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THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 18 NUMBER 20

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(Includes rules filed through September 29, 1986)

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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: AUGUST 1986.
See the Register Index for Subsequent Rulemaking Activity.
NEXT UPDATE WILL BE DATED SEPTEMBER 22, 1986.

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Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **November 19, 1986**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals. On occasion, a proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-4.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

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November 17 issue:	
Proposals	October 20
Adoptions	October 27
December 1 issue:	
Proposals	October 31
Adoptions	November 7
December 15 issue:	
Proposals	November 14
Adoptions	November 20

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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RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF RURAL RESOURCES

State Soil Conservation Committee Vegetative and Structural Standards

Proposed Amendment: N.J.A.C. 2:90-1.3

Authorized By: Arthur R. Brown, Jr., Chairman, State Soil Conservation Committee.

Authority: N.J.S.A. 4:24-3 and 4:24-42.

Proposal Number: PRN 1986-414.

Submit comments by November 19, 1986 to:
Samuel R. Race, Executive Secretary
State Soil Conservation Committee, Room 203
New Jersey Department of Agriculture
CN 330
Trenton, New Jersey 08625
(609) 292-5540

The agency proposal follows:

Summary

The Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq. requires that approval of an application for development for any project as defined in the Act shall be conditioned upon certification of a soil erosion and sediment control plan by the local soil conservation district. Such certification shall be based upon Standards for the control of soil erosion and sedimentation adopted by the State Soil Conservation Committee. The Committee formulates and modifies such standards to reflect the best available technology for such controls. Four new standards, grade stabilization, parking lot storage, rooftop storage and underground tanks, are being added by this proposal.

The Committee proposal has been developed with the assistance of a Technical Advisory group comprised of representatives of professional engineering groups, builder associations, Rutgers University, the State Departments of Agriculture, Environmental Protection and Transportation, the U.S. Soil Conservation Service and others. A brief description of the proposed changes follows.

Vegetative Standards:

3.11, Temporary Vegetative Cover for Soil Stabilization, is modified to expand requirement for mulch to include all seeded areas and utilizes the more widely accepted "Plant Hardiness Zone" designation for seed types and optimum seeding dates Statewide.

3.21, Permanent Vegetative Cover for Soil Stabilization, is modified same as 3.11.

3.31 to 3.61 have not been modified.

3.71, Dune Stabilization, is modified to eliminate fall planting season allowing only spring planting of dune grasses.

3.81 has not been modified.

3.91, Protecting Trees During Construction, is modified to provide additional guidelines to save trees on a wooded site.

Structural Standards: (currently designated as engineering standards):

4.11 has not been modified.

4.21, Diversions:

a. Modified to require the Type III, 24 hour storm and other methods as criteria for channel design, reduces design options for vegetated diversions and grassed waterways and allows the use of plastic monofilament matting in diversions and grassed waterways.

b. Provides additional design option for diversion outlets.

4.31, Grassed Waterways, is modified same as 4.21(a).

4.41, Sediment Basin, is modified to require the Type III, 24 hour storm for establishing volume capacity, eliminates structural design requirements.

4.51 (Minor changes only.)

4.61, Channel Stability, is modified to require the Type III, 24 hour storm and other methods as criteria for channel design; reduces allowable velocity for channels with sand base.

4.71, Dention Basin (currently designated as Floodwater Retarding Structure), is modified same as 4.41.

4.81 to 4.11.1 have not been modified.

4.12.1, Riprap, is modified to provide additional design option (G-bion) to stabilize channels, sets maximum channel bottom slope at 10 percent and requires the Type III, 24 hour storm and other methods as design criteria.

4.13.1, Sediment Barrier, modified to provide additional design options for silt fence materials.

4.14.1, Conduit Outlet Protection, is modified to incorporate "tailwater" in the formula to determine stone size; provides additional design options (scour hole) at pipe outlet.

4.15.1, Stabilized Construction Entrance, is modified to increase stone pad thickness.

4.16.1 (Minor changes only.)

4.17.1, Grade Stabilization Structure, is a new standard which provides alternatives to conduit outlet protection and channel stability standards.

4.18.1, Parking Lot Storage, is a new standard which provides for detention and slow release of water from the site.

4.19.1, Rooftop Storage (New standard same as 4.18.1.)

4.20.1, Underground Tanks (New standard same as 4.18.1.)

Social Impact

The proposal will have a favorable impact on the citizens of New Jersey through increased protection from offsite soil erosion and sedimentation damages resulting from land disturbances for construction, surface mining or other regulated activities. Soil losses from construction sites which result in the impairment of storm drain systems, streams and lakes and increase the potential for flooding and related damages will be more adequately controlled.

Economic Impact

The proposal will have a favorable impact on the public which will be assured that the best available technology for controlling erosion will be utilized to minimize off-site sedimentation damage costs. Some minor increases in construction costs will result. Private construction and public costs for correction of problems will be reduced as will maintenance after completion of the project.

Environmental Impact

A positive environmental impact is anticipated with reduced sedimentation damage. Water quality will be enhanced and stormwater damage will be reduced.

Full text of the proposal for technical changes to Vegetative and Engineering Standards may be reviewed at the following locations:

N.J. Department of Agriculture
State Soil Conservation Committee
CN 330, Room 203
Trenton, New Jersey 08625
(609) 292-5540

Bergen County Soil Conservation District
327 Ridgewood Avenue
Paramus 07652
(201) 261-4407

Burlington County Soil Conservation District
Cramer Building, Route 38
Mount Holly 08060
(609) 267-7410

Camden County Soil Conservation District
Municipal Building
59 S. White Horse Pike
Berlin 08009
(609) 767-6299

Cape-Atlantic Soil Conservation District
Atlantic County Office Building
1200 West Harding Highway
Mays Landing 08330
(Cape May and Atlantic Counties)
(609) 625-3144

Cumberland County Soil Conservation District
P.O. Box 5148, Route 77
Seabrook 08302
(609) 451-2422

Freehold Soil Conservation District
 35 Court Street
 Freehold 07728
 (Monmouth and Middlesex Counties)
 (201) 431-3850
 Gloucester County Soil Conservation District
 Jamesway Plaza
 North Delsea Drive, Box 507
 Glassboro 08028
 (609) 881-8323
 Hudson, Essex and Passaic Soil Conservation District
 571 Bloomfield Avenue
 Verona 07044
 (201) 239-1886
 Hunterdon County Soil Conservation District
 Extension Center Building
 4 Gauntt Place
 Flemington 08822
 (201) 782-3915
 Mercer County Soil Conservation District
 930 Spruce Street
 Trenton 08648
 (609) 989-6847
 Morris County Soil Conservation District
 Court House
 (Location—W. Hanover Avenue) (Morris Township)
 Morristown 07960
 (201) 829-8694
 Ocean County Soil Conservation District
 6 Mott Place
 CN 2191
 Toms River 08753
 (201) 244-7048
 Salem County Soil Conservation District
 1000 East, Route 40, Box 47
 Woodstown 08098
 (609) 769-1124
 Somerset-Union Soil Conservation District
 Somerset County 4-H Center
 308 Milltown Road
 Bridgewater 08807
 (201) 526-2701
 (Somerset and Union Counties)
 Sussex County Soil Conservation District
 R.D. #7, Box 13
 Route 206 South
 Newton 07860
 (201) 383-7315
 Warren County Soil Conservation District
 Stiger Street
 Hackettstown 07840
 (201) 852-2579

Topsoiling	[3.51]	3.5.1
Revised September 1979		
Maintaining Vegetation	[3.61]	3.6.1
Adopted September 1974		
Dune Stabilization	[3.71]	3.7.1
Revised June 1986		
Trees, Shrubs and Vines	[3.81]	3.8.1
Adopted June 1974		
Protecting Trees During Construction	[3.91]	3.9.1
Revised June 1986		
2. [Engineering] Structural Standards:		
Land Grading	[4.11]	4.1.1
Revised June 1986		
Diversions	[4.21]	4.2.1
Revised June 1986		
Grassed Waterway	[4.31]	4.3.1
Revised June 1986		
Sediment Basin	[4.41]	4.4.1
Revised June 1986		
Slope Protection Structures	[4.51]	4.5.1
Revised June 1986		
Channel Stabilization	[4.61]	4.6.1
Revised June 1986		
[Floodwater Retarding Structures] Detention Basin	[4.81]	4.8.1
Revised June 1986		
Subsurface Drainage	[4.81]	4.8.1
Revised June 1986		
Traffic Control	[4.91]	4.9.1
Revised June 1986		
Dust Control		4.10.1
Revised June 1986		
Lined Waterway		4.11.1
Revised June 1986		
Riprap		4.12.1
Revised June 1986		
Sediment Barrier		4.13.1
Revised June 1986		
Conduit Outlet Protection		4.14.1
Revised June 1986		
Stabilized Construction Entrance		4.15.1
Revised June 1986		
Storm Sewer Inlet Protection		4.16.1
Revised June 1986		
Grade Stabilization Structure		4.17.1
Adopted June 1986		
Parking Lot Storage		4.18.1
Adopted June 1986		
Rooftop Storage		4.19.1
Adopted June 1986		
Underground Tanks		4.20.1
Adopted June 1986		

3. Copies [are available through] of the Standards may be obtained by contacting the State Soil Conservation Committee [and each] or any of the soil conservation districts as follows:

i.-xvi. (No change.)

(b) Where it can be satisfactorily demonstrated by the applicant that unique or innovative control measures or procedures not specified in this chapter may be applicable to specific sites, such measures may be proposed for consideration and utilized subject to approval by the soil conservation district and the State Soil Conservation Committee. Such approval may be granted only where it is determined that strict application of the standards as herein specified will not result in the most practical and effective control of soil erosion, sedimentation and stormwater damages.

[(b)](c) The location address, and telephone number of [each] the local soil conservation district may be obtained from the State Soil Conservation Committee [P.O. Box 1888], CN 330, Trenton, New Jersey 08625, 609-292-5540.

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

2:90-1.3 Standards

(a) The State Soil Conservation Committee adopts and hereby incorporates into these rules by reference as standards for soil erosion and sediment control those standards [presently] published in the "Standards for Soil Erosion and Sediment Control in New Jersey", as adopted or revised September 9, 1974, [and revised] September 1979 and June 1986 as a technical basis for local soil conservation district certification of soil erosion and sediment control plans. [by the New Jersey State Soil Conservation Committee.] Specifically, these standards include the following.

I. Vegetative Standards:

Temporary Vegetative Cover for Soil Stabilization	[3.11]	3.1.1
Revised June 1986		
Permanent Vegetative Cover for Soil Stabilization	[3.21]	3.2.1
Revised June 1986		
Stabilization with Mulch Only	[3.31]	3.3.1
Revised September 1979		
Permanent Stabilization with Sod	[3.41]	3.4.1
Revised September 1979		

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code Mechanical Subcode

Proposed Amendment: N.J.A.C. 5:23-3.4, 3.20

Authorized By: Leonard S. Coleman, Commissioner,

Department of Community Affairs.

Authority: N.J.S.A. 52:27D-124.

Proposal Number: PRN 1986-438.

Submit comments by November 19, 1986 to:

Michael L. Tickin, Esq.

Administrative Practice Officer

Division of Housing and Development

CN 804

Trenton, NJ 08625.

The agency proposal follows:

Summary

Under N.J.A.C. 5:23-3.20(b), section M-508.1, "Inspection and cleaning," is being added as a deletion from the Mechanical Subcode as adopted. This amendment replaces the current provision deleting all of Section M-508.0, "Maintenance and test," of which Section M-508.1 is a part. The net result is to adopt Section M-508.2, which authorizes the subcode official to require full-scale tests of commercial kitchen exhaust systems to assure conformance to the requirements of Article 5 of the Mechanical Subcode. Also, delineation of plan review functions has been further specified.

This proposal replaces PRN 1986-375, which appears at 18 N.J.R. 1865(b).

Social Impact

Periodic testing of commercial kitchen exhaust systems can prevent fires and thereby save lives and property. The amendment will make it clear that such testing may be required.

Economic Impact

It is already the general practice of enforcement officials to require testing of commercial kitchen exhaust systems as a special inspection, so no substantial change in economic impact is likely.

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

5:23-3.4 Responsibility

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

(f) Responsibility for enforcement of specific provisions of the Mechanical Subcode shall be as follows:

1. Articles 3, [11,] 12, and 14, Plan Review functions shall be enforced jointly by the building and fire subcode officials. Construction inspection functions shall be enforced exclusively by the Building subcode official.

2.-3. (No change.)

4. Article 11 Plan review functions shall be enforced jointly by the building and fire protection subcode officials; construction inspection functions shall be enforced exclusively by the fire protection subcode official.

Renumber 4.-6. as 5.-7. (No change in text.)

5:23-3.20 Mechanical Subcode

(a) (No change.)

(b) The following articles, sections or pages of the BOCA Basic/National Mechanical Code/1984 are amended as follows:

1.-4. (No change.)

5. Article 5. of the mechanical subcode, entitled "Kitchen Exhaust Equipment" is amended as follows:

i.-iii. (No change.)

iv. Section [M-508 "Maintenance and Test"] **M-508.1 "Inspection and cleaning"** is deleted [in its entirety].

6.-19. (No change.)

(c) (No change.)

(b)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Substantive Rules: Inclusionary Development and Affirmative Marketing

Proposed New Rules: N.J.A.C. 5:92-14 and -15

Proposed Amendments: N.J.A.C. 5:92-1.3 and 5:92-10.4

Authorized By: Arthur R. Kondrup, Chairman, Council on Affordable Housing.

Authority: N.J.S.A. 52:27D-301 et seq., specifically 52:27D-307.

Proposal Number: PRN 1986-429.

A **public hearing** concerning this proposal will be held on:

November 5, 1986 from 3:00 P.M. to 6:00 P.M.

Mercer County College

Audio Visual Room 109

1200 Old Trenton Road

Trenton, NJ 08690

Submit comments by November 19, 1986 to:

Douglas V. Opalski, Executive Director

New Jersey Council on Affordable Housing

375 West State Street

CN 813

Trenton, NJ 08625-0813

The agency proposal follows:

Summary

The Fair Housing Act provides a method to enable every municipality in the State to determine and to provide for its fair share of its region's need for low and moderate income housing. The Council's initial substantive rules implement this statutory purpose through criteria and guidelines which assess regional need, fair share and the adequacy of municipal measures. It must be noted, however, that these initial rules of the Council may be revised from time to time in accordance with changing needs and circumstances. Therefore, in order to address further the range of issues which bear upon the State's need for affordable housing, that emerged during six public hearings conducted by the Council in June, 1986, the Council established task forces to conduct further research and provide recommendations regarding such areas as the following:

1. Requirements governing the affordability for low and moderate income housing;

2. Affirmative marketing requirements for low and moderate income housing; and

3. Bedroom mix, age restricted and rental housing.

The task forces, comprised of Council members and other experts in the field of low and moderate income housing, reported recommendations to the Council. These recommendations were discussed in extensive detail, coordinated and refined into this proposal. At 5:92-10.4(c) the Council addresses the area of a construction schedule for low and moderate income units as a part of an overall housing project. As a result, new rules are proposed on inclusionary developments to include: the range of affordability; bedroom mix; age restriction of units; rental housing; construction schedule of subsidized and market units and affirmative marketing.

Economic Impact

Creation of housing units affordable to a full range of low and moderate income households will provide them access to sound shelter within their means. Location of such housing at many sites may, with the option to reserve an appropriate share of such housing for local employees who are nonresidents and for prospective employees, reduce commuting distances. Reduces distances will lower individuals' commuting cost and help conserve the State's costly and scarce highway network including many roads reaching or exceeding design capacity. In-fill housing and rehabilitation may reduce expenditures on sewer and water extensions by utilizing existing systems with excess capacity.

Social Impact

The public will benefit since the rules will be the basis for creation of additional housing affordable to a full range of low and moderate income

households. The existence of a variety of housing types in all municipalities will increase consumer choice. Hardship conditions due to high housing costs or housing unavailability in some areas will be lessened. Residents in deficient housing will particularly benefit from increased housing choice.

Environmental Impact

The environmental impact of higher density inclusionary developments affordable to low and moderate income households will be less if located under a comprehensive and consistent local housing element and master plan, and, if located with reference to applicable county, regional and State plans. The regulations provide for consistency with applicable policies, plans, programs and/or regulations of related state Departments and agencies.

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

5:92-1.3 Definitions

...
 "Inclusionary development" means a residential housing development in which a substantial percentage of the housing units is provided for a reasonable income range of low and moderate income households. **The term may also mean housing developments comprised completely of low and moderate income units.**
 ...

"Priority" means a system of selecting applicants.
 ...

"Restricted" means restricted for occupancy by a class of individuals by virtue of legally enforceable conditions contained within a deed or other duly recorded document.
 ...

5:92-10.4 General provisions

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

(c) [Developers of inclusionary developments shall be entitled to final approval of at least four market housing units per each low and moderate income housing unit.] **Within inclusionary developments, low and moderate income housing units shall be built in accordance with the following schedule:**

Minimum Percentage of Low and Moderate Income Units Completed	Percentage of Market Housing Units Completed
0	25
10	25 + 1 unit
50	50
75	90
100	100

Full text of the proposed new rules follows.

SUBCHAPTER 14. INCLUSIONARY DEVELOPMENTS

5:92-14.1 Bedroom distribution

(a) Municipalities shall devise and provide for within their housing element, a method which establishes the following distribution of the number of bedrooms contained within an inclusionary development:

1. At a minimum, 35 percent of all low and moderate income units shall be two bedroom units; and
2. At a minimum, 15 percent of all low and moderate income units shall be three bedroom units; and
3. No more than, 20 percent of all low and moderate income units may be efficiency units.

5:92-14.2 Range of affordability for purchased housing

(a) Municipalities shall provide within their housing element that the average price of low and moderate income units within an inclusionary development be, as best as practicable, affordable to households at 57.5 percent of median income as contained in N.J.A.C. 5:92-12.4.

(b) In devising a range of affordability for purchased housing, as required in (a) above, municipalities shall provide, as best as practicable, for the following distribution of prices for every 20 low and moderate income units:

	Proposed Pricing Stratification
Low	1 at 40 through 42.5 percent
	3 and 42.6 through 47.5 percent
	6 at 47.6 through 50 percent
Moderate	1 at 50.1 through 57.5 percent
	1 at 57.6 through 64.5 percent
	1 at 64.6 through 68.5 percent
	1 at 68.6 through 72.5 percent
	2 at 72.6 through 77.5 percent
	4 at 77.6 through 80 percent

(c) For initial occupancy, priority shall be given to households within a particular income category with flexibility based on NJ Housing and Mortgage Finance Agency affordability controls criteria.

5:92-14.3 Age restricted units within an inclusionary development

Municipalities may provide that certain units within an inclusionary development be restricted for occupancy to residents who have attained a specified age. Municipalities shall age restrict no more than 20 percent of their fair share obligation as calculated after credits and adjustments have been granted, less any units transferred under a Regional Contribution Agreement.

5:92-14.4 Rental housing

(a) After crediting, after adjustments and after subtracting indigenous need, if a municipality's fair share obligation is 125 or more, that municipality's housing element shall contain a rental housing component.

(b) Municipalities that are required to include within their housing element a rental housing component, shall provide the opportunity that 20 percent of the units calculated pursuant to (a) above, be rental units. This opportunity may be in the form of conditional use zoning.

(c) Within zones designated for rental inclusionary developments, the Council shall presumptively require a 15 percent maximum set-aside and a minimum gross density of 7.8 units per acre. The Council may modify the set-aside or density requirements based on tax abatements granted by the municipality; government subsidy of a rental project; and/or any other action by the municipality that makes the provision of rental housing realistically possible.

(d) All municipalities, including those not required to develop a rental housing component, shall receive a one and a third unit credit, for each rental unit constructed and occupied in their municipality, until such time that the constructed rental housing units are in excess of 20 percent of the municipal fair share calculated after crediting, after adjustments and after indigenous need.

(e) No municipality shall be required to construct rental housing that is in excess of 20 percent of its fair share, after crediting, after adjustments and after providing for indigenous need.

(f) Municipalities that choose to transfer the rental housing component via a Regional Contribution Agreement shall do so by creating new rental units in the receiving municipality.

SUBCHAPTER 15. AFFIRMATIVE MARKETING WITHIN INCLUSIONARY DEVELOPMENTS

5:92-15.1 Occupancy preference

For all low and moderate income housing units provided in inclusionary developments, municipalities shall establish occupancy such that initially, no more than 50 percent of the units are made available to income eligible households that reside in the municipality or work in the municipality and reside elsewhere.

5:92-15.2 Affirmative Marketing Program

(a) Municipalities shall have primary responsibility for developing and implementing an Affirmative Marketing Program that addresses the occupancy preference requirements in N.J.A.C. 5:92-15.1. Municipalities shall either require developers and/or sponsors of low and moderate income housing to market, screen, offer occupancy and select income eligible households accordingly; perform this responsibility themselves; establish an agency to perform on their behalf and/or enter into an agreement with outside agents.

(b) Municipalities shall provide the Council on Affordable Housing with an Affirmative Marketing Program that addresses occupancy preference required in N.J.A.C. 5:92-15.1, subject to Council review and certification. This Affirmative Marketing Program shall identify representative groups operating in the municipality and its respective housing region (for example, community based and civic organizations, council of churches, welfare and social service agencies, etc.). Further, the program shall require that any developers and/or sponsors of projects with 25 or more low and moderate income housing units actively market these units to appropriate representative groups, as is specified in the Affirmative Marketing Program.

(c) Municipalities shall identify minimum and appropriate affirmative marketing requirements for projects of less than 25 units of low and moderate income housing.

(d) The Affirmative Marketing Program shall commence at least 90 days before issuance of either temporary or permanent certificates of occupancy, and shall continue until all low and moderate income housing units are under contract of sale and/or lease.

(e) For initial occupancy priority, households shall be screened for occupancy preference as required in N.J.A.C. 5:92-15.1. These households shall be offered contracts of sale and/or lease first and before other

income eligible households. When 50 percent of the housing units have been purchased or leased, according to N.J.A.C. 5:92-15.1 the remaining income eligible applicants, not yet under contract, shall be pooled and offered contracts.

(f) Within all rounds of applicant selection, random selection of eligible applicants should prevail.

(g) Municipalities shall prepare progress reports on an 18 month cycle from the date of substantive certification. These reports shall be made available to the public and filed with the Council on Affordable Housing. These reports shall provide an analysis of the actual characteristics of households occupying low and moderate income units compared to the occupancy preference in N.J.A.C. 5:92-15.1.

(h) Three and six years from substantive certification, municipalities shall prepare summary reports of their affirmative marketing programs. These reports shall expand upon previous progress reports by assessing the aggregate and up-to-date effectiveness of the programs. If applicable, municipalities shall recommend improvements to redress their record of occupancy preference to reflect requirements as in N.J.A.C. 5:92-15.1.

5:92-15.3 Exemption from occupancy preference and Affirmative Marketing Program

(a) Municipalities which do not have a reallocated present and prospective need shall be exempt from occupancy preferences as contained in N.J.A.C. 5:92-15.1 and related Affirmative Marketing Program requirements as contained in N.J.A.C. 5:92-15.1-2.

(b) Where the affirmative marketing regulations of the U.S. Department of Housing and Urban Development, the N.J. Department of Community Affairs and/or the N.J. Housing & Mortgage Finance Agency are applicable, the Council shall adhere to their affirmative marketing regulations of these agencies.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

New Jersey Pollutant Discharge Elimination System

Proposed Amendments: N.J.A.C. 7:14A-1, 2, 3, 5, 10, 12

Authorized By: Michael F. Catania, Deputy Commissioner,
Department of Environmental Protection.

Authority: N.J.S.A. 58:10A-1 et seq., 58:11A-1 et seq., 58:11-49 et seq., 58:10-23.11 et seq., 58:11-18.10 et seq., 13:1D-1 et seq., 13:1E-1 et seq., 58:4A-5, 58:4A-4.1, and 58:12A-1 et seq.

DEP Docket No. 042-86-09.

Proposal Number: PRN 1986-432.

A **public hearing** concerning this proposal will be held on:

November 13, 1986 at 10:00 A.M.
Labor Education Center Auditorium
Cook College
Ryderson Lane
Rutgers University
New Brunswick, New Jersey

Submit comments by November 19, 1986 to:

David Weinsoff
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, NJ 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) regulates the discharge of pollutants into the surface and ground waters of the State pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. On March 6, 1981, the Department promulgated regulations implementing this program. These regulations are known as the New Jersey Pollutant Discharge Elimination System (NJPDES) Regulations, N.J.A.C. 7:14A-1 et seq. On June 8, 1983, the Department readopted the NJPDES Regulations (15 N.J.R. 1094(c)). The rules establish a permitting program for various types of discharges that include discharges from the following: discharges by underground injection wells,

sanitary landfills, indirect discharges to public and private wastewater treatment plants, surface water discharges, industrial waste management facilities, surface impoundments, land application of sludge and septage, infiltration percolation lagoons, land application of effluents by overland flow and land application of effluents by spray irrigation. The rules also govern the Department's approval of the construction and operation of treatment works, sewage collection systems and treatment plants.

The proposed amendments were prepared as a result of the Department's continuous review of the regulations. The proposed amendments include changes to N.J.A.C. 7:14A-1, which identifies who must obtain a NJPDES permit, provides the definition of terms, and establishes the fee schedule for NJPDES permittees, and N.J.A.C. 7:14A-2, which establishes the requirements that apply to all NJPDES permittees for any discharge to surface or ground water, including application procedures, standardized conditions, and reporting requirements. In addition, the proposed amendments include technical changes to N.J.A.C. 7:14A-3, 5, 10 and 12. These changes are necessary to make all parallel citations in these subchapters consistent with the changes in citations being made in subchapter 1 and 2. The amendment to N.J.A.C. 7:14A-10 includes a change to the regulation of surface impoundments.

Social Impact

The proposed amendments will have a beneficial social impact. The NJPDES Regulations create a permit program which protects the surface and ground waters of the State. These proposed changes will allow the Department to continue to protect the waters of the State in an efficient manner.

Economic Impact

The proposed changes will neither increase nor decrease the cost of the NJPDES program. The NJPDES program, however, has a positive economic impact. The NJPDES regulations have significantly improved the environmental quality of New Jersey's ground and surface waters by abating the negative impact of water pollution on property values, business interests, and the tourist industry.

Environmental Impact

The proposed amendments will assist the Department in administering the NJPDES program. The NJPDES regulations allow the Department to effectively mitigate and prevent adverse impacts from discharges to the waters of the State.

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

7:14A-1.2 Scope

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

(c) No person shall discharge any pollutant except in conformity with a valid NJPDES permit. A discharger which existed prior to the effective date of this chapter who has submitted a complete application shall be deemed to [only satisfy] **satisfy** only the requirement of applying for a permit. This shall not preclude the Department from taking any appropriate enforcement action for violation of the State Act, this chapter, or other applicable law or regulation.

(d) It is the intent of the Department to regulate, [but it is not limited to] **at a minimum**, the following by means of the New Jersey Pollutant Discharge Elimination System (NJPDES) permit program:

1. (No change.)

2. Discharge of industrial pollutants by a significant indirect user and any other indirect discharger into a municipal or privately owned treatment works. All indirect dischargers are required to either obtain and comply with an individual NJPDES permit, or comply with the applicable NJPDES permit-by-rule provisions. No exemption, express or implied, conferred by this chapter from the requirement of obtaining an individual NJPDES permit shall be so construed as to bar criminal prosecution under N.J.S.A. 58:10A-10f of any indirect discharger who discharges in violation of the requirements of this chapter applicable to indirect dischargers who are not required to obtain individual NJPDES permits. See also N.J.A.C. 7:14A-13.4(c). Although all **dischargers who discharge[s]** to privately owned treatment works may not be required to obtain a NJPDES permit, such dischargers shall comply with N.J.A.C. 7:14-3.13(a)13[.];

3.-14. (No change.)

(e) The Department may issue, [but is not limited to] **at a minimum**, permits under the NJPDES permit program for:

1.-9. (No change.)

10. Discharges from **operating and non-operating** sanitary landfills (a DGW or DSW).

7:14A-1.3 General prohibitions

(a) [NJPDES permit shall not be issued:] **The Department shall not issue a NJPDES permit:**

1. When the conditions of the permit do not provide for compliance with the applicable requirements of the State and Federal Acts or regulations;

[2. For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;]

2. When the NJPDES permit would be for the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

3.-4. (No change.)

5. **To the owner or operator of any facility which [requires the disposal of liquid] disposes of sewage sludge into a landfill after March 15, 1985, except as necessary to meet short term emergencies identified by the Department. In such emergencies, the Department may grant written approval under the terms of an Administrative Consent Order for the disposal of dewatered sewage sludge in a Department designated landfill with a Department approved liner and leachate collection system.**

7:14A-1.4 Consolidation of permit processing

(a) It is the intent of the Department to issue a single NJPDES permit which includes all of the discharges covered by this chapter. (See N.J.A.C. 7:14A-1.2(e)). The Department has designated the types of discharges separately because certain information required in the permit applications and certain provisions that will be established as permit conditions are [applicable only] **only applicable** to a specific type of discharge. [Therein] **Herein** where a person is required to obtain a permit for a discharge covered under this chapter, this shall mean that a specific type of discharge [must] **shall** be included in and [authorized in] **regulated by** the NJPDES permit. The general provisions of this chapter shall apply to all types of discharges included in the NJPDES regulations (Subchapters 1, 2, 7 and 8 of this chapter). Additional conditions may apply to specific types of discharges.

(b) Whenever a facility or activity has more than one type of discharge covered by this chapter, application for all required permits to discharge shall be made at the earliest required date of filing for any of the discharges in accordance with N.J.A.C. 7:14A-2.1[(f)](g) and 10.1.

(c) Whenever a facility or activity has more than one type of discharge covered by this chapter, processing of two or more applications for those permits [should] **shall**, to the extent practicable as determined by the Department, be consolidated. The first step in consolidation [is to prepare each draft permit at the same time] **shall be the simultaneous preparation of draft permits.**

(d) Whenever draft permits are **simultaneously** prepared [at the same time], the statements of basis (required under N.J.A.C. 7:14A-7.7) or fact sheets (N.J.A.C. 7:14A-7.8), administrative records (required under N.J.A.C. 7:14A-7.9), public comment periods (N.J.A.C. 7:14A-8.1), and any public hearings (N.J.A.C. 7:14A-8.3) on those permits [should] **shall** also be consolidated. The final permits [should] **shall**, to the extent practicable, be **simultaneously** issued [together]. [They] **Final permits** need not be **simultaneously** issued [together] if, in the judgment of the Department, joint processing would result in unreasonable delay in the issuance of one or more approval(s) [to] **for** discharge.

(e) Whenever an existing facility or activity requires additional permits covered by this chapter, the Department [should] **shall**, to the extent practicable, coordinate the expiration date(s) of the new permit(s) with the expiration date(s) of the existing permit(s) so that all permits **simultaneously** expire [simultaneously]. Processing of the subsequent application for renewal [can] **shall** then be consolidated.

(f) Processing of permit applications under (b), (c), and (d) above may be consolidated as follows:

1. The Department [will] to the extent practicable consolidate permit processing at its discretion.,] **at its discretion may, to the extent practicable, consolidate permit processing;**

2. Permit applications may recommend whether or not the processing of their applications [should] **shall** be consolidated.

7:14A-1.6 Conflict of interest

(a) Any board or body which approves all or portions of a permit shall not include as a member any person who receives, or has during the previous two years received, a significant portion of [income directly or indirectly] **direct or indirect income** from permit holders or applicants for a permit.

(b) (No change.)

(c) For the purposes of this section, [income is not received "directly or indirectly from permit holders or applicants for a permit"] **"direct or indirect income from permit holders or applicants for a permit" is not**

received when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the primary sources of income.

7:14A-1.7 Application

(a) (No change.)

(b) The Department may require an applicant to provide additional information where such information, **in the opinion of the Department**, is necessary [, in the opinion of the Department,] to [fully disclose] **attain** all relevant facts concerning the permit application or permit, including proprietary data. [The applicant may assert a claim of confidentiality pursuant to subchapter 11.] Any failure to submit such information shall constitute valid cause for denial of the permit or other remedy as provided by law. **The applicant may, however, assert a claim of confidentiality pursuant to N.J.A.C. 7:14A-11.1 et seq.**

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

(e) Any provision of this chapter or the application thereof to any person shall be revised automatically, as necessary to reflect [additional requirements or] more stringent requirements [which are based on, or are comparable to regulations] adopted by the EPA.

7:14A-1.9 Definitions

As used in this chapter, the following words and terms shall have the following meanings.

...
 "Construction" means any placement, assembly or installation of facilities, equipment or treatment works, [site preparation work, including clearing, excavation removal,] or modification of existing buildings, structures or facilities which is necessary for the placement, assembly or installation of new source facilities, equipment or treatment works, or entering into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss and contracts for feasibility, engineering and design studies do not constitute a contractual obligation for the purposes of this definition.

...
 ["Infiltration percolation lagoon" means a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold and transmit fluids to the subsurface and which is not an injection well.]

"Infiltration percolation lagoon" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area which holds an accumulation of liquid or solid wastes or wastes containing free liquids or other pollutants, which is not an injection well, and discharges to the soil, geologic material and/or the groundwater.

...
 "Lagoon" means any facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area which holds an accumulation of liquid or solid wastes or other pollutants for which the Department has not made a determination of whether it shall be classified as an infiltration percolation lagoon or surface impoundment.

"Land application" means the controlled discharge of pollutants onto or into the surface soil horizon in such a manner that the materials are treated by and/or become incorporated into and blended with the soil.

...
 "Process to further reduce pathogens" (PFRP) means any sludge stabilization process which meets the criteria for PFRP set forth in Appendix II B in 40 CFR 257, including, at a minimum, composting, heat drying, heat treatment, and thermophilic aerobic digestion.

"Process to significantly reduce pathogens" (PSRP) means any sludge stabilization process which meets the criteria for PSRP set forth in Appendix II A in 40 CFR 257, including, at a minimum, aerobic digestion, air drying, anaerobic digestion, composting and lime stabilization.

...
 "Residuals" means accumulated solids and liquids which are by-products of a physical, chemical, biological, thermal or mechanical process or partial process. Residuals include, at a minimum, sludge, septage and dredge spoils.

...
 "Sludge" means the solid residue and associated liquid resulting from the physical, chemical or biological treatment of wastewater. ["Septage" means the combination of liquid and solid residues resulting from treatment of waterborne domestic waste in individual subsurface sewage disposal systems. For the purposes of this chapter "septage" held in a storage vessel other than the initial storage in a septic tank shall be considered "sludge."]

...
 "Surface impoundment" or ["impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area [formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to] which holds an accumulation of liquid or solid wastes or wastes containing free liquids [,] or other pollutants and which is not an injection well. [Examples of surface impoundments are holding, storage, settling and aeration pits, and ponds and lagoons.]

...
 "Tank" means any stationary device which holds liquid or solid pollutant and which provides the necessary structural strength through self-supporting sides to totally contain the pollutant. (Structures which meet the definition of a tank under the Federal Solid Waste Disposal Act and State Solid Waste Management Acts may also meet the definition of an infiltration percolation lagoon, lagoon or surface impoundment under the NJPDES regulations.)

7:14A-2.1 Applications for a NJPDES Permit

(a) (No change.)

[(b) When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit, except that for a IWMF permit only, the owner shall also sign the permit application.]

(b) The following persons shall obtain a NJPDES permit:

1. A person who currently owns any part of a facility which include an activity regulated pursuant to this chapter; and

2. A person who currently operates any facility which includes an activity regulated pursuant to this chapter.

(c) Whenever, pursuant to (b)1 and/or 2 above, more than one person is required to obtain a NJPDES permit for one or more activities at a specific site, the Department shall issue a single permit which lists all of these persons as permittees.

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

[(d) A person whose facility or activity results in more than one discharge at a single site, shall describe each separately in the application.]

(e) A person whose facility is the cause of, or whose activity results in, more than one discharge at a single site, shall separately describe each discharge in the application.

[(e)(f) Any person [with a] whose facility is the cause of, or whose activity results in, a discharge which is the subject of any of the applications required by these regulations and which threatens public health, or causes or contributes to any contravention of applicable water quality standards or effluent limitations, may be required, notwithstanding the filing of an application or pending filing requirement, to abate such pollution [notwithstanding the filing of an application or pending filing requirement].

[(f)(g) The schedule for submission of applications is as follows:

1. Any person planning to undertake any activity which [will] shall result in a discharge to surface water (DSW) shall apply for a discharge allocation certificate (DAC) in accordance with N.J.A.C. 7:14A-3.3[.] unless prior to [the effective date of this chapter] March 6, 1981 a facilities plan which includes such facility has been approved pursuant to Section 201 of the Federal Act. This provision does not exempt a facility from obtaining a NJPDES permit in accordance with this chapter.

2. Any person planning to undertake any activity which [will] shall result in a discharge covered by this chapter (except for a discharge to surface water (DSW)) shall apply for a NJPDES permit in accordance with N.J.A.C. 7:14A-7.2[.] at least 180 days prior to building, installing, or substantially modifying any facility for the collection or treatment of any pollutant.

3. Any person planning to undertake any activity which [will] shall result in a discharge covered by [these regulations,] this chapter which does not require a facility for the collection or treatment of waste (such as land application of sludge) shall apply for a NJPDES permit at least 90 days prior to planned discharge.

4. (No change.)

5. Any person planning to continue discharging after the expiration date of an existing NJPDES permit [must] shall file an application for renewal at least 180 days prior to expiration of the existing permit.

6. (No change.)

[(g)(h) All applicants for NJPDES permits shall provide the following information to the Department using the application form provided by the Department:

1.-3. (No change.)

4. The [operator's] name, address, and telephone number[,], of all current owners and operators, as well as the ownership status, and status as Federal, State, private, public or other entity;

5.-6. (No change.)

7. Identification of administrative orders, administrative consent order, notices of violations, [issued or] complaints filed, or other corrective or enforcement action(s) required by any governmental agency(ies) with regard to [against] the operation of the applicant at that site concerning pollution within the previous [five] ten years;

8.-10. (No change.)

[(h)(i) The Department may require that an applicant for an NJPDES permit provide additional data, reports, specifications, plans or other information concerning the existing or proposed pollution control program. For new discharges to ground water permits and all discharges to surface water permits, [T]he Department shall not make a final determination on any application until such time as the applicant has supplied the requested information and [otherwise] corrected any deficiencies therein.

[(i)(j) [Recordkeeping:] Applicant shall keep records of all data used to complete permit applications and any supplemental information submitted under N.J.A.C. 7:14A-2.1, [(3.2(DSW),4.4(IWMF), [(5.8(UIC) and [subchapters 6 and 10] N.J.A.C. 7:14A-6 and 7:14A-10 for a period of at least five years from the date the application is signed.

[(j)(k) [Endorsements and comments (this subsection shall not apply to industrial treatment works):] Applicants for NJPDES permits shall provide endorsements and comments as follows:

1. Prior to the submission of an application for a [new source DSW permit, for municipal treatment works including a DAC, and for sewer extension approval,] permit to discharge to surface or ground water, DAC, or to gain approval for a treatment works or sewer connection, the applicant shall submit (return receipt requested) a copy of the application and the applicable information required pursuant to this chapter to the affected [sewerage] sewage authority(ies) and to the municipality in which the discharge(s) will be located, with a request that they endorse the application. [The applicant shall submit a copy of the request for endorsement and receipt (return receipt requested) when filing an application with the Department. A request for an endorsement is not required when filing applications for renewal of NJPDES permits or discharges which exist as of the effective date of this chapter. Although the applicant must submit a request for an endorsement to the municipality and affected sewerage authority, an endorsement is not required for a Department determination of whether to issue a draft permit in accordance with N.J.A.C. 7:14A-7.6.]

i. Permit applications submitted to the Department for a new discharge to surface water or ground water, DAC, or to gain approval for a treatment works on sewer connection shall include the endorsement from both the affected sewage authority(ies) and municipality in which the discharge(s) will be located.

ii. Applications submitted to the Department for renewal of NJPDES permits or discharges which exist as of March 6, 1981 shall include a copy of all endorsements and comments received or a copy of the request for an endorsement and receipt (return receipt requested) sent to the affected sewage authority(ies) and municipality in which the discharge(s) will be located.

2. [Endorsement by municipality:] An endorsement by a municipality shall be as follows:

i. An endorsement by a municipality concerning a proposed discharge [of industrial pollutants] or treatment works shall include the following statements:

(1)-(2) (No change.)

ii. An endorsement [must] shall be in the form of a resolution by the governing body.

iii. (No change.)

[iv. An endorsement by a municipality concerning a proposed domestic treatment works, shall be as required on a CP-1 application form.]

[v.]iv. (No change in text.)

3. [Endorsement by affected sewerage authority:] An endorsement by an affected sewage authority shall be as follows:

i. (No change.)

ii. An endorsement by an affected [sewerage] sewage authority concerning [the] a proposed discharge of [industrial] pollutants or a treatment works shall include the following statements:

(1)-(2) (No change in text.)

iii.-iv. (No change in text.)

[v. An endorsement by an affected sewerage authority concerning a proposed domestic treatment works shall be as required on the CP-1 application form.]

4. [Lack of endorsement:] **The lack of an endorsement for renewal of NJPDES permits or discharges which exist as of March 6, 1981 may have the following effect:**

[i. Where the affected sewerage authority or municipality fails to endorse the application or submit comments within 60 days of request for endorsement the Department shall begin the application process without the endorsement.]

[ii.]i. Prior to the expiration of the 60-day period to request an endorsement, the municipality or sewerage authority may request a 30-day extension for review of a request for endorsement.

[iii.]ii. Any document issued by a [sewerage] sewerage authority or a municipality which is a tentative, preliminary, or [a] conditional approval shall not be considered an endorsement.

[iv.]iii. (No change in text.)

[5.]iv. Where the municipality or affected [sewerage] sewerage authority denies an endorsement or does not issue an endorsement, the Department shall review the reasons for denial or for the lack of endorsement, if known [of the endorsement or any comments received concerning the application for a NJPDES permit.] These reasons [and comments] shall be considered by the Department in making a [tentative] determination of whether to issue a draft permit in accordance with N.J.A.C. 7:14A-7.6.

5. **The lack of an endorsement or denial of an endorsement for a new discharge to surface or ground water, DAC, or approval of a treatment works or sewer connection shall have the following effect:**

i. **When the affected sewerage authority or municipality denies endorsement to a project, the permit application may be determined by the Department to be incomplete for processing.**

ii. **Where the municipality or affected sewerage authority denies an endorsement or does not issue an endorsement, the Department shall review the reason for denial or for the lack of endorsement, if known.**

7:14A-2.2 Emergency permits

[a] Coverage: Notwithstanding any other provision of this chapter, except for a DSW, the Department may issue a temporary emergency permit to a person to allow:

1. Discharge of pollutants, where such discharge is unpermitted or the discharge consists of pollutants not covered by an effective permit;

2. Treatment, and storage or disposal of hazardous waste for a non-permitted IWMF facility or of hazardous waste not covered by the permit for an IWMF facility with an effective permit; or

3. A specific underground injection which has not otherwise been authorized by permit, if:

i. The Department finds that an imminent and substantial endangerment to human health will result unless a temporary emergency permit is granted; or

ii. Except with regard to an injection under the UIC program, the Department finds that an imminent and substantial endangerment to the environment will result unless a temporary emergency permit is granted; or

iii. A substantial and irretrievable loss of oil or gas resources will occur unless a temporary emergency permit is granted to a Class II well under the UIC program; and

(1) Timely application for a permit could not practicably have been made; and

(2) The injection will not result in the movement of fluids into the underground sources of drinking water; or

iv. A substantial delay in production of oil or gas resources will occur unless a temporary emergency permit is granted to a new Class II well under the UIC program, and the temporary authorization will not result in the movement of fluids into an underground source of drinking water.]

(a) **The Department may issue an emergency permit to allow the activities listed in (b) below only after making a finding that:**

1. **An imminent and substantial endangerment to human health will result unless an emergency permit is granted; or**

2. **Except with regard to an injection under the UIC program, an imminent and substantial endangerment to the environment will result unless an emergency permit is granted; or**

3. **A substantial and irretrievable loss of oil or gas resources will occur unless an emergency permit is granted to a Class II well under the UIC program; and**

i. **Timely application for a permit could not practicably have been made; and**

ii. **The injection will not result in the movement of fluids into underground sources of drinking water; or**

4. **A substantial delay in production of oil or gas resources will occur unless an emergency permit is granted to a new Class II well under the UIC program, and the authorization will not result in the movement of fluids into an underground source of drinking water.**

(b) **Notwithstanding any other provision of this chapter, the Department may issue an emergency permit, except for a DSW, to an owner and/or operator of a facility to allow:**

1. **Discharge of pollutants, where such discharge is unpermitted or the discharge consists of pollutants not covered by an effective permit; or**

2. **Treatment and storage or disposal of hazardous waste for a non-permitted IWMF facility or of hazardous waste not covered by the permit for an IWMF facility with an effective permit; or**

3. **A specific underground injection which has not otherwise been authorized by permit.**

[(b)](c) [Requirements for issuance: This emergency permit:] **The requirements for issuance of an emergency permit are as follows:**

1. [May be oral or written.] **The Department may issue an emergency permit by either oral or written permission.** Oral permission may only be given by the Director, Division of Water Resources, or his/her designee [If oral, it] and shall be followed within five days by a written emergency permit.

2. [Shall not exceed 90 days in duration, except:] **The Department may issue an emergency permit for any duration not to exceed 180 days, except:**

i. (No change.)

ii. That land application of municipal or nonhazardous sludge temporarily permitted in order to prevent an imminent and substantial endangerment to the health of persons shall be for no longer term than required to prevent the hazard, or 180 days, whichever is less.

iii. That storage of municipal or nonhazardous sludge temporarily permitted in order to prevent an imminent and substantial endangerment to the health of persons shall be for a term no longer than that required to prevent the hazard, or one year, whichever is less.

3. **The Department [S]shall clearly specify in the emergency permit the hazardous wastes to be received, and the manner and location of their treatment, storage, disposal, or injection.**

4. **The Department [S]shall clearly specify in the emergency permit the rate, quantity, and quality of pollutants to be discharged and the monitoring which is required.**

5. **The Department may immediately terminate the emergency permit [May be terminated by the Department] at any time [and shall be immediately effective if it determines] following a determination that termination is appropriate to protect human health and the environment.**

6. **The Department shall publish, along with the emergency permit, [Shall be accompanied by] a public notice of the emergency permit pursuant to [published under] N.J.A.C. 7:14A-8.1, including:**

i.-v. (No change.)

[7. With regard to underground injections under (a)4 above, shall be issued only after a complete permit application has been submitted and shall be effective until final action on the application:]

7. **The Department shall issue an emergency permit regarding injections only after a complete NJPDES permit application has been submitted, and shall only be effective until final action on the application.**

[8. With regard to an injection under the UIC program, shall be conditioned in any manner the Department determines is necessary to ensure that the injection will not result in the movement of fluids into an underground source of drinking water; and]

8. **The Department may condition the emergency permit regarding injection under the UIC program in any manner that the Department determines is necessary to ensure that the injection shall not result in the movement of fluids into an underground source of drinking water; and**

9. **The Department [S]shall incorporate in the emergency permit, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of [these regulations] this chapter and 40 CFR Parts 264 and 266.**

7:14A-2.3 Continuation of [expiring] expired permits

(a) The conditions of an expired permit are continued in force pursuant to the "Administrative Procedure Act," N.J.S.A. 52:14B-11, until the effective date of a new permit if:

1. The permittee has submitted a timely and complete application for renewal as provided in N.J.A.C. 7:14A-2.1, [and (] 3.2 (DSW)[;], 4.4 (IWMF)[;], 5.8 (UIC)[;], and [subchapter] 10[)]; and

2. The Department, [through no] without fault on the part of the permittee, [does not] fails to issue a new permit with an effective date [under N.J.A.C. 7:14A-8.6,] on or before the expiration date of the previous permit (e.g., when issuance is impracticable due to constraints of time or resources [constraints]).

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(b) (No change.)

(c) [Enforcement:] When the permittee is not in compliance with the conditions of the [expiring or] expired permit, the Department, in its discretion, may choose to do [any or all] one or more of the following:

1.-4. (No change.)

(d) In the event that the permittee fails to submit a timely and complete application for renewal, all discharges of pollutants from the permittee's facility shall cease unless the Department, in its discretion, grants approval in writing to the permittee to continue to discharge in conformance with the terms and conditions of the expired permit. Such approval shall terminate upon the effective date of the renewed permit.

7:14A-2.4 Signatories

[(a) All permit applications, except those submitted for Class II wells for a UIC discharge (see (b) below) shall be signed as follows:

1. For a corporation: by a principal executive officer of at least the level of vice president;

2. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

3. For a municipality, State, Federal or other public agency: by either a principal executive officer or ranking elected official.

(b) Reports: All reports required by permits, other information requested by the Department and all permit applications submitted for Class II wells under N.J.A.C. 7:14A-5.8 shall be signed by a person described in (a) above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in (a) above;

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as a position of plant manager, operator of a well or well field, superintendent or person of equivalent responsibility; and

3. The written authorization is submitted to the Department.

(c) Changes to authorization: If an authorization under (b) above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of (b) above shall be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) Certification: Any person signing any document under (a) or (b) above shall make the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individual immediately responsible for obtaining the information, I believe the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(a) All permit applicants shall submit to the Department the following two-part certification:

1. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

i. The certification required by (a)1 shall be signed by the highest ranking corporate, partnership, or governmental officer or official at the facility to which the information pertains.

2. "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false information, including the possibility of fine and/or imprisonment."

i. The certification required by (a)2 shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency, by either the principal executive officer or ranking elected official.

(b) All reports required by permits, other information requested by the Department and all permit applications submitted for Class II wells under N.J.A.C. 7:14A-5.8 shall be signed by a person described in (a)2i above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in (a) above;

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as a position of plant manager, operator of a well or well field, superintendent or person of equivalent responsibility; and

3. The written authorization is submitted to the Department.

7:14A-2.5 Conditions applicable to all permits

[(a) The following conditions apply to all permits. For additional conditions applicable to all permits for each of the types of discharge programs individually, see N.J.A.C. 7:14A-3.10 and 3.11 (DSW), 4.4, 4.5 and 4.6 (IWMF), 5.9 (UIC) and subchapter 6 (DWG). All conditions applicable to all permits, and all additional conditions applicable to all permits for individual programs, shall be incorporated into the permits either expressly or by reference. A specific citation to these regulations shall be given in the permit.]

(a) Permittees shall comply with all applicable conditions, including, at a minimum, this section and N.J.A.C. 7:14A-3.10 and 3.11 (DSW), 4.4, 4.5 and 4.6 (IWMF), 5.9 (UIC) and 6 (DWG).

1. [Duty to comply:] Permittees shall comply with the following:

i. The permittee shall comply with all the conditions of [this] its permit. No pollutant shall be discharged more frequently than authorized or at a level in excess of that which is authorized by the permit. The discharge of any pollutant not specifically [authorized] regulated in the NJPDES permit or listed and quantified in the NJPDES application shall constitute a violation of the permit, unless the permittee can prove by clear and convincing evidence that the discharge of the unauthorized pollutant did not result from any of the permittee's industrial activities which contribute to the generation of its wastewaters. Any permit noncompliance constitutes a violation of the State Act or other authority of this chapter and is grounds for enforcement action[;], for permit termination, revocation and reissuance, or modification[;], or for denial of a permit renewal application. **The Department shall not issue a NJPDES permit when the conditions of the permit do not provide for compliance with the applicable requirements of the State and Federal Acts or regulations.**

ii. A permittee shall not [achieve] attain any effluent concentration by dilution. Nor shall a permittee increase the use of process water or cooling water or otherwise attempt to dilute a discharge as a partial or complete substitute for adequate treatment to [achieve] attain permit limitations or water quality standards. **A request for a variance may be evaluated, on a case by case basis, pursuant to the variance procedures in N.J.A.C. 7:14A-9.6.**

iii. **When evaluating requests for a variance from the requirements of this section, the Department shall consider the threat to human health or safety or the environment that would result from compliance.**

[iii].iv. (No change in text.)

iv. The State Act provides that any person who violates a permit condition implementing the State Act is subject to a civil penalty not to exceed \$10,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing the State Act is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one year, or both.]

2. [Duty to reapply:] If the permittee wishes to continue an activity regulated by a NJPDES permit after the expiration of the permit, the permittee shall apply for and obtain a new permit[.] **prior to recontaining the regulated activity.**

3. [Duty to halt or reduce activity:] **Permittees have a duty to halt or reduce activity as follows:**

i.-ii. (No change.)

4. [Duty to mitigate:] The permittee shall take all reasonable steps to minimize or [correct any adverse impact on the environment resulting from noncompliance with this permit,] **prevent any discharge in violation of its NJPDES permit which has adversely affected or has a reasonable likelihood of adversely affecting human health or the environment and to take such corrective actions as are required under the Federal Act and State Act, and other relevant provisions of law, including [but not limited to], at a minimum, accelerated and/or additional types of monitoring, temporary repairs, ceasing discharge or other mitigating measures.**

5. [Proper operation, maintenance and operator licensing:] The permittee shall at all times maintain in good working order and operate as efficiently as possible all treatment works, facilities, and systems of treatment and control (and related appurtenances) for collection and treatment which are installed or used by the permittee for water pollution control and abatement to achieve compliance with the terms and conditions of the permit. Proper operation and maintenance includes [but is not limited to], **at a minimum, effective performance based on designed facility removals, adequate funding, effective management, adequate operator staffing and training and adequate laboratory and process controls**

including appropriate quality assurance procedures as described in 40 CFR 136 and applicable State law and regulations. All permittees who operate a treatment works [, except for sanitary landfills and land application of sludge or septage, must] **shall** satisfy the licensing requirements of the ["Licensing of Superintendents or Operators of Public Water Supply Systems" N.J.S.A. 58:11-18.10 et seq.] "**Water Supply and Wastewater Operators Licensing Act**," N.J.S.A. 58:11-64 et seq., or other applicable law. This provision requires the operation of back-up or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit or where required by applicable law or regulation.

6. [Permit actions: This] A permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance[, does] **shall not stay any permit condition.**

7. [Property rights: This] A permit [does] shall not convey any property rights of any sort[, or any exclusive privilege.

8. [Duty to provide information:] The permittee shall furnish to the Department within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating its permit, or to determine compliance with its permit. The permittee shall also furnish [to], **upon request of the Department [upon request]**, copies of records required to be kept by its permit.

9. [Inspection and entry:] The permittee shall allow the Department, or an authorized representative, upon the presentation of credentials, [and other documents as may be required by law] to:

i. Enter upon the permittee's premises where a discharge source is or might be located or in which monitoring equipment or records required by a permit are kept, for purposes of inspection, sampling, copying or photographing. Photography shall **only** be allowed [only] as related to the discharge;

ii-iv. (No change.)

10. [Monitoring and records] **The permittee shall provide for monitoring and records as follows:**

i. (No change.)

ii. The State Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit, shall upon conviction, be punished by a fine of no more than \$10,000 per violation, or by imprisonment of not more than six months per violations, or by both.]

iii.ji. The [applicant] **permittee** shall perform all analyses in accordance with the analytical test procedures approved under 40 CFR Part 136. Where no approved test procedure is available, the [applicant] **permittee [must] shall** indicate a suitable analytical procedure and [must] **shall** provide the Department with literature references or a detailed description of the procedure. The Department shall [consider such method as] **determine** the appropriate procedure and so require in the NJPDES permit. The laboratory performing the analyses for compliance with this regulation [must be] **shall previously have been** Approved and/or Certified by the Department for the analysis of those specific parameters **in accordance with N.J.A.C. 7:18-1 et seq.** Information concerning laboratory approval and/or certification may be obtained from:

[New Jersey Department of Environmental Protection
Division of Administrative Operations
Central Collection and Licensing Unit
P.O. Box 1390
Trenton, New Jersey 08626
(609) 292-4071]

[New Jersey Department of Environmental Protection
Division of Administrative Operations
Bureau of Collection and Licensing Management Services
CN 402
Trenton, New Jersey 08625
(609) 292-4071]

iv. jiii. The permittee shall retain records of all monitoring information including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by [this] **its** permit, and records of all data used to complete the application for [this] **its** permit, for a period of at least five years from the date of the sample, measurement, report or application. This period may be extended by **written** request of the Department at any time.

v.-[vi.] iv.-v. (No change in text.)

[vii.]vi. If the permittee monitors any pollutant more frequently than required by [the] its permit, using test procedures approved under 40 CFR 136 or as specified in [the] its permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or MRF.

[viii.]vii. (No change in text.)

[(11) Signatory requirement:

i. All applications, reports or information submitted to the Department shall be signed and certified. (See N.J.A.C. 7:14A-2.4.)

ii. Any person who knowingly makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under the State Act, shall upon conviction, be subject to a fine of not more than \$10,000 or by imprisonment for not more than six months, or both.]

11. The permittee shall conform with the signatory provisions pursuant to N.J.A.C. 7:14A-2.4.

12. [Reporting requirements:] **The permittee shall conform to the reporting requirements as follows:**

i. [Planned changes:] The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. **Notice is required only when the alteration or addition could change the nature or increase the quantity of pollutants discharged.**

ii. [Anticipated noncompliance:] The permittee shall give reasonable advance notice to the Department **and shall receive Departmental approval prior to undertaking [of] any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.**

iii. [Transfers: This permit is not transferable] **The permittee shall not transfer its permit** to any person except after notice to the Department. The Department may require information, revocation, or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the appropriate Act. (See N.J.A.C. 7:14A-2.12; in some cases, modification or revocation and reissuance is mandatory.)

iv. [Monitoring reports: Monitoring results shall be reported] **The permittee shall report monitoring results** at the intervals specified in the permit.

v. [Compliance schedules:] **The permittee shall submit [R]reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of its permit [shall be submitted] no later than 14 days following each schedule date.**

vi. [Reporting:] **The permittee shall include the following in each report:**
(1)-(4) (No change.)

vii. [Other noncompliance:] The permittee shall report all instances of noncompliance not reported under (a)12i, iv, v, and vi above, at the time monitoring reports are submitted. The reports shall contain the information required in the written submission listed in (a)12vi.

viii. [Other information:] Where the permittee becomes aware that it has failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, the permittee shall promptly submit such facts or information.

13. [Disposal of sludge and septage:] The permittee shall conform with the requirements **for the disposal of sludge and septage** under:

i. (No change.)

ii. "The Solid Waste Management Act" N.J.S.A. 13:1E-1 et seq., **which provides that landfills shall not be used for the disposal of septage after March 15, 1981, and dewatered sewage sludge after March 15, 1985, except as necessary to meet short term emergencies identified by the Department. In such emergencies, the Department may grant written approval under the terms of an Administrative Consent Order for the disposal of dewatered sludge in a Department designated landfill. One year from the effective date of the NJPDES regulations, any person who is disposing of sewage sludge in a sanitary landfill shall submit to the Department a statement of the following:**

(1) Justification for the [continuance of the disposal of the sludge] **need to dispose of dewatered sewage sludge** in a landfill; and

(2) A description of the steps being taken to [comply with the March 15, 1985 deadline for the abandonment of landfills for the disposal of sludge] **eliminate the need for landfilling of dewatered sewage sludge.**

[(3) The manner in which solid sludge will be disposed of until March 15, 1985.]

iii. (No change.)

iv. [The "Regulations Concerning the Statewide Management of Septage," N.J.A.C. 7:14-5:] **The provisions concerning management of sludge in the Statewide Sludge Management Plan promulgated pursuant to the**

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Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., the State Act, and the Solid Waste Management Act, N.J.S.A. 13:1E et seq.

[v. To the extent practicable, the "Guidelines for the Utilization and Disposal of Municipal and Industrial Sludges and Septage;" and

vi. The provisions concerning the disposal of sludge in sanitary landfills which will be developed in the Statewide Sludge Management Plan promulgated pursuant to the "Water Quality Planning Act," N.J.S.A. 58:11A-1 et seq. and the State Act.]

7:14A-2.6 Establishing permit conditions

(a) [All programs:] In addition to conditions required in all permits for all programs (N.J.A.C. 7:14A-2.5), the Department shall establish conditions, as required on a case-by-case basis, in permits for all programs under N.J.A.C. 7:14A-2.7 (Duration of permits), N.J.A.C. 7:14A-2.8(a) (Schedules of compliance), and N.J.A.C. 7:14A-2.9 (Monitoring).

(b) [Individual programs:] **In addition to conditions required in all permits for a particular program, N.J.A.C. 7:14A-3.10 and 3.11 (DSW), N.J.A.C. 7:14A-4.4 (IWMF), N.J.A.C. 7:14A-5.9 (UIC), and N.J.A.C. 7:14A-6 (DGW), the Department shall establish conditions in permits for the individual programs, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the State and Federal Acts, other applicable authority and the regulations promulgated thereunder.**

[1. In addition to conditions required in all permits for a particular program (N.J.A.C. 7:14A-3.10 and 3.11 DSW), (N.J.A.C. 7:14A-4.4 IWMF), (N.J.A.C. 7:14A-5.9 UIC), (Subchapter 6—DGW), the Department shall establish conditions in permits for the individual programs, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the State and Federal Acts, other applicable authority and the regulations promulgated thereunder.]

[2.]-[3.]-2. (No change in text.)

3. **The Department may establish conditions for financial assurance in any NJPDES permit. Instruments that the Department may approve include, at a minimum, letters of credit, insurance, surety bonds, and trust funds.**

(c) [Incorporation:] **The Department shall incorporate [A]all permit conditions [shall be incorporated] either expressly or by reference in the permit. If incorporated by reference, the Department shall provide in the permit a specific citation to the applicable regulations or requirements [must be given in the permit.]**

7:14A-2.8 Schedules of compliance

(a) [General:] **The [permit] Department may, when appropriate, specify in the permit a schedule of compliance leading to compliance with the State and Federal Acts and all other applicable authority for this chapter.**

1. [Time for compliance: Any schedules] **The Department shall establish schedules of compliance under this section [shall require compliance as soon as possible.] as follows:**

i.-ii. (No change.)

iii. [For UIC:] **For discharges into wells under the UIC program, [S] schedules of compliance [for discharges into wells] shall require compliance not later than three years after the effective date of the permit.**

2. [Interim dates:] **Except as provided in (b)iii below, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.**

i.-ii. (No change.)

3. [Reporting:] **The permit shall be written to require that] The Department shall require in the permit that the permittee shall, no later than 14 days following each interim date [and] or the final date of compliance, [the permittee shall] notify the Department in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if (a)iii above is applicable.**

(b) [Alternative schedules of compliance: An] **A NJPDES permit applicant or permittee may cease conducting activities regulated by the State Act rather than continue to operate and meet permit requirements as follows:**

1. (No change.)

i. **The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or**

ii. (No change.)

2. **If the decision to cease conducting regulated activities is made before issuance of a permit whose term [will] shall include the termination date, the permit shall contain a schedule leading to termination which [will] shall ensure timely compliance with applicable requirements, or for a DSW discharge, compliance no later than the statutory deadline in the Federal Act.**

3. **If the permittee is undecided as to whether [to] it shall cease conducting regulated activities, the Department may issue or modify a permit to contain two schedules [as follows]:**

[i. Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

ii. **One schedule shall lead to timely compliance with applicable requirements, for DSW permits compliance shall be no later than the statutory deadline in the Federal Act;**

iii. **The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements, for DSW permits compliance shall be no later than the statutory deadline in the Federal Act.**

iv. **Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under (b)3i above it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.]**

i. **One schedule shall lead to timely compliance with all applicable requirements, compliance for DSW permits shall be no later than the statutory deadline in the Federal Act;**

ii. **The second schedule shall lead to cessation of regulated activities by a date which shall ensure timely compliance with all applicable requirements, compliance for DSW permits shall be no later than the statutory deadline in the Federal Act;**

iii. **Both schedules shall contain an identical interim deadline requiring a final decision as to whether the permittee shall cease conducting regulated activities. A decision by the permittee to continue conducting regulated activities shall be made by a date which ensures sufficient time to comply in a timely manner with all applicable requirements.**

iv. **Each permit containing two schedules shall include a requirement that the permittee, after making a final decision under (b)3iii above, shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and shall follow the schedule leading to termination if the decision is to cease conducting regulated activities.**

4. (No change.)

(c) (No change.)

(d) **New sources or sources which recommence discharging after terminating operations, and those sources which had been indirect dischargers which commence discharging into surface waters of the State, do not qualify for compliance schedules under this section except as provided in N.J.A.C. 7:14A-2.12(b)3. In addition, new sources requiring a discharge to surface water (DSW) permit are also subject to the requirements of N.J.A.C. 7:14A-3.3(DAC).**

(e) **All permittees shall provide a report indicating the status of compliance in accordance with N.J.A.C. 7:14A-2.5 [(a)23v].**

7:14A-2.9 Requirements for recording and reporting of monitoring results

(a) (No change.)

(b) **The Department may, upon written notification, require any facility which possesses or is required to possess a NJPDES DSW, DAC, DGW, SIU or UIC permit to annually have one of its permit-required periodic sampling analyses performed by an independent laboratory which is not owned or controlled by the permittee. This shall be broadly construed to include all the sample analyses that are to be performed during the course of routine hourly, daily, monthly, quarterly, semi-annual, or annual sampling.**

7:14A-2.11 Transfer of permits

[(a) Transfers by modification: Except as provided in (b) below, a permit may be modified or revoked and reissued (under N.J.A.C. 7:14A-2.12(c)2 or a minor modification made modified or revoked and reissued under N.J.A.C. 7:14A-2.12(c)2 or a minor modification made (under N.J.A.C. 7:14A-2.14(d)), to identify the new permittee and incorporate such other requirements as may be necessary under the State and Federal Acts.]

(a) **Except as provided in (b) below, to reflect changes in ownership and identify the new permittee and incorporate such other requirements as may be necessary under the State and Federal Acts, a permit may be modified under N.J.A.C. 7:14A-2.12(c)1ii or a minor modification may be made under N.J.A.C. 7:14A-2.14(a)4.**

(b) [Automatic transfers:] **As an alternative to transfers under (a) above, any NJPDES permit, except a UIC permit for a well injecting hazardous waste, may be automatically transferred to a new permittee if:**

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ENVIRONMENTAL PROTECTION

Interested Persons see Inside Front Cover

PROPOSALS

1. The current permittee notifies the Department in writing by certified mail of the proposed transfer as follows:

i. Where production levels, products produced, rates of discharge, and wastewater characteristics will remain unchanged, the following information shall be submitted at least 90 days prior to a proposed "transfer date"[:]:

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

(6) A notarized statement signed by the new principal officer stating that he/she has read the NJPDES permit and [agrees] certifies (pursuant to N.J.A.C. 7:14A-2.4(d)) to abide by all the conditions of the permit and that the production levels, products produced, rates of discharge and wastewater characteristics [will] shall remain unchanged.

ii. (No change.)

2. The current permittee [shall] includes in the notice of proposed transfer a written agreement between the existing and new permittees which includes a specific date for transfer of permit responsibility, coverage, and liability between the parties. In the case of a UIC permit, the notice shall demonstrate that the financial responsibility requirements of N.J.A.C. 7:14A-5.10[g] (a)7 [will] shall be met by the new permittee: and 3.-4. (No change.)

7:14-2.12 Modification, suspension or revocation of permits

[a] When the Department receives any information as for example, inspects the facility, receives information submitted by the permittee as required in the permit (e.g., see N.J.A.C. 7:14A-2.5, 3.10 and 3.11 (DSW), 4.4 (IWMF), 5.9 (UIC), subchapter 6, receives a request for modification or revocation under N.J.A.C. 7:14A-7.5, or conducts a review of the permit file), a determination may be made by the Department as to whether cause exists including but not limited to causes as provided under (a) and (b) of this section, for modification, suspension or revocation of the permit. If cause exists, the Department may modify, suspend or revoke the permit accordingly, subject to the limitations of (c) below, any may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked the entire permit is reopened and subject to revision. The permit may be reissued for a new term. (See N.J.A.C. 7:14A-7.5(c)2.) If a permit modification satisfies the criteria in N.J.A.C. 7:14A-2.14 for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and the procedures in subchapters 7 and 8 shall apply.]

(a) When the Department determines, pursuant to (b) below, that just cause exists to modify, suspend or revoke a NJPDES permit, the Department may modify, suspend, or revoke the permit accordingly, subject to the limitations of (c) below, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. (When the permit modification satisfies the criteria in N.J.A.C. 7:14-2.14 for "minor modifications", the permit shall be modified without a draft permit or public review. Otherwise, a draft permit shall be prepared and the procedures in N.J.A.C. 7:14A-7 and 8 shall apply.) When a permit is suspended or is revoked, the entire permit is reopened and subject to revision.

(b) The following are causes for modification, suspension, or revocation of a permit:

1. [Alterations: There are material] **Material** and substantial alterations or additions to the permitted facility, activity, or discharge which occurred after permit issuance which justify the application of permit conditions that are different or absent from those in the existing permit.

2. [Information: The Department has received new information.] **New information has been received by the Department.** Permits other than for UIC Class II and III wells may be modified, suspended, or revoked during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For DSW general permits (N.J.A.C. 7:14A-3.9) this cause shall include any information indicating that the cumulative effects on the environment are unacceptable.

3. [New regulations: A permit may be modified, suspended, or revoked after the promulgation] **Promulgation** of any applicable water quality standard, effluent standard, other standard or by judicial decision after the permit is issued. The Department may provide for a schedule of compliance in accordance with N.J.A.C. 7:14A-2.8 in order for the permittee to meet such standards.

4. [Compliance Schedules: The Department determines good cause exists for modification of a compliance schedule, such as] **Applicable only for modification of a compliance schedule, good cause, determined by the Department, and including** an act of God, strike, flood, [or material shortage] or other events over which the permittee has little or no control

and for which there is no control and for which there is no reasonably available remedy. However, in no case shall a NJPDES compliance schedule be modified to extend beyond an applicable statutory deadline. (See also N.J.A.C. 7:14A-2.14(c) (minor modifications) and [(b)5xi] (c)11 below (DSW) innovative technology). This does not preclude the Department from the revocation or suspension of a compliance schedule for **good cause shown**.

[5. For discharges to surface water (DSW) only, the Department may modify, suspend or revoke a permit.

i. When the permittee has filed a request for a variance under Section 6 of the State Act or Sections 301(c), 301(g), 301(h), 301(i), 301(k), or 316(a), or for "fundamentally different factors" under the Federal Act within the time specified in N.J.A.C. 7:14A-3.2 and the Department processes the request under the applicable provision of N.J.A.C. 7:14A-9.7;

ii. When required to incorporate an applicable toxic effluent standard or prohibition under 307(a) of the Federal Act or Sections 6 and 7 of the State Act (see N.J.A.C. 7:14A-3.13(b));

iii. When required by the "reopener" conditions in a permit, which are established in the permit under N.J.A.C. 7:14A-3.13(b) (for toxic effluent limitations) or 40 CFR Section 403.10(e) (pretreatment program);

iv. Upon request of a permittee who qualifies for effluent limitations on a net basis under N.J.A.C. 7:14A-3.14(h);

v. When a discharger is no longer eligible for net limitations, as provided in N.J.A.C. 7:14A-3.14(h)ii(2);

vi. As necessary under 40 CFR Section 403.8(e) (compliance schedule for development of pretreatment program) and subchapter 13 of this chapter;

vii. Upon failure of the State to notify, as required by Section 402(b)(3) of the Federal Act, another state whose waters may be affected by a discharge from the State;

viii. When the level of discharge of any pollutant which is not limited in their permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR Part 125.3(c);

ix. When the permittee begins or expects to begin to use or manufacture as an immediate or final product or byproduct any toxic pollutant which was not reported in the permit application under N.J.A.C. 7:14A-10.3(a)11;

x. To establish a "notification level" as provided in N.J.A.C. 7:14A-3.13(a)6;

xi. To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a grant under Section 202(a)(3) of the Federal Act for 100 percent of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under Section 202(a)(2) of the Federal Act. In no case shall the compliance schedule be modified to extend beyond an applicable Federal Act statutory deadline for compliance;

xii. To include a plan or compliance schedule for the disposal of septage or sludge in accordance with "Regulations Concerning the State-wide Management of Septage Disposal" N.J.A.C. 7:14-5.]

5. Notification has been received by the Department (pursuant to N.J.A.C. 7:14A-2.5(a)12iii) of a proposed transfer of the permit. A permit may also be modified to reflect a transfer after the effective date of an automatic transfer (N.J.A.C. 7:14A-2.11(b)) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

[(c) Causes for modification, suspension, or revocation:

1. The following are causes to modify or, alternatively, suspend or revoke a permit:

i. Cause exists for termination under Section 2.13 and the Department determines that modification, suspension or revocation is appropriate.

ii. The Department has received notification (as required in the permit, see N.J.A.C. 7:14A-2.5(a)12iii.) of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (N.J.A.C. 7:14A-2.11(b)) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.]

(c) The Department may only modify, suspend or revoke a permit for discharges to surface water (DSW):

1. When the permittee has filed a request for a variance under Section 6 of the State Act (N.J.S.A. 58:10A-6) or Sections 301(c), 301(g), 301(h), 301(i), 301(k), or 316(a), or for "fundamentally different factors" under

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the Federal Act within the time specified in N.J.A.C. 7:14A-3.2 and the Department processes the request under the applicable provision of N.J.A.C. 7:14A-9.7;

2. When required to incorporate an applicable toxic effluent standard or prohibition under 307(a) of the Federal Act or Sections 6 and 7 of the State Act (see N.J.A.C. 7:14A-3.13(a));

3. When required by the "reopener" conditions in a permit, which are established in the permit under N.J.A.C. 7:14A-3.13(a) (for toxic effluent limitations) or 40 CFR Section 403.10(e) (pretreatment program);

4. Upon request of a permittee who qualifies for effluent limitations on a net basis under N.J.A.C. 7:14A-3.14(h);

5. When a permittee is no longer eligible for net limitations, as provided in N.J.A.C. 7:14A-3.14(h);

6. As necessary under 40 CFR Section 403.8(e) (compliance schedule for development of pretreatment program) and N.J.A.C. 7:14A-13.1 et seq.;

7. Upon failure of the State to notify, as required by Section 402(b)(3) of the Federal Act, another state whose waters may be affected by a discharge from the State;

8. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR Part 125.3(c);

9. When the permittee begins or expects to begin to use or manufacture as an intermediate or final product or by-product any toxic pollutant which was not reported in the permit application under N.J.A.C. 7:14A-10.3(a)11;

10. To establish a "notification level" as provided in N.J.A.C. 7:14A-3.13(a)6;

11. To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a grant under Section 202(a)(3) of the Federal Act for 100 percent of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under Section 202(a)(2) of the Federal Act. In no case shall the compliance schedule be modified to extend beyond an applicable Federal Act statutory deadline for compliance;

12. To include a plan or compliance schedule for the management of septage or sludge in accordance with the Statewide Sludge Management Plan.

(d) [Facility Siting: For UIC and IWMF, suitability] Suitability of the facility location for UIC and IWMF [will] shall not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

7:14A-2.14 Minor modification of permits

[(a) Upon the consent of the permittee, the Department may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures or subchapters 7 and 8 of this chapter. Any permit modification not processed as a minor modification under this section shall be made for cause and with draft permit and public notice subchapters 7 and 8 of this chapter as required in N.J.A.C. 7:14A-2.12. Minor modifications may only:]

(a) The Department, with the consent of the permittee, may modify a permit to make corrections or allowances for changes in the permitted activity listed in this section. Such changes shall be made without following the procedures set forth in N.J.A.C. 7:14A-7 and 8. A permit modification not processed as a minor modification under this section shall be made for cause and shall conform with the draft permit and public notice requirements of N.J.A.C. 7:14A-7 and 8 as required in N.J.A.C. 7:14A-2.12. Minor modification may only:

1.-4. (No change.)

5. [For construction, schedules, change] Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge [under] pursuant to N.J.A.C. 7:14A-3.3;

6. [For IWMF and DSW, change] Change, for IWMF and DSW permits, the lists of facility emergency coordinators or equipment in the permit's contingency or emergency plan;

7. [For UIC only:] Change, for UIC permits:

i. [Change quantities or] The types of fluids injected which are within the capacity of the facility as permitted and, in the judgment of the Department after reviewing information required under N.J.A.C. 7:14A-10.13, would not interfere with the operation of the facility or its ability to meet conditions prescribed in the permit, and would not change its classification;

ii. [Change] The construction requirements approved by the Department pursuant to N.J.A.C. 7:14A-5.10 (establishing UIC permit conditions), provided that any such alteration shall comply with the requirements of this chapter;

8.-9. (No change.)

7:14A-2.15 [Noncompliance and program reporting by the Department] (Reserved)

[(a) The Department shall prepare quarterly and annual reports as detailed below. Any reports required under this section for DSW, UIC, and IWMF permittees shall be submitted to the Regional Administrator and to any facility listed in the report.

1. Quarterly reports: The Department shall prepare quarterly narrative reports for major facilities as follows:

i. Format: The report shall use the following format:

(1) Provide separate lists of each type of discharge covered by this chapter (N.J.A.C. 7:14A-1.2(d)). The DSW permittees shall be further subcategorized as non-POTWs, POTWs, and Federal permittees;

(2) Alphabetize each list by permittee name. When two or more permittees have the same name, the lowest permit number shall be entered first;

(3) For facilities or activities with discharges requiring more than one permit, provide an additional list combining information on non-compliance for each such facility. The report submitted by the State to EPA shall only include noncompliance concerning DSW, UIC, and IWMF permits;

(4) For each entry on a list, include the following information in the following order;

(A) Name, location and permit number of the noncomplying permittee;

(B) A brief description and date of each instance of noncompliance for that permittee. Instances of noncompliance may include one or more of the kinds set forth in (a)lii below. When a permittee has non-compliance of more than one kind, combine the information into a single entry for each such permittee;

(C) The date(s) and a brief description of the action(s) taken by the Department to ensure compliance;

(D) Status of the instance(s) of noncompliance with the date of the review of the status or the date of resolution;

(E) Any details which tend to explain or mitigate the instance(s) of noncompliance.

ii. Instances of noncompliance to be reported: Any instances of non-compliance within the following categories shall be reported in successive reports until the noncompliance is reported as resolved. Once non-compliance is reported as resolved it need not appear in subsequent reports.

(1) Failure to complete construction elements: When the permittee has failed to complete, by the date specified in the permit, an element of a compliance schedule involving either planning for construction (for example, award of a contract, preliminary plans), or a construction step (for example, begin construction, attain operation level); and the permittee has not returned to compliance by accomplishing the required element of the schedule within 30 days from the date a compliance schedule report is due under the permit.

(2) Modification of schedules of compliance: When a schedule of compliance in the permit has been modified under N.J.A.C. 7:14A-2.12 and 2.14 because of the permittee's noncompliance.

(3) Failure to complete or provide compliance schedule or monitoring reports: When the permittee has failed to complete or provide a report required in a permit compliance schedule (for example, progress report or notice of noncompliance or compliance) or a monitoring report; and the permittee has not submitted the complete report within 30 days from the date it is due under the permit for compliance schedules, or from the date specified in the permit for monitoring reports.

(4) Deficient reports: When the required reports provided by the permittee are so deficient as to cause misunderstanding by the Department and thus impede the review of the status of compliance.

(5) Noncompliance with other permit requirements: Noncompliance shall be reported in the following circumstances:

(A) Whenever the permittee has violated a permit requirement (other than reported under (a)lii(1) or (2) above), and has not returned to compliance within 45 days from the date reporting of noncompliance was due under the permit; or

(B) When the Department determines that a pattern of noncompliance exists for a major facility permittee over the most recent four consecutive reporting periods. (For DSW discharges only this pattern of non-compliance is based on violations of monthly averages and excludes

parameters where there is continuous monitoring). This pattern includes any violation of the same requirement in two consecutive reporting periods, and any violation of one or more requirements in each of four consecutive reporting periods; or

(C) When the Department determines significant permit non-compliance or other significant event has occurred, such as a discharge of a toxic or hazardous substance by a DSW facility, a fire or explosion at an IWMF, or migration of fluids into a USDW.

vi. All other: Statistical information shall be reported quarterly on all other instances of noncompliance by major facilities with permit requirements not otherwise reported under (a) above.

2. Annual reports: The Department shall prepare an annual report as required in (a)2 of this section. The Department shall submit an annual report to EPA for DSW, UIC, and IWMF permittees.

i. Statistical reports shall be prepared by the Department on nonmajor DSW permittees indicating the total number reviewed, the number of noncomplying nonmajor permittees, the number of enforcement actions, and number of permit modifications extending compliance deadlines. The statistical information shall be organized to follow the types of non-compliance listed in (a)1 above.

ii. A separate list of nonmajor discharges which are one or more years behind in construction phases of the compliance schedule shall also be prepared in alphabetical order by name and permit number.

iii. IWMF permits: In addition to the annual noncompliance report, the Department shall prepare a "program report" which contains information on the permit status of regulated facilities; and summary information on the quantities and types of hazardous waste stored, treated, and disposed during the preceding year. This summary information shall be reported according to EPA characteristics and list of hazardous wastes at 40 CFR Part 261.

iv. UIC permits: In addition to the annual noncompliance report, the Department shall:

(1) Submit each year a program report to the Administrator (in a manner and form prescribed by the Administrator) consisting of:

(A) A detailed description of the State's implementation of its program;

(B) Suggested changes, if any, to the program description (see 50 CFR Section 123.4(f)) which are necessary to more accurately reflect the State's progress in issuing permits;

(C) An updated inventory of active underground injection operations in the State.

(2) In addition to complying with the requirements of (a)2iv(1) above, the Department shall provide the Administrator within three months of the completion of the second full year of State operation of the UIC program a supplemental report containing the information required in N.J.A.C. 7:14A-5.13 and 5.15 on corrective actions taken by operators of new Class II well based upon this chapter.

3. Schedule:

i. Quarterly reports.

(1) On the last working day of May, August, November, and February, the Department shall submit to the Regional Administrator information concerning noncompliance with DSW, UIC, and IWMF permit requirements by major dischargers in the State in accordance with the schedule below.

(2) The Department shall make noncompliance reports concerning all other NJPDES permits available to the public in accordance with the schedule below.

Quarters Covered by Reports on Noncompliance by All Major Dischargers

January, February, and March	May 31 ¹
April, May, and June	Aug. 31 ¹
July, August, and September	Nov. 30 ¹
October, November, and December	Feb. 28 ¹

¹Reports shall be made available to the public for inspection and copying on this date.

ii. For all annual reports: The period for annual reports shall be for the calendar year ending December 31, with reports completed and available to the public no more than 60 days later.]

7:14A-3.3 Discharge allocation certificate (DAC)

(a) (No change.)

(b) When to apply: Any person planning to undertake any activity which will result in a DSW, except as exempted pursuant to N.J.A.C.

7:14A-2.1[(f)](g)1, shall apply for a DAC at least 90 days prior to the initiation of final engineering designs, specifications and plans of a treatment works.

(c)-(h) (No change.)

7:14A-5.17 Criteria and standards applicable to Class V injection wells

(a) (No change.)

(b) Inventory requirements: All Class V injection wells covered by rule shall submit inventory information to the Department. The authorization by rule for any Class V well which fails to comply within the time specified in (b)3 below shall be automatically terminated.

1.-2. (No change.)

3. Deadlines:

i. (No change.)

ii. Owners or operators of new injection wells must submit inventory information when an application is made for a well drilling permit, or, if the well drilling permit requirement is not applicable, in accordance with the schedule in N.J.A.C. 7:14A-2.1[(f)](g)2.

(c)-(g) (No change.)

7:14A-10.1 Schedule for submission of applications

(a) Any person planning to discharge shall apply in accordance with the schedule in N.J.A.C. 7:14A-2.1[(f)](g).

(b)-(e) (No change.)

(f) Whenever a facility has more than one type of discharge covered by these regulations, application for all required permits to discharge shall be made at the earliest required date of filing for any of the discharge permits in accordance with N.J.A.C. 7:14A-2.1[(f)](g) and [(h)](i) below.

(g) (No change.)

(h) Except as described in N.J.A.C. 7:14A-2.1[(f)](g), and N.J.A.C. 7:14A-10.2 existing dischargers shall apply for a NJPDES permit in compliance with the following schedule except where the Department determines that an application should be submitted in furtherance of a consolidated permit system (see N.J.A.C. 7:14A-1.4) or where the Department makes a determination that certain dischargers shall file sooner because of potential environmental hazards or threat to the public health or safety or other factors consistent with the intent of the State Act:

1.-5 (No change.)

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

7:14A-10.3 Discharges to surface waters (DSW)

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

(c) NJPDES Permit—Upon receipt of a Discharge Allocation Certificate the applicant may design and construct a treatment works to meet the limits stated unless the Department determines that a Treatment Works Approval is also required in accordance with subchapter 12 of this chapter. At least 60 days prior to planned discharge, the applicant shall apply for a NJPDES permit to discharge in accordance with N.J.A.C. 7:14-7.2. The following items and the information required for a DAC must be submitted for a NJPDES permit.

1. (No change.)

2. Request for Endorsement, where applicable, (see N.J.A.C. 7:14A-2.1[(j)](k)).

3.-7. (No change.)

(d) (No change.)

7:14A-10.5 Indirect discharges

(a) (No change.)

(b) Where to apply for a NJPDES permit:

1. (No change.)

2. A person planning any activity which is described in (a)1 above shall apply in accordance with N.J.A.C. 7:14A-2.1[(f)](g)2.

3.-4. (No change.)

(c)-(g) (No change.)

7:14A-10.7 Surface Impoundments

(a) (No change.)

[(b) "Surface impoundments" or impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling and aeration pits, and ponds and lagoons.]

(b) To meet the definition of being a surface impoundment under N.J.A.C. 7:14A-1.9, the permittee shall provide the Department with the following:

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1. The certified results of tests proving that the hydraulic conductivity of the liner is equal to or less than 1×10^{-7} cm/sec for the material being contained;

2. For new construction, plans showing design specifications and materials for the surface impoundment;

3. For existing lagoons, as-built plans; and,

4. Proof that any discharges to ground water from the lagoon have not created a violation of the Ground Water Quality Standards (N.J.A.C. 7:9-6) or the permittee's NJPDES permit limits.

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

(f) A request for endorsement shall be submitted in accordance with N.J.A.C. 7:14A-2.1[(j)](k) (new source dischargers only).

7:14A-10.9 Land application of effluents by spray irrigation

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

(f) A request for endorsement shall be submitted in accordance with N.J.A.C. 7:14A-2.1[(j)](k).

(g) (No change.)

7:14A-10.10 Land application of effluents by overland flow

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

(f) Request for endorsement in accordance with N.J.A.C. 7:14A-2.1[(j)](k).

(g) (No change.)

7:14A-10.11 Land disposal by infiltration-percolation lagoons

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

(f) Request for endorsement in accordance with N.J.A.C. 7:14A-2.1[(j)](k).

7:14A-12.9 Request for endorsement

The applicant shall submit a request for endorsement in accordance with N.J.A.C. 7:14A-2.1[(j)](k).

HEALTH

(a)

THE COMMISSIONER

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

Proposed Amendments: N.J.A.C. 8:33H-2.1, 3.2, 3.3, 3.5, 3.8 and 3.10

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner of the Department of Health, (with approval of the Health Care Administration Board).

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

Proposal Number: PRN 1986-418.

Submit comments by November 19, 1986 to:

John A. Calabria, Chief
New Jersey Department of Health
Health Systems Review
CN 360
Room 604
Trenton, NJ 08625

The agency proposal follows:

Summary

Current Department of Health policy, standards, and criteria, as reflected in the existing rules, were readopted by the Health Care Administration Board on July 18, 1985 in accordance with the provisions of Executive Order No. 66(1978). In addition, several amendments to N.J.A.C. 8:33H-3.3, expansion and new construction, were adopted at that time regarding concurrent construction of long-term care facility alternatives, modification of the qualifying criteria for the continuing care retirement communities exemption, and utilization of residential health care beds by Supplemental Security Income recipients.

The existing rules require periodic updating, based upon the need to address current activities in the expanding long-term care field. The amendments proposed herein reflect the Department of Health's ongoing concern for accessibility to appropriate levels of care by special populations, such as Medicaid-eligible inner-city residents, discharged psychiatric patients, pediatric patients, and members of recognized religious and fraternal organizations. Other major considerations addressed in these proposed amendments include the current effort to convert under-

utilized hospital facilities to long-term care use, and the balance between the appropriate expansion of long-term care bed capacity to better reflect the needs of the aged population and expansion of the State's community-based care programs to offer a needed alternative to institutionalization.

This proposal makes the following substantive changes:

1. Addition of definitions at N.J.A.C. 8:33H-2.1 for "pediatric long-term care" and for a "statewide restricted admission facility" which clarify the circumstances for exemption of these beds from the long-term care bed need methodology.

2. Deletion of a subparagraph at N.J.A.C. 8:33H-3.2(b)2. which contains criteria for the determination of cost-effective measures in regard to priority consideration of proposed projects. These criteria are contained elsewhere within the existing rules and proposed amendments, thus the guideline is considered redundant.

3. Amendments to N.J.A.C. 8:33H-3.3(a)3.vi. which clarify the documentation to be utilized in making determinations of prior track record for applicants with any history of facility ownership or operation.

4. Addition of a subparagraph at N.J.A.C. 8:33H-3.3(a)2.iii. which clarifies the factors considered in determining the need for pediatric long-term care beds.

5. Amendment of subparagraphs at N.J.A.C. 8:33H-3.3(a)5i. through iv. to increase the percentage requirement for Medicaid-eligible admissions from 35 to 36 percent to accommodate General Assistance patients. Addition of a subparagraph at N.J.A.C. 8:33H-3.3(a)5.viii. which codifies a long-standing practice of the Statewide Health Coordinating Council to require as a condition of approval that a minimum percentage of the required direct Medicaid utilization in long-term care facilities be set aside for discharged psychiatric patients.

6. Addition to subparagraphs at N.J.A.C. 8:33H-3.3(a)6iv. through x. which expand and clarify the utilization requirements for Supplemental Security Income recipients in residential health care facilities to correspond with those for Medicaid patients in long-term care facilities, as well as add the same condition of approval for a minimum percentage of discharged psychiatric patients.

7. Rearrangement of paragraphs at N.J.A.C. 8:33H-3.3(a), so that the current Standard III-06, Community Care Retirement Communities, becomes Standard III-07 and the current Standard III-07, Utilization of new and/or Existing Beds by Supplemental Security Income Residents, becomes Standard III-06. No content change is proposed in the current Standard III-06. The rearrangement is intended to improve readability of the document.

8. Addition of a subparagraph at N.J.A.C. 8:33H-3.3(b)3. which proposes a guideline permitting exception to the long-term care bed need methodology for ten potentially underserved urban areas containing the highest age 65 and over below poverty level populations statewide, if the city itself exhibits a need based upon the current methodology and the applicant agrees to higher direct Medicaid and Supplemental Security Income utilization.

9. Addition of a subparagraph at N.J.A.C. 8:33H-3.3(b)4. which codifies the long-standing criteria for determination of statewide restricted admission facilities.

10. Addition of a subparagraph at N.J.A.C. 8:33H-3.3(b)4. which summarizes ten of the most important criteria utilized in the prioritization of Certificate of Need applications for new or additional long-term care beds.

11. Amendments to N.J.A.C. 8:33H-3.5(a)1. which clarify and expand upon the Certificate of Need requirements for hospitals converting acute care beds to long-term care to receive priority consideration within a batching cycle. The amendments change the current exception to the long-term care bed need for hospitals requesting conversions on a bed for bed basis, formerly included at N.J.A.C. 8:33H-3.3(b)2., to an exception limited to major acute care bed conversions.

12. Amendments to N.J.A.C. 8:33H-3.8(a)1. and the addition of subparagraphs (b)1. and 2. which clarify and expand upon the Certificate of Need requirements for demonstration of financial feasibility.

13. Amendments to N.J.A.C. 8:33H-3.10(a)1. which add a third age cohort to the long-term care bed need methodology for those persons age 85 and over, as well as change the bed per population ratios to more accurately reflect need by age. These new rates reflect the percentage of the total population by age cohort that actually resides in long-term care facilities. In addition, the net bed need among the counties shall be reduced by one bed for each slot approved for the State's Medicaid waived community care programs.

Social Impact

The provision of long-term care for the frail elderly is fast emerging as a problem that may pose the greatest challenge to health and social policy, both on a State and national level, now and in the years ahead. The reasons for this challenge are primarily two-fold: changing demographic patterns and the current methods of financing and providing long-term care. The demographic shift has resulted in the aged becoming an increasingly larger proportion of the population. Improved medical procedures have improved general life expectancy, but placed this population at greater risk to debilitating chronic conditions, resulting in the increased need for various long-term care services. The major problems associated with long-term care service delivery in New Jersey are seen as the inadequate development of and access to non-institutional options for elderly patients, combined with inadequate access to long-term care facilities by Medicaid populations, including persons waiting in the community and those discharged from inpatient psychiatric facilities pending placement. These problems are closely interrelated, in that a primary cause of inappropriate long-term care facility placement is the lack of community-based alternatives and, in turn, the inappropriate utilization of such costly existing resources results in a shortage of long-term care beds for those most in need of such care, as well as reduced resources for financing alternatives. In view of the increasing recognition that many elderly need nor prefer nursing home care, institutional placement should be considered a last resort rather than the care of first choice.

The Long-Term Care Policy Manual represents a concrete step toward the development of an improved long-term care system in New Jersey, its intent being the implementation of system goals through the planning and Certificate of Need review process. The proposed amendments serve to strengthen the existing rules in order to address appropriate areas of concern. While the emphasis continues to remain on long-term care beds for the elderly, it is necessary to clearly differentiate those beds utilized for pediatric patients in terms of separate need considerations, as they are frequently located as parts of geriatric facilities. The intent is to locate this limited number of beds where they are most needed. In the same respect, the inclusion of the definition for statewide restricted admission facilities, which has been utilized for over five years as part of the long-term care bed need inventory, seeks to avoid confusion regarding the intent of the exemption of these beds from the need methodology.

The ongoing issue of access to long-term care is further addressed by the inclusion of the requirement that a minimum percentage of the beds reserved for direct Medicaid admissions in new or expanded long-term care facilities be utilized by discharged psychiatric patients. The inclusion of this condition of approval for such Certificate of Need applications has been a long-standing practice of the Statewide Health Coordinating Council in response to the difficulty frequently encountered in appropriately placing these patients, who may wait for years to leave a state or county institution. Therefore, in order to distribute the responsibility as fairly as possible, applicants have been required to sign an agreement with either the State Division of Mental Health and Hospitals or county psychiatric hospitals within one year of the date of initial licensure of the facility. The intent is to codify this practice to alert all potential applicants in advance. For the past five years the minimum percentage required has been seven percent of the total new beds approved, to be included as part of, rather than in addition to, the 35 percent direct Medicaid utilization requirement. It is anticipated that this figure will be retained until the Department of Human Services finds the need for change, at which time the new percentage will be promulgated.

Similar placement problems have been recently voiced in regard to residential health care facilities, where agreement to even a high percentage of direct admission Supplemental Security Income recipients does not necessarily result in the admission of discharged psychiatric patients. The same condition for such patients will now apply to residential health care facilities, except that the minimum percentage will be initially set at five percent of the total bed complement, to be included within the minimum ten percent direct SSI utilization requirement, in view of the relatively smaller size of most residential health care facilities. In addition, the SSI utilization requirements have been expanded to correspond with those for Medicaid, in order to codify current practice and provide clarity for potential applicants.

The new provision for an exception to the long-term care bed need for potentially underserved urban area addresses both geographical and financial access issues. It recognizes that while a particular county may exhibit a long-term care bed excess according to the bed need methodology, an urban area located within it may have a dearth of beds in relation to a high concentration of Medicaid-eligible elderly. Therefore, in order to avoid severing the links of these frail elderly to life-long

patterns of social support, additional beds may be approved within the city limits of the designated urban areas if application of the current methodology indicated a bed need within this geographically limited area. The 1980 census information on poverty status by age and by municipality was utilized to arrive at the ten target cities for this purpose. In order to further meet the access needs of these poor elderly, higher minimum direct Medicaid and Supplemental Security Income utilization requirements have been proposed.

The potential for converting underutilized hospital facilities to long-term care use has long been recognized and may have increasing significance in the near future. The proposed changes seek to clarify and update the requirements for priority consideration of these bed conversions.

Finally, the revisions to the long-term care bed need methodology attempt to better reflect actual utilization and need within the target population by further disaggregating the bed to population ratios by age, thereby adding a third age cohort for the age 85 and over population, and by applying more empirically accurate ratios for these cohorts. The current formula provides for a nursing home bed supply ratio of 4.0 beds per 100 persons aged 65 to 74 and 4.5 beds per 100 persons aged 75 and over. While there is a consensus that the 4.0 and 4.5 ratios produce an aggregate figure that is reasonable, the ratios for the two individual age cohorts do not comport well with reality. Nationally, actual nursing home use among the age cohort 65 to 74 is far lower than 4.0 beds per 100. Only about one percent of this age cohort (the so-called "young-old") is institutionalized at any given time. Conversely, nursing home utilization for the age 85 and over group (the "old-old") is much higher than 4.5 percent, averaging closer to 20 percent. Therefore, it is more appropriate to use the actual percentages of the total population in nursing home by the three cohorts for New Jersey, which are slightly lower than the national figures, as obtained from the National Center for Health Statistics 1977 and 1982 nursing home survey data. As a result, utilization of new bed need ratios of 1.2 beds per 100 persons age 65 to 74, 5.2 beds per 100 persons age 75 to 84, and 18.1 beds per 100 persons age 85 and over would generate approximately 1700 beds less in terms of an aggregate statewide need in 1990, but would have a much stronger basis in reality. It also would more accurately reflect differing regional and county needs, based on their composition of the elderly. Finally, as time passes and the relative distribution of age cohorts changes, the formula will better reflect the needs of a rapidly aging population, thereby improving access to long-term care beds. It should be noted that while the bed need shift to certain counties may not result in bed excesses in other counties, the former Certificate of Need approvals for additional beds in these counties will remain. Therefore, as the current bed need methodology indicates a statewide excess of nearly 3,000 beds, the net bed supply will not be reduced by this apparent reduction in need. In addition, the 2,199 currently existing and approved beds in statewide restricted admission facilities and continuing care retirement communities, which serve a preponderance of New Jersey residents, are not even included in the bed need methodology.

The second change in the bed need methodology permits adjustment to reflect the state's expansion of home and community-based long-term care. As progress is made in the development of a more balanced long-term care system, home care resources are rapidly growing. This will allow a shift in the setting of care for many patients and should be reflected in the methodology. It is felt that there should be an explicit trade-off, with the net bed need figures being reduced as more resources are diverted to home and community-based care.

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

Economic Impact

The New Jersey State Health Plan recognizes the provision of long-term care services, particularly institutional long-term care, as an important factor contributing to the rapidly escalating costs of health care. The highly unbalanced and almost exclusive emphasis on the provision of institutional services organized along a medical model of care have set costs climbing. Traditional long-term care resources appear to have reached capacity and the existing system's high costs almost preclude expansion in its current form. A continued orientation toward more costly health services and settings capable of caring for relatively few, at the expense of social and supportive services and housing resources for the increasing larger population at risk, predicts serious financial and social consequences. This is in the face of a relatively stable portion of the population capable of producing the goods, services, and attendant tax

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revenues necessary to support government assistance for the growing numbers dependent because of age or disability. Public and private spending on long-term care, which doubled nationally between 1975 and 1980, is expected to double again between 1980 and 1985 without any expansion of policies or programs. As in the rest of the nation, the Medicaid Program provides the driving force for New Jersey's nursing home industry. Medicaid reimbursement is the source of payment for approximately 65 percent of all nursing home patients days in New Jersey and the great majority of the State's nursing homes are Medicaid providers. Medicaid expenditures for nursing home services are expected to total \$370 million in FY'86.

Financing for these services must assure economic accessibility and should include an appropriate mix of private and public dollars. The inexorable demographics of the aging process will require that significant amounts of money be spent in the next several decades for long-term care. This will be true even if no changes are made in current programs. In this context, it should be noted that only about five percent of the over 65 population resides, at any given time, in long-term care facilities. Based on the projected demographics and current program trends, over the next twenty years, New Jersey can expect to spend at least \$600 million (in 1980 dollars) for capital investments and an average of \$1.5 billion per year (in 1980 dollars) for program operations. The issue is how to spend the money to achieve the greatest cost-efficiency possible under an adequate, balanced long-term care system that will maximize quality of life for chronically ill people. Despite the increased commitment of resources to meet a rising demand for services, dissatisfaction obviously exists regarding the structure and orientation of the delivery system.

The proposed amendments seek to promote the orderly development of adequate and effective long-term care services within the cost restraints, while at the same time ensure their availability and accessibility to the aged population and particularly those most in need among them. They assure that lower cost alternatives will be constructed as part of long-term care facilities and that residential health care beds will be available to the indigent. The long-term care bed need methodology is a key criterion in the Certificate of Need process and is the single most efficient factor shaping the supply and distribution of institutional long-term care services in New Jersey. According to the current formula, the 1986 statewide bed need is for about 35,000 units, with over 38,000 beds actually now licensed and operating. The new formula projects a 1990 need for slightly more than 43,000 beds, with nearly 47,000 beds having already been issued Certificates of Need or now in operation. These bed need figures will keep New Jersey at about the median point among the 50 states in terms of bed supply. Most observers believe that these levels are generally reasonable and appropriate for the State, given the early stage of development of our system of alternative modalities. This belief is supported by the major reduction seen in the Medicaid Nursing Home Waiting List which has dropped from 3600 to 2000 since 1982.

Another factor affecting the new formula's projected bed need or excess in certain parts of the State would be the inclusion of slots approved for Medicaid waived home and community-based care programs in the supply count, through the reduction of the net bed need among the counties by one bed for each slot. While the inclusion of these non-institutional services will moderate the expected growth in nursing home beds, it will never result in "fewer" beds. The bed supply will continue to grow, but at a more reasonable, realistic, and affordable rate than would otherwise be the case and in areas experiencing growth in the age 88 and over population.

The Community Care Program for the Elderly and Disabled (CCPED) covers people whose monthly incomes are between \$367 and \$1,008 with liquid assets under \$1600, and who meet a nursing home level of care. They receive a package of seven services: home health care, homemaker, medical day care, social day care, medical transportation, respite care, and case management. Their service use is limited by an annual overall cost cap of 70 percent of nursing home costs. A case manager arranges and monitors all the client's services. The clients may keep up to \$431.25 of their income, with the rest contributed as cost share or to pay medical bills. Intensive care management in combination with other home care services is currently available to 1,880 CCPED clients statewide. The program has been very successful in meeting the needs of frail elderly clients in an organized and cost-effective way. Spending for services is roughly 50 percent of nursing home costs. The quality of case management is high and based on "state-of-the-art" research. Clients and families are reported to be quite satisfied with the program.

Once adopted, a new bed need formula could generate very significant Medicaid savings over the long-range as fewer new beds are built and as the long-term care system becomes more balanced and efficient. The

savings could then be used to further expand home care. A key policy goal should be to support the continued development of a more balanced long-term care system by encouraging diversion of funding and new system capacity to home and community-based settings. This approach reflects the reality that the State's resources are not unlimited and that we must decide how we want to allocate our long-term care dollars. Although we are committed to expansion of the system to meet the growing need, we cannot afford unbridled expansion of all sectors at once—trade offs are necessary and must be explicitly recognized. Similarly, once the available bed supply is targeted to sicker and more impaired patients, the case mix change could be reflected and facilitated by revised Medicaid rates. In view of the obvious benefits to the overall system, the Department of Health welcomes the opportunity to work cooperatively with the Department of Human Services to facilitate its expansion of home and community-based services, and ensure that this action is cost-effective and does not result in unnecessary increased Medicaid expenditures. The net results of the proposed changes will be a continued and substantial increase in the long-term care system's overall capacity, but with a greater proportion of the growth in home and community-based care. This will result in a more balanced, efficient, and desirable response to the growing needs of the elderly.

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

8:33H-2.1 Definitions

In this chapter certain terms have specific meanings, as follows:

...
"Continuing Care Retirement Communities" means communities that combine independent living accommodations for the elderly with the provision of social and health care services, including post-acute and chronic nursing care, through an agreement to provide such continuing care for the term of a contract, frequently for the duration of a resident's life, in return for an entrance fee or periodic payments or both, in the event such care is required by residents.

"Department of Health" means the State of New Jersey Department of Health.

"Medicaid-eligible patients" means those patients who have received prior determination of medical and financial eligibility for Medicaid coverage in a long-term care facility and are directly admitted on such reimbursement from a hospital or community-based residence. This definition also includes those individuals who qualify medically and financially for such care but do not apply for Medicaid and are essentially medically indigent. **For purposes of this chapter, this definition also includes those patients whose care is reimbursed through General Assistance funds.** This does not apply to those patients who are initially admitted to a long-term care facility on private payment, either under a 'private pay contract' prior to acceptance on Medicaid reimbursement or under the requirement to 'spend down' their assets to Medicaid financial eligibility levels; such patients are not considered direct Medicaid admissions for purposes of fulfilling such utilization requirements. The only exception to this definition will be in regard to those patients who are subject to a "spend-down" period of 60 days or less upon admission to a long-term care facility.

"Pediatric long-term care" means the post-acute chronic inpatient care provided principally to children age 16 or younger.

"Statewide restricted admission facility" means a non-profit long-term care facility owned and operated by a religious or fraternal organization that serves only the members of that organization and their immediate families. This definition shall not apply to any long-term care facility serving or proposing to serve only patients with specific medical condition or diagnosis (Alzheimer's Disease, for example).

8:33H-3.2 Cost effectiveness

(a) Standards are as follows:

1.-2. (No change.)

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

- i. (No change.)
- ii. Other inpatient health facilities such as:
 - (1)-(7) (No change.)
 - (8) Mental health institutions and facilities.**
 - iii.-xii. (No change.)
- (b) Guidelines are as follows:

1. (No change.)

[2. Guideline II-02, cost efficiency: Priority consideration shall be given to actions which promote cost-effective measures. Determination of whether a proposed action promotes cost effectiveness requires an analysis of the impact of a proposed action on projected payment rates in the applicant facility itself and upon its neighboring related facilities as determined by the Department of Health. Consideration should be given to a projection of payment rates with facilities of comparable size, age, and service array statewide, in the health service area served by the applicant, and by applying a projected costs to the current reimbursement methodology.]

[3. Guideline II-03] **2. Guideline II-02, quality of health services:** Special consideration will be given to Certificate of Need applications which promote [the] **high quality** [of] health services rendered in an efficient and economical manner, [and] available to all residents of the facility's service area or all members of its special constituency.

8:33H-3.3 Expansion and new construction

(a) Standards are as follows:

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

- i.-ii. (No change.)
- iii. Pediatric long-term care, 90 percent; and**
- iii.iv. (No change in text.)

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

- i. (No change.)
- ii. The need for medical day care facilities shall be addressed as a separate service, regardless of whether free-standing [or] facility-based[.] **or hospital affiliated.** Basic criteria by which to determine need will include such factors as the number and capacity of both licensed operating and Certificate of Need approved medical day care facilities in the appropriate county/service area; the occupancy rate of the licensed operating facilities; the new facility's proposed Medicaid utilization; and whether the facility proposes to serve a [specific] **specialized** population, such as Alzheimer's disease or cerebral palsy patients. Only those medical day care facilities which are needed in certain unserved or underserved areas or which are needed to serve a [specific] **specialized** population will be approved.

iii. **The need for pediatric long-term care beds shall be evaluated with regard to the availability and adequacy of existing resources in the area to be served by the facility. Beds approved for use as pediatric long-term care beds shall not be subject to the long-term care bed need methodology or counted in the inventory of long-term care beds available to the adult population. Where the need is demonstrated, priority in approving pediatric long-term care beds will be given to applicants with a history of providing services for the treatment of chronic long-term disabilities in children. The applicant shall provide evidence of the following, to the satisfaction of the Department of Health:**

- (1) **The areawide need for the service;**
- (2) **That existing pediatric long-term care facilities located within one hour's driving time or within a 50 mile radius from the proposed site had an occupancy rate of at least 90 percent for the preceding calendar year;**
- (3) **How the proposed facility will target its services to the special needs of the most severely impaired children;**
- (4) **Transfer and referral agreements to be established with other health care and child treatment facilities; and**
- (5) **Other requirements, as enumerated in 3. below.**

3. Standard III-03, addition of beds: **In counties where the Department of Health has determined there is a need for long-term care beds, Certificate of Need applications for new facilities and additions to existing facilities will be evaluated with special consideration to the prioritization criteria outlined in (b)5. below. Applicants for long-term care and residential health care facilities seeking Certificate of Need approval to add beds to an existing facility or to construct a new facility will be required to submit all of the following with the application:**

- i. (No change.)
- ii. [vi. Documentation demonstrating that the request is in compliance with [the documents listed in Standard III-02] **all other applicable Standards and Guidelines at N.J.A.C. 8:33H.**
- iii.-v. (No change.)

[vi.jii. Documentation of a prior record of providing a high quality of care. [if the application is for bed addition or an applicant for a new facility has any history of ownership or management of long-term or residential health care facilities. Repeated violations of significant licensure standards, as determined by the Department, or other indicia of poor quality shall, except in exceptional circumstances, require non-approval of any application.] **In making determinations of prior track record, the Commissioner shall base her or his determinations on the recommendations submitted by the Department of Health's Division of Health Facilities Evaluation supplemented by reports submitted by the Department of Human Services, Division of Medical Assistance and Health Services. In evaluating the prior history of applicants who have owned or operated Class B or C boarding homes, reports submitted by the Department of Community Affairs will be used. These reports will be supplemented by the review of official State records of the track records of applicants in other states and other information, including but not limited to, reports from statewide patients advocacy groups, ombudsman, and similar organization, when available.**

4. Standard III-04, alternative to long-term care beds: Certificate of Need applicants for long-term care beds shall propose the inclusion of institutional (residential health care, congregate housing, for example) [and non institutional] alternatives to inpatient long-term care beds. **Non-institutional alternatives, such as medical day care, shall be approved only if an applicant has quantitatively documented the need to the satisfaction of the Department of Health.** Applicants are instructed to consult with the Department's health planning staff in regard to alternatives appropriate to their projects, as well as the long-term care sections of the State Health Plan, prior to submission of an application. A written commitment to construct long-term care beds and their appropriate alternatives on a concurrent basis shall be submitted with the application and will be included as a condition of approval.

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

i. New long-term care facility construction.

(1) Minimum of [35] **36** percent of total long-term care bed complement must be occupied by direct admission Medicare to Medicaid and Medicaid-eligible patients no later than one year from license issuance.

(2) Facility must continue to maintain direct Medicare to Medicaid and Medicaid-eligible admissions to a minimum of [35] **36** percent of its total long-term care bed complement thereafter.

(3) (No change.)

ii. Bed addition to an existing long-term care facility over 60 beds after expansion and which currently has Medicare to Medicaid and Medicaid-eligible patients occupying [35] **36** percent or more of its total licensed capacity.

(1) Minimum of [35] **36** percent of new long-term care beds must be occupied by direct admission of Medicare to Medicaid and Medicaid-eligible patients no later than one year from license issuance.

(2) Facility must continue to maintain direct Medicare to Medicaid and Medicaid-eligible admissions to a minimum of [35] **36** percent of its total long-term care bed complement thereafter.

(3) (No change.)

iii. Bed addition to an existing long-term care facility over 60 beds after expansion of which currently has Medicare to Medicaid and Medicaid-eligible patients occupying less than [35] **36** percent of its total licensed capacity.

(1) Minimum of [35] **36** percent of total long-term care bed complement after expansion must be occupied by direct admission Medicare to Medicaid and Medicaid-eligible patients no later than one year from license issuance and must be maintained thereafter.

(2) (No change.)

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

(1) Minimum of [35] **36** percent of new bed must be occupied by direct admission Medicare to Medicaid and Medicaid-eligible patients no later than one year from license issuance.

(2) (No change.)

v. A long-term care facility which received Certificate of Need approval for a change in cost or scope will be required to comply with the utilization percentages for Medicare to Medicaid and Medicaid-eligible recipients, as outlined at (a)5.i. through iv. above. [outlined in N.J.A.C. 8:33H-3.3(q)5.]

vi.-vii. (No change.)

viii. The Medicaid utilization requirements outlined at (a)5.i. through vii. above will include a minimum percentage of discharged psychiatric patients from New Jersey State and county hospitals as a condition of approval. This percentage will be determined on an annual basis by the Department of Health in consultation with the Department of Human Services. The Department of Health will announce the required percentage of discharged psychiatric patients each year, 30 days before the beginning of the first cycle in that calendar year. This required minimum percentage will apply to all applications reviewed in any batch during that calendar year.

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

[ix.]x. (No change in text.)

xi. The requirements that 35 percent of a long-term care facility's beds be utilized by Medicaid-eligible patients in no way diminishes an applicant's responsibility to conform with Public Law 1985, Chapter 303, regarding non-discrimination against Medicaid-eligible patients.

[6.]7. Standard III-[06]07, continuing care retirement communities. Such communities are defined as those that combine independent living accommodations for the elderly with the provision of social and health care services, including post-acute and chronic nursing home care, through an agreement to provide such continuing care for the term of a contract, frequently for the duration of a resident's life, in return for an entrance fee or periodic payments or both, in the event such care is required by residents. Those communities seeking Certificate of Need approval to construct an on-site long-term care facility, which meet the above definition as determined by the Department of Health and contain a minimum of 240 residential units, may apply for exemption from the long-term care bed need, utilization criteria, and batching cycle requirements. Such projects will be included in the Certificate of Need full review process; however, the process may be expedited with the concurrence of the local Health Systems Agency. Applicants shall apply for the above exemptions by submitting all of the following required documentation:

i.-xii. (No change.)

[7.]6. Standard III-[07]06, utilization of new and/or additional beds by Supplemental Security Income recipients: [Residential health care facilities seeking Certificate of Need approval to add beds to an existing facility or to construct a new facility, which includes both freestanding facilities and beds in a long-term care facility.] Applicants for residential health care facilities receiving Certificate of Need approval to construct new or additional beds will be required to comply with the following utilization criteria:

i.-iii. (No change.)

iv. A residential health care facility which receives Certificate of Need approval for a change in cost or scope will be required to comply with the utilization percentages for Supplemental Security Income residents identified at (i.-)(iii.) above.

v. A residential health care facility acquired through a Certificate of Need approved transfer of ownership, and which was originally subject to the Supplemental Security Income resident utilization percentages identified at (i.-)(iv.) above will be required to maintain compliance with those utilization percentages.

vi. Any Certificate of Need applicant for new or expanding residential health care facility who can produce evidence of financial hardship which would result from compliance with the Supplemental Security Income resident utilization percentages identified at N.J.A.C. 8:33H-3.7(i) through (iv.), may request a review of the financial feasibility of those percentages. This review will be conducted by the Department of Health and may result in the imposition of a requirement for a lower percentage of utilization by Supplemental Security Income residents. This review process may also be requested by approved applicants who apply for a change in the cost or scope of their residential health care facility project, or by applicants for a transfer of ownership of a residential health care facility. In such instances, the Department of Health will consult with the Statewide Health Coordinating Council in making its determinations.

vii. The Supplemental Security Income resident utilization requirements outlined at (a)6i. through ii. above will include a minimum percentage of discharged psychiatric patients from New Jersey State and county hospitals as a condition of approval. This percentage will be determined on an annual basis by the Department of Health in consultation with the Department of Human Services. The Department of Health will announce the required

percentage of discharged psychiatric patients each year, 30 days before the beginning of the first long-term care cycle in that calendar year. This required minimum percentage will apply to all residential health care facility applications reviewed thereafter, during that calendar year.

viii. If the applicant's proposal to accept a higher than required percentage of Supplemental Security Income residents, as specified at N.J.A.C. 8:33H-3.7(a)i. through ii., is a factor in the approval of a Certificate of Need for a new or expanded residential health care facility, that percentage will be included as a condition of approval by the Department of Health. The facility will be required to attain the specified level by the end of the first year after license issuance and to maintain that level on an annual basis thereafter.

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

(b) Guidelines are as follows:

1. (No change.)

2. Guideline III-02, exception to Standard III-03, addition of beds: If an applicant cannot submit the documentation required in Standard III-03, (a)3.ii. above, for long-term care beds, new or additional beds may still be approved if the request is for no more than 10 beds or a hospital requests the permanent exchange of acute care beds for long-term care beds on a one for one basis. Wherever there is a long-term care bed need for less than a usual full-sized facility of 120 beds, [only] additions to existing facilities [in accordance with N.J.A.C. 8:33H-3.1(a)1.ii.] will be [approved.] given preference, provided that all other applicable provisions of this chapter (N.J.A.C. 8:33H) are satisfied, including the prioritization criteria identified in (b)5. below.

3. Guideline III-03, exception for potentially underserved cities: If a long-term care facility applicant cannot submit the documentation required at Standard III-03, (a)3.ii. new or additional beds may still be approved in potentially underserved urban areas, which are herein defined as those cities containing the largest age 65 and over populations below poverty level statewide. For the purposes of this rule, these cities are: Newark, New Jersey, Paterson, Atlantic City, Camden, Elizabeth, Trenton, Irvington, East Orange, and Union City. The Department of Health shall annually apply the bed need methodology identified at N.J.A.C. 8:33H-3.10 to the population of each of the aforementioned cities. Applicants for long-term care facilities in any of these cities where there is a net bed need must document all of the following to the satisfaction of the Department of Health:

i. The applicant agrees, as a condition of approval, to build within the city limits.

ii. A written commitment to accept as a condition of Certificate of Need approval a minimum of 50 percent bed occupancy by direct Medicaid-eligible patients, of which 10 percent shall be discharged psychiatric patients from State and county hospitals. This percentage will be included as a condition of Certificate of Need approval; it is to be achieved no later than one year from license issuance and maintained thereafter.

iii. A written commitment to accept as a condition of Certificate of Need approval a minimum of 30 percent bed occupancy by Supplemental Security Income recipients, of which 10 percent shall be discharged psychiatric patients from State and county hospitals. This percentage will be included as a condition of Certificate of Need approval; it is to be achieved no later than one year from license issuance and maintained thereafter.

4. Guideline III-04, Exception for statewide restriction admission facilities: Certificate of Need applications for new or expanding long-term care facilities meeting the criteria listed below will not be subject to review under the long-term care bed need methodology identified at N.J.A.C. 8:33H-3.10. To be eligible for consideration as a Statewide Restricted Admission Facility, the applicant must provide documentation that the following criteria are met:

i. It must be clearly stated in the facility's bylaws that only members of the specified religious or fraternal organization and their immediate family members will be admitted to 100 percent of the long-term care and residential health care facility beds.

ii. More than 50 percent of the facility's patients will be admitted from outside the health systems area in which the facility is located or will be constructed.

5. Guideline III-05, Prioritization criteria. In counties where there is a bed need according to the methodology identified at N.J.A.C. 8:33H-3.10(a), criteria for the prioritization of Certificate of Need applications requesting new or additional beds shall include:

i. Compliance with all applicable standards and guidelines of this policy manual (N.J.A.C. 8:33H);

- ii. Greatest provision of residential alternatives, including highest absolute number of RHCf beds and SSI beds;
- iii. Highest existing and/or projected Medicaid utilization, particularly direct Medicaid admissions;
- iv. Conversion of excess acute care beds, where economically feasible;
- v. Lowest reasonable capital and operating costs;
- vi. Record of compliance with licensure standards and other indices of quality service provision in facilities owned, operated, and/or managed by any principals involved with the application.
- vii. Highest equity contribution.
- viii. Ability to implement quickly.
- ix. History of most significant service provision to the Medicaid-eligible population.
- x. Location within the official city limits of potentially underserved urban areas, as defined at N.J.A.C. 8:33H-3.3(b)3.
- xi. Existing and proposed admissions practices and policies of the facility in assuring access for low-income persons to long-term care alternatives.

8:33H-3.5 Conversion

(a) Standards are as follows:

1. Standard V-01, Certificate of Need requirements for conversion of hospital facilities to long-term care. Applications for Certificates of Need to convert licensed acute care beds in distinct parts of hospital facilities to long-term care shall be reviewed according to the long-term care bed need methodology identified at N.J.A.C. 8:33H-3.10. Within each long-term care batch, hospitals converting such beds shall be given priority consideration by the Department of Health provided that:] all of the following conditions are met:

i. They entail a permanent conversion of capacity (i.e., the creation of so-called "swing beds" is not [encouraged] proposed).

ii. There is a bed need in the [hospital's service] area and[/or] the conversion will remove at least 30 excess acute care beds from the system while mitigating the local economic and labor impact of such a reduction in acute care capacity.

iii. The hospital clearly documents, to the satisfaction of the Department, plans for providing a suitable living environment for long-stay patients within an appropriate continuum of care[.], including residential health care and/or congregate care, or admission criteria to reserve such long-term care beds for patients whose stays can reasonably be expected to be less than 100 days.

[iv. The hospital plans and maintains admission criteria to reserve such beds for patients whose stays can reasonably be expected to be less than 100 days.]

[v.]iv. The capital cost of [new] converting the acute care beds is less than that of new long-term care facility construction.

[vi.]v. The applicant [generally] complies with all other standards and guidelines herein, and will comply with licensure standards and reimbursement regulations applicable to all long-term care facilities. [, including reimbursement regulations.]

vi. The applicant documents a commitment to serve a high percentage of Medicaid patients, including the minimum utilization criteria for 36 percent direct admission Medicaid-eligible patients identified at N.J.A.C. 8:33H-3.3(a)5.

vii. Additional priority will be given to hospitals converting acute care units which were originally constructed for long-term care use.

viii. If the hospital cannot submit the documentation required in ii. above, the application to convert acute care beds to long-term care may be approved if:

(1) The request is to convert all the acute care beds in the facility to non-acute care use, or

(2) The request is for the conversion of a minimum of 120 acute care beds to long-term care.

2. (No change.)

8:33H-3.8 Financial feasibility

(a) Standards are as follows:

1. Standard VIII-01, demonstration of financial feasibility. Applicants for Certificates of Need must demonstrate.

i. [Sufficient resources to obtain financing at reasonable rates, and to maintain operations if there are temporary interruptions to cash flow:] The availability of at least 10 percent of the total project cost, including all financing and carrying costs, in the form of equity, in accordance with N.J.A.C. 8:33-3.2; and

ii. [Ability to operate with such costs so that the operator can be expected] Evidence in financial projections that income generated by operation of the facility will be sufficient to provide [for a reasonable] service

to the percentage of Medicaid or indigent patients specified in the application, or in accordance with N.J.A.C. 8:33H-3.3(a)5 (or N.J.A.C. 8:33H-3.3(b)3 where applicable), whichever is greater.

iii. Possession of sufficient resources to complete the project in a timely manner, according to the description in the application.

2. (No change.)

(b) Guidelines are as follows:

1. Guideline VIII-01, realistic projection of costs: Where projected construction costs or any element of construction costs are considerably lower or higher than the average for the health systems area, as determined by the Department of Health, the applicant shall be expected to provide an explanation at the request of the Department indicating factors contributing to said projections. This request for an explanation shall not be construed as an opportunity to change cost projections.

2. Guideline VIII-02, During the Department's review of Certificate of Need applications, consideration shall be given to applicants' and/or principals' previous history of project completion. Preference will be given to those who have completed previous projects in a timely manner and have demonstrated an ability to realistically project construction costs.

8:33H-3.10 Long-term care bed need methodology

(a) Guidelines are as follows:

1. Guideline X-01, bed need methodology:

i. The methodology used to estimate long-term care bed need by county, health service area, and the State as a whole shall be: [4.0] 1.2 beds per 100 persons age 65-74 [and 4.5], 5.2 beds per 100 persons age 75 [and over.]84, and 18.1 beds per 100 persons age 85 and over.

ii. The net bed need developed in accordance with i. above shall be reduced by one bed for each slot approved for either the State's Community Care Program for the Elderly and Disabled (CCPED) or the State's several Model Waivers programs. The bed reduction shall be allocated among the counties in proportion to the distribution of such slots as certified semi-annually by the Department of Human Services.

[ii.]iii. (No change in text.)

[iii.]iv. The Department of Health shall consult at least once yearly with the SHCC and the HSAs to determine whether any revisions to the methodology described in [(a)] i. above are necessary.

2. (No change.)

DRUG UTILIZATION REVIEW COUNCIL

The following proposals are authorized by the Drug Utilization Review Council, Robert Kowalski, Acting Chairman.

Submit comments by November 19, 1986 to:

Thomas T. Culkin, PharmD, MPH
Executive Director
Drug Utilization Review Council
New Jersey Department of Health
Room 801, CN 360
Trenton, N.J. 08625
609-984-1304

(a)

Interchangeable Drug Products Proposed Amendment: N.J.A.C. 8:71

Authority: N.J.S.A. 24:6E-6(b).

Proposal Number: PRN 1986-415

A public hearing concerning this proposal will be held on November 10, 1986, at 11:00 A.M., at:

Conference Room C
Fourth Floor
Conference Center
Hughes Justice Complex
Trenton, N.J. 08625

The agency proposal follows:

Summary

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

Over the seven years of its existence, certain medications have been added to the Formulary which now are either very seldom used or are written by generic name (thus substitution doesn't pertain). The Council

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proposes to delete these medications from the Formulary so as to make the Formulary more up-to-date and uncluttered.

In addition, some products are made only by two brand-name manufacturers and now show little or no difference in price, therefore they are to be deleted.

A third category of deletions is to remedy errors. One product (Robitussin DAC) was mistakenly added to the Formulary although it is a non-prescription medication and the Formulary only lists prescription medications.

Social Impact

There would be very little social impact of these proposed deletions, as the medications would continue to be available to those who need them, from other manufacturers.

Economic Impact

As a result of this proposal, certain generic medications will not continue to be stocked by pharmacies. This will present an economic burden to those pharmacies to either destroy or return the medicines proposed for deletion, but this is counterbalanced by lack of a continuing need to keep these seldom-used items in inventory.

Some patients who have benefited from the use of these medicines will have to pay higher prescription prices, but such persons can continue to receive these generics by insisting that their pharmacies stock the items and asking their physicians to write the prescriptions using generic terminology.

Overall, it is anticipated that very few persons will be economically adversely affected by these deletions.

Full text of the proposal follows.

The following products are proposed for **deletion** from the List of Interchangeable Drug Products:

Aminophylline tablets 100 mg	Duramed
Aminophylline tablets 200 mg	Cord, Duramed
Anisotropine MBr tabs 50 mg	Bolar
Chloramphenicol capsules 250 mg	P-D, Rachele, Zenith
Chloroquine phosphate tablets 500 mg	Danbury
Clotrimazole cream 1%, vag, crm 1%, soln 1%	Miles, Scherig
Clotrimazole vaginal tabs 100 mg	Miles, Schering
Codeine guaifenisin pseudo ephedrine	Bay
Cyclopentolate hydrochloride ophth. solution 1%	Pharmafair
Dexchlorpheniramine maleate syrup	Bay
Diethylpropion HCL tabs 25 mg	Drummer/Phoenix, Lemmon
Ergotamine tartrate with caffeine tablets, 1 mg with 100 mg	Cord, Sandoz
Erythromycin ophthalmic ointment, 5 mg/g	Fougera/Byk-Gulden, Pharmaderm/Byk-Gulden, Pharmafair
Folic acid tablets 1 mg	Bolar, Chelsea, Danbury, Generic, Halsey, Lederle, MK, PFI, Premo, Purepac/Kalipharma, Richlyn, T.P., West-Ward, Zenith
Glycopyrrolate tabs 1 mg	Bolar, Robins
Glycopyrrolate tabs 2 mg	Bolar, Chelsea, Robins
Guanethidine mono sulfate tablets 10, 25 mg	Bolar
Hydroflumethiazide tabs 50 mg	Bolar, Chelsea, Par
Methenamine mandelate suspension 500 mg/5 ml	NPC
Multivitamin Forte (VICON FORTE FORMULA) capsules	Par
Naphazoline HCL 0.025%/pheniramine 0.3% ophth. soln	Pharmafair
Nitrofurazone soluble dressing 0.2%	Clay-Park, Thames
Pentaerythritol tetranitrate tabs 10, 20 mg	Bolar, Halsey, West-Ward, Zenith
Phendimetrazine tartrate tabs 35 mg	Barr, Camall, Chelsea, Cord, Generic, Inwood, Zenith
Proparacaine HCL ophth. solution 0.5%	Pharmafair

Sodium polystyrene sulfonate powder Bay
Tetracaine HCL ophth. solution 1/2-1 Optopics
Tripeleinnaine HCL tabs 50 mg Barr, Bolar, Chelsea, CIBA, Danbury, Richlyn, West-Ward

Tropicamide ophth. solution 0.5%, 1.0% Pharmafair

(a)

Interchangeable Drug Products

Proposed Amendment: N.J.A.C. 8:71

Authority: N.J.S.A. 24:6E-6(b).

Proposal Number: PRN 1986-416.

A public hearing concerning this proposal will be held on November 10, 1986, at 10:00 A.M., at:

Conference Room C
Fourth Floor
Conference Center
Hughes Justice Complex
Trenton, N.J. 08625

The agency proposal follows:

Summary

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

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

Recent correspondence with the U.S. Food and Drug Administration shows that one company (Heather; Cherry Hill, New Jersey) whose products are listed in the Formulary does not meet Current Good Manufacturing Practices (CGMPs), as determined by the Food and Drug Administration. By statute (N.J.S.A. 24:6E-6e) manufacturers whose products appear in the Formulary *must* meet CGMPs, therefore the Council proposes to delete from the Formulary all products made by Heather.

Social Impact

There would be no social impact of these proposed deletions because other manufacturers who do meet CGMPs will continue to be listed in the Formulary as suppliers of the same products.

Economic Impact

The negative economic impact of this proposal would fall directly on Heather: their products would not readily be usable by pharmacists as substitutes for brand name medications, thus their sales in New Jersey would be adversely affected.

Full text of the proposal follows.

The following Heather products are proposed for **deletion** from the List of Interchangeable Drug Products:

Doxycycline hyclate capsules 50, 100 mg
Doxycycline hyclate tablets 100 mg
Furosemide tablets 20, 40 mg
Hydrochlorothiazide tablets 50 mg
Meprobamate tablets 400 mg
Methocarbamol tablets 500, 750 mg
Proprantheline bromide tablets 15 mg
Sulfamethoxazole/trimethoprim tablets 400/80, 800/160 mg
Sulfamethoxazole tablets 500 mg
Sulfisoxazole tablets 500 mg
Tetracycline HCL capsules 250, 500 mg

CORRECTIONS

(a)

THE COMMISSIONER

Referral of Handicapped Children for Adult Educational Services

Proposed New Rules: N.J.A.C. 10A:17-9

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6e, N.J.S.A. 3:1B-10, P.L. 1986 c.32 (N.J.S.A. 18A:46-18.2 et seq.).

Proposal Number: PRN 1986-422.

Submit comments by November 19, 1986 to:

Elaine W. Ballai, Esq.
Special Assistant for Legal Affairs
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The new rules are being proposed pursuant to N.J.S.A. 18A:46-18.2 et seq. (P.L. 1986, c.32). Presently, in accordance with N.J.A.C. 6:28, during a 21 year old handicapped pupil's last year in an educational program, a meeting shall be held to develop nonbinding written recommendations concerning services and resources available after the responsibility of the district Board of Education has ended. N.J.A.C. 6:28 also requires that an educational plan be developed by each approved facility for each school age pupil leaving a Department of Corrections or Department of Human Services education program which includes the current individualized education program or a description of the general education program, and any other educational information necessary to formulate an appropriate educational program when the pupil returns to a local district.

The enacted legislation reinforces the process stated in N.J.A.C. 6:28. At the age of 18, the multidisciplinary treatment team at each state facility will be required to provide written notice to the parent(s) or legal guardian(s) indicating that the student will not be entitled to receive tuition free education after the age of 21. This written notice shall describe, in detail, the opportunity for consent to have relevant information forwarded in a report to the Commissioner of the Department of Corrections.

The purpose of this information is to determine whether the student will need educational services after the age of 21 and, if so, recommend possible adult educational services based upon a determination of need.

The Commissioner of the Department of Corrections, in consultation with the Commissioner of the Department of Education, shall recommend appropriate educational programs operated or approved by the Department of Corrections or Department of Education, which may be available when the student attains the age of 21.

Social Impact

The proposed planning and referral process will aid in the identification of educational needs and provide the information necessary for the determination of educational services for students beyond the age of 21. This information will provide the basis for transitional educational planning which can enhance the potential ability of these students to lead more independent and productive lives.

Economic Impact

The proposal will not, of itself, cause a negative economic impact. Existing staff within the state facilities, who are routinely involved in the evaluation of these individuals, will provide the evaluations; give notice to the parent(s) and guardian(s); report findings to the Commissioner of the Department of Corrections and Commissioner of the Department of Education; and determine the educational needs of handicapped young adults. The nature and variety of existing programs, both within the Departments of Correction and Education, will be examined to ascertain the current level of service available and to develop recommendations to address the programmatic needs of these students.

Full text of the proposed new rule follows.

CHAPTER 17 SOCIAL SERVICES

SUBCHAPTERS 1 THROUGH 8. (RESERVED)

SUBCHAPTER 9. REFERRAL OF HANDICAPPED CHILDREN FOR ADULT EDUCATIONAL SERVICES

10A:17-9.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings.

"Multidisciplinary treatment team" means an evaluation team consisting of a psychologist, a learning disability teacher consultant, a social worker and any other professional who may be involved in the evaluation or treatment of a child in a state facility.

"Student" means those individuals between the ages of 18 and 21 years, residing in a state facility which is operated by, or under contract with the state, who have not received a high school diploma and who have been determined eligible for special education.

"Age 21" means the attainment of the 21st birthday before July 1.

10A:17-9.2 Referral process

(a) The Multidisciplinary Team at a state facility shall provide written notice to the parent or legal guardian of a student who is placed in the facility when the student attains the age of 18, or, if the student is over the age of 18 when placed in the facility, that the student is not entitled to receive tuition free education services after the age of 21.

(b) Educationally handicapped pupils attaining age twenty-one during the school year shall be provided required services for the balance of that school year.

(c) Written notice shall describe in detail the parent's or guardian's opportunity to consent to having the student's name or other relevant information forwarded in a report to the Office of Educational Services and the Commissioner of the Department of Corrections for the purpose of determining whether the student will need educational services after the age of 21 and, if so, recommend possible adult educational services consistent with N.J.A.C. 6:28.

(d) Upon the written consent of the parent or legal guardian, the Multidisciplinary Team shall forward the student's name and other relevant information in a report to the Office of Educational Services, Department of Corrections, for the development of a recommendation for adult educational services. A copy of this report shall be forwarded, by the Office of Educational Services to the Commissioner of the Department of Corrections and the Commissioner of the Department of Education.

(e) The report shall contain such information as defined in N.J.A.C. 6:28, which contributes to the evaluation of the student's handicapping condition, including but not limited to:

1. Results of physical and psychological examinations;
2. Relevant information presented by the parent or legal guardian and teacher;
3. Most recent individualized education plan; and,
4. Results of the most recent examinations and evaluations performed.

(f) The Multidisciplinary Team is not required to perform any examinations or evaluations not otherwise required by law.

(g) The Office of Educational Services, Department of Corrections, in consultation with the Commissioner of the Department of Education or his designee, shall determine whether a student will need adult educational services and, if the need will exist, shall recommend appropriate educational programs operated or approved by the Departments of Corrections and Education which may be available when the student attains the age of 21.

(h) The Commissioner of the Department of Corrections may conduct an evaluation of the student to determine if adult educational services will be needed.

(i) The recommendation for all programs shall be made available to the parent or guardian of the student no later than six months before the student attains the age of 21.

(j) If the Commissioner of the Department of Corrections determines that the student will not require adult educational services, the Commissioner of the Department of Corrections, or his or her designee, shall notify the student's parent or guardian in writing of the determination no later than six months before the student attains the age of 21.

(k) The Office of Educational Services, Department of Corrections, shall compile and submit an annual report, to the Departments of Corrections and Education on October 1, 1987 and thereafter on or before

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October 1 of each year, which shall not contain individually identifying information. The annual report shall contain:

1. The number of cases submitted to the Office of Educational Services;
2. The type and severity of the handicapping condition involved in each case; and
3. Any other necessary information.

INSURANCE

DIVISION OF ACTUARIAL SERVICES

Proposals numbered PRN 1986-430 and 431 are authorized by Kenneth D. Merin, Commissioner, Department of Insurance.

Submit comments by November 19, 1986 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, New Jersey 08625

(a)

Minimum Standards

Required Disclosure Provisions

Proposed Amendment: N.J.A.C. 11:4-16.8

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17B:26-1 et seq., specifically 17B:26-45 and 17B:26A-1 et seq. specifically 17B:26A-7(c) and (e).

Proposal Number: PRN 1986-431.

The agency proposal follows:

Summary

The existing text of N.J.A.C. 11:4-16.8(a)14 requires that insurers furnish a shopper's guide to health insurance to all persons eligible for Medicare by reason of age in connection with the purchase of a health insurance policy. The Department previously, through the issuance of Bulletins, has outlined the content and form of this shopper's guide.

N.J.S.A. 17B:26A-7 provides the Commissioner with specific statutory authority to prescribe by rule a standard form and the contents of an informational brochure for such Medicare-eligible persons, which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of Medicare.

The Department proposes to amend N.J.A.C. 11:4-16.8(a)14 to reflect the specific authority conferred by N.J.S.A. 17B:26A-7 and, in conformance with that authority, prescribe the form and content of the brochure. The proposed amendment provides uniform content, form and printing requirements which have been approved by the Commissioner and which must be followed by insurers when printing the brochure.

The proposed amendment accomplishes this goal in the following manner. First, the entire text of the guide, which is entitled "Bridging the Medicare Gaps: A Guide to Medicare Supplements," is appended to the subchapter as "Appendix B."

Secondly, in printing the guide, insurers are required to use only those negatives which have been authorized by and made available through the Department of Insurance, Division of Public Affairs.

Finally, the proposed amendment sets forth additional specifications, such as page size, ink color, and paper quality, to guarantee uniformity in the printing of the guide.

Additionally, the proposed amendment requires that insurers include a chart entitled "Medicare Deductibles and Copayments For 1986" in the pocket part of each guide. A sample copy of the chart containing data for the current year is appended to the subchapter as "Appendix C." To ensure the uniform content and form of the chart, insurers are required to obtain a sample copy of the chart from the Department of Insurance, Division of Public Affairs.

The Department will publish a notice in the New Jersey Register on an annual basis, or as necessary, which reflects updated information on deductibles and copayments, so that insurers may include the current data in the chart in a timely fashion.

The Department is concurrently proposing in this issue an amendment to N.J.A.C. 11:4-23.8 (Medicare Supplement Policies and Contracts), as that regulation also requires the printing and distribution of an informational brochure to Medicare-eligible senior citizens pursuant to N.J.S.A. 17B:26A-1.

Social Impact

The proposed amendment ensures that a uniform guide providing updated information is available to all persons eligible for Medicare by reason of age. The new guide contains current information about Medicare supplement insurance, and is in an easy-to-read format. Additionally, the guide has larger print type, more noticeable section headings, and is greater in overall size than current pamphlets.

The proposed amendment enables insurers to print and distribute a uniform, accurate guide. It also apprises insurers of the standards applicable to the printing of the guide, enabling them to be in compliance with the law.

The information contained in the guide allows Medicare eligible senior citizens to become more knowledgeable about their health insurance options, and provides them with the information to make better informed choices with regard to coverage.

Economic Impact

Insurers will experience an increase in cost as a result of printing the revised brochure. However, insurers are currently required to furnish a guide, and the cost of purchasing the approved negatives is minimal. Any additional costs associated with printing the guides according to the new specifications should be outweighed by the quality, appearance and informational value of the new guide.

Consumers, when purchasing insurance to supplement Medicare, will be more informed and better able to make cost-effective decisions with regard to coverage. The Department will experience an economic impact as a result of having to print a minimum of 50,000 brochures, but this cost is expected to be absorbed in the existing budget.

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

11:4-16.8 Required disclosure provisions

(a)1.-13. (No change.)

14. [A shopper's guide to health insurance for senior citizens authorized by the Commissioner.] **An informational brochure for persons eligible for Medicare by reason of age which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of Medicare, shall be furnished by each insurer to each such Medicare eligible person in connection with the purchase of a health insurance policy other than a short-term nonrenewable policy. [Delivery of the shopper's guide shall be made at the time of application except in the case of direct response solicitations where the shopper's guide shall be delivered with the policy. Acknowledgement of receipt of the shopper's guide shall be obtained by all insurers other than direct response insurers or service corporations.] The full text of the approved guide is appended to this subchapter as "Appendix B."**

15. To ensure uniformity in the content, form and printing of the guide, which is entitled "Bridging the Medicare Gaps: A Guide to Medicare Supplements," each insurer shall comply with the following requirements:

i. Insurers or their printers shall use only the printing negatives authorized by the Department of Insurance. Information concerning the purchase of the negatives is available from the Department of Insurance, Division of Public Affairs;

ii. The guide shall be printed according to the following specifications:

(1) The size of the pages shall be 7 x 10 inches;

(2) The guide shall be printed in two colors, black and PMS 321;

(3) The inside pages of the guide shall be printed on 70 pound coated Matte, Patina or approved equal;

(4) The cover of the guide is to be printed on 9 pt. Carolina cover, coated two sides;

(5) The cover shall be die cut on back to form a glued pocket two inches deep; and

(6) The guide is to be saddle stitched (two staples);

iii. A chart entitled "Medicare Deductibles and Copayments for 1986" must be included in the back pocket of each guide. A sample copy of this chart is appended to this subchapter as "Appendix C."

(1) To ensure uniform design, content and printing of the chart, the Department of Insurance, Division of Public Affairs will provide sample copies of the chart to insurers. Insurers must adhere exactly to the format of the chart, and must include the chart in the back pocket of each guide.

(2) Certain dollar amounts, such as the copayments, are updated every January 1. These figures will be published by the Department in a Public Notice in the New Jersey Register as they become available.

16. Delivery of the guide shall be made at the time of application except in the case of direct response solicitations where the guide shall be delivered

with the policy. Acknowledgment of receipt of the guide shall be obtained by all insurers other than direct response insurers or service corporations.
(b)-(o) (No change.)

APPENDIX B
BRIDGING THE MEDICARE GAPS:
A GUIDE TO MEDICARE SUPPLEMENTS
INTRODUCTION

Medicare. The word can be both a comfort and a puzzle. A comfort because Medicare is a program which provides a good, basic health coverage at minimal cost. A puzzle because the program's structure makes it look harder to understand than it really is.

Medicare historically has paid a relatively stable share of health care costs for older citizens, ranging from about 40 percent in 1977 to 45 percent in 1984, according to the U.S. House of Representatives Select Committee on Aging.

But health care costs have been rising faster than inflation—which means higher medical bills. So even though older people have been paying a relatively constant percentage of their medical bills, the bills themselves are larger. The bottom line is that older citizens are paying more total dollars for their share of health care costs.

Some people can afford to pay their health care bills. But others, who fear being caught between their fixed incomes and rising health care costs, will want to buy additional insurance to shield themselves.

Before making a decision about what kind of insurance to buy, everyone should assess his or her own needs. Assessing the need for additional protection is easier if one understands the basic structure of Medicare. The first section of this booklet is designed with that in mind.

The Building Blocks of Medicare

Medicare coverage comes in two parts—Part A, hospital insurance; and Part B, medical insurance.

The two parts in the program parallel the divisions in the medical community between hospitals and physicians. Although hospitals are filled with doctors, few doctors actually work for hospitals. Most physicians are independent businesspeople. So, if you go to the hospital with the flu, you receive separate bills—one for the things the hospital provides such as a room, nurses, food and drugs; and another for the doctors who treat you. Similarly, Medicare has two parts, A, which pays inpatient hospital bills, and B, which pays doctors' bills and outpatient hospital expenses.

Part A, the hospitalization portion of Medicare, is free, and most senior citizens participate automatically.

Part B, the medical portion is not free. It requires a monthly premium, which is deducted from your Social Security check. You don't have to take Part B, medical insurance, but for most people, it is a good buy. If you choose not to enroll in Part B when you sign up for Medicare, you can join the program later. But if you wait, the premiums will be higher.

Each of the two parts has a deductible, an amount of money which you have to pay before Medicare starts paying.

Each also requires a co-payment, which means you have to pay a part of each bill.

And each has its own rules about when these payments are required. The specific dollar amounts have been increasing over time, so they are not listed here. However, the chart in the back pocket will tell you the exact cost of the deductibles and co-payments this year.

Medicare Part A—Hospital Insurance

Medicare Part A, the heart of the Medicare program, pays hospital room and board fees. It also pays for some goods and services (such as laboratory costs, physical therapy and prescriptions) you receive while you are a patient in the hospital.

Part A does not cover all hospital bills. It covers a portion of them, depending on how long you are in the hospital, and on the basis of benefit periods (see p.5).

Drawn on a graph like the one on page 11, the system resembles a three-step staircase. First, you pay the Part A hospital deductible (which is roughly equal to the average national cost of one day in the hospital).

Then, for 60 days, Medicare pays 100 percent of the covered hospital expenses.

After 60 days, you take the first step down. For days 61 through 90, Medicare covers most of the hospital bills, but you have to pay a co-payment for each day you're there. (The co-payment is about 25 percent of the average national cost of a day in the hospital.)

If, after 90 days, you're still in the hospital, you have to make a decision. You either begin paying all the hospital bills yourself, or you take a half-step and dip into the **lifetime reserve days that Medicare provides**.

Your lifetime reserve is a "bank" with 60 days of partial coverage. The daily co-payment rises to about 50 percent of the average national daily hospital charge. You can use all or some of the 60 days for any hospitalization between 91 and 150 days. Once you use up all 60 lifetime reserve days, however, you can't get them back.

Although the increases in co-payments may seem steep, the odds of experiencing a prolonged hospital stay are small. Only 2 percent of Medicare subscribers exhaust their coverage in any given year, according to the U.S. Health Care Financing Administration. And national statistics indicate that the average hospital stay for a person over 65 has been ranging between 7.5 and 11 days.

What Part A Also Covers

Medicare also pays for three of the newer, less expensive alternatives to hospitalization—skilled nursing facilities, home health care and hospice care.

Let's say you've had a stroke and have been in the hospital for several weeks. You no longer need the intensive care a hospital provides, but you do need daily rehabilitation therapy before going home. Your doctor may refer you to a **skilled nursing facility**, where you will get professional nursing care and rehabilitation services. Although there are some restrictions, Medicare will generally pay **all** the facility's bills for the first 20 days and a portion of the bills for days 21 through 100, providing the care is reasonable and necessary.

Medicare also will pay for **home health care** to help you leave a hospital or skilled nursing facility if your condition meets certain requirements, among them a need for part-time skilled nursing care or therapy.

In addition, Medicare covers **hospice care** for terminally ill patients who want to stay home during their final weeks of life. Hospices (special organizations, which help dying patients and their families) will supply doctors' services, nursing care, home health aides, homemaker services, counseling, and medical appliances and supplies. There are some restrictions and some minimal co-payments for a few services, but Medicare will pick up the majority of the bills.

How Often Can You Collect?

Medicare Part A pays hospital expenses on the basis of **benefit periods**. A benefit period starts when you enter a hospital and ends when you have been out of the hospital or skilled nursing home for 60 days in a row.

Benefit periods determine whether you have to pay a deductible and how much of the hospital bill Medicare will pay. Let's say, for instance, that you were in the hospital for 60 days, went home for two weeks and then went back to the hospital for another two weeks. You would only have to pay one deductible, because both hospitalizations occurred in the same benefit period. You would, however, have to pay a co-payment for each day of the two weeks you were hospitalized the second time, because you exhausted your 100 percent coverage during the first 60 days of the benefit period.

When Will Medicare Refuse to Pay?

Medicare covers time in skilled nursing facilities, which are sometimes called nursing homes. But **Medicare does not cover custodial nursing home care** that only provides a place to live and help with personal needs such as bathing, feeding, dressing and taking medicine.

Usually Medicare pays hospitalization fees only for Medicare-approved hospitals. **Although all New Jersey hospitals are approved**, some hospitals and treatment centers in other states may not be.

Medicare also may refuse to pay for **experimental or controversial procedures**.

If you plan to travel, or if you're not sure whether the treatment or hospital you're considering has Medicare approval, check ahead of time with your local Social Security office to see if benefits are available.

Medicare Part B—Medical Insurance

Medicare Part B, medical insurance, is the section that helps to pay your doctor, whether you are in or out of the hospital. It also serves as a catch-all for the wide range of services people use when they are not patients in hospitals—outpatient visits to hospitals, physical therapy, laboratory tests, medical equipment (like wheelchairs or oxygen), and home health visits.

The medical insurance portion, Part B, has an annual deductible, an amount which you must pay once each year before Medicare will pay any bills related to Part B. The deductible can change, so the chart in the pocket on the back page shows the amount for this year.

How Much Does It Pay?

The medical insurance portion of Medicare was designed to pay 80 percent of the cost of most covered services. You pay the other 20 percent, which is the **Part B co-payment**.

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You could wind up paying more than 20 percent. Fees charged by doctors, therapists, suppliers and hospitals may vary, even within one town. But Medicare has a fixed schedule of fees, known as the "approved amount," for procedures done in your area. Medicare will pay only 80 percent of the approved amount. So, if your bill from the doctor or hospital outpatient clinic is higher than the approved amount, you must pay the difference.

Example: Suppose the Medicare approved amount for a medical procedure is \$40, but your doctor charges you \$100. Medicare will pay 80 percent of the \$40 approved amount, or \$32; you pay the 20 percent co-payment, or \$8. But you also make up the difference between the \$100 bill and Medicare's \$40 approved amount (\$60). So the total bill to you is \$68.

Some doctors "Accept assignment." This means the doctor agrees to accept the Medicare-approved amount for the services provided. You still have to pay the 20 percent co-payment, or \$8.

Some doctors accept assignment some of the time, some accept it all the time, while others never accept it at all. Find out, before treatment, whether your doctor will accept assignment. Each year, doctors and medical service suppliers can sign agreements to become Medicare-participating doctors or suppliers. This means they agree in advance to accept assignment on all Medicare claims. The "Medicare-Participating Physician/Supplier Directory," which is available in Social Security offices and county Offices on Aging, gives the names and addresses of Medicare-participating doctors and suppliers. You can also get this directory from Prudential, the Medicare carrier in New Jersey.

For a detailed description of the Medicare program, ask your local Social Security office for a free copy of **Your Medicare Handbook**.

FILLING IN THE GAPS

You can bridge the gaps in Medicare in a variety of ways. But there are choices to make. Different policies tend to plug different holes in the Medicare program, so you probably won't find one policy that pays for all your health care costs.

To decide which policy suits you best, begin by evaluating your needs and financial circumstances. How much can you afford to pay for insurance? Do you need help paying day-to-day health care costs? Or are you more concerned about covering yourself against the possibility of a months-long hospital stay that exhausts your Medicare benefits? Will you find it easier to budget regular insurance payments than to worry about later medical bills you might not be able to pay?

Medicaid

For some people, paying even small amounts for medical expenses or another health policy may be a real hardship. If you are one of them, start by checking with your local Social Security office or the state or county welfare agency to see if you are eligible for Medicaid, a free health care program for low-income people funded by the state and federal governments.

If you are eligible for Medicaid, you will not need any other coverage, because the combination of Medicare and Medicaid pays almost all medical expenses. Anything not covered by both is probably not covered by private health insurance policies either.

Prescription Aid

New Jersey also has a special prescription drug program, called Pharmaceutical Assistance to the Aged and Disabled (PAAD), to help pay for prescription medicines and some pharmacy items such as insulin syringes and needles.

To qualify, you must be 65 or older and meet certain income limits. The limits, which are higher than those for Medicaid, change each year.

For information on this year's limits, call the toll-free hotline, (800) 792-9745, or write to the New Jersey Department of Human Services, Division of Medical Assistance and Health Services, PAAD Program, CN 715, Trenton, N.J. 08625.

What Does Your Employer Offer?

The ideal time to start thinking about how you will supplement Medicare is several months before you reach age 65, particularly since you may be able to take advantage of insurance coverage you have as an employee.

If you are covered by a health plan at work, your employer may allow you to remain insured under the plan after you retire and may continue to pay all or part of the premium. This is sometimes referred to as "continuation."

Your employer may also offer a different arrangement called "conversion." This permits you to buy insurance from the same insurance company you had at work, but it doesn't necessarily mean your new

policy will have the same benefits. Nor does it mean the policy will be cheaper than similar policies you may find by shopping around on your own.

Continuation and conversion offer two advantages: you will probably not be required to produce a medical history or undergo a medical examination; and, you will not have to wait to receive benefits.

One kind of insurance you may be able to secure through continuation or conversion is a **major medical** or catastrophic coverage policy.

As the name applies, major medical coverage is designed to cover very large medical bills, usually after you have paid a substantial deductible. The deductibles for catastrophic insurance may be as high as \$1,000, but the coverage can amount to as much as \$1 million.

If you feel you can afford to pay Medicare's deductibles and co-payments out of your own pocket, but would like to insure against major expenses, you might consider this type of coverage. However, it isn't appropriate if you are worried about covering day-to-day health costs.

There are no hard and fast rules about continuation or conversion policies. Ask your employer's personnel office to explain your options. Can you continue or convert? How much will the coverage cost? Will the policy cover your spouse? (Some do and some don't.) What will the policy pay for?

Health Maintenance Organizations

Membership in a health maintenance organization—HMO—is another way to fill the gaps in Medicare. HMOs are prepaid health care programs which provide health services through one organization. Some HMOs have contracts with Medicare. As a Medicare beneficiary, you are eligible to join one of these if you participate in both parts of Medicare and live in a county where an HMO that contracts with Medicare is available.

If you join an HMO, you don't have to pay the Medicare deductibles and co-payments or file claims. You pay a monthly premium to the HMO, which provides doctors' services and most other health care for an additional fee of \$1 to \$5 per visit.

The trade-off is that you have to use the HMO doctors. If you need a specialist, you must go to one recommended by the HMO. If you choose to see a non-HMO physician on your own, you have to pay the bills yourself.

There are different kinds of HMOs. Some resemble hospitals, with all their doctors located in facilities owned by the HMO. Some are networks of physicians who maintain their own offices and serve HMO patients as a part of their regular practice.

HMO plans and premiums also vary. A "low option" HMO plan generally covers at least the services included under the regular Medicare program. A "high option" plan sometimes includes eye care, for example.

For further information on HMOs, write the New Jersey Department of Health, Alternative Health Systems, American Bridge Building, CN 367, Trenton, N.J. 08625.

Medicare Supplement Policies

If you are looking for a policy specifically designed to coordinate with Medicare, you may want to consider a Medicare supplement policy. The phrase "Medicare supplement" is a special term reserved in New Jersey for policies that meet minimum standards set by the state. Most policies sold to individuals are required to cover at least:

- the Medicare Part A (hospitalization) co-payments;
- 90% of hospital expenses after 150 days (when Medicare runs out), up to a total of 365 days;
- some expenses that Medicare doesn't pay under Part B up to a maximum of \$5,000 a year; and
- the co-payment for days 21-100 in a skilled nursing facility.

The exception is the Blue Cross and Blue Shield Medicare supplement policy.

We have established separate minimum standards for group policies and the Blue Cross and Blue Shield individual Medicare supplement policy. These do **not** have to cover the co-payment for days 21-100 in a skilled nursing facility.

Medicare supplement policies vary widely in price, depending on what they cover. Some supplements, for example, also cover the Part A hospital deductible, a part of private duty nursing care, prescription drugs and the Part B deductible. Generally, the more comprehensive the coverage, the more expensive the policy will be.

The Department of Insurance maintains a chart listing the individual Medicare supplement policies for sale in New Jersey. The listing includes the cost of the policy and the benefits it offers. The chart is updated each year.

If you need a copy of the chart or other help, write the department.

Blue Cross and Blue Shield Coverage

Blue Cross and Blue Shield of New Jersey, Inc. is a non-profit health service corporation offering three plans designed to coordinate with Medicare.

Blue Cross and Blue Shield Super 65 meets New Jersey's minimum standards for Medicare supplements. It pays the Part A deductible and co-payments. It pays the Part B annual deductible, the 20 percent co-payments for doctors who see you while you're hospitalized, and costs for home and office medical visits and other out of hospital services without any dollar maximums. After 150 days in a hospital when Medicare stops paying, Super 65 covers 100 percent of Medicare eligible expenses for an unlimited number of days. You may enroll for Super 65 any time during the year. However, there is a six month waiting period for pre-existing conditions.

The following two plans do **not** meet New Jersey's minimum standards for Medicare supplements:

Blue Cross and Blue Shield 65 is designed to provide basic hospitalization coverage. It pays the Part A hospital deductible and co-payments, and the Part B annual deductible and 20 percent co-payments for doctors who see you while you're hospitalized. Blue Cross and Blue Shield 65 will also pay co-payments for some services outside a hospital but there are annual dollar maximums. It will not pay for hospitalization after 150 days (when Medicare runs out) or for skilled nursing home care.

Blue Cross and Blue Shield 65 Select is primarily aimed at covering the costs for people who fear the expense of a long hospital stay. You pay the everyday health care cost—the Part A and Part B deductibles and some medical co-payments—yourself. 65 Select will pay the Part B co-payment for physician care in the hospital, the Part A hospitalization co-payments, and 90 percent of hospital costs after Medicare runs out. It also pays the Part B co-payments for some services performed outside a hospital, subject to annual dollar maximums.

If you don't apply for Blue Cross and Blue Shield 65 or 65 Select coverages 60 days before or 31 days after your 65th birthday, you can only apply during the open enrollment period from February 1 through April 30 of each year.

Hospital Indemnity Policies

Frequently advertised by celebrities, indemnity policies pay a fixed amount of money per day, week or month while you are in the hospital. They are not designed, however, to fill Medicare's gaps.

The advantages are that they pay you regardless of whether you have other hospital coverage, and the money is yours to spend as you see fit.

The disadvantage is the fact that they pay only if you're hospitalized. No matter what your medical bills are, you can't collect unless you're in the hospital.

And depending on the policy you choose, you may not collect much even then. Under New Jersey's minimum standards, policies must begin paying by day four of your hospital stay. But they don't have to pay before the fourth day, so if you go home after three, you may not see a dime. Some policies stop paying after 31 days.

The other thing to be careful about is the fact that the payments made to you may be much lower than your bills—even though the payments are required to be at least \$40 a day. Also, the amount of the benefit can remain the same year after year, so unless you update your coverage occasionally, inflation will take its toll on the value of the payments. If you do buy a hospital indemnity policy, try to update it every few years.

Don't buy a hospital indemnity policy as your only additional health coverage to supplement Medicare.

Nursing Home Policies

"Nursing Home" is a term that causes much confusion. Both skilled nursing facilities and custodial care facilities are called "nursing homes." But neither Medicare nor most insurance policies pay for custodial care. And custodial care facilities are the places most people associate with the phrase "nursing home."

Before you buy a nursing home policy, be sure to read the policy provisions carefully. If a policy does not pay benefits for custodial care, it will state that in the Outline of Coverage under "Exclusions."

Accidents Only

Accident-only policies provide coverage for death, dismemberment, or hospital and medical care due to an **accident**. They are not designed to pay routine health care costs.

A Bad Buy

You may have received advertisements in the mail for "dread disease policies"—policies that will cover you for specific diseases, like cancer. They are such a bad buy that **they are banned for sale** in New Jersey.

Dread disease policies are a bad buy because they pay in so few situations that odds are heavily stacked against the company ever having to pay you anything.

Be An Educated Consumer

Now that you know what Medicare does and does not cover, and what kinds of policies are out there, you are ready to set your strategy.

If you are concerned about day-to-day expenses, look for a policy that pays in as many situations as possible. Generally speaking, your money would be better spent on something like a Medicare supplement policy which covers a broad spectrum of medical expenses than on a hospital indemnity policy which pays only a small portion of the total daily hospital cost.

Don't duplicate coverage. Some policies will not pay for an expense already covered under another policy. So if you buy two of the same kind of policy, you can wind up with two sets of payments but only one set of benefits. **It is a federal crime** for someone to knowingly sell you a policy that duplicates Medicare or any private health policy you already have.

If you have a good basic supplement policy and want to add a hospital indemnity policy to it, be sure to update the coverage every few years, so that inflation doesn't erode the value of the coverage.

Other Considerations

Policies are contracts, and like other legal documents, they use a special vocabulary, including:

Waiting periods. If you're buying a new policy, you may have to wait up to 30 days before you will be eligible to collect anything. Some policies also have waiting periods of up to six months for specific conditions (for example, varicose veins) unless the conditions are considered a medical emergency and treated as such.

If you're considering converting or continuing your employee coverage, you are less likely to have a waiting period. If you're thinking about buying a new policy, don't rush out and cancel an existing policy. Keep the old policy in force until the new one begins paying benefits.

Pre-existing conditions exclusions. Policies may not pay bills for a health condition you had before you bought the policy. This usually isn't a problem with coverage extended by employers, and in New Jersey, Medicare supplements must pay for any conditions after you have had a policy for six months. But policies that are not called Medicare supplements, such as hospital indemnity policies, can have pre-existing condition exclusions of up to two years.

Also, watch out for these key phrases:

Maximums. A policy may have a maximum dollar amount that it will pay under the entire policy, a maximum it will pay within a given period of time or a limit on what it will pay for specific treatments. Hospital indemnity policies, for instance, may pay a specific amount per day, \$40 for example, up to a maximum amount per month.

Renewal. Find out if and when a company can refuse to renew the policy. There are three common types of renewal conditions:

Guaranteed renewable. This means that the company agrees to renew each year until you reach a certain age or for life as long as you pay the premium. Policies with a guaranteed renewal clause sold in New Jersey guarantee your right to renew for at least five years after the date of issue.

Conditionally renewable. This means that the company agrees to renew as long as the company continues to insure people in the state with the same kind of policy. If the company decides to discontinue selling that kind of policy here, the coverage can be cancelled at the end of the policy year. Most policies are conditionally renewable.

Renewable at company option. A policy with this provision can be cancelled for any reason at the end of the policy year. **This kind of clause is banned in New Jersey**, but you may see sales materials for these types of policies from outside the state.

Outline of Coverage. Don't be pressured or frightened into buying something you may not ever be able to use, like a cancer policy. If the literature you have doesn't discuss the important items mentioned here, ask for an Outline of Coverage, which companies are required to supply.

A Few Cautions

Don't be fooled into thinking that a company or agent represents Medicare or any other federal or state sponsored insurance program. The N.J. Department of Insurance sets minimum standards for policies and companies, but **it does not endorse or sell policies**.

Be honest on the application. If you lie or don't give a complete medical history, the company can refuse to pay. If someone else helps you fill

out the application, check it before signing. It is **your** claim that will be denied if incorrect medical history is on the application.

Don't pay in cash. Use a check, money order or bank draft and be sure it is payable to the company, not the agent or anyone else. Remember, even a guaranteed renewable policy can be cancelled if you don't pay your premium, so you want a record of your payments.

By law, you have a 10-day "**free look**" period, or 30 days if you're buying a mail order policy, to read the policy and return it for a full refund if you are not satisfied.

If you don't receive the policy within 30 days after applying, contact the company and obtain in writing a reason for the delay. If 60 days go by without information, call or write the Department of Insurance.

It is a violation of state regulations for your doctor to charge you a fee for filling out your claim form. If your doctor does charge you, you

can file a complaint with the State Board of Medical Examiners, 28 W. State Street, Room 602, Trenton, NJ 08608.

Claim payments should be mailed promptly. So if you experience delays, don't be afraid to assert your rights. Insurance companies sometimes make mistakes; your inquiry or complaint may help to bring a faster or fairer claim settlement.

Reminder

The Department of Insurance maintains a chart listing the individual Medicare supplement policies for sale in New Jersey. The listing includes the cost of the policy and the benefits it offers. The chart is updated each year.

If you need a copy of the chart or other help, write the department at 201 East State Street, CN-325, Trenton, New Jersey 08625.

APPENDIX C
MEDICARE DEDUCTIBLES AND CO-PAYMENTS FOR 1986

MEDICARE PART A

Service	Length of Stay	You Pay	Medicare Pays
Hospitalization	First 60 days	\$492 deductible	Balance
	61st-90th day	\$123 co-payment per day	Balance
	91st-150th day	\$246 co-payment per day	Balance
Post-hospital Skilled Nursing Facility Care	First 20 days	Nothing	All Costs
	21st-100th day	\$61.50 co-payment per day	Balance
Home Health Care		Nothing	All Costs
		*provided all conditions are met (see Your Medicare Handbook)	
Hospice Care		Nothing	All Costs
	*Nursing care, physician's services, physical/occupational therapy, medical supplies, home health aide services, counseling services (except for bereavement counseling).		
	*Drugs and biologicals	5% co-payment	Balance
*Respite Care		5% co-payment	Balance
MEDICARE PART B			
Medical Expenses		\$75 annual deductible 20% of Medicare-approved amount after deductible	80% of Medicare-approved amount after deductible

(a)

Medicare Supplement Policies and Contracts Required Disclosure Provisions

Proposed Amendment: N.J.A.C. 11:4-23.8

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:35C-1 et seq, and 17B:26A-1 et seq. specifically 17B:26A-7(c) and (e).

Proposal Number: PRN 1986-430.

The Agency proposal follows:

Summary

The existing text of N.J.A.C. 11:4-23.8(a)6 requires that insurers furnish a shopper's guide to health insurance to all persons eligible for Medicare by reason of age in connection with the purchase of a health insurance policy. The Department previously, through the issuance of Bulletins, has outlined the content and form of this shopper's guide.

N.J.S.A. 17B:26A-7 provides the Commissioner with specific statutory authority to prescribe by rule a standard form and the contents of an informational brochure for such Medicare-eligible persons, which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of Medicare.

The Department proposes to amend N.J.A.C. 11:4-23.8(a)6. to reflect the specific authority conferred by N.J.S.A. 17B:26A-7 and, in conformance with that authority, prescribe the form and content of the brochure. The proposed amendment provides uniform content, form and printing requirements which have been approved by the Commissioner and which must be followed by insurers when printing the brochure.

The proposed amendment accomplished this goal in the following manner. First, the entire text of the guide, which is entitled "Bridging

the Medicare Gaps: A Guide to Medicare Supplements," is appended to the subchapter as "Appendix A."

Secondly, in printing the guide, insurers are required to use only those negative which have been authorized by and made available through the Department of Insurance, Division of Public Affairs.

Finally, the proposed amendment sets forth additional specifications, such as page size, ink color, and paper quality, to guarantee uniformity in the printing of the guide.

Additionally, the proposed amendment requires that insurers include a chart entitled "Medicare Deductibles and Copayments For 1986" in the pocket part of each guide. A sample copy of the chart containing data for the current year is appended to the subchapter as "Appendix B." To ensure the uniform content and form of the chart, insurers are required to obtain a sample copy of the chart from the Department of Insurance, Division of Public Affairs.

The Department will publish a notice in the New Jersey Register on an annual basis, or as necessary, which reflects updated information on deductibles and copayments, so that insurers may include the current data in the chart in a timely fashion.

The Department is concurrently proposing in this issue an amendment to N.J.A.C. 11:4-16.8, (Minimum Standards), as that regulation also requires the printing and distribution of an informational brochure to Medicare-eligible senior citizens pursuant to N.J.S.A. 17B:26A-7.

Social Impact

The proposed amendment ensures that a uniform guide providing updated information is available to all persons eligible for Medicare by reason of age. The new guide contains current information about Medicare supplement insurance, and is written in an easy-to-read format. Additionally, the guide has larger print type, more noticeable section headings, and is greater in overall size than current pamphlets.

The proposed amendment enables insurers to print and distribute a uniform, accurate guide. It also apprises insurers of the standards applicable to the printing of the guide, enabling them to be in compliance with the law.

The information contained in the guide allows Medicare-eligible senior citizens to become more knowledgeable about their health insurance options, and provides them with the information to make better informed choices with regard to coverage.

Economic Impact

Insurers will experience an increase in cost as a result of printing the revised brochure. However, insurers are currently required to furnish a guide, and the cost of purchasing the approved negatives is minimal. Any additional costs associated with printing the guides according to the new specifications should be outweighed by the quality, appearance and informational value of the new guide.

Consumers, when purchasing insurance to supplement Medicare, will be more informed and better able to make cost-effective decisions with regard to coverage. The Department will experience an economic impact as a result of having to print a minimum of 50,000 brochures, but this cost is expected to be absorbed in the existing budget.

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

11:4-23.8 Required disclosure provisions

(a)1.-5. (No change.)

6. Insurers and hospital or medical service corporations issuing policies, certificates or subscriber contracts which provide hospital or medical expense coverage on an expense incurred, indemnity, or service benefit basis, other than incidentally, to a person(s) eligible for Medicare by reason of age shall provide for delivery to all applicants [a Medicare Supplement "buyer's guide" in the form authorized by the Commissioner. The "buyer's guide" shall be delivered whether or not such policies, certificates, or subscriber contracts are advertised, solicited, or issued as Medicare Supplement policies. Except in the case of direct response insurers or service corporations, delivery of the "buyer's guide" shall be made to the applicant at the time of application, and acknowledgement of receipt of the "buyer's guide" shall be obtained by the insurer or service corporation. Direct response insurers or service corporations shall deliver the "buyer's guide" to the applicant upon request but not later than at the time the policy or certificate is delivered.] **an informational brochure, which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of Medicare. The full text of the approved guide is appended to this subchapter as "Appendix A."**

7. [Except as otherwise provided in (c) below, the terms "Medicare Supplement," "Medigap," and words of similar import shall not be used unless the policy or contract is issued in compliance with N.J.A.C. 11:4-23.6.] **To ensure uniformity in the content, form and printing of the guide, which is entitled "Bridging the Medicare Gaps: A Guide to Medicare Supplements," each insurer shall comply with the following requirements:**

- i. Insurers or their printers shall use only the printing negatives authorized by the Department of Insurance. Information concerning the purchase of the negatives is available from the Department of Insurance, Division of Public Affairs;
- ii. The guide shall be printed according to the following specifications:
 - (1) The size of the pages shall be 7 x 10 inches;
 - (2) The guide shall be printed in two colors, black and PMS 321;
 - (3) The inside pages of the guide shall be printed on 70 pound coated Matte, Patina or approved equal;
 - (4) The cover of the guide is to be printed on 9 pt. Carolina cover, coated two sides;
 - (5) The cover shall be die cut on back to form a glued pocket two inches deep; and
 - (6) The guide is to be saddle stitched (two staples);
- iii. A chart entitled "Medicare Deductibles and Copayments for 1986" must be included in the back pocket of each guide. A sample copy of this chart is appended to this subchapter as "Appendix B."

- (1) To ensure uniform design, content and printing of the chart, the Department of Insurance, Division of Public Affairs will provide sample copies of the chart to insurers. Insurers must adhere exactly to the format of the chart, and must include the chart in the back pocket of each guide.
- (2) Certain dollar amounts, such as the copayments, are updated every January 1. These figures will be published by the Department in a Public Notice in the New Jersey Register as they become available.

8. **Except in the case of direct response insurers or service corporations, delivery of the guide shall be made to the applicant at the time of application, and acknowledgement of receipt of the guide shall be obtained by the insurer or service corporation. Direct response insurers or service corporations shall deliver the guide to the applicant upon request but not later than the time of policy or certificate delivery.**

9. **Except as otherwise provided in (c) below, the terms "Medicare Supplement," "Medigap," and words of similar import shall not be used unless the policy or contract is issued in compliance with N.J.A.C. 11:4-23.6.**
(b)-(c) (No change.)

APPENDIX A
BRIDGING THE MEDICARE GAPS:
A GUIDE TO MEDICARE SUPPLEMENT

INTRODUCTION

Medicare. The word can be both a comfort and a puzzle. A comfort because Medicare is a program which provides a good, basic health coverage at minimal cost. A puzzle because the program's structure makes it look harder to understand than it really is.

Medicare historically has paid a relatively stable share of health care costs for older citizens, ranging from about 40 percent in 1977 to 45 percent in 1984, according to the U.S. House of Representatives Select Committee on Aging.

But health care costs have been rising faster than inflation—which means higher medical bills. So even though older people have been paying a relatively constant percentage of their medical bills, the bills themselves are larger. The bottom line is that older citizens are paying more total dollars for their share of health care costs.

Some people can afford to pay their health care bills. But others, who fear being caught between their fixed incomes and rising health care costs, will want to buy additional insurance to shield themselves.

Before making a decision about what kind of insurance to buy, everyone should assess his or her own needs. Assessing the need for additional protection is easier if one understands the basic structure of Medicare. The first section of this booklet is designed with that in mind.

The Building Blocks of Medicare

Medicare coverage comes in two parts—Part A, hospital insurance; and Part B, medical insurance.

The two parts in the program parallel the divisions in the medical community between hospitals and physicians. Although hospitals are filled with doctors, few doctors actually work for hospitals. Most physicians are independent businesspeople. So, if you go to the hospital with the flu, you receive separate bills—one for the things the hospital provides such as a room, nurses, food and drugs; and another for the doctors who treat you. Similarly, Medicare has two parts, A, which pays inpatient hospital bills, and B, which pays doctors' bills and outpatient hospital expenses.

Part A, the hospitalization portion of Medicare, is free, and most senior citizens participate automatically.

Part B, the medical portion is not free. It requires a monthly premium, which is deducted from your Social Security check. You don't have to take Part B, medical insurance, but for most people, it is a good buy. If you choose not to enroll in Part B when you sign up for Medicare, you can join the program later. But if you wait, the premiums will be higher.

Each of the two parts has a deductible, an amount of money which you have to pay before Medicare starts paying.

Each also requires a co-payment, which means you have to pay a part of each bill.

And each has its own rules about when these payments are required. The specific dollar amounts have been increasing over time, so they are not listed here. However, the chart in the back pocket will tell you the exact cost of the deductibles and co-payments this year.

Medicare Part A—Hospital Insurance

Medicare Part A, the heart of the Medicare program, pays hospital room and board fees. It also pays for some goods and services (such as laboratory costs, physical therapy and prescriptions) you receive while you are a patient in the hospital.

Part A does not cover all hospital bills. It covers a portion of them, depending on how long you are in the hospital, and on the basis of benefit periods (see p. 5).

Drawn on a graph like the one on page 11, the system resembles a three-step staircase. First, you pay the Part A hospital deductible (which is roughly equal to the average national cost of one day in the hospital).

Then, for 60 days, Medicare pays 100 percent of the covered hospital expenses.

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After 60 days, you take the first step down. For days 61 through 90, Medicare covers most of the hospital bills, but you have to pay a co-payment for each day you're there. (The co-payment is about 25 percent of the average national cost of a day in the hospital.)

If, after 90 days, you're still in the hospital, you have to make a decision. You either begin paying all the hospital bills yourself, or you take a half-step and dip into the **lifetime reserve days that Medicare provides**.

Your lifetime reserve is a "bank" with 60 days of partial coverage. The daily co-payment rises to about 50 percent of the average national daily hospital charge. You can use all or some of the 60 days for any hospitalization between 91 and 150 days. Once you use up all 60 lifetime reserve days, however, you can't get them back.

Although the increases in co-payments may seem steep, the odds of experiencing a prolonged hospital stay are small. Only 2 percent of Medicare subscribers exhaust their coverage in any given year, according to the U.S. Health Care Financing Administration. And national statistics indicate that the average hospital stay for a person over 65 has been ranging between 7.5 and 11 days.

What Part A Also Covers

Medicare also pays for three of the newer, less expensive alternatives to hospitalization—skilled nursing facilities, home health care and hospice care.

Let's say you've had a stroke and have been in the hospital for several weeks. You no longer need the intensive care a hospital provides, but you do need daily rehabilitation therapy before going home. Your doctor may refer you to a **skilled nursing facility**, where you will get professional nursing care and rehabilitation services. Although there are some restrictions, Medicare will generally pay all the facility's bills for the first 20 days and a portion of the bills for days 21 through 100, providing the care is reasonable and necessary.

Medicare also will pay for **home health care** to help you leave a hospital or skilled nursing facility if your condition meets certain requirements, among them a need for part-time skilled nursing care or therapy.

In addition, Medicare covers **hospice care** for terminally ill patients who want to stay home during their final weeks of life. Hospices (special organizations, which help dying patients and their families) will supply doctors' services, nursing care, home health aides, homemaker services, counseling, and medical appliances and supplies. There are some restrictions and some minimal co-payments for a few services, but Medicare will pick up the majority of the bills.

How Often Can You Collect?

Medicare Part A pays hospital expenses on the basis of **benefit periods**. A benefit period starts when you enter a hospital and ends when you have been out of the hospital or skilled nursing home for 60 days in a row.

Benefit periods determine whether you have to pay a deductible and how much of the hospital bill Medicare will pay. Let's say, for instance, that you were in the hospital for 60 days, went home for two weeks and then went back to the hospital for another two weeks. You would only have to pay one deductible, because both hospitalizations occurred in the same benefit period. You would, however, have to pay a co-payment for each day of the two weeks you were hospitalized the second time, because you exhausted your 100 percent coverage during the first 60 days of the benefit period.

When Will Medicare Refuse to Pay?

Medicare covers time in skilled nursing facilities, which are sometimes called nursing homes. But **Medicare does not cover custodial nursing home care** that only provides a place to live and help with personal needs such as bathing, feeding, dressing and taking medicine.

Usually Medicare pays hospitalization fees only for Medicare-approved hospitals. **Although all New Jersey hospitals are approved**, some hospitals and treatment centers in other states may not be.

Medicare also may refuse to pay for **experimental or controversial procedures**.

If you plan to travel, or if you're not sure whether the treatment or hospital you're considering has Medicare approval, check ahead of time with your local Social Security office to see if benefits are available.

Medicare Part B—Medical Insurance

Medicare Part B, medical insurance, is the section that helps to pay your doctor, whether you are in or out of the hospital. It also serves as a catch-all for the wide range of services people use when they are not patients in hospitals—outpatient visits to hospitals, physical therapy, laboratory tests, medical equipment (like wheelchairs or oxygen), and home health visits.

The medical insurance portion, Part B, has an annual deductible, an amount which you must pay once each year before Medicare will pay any bills related to Part B. The deductible can change, so the chart in the pocket on the back page shows the amount for this year.

How Much Does It Pay?

The medical insurance portion of Medicare was designed to pay 80 percent of the cost of most covered services. You pay the other 20 percent, which is the **Part B co-payment**.

You could wind up paying more than 20 percent. Fees charged by doctors, therapists, suppliers and hospitals may vary, even within one town. But Medicare has a fixed schedule of fees, known as the "approved amount," for procedures done in your area. Medicare will pay only 80 percent of the approved amount. So, if your bill from the doctor or hospital outpatient clinic is higher than the approved amount, you must pay the difference.

Example: Suppose the Medicare approved amount for a medical procedure is \$40, but your doctor charges you \$100. Medicare will pay 80 percent of the \$40 approved amount, or \$32; you pay the 20 percent co-payment, or \$8. But you also make up the difference between the \$100 bill and Medicare's \$40 approved amount (\$60). So the total bill to you is \$68.

Some doctors "accept assignment." This means the doctor agrees to accept the Medicare-approved amount for the services provided. You still have to pay the 20 percent co-payment, or \$8.

Some doctors accept assignment some of the time, some accept it all the time, while others never accept it at all. Find out, before treatment, whether your doctor will accept assignment. Each year, doctors and medical service suppliers can sign agreements to become Medicare-participating doctors or suppliers. This means they agree in advance to accept assignment on all Medicare claims. The "Medicare-Participating Physician/Supplier Directory," which is available in Social Security offices and county Offices on Aging, gives the names and addresses of Medicare-participating doctors and suppliers. You can also get this directory from Prudential, the Medicare carrier in New Jersey.

For a detailed description of the Medicare program, ask your local Social Security office for a free copy of **Your Medicare Handbook**.

FILLING IN THE GAPS

You can bridge the gaps in Medicare in a variety of ways. But there are choices to make. Different policies tend to plug different holes in the Medicare program, so you probably won't find one policy that pays for all your health care costs.

To decide which policy suits you best, begin by evaluating your needs and financial circumstances. How much can you afford to pay for insurance? Do you need help in paying day-to-day health care costs? Or are you more concerned about covering yourself against the possibility of a months-long hospital stay that exhausts your Medicare benefits? Will you find it easier to budget regular insurance payments than to worry about later medical bills you might not be able to pay?

Medicaid

For some people, paying even small amounts for medical expenses or another health policy may be a real hardship. If you are one of them, start by checking with your local Social Security office or the state or county welfare agency to see if you are eligible for Medicaid, a free health care program for low-income people funded by the state and federal governments.

If you are eligible for Medicaid, you will not need any other coverage, because the combination of Medicare and Medicaid pays almost all medical expenses. Anything not covered by both is probably not covered by private health insurance policies either.

Prescription Aid

New Jersey also has a special prescription drug program, called Pharmaceutical Assistance to the Aged and Disabled (PAAD), to help pay for prescription medicines and some pharmacy items such as insulin syringes and needles.

To qualify, you must be 65 or older and meet certain income limits. The limits, which are higher than those for Medicaid, change each year.

For information on this year's limits, call the toll-free hotline, (800) 792-9745, or write to the New Jersey Department of Human Services, Division of Medical Assistance and Health Services, PAAD Program, CN 715, Trenton, N.J. 08625.

What Does Your Employer Offer?

The ideal time to start thinking about how you will supplement Medicare is several months before you reach age 65, particularly since you

may be able to take advantage of insurance coverage you have as an employee.

If you are covered by a health plan at work, your employer may allow you to remain insured under the plan after you retire and may continue to pay all or part of the premium. This is sometimes referred to as "continuation."

Your employer may also offer a different arrangement called "conversion." This permits you to buy insurance from the same insurance company you had at work, but it doesn't necessarily mean your new policy will have the same benefits. Nor does it mean the policy will be cheaper than similar policies you may find by shopping around on your own.

Continuation and conversion offer two advantages: you will probably not be required to produce a medical history or undergo a medical examination; and, you will not have to wait to receive benefits.

One kind of insurance you may be able to secure through continuation or conversion is a **major medical** or catastrophic coverage policy.

As the name applies, major medical coverage is designed to cover very large medical bills, usually after you have paid a substantial deductible. The deductibles may be as high as \$1,000, but the coverage can amount to as much as \$1 million.

If you feel you can afford to pay Medicare's deductibles and co-payments out of your own pocket, but would like to insure against major expenses, you might consider this type of coverage. However, it isn't appropriate if you are worried about covering day-to-day health costs.

There are no hard and fast rules about continuation or conversion policies. Ask your employer's personnel office to explain your options. Can you continue or convert? How much will the coverage cost? Will the policy cover your spouse? (Some do and some don't.) What will the policy pay for?

Health Maintenance Organizations

Membership in a health maintenance organization—HMO—is another way to fill the gaps in Medicare. HMOs are prepaid health care programs which provide health services through one organization. Some HMOs have contracts with Medicare. As a Medicare beneficiary, you are eligible to join one of these if you participate in both parts of Medicare and live in a county where an HMO that contracts with Medicare is available.

If you join an HMO, you don't have to pay the Medicare deductibles and co-payments or file claims. You pay a monthly premium to the HMO, which provides doctors' services and most other health care for an additional fee of \$1 to \$5 per visit.

The trade-off is that you have to use the HMO doctors. If you need a specialist, you must go to one recommended by the HMO. If you choose to see a non-HMO physician on your own, you have to pay the bills yourself.

There are different kinds of HMOs. Some resemble hospitals, with all their doctors located in facilities owned by the HMO. Some are networks of physicians who maintain their own offices and serve HMO patients as a part of their regular practice.

HMO plans and premiums also vary. A "low option" HMO plan generally covers at least the services included under the regular Medicare program. A "high option" plan sometimes includes eye care, for example.

For further information on HMOs, write the New Jersey Department of Health, Alternative Health Systems, American Bridge Building, CN 367, Trenton, N.J. 08625.

Medicare Supplement Policies

If you are looking for a policy specifically designed to coordinate with Medicare, you may want to consider a Medicare supplement policy. The phrase "Medicare supplement" is a special term reserved in New Jersey for policies that meet minimum standards set by the state. Most policies sold to individuals are required to cover at least:

- the Medicare Part A (hospitalization) co-payments;
- 90% of hospital expenses after 150 days (when Medicare runs out), up to a total of 365 days;
- some expenses that Medicare doesn't pay under Part B up to a maximum of \$5,000 a year; and
- the co-payment for days 21-100 in a skilled nursing facility.

The exception is the Blue Cross and Blue Shield Medicare supplement policy.

We have established separate minimum standards for group policies and the Blue Cross and Blue Shield individual Medicare supplement policy. These do **not** have to cover the co-payment for days 21-100 in a skilled nursing facility.

Medicare supplement policies vary widely in price, depending on what they cover. Some supplements, for example, also cover the Part A hospital

deductible, a part of private duty nursing care, prescription drugs and the Part B deductible. Generally, the more comprehensive the coverage, the more expensive the policy will be.

The Department of Insurance maintains a chart listing the individual Medicare supplement policies for sale in New Jersey. The listing includes the cost of the policy and the benefits it offers. The chart is updated each year.

If you need a copy of the chart or other help, write the department.

Blue Cross and Blue Shield Coverage

Blue Cross and Blue Shield of New Jersey, Inc. is a non-profit health service corporation offering three plans designed to coordinate with Medicare.

Blue Cross and Blue Shield Super 65 meets New Jersey's minimum standards for Medicare supplements. It pays the Part A deductible and co-payments. It pays the Part B annual deductible, the 20 percent co-payments for doctors who see you while you're hospitalized, and costs for home and office medical visits and other out of hospital services without any dollar maximums. After 150 days in a hospital when Medicare stops paying, Super 65 covers 100 percent of Medicare eligible expenses for an unlimited number of days. You may enroll for Super 65 any time during the year. However, there is a six month waiting period for pre-existing conditions.

The following two plans to **not** meet New Jersey's minimum standards for Medicare supplements:

Blue Cross and Blue Shield 65 is designed to provide basic hospitalization coverage. It pays the part A hospital deductible and co-payments, and the Part B annual deductible and 20 percent co-payments for doctors who see you while you're hospitalized. Blue Cross and Blue Shield 65 will also pay co-payments for some services outside a hospital but there are annual dollar maximums. It will not pay for hospitalization after 150 days (when Medicare runs out) or for skilled nursing home care.

Blue Cross and Blue Shield 65 Select is primarily aimed at covering the costs for people who fear the expense of a long hospital stay. You pay the everyday health care cost—the Part A and Part B deductibles and some medical co-payments—yourself. 65 Select will pay the Part B co-payment for physician care in the hospital, the Part A hospitalization co-payments, and 90 percent of hospital costs after Medicare runs out. It also pays the Part B co-payments for some services performed outside a hospital, subject to annual dollar maximums.

If you don't apply for Blue Cross and Blue Shield 65 or 65 Select coverages 60 days before or 31 days after your 65th birthday, you can only apply during the open enrollment period from February 1 through April 30 of each year.

Hospital Indemnity Policies

Frequently advertised by celebrities, indemnity policies pay a fixed amount of money per day, week or month while you are in the hospital. They are not designed, however, to fill Medicare's gaps.

The advantages are that they pay you regardless of whether you have other hospital coverage, and the money is yours to spend as you see fit.

The disadvantage is the fact that they pay only if you're hospitalized. No matter what your medical bills are, you can't collect unless you're in the hospital.

And depending on the policy you choose, you may not collect much even then. Under New Jersey's minimum standards, policies must begin paying by day four of your hospital stay. But they don't have to pay before the fourth day, so if you go home after three, you may not see a dime. Some policies stop paying after 31 days.

The other thing to be careful about is the fact that the payments made to you may be much lower than your bills—even though the payments are required to be at least \$40 a day. Also, the amount of the benefit can remain the same year after year, so unless you update your coverage occasionally, inflation will take its toll on the value of the payments. If you do buy a hospital indemnity policy, try to update it every few years.

Don't buy a hospital indemnity policy as your only additional health coverage to supplement Medicare.

Nursing Home Policies

"Nursing Home" is a term that causes much confusion. Both skilled nursing facilities and custodial care facilities are called "nursing homes." But neither Medicare nor most insurance policies pay for custodial care. And custodial care facilities are the places most people associate with the phrase "nursing home."

Before you buy a nursing home policy, be sure to read the policy provisions carefully. If a policy does not pay benefits for custodial care, it will state that in the Outline of Coverage under "Exclusions."

Accidents Only

Accident-only policies provide coverage for death, dismemberment, or hospital and medical care due to an **accident**. They are not designed to pay routine health care costs.

A Bad Buy

You may have received advertisements in the mail for "dread disease policies"—policies that will cover you for specific diseases, like cancer. They are such a bad buy that **they are banned for sale** in New Jersey.

Dread disease policies are a bad buy because they pay in so few situations that odds are heavily stacked against the company every having to pay you anything.

Be An Educated Consumer

Now that you know what Medicare does and does not cover, and what kinds of policies are out there, you are ready to set your strategy.

If you are concerned about day-to-day expenses, look for a policy that pays in as many situations as possible. Generally speaking, your money would be better spent on something like a Medicare supplement policy which covers a broad spectrum of medical expenses than on a hospital indemnity policy which pays only a small portion of the total daily hospital cost.

Don't duplicate coverage. Some policies will not pay for an expense already covered under another policy. So if you buy two of the same kind of policy, you can wind up with two sets of payments but only one set of benefits. **It is a federal crime** for someone to knowingly sell you a policy that duplicates Medicare or any private health policy you already have.

If you have a good basic supplement policy and want to add a hospital indemnity policy to it, be sure to update the coverage every few years, so that inflation doesn't erode the value of the coverage.

Other Considerations

Policies are contracts, and like other legal documents, they use a special vocabulary, including:

Waiting periods. If you're buying a new policy, you may have to wait up to 30 days before you will be eligible to collect anything. Some policies also have waiting periods of up to six months for specific conditions (for example, varicose veins) unless the conditions are considered a medical emergency and treated as such.

If you're considering converting or continuing your employee coverage, you are less likely to have a waiting period. If you're thinking about buying a new policy, don't rush out and cancel an existing policy. Keep the old policy until the new one begins paying benefits.

Pre-existing conditions exclusions. Policies may not pay bills for a health condition you had before you bought the policy. This usually isn't a problem with coverage extended by employers, and in New Jersey, Medicare supplements must pay for any conditions after you have had a policy for six months. But policies that are not called Medicare supplements, such as hospital indemnity policies, can have pre-existing condition exclusions of up to two years.

Also, watch out for these key phrases:

Maximums. A policy may have a maximum dollar amount that it will pay under the entire policy, a maximum it will pay within a given period of time or a limit on what it will pay for specific treatments. Hospital indemnity policies, for instance, may pay a specific amount per day, \$40 for example, up to a maximum amount per month.

Renewal. Find out if and when a company can refuse to renew the policy. There are three common types of renewal conditions:

Guaranteed renewable. This means that the company agrees to renew each year until you reach a certain age or for life as long as you pay the premium. Policies with a guaranteed renewal clause sold in New Jersey guarantee your right to renew for at least five years after the date of issue.

Conditionally renewable. This means that the company agrees to renew as long as the company continues to insure people in the state with the same kind of policy. If the company decides to discontinue selling that kind of policy here, the coverage can be cancelled and the end of the policy year. Most policies are conditionally renewable.

Renewable at company option. A policy with this provision can be cancelled for any reason at the end of the policy year. **This kind of clause is banned in New Jersey**, but you may see sales materials for these types of policies from outside the state.

Outline of Coverage. Don't be pressured or frightened into buying something you may not ever be able to use, like a cancer policy. If the literature you have doesn't discuss the important items mentioned here, ask for an Outline of Coverage, which companies are required to supply.

A Few Cautions

Don't be fooled into thinking that a company or agent represents Medicare or any other federal or state sponsored insurance program. The N.J. Department of Insurance sets minimum standards for policies and companies, but **it does not endorse or sell policies**.

Be honest on your application. If you lie or don't give a complete medical history, the company can refuse to pay. If someone else helps you fill out the application, check it before signing. It is **your** claim that will be denied if incorrect medical history is on the application.

Don't pay in cash. Use a check, money order or bank draft and be sure it is payable to the company, not the agent or anyone else. Remember, even a guaranteed renewable policy can be cancelled if you don't pay your premium, so you want a record of your payments.

By law, you have a 10-day "**free look**" period, or 30 days if you're buying a mail order policy, to read the policy and return it for a full refund if you are not satisfied.

If you don't receive the policy within 30 days after applying, contact the company and obtain in writing a reason for the delay. If 60 days go by without information, call or write the Department of Insurance.

It is a violation of state regulations for your doctor to charge you a fee for filling out your claim form. If your doctor does charge you, you can file a complaint with the State Board of Medical Examiners, 28 W. State Street, Room 602, Trenton, NJ 08608.

Claim payments should be mailed promptly. So if you experience delays, don't be afraid to assert your rights. Insurance companies sometimes make mistakes; your inquiry or complaint may help to bring a faster or fairer claim settlement.

Reminder

The Department of Insurance maintains a chart listing the individual Medicare supplement policies for sale in New Jersey. The listing includes the cost of the policy and the benefits it offers. The chart is updated each year.

If you need a copy of the chart or other help, write the department at 201 East State Street, CN-325, Trenton, New Jersey 08625.

APPENDIX B
MEDICARE DEDUCTIBLES AND CO-PAYMENTS FOR 1986

MEDICARE PART A

Service	Length of Stay	You Pay	Medicare Pays
Hospitalization	First 60 days	\$492 deductible	Balance
	61st-90th day	\$123 co-payment per day	Balance
	91st-150th day	\$246 co-payment per day	Balance
Post-hospital Skilled Nursing Facility Care	First 20 days	Nothing	All Costs
	21st-100th day	\$61.50 co-payment per day	Balance
Home Health Care		Nothing	All Costs
		*provided all conditions are met (see Your Medicare Handbook)	
Hospice Care		Nothing	All Costs
*Nursing care, physician's services, physical/occupational therapy, medical supplies, home health aide services, counseling services (except for bereavement counseling).			
*Drugs and biologicals		5% co-payment	Balance
*Respite Care		5% co-payment	Balance
MEDICARE PART B			
Medical Expenses		\$75 annual deductible 20% of Medicare-approved amount after deductible	80% of Medicare approved amount after deductible

(a)

NEW JERSEY REAL ESTATE COMMISSION
Obligations of Licensees to the Public and to Each Other

Proposed Amendment: N.J.A.C. 11:5-1.23

Authorized By: Daryl G. Bell, Secretary-Director, New Jersey Real Estate Commission.
Authority: N.J.S.A. 45:15-6.
Proposal Number: PRN 1986-439.

A **public hearing** concerning this proposal and the proposed amendments to N.J.A.C. 11:5-1.16 and 11:5-1.23(c) published in the August 18, 1986, issue of the New Jersey Register at 18 N.J.R. 1677(a) and 1680(a), respectively, will be held on:

November 24, 1986, at 9:30 A.M.
Student Center Theater
Rider College
Route 206
Lawrenceville, New Jersey 08648

Submit comments by November 24, 1986 to:
Robert J. Melillo
Special Assistant to the Director
New Jersey Real Estate Commission
201 East State Street
CN 325
Trenton, New Jersey

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 11:5-1.23(d) is intended to address the uncertainty which exists within the real estate community with regard to the obligations of licensees to show and/or submit offers upon properties which are the subject of a contract under attorney review. A proposed amendment to this rule published in the August 18, 1986, issue of the New Jersey Register at 18 N.J.R. 1677(a) omitted the clause, "nor show the subject property to other prospective purchasers or lessees," which this proposed amendment includes. All comments already received by the Commission pertaining to the prior proposed amendment will be considered regarding this proposed amendment.

The proposed amendment to N.J.A.C. 11:5-1.23(d) sets forth the restrictions which will apply to licensees with regard to a property which is under contract but pending attorney review. The restrictions which will apply are that during the attorney review period licensees will be precluded from informing the owner of the existence of any other offers

to buy or lease the property, from showing the property which is the subject of the contract under attorney review to prospective purchasers or lessees, and from otherwise interfering with the contractual rights of the parties to the contract.

Social Impact

The proposed amendment will have a favorable impact upon the real estate selling public and upon real estate licensees by precluding the submission of additional offers, the showing of a property and the interference with the contractual rights of the parties to the contract during the attorney review period, the potential for sellers or lessors to enter into contracts containing an attorney review provision in bad faith and with the sole intent of triggering an auction process with regard to their property will be greatly reduced by the proposed amendment. Further, a certain degree of finality will be returned to the real estate contracting process as a result of the owners awareness that upon the execution of a contract which contains an attorney review clause, his or her agent will not be free to submit additional offers during the attorney review period.

Economic Impact

The restrictions imposed by the proposed amendment to N.J.A.C. 11:5-1.23(d) upon licensees will have a favorable economic impact upon members of the public selling and leasing real estate. This is true because the opportunities to enter contracts which do not adequately serve all of their interests, but which only contain a price or rental amount which the owner may consider an attractive starting point for the commencement of an auction process with regard to the property will be limited. Further, by returning a degree of certainty and finality to the real estate contracting process, and by reducing the potential for entering into contracts with other than a good faith intention to fully perform on them, the economic interests of both buyers and sellers will be served.

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

11:5-1.23 Obligations of licensees to the public and to each other

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

(c) (See proposed amendment in the August 18, 1986 issue of the New Jersey Register, 18 N.J.R. 1680(a).)

(d) If any offer on any real property or interest therein is made orally, the licensee shall advise the offeror that he is not obligated to present to the owner or his authorized representative any offer unless the offer is in writing, and the licensee shall secure forthwith the offer in writing. The licensee shall transmit forthwith every written offer on any real property or interest therein to the owner or his authorized representative. **However, on contracts which contain attorney review clauses as described in N.J.A.C. 11:5-1.16(g), subsequent to the actual signing of such a contract by an offeror and owner, no licensee shall inform the owner of the existence**

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of any other offers, nor show the subject property to other prospective purchasers or lessees, or otherwise interfere with the contractual rights of the parties to the signed contract, until such contract shall be voided by the attorney for one of the said parties in accordance with the provisions of the attorney review clause contained in the said contract, or until the time period established for the attorney review by the parties and/or their attorneys shall have expired. If any acceptance of any offer is given orally, the licensee shall secure forthwith the acceptance in writing.

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

(a)

NEW JERSEY REAL ESTATE COMMISSION**Notice of Public Hearing on Proposed Amendments**

Take notice that a public hearing will be held regarding proposed amendments to N.J.A.C. 11:5-1.16, 11:5-1.23(c) and 11:5-1.23(d) published in the August 18, 1986, issue of the New Jersey Register at 18 N.J.R. 1677(a) and 1680(a), and in this issue at 18 N.J.R. 2112(a), respectively on:

November 24, 1986 at 9:30 A.M.
Student Center Theater
Rider College
Route 206
Lawrenceville, New Jersey 08640

LAW AND PUBLIC SAFETY**STATE BOARD OF DENTISTRY**

The following proposals are authorized by the State Board of Dentistry, William Gutman, Executive Secretary.

Submit comments by November 19, 1986 to:
William Gutman, Executive Secretary
State Board of Dentistry, Room 321
1100 Raymond Boulevard
Newark, New Jersey 07102

(b)

Dental Hygienists and Registered Dental Assistants Continuing Education Requirements**Proposed Amendment: N.J.A.C. 13:30-2.16**

Authority: N.J.S.A. 45:6-50.

Proposal Number: PRN 1986-424.

The agency proposal follows:

Summary

N.J.S.A. 45:6-56 provides that every four years each person licensed to practice dental hygiene and each registered dental assistant must provide the Board with a certified statement that such person has attended or participated in not less than 20 hours of continuing education in dental hygiene or dental assisting. The statute is supplemented by N.J.A.C. 13:30-2.16(a) which states, "All licensed dental hygienists and registered dental assistants in the State of New Jersey shall attend or participate in 20 hours of continuing education every four years." Neither the statute nor the regulation specify whether a certain number of hours must be taken on an annual basis. All licensed dental hygienists and registered dental assistants must renew their status by way of biennial application form. Accordingly, the State Board of Dentistry has determined that for the purposes of accurate recordkeeping and administrative efficiency, the rule should be amended to provide that each licensee/registrant shall submit proof of completion of 10 hours of continuing education every two years on the biennial renewal form. The new requirement will be effective for the renewal period commencing January 1, 1987.

Social Impact

No social impact is expected because the rule does not alter the current requirement, but only provides for ease of recordkeeping. Furthermore, the new rule will not become effective until January 1, 1987 and will not be reportable until the 1989 biennial renewal.

Economic Impact

No economic impact is expected because the rule does not alter the current requirements, but only provides more specific time frames for completion of continuing education hours.

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

13:30-2.16 Continuing education requirements

(a) All licensed dental hygienists and registered dental assistants in the State of New Jersey shall attend or participate in 20 hours of continuing education every four years. **Effective in the renewal period commencing January 1, 1987, every licensee/registrant shall submit proof of completion of 10 hours of continuing education every two years on the biennial renewal form.**

(b)-(e) (No change.)

(c)

Dental X-Rays; Lead Shields**Proposed New Rule: N.J.A.C. 13:30-8.16**

Authority: N.J.S.A. 45:6-1 et seq.

Proposal Number: PRN 1986-423.

The agency proposal follows:

Summary

The proposed new rule, N.J.A.C. 13:30-8.16, would require the use of a lead shield on patients during dental X-ray procedures. The New Jersey Radiation Protection Code, N.J.A.C. 7:28, does not at this time require the use of lead shields. However, the Bureau of Radiation Protection recommends the use of lead shields to its permit holders as good radiation protection practice. The State Board of Dentistry is very concerned about radiation protection and believes that the use of a lead shield on all patients during dental X-rays should be a mandatory procedure.

Social Impact

The proposed new rule would place an affirmative duty upon a licensed dentist to use a lead shield during every dental X-ray procedure in order to protect patients from radiation exposure. The new rule should assure patients that licensees recognize the importance of good radiation protection practice.

Economic Impact

Minimal economic impact is expected because most licensees currently own lead shields. Those who do not will be required to purchase lead shields.

Full text of the proposed new rule follows:

13:30-8.16 Dental X-rays; lead shields

Every licensee, as well as any employee or agent of such licensee duly licensed by the Department of Environmental Protection shall be required to use a lead shield to provide protection to the greatest extent possible to the torso and thyroid areas of patients during all dental X-ray procedures.

(d)

BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS**General Rules and Regulations****Proposed Readoptions: N.J.A.C. 13:31-1.5, 1.6, 1.8, 1.11****Proposed Readoptions with Amendments: N.J.A.C. 13:31-1.2, 1.4, 1.7, 1.9, 1.10****Proposed Repeal and New Rules: 13:31-1.1, 1.3**

Authorized By: Board of Examiners of Electrical Contractors,
Christine DeGregorio, Executive Secretary.

Authority: N.J.S.A. 45:1-3.2, N.J.S.A. 45:5A-6.

Proposal Number: PRN 1986-427.

Submit comments by November 19, 1986 to:

Christine T. DeGregorio, Executive Secretary
Board of Examiners of Electrical Contractors
1100 Raymond Boulevard, Room 503
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Board of Examiners of Electrical Contractors has undertaken a review of its regulations in accord with the "sunset" provisions of Executive Order No. 66 (1978) to ensure that its administrative rules are necessary, adequate, reasonable, efficient, understandable and responsive. Pursuant to the Executive Order these rules will expire, if not readopted, on December 21, 1986. As a result of this review the Board is proposing to readopt four of its regulations without change and to amend the other seven.

13:31-1.1: The present text of this rule is being deleted in its entirety. The proposed new text retains the provision for appointing a temporary chairman where the chairman is absent from a meeting, and explains that Board meetings are to be held with appropriate notice pursuant to the Open Public Meetings Act. Subsection (c) is amended to conform with N.J.S.A. 45:1-2.2(d) which provides that Board action may only be taken by a majority of the appointed members of the entire Board.

13:31-1.2: This section has always provided that the term of practical experience required by N.J.S.A. 45:5A-9(b) must involve actual practical experience "working with tools" in the installation or repair of electrical wiring. The proposed amendment clarifies this requirement by providing that time spent in managerial tasks may not be counted as practical experience.

13:31-1.3: This section concerning the licensing examination is being amended to conform with the recent Board decision to use the Multistate Electrical Licensing Test as its licensing examination. The provisions of the present regulation, describing the examination contents, application deadline, and fee arrangements have been rendered obsolete by this decision. The examination fee is now set by N.J.A.C. 13:31-1.11, and information about the content of the examination will be provided to applicants by the Educational Testing Service which administers the examination. The proposed amended regulation thus simply informs applicants that the MELT examination will be used, that the applicant may obtain further information from the Board offices and that pursuant to N.J.S.A. 45:5A-9(b) the examination, if failed, may not be retaken for six months.

13:31-1.4: This regulation defines "minor repair work" which, pursuant to N.J.S.A. 45:5A-18(a), is exempt work that may be performed by persons who do not hold a license and business permit to engage in electrical contracting. The statute provides that "Minor repair work such as the replacement of lamps and fuses" is exempt. The present regulation, adopted prior to September 1969, defined this exemption to include not only the replacement of lamps and fuses but also wall switches, plug-in receptacles on existing outlets and sockets on existing incandescent fixtures. In reviewing this regulation the Board determined that changes in the National Electric Code since 1969 and the availability of many new kinds of lamps, switches, fuses, receptacles and sockets have made it necessary to limit its former definition of exempt minor repair work in order to prevent the hazards that may result from the unskilled installation of such electrical equipment. For example, lighting switches commonly used today in office buildings operate on 277 volts. These switches can easily be replaced by a switch rated at only 150 volts by an inexperienced individual, resulting in a potential fire hazard or the potential for an electric shock to those using the switch. A hazardous situation may also result from the replacement of two-wire receptacles with modern three-wire devices without installing proper grounding devices at the same time. Special high-current limiting fuses are widely used today. These fuses are designed to interrupt an extremely high fault current that the utility transformers are capable of producing under a direct short condition. (These currents could easily exceed 10,000 amps.) Proper replacement of these fuses requires skill that an unlicensed individual is not likely to have. Improper installation could result in serious harm to the person attempting to do the installation or damage to the entire electric installation of which the fuse is a part. The installation of new kinds of lamps, such as mercury vapor lamps, metal halide lamps, and high and low pressure sodium lamps, all of which operate at over 150 volts, should only be done by skilled individuals. Similarly, modern switches include three and four way devices, safety switches and current-interrupting switches, none of which can be safely replaced by unskilled individuals. The proposed amendment therefore redefines "minor repair work" to include replacing only those lamps and fuses which operate at less than 150 volts to ground with a like or similar item. As proposed, the exemption will still permit replacement of these lower voltage lamps and fuses, which is the kind of work obviously intended to be included in the statutory exemption in 1962 when the Electrical Contractor's Licensing Act was enacted.

13:31-1.5: This section is proposed for readoption without change. The Board is empowered by N.J.S.A. 45:5A-19 to designate who shall be eligible to receive the financial protection of the bond required to be obtained by business permit holders. The Board has found the present regulation, providing this protection to any person injured, aggrieved or damaged by a violation of the licensing act or Board regulations, to be a necessary and adequate regulation for the protection of consumers who deal with licensed electrical contractors.

13:31-1.6: This section is proposed for readoption without change. It is a necessary regulation which makes it clear to Board licensees that they are responsible for being familiar with the laws affecting the business of electrical contracting.

13:31-1.7: This section is being amended merely to reflect the fact that "workmen's" compensation is now called worker's compensation. The regulation is being readopted as a necessary regulation which serves to inform business permit holders of their duty to obtain worker's compensation for their employees.

13:31-1.8: This section is being proposed for readoption without change. One of the primary obligations of a Board licensee is the assumption of full responsibility for the inspection and supervision of all electric work in conformity with recognized safety standards. These standards are incorporated in the National Electric Code. This code has been adopted by the State pursuant to the State Uniform Construction Act. Section 1.8 thus continues to be a necessary regulation. It explains that a licensee is responsible for ensuring that work performed complies with the Code, and that violations that are discovered during inspections by local electric sub-code officials must be corrected with no additional charge to the consumer.

13:31-1.9: N.J.S.A. 45:1-9 requires that all licensed contractors include their license numbers on contracts, subcontracts, bids and all forms of advertising. The Board has found that identification of the licensing status of its licensees should also be included on the vehicles they use and in business correspondence, so that consumers may be assured that they are dealing with a licensed contractor. Pursuant to subsection (c) licensees must also carry a Board-issued identification card. The section is proposed for readoption with one amendment, in order to make it clear to licensees that pursuant to N.J.S.A. 45:1-9, advertisements must contain the license or business permit number.

13:31-1.10: This section describes the seal which is issued to electrical contractors. It must be impressed upon applications for electrical permits and serves the purpose of identifying the person seeking the permit as a licensed contractor as required by N.J.A.C. 5:23-2.15(b)2.i. The licensee has the duty of ensuring that no unauthorized person may use the seal. Subsection (c) which had required that the licensee submit proof to the Board annually that the seal was still in his possession is being proposed for repeal because the Board has found that it is administratively burdensome and unnecessary. Subsection (b) is being amended to reflect that enforcement against violators is now governed by the provisions of N.J.S.A. 45:1-14 et seq., the uniform enforcement act for professional and occupational licensing boards.

13:31-1.11: This section was adopted in June of 1986. It sets the application and examination fee for applicants for licensure. It is being proposed for readoption without change as a necessary fee regulation which conforms to the requirements of N.J.S.A. 45:1-3.2.

Social Impact

The proposed revisions of Sections 1.1, 1.7 and 1.9 will simply serve to update these provisions to conform with statutory provisions enacted subsequent to their initial adoption prior to 1969. Similarly the proposed changes in Section 1.3 contain updated information about the Board examination. The proposed addition to Section 1.2 clarifies what has always been a statutory requirement for applicants for licensure. The proposed readoption of these provisions as amended will thus serve to benefit licensees by informing them of the requirements for obtaining licensure and of Board procedures. The readoption of Section 1.11 which sets the application and examination fee will provide the Board with the necessary funds to administer its licensing examination without raising excess funds, thus complying with N.J.S.A. 45:1-3.2. The readoption of Section 1.10 pressure seal requirement ensure that local sub-code officials may easily determine that electrical permit applicants are in fact licensees. This provision benefits the public by preventing unlicensed individuals from holding themselves out as electrical contractors. The readoption of Section 1.5 will continue to provide the benefit of the protection of the statutorily required contractor's bond to the consumers dealing with licensees. The readoption of Section 1.8 similarly continues the protection afforded to consumers by that provision without any undue burden on

licensees, who are reasonably required to assure that all work requiring a permit conforms to the National Electric Code. The readoption of Section 1.6 will also continue the protection to the public afforded by that section, because it is to the consumer's benefit that a contractor understand the laws relating to the work to be performed and that the work comply with these laws. The proposed revision of Section 1.4 will eliminate the exemption for certain work that, under the present rule, may be done by unlicensed persons. Thus, the proposal will require that a property owner employ a licensee to install replacements for switches, receptacles and sockets. (The exemption in N.J.S.A. 45:5A-18 for all work done by persons working on their family residences is, of course, still in effect.) As explained in the summary, however, this limitation has become necessary to protect the public from hazardous work because of changes in electrical equipment over the last decade. No significant changes in the administrative burden on Board personnel will be effected by the proposal.

Economic Impact

The readoption of Section 1.10 will mean that those being issued new business permits will continue to have to purchase a contractor's seal. This minimal one-time cost is not expected to have any appreciable effect on prices charged to the public. The readoption of Section 1.11 will provide the Board with the funds necessary to administer the licensing examination. The examination fee, \$35.00, is a necessary and reasonable fee set by contract with the Educational Testing Service which provides the examination, grades the examination and also provides the site for the examination and any necessary proctors. The proposed amendment to Section 1.4 may involve increased costs to the consumer seeking to have certain electrical equipment replaced since this work will henceforth require the services of a licensee, unless exempt for other reasons. The Board anticipates that, if this occurs, the increase in costs will be minimal, and will be more than offset by the assurance that the work will be competently and safely performed.

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

13:31-1.1 Board meetings; quorum

(Delete text of N.J.A.C. 13:31-1.1 and replace with new text as follows:)

(a) **Regular Board meetings shall be held in accordance with a schedule that is published yearly and filed with the Secretary of State.**

(b) **Special meetings may be held at the request of a Board member or called by the Chairman with publication of appropriate notice pursuant to the requirements of the Open Public Meetings Act.**

(c) **A majority of the voting members of the Board shall constitute a quorum thereof and no action of the Board shall be taken except on the affirmative vote of a majority of the members of the entire Board.**

(d) **In the absence of the chairman, members shall select one of the members attending the meeting to serve as chairman for that meeting.**

13:31-1.2 Qualifications of applicants [license examination]

(a) Applicants for examination for a license as an electrical contractor shall be over the age of 21 years and shall have had preceding the making of the application at least five years practical experience working with tools in the installation, alteration or repair of wiring for electric light, heat or power. **The required term of practical experience shall not include time spent in supervising, engineering, estimating and other managerial tasks.**

(b) An applicant having a bachelor's degree in electrical engineering shall require only two years of practical experience and applicants holding a certificate from an approved technical school shall require only 3-1/2 years of practical experience.

13:21-1.3 Examinations

(Delete text of N.J.A.C. 13:31-1.3 and replace with new text as follows:)

(a) **The Board examination shall be the Multistate Electrical Licensing Test (MELT) developed by the Educational Testing Service, Princeton, New Jersey.**

(b) **An applicant must obtain a passing grade on the MELT examination. Any applicant who fails to pass the Board examination shall not be eligible to retake the examination for six months from the date of such failure.**

(c) **An applicant shall complete all required application forms and questionnaires supplied by the Board. Examinations will be held at least four times a year. Information about scheduled examinations and deadlines for submissions of completed applications including appropriate fees may be obtained from the Board offices at 1100 Raymond Boulevard, Newark, New Jersey 07102.**

13:31-1.4 Minor repair work

Minor repair work within the meaning of N.J.S.A. 45:5A-18(a) shall include, without limitation, the replacement of lamps and fuses [, existing wall switches, plug-in receptacles on existing outlets and sockets on existing incandescent fixtures.] **operating at less than 150 volts to ground with a like or similar item.**

13:31-1.5 Bonds

(No change.)

13:31-1.6 Familiarity with laws

(No change.)

13:31-1.7 [Workmen's] **Worker's** compensation

Business permit holders shall obtain the [workmen's] **worker's** compensation insurance required by the laws of this State covering employees employed by the business permit holder or his subcontractor.

13:31-1.8 Work standards and inspections

(No change.)

13:31-1.9 Identification of licensees and permittees

(a) (No change.)

(b) All business correspondence **and advertising** shall display the license or business permit number.

(c) (No change.)

13:31-1.10 Requirement of pressure seal defined

(a) (No change.)

(b) No person, other than the electrical contractor to whom the license and business permit shall have been issued by this board, shall have the right to use the aforesaid seal. Any violation of this provision shall subject, first, the person wrongfully using the seal, and secondly, the licensee who willfully or negligently allows such unlicensed and unauthorized person to use said seal to such penalties and sanctions as shall be imposed by the board pursuant to authority granted by N.J.S.A. 45:5A-1 et seq. **and N.J.S.A. 45:1-14 et seq.**

[(c) An example of such pressure seal duly impressed upon letterhead stationery shall be required to be filed annually not later than February 1 of each calendar year with the Board of Examiners of Electrical Contractors.]

13:31-1.11 Fees for application and examination

(No change.)

(a)

DIVISION OF CONSUMER AFFAIRS

Deceptive Practices Concerning Automotive Sales Proposed Amendment: N.J.A.C. 13:45A-6.2

Authorized By: Division of Consumer Affairs, James J. Barry, Jr., Director.

Authority: N.J.S.A. 56:8-4.

Proposal Number: PRN 1986-434.

Submit comments by November 19, 1986 to:

James J. Barry, Jr., Director
Division of Consumer Affairs
1100 Raymond Boulevard, Room 504
Newark, New Jersey 07102

The agency proposal follows:

Summary

N.J.A.C. 13:45A-6.2 details the unlawful conduct of an automotive dealer with respect to documentary service fees. The proposed amendment addresses the situation in which the dealer charges a documentary service fee. It provides that the sales document must clearly and conspicuously disclose that the buyer has the option of having the dealer perform the documentary service or doing it him or herself. The proposed amendment also requires the dealer to inform the buyer of the procedures by which he or she may perform the documentary services.

Social Impact

The proposed amendment is beneficial to all persons engaged in the business of selling motor vehicles and to all consumers who purchase motor vehicles. The amendment insures that the sales document fully discloses the procedures by which a consumer may perform the documentary services connected with the purchase of a motor vehicle and that the dealer's performance of these services is at the consumer's option.

Economic Impact

The proposed amendment should correct any confusion by buyers of motor vehicles who in the past have misunderstood the necessity of the automotive dealer performing the documentary services upon a motor vehicle and should have a beneficial impact on those buyers who opt to perform these services themselves.

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

13:45A-6.2 Unlawful practices

(a) Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., the following practices involving the sale of motor vehicles by automotive dealers shall be unlawful thereunder.

1. (No change.)
2. With respect to documentary service fees:
 - i.-ii. (No change.)

[iii. Failing to conspicuously place upon the front of the sales document which contains a documentary service fee, in ten-point boldface type, the following:

"You have a right to a written itemized price for each specific documentary service which is to be performed."]

iii. Failing to conspicuously place upon the front of the sales document which contains a documentary service fee, in ten-point boldface type, the following:

"You have a right to perform the documentary services yourself. If the automotive dealer performs them for you he may charge a reasonable fee but he must provide you with a written itemized price for each documentary service he performs."

iv. Failing to advise a consumer that the performance by the seller of such documentary services is optional.

v. Failing to disclose to a consumer prior to entering into the sales contract the procedures available by which the consumer may perform the documentary services.

vi. Failing to use the word "optional" whenever the term "documentary fee" appears on the sales document.

vii. Having a dollar figure for documentary service prices appear on the sales document prior to the time a consumer enters into the sales contract.

(a)

DIVISION OF CONSUMER AFFAIRS

**Office of Weights and Measures
Approaches for Vehicle Scales**

Proposed Repeal: N.J.A.C. 13:47B-1.22

Authorized By: Thomas W. Kelly, State Superintendent, Office of Weights and Measures.

Authority: N.J.S.A. 51:1-61 and 51:1-129.

Proposal Number: PRN 1986-428.

Submit comments by November 19, 1986 to:

Thomas W. Kelly,
State Superintendent
Office of Weights and Measures
Division of Consumer Affairs
Department of Law and Public Safety
187 West Hanover Street
Trenton, NJ 08625

The agency proposal follows:

Summary

In accordance with the provisions of N.J.S.A. 51:1-61, the State Superintendent proposes to repeal the rule setting forth the requirements for the approaches to vehicle scales.

Social Impact

The repeal of this rule will remove the present conflict between Federal and State specifications for vehicle scale approaches that no longer exist or are of such a minor nature that dual requirements are no longer practical.

Repeal of the rule will have no impact, either positive or negative, on public or governmental interests since an existing rule, N.J.A.C. 13:47B-1.20, will continue to govern the planning and construction of vehicle scale approaches.

Economic Impact

There will be positive economic impact because planning and construction of vehicle scale installations will be simplified when only one standard must be met by the owner/operator of the scale or his contractor.

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

13:47B-1.22 [Approaches for vehicle scales] (**Reserved**)

[At each end of a vehicle scale there should be a straight approach in the same plane as the platform for a distance equal to at least the length of the scale platform or 40 feet, whichever is less; provided, however, that where a scale location does not lend itself to approaches of the stipulated lengths, this requirement may be waived by the State Office of Weights and Measures of the Department of Law and Public Safety. And the scale considered as a legal weighing device when its accuracy is established upon test by a weights and measures officer; and provided further, that any such scale used by law enforcement officers for the weighing of vehicles in the enforcement of the Motor Vehicle Traffic Act of New Jersey shall be exempt from the provisions of this section and shall be deemed legal for regulatory weighings when the scale and its approaches are approved and recommended for such service by said Office of Weights and Measures.]

NEW JERSEY RACING COMMISSION

The following proposals are authorized by the New Jersey Racing Commission, Charles K. Bradley, Deputy Director.

Submit comments by November 19, 1986 to:

Charles K. Bradley, Deputy Director
New Jersey Racing Commission
CN-088 Justice Complex
Trenton, New Jersey 08625

(b)

**Thoroughbred Rules
Certificate of Compliance**

Proposed Amendment: N.J.A.C. 13:70-3.42

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

Proposal Number: PRN 1986-425.

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 13:70-3.42 removes the words "before a license is issued" in this rule. This rule requires owners and trainers to carry workmen's compensation insurance. Removal of the words "before a license is issued" will not change that requirement.

Social Impact

There is no real social impact on this amendment. The gist of the rule remains in effect, that is, that owners and trainers must have workmen's compensation policies which must be on file with the Racing Secretary. The only change is that the words "before a license is issued" will be removed.

Economic Impact

There is no economic effect; workmen's compensation insurance is still required. There are no increased costs to the public or the participants, and there is no effect on State revenue.

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

13:70-3.42 Certificate of compliance on file

Effective January 1, 1969, a certificate of compliance with [section 43 of this subchapter,] **N.J.A.C. 13:70-3.41** issued by an insurance company authorized to do business in the State of New Jersey, must be on file with the [racing] **race secretary** [before a license is issued].

NEW JERSEY REGISTER, MONDAY, OCTOBER 20, 1986

(a)

**Harness Rules
Compensation Insurance****Proposed Amendments: N.J.A.C. 13:71-6.1**

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

Proposal Number: PRN 1986-426.

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 13:71-6.1 removes the words "before a license is issued" in this rule. This rule requires owners and trainers to carry workmen's compensation insurance. Removal of the words "before a license is issued" will not change that requirement.

Social Impact

There is no real social impact on this amendment. The gist of the rule remains in effect, that is, that owners and trainers must have workmen's compensation policies which must be on file with the Racing Secretary. The only change is that the words "before a license is issued" will be removed.

Economic Impact

There is no economic effect; workmen's compensation insurance is still required. There are no increased costs to the public or the participants, and there is no effect on State revenue.

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

13:71-6.1 Compensation insurance

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

(d) A certificate of compliance with this rule, issued by an insurance company authorized to do business in the State of New Jersey, must be on file with the race secretary [before a license is issued].

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

TRANSPORTATION**TRANSPORTATION OPERATIONS**

The following proposals are authorized by Hazel Frank Gluck, Commissioner, Department of Transportation.

Submit comments by November 19, 1986 to:

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

(b)

Speed Limits**Route U.S. 46 including Route U.S. 9 and 46 in
Rockaway Borough and Denville Township, Morris
County.****Proposed Amendment: N.J.A.C. 16:28-1.10**

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

Proposal Number: PRN 1986-411.

The agency proposal follows:

Summary

The proposed amendment will establish speed limits along Route U.S. 46 in Rockaway Borough and Denville Township, Morris County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon a request from the local official, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of speed limits along Route U.S. 46 in Rockaway Borough and Denville Township, Morris County was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.10 based upon the request from local officials and the traffic investigation.

Social Impact

The proposed amendment will establish speed limits along Route U.S. 46 in Rockaway Borough and Denville Townships, Morris County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

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

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

16:28-1.10 Route U.S. 46 including Route U.S. 1, 9 and 46

(a) The rate of speed designated for the certain parts of State highway Route U.S. 46 described [herein below] in this section shall be [and hereby is] established and adopted as the maximum legal rate of speed thereat:

1.-3. (No change.)

4. For both direction of traffic:

i.-xii. (No change.)

xiii. [Zones 23 and 24: 40 mph to Broad Street, Denville Township (milepost 42.12), except] **Zone 23: 40 mph between Maple Avenue and the Rockaway Township line (George Street) (milepost 38.77 to 39.5), thence.**

(1) (No change.)

(2) **40 mph in Rockaway Township, Morris County (milepost 39.5 to 39.9); thence**

(3) **40 mph between Rockaway Township line and Mannino Street, Rockaway Borough, Morris County (milepost 39.9 to 40.6); thence**

xiv. **Zone 24: 40 mph between Mannino Street and the Denville Township line (New Main Street), Rockaway Borough, Morris County (milepost 40.6 to 42.0); thence**

(1) **40 mph within the corporate limits of Rockaway Borough, Morris County (milepost 39.95 to 41.95); thence**

(2) **40 mph between the Rockaway Borough-Denville Township line and 500 feet east of Route 53, Morris County (milepost 41.95 to 43.20); thence**

(3) **School Zone: 25 mph in the Saint Mary School Zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school during opening or closing hours.**

xv. **Zone 26: 50 mph between 500 feet east of Route 53 and the Denville Township-Mountain Lakes Borough line (New Lakewood Drive); (milepost 43.20 to 43.80); thence**

(1) **50 mph between the Denville Township line and the Montville Township line (Rockaway River) Mountain Lakes Borough and Parsippany Troy-Hills Township, Morris County (milepost 43.8 to 50.35); thence**

(2) **50 mph between the Parsippany Troy-Hills line (Rockaway River) and the Passaic River Bridge (Morris County-Essex County line) (milepost 50.35 to 51.82); thence**

5. (No change.)

6. For westbound traffic in zone 27: 40 mph from Route 53, Denville Township (milepost 43.04) to Broad Street, Denville Township (milepost 42.12), except].

[i. School Zone: 25 mph in the Saint Mary School zone, during recess or while children are going to or leaving school, during opening or closing hours;]

[7. For both directions of traffic

i. **Zone 26: 50 mph from Route 53, Denville Township (milepost 43.04) to Lakewood Drive and the Passaic River Bridge (Morris County-Essex County line, milepost 51.82).]**

(b) (No change.)

(c)

Speed Limits**Route 27 in Middlesex County****Proposed Amendment: N.J.A.C. 16:28-1.44**

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

Proposal Number: PRN 1986-409.

The agency proposal follows:

Summary

The proposed amendment will establish speed limit zones along Route 27 in Highland Park Borough, Edison Township and Metuchen Borough, Middlesex County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon a request from the local officials, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of speed limit zones were warranted.

The Department therefore proposes to amend N.J.A.C. 16:29-1.44 based upon the request from local officials and the traffic investigation.

Social Impact

The proposed amendment will establish speed limit zones along Route 27 in Highland Park Borough, Edison Township and Metuchen Borough, Middlesex County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

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

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

16:28-1.44 Route 27

(a) The rate of speed designated for certain parts of State Highway Route 27 described in this section shall be established and adopted as the maximum legal rate of speed thereat:

1. For both directions of traffic:
 - i.-xi. (No change.)
 - xii. 30 miles per hour [from] **between the southerly end of the Bridge over the Raritan River [to the intersection of Eighth Avenue] and Bridge Street, Highland Park Borough, Edison Township and Metuchen Borough, Middlesex County; (mileposts 16.71 to 20.94) thence,**
 - xiii. [40] **35 miles per hour [to a point 300 feet south of the centerline of] between Bridge Street and Kentnor Street, Borough of Metuchen, Middlesex County; (mileposts 20.94 to 21.28) thence,**
 - xiv. 30 miles per hour [to the intersection of Oak Avenue.] **between Kentnor Street and Oak Street, [Metuchen Boro] Borough of Metuchen, Middlesex County; (mileposts 21.28 to 22.33) thence,**
 - xv. **35 miles per hour between Oak Street and Wakefield Drive, Borough of Metuchen, Middlesex County (mileposts 22.33 to 22.94) thence,** [xv.]xvi. 40 miles per hour [to the intersection of] **between Oak Street and Frederic Street, Edison Township[,] and Borough of Metuchen, Middlesex County; (mileposts 22.94 to 23.86) thence,**
Renumber xvi.-xx. as xvii.-xxi. (No change in text.)

(a)

Speed Limits

Route 52 in Cape May and Atlantic Counties

Proposed Amendment: N.J.A.C. 16:28-1.98

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

Proposal Number: PRN 1986-412.

The agency proposal follows:

Summary

The proposed amendment will establish maximum speed limits along Route 52 in Ocean City, Cape May County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon requests from the local officials, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of speed limits along Route 52 in Cape May and Atlantic Counties were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.98 based upon the requests from local officials and the traffic investigations.

Social Impact

The proposed amendment will establish speed limits along Route 52 in Ocean City, Cape May County and Somers Point City, Atlantic County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will

bear the costs for the installation of "speed limit" zone signs. Motorists who violate the rules will be assessed the appropriate fine.

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

16:28-1.98 Route 52

(a) The rate of speed designated for state [H]highway Route 52 described [herein below] in this section shall be [and hereby is] established and adopted as the maximum legal rate of speed thereat:

1. For both directions of traffic:
 - i. Zone 1. 40 mph from Palen Avenue to a point 775 feet north of northerly end of Beach Thorofare Bridge (mileposts (0.0 to 0.40); and thence
 - ii. Zone 2. 45 mph to center of Ship Channel Bridge (also Cape May-Atlantic Counties line, milepost 1.91) and thence to Route US 9, Somers Point City (milepost 2.74).
 - i. In Ocean City, Cape May County:
 - (1) Zone 1: 35 mph between Palen Avenue and 750 feet north of the northerly end of the Beach Thorofare Bridge (mileposts 0.0 to 0.36); thence
 - (2) Zone 2: 40 mph between 750 feet north of the northerly end of Beach Thorofare Bridge and the center of the Ship Channel Bridge (mileposts 0.36 to 1.92); thence
 - ii. In Somers Point City, Atlantic County:
 - (1) 40 mph between the center of the Ship Channel Bridge and Route U.S. 9 (mileposts 1.92 to 2.74).

(b)

Restricted Parking and Stopping Route 147 in Cape May County

Proposed Amendment: N.J.A.C. 16:28A-1.47

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139.

Proposal Number: PRN 1986-410.

The agency proposal follows:

Summary

The proposed amendment will establish "no parking" zones along Route 147 in Middle Township, Cape May County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

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

The Department therefore proposes to amend N.J.A.C. 16:28A-1.47, based upon the request from local officials and the traffic investigation.

Social Impact

The proposed amendment will establish "no parking" zones along Route 147 in Middle Township, Cape May County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no parking" zone signs. Motorists who violate the rules will be assessed the appropriate fine.

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

16:28A-1.47 Route 147

(a) The certain parts of State highway Route 147 described [herein below] 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 stopping or standing in Middle Township, Cape May County: [along the south side from the westerly end of the Bridge over Grassy Sound Channel to a point 135 feet westerly therefrom.]
 - i. **Along the southbound side from the westerly end of the Bridge over Grassy Sound Channel to a point 135 feet westerly therefrom.**
 - ii. **Along both sides for the entire length within the corporate limits of the Township of Middle, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.**

NEW JERSEY REGISTER, MONDAY, OCTOBER 20, 1986

(a)**No Passing Zones
Routes 72 in Ocean County and 45 in Gloucester
County****Proposed Amendments: N.J.A.C. 16:29-1.26 and
1.63**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-201.1.

Proposal Number: PRN 1986-407.

The agency proposal follows:

Summary

The proposed amendment will establish "no passing" zones along Routes 72 in Barnegat and Stafford Townships, Ocean County and 45 in the Townships of South Harrison, Harrison, Mantua and West Deptford, the Boroughs of Woodbury Heights and Westville, and the City of Woodbury, Gloucester County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon requests from the local officials, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no passing" zones along Routes 72 in Ocean County and 45 in Gloucester County were warranted.

The Department therefore proposes to amend N.J.A.C. 16:29-1.26 and 1.63 based upon the request from local officials and the traffic investigations.

Social Impact

The proposed amendment will establish "no passing" zones along Route 72 in Barnegat and Stafford Townships, Ocean County and 45 in the Townships of South Harrison, Harrison, Mantua and West Deptford, the Boroughs of Woodbury Heights and Westville, and the City of Woodbury, Gloucester County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate markings will be painted to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no passing" zone markings. 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]).

16:29-1.26 Route 72

(a) The following certain parts of State highway Route 72 shall be designated and established as "No Passing" zones:

1. That part in Barnegat and Stafford Townships, Ocean County and described in drawing number HNPZ-054[,]A, dated [August 30, 1982.] **June 16, 1986.**

2. (No change.)

16:29-1.63 Route 45

(a) The following certain parts of State highway Route 45 shall be designated and established as "No Passing" zones:

1. (See proposal at 18 N.J.R. 1450(a).)

2. **That part within the Townships of South Harrison, Harrison, Mantua and West Deptford, the Boroughs of Woodbury Heights and Westville, and the City of Woodbury, Gloucester County and described in drawing number HNPZ-106 dated June 16, 1986.**

(b)**No Passing Zones
Route 147 in Cape May County****Proposed Repeal and New Rule: N.J.A.C. 16:29-1.36**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-201.1.

Proposal Number: PRN 1986-408.

The agency proposal follows:

Summary

The proposed amendment will amend the existing "no passing" zones along Route 147 in the City of North Wildwood and Middle Township,

Cape May County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon a request from the local officials, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that additions to the existing "no passing" zones along Route 147 were warranted.

The Department therefore proposes to amend N.J.A.C. 16:29-1.36, based upon the request from local officials and the traffic investigation.

Social Impact

The proposed amendment will extend the existing "no passing" zones along Route 147 in the City of North Wildwood and Middle Township, Cape May County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate marking will be painted to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no passing" zone markings. 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]).

16:29-1.36 Route 147

[(a) The following certain parts of State highway Route 147 shall be designated and established as "No Passing" zones:

1. That part within the City of North Wildwood and Middle Township, Cape May County and described in drawing number HNPZ-068 dated April 6, 1983.]

That part of State highway Route 147 within the city of North Wildwood and Middle Township, Cape May County, described in drawing number HNPZ 068A, revised June 25, 1986, shall be designated and established as "No Passing" zones.

(c)**No Passing Zones
Route 166 in Ocean County****Proposed New Rule: N.J.A.C. 16:29-1.65**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-201.1.

Proposal Number: PRN 1986-413.

The agency proposal follows:

Summary

The proposed new rule will establish "no passing" zones along Route 166 in the Boroughs of Beechwood and South Toms River and Dover Township, Ocean County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon request from the local officials the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of "no passing" zones along Route 166 in Ocean County were warranted.

The Department therefore proposes new rule N.J.A.C. 16:29-1.65 based upon the request from local officials and the traffic investigation.

Social Impact

The proposed new rule will establish "no passing" zones along Route 166 in Boroughs of Beechwood and South Toms River and Dover Township, Ocean County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate markings will be painted to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no passing" zone markings. Motorists who violate the rules will be assessed the appropriate fine.

Full text of the proposed new rule follows.

16:29-1.65 Route 166

That part of State highway Route 166 within the Boroughs of Beechwood and South Toms River and Dover Township, Ocean County described in drawing number HNPZ-107 dated July 18, 1986 shall be designated and established as "No Passing" zones:

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Teachers' Pension and Annuity Fund Optional Purchases of Eligible Service

Proposed Amendments: N.J.A.C. 17:3-5.5

Authorized By: Anthony Ferrazza, Secretary, Teachers' Pension and Annuity Fund.

Authority: N.J.S.A. 18A:66-56.

Proposal Number: PRN 1986-419.

Submit comments by November 19, 1986 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 amendment corrects a printing error in the rule which describes the different benefits available with Class A and Class B service credit. The proposed amendment does not substantively change the benefits since they are being correctly computed but rather are technical corrections to the printed version of the rule.

Social Impact

No members of the Teachers' Pension and Annuity Fund would be adversely affected by this proposal since the benefits will not be altered substantively by this technical printing correction.

Economic Impact

There are no adverse economic effects associated with this technical correction of a printing error. The benefits remain unchanged.

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

17:3-5.5 Optional purchases of eligible service

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

(c) Rules concerning the purchase and/or conversion of Class A credit include the following:

1. The cost of Class B service credit is based on actuarial factors and such factors provide a retirement benefit which is $[1/5] 1/6$ greater than service credited as Class A. If Class A credit is purchased, the cost will be $6/7$ of the amount computed for a Class B purchase. The computation is based on the member's present salary multiplied by the actuarial factor for the member's age at the time of purchase with regular interest.
2. (No change.)

OTHER AGENCIES

NEW JERSEY HIGHWAY AUTHORITY

The following proposals are authorized by the New Jersey Highway Authority, George P. Zilocchi, Executive Director.

Submit comments by November 19, 1986 to:

George P. Zilocchi, Executive Director
New Jersey Highway Authority
Garden State Parkway
Woodbridge, New Jersey 07095

(b)

Garden State Parkway Parking, Standing or Stopping on Parkway Prohibited Except in Emergency

Proposed Amendment: N.J.A.C. 19:8-1.8

Authority: N.J.S.A. 27:12B-5(j) and (s), 27:12B-18, and 27:12B-24.

Proposal Number: PRN 1986-420.

The agency proposal follows:

Summary

The proposed amendment will delete the prohibition of omnibuses stopping in service areas except by special permission obtained in advance through the office of the Authority's Operations Manager. The deletion of this regulation will permit regular bus patrons use of service areas on the Garden State Parkway without restriction.

Social Impact

Deletion of the regulation which prohibited omnibuses from using the service areas on the Garden State Parkway except by special permit will permit full use of service areas on the Garden State Parkway by passengers on buses using the Garden State Parkway. The amendment will contribute to a fuller use and enjoyment of the Garden State Parkway by bus passengers.

Economic Impact

The proposed deletion will not result in any increased costs to the traveling public and there is little, if any, economic impact.

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

19:8-1.8 Parking, standing or stopping on Parkway prohibited except in emergency

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

[(d) Omnibuses shall not stop in service areas on the Parkway except by special permission obtained in advance through the office of the Authority's operations manager.]

Re-number (e)-(i) as (d)-(h) (No change in text.)

(c)

Garden State Parkway Emergency Service

Proposed Amendment: N.J.A.C. 19:8-2.12

Authority: N.J.S.A. 27:12B-5(j) and (s), 27:12B-18, and 27:12B-24.

Proposal Number: PRN 1986-421.

The agency proposal follows:

Summary

The proposed amendment will increase the maximum charges for emergency services on the Garden State Parkway. The proposed increased charges are as follows:

Service charge increased from \$11.00 to \$12.00; vehicle towing up to 6,999 lbs. increased from \$1.75 per mile or fraction thereof to \$2.00 per mile or fraction thereof; vehicle towing over 7,000 lbs. and two-axle trucks increased from \$2.00 per mile or fraction thereof to \$2.25 per mile or fraction thereof; vehicle towing over 14,999 lbs. increased from \$2.50 per mile or fraction thereof to \$3.00 per mile or fraction thereof. In addition, the charge for use of a Land All Trailer (Low Boy) is \$100.00 for the first hour, with an additional \$50.00 charge for each additional hour used. In addition, there will be a towing charge of \$4.00 per mile.

Social Impact

The allowance of these increases will permit the Authority to continue to maintain reliable and professional emergency services for patrons of the Garden State Parkway and contribute to the use and enjoyment of the Garden State Parkway by the traveling public.

The proposed increases are consistent with increased costs and will be borne by those patrons of the Garden State Parkway who must avail themselves of emergency services.

Economic Impact

The rate increases imposed by this amendment will result in minimal increased costs for the traveling public which the Authority believes to be reasonable, while providing a reasonable profit for the licensed towing operators.

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

19:8-2.12 Emergency service

(a) (No change.)

(b) Rules on road service for all vehicles are as follows:

1. Service charge, 24 hours per day: [\$11.00] **\$12.00**;

2.-3. (No change.)

(c) Rules on towing cars and campers up to a registered maximum gross weight of 6,999 lbs. are as follows:

1. Towing charge: \$30.00 plus \$[1.75] **2.00** per mile or fraction thereof;

(d) Rules on towing trucks and buses (two-axle) and cars and campers registered gross weight 7,000 lbs. to 14,999 lbs. are as follows:

1. Towing charge: \$45.00 plus \$[2.00] **2.25** per mile or fraction thereof.

(e) Rules on towing trucks, with or without trailers, and buses (three-axle or more) or with a registered gross weight exceeding 14,999 lbs. are:

1. Towing charge: \$75.00 plus \$[2.50] **3.00** per mile or fraction thereof.

2. The charge for use of a Land All Trailer (Low Boy) is \$100.00 for the first hour, with an additional \$50.00 charge for each additional hour used. In addition, there will be a towing charge of \$4.00 per mile.

(f) (No change.)

CASINO CONTROL COMMISSION

(a)

Gaming Equipment

Evidence of Cheating or Tampering

Proposed Amendments: N.J.A.C. 19:46-1.16, 1.18 and 1.20

Authorized By: Casino Control Commission,

Theron G. Schmidt, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c) and 5:12-70(f).

Proposal Number: PRN 1986-417.

Submit comments by November 19, 1986 to:

Deno R. Marino, Deputy Director—Operations

Casino Control Commission

Division of Financial Evaluation and Control

Princeton Pike Office Park, Bldg. 5

Trenton, New Jersey 08625.

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 19:46-1.16, 1.18 and 1.20 are intended to protect the integrity and fairness of the games by requiring a casino licensee to notify the Commission and the Division immediately in the event a licensee detects any evidence of cheating or tampering involving the use of gaming equipment or other devices used in a casino. Furthermore, the casino security departments would be required to insure that any evidence is maintained in a secure manner until the arrival of a Division of Gaming Enforcement agent.

Social Impact

The social impact of the proposed amendments will be to preserve the integrity and fairness of casino gaming.

Economic Impact

Since the proposed amendments will not affect casino revenues, it is not anticipated that they will have any economic impact.

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

19:46-1.16 Dice; receipt, storage, inspections and removal from use

(a)-(f) (No change.)

(g) At the end of each shift or day, a craps supervisor other than the one who originally inspected the dice, shall reinspect each die for evidence of tampering. Such evidence discovered at this time or at any other time shall be **immediately** reported to an agent of the Commission and Division by the completion **and delivery** of an approved three-part Dice Discrepancy Report.

1.-2. (No change.)

19:46-1.18 Cards; receipt, storage, inspections and removal from use

(a)-(k) (No change.)

(l) When [evenlopes] **envelopes** or containers of used cards and reserve cards with broken seals are returned to the security department, they shall be inspected for tampering, marks, alterations, missing or additional cards or anything that might indicate unfair play.

1.-5. (No change.)

6. Evidence of tampering, marks, alterations, missing or additional cards or anything that might indicate unfair play discovered at this time, or at any other time, shall be **immediately** reported to an agent of the Commission and Division by the completion **and delivery** of an approved three-part Card Discrepancy Report.

i.-iii. (No change.)

(m)-(n) (No change.)

19:46-1.20 Approval of gaming equipment; retention by commission and division; **evidence of tampering**

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

(c) **Any evidence that gaming equipment or other devices used in a casino including, without limitation, gaming tables, layouts, roulette wheels, roulette balls, drop boxes, big six wheels, gaming chips, plaques, chip holders, racks and containers, scales, counting devices, trolleys, slip dispensers, dealing shoes, locking devices, data processing equipment, tokens and slot machines have been tampered with or altered in any way which would affect the integrity, fairness, honesty or suitability of the gaming equipment or other device for use in a casino shall be immediately reported to an agent of the Commission and the Division. A member of the casino licensee's security department shall be required to insure that the gaming equipment or other device and any evidence required to be reported pursuant to this subsection is maintained in a secure manner until the arrival of an agent of the Division.**

RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

SPECIAL HEARING RULES

Department of Community Affairs Council on Affordable Housing Hearings

Adopted New Rule: N.J.A.C. 1:5

Proposed: August 4, 1986 at 18 N.J.R. 1506(a).

Adopted: September 16, 1986 by Ronald I. Parker, Acting
Director, Office of Administrative Law.

Filed: September 18, 1986 as R.1986 d.421, **with substantive and
technical changes** not requiring additional notice and comment
(see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Effective Date: October 20, 1986.

Expiration Date: October 20, 1991.

Summary of Public Comments and Agency Responses:

The OAL received one comment from the law firm Greenbaum, Rowe, Smith, Ravin, Davis and Bergstein on behalf of Essex Glen, Inc., Flama Construction Corp., Fort Plains Building and Developing Company, Helen Motzenbecker, JBL-RAL Associates, JZR Associates, Inc., New Brunswick Hampton, Inc. and Rakeco Developers, Inc. Their concern was that the discovery provisions of the proposed rule were too limited and, thus, would make it difficult for either the parties or the judge to prepare adequately for the hearing. Specifically, the following suggestions were made: (1) requiring that discovery be completed five days before the hearing might result in unfair surprise and inadequate preparation time; (2) depositions and requests for documents should be permitted, and (3) the role of the prehearing conference should be expanded so that the parties' factual and legal contentions as well as the identity of all witnesses are disclosed at that time.

The OAL agrees that the deadline for completion of discovery may be too close to the hearing and has decided to change the rule so that discovery must end 10 days before the hearing. However, the OAL elects not to eliminate the restrictions on discovery. One reason is that the parties in these hearings will already have had extensive prior contact and only a minimum amount of additional discovery should be necessary. Second, the statutory requirement that cases be concluded within 90 days of being transmitted to the OAL means that the discovery process cannot be allowed to be protracted. Regarding the prehearing conference, the general rule on prehearing conferences (N.J.A.C. 1:1-10.1) ensures that a full range of topics will be covered; this special hearing rules is meant only to cover special requirements in these types of cases. There is no need to expand in this rule on prehearing conference procedures that are familiar to all judges.

In addition to the one substantive change explained above, the rule has been reorganized to conform to the format used in the OAL's proposed revision of N.J.A.C. 1:1 and 1:6 through 1:21. See, 18 N.J.R. 1728(a). For that reason, some of the subchapter numbers have been changed.

Full text of the adoption follows.

CHAPTER 5 DEPARTMENT OF COMMUNITY AFFAIRS COUNCIL ON AFFORDABLE HOUSING

SUBCHAPTER 1. APPLICABILITY

1:5-1.1 Applicability

(a) The rules in subchapters 2 through 5 of this chapter shall apply to hearings arising under N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:91-8.1 concerning an objection to a municipality's petition for substantive certification.

(b) The rules in subchapter 20 of this chapter shall apply to hearings arising under N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:91-7.1(d) concerning the adjudication of an issue which may facilitate mediation efforts.

(c) Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R. these rules shall apply.

SUBCHAPTER 2 THROUGH SUBCHAPTER 9. (RESERVED)

SUBCHAPTER 10. DISCOVERY

1:5-10.1 Discovery

(a) At least ***[five]* *10*** days before the scheduled hearing date, each party shall disclose to each other party the following:

1. Copies of any documents intended to be introduced at the hearing;
2. The names and addresses of all witnesses intended to be called at the hearing, including the qualifications of any expert witnesses; and
3. A summary of the testimony of each witness.

(b) Upon application of a party, the judge shall exclude any evidence at hearing that has not been disclosed to that party at least five days before the hearing, unless the judge determines that the evidence could not reasonably have been disclosed within that time.

(c) No other discovery need be provided.

SUBCHAPTER 11. (RESERVED)

SUBCHAPTER 12. MOTIONS

1:5-12.1 Motions

Other than motions resolved in the prehearing order and motions for emergency relief or for summary decision, a party may not file a motion in advance of the scheduled hearing date.

SUBCHAPTER 13. PREHEARING CONFERENCE; EXPEDITED SCHEDULING; ADMISSIBILITY OF EXPERT WITNESS REPORTS

1:5-13.1 Prehearing conference

(a) A prehearing conference shall be scheduled within 15 days of receipt of the case in the Office of Administrative Law.

(b) When the case is filed, the Clerk shall contact the parties to arrange a date, time and place for a prehearing conference.

1:5-13.2 Expedited scheduling

(a) At the prehearing conference, the judge shall set a schedule for the hearing, specifying the time which will be allowed for briefs, proposed findings of fact, conclusions of law, forms of order or other dispositions, or other supplemental material.

(b) The schedule shall provide for the completion of the hearing and the issuance of the initial decision no later than 90 days after transmittal of the matter to the Office of Administrative Law, unless the time is extended by the Director for good cause shown.

1:5-13.3 Admissibility of expert witness reports

(a) During the prehearing conference, the judge may consider requests to admit into evidence an expert witness report in lieu of direct examination, subject to cross-examination of the expert at the hearing.

(b) If an expert witness report is to be admitted pursuant to (a) above, such report shall be filed with the judge and served on each party by the offering party no later than five days before the scheduled hearing date.

SUBCHAPTER 14 THROUGH SUBCHAPTER 17. (RESERVED)

SUBCHAPTER 18. INITIAL DECISION; TRANSCRIPTS

1:5-18.1 Transcripts

(a) At the conclusion of the hearing, a transcript of the proceedings shall be prepared. The written transcript must be completed in time to be submitted to the Council on Affordable Housing simultaneously with the initial decision.

(b) Cost of the transcript shall be apportioned pursuant to N.J.A.C. 5:91-8.1.

SUBCHAPTER 19. (RESERVED)

SUBCHAPTER 20. ISSUE REFERRAL FROM COUNCIL'S MEDIATION PROCESS

1:5-20.1 Referral to the Office of Administrative Law

(a) The Council on Affordable Housing may under N.J.A.C. 5:91-7.1(d) request the OAL to conduct a hearing on any issue which the Council believes may facilitate the mediation process.

(b) The Council's requests shall be granted by the OAL under N.J.S.A. 52:14F-5(o) and the hearing conducted pursuant to this subchapter.

1:5-20.2 Scheduling

Issues transmitted under this subchapter shall be scheduled by the Clerk for a hearing within 20 days of their transmittal to this office.

1:5-20.3 Discovery

(a) At least five days before the scheduled date for the hearing, each party shall exchange with each other party the following:

1. Copies of any documents intended to be introduced at the hearings;
2. The name and addresses of all witnesses intended to be called at the hearing, including the qualifications of any expert witnesses; and
3. A summary of the testimony of each witness.

(b) Upon application of a party, the judge shall exclude any evidence that has not been disclosed to that party at least five days before the hearing, unless the judge determines that the evidence could not reasonably have been disclosed within that time.

(c) No other discovery need be provided.

1:5-20.4 Conduct of hearing

Unless other arrangements are requested by the Council on Affordable Housing and agreed to by the Director of the Office of Administrative Law, hearings under this subsection shall be conducted pursuant to N.J.A.C. 1:1-13.7(a) through (g) as pre-proposed at 18 N.J.R. 728(a).

SUBCHAPTER 21. (RESERVED)

AGRICULTURE

(a)

DIVISION OF ANIMAL HEALTH

Poultry and Turkey Improvement Plans General Provisions

Adopted Repeal and New Rules: N.J.A.C. 2:7-1.2, 1.3 and 1.4

Proposed: August 4, 1986 at 18 N.J.R. 1508(a).

Adopted: September 25, 1986, by Arthur R. Brown, Jr.,
Secretary, Department of Agriculture and State Board of
Agriculture.

Filed: September 26, 1986 as R.1986 d.430, **without change**.

Authority: N.J.S.A. 4:10-2 through 4:10-13.

Effective Date: October 20, 1986.

Expiration Date: September 29, 1988.

Summary of Public Comments and Agency Responses:

COMMENT: One comment was received objecting to the testing of 4-H and other small flocks not in the breeding program prior to their exhibition.

RESPONSE: While testing before exhibition is not a part of these regulations, it is closely related to them. The outbreak of pullorum this spring, which was distributed to small flocks, while contained, required the Department of Agriculture to request the testing of those flocks prior to exhibition this year. This requirement was adopted and enforced by the exhibition authorities.

However, if, as expected, all poultry is purchased from pullorum-free flocks, the need to test before exhibition will no longer be necessary. Therefore, the Department of Agriculture feels the adoption of the rule as proposed is warranted.

Full text of the adoption follows.

2:7-1.2 General regulations

(a) All poultry hatcheries and flocks within New Jersey must qualify as National Plan hatcheries. All hatcheries and flocks shipping to New Jersey must qualify as United States pullorum-typhoid clean; or they must meet equivalent requirements for pullorum-typhoid control under official supervision.

(b) All shipments of products, other than United States pullorum-typhoid clean or the equivalent, into the state are prohibited except for immediate slaughter.

(c) All poultry, except water fowl, shown in public exhibitions in New Jersey must originate from United States pullorum-typhoid clean or equivalent flocks, or have a negative pullorum-typhoid test within 90 days of the movement to the public exhibition.

2:7-1.3 Pullorum-typhoid disease testing and testing agents

(a) All breeding birds to be tested shall be selected and banded by a veterinarian or inspector of the New Jersey Department of Agriculture or by qualified testing agents under Department supervision.

(b) The pullorum-typhoid test shall be done by representatives of the New Jersey Department of Agriculture or qualified testing agents under Department supervision.

(c) Testing agents shall take a minimum one-day course of training as prescribed by the New Jersey Department of Agriculture and shall pass a written examination on National Poultry Improvement Plan (NPIP) rules and sanitation and a practical test to prove their ability to select and test birds for pullorum-typhoid diseases before being certified. A refresher training course shall be required annually for recertification.

(d) Applications for certification shall be made in writing, sufficiently in advance to permit the early scheduling of work by the Department of Agriculture.

(e) Certification or recertification will be denied pursuant to provisions of NPIP or violation of these rules.

(f) Any reactors must be submitted for bacteriological examination for pullorum-typhoid disease. The bacteriological examination must be done in one of the following laboratories:

1. New Jersey Department of Agriculture, Health and Agriculture Building, John Fitch Plaza, Trenton, New Jersey 08625; or
2. Poultry Pathology, Department of Animal Science, Cook College/New Jersey Experiment Station, Rutgers, the State University, New Brunswick, New Jersey 08903.

2:7-1.4 Reporting and quarantine provisions

(a) Pullorum-typhoid diseases are reportable diseases under N.J.A.C. 2:2-1.1 and must be reported by any veterinarian or other person to the New Jersey Department of Agriculture.

(b) Upon receipt of a report of pullorum-typhoid, the Division of Animal Health shall direct the immediate investigation by an authorized representative to determine the origin and avenue of transmission of the infection.

(c) The flocks or hatching eggs deemed to be infected with pullorum-typhoid shall be quarantined. Quarantined flocks or any portion thereof shall not be removed from the premises where the infection was detected or disposed of except in accordance with the written permission of the Department of Agriculture.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF FISH, GAME AND WILDLIFE Higbee Beach Wildlife Management Area

Adopted New Rule: N.J.A.C. 7:25-2.20

Proposed: August 4, 1986 at 18 N.J.R. 1511(b).

Adopted: September 26, 1986 by Richard T. Dewling,
Commissioner of Environmental Protection.

Filed: September 29, 1986, as R.1986 d.437, **without change**.

Authority: N.J.S.A. 23:2A-5, 23:2A-7 and 23:7-9.

Effective Date: October 20, 1986.

Expiration Date: February 18, 1991.

DEP Docket No. 031-86-07.

Summary of Public Comments and Agency Responses:

A public hearing on the proposal was held on August 27, 1986. In addition, written comments were accepted by the Department during the comment period which closed on September 3, 1986. Comments received relevant to the proposal are addressed below.

COMMENT: Hunting and trapping should be restricted all year.

RESPONSE: Currently available data indicate that sport hunting and trapping at the Higbee Beach Wildlife Management Area (HBWMA)

poses no threat to migrating nongame birds. Current information suggests that by mid-December there is no conflict between these uses and birding (that is the observation of birds).

COMMENT: Hunting should begin in early November when the small game season opens.

RESPONSE: Currently available data suggest that hunting activities during November discourage the participation in birding at the HBWMA. It is the Department's policy, based on the recommendation of its Division of Fish, Game and Wildlife, to encourage birding on this area as a priority use.

COMMENT: There is no need to restrict birders from September 15 to November 1.

RESPONSE: Current information suggests that birder restrictions enhance conditions for migrating nongame and endangered species and improve observation of them.

COMMENT: The studies and data supporting these rules are incomplete and inadequate.

RESPONSE: Although lengthy studies and large data bases are always desirable, the existing data developed during 1984 and 1985 provide an adequate basis for this rule. Human use studies are ongoing and will guide future adjustments to the HBWMA plan.

COMMENT: Local businessmen will suffer economic hardship from the loss of hunter-associated business as a result of hunting closures on the HBWMA.

RESPONSE: The loss of business from hunters should be at least partially offset by the increased business from birders that should result from this rule.

COMMENT: Trapping and freshwater fishing need not be restricted.

RESPONSE: Fishing is not being restricted by these rules. The Game Code (N.J.A.C. 7:25-5) restricts trapping on all wildlife management areas until after January 1.

COMMENT: The social impact statement erroneously alludes to the "dangerous conflict when hunters take to the field at the same time that large numbers of bird watchers are observing bird migrations."

RESPONSE: The Department did not allege the actual existence of such "dangerous conflict" on the HBWMA, but did identify the potential therefor solely in the limited case of this particular wildlife management area.

Full text of the adoption follows:

7:25-2.20 Higbee Beach

(a) In addition to all regulations prescribed in this subchapter affecting the designated Wildlife Management Areas listed at N.J.A.C. 7:25-2.18, the following additional regulations shall apply to the public use of the Higbee Beach Wildlife Management Area (HBWMA):

1. From 12:01 A.M. on September 15 until 8:00 A.M. on November 1 of each year, use of the HBWMA shall be limited to trails designated on the map posted at the HBWMA parking lot, and on maps available at the division's Endangered and Nongame Species Program office located at the HBWMA.

2. Fields on the HBWMA shown on the map described at 1 above may be designated as "refuge areas" from 12:01 A.M. on September 15 until 8:00 A.M. on November 1 of each year. Observations of these refuge areas will be permitted only from blinds established and maintained by the division's Endangered and Nongame Species Program. Permits for observation from established trails within these refuge areas may be issued by the division's Endangered and Nongame Species Program office upon written request received in the division's Trenton office (CN 400, Trenton NJ 08625) at least five days in advance of the effective date of the permit and provided the specific permitted activity is consistent with the intent of this section.

3. During the time period specified at 1 above, group size will be limited to six people. Permits for groups numbering more than six people will be available at no charge from the division's Endangered and Nongame Species Program office located at the HBWMA.

4. No person may hunt or trap on the HBWMA from 12:01 A.M. on September 1 to 12:01 A.M. on the first Monday after the white-tailed deer (*Odocoileus virginianus*) six day firearm season ends in accordance with the provisions of N.J.A.C. 7:25-5.27.

5. Motor vehicles may be used on designated roads and on the beach area (the area seaward of the dunes) of the HBWMA only as follows:

i. The operator must have in possession a valid permit issued for use on the HBWMA and available at no charge upon written request received in the division's Trenton office (CN 400, Trenton, NJ 08625):

ii. Motor vehicles may not be present on the beach area from two hours before high tide to two hours after high tide, as the times of such tides are posted at the HBWMA parking lot;

iii. Motor vehicles may not be present on the beach area between Memorial Day (the last Monday in May) and Labor Day (the first Monday in September) from 10:00 A.M. to 5:00 P.M. and as further limited at ii above; and

iv. Motor vehicles may be excluded from the beach area upon departmental determination that this action is necessary to maintain and enhance the use of HBWMA by migratory and resident endangered and threatened species of wildlife.

HIGHER EDUCATION

(a)

STUDENT ASSISTANCE BOARD

Tuition Aid Grant Program 1986-87 Award Table

Adoption of Concurrent Proposal: N.J.A.C. 9:7-3.1

Proposed: August 18, 1986 at 18 N.J.R. 1713(a).

Adopted: September 29, 1986 by Student Assistance Board,
Joseph Streit, Chairman.

Filed: September 29, 1986 as R.1986 d.435, with **technical changes** not requiring additional notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:71-47(b) and 18A:71-48.

Effective Date: October 20, 1986.

Expiration Date: April 13, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

The Board, however, has made one technical change upon adoption. Due to a printing error, the award amount for New Jersey Inst. of Tech. was printed as 2312. The correct amount as adopted and filed by the Board is 2132. The change upon adoption reflects the correct amount.

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

9:7-3.1 Tuition Aid Grant Award Table

(a) The value of the grant is related to the tuition charges of the various institutional sectors in New Jersey and the student's ability to pay for educational costs. The award tables below show approximate award levels depending upon tuition and ability to pay:

1. (No change.)

2. TUITION AID GRANT (TAG) AWARD TABLE FOR 1986-87 APPROXIMATE TUITION AID GRANT VALUES NEW JERSEY COLLEGES AND UNIVERSITIES

(Delete the existing table in the New Jersey Administrative Code and replace with the following table.)

NJ Eligibility Index (NJEI)	County Colleges	State Colleges	Independent Institutions	Rutgers Univ. & UMDNJ ¹	NJ Inst. of Tech.
A	B	C	D	E	F
Under 950	\$890	\$1280	\$2650	\$1852	\$2132
950-1349	890	1280	2650	1852	*[2312]***2132*
1350-1749	840	1230	2500	1800	2040
1750-2149	740	1130	2350	1700	1920
2150-2549	640	1030	2200	1600	1800
2550-2949	540	930	2050	1500	1680
2950-3349	290	680	1750	1250	1410
3350-3749	200	580	1600	1150	1290
3750-4149	0	480	1450	1050	1170
4150-4549		380	1300	950	1050
4550-4949		280	1150	850	930
4950-5349		200	1000	750	830
5350-5749		0	850	650	730
5750-6149			700	550	630
6150-6549			550	200	530
6550-6949			400	0	200
6950-7349			250		0
7350-7749			200		
Over 7749					

¹Rutgers Engineering, Pharmacy, and Cook College students will have their awards increased to offset the higher tuition charged for these programs of study. Students enrolled in eligible programs at UMDNJ. Contact the financial aid office for details.

NEW JERSEY REGISTER, MONDAY, OCTOBER 20, 1986

HUMAN SERVICES**DIVISION OF PUBLIC WELFARE****(a)****Public Assistance Manual
Funeral and Burial Payments****Adopted New Rule: N.J.A.C. 10:81-7.21 through 7.28**
Adopted Repeal: N.J.A.C. 10:81-7.21 through 7.29

Proposed: June 2, 1986 at 18 N.J.R. 1168(b).

Filed: September 25, 1986 as R.1986 d.428, **with technical changes**
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).**General Assistance Manual
Funeral and Burial Payments****Adopted Amendment: N.J.A.C. 10:85-4.8**

Proposed: June 2, 1986 at 18 N.J.R. 1170(a).

Filed: September 25, 1986 as R.1986 d.427, **without change.****Service Programs for the Aged, Blind or Disabled
Persons****Special Payments Handbook; Aged, Blind and
Disabled****Funeral and Burial Payments****Adopted Amendments: N.J.A.C. 10:100-3 and 3.7**

Proposed: June 2, 1986 at 18 N.J.R. 1171(a).

Filed: September 25, 1986 as R.1986 d.426, **with technical and
substantive changes** not requiring additional public notice and
comment (see N.J.A.C. 1:30-4.3).Adopted: September 23, 1986 by Drew Altman, Ph.D.,
Commissioner, Department of Human Services.Authority: N.J.S.A. 30:1-12, 44:7-6, 44:7-12; 44:7-13; 44:7-38;
44:7-43; 44:8-111(d); 44:10-3.

Effective Date: October 20, 1986.

Operative Date: November 1, 1986.

Expiration Date: October 15, 1989 for 10:81; January 30, 1990
for 10:85; February 6, 1989 for 10:100.**Summary of Public Comments and Agency Responses:**Comments were received from the Princeton Memorial Association and
the New Jersey State Funeral Directors Association.

Comment from the Princeton Memorial Association is as follows:

COMMENT: The funeral and burial payment levels being authorized
are higher than need be. Lower cost arrangements are available.RESPONSE: The enactment of Assembly Bill No. 2846 (Chapter 282,
Laws of 1985) revised N.J.S.A. 44:1-157.1 to mandate that public as-
sistance agencies make higher payments for funerals and burials. The
amendment places a minimum on such payments, requiring that "... the
total allowable payment for funeral and burial or cremation including
contributions by others, shall be at least 75 percent of the average cost
for a proper funeral and burial charged by funeral directors. ..." The
stated allowances represent adherence to that wording.Comments from the New Jersey State Funeral Directors Association
follow:COMMENT: The funeral director should not be responsible for hand-
ling payments to the cemetery. The cemetery is not a subcontractor to
the funeral director.RESPONSE: The absence of provision for separate cemetery payments
was based on consultation with the Office of the Attorney General.
Accordingly, the Department finds no administrative latitude within
which to authorize separate payments.COMMENT: The assistance agency should pay funeral directors in full
(except for contributions of friends and relatives) and should collect the
decedents' assets itself.RESPONSE: The public assistance agency is, in most instances, neither
a party to the funeral contract nor a creditor of the decedent. Accordingly,
it has no inherent right to behave as a representative of the deceased.COMMENT: There is no statement about review or "indexing" to
provide for adjustments for future changes in the economy.RESPONSE: These regulations provide instruction to local agencies.
Those agencies have no responsibility for such review. Accordingly, any
such instruction would be misplaced here.COMMENT: The funeral payment should be allowed even if the
cemetery allowance is disallowed because of burial in a publicly owned
cemetery.RESPONSE: This provision is newly worded but represents a concept
which exists under the Old Age Assistance Act itself. Its purpose was
and is to encourage decent and proper funerals and burials by barring
any payment whatever when a "potters' field" is used. The wording, by
over-generalizing, would have barred payment when burial was made in
Veterans' Administration (VA) and other publicly-owned and operated
cemetaries. This was not intended. Therefore, N.J.A.C. 10:81-7.24(a) has
been revised.COMMENT: The rule should address the question of "municipal
indigents", those who die without funds or death benefits and are not
connected with any program of assistance.RESPONSE: The Department of Human Services recognizes the ex-
istence of a problem in this area. The Department believes, however, that
we have provided for all of those for whom we have the statutory
authority to provide. The Department may not exceed that authority.COMMENT: Welfare agencies should make written commitments of
payment.RESPONSE: Welfare agencies are more than willing to make very
prompt commitments with respect to programmatic eligibility for funeral
and burial costs. As for payment commitments, these regulations provide
commitment with necessary limits. The actual dollar payment by the
agency for any one decedent cannot be calculated without complete
information. Such information is rarely available in the short time avail-
able between death and funeral.COMMENT: The regulations do not specify how payments from other
agencies, specifically the Social Security Administration and the Veterans
Administration (VA), apply to the maximum burial and funeral ceilings.RESPONSE: The cited benefits and any similar ones are covered
resources of the decedent. They, along with other resources, are to be
deducted from the maximum payment allowance to calculate the amount
of the agency payment.COMMENT: The Social Security lump-sum should not be considered
in computing the agency payment.RESPONSE: The Department cannot agree. The sum is clearly a death
benefit and must be treated accordingly.COMMENT: When the VA makes a plot interment allowance, the
welfare agency should reduce its payment accordingly.RESPONSE: This is already covered. A plot interment allowance is
a death benefit and is to be deducted from the maximum allowable.COMMENT: When interment is provided free of charge, as in a
Veterans' cemetery, the burial allowance should not be paid.RESPONSE: This is already covered. The cemetery allowance, like the
funeral allowance, is limited by the amount actually charged. If there is
no charge, the allowance is zero.COMMENT: The effective date of the statute being implemented was
September 8, 1985. There is no provision in the regulations for retroactive
adjustments for those funerals which occurred between that date and the
date of full implementation of the statute.RESPONSE: Regulatory text on retroactive adjustments will be
proposed in the November 3, 1986 issue of the New Jersey Register.COMMENT: Retroactive adjustments should not be made available
in those situations in which the prior level of payment was, itself, suffi-
cient to pay the regular charges for the services provided. The situations
can be distinguished by restricting the payments to those situations in
which the funeral director provided "embalming and preparation ser-
vices."RESPONSE: The suggestion and the suggested wording will be in-
cluded in the proposal in the November 3, 1986 issue of the New Jersey
Register.**Full text of the adoption follows (additions indicated in boldface with
asterisks *thus*; deletions indicated in brackets with asterisks *[thus]*).**
10:81-7.21 Payment of funeral and burial expenses; all segments(a) Funeral and burial expenses may be provided for AFDC recipients
(all segments) and certain others as identified in N.J.A.C. 10:81-7.22.
Payments for such expenses are not a benefit automatically payable at

death, but are a means of supplementing the resources, when necessary, of the deceased recipient, of his or her family and of volunteer contributors.

(b) Payment, if made, will be made by the chargeable CWA which is the first occurring of the following as may exist: the CWA which granted assistance for the decedent for the month of death; the CWA which would, but for the death, have made the next grant of assistance; or the CWA which made the most recent grant of assistance.

10:81-7.22 Persons who may be eligible

(a) Claims for payment of funeral and burial expenses may be received and considered with respect to:

1. A person who was in active receipt of assistance at the time of death;
2. A person for whom eligibility can be otherwise determined, provided that an application for assistance was made prior to death. This includes stillborn infants and deceased newborns who would have been included in a previously existing AFDC case. It also includes parents and infants for whom application for AFDC had been made in anticipation of eligibility at the birth of a child;
3. A former recipient of AFDC whose admission to any tax-supported institution within this State, other than a penal or correctional institution, was the only reason for the suspension or termination of the assistance grant, and whose death occurred while confined to such institution.

10:81-7.23 Funeral and burial contracts

(a) The right and responsibility to arrange and contract for funeral and burial services rests with the next of kin of the decedent. In the absence of any next of kin, arrangements may be made by any interested party such as a friend, clergyman, or nursing home or hospital administrator. These regulations shall not control or impair a contract between a funeral director and the next of kin or other party except to the extent that the contract results in or may result in a claim against the CWA or against any assets legally owed to the CWA.

1. In the complete absence and only in the complete absence of any next of kin and when no other person or agency is available to make the arrangements, the CWA may do so. The availability of funds is not to be a factor in determining whether the CWA will make the arrangements. The CWA will select funeral directors for such contracting in *[consultatiuon]* *consultation* with the county association of funeral directors.

i. A contract negotiated by a CWA shall be in accord with all parts of these regulations including the cost even though the cost may not be met from public funds.

ii. A contract negotiated by a CWA may be concluded orally but shall be confirmed by letter from the CWA to the funeral director.

(b) Regardless of whether or not it is one of the contracting parties, the CWA will not authorize any cremation. Nor will it authorize any postmortem examination or any other procedure not a part of regular funeral and burial services.

10:81-7.24 Definitions and conditions

(a) Public burying ground: The CWA will not participate in the cost of either the funeral or the burial of any person who was or is to be buried in any publicly owned cemetery or burial ground ***which is or has been maintained as a potters field***.

(b) Prior notice: When either of the contracting parties contemplates that a county welfare agency will be asked to pay any part of the cost of a funeral and burial or cremation, either or both parties shall notify and consult with the county welfare agency before the services take place. The probable allowance or disallowance of the claim shall be discussed at that time, but the agency is under no obligation to make a commitment of payment. The requirement for prior notice may be waived by the agency upon a showing of good cause (as determined by the agency) which is not prejudicial to the validity of the claim.

(c) Submission of petition:

1. The funeral director or other claimant shall, within 30 days following burial or cremation, submit to the county welfare agency a petition on Form PA-11 or a substantially similar document which certifies to services rendered, to payments contracted, received and expected; and to compliance with all applicable laws and regulations. Petitions submitted beyond the 30 day period may be considered upon a showing of good cause (as determined by the agency) which is not prejudicial to the validity of the claim.

2. A claim filed with a county welfare agency for funeral, burial or cremation is not a demand for payment owing under a contract but is merely a petition for an allowance to be granted or denied consistent with these regulations. It has the effect of a demand, however, when the agency was the contracting party.

(d) Combined resources; definition: The combined resources of a decedent means the aggregate net total value of all of the following:

1. Cash on hand or in the hands of others as property of the decedent including personal needs accounts in long term care facilities (but excluding cash in the custody, possession, or control of the CWA);

2. Other resources, such as securities, real estate, antique furniture, and automobiles;

3. Life insurance or death or funeral benefits from public or private sources which have been received, or which are receivable by the estate of the decedent, by the decedent's spouse, children, father or mother because of the death of the decedent;

4. Payments of the same nature as in 3 above which have been received by or which are receivable by any other person excepting such amounts as are lawfully claimed by such person as a bona fide assignee for value or as a claimant for equitable refund of premiums paid;

5. Sums which have been paid or are promised to be paid on account of the death of the decedent by any other person or organization, excepting such sums as have been paid or will be paid to the county welfare agency;

6. Funds owed the decedent at the time of death.

10:81-7.25 Authorization of payment

(a) Allowances: The allowance for funeral services, exclusive of cemetery costs, is the total amount charged or \$1,970.00, whichever is less. When ground burial is made of uncremated remains, the cemetery allowance also applies. The cemetery allowance is the sum of all cemetery charges or \$460.00 whichever is less. The maximum total of allowances for a decedent is the sum of the funeral allowance and the cemetery allowance, as applicable.

1. The county welfare agency may, in any case in which it determines that any of the resources in N.J.A.C. 10:81-7.24(d) should be waived or omitted to avoid hardship or inequity, present a recommendation with supporting reasons to the State office for disposition.

(b) Amount of payment: The payment to be made is the maximum total of allowances as reduced by the combined resources of the decedent and as further reduced by the sum of all contributions from next of kin and other interested parties.

(c) Payments shall be made first from any funds received by the CWA from or on behalf of the decedent and secondly, if necessary, from assistance funds. Payments from assistance funds are subject to 75 percent State matching. There is no Federal reimbursement.

10:81-7.26 Time of payment

(a) The amount to be allowed on any claim shall, in the absence of known irregularity, be paid as promptly as possible after such amount is determined and, in any event, within 30 days thereafter. The CWA shall provide notice of its determination to all parties to the funeral contract and to any others who have both a need for the information and the right to receive it.

1. In the event that a determination cannot be made within 10 calendar days after receipt of a petition for payment solely because information about a determination by one or more other agencies is not available, the CWA shall make a tentative determination based on the assumption of favorable action by the other agencies. The CWA will remit the difference within 30 days following the tentative determination. Upon receipt of information about the determination(s) of the other agencies, the CWA will make a final determination and remit any balance due to the petitioner within 30 days of the final determination.

10:81-7.27 Irregularities

(a) Disputed claims: In the event of a dispute or disagreement about a claim which cannot be readily resolved between the agency and the claimant, the CWA will submit the matter to the State office for review and advice.

(b) Duplicate or inconsistent claims: In the event that the CWA becomes aware of the filing of any claim with another person or agency which is in duplication of or is inconsistent with any claim received by the CWA, the CWA shall:

1. Advise the other person or agency of the circumstances and take all appropriate steps to assert and secure the CWA's rights; and

2. In the absence of a prompt local resolution of the matter, report it to the State office for review and advise; and

3. Determine whether any violation of a criminal nature may have occurred and, if so, report the matter in writing to the County Prosecutor.

(c) Later discovery: In the event that the CWA later learns of the existence of resources which should have been available but were not known or made available, it will immediately take all appropriate steps to secure its rights to refund or recovery.

10:81-7.28 Other agency death benefits

(a) Social Security lump sum death benefit: A lump sum death benefit of \$255.00 will be paid by the SSA to a person eligible to receive it. In the absence of an eligible recipient, no payment will be made.

1. Eligible persons in order of priority are:

- i. Surviving widow(er) who lived in the same household;
- ii. Surviving *[window(er)]* ***widow(er)*** who is (or would have been upon application) eligible in the month of death to receive benefits based on the wage record of the deceased;
- iii. Surviving children who are (or would have been *[applicable])* ***upon application)*** eligible in the month of death to receive benefits based on the wage record of the deceased.

(b) Veteran's benefits;

1. Eligibility: Payment of burial expenses is available on behalf of a deceased veteran discharged under conditions other than ***[dishonored]* *dishonorable*** when such person was a wartime veteran, served during the Korean or Vietnam conflicts or was a peacetime veteran with certain entitlements.

2. Amount of benefits:

i. Generally, payment toward a veteran's funeral expenses will not exceed \$300.00. This payments is only available for a veteran who at the time of death was receiving or was eligible to receive a Veteran's Administration (VA) pension or a service related disability compensation. An amount not exceeding \$150.00 may be paid for any veteran, as a plot or interment allowance when the veteran is not buried in a national cemetery. A higher burial allowance is available if the death was service-connected.

ii. Burial and plot allowances will not be provided to the extent that they were paid by the deceased veteran's employer or by a State agency or a political subdivision of the State.

3. Filing of claims: A claim may be filed with any Veteran's Administration office. It ***[may]* *must*** be filed within two years after cremation or permanent burial.

10:81-7.29 (Reserved)

10:85-4.8 Funeral and burial expenses

(a) The municipal welfare department shall make payments from General Assistance funds for the expenses of the funeral and burial of the persons identified in 1 below in accordance with the limitations set forth in 2 below.

1. An eligible person is:

- i. A person who was an active recipient of General Assistance at the time of death; or
- ii. A person whose eligibility had been established within 15 days prior to death, but for whom no payment of General Assistance had been issued; or
- iii. A person who died while a patient in a general hospital and who had been receiving General Assistance at the time of admission to the hospital; or
- iv. A person who had received General Assistance at any time within six months prior death.

2. Authorization of payments:

i. Allowances: The allowance for funeral services, exclusive of cemetery costs, is the actual amount charged or \$1,970.00 whichever is less. When ground burial is made of uncremated remains, the cemetery allowance also applies. The cemetery allowance is the sum of all cemetery charges or \$460.00, whichever is less. The maximum total of allowances for a decedent is the sum of the funeral allowance and the cemetery allowance as applicable.

ii. Payment: The payment to be made is the maximum total of allowances as reduced by all of the assets of the decedent, including cash on hand, funds in the hands of others, the value of real and personal property, and public and private death benefits; and as further reduced by the sum of all contributions from next of kin and other interested parties.

(b) (No change.)

10:100-3.6 Condition of payment

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

(c) Combined resources; definition: The combined resources of a decedent means the aggregate net total value of all of the following:

1.-6. (No change.)

7. When the ***[decedent]* *decedent*** and his or her spouse had been determined eligible for SSI or Medicaid Only as a couple, any amount of resources of the decedent and the surviving spouse in excess of the program resource limit for one person.

10:100-3.7 Authorization of payments

(a) Allowances: The allowance for funeral services, exclusive of cemetery costs, is the actual amount charged or \$1,970.00, whichever is less. When ground burial is made of uncremated remains, the cemetery allowance also applies. The cemetery allowance is the sum of all cemetery charges or \$460.00, whichever is less. The maximum total of allowances for a ***[decedent]* *decedent*** is the sum of the funeral allowance and the cemetery allowance, as applicable.

(b) Payment: The payment to be made is the maximum total of allowances as reduced by the combined resources of the decedent and as further reduced by the sum of all contributions from next of kin and other interested parties.

1. For those decedents who were found eligible for burial and/or funeral payment consideration solely by reason of assigned assets (N.J.A.C. 10:100-3.4(a)3), the sum of the cemetery and funeral payments to be authorized shall not exceed the liquidated value of such assets and in no case more than the maximum of payments indicated in (a) above.

(c) Time of payment: Payment shall be made by the chargeable CWA in accordance with the same ***time*** schedule as is applicable in AFDC (see N.J.A.C. 10:81-7.26).

(d) (No change in text.)

LABOR

(a)

UNEMPLOYMENT COMPENSATION AND
TEMPORARY DISABILITY

Disclosure of Information

Adopted Amendments: N.J.A.C. 12:17-7.1 and 7.2

Proposed: July 21, 1986, at 18 N.J.R. 1447(a).

Adopted: September 11, 1986, by Charles Serrano,

Commissioner, Department of Labor.

Filed: September 17, 1986 as R.1986 d.420, **without change.**

Authority: N.J.S.A. 43:21-1 et seq. (L.1984 c.24), specifically 43:21-11.

Effective Date: October 20, 1986.

Expiration Date: January 6, 1991.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

12:17-7.1 Administration of New Jersey Unemployment Compensation and Temporary Disability Benefits Law

No disclosure of information obtained at any time from workers, employers or other persons or groups in the course of administering the New Jersey Unemployment Compensation and Temporary Disability Benefits Law shall be made directly or indirectly, except as authorized by the Commissioner or his representative in accordance with this subchapter.

12:17-7.2 Authorized disclosure of information

(a) Disclosure of any information in the course of administering the New Jersey Unemployment Compensation and Temporary Disability Benefits Law may be authorized in the following cases for the following purposes:

1.-2. (No change.)

3. To claimants, employers, and the public, disclosure of the names, geographic location and standard industrial classification (SIC) of employers. Such release shall not include employment, wages, taxes or any other data identifiable to individual employers or employees;

4. To officers or employees of any agency of the federal government or any state, territorial or local government (or officers or employees of a foreign government agency with which reciprocal arrangements have been made and which is lawfully charged with the administration of an unemployment compensation or readjustment allowance law) if such disclosures will not impede the operation of, and are not inconsistent with the purposes of the New Jersey Unemployment Compensation and Temporary Disability Benefits Law.

LAW AND PUBLIC SAFETY

DIVISION OF CONSUMER AFFAIRS

(a)

Board of Nursing

Delegation of Selected Nursing Tasks

Adopted New Rule with Amendment: N.J.A.C. 13:37-6.2

Proposed: June 2, 1986 at 18 N.J.R. 1176(a) and July 21, 1986 at 18 N.J.R. 1448(a).

Adopted: September 16, 1986 by New Jersey State Board of Nursing, Sylvia C. Edge, R.N., M.A., President.

Filed: September 26, 1986 as R.1986 d.431, **without change**.

Authority: N.J.S.A. 45:11-23, 11-24, 1-21.

Effective Date: October 20, 1986.

Expiration Date: February 11, 1990.

Summary of Public Comments and Agency Responses:

An earlier version of N.J.A.C. 13:37-6.2 was published on October 7, 1985 at 17 N.J.R. 2354. Following publication of the rule proposal, the Board received numerous comments which strongly suggested the need for some revision. The Board communicated with those interested persons in an effort to obtain their input into the appropriate and necessary revisions. N.J.A.C. 13:37-6.2, as substantially revised, was published in the New Jersey Register on June 2, 1986 at 18 N.J.R. 1176(a). The proposal addressed the questions submitted in response to the Board's earlier proposal. Due to a printing error omitting essential language, a correction was published in the New Jersey Register on July 21, 1986 at 18 N.J.R. 1448(a).

Written comments were accepted on the entire proposal until August 20, 1986. Most of the comments were enthusiastic in their support of the rule.

A letter of support received from Grace Smith, R.N. stated that the proposal was a comprehensive and well written document. She made the suggestion that a statement be included in the rule to indicate that it was inadvisable to delegate circulating nurse functions in the Operating Room. In response to this suggestion, the Board believes it is unnecessary to include such a specific prohibition since the rule is clear on the non-delegation of certain nursing functions. The rule prohibits the delegation of any tasks "which requires substantial knowledge and skill derived from completion of a nursing education program and the specialized skill, judgment and knowledge of a registered nurse and/or an understanding of nursing principles necessary to recognize and manage complications which may result in harm to the health and safety of a patient."

The Board received letters of support from the Director of Nursing at Underwood Memorial Hospital and the Vice President of Nursing at Riverview Medical Center, Valley Hospital and the Executive Director of the Neighborhood Association of Milburn Township. A letter of support was received from the New Jersey State Board of Medical Examiners which indicated that the rule was in the public interest and would permit the more effective utilization of the special skills of the registered professional nurse.

The Board received a letter from John M. Deriso who expressed concern that the rule would result in an increase of malpractice litigation directed towards the registered nurse. He also questioned that the registered nurse has been given the authority in the administrative structure of many health care facilities to monitor and adequately supervise ancillary nursing personnel. In response to these concerns, the Board believes that the rule may in fact result in a decrease in malpractice litigation since it will promote the proper training, skill and supervision of nursing tasks when a delegation has been made.

The Board received a letter from the New Jersey Hospital Association. In this letter it is suggested that the word "selected" be deleted from the entire rule and the nursing tasks performed in specific practice settings be addressed. An objection is also raised that the rule subjects ancillary personnel to Board of Nursing rules and regulations. In response to this letter, the Board does not agree that the word "selected" should be deleted from the entire rule. The rule recognizes that there are certain nursing functions which are not appropriate for delegation since they require the knowledge, skill and judgment of a registered nurse. The Board does not agree that nursing tasks performed in specific practice settings should be

addressed in the rule. Following publication of the earlier rule proposal concerning delegation of nursing tasks (17 N.J.R. 2354) the Board received numerous comments strongly advising the Board against seeking to define the delegation/nondelegation of specific nursing tasks. The Board has recognized that it is impractical to define each and every nursing task which may be performed in a given health care setting. The language used in the rule is intended to be broad enough so that it will apply to all health care settings, yet it is intended to offer specific guidance so that interpretation of the rule will be consistently applied and uniformly understood. Finally, the Board strongly disputes that the rule is an attempt to subject ancillary nursing personnel to its rules or regulations. Of course, the Board is vested with the statutory authority to regulate the unlicensed practice of nursing under N.J.S.A. 45:1-23. Any individual engaging in nursing practice without having a nursing license may be guilty of the unlicensed practice of nursing. Under N.J.S.A. 45:1-24 appropriate procedures may be undertaken by the Board to prevent future acts and to penalize the unlicensed practice of nursing. However, notwithstanding, the rule in question speaks directly to nursing licensees. It codifies existing nursing practice in this and most other states in the country which recognize that "delegation" and "supervision" are integral parts of nursing. This rule conclusively establishes that the failure of a registered nurse to properly exercise his or her responsibilities of supervision and delegation could result in disciplinary actions as professional misconduct under N.J.S.A. 45:1-21.

The Board received a letter from Harriet R. Lutri, B.S.N., M.S.N. from Burlington County Hospitals who expressed concern that there is a lack of definition in the following concepts: 1. verifiable training and education; 2. specialized skill, judgment and knowledge of a registered nurse; 3. the understanding of nursing principles necessary to recognize complications. She also expresses concern that there are no specific guidelines to indicate what tasks may be delegated. In response to these concerns, the Board states that the interpretation of the concepts contained in the rule will be made in accordance with acceptable standards of nursing practice under the Nurse Practice Act.

The Board received a letter of support from Rosalinda M. Haddon, B.S.N., M.A., R.N., Newark Beth Israel Medical Center. In addition, she raises a question of whether hospital-based certification programs approved by the A.N.A. and N.A.A.C.O.G. can be considered verifiable training and education. In response to this inquiry, the type of verifiable training and education necessary will depend on the task being delegated, but in general the A.N.A. and N.A.A.C.O.G. approved programs may be acceptable.

Finally, the Board received a letter of support from the President of the New Jersey State Nurses Association. Additionally, it is recommended that the rule include provision that the hiring and terminating of nurses or ancillary personnel fall within the responsibility of the nursing department. (Other recommendations contained in the letter are not directed at proposed rule N.J.A.C. 13:37-6.2.) In response to this recommendation, the Board notes that the responsibility procedure for hiring and terminating an employee is ordinarily determined by the employer.

Full text of the adoption follows.

13:37-6.2 Delegation of selected nursing tasks

(a) The registered professional nurse is responsible for the nature and quality of all nursing care including the assessment of the nursing needs, the plan of nursing care, the implementation, and the monitoring and evaluation of the plan. The registered professional nurse may delegate selected nursing tasks in the implementation of the nursing regimen to licensed practical nurses and ancillary nursing personnel. Ancillary nursing personnel shall include but not limited to: aides, assistants, attendants and technicians.

(b) In delegating selected nursing tasks to licensed practical nurses or ancillary nursing personnel, the registered professional nurse shall be responsible for exercising that degree of judgment and knowledge reasonably expected to assure that a proper delegation has been made. A registered professional nurse may not delegate the performance of a nursing task to persons who have not been adequately prepared by verifiable training and education. No task may be delegated which is within the scope of nursing practice and requires:

1. The substantial knowledge and skill derived from completion of a nursing education program and the specialized skill, judgment and knowledge of a registered nurse;

2. An understanding of nursing principles necessary to recognize and manage complications which may result in harm to the health and safety of the patient.

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(c) The registered professional nurse shall be responsible for the proper supervision of licensed practical nurses and ancillary nursing personnel to whom such delegation is made. The degree of supervision exercised over licensed practical nurses and ancillary nursing personnel shall be determined by the registered professional nurse based on an evaluation of all factors including:

1. The condition of the patient;
2. The education, skill and training of the licensed practical nurse and ancillary nursing personnel to whom delegation is being made;
3. The nature of the tasks and the activities being delegated;
4. Supervision may require the direct continuing presence or the intermittent observation, direction and occasional physical presence of a registered professional nurse. In all cases, the registered professional nurse shall be available for on-site supervision.

(d) A registered professional nurse shall not delegate the performance of a selected nursing task to any licensed practical nurse who does not hold a current valid license to practice nursing in the State of New Jersey. A registered professional nurse shall not delegate the performance of a selected nursing task to ancillary nursing personnel who have not received verifiable education and have not demonstrated the adequacy of their knowledge, skill and competency to perform the task being delegated.

(e) Nothing contained in this rule is intended to limit the current scope of nursing practice.

(f) Nothing contained in this rule shall limit the authority of a duly licensed physician acting in accordance with N.J.S.A. 45:9-1 et seq.

(a)

**Board of Psychological Examiners
Disclosure of Patient Information; Independent
Professional Review Committee**

**Recodification: N.J.A.C. 13:42-6.1 to 13:42-5.1
Adopted New Rules: N.J.A.C. 13:42-6**

Proposed: April 21, 1986 at 18 N.J.R. 817(a).

Adopted: June 2, 1986, by Board of Psychological Examiners,
Duncan E. Walton, Ph.D., President.

Filed: September 29, 1986 as R.1986 d.438, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: L. 1985, c. 256, Sections 14 and 15 (to be codified as N.J.S.A. 45:14B-44 and N.J.S.A. 45:14B-45).

Effective Date: October 20, 1986.

Expiration Date: November 3, 1988.

Summary of Public Comments and Agency Responses:

The Board of Psychological Examiners afforded all interested persons the opportunity to comment on the proposed new rules concerning disclosure of patient information and independent professional review committees. Announcement of this opportunity to comment was given in the *New Jersey Register* on April 21, 1986. Announcements were also forwarded to twenty-one individuals and organizations including the New Jersey Psychological Association (a professional association for psychologists in New Jersey). The Board accepted comments through June 2, 1986. Eight written comments were received. No phone comments were received.

A full record of this opportunity to be heard can be inspected by contacting the Board of Psychological Examiners, 1100 Raymond Boulevard, Room 512, Newark, New Jersey 07102.

On June 2, 1986 the Board of Psychological Examiners held a meeting, open to the public, for the purpose of discussing the comments received concerning the proposed regulations and adopting the proposed regulations.

The Board received a comment from John M. Lagos, Ph.D, President of the New Jersey Psychological Association (NJPA). The Association raised several issues. First, the Association pointed out what appeared to it to be a discrepancy between the statute and the proposed regulations concerning qualifications for members of the independent professional review committee (hereinafter IPRC). The statute states that members of the IPRC "shall be psychologists . . . who are currently and have been for the preceding five years engaged for the majority of their professional work in the practice of psychotherapy." (L. 1985, c. 256, § 14 to be

codified as N.J.S.A. 45:14B-44). The Association expressed concern that proposed regulation N.J.A.C. 13:42-6.1(a) (" . . . members shall be active practitioners with a current minimum average of ten hours per week of direct service in the area of service he or she is authorized to review.") is in conflict with the statutory provision requiring the IPRC member to be engaged for the majority of their professional work in the practice of psychotherapy. The Board responded by indicating that the "ten hours per week" requirement was not meant to equate with or define the statutory "majority of their professional work" requirement. Rather, the "ten hours per week" requirement is an additional requirement imposed by the regulation. In order to facilitate the matching of appropriate reviewers to cases, the Board is requiring that IPRC members have experience in the area they are assigned to review. Thus, there is no conflict between the statute and the proposed regulation.

The Association sought clarification of the nature of the Board's authority over the peer review system. The Association questioned how "activities related to the review process will take place outside the Board's authority" (N.J.A.C. 13:42-6.1) when the Board has the responsibility of administering the peer review program. In response to this query, the Board stated that although the Board does retain some authority over the peer review program, the Board's function with respect to the peer review program is an administrative one rather than an oversight function. To clarify this point, the board has amended the rule to read: "once the reviewers are selected, most activities related to the review process will take place outside the Board's authority, that is, without the direct and immediate overview of the Board."

The NJPA also suggested that the administrator chosen to head the IPRC be a psychologist. The Board rejected this suggestion. The administrator's function is purely ministerial, that is, the administrator will carry out the limited functions outlined in the statute and regulations. Therefore, a background in psychology is not necessary. Additionally, given current budgetary constraints, it would not be economically feasible to hire a psychologist for the position. The peer review subcommittee of the Board will be available to the administrator for at least the first six months that the peer review system is operational to answer procedural questions from the administrator and the IPRC.

The Association questioned the definition of the terms "education" and "experience" that are found in N.J.A.C. 13:42-6.1(b). The Association believes that the definition of these terms should be more explicit so that "senior psychologists," that is, those with substantial education and experience, are selected to do reviews. The Board rejected this suggestion. It was the Board's intention to word these definitions in such a manner so that they would remain flexible enough to accommodate whatever criteria are utilized to select reviewers. The definitions are meant to state basic, minimum qualifications.

The NJPA next pointed out that the "Psy.D." degree was omitted from the list of degrees set forth in the definition of "education" (N.J.A.C. 13:42-6.1(b)). Several other writers pointed out this omission as well. The Board agreed that the Psy.D. degree should appear in the definition of "education" and has made this change in the regulations. The Psy.D. degree was inadvertently dropped from the definition during the drafting stages of the regulation.

The Association next suggested that IPRC members be "held harmless" for the performance of their peer review functions. The Board recognized that a psychologist's decision to act as a peer reviewer may be greatly influenced by whether they are exposed to liability for performing their functions. However, the Board cannot by regulation provide indemnification or "hold harmless" protection to an IPRC member. Such protection can only be afforded by legislative action. The Board is pursuing this.

The NJPA also suggested that N.J.A.C. 13:42-6.2(a) be changed to place the responsibility for obtaining patient's consent for disclosure of treatment information on the third party payor (the regulation places this responsibility on the treating psychologist). The Association contends that since the third party payor requests the review, the third party payor should obtain the authorization for disclosure of information from the patient. The Board rejected this proposal. The treating psychologist is in the better position to facilitate the securing of the authorization. It is appropriate for the treating psychologist to deal with this issue with his patient as part of the treatment process.

The Association next expressed concern that the twenty day time limit for completion of the review process imposed by N.J.A.C. 13:42-6.4(a)5 on the IPRC is too short. Although the Association recognizes that the twenty day limit is imposed by the statute and thus cannot be lengthened without amendment of the statute by the Legislature, it wished the Board and the administrator to be cognizant of the difficulties that can be expected in trying to comply with the time limit. The Association suggests

that Stages II and III be combined into one stage of review, if only for the purpose of obtaining, at one time, the information necessary to undertake the State II and Stage III review. The Association believes that this would help alleviate some of the time pressure. Although cognizant of and sympathetic to the concerns raised by the Association, the Board cannot by regulation combine Stage II and Stage III. L. 1985, c. 256, Section 4 (to be codified as N.J.S.A. 45:14B-34) explicitly created four distinct and discreet levels or stages of review. Any modification of this would have to be done by the Legislature. The Board indicated, however, that the twenty day period would be calculated by counting only working days rather than calendar days.

The NJPA next pointed out that the regulation sets forth no procedures concerning dismissal of reviewers prior to completion of the reviewer's three year term of office, nor does the regulation specify how long records are kept by the IPRC. The Board is currently studying these issues and if necessary, will propose new regulations on these subjects.

Finally, the NJPA questioned why the therapist (treating psychologist) must identify his specialty area (N.J.A.C. 13:42-6.2(c)1) as this might result in a more cumbersome procedure than necessary. The Board believes that such information will facilitate the matching of appropriate reviewers to a specific therapist's case and therefore will not delete this requirement.

The Board received a comment from Stanley Moldawsky, Ph.D. As did the NJPA, Dr. Moldawsky requested that the Psy.D. degree be included in the list of degrees set forth in the definition of education (N.J.A.C. 13:42-6.1(b)). For the reasons stated above, the Board has amended the regulation to include the Psy.D. degree. Dr. Moldawsky also noted that in the definition of "orientation" (N.J.A.C. 13:42-6.1(b)), "behavior" should read "behavioral." The Board has amended the language consistent with Dr. Moldawsky's suggestion. Dr. Moldawsky next recommended that to be considered for appointment as an IPRC member, a psychologist must be licensed for a minimum of ten years rather than the five years set forth by the regulation (N.J.A.C. 13:42-6.1(a)) in order that reviewers "be truly senior peers—not junior peers." The Board rejected this recommendation. L. 1985, c. 256, Section 14 (to be codified as N.J.S.A. 45:14B-44) establishes five years as the minimum requirement. Additionally, the Board believes that the five year requirement will create a more democratic review process, one in which reviewers will bring a broader range of experience to the review process. Dr. Moldawsky next commented that IPRC members should have twenty hours of weekly practice rather than the ten hours per week set forth in the regulation. Dr. Moldawsky is apparently referring to N.J.A.C. 13:42-6.1(a). The Board pointed out that the ten hours per week requirement refers to the practitioner's area of specialty and the area of service he is authorized to review, rather than the total amount of time the practitioner spends in active practice; thus, there is no need to change the regulation. Finally, Dr. Moldawsky proposed that there should be a mechanism set up to train reviewers, review reviewers and dismiss reviewers (if necessary). The Board is at present formulating a training program for reviewers. And, as discussed above, the Board is currently studying the issue of procedures for dismissal of reviewers and, if necessary, will propose new regulations on the subject.

The Board received a comment from Floyd Turner, Ph.D. Dr. Turner pointed out a possible discrepancy between the law and the regulations concerning what information is to be disclosed to a third party payor (see L. 1985, c. 256, § 2 and N.J.A.C. 13:42-6.2(a)2 iv and v as proposed). For a Stage I review (which does not involve the IPRC), the statute specifies what limited information can be provided to a third party payor. As proposed, the regulation expanded the amount of information that could be provided to the third party payor. The Board agreed with Dr. Turner's comment and has amended the regulation to read consistent with the statutory language. However, because the Board believes that such information (that is, as specified in N.J.A.C. 13:42-6.2(a)2 iv and v as proposed) is important and necessary for IPRC members to conduct their reviews, the regulation has been amended so that this information will be provided at Stage II review (which is conducted by the IPRC).

The Board received a comment from Herbert Potash, Ph.D. Dr. Potash suggested that at the same time Stage I information is provided to a third party payor, the same data be sent to the Board/Administrator. He believes that not only would this speed up the review procedure, but, the Board could obtain helpful statistical data. The Board rejected this suggestion. Third party payors will not necessarily request Stage II reviews (which cannot be done, according to the statute, until Stage I is completed). If Dr. Potash's suggestion is implemented, confidential patient information would be provided directly to the Board/Administrator whether or not a Stage II review is requested, in contravention of both

the statutory purpose of protecting confidential patient information and regulation (See N.J.A.C. 13:42-6.2(c)4: "The information required to be transmitted to the IPRC . . . is not to be communicated to the Board.") Dr. Potash commented also from the point of view of a therapist working from an existential framework. Existential psychotherapy places responsibility upon the patient to determine the length of treatment; the therapist cannot, consistent with the goals of therapy, provide an estimate of the length of treatment. The Board reminded Dr. Potash that, pursuant to the regulations, he will be reviewed by IPRC members sharing his theoretical orientation who will understand why he is unable to provide an estimate for the length of treatment.

The Board received a comment from Robert Wood, M.D., Medical Director of the Philadelphia American Life Insurance Company. Dr. Wood addressed a general comment to the need (or lack thereof) for the peer review system set up by L. 1985, c. 256 and questioned whether it could be implemented effectively. Dr. Wood disagreed with the summary and social impact statements which accompanied the proposed regulations. Although respecting Dr. Wood's point of view, the Board disagreed and restated the need for a system that will create and maintain a more workable balance between the third party payor's legitimate need for information and the delicate relationship between a psychologist and his patient. Dr. Wood next commented on a situation he feels should be addressed by the regulations. The statute provides that benefits cannot be terminated until the review process is completed and that benefits will not be denied retroactively. What then, Dr. Wood asks, of the situation in which "maximum clinical effectiveness" is judged to have occurred on or before the review date; should the regulations be amended to provide that payments received by the treating psychologist from the third party payor be returned to the third party payor in such a situation? The Board responded that all the reviewer is doing is deciding whether the treatment is usual, customary or reasonable. The reviewer does not render a determination on whether maximum clinical effectiveness has been reached. Therefore, there is no reason for the regulations to address the issue of return of payments to a third party payor in such a situation and the Board will not change the regulations.

The Board received a comment from the Director, Division of Vocational Rehabilitation Services in the New Jersey Department of Labor. The Director asked several questions concerning the interpretation of the regulations as applied to the Division of Vocational Rehabilitation Services (DVRS). The Board responded by referring the Director to L. 1985, c. 256, § 1(e) (to be codified as N.J.S.A. 45:14B-31(e)) which specifically exempts governmental agencies from the act. The DVRS, a provider of benefits for psychological services, is a governmental agency and therefore does not have to comply with the mechanism set up by L. 1985, c. 256 and implemented by these regulations. The regulations need not reiterate that governmental agencies are excluded from the definition of third party payor. Because the DVRS is not covered by the act, the Director's questions are moot.

The Board received a comment from a New Jersey resident who is currently receiving psychological treatment in New York State from a New York psychologist. The patient requested that the regulations be amended to allow the statute and regulations covering peer review and disclosure of patient information to be applied to any New Jersey resident who is covered by an insurance policy issued in New Jersey regardless of where the psychologist practices or where the psychological services are rendered (so long as the psychologist agrees to abide by the New Jersey statute and regulations). The Board rejected this requested amendment to the regulations. The New Jersey statute and regulations adopted thereunder can apply only to New Jersey licensed psychologists. Treatment rendered in New York by a New York psychologist is not within the purview of this statute and regulation.

The Board received a comment from the Psychologist's Committee on Peer Review and Insurance. The comment praised the Board for its time and efforts on the peer review/confidentiality issue.

The Board, after consultation with counsel, voted to delete N.J.A.C. 13:42-6.4(a)7. This paragraph, which requires a reviewer to report to the Board information concerning unlawful acts committed by the licensee being reviewed which is disclosed during the review process, conflicts with the provisions of the enabling legislation concerning confidentiality of information (see N.J.S.A. 45:14B-35 and N.J.S.A. 45:14B-40).

The above enumerated changes in the adopted rule are minor substantive changes which do not significantly curtail or expand the content or scope of the rule and its burden, curtail or expand who or what would be affected by the rule or change what is being prescribed by the rule.

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

SUBCHAPTER 6. DISCLOSURE OF PATIENT INFORMATION; INDEPENDENT PROFESSIONAL REVIEW COMMITTEE

13:42-6.1 General provisions

(a) ***Statement of Purpose:** L.1985, c.256 sets forth certain standards and procedures regarding preservation of patient privacy within the contractual setting of insurance contracts and designates a peer review procedure to be accomplished by licensed psychologists appointed to an ***[Independent Professional Review Committee]*** ***independent professional review committee*** (IPRC). In accordance with L.1985, c.256, the Board of Psychological Examiners is mandated to establish the independent professional review committee. Once established, the IPRC will be essentially independent of the Board; it will be a free standing entity whose members are appointed for a three year term. Members of the IPRC shall be psychologists licensed in New Jersey for the preceding five years and who have been engaged in active practice for that period. Members will be appointed by the Board from a pool of volunteers who shall be screened and trained by the Board. Considering the special responsibilities assigned to the IPRC, licensees appointed as members shall be active practitioners with a current minimum average of 10 hours per week of direct service in the area of service he or she is authorized to review (for example, psychotherapy with adults and adolescents; psychotherapy with children; marital/family therapy; testing/assessment). In addition, members shall have demonstrated that they are respected and known by their professional colleagues for the quality of their clinical work and exemplary professional conduct. Once the reviewers are selected, most activities related to the review process will take place outside the Board's authority~~.*[.]~~ ***that is, without the direct and immediate overview of the Board.*** An IPRC administrator will make assignments in each case and will be responsible for the processing of all review requests. In addition to the reporting requirement contained in L.1985 c.256, section 15, the Board shall file an annual report with the Governor and the Director, Division of Consumer Affairs, commencing January 30, 1987.

(b) As used in L.1985, c.256, and in this subchapter, unless the context clearly requires otherwise and except as expressly otherwise provided:

"Customary" means that range of usual practices provided by psychologists of similar education, experience, and orientation within a similar geographic or socioeconomic area.

"Education" means the attainment of any of the educational programs and attendant degrees that have qualified a person for licensure as a psychologist in this State pursuant to N.J.S.A. 45:14B-1 et seq., for example, Ph.D., Ed.D., ***Psy.D.,*** D.S.W. Holders of any of these degrees shall be deemed equivalent for the purpose of assigning reviewers of similar education to a given claim under review:

"Experience" means one of the following areas of specialized practice: psychotherapy with adults and adolescents; psychotherapy with children; marital/family therapy; or testing/assessment.

"Orientation" means one of the following five theoretical positions: ***[behavior]**behavioral***, humanistic/existential, psychoanalytic, systems or eclectic.

"Psychological services" means the provision of professional services founded upon psychological principles derived from a base of scientific knowledge and a recognized and accepted theory of clinical application which are used to promote the optimal development of an individual's potential or to ameliorate an individual's personality disturbances and maladjustment, as manifested in personal and interpersonal situations. Services shall be selected and rendered to patients based upon the treating psychologist's professional experience, knowledge of empirical and theoretical literature, and professional guidelines and standards. The services shall be necessary and appropriate in light of the patient's circumstances, the diagnosis, the reasonableness of goals, and the adequacy of progress.

"Reasonable" means that there is an acceptable probability that the patient will realize a significant benefit from the continuation of the psychological treatment.

"Stage I (Preliminary Disclosure)" means a request from a third party payor to obtain certain limited information about a patient from the treating psychologist for the purpose of permitting the patient to obtain or continue benefits from the third party payor for psychological services.

"Stage II Review" means a review conducted by an independent professional review committee for the purpose of determining whether the treatment is usual, customary or reasonable. The review shall be based

on the following information: the case identification number, the status of the patient, the duration and frequency of treatment, the diagnosis, the prognosis and the level of function and the level of distress.

"Stage III Review" means a review conducted by the independent professional review committee for the purpose of determining whether the treatment is usual, customary or reasonable. The review will be based on a written statement provided by the treating psychologist describing his customary mode of treatment. Stage III Review will occur when the reviewers are unable to make a determination from the information provided in Stage II.

"Stage IV Review" means a review conducted by the independent professional review committee for the purpose of determining whether the treatment is usual, customary or reasonable. The review will be based on details and circumstances concerning the case under review provided by the treating psychologist. Stage IV Review will occur when the reviewers are unable to make a determination from the information provided in Stage III.

"Usual" means a practice in keeping with the particular psychologist's general mode of operation.

(c) Any consent or agreement purporting to waive the provisions of L.1985, c.256 or this subchapter shall be against public policy and void.

(d) If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provisions or applications of these regulations which can be given effect without such invalid, such invalidity shall not affect any other provisions or applications of these regulations which can be given without such invalid provision or application, and to this end the provisions of this subchapter are declared to be severable.

(e) Nothing herein contained shall preclude an interested party from filing a complaint with the Board regarding the conduct of an independent professional review committee member.

13:42-6.2 Responsibilities of the treating psychologist

(a) Preliminary Disclosure (Stage I): A patient who is receiving or has received treatment from a licensed, practicing psychologist may be requested to authorize the psychologist to disclose certain confidential information to a third party payor for the purpose of obtaining benefits from the third party payor for psychological services. This preliminary disclosure phase (Stage I) shall not involve the independent professional review committee. When a treating psychologist receives a request from a third party payor for information about psychological services rendered by the psychologist, the treating psychologist shall request from the patient or other designated person a valid authorization. The treating psychologist shall secure the authorization within 14 days of receiving the request from the third party payor unless precluded from doing so by the particular circumstances of the case.

1. The authorization shall:

i. Be in writing; and

ii. Specify the nature of the information to be disclosed, the person authorized to disclose the information, to whom the information may be disclosed, the specific purposes for which the information may be used at the time of disclosure and at any time in the future; and

iii. State that the patient is aware of the statutory privilege for confidential communication between a patient and a licensed psychologist; and

iv. State that the consent may be revoked in writing by the patient at any time, if such notice is given both the treating psychologist and the recipient named in the authorization; and

v. Be signed by the patient or the person authorizing the disclosure. If the patient is adjudicated incompetent or is deceased, the authorization shall be signed by the patient's legally authorized representative. When the patient is more than 14 years of age but has not yet reached the age of majority, the authorization shall be signed by the patient and by the patient's parent or legal guardian. When the patient is less than 14 years of age, the authorization shall be signed only by the patient's parent or legal guardian; and

vi. Contain the date upon which the authorization was signed; and

vii. Apply only to information existing as of that date and is effective only for one year from the date the authorization is signed; and

viii. A copy of the authorization shall be provided to the person authorizing the disclosure.

2. The treating psychologist shall provide to the third party payor basic patient information limited to the following:

i. Administrative information, further defined as patient's name, age, sex, address, educational status, identifying number, date of onset of difficulty, date of initial consultation, dates and character of sessions (individual or group), and fees; and

ii. Diagnostic information, further defined as therapeutic characterizations of the type found in the DSM III or other professionally recognized diagnostic manual; and

iii. Status of the patient (voluntary or involuntary; inpatient or outpatient); and

iv. The reason for continuing psychological services *[stated in terms of the various functions assessed and professional judgment as to level of impairment and level of distress. Each level shall be rated as mild, moderate, severe or extreme; and]* *, limited to an assessment of the patient's current level of functioning and level of distress (both described by the term mild, moderate, severe or extreme); and*

v. Prognosis, *[including estimated minimal length of future treatment, expressed in terms of an identified goal(s).]* *limited to the estimated minimal time during which treatment might continue.*

vi. The information described in i. through v. above shall be sent to the third party payor by the treating psychologist within 10 days of receipt of the authorization.

(b) Further Review Requested (Stages II, III and IV): Further review by an independent professional review committee will follow when the third party payor has reasonable cause to believe that the psychological treatment in question may be neither usual, customary or reasonable.

(c) Arrangement for Independent Professional Review Committee and Procedures to be Utilized in Connection with Review (Stages II, III and IV) are as follows:

1. Within 10 days of receipt by the psychologist of a written request from the third party payor for such review the treating psychologist shall notify the State Board of Psychological Examiners of the request. The treating psychologist shall, at the same time, identify for the Board his or her major theoretical orientation: for example behavioral, humanistic/existential, psychoanalytic, systems or eclectic; and shall also specify his or her area of practice specialization: for example psychotherapy with adults and adolescents, psychotherapy with children, marital/family therapy, or testing/assessment.

2. Within 10 days of receipt of notification by the treating psychologist, the Board shall designate two or more members of the independent professional review committee to serve as reviewers of the case and shall inform the treating psychologist of their names and addresses.

3. The treating psychologist shall immediately disclose to the reviewers requested confidential information concerning the patient's treatment only pursuant to a valid written authorization from the patient. The information that the treating psychologist shall disclose is limited to the following:

i. For a Stage II review: in writing, the case identification number, the status of the patient, duration and frequency of treatment, diagnosis, prognosis*[,]* *(including minimal length of future treatment, expressed in terms of an identified goal(s)),* *[and the level of functioning and level of distress, both described by the terms mild, moderate, severe or extreme.]* *and the reason for continuing psychological services stated in terms of the various functions assessed and professional judgment as to level of impairment and level of distress (each level shall be rated as mild, moderate, severe or extreme).*

ii. For a Stage III review: a written statement describing the treating psychologist's customary mode of treatment for the particular diagnosis given.

iii. For a Stage IV review: details and circumstances concerning the case under review.

4. The information required to be transmitted to the independent professional review committee shall be communicated by the treating psychologist directly to the reviewers. This information is not to be communicated to the Board.

(d) In the event a patient declines to provide the authorization required by these rules, the review process shall not be undertaken. The treating psychologist shall promptly notify the third party payor and any assigned reviewers in the event that the patient declines to provide authorization complying with the requirements of any of the stages of review established by L.1985, c.256.

(e) Absent good cause being demonstrated, failure of the treating psychologist to comply with any of the provisions of L.1985 c.256 or these rules shall subject the licensee to any of the disciplinary sanctions authorized by law. Good cause shall include, but not be limited to, taking vacations of reasonable length, illness, serious family problems, or not receiving daily mail deliveries if there is more than one practice location.

13:42-6.3 Responsibilities of the Board of Psychological Examiners: Appointments of Independent Professional Review Committee Members

(a) Within 10 days of receipt of notification by a treating psychologist of a request by the third party payor for a Stage II review, the Board shall designate two or more members of the Independent Professional Review Committee to conduct that review and shall notify the treating psychologist of the assignment.

(b) To the extent practicable, the reviewers designated for a particular case review shall be knowledgeable in the orientation used by the treating psychologist and the customary practices of that orientation.

13:42-6.4 Responsibilities of the Independent Professional Review Committee

(a) Conduct of the review for Stages II, III and IV shall be as follows:

1. The reviewers shall examine the material submitted by the treating psychologist as specified in N.J.A.C. 13:42-6.2(c)3.

2. Stage II Review:

i. The purpose of the Stage II review is to determine, on the basis of the limited information provided, whether the psychological services, for which claimed payment is made are usual, customary or reasonable.

ii. Each reviewer shall make an independent assessment of the material and shall then confer with the other designated reviewer(s) to ascertain whether or not there is agreement on the finding.

iii. If the two reviewers are unable to agree that services are usual, customary or reasonable or they both agree that the services are not usual, customary or reasonable or one or both reviewers find the information provided to be insufficient to reach such a conclusion the reviewers shall proceed to Stage III and shall so notify the Board and the treating psychologist.

iv. If, on the basis of the information provided the reviewers can certify that the treatment is usual, customary or reasonable, the reviewers shall so notify the third party payor and the Board. In the event agreement is reached that the treatment is usual, customary or reasonable, no further review shall be undertaken.

3. Stage III Review:

i. For a Stage III review, the two reviewers shall request the treating psychologist to provide a written statement describing his or her customary mode of treatment for the particular diagnosis given.

ii. If, on the basis of the information provided, the reviewers can certify that the treatment is usual, customary or reasonable, the reviewers shall so notify the third party payor and the Board. In the event agreement is reached that the treatment is usual, customary or reasonable, no further review shall be undertaken.

iii. If the two reviewers are unable to so agree or they both agree that the services are not usual, customary or reasonable or one or both reviewers find the information provided to be insufficient to reach such a conclusion, the reviewers shall proceed to Stage IV and shall so notify the Board and the treating psychologist.

4. Stage IV Review:

i. For a Stage IV review, a third reviewer shall be appointed by the Board. The reviewers shall request the treating psychologist to provide details and circumstances concerning the case under review.

ii. On the basis of the information provided, the reviewers shall then certify to the third party payor their conclusion as to whether or not the treatment is usual, customary or reasonable. The conclusion of a majority of the three person independent professional review committee shall be reported as the conclusion of the independent professional review committee to the third party payor and the Board. Additionally, the reviewers shall certify to the third party payor the date and length of time of their consultation in reviewing the case.

5. The entire review process, that is, Stages II, III (if necessary) and IV (if necessary), shall be completed by the reviewers within 20 days of their receipt of the review request from the Board. The Board shall interpret the time frame to be exclusive of days lost as a result of injury or extenuating personal circumstances. The reviewer shall agree to inform the Board, or arrange for another to do so, when such unforeseen event prevents the timely completion of a review assignment. The Board shall, in that event, attempt to appoint a substitute reviewer to complete the assignment.

6. All information provided by the treating psychologist to the reviewers shall be confidential and shall not be disclosed to the third party payor or to any private person.

*[7. If a reviewer believes that the information disclosed in the review raises a substantial possibility that the treating psychologist has engaged in any act or practice declared unlawful by a statute or regulation admin-

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istered by the Board, the reviewer shall make a report of same to the Board, which may then conduct its own inquiry.]*

*[8.]**7.* Upon termination of practice, a reviewer or a reviewer's designee shall transfer all peer review records to the independent professional review committee office.

TRANSPORTATION

(a)

NEW JERSEY TRANSIT CORPORATION

Destructive Competition Procedure for Claims

Adopted New Rules: N.J.A.C. 16:74

Proposed: June 16, 1986 at 18 N.J.R. 1255(a).

Adopted: September 29, 1986, by Jerome C. Premo, Executive Director, New Jersey Transit Corporation.

Filed: September 26, 1986 as R.1986 d.434 with technical changes not requiring additional public notice and comment.

Authority: N.J.S.A. 27:25-5(e), (h), (k) and 27:25-7(b).

Effective Date: October 20, 1986.

Expiration Date: October 20, 1991.

Summary of Public Comments and Agency Responses:

A combined set of comments were received from the New Jersey Motor Bus Association, Inc. and the Private Carrier Advisory Committee. A summary of their comments are as follows:

1. The commenters objected to the definition of "affiliate" contained in N.J.A.C. 16:74-1.2 because they felt that the existence of affiliate status should be determined by an objective standard of an actual factual relationship rather than the subjective standard "there is a reason to believe."

2. The commenters recommended that an additional factor, to be considered in determining whether NJ TRANSIT has engaged in destructive competition, should be: "whether the level of service and/or fares of NJ TRANSIT is destructively competitive."

3. The commenters objected to the limitation set forth at N.J.A.C. 16:74-2.5(a) with respect to the remedy. First, they argue that NJ TRANSIT may only adopt regulations dealing with procedures and not substance. Second, they believe that an available remedy should be monetary damages as well as a cease and desist order.

4. The commenters objected to the provision set forth at N.J.A.C. 16:74-2.6 (incorrectly designated as 2.5 in the New Jersey Register publication) which makes these regulations inapplicable to services provided as of the initial promulgation of these regulations or to proceedings instituted prior to such initial promulgation.

5. In addition, Mr. Barnett Rukin, a member of the New Jersey Motor Bus association and Private Carrier Advisory Committee spoke at the open public meeting of the Board of Directors of NJ TRANSIT on September 23, 1986. He reiterated the objections noted above with respect to remedy.

With exception of the suggested changes with regard to comment number 3 above concerning remedy, the Board of Directors adopted each of the changes recommended. With respect to the "remedy issue", the Board accepted staff's recommendation to limit the remedy to a cease and desist order. It relied upon the Attorney General's opinion that NJ TRANSIT has the statutory authority to promulgate the remedy aspect of the regulation and that such provisions do not violate the Administrative Procedure Act. The Board also rejected the argument regarding monetary damages. It believes that the legislative intent, with regard to the word "claims" was to allow for "assertions open to challenge" and not claims for monetary damages. A comprehensive statutory program for the handling of damage claims can be found in the New Jersey Tort Claims Act and Contractual Liability Act (N.J.S.A. 59:1-1 et seq. and 13-1 et seq.) In addition, a number of minor technical changes have been made as recommended by the Attorney General.

Reference to ALJ has been changed to Board to reflect the factors and the remedy to be considered by the Board. It is implicit, however, that the ALJ in his or her conduct of the proceeding will take into account the factors and remedy to be ultimately considered by the Board.

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

CHAPTER 74 PROCEDURE FOR CLAIMS

SUBCHAPTER 1. GENERAL PROVISIONS

16:74-1.1 Purpose

The New Jersey Transit Corporation (NJ TRANSIT) was established by the New Jersey Public Transportation Act of 1979 (N.J.S.A. 27:25-1 et seq.) as the instrumentality of the State Government responsible to establish and provide for the operation and improvement of a coherent public transportation system in the most efficient and effective manner. One of the legislative findings set forth in the Act is that, in the provision of public transportation services, it is desirable to encourage to the maximum extent feasible the participation of private enterprise and to avoid destructive competition. To insure the accomplishment of this goal, N.J.S.A. 27:25-7(b) requires NJ TRANSIT to establish procedures for the handling of claims of destructive competition which are brought by carriers providing motor bus regular route service.

16:74-1.2 Definitions

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

"Act" means the New Jersey Public Transportation Act of 1979.

"Actions by NJ TRANSIT" means the operation of equipment or facilities by NJ TRANSIT, its subsidiaries, or other carriers contracting with NJ TRANSIT pursuant to Section 6 of the Act to the extent that such operation by contract carriers is within the control of NJ TRANSIT.

["Affiliate" means any individual, company, proprietorship, corporation, trust or partnership where, by reason of the relationship of such entity with the carrier, whether by reason of the method of, or circumstances surrounding organization or operation, or whether established through common directors, officers, stockholders, a voting trust or trusts, a holding or investment company or companies, family relationships, or any other direct or indirect means, there is a reason to believe that the affairs of the carriers may be managed in the interest of such individual, company, proprietorship, corporation, trust or partnership.]

"Board" means the Board of Directors of NJ TRANSIT.

"Carrier" means any individual, co-partnership, association, corporation, joint stock company, trustee or receiver or any *[affiliate as defined above]* operating or controlling regular route motor bus service on established routes within the State or between points in this State and points in adjacent states. *[When reference is made hereafter to a "carrier" it shall also mean its affiliate or affiliates as defined above.]*

"Established routes" means all regular intrastate or interstate routes as authorized by NJ TRANSIT, the New Jersey Department of Transportation, the Interstate Commerce Commission, a municipality, or any other regulatory body.

"Equipment or facilities" means passenger stations, shelters and terminals, automobile parking facilities, ramps, track connections, signal systems, power systems, information and communication systems, roadbeds, transit lanes or rights of way, equipment storage and servicing facilities, bridges, grade crossings, rail cars, locomotives, motor bus and other motor vehicles, maintenance and garage facilities, revenue handling equipment and any other equipment, facility or property useful for or related to the provision of public transportation service.

"Executive Director" means the Executive Director of NJ TRANSIT or his designee.

"Motorbus regular route services" means the operation of any motor bus or motor buses on streets, public highways or other facilities, over a fixed route and between fixed termini on a regular schedule for the purpose of carrying passengers for hire or otherwise, in this State or between points in this State and points in other states.

"NJ TRANSIT" means the New Jersey Transit Corporation.

"Rail passenger service" means and includes the operations of a railroad, subway, street, traction or electric railway for the purpose of carrying passengers in this State or between points in this State and points in other states.

SUBCHAPTER 2. PROCEDURES

16:74-2.1 Filing of Claims

(a) All claims must be filed in writing with NJ TRANSIT's Department of Compliance, Market Street and McCarter Highway, P.O. Box 10009, Newark, New Jersey 07101.

(b) Claims may be filed only by properly certified carriers providing regular route motor bus services.

(c) The claim must contain the following information or it will not be cognizable under this chapter or N.J.S.A. 27:25-7(b):

1. The names and addresses of the carrier and its officers;
 2. A copy of the relevant operating authority or Certificate of Public Convenience and Necessity issued by the New Jersey Department of Transportation, Interstate Commerce Commission, a municipality, or any other regulatory body;
 3. A description of the actions of NJ TRANSIT alleged to be destructively competitive including but not limited to the date of such actions and the actions taken by the carrier in response thereto. This statement must contain the facts upon which the carrier relies to support its claim of destructive competition;
 4. The economic and operational impact of the alleged acts of destructive competition on the carrier or its employees and users;
 5. A statement setting forth the carrier's reasons why particular competitive actions of NJ TRANSIT are alleged to be "destructively competitive";
 6. A statement of the relief sought, including alternatives deemed appropriate by the carrier.
- (d) Nothing in this section shall be construed to prevent the carrier from presenting additional facts to the Administrative Law Judge (ALJ) for his or her consideration.

16:74-2.2 Conferences

(a) Settlement conference will be held in accordance with the provisions of N.J.A.C. 1:1-5.4.

(b) Unaccepted proposals of settlement or of adjustment not agreed to shall be privileged and shall not be admissible in evidence against NJ TRANSIT, the carrier, or their attorneys.

16:74-2.3 Transmittal to Office of Administrative Law (OAL)*[Board]*

When the carrier has satisfied all of the above requirements, the matter shall be considered a contested case and the Executive Director or his designee shall, within 60 days of receipt of the completed claim, refer the complaint to the OAL to be processed in accordance with N.J.S.A. 52:14F-1 et seq. and the applicable rules and regulations of the OAL.

16:74-2.4 Factors to be considered

(a) The following factors may be considered by the *[ALJ]* ***Board*** in determining whether NJ TRANSIT has engaged in destructive competition:

1. Which carrier was the first to provide the service;
2. Whether the action of NJ TRANSIT was a significant cause of the adverse impact on the carrier;
3. Whether NJ TRANSIT is complying with all applicable federal and State laws, its Certificates of Public Convenience and Necessity and applicable tariffs, in providing the service alleged to be destructively competitive;
4. The inherent benefits of the services to the rider, including, but not limited to, destination, door to door travel time, frequency of service, comfort, cost, transfer frequencies or proximity to the riders' residence;
5. Whether the NJ TRANSIT service alleged to be destructively competitive is in the public interest; and

6. Whether the level of service and/or fares of NJ TRANSIT is destructively competitive.

(b) Nothing in this section should be construed to prevent the *[ALJ]* ***Board*** from considering factors other than those set forth in this section in determining whether NJ TRANSIT has engaged in destructive competition.

16:74-2.5 Remedy and Order

(a) The sole remedy that may be *[recommended]* ***considered*** by the *[ALJ]* ***Board*** pursuant to this chapter and N.J.S.A. 27:25-7(b), is to direct NJ TRANSIT to cease and desist in whole or part from using its equipment or facilities in a destructively competitive manner.

(b) Upon receipt of the Initial Decision of the ALJ, the Executive Director shall present the matter to the Board and the Board shall adopt an order or final decision accepting, rejecting, or modifying the Initial Decision by the ALJ or remanding the decision to the OAL all in accordance with N.J.A.C. 1:1-16.5 and 1:1-16.6.

*[16:74-2.5 Effective date

These regulations shall not apply to motorbus regular route and rail passenger services provided as of the initial promulgation of these regulations or to proceedings instituted prior to the initial promulgation of these regulations.]*

(a)

NEW JERSEY TRANSIT CORPORATION Background Checks for Non-Criminal Matters Adopted New Rule: N.J.A.C. 16:79

Proposed: August 18, 1986 at 18 N.J.R. 1685(a).

Adopted: September 22, 1986, by Jerome C. Premo, Executive Director, New Jersey Transit Corporation.

Filed: September 26, 1986 as R.1986 d.433, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 27:25-5(e) and 5(f); N.J.S.A. 27:25-15.

Effective Date: October 20, 1986.

Expiration Date: October 20, 1991.

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

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

CHAPTER 79 BACKGROUND CHECKS FOR NON-CRIMINAL MATTERS

SUBCHAPTER 1. GENERAL PROVISIONS

16:79-1.1 Purpose

The New Jersey Transit Corporation (NJ TRANSIT) and its subsidiaries are responsible for the provision of rail and bus services in the State of New Jersey. In providing these services, it is necessary to employ personnel in positions of trust such as bus drivers, conductors, ticket sellers and numerous other positions which are financial in nature or require contact with the riding public. In order to ensure that only the appropriate persons are hired for these positions, NJ TRANSIT feels it may be appropriate to request from the State of New Jersey's Bureau of ***[Investigations]* *Identification*** a criminal history name search ID check prior to hiring such individuals.

16:79-1.2 Definitions

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

"Executive Director" means the Executive Director of NJ TRANSIT or the President of any NJ TRANSIT subsidiary or their designees.

"Fee" means that price established by law for processing all record requests for a licensing and/or employment purpose for authorized agencies.

"NJ TRANSIT" means the New Jersey Transit Corporation or any of its subsidiaries.

"Processing criminal history record background checks" means the process whereby the State Bureau of Identification compares a set of classifiable fingerprints or conducts a name search request to determine if a New Jersey criminal history record exists for the person identified by the request.

"State Bureau of Identification (S.B.I.);" means the State Bureau of Identification as created by L.1930, c.65 as a bureau within the Division of State Police.

SUBCHAPTER 2. PROCEDURES

16:79-2.1 Employment applications

(a) NJ TRANSIT may require as a condition of employment that its prospective employees complete an employment application in which they are asked to state whether they have ever been convicted of a criminal offense.

(b) In order to ensure that only appropriate persons are employed at NJ TRANSIT, it is imperative that NJ TRANSIT be able to confirm that prospective employees are truthful on their employment applications when responding to an inquiry of any past criminal record.

(c) Applicants who falsify their employment application will not be hired by NJ TRANSIT or if hired prior to such determination will be subject to dismissal.

16:79-2.2 Request for criminal history record background checks for non-criminal matters

(a) The Executive Director shall, when appropriate, request a criminal history record background check in conjunction with the prospective employment of an applicant at NJ TRANSIT.

(b) The Executive Director shall file with the State Bureau of Identification the appropriate forms and fees all in accordance with N.J.A.C. 13:59-1.

TREASURY-GENERAL

DIVISION OF PENSIONS

(a)

Administration

Administrative Expense Proration

Adopted Amendment: N.J.A.C. 17:1-1.17

Proposed: August 18, 1986, at 18 N.J.R. 1686(a).

Adopted: September 22, 1986, by Douglas R. Forrester, Director, Division of Pensions.

Filed: September 25, 1986 as R.1986 d.425, **without change**.

Authority: N.J.S.A. 52:18A-96 et seq.

Effective Date: October 20, 1986.

Expiration Date: June 6, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

17:1-1.17 Administrative expenses: proration among systems

(a) Not later than 60 days after receipt of the expenditures by account the Division of Pensions will prepare a complete fiscal statement indicating the administrative expenses incurred by the Division within its State appropriation for the previous fiscal year, the year ending the prior June 30:

1.-5. (No change.)

6. Included in the administrative expenses incurred by the division shall be those of the State Division of Investment as the expenses of that division pertain to the investment of monies appropriate to each retirement system or fund calculated on the number of transactions processed for the respective systems.

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

(b)

Public Employees' Retirement System Retirement Application

Adopted Amendment: N.J.A.C. 17:2-6.1

Proposed: July 21, 1986, at 18 N.J.R. 1451(a).

Adopted: September 24, 1986, by the Board of Trustees, Public Employees' Retirement System, Janice Nelson, Secretary.

Filed: September 26, 1986 as R.1986 d.432, **without change**.

Authority: N.J.S.A. 43:15A-17.

Effective Date: October 20, 1986.

Expiration Date: December 17, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

17:2-6.1 Applications

(a) Applications for retirement must be made on forms prescribed by the system. Such forms must be completed in all respects and filed with the system before the requested date of retirement.

(b) In the event a member files an incomplete application, the deficiency shall be brought to his or her attention and he or she will be required to file a completed application with the system to enable acceptance for processing.

(c) Before an application for retirement may be accepted for processing, it must be supported by a certificate from the employer setting forth the employment termination date, the salaries reported for contributions in the member's final years of employment and proof of age, if none is already in the member's record.

(d) In addition to the foregoing requirement, an application for disability retirement must be supported by a report of the member's personal or attending physician and a statement from the employer regarding the member's incapacity for further duty.

(c)

State Health Benefits Program Definition of Retired Employee

Adopted Amendment: N.J.A.C. 17:9-6.1

Proposed: July 21, 1986, at 18 N.J.R. 1451(b).

Adopted: September 16, 1986, by Gaius B. Mount, Acting Secretary, State Health Benefits Commission.

Filed: September 19, 1986, as R.1986 d.423, **without change**.

Authority: N.J.S.A. 52:14-17.27 et seq.

Effective Date: October 20, 1986.

Expiration Date: June 6, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

17:9-6.1 Retired employee defined

(a) "Retired employee" shall be defined as a covered employee, who immediately following the cessation of employment, applies for and receives a periodic retirement allowance for life or duration of disability to which he or she is entitled by reason of age, years of service or disability provided such allowance is being paid by a State or locally administered retirement system or plan by which he or she was covered immediately prior to his or her retirement. This "retired employee" status, once established, will continue in effect even though the employer is subsequently disbanded and no successor agency is created upon the dissolution of such employer. An employee who continued his or her coverage while on an official leave of absence for illness without pay but whose coverage was terminated when his or her leave exceeded the period established by the statute for the continuation of coverage during such leave, will be permitted to elect to continue Health Benefits coverage into retirement provided such leave was in effect immediately preceding the date of his or her retirement.

(b) The definition of "retired employee" shall include the spouse of the employee, provided he or she was covered as a dependent under the Health Benefits Program immediately preceding the retirement or the death of the active or retired employee, and further provided that he or she was the employee's beneficiary.

(c)-(g) (No change.)

(d)

State Health Benefits Program Coverage for Beneficiary, Dependent or Survivor

Adopted Amendment: N.J.A.C. 17:9-6.6

Proposed: July 21, 1986, at 18 N.J.R. 1452(a).

Adopted: September 16, 1986, by Gaius Mount, Acting Secretary, State Health Benefits Commission.

Filed: September 19, 1986, as R.1986 d.424, **without change**.

Authority: N.J.S.A. 52:14-17.27 et seq.

Effective Date: October 20, 1986.

Expiration Date: June 6, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

17:9-6.6 Beneficiary, dependent or survivor

(a) An eligible beneficiary or survivor will have their coverage discontinued upon the death of the retirant but will be given the opportunity

to continue coverage on a prospective basis only, once they have filed proper applications for pensions. Coverage may be made retroactive for as much as six months provided the necessary charges are paid. Any request for retroactive coverage in excess of six months shall be submitted to the secretary.

(b) An eligible dependent, who is not the recipient of any monthly retirement benefit from a State-administered retirement system upon the death of the retired member, will be offered the opportunity to continue participation in the State Health Benefits Program subsequent to the death of the retired member. The coverage will be no greater than the coverage that was in effect at the time of the retired member's death and will be limited to only those dependents covered at the time of the member's death. The Division of Pensions will bill the appropriate dependent at the group rate then in effect for such coverage on a quarterly calendar basis.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Rules of the Games Insurance Wagers

Adopted Amendment: N.J.A.C. 19:47-2.9

Proposed: July 7, 1986, at 18 N.J.R. 1361(a).

Adopted: September 18, 1986 by the Casino Control Commission, Walter N. Read, Chairman.

Filed: September 18, 1986, as R.1986 d.422, **without change**.

Authority: N.J.S.A. 5:12-63(c), and 5:12-100(f).

Effective Date: October 20, 1986.

Expiration Date: May 4, 1988.

Summary of Public Comments and Agency Responses:

The Division of Gaming Enforcement (DGE) and Claridge Casino Hotel filed written comments relevant to the proposal. The following summarizes the comments received and provides the Commission's responses to these comments.

1. COMMENT: The DGE recommends the amendment's adoption and indicates the amendment is "a relatively minor procedural change to the rules and has no impact on the integrity or fairness of blackjack."

RESPONSE: The Commission acknowledges acceptance of the comment.

2. COMMENT: The Claridge Casino Hotel indicates that they fully support the amendment.

RESPONSE: The Commission acknowledges acceptance of the comment.

Full text of the adoption follows.

19:47-2.9 Insurance wagers

(a) (No change.)

(b) An insurance bet may be made by placing on the insurance line of the layout an amount not more than half the amount staked on the player's initial wager, except that a player may bet an amount in excess of half the initial wager to the next unit that can be wagered in chips, when because of the limitation of the value of chip denominations, half the initial wager cannot be bet. All insurance wagers shall be placed immediately after the second card is dealt to each player and prior to any additional cards being dealt to them.

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

(b)

Entertainment General Provisions

Readoption with Amendments: N.J.A.C. 19:52

Proposed: August 18, 1986 at 18 N.J.R. 1687(b).

Adopted: September 25, 1986 by Casino Control Commission, Walter N. Read, Chairman.

Filed: September 25, 1986, as R.1986 d.429, **without change**.

Authority: N.J.S.A. 5:12-69 and 5:12-70(p).

Effective Date: September 25, 1986.

Expiration Date: September 25, 1991.

Summary of Public Comments and Agency Responses:

The Division of Gaming Enforcement expressed its support for the readoption with amendments of N.J.A.C. 19:52.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 19:52.

Full text of the amendments of the readoption follows.

19:52-1.3 General requirements concerning entertainment

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

(c) Each casino hotel shall file a quarterly report of all disbursements made for entertainment programs and activities identifying the recipient of the disbursement and the amount involved.

(d)-(f) (No change.)

19:52-1.4 Prohibited entertainment activities

(a) No motion picture shall be exhibited within any casino hotel complex either by direct projection or by closed circuit television which would be classified as obscene material pursuant to the definition contained in N.J.S.A. 2C:34-2.

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

EMERGENCY ADOPTION

HUMAN SERVICES

(a)

DIVISION OF PUBLIC WELFARE

Food Stamp Program

Revised Income Deductions, Utility Allowances, Uniform Telephone Allowance and Maximum Coupon Allotments

Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 10:87-12.1 and 12.2

Emergency Amendment Adopted: September 10, 1986,
by Drew Altman, Ph.D., Commissioner,
Department of Human Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): September 26,
1986.

Emergency Amendment Filed: September 29, 1986 as R.1986
d.436.

Authority: N.J.S.A. 30:4B-2; the Food Stamp Act of 1977 as
amended (7 USC 2014); 7 CFR 273.9(d)(4), (6), (7), and (8);
and 7 CFR 273.10(e)(4).

Emergency Amendment Effective Date: September 29, 1986.

Emergency Amendment Operative Date: October 1, 1986.

Emergency Amendment Expiration Date: November 28, 1986.

The Concurrent Proposal is known as PRN 1986-444.

Submit comments by November 19, 1986 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 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 rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.6).

The agency emergency adoption and concurrent proposal follows.

Summary

The Department of Human Services is required by the Food Stamp Act of 1977, as amended and Federal regulations to revise maximum coupon allotments (7 CFR 273.10(e)(4)) and increase the standard deduction (7 CFR 273.9(d)(7)), shelter deduction (7 CFR 273.9(d)(8)) and the dependent care deduction for households containing an elderly or disabled member (7 CFR 273.9(d)(4), 51 VF 11009) to reflect the annual Federal adjustment of these amounts which takes into account changes in the cost of living. Additionally, the Department is updating the uniform telephone allowance to \$13.20 and adjusting the utility allowances (7 CFR 273.9(d)(6)) to reflect the decrease, over the past 12 months, in the average cost of services, fuel and utilities. The heating utility allowance (HUA), which can be utilized by households who are responsible for their heating costs, is \$168.00. The standard utility allowance (SUA), which is for use by households that are not responsible for their heating costs but who

are responsible for a major utility expense, is \$101.00. These are annualized amounts and will be effective through September 1987.

Social Impact

The increase in the standard deduction, shelter deduction, dependent care deduction for the elderly/disabled, uniform telephone allowance, and increase in maximum coupon allotments will result in an increase in the amount of food stamp benefits households are entitled to receive.

Both the annualized SUA and HUA are being amended to reflect a decrease in the average cost of fuels and utilities. However, it should be noted that households having utility expenses in excess of the SUA or HUA may elect to have actual expenses used in the eligibility and benefit computation.

Economic Impact

The net effect of the increase in the standard deduction, shelter deduction, dependent care deduction for the elderly/disabled, uniform telephone allowance, and maximum coupon allotments will be an increase in benefits for food stamp recipients. Contingent on individual household circumstances, some households may experience a small decrease in benefits due to the decrease in the utility allowances. However, this decrease may be offset due to the increases in other deductions and the use of actual utility expenses if in excess of the SUA or HUA.

These changes will not have a significant adverse impact on the Department and local agencies administering the program but may bring some additional Federal funds into the State for those households participating in this federally funded program.

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

10:87-12.1 Income deduction table

TABLE I
Income Deductions

Standard Deduction	[\$ 98.00] \$ 99.00
Shelter Deduction	[\$147.00] \$149.00
Dependent Care Deduction (elderly/disabled)	[\$147.00] \$149.00
Dependent Care Deduction (nonelderly/nondisabled)	\$160.00
Uniform Telephone Allowance	[\$ 12.40] \$ 13.20
Standard Utility Allowance	[\$111.00] \$101.00
Heating Utility Allowance	[\$186.00] \$168.00

10:87-12.2 Maximum coupon allotment table

TABLE II
Maximum Coupon Allotment (MCA)

Household Size	MCA
1	[\$ 80] 81
2	[\$147] 149
3	[\$211] 214
4	[\$268] 271
5	[\$318] 322
6	[\$382] 387
7	[\$422] 428
8	[\$483] 489
9	[\$543] 550
10	[\$603] 611
Each Additional Member	[+60] +61

MISCELLANEOUS NOTICES

ENVIRONMENTAL PROTECTION

DIVISION OF WATER RESOURCES

(a)

Amendment to Cape May County Water Quality Management Plan

Public Notice

Take notice that on August 22, 1986 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), an amendment to the Cape May County Water Quality Management Plan was adopted by the Department. This amendment is to expand the Township of Lower Municipal Utilities Authority's sewer service area to include Lots 14 and 11S of Block 496 located in Lower Township. The purpose of this expansion is to provide sewer service to the proposed residential development known as Holly Estates.

(b)

Amendment to Tri-County Water Quality Management Plan

Public Notice

Take notice that on August 20, 1986 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), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department. This amendment will allow for the expansion of the Cooper River Interceptor into Berlin Township and Berlin Borough. Wastewater from these two communities will be treated at Camden County Municipal Utilities Authority's Delaware #1 Plant. The existing Berlin Borough plant will be eliminated.

HEALTH

(c)

Local and Community Health Services Public Forum on Children/Adolescents and Smoking

Take notice that the Department of Health, in coordination with the departmental advisory Commission on Smoking or Health, is announcing an open forum to give opportunity for public participation in the discussion of current and proposed activities concerning children/adolescents: their motivation to smoke, their access to cigarettes and their use of other tobacco products (i.e. smokeless tobacco).

New Jersey has been among the leaders in protecting the rights of nonsmoking adults through the control of smoking in workplace, government buildings, restaurants, and other areas of public congregation. The Department of Health now seeks to address what factors influence children/adolescents to start smoking and what preventive strategies can be implemented.

1. Advertising:

(a) Should the free distribution of cigarettes be prohibited?

(b) Should sporting events not advertise cigarettes or tobacco products?

2. Sales Restrictions:

(a) Should unsupervised vending machine sales of cigarettes be banned or restricted?

3. Taxation:

(a) Should the present state cigarette tax be increased in order to discourage consumption among children/adolescents? Would this be effective?

4. Education:

(a) What source of revenue can be used to fund educational activities? Is it appropriate to tap into the cigarette tax?

The use of cigarettes by children/adolescents and young adults has proliferated to the point of significant increase in the rates of pulmonary diseases in these age groups. This public forum will serve as a catalyst for the department, and the community at large, on how to proceed to inform children and adolescents about the hazards of smoking, and reduce their use of cigarettes.

The public meeting will be held on Wednesday, November 19, 1986, at 9:00 A.M. to 4:00 P.M. at:

State House Annex
Room 403, Fourth Floor
West State Street
Trenton, NJ 08625

Persons wishing to present testimony or if further information is needed on this subject, please contact:

Diane DiDonato, R.N., M.P.H.
Coordinator, Chronic Illness Prevention
Adult Health Services
120 South Stockton Street
CN 364
Trenton, NJ 08625-0364
(609) 292-8106

CORRECTIONS

(d)

THE COMMISSIONER Inmate Prohibited Acts

Notice of Correction: N.J.A.C. 10A:4-4.1

Take notice that errors appear in the adoption notice in the July 21, 1986 issue of the New Jersey Register at 18 N.J.R. 1468 concerning Prohibited acts, N.J.A.C. 10A:4-4.1. The corrected text follows:

10A:4-4.1 Prohibited acts

(a) An inmate who commits one or more of the following numbered prohibited acts shall be subject to disciplinary action and a sanction that is imposed by a Disciplinary Hearing Officer or Adjustment Committee. Prohibited Acts preceded by an asterisk are considered the most serious and result in the most severe sanctions (See N.J.A.C. 10A:5, SCHEDULE OF SANCTIONS).

*.306 conduct which disrupts or interferes with the security or orderly running of the correctional facility

(b) (No change.)

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the September 8, 1986 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 adopt a proposed rule on a timely basis 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.1986 d.100 means the one hundredth rule adopted in 1986.

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 certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: AUGUST 18, 1986.

NEXT UPDATE WILL BE DATED SEPTEMBER 22, 1986.

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

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
17 N.J.R. 2319 and 2484	October 7, 1985	18 N.J.R. 727 and 868	April 21, 1986
17 N.J.R. 2485 and 2584	October 21, 1985	18 N.J.R. 869 and 1018	May 5, 1986
17 N.J.R. 2585 and 2710	November 4, 1985	18 N.J.R. 1019 and 1122	May 19, 1986
17 N.J.R. 2711 and 2814	November 18, 1985	18 N.J.R. 1123 and 1222	June 2, 1986
17 N.J.R. 2815 and 2934	December 2, 1985	18 N.J.R. 1223 and 1326	June 16, 1986
17 N.J.R. 2935 and 3032	December 16, 1985	18 N.J.R. 1327 and 1432	July 7, 1986
18 N.J.R. 1 and 128	January 6, 1986	18 N.J.R. 1433 and 1504	July 21, 1986
18 N.J.R. 129 and 234	January 21, 1986	18 N.J.R. 1505 and 1640	August 4, 1986
18 N.J.R. 235 and 376	February 3, 1986	18 N.J.R. 1641 and 1726	August 18, 1986
18 N.J.R. 377 and 446	February 18, 1986	18 N.J.R. 1727 and 1862	September 8, 1986
18 N.J.R. 447 and 506	March 3, 1986	18 N.J.R. 1863 and 1978	September 22, 1986
18 N.J.R. 507 and 582	March 17, 1986	18 N.J.R. 1979 and 2078	October 6, 1986
18 N.J.R. 583 and 726	April 7, 1986	18 N.J.R. 2069 and 2148	October 20, 1986

**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, 1:2-1:21	Administrative hearings	18 N.J.R. 1728(a)		
1:1-15.10	Prior transcribed testimony	18 N.J.R. 1865(a)		
1:5	Council on Affordable Housing hearings	18 N.J.R. 1506(a)	R.1986 d.421	18 N.J.R. 2122(a)
1:10B	Medicaid and Medically Needy hearings	18 N.J.R. 1507(a)	R.1986 d.405	18 N.J.R. 2008(a)

(TRANSMITTAL 23, dated August 18, 1986)

AGRICULTURE—TITLE 2

2:7-1.2, 1.3, 1.4	Pullorum and fowl typhoid control	18 N.J.R. 1508(a)	R.1986 d.430	18 N.J.R. 2123(a)
2:76-5.3	Cost-share assistance for soil and water conservation projects	18 N.J.R. 1981(a)		
2:76-6.2, 6.15	Sale of development easements: deed restrictions	18 N.J.R. 1328(a)	R.1986 d.386	18 N.J.R. 1930(a)
2:76-6.15	Acquisition of development easements: deed restrictions	18 N.J.R. 513(a)		

(TRANSMITTAL 42, dated July 21, 1986)

BANKING—TITLE 3

3:11-11.13	Leeway investments: confidentiality of approval process	18 N.J.R. 1224(a)		
3:13-1	Registration of bank holding companies	18 N.J.R. 1434(a)		
3:13-2, 3	Bank holding company: reporting requirements and examination charges	18 N.J.R. 1763(a)		
3:13-4	Bank holding companies: interstate acquisitions	18 N.J.R. 1982(a)		
3:38-5.2	Return of borrower's commitment fee	17 N.J.R. 2488(b)		
3:41	Cemeteries: disinterment and reinterment of human remains	18 N.J.R. 1642(a)		

(TRANSMITTAL 34, dated July 21, 1986)

CIVIL SERVICE—TITLE 4

4:1-2.1, 5.2, 11.2, 16, 24	Separations, demotions, layoffs; review and appeals	18 N.J.R. 450(a)		
4:1-8.4	Promotional examinations	18 N.J.R. 591(a)		
4:1-12.18	Disposition of certification by appointing authority	18 N.J.R. 1642(b)		
4:1-15	Assignments and transfers	18 N.J.R. 592(a)		
4:1-18	Workweek programs	18 N.J.R. 1764(a)		
4:2-15.1	Assignments and transfers	18 N.J.R. 592(a)		
4:2-16	Separations and demotions	18 N.J.R. 450(a)		
4:2-18	Workweek programs	18 N.J.R. 1764(a)		
4:3-16	Separations and demotions	18 N.J.R. 450(a)		
4:4	State employees' awards program	18 N.J.R. 1766(a)		

(TRANSMITTAL 31, dated June 16, 1986)

COMMUNITY AFFAIRS—TITLE 5

5:11-2.1	Uniform Fire Code enforcement and relocation assistance	17 N.J.R. 2938(a)		
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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
5:18-2.5, 2.7, 2.11, 2.14, 3.2, 4.1, 4.7, 4.9-4.13, 4.17, 4.18	Uniform Fire Code: Fire Safety Code	18 N.J.R. 1225(a)		
5:18A-2.3, 4.3, 4.4	Fire Code Enforcement	18 N.J.R. 1225(a)		
5:23-3.2	Subcode exceptions	18 N.J.R. 757(a)		
5:23-3.4, 3.14, 3.17, 3.20	Building, Fire Protection, and Mechanical Subcodes	18 N.J.R. 1235(a)	R.1986 d.380	18 N.J.R. 1931(a)
5:23-3.4, 3.20	Uniform Construction Code: correction	_____	_____	18 N.J.R. 2063(b)
5:23-3.11	Uniform Construction Code: correction to Administrative Code	_____	_____	18 N.J.R. 1621(a)
5:23-3.11	Uniform Construction Code: enforcement activities reserved to State	_____	_____	18 N.J.R. 1842(a)
5:23-3.20	Uniform Construction Code: mechanical subcode	18 N.J.R. 1865(b)		
5:23-5.7	Uniform Construction Code: correction to subcode official requirements	18 N.J.R. 1963(a)		
5:23-5.18	Uniform Construction Code: correction to inplant inspector requirements	18 N.J.R. 1963(b)		
5:23-7	Barrier Free Subcode: access for physically handicapped and aged	18 N.J.R. 757(a)		
5:25	New Home Warranty and Builders' Registration rules: waiver of sunset provision	18 N.J.R. 218(a)		
5:25	New Home Warranty and Builders' Registration rules: waiver of sunset provision	18 N.J.R. 490(a)		
5:91-1.2, 1.3, 2.1, 3.1, 5.1, 7.1, 13.3, 13.4	Council on Affordable Housing: procedural rules	18 N.J.R. 1643(a)		

(TRANSMITTAL 44, dated August 18, 1986)

DEFENSE—TITLE 5A

(TRANSMITTAL 1, dated May 20, 1985)

EDUCATION—TITLE 6

6:8	Thorough and Efficient System of Free Public Schools	18 N.J.R. 1984(a)		
6:11-12.11	Speech-language specialist endorsement	18 N.J.R. 1994(a)		
6:11-12.24	Teacher-coordinator certification in Work Experience Career Exploration Program	18 N.J.R. 1995(a)		
6:20-4.4	Tuition for private schools for handicapped	18 N.J.R. 1237(a)	R.1986 d.360	18 N.J.R. 1797(a)
6:28-3.4, 3.5	Special education	18 N.J.R. 1771(a)		
6:29-4.4	Children with HIV infection and school attendance	18 N.J.R. 1509(a)		
6:29-8.1, 8.2	Audiometric screening	18 N.J.R. 1996(a)		
6:29-9	Policies and procedures concerning pupil use of drugs and alcohol	18 N.J.R. 1237(b)	R.1986 d.396	18 N.J.R. 2009(a)
6:46	Area Vocational Technical and Private Schools: waiver of Executive Order No. 66 (1978) sunset provision	18 N.J.R. 1996(b)		
6:46-1	Area vocational technical schools	18 N.J.R. 1511(a)		

(TRANSMITTAL 43, dated August 18, 1986)

ENVIRONMENTAL PROTECTION—TITLE 7

7:1-6	Disposal of solid waste	18 N.J.R. 883(a)		
7:2-11.22	Bear Swamp East natural area: public hearing	18 N.J.R. 532(a)		
7:6-1.42	Boating rules: diving and swimming	Emergency	R.1986 d.345	18 N.J.R. 1712(a)
7:7-2.1	CAFRA facilities	18 N.J.R. 1772(a)		
7:9-4.14	Water quality criteria for Mainstem Delaware River Zones	18 N.J.R. 1435(a)		
7:11-3	Use of water from Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir Complex	18 N.J.R. 1330(a)		
7:13-7.1	Floodway delineations along East Branch of Stony Brook, South Branch of Rockaway Creek, and Whale Pond Brook	18 N.J.R. 1239(a)		
7:13-7.1	Floodway delineations in Montgomery Township and Rocky Hill	18 N.J.R. 1334(a)		
7:13-7.1(d)	Flood hazard delineations for Raritan River and Peters Brook	18 N.J.R. 600(a)		
7:13-7.1(d)	Redelineation of Holland Brook in Somerset County	18 N.J.R. 1866(a)		
7:13-7.1(d)	Redelineation of North Branch Raritan River in Somerset County	18 N.J.R. 1866(b)		
7:14A-4.4, 4.7	Dioxin-containing waste	18 N.J.R. 879(a)	R.1986 d.387	18 N.J.R. 1933(a)
7:14A-6.16	Disposal of solid waste	18 N.J.R. 883(a)		
7:18	Laboratory certification and standards of performance	18 N.J.R. 1239(b)	R.1986 d.351	18 N.J.R. 1797(b)
7:22-1, 2, 8	Wastewater treatment facilities: State matching grants	18 N.J.R. 1869(a)		
7:22-3	Wastewater Treatment Fund procedures	18 N.J.R. 1875(a)		
7:22-4	Wastewater Treatment Trust procedures	18 N.J.R. 1883(a)		
7:22-5	Determination of allowable costs: Wastewater Treatment Fund and Trust	18 N.J.R. 1891(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
7:22-6	Pinelands Infrastructure Trust Fund procedures	18 N.J.R. 1896(a)		
7:22-7	Determination of allowable costs: Pinelands	18 N.J.R. 1904(a)		
7:25-2.20	Higbee Beach Wildlife Management Area	18 N.J.R. 1511(b)	R.1986 d.437	18 N.J.R. 2123(b)
7:25-6	1987-88 Fish Code	18 N.J.R. 1644(a)		
7:26-1.4, 2, 2A, 2B, 5, 12.11, 12.12	Disposal of solid waste	18 N.J.R. 883(a)		
7:26-1.4, 7.5, 7.7, 8.13	Waste oil	18 N.J.R. 878(a)		
7:26-2.6, 2.7	Disposal of asbestos waste	17 N.J.R. 2719(a)	R.1986 d.388	18 N.J.R. 1932(a)
7:26-2.9	Closure and post-closure of sanitary landfills	18 N.J.R. 252(a)		
7:26-2.9	Closure and post-closure of sanitary landfills	18 N.J.R. 924(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow	18 N.J.R. 1773(a)		
7:26-8.1, 8.2, 8.19, 9.3, 9.7, 12.2	Hazardous waste management	17 N.J.R. 2941(a)		
7:26-8.1, 8.2, 8.19, 9.3, 9.7, 12.2	Hazardous waste management: extension of comment period	18 N.J.R. 254(a)		
7:26-8.3, 8.4, 8.13, 8.15, 10.5-10.8, 11.1, 11.5, 11.6, 12.2	Dioxin-containing waste	18 N.J.R. 879(a)	R.1986 d.387	18 N.J.R. 1933(a)
7:26-8.14, 8.15, 8.16	Hazardous waste criteria, identification and listing	18 N.J.R. 1037(a)		
7:26-8.16	Waste code numbers for hazardous constituents	18 N.J.R. 792(a)	R.1986 d.371	18 N.J.R. 1798(a)
7:26-8.17	Hazardous waste delisting procedure	18 N.J.R. 1335(a)		
7:26-17	Scales at solid waste facilities	18 N.J.R. 1154(a)		
7:27-16	Air pollution by volatile organic substances	17 N.J.R. 1969(a)	R.1986 d.379	18 N.J.R. 1936(a)
7:27-16.1, 16.3	Air pollution control: Stage II vapor recovery	18 N.J.R. 1867(a)		
7:27B-3	Determination of volatile organic substances from source operations	17 N.J.R. 2194(a)	R.1986 d.377	18 N.J.R. 1800(a)
7:28-14	Therapeutic radiation installations	18 N.J.R. 1157(a)		
7:28-42.1	Workplace exposure to radio frequency radiation	18 N.J.R. 1166(a)		

(TRANSMITTAL 45, dated August 18, 1986)

HEALTH—TITLE 8

8:21-5	Foods, drugs, cosmetics, devices: order to remove from sale and recall	18 N.J.R. 1361(b)		
8:21-5	Order to remove from sale and recall of foods, drugs, cosmetics, and devices: extension of proposal comment period	18 N.J.R. 1715(b)		
8:31-25.1	Mobile intensive care: administration of medications	18 N.J.R. 602(a)		
8:31-30.1	Health facilities construction: plan review fees	18 N.J.R. 795(a)		
8:31B-2.2, 3.51, 3.57, 3.73, 4.40	Hospital reimbursement: Same Day Surgery services	18 N.J.R. 1908(a)		
8:31B-3.27, 4.42	Hospital reimbursement: capital facilities allowance	18 N.J.R. 1912(a)		
8:31B-3.38, 3.58, App. II, 4.66	Hospital reimbursement: malpractice costs	18 N.J.R. 1911(a)		
8:31B-3.72	Hospital reimbursement: periodic adjustments	18 N.J.R. 1917(a)		
8:31B-3.76-3.82	Hospital reimbursement: URO performance evaluation; post-billing denial of payments	18 N.J.R. 150(b)		
8:31C-1	Residential alcoholism treatment facilities: cost accounting and rate evaluation	18 N.J.R. 1918(a)		
8:33F-1.2	Continuous ambulatory peritoneal dialysis	18 N.J.R. 1241(a)	R.1986 d.372	18 N.J.R. 1816(a)
8:33I	Megavoltage radiation oncology services	18 N.J.R. 1436(a)	R.1986 d.417	18 N.J.R. 2010(a)
8:39-3.11	Availability of information at long-term care facilities	18 N.J.R. 1241(b)	R.1986 d.384	18 N.J.R. 1955(a)
8:41-8	Mobile intensive care: administration of medications	18 N.J.R. 602(a)		
8:43E-1	Hospital Policy Manual	18 N.J.R. 825(a)		
8:43G	Hospital capital policy	18 N.J.R. 1242(a)	R.1986 d.375	18 N.J.R. 1817(a)
8:51-1—6	Standards for local boards of health	18 N.J.R. 1690(a)		
8:52	Standards for local boards of health	18 N.J.R. 1690(a)		
8:57-1.14	Reporting of AIDS and AIDS Related Complex	18 N.J.R. 1245(a)	R.1986 d.408	18 N.J.R. 2011(a)
8:59-1.3, 1.5, 2.1, 3.13, 5.1, 5.5, 6.2, 7.1, 7.2, 8.1, 8.2, 8.5-8.12, 10.3	Worker and Community Right to Know Act	18 N.J.R. 1363(a)	R.1986 d.373	18 N.J.R. 1821(a)
8:60-1.1, 4.2-4.8, 5.2, 5.4-5.7, 6.1, 6.3, 6.11	Asbestos licenses and permits	18 N.J.R. 156(a)		
8:61-1.1	Children and adults with HIV infection and school attendance	18 N.J.R. 1512(a)	R.1986 d.407	18 N.J.R. 2014(a)
8:65-10.1, 10.2	Reschedule Dronabinol from Schedule I to II	18 N.J.R. 1774(a)		
8:65-10.4	Controlled substances: Quazepam and Midazolam	18 N.J.R. 1166(b)	R.1986 d.374	18 N.J.R. 1827(a)
8:71	Generic drug list additions (see 18 N.J.R. 417(a), 984(b), 1102(b), 1382(a), 1463(a))	17 N.J.R. 2842(a)	R.1986 d.383	18 N.J.R. 1957(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
8:71	Generic drug list additions: public hearing (see 18 N.J.R. 1381(a), 1463(b), 1957(a))	18 N.J.R. 537(a)	R.1986 d.406	18 N.J.R. 2015(a)
8:71	Generic drug list additions	18 N.J.R. 1167(a)	R.1986 d.381	18 N.J.R. 1955(b)
8:71	Generic drug additions	18 N.J.R. 1775(a)		

(TRANSMITTAL 42, dated August 18, 1986)**HIGHER EDUCATION—TITLE 9**

9:2-5	Management of computerized information	18 N.J.R. 799(a)		
9:4	Policies and procedures for community colleges	18 N.J.R. 1439(a)		
9:7-3.1	Tuition Aid Grant Program: 1986-87 Award Table	18 N.J.R. 1713(a)	R.1986 d.435	18 N.J.R. 2124(a)
9:11-1.2	Student residency	18 N.J.R. 1777(a)		
9:12-1.5, 2.3	Educational Opportunity Fund Program	18 N.J.R. 801(b)		

(TRANSMITTAL 33, dated August 18, 1986)**HUMAN SERVICES—TITLE 10**

10:2	County Human Services Advisory Councils	18 N.J.R. 1777(b)		
10:12-3	Referral of handicapped students for adult educational services	18 N.J.R. 1997(a)		
10:36-1	Patient supervision at State psychiatric hospitals: public hearing	18 N.J.R. 20(a)		
10:36-2	Clinical review procedures for special status psychiatric patients	17 N.J.R. 2951(a)		
10:51-1, App. B, C	Pharmaceutical services manual	18 N.J.R. 1780(a)		
10:51-1.14, 5.16	Pharmaceutical services: ineligible prescription drugs	17 N.J.R. 2730(a)		
10:51-2.2, 2.3, 2.6	Pharmaceutical Services Manual: pharmacy claims	18 N.J.R. 1674(a)		
10:52-1.5, 1.17	Out-of-state inpatient hospital services	18 N.J.R. 538(a)		
10:56	Dental Services manual	18 N.J.R. 1337(a)	R.1986 d.385	18 N.J.R. 1958(a)
10:61-1, 2	Independent laboratory services	18 N.J.R. 540(a)		
10:62-1, 2, 3	Vision Care Manual	18 N.J.R. 1246(a)		
10:63-3.2, 3.4, 3.5, 3.6, 3.8, 3.10-3.15, 3.18, 3.19	Long-term care facilities: CARE Guidelines	18 N.J.R. 257(a)		
10:66-2, 3	Independent clinic services	18 N.J.R. 541(a)		
10:66-3	Independent clinic transportation services: HCPCS codes	18 N.J.R. 1053(a)	R.1986 d.369	18 N.J.R. 1827(b)
10:66-3	Independent clinic transportation services: HCPCS codes	18 N.J.R. 1252(a)		
10:68-2	Chiropractor billing procedures	18 N.J.R. 810(a)		
10:81-3.17, 3.18, 5.9, 5.10	PAM: AFDC eligibility, WIN status, LLR reevaluation	18 N.J.R. 1513(a)		
10:81-3.34	PAM: temporary absence of child from home	18 N.J.R. 1675(a)		
10:81-3.38	PAM: transfer of resources	18 N.J.R. 1168(a)	R.1986 d.397	18 N.J.R. 2015(b)
10:81-7.21—7.29	PAM: funeral and burial payments	18 N.J.R. 1168(b)	R.1986 d.428	18 N.J.R. 2125(a)
10:82-1.8, 1.9, 2.14, 2.20, 3.1, 3.2, 4.4, 4.6, 4.15, 4.17, 5.3, 5.10	ASH: conformity with Federal regulations	18 N.J.R. 260(a)		
10:82-2.3, 2.4, 4.3	ASH: AFDC eligibility requirements	18 N.J.R. 928(a)		
10:82-5.10	ASH: emergency assistance	17 N.J.R. 2337(a)	Expired	
10:85-3.3	GAM: Medically Needy eligibility	18 N.J.R. 1781(a)		
10:85-4.6	GAM: emergency assistance	18 N.J.R. 1343(a)	R.1986 d.389	18 N.J.R. 1962(a)
10:85-4.8	GAM: funeral and burial payments	18 N.J.R. 1170(a)	R.1986 d.427	18 N.J.R. 2125(a)
10:85-8.4	GAM: information concerning PAAD	18 N.J.R. 1343(b)		
10:87-5.4, 5.5, 12.3, 12.4, 12.7	Food Stamp Program: maximum income limits	18 N.J.R. 1490(a)	R.1986 d.395	18 N.J.R. 2015(c)
10:87-12.1, 12.2	Food Stamp Program: income deductions and maximum coupon allotments	Emergency	R.1986 d.436	18 N.J.R. 2137(a)
10:89-2.2, 2.3, 3.4	Home Energy Assistance	18 N.J.R. 1676(a)		
10:94-4.2, 4.3	Medicaid eligibility and nonliquid resources	18 N.J.R. 542(a)		
10:100-3.6, 3.7	Special Payments Handbook: funeral and burial payments	18 N.J.R. 1171(a)	R.1986 d.426	18 N.J.R. 2125(a)
10:121-2	Adoption subsidy	18 N.J.R. 24(a)		
10:121A-2.2	Certification period for adoption agencies	18 N.J.R. 1923(a)		
10:132	Youth and Family Services: court actions and proceedings	18 N.J.R. 1924(a)		

(TRANSMITTAL 43, dated August 18, 1986)**CORRECTIONS—TITLE 10A**

10A:3	Security and control	18 N.J.R. 1057(b)	R.1986 d.410	18 N.J.R. 2016(a)
10A:5	Close custody units	18 N.J.R. 1067(a)	R.1986 d.409	18 N.J.R. 2027

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
10A:9	Classification of inmates	18 N.J.R. 1649(a)		
10A:16	Medical and health services	18 N.J.R. 1662(a)		
10A:31-3.12, 3.15	Medical screening of new inmates in county facilities: public hearing	17 N.J.R. 2955(b)		

(TRANSMITTAL 13, dated August 18, 1986)**INSURANCE—TITLE 11**

11:1-16	Filing of rate decreases	18 N.J.R. 1998(a)		
11:1-20, 22	Cancellation and nonrenewal of property and casualty/liability policies	17 N.J.R. 2956(a)		
11:1-20.1, 20.2, 20.3, 22.1	Cancellation and nonrenewal of commercial policies	18 N.J.R. 1445(a)		
11:1-24	Credit cards and payment of insurance premiums	18 N.J.R. 1999(a)		
11:2-19.2	Continuing education	18 N.J.R. 44(a)		
11:2-20	License renewal: continuing education requirement	17 N.J.R. 2962(a)		
11:3-8	Nonrenewal of automobile policies	18 N.J.R. 1079(a)	R.1986 d.418	18 N.J.R. 2039(a)
11:3-16	Pre-proposal: Private passenger automobile rate filings	18 N.J.R. 1083(a)		
11:3-17	Rating organizations: private passenger automobile filings	18 N.J.R. 1171(b)	R.1986 d.419	18 N.J.R. 2045(a)
11:3-22	Automobile coverage option survey	18 N.J.R. 1344(b)		
11:4-2	Replacement of life insurance and annuities	17 N.J.R. 2344(a)	Expired	
11:4-16.6	Daily hospital room and board coverage	18 N.J.R. 608(a)		
11:4-20	Coverage of the handicapped	18 N.J.R. 44(b)		
11:4-21	Limited death benefit policies	18 N.J.R. 1085(a)		
11:5-1.3	Real estate licensing qualifications	18 N.J.R. 1782(a)		
11:5-1.15	Real estate advertising	17 N.J.R. 2351(a)	Expired	
11:5-1.15	Advertising by real estate licensees	18 N.J.R. 1679(a)		
11:5-1.16, 1.23	Obligations of real estate licensees	18 N.J.R. 1677(a)		
11:5-1.23	Obligations of real estate licensees	18 N.J.R. 1680(a)		
11:5-1.25	Sales of interstate properties	18 N.J.R. 1678(a)		
11:5-1.28	Certification as approved real estate education instructor	18 N.J.R. 1681(a)		
11:5-1.30	Sponsoring of real estate license applications	18 N.J.R. 2000(a)		
11:12	Legal services insurance	18 N.J.R. 1182(b)		
11:12	Pre-proposal: Legal services insurance	18 N.J.R. 1183(a)		
11:17-1	Surplus lines insurance guaranty fund surcharge	18 N.J.R. 1173(a)		

(TRANSMITTAL 40, dated July 21, 1986)**LABOR—TITLE 12**

12:15-1.3	Unemployment compensation and temporary disability: 1987 maximum weekly benefits	18 N.J.R. 1787(a)		
12:15-1.4	Unemployment compensation: 1987 taxable wage base	18 N.J.R. 1787(b)		
12:15-1.5	Unemployment compensation: 1987 contribution rate for governmental entities	18 N.J.R. 1788(c)		
12:15-1.6	Base week earnings for claim eligibility	18 N.J.R. 1787(c)		
12:15-1.7	Alternate earnings test	18 N.J.R. 1788(a)		
12:16-19.1	Charging of unemployment benefits to employer's account	18 N.J.R. 1682(a)		
12:16-20.1	Work relief and work training programs: exempt employment	18 N.J.R. 1683(a)		
12:17-2.2, 2.4	Unemployment compensation claims and verification of Social Security numbers	18 N.J.R. 1683(b)		
12:17-3.1, 4.1, 4.2	"Week of partial unemployment" defined	18 N.J.R. 1684(a)		
12:17-7.1, 7.2	Unemployment compensation and temporary disability: disclosure of information	18 N.J.R. 1447(a)	R.1986 d.420	18 N.J.R. 2127(a)
12:235-1.6	Workers' compensation: 1987 maximum weekly benefit	18 N.J.R. 1788(b)		

(TRANSMITTAL 32, dated August 18, 1986)**COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A**

12A	Departmental rules; small business set-aside contracts	16 N.J.R. 1955(a)	R.1984 d.421	16 N.J.R. 2683(a)
12A:100-1	Commission on Science and Technology: Innovation Partnership Grant Program	18 N.J.R. 1175(a)	R.1986 d.350	18 N.J.R. 1828(a)

LAW AND PUBLIC SAFETY—TITLE 13

13:27	Rules of Board of Architects	17 N.J.R. 2851(b)		
13:30-8.6, 8.15	Practice of dentistry and referral fees	18 N.J.R. 1515(a)		
13:35-6.10	Ambulatory care facilities: advertising and solicitation practices	18 N.J.R. 1788(d)		
13:37-6.2	Delegation of selected nursing tasks	18 N.J.R. 1448(a)	R.1986 d.431	18 N.J.R. 2128(a)
13:37-6.3	Nursing procedures: administration of renal dialysis treatment	18 N.J.R. 398(b)		
13:39A-1.4	Licensure of physical therapists: fees and charges	18 N.J.R. 1177(a)		
13:39A-2.2	Authorized practice by physical therapist	18 N.J.R. 1177(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
13:39A-2.2, 3.3	Electromyographic testing by licensed physical therapist: public hearing	18 N.J.R. 1684(b)		
13:39A-3.3	Physical therapy: unlawful practices	18 N.J.R. 1178(a)		
13:39A-5.2—5.4, 5.6—5.9	Physical therapy educational credentials and examination standards	18 N.J.R. 1179(a)		
13:39A-6	Temporary licensure of physical therapists	18 N.J.R. 1179(b)		
13:42-6	Reimbursement for psychological services: disclosure of patient information	18 N.J.R. 817(a)	R.1986 d.438	18 N.J.R. 2129(a)
13:44-2.5	Veterinary practice and referral fees	18 N.J.R. 1515(b)	R.1986 d.414	18 N.J.R. 2048(a)
13:45A-2	Motor vehicle advertising practices	17 N.J.R. 2861(a)		
13:45A-24	Sale of grey market merchandise	17 N.J.R. 2866(a)		
13:46-1A.1, 1A.2, 5.19, 12.4	Boxing: weight classes, age limitations, health safeguards	18 N.J.R. 1789(a)		
13:46-3.1	Bandage specifications for boxer's hands	18 N.J.R. 1924(b)		
13:46-4.7, 4.25	Licensure of boxers	18 N.J.R. 1924(c)		
13:46-8.19	Point system scoring in boxing contests	18 N.J.R. 1515(c)		
13:46-8.25, 11.10	Compensation for boxing referees, judges and timekeepers	18 N.J.R. 1925(a)		
13:46-21.2	Compensation of wrestling referees	18 N.J.R. 1790(a)		
13:47-6.19	Prohibited prizes in games of chance	18 N.J.R. 1180(a)		
13:47-14.3	Rental of premises for bingo	18 N.J.R. 1180(b)		
13:54	Regulation of firearms businesses	18 N.J.R. 51(a)	R.1986 d.413	18 N.J.R. 2048(b)
13:70-1.17	Thoroughbred racing: policing requirements	18 N.J.R. 819(a)	R.1986 d.354	18 N.J.R. 1829(a)
13:70-3.47	Thoroughbred racing: Coggins test	18 N.J.R. 401(a)		
13:70-3.47	Thoroughbred racing: Coggins test for track entrance	18 N.J.R. 1448(b)	R.1986 d.416	18 N.J.R. 2054(a)
13:70-29.56	Thoroughbred racing: Super Six	18 N.J.R. 1619(a)	R.1986 d.411	18 N.J.R. 2054(b)
13:71-5.1	Harness racing: policing requirements	18 N.J.R. 820(a)	R.1986 d.358	18 N.J.R. 1830(a)
13:71-6.24	Harness racing: Coggins test	18 N.J.R. 402(b)		
13:71-6.24	Harness racing: Coggins test for track entrance	18 N.J.R. 1448(c)	R.1986 d.415	18 N.J.R. 2055(a)
13:71-21.8	Harness racing: purse deductions	18 N.J.R. 1516(a)		
13:71-27.53	Harness racing: Super Six	18 N.J.R. 1619(a)	R.1986 d.412	18 N.J.R. 2055(b)

(TRANSMITTAL 45, dated August 18, 1986)

PUBLIC UTILITIES—TITLE 14

14:10-5	Inter LATA telecommunications carriers	17 N.J.R. 2012(a)	R.1986 d.368	18 N.J.R. 1830(b)
14:18-1.2, 3.9	Cable TV: service outages	18 N.J.R. 619(a)	R.1986 d.376	18 N.J.R. 1831(a)
14:18-1.2, 11.21, 3	CATV: franchise renewals	18 N.J.R. 1181(a)		

(TRANSMITTAL 28, dated July 21, 1986)

ENERGY—TITLE 14A

14A:3-4.4	Energy Subcode: thermal efficiency standards	18 N.J.R. 1926(a)		
14A:6-2	Business Energy Improvement Subsidy Program	18 N.J.R. 1347(a)	R.1986 d.367	18 N.J.R. 1833(a)
14A:21-1.2, 2.2, 2.3, 3.4—3.7, 5.2, 6.1, 6.2, 7.1, 7.2, 7.5—7.7, 8.1—8.3, 9.4, 10.1, 11.2, 11.3	Home Energy Savings Program	18 N.J.R. 2001(a)		

(TRANSMITTAL 20, dated August 18, 1986)

STATE—TITLE 15

15:3-2.15	Microfilm standards: correction to Administrative Code	_____	_____	18 N.J.R. 1623(b)
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(TRANSMITTAL 17, dated July 21, 1986)

PUBLIC ADVOCATE—TITLE 15A

(TRANSMITTAL 1, dated March 20, 1978)

TRANSPORTATION—TITLE 16

16:27	Bureau of Traffic Engineering	18 N.J.R. 1184(a)	R.1986 d.352	18 N.J.R. 1835(a)
16:28-1.92	Parking and stopping on Route 169	18 N.J.R. 1790(b)		
16:28A-1.7, 1.36	No parking zones along U.S. 9 in Little Egg Harbor and Route 57 in Mansfield	18 N.J.R. 1517(a)	R.1986 d.400	18 N.J.R. 2056(a)
16:28A-1.23, 1.27, 1.51, 1.71, 1.106	No parking zones along Routes 33, 38, 168, 67 and Truck Route U.S. 1 and 9	18 N.J.R. 1350(a)	R.1986 d.361	18 N.J.R. 1836(a)
16:28A-1.33	Parking along Route 47 in Cape May County	18 N.J.R. 1491(a)	R.1986 d.391	18 N.J.R. 2056(b)
16:28A-1.61	Bus stop zones on U.S. 9W in Englewood Cliffs	18 N.J.R. 1351(a)	R.1986 d.362	18 N.J.R. 1836(b)
16:29-1.56, 1.58, 1.59	No passing zones along U.S. 9W, U.S. 202, and Route 77	18 N.J.R. 1449(a)	R.1986 d.394	18 N.J.R. 2056(c)
16:29-1.60	No passing zones along Route 54 in Atlantic County	18 N.J.R. 1449(b)	R.1986 d.392	18 N.J.R. 2057(a)
16:29-1.61-1.64	No passing zones along Routes 17, 24, 45 and 48	18 N.J.R. 1450(a)	R.1986 d.393	18 N.J.R. 2057(b)
16:30-1.8	One-way on Route 57 ramp in Warren County	18 N.J.R. 1517(b)	R.1986 d.402	18 N.J.R. 2057(c)
16:30-2.11	Stop-intersections along Route 57, Warren County	18 N.J.R. 1517(c)	R.1986 d.401	18 N.J.R. 2057(d)
16:30-3.4	Bus and HOV lane on U.S. 9 in Middlesex County	18 N.J.R. 1518(a)	R.1986 d.403	18 N.J.R. 2058(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:31-1.4	No left turn on Route 35 in Sayreville	18 N.J.R. 1352(a)	R.1986 d.363	18 N.J.R. 1837(a)
16:31-1.14, 1.21	No left turns along Route 15 in Morris County and Route 57 in Warren County	18 N.J.R. 1518(b)	R.1986 d.404	18 N.J.R. 2058(b)
16:32-1.2, 1.3, 3	Designated routes for double trailers and wide trucks	18 N.J.R. 1184(b)		
16:41-8.9	Outdoor advertising permit fees for vegetation control	18 N.J.R. 625(b)	R.1986 d.378	18 N.J.R. 1837(b)
16:49-1.3	Transportation of hazardous materials	18 N.J.R. 933(a)		
16:49-1.3, 1.4, 1.5, 1.6, 2.1	Transportation of hazardous materials	18 N.J.R. 1791(a)		
16:51	Pre-proposal: Practice before Office of Regulatory Affairs	17 N.J.R. 2867(a)		
16:53-3.5, 3.19, 6.28, 6.29	Autobus specifications	18 N.J.R. 1519(a)	R.1986 d.399	18 N.J.R. 2058(c)
16:74	NJ TRANSIT: claims of destructive competition	18 N.J.R. 1255(a)	R.1986 d.434	18 N.J.R. 2133(a)
16:79	NJ TRANSIT: background checks on prospective employees	18 N.J.R. 1685(a)	R.1986 d.433	18 N.J.R. 2134(a)

(TRANSMITTAL 43, dated August 18, 1986)**TREASURY-GENERAL—TITLE 17**

17:1-1.17	Administrative expenses proration among retirement systems	18 N.J.R. 1686(a)	R.1986 d.425	18 N.J.R. 2135(a)
17:1-2.37	Alternate Benefit Program: transmittal of employee contributions	18 N.J.R. 1256(a)		
17:1-4.35	PERS: purchase of temporary service credit	18 N.J.R. 1450(b)	R.1986 d.390	18 N.J.R. 2059(a)
17:2-6.1	PERS: application for retirement	18 N.J.R. 1451(a)	R.1986 d.432	18 N.J.R. 2135(b)
17:3-6.1	Teachers' Pension and Annuity Fund: filing of retirement application	18 N.J.R. 1517(b)		
17:4-6.1	Police and Firemen's Retirement System: retirement applications	18 N.J.R. 1795(a)		
17:5-5.1	State Police Retirement System: filing of retirement application	18 N.J.R. 1520(a)		
17:5-5.12	State Police disability retirant rule	17 N.J.R. 2746(b)		
17:6-3.1	Consolidated Police and Firemen's Pension Fund: administrative change	_____	_____	18 N.J.R. 1624(a)
17:7-1.4	Prison Officers' Pension Fund: election of commission members	18 N.J.R. 1352(b)		
17:7-3.1	Prison Officers' Pension Fund: retirement applications	18 N.J.R. 1796(a)		
17:9-6.1	State Health Benefits Program: "retired employee" status	18 N.J.R. 1451(b)	R.1986 d.423	18 N.J.R. 2135(c)
17:9-6.6	State Health Benefits Program: coverage for surviving dependent	18 N.J.R. 1452(a)	R.1986 d.424	18 N.J.R. 2135(d)
17:16-17.1, 17.3	State Investment Council: limitations on common and preferred stock and convertible issues	18 N.J.R. 1353(a)	R.1986 d.356	18 N.J.R. 1838(a)
17:16-37.1	State Investment Council: repurchase agreements	18 N.J.R. 1353(b)	R.1986 d.357	18 N.J.R. 1838(b)
17:20-4.4, 5.1, 6.2, 6.4	Lottery Commission rules	18 N.J.R. 1927(a)		

(TRANSMITTAL 40, dated June 16, 1986)**TREASURY-TAXATION—TITLE 18**

18:7-4.5, 4.6, 5.5	Corporation business tax: indebtedness, interest, and offsets	18 N.J.R. 2004(b)		
18:7-11.16	Corporation business tax: returns filed by S corporations	18 N.J.R. 1686(b)		
18:24-1.2	Sales and Use Tax: "periodicals"	18 N.J.R. 1928(a)		
18:26-8.7	Transfer inheritance tax waiver	18 N.J.R. 1520(b)		

(TRANSMITTAL 37, dated July 21, 1986)**TITLE 19—OTHER AGENCIES**

19:12	Mediation, fact-finding, arbitration	18 N.J.R. 1357(a)	R.1986 d.354	18 N.J.R. 1838(c)
19:16	Labor disputes in public fire and police departments	18 N.J.R. 1358(a)	R.1986 d.355	18 N.J.R. 1839(a)
19:17-2.1, 3.1-4.5	PERC: Appeal Board procedure	18 N.J.R. 1521(a)		
19:25-1.7, 7.2, 7.3, 7.4	Surplus campaign funds	18 N.J.R. 1359(a)		
19:75-1.1, 2.1, 2.2, 2.3, 3.1, 5.4, 6.1, 6.2, 7.1, 7.2, 7.4, 9.2, 9.4	Atlantic County Transportation Authority: bus management program	18 N.J.R. 1688(a)		

(TRANSMITTAL 33, dated August 18, 1986)**TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY**

19:40-1.2	Slot machine jackpot payouts	18 N.J.R. 2005(a)		
19:41-9.7	Fee for casino hotel alcoholic beverage license	18 N.J.R. 1687(a)		
19:45-1.1, 1.37, 1.40, 1.40A	Slot machine jackpot payouts	18 N.J.R. 2005(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
19:45-1.27	Patron credit	18 N.J.R. 935(b)	R.1986 d.365	18 N.J.R. 1839(a)
19:45-1.32, 1.43	Hard count room procedures	18 N.J.R. 1929(a)		
19:45-1.40	Manually-paid slot machine jackpots	18 N.J.R. 1360(a)	R.1986 d.398	18 N.J.R. 2059(b)
19:46-1.26	Slot machine jackpot payouts	18 N.J.R. 2005(a)		
19:46-1.27	Aisle space and slot machines	17 N.J.R. 2533(a)		
19:47-2.9	Blackjack: insurance wagers	18 N.J.R. 1361(a)	R.1986 d.422	18 N.J.R. 2136(a)
19:50-1.6	Purchasing and dispensing of wine	18 N.J.R. 160(a)	R.1986 d.364	18 N.J.R. 1840(a)
19:51	Advertising by licensees	18 N.J.R. 1258(a)	R.1986 d.366	18 N.J.R. 1841(a)
19:52	Casino entertainment	18 N.J.R. 1687(b)	R.1986 d.429	18 N.J.R. 2136(b)

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