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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: NOVEMBER 16, 1987

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT DECEMBER 21, 1987

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INTERESTED PERSONS

Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **March 2, 1988**. 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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NEW JERSEY REGISTER

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RULE PROPOSALS

COMMUNITY AFFAIRS

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:23.

DIVISION OF HOUSING AND DEVELOPMENT

The following proposals are authorized by Leonard S. Coleman, Jr., Commissioner, Department of Community Affairs.

Submit comments by March 2, 1988 to:
 Michael L. Ticktin, Esq.
 Administrative Practice Officer
 Department of Community Affairs
 CN 804
 Trenton, NJ 08625

(a)

Uniform Construction Code

Proposed Readoption: N.J.A.C. 5:23

Authority: N.J.S.A. 52:27D-123.
 Proposal Number: PRN 1988-52.

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 5:23 will expire on April 1, 1988.

The Department has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. Therefore, N.J.A.C. 5:23 is proposed for readoption without change.

P.L. 1975, c.217, as amended, specifically N.J.S.A. 52:27D-123, requires the Commissioner of Community Affairs to adopt a State Uniform Construction Code to govern all building construction in the State. This Code includes, in addition to the administrative rules, the Barrier-Free Subcode and the Asbestos Hazard Abatement Subcode set forth in N.J.A.C. 5:23, the building, plumbing, fire protection, electrical, energy, mechanical, one and two family dwelling and manufactured housing subcodes which are adoptions of codes and standards issued by nationally recognized codewriting organizations.

The purpose of these rules is to establish standards and procedures for the regulation of building construction. Thus, the chapter includes subchapters concerned with administration and enforcement (including, inter alia, permit and certificate of occupancy requirements, variations, inspections, fees, compliance and enforcement, measures for dealing with unsafe structures, and appeal procedures), subcodes, procedures and requirements for State, local and private enforcing agencies, standards and procedures for licensing of code enforcement officials and inspectors and construction-related tax exemptions (solar facilities and automatic fire suppression systems). The Barrier-Free and Asbestos Hazard Abatement subcodes were included in the chapter because no nationally-recognized codes existed which could be adopted by reference.

Social Impact

Readoption of the rules, which includes readoption of the subcodes adopted by reference, will insure continuity in construction code enforcement throughout the State. Failure to readopt these rules would result in incalculable harm to purchasers and occupants of buildings, and to fire fighters and the general public, since there would no longer be any control over the construction and alteration of buildings and there would be no administrative safeguard against unsafe building practices.

Economic Impact

There will be no economic change as a result of readoption since no new fees are being established and no new procedural or technical requirements are being imposed. Failure to readopt would provide possible short term financial benefit to builders who might be inclined to "cut corners," although this benefit might be tempered by loss incurred as a consequence of litigation if injury is sustained as a result of improper construction.

Regulatory Flexibility Statement

In the interest of public health and safety, the same construction standards must apply to construction work done by small businesses as to that done by other builders. Failure to readopt the rules would be as detrimental to small businesses for whom construction work is done as to any other purchasers or users of buildings.

(b)

Uniform Construction Code

Certificate of Occupancy Requirements

Proposed Amendment: N.J.A.C. 5:23-2.23

Authority: N.J.S.A. 52:27D-119 et seq.
 Proposal Number: PRN 1988-53.

Summary

This amendment is being proposed in response to a complaint from a Construction Board of Appeals member who noted an inexplicable divergence between N.J.A.C. 5:23-2.23(b) and BOCA Section 119.2 upon which it was based.

The State Uniform Construction Code section, controlling the issuance of a certificate of occupancy for a building or other structure in the process of alteration, does not permit continued use or occupancy during the alteration. This wording is needlessly restrictive. The intent of the rule is to prohibit use or occupancy for more than 30 calendar days following the completion of an alteration only in the event that no certificate of occupancy was issued following the completion of the alteration.

The needless prohibition of use and occupancy of buildings undergoing alteration is costly and inconvenient. Further, the current rule seems to imply that it should be possible to complete any sort of alteration in 30 calendar days. This was not the intent of the Department.

Social Impact

The Department does not anticipate that this proposed amendment will have any direct social impact as its purpose is to correct a technical error which makes the State code at variance with its reference standard, the Building Officials and Code Administrators' (BOCA) National Building Code. The correction, by reducing confusion, may incidentally make it easier for building owners to continue uses during building alterations. This is not a change in the intent of the code.

Economic Impact

Because the proposed amendment is essentially a clarifying change, it is not anticipated that the amendment will have any economic impact. Because confusion over the meaning of the code prior to this change may have interfered with the ability of building owners to continue uses in a building undergoing alterations, elimination of this confusion may result in incidental savings.

Regulatory Flexibility Analysis

Because this rule, as presently worded, was interpreted in conflict with the similar BOCA Section 119.2, it caused confusion among construction officials and often caused them to interrupt occupancies or business uses needlessly. This proposed amendment should alleviate the confusion, and prevent the interruption of lawful uses, saving the small business community time and money.

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

5:23-2.23 Certificate of occupancy requirements

(a) (No change.)

(b) Building hereafter altered: A building or structure hereafter enlarged, extended or altered shall not be occupied or used until the certificate of occupancy shall have been issued by the construction official certifying that the work has been completed in accordance with the provisions of the approved permit, except as is provided in regulations. Any use or occupancy, **which was not discontinued during the work [or] of alteration, shall be discontinued within 30 calendar days[,] after the completion of the alteration** unless the certificate of occupancy is secured from the enforcing agency.

(c)-(k) (No change.)

(a)

**Uniform Construction Code
Code Interpretations****Proposed New Rules: N.J.A.C. 5:23-9.1 and 9.2**

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

Proposal Number: PRN 1988-54.

The agency proposal follows:

Summary

N.J.A.C. 5:23-3.9 provides for the promulgation by rule of interpretations of the administrative provisions of the Uniform Construction Code and for the issuance of formal technical opinions with regard to the proper application of standards set forth in the various adopted subcodes. The proposed N.J.A.C. 5:23-9.1 is an interpretation which makes clear the inapplicability of Chapter 18 of the National Standard Plumbing Code (Plumbing Subcode) to manufactured housing constructed to Federal standards. N.J.A.C. 5:23-9.2 adopts an interpretation (number 2A) which concerns procedures for construction permits for single family houses which was issued by the Department prior to effective date of the current text of N.J.A.C. 5:23-3.9. The other interpretations issued prior to that date are technical in nature and are being reissued as formal technical opinions.

Social Impact

By making clear that Chapter 18 of the Plumbing Subcode, which deals with mobile homes that are actually intended to be moved from site to site, is inapplicable to manufactured homes that are permanently installed at one location, the proposed new rule will prevent inappropriate plumbing connections. Proper codification of interpretations will assist users of the rules in locating them.

Economic Impact

To the extent that delay and confusion are reduced, the new rules will have a positive economic impact.

Regulatory Flexibility Statement

Proposed new rule N.J.A.C. 5:23-9.1 merely clarifies that Chapter 18 of the Plumbing Subcode is inapplicable to permanently installed manufactured housing that meets Federal standards. Proposed new rule N.J.A.C. 5:23-9.2 is also a clarification of procedures for applications for construction permits for single family residences. Such compliance requirements apply to builders who may meet the definition of small businesses as defined in the Regulatory Flexibility Act, P.L. 1986, c.169. However, since the new rules merely clarify existing procedures, no additional costs of compliance should be incurred. In addition, in view of the goal of uniform application of the code, no differential treatment is accorded small businesses.

Full text of the proposed new rules follows.

SUBCHAPTER 9. CODE INTERPRETATIONS**5:23-9.1 Application of the Plumbing Subcode to certain mobile homes**

(a) Chapter 18 of the Plumbing Subcode (National Standard Plumbing Code) is not applicable to permanently installed mobile homes meeting the Federal Manufactured Home Construction and Safety Standards, 24 C.F.R. Part 3280.

(b) An approved structure placed on a site for use as a permanent dwelling shall meet the requirements of the State Plumbing Subcode, excluding Chapter 18 of the Plumbing Subcode (National Standard Plumbing Code), or, if applicable, the Federal Manufactured Home Construction and Safety Standards.

5:23-9.2 Interpretation: Construction Permit for a single family residence

(a) Any application for a construction permit for a single family residence shall be accompanied by at least two copies of plans drawn to scale, with sufficient clarity and detailed dimensions to show the nature and character of the work to be performed. Plans submitted shall not be required to show more detail or include more information than is reasonably necessary to assure compliance with the requirements of the Uniform Construction Code and rules in this chapter.

(b) Plans containing the following information shall be considered to meet the requirements of (a) above:

1. Site diagram consisting of a site plan showing size and location of all new and existing construction on the site with distances from lot lines and indicating new building services, location and size.

2. Construction plans consisting of a scale drawing showing foundation, floor plans, and elevations, including structural framing notes for all floors, ceilings and roofs. Only girders and columns need be identified and located on the plan. Included on the drawings shall be a loading schedule indicating the live loads for which the structure is designed.

3. The following details shall be required:

i. A cross section through one typical wall showing construction details from footing to and including roof framing. This section shall indicate all construction materials used including roofing, vapor barriers, sheathing type and thickness, insulation type and thickness, windows, glazing type if other than standard window glazing is used, interior finish material, floor type and thickness, structure, foundation and footings. Decorative material shall not be required to be shown unless it contributes to the structural integrity of the section.

ii. Electrical details indicating lighting; receptacles; motors and equipment; smoke detectors; service entrance locations; size and type (overhead or underground); panel size, location; number of proposed circuits. A symbol legend shall be included.

iii. Plumbing details indicating the locations of fixtures and a notice or table listing water and drainage pipe sizes. A note stating if sewage disposal is to public sewer or individual septic system shall be included.

iv. Mechanical details indicating the type of heating system; location, size and type of heating unit, noting the distribution method and indicating design rates, location of fire dampers and safeguards; and location, type and size of flue.

4. The drawings shall bear the seal and signature of an architect or engineer who prepared the plans and is registered in the State of New Jersey. The seal and signature shall appear on each sheet of each copy of the plans submitted.

i. The construction official shall waive the requirements for sealed plans in the case of a single family home owner who prepares his or her own plans for the construction, alteration or repair of a structure used or intended to be used exclusively as the owner's private residence, and which is to be constructed by the owner, providing that the owner shall submit an affidavit attesting to the fact that he has prepared the plans and that the plans are, in the opinion of the construction official and appropriate subcode officials, legible and complete for the purpose of ensuring compliance with the regulations.

ii. Plumbing plans, electrical plans and mechanical plans may be prepared by licensed plumbers, licensed electrical contractors and mechanical contractors, respectively, in accordance with these regulations.

5. Construction plans, and electrical, plumbing, and mechanical details may be shown on more than one drawing.

6. Where a prototype plan has been approved pursuant to existing regulations, only a site diagram and reference to the approved prototype plan shall be required. This site diagram must be signed and sealed by a registered architect or licensed professional engineer.

7. The Construction Official, upon the advice of the appropriate subcode official, may waive any or all of the requirements for plans in (b)1 through 6 above when the work is of a minor nature.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Proposed Amendments to Rules for Principal Certification

Public Hearings

Take notice that the State Board of Education will hold special public hearings concerning proposed amendments to rules for principal certification. The hearings will be held:

February 4, 1988 and
February 23, 1988
2:00 P.M. to 6:00 P.M.
State Library Archives Room
185 West State Street
Trenton, NJ 08625

Interested persons should call (609) 292-0739 to reserve time to speak.

HUMAN SERVICES

(b)

DIVISION OF YOUTH AND FAMILY SERVICES

Social Services Program for Individuals and Families Personal Needs Allowance: Residential Health Care Facilities and Boarding Homes

Proposed Amendment: N.J.A.C. 10:123-3.2

Authorized By: Drew Altman, Commissioner, Department of Human Services.

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

Proposal Number: PRN 1988-55.

Submit written comments by March 2, 1988 to:

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

The agency proposal follows:

Summary

The proposed amendment makes one change in the existing text of N.J.A.C. 10:123-3.2. The amount of the personal needs allowance to be reserved by owners and operators of residential health care facilities and boarding homes for the use of Supplemental Security Income or General Public Assistance recipient residents is being increased by two dollars from \$53.00 to \$55.00. This increase is based on the total 1987 Federal Social Security cost of living increase.

Social Impact

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

Economic Impact

Recipients of the increased personal needs allowance will benefit by having their spending power, for use in purchasing incidentals, keep pace with increases in cost of living. There will be no negative impact on facility owners or operators.

Regulatory Flexibility Statement

This rule and the proposed amendments are required by N.J.S.A. 44:7-87. The rule affects small businesses, in that a number of the residential health care facilities and boarding homes are small businesses as delineated in N.J.S.A. 52:14B-16. However, it is not appropriate to exclude any small business from compliance with the rule, since to do so would penalize the residents of the health care facilities and boarding homes. There is a statutory entitlement to the personal needs allowance, and to adjustments made in favor of the residents.

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

10:123-3.2 Amount

The owner or operator of each residential health care facility or boarding home shall reserve to each Supplemental Security Income recipient residing therein, and the owner or operator of each residential health care facility shall reserve to each General Public Assistance recipient residing therein, a personal needs allowance in the amount of at least [\$53.00] **\$55.00** per month. No owner or operator or agency thereof shall interfere with the recipient's retention, use, or control of the personal needs allowance.

INSURANCE

The following proposals are authorized by Kenneth D. Merin, Commissioner, Department of Insurance.

Submit comments by March 2, 1988 to:

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

(c)

DIVISION OF LICENSING AND ENFORCEMENT

Insurance Producer Licensing

Proposed Repeals: N.J.A.C. 11:1-8.1, 11:1-9,
11:1-12.1, 11:1-12.3, 11:1-12.4, 11:1-12.6, 11:1-14,
11:1-18, 11:1-19 and 11:12-1.3

Proposed New Rules: N.J.A.C. 11:17-1, 2 and 5

Authority: N.J.S.A. 17:1C-6, 17:1-8.1, P.L. 1987, c.293 (N.J.S.A. 17:22A-1 et seq.).

Proposal Number: PRN 1988-57.

The agency proposal follows:

Summary

Summary of Public Comments and Agency Responses:

These rules were pre-proposed on November 16, 1987 at 19 N.J.R. 2112(a). Four comments were received. The following is a summary of the comments on the pre-proposed licensing rules, and agency responses to those comments.

COMMENT: Two comments strongly urged that auto physical damage and liability only not be permitted as a kind of insurance authorized to be sold by limited insurance representatives in pre-proposal N.J.A.C. 11:17-2.10(a). The comments urge that, under present law, automobile insurance is far more complex, and choosing appropriate coverage involves detailed explanation and counseling by skilled professionals, and decisions on complex choices by the consumer. It was commented that industry experience has demonstrated a problem in the past with this category of limited license, and permitting such coverage to be sold by nonprofessional limited insurance representatives will exacerbate existing problems.

RESPONSE: The Department agrees with the comments and the proposed new rules eliminate auto physical damage and liability only as an appropriate coverage to be sold by limited insurance representatives. The statutory criteria for limited insurance representatives are those lines of insurance which by the nature of the line and the manner by which it is marketed to the public does not require the professional competency of a licensed insurance producer. The complexity of present automobile insurance laws in New Jersey requires those marketing it to have substantial professional qualifications and skills exceeding those of a limited insurance representative.

COMMENT: Two comments expressed concern over the standards of approval of business names in pre-proposed N.J.A.C. 11:17-2.7(c), specifically inquiring whether these standards would be applied in such a manner to prevent the licensing of present agents and brokers under their present business names. The comments noted that substantial invest-

INSURANCE

PROPOSALS

ment in signs, advertising, stationery, good will, etc. have been made in existing names. The comments suggest that the rule specifically provide that the names of existing licensees are "grandfathered".

RESPONSE: The proposed new rules will not automatically disturb any presently recorded business names. All presently licensed agents and brokers will be relicensed contemporaneously as producers. Licenses will be issued under present business names. The Department notes that, because of the specific language of this rule noting that issuance of a license will be deemed approval of the business name, no "grandfather" language appears necessary.

COMMENT: Two comments objected to the language of pre-proposed N.J.A.C. 11:17-2.7(c)5 prohibiting use of a franchise designation in any business name. The comments note that real estate agents and scores of other business entities use franchise designations, and franchising has become common as the manner of conducting many types of businesses throughout the United States.

RESPONSE: The proposed new rules restate the existing standard in the current rule, N.J.A.C. 11:1-18.4(b), which was adopted in January, 1986. It thus does not disturb any existing records or relationships. Standards for using a franchise name or designation in producer business names or advertising, and conducting the business of an insurance producer as a franchisee, raise a great number of regulatory issues and potential problems. These include the interplay of Federal trademark laws with State laws; national and local advertising; commission sharing; terms of franchise agreements that may be inconsistent with State regulations; and rights and responsibilities of the franchisor, franchisee or Department upon termination of franchising relationships. These issues more properly would be addressed in a comprehensive rule dealing specifically with franchised producers, after a thorough review of all of the issues involved and the impact on producer regulatory policy. The Department notes, for example, that there is a separate rule resolving some of these issues for franchised real estate brokers. The Department believes that it is inappropriate to attempt an examination and resolution of producer franchise issues in the proposed new rules which have only a minor section dealing solely with business names. Therefore the intent of the current and pre-proposed language remains, subject to Department adoption of rules or other procedures concerning franchised producers.

COMMENT: One comment expressed concern over the provisions of pre-proposed N.J.A.C. 11:17-2.11(d) dealing with the requirement of a bond for surplus lines authority. First, the comment noted that there is no maximum amount of a bond. Secondly, the comment expressed concern about the pre-proposed new rules' language to the effect that failure to maintain a bond would serve to void the authority. The comment stated that this provision as drafted vests regulatory authority in a nongovernmental entity, that is, the bonding company, and that it places the surplus lines licensee at the mercy of an uncertain market place.

RESPONSE: The Department notes that the prerequisite of a bond for surplus lines authority is statutory and existed under the previous statute and rules. It is designed to secure the payment of premium taxes collected by producers doing surplus lines business. While there is no statutory maximum, the standard for selecting a maximum includes consideration of the volume of surplus lines business, which is an adequate standard considering the potential range of that volume of business and the purpose of the bond. Concerning the question whether the statute justifies the language in the pre-proposed new rules concerning the effect of a producer's failure to maintain a bond in effect, the Department notes the potential problem of a producer in obtaining a surplus lines bond at the time of licensing that covers the full, four-year term of the license. Many of these bonds are for a year or some other period, and are thereafter renewed. The pre-proposed new rules permit the issuance of a surplus lines license without the posting of a bond covering the full term of the license, but thereafter place the burden on the producer to maintain in effect a bond in the amount required for that producer. To do otherwise would prevent the producer from being licensed in the first place, for failure to meet the statutory requirements.

COMMENT: One comment opposed the provision in pre-proposed N.J.A.C. 11:17-2.14(a) permitting the Department to refuse to accept a request for cancellation of an organization license unless all licensed officers or partners consented to the request. The comment indicated that the provision potentially hands unjustifiably great leverage to non-owner officers and minority stockholders, and requested a change so that the license could be cancelled at the request of 75 percent or more of the organization ownership.

RESPONSE: The pre-proposed new rules permit licenses to be terminated voluntarily. With organization licenses, however, there are occasional problems resulting from internal disputes between partners or

the officers of closely held corporations. The Department wishes to avoid both canceling licenses arbitrarily, based on the wishes of a single disgruntled officer, and becoming embroiled in such disputes. The Act specifies that only one licensed officer or partner is necessary to support an organization license. The pre-proposed new rules permit the Department to inquire when a request for cancellation is sent by less than all licensed officers or partners of an organization. The operative words are "may refuse to accept a request for cancellation." Receipt of a request for cancellation by less than all of the licensed officers or partners will prompt an inquiry. The decision whether or not to cancel a license may require appropriate proof of action by the corporate Board of Directors, if necessary. In the event of a question or dispute, the valid license may remain in effect.

COMMENT: One comment expressed concern about the 30 day turnaround requirement from July 1, 1988 to July 31, 1988 for the issuance of the initial producer renewal in pre-proposed N.J.A.C. 11:17-5.2. The comment indicated that this may not be sufficient time, specifically considering July as a month when many take vacations.

RESPONSE: The Department expects to print and mail the initial producer renewal applications between June 1 and June 15, 1988. Nevertheless, the transition to producer licensing requires a complete revision of the Department's data processing system. If the Department's initial producer renewal is slightly delayed, this rule confirms to all licensees that they have a 30 day period to complete and return the producer renewal application running from the date the applications are mailed. The Department notes that the renewal process will be a fairly simple procedure involving answering "yes" or "no" to a few simple questions, signing and dating the application, and returning it in an envelope with a check for the license fee. The renewal must be accomplished promptly, as the transition to the producer system involves shutting down one data processing system and activating another. A short, stated time frame is necessary to encourage all producers to act promptly. The Department also notes that there should be sufficient publicity of the time frames and dates to allow producers to make provision to meet this deadline even if they are on vacation during this period.

COMMENT: One comment suggested that the increased penalties provided in the Act be implemented immediately.

RESPONSE: The Department intends to implement the increased penalties as of the effective date of the Act. The language of pre-proposed N.J.A.C. 11:17-5.1 has been amended as proposed to clarify that "standards of conduct, penalties and other related provisions described in the New Jersey Producers Licensing Act shall take effect as provided by statute."

COMMENT: One comment suggested that pre-proposed N.J.A.C. 11:17-2.3(b)1 be changed to request the "names, addresses and license reference numbers if any" of owners.

RESPONSE: This comment's suggestion would clarify agency intent and therefore is included in the proposed new rules.

COMMENT: One comment discussed the provision contained in pre-proposed N.J.A.C. 11:17-2.4 which grants temporary authority to work, indicating that the 60 day expiration may create a hardship on the license applicant if, through no fault of the applicant, the issuance of the license was delayed. The comment requested an expansion of the time limit.

RESPONSE: The Department does not wish to expand this maximum 60 day time limit. The procedure granting temporary authority to work is being instituted to allow an individual to begin work upon meeting all the requirements for licensing, but prior to the information being entered into the Department's system and records. The 60 day maximum is a long time, and actual operation may call for a shorter period. This procedure is considered to be an improvement for the benefit of new entrants, and the 60 day time limit is an important control in its use.

COMMENT: Two comments stated opposing views on pre-proposed N.J.A.C. 11:17-2.8(e) concerning the staffing of a branch office by a licensed producer that is "present or accessible." The Department notes that the purpose of the rule is to ensure that a branch office is staffed by a licensed producer, not by unlicensed persons, but the Department recognizes that the practical operation of a business sometimes requires that the licensed producer be away from the office to conduct agency business elsewhere, or for such things as illness or vacation. The present rule, N.J.A.C. 11:1-19.3(a), suggests that the licensed producer assigned to the office never leave the premises.

RESPONSE: The Department accepts the suggested alternate language of one comment, which is reflected in the proposed new rules. Further clarification or revision may make the rule language unwieldy, and no language could be expected to address every possible absence. Nevertheless, the purpose, to ensure that at least one licensed producer is

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permanently assigned to the office, is clear, and nothing in the proposed new rules authorizes unlicensed personnel to engage in activities for which a license is required.

COMMENT: One comment inquired whether the language in pre-proposed N.J.A.C. 11:17-2.9(b)3 should read "employer" rather than "employee".

RESPONSE: The comment is correct and the change has been made in the proposed new rule.

COMMENT: Two comments discussed pre-proposed N.J.A.C. 11:17-2.9(c), dealing with the notice required when a licensed producer continues the business of a deceased or disabled producer. One comment suggested that additional language from the Act should be included to explain the rule. A second comment expressed concern about how the elimination of the availability of a temporary license to the survivor of a deceased producer, or representative of a disabled producer, will impact on the continuity of the insurance business being conducted.

RESPONSE: The first comment's suggested inclusion of additional language from the statute has been included in the proposed new rule. With respect to the second comment's suggested change from the temporary licensing under prior law to the policy expressed in the Act and this rule, the Department notes two things: first, the rule is designed to implement the Act; and, second, even under the prior "temporary license" procedure, some delay always was involved between the date of death or disablement and the date of qualification as the survivor or representative. The Department notes that this statute and rule essentially act as an exception to the general prohibition against sharing fees with nonlicensees. The policy expressed in the Act is that nonlicensed, unqualified people should not solicit, negotiate or effect contracts of insurance. Nevertheless, it does permit the survivor or representative of a deceased or disabled producer to realize some of the benefits of the agency as a going concern. Any disruption to the continuity of the business of a producer who failed to provide for such eventualities is more than outweighed by the harm that can be done to the insurance consuming public by unqualified people acting as producers.

COMMENT: One comment suggested that pre-proposed N.J.A.C. 11:17-5.5(a) and (b) be altered to include the language "to any individual who has last passed the state licensing examination" and "last completed the course of prelicensing education."

RESPONSE: The addition of the word "last" clarifies agency intent and is contained in the proposed new rules.

COMMENT: One comment suggested that pre-proposed N.J.A.C. 11:17-1.2, the definition section, be amended to define "manager" as the term is used in section 3 of the Act, dealing with exemptions from licensing.

RESPONSE: The term "manager" is a generally used term that can describe a wide variety of functions in an organization. Any attempt to define it in these rules would likely result in some classification of "managers" being excluded. The Act's language appears clear concerning who is exempt, and the Department does not believe that any further clarification of this language is necessary.

COMMENT: One comment expressed concern over pre-proposed N.J.A.C. 11:2-9, "business relationships". The concern was directed specifically to the elimination of the "solicitor" category which existed under prior law. The comment expressed the view that this might upset existing business relationships.

RESPONSE: The elimination of the "solicitor" category in favor of a general "producer" category for all licensees is a legislative decision that is contained in the Act. The proposed new rules simply implement that decision. The Act also requires that the Department be notified of employer/employee relationships. To the extent these relationships involve those previously licensed as "solicitors", the concern of the comment is addressed. The Department notes that under the old law the definition and license for "solicitor" simply described a way of placing insurance business through another licensee. The rights and duties of the parties, the solicitor and his or her employing agent or broker, were always subject to an employment agreement between the parties. Those presently licensed as solicitors have, or should have, employment agreements covering such items. One general policy contained in the Act is that the Department should not undertake to regulate the terms of these business relationships because there is no important State insurance regulatory interest in the detailed terms of such employment contracts. To the extent licensed solicitors and their employees do not presently have employment contracts, the Act and these rules will serve the salutary purpose of encouraging the use of such contracts.

COMMENT: One comment discussed two provisions of the Act, suggesting that language similar to that contained in N.J.S.A. 17:22-6.6a be

added, and that an apprenticeship requirement be added as a statutory qualification for a producer licensed with property/casualty authority.

RESPONSE: While the Department appreciates the comment's concerns, it has no authority to promulgate rules without sufficient statutory basis. Statutory amendments are beyond the appropriate scope of rule comments.

COMMENT: One comment requested immediate enactment of regulatory controls specifically regarding insurance consultants, noting that these were absent from the pre-proposal.

RESPONSE: The proposed new rules contain the new and transition producer licensing rules. Future proposed new rules will contain professional qualifications and regulatory controls. Consultants will be specifically addressed in those rules. The Department notes that under present law a person may act as an insurance "consultant" without either holding any insurance producer license or being subject to any real regulatory control. The Department appreciates the comment and expects that other rules to be proposed in the future will address this concern.

Summary

The proposed new rules contain insurance producer licensing and transitional licensing rules designed to implement the "New Jersey Insurance Producers Licensing Act", P.L. 1987, c.293 (N.J.S.A. 17:22A-1 et seq.) "the Act", which was signed October 29, 1987 by Governor Kean and by its terms takes effect 180 days thereafter. The Act amends certain provisions of the insurance licensing statute and repeals others under Title 17 and 17B. The Act reduces the kinds of insurance licenses issued by consolidating the present agent, broker and solicitor licenses into one "producer" license. It provides for five general insurance authorities: life, health, property/casualty, surplus lines and title insurance. Present limited lines licenses (for example, credit life, ticket property/casualty) are replaced by a registration process. The proposed new rules further describe how the Department will continue to record information about certain business relationships, such as agent relationships between companies and producers and employer-employee relationships between producers.

Subchapter 1 of the proposed new rules describes the general provisions of the rules. N.J.A.C. 11:17-1.1 sets forth the purpose and scope. It provides that the rules are part of the insurance laws of this State, and violation may result in sanctions as provided by law. Rules inconsistent with the new rules are repealed or superseded subject to the provisions regarding transition. Provisions of the Act and of the rules are to be applied to all licensees, limited insurance representatives and other persons specifically including those who obtain nonresident licenses for business written in New Jersey.

N.J.A.C. 11:17-1.2 defines a number of terms. N.J.A.C. 11:17-1.2(a) provides that the definitions contained in the Act are incorporated by reference. N.J.A.C. 11:17-1.2(b) defines other terms. "Branch office" is defined to mean a resident producer's subsidiary office in New Jersey, clarifying that the requirement to register branch offices is not applied to nonresident firms. "Business name" is defined to include the legal name of a licensed organization as well as any trade name under which an individual or organization licensee conducts insurance business. "Credit life insurance" and "credit health insurance" are defined the same as provided in N.J.S.A. 17B:29-2. "Home state" is defined to mean the state other than New Jersey where a nonresident licensee is licensed as a resident; under some states' laws, this may be where the principal office is located. "Insurance-related conduct" is defined to mean soliciting, negotiating or binding policies of insurance, and other conduct directly affecting the marketing of insurance products. "Resident of New Jersey" is defined to mean a person who either resides in New Jersey or maintains an insurance office here; "nonresident" is defined to be mutually exclusive of resident. This definition is required to clarify the licensing requirements of individuals who live in one state and work in another, which has created apparent conflicts with the licensing laws of other states. "Ticket life insurance", "ticket accident insurance", and "ticket property/casualty insurance" are defined as under present law to mean those limited coverages of the risks of travel by persons whose primary business activity is being a travel agent or agent of a transportation company.

Subchapter 2 contains the licensing rules.

N.J.A.C. 11:17-2.1 provides that an insurance producer license will be issued by quarter with a general term of four years. Licensing quarters will begin on the first day of February, May, August and November of each year. A license first issued during a quarter will expire in the fourth year on the last day of the quarter prior to that in which the license was effective. For example, any license issued between February 1, and April 30, 1989, will expire at the end of the previous quarter, on January 31,

1993. Renewed licenses will be issued for a full four years. The license will contain the expiration date. When the temporary certificate process described in N.J.A.C. 11:17-2.4 is implemented, the effective date of a new license will be the effective date of the temporary certificate. For example, if the temporary certificate is effective April 20, 1989 and the license actually issued May 10, 1989, the license will be allocated to the February 1 through April 30 quarter and expire January 31, 1993.

N.J.A.C. 11:17-2.2 describes the specific kinds of insurance allocated to the five different general license authorities. Life authority includes those coverages defined by statute as life insurance, annuities and contracts on a variable basis. Those licensed under the Act need not obtain a separate insurance license to sell contracts on a variable basis. Nevertheless, N.J.A.C. 11:17-2.2(c) confirms that producers licensed with life authority must also hold any necessary Federal and State securities licenses to sell contracts on a variable basis.

Health authority is defined by reference to the statutes defining health insurance. Property/casualty authority is defined by reference to the various kinds or lines of insurance for which property/casualty insurance companies are granted authority in New Jersey. Surplus lines and title insurance authorities are defined as by statute.

N.J.A.C. 11:17-2.2(b) provides for the designation of authorities for nonresident licensees whose home state definitions of the kind of insurance authorized to be transacted do not precisely match that of New Jersey. For example, many states separately license those selling contracts on a variable basis, as did New Jersey under prior law. New Jersey will issue a license containing life authority to a nonresident regardless of whether the applicant was authorized for contracts on a variable basis in the nonresident's home state. Nevertheless, issuing a New Jersey license containing a specific authority will not authorize the nonresident licensee to transact any business in New Jersey for which it has no identical authority in its home state.

N.J.A.C. 11:17-2.3 describes the information filing requirements for the issuance of initial licenses. Individuals will be required to file a producer license application that requests a specific authority, and which sets forth the applicant's legal name, home address, date of birth, business mailing and location address, business trade name if any and responses to certain questions concerning the applicant's character and fitness for licensing. The application must be dated and certified to be correct. If the applicant is a resident, the application shall be accompanied by certificates that show completion of an approved course of pre-licensing education and passage of the State licensing examination or a certificate waiving one or both of these requirements. If a nonresident, the application must be accompanied by a certification of license status from the applicant's home state showing that the applicant holds a valid license there. The application shall also be accompanied by necessary documents or written statements to explain answers to questions concerning the applicant's character and fitness for licensing, if necessary. For example, an applicant who reveals a criminal conviction must attach a copy of the judgment of conviction of the crime and certain other explanatory materials needed to evaluate whether a license may be issued. Individual applications shall also be accompanied by a criminal history verification form to obtain a police record check. Those requesting surplus lines authority must submit a bond. Necessary fees must accompany all applications.

Organization applicants (corporations and partnerships) will submit an application that contains the organization's legal name, business mailing and location address, other business names if any, and the names, license reference numbers and license authorities of its licensed officers and partners. Also required will be the names, addresses and license reference numbers, if any, of all persons owning five percent or more of the applicant organization. These applications also will require responses to questions concerning the applicant's fitness and financial responsibility. The application must be signed, dated and certified to be correct by all licensed officers or partners.

The organization license application must be accompanied by a copy of the certificate of incorporation or the filed partnership document showing the legal existence of the organization. If the organization has another business name, a copy of the document recording that name must be submitted. If the applicant is a corporation domiciled in another state and is applying for a resident license to open an office in New Jersey, the application must be accompanied by the certificate of authority evidencing that it has been authorized to transact business in New Jersey by the New Jersey Secretary of State. Nonresident organizations must supply a certificate from their home state showing they are licensed there. If surplus lines authority is requested, a performance bond is required. As with the individual license, statements or documents may be required

to explain responses to questions concerning character and fitness. Appropriate fees must accompany the application.

N.J.A.C. 11:17-2.4 authorizes the issuance of a temporary certificate when an individual resident applicant has met all qualifications for licensing. When implemented, the testing service will gather basic licensee data in connection with test registration procedures, and issue a temporary certificate to those passing the test, which shall serve as a temporary authority to begin work when the application and fees have been submitted.

N.J.A.C. 11:17-2.5 describes the license renewal procedure. As indicated above, licenses will expire by licensing quarters and renewal shall be for a term of four years.

The Department will mail renewal applications approximately 60 days prior to the expiration date. Renewal applications will contain certain questions about licensee qualifications, and they must be signed, dated and certified to be correct by the applicant or a licensed officer or partner of an applicant organization. License renewal fees must be paid. Any licensee not desiring to renew its license must notify the Department by returning the renewal application marked "Do Not Renew" so that Department records may be properly noted. Renewal applications should be submitted at least 10 days before the old license expires.

Future license renewals will be accomplished through the computerized bank lock box procedure so as to reduce manual handling of renewal applications.

N.J.A.C. 11:17-2.6 describes the process for obtaining additional authorities which will be similar for both individuals and organizations. The license document itself will serve as the application. For individuals, the license will be submitted with appropriate notations requesting the additional authority, and signed, dated and certified by the applicant. If a resident, the necessary documents confirming professional qualification by prelicensing education and State examination (or a waiver) must accompany the request. For nonresidents, a recent home state certification of license status will be required. If requesting surplus lines authority, the required bond must be submitted. For licensed organizations, a request for additional authority must be signed by the licensed officer or partner that holds the additional authority requested. A \$20.00 processing fee is required.

When additional authorities are requested, the old license will be destroyed and a new license issued showing all authorities.

N.J.A.C. 11:17-2.7 contains mandatory provisions concerning business names and the updating of addresses. N.J.A.C. 11:17-2.7(a) provides that no producer may conduct insurance business under a name other than its legal name unless the name has been filed with and approved by the Department. Business names that include the licensee's legal name and words such as "agency" need not be filed. For example, a licensee named John B. Smith need not file if his business name is "John B. Smith Insurance Agency". Issuance of a license containing the business name is notice of approval. Nonresident producers may conduct business only under their legal or business names in the state where they maintain a resident license.

N.J.A.C. 11:17-2.7(c) contains the standards for approval of business names. No business name may be misleading or deceptive, nor shall it be identical or confusingly similar to the business name of another currently licensed resident producer (legal names of nonresidents must be accepted). If the word "insurance" is used in the name, it must be joined with a word such as "agency" to distinguish the entity from an insurance underwriting company. Producer business names must not contain the names of or imply any affiliation with a government agency, nor shall they contain any franchise designation. A business name may not include any identification with a producer whose license has been revoked.

N.J.A.C. 11:17-2.7(d) describes the process for obtaining approval of a business name before filing with the Secretary of State, County Clerk, or other recording authority. This prior approval process avoids the problem experienced by some licensees who file a particular name and expend money for stationery, signs and other advertising only to find that the name cannot be approved by the Department and the time and expense has been wasted.

N.J.A.C. 11:17-2.7(e) describes requirements for licensee business addresses. All licensees are required to provide the Department with a complete and current business mailing address, which includes a street or location address. A post office box or post office call number is not sufficient. Individual licensees must also provide the Department with a residence address. Licensees must notify the Department within 20 days of any change of address; failure to do so may result in fines or other penalties. Legal process issued by the Commissioner such as subpoenas

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and orders to show cause will be deemed served when they are mailed to the licensee's address currently on file with the Department.

N.J.A.C. 11:17-2.7(f) describes the process for changing a legal or business name or address. The licensee will submit its current license document for cancellation and reissuance with the new information noted. No fee will be charged. If a name is changed, the request shall be accompanied by the appropriate recorded legal documents that evidence the change. For example, a corporation's change of name must be accompanied by the document filed with the Office of the Secretary of State amending the corporate certificate. An individual name change should be accompanied by a similar document, such as a marriage certificate or judgment in an action to change an individual's name.

N.J.A.C. 11:17-2.8 describes the requirements and registration process for branch offices. A licensee opening a branch office in New Jersey must register it within 30 days before beginning business by submitting a branch office registration form and the processing fee. The Department will then issue a branch office certificate. Producers must notify the Department of the closing of any branch office within 20 days and return the branch office certificate. A branch office certificate may not be transferred to another location; a new certificate must be issued for a different location.

N.J.A.C. 11:17-2.8(c) and (d) describe requirements for branch offices. The business hours must be established so as to provide reasonable availability to consumers. These hours and days and hours of work must be posted at the office. A branch office must be staffed by an individually licensed producer permanently assigned there and present or accessible during normal business hours except when engaged in the activities of the branch office elsewhere.

N.J.A.C. 11:17-2.9 describes the various business relationships that will be recorded by the Department, and the methods and responsibilities of those who establish them.

N.J.A.C. 11:17-2.9(a) describes agency relationships between insurance companies and insurance producers. This process replaces the "appointment" process under prior law.

The agency relationship between an insurance company and licensed producer is established by a written contract executed by both parties; the parties must maintain copies of that contract and make them available for inspection by the Department upon request. The insurance company is responsible for notifying the Department of the existence of the agency relationship by filing a notice within 15 days of the execution of the contract on a form signed by a representative of the company. The form will set forth the company's name, address and New Jersey Department of Insurance reference number; the contract date; and the producer's name, business address and reference numbers. The form filing shall be accompanied by a fee.

The company shall be responsible for determining that the producer is properly licensed with authority for one or more of the kinds of insurance for which the company is authorized in New Jersey. Unless the notice states that the agency contract is limited to certain of the general authorities for which the company and producer are jointly authorized, it will be deemed to mean that the producer is the company's agent for all jointly authorized kinds of insurance. For example, if a company is authorized for both life and health insurance, and the producer authorized for both life and health insurance, the notice will be deemed to mean that the agency contract covers both life and health authorities. If the contract covers life authorities only, the form must so specify. The agency contract will be deemed to continue in effect until a notice of cancellation is filed with the Department by the company. Any notice of cancellation shall specify the reason. If the reason is misconduct by the licensee that may constitute a cause for action by the Department against the licensee, an additional copy of the notice must be mailed to the Department's Enforcement Division.

N.J.A.C. 11:17-2.9(a)7 provides that notwithstanding the lack of any agency contract relationship, a company shall be deemed to have authorized a producer from whom it accepts insurance business to receive premium payments on its behalf. This restates prior law applicable to the receipt of premiums by brokers who do not have established agency contracts with insurance companies.

N.J.A.C. 11:17-2.9(b) describes the filing requirements when a licensed producer employs another licensed producer. Employment contracts between producers shall be in writing, but they need not include all of the license authorities of the parties. For example, a producer may employ another producer to write life and health authorities only, even though the employed producer is also authorized to write property/casualty insurance. Both parties to the contract shall maintain copies and make them available to the Department upon request. Employing producers

(employers) must notify the Department of the existence of the relationship by submitting a notice, which may be in letter form, indicating the name, license reference number and date of employment of the employer producer (employee). Employers are responsible for examining the credentials of an employee prior to hiring them, and for overseeing the insurance related conduct of an employee. Further, the employer will notify the Department upon the termination of the relationship, which also may be communicated in letter form.

An employee may execute applications and policies by signing the employer's name if authorized by the employer and any company with which the employer maintains a written agency contract.

Producers may establish independent contractor relationships that do not require the filing of the notice of an employer-employee relationship. Acts of misconduct by an independent contractor will not create any responsibility by other independent contractors unless they knew of the activities or acted in concert.

N.J.A.C. 11:17-2.9(c) describes the filing required by a licensed producer who continues the business of a deceased or disabled producer. The Act changes prior law to eliminate temporary licensing of survivors or legal representatives. These individuals now are required to contract with a licensed producer to carry on the business. The producer entering into the contract will be required to notify the Department of the contract by filing a notice, which may be in letter form. The notice shall contain the name and reference number of the licensed producer, the name and reference number of the deceased or disabled producer and the address where the business will be conducted. The notice shall also confirm the date of death or disablement and the term of the contract. At the time the notice is sent, the deceased or disabled producer's license shall be returned to the Department for cancellation. The notice shall include other documents that may be necessary to show the legal capacity of the deceased or disabled producer's representative, such as a surrogate's short certificate.

N.J.A.C. 11:17-2.10 deals with limited insurance representatives. N.J.A.C. 11:17-2.10(a) lists the kinds of insurance that may be marketed through limited representatives: bail bonds, credit life, credit health, credit property/casualty, ticket life, ticket accident, ticket property/casualty, group mortgage cancellation, mortgage guaranty and legal insurance.

N.J.A.C. 11:17-2.10(b) provides that insurance companies authorized to write limited lines must register their limited insurance representatives. N.J.A.C. 11:17-2.10(c) requires that the insurance company and the limited insurance representative execute a written contract, and that both parties retain a copy of the contract and make it available to the Department if requested. Because no license is issued and no preclearing requirements are established, N.J.A.C. 11:17-2.10(d) provides that the company will be responsible for determining that the limited insurance representative is capable of acting on its behalf.

N.J.A.C. 11:17-2.10(e) and (f) describe the registration process. The company must register limited insurance representatives on a form that contains the company name, address and reference number as well as the representative's name and business location address and other information. It also must describe the kind of insurance business to be conducted and the effective date of the contract. The one-time registration fee must be paid at the time the registration is filed. The contract will be deemed to continue in effect until a notice of cancellation has been filed with the Department. As with the notice of agency contract between insurance companies and licensed producers, the notice of cancellation shall specify the reason; if the reason for cancellation is misconduct, an additional copy must be mailed to the Department's Enforcement Division.

N.J.A.C. 11:17-2.10(g) provides that during the term of the contract between the limited insurance representative and the company, the representative will be deemed to be the company's agent for all insurance related conduct undertaken on the company's behalf.

N.J.A.C. 11:17-2.10(h) permits a company to contract with a licensed producer to market limited lines of insurance. For example, a company authorized for credit life insurance may contract with a producer authorized to write life coverages, and file a notice of agency contract in the usual manner.

N.J.A.C. 11:17-2.11 describes in more detail other information requirements for licensing.

N.J.A.C. 11:17-2.11(a) describes the criminal history information requirements to be submitted with initial applications. A New Jersey State Police request for criminal history record information and a fee to pay for its processing will be required with each application for an individual license and for the officers, directors, partners and owners of five percent or more of an applicant organization. The fee required is the fee set by

the State Police. The Department also will have the option to require fingerprint impressions be taken, if necessary. The Department may likewise request copies of documents resulting from criminal proceedings to evaluate whether a convicted license applicant or licensee nevertheless may be licensed in accordance with the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1. Failure to respond to a request will constitute grounds for denial of a license, or revocation or suspension of a current license.

N.J.A.C. 11:17-2.11(b) authorizes the Department to request and obtain financial history information, particularly information concerning legal proceedings to discharge debts either by Federal bankruptcy proceedings or in a proceeding for an assignment of assets to creditors. Failure to respond to such requests will constitute grounds for denial of a license, or suspension or revocation of a current license.

N.J.A.C. 11:17-2.11(c) describes the bond requirement for surplus lines authority. The bond shall be filed with an application and be in a form approved by the Commissioner. Failure to maintain the bond in full force and effect will void the license, as it is a condition precedent to holding a surplus lines authority. In the event the bond is cancelled, surplus lines authority shall also be automatically cancelled subject to the right of the licensee to request a hearing on the issue of whether the bond remained in effect, or whether a replacement bond was obtained and filed. In order to determine the appropriate amount of the bond, licensees may be required to provide the Department with information about the volume of surplus lines business they transact.

N.J.A.C. 11:17-2.11(d) provides that licensed organizations must update information about their unlicensed officers, directors, partners and owners.

N.J.A.C. 11:17-2.12 describes the fees payable in connection with licensing. These fees were determined as the result of a study of present and anticipated revenues so as to maintain the level of revenues to the Department, as required in the Act. The license fee is established at \$300.00; this license fee is paid once for the entire four year license period. All other processing, filing or registration fees are \$20.00. Fees must be paid by check or money order made payable to the "State of New Jersey—General Treasury".

N.J.A.C. 11:17-2.12(c) provides an exemption from fees for disabled veterans who submit sufficient proof of a service connected disability.

N.J.A.C. 11:17-2.13 describes the procedure when a license is denied. If it appears from the application and documents submitted that an individual has not demonstrated the qualifications provided in the Act and rules, the Department will notify the applicant in writing. The notice of denial will specify the reason for denial, referencing the appropriate provision of the Act or these rules. A notice of denial will advise the applicant of its right to a hearing and procedures for requesting a hearing.

If an applicant requests a hearing, the Department will review the original application, its records and any additional information submitted to determine whether the applicant is qualified. If the applicant still appears to be disqualified, the Department shall find the matter constitutes a "contested case" as defined in the Administrative Rules of the Office of Administrative Law and shall forward the matter there for hearing.

These procedures need not be used when the application is returned for a ministerial error, such as failure to complete a required portion of the application or the failure to attach necessary documents.

The requirements and procedures for revocation or suspension of a license by the Department are not addressed by the proposed new rules. However, the Department is in the process of drafting new rules for such license action, pursuant to the requirements of the Act.

N.J.A.C. 11:17-2.14 describes the procedure for termination of a license during its four year term and the reinstatement of the license if so requested. A licensee may terminate its license at its option. Nevertheless, the Department may refuse to accept the termination of an organization license unless all current licensed officers and partners consent to the cancellation. A license may be reinstated after termination within the four year license cycle without further payment of license fee by completing an application and paying the processing fee. Cancelling a license shall not, however, require the dismissal or cancellation of any proceedings against the licensee.

N.J.A.C. 11:17-2.15 describes the permanent license records that will be maintained by the Department and which of these records will be available to the public according to the Public Records Act, N.J.S.A. 47:1A-1 et seq. Public records for individual licensees are the licensee's name, license reference number, business name if any, business mailing and location address, date of birth, license authorities, date first licensed, professional qualifications, and the date last licensed or current license

expiration date; names of companies for which a notice of agency contract has been filed, including the date of the contract and date of termination, if any, and what authorities are covered by the contract; the names and reference numbers of licensed organizations for which the producer serves as a licensed officer or partner, the date the producer became a licensed officer and date terminated, if any; and the names and reference numbers of employed or employing producers and the dates the relationship began and terminated. Public records for a licensed organization will be the licensee's legal name, license reference number, other business name if any, business mailing and location address, license authorities, date first licensed, and the date last licensed or current expiration date; names and reference numbers of licensed officers or partners; names and reference numbers of insurance companies with which notice of agency contracts have been filed, agency contract date and termination date if any, and limits of authority if any; names and reference numbers of employed producers, date relationship began and terminated.

N.J.A.C. 11:17-2.15(b) provides that certain records are specifically determined to be nonpublic records in accordance with the Public Records Act. Criminal complaints, indictments, judgments of conviction and other such documents, as well as the criminal history records obtained from the criminal history record check, are nonpublic records. While these records may be public records elsewhere and obtainable through the courts, the Department will not disclose them. Because of the limited nature of the Department's inquiry, it may not be aware of other related proceedings, such as appeals, retrials, etc., or actions to expunge conviction, which affect the validity of the information in the Department's files.

Likewise, copies of petitions or discharges in bankruptcy, complaints, orders and other pleadings in actions for assignment to creditors, etc., submitted in connection with a license application, are determined to be nonpublic records. As with criminal history records, there is a likelihood that such information is inaccurate or incomplete at the time a request for such records is made. In view of the substantial effect disclosure may have on reputation, and considering that such records are available elsewhere, the Department has determined that these will be nonpublic.

Similarly, copies of orders of suspension or revocation of professional or occupational license submitted in connection with a license application are determined to be nonpublic. As with criminal history and financial history information, such documents have a potential to be damaging to reputation and may not be valid at the time a request for such records is made. They may constitute public records appropriate for disclosure by the other specific professional or occupational licensing authorities who conducted the proceedings, and may be available through them. Records concerning mental or physical disablement of a licensee will not be considered public records. They may contain privileged medical information.

Finally, investigative files in any matter pending investigation or any completed investigation in which no formal disciplinary action was taken are determined to be nonpublic records. The Public Records Act specifically provides that investigative files in matters pending investigation are nonpublic. The Department also has determined that records of completed investigations in which no formal disciplinary action was taken to suspend or revoke a producer's license should be nonpublic. There is a substantial harm that reputation can be severely damaged by disclosure of unfounded complaints. Additionally, public disclosure of complaints or other statements concerning the conduct of a producer may inhibit persons with complaints from coming forward should their complaints and statements be subject to routine release.

N.J.A.C. 11:17-2.15(c) provides that information will be issued in a standard certification of license status. This is most often used to certify to another state that a New Jersey licensee holds a resident license here, but also is useful in response to any public information request concerning whether an individual or organization holds a current license. The standard certification will contain the licensee's name, date of birth if an individual, license reference number, whether currently licensed or expired; kinds of insurance for which authorized; whether qualified by State licensing examination or the equivalent; and whether any formal disciplinary action was taken during the last four years.

N.J.A.C. 11:17-2.15(d) provides that the requirements to maintain records shall be subject to normal retirement or destruction dates as approved by the Division of the State Library. The Department will not provide copies of any written applications or other records when the information is available as an abstract of information contained on the Department's electronic data processing system. Experience has shown that most requesters of information do not, in fact, need the original document, but just the information itself. The information will be readily available from the Department's data processing system.

Subchapters 3 and 4 are reserved.

Subchapter 5 describes special rules for transition from the old to the new licensing system. N.J.A.C. 11:17-5.1(a) provides that all standards of conduct in the Act shall be effective immediately. Pleadings in pending disciplinary actions begun under prior law shall be amended to charge violation of a comparable section of the new Act. Provisions of rules in subsequent proposals describing specific standards of conduct shall take effect on the date of publication in the New Jersey Register or the effective date of the Act, whichever is later.

N.J.A.C. 11:17-5.1(b) provides that, beginning May 1, 1988, the Department will cease issuing agent, broker and solicitor licenses. Producer licenses will be issued beginning July 1, 1988. New applicants in the interim will obtain a letter of temporary authority. N.J.A.C. 11:17-5.1(c) provides that those holding agent, broker or solicitor licenses with general authorities may continue to transact the business authorized by those licenses until their initial producer license is issued. N.J.A.C. 11:17-5.1(d) provides that property/casualty agent licenses which are scheduled to expire April 30, 1988, will continue in effect until the licensees obtain their initial producer license.

N.J.A.C. 11:17-5.2 describes the process for relicensing as producers those currently licensed with general authorities. On July 1, 1988 the Department will mail an initial producer license application to currently licensed agents, brokers and solicitors holding general authorities. These applications will contain dates of expiration staggered by quarter so that insurance license renewals will be spread out over a four year period. By staggering the renewals, surges of work created by the present system of renewal by license type will be eliminated. License fees charged for this initial renewal will be proportionate to the length of time the license will be effective. A credit will be given for license fees paid for any current agent, broker or solicitor license issued under prior law for a license year that has not begun. For example, property/casualty broker licenses were renewed on November 1, 1987 for a two year period at a cost of \$100.00, or \$50.00 per year. Since the second year of that license period will have not begun, those holding that license will be entitled to a \$50.00 credit against their producer license fee.

Those wishing to obtain a producer license are required to submit the application together with payment by July 31, 1988. Those holding current licenses who do not wish to renew as producers should return the application marked "Do Not Renew". Those not renewing may request a refund of any amount for which they would have obtained a credit by sending a letter with the returned application. Any license not renewed as a producer as of August 1, 1988 will be cancelled.

N.J.A.C. 11:17-5.2(g) provides that any existing company-producer agency relationships will be deemed to continue in effect unless terminated. Department records of those relationships will be re-recorded in the Department's reconstituted data base. Resolutions filed by affiliated companies for the joint appointment of agents likewise will continue in effect.

N.J.A.C. 11:17-5.2(h) provides for the updating of Department records of the licensed officer or partner of licensed producer organizations between August 1 and November 1, 1988. This information will not be automatically transferred to the new data base. Instead, licensed organizations will be required to file a statement with the Department naming those individually licensed officers or partners of the licensed organization who will be responsible for the organization's insurance related conduct. Because the Act does not require each individual producer to be licensed as either an officer or partner of an organization, many organizations are likely to reduce the number of named licensed officers or partners to those actually in supervisory positions.

N.J.A.C. 11:17-5.2(i) likewise provides that producers who employ other producers shall file statements confirming those relationships between August 1 and November 1, 1988.

N.J.A.C. 11:17-5.3 provides for transition to registration of limited insurance representatives, rather than licensing them as limited lines agents. Beginning May 1, 1988, no further limited lines licenses will be issued; rather, those individuals will be registered in accordance with the Act and these rules.

All presently licensed limited lines agents may continue to transact business until they expire. Between November 1, 1988 and the date present limited lines licenses expire, all presently licensed limited lines agents will be registered by the companies they represent. If they are not registered, their authority to continue transacting business will expire. This registration process is a one-time only action, and the \$20.00 registration fee will be collected.

Since some insurance consultants presently in business do not hold agent, broker or solicitor licenses, N.J.A.C. 11:17-5.4 permits them until August 1, 1988 to obtain their producer license.

N.J.A.C. 11:17-5.5 provides that the time limits contained in the Act for taking the examination and applying for a license will be effective as of the date of the Act. A graduate of an approved course of preclicensing education has one year to take the State licensing examination after completing the course; a person passing the State licensing examination has one year to apply for a license. These time limits help assure that those entering the industry are properly qualified.

N.J.A.C. 11:17-5.6 provides that the extension of license privileges by the transition rules does not supersede any order suspending or revoking any individual license.

These proposed new rules are intended to replace and supersede N.J.A.C. 11:1-8.1, 9, 12.1, 12.3, 12.4, 12.6, 14, 18, 19 and 11:12-1.3, which are herein proposed for repeal.

Social Impact

The proposed new rules set forth the manner by which the Act will be implemented to license insurance producers and register limited insurance representatives. Informational requirements for licensing are streamlined and made more compatible with electronic data processing. The proposed new rules further describe the transition process by which present licensees will be relicensed as producers or registered as limited insurance representatives.

Implementation of the Act through the proposed new rules should reduce the number of insurance licenses issued from over 90,000 to less than 50,000, and when fully implemented should permit almost a 50 percent reduction in Department resources required for licensing. By simplifying and automating many of the processes, service should be greatly improved and the time now required to issue licenses substantially reduced.

In addition, the proposed new rules authorize the Department to assess the character of license applicants by obtaining criminal and financial history information in order to protect the interest of New Jersey consumers. The Department may request a current licensed producer or a license applicant to submit copies of any petition or complaint in bankruptcy, discharge in bankruptcy or copies of any pleadings in a proceeding for assignment to creditors in order to determine their character or financial stability.

Economic Impact

The proposed new rules eventually should cut Division of Licensing operating expenses by nearly half, from more than \$700,000 annually to less than \$400,000 a year for the next budget year. The license fee for a producer is established at \$300.00 for four years. The fees are designed to be revenue neutral as required by the Act. The aggregate amount of fees for each producer will be determined by the number of licenses he or she holds. Therefore, some producers will experience higher or lesser fees than at present.

Regulatory Flexibility Statement

The proposed new rules affect small businesses as that term is defined in the Regulatory Flexibility Act, P.L. 1986, c.169. Small businesses comprise the majority of businesses regulated by these proposed new rules. To provide for uniform and consistent applicability of these rules and to avoid the granting of a prescribed advantage to insurance producers who are small businesses, no differential treatment is accorded small business by these proposed new rules.

As a result of the proposed new rules, the amount of documents and application information requested by the Department of Insurance will be substantially reduced. In addition, the provisions concerning fees are revenue neutral. Therefore, the proposed new rules will provide neither a financial benefit nor a financial disadvantage to small businesses.

Full text of the current rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 11:1-8.1, 11:1-1.9, 11:1-12.1, 11:1-12.3, 11:1-12.4, 11:1-12.6, 11:1-14, 11:1-18, 11:1-19 and 11:12-1.3.

Full text of the proposed new rules follows:

CHAPTER 17 PRODUCER LICENSING

SUBCHAPTER 1. GENERAL PROVISIONS

11:17-1.1 Purpose and scope

(a) This chapter implements provisions of P.L. 1987, c.293 (N.J.S.A. 17:22A-1 et seq.), the New Jersey Insurance Producer

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Licensing Act (the Act). This chapter concerns the licensing and conduct of insurance producers and shall be considered part of the insurance law of the State of New Jersey, and violation of any provision shall be sufficient cause for action against any person as permitted by statute. Specification of the standards of conduct shall not, however, prohibit the application of other insurance statutes or rules to licensed producers.

(b) Provisions of the New Jersey Insurance Producer Licensing Act and of this chapter shall be applied to all licensees, limited insurance representatives and other persons, including nonresident licensees in connection with the licensing and standards of conduct on business for which a New Jersey insurance producer license is required.

11:17-1.2 Definitions

(a) Words and terms contained in the Act, when used in this chapter, shall have the meanings as defined in the Act, unless the context clearly indicates otherwise.

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

"Act" means the New Jersey Insurance Producer Licensing Act, P.L. 1987, c.293 (N.J.S.A. 17:22A-1 et seq.).

"Administrative Procedure Act" means the Act concerning practices and proceedings of New Jersey public agencies pursuant to N.J.S.A. 52:14B-1 et seq.

"Branch office" means an office in New Jersey other than a principal office where a resident licensee conducts insurance business.

"Business name" means the legal name of a corporation or partnership, and any trade or fictitious name under which a licensee or license applicant conducts or intends to conduct insurance business.

"Credit life insurance" and "credit health insurance" mean the insurance coverages as defined in N.J.S.A. 17B:29-2.

"Credit property/casualty insurance" means insurance against loss of or damage to property serving as security on a specific loan or credit transaction except automobiles.

"Home state" means the state other than this State in which a nonresident licensee or license applicant holds a resident insurance license.

"Insurance related conduct" includes soliciting, negotiating or binding policies of insurance; all communication with insureds concerning any term or condition of a policy of insurance; office management policies affecting insureds; processing claims; and transmitting funds between insureds, producers, premium finance companies and insurance companies.

"Nonresident" (of New Jersey) means a person who neither resides in New Jersey nor maintains an office in New Jersey where insurance business is transacted.

"Resident" (of New Jersey) means a person who either resides in New Jersey or maintains an office in New Jersey where insurance business is transacted.

"Ticket life insurance", "ticket accident insurance" and "ticket property/casualty insurance" mean the insurance coverages sold covering only the risk of travel in connection with a ticket sold by a travel agent or an agent of any railroad company, steamship company, airline company, car rental company or bus company.

SUBCHAPTER 2. LICENSING RULES**11:17-2.1 Term of license**

(a) The standard term of an insurance producer license shall be 16 licensing quarters. Licensing quarters shall begin on the first day of February, May, August and November of each year. Licenses shall expire in the fourth year on the last day of the quarter in which the license was effective.

(b) Each license issued shall contain an expiration date. An initial license shall be deemed effective as of the date of issuance of any temporary certificate issued pursuant to N.J.A.C. 11:17-2.4.

11:17-2.2 License authorities

(a) Producers licensed in accordance with the Act and this chapter shall be authorized to write the kinds of insurance designated if qualified by each authority set forth below.

1. Life Authority: All coverages defined as "life insurance" in N.J.S.A. 17B:17-3; all coverages defined as an "annuity" in N.J.S.A. 17B:17-5; and all coverages defined as a "contract on a variable basis" in N.J.S.A. 17B:28-1.

2. Health Authority: All coverages defined as "health insurance" in N.J.S.A. 17B:17-4.

3. Property Casualty Authority: All coverages written by authorized insurers for fire and allied lines, earthquake, growing crops, ocean marine, inland marine, workers' compensation and employers' liability, automobile liability bodily injury, automobile liability property damage, other liability, boiler and machinery, fidelity and surety, credit property/casualty, burglary and theft, glass, sprinkler leakage and water damage, livestock, smoke or smudge, physical loss to buildings, radioactive contamination, mechanical breakdown or power failure, other property or casualty loss, municipal bond insurance and mortgage guaranty insurance.

4. Surplus Lines Authority: All coverages written by unauthorized insurers and defined as "surplus lines" in N.J.S.A. 17:22-6.42.

5. Title Insurance Authority: All policies of insurance guaranteeing or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, defects in or the unmarketability of the title to said property, guaranteeing, warranting or otherwise insuring by a title insurance company the correctness of searches relating to the title to real property, or doing any real business in substance equivalent to any of the foregoing.

(b) The Department is authorized to issue nonresident licenses containing the above authorities regardless of whether the authority conferred by the nonresident applicant's home state license precisely matches the kinds or lines of insurance described above, so long as they are generally comparable. No nonresident licensee shall be authorized to transact business for any kind or line of insurance for which the licensee is not authorized in its home state.

(c) No person shall be authorized to transact business regarding contracts on a variable basis unless that person also holds a securities license as required by any other state or Federal law.

11:17-2.3 Application filing requirements for initial licenses

(a) A first time applicant for an individual license shall submit the following:

1. A properly completed application requesting issuance of an insurance producer license with one or more authorities, which shall contain the applicant's legal name, home address, date of birth, business mailing and location address, business trade name, if any, and response to questions concerning applicant's character and fitness for licensing. The application must be signed, dated and certified to be correct by the applicant;

2. If a resident, a certificate evidencing completion of an approved course of prelicensing education or a certificate evidencing waiver of that requirement; and a certificate evidencing that the applicant has passed the State licensing examination for the authority or authorities requested, or a certificate evidencing waiver of the examination requirement;

3. If a nonresident, a recent certification from the insurance licensing agency of the applicant's home state that he or she holds a currently valid license authorizing transaction of insurance business for the kinds of insurance for which application is made;

4. Any documents or statements required to explain responses to questions concerning the applicant's character, fitness or financial responsibility;

5. A properly completed criminal history verification form;

6. If the application requests surplus lines authority, a bond conforming to the requirements of N.J.A.C. 11:17-2.11; and

7. A valid check or money order for the fees required in accordance with N.J.A.C. 11:17-2.12.

(b) A first time applicant for an organization license shall submit the following:

1. A properly completed application requesting issuance of an insurance producer license for one or more authorities, which shall contain the organization's legal name; business mailing and location address; other business names, if any; names, license reference numbers, if any, and license authorities of each licensed officer or

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partner; names, addresses and license reference numbers, if any, of all persons owning five percent or more of the organization; and responses to questions concerning the applicant's character, fitness and financial responsibility. The application must be dated, signed and certified to be correct by all officers or partners of the organization that hold, or have applied for, New Jersey insurance producer licenses;

2. If the applicant is a New Jersey corporation or partnership, a copy of the Certificate of Incorporation or of the partnership document, stamped "filed" by the Office of the Secretary of State, County Clerk or other authority as applicable. If the application includes a business name other than the organization's legal name, the applicant shall also submit a certificate stamped "filed" by the Office of the Secretary of State, County Clerk or other authority, as applicable, confirming that the business name has been properly recorded;

3. If the applicant is a foreign corporation or partnership applying for a resident license to open an office in New Jersey, a certificate filed by the Office of the New Jersey Secretary of State authorizing the applicant to transact business in New Jersey;

4. If the applicant is a foreign corporation or partnership applying for a nonresident license, a recently issued certification by the licensing authority in the applicant's home state evidencing that the applicant is authorized there to transact insurance business with comparable authorities;

5. Properly completed criminal history verification forms for each officer, director, partner or owner of five percent or more of the applicant organization;

6. If applying for surplus lines authority, a bond conforming to the requirements of N.J.A.C. 11:17-2.11(d);

7. Any documentation required to explain responses to questions concerning the applicant's character, fitness and financial responsibility; and

8. A valid check or money order for the fees required by N.J.A.C. 11:17-2.12.

11:17-2.4 Temporary certificate

The Commissioner or his or her designee is authorized to issue a temporary certificate evidencing that an applicant may begin work when the applicant has submitted in proper form the items required by N.J.A.C. 11:17-2.3 if the submission does not disclose any matter that may disqualify the applicant from being licensed. Any certificate issued in accordance with this section shall expire no more than 60 days after issuance.

11:17-2.5 License renewal

(a) A current licensee shall renew a license in the following manner:

1. At least 10 days before the license expiration date, each licensee shall submit a properly completed renewal application together with a valid check or money order for fees in accordance with N.J.A.C. 11:17-2.12. The renewal application shall be signed, dated and certified to be correct by the licensee or a licensed officer or partner of a licensed organization. The licensee shall certify that he, she or it continues to be qualified in accordance with the insurance laws of New Jersey.

(b) Failure to submit the renewal application for receipt by the date of expiration shall be deemed to establish that the license expired on the date shown, and that the licensee was not thereafter authorized to engage in any activities for which the license is required.

(c) Any licensee who does not desire license renewal shall notify the Department by submitting the renewal application marked on the face, "Do Not Renew".

11:17-2.6 Additional authorities

(a) A currently licensed individual producer may obtain additional authorities as described in N.J.A.C. 11:17-2.2 by submitting the following:

1. His or her current license, marked to request the additional authority or authorities, dated, signed and certified to be correct by the applicant. The applicant shall certify that he or she continues to be qualified in accordance with the insurance laws of New Jersey;

2. If a resident, a certificate evidencing completion of an approved course of preclicensing education, if required, or a certificate evidenc-

ing waiver of this requirement, and a certificate evidencing that the applicant has passed the State licensing examination for the authority or authorities requested or a certificate evidencing waiver of this requirement;

3. If a nonresident, a recent certification issued by the licensing authority in the applicant's home state, evidencing that the applicant holds a current license with comparable authority;

4. If applying for surplus lines authority, a bond conforming to the requirements of N.J.A.C. 11:17-2.11(d); and

5. A valid check or money order for the processing fee as required by N.J.A.C. 11:17-2.12.

(b) A currently licensed organizational producer may obtain additional authorities as described in N.J.A.C. 11:17-2.2 by submitting the following:

1. Its current license, marked to request the additional authority or authorities, dated, signed and certified to be correct by a licensed officer or partner who holds or has applied for that authority;

2. If a nonresident applicant, a recent certification issued by the licensing authority in the applicant's home state, evidencing that the applicant holds a currently valid license with comparable authority in that state;

3. If applying for surplus lines authority, a performance bond as required in accordance with N.J.A.C. 11:17-2.11(d); and

4. A valid check or money order for the processing fee described in N.J.A.C. 11:17-2.12.

11:17-2.7 Legal and business names; addresses

(a) No resident licensed producer shall conduct insurance business under a name other than its legal name unless the name has been filed with and approved by the Department. Nothing in this section shall prohibit the transaction of business under the licensee's legal name and the words "agency", "insurance agency", "brokerage" or words of similar import. Issuance of a license containing the name shall serve as notice of approval.

(b) No nonresident licensed producer shall conduct business under a name other than its legal or business name in the state where it maintains a resident license.

(c) Standards for approval of business names are as follows:

1. No business name shall have the capacity or tendency to be misleading or deceptive;

2. No business name shall be identical or confusingly similar to the business name of another currently licensed resident producer;

3. If the word "insurance" or its equivalent is contained in the name, it must be joined with wording such as "agency" or "brokerage" to distinguish the entity from an insurance underwriting company;

4. No business name shall express or imply any identification or affiliation with a Federal, State or other government entity, including any department, division, bureau or any subdivision of such entities;

5. No business name shall consist of or include any franchise designation except in accordance with procedures approved by the Commissioner; and

6. No business name shall contain the name of, or imply any affiliation with, a producer whose license has been revoked.

(d) An applicant may obtain prior Departmental approval of a proposed business name before the filing of the name with the Secretary of State, County Clerk or other authority by submitting the proposed name or names for consideration. Prior approvals of names shall expire 90 days after the date of prior approval if no license application is received by the Department.

(e) The requirements for business addresses and notification of change of business mailing or location address and residence address are as follows:

1. All licensees shall provide the Department with a complete and current business mailing address, which shall include a street or location address. Individual licensees shall also provide the Department with a complete and current residence address.

2. All licensees shall provide the Department with written notification of any change of business mailing or location address and residence address within 20 days of the change.

3. Any legal process issued pursuant to the statutory authority of the Commissioner including, but not limited to, subpoenas, orders

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and orders to show cause may be served by sending the documents to the business mailing or residence address of the licensee then on file with the Department.

(f) A licensee shall advise the Department of a change of any legal name, business name or a change of business mailing and location address by noting the change on its current license and returning it to the Department for cancellation and reissuance of a new license containing the updated information. No fee shall be required for such changes. If the notice is to change a legal or business name, the request shall be accompanied by a copy of the document filed in the office of the Secretary of State, County Clerk or other authority evidencing that the change has been properly recorded.

11:17-2.8 Branch offices

(a) Licensees shall file with the Department a branch office registration form within 30 days before business is first conducted there. A branch office registration form shall be accompanied by the processing fee specified in N.J.A.C. 11:17-2.12. The appropriate registration form will be prescribed by the Department.

(b) Upon receipt of a properly completed branch office registration form and fee, the Department shall issue a branch office certificate. Branch office certificates shall expire contemporaneously with the producer's own license. The branch office certificate shall not authorize the transaction of business at any location other than that named.

(c) The licensee shall advise the Department in writing of the closing of any branch office within 20 calendar days of the closing by returning the branch office certificate for cancellation.

(d) A branch office shall be open to the public during such hours and days of the week as to provide the public reasonable access to the branch office. The branch office shall post the hours and days of operation in a manner reasonably calculated to inform the public.

(e) No branch office may be opened or operated unless at least one licensed individual insurance producer is permanently and exclusively assigned to that office and present or accessible during normal business hours except when engaged in the activities of the branch office elsewhere.

11:17-2.9 Business relationships

(a) The agency relationship between company and producer is subject to the following requirements:

1. An agency relationship between an insurance company and licensed producer is established by written contract executed by both parties. Both parties shall maintain copies of agency contracts and make them available for inspection by the Department upon request.

2. An insurance company contracting with a licensed insurance producer shall be responsible to advise the Department of that relationship by filing a notice within 15 days after execution of the contract, on a form prescribed by the Department containing the company's name, reference number and address; the producer's name, reference number and business address; and the effective date of the contract. The form shall contain the name and title of the company official who signed and certified the notice. The notice shall be submitted with the fee set forth in N.J.A.C. 11:17-2.12.

3. Prior to executing any agency contract, the insurance company shall determine that the producer is properly licensed with authority for the kinds of insurance described in the contract. The company officer executing the notice shall certify that he or she examined the credentials of the producer and is satisfied that the producer is currently licensed with the authorities for one or more of the kinds of insurance for which the company is authorized.

4. Unless otherwise specified in the notice, filing a notice of agency contract shall be deemed to mean that the producer is that company's agent for all kinds or lines of insurance for which the company and producer are jointly authorized.

5. The agency contract shall be deemed to continue in effect until a notice of cancellation of that contract is filed by the insurance company with the Department on a form prescribed by the Commissioner.

6. The notice of cancellation filed shall specify the reason for cancellation. If the reason is conduct by the producer that may constitute cause for disciplinary action against the producer, an ad-

ditional copy of the notice of cancellation shall be mailed to the Department's Enforcement Division.

7. Notwithstanding the lack of any contract establishing an agency relationship, any insurer that delivers in this State to any insurance producer a contract of insurance pursuant to the application or request of such producer, acting for an insured other than himself, shall be deemed to have authorized such producer to receive on its behalf payment of any premium which is due on such contract at the time of its issuance or delivery or the payment of any installment of such premium or any additional premium which becomes due or payable thereafter on such contract, provided such payment is received by the producer within 90 days after the due date of the premium or installment or after the date of delivery of a statement by the insurer of such additional premium.

(b) The employment of another producer by a producer is subject to the following requirements:

1. Licensed producers may enter into employment contracts by which the employed producer (employee) conducts business under the supervision of and in the name of an employing producer (employer). The employment contract may specify that it does not include all license authorities of the parties. The contract shall be in writing. Both parties shall retain copies and shall make them available to the Department upon request.

2. An employer who has entered into such an employment contract shall notify the Department of the agreement by submitting a document signed by the employer, or licensed officer or partner if an organization, containing the employee's name, license reference number and the date of employment. The employer shall examine the credentials of the employee to determine that he or she is licensed to conduct the kinds of business described in the contract.

3. An employee may, if authorized by the employer and any insurance company for which the employer is an agent, execute the employer's name to contracts of insurance in accordance with a written agency contract.

4. An employer shall oversee the insurance related conduct of an employee. In any disciplinary proceeding, the existence of the employment contract shall be prima facie evidence that the employer knew of the activities of the employee.

5. Upon termination of any employment contract, the employer shall notify the Department in writing of the termination of the relationship.

6. Existence of a business relationship between two licensed producers by which each acts as an independent contractor shall not require the filing of any notice in accordance with this provision, nor create any responsibility for the acts of the other in the absence of knowledge or concerted action.

(c) A licensed producer continuing the business of a deceased or disabled producer is subject to the following requirements:

1. Pursuant to the provisions of the Act, a surviving spouse, next of kin, or administrator or executor of a deceased producer, or the legal guardian of a producer who has become mentally or physically disabled, may enter into a contract with a licensed producer for the purpose of continuing the business of the deceased or disabled producer. The contract may provide that the deceased or disabled producer's representative receive a portion of the fees or commissions generated by the business, notwithstanding that the representative does not hold a producer's license.

2. The licensed producer who contracts with the surviving spouse, next of kin, or administrator or executor of a deceased producer, or the legal guardian of a producer who has become mentally or physically disabled, to continue the business of the deceased or disabled producer shall immediately notify the Department in writing.

3. The notice shall contain the name and license reference number of the licensed producer; name and license reference number of the deceased or disabled producer; address where the business will be conducted; date of death or disablement; term of contract; and the name and address of the deceased or disabled producer's representative.

4. The notice shall be signed by the licensed producer and filed with the Department.

5. The notice shall be accompanied by the deceased or disabled producer's current license returned for cancellation and such other

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documents as may be necessary to show the legal capacity of the deceased or disabled producer's representative.

6. The licensed producer shall notify the Department when the contract has terminated.

11:17-2.10 Limited insurance representatives

(a) The following kinds of insurance may be marketed through limited insurance representatives:

1. Bail bonds;
2. Credit life;
3. Credit health;
4. Credit property/casualty;
5. Ticket life;
6. Ticket accident;
7. Ticket property/casualty;
8. Group mortgage cancellation;
9. Mortgage guaranty;
10. Legal insurance.

(b) An insurance company authorized to write the lines of insurance described in (a) above shall register its limited insurance representatives with the Department in accordance with this section.

(c) Prior to registering any limited insurance representative, the insurance company and the representative shall execute a written contract describing the duties and responsibilities of each. Both parties shall retain a copy of the contract and shall make it available to the Department upon request.

(d) The insurance company shall satisfy itself that the proposed limited insurance representative is competent, honest, financially responsible and capable of acting as its representative.

(e) The insurance company shall register its limited insurance representatives on a form prescribed by the Commissioner containing its company name, address and reference number; the representative's name, and date of birth if an individual; business mailing and location address; kind of insurance business to be conducted; and the effective date of the contract. The fee described in N.J.A.C. 11:17-2.12 shall be paid at the time of initial registration.

(f) The contract will be deemed to continue in effect until the insurance company files a notice of cancellation of the registration with the Department on a form prescribed by the Commissioner. The notice shall specify the reason for cancellation. If the reason is conduct of the representative that may constitute cause for disciplinary action against the representative, the company shall mail an additional copy of the notice to the Department's Enforcement Division.

(g) During the existence of the contract and until notice of cancellation has been filed, the limited insurance representative shall be deemed to be acting under the supervision of the insurer and as an agent for it, with respect to any insurance related conduct and pursuant to the contract between the parties.

(h) Nothing in this section shall prevent licensed insurance producers from marketing the kinds of insurance described in (a) above so long as they are licensed with the appropriate authority according to N.J.A.C. 11:17-2.2. Nothing in this section shall prevent companies authorized to write such insurance from entering into an agency contract with a licensed producer and filing a notice of agency contract in accordance with N.J.A.C. 11:17-2.9(a).

11:17-2.11 Licensing information requirements

(a) The following requirements relate to the provision of criminal history information by licensed producers and license applicants.

1. An applicant for an individual license shall submit with his or her initial application a New Jersey State Police Request for Criminal History Record Information and the fee required to pay for its processing.

2. An applicant for an organization license shall submit with its application New Jersey State Police Requests for Criminal History Record Information and the fee required to pay for their processing, for each officer, director, partner and owner of five percent or more of the organization. Applicants who contemporaneously submit organization and individual applications need not submit duplicates.

3. Upon request by the Department, any licensed producer or license applicant, or any officer, director, partner or owner of five

percent or more of any applicant organization, shall have fingerprint impressions taken and submit them to the Department on a New Jersey State Police fingerprint card, with the fee required to pay for their processing.

4. Upon request by the Department, a licensed producer or license applicant shall supply copies of any complaint, indictment, judgment of conviction or other related documents.

5. Failure to respond to any specific request or to submit documentation requested shall constitute grounds for denial of the license, or suspension or revocation of any current license.

(b) Upon request by the Department, a licensed producer or license applicant shall supply copies of any petition or complaint in bankruptcy, discharge in bankruptcy, or copies of any pleadings in a proceeding for assignment to creditors. Failure to respond to any specific request or to submit documentation requested shall constitute grounds for denial of the license, or suspension or revocation of any current license.

(c) The following provisions apply to the bond requirement for surplus lines authority.

1. The bond required to be filed in connection with the application of any person for a producer license with surplus lines authority shall be on a form approved by the Commissioner pursuant to N.J.S.A. 17:22A-14.

2. Failure to maintain a bond in full force and effect and in the full amount required will serve to void the authority to act as a surplus lines producer as of the date of expiration or cancellation of the bond. Voiding or cancelling surplus lines authority shall be subject to the right of any producer to a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq. on the issue of whether the filed bond remained valid or a replacement bond was obtained and filed.

3. Upon request by the Department, licensees shall provide information concerning the volume of surplus lines business transacted.

(d) Licensed organizations shall notify the Department within 30 days of the addition or deletion of any unlicensed officer, director, partner or owner of five percent or more of the licensed organization.

11:17-2.12 Fees

(a) The following fees shall be payable as set forth in this chapter:

1. License fee: \$300.00;
2. Filing or processing initial application: \$20.00;
3. Additional authority filing: \$20.00;
4. Reinstating terminated license before its stated expiration date: \$20.00;
5. Any branch office registration: \$20.00;
6. Filing or processing any Notice of Agency Contract: \$20.00;
7. Reissuing lost, stolen or destroyed license: \$20.00; and
8. Any limited insurance representative registration: \$20.00.

(b) All fees shall be paid by check or money order made payable to: State of New Jersey—General Treasury.

(c) Disabled veterans may be exempted from payment of the fees described in (a) above upon submission to the Department of a completed form DD-214 or recent certificate of the United States Veterans Administration confirming a current service connected disability.

11:17-2.13 Denial of license

(a) Whenever it appears from an application, attached documents and Department records that an applicant has not demonstrated the qualifications prescribed in the Act and this chapter, the Department shall advise the applicant in writing that the license requested is denied; shall specify the reason for denial; and shall further advise the applicant of the right to request a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq. and the procedure for doing so.

(b) Upon receipt of a request for a hearing on a license denial, the Department shall review the application and attachments, its records and any additional information submitted to determine whether the license may be issued. If after this review the Department finds the applicant is not qualified, it shall find that the matter is

a contested case and transmit it to the Office of Administrative Law for hearing.

(c) Nothing in this section shall prevent the return of an application to the applicant for correction of ministerial errors.

11:17-2.14 Termination and cancellation of license; reinstatement after termination

(a) A licensee may terminate a current producer license by returning the license document to the Department for cancellation at any time before expiration. The Department may refuse to accept a request for cancellation of an organization license unless all current licensed officers or partners consent to the request.

(b) A producer license may be reinstated after termination during the same license period by completing an application in accordance with the provisions of N.J.A.C. 11:17-2.3. No additional license fee for that period shall be required but the processing fee provided in N.J.A.C. 11:17-2.12 shall be paid.

(c) Submitting a license for cancellation shall not void or terminate any disciplinary proceedings against the licensee, nor prevent imposition of any penalty, ordered restitution or costs.

(d) In the event a license is lost or destroyed, the licensee may request a duplicate by submitting a certified statement attesting to the loss with the fee required for processing.

11:17-2.15 Licensee records

(a) The following licensee records shall be public records in accordance with N.J.S.A. 47:1A-1 et seq.:

1. Individual licensee: Name, license reference number, business name, business mailing and location address, date of birth, license authorities, date first licensed, professional qualification, date last licensed or current license expiration date; names of companies for which notice of agency contracts have been filed, date of agency contract and date of termination of agency contract if any, and limits on authority if any; names and reference numbers of licensed organizations for which the producer serves as a licensed officer or partner, date became a licensed officer or partner and date terminated if any; names and reference numbers of employed or employing producers, date relationship began and terminated.

2. Licensed organization: Legal name of producer, license reference number, other business name if any, business mailing and location address; license authorities, date first licensed, date last licensed or current expiration date, names and reference numbers of licensed officers and partners; names and reference numbers of insurance companies for which notice of agency contracts have been filed, agency contract date and termination date if any, limits of authority if any; names and reference numbers of employed producers, date relationship began and terminated.

(b) The following licensee records are specifically determined to be nonpublic records in accordance with N.J.S.A. 47:1A-1 et seq.:

1. Criminal complaints, indictments, judgments of conviction and other separate documents submitted in connection with a license application concerning whether an applicant is disqualified by reason of conviction of a crime;

2. Criminal history records obtained as the result of any criminal history check;

3. Petitions or discharges in bankruptcy, complaints, orders or other pleadings in actions for assignment to creditors and other separate documents submitted in connection with a license application concerning whether the applicant is disqualified by reason of unworthiness;

4. Copies of orders of suspension or revocation issued by professional or occupational licensing authorities, and other separate documents submitted in connection with a license application concerning whether the applicant is disqualified by reason of unworthiness;

5. Records concerning the medical disability of any licensee; and

6. Investigative files in any matter pending investigation, or in any completed investigation in which no formal disciplinary action was taken.

(c) Upon request by any person, the Department shall issue a certification of the license status of any currently licensed producer or producer licensed within the preceding four years. Such certification shall contain the licensee's name, date of birth, license reference

number, whether currently licensed or expired, kinds of insurance for which authorized whether qualified by examination or the equivalent, and whether any formal disciplinary action was taken during the last four years.

(d) Nothing in this section shall compel the Department to maintain licensee records beyond normal retirement or destruction schedules as approved by the Division of State Library, or to retrieve and provide a copy of any written record required to be filed with the Department when the information requested is available as a certified abstract of information contained in the Department's electronic data processing system.

SUBCHAPTER 3. (RESERVED)

SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 5. TRANSITION RULES

11:17-5.1 Effective dates

(a) The standards of conduct, penalties and other related provisions described in the Act shall take effect as provided by statute. All pleadings in any pending disciplinary action filed on or before the effective date of the Act shall be deemed amended to charge violation of a comparable section.

(b) Beginning May 1, 1988, the Department shall cease issuing agent, broker and solicitor licenses under prior law. Beginning July 1, 1988, all licenses shall be issued in accordance with the provisions of the New Jersey Insurance Producer Licensing Act and this chapter. New license applicants between May 1, 1988 and July 1, 1988 shall, if qualified, be issued a temporary certificate authorizing them to work pending licensure as a producer.

(c) All those holding licenses as life agents, life brokers, life solicitors, property/casualty agents, property/casualty brokers, property/casualty solicitors, surplus lines agents and title agents may continue to transact business authorized by those licenses after the effective date of the Act, and until relicensed as insurance producers in accordance with N.J.A.C. 11:17-5.2.

(d) All those licensed as property/casualty agents, whose licenses expire April 30, 1988, may continue to transact any business authorized by those licenses until relicensed as insurance producers in accordance with N.J.A.C. 11:17-5.2.

11:17-5.2 Relicensing current licensees as producers

(a) On or before July 1, 1988, the Department shall mail an initial producer license renewal application to each currently licensed agent, broker and solicitor with general authorities described in N.J.A.C. 11:17-2.5. These applications shall be directed to the business address then on file with the Department.

(b) Initial producer license renewal applications shall set forth the date of expiration of the initial producer license, which shall be by licensing quarter so as to spread future renewals over four years.

(c) License fees charged for the initial producer license renewal application shall be proportionate to the number of licensing quarters until expiration, and shall provide credit for fees paid for any license issued under prior law for a license year that has not begun by August 1, 1988.

(d) On or before July 31, 1988, all currently licensed agents, brokers and solicitors with general authorities described in N.J.A.C. 11:17-2.2 shall apply for relicensing as a producer by completing the application and returning it with a valid check or money order for the fee charged.

(e) Any person licensed under prior law who does not desire to relicense as a producer may return the initial producer license renewal application marked "Do Not Renew" and request a refund of any fees paid for a license issued under prior law for a license year that has not begun by August 1, 1988.

(f) Unless relicensed as a producer in accordance with this chapter, any license issued under prior law as an agent, broker or solicitor with authorities described in N.J.A.C. 11:17-2.2 shall be cancelled effective August 1, 1988.

(g) All licensed producers currently appointed as agents by any company under prior law shall be deemed to continue as a producer with a valid agency contract with that company unless and until a

notice of cancellation of agent has been filed in accordance with N.J.A.C. 11:17-2.9. Any resolutions filed by affiliated companies for the joint appointment of agents under prior law will continue in effect until the Department receives notice to the contrary.

(h) After August 1, 1988 but before November 1, 1988, all organizations licensed as producers shall file a statement with the Department naming those producers who serve as the licensed officers or partners of the licensed organization. Such a statement shall be dated, signed and certified by at least one licensed officer or partner.

(i) On or after August 1, 1988 but before November 1, 1988, all producers who employ other producers as provided by N.J.A.C. 11:17-2.9(b) shall file statements conforming to the requirements of that section. Such statements shall be dated, signed and certified to be correct by the employing producer.

11:17-5.3 Limited insurance representatives

(a) On or after May 1, 1988, any company writing insurance that may be marketed through limited insurance representatives shall register, in accordance with N.J.A.C. 11:17-2.10, any new representatives not licensed under prior law.

(b) All those licensed as bail bond agents, credit life agents, credit health agents, credit property/casualty agents, ticket life agents, ticket accident agents, ticket property/casualty agents, group mortgage cancellation agents, mortgage guarantee agents and auto physical damage and liability only agents may continue to transact any business authorized by existing licenses until such licenses expire.

(c) On or after November 1, 1988, but before existing licenses expire, all companies writing insurance business that may be marketed through limited insurance representatives shall file a statement registering those licensed under prior law and pay the registration fee provided in N.J.A.C. 11:17-2.12.

11:17-5.4 Insurance consultants

Insurance consultants who do not hold a license issued under prior law must either obtain a producer license or stop doing business by August 1, 1988.

11:17-5.5 Prelicensing education and examination

(a) Beginning on the effective date of the Act, no license shall be issued to any individual who has last passed the State licensing examination more than one year before the date of application. For purposes of this subsection, the date of application shall be deemed to be the date the application was received by the Department.

(b) Beginning on the effective date of the Act, no license shall be issued to any individual who has last completed the course of prelicensing education more than two years before the date of application.

(c) For purposes of this section, the date of application shall be deemed the date the application was received by the Department.

11:17-5.6 Effect of license revocation or suspension

Nothing in these rules shall authorize any person whose license has been revoked or suspended to continue to transact insurance business after the date of revocation or suspension.

(a)

DIVISION OF LICENSING AND ENFORCEMENT

Insurance Producer Licensing Professional Qualifications

**Proposed Repeals: N.J.A.C. 11:2-1.1 through 1.6;
11:2-19.1 through 19.5**

**Proposed New Rules: N.J.A.C. 11:17-3.1 through
3.5; 11:17-5.7**

Authority: N.J.S.A. 17:1C-6, 17:1-8.1, P.L. 1987, c.293.

(C.17:22A-1 et seq.)

Proposal Number: PRN 1988-56.

The agency proposal follows:

Summary

The proposed new rules contain insurance producer professional qualification requirements designed to implement the "New Jersey Insurance Producers Licensing Act" (the Act) P.L. 1987, c.293 (C.17:22A-1 et seq.), which was signed October 29, 1987 by Governor Kean and by its terms takes effect 180 days thereafter.

The Act amends certain provisions of the Insurance Licensing statute and repeals others under Title 17 and 17B. Rules concerning insurance producer licensing and licensing transition have been submitted in a separate proposal. This proposal provides rules for the professional qualifications of insurance producers, specifically regarding required professional education and examination provisions. Certain rules are repealed and replaced by the proposed new rules specifically dealing with continuing education and recognized professional designations.

N.J.A.C. 11:17-3.1 describes the standards and procedures for approval of insurance education programs, replacing the repealed rules at N.J.A.C. 11:2-19. The proposed new rule provides for Department approval of programs which include the teaching of insurance courses to satisfy professional qualification requirements for prelicensing and continuing education. Informational requirements for the application and procedures for approval are set forth. The proposed requirements are generally similar in language and practice to the current rules, with the following modifications:

1. An approval shall be for three years rather than the current two;
2. Applicants shall submit a copy of the program's student contract or agreement as a part of their submission for approval; and
3. The program name, and the name of the owner of a classroom facility if different than the program applicant, shall be included with the license application.

N.J.A.C. 11:17-3.1(g) describes the standards for approval of insurance education programs. Programs must maintain a permanent office in New Jersey where student records, copies of educational materials used and the program's certificate of approval are kept. The office shall be open to the Department for inspection and accessible to prospective, present and past students. This requirement of a permanent office in New Jersey is waived for courses sponsored by accredited colleges and universities, or national trade associations, if accessible to New Jersey students and if proper records are maintained and available. Approved programs must maintain a director in charge, who is accessible at or through the program's New Jersey office for communication to and from the Department and the public. The director is the personal point of contact with the program, and is responsible to receive and distribute information to other program locations and instructors.

An approved program must retain sufficient qualified instructors. The present requirement that the instructor have five years of experience in insurance practice, education or its equivalent is retained; additionally, instructors will be required to demonstrate professional competence by holding a recognized professional designation, being a member of the faculty of an accredited college or university, or passing an examination designed to test the knowledge and competence of instructors. Neither the director nor any instructors may have had an insurance license revoked.

The proposal retains the present rule requiring that programs maintain adequate classroom facilities for teaching the courses. The program must teach prelicensing courses in accordance with curricula established by the Department and/or continuing education programs approved by the Department in accordance with N.J.A.C. 11:17-3.4. Programs teaching prelicensing courses must provide remedies for students who failed the state licensing examination. An additional requirement that approved programs retain necessary student records was implied by the previous rule, and is now specified.

N.J.A.C. 11:17-3.1(h) and (i) provide that approved programs may teach courses at multiple, permanent locations or may conduct classes at temporary locations. This is a new provision designed to promote flexibility and to ensure that proper prelicensing and continuing education courses are widely available throughout the state.

An approved program is required by proposed N.J.A.C. 11:17-3.1(j) to issue a certificate containing specific information to students completing prelicensing education courses. This provision is contained in the present rule; the certificate is used to permit entrance to the state licensing examination. Issuance of the certificate by an approved program is confirmation that the student has received a minimum 70 percent passing course grade, as under the current rule. This requirement is meant to demonstrate that the program personnel are reasonably confident that the individual has learned the material.

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Proposed N.J.A.C. 11:17-3.1(k) articulates that any program denied approval for failure to meet the rule standards shall be advised in writing of the reason for the denial.

As under the current rule, proposed N.J.A.C. 11:17-3.1(l) provides that the Commissioner may suspend or revoke the approval of insurance education programs. Approval may be revoked for failure to maintain standards; failure to advise of changes in required information submitted in the application; obtaining approval by fraud or misrepresentation; failure to maintain a passing rate on the licensing examination of 70 percent or more; or failure to report students' continuing education units promptly and accurately. This latter requirement is new, and reflects the program's obligation to report continuing education units completed directly to the Department or its designee.

Proposed N.J.A.C. 11:17-3.1(m) provides hearing rights pursuant to the Administrative Procedure Act for a program whose approval was denied, suspended or revoked. This procedure recognizes that approval of insurance education programs is a quasi-licensing process.

A new provision, which is added to improve regulatory flexibility in less serious cases, allows the Commissioner to assess a fine or place a program on probation.

N.J.A.C. 11:17-3.2 describes the prelicensing education requirements. Applicants for resident insurance producer licenses must satisfy these requirements.

N.J.A.C. 11:17-3.2(b) describes a new general course requirement for those applying for their first license as a producer. The course requires 20 classroom hours, and covers general regulatory authority and methods; producer licensing; trade practices, standards of conduct and ethics; and general information on doing business as a licensed insurance producer in New Jersey. This course will include much of the "New Jersey law and practice" previously contained in authority-specific courses. This course will not, however, have to be re-taken by a producer who is applying for an additional license authority.

N.J.A.C. 11:17-3.2(c) describes the classroom hours for the authority-specific courses. Hours have been increased to 30 for life and health authorities, remain at 50 hours for title insurance, and are increased to 130 hours for property/casualty insurance. The life authority has been expanded to include material on contracts on a variable basis. New Jersey law and practice will be specific for each authority requested. Detailed curricula will be distributed to the approved education programs, and updated by the Department from time to time as necessary.

N.J.A.C. 11:17-3.2(d) exempts those holding approved professional designations from the prelicensing education requirements. Those persons holding such designations are also exempt from taking the licensing examination. Anyone who has successfully completed the courses and tests necessary to attain one of the recognized professional designations is expected to be professionally qualified to be a licensed insurance producer.

Many state agencies, including the Department of Insurance, require their employees to surrender professional licenses when they obtain employment in order to avoid conflicts of interest. An individual who previously held a New Jersey insurance license, but was required to surrender it as a condition of public employment related to insurance, need not retake a prelicensing education course. Such people will be able to requalify for their license within one year of the termination of insurance-related public employment without again having to complete the basic prelicensing education requirements. N.J.A.C. 11:17-3.3(c) excuses such persons from retaking the prelicensing examination.

N.J.A.C. 11:17-3.2(e) implements the Act's provision for waiver of prelicensing education requirements. Waivers will be granted for those who currently hold or have held an insurance license in another state within one year of application for the waiver, or those who, as veterans, have completed veterans' insurance education programs. Prelicensing education is also waived for lawyers seeking title insurance authority, and those holding baccalaureate degrees with substantial credit hours for insurance courses.

Waivers expire in 60 days and may not be reissued or renewed. Those who have not passed the test within 60 days of the waiver must complete the required prelicensing education course.

N.J.A.C. 11:17-3.3 describes the state licensing examination requirements and the terms and conditions for testing by an independent vendor. Applicants for resident individual insurance producer licenses must pass the state licensing examination, unless exempt.

N.J.A.C. 11:17-3.3(b) sets forth required provisions for a contract between any vendor of insurance producer testing services and the Department. This replaces N.J.A.C. 11:2-1.6, and most of the terms are substantially similar to the current rule. However, the proposed new rule

will improve communication between the contract testing service and the approved education programs by providing that the testing vendor will supply forms and information directly to the approved education programs and provide the programs with statistics concerning their graduates' performance on the state licensing examination.

In addition, the rule describes the contract vendor's obligation to collect and transmit electronically to the Department certain data captured during the test registration process that is also necessary in the licensing process. This will improve efficiency, as data need not be collected twice. The proposed rule also permits provisions in a testing contract concerning the testing vendor's issuance of temporary work authority to passing test candidates, to implement the proposed temporary work authority described in N.J.A.C. 11:17-2.4.

N.J.A.C. 11:17-3.3(c) exempts from the licensing examination requirement those persons holding recognized professional designations. Examinations successfully completed in achieving a recognized professional designation are considered to be sufficient evidence of the requisite professional qualifications. Applicants who previously held a New Jersey insurance license which was terminated as a condition of insurance-related public employment need not retake the examination if they apply for the license within one year of termination of employment.

N.J.A.C. 11:17-3.4 describes the requirements for continuing education, which are new requirements designed to implement the continuing education authority contained in the Act.

Beginning August 1, 1992, no individual insurance producer license will be renewed unless the renewal applicant has successfully completed the indicated continuing education requirements. This date was chosen based on the four-year renewal cycle and the initial relicensing of current licensees as producers on August 1, 1988. A licensee will have completed the continuing education requirements if he or she either holds a recognized professional designation or completes at least 48 continuing education credit units during the four-year license term. Those attaining a recognized professional designation are thereafter exempt from further continuing education requirements, as are New Jersey attorneys holding producer licenses with title insurance authority. Others must complete at least 48 certified continuing education units during each four year renewal cycle.

Continuing education credit units will be certified by the Department upon submission for evaluation by an approved insurance education program. Allowing approved education programs to develop such courses permits the greatest amount of flexibility and creativity concerning course content. Credit will not be certified for courses primarily concerning sales or salesmanship.

Submissions for certification of continuing education units shall include sufficiently detailed information to allow proper evaluation of the course. Continuing education units will be assigned and certified based on the number of hours of formal classroom instruction, course content, and requirements, if any, of outside work.

Work completed as part of requirements for obtaining a professional designation is assigned specific continuing education value. Each part of the Chartered Life Underwriter (CLU) and Chartered Property/Casualty Underwriter (CPCU) designations shall be worth 10 continuing education units. Insurance courses completed at an accredited college or university shall be worth four units for each semester hour. An individual completing five parts of the CLU or CPCU designations or 12 semester hours of college insurance courses during a renewal cycle will have satisfied the requirements. Licensees seeking credit for work toward a professional designation will individually submit transcripts to the Department or its designee. To ensure that proper credit is received by those completing courses at approved insurance education programs, which have been certified for a particular number of continuing education units, the director of such programs will report the course and credits directly to the Department or its designee. This process is expected to be easier to administer than any alternative.

The Department or its designee will send to resident licensees not holding a professional designation an annual report describing the continuing education units completed, the number remaining to be completed, and the licensee's renewal date. At least five months prior to renewal, the licensee will receive a statement as to whether the continuing education requirements for renewal have been met, based upon current records. In the event that a licensee asserts that either the annual statement or the final statement does not contain all the credits to which he or she is entitled, it will be the licensee's obligation to contact the program director where the course was taken and have them submit a supplemental statement to the Department or its designee.

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N.J.A.C. 11:17-3.5 describes the recognized professional designations which will be acceptable substitutes for other education and examination requirements as provided elsewhere in proposed Subchapter 3.

The recognized professional designations are as follows:

1. A Chartered Life Underwriter (CLU) designation conferred by the American College of Life Underwriters, will be accepted for life and health authorities.

2. A Chartered Property/Casualty Underwriter (CPCU) designation conferred by the American Institute of Property and Liability Underwriters will be accepted for property/casualty, health and surplus lines authorities.

Applicants seeking acceptance of a professional designation as satisfaction of any education or examination license requirement will be required to submit adequate proof of achievement of that designation.

The transition provisions at N.J.A.C. 11:17-5.7 continue the approval of current insurance education programs until the approval expires or is revoked. These rules also allow those who have completed the education and examination requirements under prior law to be licensed as producers, subject to the two-year limit on education and one-year limit on examination.

Social Impact

The proposed new rules affect all current and future licensed and authorized insurance producers. The proposed new rules will have a positive social impact in that the rules will greatly improve professionalism of insurance producers and thereby improve the quality of insurance services rendered to the public. The rules' professional qualification requirements for licensed insurance producers are comparable to those in other regulated occupations in New Jersey.

Insurance is a complicated subject and requires comprehensive and continuously changing knowledge and expertise. The prelicensing education and continuing education requirements of the proposed new rules will ensure that licensed insurance producers in New Jersey will maintain the necessary knowledge and expertise to properly advise insurance customers. The public will not be affected economically by the proposed new rules. The proposed new rules place an affirmative responsibility on insurance producers to update their skills in order to obtain a renewal license. The proposed new rules also address a public need by protecting the interests of insurance consumers in helping them make informed insurance decisions with the assistance of knowledgeable insurance producers. The insurance producer should have a higher sense of self-esteem, and ultimately enjoy a better reputation in the community.

Economic Impact

The increase in producer prelicensing course hours will increase the cost of entry to producer license candidates. The continuing education requirement will impose a continuing economic cost on producer licensees for the cost of completing the course. Instructors at approved programs will incur the cost of any necessary fee for administration of the instructor's examination. These costs are substantially outweighed by the expected improvements in insurance industry professionalism and the resultant benefits to consumers of insurance products.

In fulfilling the continuing education requirement, insurance producers will incur costs related to those courses.

Insurance consumers will experience a more efficient allocation of premium dollars, as their insurance needs will be handled by professional, qualified advisors. The Department of Insurance will incur administrative costs in monitoring compliance with the requirements of the proposed new subchapter and in approving courses and producers. The Department expects these costs to be absorbed in its existing budget through offsetting savings resulting from the new producer licensing system.

Any economic impact on approved programs created by these rules will be passed through to the license candidates or licensees.

Regulatory Flexibility Statement

The proposed new rules affect current and prospective licensed or authorized insurance producers in New Jersey. Most insurance producers are small businesses as that term is defined in the Regulatory Flexibility Act, P.L. 1986, c.169. As a result of the proposed new rules small businesses will incur additional expenses in satisfying continuing education requirements and will maintain a higher degree of professionalism than under the current system.

To provide for uniform and consistent application of these rules and to avoid the granting of a prescribed advantage to insurance producers who are small businesses, no differential treatment is accorded small business by these proposed new rules.

Full text of the proposed repeal appears in the New Jersey Administrative Code at N.J.A.C. 11:2-1.1 through 1.6; 11:2-19.1 through 19.5.

Full text of the proposed new rules follows:

SUBCHAPTER 3. PROFESSIONAL QUALIFICATION**11:17-3.1 Approval of insurance education programs**

(a) Programs which include the teaching of insurance courses to satisfy professional qualification requirements for prelicensing or continuing education shall obtain approval in accordance with this section.

(b) An application for approval of an insurance education program shall be made on a form prescribed by the Department and shall contain the following information:

1. Name of program and address of program office;
2. Name and address of sponsoring organization, if any;
3. Name and home address of program director or directors;
4. Names of all instructors;
5. Courses to be taught;
6. Maximum number of students taught in any one class;
7. Amount of tuition, fees and other charges to be paid by students;
8. Address of classroom or classrooms if different from office;
9. Name of owner of classroom facility, if different; and
10. Any other information that may be required to determine whether the program meets standards for approval.

(c) An application for approval shall be accompanied by the following:

1. Resumes of all instructors;
2. Confirmation that each instructor is qualified in accordance with (g)3. below;
3. A copy of the enrollment application, student contract or other form of agreement between the program and students;
4. A lease or other agreement evidencing the right to use classroom facilities if not owned by program sponsor; and
5. An application fee of \$100.00.

(d) An application for approval shall be certified as correct by the program director or directors named in the application.

(e) An application for approval shall be submitted to:

Insurance Education Supervisor
Department of Insurance
CN 325
Trenton, New Jersey 08625

(f) Applications for approval shall be reviewed by the Department to determine compliance with the standards in (g) below. The applicant shall supply upon request such additional information or documentation as may be required to determine whether such standards are met:

1. An inspection of the office and classroom facility may be conducted prior to approval or the approval may be issued conditional upon the results of an inspection.

2. If the application is in proper form and all standards in (g) below are met, the Department shall issue a certificate of approval which shall contain the approved school code number, effective date and expiration date.

3. An approval shall expire in the third year on the last day of the licensing quarter preceding the quarter in which the approval was effective.

4. A program approval may be renewed by the same procedure set forth in this section.

(g) Each insurance education program shall meet the following standards:

1. Maintain a permanent office in New Jersey where shall be kept student records, samples of all instructional materials used, copies of the New Jersey Insurance Statutes and Administrative Rules, and the program's certificate of approval. The office shall be open and accessible to the Department and to prospective, present and past students during normal business hours. This requirement may be waived for courses sponsored by accredited colleges and universities, or national insurance producer trade associations, which demonstrate

adequate accessibility to New Jersey students and agree to provide the Department with student records upon request.

2. Retain a director in responsible charge of the program, who shall be accessible to the Department and the public at or through the program's office during normal business hours. The program director shall oversee the program and activities of all instructors and receive and distribute communications from the Department and others to all instructors and students. The director shall not have had his or her insurance license revoked.

3. Retain sufficient instructors with at least five years of broad experience in insurance practice, insurance education or equivalent experience, and who hold a recognized professional designation, have passed the New Jersey instructor examination or are a faculty member of an accredited college or university. An instructor shall not have had his or her insurance license revoked.

4. Maintain classroom facilities with sufficient lighting, desks or tables and quarters conducive to learning, and which meet all local building codes. Classroom facilities shall be open to the Department for class monitoring at any time.

5. Instruct students in courses of prelicensing education and/or continuing education in accordance with curricula established or approved by the Department.

6. Provide remedies for students who have failed the state licensing examination, which may include review courses or second full courses at reduced rates.

7. Maintain for six years records of each student, course taken, instructor or instructors, pass or fail, and location where taken if the program teaches at more than one location.

(h) An approved insurance education program may maintain classroom facilities at more than one permanent location in New Jersey under the supervision of a single director, provided that each classroom facility meets the standards provided above and that necessary student records are maintained at the program's main office location.

(i) An approved insurance education program may conduct classes at temporary locations in New Jersey provided that the following requirements are met:

1. Each classroom facility shall meet the standards set forth in (g) above;

2. Students records shall be maintained at the program's main office; and

3. The program director shall notify the Department in writing of the time, date, location and course taught at any temporary location at least ten days prior to the first class, so that classes at temporary locations may be monitored by the Department in the same manner as classes at any permanent location.

(j) An approved insurance education program shall issue a certificate to each student who has successfully completed a prelicensing education course. The certificate shall contain the following:

1. Program name and program code number;

2. Student's name;

3. The course and hours of study;

4. Student's and instructor's signatures;

5. Course completion date; and

6. A statement that the student was instructed for the number of hours indicated on the certificate, that the instructor is satisfied that the student knows the material, and that the student has received at least a 70 percent minimum passing course grade in the program.

(k) Any insurance education program may be denied approval for failure to meet the standards in this section. Nothing in this section shall prohibit the rejection and return of applications for correction of ministerial errors.

(l) The Commissioner may suspend or revoke the approval of any insurance education program for any of the following reasons:

1. Failure to maintain any standard set forth in this section;

2. Failure to advise promptly of any change in information initially submitted in the application during the period of approval;

3. Obtaining any approval by fraud or misrepresentation;

4. Failure to conduct any classes for a period of twelve months; or

5. Failure to maintain an overall passing rate on the state insurance licensing examination of 70 percent or more during any

period of 12 consecutive months. For the purpose of calculating the passing rate, each examination taken by each program graduate will be counted.

6. Failure to report students' continuing education units promptly and accurately to the Department.

(m) Any approval denial, suspension or revocation pursuant to (k) and (l) above shall be in writing, and shall advise the applicant or program of his, her or its right to a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

(n) The Commissioner may place any program on probation with appropriate conditions and assess an administrative fine in addition to or in lieu of suspension or revocation of approval.

11:17-3.2 Prelicensing education

(a) Each applicant for a resident insurance producer's license shall successfully complete a course of prelicensing education with the appropriate number of hours of classroom instruction described in (b) through (e) below.

(b) Prior to being licensed in New Jersey for the first time as a producer, an applicant shall complete a course on regulation of the insurance industry in New Jersey which includes the following topics, for a total of 20 classroom hours:

1. State regulatory jurisdiction;

2. Powers of the Commissioner and methods of regulation;

3. Producer licensing;

4. Producer trade practices, standards of conduct and ethics; and

5. Doing business as a licensed insurance producer.

(c) Prior to being admitted to the State licensing examination to obtain a particular producer license authority, an applicant shall complete a course of prelicensing education for the specific authority or authorities as follows:

1. Life authority, for a total of 30 classroom hours:

i. General life insurance concepts;

ii. Annuities;

iii. Contracts on a variable basis; and

iv. New Jersey law and practice regarding life insurance.

2. Health authority, for a total of 30 classroom hours:

i. General health concepts; and

ii. New Jersey law and practice regarding health insurance.

3. Property/Casualty authority, for a total of 130 classroom hours:

i. General property insurance concepts;

ii. General casualty insurance concepts; and

iii. New Jersey law and practice regarding property/casualty insurance.

4. Title insurance authority; for a total of 50 classroom hours:

i. General principles of real estate and title insurance.

ii. New Jersey law and practice regarding title insurance.

(d) A person holding an approved professional designation described in N.J.A.C. 11:17-3.5 shall not be required to complete the courses of prelicensing education. A person who previously held a New Jersey insurance license, which was surrendered as a condition of public employment, shall not be required to complete the course of prelicensing education to reinstate the license provided that the employment was insurance-related and application for license is made within one year of termination of the public employment.

(e) Upon application to the Supervisor of Insurance Education, any of the courses in (c) above may be waived for any license applicant who can demonstrate that he or she satisfies at least one of the following:

1. Holds or has held an insurance producer, agent, broker or solicitor license in a state other than this State, which is current or expired less than one year preceeding the date of application for waiver;

2. Is a veteran of the United States armed services, and completed a course of veteran's education approved by the Department of Education and the Commissioner of Insurance;

3. Holds a baccalaureate degree from an accredited college or university and has successfully completed a minimum of 24 credit hours in insurance subjects at an accredited college or university as part of that degree or otherwise; or

(f) An application for waiver shall be made on the form prescribed by the Department, and shall be submitted directly to the Supervisor of Insurance Education prior to registering for the State licensing examination or making application for an insurance producer license.

1. Applicants seeking a waiver authorized by (e)1. above shall submit a recent certification of license status of letter of severance issued by the insurance licensing authority in the state where they hold or held an insurance license.

2. Applicants seeking a waiver authorized by (e)2. above shall submit proof of completion of a course of veteran's education issued by the New Jersey Department of Education.

3. Applicants seeking a waiver authorized by (e)3. above shall submit a transcript issued by the college or university where the degree was earned.

4. Applicants seeking a waiver authorized by (e)4. above shall submit a certificate of good standing issued by the Clerk of the New Jersey Supreme Court.

(g) If a waiver is approved pursuant to (e) above, the Supervisor of Insurance Education shall issue a letter of approval waiving the prelicensing education requirement, which shall be attached to the producer license application when submitted.

(h) Producer license applicants who obtain a waiver of the education requirement shall be responsible for test preparation.

(i) Waivers shall expire in 60 days and shall not be reissued or renewed.

11:17-3.3 State licensing examination; use of independent examination vendor

(a) All applicants for a resident insurance producer license must pass the State licensing examination, which may be given by the Department or by an independent vendor under contract to the Department that meets the criteria set forth in (b) below.

(b) Any contract for development and administration of the New Jersey State insurance producer licensing examination shall include without limitation the following terms and conditions:

1. The contract vendor shall develop and administer the examination in accordance with specifications approved by the Commissioner. Examinations shall be administered not less than two times per month at such times and places as may be agreed upon by the Commissioner and the contract vendor, provided that the contract vendor shall furnish the Commissioner at least four months' prior notice of scheduled test administration dates.

2. The contract vendor shall establish at least four test administration centers within the State, provide all physical facilities and provide all test center personnel sufficient for the administration. At least one test administration center shall be in each of the following areas:

- i. Newark;
- ii. Trenton;
- iii. Camden;
- iv. Atlantic City.

3. The contract vendor shall collect from applicants taking the insurance license examination an agreed fee covering the cost of developing and administering the examination.

4. The contract vendor shall administer the examination in accordance with the contract, which shall contain adequate provisions for preregistration of test candidates, walk-in testing, score reporting, security measures and such other provisions that assure fair and consistent administration of the examination.

5. The contract vendor shall print and distribute to all approved education programs and to any prospective test candidate such candidate bulletins, registration forms and other information that may be useful or required.

6. The contract vendor shall score examinations promptly, and deliver score reports to all passing and failing candidates no more than 15 days after each test administration.

7. The contract vendor shall provide to failing candidates diagnostic information by major content areas for each test taken.

8. The contract vendor shall provide to the Department alphabetical lists containing candidate names, addresses, identification numbers, school code numbers and scores on state producer licensing examinations of passing and failing candidates and sum-

mary statistics indicating the number of candidates registered, tested and absent, and passing or failing for each test administration.

9. The contract vendor shall provide to the Department at least quarterly accumulative, non-personally identifiable pass/fail data and diagnostic data by major content areas for each test for approved programs of prelicensing insurance education.

10. The contract vendor shall provide to approved programs teaching courses of prelicensing education quarterly reports about their students' performance on the licensing examination, which shall contain students' names, tests taken, scores (passing or failing) and summary statistics.

11. The Department shall have the sole responsibility for establishing minimum qualifications and passing requirements of candidates.

12. The contract vendor shall defend and indemnify the Department of Insurance, the State of New Jersey and its agents, officers and employees from all claims, actions, damages, liability and expenses in connection with loss of life, personal injury and/or damage to property arising out of the ownership, occupancy or use by the contract vendor of any facilities used as test administration centers, occasioned wholly or in part by any act or omission of the contract vendor, its agents, contractors or employees.

13. The contract vendor shall provide technical and legal assistance to the Department in the event of any legal challenge to the validity of any examination administered, prepared and/or copyrighted by the contract vendor or the Department in which the State of New Jersey or any of its agencies, officers or employees is named as a party.

14. The contract vendor shall provide public liability insurance with respect to the test facilities in a form satisfactory to the Department with minimum policy limits of \$1,000,000 bodily injury coverage for each occurrence; \$1,000,000 aggregate bodily injury coverage; \$500,000 property damage coverage for each occurrence; and \$1,500,000 aggregate property damage coverage.

15. The contract vendor shall transmit to the Department in a form satisfactory to the Department information collected during the test registration process to aid in prompt licensing of passing candidates, and may issue to passing candidates, on a form prescribed by the Department, a temporary work authority. The contract vendor shall deliver the test registration forms of passing candidates to whom a temporary work authority has been issued within thirty days of the date of test administration.

(c) Applicants holding a recognized professional designation described in N.J.A.C. 11:17-3.5 are exempt from the licensing examination. Applicants who previously held a New Jersey insurance license, which was terminated as a condition of public employment, are exempt from re-examination provided the public employment was in an insurance-related field and the license application is made within one year of termination of that employment.

11:17-3.4 Continuing education

(a) No resident individual insurance producer license shall be renewed on or after August 1, 1992, unless the renewal applicant demonstrates that he or she has completed the continuing education requirements described in this section, by showing that he or she satisfies at least one of the following:

1. Has at any time attained and currently maintains in good standing a recognized professional designation described in N.J.A.C. 11:17-3.5;

2. Has during the previous four years completed not less than 48 continuing education units of certified continuing education courses; or

3. For title insurance only, is a New Jersey admitted attorney at law having an insurance producer license with title insurance authority in New Jersey.

(b) Approved insurance education programs may submit for certification of continuing education units such courses as they may develop. No continuing education unit shall be certified unless the course was completed at an approved insurance education program.

1. No credit shall be certified for courses that deal substantially with sales or salesmanship.

2. An approved insurance education program shall submit its request for continuing education unit certification on a form prescribed by the Department, which shall include:

- i. The title of the course;
- ii. A description of the topics or subject matter to be covered;
- iii. Copies of any materials to be used;
- iv. The number of classroom hours; and
- v. Such other information as may be necessary to evaluate the proposed course for continuing education units.

3. The Supervisor of Insurance Education shall disapprove the course, or certify it for a specified number of continuing education units, based on the number of hours of formal classroom instruction, the difficulty of the material covered and the requirement, if any, of outside preparation or study.

4. Each completed part of the Chartered Life Underwriter (CLU) and Chartered Property Casualty Underwriter (CPCU) designations shall be worth 10 continuing education units. Insurance courses completed at an accredited college or university shall be worth four continuing education units for each semester hour of college credit.

(c) The director of an approved insurance education program shall report the names and producer license reference numbers of those completing each continuing education course to the Department or its designee on a form prescribed by the Department which shall include the following:

1. Program name and school code;
2. Course completed;
3. The continuing education units as certified; and
4. Such other information as may be necessary to ensure that those completing the course receive proper credit.

(d) Producers who seek continuing education credit for one or more parts of the CLU or CPCU designations, or for insurance courses completed at an accredited college or university may submit a certified transcript directly to the Department or its designee. Producers who seek credit as attorneys-at-law may submit a certificate of good standing, issued by the Clerk of the Supreme Court.

(e) At least once each year the Department or its designee shall issue to individual resident producers an accounting of the number of continuing education units completed, the course and school code, total continuing education units completed, the total remaining to be completed, and the producer's renewal date. If this accounting does not accurately reflect the continuing education units completed, the producer may request the director of the approved education program to submit an appropriate supplemental report.

(f) At least five months prior to renewal, the Department or its designee shall issue to individual resident producers a statement whether the continuing education requirement for renewal has been met, based upon current records. In the event the producer asserts that credit has not been recorded for a certified continuing education course, it shall be the sole responsibility of the producer to request from the director of the approved program where the course was taken that a supplemental report of continuing education units be prepared and filed by the director.

11:17-3.5 Recognized professional designations

(a) The Department recognizes the following professional designations as acceptable substitutes for other producer education and examination requirements:

1. For life and health authorities, a Chartered Life Underwriter (CLU) designation conferred by The American College of Life Underwriters;
2. For property/casualty, health and surplus lines authorities, a Chartered Property Casualty Underwriter (CPCU) designation conferred by The American Institute of Property and Liability Underwriters.

(b) An applicant seeking to rely on a recognized professional designation to satisfy any education or examination requirement shall submit adequate proof of achievement of a Chartered Life Underwriter (CLU) or Chartered Property/Casualty Underwriter (CPCU) which proof shall include an official document or transcript issued by the organization conferring the designation and certified as currently in effect.

11:17-5.7 Professional qualifications

(a) Insurance education programs approved in accordance with the prior rule, N.J.A.C. 11:2-19, are deemed to continue as approved until their current approval expires, unless approval is revoked.

(b) Subject to the time limitations of the New Jersey Insurance Producers Licensing Act P.L. 1987 c.293 and N.J.A.C. 11:17-5.4, individuals applying for producer licenses are deemed to satisfy the education and examination requirements of N.J.A.C. 11:17-3.2 and 3.3 by completing courses of preclicensing education at an approved program and passing the state licensing examination in accordance with prior law.

(a)

DIVISION OF ADMINISTRATION

New Jersey Medical Malpractice Reinsurance Recovery Fund Surcharge

Pre-Proposed New Rules: N.J.A.C. 11:18

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17:30D-1 et seq.
Pre-Proposal Number: PPN 1988-2.

The agency pre-proposal follows:

Summary

N.J.S.A. 17:30D-1 et seq., the Medical Malpractice Liability Insurance Act ("Act"), was enacted to ensure that medical malpractice liability insurance was readily available to licensed medical practitioners and health care facilities. The Act established the New Jersey Medical Malpractice Reinsurance Association ("Association") which was required to reinsure certain medical malpractice liability insurance policies. The Association was also permitted to write such policies on a direct basis in the absence of a qualified provider willing to issue the needed class of coverage.

As a financial backup, the Medical Malpractice Reinsurance Recovery Fund ("Fund") was established to reimburse the Association for any deficit it might sustain in the operation of the Association. A deficit, as defined in N.J.S.A. 17:30D-9, exists when premium and investment income are exhausted by payment of or allocation for the Association's administrative expenses, losses, loss adjustment expenses and reserves for losses incurred and losses incurred but not reported.

For the purpose of providing monies to the Fund so as to establish it in an amount sufficient to meet the requirements of the Act, the Commissioner is empowered, pursuant to N.J.S.A. 17:30D-10, to "establish reasonable provisions through additional premium charges for policies of the various categories and subcategories of medical malpractice liability insurance." The Commissioner may further exercise the broad powers expressly conferred on him to select those classes of insureds or lines of coverage to be surcharged and the amount and duration of such surcharge which in his view accomplishes the statutory objectives.

The Association, although totally deactivated by 1982, remains obligated on claims presented under the coverage it reinsured or wrote directly during its years of operation. Actuarial studies conducted on behalf of the Association for year end 1982 indicated that the Association would experience substantial deficits and an eventual inability to pay claims on which it was still responsible. The year end actuarial report for 1983 confirmed the existence of a deficit, and the Association has continued to report a deficit to the Department of Insurance each year to the present.

In view of the need to fund the Association's deficit, the Department hereby submits this pre-proposal so as to solicit comments prior to formally proposing new rules at N.J.A.C. 11:18. N.J.A.C. 11:18-1.1 sets forth the purpose of the pre-proposed new rules and N.J.A.C. 11:18-1.2 sets forth the scope. N.J.A.C. 11:18-1.3 contains definitions of terms used throughout the chapter.

The substantive sections of the pre-proposal are N.J.A.C. 11:18-1.4 and 1.5. N.J.A.C. 11:18-1.4 would impose a four percent surcharge on the premiums for all policies of medical malpractice liability insurance covering physicians and doctors. The surcharge is to be a separate charge to the insured in addition to the premium and shall be so identified. This section also allows for cancellation of a policy when the insured fails to pay the surcharge and for pro rata return of collected surcharges when such is appropriate.

N.J.A.C. 11:18-1.5 sets forth collection and remittance requirements. Insurers are to collect surcharges at the time of payment of premium

and shall remit such to the State Treasurer within 10 days from collection. The Treasurer shall biannually remit monies received for the account of the Fund, plus interest, to the Association. Each insurer must also biannually file specific information with the Department, such as: listings of each surcharge collected and remitted during the preceding reporting period; the total amounts of surcharges collected and remitted during the preceding reporting period; and a certification of accuracy. Lastly, this section provides for the imposition of penalties where an insurer fails to timely submit the above information and obligates the insurer to collect and remit the surcharge as a condition of maintaining its license.

Social Impact

The pre-proposal will allow the New Jersey Medical Malpractice Reinsurance Association to remain viable and continue to service and pay the claims for which it remains liable.

Economic Impact

The pre-proposed new rules will not result in any significant adverse economic impact upon insurers. Insurers may experience a minimal increase in costs by having to remit the collected surcharges to the State Treasurer and file the specified information biannually with the Department.

The insureds which fall within the scope of the pre-proposed new rules will experience an adverse economic impact in that the imposition of the surcharge will result in each insured being responsible for an additional four percent of its premium amount.

The Department does not expect to incur any additional expenses as a result of the pre-proposed new rules.

Regulatory Flexibility Statement

Some insurers affected by the pre-proposed new rules may be small businesses as that term is defined in the Regulatory Flexibility Act, P.L. 1986, c. 169. The compliance requirements imposed by the pre-proposed new rules upon insurers, including small businesses, are that they collect a surcharge along with the policy premium, remit such to the State Treasurer within 10 days from collection and biannually file with the Department specified information regarding the collected and remitted surcharges. None of the above requirements are expected to have any significant adverse economic impact on insurer small businesses. To provide for uniform and consistent applicability of these rules, and to avoid the granting of a prescribed advantage to insureds who are small business, no differential treatment is accorded small business insureds by these proposed new rules.

Full text of the pre-proposal follows:

SUBTITLE N. NEW JERSEY MEDICAL MALPRACTICE REINSURANCE RECOVERY FUND

CHAPTER 18

NEW JERSEY MEDICAL MALPRACTICE REINSURANCE RECOVERY FUND

SUBCHAPTER 1. FUND SURCHARGE

11:18-1.1 Purpose

Pursuant to N.J.S.A. 17:30D-9, the New Jersey Medical Malpractice Reinsurance Recovery Fund was created to be used to reimburse the New Jersey Medical Malpractice Reinsurance Association, created pursuant to N.J.S.A. 17:30D-4, for any deficit sustained in the operation of the Association. Pursuant to N.J.S.A. 17:30D-10, the Commissioner of the Department of Insurance is authorized to establish reasonable provisions through additional premium charges for medical malpractice liability insurance policies for the purpose of providing monies necessary to establish the Fund in an amount sufficient to meet the requirements of the Medical Malpractice Liability Insurance Act, N.J.S.A. 17:30D-1.1 et seq. This subchapter establishes such provisions.

11:18-1.2 Scope

This subchapter applies to all insurers authorized to write medical malpractice liability insurance in this State.

11:18-1.3 Definitions

"Association" means the New Jersey Medical Malpractice Reinsurance Association created pursuant to N.J.S.A. 17:30D-4.

"Fund" means the New Jersey Medical Malpractice Reinsurance Recovery Fund created pursuant to N.J.S.A. 17:30D-9.

"Medical malpractice liability insurance" means insurance coverage against the legal liability of the insured and against loss, damage or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in rendering professional service by any physician or doctor or a claim arising out of ownership, operation or maintenance of the physician's or doctor's business premises, including primary and excess coverages.

"Physicians" or "doctor" shall mean a doctor of medicine (M.D.), a doctor of osteopathic medicine (D.O.), a doctor of podiatric medicine (D.P.M.), and a doctor of chiropractic (D.C.).

"Treasurer" means the Treasurer of the State of New Jersey.

11:18-1.4 Imposition of surcharge

(a) A surcharge of four percent is imposed on the premiums for all policies of medical malpractice liability insurance covering physicians and doctors, whether participating individually or as a professional association or employee thereof, or in affiliation or employment with any hospital or health maintenance organization.

(b) The surcharge shall apply to all new and renewal policies effective on or after January 1, 1988, and to the additional premiums on all endorsements effective on or after January 1, 1988.

(c) The surcharge shall be a separate charge to the insured in addition to the premium to be paid and shall be shown separately in dollars and cents on the document stating the policy premium. The surcharge shall be identified to the insured as the "Medical Malpractice Reinsurance Recovery Fund Surcharge".

(d) Commissions and premium taxes shall not be payable on the surcharge and the insurer is prohibited from absorbing such surcharge as an inducement for insurance or for any other reason.

(e) Failure of the insured to pay the surcharge shall be deemed failure to pay the premium and result in cancellation for nonpayment of premium.

(f) Return of surcharge collected is permitted on policy activity such as endorsements decreasing premium and cancellation effective January 1, 1988 and thereafter. The return surcharge shall be calculated on the same pro rata basis as the return premium.

11:18-1.5 Collection and remittance of surcharge

(a) The surcharge billed to the policyholder shall be collected by each insurer at the time of payment of premium.

(b) The insurer shall remit collected surcharges to the Treasurer for the account of the Fund not later than 10 days from the collection of the surcharge.

(c) Not later than April 1 and October 1 of each year, the Treasurer shall remit the total amount of monies received by the Fund, plus all accrued interest thereon, to the Association pursuant to N.J.S.A. 17:30D-11.

(d) Not later than March 1 and September 1 of each year, each insurer shall file with the Department of Insurance the following:

1. A listing of each fund surcharge collected during the preceding reporting period;
2. A listing of each Fund surcharge remitted to the Treasurer during the preceding reporting period;
3. The total amount of Fund surcharges collected during the preceding reporting period;
4. The total amount of Fund surcharges remitted to the Treasurer during the preceding reporting period; and
5. A statement from an officer of the company certifying that the information submitted is accurate and complete to the best of his or her knowledge.

(e) The information required above in N.J.A.C. 11:18-1.5(d) shall be submitted to:

Office of the Special Deputy Commissioners
New Jersey Department of Insurance
CN 325
Trenton, New Jersey 08625
Attention: MMRRF Surcharge

(f) Failure by an insurer to submit the information required in N.J.A.C. 11:18-1.5(d) in a timely manner may result in the imposition of penalties pursuant to N.J.S.A. 17:33-2.

(g) The surcharge shall be billed to the policyholder, collected by the insurer, and remitted to the Treasurer until such time as the

Commissioner of the Department of Insurance determines that the monies in the fund are sufficient to meet the requirements of N.J.S.A. 17:30D-1 et seq.

(h) The insurer's obligation to collect the surcharge and remit it to the Treasurer in a timely manner shall be a condition of maintaining its license.

LAW AND PUBLIC SAFETY

(a)

BOARD OF PHARMACY

Board of Pharmacy Rules

Proposed Repeal and New Rules: N.J.A.C. 13:39

Comment Period Extension

Take notice that the Board of Pharmacy is extending until February 18, 1988, the period for submission of written comments on the proposed repeal and new rules which govern all aspects of the practice of pharmacy in this State, N.J.A.C. 13:39. The original proposal was published on November 2, 1987 in the New Jersey Register at 19 N.J.R. 1952(a). Please refer to it for further information.

Interested persons may submit written comments on the proposed repeal and new rules to:

Robert Terranova, Executive Secretary
State Board of Pharmacy
1100 Raymond Boulevard, Room 325
Newark, New Jersey 07102

(b)

DIVISION OF CONSUMER AFFAIRS

Practice of Audiology and Speech-Language Pathology

Proposed Repeal: N.J.A.C. 13:44C-1.1

Proposed New Rules: N.J.A.C. 13:44C-1.1 through 13:44C-9.1

Authorized By: James J. Barry, Jr., Director, New Jersey Division of Consumer Affairs.

Authority: N.J.S.A. 45:3B-24.

Proposal Number: PRN 1988-61.

A **public hearing** regarding this proposal will be held on:
Tuesday, February 23, 1988 at 10:30 A.M.
Essex County Community College Auditorium
303 University Avenue
Newark, New Jersey

Submit comments by March 2, 1988 to:
Richard Weisman, Executive Director
Advisory Committee on Audiology and Speech-Pathology
100 Raymond Boulevard, Room 510
Newark, New Jersey 07102

The agency proposal follows:

Summary

These rules are repropoed following a period of public comment. The initial proposal appeared on August 3, 1987 at 19 N.J.R. 1412(a). The revisions to the initial proposal are generally designed to conform with statutory provisions, to clarify possibly misleading statements, and to specify acceptable Continuing Professional Education credits.

The repropoal repeals N.J.A.C. 13:44C-1.1, the current rule on fees and charges, and replaces it with the repropoed new rules, N.J.A.C. 13:44C-1.1 through 9.1, which include a more extensive subchapter on fees. Aside from the subchapter on fees, the repropoed rules are entirely new and govern the licensing of audiologists and speech-language pathologists and the standards for practice of audiology and speech-language pathology. Since the enactment of the enabling legislation in 1983, the following numbers of licenses have been issued, as of December 1, 1987: Audiology—217; Speech-Language Pathology—1,344; Both types of licenses—38. Currently, 61 applications are pending. Under the

proposed rules, "firms" or "group practices" are not required to obtain special licenses, nor are there any special requirements imposed on such practices beyond what applies to the individual licensees. Firms or group practices owned by non-licensees are required to file with the Director of the Division of Consumer Affairs a statement that the non-licensee subjects himself or itself to all applicable provisions of the act or regulations (N.J.S.A. 45:3B-16).

The repropoed rules govern in detail such areas as educational requirements, clinical internships, Continuing Professional Education (CPE), unprofessional business conduct, and professional misconduct. These last two areas, set forth in Subchapter 8, include provisions relating to recordkeeping and release of records, preparation of reports and insurance forms, charges and fees, advertising, posting of licenses, and unnecessary treatment, as well as receipt or payment of kickbacks for patient referrals, use of uncalibrated equipment and receipt of payment for prescribing, recommending, ordering or promoting the sale of devices or services without notifying the patient of any interest in such sale.

This repropoal contains the following technical corrections and substantive changes from the original proposal. Reasons for the changes are set forth below. The changes are boldface; deletions are marked in brackets [thus].

1. N.J.A.C. 13:44C-2.1, Election of Officers. "In the absence of the chairman or an express delegation of responsibility, the **secretary-treasurer** shall assume all duties of the chairman". Technical correction.

2. N.J.A.C. 13:44C-2.2(a)3, Fees. "Temporary license fee for **one year** . . . **\$50.**" Technical correction.

3. N.J.A.C. 13:44C-4.2(a)1, Provisional licensure requirements. "Graduation from a bachelor's degree program [audiology or speech-language pathology] from an accredited college, (etc.)" Conforms language with statute.

4. N.J.A.C. 13:44C-4.2(a)5, Provisional licensure requirements. "A plan . . . which meets the requirements of N.J.A.C. **13:44C-4.5.**" Technical correction of cross-reference.

5. N.J.A.C. 13:44C-4.5(a), Supervision of Provisionals. "A holder of a provisional license may work only under the supervision of a **licensed** audiologist or speech-language pathologist, as appropriate, [who holds a regular license pursuant to N.J.S.A. 45:3B-1 et seq. or is licensed to practice audiology or speech-language pathology, as is appropriate, in a state with licensure requirements substantially equal to those of this State, or holds a Certificate of Clinical Competence from the American Speech-Language-Hearing Association or its equivalent and] who shall be responsible for the actions of the provisional licensee." Conforms language with statute.

6. N.J.A.C. 13:44C-6.2(a), Allocation of CPE credit. Delete the last sentence, "However, for renewal in November 1987 only seven documented hours shall be required." Rules were not initially published until very shortly before first renewal date. This proposal appears after that date.

7. N.J.A.C. 13:44C-6.5(a), Subjects of Continuing Professional Education courses. Delete the phrase "learning theory." Restricts CPE credits to courses which specifically deal with or relate to speech and hearing-related issues.

8. N.J.A.C. 13:44C-6.5(b), Sponsors of Continuing Professional Education. Third clause now reads, "**local**, state or federal education or health agency . . ." Permits licensees employed by the school systems to earn CPE credits for appropriate in-service training courses offered by the schools.

9. N.J.A.C. 13:44C-6.5(b), Sponsors of Continuing Professional Education. Last sentence now reads: "Courses accepted for credit by the National Registry on Continuing Education or by the American **Speech-Language-Hearing** Association will be given credit by the Advisory Committee as set forth in N.J.A.C. 13:44C-6.2." Technical corrections.

10. N.J.A.C. 13:44C-7.2(a)4, Exemptions. "Any person certified as a **speech-language** correctionist . . ." Technical correction.

11. N.J.A.C. 13:44C-8.1(a)2, Recordkeeping-calibration log. This section now reads: "Failure to document that all audiological equipment is calibrated on a timely basis and meets nationally recognized standards" (ANSI, 1969 and all subsequent revisions). Clarification.

12. N.J.A.C. 13:44C-8.1(a)10, Omission of license number on bills. This section as originally proposed is deleted because of the hardship that would be imposed on large practices and hospitals.

13. N.J.A.C. 13:44C-8.1(a) 11-16 are renumbered.

14. N.J.A.C. 13:44C-8.1(a)11iv., Advertising. Add the words, for example, advertising percentages of success." Advisory Committee agreed with a member of the public who observed that such representations are

misleading and tend to raise unjustified expectations on the part of patients.

15. N.J.A.C. 13:44C-8.1(a)11ix., Advertising. First clause now reads, "Contains offers of discounts for services without stating the advertiser's usual and customary fee on which the discount will be taken, or the availability of a schedule of the licensee's usual and customary fees." Provides the licensee the option of stating the usual or customary fee or offering to provide fee schedule.

16. N.J.A.C. 13:44C-8.1(a), Business Practices. Add new paragraph 16: "Failure to electronically calibrate audiological testing equipment at least annually and to document same." Failure to do so is an unprofessional business practice.

17. N.J.A.C. 13:44C-8.2, Professional practices. Add new paragraph 5. Language is moved from N.J.A.C. 13:44C-8.1(a)15., Business practices.

18. N.J.A.C. 13:44C-8.3, Scope of Practice. This section now reads: "The representation of a speech-language pathologist or audiologist as a physician rendering medical opinions or medical services shall be deemed to be outside the scope of speech-language pathology and audiology and, upon proof that a licensee is engaging in such conduct, he or she may be subject to disciplinary action." Clarification.

Social Impact

Those professionals engaged in the private practice of audiology and speech-language pathology will be required to conform to high standards of professional practice for the protection of the public. In guarding against incompetence and improper practices, the reposed rules will have a beneficial impact upon the growing number of patients treated by audiologists and speech-language pathologists.

Economic Impact

The reposed new rules do not represent any major departures from current practice and thus are not expected to result in significantly increased costs either to the licensee or the public. The licensing fees obviously have an economic impact upon the professional, and also on his or her clients if the licensing costs are passed on to clients through the professional's fees. The licensing fees have, however, been set at the lowest possible level that will cover the operating expenses of the Board.

Regulatory Flexibility Statement

As defined in the New Jersey Regulatory Flexibility Act, sole practitioners may be considered to be "small businesses," and, consequently, the reposed new rules may impact on small businesses.

The reposed new rules are based in part on standards of professional practice developed over the years by professional organizations within the two fields of audiology and speech-language pathology. The recordkeeping and other compliance requirements, contained primarily in subchapter 8 of this reposal, are not significant departures from standard practice.

Licensees must maintain written, contemporaneous treatment records for seven years from the date of last entry (or, for minors, two years beyond the patient's attainment of the age of majority). N.J.A.C. 13:44C-8.1(a). The licensee's current license number must appear on all bills, N.J.A.C. 13:44C-8.1(i). Written reports, records and written fee schedules must be made available upon request N.J.A.C. 13:44C-8.1(b), (c), (h). Equipment must be properly calibrated to nationally recognized standards (A.N.S.I. 1969).

While the cost of compliance with the reposed rules cannot be accurately estimated, the rules are not expected to impact heavily on licensees inasmuch as many of the requirements are already a part of a professional's regular practice. These requirements are considered by the Advisory Committee to represent the minimum necessary for protection of the health, safety, welfare and professional image of the professions of audiology and speech-language pathology, without undue burden upon the practitioner. The timetables set in the rules for such items as record release are reasonable and in line with the requirements of other professions. The obligation of maintaining detailed patient records is vital for protection of public health and should not be modified to suit the individual practitioner. Therefore, no exemption from the rules is feasible.

Full text of the proposed repeal follows.

13:44C-1.1 Fees and charges

(a) The following fees shall be charged by the Committee:

- 1. Application fee \$10.00
- 2. License fee for two years \$100.00

Full text of the proposed new rules follows.

CHAPTER 44C

AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY
ADVISORY COMMITTEE

SUBCHAPTER 1. GENERAL REQUIREMENTS

13:44C-1.1 Change of Address or Telephone

Every licensed audiologist and speech-language pathologist shall notify the director of the Division of Consumer Affairs ("director") in writing within 60 days of any change in office address or office telephone number.

SUBCHAPTER 2. ADMINISTRATION; FEES

13:44C-2.1 Election of officers

The membership of the New Jersey Audiology and Speech-Language-Pathology Advisory Committee shall once each year elect a chairman, and a secretary-treasurer. The chairman shall have the responsibility to conduct all meetings unless, in his or her discretion, a delegation of that responsibility is made. In the absence of the chairman or an express delegation of responsibility, the secretary-treasurer shall assume all duties of the chairman.

13:44C-2.2 Fees and charges

(a) The following fees shall be charged by the Advisory Committee:

- 1. Application fee \$10.00
- 2. License fee for two years \$100.00
- 3. Temporary license fee for one year \$50.00
- 4. Reinstatement fee \$10.00
- 5. Certification of licensure to other states \$25.00
- 6. Duplicate license or wall certificate \$10.00
- 7. Replacement of license or wall certificate
on account of name change \$25.00

SUBCHAPTER 3. REQUIREMENTS FOR LICENSURE AS
AUDIOLOGIST OR SPEECH-LANGUAGE
PATHOLOGIST

13:44C-3.1 Application forms

(a) Applications for licensure may be obtained at the office of the Advisory Committee, Room 510, 1100 Raymond Boulevard, Newark, New Jersey, 07102.

(b) All applications for licensure shall be accompanied by the fee as set forth in N.J.A.C. 13:44C-2.2.

13:44C-3.2 Requirements for licensure

(a) An applicant for licensure shall submit the following to the Advisory Committee:

1. Satisfactory proof of graduation from a master's degree program or its equivalent in the area of audiology, speech-language pathology, or both, at an accredited college or university acceptable to the New Jersey Department of Higher Education.

i. "Equivalency of a master's degree" means holding a bachelor's degree from an accredited college or university and at least 42 post-baccalaureate semester hours acceptable toward a master's degree, of which at least 30 semester hours shall be in the areas of speech-language pathology or audiology. At least 21 of these 42 semester hours shall have been obtained from a single college or university. No more than six semester hours may be in the courses that provide credit for clinical practice obtained during academic training.

2. Transcripts from one or more accredited educational institutions evidencing the completion of a total of 60 semester hours of academic credit that demonstrate that the applicant has obtained a well-integrated program of course study dealing with the normal aspects of human communication, development and disorders thereof and clinical techniques for evaluation and management of such disorders, as follows:

i. Twelve of the 60 semester hours shall be obtained in courses that provide information that pertains to normal development and normal functions of speech, language and hearing processes.

ii. Thirty of the 60 semester hours shall be in courses that provide information relative to communication disorders and information about, and training in, evaluation and management of speech, language and hearing disorders. At least 24 of these 30 semester hours

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shall be in courses in the professional area (audiology or speech-language pathology) for which the license is requested, and at least six semester hours must be in audiology for the license in speech-language pathology, or in speech-language pathology for the license in audiology. No more than six semester hours may be in courses that provide credit for clinical practice obtained during academic training.

iii. Credit for study of information pertaining to related fields that augment the work of the clinical practitioner of audiology or speech-language pathology may also apply toward the 60 total semester hours.

iv. Thirty of the total 60 semester hours that are required for a license shall be in courses that are acceptable toward a graduate degree by the college or university in which they are taken. Moreover, 21 of those 30 semester hours shall be within the 24 semester hours required in the professional area (audiology or speech-language pathology) for which the license is requested or within the six semester hours required in the other area.

v. A minimum of 300 clock hours of supervised clinical experience with individuals who present a variety of communication disorders, and this experience must have been obtained within the training institution or in one of its cooperating programs.

3. Satisfactory proof of completion of a clinical internship in the professional area for which the license is sought. Clinical internship shall be under the direct supervision of a person licensed to practice audiology or speech-language pathology, as appropriate, by this State or another state which has standards substantially equivalent to those of this State, or a person who holds a Certificate of Clinical Competence (C.C.C.) by the American Speech-Language-Hearing Association (ASHA) or its equivalent. The clinical internship shall comprise no less than nine months of full-time professional employment.

i. "Professional employment" means direct clinical work with patients, consultations, record keeping, and any other duties relevant to a bona fide program of clinical work.

ii. At least half of the clinical experience shall be in direct clinical contact with persons who have communication disorders. Time spent in supervision of students, academic teaching and research, as well as administrative activity that does not deal directly with management programs of specific patients or clients will not be counted as professional employment in this context.

iii. Full-time employment is defined as a minimum of 30 clock hours of work per week. This requirement also may be fulfilled by part-time employment as follows:

- (1) Work of 15-19 hours per week over 18 months;
- (2) Work of 20-24 hours per week over 15 months;
- (3) Work of 25-29 hours per week over 12 months.

iv. In the event that part-time employment is used to fulfill a part of the clinical internship, 100 percent of the minimum hours of the weekly part-time work requirement must be spent in direct professional employment as defined in i. above.

v. The clinical internship must be completed within a maximum period of 36 consecutive months. Professional employment of less than 15 hours per week will not fulfill any part of this requirement.

4. Satisfactory proof of having achieved a score of 600 or the 16th or greater percentile on the National Teachers' Examinations in audiology or speech-language pathology, as appropriate, administered by the Educational Testing Service in Princeton, New Jersey. An applicant may substitute a current and valid license to practice audiology or speech-language pathology, as is appropriate, issued by another state with substantially equivalent requirements for licensure, as satisfactory proof of having passed the examination.

13:44C-3.3 Waiver

The director may waive provisions of this subchapter for good cause shown.

SUBCHAPTER 4. PROVISIONAL LICENSURE AS AUDIOLOGIST OR SPEECH-LANGUAGE PATHOLOGIST

13:44C-4.1 Applications

(a) Applications for provisional licensure may be obtained at the

office of the Advisory Committee, Room 510, 1100 Raymond Boulevard, Newark, New Jersey 07102.

(b) All applications for provisional licensure shall be accompanied by the fee set forth in N.J.A.C. 13:44C-2.2.

13:44C-4.2 Requirements for provisional licensure

(a) Applicants for provisional licensure shall submit satisfactory proof of the following to the Advisory Committee:

1. Graduation from a bachelor's degree program from an accredited college or university acceptable to the New Jersey Department of Higher Education;
2. Having been actively engaged in the practice of audiology or speech-language pathology or both in New Jersey for three of the last five years immediately preceding January 5, 1984;
3. Working toward fulfillment of the requirements for licensure as an audiologist or speech-language pathologist;
4. The name and credentials of the supervisor and the applicant's place of employment; and
5. A plan of provisional licensee supervision which meets the requirements of 13:44C-4.5.

13:44C-4.3 Supervision plan; forms

The applicant's supervisor must document the supervision plan on a form provided by the director.

13:44C-4.4 Application deadline; renewal

For applicants who applied for a license prior to February 12, 1987 and were found eligible for provisional licensure, the provisional license shall be in effect for a period of two years and may be renewed once. No provisional licenses shall be issued after February 12, 1989.

13:44C-4.5 Supervision

(a) A holder of a provisional license may work only under the supervision of a licensed audiologist or speech-language pathologist, as appropriate, who shall be responsible for the actions of the provisional licensee.

(b) Supervision shall consist of no less than one hour of on-site direct supervision per 20 hours of direct, face-to-face evaluation or therapeutic services and shall take place not less than once a month.

SUBCHAPTER 5. APPLICANTS FOR TEMPORARY LICENSURE AS AUDIOLOGIST OR SPEECH-LANGUAGE PATHOLOGIST

13:44C-5.1 Applications

(a) Applications for temporary licensure may be obtained at the Office of the Advisory Committee, Room 510, 1100 Raymond Boulevard, Newark, New Jersey 07102.

(b) All applications for temporary licensure shall be accompanied by the fee set forth in N.J.A.C. 13:44C-2.2.

13:44C-5.2 Requirements for temporary licensure

(a) An applicant for temporary licensure shall submit the following to the Advisory Committee:

1. A notarized statement by the applicant that the applicant has become a resident of New Jersey within the preceding six months;
2. Proof that the applicant holds a current and valid license to practice audiology and/or speech-language pathology in another state.

13:44C-5.3 One year limit on temporary license

A temporary license is valid for one year and cannot be renewed.

SUBCHAPTER 6. CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

13:44C-6.1 License renewal

No license renewal shall be issued by the director until the applicant submits satisfactory proof to the Advisory Committee that during the two calendar years preceding application for renewal he or she has participated in courses of Continuing Professional Education of the types and number of credits hereinafter specified. Such continuing education is a mandatory requirement for license renewal.

13:44C-6.2 Allocation of credit

(a) Evidence of 20 documented hours of Continuing Professional Education shall be required biennially of each applicant for renewal.

(b) Credit for all Continuing Professional Education will be granted as follows for each two-year period:

1. Giving a seminar or lecture or in-service workshop: One hour per contact hour up to a maximum of 10 hours.

i. "Contact hour" means one hour of actual presence in or participation in a course of study.

2. Teaching a new graduate course: six hours for each new course up to a maximum of 12 hours.

3. Publication in a national journal of a copyrighted article in audiology or speech-language pathology: three hours per publication to a maximum of six hours.

4. Attendance at seminars and conferences: one hour per contact hour.

5. Self-Assessment Home Study courses accompanied by examination and sponsored by a nationally-recognized professional organization in audiology or speech-language pathology: maximum of 10 hours.

6. Successful completion of graduate course work taken beyond that required for professional license: one hour per contact hour.

(c) "Documented" means that the applicant obtains a certificate of participation, a signed document by the instructor indicating attendance or an official transcript from an accredited college or university.

13:44C-6.3 Excess hours not credited to subsequent renewal period

In the event that a candidate for license renewal shall complete in two years a number of hours in excess of the number required in N.J.A.C. 13:44C-4.1, the documented hours in excess of those required shall not be credited toward license renewal requirements for subsequent years.

13:44C-6.4 Waiver of requirements; appearance

The director may, at his or her discretion, or upon the recommendation of the Advisory Committee, waive any of the requirements of this subchapter for due cause. An appearance before the Advisory Committee may be required.

13:44C-6.5 Subjects; sponsors

(a) Acceptable Continuing Professional Education shall be in any of the following areas: human physiology; human anatomy; human development; human communication; identification, prevention, diagnosis and treatment of communication disorders; acoustical or electrical science relative to communication disorders; health administration relative to communication disorders, and initial preparation of a relevant course of study acceptable to the Department of Higher Education.

(b) The Continuing Professional Education hours must be accredited by the New Jersey Department of Higher Education, or accredited or sponsored by a local, state or national audiology and speech-language pathology professional organization, local, state or federal education or health agency, or a local, state or national medical, psychological, dental or similar professional organization. Courses accepted for credit by the National Registry on Continuing Education or by the American Speech-Language-Hearing Association will be given credit by the Committee as set forth in N.J.A.C. 13:44C-6.2.

SUBCHAPTER 7. AUTHORIZED PRACTICE

13:44C-7.1 Business interest of unlicensed persons

(a) An unlicensed individual may have a business interest in a corporation, partnership, trust, association or other like organization that provides audiology or speech-language pathology services or both, if the provision of direct clinical services is done by licensed audiologists or speech-language pathologists, as appropriate. Nothing in this section shall be construed to mean that such unlicensed person may provide direct clinical services.

(b) Such unlicensed person shall file a statement with the director on a form approved by the director.

13:44C-7.2 Exemptions

(a) The following are exempt from the provisions of this chapter, pursuant to N.J.S.A. 45:3B-17:

1. Any person currently licensed to practice medicine and surgery by this State, provided such a person is not referred to as an audiologist or speech-language pathologist or other similar title.

2. Persons employed by and under the direct supervision of a physician, provided such person is not referred to as an audiologist or speech-language pathologist or other similar title.

3. Persons employed part-time or full-time by the United States government or any agency thereof where the terms and conditions of employment, the standards and practice of audiology or speech-language pathology or the everyday operations and decision-making of the agency are established, supervised and funded by the federal government.

i. The fact that all or part of an agency's funding is derived from federal sources shall not suffice in and of itself to make an agency a "federal agency" for purposes of this exemption.

ii. This exemption applies provided that audiology or speech-language pathology services are being performed as part of the duties of the person's office or position with that agency.

4. Any person certified as a speech-language correctionist by the State Department of Education. However, such person is not exempt under this section for that portion of his or her time spent as a private practitioner or providing services for which a fee may be paid by a recipient of the service.

5. Students and trainees in audiology or speech-language pathology matriculated in an accredited college or university, provided that their services constitute part of their course of study and on-site supervision by a licensee is provided in the appropriate professional field.

6. Persons fulfilling their clinical internship, provided a supervision plan is submitted to and approved by the Audiology and Speech-Language Pathology Advisory Committee, and provided further that such person affirmatively represents himself or herself to patients as an intern and not as a licensee. Persons exempt under this section shall be exempt for no more than 36 months from the date of filing of their Clinical Internship plan.

7. Persons whose services and activities constitute part of an occupation for which they are regulated by their own State registration, certification or license, and who do not refer to themselves as audiologists or speech-language pathologists.

8. Persons licensed by this State as a hearing aid dispenser pursuant to P.L. 1973, c. 19 (N.J.S.A. 45:9A-1 et seq.) who are engaged in activities and services within the scope of practice of a hearing aid dispenser, provided that such person does not refer to himself or herself as an audiologist or speech-language pathologist.

SUBCHAPTER 8. UNLAWFUL PRACTICES

13:44C-8.1 Business practices

(a) The following acts or business practices shall be deemed to be unprofessional conduct:

1. Patient records: Failure to maintain written, contemporaneous patient records for seven years from date of last entry for patients who have attained the age of majority, and for patients who are minors, for two years beyond the patient's attainment of the age of majority. The records shall include:

i. Findings upon initial examination including the patient's significant past history and results of appropriate tests and measures.

ii. A written plan of care indicating the goals of the treatment program, the type of treatment, and the frequency and expected duration of treatment for audiology and speech-language pathology services.

iii. Dated and signed documentation of each treatment rendered.

iv. Dated and signed progress notes.

v. Documentation of any changes in the treatment program.

vi. Documentation of any contact with other health professionals relative to the patient's care.

vii. A discharge summary which includes the reason for discharge and the outcome of services rendered.

viii. Any pertinent legal document such as patient release forms or chart access sheets.

2. Recordkeeping—calibration log: Failure to document that all audiological equipment is calibrated on a timely basis and meets nationally recognized standards (ANSI, 1969 and all subsequent revisions).

3. Record release: Failure to provide, without charge, copies of a patient's record of testing or treatment within 15 days of a written request by the patient or any person whom the patient has designated to receive such records. However, nothing herein should be construed to prohibit a licensed speech-language pathologist or audiologist from charging a reasonable fee to the patient for the cost of reproduction of a record.

4. Preparation of written reports: Failure to prepare within 30 days, upon written request by the patient or any person whom the patient has designated to receive such, a written report embodying information set forth in (a)i-vii above, except that nothing herein shall preclude a licensee from charging a reasonable fee for the preparation of a written report.

5. Preparation of insurance forms: Requiring a patient or a third party payor to pay a separate fee for the preparation of an insurance claim form.

6. Charges for interest on unpaid accounts: Requiring a patient or a third party payor to pay interest on an unpaid account unless the patient has been notified of this policy in writing prior to the initiation of audiology or speech-language pathology treatment.

7. Charges for unkept appointments: Requiring a patient or a third party payor to pay a full or partial fee for unkept appointments unless the patient has been notified of this policy in writing prior to the initiation of audiology or speech-language pathology treatment.

8. Charges for unrecorded treatment: Requiring a patient or a third party payor to pay for any evaluation, testing, treatment or other services not documented in a patient chart.

9. Disclosure of fees: Failure to make available a written fee schedule which describes charges for each service offered to any interested person upon request.

10. Posting of license: Failure to post in a conspicuous place a copy of a licensee's biennial renewal certificate.

11. Advertising: Use or participation in the use of any form of public communication regarding professional services, via print, electronic media or in-person solicitation, which contains a false, fraudulent, misleading or deceptive statement or claim. A false, fraudulent, misleading or deceptive statement includes but is not limited to any statement or claim which:

- i. Contains a misrepresentation of fact;
- ii. Is likely to mislead or deceive because it fails to make full disclosure of relevant facts;
- iii. Contains any personal testimonial or laudatory statement, attesting to the technical quality or technical competence of any service or treatment offered by a licensee;
- iv. Is intended or is likely to create a false or unjustified expectation of favorable results, for example, advertising percentages of success;
- v. Implies educational attainments or licensing recognition not supported in fact;
- vi. States or implies that the licensee has received formal recognition as a specialist in any aspect of the practice of audiology or speech-language pathology if this is not the case;
- vii. Represents that the professional services can or will be competently performed for a stated fee when this is not the case, or makes a representation with respect to fees for professional services that does not disclose all variables affecting the fees that will in fact be charged;
- viii. Uses techniques of communication which in light of the setting and circumstances appear to intimidate or exert undue influence or undue pressure over a prospective patient;
- ix. Contains offers of discounts for services without stating the advertiser's usual and customary fee on which the discount will be taken, or the availability of a schedule of the licensee's usual and customary fees, and the period of time during which the offer can be accepted by a prospective patient. If no time limit is specified, such offer shall be deemed to apply for 30 days, or

x. Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to be misled or be deceived.

12. In-person solicitation: Engaging in uninvited in-person solicitation of actual or potential patients who, because of their particular circumstances, are vulnerable to undue influence. This paragraph shall not prohibit the offering of services by a licensee to any bona fide representative of prospective patients including but not limited to employers, labor union representatives or insurance carriers.

13. Excessive fees: Charging a fee to a patient or a third party payor which is excessive when considered in light of the following factors:

- i. The novelty and difficulty of the professional treatment;
- ii. The skill and equipment required to perform the treatment properly;
- iii. Any requirements or conditions imposed by the patient or by the circumstances;
- iv. The nature and length of the professional relationship with the patient;
- v. The experience, reputation and ability of the licensee performing the services; and
- vi. The nature and the circumstances under which the services were provided (for example, emergency; home visit).

14. Charges for unnecessary services: Charging a fee to a patient or a third party payor for audiology or speech-language pathology services which are unwarranted and unnecessary.

15. Failure to electronically calibrate audiological testing equipment at least annually and to document same.

13:44C-8.2 Professional practices

(a) The following acts or professional practices shall be deemed to be unprofessional conduct:

1. Offering, agreeing to provide or providing any payment or any other form of remuneration to any person or entity authorized to direct the initiation of speech-language pathology or audiology services for a referral of any specific patient or any number of patients.
2. Accepting any payment or other form of remuneration from any person or entity authorized to direct the initiation of audiology or speech-language pathology services for the referral of any specific patient or any number of patients.
3. Receiving from any person, firm, partnership or corporation a fee, commission, salary, rebate, gift or other form of remuneration for the prescribing, recommending, ordering or promotion of the sale of a device, appliance or other item or service, unless such interest is made known in writing to the person for whom the device or appliance is being ordered, prescribed or recommended, except that nothing herein shall preclude a licensed speech-language pathologist or audiologist from accepting a product or commodity which can be used as a sample by patients, provided that the speech-language pathologist or audiologist does not charge patients for items so obtained.
4. Knowingly using equipment that is not calibrated or has not been calibrated according to the nationally recognized standards (A.N.S.I., 1969).
5. Undertaking to render treatment or to conduct testing which in light of the patient's history and findings is unwarranted and unnecessary.

13:44C-8.3 Scope of practice

The representation of a speech-language pathologist or audiologist as a physician rendering medical opinion or medical services shall be deemed to be outside the scope of speech-language pathology and audiology and, upon proof that a licensee is engaging in such conduct, he or she may be subject to disciplinary action.

SUBCHAPTER 9. UNLICENSED PRACTICE

13:44C-9.1 Acts amounting to unlicensed practice

(a) The following acts or practices shall be deemed to be the unlicensed practice of audiology or speech-language pathology and may warrant the director's initiation of an action in Superior Court for such appropriate injunctive relief as may be authorized by N.J.S.A. 45:3B-15:

1. Offering of any speech-language pathology or audiology services by any person who does not hold the applicable license as a speech-language pathologist or audiologist or is not exempt from licensure as defined in N.J.A.C. 13:44C-7.2;

2. The use of the words speech-language therapy, speech therapy, audiology, speech pathologist, audiologist or such similar words or their related abbreviations in connection with the offering of certain agents and measures which are utilized in the rendition of speech-language pathology and audiology services by any person who does not hold the appropriate license in speech-language pathology or audiology; or

3. Billing any patient or third party payor for "speech-language pathology evaluation" or "speech-language pathology therapy" or "audiologic evaluation" or "audiologic services" or services described by similar words if the individual providing the service does not hold the appropriate license to practice audiology or speech-language pathology or is not a licensed physician.

13:44C-9.2 Aiding and abetting unlicensed practice

It shall be unlawful for a licensee to aid or assist any person in engaging in any of the acts identified in N.J.A.C. 13:44C-9.1.

SUBCHAPTER 10. DISCIPLINARY ACTIONS

13:44C-10.1 Suspension and revocation of license

(a) The license of any person licensed under the provisions of this chapter may be suspended or revoked, or a civil penalty may be assessed or a reprimand may be issued by the director, upon a finding by the director that the licensee:

1. Has obtained a certificate, registration, license or authorization to sit for an examination, as the case may be, through fraud, deception, or misrepresentation;

2. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;

3. Has engaged in gross negligence, gross malpractice or gross incompetence;

4. Has engaged in repeated acts of negligence, malpractice or incompetence;

5. Has engaged in professional or occupational misconduct as may be determined by the director;

6. Has been convicted of any crime involving moral turpitude or any crime relating adversely to the practice of audiology or speech-language pathology. For the purpose of this subsection a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction;

7. Has had his authority to engage in the practice of audiology or speech-language pathology revoked or suspended by any other state, agency or authority for reasons consistent with this section;

8. Is incapable, for medical or any other good cause, of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare;

9. Has violated or failed to comply with any of the provisions of N.J.S.A. 45:3B-1 et seq. or N.J.A.C. 13:44C-1.1 et seq.

(b) The Notice of Proposed Suspension or Revocation shall inform the licensed individual of the right to request a hearing within 10 days. The shall be pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

13:44C-10.2 Reinstatement

The Director, in consultation with the Advisory Committee, may restore a license after one year from the date of its revocation following submission of a new application and a hearing before the Advisory Committee at which the applicant shall demonstrate fitness for reinstatement.

(a)

DIVISION OF CONSUMER AFFAIRS

Legalized Games of Chance: Unaffiliated Organizations; Unlicensed Games

Proposed Amendments: N.J.A.C. 13:47-6.20 and 7.17

Authorized By: William J. Reed, Executive Director, Legalized Games of Chance Control Commission.

Authority: N.J.S.A. 5:8-1 et seq.

Proposal Number: PRN 1988-60.

Submit comments by March 2, 1988 to:

William J. Reed, Executive Director
 Legalized Games of Chance Control Commission
 1100 Raymond Boulevard, Room 510
 Newark, New Jersey 07102

The agency proposal follows:

Summary

The Legalized Games of Chance Control Commission is proposing to amend N.J.A.C. 13:47-6.20, to permit, pursuant to N.J.A.C. 13:47-14.3(c), two or more unaffiliated organizations to hold bingo on the same day at the same place, and to permit two or more unaffiliated organizations to conduct raffles at the same place at the same time. The proposal also amends N.J.A.C. 13:47-7.17 to permit licensed games of chance to be held concurrently with bingo.

Many organizations which conduct bingo and raffles fail to realize substantial net receipts due to insufficient numbers of operating personnel and limitations on the types of games of chance that can be operated concurrently. The proposed amendments would remove some of the current restrictions which hamper the fund-raising activities of qualified organizations.

Social Impact

The proposed amendments to N.J.A.C. 13:47-6.20 and 13:47-7.17 will have a beneficial social impact. They will enable qualified organizations to continue to provide funding from various sources for activities that are of value to society. More specifically, these amendments will enable volunteer fire companies, first aid squads and rescue squads to continue to operate; educational organizations to continue to support parochial and public school programs and scholarships; and veterans' organizations to continue to assist hospitalized veterans and to further patriotic programs.

Economic Impact

The proposed amendments to N.J.A.C. 13:47-6.20 and 13:47-7.17 will have a positive statewide economic impact.

Revenues generated from legalized games of chance substantially lessen the governmental burden of educating youth, providing human services and protecting lives and property statewide. The proposed amendments will enable qualified organizations to generate additional income to support their educational, charitable and public-spirited programs. The amendments will also allow qualified organizations to meet operational costs which have recently increased due to reductions in State and Federal appropriations.

Regulatory Flexibility Statement

The proposed amendments to N.J.A.C. 13:47-6.20 and 13:47-7.17 do not require a small business regulatory flexibility analysis since the amendments do not apply to or impact upon small businesses as contemplated by the Act.

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

13:47-6.20 [Restrictions on] **Conduct by** unaffiliated organizations

(a) Two or more unaffiliated organizations may not conduct [games of chance] **bingo** at the same place on the same day **except as provided in N.J.A.C. 13:47-14.3(c).**

(b) **Two or more unaffiliated organizations may conduct raffles at the same place at the same time.**

13:47-7.17 Exclusion of [other] **unlicensed** games

No **unlicensed** game of chance of any kind, [other than bingo,] whether lawful or not, and whether any separate or additional charge

or wager is required or not, shall be conducted or allowed on any occasion when bingo is played.

(a)

NEW JERSEY RACING COMMISSION

Harness Rule

Administering Medication to Respiratory Bleeders

Proposed Amendment: N.J.A.C. 13:71-23.8

Authorized By: Charles K. Bradley, Deputy Director, New Jersey Racing Commission.

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

Proposal Number: PRN 1988-62.

Submit comments by March 2, 1988 to:
Charles K. Bradley, Deputy Director
New Jersey Racing Commission
Justice Complex
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment reduces the amount of time a horse cannot compete from 90 days to 30 days for a second time bleeder. The proposal also allows a horse that is a respiratory bleeder an additional opportunity to participate before being barred from racing in the State of New Jersey. The proposal further allows a horse that is a third time bleeder to be suspended from racing for three months rather than being barred from racing.

Social Impact

The social impact of the proposed amendment will be positive for the owners and trainers of horses that are respiratory bleeders. The proposal will allow horses to compete an additional time in the event that they have a bleeding problem. With the medication that is available now to help control bleeding, the horses would not have to be suspended from racing as long as they have been previously.

Economic Impact

The proposal should provide a small economic benefit to the industry and to the public, in that it will make the availability of more horses to be carded on racing programs. The owners and trainers of respiratory bleeders will be able to receive more starts out of horses since the time horses must be laid up will be shortened considerably and additionally, the proposal will allow for horses to be given an additional time to compete in New Jersey prior to being barred from racing.

Regulatory Flexibility Statement

The majority of the owners of the horses affected by this proposed amendment come within the Regulatory Flexibility Act's definition of a small business. The proposed amendment is directed toward maintaining the integrity of racing in New Jersey, while taking into consideration the advancements made toward the treatment of the horses that have respiratory bleeding problems. To achieve the regulatory responsibilities of the Racing Commission in protecting the public and the participants, it is necessary to establish standards for the treatment of horses that have a respiratory bleeding problem and the rules which govern the treatment of respiratory bleeders are being amended to the benefit of the owners of respiratory bleeders.

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

13:71-23.8 Administering medication to respiratory bleeders

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

(d) A horse placed on the veterinarian's list for bleeding must remain on the list for 14 calendar days, [and] a second time bleeder must remain on the respiratory list for [three months.] **30 days, and a third time bleeder must remain on the respiratory list for three months.** A bleeder in the above categories is automatically released from the veterinarian's list after these dates; however, a horse which evidences respiratory bleeding a [third] **fourth** time is barred from further racing in New Jersey.

**COMMERCE AND
ECONOMIC DEVELOPMENT**

(b)

**DIVISION OF ENERGY PLANNING AND
CONSERVATION**

Business Energy Improvement Program

Proposed Amendments: N.J.A.C. 14A:6-2

Authorized By: Borden R. Putnam, Commissioner, Department of Commerce and Economic Development.

Authority: N.J.S.A. 52:27F-11g and m, and 52:18A-209 et seq. (P.L. 1987 c.231).

Proposal Number: PRN 1988-51.

Submit comments by March 2, 1988 to:
Edward J. Linky, Esq.
Chief Regulatory Officer
Division of Energy Planning and Conservation
101 Commerce Street
Newark, New Jersey 07102

The agency proposal follows.

Summary

The proposed amendments to the Business Energy Improvement Subsidy Program reflect the coordination of programs in the Department of Commerce and Economic Development and the Division of Energy Planning and Conservation dictated by the merger of the Division into the Department pursuant to Executive Order 001-1986. The proposed amendments also reflect the expanded opportunities available to the Department and to the business community of the appropriation by the Legislature of "petroleum overcharge funds" through the Petroleum Overcharge Reimbursement Fund, N.J.S.A. 52:18A-209 et seq. (P.L. 1987 c.231). The availability of these funds allows the Department to expand the scope of the existing Business Energy Improvement Subsidy Program to include more types of small businesses and to increase participation in the program by the agricultural community.

A specific new feature is the creation of a revolving loan fund with zero or no interest loans to be repaid from the energy savings of the loan recipients. Of note is that municipalities which are constructing resource recovery facilities are eligible recipients of funds from the revolving fund. An additional feature is a provision for feasibility studies for future energy conservation techniques.

Social Impact

The adoption of these proposed amendments will have a positive social impact. One of the features of the grants for businesses which are located in Urban Enterprise Zones is that they can receive the full incremental cost of energy improvements to their factories which are in excess of State Uniform Construction Code standards. This program has the capability to enhance the already successful Urban Enterprise Zone by creating more jobs and stabilizing the energy costs of existing businesses in the zones or businesses considering the zones.

Economic Impact

The proposed amendments will have a positive economic impact on small businesses. One focus of this program is the family-owned farm. The program will enable this energy cost sensitive sector of the economy to make useful improvements that will help stabilize energy costs in the future and hopefully contribute to the retention of the farms. Grants for demonstrations of new technology can assist in bringing energy efficient technologies closer to commercial reality and thus generate additional jobs from both the manufacturing of the new technologies and the businesses that purchase them.

Environmental Impact

These proposed amendments will have a positive environmental impact. For example, municipalities which are constructing resource recovery facilities are specifically identified as a beneficiary of interest rate buy downs and zero or low interest loans from the revolving loan fund. The State's need to advance the licensing and construction of these facilities to meet the solid waste management problem is well documented. Energy efficiency improvements which lower fossil fuel con-

PROPOSALS

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COMMERCE AND ECONOMIC DEVELOPMENT

sumption are accepted as contributing to the overall improvement in environmental quality.

Regulatory Flexibility Statement

The thrust of amending this program is to expand the scope to benefit small businesses. Application procedures are designed to minimize the administrative costs to small businesses who wish to participate in the program.

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

SUBCHAPTER 2. BUSINESS ENERGY IMPROVEMENT
[SUBSIDY] PROGRAM

14A:6-2.1 Scope and purpose

(a) This subchapter establishes the rules governing the Business Energy Improvement [Subsidy] Program. The Program provides [subsidies] funds to eligible [businesses] applicants for the purpose of fostering energy conservation [renovations, energy conserving construction and alternative energy production facilities]. The intent of the fund is [subsidies are intended] to encourage [these purposes] investment in, and to provide cost reduction for, renovations, equipment replacement, energy conservation construction, alternative energy production facilities, resource recovery projects and demonstration programs. [by reducing the cost of these projects; and

(b) The program is designed to assist mature projects that are beyond the conceptual stage.]

14A:6-2.2 Definitions

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

"Alternative Energy Production Facility" [means] includes, but is not limited to, a facility that produces energy by using:

1. [Solar technologies] cogeneration;
2. Hydro power;
3. Wind power;
4. [Cogeneration] Solar technologies; or
5. Resource [R] recovery methods [from solid waste].

"Applicant" means the owner or lessee of an eligible [business] facility who applies for [a subsidy] funds pursuant to this subchapter.

"Application" means a Business Energy Improvement [Subsidy application] Program document.

"Avoided costs" means the annual cost savings based on improved efficiencies using the difference between the normal annual purchased energy costs, and the cost of equivalent energy production by the facility for which an application is made.

"Closely held company" means a business organization in which ownership and control are vested in 10 or fewer individuals.

"Commissioner" means the Commissioner or the Assistant Commissioner of the Department of Commerce and Economic Development, Division of Energy Planning and Conservation or its successor.

"Demonstration Program" means an on-site installation of a state-of-the-art energy conservation measure, or integrated system of energy conservation measures, under the direction and control of a Division-approved organization which serves to illustrate, by example, the practical application of energy conservation measure(s). The intent and purpose of such demonstration projects is to induce widespread adoption of the energy conservation measure(s) as a normal operating practice.

["Department"] Division means the New Jersey Department of [Energy] Commerce and Economic Development, Division of Energy Planning and Conservation or its successor.

"Eligible [business] applicant" means a person who qualifies for one or more types of funding defined herein, but may not receive funds from more than one program category for a given project.

[1. Businesses meeting the Small Business Administration definition of small business contained in 13 C.F.R. Part 121.2 (49 F.R. 5030-37);

2. Qualified Urban Enterprise Zone businesses as defined in P.L. 1983 c.303; and

3. Multi-family buildings, condominiums, cooperatives and not-for-profit businesses, but not including religiously-owned or affiliated businesses which are located in New Jersey.]

"Eligible loan" means a loan made by a lender to the applicant for energy conservation renovations or an alternative energy production facility, which meets the requirements of N.J.A.C. 14A:6-2.6.

"Energy audit" means a study of a building or facility conducted by an engineer or an architect/engineering firm or other Division-approved party to determine operating and maintenance procedures and renovations which would result in reduced energy consumption. The energy audit shall provide the estimated costs of implementation and the expected dollar and energy savings for the recommended project and maintenance procedures. The energy audit shall include but not be limited to the energy conserving renovations listed in N.J.A.C. 14A:13-1.11.

"Energy conservation renovation" means any equipment, materials, alterations or improvements installed within an existing structure owned or leased by an eligible [business] applicant that would reduce energy consumption or increase energy efficiency, and which have been approved by the [Department] Division pursuant to N.J.A.C. 14A:6-[2.7.] 2.8, but shall not include new construction or energy conservation renovations installed prior to [approval] receipt of a completed Business Energy Improvement [Subsidy] Program application by the [Department] Division.

"Energy conserving construction" means materials, practices or equipment that exceeds the energy efficiency of those required under the "Energy Subcode", N.J.A.C. 14A:3-4 as amended. [Only Urban Enterprise Zone businesses are eligible for energy conserving construction subsidies.]

"Energy service company" (ESCO) means a vendor engaged in the business of furnishing energy conserving renovations to users through a shared-savings or guaranteed-savings program, and includes all representatives, agents, assignees, and other persons or entities performing activities for, or acting on behalf of, the vendor.

"Family-owned farm" means a farm which is any place producing agricultural or horticultural or other food products worth \$2,500 or more annually and meets the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964" P.L. 1964, c.48 (N.J.S.A. 54:4-23.1 et seq.).

"Feasibility planning for future energy conservation techniques" means projects undertaken by eligible applicants to make their own facilities, or the facilities of other eligible applicants, energy efficient by utilizing the construction of alternative energy production facilities, demonstration programs, energy audits, energy conservation renovations, energy conserving construction or other conservation techniques as will be specified by the Division as these technologies reach commercial application.

["Grant" means full payment for the incremental cost of using materials, practices and equipment that exceed those required under the "Energy Subcode", N.J.A.C. 14A:3-4 as amended, in lieu of using materials, practices and equipment that only meet the "Energy Subcode", N.J.A.C. 14A:3-4 as amended.]

"Incremental grant" means full payment for the incremental cost of using materials, practices and equipment that exceed those materials, practices and equipment required under the "Energy Subcode", N.J.A.C. 14A:3-4.

"Interest subsidy" means funds provided by the [Department] Division to reduce the effective interest rate on an eligible loan.

"Lessee" means a person or business operation to whom property or equipment is leased or loaned for a fee.

"Lender" means State-chartered banks, savings banks, savings and loan associations, national banks, Federally-chartered savings and loan associations, approved out-of-State banks, economic development agencies, and other Division approved corporations authorized to transact the business of [banking] financing.

"Matching grant" means the one-time provision of funds by the Division to an eligible applicant to assist in the implementation of an approved project.

"Multi-family buildings" means [owners and other proprietors of multi-family] buildings used for residential occupancy and containing five or more dwelling units.

"Municipal facility" means a facility owned and operated by either an incorporated unit of local government or a designee of the incorporated unit under contract to the unit for a specific energy conservation purpose.

"Payback" means the calculated number of years required for the first year energy costs savings, or avoided costs, to equal the capital cost of the renovation or alternative energy facility. It is calculated by the following formula:

$$\text{Payback} = \frac{\text{Total estimated capital cost of renovation(s) or alternative energy facility}}{\text{estimated net annual energy cost savings or avoided costs accruing to the applicant for the first year following installation of the energy conservation measure or alternative energy facility}}$$

"Private nonprofit organization" means a secular or religious organization described in Section 501(c) of the Internal Revenue Code of 1954 which:

1. Is exempt from taxation under Subtitle A of the Code;
2. Has an accounting system and a voluntary Board of Directors; and
3. Practices nondiscrimination in providing assistance.

"Program" means the Business Energy Improvement [Subsidy] Program established by this subchapter.

"Resource recovery facility" means a solid waste facility constructed and operated for the incineration of municipal solid waste for energy production and the recovery of metals and other materials for reuse; or a mechanized composting facility; or any other solid waste facility constructed or operated for the collection, separation, recycling, and recovery of metals, glass, paper, and other materials for reuse or for energy production.

"Revolving loan fund" means a pool of money available at zero-interest or low interest to accommodate individually owned businesses, closely held companies, family farms, multi-family buildings, and municipalities which are unable to use either conventional lending sources or an energy service company (ESCO) for energy conservation projects whose principal repayments are structured around the energy savings generated.

"Subsidy" means funds furnished by the Division for energy conservation projects.

"Urban Enterprise Zone" or "Enterprise Zone" means an area that has been designated by the Commissioner of the Department of Community Affairs as an "area in need of rehabilitation" under the five-year tax abatement process (P.L. 1977, c. 12 ([C] N.J.S.A. 54:4-3.95 et seq.)) or is qualified for that designation, and meets the criteria established by the Enterprise Zone Authority.

14A:6-2.3 Program duration and limitation of funding

(a) The number and amount of [interest] subsidies and the duration of the Program shall depend on the availability of sufficient revenues to cover [interest] subsidies previously approved by the [Department] Division and to provide sufficient [monies] funds for further [interest] subsidies.

(b) The Commissioner may suspend the Program ([] with respect to new applicants []) in the event that funds are exhausted or the anticipated demand for [interest] subsidies exceeds available funds.

(c) Upon [receipt] notification of an [subsidy] award, the applicant shall have [90] 120 days to obtain all State, Federal or local permit approvals or petition the [Department] Division for an extension with full explanation [of the reason for the extension] for the request.

14A:6-2.4 Requests for applications

The [Department] Division shall make available Business Energy Improvement [Subsidy] Program applications on request, until the Program is suspended pursuant to N.J.A.C. 14A:6-2.3.

14A:6-2.5 Submission requirements

(a) Each [Business Energy Improvement Subsidy] Program application submitted to the [Department] Division for interest subsidies, revolving loan funds, or grants shall include the following information:

1. Name and address of the applicant.
2. A precise description of each energy conservation renovation, energy conserving construction. [or] alternative energy production facility or demonstration program for which [subsidy] the application is [sought] made.

[3. For energy conservation renovations, an analysis of the energy conservation renovation requirements of the eligible business shall be comprised of the results of a Commercial and Apartment Conservation Service (CACS) energy audit, Commercial Light Industrial

Energy Technical Service (CLIENTS) survey, or other energy consumption and cost analysis of the eligible business approved by the Division.]

3.[4.] For all projects, except demonstration programs. [energy conserving renovations and energy conserving construction.] the following information shall be submitted:

i. A reasonable construction bid [with respect to the energy conserving renovations or energy conserving construction, including cost estimates for each energy conservation renovation or energy conserving construction] including itemization of the component costs. The construction bid shall be accompanied by the following:

(1) A sworn statement by the bidder, or an officer or partner of the bidder, indicating that the bidder is not, at the time of the construction bid, included on the State Treasurer's List of Debarred, Suspended and Disqualified Bidders; and

(2) A certification that, where applicable, the bidder is in compliance with the discrimination and affirmative action provisions of N.J.A.C. 10:2-1 et seq. and the rules and regulations promulgated pursuant thereto[.] ;

ii. Engineering calculations and energy savings or avoided costs calculations for each project [energy conservation renovation or energy conserving construction.] ; and

iii. The simple payback period [and calculations] for each energy conservation renovation or energy conserving construction. [Only energy conservation renovations or energy conserving construction having a simple payback period of less than or equal to five years shall be included in the application and shall be eligible for subsidy.]

[5. For alternative energy production facilities the following shall be submitted:

i. An engineering analysis detailing:

(1) Cost of construction of the facility including a reasonable construction bid;

(2) Type and quantity of alternative energy units produced;

(3) Cost of production per unit;

(4) Total avoided energy cost of conventional energy sources resulting from the alternative energy production units;

(5) Avoided energy cost per unit;

(6) Overall cost benefit of the facility.

6. For energy conserving renovations and alternative energy production facilities a commitment by a lender for an eligible loan and the terms thereof; provided, however, that in the event that the commitment is not available on the date of submission of the application, same may be submitted as a supplement to the application, in accordance with the provisions of N.J.A.C. 14A:6-2.7(c)2ii.

7. For energy conserving construction, evidence that capital expenditures sufficient to cover the construction cost estimate provided under (a)4i. above, will be made.]

[8.]4. Such additional information as may be required by the [Department] Division to provide a complete and accurate description of the project.

(b) All calculations with respect to information contained in the application and any supporting documents shall be based on the energy estimating methods of the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc. ("ASHRAE"), including all revisions and updates adopted by ASHRAE. Copies of the document may be obtained from ASHRAE, Inc., 1791 Tullie Circle, N.E., Atlanta, Georgia 30329.

(c) The Division reserves the right to charge applicants reasonable fees for the evaluation of applications for complex projects which may involve new or emergent technologies.

[14A:6-2.6 Eligible loans

(a) Only eligible loans shall be reviewed by the Department for interest subsidies pursuant to N.J.A.C. 14A:6-2.8. In order to be eligible for an interest subsidy, the loan shall meet the following requirements:

1. The loan (and any supporting or related documents) shall:

i. Be for the purpose of financing the installation of energy conservation renovations or alternative energy production facilities that meet the requirements of N.J.A.C. 14A:6-2.5 and that are approved by the Department pursuant to N.J.A.C. 14A:6-2.8.

ii. State separately the amount representing the principal, interest, and penalties with respect to all energy conservation renovations or alternative energy production facility, and separately account for same for each energy conservation renovation or alternative energy production facility during the term of the loan;

iii. Be for an amount (of principal) of not more than:

- (1) \$500,000 for Energy Conservation Renovations;
- (2) \$12,000,000 for Alternative Energy Production Facilities.

iv. Have a term of not more than five years for loans up to \$500,000 and a term of not more than 20 years for loans up to \$12,000,000.

v. Have a fixed interest rate; provided, however, that in the event of a substantial change in commercial loan market conditions, the Commissioner may, in his discretion, modify the requirement specified herein.

vi. Be amortized according to a predetermined monthly amortization schedule.

vii. Not obligate or render the Department liable to pay the lender or the applicant at any time, any amount of principal, interest, interest accruals or penalties, for any reason, including but not limited to:

(1) The default or late payment of the eligible loan by the applicant.

(2) Failure to pay, withholding of payment or seeking the return of the interest subsidy by the Department.

viii. Have been reviewed and approved by the lender in accordance with standard procedures.

(b) The Department does not guarantee the approval by lenders of loans for energy conservation renovations or alternative energy production facility. Applicants that are denied loans shall have no recourse to the Department. The Department shall not participate in any manner in any aspect of the lender's loan review process.]

14A:6-2.6 Eligible subsidies and revolving loans

(a) The requirements for interest subsidies are as follows:

1. Eligibility for interest subsidies will be limited to:

i. Businesses meeting the Small Business Administration definition of small business contained in 13 C.F.R. Part 121.2 (49 F.R. 5030-37);

ii. Qualified Urban Enterprise Zone businesses as defined in P.L. 1983 c.303;

iii. Multi-family buildings, condominiums, and cooperatives;

iv. Private non-profit institutions, but not including facilities which are used for worship or in which the sanctuary area directly benefits from the improvement;

v. Family-owned farms; and

vi. Municipal facilities.

2. For the purpose of calculating possible subsidy, the Division will participate in projects where the maximum principal amount, interest term and simple payback are as follows:

i. For energy conservation renovations and alternative energy production facilities:

(1) The principal not to exceed the lesser of the actual project cost or \$500,000;

(2) The term not to exceed the lesser of the lender loan term or the estimated time for payback of the project; and

(3) A simple payback of 10 years or less.

ii. For resource recovery facilities:

(1) The principal not to exceed the lesser of the actual project cost or \$2,000,000;

(2) The term not to exceed the lesser of the lender loan term or the estimated time for payback of the project; and

(3) A simple payback of 20 years or less.

3. Applicants must supply a copy of their loan application or loan commitment from the lending institution with supporting documentation specifying principal, interest and penalties with respect to all projects.

4. Applicants shall execute an agreement with the Division to establish the conditions associated with the interest subsidy loan. The agreement shall include, but not be limited to:

i. The loan term;

ii. The rate of interest which can be fixed or floating;

iii. That the loan is amortized according to a predetermined monthly schedule;

iv. That the loan does not obligate or render the Division liable to pay, at any time, any amount of principal, interest, interest accruals or penalties, for any reason, including but not limited to:

(1) The default or late payment of the eligible loan by the applicant;

(2) Failure to pay, withholding of payment or seeking the return of the interest subsidy by the Division;

v. That the loan was or will be reviewed and approved by the lender in accordance with standard procedures; and

vi. That the Division does not guarantee the approval by lenders of loans or that the Division will not participate in any manner in any aspect of the lender's loan review process.

(b) The requirement for revolving loan funds are as follows:

1. Eligibility will be limited to private non-profit institutions, family-owned farms, individually-owned or closely held companies, and municipal facilities.

2. Eligible applicants with an annual energy bill in excess of \$150,000 which have been denied energy conservation project funding by an energy service company (ESCO), and/or have been denied energy conservation project funding by a lending institution, must supply proof of that denial.

3. Revolving loan funds shall be at zero interest or low interest to eligible applicants where the maximum principal amount term, and simple payback, are as follows:

i. For energy conservation renovations or alternative energy production facilities:

(1) \$200,000 in principal;

(2) The loan term not to exceed the lesser of 10 years, or twice the estimated payback in years; and

(3) A simple payback of 10 years or less.

ii. For Resource Recovery Facilities:

(1) \$3,000,000 in principal;

(2) The loan term not to exceed the lesser of 20 years, or twice the estimated payback in years; and

(3) A simple payback of 20 years or less.

4. Repayment of revolving loans shall be based on a percentage of the annual energy cost savings or avoided energy costs with a balloon payment, if any, due at the end of the term.

5. Applicants shall execute an agreement with the Division to establish the terms and conditions associated with the loan.

14A:6-2.7 Eligible grants

[In order to be eligible for a subsidy, the grant shall be for the purpose of financing the energy conserving construction that meets the requirements of N.J.A.C. 14A:6-2.5 and that is approved by the Department pursuant to N.J.A.C. 14A:6-2.8.]

(a) The requirements for grants are as follows:

1. Incremental grants shall be provided as follows:

i. Eligibility for new construction projects and/or major renovations will be limited to qualified Urban Enterprise Zone business applicants.

ii. The grant will pay the full incremental cost up to a maximum of \$100,000 between materials, practices or equipment used in the Project which exceed those materials, practices or equipment required under the "Energy Subcode", N.J.A.C. 14A:3.4 et seq.

iii. The maximum simple payback, for the purpose of establishing eligibility for the grant, will be 10 years, and will be calculated using: The incremental cost determined by (a)ii above, divided by the first year energy savings, converted to dollars, established as the difference in consumption between code-required equipment, materials and practices and those that exceed the code.

2. Matching grants shall be provided as follows:

i. Eligibility will be limited to family-owned farms.

ii. The Division's percentage of match will be based on the farm operation income in relation to the median farm operation income of the farm location and will not exceed 80 percent of the cost of the project;

iii. Energy conservation projects or alternative energy projects with a maximum simple payback of 10 years will be eligible; and

iv. The maximum grant amount will be \$100,000.

(b) The requirements for demonstration program funds are as follows:

1. Eligibility is limited to nonprofit organizations, educational institutions, colleges, or universities; and

2. The Division may, at its discretion, allot funds in the form of grants up to a maximum of \$200,000 per project for demonstration programs.

(c) All applicants shall execute an agreement with the Division to establish the terms and conditions associated with the grant. No charges for indirect costs will be allowable charges under the grant.

14A:6-2.8 Application and review procedures

(a) Applicants shall submit to the [Department] Division a completed Business Energy Improvement [Subsidy] application. The application shall bear either a legible (non-metered) postmark or a date stamp from the [Department's] Division's Office of Operations indicating that the application was submitted on or before any deadline established pursuant to N.J.A.C. 14A:6-2.3.

(b) The [Department] Division shall conduct a review of the applications commencing with the application bearing the earliest submission date. The [Department] Division may require the submission of additional information to complete the application or may require the resubmission of the entire application if incomplete. The [Department] Division shall review the applications to determine whether:

1. The application is made on behalf of an eligible [business] applicant;

2. The application covers energy conservation renovations, energy conserving construction [or], alternative energy production facilities[,], or demonstration programs;

3. The application is complete as to form (required documentation is present and complete);

4. The application is complete as to the submission requirements of N.J.A.C. 14A:6-2.5;

5. The engineering calculations and other technical matters with respect to the energy conservation renovations, energy conserving construction, [or] alternative energy production facilities, or demonstration programs are accurate and correct; [and]

6. The energy conservation renovations or energy conserving construction are appropriate [for the eligible business]; and

7. For energy conserving construction, evidence that capital expenditures are sufficient to cover the construction cost estimate provided under N.J.A.C. 14A:6-2.5(a)3.

(c) Upon completion of the review of an application pursuant to (b) above, the [Department] Division shall notify the applicant in writing whether the application has been approved, approved with modification, [the condition that an eligible loan be obtained,] or denied. [Interest s]Subsidies, revolving loan funds or grants shall be extended to applicants in the order that applications are approved.

1. In the event that an application is approved an [subsidy] agreement shall be executed [pursuant to (d) below.] with the Division to establish the terms and conditions associated with subsidies, revolving loan funds or grants.

2. In the event that an application is approved with [the condition that the applicant obtain an eligible loan,] modification, the [Department] Division shall:

i. Indicate preliminarily in writing, the terms [of] under which a[n interest] subsidy, revolving loan or grant will be extended to the applicant, [including but not limited to the energy conservation renovations for which the interest subsidy will be extended] and the amount of the [interest] subsidy, revolving loan or grant.

ii. Allow the applicant a period of 30 calendar days from the date of approval of the application to obtain an eligible loan on the terms which include any requirements established pursuant to (c)2i above, and to file same with the Department.

iii. In the event that an eligible loan is not obtained for the energy conservation renovations or the alternative energy production facilities approved by the Department within the 30 calendar day period, the Department may, in its discretion, extend the period for obtaining and filing the loan for an additional 30 calendar days. Upon filing of the loan by the applicant, the Department shall review the loan for eligibility in accordance with the requirements of N.J.A.C. 14A:6-2.6. The Department shall notify the applicant whether the application is approved pursuant to (c)1 above or denied pursuant to (c)3 below.

iv. Failure of the applicant to obtain an eligible loan by the conclusion of the appropriate 30 calendar day period and to file same with the Department shall result in a denial of the application.

v. In the event that a loan is obtained for energy conservation renovations or alternative energy production facilities on terms other than those approved by the Department, the applicant shall be required to file a new application with the Department pursuant to N.J.A.C. 14A:6-2.5 in order to be considered for an interest subsidy.]

3. In the event that an application is denied, the applicant shall be ineligible to receive a subsidy for the particular energy conservation renovations, energy conserving construction, [or] alternative energy production facilities or demonstration programs included in the application and shall not be permitted to submit another application for the same project[s] under the same program.

[(d) Upon approval of an application pursuant to (c) above, the Department and the applicant shall execute in writing a subsidy agreement, which shall include but not be limited to provisions specifying the energy conservation renovations, energy conserving construction or the alternative energy production facilities to which the subsidy shall apply, the terms and conditions on which the subsidy shall be made by the Department, the amount of the subsidy and the payment schedule and the effect of prepayment on any outstanding balance of an interest subsidy. All subsidy agreements, whether specifically stated therein or not, shall be subject to the provisions of this subchapter.]

14A:6-2.9 Conditions for payment and repayment of subsidies, revolving loans, and grants

(a) The following provisions govern the payment of subsidies:

1. The [Department] Division shall pay subsidies directly to [the] an approved applicant or, where applicable, to a lending institution in the name of an approved applicant.

[(b) The following terms govern payment of interest subsidies:

1. The applicant shall be solely responsible and liable for repayment of the principal, interest, interest accruals and penalties with respect to the eligible loan. The Department shall not be liable to the applicant for the repayment of principal, interest, interest accruals or penalties.

2. Interest subsidies shall be made by the Department at 50 percent of the lender's commercial lending rate up to 600 basis points; provided, however, that in the event of a substantial increase or decrease in commercial lending rates, the Commissioner may, in his discretion, modify the percentage or basis points available to applications for which an interest subsidy agreement has not been executed pursuant to N.J.A.C. 14A:6-2.7(c)

3. Interest subsidies shall be paid by the Department at intervals not exceeding six months in accordance with the terms of the interest subsidy agreement.]

2.[4.] The [Department] Division [may in its discretion,] shall pay the entire subsidy in [one initial] a single discounted lump-sum payment when the project is installed and inspected. The discount rate shall be [at a negotiable discount rate] no lower than six percent. The total value of the subsidy will be the same as if the prepaid subsidy were invested at the negotiable discount rate compounded semi-annually over the term of the [loan] subsidy.

[5. The applicant shall provide, or cause to be provided, to the Department, at intervals not exceeding six months, and commencing not more than six months after the due date of the first repayment of the eligible loan, a certification that repayment of the eligible loan is being made timely to the lender, in accordance with the terms of the interest subsidy agreement. The certification shall be in the form of an official audit confirmation from the lender. This confirmation is due 15 days prior to the scheduled subsidy payment.]

(b) The following provisions govern repayment of revolving loan funds:

1. The applicant shall be solely responsible and liable for repayment of the principal, and any interest, interest accruals, or penalties which may be assessed or result from the loan.

2. Revolving loan funds shall be secured by property liens where applicable until loan repayment is completed.

3. Where the project scope necessitates, the services of an interim lender may be engaged as an experienced construction lender to assume

responsibility for monitoring the construction phase and timely completion of the project, to minimize non-performance risk, and monitor costs to preclude cost overruns. When an interim lender is not used, the Division will make advances to the applicant, based upon construction cost estimates, to initiate the project, make payments during the project, and a final payment upon acceptance of the completed project.

4. Repayment of principal by the applicant shall be made from the value of energy savings that accrue as a result of the energy conservation measure implemented with the borrowed money.

i. An annual accounting, on an agreed calendar or fiscal year basis, shall be made for reconciliation of energy savings or avoided costs realized and loan repayment due.

ii. Repayment of the loan shall commence six months after the project is operational, and on an annual basis thereafter, with repayment not to exceed a maximum of 10 years or 20 years for a resources recovery project.

(c) The following provisions govern the payment of grant funds:

1. For incremental grants, the Division will make a single lump sum payment when the project is installed and inspected.

2. For matching grants, the Division will make advances to the applicant, based upon construction cost estimates, to initiate the project, make payments during the project, and a final payment upon acceptance of the completed project. Grantees must demonstrate that their matching funds are being spent at the same rate as their spending of Division funds.

3. For demonstration program grants, the Division will reimburse grantees based on an approved line item budget for eligible expenses incurred. Requests for payment shall not be made more than once per calendar quarter.

14A:6-2.10 Monitoring

(a) The applicant shall provide, or cause to be provided, to the Division, at intervals not exceeding six months, and commencing not more than six months after the due date of the first repayment of the eligible loan, certification that repayment of the eligible loan is being made on a timely basis to the lender, in accordance with the terms of the interest subsidy agreement. The certification shall be in the form of an official statement confirmation from the lender. This confirmation is due in the Division every six months until the loan is fully repaid.

(b) The [Department] Division shall monitor all work related to energy conservation renovations, energy conserving construction or alternative energy production facilities that are the subject of an [interest] subsidy, revolving loan, or grant agreement by the [Department] Division.

(c) "Monitoring" shall include, but not be limited to, reviewing plans, specifications, [and] other documents and information[,] and conducting on-site inspections to assess the progress and completion of work.

(d) The applicant shall comply promptly with all requests by the [Department] Division to conduct monitoring activities[.] That is, supply periodic fuel consumption figures to validate energy savings, as required.

(e) Authorization from the applicant to the Division for the direct receipt of utility bill information may be required for monitoring purposes. Where exercised, confidentiality will be maintained; utility data shall be treated as proprietary information.

14A:6-2.11 Rescission and withholding of funds

(a) The [Department] Division, in addition to any other rights or remedies available pursuant to law, may withhold or rescind payment

of a subsidy, revolving loan, or grant or any portion thereof for good cause. Such withholding or rescission shall terminate the obligation of the [Department] Division to make further payments of [subsidies] funds to the applicant. The term "good cause" shall include, but not be limited to, the following:

1. Failure to comply with the requirements of this subchapter, or other applicable State laws or regulations.

2. Failure to comply with any condition or requirement of the subsidy agreement.

3. Submission of false or misleading information, or failing to submit relevant information to the [Department] Division.

4. Non-payment or failure to make timely repayment of an eligible loan, or declaration by the lender that the applicant is in default of an eligible loan.

5. Insolvency, bankruptcy or other condition affecting the financial integrity of the applicant.

6. Use of the subsidy for any purpose other than as specified in the [subsidy] agreement.

7. Inability or failure to install the energy conservation renovations, energy conserving construction, [or the] alternative energy production facility, or conduct the demonstration program, in a timely manner, absent force majeure or other exigent circumstances.

8. Failure to provide documentation with respect to the installation of energy conservation renovations, energy conserving construction, [or] the building of an alternative energy production facility, or the conduct of the feasibility planning project.

9. Modification of the terms of the eligible loan without express written consent of the [Department] Division.

(b) Subsidies, revolving loans, or grants shall be withheld or rescinded according to the following procedures:

1. The [Department] Division shall give written notice to the applicant of its intent to withhold or rescind a subsidy in whole or in part.

2. Prior to the withholding or rescission of the [interest] subsidy the [Department] Division shall afford the applicant a period of [20] 30 days, commencing on the date of written notice, to consult the [Department] Division in the matter, and cure the issues forcing rescission. The [Department] Division may, thereafter, withhold or rescind the [interest] subsidy in whole or in part. The withholding or rescission determination shall be in writing and shall be effective on the date such action is taken. The determination will be provided to the applicant.

3. The determination to withhold or rescind a[n] [interest] subsidy, revolving loan, or grant shall be solely within the discretion of the [Department] Division and is not subject to further review by the [agency] Division.

(c) In the event that a subsidy, revolving loan, or grant is withheld or rescinded by the [Department] Division the applicant shall refund immediately the total amount of [subsidy] funds paid by the [Department] Division as of the date of rescission or withholding.

1. The [Department] Division shall return all rescinded monies to the Business Energy Improvement [Subsidy] Program.

14A:6-2.12 Severability

If any section, subsection, provision, clause or portion of this subchapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

RULE ADOPTIONS

COMMUNITY AFFAIRS

DIVISION OF HOUSING AND DEVELOPMENT

(a)

Limited Dividend and Nonprofit Housing Corporations and Associations

Readoption with Amendments: N.J.A.C. 5:13

Proposed: October 19, 1987 at 19 N.J.R. 1861(a).

Adopted: December 23, 1987 by Leonard S. Coleman, Jr.,
Commissioner, Department of Community Affairs.

Filed: December 24, 1987 as R.1988, d.49, **without change**.

Authority: N.J.S.A. 55:16-11 and 52:27D-22.

Effective Date for Readoption: December 24, 1987.

Effective Date for Amendments: February 1, 1988.

Expiration Date: December 24, 1992.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:13.

Full text of the adopted amendments to the readoption follows.

5:13-1.1 Definitions

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

...

"HMFA" means the New Jersey Housing and Mortgage Finance Agency, in, but not of, the Department of Community Affairs.

...

5:13-1.2 Scope

(a) (No change.)

(b) For the purpose of encouraging development of housing projects under these regulations and to enable housing sponsors to obtain the necessary financing through FHA or HMFA, the State Administrator may waive any regulations herein where such waiver is in the public interest and there is a conflict between these regulations and either FHA or HMFA requirements.

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

5:13-1.5 Operation of corporation or association

(a) (No change.)

(b) If the mortgage on the project is insured by the FHA or financed by the HMFA, the housing sponsor shall comply with the requirements of such agency in connection with reserves. On termination of the jurisdiction of the FHA or HMFA, the reserves of the corporation shall be established and maintained in an account approved by the Authority.

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

5:13-1.7 Tenant application, selection and priorities

It is the purpose and intent of the Act and this Chapter that tenants whose housing need is greatest receive priority for occupancy in any project under the Act; provided that the applicant's family size must be suitable to the apartment to be occupied and the tenant's income must be sufficient to be able to afford the rent charged; and provided that any regulations of the HMFA implementing priority categories specified by the New Jersey Housing and Mortgage Finance Agency law (N.J.S.A. 55:14K-1 et seq.), as amended, shall prevail in those projects financed by said agency.

5:13-1.8 Tenant priorities

(a) Applications for eligible persons and families for occupancy shall receive priority over all others in the following order:

1.-2. (No change.)

(b) Persons who have moved to standard housing under an ap-

proved Workable Relocation Assistance Program pursuant to the Relocation Assistance Law of 1967 (N.J.S.A. 52:31B-1 et seq.) and the Relocation Assistance Act (N.J.S.A. 20:4-1 et seq.) and regulations promulgated thereunder (N.J.A.C. 5:11), as a permanent move outside of a priority area, shall not have priority status under this Section.

5:13-1.10 Public notice to applicants on rights

(a) There shall be posted, in a prominent place, in each office where prospective applicants come to make application for tenancy, a sign notifying the applicants of their rights with reference to non-discrimination; priority preferences in accordance with these or HMFA regulations if applicable; eligibility to file where income is derived from welfare and public assistance funds; rights of any person to request and file application for tenancy; and the right to file complaints with the State Administrator.

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

(d) All informational bulletins, advertising brochures, and application forms shall, in bold type, be printed with a statement indicating to applicants or prospective applicants their rights with reference to nondiscrimination, priority preferences as provided for in these or HMFA regulations, and eligibility to file where income is derived from welfare or public assistance funds.

5:13-1.11 Applications for dwelling leases and rentals

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

(f) Each application shall be dated and numbered serially as received; excepting, however, those applications disclosing priority shall be numbered serially separately and bear the prefix "P" or, if HMFA priorities, the prefix "HMFA-P" to so indicate and shall be separately maintained and transmitted to the Authority for approval.

(g)-(n) (No change.)

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Continuing Care Retirement Community Rules

Adopted New Rules: N.J.A.C. 5:19

Proposed: April 20, 1987 at 19 N.J.R. 597(a).

Adopted: January 7, 1988 by Leonard S. Coleman, Jr.,
Commissioner, Department of Community Affairs.

Filed: January 8, 1988 as R.1988 d.60, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-330 et seq., specifically N.J.S.A. 52:27D-358.

Effective Date: February 1, 1988.

Expiration Date: February 1, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: There were numerous objections to the initially proposed fee of \$4,000 plus \$40.00 per unit for the initial application in N.J.A.C. 5:19-2.4 and \$2,000 plus \$20.00 per unit for the annual disclosure statement in N.J.A.C. 5:19-4.9.

RESPONSE: The Department has revised the fee schedule as follows: \$400.00 plus \$40.00 per unit for the initial application and \$130.00 plus \$13.00 per unit for the annual disclosure statement.

The following comments are from the New Jersey Association of Non-Profit Homes for the Aging (NJANPHA):

COMMENT: The statute and rules will cover facilities with as few as 51 units. The proposed fees would be especially harsh for such small facilities and their residents. Fees for smaller facilities should be reduced.

RESPONSE: The administrative review process is not substantially different for smaller projects. The revised fee schedule is structured to place less of a burden on small facilities.

COMMENT: The statute and proposed rules provide a definition of the term "provider" which should be substituted for the term "owner of property," both because provider is a defined term and because the provider is not necessarily the owner of the property.

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RESPONSE: The rules have been revised to substitute the term "provider" for the term "owner of property".

COMMENT: N.J.A.C. 5:19-1.2 and 3.4(b) suggest that the agency intends to review and approve advertising material. However, the statute does not authorize the Department of Community Affairs (Department) to preview or approve advertising material prior to dissemination. This would be burdensome both for providers and the Department.

RESPONSE: The Department has deleted N.J.A.C. 5:19-1.2(a)3, dealing with the affirmative determination of advertising material and the general promotional plan, and has also deleted the phrase "and/or advertising" from N.J.A.C. 5:19-3.4(b).

COMMENT: Subsection 7c(4) of the statute requires providers to disclose whether officers, directors, trustees and certain other officials have been convicted of a crime. However, the statute does not automatically disqualify such individuals. Therefore, N.J.A.C. 5:19-1.2(a)4 should be brought into conformity with the statute.

RESPONSE: Since the Department has been given the responsibility of enforcing the Act and protecting the interests of the residents of continuing care retirement community facilities, N.J.A.C. 5:19-1.2(a)4 (recodified as (a)3) has been amended to include "the seriousness of which, in the opinion of the Department, warrants the denial of certification".

COMMENT: The term "interest" is duplicative of the term "unit" or "living unit" and should, therefore, be deleted.

RESPONSE: The term "interest" in N.J.A.C. 5:19-1.3 has been deleted in the definition of "Blanket Encumbrance" and the definition of the term itself has been deleted.

COMMENT: The definition of "living unit" should clarify that the term refers to a residential unit and does not include residential health care or a bed in the nursing unit of a facility.

RESPONSE: The term as defined indicates that a "living unit" is an area for the exclusive use as a household unit.

COMMENT: The definition of "material change" is too broad and goes well beyond the scope of statute.

RESPONSE: The definition of "material change" has been deleted from N.J.A.C. 5:19-1.3; however, the Department still has the obligation to determine whether a change to the facility is significant.

COMMENT: N.J.A.C. 5:19-2.3 provides an excellent mechanism for a facility that is like a CCRC but is not a CCRC within the meaning of the Act, to establish on the record that the Act does not apply to it. However, the use of the term "continuing care retirement community" makes the provision somewhat confusing since CCRCs are, by definition, required to file under the Act. This could be cured by inserting the phrase "or similar facility" after the term continuing care retirement community, wherever it appears in this rule.

RESPONSE: The phrase "or similar facility" has been inserted throughout N.J.A.C. 5:19-2.3.

COMMENT: In N.J.A.C. 5:19-2.8 an order of rejection, based on technical grounds, may provoke needless anxiety on the part of residents at existing CCRCs. In addition, the rejection could be quite costly if the application fee is payable whether or not the application is approved. When the notice of correction is issued pursuant to N.J.A.C. 5:19-2.7, the provider should be granted an extension of 30 days of the time within which to fulfill the requirements of the notice of correction. This extension should be granted automatically upon request of the provider. An extension for a longer period should be permitted with the Department's consent.

RESPONSE: N.J.A.C. 5:19-2.7 has been amended to add "the applicant may request and receive an extension of 30 days to submit necessary corrections. Additional 30 day extensions may be granted for good cause shown."

COMMENT: In N.J.A.C. 5:19-2.12(a)2 the term "dispose of" should be deleted.

RESPONSE: The Department has determined that this rule will remain as proposed since the term "dispose of" has meanings other than the sale of a unit.

COMMENT: In N.J.A.C. 5:19-2.13, NJANPHA strongly urged the Department to delete the requirement of an annual report which, as proposed in this section, would be redundant and would involve substantial excess paperwork. In addition, the 45-day time frame is unrealistically short. The six month filing period for the annual disclosure statement is far more practical.

RESPONSE: Every provider upon certification will receive a copy of the Annual Report Form. This form requests information about the facility which is not a duplication of information included in the Annual Disclosure Statement. N.J.A.C. 5:19-2.13(a) has been amended to delete

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"within 45 days after the anniversary date of the latest order of certification and while the provider retains any interest in the facility or retirement community". New subsection (b) states that "The Annual Report shall be filed together with the Annual Disclosure Statement".

COMMENT: Since all providers will be located within the State, N.J.A.C. 5:19-3.1(a)1, requiring an irrevocable appointment of the Department, is unnecessary.

RESPONSE: As part of its obligation to administer the Act, the Department deems it necessary to receive service of any lawful process in any non-criminal proceeding arising under the Act against the provider or his agents.

COMMENT: The scope of N.J.A.C. 5:19-3.1(a)2. is unclear in that there is no identification of the entity whose filing(s) in other jurisdictions must be reported in the application for certification.

RESPONSE: The rule has been amended to state that "the States or other jurisdictions, including the Federal Government, in which an Application for Certification or similar documents for the subject facility. . . ."

COMMENT: In N.J.A.C. 5:19-3.1(a)3, the phrase "or person occupying a similar status and of any person performing similar management functions" is unclear. Instead, the statutory phrase "officers, directors, trustees, managing or general partners and any person having a 10 percent or greater equity or beneficial interest in the provider," subsection 7b, should be used here.

RESPONSE: N.J.A.C. 5:19-3.1(a)3 has been amended to read: "The names and business addresses of the officers, directors, trustees, managing or general partners and any person having a 10 percent or greater equity or beneficial interest in the provider and a description of that person's interest in or occupation with the provider".

COMMENT: N.J.A.C. 5:19-3.1(a)5. is burdensome and does not provide the kind of protection the Act was intended to extend to residents and prospective residents of the CCRCs. For new facilities, the filing of similar or identical documents will be required by local construction authorities. For existing facilities, the process of obtaining these documents may be burdensome, time consuming and expensive. It is most important that the requirement of a map drawn to scale be eliminated. This could prove extremely expensive for providers without providing any corresponding benefit to prospective residents.

RESPONSE: The Department has decided that it is necessary for it to know the exact legal description of the lands to be certified. To clarify this requirement, the rule has been revised to state: "A legal description by metes and bounds or other acceptable means of the lands to be certified, and the relationship of such lands to existing streets, roads and other improvements; together with a map showing the proposed or actual facility and showing the dimensions of the living units as available, except for living units that are completed and available for inspection. The aforesaid map shall be drawn to scale, signed and sealed by a licensed professional engineer or land surveyor;"

COMMENT: In N.J.A.C. 5:19-3.1(a)9, the phrase "conditions of access" is unclear and the phrase "any adverse conditions that affect a facility" is simply too broad to be meaningful. Furthermore, similar information is already required to be included in the disclosure statement in N.J.A.C. 5:19-4.2(a)5.

RESPONSE: The intention of this rule is to describe the streets which are accessible to and from the facility. An adverse condition would include such things as a toxic waste dump or railroad which adjoined the facility.

COMMENT: In N.J.A.C. 5:19-3.1(a)10, the terms "purchaser" and "offering" are inappropriate.

RESPONSE: The term "purchaser" has been replaced with "resident" and the phrase "in connection with this offering" has been deleted from that rule.

COMMENT: In N.J.A.C. 5:19-3.1(a)13, current financial statements should be required for the provider only and not for "any predecessor, parent or subsidiary company". The production of such documents would be burdensome, time consuming and expensive and is beyond the scope set forth in the statute at subsection 7i.

RESPONSE: It is the provider's responsibility to prove his financial ability to operate a facility. The rule has been amended to add the term "related" before predecessor, parent or subsidiary company. . . ."

COMMENT: N.J.A.C. 5:19-3.1(a)15 is also burdensome and unrelated to the purpose of the Act.

RESPONSE: The intention of the Act is to provide full disclosure of all aspects of the facility. It is in the best interest of the residents that all easements and restrictions, whether of record or not, be made part of the application for certification.

COMMENT: N.J.A.C. 5:19-3.1(a)16 would be extraordinarily burdensome and is outside of and bears no relation to the scope of the Act. A CCRC is a complex organization that is subject to numerous agencies and hundreds of rules. There is no need for the Department to oversee a facility's compliance with the rules of other departments.

RESPONSE: This rule has been amended to request the statement of compliance of governmental agencies having jurisdiction over the "construction, permitting and licensing of the facility".

COMMENT: N.J.A.C. 5:19-3.1(a)18 would require a projected 20-year annual budget. In order for a budget projection to be of use to the Department, as well as prospective and existing residents, it must be based upon reasonably reliable data and assumptions. This would not be possible in connection with a 20-year projection. Furthermore, it is doubtful whether any competent accountant or actuary would be prepared to lend his or her name to such an undertaking. NJANPHA supports this concept, even though it does not appear in the statute, but recommends that the projected budget be for a three-year period which is the maximum period for which budgets can be projected with any reasonable degree of confidence. Pennsylvania's Department of Insurance, which administers a CCRC statute nearly identical to the Act, requires a three-year budget projection.

RESPONSE: This rule has been amended to require a five-year projected budget of the facility.

COMMENT: N.J.A.C. 5:19-3.1(a)19 should be revised to clarify that market studies are not required. NJANPHA recommends that the beginning of this sentence be changed as follows: "Copies of market studies, if any, . . ."

RESPONSE: The Department has revised this rule to read: "Copies of market studies, if any, prepared on behalf of the provider, concerning the feasibility of the project."

COMMENT: In N.J.A.C. 5:19-3.1(a)20 in view of the fact that the application for a COA will contain a budget projection (that is, an estimate) for some period of years, it is inappropriate to require the provider to attest that the contents of the application are "true and accurate". Instead, this phrase should be modified to: "true and accurate to the best of my knowledge and belief".

RESPONSE: The phrase "and made in good faith" has been added to the statement.

COMMENT: N.J.A.C. 5:19-3.2 should be deleted.

RESPONSE: The intention of this rule is to provide information to the person compiling the application. If the seven steps in N.J.A.C. 5:19-3.2 are followed, the review should be compiled in a timely fashion.

COMMENT: In N.J.A.C. 5:19-3.3(a), it is unfair and unrealistic to expect a provider to "immediately" report an amendment to the Department; this word should be replaced with "promptly". In addition, the Department should require the reporting of significant or material changes only.

RESPONSE: The rule has been amended to replace the word "immediately" with "promptly" and to report "material" changes.

COMMENT: The thrust of N.J.A.C. 5:19-3.3(b) ("change in the substance or intent of the promotional plan or plan of disposition") is contrary to the statute.

RESPONSE: N.J.A.C. 5:19-3.3(b) has been deleted.

COMMENT: The terminology of the statute (" . . . provider shall provide a disclosure statement to a prospective resident . . . prior to the execution of the contract. . . ." Section 7) is more precise and, therefore, preferable to the terminology in proposed N.J.A.C. 5:19-4.1(a).

RESPONSE: N.J.A.C. 5:19-4.1(a) has been deleted.

COMMENT: The statute sets out in precise detail which characteristics and features are to be covered and disclosed in the disclosure statement. By contrast, the phrase in N.J.A.C. 5:19-4.1(b), "all unusual and material circumstances and features affecting the facility", is vague and overly broad and should be deleted.

RESPONSE: The Department has decided that the provider should be in a position to determine any unusual and material circumstances and features affecting the facility and include them in the disclosure statement.

COMMENT: The statute and proposed rules require the disclosure statement and continuing care agreement to "be written in plain English and in a language understandable by a lay person". Sections 7 and 15a; N.J.A.C. 5:19-4.1(c) and 5:19-6.5(a). It is unrealistic to require "simplicity" since the statutes and rules themselves require complicated disclosures. Besides, the term "simplicity" is vague and subjective.

RESPONSE: The term "simplicity" in this subsection refers to language which should be understandable to a lay person.

COMMENT: The provisions of N.J.A.C. 5:19-4.1(d) are vague and

add nothing to the obviously implicit requirement of the statute and regulations.

RESPONSE: If in the course of the Department's review of the disclosure statement it is determined that certain aspects of the facility are not properly disclosed, the provider will be required to amend the disclosure statement to include the additional information, as provided in subsection (d) (recodified as (c)).

COMMENT: In N.J.A.C. 5:19-4.1(f), the word "approved" should be replaced with "filed".

RESPONSE: The phrase "approved by" has been replaced by the phrase "filed with" in subsection (f) (recodified as (e)).

COMMENT: N.J.A.C. 5:19-4.2(a)6 is vague and overly broad. Compilation of "what standards apply to . . . the facility" would be burdensome and useless.

RESPONSE: The rule has been revised by deleting the word "standard" and adding "laws and regulations".

COMMENT: Some facilities may have residents/patients who are not covered by continuing care contracts. It would be helpful to clarify N.J.A.C. 5:19-4.2(a)8 to indicate that the disclosure concerning fees required of residents applies only to those residents who are subject to contracts for continuing care. This is consistent with other provisions of the Act, for example, subsection 10c.

RESPONSE: The Department has amended the rule to read "A description of all fees required of residents subject to contracts for continuing care. . . ."

COMMENT: So long as the disclosure statement is legible, there is no justification whatsoever for limiting the printing to "unglazed white paper" in N.J.A.C. 5:19-4.3(a)5. Likewise, there is no reason to prohibit a disclosure statement from using underscoring, italics, and different color and type print, as in N.J.A.C. 5:19-4.3(a)6. In fact, the proposed rules themselves contain underscoring, bold print and different size print, presumably to make the material easier to read.

RESPONSE: N.J.A.C. 5:19-4.3 has been inserted into the rules to insure some consistency in the manner in which disclosure statements are submitted.

COMMENT: N.J.A.C. 5:19-4.5(a) would more logically be located at N.J.A.C. 5:19-4.9(d) since it refers to amendments to the annual disclosure statement. This would correspond to its location in the statute, subsection 8c.

RESPONSE: The term "currently filed annual" has been deleted from N.J.A.C. 5:19-4.5(a) since that subsection refers to an amendment of the initial disclosure statement.

COMMENT: N.J.A.C. 5:19-4.5(b) is unclear as to what is meant by "paste-over or other permanent means".

RESPONSE: The amended page of a disclosure statement may be completely replaced in the document, or a paragraph on a page may be amended by pasting the new paragraph over the amended paragraph in every disclosure statement.

COMMENT: It is not clear what is meant by N.J.A.C. 5:19-4.6.

RESPONSE: The Department will process and review requests for amendments within 90 days of the receipt of the amendment in accordance with the standards set forth in sections 5:19-3.1 and 5:19-4.2.

COMMENT: The legally required disclaimer on the disclosure statement and the continuing care contract advises individuals to consult with an attorney and financial advisor of their choice. It is redundant and unnecessary to impose a further burden on providers in N.J.A.C. 5:19-4.8 by requiring additional advice. If providers gave advice verbally, no record would exist. If they did so in writing, it would repeat the disclaimer already required to be printed on the continuing care agreement and the disclosure statement.

RESPONSE: The rule has been amended by deleting the following: "the provider shall also advise prospective residents to seek the independent advice of an attorney and financial advisor of their choice concerning the disclosure statement or contract".

COMMENT: The statute prohibits advertising which is "untrue, deceptive or misleading". Subsection 9a. In describing a CCRC, some aspects, for example the social or religious environment, may not be "provable" and this term should be deleted from N.J.A.C. 5:19-5.1(a). It is not possible to determine through any objective criteria whether advertising will foster the "understanding and trust" of the public and, therefore, no such requirement should be imposed by this subsection.

RESPONSE: The subsection has been amended to delete the word "provable". However, the Department feels that advertising which is consistent with the regulations will foster the understanding and trust of prospective residents.

COMMENT: To conform the language of N.J.A.C. 5:19-5.2(a)1 to the

statutory terminology, the phrase "additional assessments" should be replaced with "other periodic charges".

RESPONSE: The word "additional" in this rule has been deleted and replaced by "periodic charges".

COMMENT: The meaning of N.J.A.C. 5:19-5.2(a)4 is unclear.

RESPONSE: In the event that the disclosure statement indicates that, for example, a recreation facility will be constructed, it must disclose that there will be a special assessment and indicate the amount of the assessment for each resident.

COMMENT: N.J.A.C. 5:19-5.2(a)6 and (a)7 are redundant.

RESPONSE: N.J.A.C. 5:19-5.2(a)6 has been revised by deleting "no sketch or artist's conception may be used in advertising unless it is clearly stated immediately adjacent to such sketch or artist's conception that it is in fact a sketch or artist's conception".

COMMENT: While it can be predicted that prices will increase, the amount and date of future increases cannot be predicted. Therefore, N.J.A.C. 5:19-5.2(a)8 should be deleted.

RESPONSE: This rule will discourage providers from advertising a reduced price which will expire next month. If the price will change at the end of the month, the provider must disclose the date and the new price.

COMMENT: The statute and the proposed rules contain highly specific guidelines for the continuing care contracts. The language of N.J.A.C. 5:19-6.1 is vague and overly broad and should be deleted.

RESPONSE: This section is a preface to Subchapter 6, Contracts, and is to be read in conjunction with the other sections dealing with contracts.

COMMENT: N.J.A.C. 5:19-6.2 is not entirely consistent with subsection 15b of the Act and proposed N.J.A.C. 5:19-6.6(a). Therefore, this proposed section should be replaced with N.J.A.C. 5:19-6.6(a) which references the fact that any deposit returnable upon cancellation of the contract must be reduced by "those costs specifically incurred by the facility at the request of the resident and set forth in writing in a separate addendum".

RESPONSE: Proposed N.J.A.C. 5:19-6.2 has been deleted.

COMMENT: The boldface notice required in N.J.A.C. 5:19-6.3 (recodified as 6.2) should be revised to reference the provision for a separate addendum addressed previously or in the alternative, the disclaimer should terminate with the end of the first sentence.

RESPONSE: The phrase "except for expenses incurred by the provider at the resident's specific request", has been added to the required notice in N.J.A.C. 5:19-6.2.

COMMENT: N.J.A.C. 5:19-6.4 (recodified as 6.3) is inconsistent with Section 13 of the Act and proposed N.J.A.C. 5:19-7.4, which states the conditions under which deposits may be released. For example, an entrance fee which gives the resident the right to occupy a living unit which has been previously occupied must be released to the provider when the living unit becomes available for occupancy by the new resident. Subsection 13a; N.J.A.C. 5:19-7.4(a)1. However, under proposed N.J.A.C. 5:19-6.4, the deposit could not be released before the 30-day rescission period. It is critical that this inconsistency be removed. Therefore, this section should be deleted in its entirety.

RESPONSE: The Department has amended N.J.A.C. 5:19-6.3 as follows: "All deposits, down payments or other funds paid to a provider by a purchaser shall be held in an interest bearing separate trust account in a banking or similar institution within this State or deposited with an attorney licensed to practice law in this State, or until occupancy or cancellation of the contract, as governed by N.J.A.C. 5:19-7.4. Occupancy of the living unit by the resident prior to the expiration of the 30 day rescission period shall not be construed as a waiver of any part of said rescission period."

COMMENT: For the sake of clarity and consistency, the citation at the end of N.J.A.C. 5:19-6.5(a)5. (recodified as 6.4(a)5) should be "N.J.A.C. 5:19-6.6(f) and (g)". This would conform the rule to its source, subsection 15a(5) of the Act.

RESPONSE: The rule now references N.J.A.C. 5:19-6.5(f) and (g).

COMMENT: N.J.A.C. 5:19-6.6(a) should be substituted for 6.2(a).

RESPONSE: N.J.A.C. 5:19-6.2(a) has been deleted.

COMMENT: In N.J.A.C. 5:19-6.6(b) (recodified as 6.5(b)), the phrase "occupancy date" should be replaced by the phrase "date the unit is available for occupancy".

RESPONSE: The subsection has been amended to read "If a resident dies before the date the unit is available for occupancy pursuant to a continuing care agreement. . . ."

COMMENT: N.J.A.C. 5:19-6.6(f) and subsection 15e of the statute, upon which it is based, permit a facility to assign a per capita cost of caring for the resident of two percent per month for occupancy of the

residential unit and four percent per month for occupancy of the nursing unit. A third type of care, residential health care (also known as personal care), should also be referenced in this subsection. Since the type of care rendered in this unit is similar to low intensity nursing care, the following should be added: "For purposes of calculating the per capita cost of caring for the resident pursuant to this section, a bed in the residential health care unit of the facility shall be considered as a bed in the nursing unit of the facility".

RESPONSE: The Department has decided that a bed in the residential health care unit of a facility does not require and receive the same care as a bed in the nursing unit, so the subsection will not be amended.

COMMENT: Harrogate, a Life Care Community, objected to the following sentence in the Notice to Purchasers in N.J.A.C. 5:19-4.3(a)1: "The New Jersey DCA has neither approved nor disapproved the merits of this disclosure statement." A provider cannot receive a certificate of authority unless the disclosure statement requirements of the statute and regulations are deemed to be satisfied. Providers will pay extremely high fees for the Department's review of their disclosure statements. If the Department is not satisfied with the statement, it may direct changes. It is, therefore, a misleading abdication of responsibility to state that the Department neither approves nor disapproves of the merits of the disclosure statement. A more accurate notice would state that the Department has reviewed the disclosure statement; that the statement complies with New Jersey's statutes and regulations; but that the Department does not endorse or approve of any particular continuing care retirement community, and the purchaser should determine if the unit offered meets his or her particular requirements.

RESPONSE: The Department issues a Certificate of Authority based on its affirmative determination that the disclosure statement requirements have been satisfied. The prospective resident must review the disclosure statement to determine whether or not the facility meets his needs.

COMMENT: N.J.A.C. 5:19-8.3 Right to a hearing, should be clarified.

Proposed N.J.A.C. 5:19-2.3(d), 2.9(a) and 2.12(d) each prescribe a hearing right but utilize somewhat differing language, that is, they may or may not refer to the Administrative Procedure Act. Moreover, N.J.A.C. 5:19-2.11 Orders of Revocation, does not specify a hearing right. Since proposed N.J.A.C. 5:19-8.3 and 8.4 provide an APA hearing, the above-mentioned sections seem superfluous and confusing.

RESPONSE: For purposes of clarity, N.J.A.C. 5:19-2.3(d) and 2.12(d) have been deleted and 5:19-2.9(a) has been amended by deleting the language in question. The hearing right provisions are now provided at N.J.A.C. 5:19-8.3 (recodified as 5:19-9.3). Any applicant aggrieved by an order or determination of the Department issued under the regulations shall be entitled to a hearing as provided by law, provided a written request for such hearing is filed within 20 days of the receipt, of the Order or determination. Hearing requests shall be addressed to the Hearing Coordinator, Division of Housing and Development, CN 804, Trenton, New Jersey 08625-0804.

N.J.A.C. 5:19-9.4 Conduct of hearing, makes clear that all hearings shall be conducted in accordance with the Administrative Procedure Act and the Uniform Administrative Procedure Rules.

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

CHAPTER 19 CONTINUING CARE RETIREMENT COMMUNITY RULES

SUBCHAPTER 1. GENERAL PROVISIONS

5:19-1.1 Purpose

The Continuing Care Retirement Community Regulation and Financial Disclosure Act (P.L. 1986, c.103, N.J.S.A. 52:27D-330 et seq.) became effective March 2, 1987. The rules contained in this chapter are intended to enable the Department of Community Affairs to implement the Act and to enable *[the owners of property]* affected *providers* to more easily and more fully comply with the requirements of the Act.

5:19-1.2 Affirmative determination

(a) The Department shall issue a certificate of authority upon its affirmative determination that all of the following requirements have been met:

1. The provider can fulfill its obligations under the continuing care agreement if the resident complies with the terms of the offer;

2. There is reasonable assurance that all proposed improvements can be completed as represented;

[3. The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed in N.J.A.C. 5:19-5, and afford full and fair disclosure;]

*[4.]***3.** The provider, its officers and/or principals have not been convicted of a crime *[involving any aspect of the continuing care retirement community business]* in this State, the United States, or any other state or foreign country within the past 10 years*, **the seriousness of which, in the opinion of the Department, warrants the denial of certification***;

*[5.]***4.** The provider, its officers and/or principals have not been subject to any permanent injunction or final administrative order restraining a false or misleading plan involving a facility disposition, the seriousness of which, in the opinion of the Department, warrants the denial of certification; and

*[6.]***5.** The disclosure statement requirements have been satisfied.

5:19-1.3 Definitions

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

"Act" means the Continuing Care Retirement Community Regulation and Financial Disclosure Act (P.L. 1986, Chapter 103, N.J.S.A. 52:27D-330 et seq.), together with any amendatory or supplementary acts.

"Advertising" means and includes the publication or causing to be published of any information offering for disposition or for the purpose of causing or inducing any other person to enter into a continuing care agreement in a continuing care retirement community, including the continuing care agreement to be used and any photographs or drawings or artist's representation of physical conditions or facilities on the property existing or to exist by means of any:

1. Newspaper or periodical;
2. Radio or television broadcast;
3. Written, printed or photographic matter;
4. Billboards or signs;
5. Display of model facilities or units;
6. Material used in connection with the disposition or offer of the facility by radio, television, telephone or any other electronic means;

or

7. Material used by provider or their agents to induce prospective residents to visit the facility, particularly gift certificates which require the holders of such certificates to attend or submit to a sales presentation by providers or their agents.

The term "advertising" does not include stockholder communications, such as annual reports, interim financial reports, proxy materials, certification statements, securities prospectuses, applications for listing securities on stock exchanges, and the like, and any and all communications addressed and relating to the account of any person who has previously executed a continuing care agreement.

"Application fee" means the fee an individual is charged, in addition to an entrance fee or any other fee, to cover the provider's reasonable cost for processing the individual's application to become a resident at the facility.

"Blanket encumbrance" means a trust deed, mortgage, judgment or other lien or encumbrance, including an option or contract to sell or a trust agreement, affecting a continuing care retirement community of more than one unit *[or interest]* therein, but does not include any lien or other encumbrance arising as the result of the imposition of any tax assessment by any public authority.

"Commissioner" means the Commissioner, Department of Community Affairs.

"Continuing care" means the provision of lodging and nursing, medical or other health related services at the same or another location to an individual pursuant to an agreement effective for the life of the individual or for a period greater than one year, including mutually terminable contracts, and in consideration of the payment

of an entrance fee with or without other periodic charges. An individual who is provided continuing care is one who is not related by consanguinity or affinity to the person who provides the care.

"Department" means the Department of Community Affairs.

"Entrance fee" means a transfer to a provider of a sum of money or other property made or promised to be made as full or partial consideration for acceptance of a specified person as a resident in a facility, and includes a fee which is refundable upon the death, departure or option of the resident.

1. A fee which is less than the sum of the regular periodic charges for one year of residency is not considered an entrance fee for the purpose of the Act. A transfer of a sum of money or other property, by or on behalf of a resident, to a trust account which is managed by the facility or an independent trustee for the benefit of the resident is not considered an entrance fee for the purposes of the Act if the transfer is not a condition of admission or of continued stay and the principal amount and any interest thereon are the exclusive and sole property of the resident or the individual acting on behalf of the resident.

"Facility" means the place or places in which a person undertakes to provide continuing care to an individual.

["Interest" means any and all rights to use and enjoy any part of the facilities of the continuing care retirement community.]

"Living unit" means a room, apartment, cottage or other area within a facility set aside for the exclusive use or control of one person or of persons constituting a household unit.

["Material change" means, but is not limited to, any significant change in the size or character of the facility or interest being offered or anything having a significant effect on the rights, duties or obligations of the provider or resident, including, but not limited to, matters relating to the operation of the building, budget matters and sales prices.]

"Offer" means an inducement, solicitation, advertisement, or attempt to encourage a person to enter into a continuing care agreement.

"Operator or administrator" means a person who operates or manages a facility for the provider.

"Person" shall be defined as in N.J.S.A. 1:1-2.

"Provider" means a person who undertakes to provide continuing care in a facility.

"Resident" means a person entitled to receive continuing care in a facility.

"State" means the State of New Jersey.

SUBCHAPTER 2. CERTIFICATION

5:19-2.1 Certification required

A person shall not establish, operate or administer a continuing care facility in this State without obtaining and maintaining a certificate of authority pursuant to the Act. A certificate of authority granted pursuant to the Act is not transferable.

5:19-2.2 Nonapplicability

Unless the method of disposition is adopted for purposes of evasion, the provisions of these rules shall not apply to offers or disposition:

1. Pursuant to court order;
2. By the United States, by this State or any of its agencies or political subdivisions;
3. Of real property located outside of the State.

5:19-2.3 Request for Letter of Nonapplicability

(a) Any person who believes a continuing care retirement community ***or similar facility*** is not subject to the provisions of the Act, or who is contemplating a continuing care retirement community ***or similar facility*** which he believes may not be subject to the Act, may apply to the Department for a Letter of Nonapplicability. Such application shall be in writing and shall list the reasons why such ***existing or proposed*** continuing care retirement community ***or similar facility*** *[or proposed continuing care retirement community]* may not be subject to the Act. An application for a Letter of Nonapplicability pursuant to this Subsection shall be accompanied by a fee of \$50.00.

(b) In the event the Department shall determine that such continuing care retirement community ***or similar facility*** is not subject to the Act, it shall issue a Letter of Nonapplicability setting forth the facts upon which its determination is based.

(c) In the event the Department shall determine that such continuing care retirement community ***facility*** or proposed continuing care retirement community ***or similar facility*** is subject to the provisions of the Act, it shall deny the request for the Letter of Nonapplicability setting forth the facts upon which its determination is based and shall notify the applicant of its findings.

(d) Any person who is aggrieved by the determination by the Department pursuant to (c) above, is entitled to a hearing on such determination provided said hearing is requested, in writing, no later than 20 days from the date of such determination. Hearing requests shall be addressed to the Hearing Coordinator, Division of Housing and Development, CN 84, Trenton, New Jersey 08625.]

5:19-2.4 Application for certification; submission and fees

(a) An application for a certificate of authority shall consist of a statement containing the items set forth in N.J.A.C. 5:19-3 and shall be submitted in the manner and form as provided therein, together with the filing fee in the amount of *[\$4,000]* ***\$400.00*** plus \$40.00 per living unit made payable to the Treasurer, State of New Jersey. In the event ***living*** units ***[or interests]*** are added during certification, an additional fee of \$40.00 per ***living*** unit ***[or interest]*** shall be paid. There will be no refunds for deletions.

(b) Any facility with one or more residents under continuing care agreements on March 2, 1987 shall pay a fee of \$200.00 plus \$20.00 per unit in lieu of the fee in (a) above.

5:19-2.5 Notice of filing

Upon receipt of an application for certification in proper form, accompanied by payment of the required filing fee, the Department shall, within 10 business days, issue a notice of filing to the applicant. The notice of filing shall not be construed as an approval of the application for certification or any portion thereof.

5:19-2.6 Order of certification

Within 90 days from the date of the notice of filing, or the notice of correction as provided below, the Department shall issue a certificate of authority if the Department affirmatively determines that the requirements of N.J.A.C. 5:19-1.2 and all applicable statutory requirements have been met.

5:19-2.7 Notice of correction

When the Department determines, upon inquiry and examination, that any of the requirements of N.J.A.C. 5:19-1.2 or any other requirements under the Act have not been met, the Department shall notify the applicant that the application for certification must be corrected in such particulars within 30 days. ***The applicant may request and receive an extension of 30 days to submit necessary corrections. Additional 30 day extensions may be granted for good cause shown.***

5:19-2.8 Order of rejection

(a) In the event the requirements of the notice of correction are not met within the time allowed, the Department may enter an order rejecting the application for certification which shall include the findings of fact upon which the order is based.

(b) The order of rejection shall not take effect for a period of 20 days from the expiration of the 30 day period as set forth in N.J.A.C. 5:19-2.7.

5:19-2.9 Petition for reconsideration

(a) Upon the issuance of an order of rejection, the applicant shall have the right to file a petition for reconsideration with the Department ***[and shall be entitled to a hearing pursuant to the Administrative Procedure Act, (P.L. 1968, c.410, N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Practice Rules N.J.A.C. 1:1-1 et seq.], provided the petition for reconsideration shall be filed within 20 days of the applicant's receipt of the order of rejection]*.**

(b) In the event a petition for reconsideration is filed by the applicant, as provided, the order of rejection shall not take effect until such time as the hearing has been held and a final decision rendered by the Commissioner.

5:19-2.10 Automatic certification

The continuing care retirement community shall be deemed to be certified pursuant to N.J.A.C. 5:19-1.2 if, within 90 days of the notice of filing or notice of correction, the Department has not issued a certificate of authority or order of rejection and the applicant has not consented to an extension of the time for review in writing.

5:19-2.11 Order of revocation

(a) The certificate of authority or temporary certificate of authority of a provider shall remain in effect until revoked, upon the Department's written finding of fact that the provider has:

1. Repeatedly failed to correct violations of the Act or these rules;
2. Failed to file an annual disclosure statement or resident agreement pursuant to the Act;
3. Failed to deliver to a prospective resident or their representative an annual disclosure statement or resident agreement pursuant to the Act;
4. Delivered to a prospective resident a disclosure statement which makes an untrue statement or omits a material fact and the provider at the time of the delivery of the disclosure statement had actual knowledge of the misstatement or omission;
5. Failed to comply with the terms of a cease and desist order; or

6. Committed serious violations of any other State or Federal law.

7. The provider has disseminated false or misleading advertising material which does not comply with the standards set forth in N.J.A.C. 5:19-5.

(b) The Department shall include in the findings of fact in support of revocation a concise and explicit statement of the underlying facts supporting the findings.

(c) If the Department has cause to believe that the provider is guilty of a violation for which revocation may be ordered, the Department may issue an order directing the provider or operator to cease and desist from engaging in any practice in violation of the Act.

(d) If the cease and desist order is not or may not be effective in remedying the violation, the Department may revoke the certificate of authority or temporary certificate of authority and order that it be surrendered to the Department.

(e) The Department may, as often as it ***[reasonably]*** deems necessary, conduct an investigation to determine whether any person has violated or is about to violate any provision of these rules or to aid in the enforcement of these rules or ***[in the]* ***as necessary for*** prescribing ***[of]*** rules and forms hereunder.**

(f) For the purpose of any investigation or proceeding under these rules, the Department may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the Department deems relevant or material to the inquiry.

5:19-2.12 Cease and desist orders; injunctions

(a) The Department may issue an order requiring a person to cease and desist from an unlawful practice or an order requiring him to take such other affirmative action as in the judgment of the Department will carry out the purposes of the Act or these rules, upon the Department's determination that a provider has:

1. Violated any provision of the Act;
2. Directly or through an agent or employee knowingly engaged in false, deceptive or misleading advertising, promotional or sales methods to offer or dispose of a unit;
3. Made any material change in the plan of disposition of the continuing care retirement community subsequent to the certificate of authority without obtaining prior approval from the Department.
4. Disposed of any unit or interest in a continuing care retirement community which has not been certified with the Department; or
5. Violated any lawful order or rule of the Department.

(b) Upon the determination of the Department in writing, based on a finding of fact that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order including therein a provision that, upon request, a hearing will be held within 10 days of such request to determine whether or not

the temporary cease and desist order shall become permanent. A copy of any temporary cease and desist order shall be sent to the provider by certified mail.

(c) The Department may, if it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of the Act or a rule or order of the Department, bring an action in Superior Court to enjoin the acts or practices and to enforce compliance with the Act or rules herein, and may seek appointment of a receiver or conservator for the facility or its assets.

(d) Any person aggrieved by an order or determination of the Department shall be entitled to a hearing, pursuant to the Administrative Procedure Act, to contest such order or determination. An application for a hearing must be filed with the Hearing Coordinator of the Division of Housing and Development, within 20 days of the applicant's receipt of the order or determination complained of.]

5:19-2.13 Annual report

[Within 45 days after the anniversary date of the latest order of certification and while the provider retains any interest in the facility or retirement community, the] ***(a) The*** provider shall file on a form designated by the Department an annual report reflecting any material changes in information contained in the original application for certification. This shall not diminish the obligation of the provider to notify the Department of material changes as they occur.

(b) The Annual Report shall be filed together with the Annual Disclosure Statement.

5:19-2.14 Consolidated filing

A provider may register additional property pursuant to a common promotional plan as those previously certified by the Department by submitting another application providing such additional information as may be necessary to register the additional units *[or interests]*.

5:19-2.15 Cyclical inspections

The Department shall visit each facility offering continuing care in this State to examine its books and records at least once every four years.

SUBCHAPTER 3. APPLICATION FOR CERTIFICATION

5:19-3.1 Contents of application for certification

(a) The application for certification shall contain the following documents and information:

1. An irrevocable appointment of the Department to receive service of any lawful process in any noncriminal proceeding arising under the Act against the provider or his agents;

2. The States or other jurisdictions, including the Federal Government, in which an application for certification or similar documents ***for the subject facility*** have been or will be filed and any order, judgment or decree entered in connection therewith by the regulatory authorities in each of the jurisdictions or by any court or administrative body thereof;

3. ***[The name, address, and principal occupation for the past five years of every officer of the applicant or person occupying a similar status and of any person performing similar management functions, and the extent and nature of his interest in the applicant or the facility as of a specified date within 30 days prior to the filing of the application for certification:]* *The names and business addresses of the officers, directors, trustees, managing or general partners and any person having a 10 percent or greater equity or beneficial interest in the provider and a description of that person's interest in or occupation with the provider;***

4. Copies of the articles of incorporation, with all amendments thereto, if the provider is a corporation; copies of all instruments by which the trust is created or declared, if the provider is a trust; copies of the articles of partnership or association and all other organization papers if the provider is organized under another form. In the event the provider is not the legal title holder to the property upon which the facility is or is to be constructed, the above documents shall be submitted for both the provider and the legal title holder;

5. A legal description by metes and bounds or other acceptable means of the lands to be certified, ***and the relationship of such lands**

to existing streets, roads and other improvements,* together with a map showing the proposed or actual facility and showing the dimensions of the living units as available, ***[and the relation of such lands to existing streets, roads and other improvements.]* *except for living units that are completed and available for inspection.*** The aforesaid map shall be drawn to scale, signed and sealed by a licensed professional engineer or land surveyor;

6. Copies of the deed or other instrument establishing title of the provider and a title search, title report or title certificate or binder ***or policy*** issued by a licensed title insurance company;

7. A statement concerning any litigation, orders, judgments or decrees which might affect the offering;

8. A statement that the continuing care agreements will be offered to the public and entered into without regard to marital status, sex, race, creed or national origin or, if not, any legally permissible restrictions on purchase that will apply;

9. A statement of the present conditions of ***physical*** access to the facility, and the existence of any ***material*** adverse conditions that affect the facility, that are known, should be known or are readily ascertainable;

10. Copies of all contracts and agreements which the ***[purchaser]* *resident*** may be required to execute ***[in connection with the offering]***;

11. In the event there is or will be a blanket encumbrance affecting the facility or a portion thereof, a copy of the document creating it and a statement of the consequences upon a resident of a failure of the person bound to fulfill the obligations under the instrument and the manner in which the interest of the resident is to be protected in the event of such eventuality;

12. One copy of the proposed disclosure statement;

13. A current financial statement of the provider and any ***related*** predecessor, parent or subsidiary company, including but not limited to a current profit and loss statement and balance sheet audited by an independent public accountant;

14. A statement concerning any adjudication of bankruptcy during the last five years against the provider, its predecessor, parent or subsidiary company and any principal owning more than 10 percent of the interests in the facility at the time of the filing of the application for certification. This requirement shall not extend to limited partners or those whose interests are solely those of investors;

15. Copies of all easements and restrictions, whether of record or not;

16. A statement as to the status of compliance with all the requirements of all laws, ordinances and regulations of governmental agencies having jurisdiction over the ***[premises]* *construction, permitting and licensing of the facility***, including but not limited to any permits required by the Department of Environmental Protection together with copies of all necessary Federal, State, county and municipal approvals;

17. A statement that neither the provider nor any of its officers or principals have ever been convicted of a crime ***[involving any aspect of continuing care]*** in this State or a foreign jurisdiction, and that the provider has never been subject to any permanent injunction or final administrative order restraining a false or misleading promotional plan involving continuing care facility disposition ***or if so, copies of all pleadings and orders in regard thereto***;

18. A projected annual budget for the facility for the next ***[20]* *five*** years or such lesser time as the Department allows;

19. Copies of ***[any]*** market studies, ***[proposed]* *if any, prepared*** on the behalf of the provider, concerning the feasibility of the project;

20. An affidavit, signed by the provider, that the contents of the application are true and accurate ***and made in good faith***; and

21. Such other additional information as the Department may require in individual cases after review of an application for certification to assure full and fair disclosure.

5:19-3.2 Form of the application for certification

(a) An application for certification shall be submitted in the following form:

1. Two sets of the information and documents required to be filed shall be submitted in separate binders, fastened at the top in such

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a manner as to permit the reading of each page without requiring removal. The two required copies of the disclosure statement shall be submitted in separate binders;

2. All information and documents shall be arranged in the order set forth in N.J.A.C. 5:19-3.1;

3. Each binder shall note the name and address of the provider and the name and address of the person responsible for the preparation of the application on the front cover;

4. The first page shall be a table of contents;

5. The right side of the first page of each section shall bear a tab numbered in conformity with the table of contents. Each tab shall be visible without the necessity of lifting any other tab;

6. If a section or document is omitted, a single sheet of paper, properly tabbed, shall be inserted containing a description of what is omitted and an explanation as to the reason for the omission;

7. With the exception of maps, drawings, surveys and the like, all documents shall be no smaller than 8-1/2 inches by 11 inches nor larger than 8-1/2 inches by 14 inches.

(b) Plats, maps or surveys which are too bulky to include in a binder may be submitted in a separate folder and a list of such shall be included in the binder.

5:19-3.3 Amendment of the application for certification

[(a)] The provider shall ***[immediately]*** ***promptly*** report to the Department any ***material*** changes in the information or documents contained in the application for certification, with a request for an amendment to the application for certification.

[(b)] No change in the substance or intent of the promotional plan or the plan of disposition or facility shall be made unless such change has been approved by the Department by way of amendment to the application for certification.]*

5:19-3.4 Review of requests for amendment

(a) The Department shall process and review requests for amendments of an application for certification in accordance with the standards and procedures established in this chapter for review of an application for certification.

(b) Requests for amendments shall be accompanied by a fee of ***\$250.00*** ***\$50.00***. This fee shall not be required for amendments concerned exclusively with price changes ***[and/or advertising]***.

5:19-3.5 Public inspection of application for certification

The Department shall retain copies of all certified applications, together with all amendments thereto that have been approved, and shall make them reasonably available for public inspection during ordinary business hours at the Department's office.

5:19-3.6 Copies of the application for certification

(a) The Department shall comply with all reasonable requests for copies of an application for certification, together with all amendments thereto.

(b) The Department shall charge a fee for such copies as follows:

First page to tenth page: \$0.50 per page

Eleventh page to 20th page: \$0.25 per page

All pages over 20: \$0.10 per page

This fee shall be in addition to a charge for the cost of postage.

SUBCHAPTER 4. DISCLOSURE STATEMENT

5:19-4.1 Disclosure statement required

[(a)] No provider may dispose of any unit in a continuing care retirement community unless said provider delivers to the prospective resident a current disclosure statement on or before the contract date.]*

*[(b)]****(a)*** The disclosure statement shall disclose fully and accurately the characteristics of the facility and the interests offered and shall make known to prospective residents all unusual and material circumstances and features affecting the facility.

*[(c)]****(b)*** The disclosure statement shall be in plain English and in language understandable by a lay person and combine simplicity and accuracy in order to fully advise residents of their rights, privileges, obligations and restrictions.

*[(d)]****(c)*** The Department may require the provider to alter or amend the proposed disclosure statement in order to assure full and

fair disclosure to prospective residents and may require the revision of a disclosure statement which it finds to be unnecessarily complex, confusing or illegible.

*[(e)]****(d)*** The provider shall provide a disclosure statement to a prospective resident of a continuing care facility or the person with whom the provider shall enter into a contract to provide continuing care, prior to the execution of the contract or at the time of or prior to the transfer of any money or other property to the provider by or on behalf of the prospective resident, whichever occurs first, at no charge to the prospective resident.

*[(f)]****(e)*** A disclosure statement shall not be deemed current unless it contains all amendments ***[approved by]*** ***filed with*** the Department.

5:19-4.2 Contents of disclosure statement

(a) The disclosure statement shall contain the following information unless the information is contained in the contract:

1. The name and business address of the provider and a statement of whether the provider is a partnership, corporation or other type of legal entity;

2. The names and business addresses of the officers, directors, trustees, managing or general partners and any person having a 10 percent or greater equity or beneficial interest in the provider and a description of that person's interest in or occupation with the provider;

3. With respect to the provider, any person named in response to (a)2 above and the proposed operator, if the facility is managed on a day-to-day basis by a person other than an individual directly employed by the provider:

i. A description of the person's business experience, if any, in the operation or management of similar facilities;

ii. The name and address of any professional service firm, association, trust, partnership or corporation in which the person has a 10 percent or greater interest and which may provide goods, leases or services to the facility of a value of \$500.00 or more, within any year;

iii. A description of the goods, leases or services provided pursuant to ***[(1)]****(a)***3ii** above and the probable or anticipated cost thereof to the facility or provider;

iv. A description of any matter in which the person has been convicted of a crime or pleaded nolo contendere to a criminal charge, or has been held liable or enjoined in a civil action which involved fraud, embezzlement, fraudulent conversion or misappropriation of property; and

v. A description of any matter in which the person is subject to a currently effective injunctive or restrictive court order or, within the past five years, had a state or Federal license or permit suspended or revoked as a result of an action brought by a governmental agency or department, which arose out of or related to business activity or health care, including actions affecting a license to operate a residential health care facility, rooming or boarding house, nursing home, retirement home, home for the aged or facility certified under the Act or a similar act in another state.

4. A statement whether the provider is or ever has been affiliated with a religious, charitable or other non-profit organization, the nature of the affiliation, if any, the extent to which the affiliate organization is responsible for the financial and contractual obligations of the provider, and the provision of the Federal Internal Revenue Code, if any, under which the provider or affiliate is exempt from the payment of income tax;

5. The location and description of the physical property of the facility, both existing and proposed, and, with respect to proposed property, the estimated completion date, the date construction began or shall begin and the contingencies subject to which construction may be deferred.

6. A statement of what ***[standards]*** ***laws and regulations*** apply to the operation and maintenance of the facility and which public agencies have jurisdiction over the facility;

7. The services provided or proposed to be provided under contracts for continuing care at the facility, including the extent to which medical care and other services are furnished under the basic contract and which other care or services are available at or by the facility at extra charge;

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8. A description of all fees required of residents ***subject to contracts for continuing care***, including the application fee, entrance fee and periodic charges, if any, the manner by which the provider may adjust periodic charges or other recurring fees and the limitation on the adjustments, if any, and, if the facility is already in operation or if the provider or operator operates one or more similar facilities within this State, tables showing the frequency and average dollar amount of each increase in periodic rates at each facility for the previous five years or as many years as the facility has been operated by the provider or operator, whichever is less;

9. The provisions that have been made or will be made, if any, to provide reserve funding or security which will enable the provider to fully perform its obligations under contracts to provide continuing care at the facility, including the establishment of escrow accounts, trusts or reserve funds, the manner in which the funds shall be invested and the names and experience of persons who will make the investment decisions;

10. Certified financial statements of the provider which include balance sheets and income statements for the two most recent completed fiscal years or for as long as the provider has been in existence, whichever is less;

11. If the operation of the facility has not yet commenced, a statement of the anticipated source and application of the funds used or to be used in the purchase or construction of the facility, including:

i. An estimate of the cost of purchasing or construction and equipping the facility which includes related costs such as financing expenses, legal expenses, land costs, marketing and development costs and other similar costs the provider expects to incur or become obligated for prior to the commencement of operations;

ii. A description of any mortgage loan or other long-term financing intended to be used for the financing of the facility and the anticipated terms and costs of the financing;

iii. An estimate of the total amount of entrance fees to be received from or on behalf of residents at or prior to commencement of operation of the facility;

iv. An estimate of the funds, if any, which are anticipated to be necessary to fund start-up losses and provide reserve funds to assure full performance of the obligations of the provider under contracts for the provision of continuing care;

v. A projection of estimated income from fees and charges other than entrance fees, a description of individual rates anticipated to be charged, the assumptions used in calculating the estimated occupancy rate of the facility and the effect on the income of the facility of government subsidies, if any, for health care services provided pursuant to the contracts for continuing care;

vi. A projection of estimated operating expenses of the facility, including a description of the assumptions used in calculating the expenses and separate allowances, if any, the replacement of equipment and furnishings and any anticipated major structural repairs or additions.

vii. Identification of assets pledged as collateral for any purpose; and

viii. An estimate of annual payments of principal and interest required by any mortgage loan or other long-term financing.

12. Other material information concerning the facility or the provider as required by the Department or as the provider wishes to include.

5:19-4.3 Form of disclosure statement

(a) The disclosure statement shall be in the following form:

1. A front cover shall contain the name and address of the provider, the name and location of the continuing care retirement community, the effective date of the disclosure statement which shall be the date of certification by the Department and shall contain the following statement in 10-point bold face type:

NOTICE TO PURCHASERS

THIS DISCLOSURE STATEMENT IS FOR INFORMATIONAL PURPOSES ONLY. PURCHASERS SHOULD ASCERTAIN FOR THEMSELVES THAT THE UNIT OFFERED MEETS THEIR PERSONAL REQUIREMENTS. THE NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS HAS NEITHER APPROVED NOR DISAPPROVED

THE MERITS OF THIS DISCLOSURE STATEMENT. BE SURE TO READ CAREFULLY ALL DOCUMENTS BEFORE YOU SIGN THEM.

2. The disclosure statement and the contract shall each state on the cover or top of the first page in bold print the following:

THIS MATTER INVOLVES A SUBSTANTIAL FINANCIAL INVESTMENT AND A LEGALLY BINDING CONTRACT. IN EVALUATING THE DISCLOSURE STATEMENT AND THE CONTRACT PRIOR TO ANY COMMITMENT, IT IS RECOMMENDED THAT YOU CONSULT WITH AN ATTORNEY AND FINANCIAL ADVISOR OF YOUR CHOICE, IF YOU SO ELECT, WHO CAN REVIEW THESE DOCUMENTS WITH YOU.

3. A reasonably detailed table of contents showing the subject matter of the various sections, subsections or documents contained in the disclosure statement and the page number on which each appears shall be added at the foot of disclosure statement;

4. The provider shall attach a copy of the standard form of contract for continuing care used by the provider as an exhibit to each disclosure statement;

5. The disclosure statement shall be printed on good quality unglazed white paper no smaller than 8-1/2 inches by 11 inches nor larger than 8-1/2 inches by 14 inches. The cover may be of a different color provided the printed material contained thereon shall be legible;

6. No portion of the disclosure statement shall be underscored, italicized, or printed in larger, heavier or different color type than the remainder of the statement unless required or permitted by the Department.

5:19-4.4 Filing of disclosure statement

Two copies of the proposed disclosure statement shall be filed with the application for certification and, if the Department requires revisions to the proposed disclosure statement, two copies of the revised disclosure statements shall be filed.

5:19-4.5 Amendment of the disclosure statement

(a) A provider shall amend its ***[currently filed annual]*** disclosure statement at any time if, in the opinion of the provider or the Department, an amendment is necessary to prevent the disclosure statement from containing any material misstatement of fact or omission to state a material fact as required pursuant to the Act. The provider shall file an amendment or amended disclosure statement with the Department before the provider provides it to a resident or prospective resident.

(b) Amendments and corrections to the disclosure statement shall be by replacement of the amended or corrected material by paste-over or other permanent means.

5:19-4.6 Review of request for amendments

The Department shall process and review requests for amendments of a disclosure statement in accordance with the standards and procedures established in this chapter for review of a disclosure statement.

5:19-4.7 Use of the disclosure statement

(a) The disclosure statement shall not be used for any promotional purposes before certification of the facility and thereafter may only be used in its entirety.

(b) No person shall represent or imply that the Department approves or recommends the continuing care retirement community.

5:19-4.8 Assistance by provider

The provider shall designate and make knowledgeable personnel available to prospective residents to answer questions about any information contained in the disclosure statement or contract. ***[The provider shall also advise prospective residents to seek the independent advice of an attorney or financial advisor of their choice concerning the disclosure statement or contract.]***

5:19-4.9 Annual disclosure statement

(a) The provider shall file an annual disclosure statement with the Department which contains the information required for the initial disclosure statement pursuant to N.J.A.C. 5:19-4. The annual disclosure statement also shall include a narrative describing any ma-

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terial differences between the pro forma income statement filed pursuant to these rules either as part of the initial application for a certificate of authority or the most recent annual disclosure statement and the actual results of operations during the fiscal year. The statement also shall contain a revised pro forma income statement for the next fiscal year. The Department may request additional income statements if necessary.

(b) The provider shall file the annual disclosure statement within six months following the end of the provider's fiscal year.

(c) Prior to the provider's acceptance of part or all of any application or entrance fee or the execution of the continuing care agreement by the resident, whichever occurs first, the provider shall deliver the most current annual disclosure statement to the current or prospective resident and to any other person with whom the continuing care agreement is or may be entered into.

(d) The annual disclosure statement, when filed with the Department, shall be accompanied by a fee of *[\$2,000]* ***\$130.00*** plus *[\$20.00]* ***\$13.00*** per certified unit.

SUBCHAPTER 5. ADVERTISING

5:19-5.1 General standards

(a) All advertising which is used by or on behalf of the provider to promote a continuing care retirement community shall be accurate, *[provable,]* truthful and not misleading so as to fully inform the public and foster their understanding and trust.

(b) No provider or person acting on behalf of the provider shall make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public in a newspaper or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement of any sort containing an assertion, representation or statement which is untrue, deceptive or misleading.

(c) No provider or person acting on behalf of the provider shall file with the Department or make, publish, disseminate, circulate or deliver to any person or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or delivered to any person, or placed before the public, any disclosure statement, financial statement or continuing care agreement that contains an assertion, representation, or statement which is untrue, deceptive or misleading.

5:19-5.2 Specific standards

(a) Without limiting the general standards of advertising in this chapter, all advertising, except billboards, shall substantially conform to the following specific standards:

1. Advertising that refers to *[the]* ***a specific*** entrance fee shall state the full entrance fee and shall *[include]* ***state*** any *[additional]* ***periodic charges,*** assessments or cost to the purchaser;

2. In order to eliminate fictitious pricing or illusory discounts, no certificates shall be distributed indicating that a discount from the advertised price shall be given. This shall not preclude the giving of a discount on the basis of any reasonable criteria;

3. Advertising shall not refer to any facility that does not then exist unless that fact is prominently stated in the advertising and the proposed date of completion is contained therein;

4. Any reference to proposed improvements for which the purchaser will be assessed shall clearly set forth the fact of the assessment and the amount of the assessment;

5. Advertising shall not state that items or services are free when the cost thereof is included in the monthly maintenance fee.

6. Advertising shall not contain photographs, sketches or artist's conceptions of proposed facilities unless the fact that the photographs, sketches or artist's conceptions are of proposed facilities is stated immediately adjacent to them;

[7. No sketch or artist's conception may be used in advertising unless it is clearly stated immediately adjacent to such sketch or artist's conception that it is in fact a sketch or artist's conception.]

[8.] ***7.*** Advertising shall not refer in wording, photograph, sketch or artist's conception to any recreational, medical, social,

shopping or other facility that is not located within the continuing care retirement community unless so stated and the approximate distance therefrom in miles is set forth;

[9.] ***8.*** Advertising shall not refer to a price increase unless the amount and date of the increase are indicated;

[10.] ***9.*** Advertising in the form of vacation certificates or other promotions intended to induce prospective residents to visit the continuing care retirement community that requires the holders thereof to attend or submit to a sales promotion shall clearly and conspicuously state the necessity of attendance at or submission to the sales promotion and the approximate length of time required to be spent by the prospective resident at such sales promotion;

[11.] ***10.*** Any model unit that is used as a part of a promotional plan shall be in substantial conformity with the units that are subsequently constructed unless otherwise noted in the contract.

SUBCHAPTER 6. CONTRACTS

5:19-6.1 General standards

All contracts or agreements for continuing care in a continuing care retirement community shall be fair and reasonable and shall not impose undue restrictions or hardships upon the resident.

*[5:19-6.2 Rescission

(a) Any contract or agreement for continuing care in a continuing care retirement community may be cancelled without cause, by the purchaser, by sending or delivering written notice of cancellation within 30 days following the date on which such contract or agreement was executed, or the initial deposit was made, whichever is later.

1. A resident shall not be required to move into the facility designated in the agreement before the expiration of this 30 day period.]*

5:19-6.3]* ***6.2*** Notice of rescission

Every contract or agreement shall contain the following notice in 10-point bold face type or larger, directly above the space provided for the signature of the resident.

NOTICE TO THE RESIDENT: YOU HAVE THE RIGHT TO CANCEL THIS CONTRACT OR AGREEMENT BY SENDING OR DELIVERING WRITTEN NOTICE OF CANCELLATION TO THE PROVIDER BY MIDNIGHT OF THE 30TH CALENDAR DAY FOLLOWING THE DAY ON WHICH IT WAS EXECUTED *BY BOTH PARTIES*, OR AN INITIAL DEPOSIT WAS MADE. SUCH CANCELLATION IS WITHOUT PENALTY, AND ALL DEPOSITS MADE BY YOU SHALL BE PROMPTLY REFUNDED*, EXCEPT FOR EXPENSES INCURRED BY THE PROVIDER AT THE RESIDENT'S SPECIFIC REQUEST*.

5:19-6.4]* ***3*** Deposits

All deposits, downpayments, or other funds paid to a provider by a purchaser shall be held in *[a]* ***an interest bearing*** separate trust account in a banking or similar institution located within this State or deposited with an attorney licensed to practice law in this State, ***or*** until *[closing or termination]* ***occupancy or cancellation*** of the contract*, **as governed by N.J.A.C. 5:19-7.4.*** *[or until a bond or other guarantee acceptable to the Department is provided. In no event shall the escrow be released before the expiration of the 30 day rescission period.]* ***Occupancy of the living unit by the resident prior to the expiration of the 30 day rescission period shall not be construed as a waiver of any part of said rescission period.***

5:19-6.5]* ***4*** Provisions required

(a) A continuing care agreement executed on or after March 2, 1987 shall be written in plain English, and in language understandable by a lay person, and shall include, but not be limited to, the following:

1. A provision for the continuing care of one resident, or two or more residents occupying space designed for multiple occupancy under appropriate procedures established by the provider, and a statement showing the value of all property transferred, including donations, subscriptions, fees and any other amounts payable by, or on behalf of, the resident;

2. A statement on a form provided by the Department specifying all services which are to be provided to the resident by the provider

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including, in detail, all items which the resident will receive such as food, shelter, nursing care, pharmaceuticals and burial and whether the items will be provided for a designated period of time or for life;

3. A description of the health and financial conditions upon which the provider may have the resident relinquish his space in the designated facility;

4. A description of the health and financial conditions required for a person to continue as a resident;

5. A description of the circumstances under which the resident shall be permitted to remain in the facility in the event of financial difficulties of the resident. The stated policy may not be less than the terms stated in N.J.A.C. 5:19-6.*[6]**5(f) and (g)*;

6. A statement of the fees that will be charged if the resident marries a person who is not a resident of the facility, the terms concerning the entry of a spouse into the facility and the consequences if the spouse does not meet the requirements for entry;

7. A statement providing that the agreement may be cancelled upon giving at least 60 days' notice by the provider or the resident, except that if an agreement is cancelled by the provider because there has been a good faith determination in writing, signed by the medical director and the administrator of the facility, that a resident is a danger to himself or others, only notice that is reasonable under the circumstances is required;

8. A statement providing in clear and understandable language, in print no smaller than the largest type used in the body of the agreement, the terms governing the refund of any portion of the entrance fee;

9. A statement of the terms under which an agreement is cancelled by the death of the resident, which statement may contain a provision stating that upon the death of the resident the moneys paid for the continuing care of the resident shall be considered earned and become the property of the provider; and

10. A statement providing for at least 30 days advance notice to the resident before any change in fees or changes in the scope of care or services are effective, except for changes required by State or Federal assistance programs.

5:19-6.*[6]**5* Recission and removal

(a) A resident has the right to rescind a continuing care agreement without penalty or forfeiture, except those costs specifically incurred by the facility at the request of the resident and set forth in writing in a separate addendum signed by both parties to the agreement, within 30 days after making an initial deposit or executing the agreement. A resident shall not be required to move into the facility designated in the agreement before the expiration of the 30 day period.

(b) If a resident dies before the ***date the unit is available for* occupancy** ***[date]* pursuant to a continuing care agreement***, or through illness, injury or incapacity is precluded from becoming a resident under the terms of the continuing care agreement, the agreement shall be automatically rescinded and the resident or the resident's legal representative shall receive a full refund of all moneys paid to the facility, except those costs specifically incurred by the facility at the request of the resident and set forth in writing in a separate addendum signed by both parties to the agreement.

(c) No agreement for care shall permit dismissal or discharge of the resident from the facility prior to the expiration of the agreement without just cause for the removal. For the purposes of the Act, "just cause" means but is not limited to a good faith determination in writing, signed by the medical director and the administrator of the facility, that a resident is a danger to himself or others while remaining in the facility. The written determination shall state:

1. That the determination is made in good faith;
2. The reasons supporting the determination that the resident is a danger to himself or others;
3. The basis for the conclusion that there is no less restrictive alternative to dismissal, discharge or cancellation, as the case may be, for abating the dangerousness of the resident; and
4. The basis for the conclusion that the danger is such that a notice period of less than 60 days is appropriate.

(d) If a facility dismisses a resident for just cause, the resident shall be entitled to a refund of his unearned entrance fee, if any, in the same manner as provided in (f) below.

(e) A resident may request a hearing to contest a facility's decision to dismiss or discharge the resident. The hearing shall be held pursuant to the Administrative Procedure Act (P.L. 1968, c.410, N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Practice Rules, N.J.A.C. 1:1-1 et seq.

(f) It shall not be deemed just cause if the resident is unable to pay monthly maintenance fees until the entire unearned entrance fee plus, where applicable, any third-party insurance benefits received, are earned by the facility. For the purpose of this subsection, the unearned portion shall be the difference between the entrance fee paid by, or on behalf of, the resident and the cost of caring for the resident based upon the per capita cost to the facility. In lieu of calculating the actual per capita cost of caring for a resident, a facility may provide, in the agreement for continuing care, that the per capita cost of caring for the resident shall be calculated as follows:

1. No more than two percent of the entrance fee for each month the resident occupies, or is entitled to occupy, a bed in the residential unit ***or residential health care unit*** of the facility;

2. No more than four percent of the entrance fee for each month the resident occupies, or is entitled to occupy, a bed in the nursing unit of the facility; and

3. No more than 10 percent of the entrance fee as a one-time charge for processing and refurbishment.

(g) If the entrance fees as set forth in (f) above are exhausted within 90 days of the date of failure to pay, the facility may not require the resident to leave before 90 days from the date of failure to pay, during which time the resident shall continue to pay the facility a reduced fee based upon the resident's current income.

(h) No act, agreement or statement of a resident or of an individual purchasing care for a resident under any agreement to furnish care to the resident shall constitute a valid waiver of any provision of the Act intended for the benefit or protection of the resident or the individual purchasing care for the resident.

(i) An agreement entered into prior to March 2, 1987 or prior to the issuance of a certificate of authority to the provider is valid and binding upon both parties in accordance with the terms of the agreement.

SUBCHAPTER 7. FINANCIAL RESPONSIBILITY

5:19-7.1 Liquid reserves

(a) Each provider shall establish and maintain liquid reserves in an amount equal to or exceeding the greater of:

1. The total of all principal and interest payments due during the next 12 months on account of any mortgage loan or other long term financing of the facility; or

2. 15 percent of the projected annual operating expenses of the facility, exclusive of depreciation.

(b) A provider shall notify the Department in writing at least 10 days prior to reducing the amount of funds available to satisfy the applicable liquid reserve requirement. A provider may not expend more than one-twelfth of the required balance each calendar month.

(c) In a facility where some residents are not under continuing care agreements, the reserve shall be computed only on the proportional share of financing or operating expenses that is applicable to residents under continuing care agreements at the end of the provider's most recent fiscal year.

(d) A provider may use funds in an endowment fund or escrow account, including an escrow account established by or pursuant to a mortgage loan, bond indenture or other long-term financing, to satisfy the reserve requirements of this section if the funds are available to make payments when operating funds are insufficient for these purposes.

(e) In the case of a provider who has offered continuing care agreements to existing or prospective residents in a facility established prior to March 2, 1987 and which has one or more residents living there pursuant to agreements entered into prior to March 2, 1987, if the provider is unable to comply with this section of these rules within the time required, the Department may, upon the written

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request of the provider, issue a temporary certificate of authority to the provider. The provider may then enter into continuing care agreements which are in compliance with all other applicable provisions of the Act until the permanent certificate is issued.

(f) The temporary certificates shall be issued only to those existing providers who shall be able to comply with the provisions of this section within a period of time determined by the Department but which does not exceed two years. If a provider is not in compliance on or before the expiration date of the temporary certificate, the provider may request an extension from the Department. The Department may grant an extension of up to three years to a provider who shall be able to comply with this section in that time period.

5:19-7.2 Financial responsibility

(a) The Department may require a provider to establish and maintain in escrow, on a current basis with a bank, trust company or other escrow agent approved by the Department, a portion of all entrance fees received by the provider in an aggregate amount not to exceed the total of all principal and interest payments due during the next 12 months on account of any first mortgage loan or other long-term financing of the facility. The provider may invest the funds in the escrow account, with the earnings thereon payable to the provider. If the provider so requests in writing, the escrow agent shall release up to one-twelfth of the original principal balance of the escrow account. The escrow agent shall not so release funds more than once during any calendar month, and then only after the escrow agent has given written notice to the Department at least 10 days prior to release. The amount of this escrow fund shall be included in satisfying the reserves required pursuant to N.J.A.C. 5:19-7.1.

(b) This section shall be applicable only when the Department has cause to believe that additional protection is necessary to secure the provider's performance of the terms of all resident agreements.

5:19-7.3 Department's lien

(a) Prior to the issuance of a certificate of authority pursuant to these rules, or at any other time the Department determines it is in the best interest of residents of a facility, the Department may file a lien on the real and personal property of the provider or facility to secure the obligations of the provider pursuant to existing and future contracts for continuing care. A lien filed under this section is effective for a period of 10 days following its filing and may be extended by the Department if the Department finds that the extension is advisable for the protection of residents of the facility.

(b) The Department may foreclose on the lien upon the liquidation of the facility or the insolvency or bankruptcy of the provider. In this event, the Department shall use the proceeds thereof for full or partial satisfaction of obligations of the provider pursuant to contracts for continuing care in effect at that time.

(c) The lien provided for in this section is subordinate to the lien of any first mortgage on the real property of the facility, and if the Department determines and so states in writing that it is advisable for the efficient operation of the facility, the lien may be subordinated to the claims of other persons.

5:19-7.4 Escrow requirements

(a) The provider shall establish an interest bearing escrow account with a bank, trust company or other escrow agent authorized to do business in the State of New Jersey, as a condition of the issuing a certificate of authority. The provider shall place in the escrow account any entrance fees or payments in excess of five percent of the then existing entrance fee for the living unit that are received by the provider prior to the date the resident is permitted to occupy the living unit in the facility. The fees or payments are subject to release from the escrow account in the following manner:

1. If the entrance fee gives the resident the right to occupy a living unit which has been previously occupied, the entrance fee and any interest earned thereon shall be released to the provider when the living unit becomes available for occupancy by the new resident.

2. If the entrance fee applies to a living unit which has not been previously occupied, the entrance fee and any interest earned thereon shall be released to the provider when the Department is satisfied that:

i. Aggregate entrance fees received or receivable by the provider pursuant to executed continuing care agreements equal at least 50 percent of the sum of the entrance fees due at full occupancy of the portion of the facility under construction, except that entrance fees receivable pursuant to an agreement shall be counted only if the facility has received a deposit of 35 percent or more of the entrance fee due from the individual signing the contract;

ii. The aggregate entrance fees received or receivable pursuant to the preceding paragraphs plus anticipated proceeds of any first mortgage loan or other long-term financing commitment and funds from other sources in the actual possession of the provider are equal to at least 50 percent of the aggregate cost of constructing or purchasing, equipping and furnishing the facility plus at least 50 percent of the funds necessary to fund start-up losses as estimated by the provider in the statement of anticipated source and application of funds submitted pursuant to N.J.A.C. 5:19-4.2(a)11; and

iii. The provider has received a preliminary commitment for any permanent mortgage loan or other long-term financing described pursuant to N.J.A.C. 5:19-4.2(a)11 and any conditions of the commitment prior to disbursement of funds thereunder, other than completion of the construction or closing of the purchase of the facility, are substantially satisfied.

3. If the funds in the escrow account established pursuant to this section and any interest earned thereon are not released within 36 months, or a greater time if so specified by the provider with the consent of the Department, the escrow agent shall return the funds to the individuals who made payments to the provider.

4. Nothing in this section shall require the provider to place any non-refundable application fees charged to prospective residents in escrow.

5. In lieu of any escrow required pursuant to this section, a provider is entitled to post a letter of credit from a financial institution, negotiable securities or a bond by a surety authorized to do business in this State, in a form approved by the Department and in an amount not to exceed the amount required by (a)2 above. The provider shall execute the letter of credit, negotiable securities or bond in favor of the Department on behalf of individuals who are entitled to a refund of entrance fees from the provider.

6. A provider may apply to the Department for a waiver of the applicable escrow requirements of this section when a provider constructs additional living units in an amount that does not exceed 10 percent of the facility's existing living units for continuing care residents. The provider shall apply for the waiver in writing to the Department. The Department may grant the waiver which may be effective for a period of one year or longer, at the discretion of the Department, if the construction of additional units meets the requirements of this subsection.

7. Upon receipt of a notice from the provider that an individual is entitled to a refund of an entrance fee, the escrow agent shall return the funds held in the escrow account to the individual.

5:19-7.5 Provider's collateral

A provider shall pledge only the unencumbered assets of a continuing care facility as collateral for the purpose of securing loans for other continuing care facilities, whether proposed or existing.

5:19-7.6 Bankruptcy or insolvency of provider

(a) The Department may apply to a court of competent jurisdiction or to the Federal bankruptcy court, if that court had previously taken jurisdiction over the provider or facility, for an order authorizing the Department to appoint a trustee to rehabilitate or to liquidate the facility if the Department determines that:

1. A portion of a provider's reserve fund escrow as required pursuant to the Act has been or is proposed to be released;

2. A provider is or will be unable to meet the pro forma income or cash flow projections filed pursuant to N.J.S.A. 52:27D-336, except in a manner that may endanger the ability of the provider to fully meet its continuing care contract obligations.

3. A provider has failed to maintain the reserves required under the Act; or

4. A provider is bankrupt or insolvent, or in imminent danger of becoming bankrupt or insolvent.

(b) An order to rehabilitate a facility shall direct the Department or trustee to take possession of the property of the provider and to conduct the business thereof, including the employment of managers or agents that the Department or trustee deems necessary and to take those steps the court directs toward removal of the causes and conditions which have made rehabilitation necessary.

(c) If the Department determines that further efforts to rehabilitate the provider would be useless, the Department may apply to the court for an order of liquidation.

(d) In applying for an order to rehabilitate or liquidate a facility, the Department shall give due consideration in the application to the manner in which the welfare of persons who have previously contracted with the provider for continuing care may be best served. In furtherance of this objective, the proceeds of any lien obtained by the Department pursuant to the Act may be:

1. Used in full or partial payment of entrance fees;
2. Used on behalf of residents of a facility that is being liquidated; or
3. Paid, on behalf of those persons, to other facilities operated by providers who hold a certificate of authority issued pursuant to the Act.

(e) The Department shall attempt to keep resident of the community informed about its actions to rehabilitate or liquidate the facility and, when appropriate, the Department shall meet with residents of the facility.

SUBCHAPTER 8. (RESERVED)

SUBCHAPTER *[8.]**9.* ADMINISTRATION

5:19-*[8.1]**9.1* Enforcing agency designated

The Division of Housing and Development in the Department of Community Affairs shall administer and enforce these rules. Within the Division, responsibilities for administration and enforcement of these rules shall be vested in the Bureau of *[Construction Code Enforcement]* ***Homeowner Protection***. All powers and responsibilities vested in the Commissioner shall be executed by the Chief, Bureau of *[Construction Code Enforcement]* ***Homeowner Protection***, with the exception of the power to promulgate rules and the power to issue final decisions in administrative hearings.

5:19-*[8.2]**9.2* Complaints and investigations

Any person may, at any time, file a complaint with the Department concerning any matter subject to the Act or these rules. Said complaint may be written or oral. Nothing contained herein shall prevent the Department from instituting an investigation on its own initiative.

5:19-*[8.3]**9.3* Rights to a hearing

Any applicant aggrieved by an order ***or determination*** of the Department issued under these rules shall be entitled to a hearing as provided by law, provided a written request for such hearing is filed within ***[the time provided by these rules or as provided by law.]* *20 days of the receipt of the order or determination. Hearing requests shall be addressed to the Hearing Coordinator, Division of Housing and Development, CN 804, Trenton, New Jersey 08625.***

5:19-*[8.4]**9.4* Conduct of hearing

All hearings ***[pursuant to the Act]*** shall be conducted in accordance with the Administrative Procedure Act, **(*[P.L. 1968, c.410.]* N.J.S.A. 52:14B-1 et seq.)** and the amendments thereto and the Uniform Administrative ***[Practice]* *Procedure*** Rules, N.J.A.C. 1:1-1 et seq.

5:19-*[8.5]**9.5* Consent orders

The Department may, in its discretion, enter into any consent order, stipulation or settlement in any matter.

5:19-*[8.6]**9.6* Applicability

- (a) These rules shall be applicable as follows:
1. A provider who is offering but not providing continuing care on March 2, 1987 may be given a reasonable time, not to exceed one year from the date of promulgation of these rules, within which to comply with the requirements of the Act and obtain a certificate of authority.

2. A facility which has not entered into any agreements for continuing care pursuant to the Act since 1965, is not subject to the provisions of the Act; but this exclusion shall not apply if that facility enters into one or more agreements for continuing care on or after March 2, 1987.

3. A facility which has fewer than 50 residents who are under continuing care agreements on the date of enactment of the Act is not subject to the provisions of the Act; but this exclusion shall not apply if that facility increases the number of its residents under continuing care agreements to 50 or more, after the date of enactment of the Act.

4. A provider who is offering continuing care on the effective date of the Act shall be given a reasonable time, not to exceed one year from the date of promulgation of this chapter, within which to comply with the requirements of the Act and obtain a Certificate of Authority.

5:19-*[8.7]**9.7* Construction

These rules shall be construed liberally to effectuate the purposes of the Act and of these rules.

5:19-*[8.8]**9.8* Waiver

The Department may grant exemptions to these rules or any part thereof when, in its opinion, the enforcement thereof is unduly burdensome or impractical.

5:19-*[8.9]**9.9* Severability

If any provision of these rules or the application thereof to any person or circumstances is held to be invalid, the invalidity shall not affect other provisions or applications of these rules which can be given effect and to this end the provisions of these rules are severable.

(a)

Uniform Construction Code Energy Subcode; Individual Electric Metering in Residential Buildings; Lighting Efficiency Standards for Existing Buildings

Adopted Amendment: N.J.A.C. 5:23-3.18

Adopted Repeal: N.J.A.C. 14A:3-7 ad 14A:3-9

Proposed: October 19, 1987 at 19 N.J.R. 1862(b).

Adopted: December 23, 1987 by Leonard S. Coleman, Jr.,
Commissioner, Department of Community Affairs.

Filed: December 24, 1987 as R.1988 d.50, **without change.**

Authority: N.J.S.A. 52:27D-124; Reorganization Plan No.
001-1986.

Effective Date: February 1, 1988.

Expiration Date: April 1, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

5:23-3.18 Energy Subcode

(a) (No change.)

(b) The following chapters or articles of the Energy Subcode are amended as follows:

1.-5. (No change.)

6. The following amendment is made to article 6 of the Energy Subcode entitled "Electrical Systems":

i. In Section E-601.2, add the words "In buildings of Use Group R-2 which are under a condominium or cooperative form of ownership only, electrical energy use by the occupants of each dwelling unit may be determined by means of checkmetering rather than by use of a separate meter owned by the electric utility for each dwelling unit."

7. The following amendments are made to article 7 of the Energy Subcode entitled "Alternative Systems":

i. (No change.)

8. The following amendments are made to section 2 of standard LEM-1 of the Energy Subcode, entitled "Scope":

i. (No change.)

ADOPTIONS

ENVIRONMENTAL PROTECTION

Full text of the adopted repeal of N.J.A.C. 14A:3-7, Individual Electric Metering in Residential Buildings, and N.J.A.C. 14A:3-9, Lighting Efficiency Standards for Existing Buildings, may be found in the New Jersey Administrative Code in Title 14A.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

New Jersey Pollutant Discharge Elimination System

Adopted Amendments: N.J.A.C. 7:14A-8

Proposed: October 19, 1987 at 19 N.J.R. 1864(a)

Adopted: January 7, 1988 by Richard T. Dewling, Commissioner, Department of Environmental Protection.

Filed: January 7, 1988 as R.1988 d.59, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 58:10A-1 et seq., 58:11A-1 et seq., 58:10-23.11 et seq., 58:11-64 et seq., 13:1D-1 et seq., specifically 13:1D-9, 13:1E-1 et seq., specifically 13:1E-6, 58:4A-5, 58:4A-4.1, and 58:12A-1 et seq.

DEP Docket Number: 045-87-09

Effective Date: February 1, 1988

Expiration Date: June 4, 1989.

Summary of Public Comments and Agency Responses:

No public hearing has held on this rule proposal. Six written comments were received by the Department by the close of the public comment period on November 18, 1987.

COMMENT: N.J.A.C. 7:14A-8.1(a)1. Two commenters stated that the amendment to N.J.A.C. 7:14A-8.1(a)1 making minor modifications of a permit subject to public notice and comment is an unwarranted expenditure of time or resources, unduly burdening both the Department and the permittee.

RESPONSE: The Department will provide public notice of all minor modifications in the New Jersey Register on an annual basis (N.J.A.C. 7:14A-8.1(e)3). This comports with the requirement of the Water Pollution Control Act that "notice of all modifications of a discharge permit shall be published in the New Jersey Register." (N.J.S.A. 58:10A-7c). The notice requirements set forth at N.J.A.C. 7:14A-8.1(a)1, when read in conjunction with N.J.A.C. 7:14A-8.1(c)1 and (e)3, limit the notice requirements for minor modifications to the public notice requirements of the Water Pollution Control Act and therefore can not be considered unwarranted or unduly burdensome.

COMMENT: N.J.A.C. 7:14A-8.1(f). One comment was received stating that the Department should include in the public notice "all information supporting the Department's decisions on the conditions included in the permit".

RESPONSE: The Department believes that the language incorporated in N.J.A.C. 7:14A-8.1(f)7, providing the Department with the opportunity to include in the public notice any additional information that is necessary and proper, provides for the concerns of the commenter and satisfies the notice requirement of the Water Pollution Control Act. Any person who is interested in reviewing the administrative record of the Department's determinations in a permit action may do so in accordance with N.J.A.C. 7:14A-8.8.

COMMENT: N.J.A.C. 7:14A-8.2(c) and 8.7(a). One comment was received which stated that while the commenter agrees with the requirement that the Department should respond to all comments prior to making its final decision, the Department should provide its response to comments 30 days prior to issuing the final permit. This time period can be used to facilitate resolution of disputed issues.

RESPONSE: The public comment period is the time-frame in which interested persons should bring all reasonably ascertainable issues to the attention of the Department. Providing a 30 day period between issuance of the response to comments and issuance of the final permit would unduly delay the NJPDES permitting process.

COMMENT: N.J.A.C. 7:14A-8.4(a) and 8.9(b)8. Five comments were received which requested that the Department amend or delete the sentence: "If the applicant/permittee fails to raise any reasonably ascer-

tainable issues at this time (during the public comment period), the applicant/permittee shall be deemed to have waived the right to raise or contest any such issues in any subsequent adjudicatory hearing or appeal." It is suggested that such lack of flexibility would impose an unfair and inappropriate burden on the permittee/applicant to ensure that all possible issues are identified in the public comment period, and would be in direct conflict with the Department's statements in the rule summary and impact statements that the proposed amendments in general, and this provision in particular, imposes no additional financial burden on the regulated community.

RESPONSE: The Department is imposing no additional regulatory requirements or burdens on the regulated community. The amendments to N.J.A.C. 7:14A-8.4(a) serve to clarify an existing regulatory requirement to raise all ascertainable issues during the public comment period. The language stating that a failure to raise such issues will serve as a waiver in any subsequent adjudicatory hearing or appeal sets forth the legal impact of this failure. In total, N.J.A.C. 7:14A-8.4(a) reflects the Appellate Division's decision in *Bell Harbor, Inc. v. New Jersey Department of Environmental Protection*, No. A-3419-85-T8 (App. Div. December 10, 1986), that while an applicant/permittee must be afforded "an opportunity" for a hearing, the interests of speed and efficiency in the implementing of agency objectives militate against extended and duplicative procedures to the detriment of the purposes of the Water Pollution Control Act.

COMMENT: N.J.A.C. 7:14A-8.4(a). Two comments were received which questioned whether the requirement that public comment be submitted by certified mail means that comments postmarked and dispatched by certified mail during the comment period are considered timely, and whether comments can be hand delivered.

RESPONSE: The Department will only accept public comments which are postmarked prior to the close of the public comment period and submitted by certified mail. The purpose of this requirement is to ensure that all comments are timely received and to provide a record of receipt that serves to protect the rights of the commenter and the Department.

COMMENT: N.J.A.C. 7:14A-8.4(a). Three comments were received requesting that the Department retain the parenthetical concerning a flexible approach to granting comment periods greater than 30 days.

RESPONSE: The Department deleted the parenthetical because it was not regulatory in nature, serving only as guidance to the agency on the issue of providing an appropriate time-frame in which to receive public comment. The Department will, however, continue to be flexible in establishing appropriate public comment periods.

COMMENT: N.J.A.C. 7:14A-8.6(b). One comment was received which stated that the amendment to this section, deleting the provision that a request for an adjudicatory hearing will serve to toll the 30 day period establishing the effective date of the final permit, can be unfair and prejudicial to NJPDES permittees who make a timely request to the Department for a hearing and a stay of permit conditions but receive no response from the Department prior to the permit becoming effective.

RESPONSE: The Department, pursuant to N.J.A.C. 7:14A-8.6(b), provides that a final permit will become effective 30 days after serving the permittee with notice of this action. The permittee therefore has a 30 day period in which to request an adjudicatory hearing to contest any condition of this final permit, and pursuant to N.J.A.C. 7:14A-8.10, the permittee may request a stay of any contested permit condition. There is, however, no automatic right to a stay of any permit condition. Should the Department fail to act on a timely request for an adjudicatory hearing and request for a stay of permit conditions, the permittee may seek judicial relief.

COMMENT: N.J.A.C. 7:14A-8.8(b)3. One commenter stated that there is an inconsistency between N.J.A.C. 7:14A-8.8(b)3 and 7:14A-8.3(c) on the issue of including a tape recording as part of the public record.

RESPONSE: The Department agrees and N.J.A.C. 7:14A-8.8(b)3 has been changed to be consistent with N.J.A.C. 7:14A-8.3(c). The tape recording of any hearings held under N.J.A.C. 7:14A-8.3(c) will not be included in the administrative record.

COMMENT: N.J.A.C. 7:14A-8.9(a). One comment was received which requested that the Department extend the period during which a permittee may request an adjudicatory hearing under this section from 30 days to 60 days.

RESPONSE: The Department believes that the 30 day time-frame, an existing procedural requirement that is unchanged in the proposal, is sufficient. The Department, however, can extend the time allowed for submission of a hearing request for good cause shown under N.J.A.C. 7:14A-8.9(d).

COMMENT: N.J.A.C. 7:14A-8.9(b)6. One comment was received which stated that the Department should retain the existing N.J.A.C. 7:14A-8.9(c)7: "Identification of the permit obligations that are contested or are inseparable from contested conditions and should be stayed if the request is granted by reference to the particular contested conditions warranting the stay".

RESPONSE: The Department believes that this requirement is incorporated in N.J.A.C. 7:14A-8.9(b)6 requiring a list of specific contested permit conditions. The listing of specific contested permit conditions for which an adjudicatory hearing is requested should include identification of all permit conditions, including those that are inseparable from specifically contested conditions.

COMMENT: N.J.A.C. 7:14A-8.9(b)9. One comment was received which requested that the Department explain why the permittee should state the relevance of the legal and/or factual issues raised in accordance with N.J.A.C. 7:14A-8.9(b)7.

RESPONSE: The Department requires that the relevance of legal and/or factual issues be set forth to ensure that the Department and the Office of Administrative Law focus on relevant issues in the adjudicatory hearing. In accordance with N.J.A.C. 7:14A-8.9(f), the Department shall base its determination on the extent to which an adjudicatory hearing should be granted on the material issues of fact or law relevant to the issuance of the permit.

COMMENT: N.J.A.C. 7:14A-8.9(b)11. One comment was received which requested that the Department require that the permittee estimate the time required for the total adjudicatory hearing rather than for each contested issue.

RESPONSE: The Department agrees and the provision has been changed to reflect this comment.

COMMENT: N.J.A.C. 7:14A-8.9(b)17. One comment was received which requested that the Department delete the certification relative to a hearing request as there is no requirement under the Water Pollution Control Act or the Administrative Procedure Act (N.J.S.A. 40:1B-1 et seq.) for such requirement.

RESPONSE: Without making a determination as to the legal merits of this comment, the Department has not adopted this provision.

COMMENT: N.J.A.C. 7:14A-8.9(c) and 8.11. One comment was received which stated that the term co-permittee should be defined and that a section should be included in the rules specifying the conditions under which a co-permittee (including a municipality) is required.

RESPONSE: The Department is clear in setting forth who is a co-permittee and when parties are considered by the Department to be co-permittees. The NJPDES rules provide that a person (including a municipality) who owns and a person who operates any part of a facility which includes an activity regulated pursuant to N.J.A.C. 7:14A-1 et seq. shall obtain a NJPDES permit (N.J.A.C. 7:14A-2.1(b)). Whenever 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 (N.J.A.C. 7:14A-2.1(c)). Where more than one person is listed on a NJPDES permit, these parties are considered by the Department to be co-permittees, jointly and severally liable for all violations of their permit.

COMMENT: N.J.A.C. 7:14A-8.9(d). One comment was received which stated that the Department should amend this provision to provide that "should the Department not grant an extension the permittee shall submit its request for an adjudicatory hearing within 60 days from receipt of the Department's decision."

RESPONSE: Permittees should request adjudicatory hearings in accordance with N.J.A.C. 7:14A-8.9(a). Permittees should not anticipate that the Department will grant an extension of the time period for requesting a hearing under N.J.A.C. 7:14A-8.9(d). The Department believes that failure to comply with the 30 day requirement of N.J.A.C. 7:14A-8.9(a), or failure to demonstrate good cause for an extension under N.J.A.C. 7:14A-8.9(d), should result in a waiver of the right to request an adjudicatory hearing under this chapter.

COMMENT: N.J.A.C. 7:14A-8.9(e). Three comments were received requesting that the Department substitute the word "permittee" for "violation".

RESPONSE: The Department has determined that the word "permittee" is consistently used in this section. The Department has changed the word to reflect this comment.

COMMENT: N.J.A.C. 7:14A-8.9(e). Four comments were received stating that fairness and due process require that the Department amend this provision to allow the permittee the opportunity to correct minor omissions, omissions of material that have no significant impact on the issues, minor technical or administrative matters, or any deficiency.

RESPONSE: The Department has determined that if the permittee fails to include any information required by N.J.A.C. 7:14A-8.9(b) it may deny the request for an adjudicatory hearing. It has been the practice of the Department to issue formal "Deficiency Letters" to permittees who request an adjudicatory hearing but fail to provide all of the information required to consider the request. Deficiency Letters set forth the specific provisions which the permittee has failed to comply with and provide a time-frame to correct these deficiencies. The Department has deleted the word "shall" and substituted "may" to reflect this practice.

COMMENT: N.J.A.C. 7:14A-8.9(f), (g) and (h). Four commenters criticized the level of discretion which the Department reserved to itself in these provisions of the adjudicatory hearing process.

RESPONSE: N.J.A.C. 7:14A-8.9(f), (g) and (h) incorporate and clarify the adjudicatory hearing provisions that were set forth in N.J.A.C. 7:14A-8.11 (Decision on request for a hearing) which was repealed in this proposal. The Department believes that these existing requirements are fair and protective of the permittee's rights to an adjudicatory hearing and will not change them.

COMMENT: N.J.A.C. 7:14A-8.10(a) and (b). Two comments were received which stated that undue hardship would result unless a permittee was able to receive a stay of a contested permit condition, or any issue inseparable from a contested issue set forth in accordance with N.J.A.C. 7:14A-8.9(b)6, until the Department made a determination on the contested issue. It is argued that unless a contested condition is stayed, the permittee is required to comply with the contested condition and is subject to a penalty for non-compliance before the legitimacy of the contested issue is established.

RESPONSE: There is no automatic right to a stay of any permit condition. Where a permittee believes that the Department has failed to act on a timely request for a stay of permit condition(s) or that the Department's denial of a stay request will cause undue hardship, is unfair or is inequitable, the permittee may seek appropriate judicial relief.

COMMENT: N.J.A.C. 7:14A-8.10(d). One comment was received which requested that this subsection be changed to require that the contested conditions be stayed unless the Department finds and demonstrates that there would be irreparable harm to the environment.

RESPONSE: The Department disagrees. The language of this subsection provides for a balancing test, weighing the economic impact of compliance on the permittee against the impact of the unstayed condition(s) of the permit on the environment. The Department believes that this provides for a fair and equitable means by which to balance competing interests.

COMMENT: N.J.A.C. 7:14A-8.11. One commenter suggested that the Department expand this section to require the Department to schedule adjudicatory hearings within 60 days of receipt of a request for a hearing; that hearings should be expedited; that hearing decisions should be issued within 30 days of completion of the hearing; that hearings and hearing decisions should be delayed upon mutual consent of the Department and the permittee; and, should the Department not act in a timely manner, that contested permit conditions should be vacated and replaced with the suggested conditions submitted by the permittee.

RESPONSE: The Department disagrees. The procedural requirements set forth in this subchapter are adopted under the authority of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and have been amended to clarify and more accurately set forth the legal obligations of a NJPDES applicant/permittee. The Department believes that adoption of the commenter's suggestions would dilute the procedures and requirements of this subchapter. Where the commenter believes that the Department fails to act in accordance with the requirements of the Water Pollution Control Act and the Administrative Procedure Act, it can seek appropriate judicial relief.

COMMENT: General issue. One comment was received which stated that the Department should, in the interests of administrative efficiency, bring the NJPDES program under the 90 Day Permit program used in the Sewer Extension, Stream Encroachment, CAFRA, Waterfront Development and Coastal Wetlands Permit Programs.

RESPONSE: NJPDES permits do not come under the jurisdiction of the 90 Day Law.

COMMENT: General issue. One comment was received which stated that the Department should succinctly state all of the criteria necessary to satisfy the requirements to obtain approval for wastewater treatment systems.

RESPONSE: The comments go beyond the scope of the proposed changes to this subchapter and therefore will not be considered at this time.

ADOPTIONS

ENVIRONMENTAL PROTECTION

COMMENT and RESPONSE: The Department is adding an "and" after N.J.A.C. 7:14A-8.1(e)2 to correct an omission in the rules. Review of the "Program Submission from the State of New Jersey to the Administrator of the United States Environmental Protection Agency Concerning Delegation of the National Pollutant Discharge Elimination System", signed by the Commissioner of the Department of Environmental Protection and the Administrator of the United States Environmental Protection Agency, provides evidence that the rules incorporate an "and" in this provision. The Department is adding the "and" to bring the published rules into conformance with the "delegation agreement" and the documents filed with the Office of Administrative Law when this provision was originally adopted.

In addition, the new text of N.J.A.C. 7:14A-8.8(b)2, which was inadvertently omitted from the proposal as filed with the Office of Administrative Law, is added upon adoption. This paragraph requires all comments received for any DAC or permit application be made part of the final administrative record of the decision.

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

7:14A-8.1 Public notice of permit actions and public comment period

(a) The Department shall provide public notice of the following actions:

1. Proposed suspension, revocation and reissuance, renewal, major modification of a permit under N.J.A.C. 7:14A-2.12 and/or 7.5 or minor modification of a permit under N.J.A.C. 7:14A-2.14;
2. Intent to deny a permit or DAC application under N.J.A.C. 7:14A-7.6(c);
3. Issuance of a draft permit or draft DAC under N.J.A.C. 7:14A-7.6(e);
4. Scheduled hearing under N.J.A.C. 7:14A-8.3; and
5. Reopening of the public comment period under N.J.A.C. 7:14A-8.5.

(b) The Department shall not be required to provide public notice when a request for permit modification, revocation and reissuance, or termination is denied under N.J.A.C. 7:14A-7.5(b). Written notice of the denial shall be provided to the requestor and to the permittee.

(c) The Department shall provide public notice according to the following schedule:

1. Public notice of an action set forth in (a)1, 2, 3 or 5 above, except for minor modification of a permit under N.J.A.C. 7:14A-2.14, shall be provided at least 30 days prior to the end of the public comment period unless otherwise required pursuant to N.J.A.C. 7:26-12.12(c). In addition, public notice of all major and minor modifications to permits shall be provided annually in the New Jersey Register.

2. Public notice of a public hearing as set forth in (a)4 above shall be provided 30 days prior to the public hearing.

(d) The Department may describe more than one type of discharge or permit action in a public notice. The Department may provide public notice of the public hearing at the same time as public notice of the draft permit and the two notices may be combined.

(e) To provide public notice of activities described in (a) above, the Department shall:

1. Mail a copy of the public notice to the following:
 - i. (No change.)
 - ii. Federal and State agencies that have issued or are required to issue RCRA, PSD, or 404 permits for the same facility or activity;
 - iii. Federal and State agencies that have jurisdiction over fish, shellfish, wildlife resources, coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, and other appropriate government authorities, including any affected states;
 - iv.-v. (No change.)
 - vi. The mayor, municipal clerk, planning board, sewage authority, health officer, and environmental commission of the applicable municipality(ies);
 - vii. Persons on a mailing list developed by:

(1) Including those who request in writing to be on the mailing list;

(2) Soliciting persons for "area lists" from participants of past permit proceedings in that area; and

(3) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as State funded newsletters, environmental bulletins, or State law journals.

2. Publish notice of an action under (a) above, except for minor modification of a permit under N.J.A.C. 7:14A-2.14, in a daily or weekly newspaper within the area affected by the facility or activity*[*]**; **and***

3. Publish annual notice of all major and minor modifications to permits in the New Jersey Register.

(f) The Department shall include the following information in all public notices provided pursuant to this subchapter:

1. Name and address of the person that is processing the permit action and to whom interested persons can make a written request for appropriate copies;

2. Name and address of the applicant/permittee and, if different, of the facility and/or activity regulated by the permit, except for draft general permits issued pursuant to N.J.A.C. 7:14A-3.9;

3. A brief description of the business conducted at the facility or activity described in the permit, permit or DAC application, draft permit or draft DAC;

4. A general description of the location of each existing or proposed discharge point and the name of the receiving water. For draft general permits, this requirement will be satisfied by a map or description of the permit area;

5. Name and address of the Bureau within the Water Quality Management Element to which interested persons can make a written request for a copy of the administrative record and the times and place at which the record will be open for public inspection;

6. A brief description of the comment procedures required by N.J.A.C. 7:14A-8.2 and 8.3 and the time and place of any hearing that will be held, including a statement of the procedures by which to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision; and

7. Any additional information considered by the Department to be necessary or proper.

(g) In addition to the public notice described in (f) above, the Department shall include the following information in the public notice of a hearing under N.J.A.C. 7:14A-8.3:

1. The date of any previous public notice relating to the permit;
2. The date, time and place of the hearing; and

3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(h) In addition to the public notice described in (f) above, all persons identified in (e)1i, ii, iii, iv and v above shall be mailed a copy of the fact sheet or statement of basis, and upon written request to the Department, the permit application and the draft permit.

7:14A-8.2 Public comments and requests for public hearing

(a) During the public comment period provided under N.J.A.C. 7:14A-8.1, all interested persons may submit written comments and data on the proposed suspension, revocation and reissuance, renewal or major modification of a permit, intent to deny a permit or DAC application, or preparation of a draft permit or draft DAC.

(b) If the Department has not already scheduled a public hearing, an interested person may request a public hearing. A request for a public hearing shall be in writing and shall state the nature of the legal and/or factual issues proposed to be raised in the hearing.

(c) The Department shall consider all comments in making its final decision and shall respond to comments pursuant to N.J.A.C. 7:14A-8.7.

7:14A-8.3 Public hearings

(a) The Department shall hold a public hearing following its determination that there is or may be a significant degree of public interest in, or that a hearing can clarify one or more legal and/or factual issues on, a proposed suspension, revocation and reissuance, renewal or major modification of a permit, intent to deny a permit or DAC application, or preparation of a draft permit or draft DAC.

(b) The Department may set reasonable limits upon the time allowed for oral comments at the public hearing and may also require the submission of written comments. The Department shall automatically extend the public comment period pursuant to N.J.A.C. 7:14A-8.1 to the close of any public hearing under this section. The Department may also extend the comment period by so stating at the hearing.

(c) The Department shall include a written transcript of the hearing in the Administrative Record.

7:14A-8.4 Obligation to raise issues and provide information during the public comment period

(a) Applicants/permittees who believe that any action under N.J.A.C. 7:14A-8.1(a)1, 2, or 3 is inappropriate, shall raise all reasonably ascertainable issues and submit in writing to the Department by certified mail (return receipt requested) all reasonably ascertainable arguments and factual grounds supporting their position, including all supporting materials, by the close of the public comment period. If the applicant/permittee fails to raise any reasonably ascertainable issues at this time, the applicant/permittee shall be deemed to have waived the right to raise or contest any such issues in any subsequent adjudicatory hearing or appeal. All supporting materials shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. Commentors shall make supporting material not already included in the administrative record available at the request of the Department.

7:14A-8.5 Action subsequent to public comment

(a) The Department may, upon a determination that any data, information or argument submitted during the comment period raises significant legal and/or factual issues concerning a permit or DAC, take one or more of the following actions:

1. Prepare a new draft permit or a new draft DAC, appropriately modified, pursuant to N.J.A.C. 7:14A-7.6;
2. Prepare a revised statement of basis under N.J.A.C. 14A-7.7, or a fact sheet or revised fact sheet pursuant to N.J.A.C. 14A-7.8, and reopen the comment period under (a)3 below;
3. (No change.)

(b) Comments filed during the reopened comment period shall be limited to the significant legal and/or factual issues that caused its reopening. The public notice under N.J.A.C. 7:14A-8.1 shall define the scope of the reopening.

(c) (No change.)

7:14A-8.6 Issuance and effective date of permit

(a) The Department shall issue a final permit or DAC decision after the close of the public comment period. The Department shall notify the applicant/permittee and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures provided to the applicant/permittee for contesting the Department's decision on a permit. For the purposes of this section, a final permit decision means a final decision to issue, deny, suspend, modify, revoke and reissue, renew or terminate a permit or DAC.

(b) A final permit or DAC decision shall become effective 30 days after the service of notice of the decision under (a) above, unless a later effective date is specified in the permit or decision.

7:14A-8.7 Response to comments

(a) The Department shall issue a response to comments at the time that a final permit or DAC decision is issued. The response to comments shall:

1. State what action the Department has taken on the final permit or DAC decision;
- 2.-3. (No change in text.)

(b) The Department shall make the response to comments available to the public.

7:14A-8.8 Administrative record for final permit and final DAC

(a) The Department shall base final DAC or final permit decisions made pursuant to N.J.A.C. 7:14A-8.6 on the administrative record defined in this section.

(b) The administrative record for any final DAC or final permit decision shall consist of:

1. The administrative record for the draft DAC or draft permit required by N.J.A.C. 7:14A-7.9;
- *2. All comments received during the public comment period provided under N.J.A.C. 7:14A-8.1 (including any extension or reopening under N.J.A.C. 7:14A-8.5);*
3. The *[tape or]* transcript of any hearing(s) held under N.J.A.C. 7:14A-8.3;
4. Any written materials submitted at any public hearing held under N.J.A.C. 7:14A-8.3;
5. The response to comments required under N.J.A.C. 7:14A-8.7 and any new material placed in the record under that section;
6. The environmental assessment and any supplement required for DSW new source permits;
7. (No change in text.)
8. The final permit or DAC decision.

(c) The Department shall add to the administrative record the additional documents required under (b) above as soon as possible after its receipt or publication by the Department. The administrative record shall be complete no later than the date that the DAC or final permit is issued.

(d) Material readily available to the Department, or published materials which are generally available and which are included in the administrative record under the standards of this section or under N.J.A.C. 7:14A-8.7, need not be physically included in the record if it is specifically referred to in the statement of basis, fact sheet or in the response to comments.

7:14A-8.9 Adjudicatory hearings

(a) The permittee, within 30 days following the service of notice of the Department's issuance of a final permit or DAC decision under N.J.A.C. 7:14A-8.6, may submit a written request to the Department under (b) below for an adjudicatory hearing to contest the conditions of that permit.

(b) The permittee shall include the following information in a request for an adjudicatory hearing:

1. The location of the permitted facility (Municipality, Lot and Block Number and County);
2. The type of NJPDES permit or DAC;
3. The NJPDES permit number;
4. The NJPDES permit issuance date;
5. The date that the final permit or DAC decision was received by the permittee;
6. A list of the specific contested permit condition(s);
7. The legal or factual question(s) at issue in each contested permit or DAC condition;
8. A statement as to whether the permittee raised the legal and/or factual issues during the public comment period in accordance with the provisions of N.J.A.C. 7:14A-8.4;
9. The relevance of the legal and/or factual issues to the permit or DAC decision;
10. Suggested revised or alternative permit or DAC conditions;
11. An estimate of the amount of *[hearing time necessary to adjudicate each legal and/or factual issue]* ***time required for the hearing***;
12. The name, mailing address and telephone number of the person making the request(s);
13. The name(s) and address(es) of the person(s) whom the permittee represents;
- *[14. (Reserved)]*
- *[15.]* ***14.*** Information supporting the request or other written documents relied upon to support the request, unless this information is already in the administrative record (in which case, such information shall be specifically referenced in the request); and
- *[16.]* ***15.*** Identification of the basis for any objection to the application of control or treatment technologies identified in the statement of basis or fact sheets and the alternative technologies or

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combination of technologies which, in the judgement of the permittee, are necessary to implement the requirements of the State and Federal Acts.

[17. A certification stating that "I hereby 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."]

(c) The permittee shall provide a copy of its request for an adjudicatory hearing to all other co-permittees (if any).

(d) The Department, in its discretion, may extend the time allowed for submission of a hearing request under this section for good cause shown.

(e) If the *[violator]* *permittee* fails to include any of the information required by (b) above, the Department *[shall]* *may* deny the request for a hearing.

(f) The Department, in its discretion, shall decide the extent to which the request for an adjudicatory hearing shall be granted. The Department may grant a request for a hearing in whole or in part. The Department's decision shall be made following a determination that the permittee's request conforms to the requirements of this section and sets forth material issues of fact or law relevant to the issuance of the permit.

(g) The Department, if it grants a request for an adjudicatory hearing, shall identify those contested permit conditions for which an adjudicatory hearing has been granted. The Department shall specify these conditions in writing and shall serve notice pursuant to N.J.A.C. 7:14A-8.11. Permit conditions which are not contested, which were not commented on by the permittee during the public comment period, or for which the Department has denied the hearing request, shall not be affected by or considered at the adjudicatory hearing. The issues presented in the adjudicatory hearing shall be limited to those permit conditions specifically identified by the Department as required by this section.

(h) The Department, if it denies a hearing request in whole or in part, shall briefly state the reasons for such denial. Such denial shall be considered final agency action.

7:14A-8.10 Stays of contested permit conditions

(a) A permittee may request, in writing, a stay of any permit condition for which the Department has granted an adjudicatory hearing.

(b) The Department's grant of a permittee's request for an adjudicatory hearing under N.J.A.C. 7:14A-8.9 shall not automatically result in a stay of a contested permit condition and, when the Department denies a stay request, the contested condition shall remain in full force and effect during the adjudicatory process.

(c) The Department, in determining whether to grant or deny a stay request, shall consider the following factors:

1.-3. (No change.)

(d) Where the Department determines that immediate compliance will result in irreparable economic dislocation and that immediate compliance is not required to preserve irreplaceable environmental resources, it shall direct that compliance with the effluent limitations be phased into effect, partially stayed or entirely stayed pending resolution of the permittee's appeal.

(e) Any facility or activity regulated by an existing permit shall:

1. Comply, at a minimum, with the conditions of its existing permit during any modification or revocation and reissuance proceeding under N.J.A.C. 7:14A-7.5; and

2. To the extent conditions of a modified or revoked and reissued permit are stayed under this section, comply with the conditions of the existing permit corresponding to the stayed conditions, unless compliance with the existing conditions would be technologically incompatible with any unstayed conditions in the new permit.

(f) In granting a stay, the Department shall detail in writing:

1. The reasons for granting the stay; and
2. The specific permit conditions that are stayed.

7:14A-8.11 Notice of adjudicatory hearing

The Department shall provide public notice of an adjudicatory hearing by mailing a copy of the notice to co-permittees, to all

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commenters on the draft permit, and to those parties that testified at the public hearing.

7:14A-8.12 Conduct of adjudicatory hearing

Adjudicatory hearings on permit conditions (including denial of variance requests) shall be governed under the "New Jersey Uniform Administrative Procedures Rules", N.J.A.C. 1:1-1 et seq.

7:14A-8.13 Public participation in the State enforcement process

(a) (No change.)

(b) Within 30 days of publication in the DEP Bulletin, any person having an interest which is or may be affected may request in writing to intervene as of right in any administrative enforcement action brought pursuant to Sections 10(b) or (d) of the State Act.

DIVISION OF HAZARDOUS WASTE MANAGEMENT

(a)

Availability of Information; Confidential Business Information

Adopted New Rules: N.J.A.C. 7:26-17

Adopted Amendments: N.J.A.C. 7:14A-11.1, 7:26-1.9 and 12.2

Proposed: October 19, 1987 at 19 N.J.R. 1869(a)

Adopted: December 23, 1987 by Richard T. Dewling,

Commissioner, Department of Environmental Protection.

Filed: January 7, 1988 as R.1988 d.57, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 13:1E-6 and 13:1E-18

DEP Docket Number: 043-87-09

Effective Date: February 1, 1988

Expiration Date: November 4, 1990

Summary of Public Comments and Agency Responses:

The Department received one written comment before the close of the comment period on November 18, 1987. The comment is summarized as follows:

COMMENT: The commenter points out N.J.A.C. 7:26-1.9, 12.2 and 17.4(k) refer to Subchapter 18 instead of 17.

RESPONSE: The correct references under N.J.A.C. 7:26-1.9, 12.2 and 17.4(k) are to Subchapter 17. These erroneous references to Subchapter 18 as well as a fourth one under N.J.A.C. 7:14A-11.1(b) have been corrected upon adoption. Furthermore, N.J.A.C. 7:26-17.4(k) and (l) have been corrected to 17.4(i) and 17.4(j) and the citation at N.J.A.C. 7:26-17.1(b) and (f) to N.J.A.C. 7:26-1.4 has been corrected to N.J.A.C. 7:26-1, 4.

COMMENT: The commenter asks why the State's Examination of Public Records Act, N.J.S.A. 47:1A-1 et seq., was not referenced and the Federal Freedom of Information Act, 5 U.S.C. §552(b)(5), was referenced at N.J.A.C. 7:26-17.1(d). This subsection exempts certain inter-agency or intragovernmental memoranda or letters from disclosure.

RESPONSE: These rules are adopted in response to Federal requirements promulgated under the authority of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. One of the Federal requirements with which the State is mandated to comply is the reference to 5 U.S.C. §552(b)(5). (See 41 FR 36902, September 7, 1976, and 43 FR 40000, September 8, 1978.)

COMMENT: The commenter indicates that there are typographical errors in N.J.A.C. 7:26-17.4(c).

RESPONSE: This subsection was corrected upon adoption to provide that "A requester of non-confidential and confidential records . . . shall not be required to supply any justification for the information request." The words "to supply" were inadvertently omitted in the proposal.

COMMENT: The commenter offers the opinion that the 20 day limit for responding to information requests provided in N.J.A.C. 7:26-17.4(g) is too brief a time span.

RESPONSE: The 20 day limit is imposed by Federal regulations. The Department will endeavor to operate within the designated time span.

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COMMENT: The commenter believes that a clarification is needed regarding N.J.A.C. 7:26-17.7(a)1. Each page should be stamped "confidential," not just the first page or cover.

RESPONSE: The Department agrees with the commenter and has added language to N.J.A.C. 7:26-17.7(a)1 directing that each page be stamped "confidential."

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

7:14A-11.1 Public access to information and scope of authority

(a) All NJPDES permit applications, documented information concerning actual and proposed discharges, comments received from the public, and draft and issued NJPDES permits shall be made available to the public for inspection and duplication in accordance with Section 9 of the State Act and pursuant to N.J.S.A. 13:1E-1 et seq.

(b) This subchapter shall apply to any person who has applied for or received a NJPDES permit. However, those facilities also falling within the jurisdiction of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., and/or the Hazardous and Solid Waste Amendments of 1984 to the Act will be regulated by N.J.A.C. 7:26-1*[8]**7*, Availability of Information; Confidential Business Information.

7:26-1.9 Public access to information and requirements for Department determination of confidentiality

Any confidential information obtained or used in the administration of the State hazardous waste program, as provided in Section 3006 of "The Resource Conservation and Recovery Act of 1976", 42 U.S.C. 3251 et seq., and amendments thereto, shall be treated in accordance with N.J.A.C. 7:26-1*[8]**7*.

7:26-12.2 Permit application

(a) Any person who is required to have a permit (including new applicants and permittees with expiring permits) shall complete, sign and submit an application to the Department as described in this section. Procedures for applications, issuance and administration of emergency permits are found exclusively in N.J.A.C. 7:26-12.9. Procedures for claiming confidentiality are found in N.J.A.C. *7:26-18.1 et seq.* ***7:26-17.***

(b)-(l) (No change.)

SUBCHAPTER 17. AVAILABILITY OF INFORMATION;
CONFIDENTIAL BUSINESS
INFORMATION

7:26-17.1 Scope and exchange of information

(a) This subchapter sets forth the procedures for making information received by the Department in administering the hazardous waste program under N.J.A.C. 7:26-1, 4 and 7 through 12 available to the public and maintaining confidentiality of certain parts of that information.

(b) All information collected by or originated by the Department in connection with hazardous waste regulatory activities under N.J.A.C. *7:26-1.4* ***7:26-1, 4***, and 7 through 12 shall be generally available to the public except as provided otherwise in this subchapter. This requirement shall also include information regarding hazardous waste facilities regulated by N.J.A.C. 7:14A-1 et seq.

(c) Claims for confidentiality will be decided by the Department in accordance with the provisions of this subchapter.

(d) If a request for information is made for interagency or intraagency memoranda or letters, the Department may deny the request if such request is exempted from disclosure pursuant to 5 U.S.C. 552(b)(5).

(e) If a request for information is made for investigatory records, the Department may deny the request if such request is exempted from disclosure pursuant to 5 USC §552(b)(7) or N.J.S.A. 47:1A-3.

(f) Any information obtained or used in the administration of the hazardous waste program under N.J.A.C. 7:26-1*[1.4]* ***1, 4***, or 7 through 12, shall be available to EPA upon request without restriction. If the information has been submitted to the Department under

a claim of confidentiality, the Department shall submit that claim to EPA when providing information to EPA under this subchapter.

(g) When EPA supplies information to the Department which was submitted to EPA under a claim of confidentiality, the information shall be subject to the conditions set forth in 40 CFR Part 2 and this subchapter. If the Department obtains information from EPA that is not claimed to be confidential, the Department may make that information available to the public without further notice to any interested party.

7:26-17.2 Definitions

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

"Act" means the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.

"Business" means any person engaged in a business, trade, employment, calling or profession, whether or not all or any part of the net earnings derived from such engagement by such person inure, or may lawfully inure, to the benefit of any private shareholder or individual.

"Hazardous waste" means those solid wastes identified as hazardous wastes in accordance with N.J.A.C. 7:26-8.

"Person" means an individual, partnership, corporation, association, or other public or private organization or legal entity, including Federal, State or local governing bodies and agencies and their employees.

7:26-17.3 Classes of information

(a) The classes of information to be made available to the public and to EPA shall include, but not be limited to, the following:

1. Permits, permit applications and modifications;
2. Annual reports;
3. Closure plans;
4. Notification of a facility closure;
5. Contingency plan incident reports;
6. Delisting petitions and other petitions for variances or waivers;
7. Financial responsibility instruments;
8. Environmental monitoring data;
9. International shipment records;
10. Manifests and manifest exception, discrepancy and unmanifested waste reports;
11. Facility EPA identification numbers;
12. General correspondence with the facility;
13. Orders, consent orders, notices of violations, penalty settlement offers, civil and administrative penalty assessments, and other enforcement documents;
14. Inspection reports;
15. Results of corrective action investigations, undertaken pursuant to §3004 (u) and (v) of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; and
16. Analytical data submitted to the Department.

7:26-17.4 Administrative procedures and appeals for requests for information

(a) The scope of records maintained by the Department that are subject to requests for information shall be as broad as the scope of records as provided by the United States Environmental Protection Agency at 40 CFR 2.100(b).

(b) Materials which are routinely available to the general public are not confidential information and shall be supplied within a reasonable time upon written request by interested parties. Such materials include, but are not limited to final orders in case adjudications, press releases, copies of speeches, pamphlets and educational materials.

(c) A requester of non-confidential and confidential records including, but not limited to, records defined in (b) above shall not be required ***to supply*** any justification for the information request.

(d) All requests for information shall identify with specificity the information requested. The Department, in responding to requests containing incomplete identification of records, shall make reasonable efforts to assist a requester in identifying the records being sought. The Department's designated information officer shall con-

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tact the requester by telephone if possible or in writing to assist the requester to formulate his or her request. The Department's designated information officer shall also aid the requester in locating the office maintaining the records he or she seeks.

(e) If a request is formulated in general terms covering a large quantity of records, the Department's designated information officer shall assist the requester in narrowing the scope of the request to minimize the fees payable by the requester. This type of assistance shall not be used as a means to discourage requests, but to help narrow the scope of investigation when possible.

(f) Information concerning the fees in regard to both information requests and confidentiality claims is set forth in N.J.A.C. 7:26-17.11 and 17.12.

(g) Requests for information shall be answered in writing within 20 working days of receipt by the designated information officer. The written response shall designate which records will be released, which will not be released, and the reasons for denial.

1. If the request for information is incomplete or insufficient, the time span covering the State's request for clarification to the requester's reply shall not be counted in the 20 working days in (g) above.

2. Failure of the Department to issue a determination within the 20 day period shall be considered a denial. This shall authorize the requester to pursue further legal recourse and apply for an order to release the requested information pursuant to (h) below.

(h) If the Department denies a request for information, it shall inform the requester of the reasons for denial and shall advise the requester that he may appeal the denial to the Superior Court of New Jersey as provided in N.J.S.A. 47:1A-1 et seq.

*(k)**(i)* The Department may require prepayment of the fees set forth at N.J.A.C. *[7:26-18.11 and 18.12]* ***7:26-17.11 and 17.12***

When prepayment of a fee is required, the Department will release the information to the requester upon payment of the fee.

*(l)**(j)* The Department may allow the public to inspect and to make copies of any non-confidential information at the per copy fee set forth at N.J.S.A. 47:1A-2, which is as follows:

First to tenth page	\$0.50 per page
Eleventh page to 20th page	\$0.25 per page
All pages over 20	\$0.10 per page

7:26-17.5 Claims of confidentiality

(a) Information for which a confidentiality claim has been asserted will be treated by the Department as entitled to confidential treatment unless the Department determines that the information is not entitled to confidential treatment as provided in this section and N.J.A.C. 7:26-17.6.

(b) When the Department requires the submission of information which may be confidential, it shall advise the submitter of the information concerning departmental procedures which govern application for a confidentiality claim. If confidentiality is not requested upon submission to the Department, the Department will place the information in the files which are available to the public.

(c) The following procedures apply to confidentiality claims:

1. Claims of confidentiality for permit application information and any other information shall be substantiated in accordance with the criteria set forth in N.J.A.C. 7:26-17.6 at the time the information is submitted. Any applicable fees shall be enclosed with the submittal. Failure to request confidentiality or failure to pay the confidentiality fee shall be grounds for denial of the confidentiality claim.

2. If a submitter does not provide substantiation which satisfies the criteria of N.J.A.C. 7:26-17.6, the Department will notify the submitter by certified mail, return receipt requested of the requirement to do so. If the Department does not receive the substantiation within 10 days after the submitter receives the notice, the confidentiality claim is waived and the Department may make the information available to the public.

3. Within the Department, Division Directors or their appropriate designees shall determine, based on the criteria listed in N.J.A.C. 7:26-17.6, whether or not information is entitled to confidential treatment.

4. If, in accordance with the criteria listed in N.J.A.C. 7:26-17.6, the Department determines that the information is entitled to con-

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fidential treatment, it shall maintain the information in confidence (subject to court order, any applicable court rules or other provisions of this subchapter which authorizes disclosure in specific circumstances), and the Department shall so inform the business. If any other person's request for the release of the information is then pending under N.J.S.A. 47:1A-1 et seq., the Department shall state the basis for the denial and that it constitutes final agency action.

5. If, in accordance with the criteria listed in N.J.A.C. 7:26-17.6, the Department determines that the information is not entitled to confidential treatment, the Department shall so notify the business. Such notice of denial of a confidentiality claim shall be in writing and shall be furnished by certified mail, return receipt requested.

i. The notice shall state the basis for the determination, that it constitutes final agency action concerning the confidentiality claim, and that the Department shall make the information available to the public 10 days after the date of the business's receipt of the notice.

6. Documents, in whole or in part, may be determined by the Department to be confidential.

(d) When a request is made for access to confidential information, the request shall be denied and the Department shall notify the submitter of the information of the request by certified mail, return receipt requested.

7:26-17.6 Criteria for confidentiality determinations

(a) Where the following criteria are satisfied by the business in regard to a claim of confidentiality under N.J.A.C. 7:26-17.5, information shall be kept confidential:

1. The business has asserted a confidentiality claim, when it submits the information to the Department;

2. The business has satisfactorily shown that it has taken reasonable measures to protect the confidentiality of the information, and that it intends to continue to take such measures;

3. The information is not, and has not been, reasonably obtainable, without the business's consent, by other persons (other than governmental bodies) using legitimate means (other than discovery based on showing of social need in a judicial or quasi-judicial proceeding);

4. No statute requires disclosure of the information;

5. The business has satisfactorily shown that disclosure of the information would be likely to cause substantial harm to the business's competitive position; and

6. The business has paid all fees required by this subchapter when it submits the information to the Department.

7:26-17.7 Confidential files

(a) If the Department approves a claim of confidentiality, the submitter shall submit two copies of the documents.

1. One copy shall be stamped "confidential" ***on each page*** and shall contain all the information requested by the Department. This copy shall be maintained in a separate locked file and shall be accessible to State employees only as necessary for regulatory purposes, or as otherwise provided in the subchapter.

2. A second copy with the confidential information deleted shall be placed in the files available to the public. The second copy shall carry a notation that confidential material has been deleted.

7:26-17.8 Exception to granted confidentiality claims

(a) If the Department finds that disclosure of information covered by a confidentiality claim would serve to alleviate an emergency situation posing an imminent and substantial danger to public health or safety, it may:

1. Disclose confidential information to any person whose role in alleviating the danger to public health or safety or the environment necessitates that person's knowing the information. Any such disclosure shall be limited to the minimum information necessary to enable the person to whom it is disclosed to carry out that person's role in alleviating the dangerous situation.

2. Any disclosure made pursuant to this section shall not be deemed a waiver of a confidentiality claim nor shall it, by itself, be grounds for any determination that the information is no longer entitled to confidential treatment.

(b) Information required for legal proceedings that is protected by confidentiality claims will be released only when properly sub-

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poenaed for a court proceeding or an investigative committee impaneled by the Federal or State Legislature.

7:26-17.9 Access to and safeguarding of confidential information

(a) Unless specifically provided for by Federal law, State law, court order, or applicable court rule, no person shall have access to information which has been determined to be entitled to confidential treatment, other than:

1. The designated Department personnel;
2. Federal or other State agencies; or
3. Authorized representatives of the Department, subject to the provisions of this subchapter.

(b) Each departmental officer or employee who has custody or possession of confidential information shall take appropriate measures to properly safeguard such information and to protect against its improper disclosure.

(c) No departmental officer or employee may disclose, or use for his or her private gain or advantage, any confidential information which comes into his or her possession, or to which he or she gains access, by virtue of his or her official position of employment, except as authorized by this subchapter.

(d) If the Department finds that any person has violated the provisions of this subchapter, it may:

1. Commence a civil action in Superior Court for a restraining order and an injunction barring that person from further disclosing confidential information; and
2. Pursue any other remedy available by law.

(e) In addition to any other penalty that may be sought by the Department, violation of this subchapter by a departmental employee shall constitute grounds for dismissal, suspension, fine, or other adverse personnel actions.

7:26-17.10 Class determinations

(a) The Department may, through the promulgation of amendments in accordance with the provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., make a determination that a certain class of information is or is not entitled to confidential treatment if it finds that:

1. The Department possesses, or is obtaining, related items of information; and
2. One or more characteristics common to all such items of information will necessarily result in identical treatment for each such item, and that it is therefore proper to treat all such items as a class.

(b) A class determination shall clearly identify the class of information to which it pertains.

(c) A class determination shall state that all of the information in the class:

1. Fails to satisfy one or more of the applicable criteria in N.J.A.C. 7:26-17.6 and is therefore ineligible for confidential treatment; or
2. Satisfies the applicable criteria in N.J.A.C. 7:26-17.6 and is therefore eligible for confidential treatment.

7:26-17.11 Procedure regarding fees for information requests

(a) Except as provided in (b) below, requesters shall pay for all expenses incurred by the Department in identifying and copying requested records.

(b) No payment is required for the following services:

1. The cost of reviewing requests for information and preparing and reviewing written responses thereto;
2. For furnishing documents requested by USEPA;
3. For furnishing documents requested by and for the official use of other State agencies; or
4. For furnishing documents needed by a State contractor or grantee to perform the work required by a State contract or grant.

(c) All fee payments shall be in the form of a check or money order payable to the "Treasurer, State of New Jersey" and shall be submitted to the designated information officer.

(d) If the Department estimates that the fee for information requests will exceed \$25.00 and the requester has not submitted payment in advance to cover the estimated fees, the Department shall notify the requester of the amount of the estimated fees or such portion thereof as can readily be estimated. In such cases, the Department shall not release the information to the requester until it receives

the total amount of fees due or estimated to become due. Such notice shall be transmitted to the requester within 10 working days after the Department has made the initial determination that the records are available.

(e) Where an estimate fee paid by the requester in advance exceeds the fee chargeable under the fee schedule for services actually performed, the Department shall refund the balance. Where the actual fees due for the services exceed the estimate, the requester shall remit the amount of the actual fees before the copies are released. In such cases, the Department shall not release the information to the requester until payment has been received.

(f) The fee for information requests may be reduced or waived by the Department if the public interest would be served thereby. The Department shall consider, but is not required to grant reduction or waiver of fees in connection with each request from a representative of the press or other communications medium, or from a public interest group.

1. A request for reduction or waiver of fees shall be addressed to the appropriate Division or Bureau which is responding to the request for records.

2. The Division or Bureau shall initially determine whether the fee shall be reduced or waived, and shall so inform the requester.

3. The requester may appeal the determination of the Division or Bureau by letter addressed to the appropriate Assistant Commissioner. The Assistant Commissioner shall decide such appeals.

(g) In the event that a requester who is in arrears for previous requests makes a request for documents, whether requested under this subchapter or any other Department rule, the Department may deny the request until the arrears have been paid in full.

1. Any request made by an individual who specifies an affiliation with, or representation of, a corporation, association, law firm, or other organization shall be deemed to be a request by the corporation, association, law firm, or other organization. If an organization can show that the person who made the request for which payment is overdue did not make the request on behalf of the organization, the organization will not be considered in arrears, but the individual shall be.

7:26-17.12 Fee schedule for confidentiality claims

Any person submitting documents to the Department under a claim of confidentiality under N.J.A.C. 7:26-17.5, shall submit a check in the amount of \$250.00 for the first 50 confidential pages and \$1.00 for each page thereafter, to cover the costs of evaluating the confidentiality claim.

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Hazardous Waste; Application Signatories

Adopted Amendment: N.J.A.C. 7:26-12.2

Proposed: January 5, 1987 at 19 N.J.R. 11(b).

Adopted: January 4, 1988, by Richard T. Dewling,

Commissioner, Department of Environmental Protection.

Filed: January 4, 1988 as R.1988 d.56, with technical changes not requiring additional notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1E-6, 13:1D-9 and 58:10A-4.

Effective Date: February 1, 1988.

Expiration Date: November 4, 1990.

DEP Docket Number: 057-86-12.

AGENCY NOTE: A proposed amendment to N.J.A.C. 7:26-12.2(j) was originally published in the New Jersey Register on December 16, 1985 at 17 N.J.R. 2941(a) as a result of the Chemical Industry Council's Petition for Rulemaking filed pursuant to N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6 with the Department of Environmental Protection (Department) on April 29, 1982. The proposal concerned certification and signatory requirements for permits and related reports, and was based on Federal regulation (see 48 FR 39,611, 1983).

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The December 16, 1985 proposed amendment provided that all permit applications be signed by: a responsible corporate officer (president, secretary, treasurer or vice president) or the manager of a facility which employs more than 250 people or has annual sales or expenditures exceeding \$25,000,000. The existing rule required signature by "a principal executive officer of at least the rank of vice president."

The December 16, 1985 proposed amendment at N.J.A.C. 7:26-12.2(k) provided that any person who signs a permit application or report shall certify under penalty of law that the document was prepared under the signer's direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted and that

[b]ased on my inquiry of the persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

At the same time, the proposed amendment deleted the requirements that the signer personally examine and be familiar with the information submitted in the application.

The New Jersey Department of Law and Public Safety, Division of Criminal Justice submitted a comment on February 20, 1986 which expressed concern that the proposed amendment did not require the signer to certify that the information was true, accurate and complete, but allowed the signer to depend upon an inquiry of other persons that the information was true, accurate, and complete. The comment asserted that the proposed amendment would allow corporate officers to avoid responsibility for providing false and misleading information. The comment suggested the following language "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 penalties for submitting false, inaccurate, or incomplete information including fines or imprisonment for knowing or negligent violations."

As a result of receiving this comment, the Department determined not to adopt the original proposed amendment and repropose N.J.A.C. 7:26-12.2(j) and (k) on January 5, 1987 at 19 N.J.R. 11(b). The repropose amendment contained a two-tiered corporate certification which required that the highest ranking officer of the facility to which the information pertained certify as to personal knowledge that the information is true, accurate and complete, and that a principal corporate officer of at least the rank of vice president certify he or she has

personally examined and [is] familiar with the information submitted in this application and that based upon 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.

Reproposed subsection (k) provided that all reports required by permits and other information requested by the Department shall be signed either by a principle executive officer of at least the rank of vice president (who must certify that the information is true, accurate and complete based upon inquiry and belief), or by a duly authorized representative of that person (who must certify the information is true, accurate and complete).

Finally, the text of the present adoption has been changed at N.J.A.C. 7:26-12.2(j)1i to afford conformity and consistency with the recently adopted regulations at N.J.A.C. 7:26B-1.13 which implement the Environmental Cleanup Responsibility Act.

Summary of Public Comments and Agency Responses:

The Department received written comments concerning the proposal from six commenters during the public comment period, which closed February 4, 1987.

COMMENT: The repropose amendment deserves strong support. An applicant should be expected to certify that the information in an application is "true, accurate, and complete." Moreover, applicants should be subject to significant civil and criminal penalties.

RESPONSE: The Department appreciates the comment.

COMMENT: The Department should adopt the less stringent Federal consolidated permit and RCRA signatory and certification rules, as was reflected in the original proposal. Requiring signature and certifications from high-level corporate officers who may be distantly located from facilities is a burdensome process. The imposition of the proposed requirements on other State programs, for example, hazardous waste facili-

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ties, secondary containments, underground storage tanks, surface impoundments, and retention basins, will be burdensome and costly.

RESPONSE: The Department may adopt requirements which are more stringent than the Federal regulations. By requiring the participation, review, and certification of high-ranking business and government officers for facility permits and reports, the adopted amendments will encourage greater corporate care and accountability in the submission of information. In the corporate context, many New Jersey facilities are not independent and are part of a larger corporate entity. Corporate compliance is furthered by placing liability for non-compliance upon the highest officials. Therefore, requiring the highest levels of corporate management to review and certify the actions of its subordinate or subsidiary branch facilities is most reasonable, particularly in light of the risks posed by the management of hazardous waste.

Moreover, the language of the certification requires only the belief that the submitted information is true, accurate, and complete based upon "inquiry of those individuals immediately responsible for obtaining the information."

The adopted signatory requirement will apply to such documents as permit applications, annual reports, closure and post-closure documents and financial assurance submissions. It should be noted that underground storage tanks that are not used to store hazardous wastes are not within the scope of the amendment. Therefore, compliance with the certification requirements is not unduly burdensome.

Similar signatory requirements have been adopted as part of the rules which implement the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq., (see N.J.A.C. 7:26B-1.13), and the New Jersey Pollutant Discharge Elimination System rules at N.J.A.C. 7:14A-2.4.

COMMENT: The current signatory requirements adequately protect the environment and human health, and do not have the potential for allowing corporate individuals to avoid the responsibility for providing false and misleading statements. The proposed amendment at N.J.A.C. 7:26-12.2(j), by imposing personal liability, places undue burden on middle managers to certify to truth, accuracy, and completeness, as they depend on other persons to supply information. Facilities are usually not set up so that a single individual can certify as required in the proposal. It is customary for the individual to depend upon the inquiry of other individuals, as well as records, etc., to determine the truth, accuracy, and completeness of a document. The amendment does not afford a "duly authorized person" the same protection as that afforded to a corporation, general partner or proprietor.

RESPONSE: The adoption of the new signatory requirements will encourage the protection of the public health and the environment by requiring the highest responsible employee at a site to certify to personal knowledge of the truth, accuracy, and completeness of the information in question. In contrast, the prior rule set forth the less stringent standard of the signer's "information and belief." It is the Department's position that requiring a "duly authorized person" who is responsible for the workings of a facility on a day-to-day basis to certify that information is accurate and true is a reasonable and proper requirement of operation.

Responsibility for the operations at the site must be in some identifiable and responsible corporate, partnership, or governmental officer or official who has personal knowledge of these activities. The Department cannot be required to sanction the unwillingness of the owner or operator of a site to identify an official willing to take responsibility for the operations and remediation of any contamination at that site.

A "duly authorized person" must certify that the information in the document is "true, accurate and complete." If the person is unable to make this statement, that person should not be authorized to sign.

COMMENT: The phrase "at the facility" is unclear as to how to proceed when the regulated facility constitutes a small portion of the total business site (see the proposal at N.J.A.C. 7:26-12.2(j)1i). The amendment should provide that a signatory requirement be established for the "highest ranking official" with management responsibility for the regulated facility to which the information pertains.

RESPONSE: In situations when the regulated facility constitutes a portion of the entire business site, the adopted signatory requirement applies only to the regulated facility to which the information pertains, and not to the entire business site.

COMMENT: In large diversified corporations, cases will arise which concern temporary hazardous waste storage facilities. It would be difficult to obtain signatures of executive officers in these situations (see the proposal at N.J.A.C. 7:26-12.2(j)2.)

RESPONSE: With reference to the temporary storage of hazardous wastes, see N.J.A.C. 7:26-9.3(a), which provides that a generator may

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accumulate hazardous waste on-site for 90 days without a permit if the conditions which are set forth are complied with. N.J.A.C. 7:26-9.3(c) sets forth a procedure for obtaining an extension of the 90 day period, and N.J.A.C. 7:26-12.9(l) enumerates the standards for obtaining an emergency short-term permit. In these situations, the signatory requirements of the adopted amendments shall be complied with.

COMMENT: The proposed amendment refers to "this application and all attached documents" which leads to the conclusion that the N.J.A.C. 7:26-12.2(j)2 certification would apply only to permit applications and not to all documents.

RESPONSE: The certification and signatory requirements of N.J.A.C. 7:26-12.2(j) apply to permit applications, which include all documents attached thereto and all supplements thereto. The text of the rule has been changed to more clearly reflect this.

COMMENT: The proposed amendment to N.J.A.C. 7:26-12.2(k) provides that "all reports required by permits and other information requested by the Department shall be signed by a person described in j(2)i above, or by a duly authorized representative of that person." It is unclear what constitutes "other information requested by the Department". Moreover, the rule should be made clear whether generators who are not treatment, storage or disposal facilities or are subject to permit-by-rule regulation are required to comply with the proposed amendment.

RESPONSE: The rule applies to all reports and other information required by permits or by State hazardous waste rules which are requested by the Department. The rule does include generators of hazardous waste. Other information requested by the Department includes but is not limited to additional reporting requirements, such as waste minimization surveys and annual reports. The Department can request generators to submit annual reports and other information specified at N.J.A.C. 7:26-7. The certification requirement will not be applied to hazardous waste manifests.

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

7:26-12.2 Permit application

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

(j) All permit applications ***and attachments or supplements thereto*** shall contain the following signatures and two-part certification which provides the following:

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 (j)1 ***above*** shall be signed by the highest ranking ***[corporate, partnership, or governmental officer or official]* ***individual***** at the facility ***with overall responsibility for that 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 ***[application and all attached documents.]* ***document***** 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 (j)2 above 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.

(k) All reports required by permits and other information requested by the Department shall be signed by a person described in (j)2i above who shall make the certification set forth in (j)2 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 (j)2i above;

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2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or well field, superintendent or person of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

3. The written authorization is submitted to the Department;

4. If an authorization 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 this subsection shall be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

5. A duly authorized person shall make the following certification:

i. "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 penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment, for violations."

(a)

**DIVISION OF ENVIRONMENTAL QUALITY
Determination of Noise from Stationary Sources
Adopted New Rule: N.J.A.C. 7:29B**

Proposed: August 17, 1987 at 19 N.J.R. 1483(a).

Adopted: January 4, 1988, by Richard T. Dewling,

Commissioner, Department of Environmental Protection.

Filed: January 7, 1988, as R.1988 d.58, **without change**.

Authority: N.J.S.A. 13:1D-1 et seq. and 13:1G-4.

DEP Docket Number: 034-87-07.

Effective Date: February 1, 1988.

Expiration Date: February 1, 1993.

Summary of Public Comments and Agency Responses:

The proposal to adopt, without change, as new rules, the expired rules concerning the procedures for noise determination from stationary sources appeared in the August 17, 1987 New Jersey Register at 19 N.J.R. 1483. The comment period was held open until December 4, 1987 (19 N.J.R. 2092).

No comments received.

Full text of the adoption appears in the New Jersey Administrative Code at N.J.A.C. 7:29B.

HUMAN SERVICES

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

**Administration Manual Hospital and Special Hospital Manual, Physicians Manual, Nurse-Midwifery Services, Independent Clinic Manual
Comprehensive Maternity Care Services and
Comprehensive Pediatric Care Services
(HealthStart)**

Adopted New Rule: N.J.A.C. 10:49-3.1 through 3.20

**Adopted Amendments: N.J.A.C. 10:49-1.3, 1.4, 1.5;
10:52-1.7; 10:53-1.6; 10:54-1.1, 1.2; 10:58-1.2, 1.3;
10:66-1.3, 1.6**

Adopted Repeal: N.J.A.C. 10:49-1.6

Proposed: November 2, 1987 at 19 N.J.R. 1978(a)

Adopted: January 7, 1988, Drew Altman, Commissioner,
Department of Human Services.

Filed: January 8, 1988 as R.1988 d.62, **with substantive and technical changes** not in violation of N.J.A.C. 1:30-4.3.

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Authority: N.J.S.A. 30:4D-2, 30:4D-3, 30:4D-5, 30:4D-6, 30:4D-7, 30:4D-12, and 1920(a) of the Social Security Act.

Effective Date: February 1, 1988.

Expiration Date: N.J.A.C. 10:49, August 12, 1990; N.J.A.C. 10:53, April 29, 1990; N.J.A.C. 10:54, March 3, 1991; N.J.A.C. 10:58, March 3, 1991; N.J.A.C. 10:66, December 15, 1988.

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

Summary of Changes between Proposal and Adoption:

There are several changes being made upon adoption. The following summary explains the changes and reason(s) for the changes.

The summary should be amended to add the following language as part of the package of Health Support Services. The services should include nutrition assessment and basic guidance services as well as those listed in paragraph 4 of the proposal (Summary).

N.J.A.C. 10:49-3.3(a) is being amended to allow local health departments to become Medicaid providers (of HealthStart services) if they meet the New Jersey Department of Health Improved Pregnancy Outcome criteria.

N.J.A.C. 10:49-3.5(d) has been added. This new subsection indicates that independent clinics, local health departments, and hospital outpatient departments may provide just the HealthStart Health Support Services component only when they have entered into a written agreement with a private practitioner(s) who will provide the HealthStart Medical Care Service component. This agreement shall delineate which party is to take primary responsibility for provision for all HealthStart Services. N.J.A.C. 10:49-3.6(a) has been deleted and replaced with new text which indicates that physician(s) or nurse-midwives may enter into an agreement with independent clinics, local health departments, and hospital outpatient departments. The rationale for the changes listed above are to enable more providers to participate in HealthStart, thereby making more HealthStart services available to Medicaid patients. N.J.A.C. 10:49-3.3(d)3 has been added to indicate that a HealthStart Pediatric Care Provider must provide all services in one pediatric clinic to ensure continuity of care.

This additional paragraph emphasizes the requirement that HealthStart Pediatric services be delivered at one site. N.J.A.C. 10:49-3.15(b) has been amended to indicate that Pediatric Providers must provide 24 hour telephone access for each child.

N.J.A.C. 10:49-3.1(a) has been amended by deleting the word "arrange." The HealthStart provider's responsibility is to provide a comprehensive package of services for pregnant women and dependent children. The word "provide" was in the original proposal.

N.J.A.C. 10:49-3.2(c) has been amended to indicate that a HealthStart Comprehensive Pediatric Care Provider may make arrangements for the provision of sick care. The proposal gave the impression that sick care had to be provided directly by the provider.

The requirements for HealthStart Maternity Care Providers have been clarified by indicating that participation in program evaluation and training activities shall be in accordance with Guidelines for HealthStart Providers issued by the New Jersey Department of Health. In addition, HealthStart Maternity Care Providers may determine presumptive eligibility in accordance with eligibility criteria contained in N.J.A.C. 10:72. (Reference is made to N.J.A.C. 10:49-3.3(c)1 and 2).

The qualifications for case coordinator have been modified to allow a licensed professional nurse to function as a case coordinator. This modification reflects the fact that licensed RNs currently perform this function. Case coordinators may also have a Bachelor's degree in Social Work, health or behavioral sciences, as indicated in the original proposal.

In addition, nutrition and social-psychological basic counseling shall be provided by a case coordinator with at least one year of experience in providing services to maternity patients or by the appropriate specialist in each of the areas or by a registered nurse or obstetrical care provider (N.J.A.C. 10:49-3.11(c) and (i)).

Some revisions to the billing instructions have been made in N.J.A.C. 10:49-3.18.

There were also changes in the procedure codes which were proposed at N.J.A.C. 10:49-3.19. Two new codes were added. The first code recognizes delivery by cesarean section (W9031). The second code establishes pediatric continuity of care services provided by certain hospital outpatient departments (W9070). The reimbursement for code W9031 is \$435.00 for a specialist and \$403.00 for a non-specialist. The reimbursement for code W9070 is \$13.00.

The Division believed a separate code was necessary for these two procedures. There will be no change in the economic impact statement that appeared in the original proposal because the economic impact statement included these services in this computation.

Procedure Codes W9027 and W9027WM that appeared in the proposal were renumbered as W9029 and W9029WM on adoption. The requirement that the Maternity Services Summary Data Form accompany the claim form sent to Medicaid was deleted. Providers should complete the Maternity Services Summary Data Form and forward it to the Department of Health, HealthStart Project. There is no change in the maximum fee allowance for these codes. This procedure code includes regular delivery and postpartum visit for patients who have had a vaginal delivery and who return to the provider for a follow up visit within 60 days from the date of delivery.

Procedure codes W9027 and W9027WM were added upon adoption to pay providers separately for normal vaginal delivery when the deliverer does not give the postpartum care.

Procedure codes W9028 and W9028WM as W9029 and W9029WM were added on adoption to allow for these instances in which the patient does not return to the physician, or certified nurse-midwife, who did their actual delivery. This particular code could be used for the postpartum visit after both a vaginal or cesarean delivery.

The following codes were renumbered with minor textual change but no change in reimbursement. Procedure code W9028 and W9028WM (in the proposal) were changed to W9030 and W9030WM on adoption. Procedure codes W9029 through W9032 were numbered to W9040 through W9043. These codes are the maternity health support codes. There was no change in the maximum fee allowance for these codes.

Procedure code W9069 (HealthStart Pediatric Care Registration) contains textual changes which allow for the use of this code in conjunction with an annual health maintenance code performed by a physician in a hospital outpatient department where physicians bill independently for professional services.

These changes are not so substantive as to require reproposal. They do not impose any additional burden upon providers of HealthStart Services. These providers are required to meet the same standards, render the same package of services, and be reimbursed at the same rate as was specified in the original proposal. The changes made are designed to increase the availability of services to pregnant women and dependent children.

Additional procedure codes were necessary in order to reimburse for deliveries by cesarean section and to allow for those instances where the patient does not return to the provider who delivered the child for the follow up postpartum visit (for either regular delivery or delivery by cesarean section).

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

10:49-1.3 Eligible providers

(a) An eligible provider is any individual, partnership, association, corporation, institution or any other public or private entity designated below, meeting applicable requirements and standards for participation in the New Jersey Medicaid Program; and, where applicable, holding a current valid license. Providers are required to complete a provider application form (FD-20), to sign a provider participation agreement (FD-62) (see Exhibits V through VI at the end of this section); a specialized agreement; and/or such other documentation as the program may require, depending on the nature of the provider. All provider applicants and reapplicants defined as disclosing entities (all Medicaid providers other than an individual practitioner and/or a group of practitioners) are required to complete HCFA form 1513, Ownership and Control Interest Disclosure Statement. Providers prior to 1973 were not required to utilize provider agreement forms; however, they must comply with all applicable State and Federal Medical laws, policies, rules and regulations.

1. through 3. (No change in text.)

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

EXHIBIT V (No change.)

10:49-1.4 Services covered by the New Jersey Medicaid Program

(a) New Jersey Medicaid individuals are eligible for covered services when the services are provided in conjunction with program requirements specifically outlined in the second chapter of each ser-

vice manual; however, for Medically Needy individuals some Medicaid services are not available or are only available to certain eligible Medically Needy groups (see (b) below). Any limitations imposed will be consistent with the medical necessity of the patient's condition as determined by the attending physician or other practitioner*[s]* and in accordance with standards generally recognized by health professionals and promulgated through the New Jersey Medicaid Program. The covered services listed below in alphabetical order are available to the regular Medicaid population:

1. through 6. (No change in text.)

7. HealthStart Maternity and Pediatric Care Services include packages of comprehensive services provided by independent clinics, hospital outpatient departments, ***local health departments meeting New Jersey Department of Health Improved Pregnancy Outcome criteria,*** physicians, and nurse midwives, either directly or through linkage with other HealthStart care providers. (See N.J.A.C. 10:49-3 for information about HealthStart Services and provider requirements for participation.)

Renumber 7. through 12. as 8. through 13. (No change in text.)

14. Maternity Care Services under HealthStart means a package of comprehensive maternity care services including two components—Medical Maternity Care and Health Support Services. (See N.J.A.C. 10:49-3 for information about HealthStart Services and provider requirements for participation.)

Renumber 13. through 17. accordingly as 15. through 19. (No change in text.)

20. Pediatric Care Services under HealthStart means a comprehensive package of pediatric services. (See Subchapter 3 of this chapter for information about HealthStart Services and provider requirements for participation.)

Renumber 18. through 23 as 21. through 26. (No change in text.)

10:49-1.5 General exclusions

(a) The items listed in this section are general exclusions from New Jersey Medicaid coverage. There are certain additional specific exclusions and limitations which are detailed in the appropriate provider manual sections. Payment is not made for:

1. (No change in text.)

2. Free Services—Services provided to all persons without charge may not be billed to the Medicaid program. Services and items provided without charge through programs of other public or voluntary agencies (for example, New Jersey State Department of Health, New Jersey Heart Association, First Aid or Rescue Squads, and so forth) must be utilized to the fullest extent possible.

Renumber 2. through 14. as 3. through 15. (No change in text.)

10:49-1.6 (Reserved)

SUBCHAPTER 3. HEALTHSTART—COMPREHENSIVE MATERNITY CARE SERVICES AND COMPREHENSIVE PEDIATRIC CARE SERVICES

10:49-3.1 Purpose

(a) The purpose of HealthStart is to provide *[or arrange]* for comprehensive maternity and child health care services for all pregnant women (including those determined to be presumptively eligible) and for children (through two years of age) in the State of New Jersey who are eligible for Medicaid benefits.

10:49-3.2 Scope of services

(a) HealthStart maternity care services include all medical services recommended by the American College of Obstetricians and Gynecologists, as well as a program of health support services. HealthStart pediatric care services include the nine preventive visits as recommended by the American Academy of Pediatrics and all of the necessary immunizations. This subchapter includes provisions for provider participation, standards for service delivery, procedure codes from the HCFA, Common Procedure Coding System (HCPCS), and directions for submitting claims.

(b) HealthStart Comprehensive Maternity Care includes two components, Medical Maternity Care Services and Health Support Services as follows:

1. Medical Maternity Care Services include, but are not limited to:

- i. Ambulatory prenatal services;
- ii. Admission arrangements for delivery;
- iii. Obstetrical delivery services; and
- iv. Postpartum medical services.

2. Health Support Services include, but are not limited to:

- i. Case coordination services;
- ii. Health education assessment and counseling service;
- iii. Nutrition assessment and counseling services;
- iv. Social-psychological assessment and counseling services;
- v. Home visitation; and
- vi. Outreach, referral and follow-up services.

(c) HealthStart Comprehensive Pediatric Care includes nine preventive child health visits; all the recommended immunizations; *[sick care;]* case coordination and continuity of care including, but not limited to, ***the provision or arrangement for sick care,*** 24 hour telephone access, and referral and follow-up for complex or extensive medical, social, psychological, and nutritional needs.

10:49-3.3 HealthStart provider participation criteria

(a) Providers that are eligible to participate as a HealthStart provider are: independent clinics, hospital outpatient departments, ***local health departments meeting the New Jersey Department of Health Improved Pregnancy Outcome criteria,*** physicians and physician groups, and nurse midwives approved as providers in the New Jersey Medicaid Program.

(b) In addition to New Jersey Medicaid Program rules applicable to provider participation, HealthStart providers shall:

1. Sign an Addendum to the New Jersey Medicaid Program Provider Agreement; and
2. Have a valid HealthStart Maternity Care Certificate and/or a Pediatric Care Certificate; and

3. Provide maternity care and/or pediatric care services in accordance with the requirements for issuance of a "HealthStart Maternity Care Certificate" and/or a "HealthStart Pediatric Care Certificate" and in accordance with the New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers and HealthStart Pediatric Care Providers.

(c) In addition to (a) and (b) above, a HealthStart Maternity Care Provider with more than one care site or more than one maternity clinic at the same site that uses different staff, shall apply for a separate HealthStart Maternity Care Certificate for each separate clinic. Within an agency, only those sites which hold a certificate will be reimbursed for HealthStart services; and

1. Shall participate in program evaluation and training activities, including, but not limited to, site monitoring, agency and patient record review, and submission of required summary information on each patient ***according to the New Jersey Department of Health, Guidelines for HealthStart providers*;** and
2. May determine presumptive eligibility for New Jersey Medicaid if approved by the Division of Medical Assistance and Health Services.

(d) In addition to (a) and (b) above, a HealthStart Pediatric Care Provider*[,]* shall:

1. Participate in program evaluation and training activities, including but not limited to, submission of a Pediatric Preventive Child Health form and documentation of outreach and follow-up activities in the patient's record; and
2. Enroll eligible children in Early ***and*** Periodic Screening, Diagnosis and Treatment (EPSDT). (Hospital outpatient departments are excluded from this requirement.)

3. Provide all components of the Child Health screening services within one clinic when the HealthStart Pediatric Care Provider is the outpatient department of a hospital. Referral to other clinics for screening is prohibited.

(e) A site review may be required to ascertain an applicant's ability to meet the Standards for a HealthStart Certificate in the appropriate area and to provide services in accordance with the New Jersey State Department of Health Guidelines for HealthStart Providers in the appropriate area.

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(f) A HealthStart Provider Certificate shall be reviewed at least every 18 months from the date of issuance.

(g) An application for a HealthStart Provider Certificate is available from:

HealthStart
New Jersey State Department of Health
CN 360
Trenton, NJ 08625.

(h) An application for a New Jersey Medicaid HealthStart Provider agreement is available from:

Chief, Provider Enrollment Unit
New Jersey Department of Human Services
Division of Medical Assistance and Health Services
CN 712
Trenton, NJ 08625

10:49-3.4 Termination of HealthStart certificate

(a) The New Jersey State Department of Health will be responsible for enforcement of its requirements for HealthStart provider Certificates and for evaluation and enforcement of its requirements within the Standards and Guidelines for HealthStart providers.

(b) Failure to comply with HealthStart Certificate Standards shall be cause for termination of the HealthStart provider Certificate. Providers who are terminated shall have the right to request a hearing pursuant to the procedures in N.J.A.C. 10:49-1.16.

10:49-3.5 Standards for a HealthStart Maternity Care Provider Certificate

(a) Comprehensive maternity care services must be integrated and coordinated.

(b) HealthStart Maternity Care providers, excluding physicians and nurse midwives who are in private practice, shall provide for comprehensive maternity care services within the following organizational requirements:

1. The provider shall provide directly or through an approved agreement, at one contiguous site, the following services: ambulatory prenatal and postpartum care; case-coordination services; nutrition assessment*[:]**,* guidance and counseling services; health education assessment and instruction; social-psychological assessment, guidance and counseling;

2. The provider shall provide or arrange for the admission of the patient to the appropriate level of care facility for obstetrical care delivery services;

3. The provider shall provide or arrange for all necessary laboratory services;

4. The provider shall provide one or more prenatal home visit*s* for each high risk patient;

5. The provider shall provide at least one postpartum home visit for each high risk patient;

[6. Providers who provide only one component of the Comprehensive Maternity Care Service, either the Medical Care Service component or the Health Support Service component, shall demonstrate the ability to obtain the other component through an agreement with another HealthStart provider. This agreement shall delineate which party is to take primary responsibility for provision of all HealthStart services:]

*[7.]**6.* The provider shall adopt procedures and policies which assure the delivery of coordinated, integrated and comprehensive care:

*[8.]**7.* The provider shall arrange for admission of patients to appropriate level of care facilities for obstetrical services; and

*[9.]**8.* The provider shall provide referral and follow-up services, which must include but not be limited to: referral for specialized evaluation, counseling and treatment for extensive social, psychological, nutrition and medical needs.

(c) The provider shall be responsible for linking the mother and newborn infant to a pediatric care provider; if feasible, the linkage should be with a HealthStart Pediatric Care provider.

***(d) Independent clinics, hospital outpatient departments, and local health departments may provide just the HealthStart Health Support Services component only when they have entered into a written agreement with a private practitioner(s) who will provide the HealthStart**

Medical Care Services component. This agreement shall delineate which party is to take primary responsibility for provision of all HealthStart services.*

10:49-3.6 Standards for the HealthStart Maternity Care Certificate for Physicians or Nurse Midwives in Private Practice

*[(a) Physicians and nurse midwives in private practice must meet the same requirements as in N.J.A.C. 10:49-3.5, except two sites may be utilized for the provision of: ambulatory prenatal and postpartum care; case coordination services, nutrition assessment and counseling services, health education assessment and instruction, social-psychological assessment and counseling. Two sites may be utilized only when one site for provision of services is not feasible.

(b) If two sites are utilized, a case conference on each patient, including but not limited to, the medical practitioner and case coordinator, must occur whenever there is a change in the Care Plan, but at least once a trimester.

(c) Additionally, if two sites are utilized, following each visit, a summary report, including pertinent findings, identification of problem(s), follow-up needs and amendments to the Care Plan must be communicated and documented between the case coordinator and obstetrical provider.]*

***(a) Physicians and certified nurse midwives in private practice must meet the same requirements as in N.J.A.C. 10:49-3.5 except they may provide just the medical care component as long as they have entered into a written agreement with a single HealthStart provider who will provide the HealthStart Health Support Services component. This agreement shall delineate which party is to take primary responsibility for the provision of all HealthStart services.**

1. Separate certificates for each component shall be issued.

2. Two sites may be utilized only when one site for the provision of services is not feasible.*

10:49-3.7 Access to Service

(a) All HealthStart services shall be accessible to patients.

(b) HealthStart Maternity Care providers shall facilitate patient access to services by scheduling an initial appointment within two weeks of the patient's first request for services.

(c) HealthStart Maternity Care providers shall provide or arrange for 24 hour access to case coordination and medical services for emergency situations.

(d) HealthStart Maternity Care providers shall arrange for language translation and/or interpretation services.

(e) HealthStart Maternity Care providers may implement a presumptive eligibility processing if approved by the Division of Medical Assistance and Health Services to institute this process.

(f) HealthStart Maternity Care providers shall undertake community outreach activities to encourage women to seek early prenatal care and increase awareness of the availability of maternity care services.

10:49-3.8 Plan of Care

(a) A Care Plan shall be developed and maintained by the case coordinator for each patient.

(b) A Care Plan shall be based on the medical, nutritional, social-psychological and health education assessments.

(c) A Care Plan shall include but not be limited to: identification of risk conditions and/or problems, prioritization of needs, outcome objectives, planned interventions, time frames, referrals and follow-up activities, and identification of staff persons responsible for the services.

(d) The Care Plan shall be developed and revised in consultation with the patient and staff providing services to the patient.

(e) The initial Care Plan shall be completed after a case conference and no later than one month after the initial registration visit.

10:49-3.9 Maternity Medical Care Services

(a) The Medical Care services include antepartum, intrapartum and postpartum care provided by the obstetrical care practitioner(s) in accordance with New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers.

(b) Prenatal services are as follows:

1. Frequency of prenatal visits for an uncomplicated pregnancy shall be every four weeks during the first 28 weeks; then every two

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weeks until 36 weeks; and weekly thereafter. Prenatal visits for complications should be scheduled as needed;

2. Initial prenatal visit content shall include but not be limited to:
 - i. history;
 - ii. review of systems;
 - iii. comprehensive physical examination;
 - iv. risk assessment;
 - v. patient counseling;
 - vi. routine laboratory tests;
 - vii. development of the Care Plan;
 - viii. special tests and/or procedures as medically indicated;
3. Subsequent prenatal visit content shall include, but not be limited to the:
 - i. review and revision of the patient Care Plan;
 - ii. interim history;
 - iii. physical examination;
 - iv. patient counseling and treatment;
 - v. laboratory tests;
 - vi. special tests and/or procedures which are medically indicated;
 - vii. identification of new or developing problems;
 - viii. management, including transfer, of any new or persistent problems;
4. Transfer of the prenatal records to the hospital of delivery no later than 34 weeks gestation.

(c) Obstetrical delivery services must include, but not be limited to:

1. determination of and arrangements for delivery site;
2. attendance at or provision for obstetrical delivery by a qualified physician or certified nurse midwife;
3. medical treatment during the postpartum stay.

(d) A postpartum visit shall be provided by the 60th day after delivery, and must include but not be limited to the:

1. history;
2. review of the prenatal, labor and delivery record;
3. physical examination;
4. patient counseling and treatment;
5. patient/infant assessment;
6. referral/consultation, as indicated;
7. procedures/tests, as indicated.

(e) All HealthStart Maternity Care providers must have *[written]* policies and protocols which are consistent with national standards regarding consultation, and/or transfer of medically high risk patients to tertiary level maternity care facilities or specialists, and to genetic counseling and testing facilities.

10:49-3.10 Health Support Services

(a) Case coordination services shall facilitate the delivery of continuous, coordinated and comprehensive services for each patient in accordance with New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers as follows:

1. A permanent case coordinator shall be assigned to each patient no later than two weeks after the HealthStart enrollment visit.

2. Prenatal case coordination activities shall include but not be limited to:

- i. orienting the patient to all services;
- ii. developing, maintaining and coordinating the Care Plan in consultation with the patient;
- iii. coordinating and monitoring the delivery of all services and referrals;
- iv. monitoring and facilitating the patient entry into and continuation with maternity services;
- v. facilitating and providing advocacy for obtaining referral services;
- vi. reinforcing health teachings and providing support;
- vii. vigorous follow-up for missed appointments and referrals;
- viii. arranging home visits;
- ix. meeting with the patient and coordinating patient care conferences;
- x. reviewing, monitoring and updating the patient's complete record.

3. Postpartum case coordination activities shall include but not be limited to:

- i. arranging, coordinating the postpartum visit and any home visit;
- ii. arranging with the obstetrical care provider to obtain the labor, delivery and postpartum hospital summary record no later than two (2) weeks after delivery;

iii. linking the patient to appropriate service agencies including: Women, Infants and Children Program (WIC), pediatric care (preferably with a HealthStart Pediatric Care provider), future family planning, Special Child Health Services County Case Management Unit and other health and social agencies, if needed;

iv. arranging for the transfer of pertinent information or records to the pediatric care and/or future family planning service providers;

v. coordinating referrals and following up on missed appointments and referrals;

vi. reinforcing health instruction for mother and baby.

(b) Nutrition assessment and basic guidance services must be provided to orient and educate all patients to nutritional needs during pregnancy and educate the patient to good dietary practices in accordance with New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers. Specialized nutrition assessment and counseling must be provided to those women with additional needs. Services shall be provided as follows:

1. Initial assessment services, which shall include but are not limited to:

- i. review of the patient's chart;
- ii. identification of dental problems which may interfere with nutrition;
- iii. nutrition history;
- iv. current nutritional status;
- v. determination of participation in WIC or other food supplement programs;

vi. identification of need for specialized nutrition counseling.

2. Subsequent nutrition assessment, which shall include but not be limited to:

- i. monitoring of weight gain/loss;
- ii. identification of special dietary needs;
- iii. identification of need for specialized nutrition counseling services.

3. Prenatal nutrition basic guidance, which shall include but not be limited to:

i. basic instruction on nutritional needs during pregnancy including balanced diet, vitamins and recommended daily allowances;

ii. review and reinforcement of other nutrition and dietary counseling services the patient may be receiving;

iii. instruction on food purchase, storage and preparation;

iv. instruction on food substitutions, as indicated;

v. discussion of infant feeding and nutritional needs;

vi. referral to food supplementation programs through the case coordinator.

4. Specialized nutrition assessment and counseling, which shall be provided to those women with additional needs.

5. Referral for extensive specialized nutritional service which shall be initiated by the medical care provider or the nutritionist under the supervision of the medical care provider in coordination with the case coordinator.

6. Postpartum nutrition assessment and basic guidance services which shall include but not be limited to:

i. review and reinforcement of good dietary practices;

ii. review of instruction on dietary requirement changes;

iii. instruction on breast feeding and/or formula preparation and feeding.

(c) Social-psychological assessment and basic guidance services shall be provided to all patients to assist the patient in resolving social-psychological needs, in accordance with New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers. Specialized social-psychological assessment and short-term counseling shall be provided to those women with additional needs. Services shall be provided as follows:

1. Initial social-psychological assessment services which shall include but are not limited to:

i. determining financial resources and living conditions;

ii. determining the patient's personal support system;

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- iii. determining the patient's attitudes and concerns regarding the pregnancy
 - iv. ascertaining present and prior involvement by the patient with other social programs or agencies and current social service needs;
 - v. ascertaining educational and/or employment status and needs;
 - vi. identification of the need for specialized social-psychological and/or mental health evaluation and counseling services;
2. Subsequent social-psychological assessment services, which shall include but not be limited to:
- i. determination of patient's reaction to pregnancy;
 - ii. ascertaining the reaction of family, friend and actual support person to the pregnancy;
 - iii. identification of the need for social service interventions and advocacy;
 - iv. identification of the need for specialized social-psychological and/or mental health evaluation and counseling;
3. Basic social-psychological guidance, which shall include but not be limited to:
- i. orientation and information on available community resources;
 - ii. orientation regarding stress and stress reduction during pregnancy;
 - iii. assistance with arrangements for transportation and for child care and financial needs;
4. Specialized, short-term social-psychological counseling which shall be provided to those women who are identified through assessment or basic counseling as having need for more intense service.
5. Referral for extensive specialized social-psychological services, which shall be initiated by the medical care provider or by the social worker under the supervision of the medical care provider and in coordination with the case coordinator.
6. Postpartum social-psychological assessment and guidance which shall include but not be limited to:
- i. review of the prenatal, labor, delivery and postpartum course;
 - ii. assessment of patient's current social-psychological status, including mother and infant bonding and father/family acceptance of the infant, as applicable;
 - iii. identification of the need for additional social-psychological services;
 - vi. review of available community resources for mother and infant, as applicable;
 - v. counseling regarding fetal loss or infant death, if applicable;
 - vi. counseling regarding school/employment planning.
- (d) Health education assessment and instruction shall be provided to all patients at intervals throughout the pregnancy, based on the patient's needs and in accordance with New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers. Services shall be provided as follows:
- 1. Initial assessment of health educational needs, which shall include but not be limited to:
 - i. identification of general educational background;
 - ii. patient's health education needs;
 - iii. previous education and experience concerning pregnancy, birth and infant care.
 - 2. Health education instruction, which shall be provided for all patients based on their identified health education needs but must include at least the following:
 - i. normal course of pregnancy;
 - ii. fetal growth and development;
 - iii. warning signs, such as signs of pre-term labor, and identification of emergency situations;
 - iv. personal hygiene;
 - v. exercise and activity;
 - vi. child birth preparation, including management of labor and delivery;
 - vii. preparation for hospital admission;
 - viii. substance/occupational/environmental hazards;
 - ix. need for continuing medical and dental care;
 - x. future family planning;
 - xi. parenting, basic infant care and development;
 - xii. availability of pediatric and family medical care in the community;

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- xiii. normal postpartum physical and emotional changes.
3. Health education services, which shall include guidance in decision making and in the implementation of decisions concerning pregnancy, birth and infant care; and
4. Postpartum assessment of health education needs shall be conducted.
- (e) One face to face preventive health care contact must be provided or arranged for during the time after hospital discharge and prior to the required medical postpartum visit in accordance with the New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers follows:
- 1. This contact shall include but not be limited to:
 - i. review of the mother's health status;
 - ii. review of the infant's health status;
 - iii. review of mother/infant interaction;
 - iv. revision of the Care Plan, and;
 - v. provision of additional services, as indicated.
 - 2. The provider shall provide or arrange for one or more home visits for each high risk patient in accordance with the New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers.
- (f) HealthStart Maternity Care providers shall utilize existing community services to enhance the maternity care services.
- (g) HealthStart Maternity Care providers shall have written procedures which identify specific agencies or practitioners and criteria for referral of patients requiring services which are extensive, complex or expected to extend beyond the pregnancy. These shall include but are not limited to: nutrition and food supplementation services, substance abuse treatment facilities, mental health services, county/local social and welfare agencies, parenting and child care educational programs, future family planning services, fetal alcohol syndrome and AIDS counseling services.
- 10:49-3.11 Professional staff requirements for HealthStart Maternity Comprehensive Services
- (a) All HealthStart Maternity Care services shall be delivered through a team approach by qualified professionals.
- (b) Physicians and/or certified nurse midwives shall be Medicaid providers and have obstetrical admitting privileges at a licensed maternity care facility.
- (c) *[Case coordinators shall have as a minimum, a Bachelor's Degree in nursing, social work or a related field or have the appropriate health care experience as defined in the New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers.]* ***Case coordinators shall have as a minimum a license as a registered nurse; or a Bachelor's degree in Social Work, health or behavioral science.***
- (d) Health professionals shall have a valid license to practice their professions as required by the State.
- (e) All other professionals, for whom no license to practice is required, shall meet generally accepted professional standards for qualification.
- (f) Paraprofessionals shall be familiar with the local community, have knowledge and/or skills in maternal and child health services and be supervised by a health professional.
- (g) Prenatal, delivery, and postpartum medical services shall be delivered by a physician and/or a certified nurse midwife.
- (h) Nutrition, social-psychological and health education assessment and development of the Care Plan shall be provided by the appropriate professional in each of the specialty areas or the case coordinator or medical care professional. If the nutrition or social-psychological assessment portion of the Care Plan are provided by the case coordinator or medical care professional, then they shall be reviewed by the nutritionist or social worker, respectively.
- (i) Nutrition and social-psychological basic counseling shall be provided by *[the appropriate specialist in each of the areas or by a Registered Nurse.]* ***a case coordinator with at least one year of experience in providing services to maternity patients or by the appropriate specialist in each of the areas or by a registered nurse or obstetrical care provider.***
- (j) Short term specialized social-psychological and nutrition counseling services shall be provided by a social worker and nutritionist

respectively. The social worker and nutritionist shall be available on site during patient visits.

(k) There shall be adequate professional, paraprofessional and clerical staff to provide, in a timely manner, maternity care services as described herein which meet the needs of the patients.

10:49-3.12 Records: documentation, confidentiality and informed consent for HealthStart Comprehensive Maternity Care Providers

(a) HealthStart Maternity Care providers shall have policies which protect patient confidentiality, provide for informed consent and document prenatal, labor, delivery and postpartum services in accordance with New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers.

(b) An individual record shall be maintained for each patient throughout the pregnancy.

(c) Each record shall be confidential and shall include at least the following: history and physical examination findings assessment, a Care Plan, treatment services, laboratory reports, counseling and health instruction provided and documentation of referral and follow-up services.

(d) There shall be policies and procedures for appropriate informed consent for all HealthStart services.

10:49-3.13 Standards for HealthStart Pediatric Care Certificate

(a) Pediatric care services shall be comprehensive, integrated and coordinated.

(b) HealthStart Pediatric Care providers shall:

1. Directly provide preventive, well-child care, maintenance of complete patient history, outreach for preventive care, initiation of referrals for appropriate medical, educational, social, psychological and nutrition services, and follow-up of referrals and sick care.

2. ***[Provide arrangements]* *Directly provide or arrange*** for non-emergency room based, 24-hour physician telephone access to eligible patients.

3. Directly provide or arrange for sick care and emergency care.

4. HealthStart Pediatric Care providers shall be Medicaid providers.

10:49-3.14 Professional Requirements for HealthStart Pediatric Care Providers

All HealthStart Pediatric Care providers shall be physicians or have a physician on staff who possesses a knowledge of pediatrics. This may be demonstrated by eligibility for board certification by the American Academy of Pediatrics and/or by hospital admitting privileges in pediatrics.

10:49-3.15 Preventive Care Services for HealthStart Pediatric Care Providers

(a) HealthStart Pediatric Care Providers shall provide preventive health visits in accordance with the recommended guidelines of the American Academy of Pediatrics and the New Jersey State Department of Health Guidelines for HealthStart Pediatric Care. The schedule shall include a 2 to 4 week visit, 2 month visit, 4 month visit, 6 month visit, 9 month visit, 12 month visit, 15 month visit, 18 month visit and 23-24 month visit. ***[Visits]* *Each visit*** shall include, at a minimum, medical, family and social history, unclothed physical examination, developmental and nutritional assessment, vision and hearing screening, dental assessment, assessment of behavior and social environment, anticipatory guidance, age appropriate laboratory examinations and immunizations. Referrals shall be made as appropriate. The HealthStart Child Health Preventive Visit form shall be completed for each HealthStart preventive visit.

(b) Each provider shall provide or arrange for sick care and 24 hour telephone physician access during non-office hours. If not directly provided by the HealthStart provider, ***[a single designated physician or physician group must provide such care via mutual written agreement]* *sick care and 24 hour telephone access shall be provided for each child by a single designated provider via a documented agreement***. Information on care given shall be communicated to the primary HealthStart pediatric care provider. Telephone access provided exclusively via emergency room staff is not permitted. Referral to the emergency room should occur only for emergency medi-

cal care or urgent care ***[as recommended by the physician responsible for sick care]***.

(c) Case coordination outreach and follow-up services shall include letter and/or telephone call reminders to the child's parent or guardian for preventive well-child visits and letters and/or telephone follow-up of missed appointments. Referrals for home visit services for follow-up shall be made when appropriate. For all referrals and follow-up visits, the provider shall document the completion of such referrals and/or visits. If the referrals is not completed, a letter or phone call to this child's parent or guardian and/or to the referred agency shall be sent or made encouraging the follow through of the referral. All of the activity shall be recorded on the patient's chart.

10:49-3.16 Referral Services for Health Start Pediatric Care providers

All HealthStart Pediatric Care providers shall make provision for consultation for specialized health and other pediatric services. Services shall include medical services, as well as social, psychological, educational and nutrition services. This may include, but is not limited to: the Women, Infants and Children Program (WIC), the Division of Youth and Family Services, Special Child Health Services Case Management Units and Child Evaluation Centers, the early intervention programs, ***[local]* county welfare agencies***, **Board of Social Services***, certified home health agencies and community mental health centers and local and county health departments.

10:49-3.17 Records: documentation, confidentiality and informed consent for HealthStart Pediatric Care Providers

(a) HealthStart Pediatric Care providers shall have policies which protect patient confidentiality, provide for informed consent and document comprehensive care services in accordance with New Jersey State Department of Health Guidelines for HealthStart Pediatric Care Providers.

(b) An individual record shall be maintained for each patient.

(c) Each record shall be confidential and shall include at least the following: history and physical examination, results of required assessments, Care Plan, treatment services, laboratory reports, counseling and health instruction provided and documentation of referral and follow-up services.

(d) There shall be policies and procedures for appropriate informed consent for all HealthStart Pediatric services.

10:49-3.18 ***[HealthStart procedure codes; Health Care Financing Administration Common Procedure Coding System (HCPCS)]* *Policy for Reimbursement of HealthStart Providers***

(a) The ***HealthStart*** HCPCS procedure codes listed in this subchapter are governed by the same policies and rules that appear in the HCPCS subchapter of each non-institutional provider services manual (Independent Clinic, Physician and the Nurse Midwifery Services Manual*s*). ***The maximum fee allowance schedule and reimbursement requirements for*** HCPCS HealthStart Maternity Codes (Medical Care and Health Support Services) and HCPCS HealthStart Pediatric Codes are listed under N.J.A.C. 10:49-3.19 and 3.20 respectively.

***(b) A HealthStart Provider will submit the same claim form presently in use for the type of service provided.**

Physician Services—1500 N.J. (Health Insurance Claim Form)

Nurse Midwifery Services—1500 N.J. (Health Insurance Claim Form)

Independent Clinics—MC-14 Form (Independent Outpatient Health Facility Claim Form)

Local Health Departments—MC-14 Form (Independent Outpatient Health Facility Claim Form)

Hospital Outpatient Departments—Use present procedure for OPD billing except for HealthStart Health Support Services (W9040-W9043) and the HealthStart Pediatric Continuity of Care (W9070 which are billed on the Independent Outpatient Health Facilities Claim Form (MC-14)*

10:49-3.19 HealthStart Maternity Care Code requirements

(a) HealthStart Maternity Care Code requirements are as follows:
1. Separate reimbursement is available for Maternity Medical Care Services and Maternity Health Support Services.

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2. Maternity Medical Care Services should be billed as a total obstetrical package, when feasible, but may be billed as separate procedures.

3. The enhanced reimbursement for the delivery and postpartum care may be claimed only for a patient who had received at least one antepartum HealthStart Maternity Medical or Health Support Service.

4. The modifier "WM" in the HCPCS lists of codes refers to those services provided by certified nurse midwives who must include the modifier at the end of each code.

5. Laboratory and other diagnostic procedures and all necessary medical consultations are eligible for separate reimbursement.

(b) HealthStart Maternity Care Services Codes are as follows:

HCPCS Codes Mod	Procedure description	Maximum Fee Allowance		
		S	NS	WM
W9025	*HealthStart* Initial antepartum maternity medical care visit	\$72.00	69.00	
W9025WM	*HealthStart* Initial antepartum maternity medical care visit by certified nurse midwife History, including system review Complete physical examination Risk assessment Initial care plan Patient counseling and treatment Routine and special laboratory tests on site, or by referral, as appropriate Referral for other medical consultations, as appropriate (including dental) *[Referral to]* *Coordination with the* HealthStart *Health* Support Services provider, as applicable Case conference with HealthStart case coordinator			67.00
W9026	*HealthStart* Subsequent antepartum maternity medical care visit	\$15.00	14.00	
W9026WM	*HealthStart* Subsequent antepartum maternity medical care visit by certified nurse midwife Interim history Physical examination Risk assessment Review of plan of care Patient counseling and treatment Laboratory services on site or by referral, as appropriate Referrals for other medical consultations, as appropriate *Coordination with HealthStart case coordinator*			13.00

NOTE: This code may be billed only for the 2nd through 15th antepartum visit.

NOTE: If medical necessity dictates, corroborated by the record, additional visits above the initial and fourteen subsequent visits may be reimbursed under procedure code 90040*[-]**, 90050, 90060 and* 90070, *(routine or follow-up clinic visit)*; 90050 WM, *90060 WM, 90150 WM, 90160 WM, (*routine or follow-up visit *[(]**—*midwife). The claim form *[shold]**should* clearly indicate the reason for the medical necessity and date for each additional visit *(90040-90070, 90050 WM)*.

*W9027	HealthStart REGULAR DELIVERY	\$305.00	\$290.00	
W9027WM	HealthStart REGULAR DELIVERY BY CERTIFIED NURSE MIDWIFE			\$259.00
	Admission History Complete physical examination			

Vaginal delivery with or without episiotomy
Inpatient postpartum care
Referral to postpartum follow-up care provider including:
1. **Mother's hospital discharge summary**
2. **Infant's discharge summary, as appropriate**

NOTE: Obstetrical delivery applies to a vaginal delivery at full term or premature and includes care in the home, birthing center or in the hospital (inpatient setting). Include delivery date on the Independent Outpatient Health Facility Claim Form (MC-14) and on the Health Care Insurance Claim Form 1500 N.J.*

*W9028	HealthStart POSTPARTUM CARE VISIT	\$15.00	\$14.00	
W9028WM	HealthStart POSTPARTUM CARE VISIT BY CERTIFIED NURSE MIDWIFE			\$13.00
	Outpatient postpartum care by the 60th day after the vaginal or Cesarean section delivery Review of prenatal, labor and delivery course Interim history, including information on feeding and care of the newborn Physical examination Referral for laboratory services as appropriate Referral for ongoing medical care when appropriate Patient counseling and treatment			

NOTE: The postpartum visit shall be made by the 60th postpartum day. Include delivery date on the Independent Outpatient Health Facility Claim Form (MC-14) and on the Health Care Insurance Claim Form 1500 N.J.*

[W9027]				
W9029	HealthStart REGULAR DELIVERY AND POSTPARTUM	\$320.00	304.00	
[W9027WM]				
W9029WM	HealthStart REGULAR DELIVERY AND POSTPARTUM BY CERTIFIED NURSE MIDWIFE			272.00
	Admission History Complete physical examination *[Obstetrical v]* *Vaginal delivery with or without episiotomy Inpatient postpartum care Referral to postpartum follow-up care provider including: 1. Mother's hospital discharge summary 2. Infant's discharge summary, as appropriate Outpatient postpartum care by the 60th day after the delivery Review of prenatal, labor and delivery course Interim history, including information on feeding and care of the newborn Physical examination Referral for laboratory services as appropriate Referral for ongoing medical care when appropriate Patient counseling and treatment			

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[Completion of the Maternity Services Summary Data Form]

NOTE: *[Obstetrical delivery]* ***This code*** applies to a vaginal delivery at full term or premature and includes care in the home, birthing center or in the hospital (inpatient setting). This shall also include one post hospital discharge visit by the 60th postpartum day. Include delivery date on the Independent Outpatient Health Facility Claim Form (MC-14) and on the Health Care Insurance Claim Form 1500 N.J.

[W9028]
W9030 HealthStart TOTAL OBSTETRICAL CARE \$602.00 569.00

[W9028WM]
W9030WM HealthStart TOTAL OBSTETRICAL CARE BY CERTIFIED NURSE MIDWIFE 521.00

Total obstetrical care consists of:

1. Initial antepartum visit and fourteen subsequent antepartum visits. Specific dates are to be listed on the Independent Outpatient Health Facility Care Form (MC-14) and on the Health Care Insurance Claim Form 1500 NJ.

NOTE: Reimbursement will be decreased by the fee for the maternity medical care initial antepartum visit if the patient is not seen for this visit. The total fee will also be decreased by the reimbursement sum for each subsequent maternity medical care antepartum visit less than fourteen visits.

2. Obstetrical delivery per vagina with or without episiotomy including care when provided in the home, birthing center or in the hospital (inpatient setting).

This applies to a vaginal delivery at full term or premature. This shall also include one post hospital discharge visit by the 60th postpartum day. Include delivery date on the Independent Outpatient Health Facility Claim Form *(MC-14)* *(MC-19)* and on the Health Care Insurance Claim Form 1500 N.J. *[The completion of the Maternity Services Summary Data form is also required.]*

***W9031** HealthStart CESAREAN SECTION DELIVERY \$435.00 \$403.00
 Admission History
 Complete physical examination
 Cesarean section delivery
 Inpatient postpartum care
 Referral to postpartum follow-up care provider including:
 1. Mother's hospital discharge summary
 2. Infant's discharge summary, as appropriate

NOTE: Include the delivery date on the Health Care Insurance Claim Form 1500 N.J. or on the Independent Outpatient Health Facility Claim Form (MC-14)*

(c) HealthStart maternity health support services codes are as follows:

[W9029]
W9040 HealthStart ENROLLMENT PROCESS \$30.00

- Assistance with the presumptive eligibility determination for Maternity Care recipients, when and if applicable
- Patient registration and scheduling of the initial appointments
- Counseling and referral for WIC, food stamps and other community-based services
- Assignment of HealthStart case coordinator
- Outreach and follow-up on missed appointments

NOTE: This code may be billed only once during pregnancy by the same provider.

[W9030]
W9041 ***HealthStart*** DEVELOPMENT OF MATERNITY PLAN OF CARE \$120.00

- Case coordination services
- Initial assessments
 1. nutrition
 2. health education
 3. social/psychological
- Case conference with Maternity Medical care provider
- Initial plan of care developed by the HealthStart case coordinator
- Basic guidance and health education services
- Referral for other needed services including follow-up with County Welfare Agency ***/Board of Social Services***
- Outreach, referral and follow-up activities including phone calls and letters.

NOTE: This code may be billed only once during the pregnancy by the same provider.

[W9031]
W9042 ***HealthStart*** SUBSEQUENT MATERNITY HEALTH *[SERVICES SUPPORT]* ***SUPPORT SERVICES*** VISIT \$50.00

- Case coordination
- Review and update of care plan
- Coordination with maternity medical care provider
- Health education instruction
- Social/psychological guidance
- Nutrition guidance
- Home visit for high risk clients
- Outreach, referral and follow-up activities including phone calls and letters.

NOTE: This code may be billed only once per trimester and not more than twice per pregnancy.

[W9032]
W9043 ***HealthStart*** POSTPARTUM MATERNITY HEALTH SUPPORT SERVICES \$100.00

- Case coordination services
- Review of the plan of care
- Review of the summary of hospital stay records and current medical status
- Nutrition assessment and counseling
- Social/psychological assessment and counseling
- Health education assessment and instruction
- Home visit(s) as applicable
- Referral, outreach and follow-up services including phone calls*[,] *and* letters
- Referral for pediatric preventive care and follow-up
- Transfer of pertinent information to pediatric, future family planning and medical care providers
- Completion of the plan of care

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10:49-3.20 HealthStart Pediatric Care Codes

(a) HealthStart Pediatric Care Guidelines provides for up to nine (9) preventive child health visits for a child under 2 years of age. The first visit, regardless of age, must be consistent with the requirements for an Early ***and*** Periodic Screening, Diagnosis and Treatment (EPSDT) examination (Code W9820*)****, see Physician and Independent Clinic Services Manuals*** and billed as such. EPSDT examination should be performed annually thereafter. All other preventive child health visits must be billed using the HealthStart preventive child health visit codes appropriate to the child's age at the time of visit. Each preventive child health code may be claimed only once per child.

(b) A HealthStart registration fee (Code W9069) may be claimed only in conjunction with Code W9820. The claim must be submitted on an Independent Outpatient Health Facility Claim Form (MC-14) or a Health Insurance Claim Form (1500 N.J.) and be accompanied by a MC-19 Form (EPSDT Referral Report) and the HealthStart Preventive Child Health Form.

(c) Claims for reimbursement must be submitted on an Independent Outpatient Health Facility Claim Form (MC-14) or a Health Insurance Claim Form 1500 N.J. and *[Health Care Facilities Claim Form (MC-14) or a Health Insurance Claim Form 1500-NJ and]* ***be accompanied by*** the HealthStart Preventive Child Health Form.

(d) Laboratory and other diagnostic procedures and all necessary medical consultation are eligible for separate reimbursement

***(d)**(e)* (HCFA) Health Care Financing Administration Common Procedure Coding System**

(HCPCS) for HealthStart Pediatric Care Services is as follows:

*HCPC CODES	MOD	PROCEDURE DESCRIPTION	MAXIMUM FEE	
			ALLOWANCE S	NS*
		HealthStart PEDIATRIC PREVENTIVE CARE VISIT	\$22.00	\$17.00
		These codes are for pediatric preventive care visits during the following dates of the infant's age.		
W9060		under 6 weeks		
W9061		6 weeks-3 months		
W9062		3 months-5 months		
W9063		5 months-8 months		
W9064		8 months-11 months		
W9065		11 months-14 months		
W9066		14 months-17 months		
W9067		17 months-20 months		
W9068		20 months-24 months		

1. History including behavior and environmental factors
2. Developmental assessment
3. Complete unclothed physical examination by physician or a nurse under the personal supervision of a physician, to include:
 - i. measurements: height, weight and head circumference
 - ii. vision and hearing screening
 - iii. nutritional assessment
4. Assessment of immunizations and administration of immunizations (see appropriate procedure codes for immunizations and reimbursements)
5. Anticipatory Guidance
6. Arrangement for diagnosis and treatment of medical problems uncovered during the visit. This includes self referrals and/or referrals to other providers as medically indicated.

7. Appropriate laboratory procedures performed, or referred, in accordance with HealthStart Pediatric Care guidelines.

- i. Sickle cell, PKU screening, as appropriate
 - ii. Hemoglobin or hematocrit twice: at 6-9 mos and 20-24 mos of age (When done in conjunction with lead screening this test is not reimbursable as a separate procedure)
 - iii. Urinalysis, twice: at 6-9 mos and 20-24 mos of age
 - iv. Tuberculin test, twice: at 12-14 mos and 20-24 mos
 - v. Lead screening (EP) at 12-14 mos and 20-24 mos
8. Case Coordination: referral for nutritional, psychological, social and other community services, as appropriate: ***[and]* *provision or arrangement for 24 hour telephone physician access and sick care;*** and outreach and follow-up activities in accordance with the HealthStart Pediatric Care Guidelines.

NOTE: Laboratory procedures performed by a physician in his office are reimbursable to the physician; if such procedures are performed by an outside laboratory, the laboratory must submit a separate claim.

NOTE: Claims for HealthStart Preventive Care visits shall include a completed MC-14 or Health Insurance Claim Form 1500-NJ and a HealthStart Preventive Child Health Form. *[Reimbursement for claims not accompanied by the appropriate forms will be reduced to that of Medicaid Preventive Health Care Visit (Code 90753 and 90754).]*

W9069		HealthStart Pediatric Care Registration	\$13.00	\$13.00
		Case coordination activities including, but not limited to:		
		—appointment reminders (by telephone and/or letter)		
		—follow-up on referrals and missed appointments		
		— *provisions or arrangement for* 24 hour telephone access		

NOTE: Procedure code W9069 ***[is to]* *may*** be billed only in conjunction with*:

(1)* the Early ***and Periodic Screening, Diagnosis and Treatment (EPSDT) examination (code W9820), performed ***[at the child's first HealthStart visit and at annual intervals.]* *in the physician's office or in the independent clinic, or;****

(2) the Annual Health Maintenance examination (Code W90753, W90754, W90763 or W90764) performed by a HealthStart physician in a hospital outpatient department where physicians bill independently for professional services.*

Hospital outpatient departments are prohibited from using this code. A completed HealthStart Pediatric Preventive Child Health form must accompany the Health Insurance Claim Form 1500-N.J. ***[and MC-19.]* *A completed Form MC-19 is also required when billing Code W9820.**

NOTE: EPSDT examination or Annual Health Maintenance examination code replaces the age appropriate HealthStart Pediatric Preventive Care Visit code.*

*W9070		HealthStart PEDIATRIC CONTINUITY OF CARE	\$13.00
		This is a service by a certified HealthStart Pediatric Care Services Provider which is a hospital outpatient department where physicians do not bill	

Medicaid independently for professional services. This code includes reimbursement for the following service components:

- assignment of a case coordinator responsible for outreach, referral and followup activities;
- 24 hour telephone access for medical consultation outside non-clinic hours;
- provision or arrangement for sick care.

(Referral to the emergency room should only occur for emergency medical care or urgent care as recommended by the physician responsible for sick care.)*

NOTE: This code may be billed only in conjunction with a Pediatric preventive health care visit provided in accordance with HealthStart regulations and Guidelines for HealthStart Providers. A completed HealthStart Pediatric Preventive Child Health form must be submitted as a condition for payment with the Independent Outpatient Health Facility Claim form (MC-14).

10:52-1.7 Covered outpatient hospital services

(a) Approved hospital outpatient departments may provide the following services to outpatients when medically necessary:

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

5. HealthStart Maternity (Comprehensive) Health Services. (See N.J.A.C. 10:49-3 for information about HealthStart Services and provider requirements for participation.)

6. HealthStart Pediatric (Comprehensive) Care Services. (See N.J.A.C. 10:49-3, for information about HealthStart Services and provider requirements for participation.)

Renumber 5. through 14. as 7. through 16. (No change in text.)

10:53-1.6 Covered outpatient hospital services

(a) Approved special *[housing]* *hospital* outpatient departments may provide the following services to outpatients when medically necessary:

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

5. HealthStart Maternity (Comprehensive) Health Services. (See N.J.A.C. 10:49-3 of this manual, for information about HealthStart Services and provider requirements for participation.)

6. HealthStart Pediatric (Comprehensive) Care Services. (See N.J.A.C. 10:49-3 of this manual, for information about HealthStart Services and provider requirements for participation.)

Renumber 5. through 14. as 7. through 16. (No change in text.)

10:54-1.1 Definitions

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

“HealthStart Maternity (Comprehensive) Care Services Provider” means a physician or a group of physicians who provide either directly or indirectly through linkage with other HealthStart care providers, a comprehensive package of maternity care services which includes two components—“Medical Maternity Care” and “Health Support Services”. (See N.J.A.C. 10:49-3 for information about HealthStart Services and provider requirements for participation.)

“HealthStart Pediatric (Comprehensive) Care Services Provider” means a physician who provides a comprehensive package of pediatric care services. (See N.J.A.C. 10:49-3 for information about HealthStart Services and provider requirements for participation.)

10:54-1.2 Scope of service

(a) Payment will be made for the medically necessary services, subject to the following limitations:

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

3. HealthStart-Maternity (Comprehensive) Health Services. (See N.J.A.C. 10:49-3 for information about HealthStart Services and provider requirements for participation.)

4. HealthStart Pediatric (Comprehensive) Care Services. (See N.J.A.C. 10:49-3 for information about HealthStart Services and provider requirements for participation.)

Renumber 3. through 7. as 5. through 9. (No change in text.)

10:58-1.2 Definitions

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

“HealthStart Maternity (Comprehensive) Care Services Provider” means a midwife who provides either directly or indirectly through linkage with other health care providers, in independent clinics and hospital outpatient departments; or physicians’ offices, a comprehensive package of maternity care services which includes two components, “Medical Maternity Care” and “Health Support Services.” (See N.J.A.C. 10:49-3 for information about HealthStart Services and provider requirements for participation.)

“Maternity (Comprehensive) Care Services” under HealthStart means a comprehensive package of maternity care services which includes two components, “Medical Maternity Care” and “Health Support Services”. (See N.J.A.C. 10:49-3 for information about HealthStart Services and provider requirements for participation.)

10:58-1.3 Scope of Service

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

(d) For HealthStart Maternity (Comprehensive) Health Services rules see N.J.A.C. 10:49-3 for information about HealthStart Services and provider requirements for participation.

10:66-1.3 Provisions for participation (New Jersey based)

(a) (No change in text.)

(b) In addition to (a) above, to be approved as a Medicaid Provider an independent clinic shall:

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

3. In addition to the requirements of (a) and (b)1 and 2 above, the following types of clinics must obtain approval from the relevant State and Federal agencies, as noted in this paragraph, in order to be reimbursed:

*[1.]**i.* through vii. (No change in text.)

viii. Maternity (Comprehensive) Care Services under HealthStart. (See N.J.A.C. 10:49-3 for information about HealthStart Services and provider requirements for participation.)

ix. Pediatric (Comprehensive) Care Services under HealthStart. (See N.J.A.C. 10:49-3 for information about HealthStart Services and provider requirements for participation.)

10:66-1.6 Scope of service

(a) Licensed and approved independent clinics may, to the extent of their specialty, HealthStart Certificate, license and/or approve New Jersey Medicaid Provider Agreement, provide the following services when medically necessary (see 1.6(b) through (p)). Procedure codes and maximum dollar allowance which correspond to allowable services are listed in subchapter 3. HCFA Common Procedure Coding System (HCPCS). (N.J.A.C. 10:66-3).

(b) through (e) (No change in text.)

(f) HealthStart rules for Comprehensive Maternity and Pediatric Care Services are as follows:

1. See N.J.A.C. 10:49-3 for information about HealthStart Services and provider requirements for participation.

Renumber (f) through (o) as (g) through (p) (No change in text.)

(a)

Pharmacy Manual

Payment for Drugs—Upper Limits

Adopted Concurrent Proposal: N.J.A.C. 10:51-1.6, 1.11, 1.16, 1.18, 3.5, 3.10, 3.14, 5.14 and 5.18

Proposed: November 16, 1987 at 19 N.J.R. 2203(a).

Adopted: December 24, 1987 by Drew Altman, Commissioner, Department of Human Services.

Filed: December 24, 1987 as R.1987 d.48, without change.

ADOPTIONS

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Authority: N.J.S.A. 30:4D-6b(6), 7a, b, c, 30:4D-12, 30:4D-20, 21, 22, 24; 42 CFR 447.301, 331, 332, 333.

Effective Date: December 24, 1987.

Expiration Date: October 28, 1990.

Summary of Public Comments and Agency Responses:

COMMENT: There was one comment on this proposal submitted by CIBA-GEIGY Corporation, Pharmaceuticals Division. The commenter requested that their anti-convulsant drug, Tegretol, a brand of carbamazepine, be excluded from the list of drugs subject to the upper payment limit. The commenter alleged that the shift from the brand name (Tegretol) to the generic equivalent (carbamazepine) will place the patient at risk because of the possible loss of seizure control. The commenter also alleged that generic substitution will cause increased physician monitoring as well as extensive laboratory work and dosage titration to insure proper maintenance of blood levels necessary for seizure control. The commenter alleged that these measures will cause cost-shifting instead of cost-effectiveness.

RESPONSE: The Division's response is that neither the New Jersey Medicaid Program nor the PAAD (Pharmaceutical Assistance for the Aged and Disabled) program support uncontrolled substitution. Prescribers have complete control because they can override substitution of any MAC (Maximum Allowable Cost) drug by hand-writing on the prescription the words "Brand Medically Necessary" or "Brand Necessary."

If the patient is enrolled in the PAAD program, prescribers may indicate to the pharmacist "do not substitute" verbally or in writing. In addition, all the anti-convulsants on the MAC list, now titled "Specific Upper Limits for Multiple Source and Other Drugs" are approved by the FDA (United States Food and Drug Administration) and all are included in the New Jersey State Formulary. Consequently, the Division will make payment for either brand or generic anti-convulsant drugs in accordance with federal and state regulatory guidelines.

For the reasons stated above, carbamazepine will remain on the list, that is, the "Specific Upper Limits for Multiple Source and Other Drugs."

Full text of the adoption follows.

10:51-1.6 Prescription drug policies

(a) The choice of prescribed drugs will be at the discretion of the prescriber within the limits of applicable laws and as listed herein. However, the prescriber's discretion is limited for certain drugs, subject to the following conditions under which payment may be denied if the requirements of the rules are not met:

1. Covered pharmaceutical services requiring prior authorization, (see N.J.A.C. 10:51-1.13);

2. Pharmaceutical services not eligible for reimbursement (see N.J.A.C. 10:51-1.14);

3. Non-legend drugs, (see N.J.A.C. 10:51-1.20).

4. Products listed in the current New Jersey Drug Utilization Review Council (DURC) Formulary (hereafter referred to as "the Formulary"), and all subsequent revisions, distributed to all prescribers and pharmacists.

(b) The Prescription Drug Price and Quality Stabilization Act (N.J.S.A. 24:6E-1) will apply to the New Jersey Medicaid Program. This law requires that every prescription blank contain the statements "Substitution Permissible" and "Do Not Substitute". The prescriber must initial one of the statements in addition to signing the prescription blank.

1. When the prescriber does not initial either statement on a prescription for a drug product listed in the DURC Formulary, the pharmacist shall substitute from the list of interchangeable products, and bill Medicaid accordingly.

2. (No change.)

3. For non-MAC drugs, when the prescriber initials "Do Not Substitute", the pharmacist shall indicate the prescriber's preference by checking "Medical Certification" on the MC-6 claim form and will dispense and bill Medicaid for the prescribed product. Reimbursement shall be EAC price (see N.J.A.C. 10:51-1.16(a)1.ii. plus applicable fee or the usual and customary charges, whichever is less for that product.

4. When the prescriber orders by generic name, the DURC Formulary does not apply. The pharmacist will dispense the least ex-

pensive, therapeutically effective product available to him/her at the time of dispensing. The product need not necessarily be from the list of interchangeable products.

(c) Federal regulations prescribe the aggregate upper limit, for which Federal Financial Participation (FFP) is available, that Medicaid may reimburse for certain multi-source drugs. The limit will apply to all listed MAC drugs (see N.J.A.C. 10:51-1.16(a)1.), unless the prescriber indicates in his or her own handwriting on each written or telephone ordered prescription (see N.J.A.C. 10:51-1.9) "Brand Necessary" or "Medically Necessary" or other acceptable phrase. The Federal regulation requires a handwritten statement and does not permit the use of alternatives, such as a check-off box, initials or prescriber's signature next to a preprinted statement "Do Not Substitute". For purposes of reimbursement, the physician's override capability under N.J.S.A. 24:6E-1 does not apply to drugs which have a Federal MAC limit.

(d) Blanket authorization denying substitutions will not be permitted. Each prescription order must state "Brand Necessary" or "Brand Medically Necessary" in the prescriber's own handwriting (see (c) above). For non-MAC drugs, each prescription order must follow the requirements of N.J.S.A. 24:6E-1 (see (c) above.)

10:51-1.11 Non-proprietary or generic dispensing

When medication is prescribed by its non-proprietary or generic name, the pharmacist will dispense the least expensive, therapeutically effective equivalent product available, preferably one listed in the DURC Formulary.

10:51-1.16 Basis of payment

(a) Payment for legend drugs (those drugs whose labels include the legend "Caution: Federal Law Prohibits Dispensing Without a Prescription"), contraceptive diaphragms and reimbursable devices shall be based upon "Maximum Allowable Cost".

1. Maximum Allowable Cost is defined as:

i. The "Maximum Allowable Cost" (MAC) price published periodically by the Health Care Finance Administration (HCFA) of the federal Department of Health and Human Services for listed multi-source drugs or established by the Division of Medical Assistance and Health Services; or

ii. Subject to the limits of (b) below, the Estimated Acquisition Cost (EAC) herein defined as lower of the Average Wholesale Price (AWP) listed for the most frequently purchased package size (as defined by the Division of Medical Assistance and Health Services) in current national; price compendia or other appropriate sources, and their supplements; price changes listed in the national price compendia; or designated prices defined in Section 1.6. In the case of unlisted or undesignated AWP "costs" or of typographical errors, the known correct price will be used as maximum.

2. If the published MAC price as defined in (a)1.i. above is higher than the price which would be paid under (a)1.ii. above, then (a)1.ii. above will apply.

(b) Maximum cost for each eligible prescription claim not covered by (a)1.i. above will be subject to the following fiscal conditions based upon six categories, as determined by the New Jersey Medicaid Program based on the previous year's total prescription volume for each participating pharmacy. The categories will be reviewed annually and adjusted as appropriate.

1.-6. (No change.)

7. Category VI: Pharmacies whose total prescription volume in the preceding calendar year was 50,000 prescriptions or more.

i. Pharmacy providers in this category will receive reimbursement for Medicaid prescription claims for legend drugs, at average wholesale price (AWP), as defined in (a) above, less six percent, as the maximum.

(c) The appropriate calculated discount will be automatically deducted (by Blue Cross and Blue Shield of New Jersey, Inc.) from each eligible legend drug claim during the claim processing procedure.

(d) For prescription drugs costing more than \$24.99 there will be no discount from the average wholesale price (AWP).

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10:51-1.18 Legend drugs: Total charge

(a) The maximum charge to the New Jersey Medicaid Program for a legend drug, including the charge for the cost of medication and the dispensing fee, may not exceed the lowest of the following:

1. "MAC/EAC" plus dispensing fee, as outlined in N.J.A.C. 10:51-1.16; or
2. Usual and customary and/or posted or advertised charges; or
3. Other third-party prescription plan payments.

10:51-3.5 Prescription drug policies

(a) The choice of prescribed drugs will be at the discretion of the prescriber within the limits of applicable laws and as listed herein. However, the prescriber's discretion is limited for certain drugs, subject to the following conditions under which payment may be denied if the requirements of the rules are not met:

1. Pharmaceutical services not eligible for reimbursement (see N.J.A.C. 10:51-3.12);
2. Non-legend drugs. (see N.J.A.C. 10:51-1.20)
3. Products listed in the current New Jersey Drug Utilization Review Council (DURC) Formulary (hereafter referred to as the Formulary), and all subsequent revisions, distributed to all prescribers and pharmacists.

(b) The Prescription Drug Price and Quality Stabilization Act (N.J.S.A. 24:6E-1) will apply to the New Jersey Medicaid Program. This law requires that every prescription blank contain the statements "Substitutions Permissible" and "Do Not Substitute". The prescriber must initial one of the statements in addition to signing the prescription blank.

1. The prescriber does not initial either statement on a prescription for a drug product listed in the DURC Formulary, the pharmacist shall substitute from the list of interchangeable products, and bill Medicaid accordingly.

2. When the prescriber initials "Substitution Permissible" the pharmacist will dispense and bill Medicaid for one of the less expensive products listed as interchangeable with the brand name prescribed. The Medicaid client must accept the interchangeable product unless the client is willing to pay the pharmacy's full usual and customary price. If that occurs, the pharmacist will so note on the prescription blank and no claim will be submitted to Medicaid.

3. For non-MAC drugs, when the prescriber initials "Do Not Substitute", the pharmacist must indicate the prescriber's preference by checking "Medical Certification" on the MC-6 claim form and will dispense and bill Medicaid for the prescribed product. Reimbursement shall be EAC price (see N.J.A.C. 10:51-1.16(a)1.ii. plus applicable capitation fee or the usual and customary charges, whichever is less for the product.

4. When the prescriber orders by generic name, the Formulary does not apply. The pharmacist will dispense the least expensive, therapeutically effective product available to him or her at the time of dispensing. The product need not necessarily be from the list of interchangeable products.

(c) Federal regulations prescribe the aggregate upper limit, for which Federal Financial Participation (FFP) is available, that Medicaid may reimburse for certain multi-source drugs. The limit will apply to all listed MAC drugs, (see N.J.A.C. 10:51-3.14(a)1.) unless the prescriber indicates in his or her own handwriting on each written or telephoned prescription (see N.J.A.C. 10:51-3.8) "Brand Necessary" or "Brand Medically Necessary" or other acceptable phrase. The Federal regulation requires a handwritten statement and does not permit the use of alternatives, such as a check-off box, initials, or prescriber's signature next to a preprinted statement "Do Not Substitute". For purposes of reimbursement, the physician's override capability under N.J.S.A. 24:6E-1 does not apply to drugs which have a Federal MAC limit.

(d) Blanket authorization denying substitutions will not be permitted. Each prescription order must state "Brand Necessary" or "Brand Medically Necessary" in the prescriber's own handwriting (see (c) above). For non-MAC drugs, each prescription order must follow the requirements of N.J.S.A. 24:6E-1 (see (c) above).

10:51-3.10 Non-Proprietary or generic dispensing

When medication is prescribed by its non-proprietary or generic name, the pharmacist will dispense and bill Medicaid for the least

expensive, therapeutically effective product available, preferably one listed in the DURC Formulary.

10:51-3.14 Basis of payment

(a) Payment for legend drugs (those drugs whose labels include the legend "Caution" Federal Law Prohibits Dispensing Without a Prescription"), contraceptive devices and other reimbursable devices will be based upon "Maximum Allowable Cost".

1. Maximum Allowable Cost is defined as:

i. The "Maximum Allowable Cost" (MAC) price published periodically by the Health Care Finance Administration (HCFA) of the federal Department of Health and Human Services for listed multi-source drugs or established by the Division of Medical Assistance and Health Services; or

ii. Subject to the limits of Section (b) below. The Estimated Acquisition Cost (EAC) herein defined as lower of the Average Wholesale Price (AWP) listed for the most frequently purchased package size (as defined by the New Jersey Medicaid Program) in current national price compendia or other appropriate sources, and their supplements; price changes listed in the national price compendia; or designated prices defined in N.J.A.C. 10:51-3.5. In the case of unlisted or undesignated AWP "cost" or of typographical errors, the known correct price will be used as maximum.

2. If the published MAC price as defined in (a)1i. above is higher than the price which would be paid under (a)1ii. above, then (a)1ii. above will apply.

(b) (No change.)

(c) (No change in text.)

(d) (No change in text.)

10:51-3.16 Maximum charges

(a) The maximum charge to the New Jersey Medicaid Program for a legend drug, including the charge for the cost of medication and the capitation fee, may not exceed the lowest of the following:

1. The charges made to other medical facilities or agencies through contracts or other agreement; or
2. "MAC/EAC" plus capitation fee, as outlined in N.J.A.C. 10:51-3.14; or

3. Usual and customary and/or posted or advertised charges; or
4. Other third-party prescription plan payments.

(b) (No change in text.)

(c) (No change in text.)

10:51-5.14 Non-proprietary or generic dispensing

When medication is prescribed by its non-proprietary or generic name, the pharmacist will dispense the least expensive, therapeutically effective equivalent product available, preferably one listed in the DURC Formulary.

10:51-5.18 Basis of payment

(a) Payment for legend drugs (those drugs whose labels include the legend "Caution: Federal Law Prohibits Dispensing Without a Prescription") will be based upon "Maximum Allowable Cost", as herein defined, for each prescription (new or refill) minus the \$2.00 copayment, which must be paid by or on behalf of the client.

1. Maximum Allowable Cost is defined as:

i. The "Maximum Allowable Cost" (MAC) price published periodically by the Health Care Finance Administration (HCFA) of the Federal Department of Health and Human Services for listed multi-source drugs or established by the Division of Medical Assistance and Health Services; or

ii. Subject to the limits of (b) below, the Estimated Acquisition Cost (EAC) herein defined as lower of the Average Wholesale Price (AWP) listed for the most frequently purchased package size (as defined by the Division of Medical Assistance and Health Services) in current national price compendia or other appropriate course, and their supplements; price changes listed in the national price compendia; or designated prices defined in N.J.A.C. 10:51-5.19 and 10:51-5.20. In the case of unlisted or undesignated AWP "costs" or of typographical errors, the known correct price will be used as maximum.

2. If the published MAC price as defined in (a)1i above is higher than the price which would be paid under (a)1ii above, then (a)1ii above will apply.

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(b) Maximum cost for each eligible prescription claim not covered by (a)1i. above will be subject to fiscal conditions based upon six categories (b)2 through 7 below as determined by the Division, based on the previous year's total prescription volume for each participating pharmacy. The categories will be reviewed annually and adjusted as appropriate.

1.-7. (No change.)

(c) Dispensing fee: The "dispensing fee" for legend drugs provided under the New Jersey PAAD Program as outlined in this subchapter shall be the prevailing New Jersey Medicaid rate as outlined in this chapter.

1. Pharmacies with institutional permits will be reimbursed at 75 percent of the fee for pharmacies with rental permits.

(d) The maximum payment by the New Jersey PAAD Program for a legend drug, including the charge for the cost of medication and the dispensing fee will not exceed the lowest of the following, minus a copayment of \$2.00 for each prescription:

1. "MAC/EAC" plus dispensing fee, as outlined in N.J.A.C. 10:51-5.18(a); or

2. Usual and customary and/or posted or advertised charges; or

3. Other third party prescription plan payments.

NOTE: Collection of the copayment is mandatory. N.J.S.A. C30:4D-25 P.L. 1978 c.171 states "said copayment will be paid in full by each eligible person to the pharmacists at the time of each purchase of prescription in whole or in part." Failure to collect the copayment will result in retroactive reduction of payment by an amount equivalent to the copayment or portion thereof, whichever is applicable. The provider may be suspended or debarred from participation in the New Jersey Medicaid Program for violation of this or any other provision of the regulations, at the discretion of the Director, Division of Medical Assistance and Health Services.

(a)

DIVISION OF PUBLIC WELFARE

Public Assistance Manual

Extension of Medicaid Benefits

Adopted Concurrent Proposal: N.J.A.C. 10:81-8.22 and 14.20

Proposed: November 16, 1987 at 19 N.J.R. 2206(a).

Adopted: December 24, 1987 by Drew Altman, Commissioner, Department of Human Services.

Filed: December 24, 1987 as R.1988 d.47, **without change.**

Authority: N.J.S.A. 44:7-6 and 44:10-3; Public Law 1987, c.283.

Effective Date: December 24, 1987.

Expiration Date: October 15, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

10:81-8.22 Persons eligible for medical assistance

(a) (No change.)

(b) Extension of Medicaid benefits: Extended Medicaid benefits shall be provided former AFDC families in accordance with the provisions of this subsection.

1. When an AFDC-C, -F or -N family loses eligibility for AFDC (including families deemed to be recipients of AFDC) due to the following reasons, Medicaid eligibility continues for a period of 12 months beginning with the month in which the family is no longer eligible for AFDC:

i. Earnings or increased earnings from employment, including earnings from new employment;

ii. Loss of the \$30.00 or one-third disregards of earned income (see N.J.A.C. 10:82-4) because of the time-limited application of those disregards;

iii. Increased hours of employment; or

iv. Receipt of New Jersey state unemployment or temporary disability insurance benefits.

2. For any family which became eligible for AFDC prior to the enactment of P.L. 1987, c.283, in order to be eligible for this employment related extension, the family must have been eligible for AFDC or was deemed to be in receipt of AFDC for at least three of the six months preceding the month in which the family lost eligibility for AFDC.

3. New members added to the eligible unit during the 12 month extension period are not included under the extended coverage with the exception of a child born to the family during the 12 month extension period.

4. Any family formerly receiving AFDC-C or -F qualifying for this extension because of the loss of the \$30.00 or one-third disregards, shall receive an additional three months of Medicaid extension if, at the expiration of the 12-month extension, the family would be eligible for AFDC if the \$30.00 and the one-third still applied. To receive this additional three months of Medicaid extension, the family must demonstrate to the satisfaction of the CWA that, had the \$30.00 and one-third disregard of earned income not been time-limited, the family would have been continuously eligible for AFDC from the time it became ineligible for AFDC.

5. Eligibility for the 12-month Medicaid extension is not available for any month to any individual who, except for income, resources or hours of employment, is not otherwise eligible to receive AFDC.

6. (No change in text.)

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

10:81-14.20 REACH support services: medical assistance

(a) Post-assistance Medicaid coverage: When an AFDC-C, -F or -N family, residing in a county participating in the REACH program, becomes ineligible for AFDC (including families deemed to be recipients of AFDC) for any of the reasons listed in (b) below, the members of the family shall continue to receive Medicaid for a period of 12 months.

(b) (No change.)

(c) Additional requirements: The following additional requirements apply to the 12-month Medicaid extension:

1. Except as specified in 1i below, the family must have received AFDC in the month preceding the month in which the family became ineligible for AFDC.

i. For families who became eligible for AFDC prior to the enactment of P.L. 1987, c.283 on October 8, 1987, the family must have received AFDC (or were deemed to have been in receipt of AFDC) in any three or more months during the six-month period immediately preceding the month in which the family became ineligible for AFDC.

2. (No change in text.)

3. (No change in text.)

(d) (No change.)

(e) Any family formerly receiving AFDC-C or -F qualifying for this 12-month extension because of the loss of the \$30.00 or one-third disregards (see (b)1 above) shall receive an additional three months of Medicaid extension if, at the expiration of the 12-month extension, the family would be eligible for AFDC if the \$30.00 and one-third disregards still applied. To receive this additional three months of Medicaid extension, the family must demonstrate to the satisfaction of the CWA that, had the \$30.00 and one-third disregard of earned income not been time-limited, the family would have been continuously eligible for AFDC from the time it became ineligible for AFDC.

(b)

DIVISION OF PUBLIC WELFARE

Home Energy Assistance Handbook

Income Eligibility Requirements; Maximum

Allowable Gross Income Limits; Special Energy Assistance; Cooling Assistance; Emergency Energy Assistance; and Payment Schedules

Adoption of Concurrent Proposal: N.J.A.C.

10:89-2.2, 2.3, 3.2, 3.3, 3.4, 3.6 and 4.1

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Proposed: November 16, 1987 at 19 N.J.R. 2208(a).
 Adopted: December 24, 1987 by Drew Altman, Commissioner,
 Department of Human Services.
 Filed: December 24, 1987 as R.1988 d.46, with technical changes
 not requiring additional public notice and comment (see
 N.J.A.C. 1:30-4.3).

	6	1878
	7	2116
	8	2354
	9	2592
	10	2830
Each Additional Member		+238

Authority: N.J.S.A. 30:4B-2.
 Effective Date: December 24, 1987.
 Expiration Date: September 11, 1990.

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

Summary of Changes Subsequent to Proposal:
 The HEA emergency rule eliminated payment schedule D, which listed benefit levels for heating and cooling costs for eligible renters, and it provided that the benefit levels in schedule C be applicable for renters as well as for all other fuels not addressed in schedules A and B. The changes at N.J.A.C. 10:89-3.2(f)1 and 2iii delete reference to schedule D since it has been eliminated. The language revision at N.J.A.C. 10:89-3.3 has been made for purposes of clarification.

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

10:89-2.2 Eligibility requirements

(a) The household members shall be residents of New Jersey.
 1.-3. (No change.)

4. Illegal aliens are ineligible for Home Energy Assistance benefits. In cases where an illegal alien resides within an applicant household, the alien must be excluded from the HEA household size. If the illegal alien has monthly income in excess of \$238.00, the amount in excess of \$238.00 shall be counted as income to the household, and must be added to all other household income in determining the household's gross monthly income.

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

10:89-2.3 Income eligibility

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

(f) Income computation: Countable gross monthly earned and unearned income, as defined in (c) and (d) above, and verified in accordance with N.J.A.C. 10:89-4.1(d), shall be added to determine the household's total gross monthly income. Cents shall be rounded to the nearest dollar. If the household's total gross monthly income is equal to or less than the gross income limit for the household size, the household is income eligible for Home Energy Assistance.

1.-3. (No change.)

4. Roomer-boarders residing within applicant household are not to be included in the household size and the income of such individuals is not to be considered in the eligibility determination. However, in accordance with N.J.A.C. 10:82-4.3(c) in the Assistance Standards Handbook (ASH), any income to the HEA Program applicant household in roomer-boarder situations in excess of \$125.00 per month shall be considered in determining the household's gross monthly income.

i. (No change.)

5. If a household member receives Social Security benefits and/or SSI the CWA must determine the countable income as follows:

i.-ii. (No change.)

iii. For individuals receiving Social Security benefits or SSI, moneys withheld to repay a prior overpayment shall not be counted as income.

(g) Gross Income Eligibility Limits for Home Energy Assistance:

Household Size	Monthly Allowable Gross Income Limit
1	\$ 688
2	926
3	1164
4	1402
5	1640

10:89-3.2 Special energy assistance

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

(f) Households responsible for heating costs:

1. Households which are responsible for primary fuel costs associated with residential heat shall receive a benefit based on the appropriate benefit level in Schedule A, B, ***or*** C ***[or D]*** of this chapter for the household's size, income, fuel type, and heating region.

2. For program purposes a household's benefit will be determined as follows:

i.-ii. (No change.)

iii. If heat is included in a single monthly rental charge the benefit will be based on Schedule ***[D]* *C***.

3.-5. (No change.)

6. For cases in which an applicant indicates that he or she is using a kerosene heater as the primary heat source in an area in which zoning ordinances have declared that type of heater illegal, kerosene shall not be considered the household's main source of heat on the HEA application. In such situations the CWA must advise applicants of the legal implications of using that form of heater and provide them with information regarding any available programs which may assist them in the establishment of an alternate heating source.

i. In any situation in which the applicant is uncooperative in securing a new heating source, the CWA must document in the case record that the applicant was advised of the illegality of the use of kerosene heaters and was counseled regarding existing alternatives. Home energy assistance payments shall not be authorized to supplement illegal heating sources.

10:89-3.3 Cooling assistance

(a) Income eligible households for which there is medical evidence that the health of at least one household member will be seriously endangered unless the household's living quarters are cooled shall receive a one-time benefit in the amount of \$125.00 subject to the following provisions. This benefit is available in addition to any other benefits made under this program and will be paid directly to the household.

1.-2. (No change.)

3. The following households are not eligible for cooling assistance payments:

i. Households residing in publicly operated housing or receiving a rent subsidy which includes ***all*** cooling costs;

ii.-iv. (No change.)

10:89-3.4 Emergency energy assistance

(a) Emergency energy assistance is available to HEA eligible households and is subject to the following conditions:

1. An energy emergency shall exist when a household is without heat or is in danger of being without heat and has insufficient income available to purchase fuel or when a household which pays for heating costs which are included in a monthly rental charge is faced with eviction due to nonpayment of rent.

2. (No change.)

3. The amount of any emergency assistance payment shall be the lowest amount charged for the service performed by the household's energy supplier or for the purchase of fuel, but shall not exceed \$200.00 for the purchase of fuel oil, electricity, natural gas, bottled gas, kerosene, wood or coal. The fee for restoration of utility service shall be counted toward the \$200.00 maximum amount for purchase of electricity or natural gas.

4. The client shall be required to account for the use of all funds received under the program prior to the request for emergency assistance. The CWA shall evaluate the request for emergency assistance with the understanding that any benefits previously provided to the client under this section or N.J.A.C. 10:89-3.1, "Automatic payments to certain households" and N.J.A.C. 10:89-3.2, "Special

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energy assistance" were intended to defray the cost of home heating fuel for the current heating season or to defray heating costs which are included in a monthly rental charge.

5.-6. (No change.)

(b) It is intended that emergency energy assistance be authorized in the form of a direct payment to the client from the CWA on Administrative Account No. 57. The CWA will subsequently be reimbursed by DPW for such payments.

1. Emergency energy assistance benefits may, at the discretion of the agency, be issued as a two party check payable to the head of household and the fuel supplier or utility company.

(c) (No change.)

(d) Emergency energy assistance for specific services:

1. Emergency energy assistance is authorized through the CWA when a household is without heat or is in danger of being without heat. Payments for the following services shall only be authorized for a household if the household owns and resides in the residence requiring the service:

i. Furnace repairs up to \$1,000 or;

ii. (No change in text.)

2. Payment for the following service may be authorized for households which are directly responsible for payment of the cost of the primary heating fuel for the residence requiring the service, regardless of whether the household owns the residence.

i. Furnace restart not to exceed \$100.00.

(e) Emergency temporary rehousing:

1. Payment may be authorized for the actual cost of adequate emergency shelter arrangements for HEA eligible households which have been temporarily rehoused due to an energy related emergency.

2. (No change.)

3. The CWA will be reimbursed retroactively for emergency rehousing assistance provided to eligible households.

4. The CWA is responsible for evaluation of the situations and determination of the appropriateness of reimbursement from program funds. Reimbursement shall be authorized for a specified temporary period consistent with N.J.A.C. 10:82-5.10.

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

(f) Restoration or maintenance of utility service:

1. Emergency energy assistance may be granted by a CWA to restore or maintain utility service for an eligible household under the following conditions:

i. (No change.)

ii. The household must have received a termination of service notice or have actually been shut off;

iii. The utility company agrees to restore or maintain service but requests a fee for reconnection;

iv. The household is without the means to pay the reconnection fee;

v. (No change in text.)

vi. The total amount of the emergency payment may not exceed \$200.00 which includes the emergency purchase of fuel and the reconnection fee; and

vii. The county welfare agency (CWA) must verify with the utility that the amount of the available emergency payment will be sufficient to restore or maintain service.

2. If the request for emergency assistance is made while the Board of Public Utilities Order regarding the winter termination program (moratorium) is in effect, the household must document that appeal to the Board has been unsuccessful.

3. If the utility requires a minimum payment in an amount greater than \$200.00 to restore or maintain service, prior to issuing the emergency payment, the CWA shall require the household to show proof that the household has funds to pay or has paid the excess amount prior to issuance of the emergency payment.

4. If a household which heats by fuel oil must have utility service reconnected to start the fuel burner, emergency energy assistance may be granted for the utility reconnection necessary to restart the fuel burner and for an emergency fuel oil delivery. The total amount of the emergency payment in such instances may not exceed \$200.00. The maximum payment for utility reconnection may not exceed

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\$100.00. If a household which heats by fuel oil has used its HEA benefit check to purchase oil or already has oil but needs utility reconnection to start the fuel burner, emergency energy assistance may be granted for such utility reconnection but may not exceed \$100.00.

10:89-3.6 Payment schedules

Delete (a)-(d) (Payment Schedule A through D) as currently found at N.J.A.C. 10:89-3.6; Replace with the following:

(a) Schedule A: Electricity, Natural Gas:

HOUSEHOLD SIZE Region Designation Monthly Income	1 or 2		3 to 5		6 or more	
	Blue	Red	Blue	Red	Blue	Red
\$0-\$667.00	522	454	698	606	834	726
\$668.00-\$1084.00	434	380	580	504	698	606
\$1085.00-\$1501.00	350	302	464	404	558	486
\$1502.00-\$1918.00			348	302	418	362
\$1919.00-\$2335.00			232	202	278	242
Over \$2335.00					140	120

"Blue" means Sussex and Warren counties.

"Red" means all other counties.

(b) Schedule B: Fuel Oil, Kerosene:

HOUSEHOLD SIZE Region Designation Monthly Income	1 or 2		3 to 5		6 or more	
	Blue	Red	Blue	Red	Blue	Red
\$0-\$667.00	492	428	658	572	788	686
\$668.00-\$1084.00	410	358	548	476	658	572
\$1085.00-\$1501.00	330	286	438	382	526	458
\$1502.00-\$1918.00			328	286	394	342
\$1919.00-\$2335.00			220	190	262	228
Over \$2335.00					132	114

"Blue" means Sussex and Warren counties.

"Red" means all other counties.

(c) Schedule C: All other fuel:

HOUSEHOLD SIZE Region Designation Monthly Income	1 or 2		3 to 5		6 or more	
	Blue	Red	Blue	Red	Blue	Red
\$0-\$667.00	322	280	430	372	516	448
\$668.00-\$1084.00	268	234	358	312	430	374
\$1085.00-\$1501.00	216	188	286	250	344	298
\$1502.00-\$1918.00			214	186	258	224
\$1919.00-\$2335.00			144	124	172	150
Over \$2335.00					86	74

"Blue" means Sussex and Warren counties.

"Red" means all other counties.

10:89-4.1 Opportunity and decision to apply

(a) Any individual(s) who believes he or she or his or her household is eligible for HEA must be given the opportunity to apply without delay. Heating assistance applications shall be accepted from November 1 through April 30 of each year. Cooling assistance applications shall be accepted from November 1 through June 30 of each year. Applicants will be informed about eligibility requirements and their rights and obligations in applying for and receiving assistance. The decision to apply rests with the applicant. The applicant has the right to withdraw the application before eligibility or ineligibility has been determined. Upon completion of the application process, the application shall be transmitted to DPW in accordance with (e) below.

1. (No change.)

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

CORRECTIONS

(a)

THE COMMISSIONER

Inmate Discipline Suspending Sanctions

Adopted New Rule: N.J.A.C. 10A:4-9.18

Proposed: September 21, 1987 at 19 N.J.R. 1717(b).
Adopted: January 8, 1988, by William H. Fauver, Commissioner,
Department of Corrections.
Filed: January 8, 1988 as R.1988 d.61, **without change**.
Authority: N.J.S.A. 30:1B-6 and 30:1B-10.
Effective Date: February 1, 1988.
Expiration Date: July 21, 1991.

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

Full text of the adoption follows.

10A:4-9.18 Suspending sanctions
(a) The Adjustment Committee or Disciplinary Hearing Officer may suspend a sanction(s) imposed upon an inmate for a violation of a prohibited act when, in their opinion, such action is warranted by the particular circumstances of the case.
(b) When a sanction(s) is suspended, the inmate's behavior shall be watched closely for a period of time to see if his or her intentions to conform to the required code of behavior are sincere.
(c) If the inmate whose sanction(s) has been suspended commits further violations of the correctional facility's rules or regulations, the Adjustment Committee or Disciplinary Hearing Officer shall enforce the sanction(s) which was suspended and impose an additional sanction(s) for the new violation(s).
Recodify existing 10A:4-9.18 through 9.22 as 10A:4-9.19 through 9.23 (No change in text.)

INSURANCE

DIVISION OF ADMINISTRATION

(b)

Official Department Mailing List: Address Information

Adopted New Rules: N.J.A.C. 11:1-25

Proposed: December 7, 1987 at 19 N.J.R. 2236(a).
Adopted: January 8, 1988, by Kenneth D. Merin, Commissioner,
Department of Insurance.
Filed: January 8, 1988 as R.1988 d.64, **without change**.
Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:16A-13, 17:22-6.45,
17:23-1, 17:35-8, 17:35-19, 17:44A-34, 17:45-12, 17:46A-7,
17:46B-55, 17:46C-9, 17:48-11, 17:48A-15, 17:48C-26,
17:48D-13, 17:48E-36, 17:50-8 and 17B:21-1.
Effective Date: February 1, 1988.
Expiration Date: February 3, 1991.

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

Full text of the adoption follows.

SUBCHAPTER 25. OFFICIAL DEPARTMENT MAILING LIST: ADDRESS INFORMATION

11:1-25.1 Purpose
The purpose of this subchapter is to ensure that the Department's official mailing address records remain accurate and updated at all

times and thereby maximize the use of Department resources and the effectiveness of Department mailings.

11:1-25.2 Scope
This subchapter shall apply to any person, partnership, corporation or any other legal entity that is required to submit an annual financial statement or report to the Commissioner pursuant to any of the following: N.J.S.A. 17:16A-13, 17:22-6.45, 17:23-1, 17:35-8, 17:35-19, 17:44A-34, 17:45-12, 17:46A-7, 17:46B-55, 17:46C-9, 17:48-11, 17:48A-15, 17:48C-26, 17:48D-13, 17:48E-36, 17:50-8 or 17B:21-1.

11:1-25.3 Official mailing list; change in address information
(a) For the purpose of disseminating Department information, including but not limited to, bulletins, certificates of authority, orders to show cause, administrative orders, and public notices, the Department's official mailing list shall be based upon the mailing address information as provided in the 1985 annual financial statement or report filed pursuant to the respective insurance laws requiring such, as set forth above at N.J.A.C. 11:1-25.2. The mailing address provided in the 1985 annual financial statement or report shall be deemed the official mailing address of the person, partnership, corporation or other legal entity which filed such statement or report, unless the Department has been specifically notified otherwise of a change in the mailing address. In such cases, the mailing address the Department has been notified of shall be deemed the official mailing address.

1. In cases where no mailing address is designated, the home address as provided in the 1985 annual financial statement or report filed shall be deemed the official mailing address of the person, partnership, corporation or other legal entity which filed such statement or report, unless the Department has been specifically notified otherwise of a change in the home address. In such cases, the home address the Department has been notified of shall be deemed the official mailing address.

2. If an insurer's or other regulated entity's mailing address, or home address if applicable, is different on the 1985 annual financial statement or report than on the 1986 annual financial statement or report and the Department has not otherwise been specifically notified of such change, the insurer or other regulated entity shall notify the Department in writing of the address change, within 10 days of the effective date of this subchapter, by sending the notification to the Department at the address set forth in (b) below.

(b) Upon any change in the mailing address, or home address if applicable, the insurer or other regulated entity shall notify the Department in writing of such change no later than 10 days from the date the new address became effective. All address change notifications shall be sent to:

Supervisor of Insurance Reports
Division of Financial Examinations
New Jersey Department of Insurance
CN 325
Trenton, New Jersey 08625

(c) Department information, as defined in subsection (a) above, shall be addressed to the secretary of the company and mailed to the official mailing address.

(d) Unless the Department is notified otherwise in accordance with the above provisions, the mailing address last provided to the Department pursuant to this rule shall be deemed correct and any communications mailed to such shall be deemed properly mailed and received.

11:1-25.4 Penalties
Failure to comply with the provisions of this subchapter shall constitute a violation of the insurance laws of this State and may result in the imposition of any penalties authorized by law.

ADOPTIONS

LAW AND PUBLIC SAFETY

(a)

Automobile Insurance Coverage Option Survey: Personal Injury Protection and Tort Threshold Options

Adopted Amendments: N.J.A.C. 11:3-22.3

Proposed: December 7, 1987 at 19 N.J.R. 2237(a).
 Adopted: January 8, 1988, by Kenneth D. Merin, Commissioner, Department of Insurance.
 Filed: January 8, 1988 as R.1988 d.65, **without change**.
 Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1, 17:28-1 et seq. and 39:6A-1 et seq.
 Effective Date: February 1, 1988.
 Expiration Date: January 6, 1991.

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

Full text of the adoption follows.

11:3-22.3 Coverage option survey requirements

(a) Every automobile insurer, on a biannual basis, shall complete and file with the Commissioner the coverage option survey required by this subchapter. The insurer's biannual survey shall reflect the total number of automobiles with in force coverage as of December 31 and as of June 30 of each year, and shall indicate the personal injury protection and tort threshold options selected with respect to each such automobile. Insurers shall use forms A and B, appended to this subchapter, to report the information required by this section.
 (b) Survey forms reflecting coverage option selections as of December 31 of each year shall be filed with the Commissioner by January 21 of that year. Survey forms reflecting coverage option selections as of June 30 of each year shall be filed with the Commissioner by July 22 of that year.
 (c)-(f) (No change.)

Form A
 STATE OF NEW JERSEY—DEPARTMENT OF INSURANCE
 AUTOMOBILE INSURANCE COVERAGE OPTION SURVEY

Company/Group: _____

Total Number of Automobiles with Insurance Policy Coverage in Force as of December 31 or June 30, 19__.

Options	Number of Automobiles
PIP Coverages for Medical Expense Only	_____
PIP Medical Expense Benefit Deductibles:	
\$ 500	_____
\$1,000	_____
\$2,500	_____
No deductible	_____
Reimbursement to Insurance Company of PIP Medical Expenses up to 20% of Non-Economic Loss	_____
Tort Threshold	_____
\$ 200	_____
†Threshold Index amount	_____

†Note: Due to the inflation index, the tort threshold amount is subject to change on January 1 of each year.

Form B

STATE OF NEW JERSEY—DEPARTMENT OF INSURANCE
 AUTOMOBILE INSURANCE COVERAGE OPTION SURVEY

Company/Group: _____

Number of Automobiles with Insurance Coverage in Force as of December 31 or June 30, 19__.

P.I.P. Deductible	Set Off	Full P.I.P. with Tort Threshold of:		Medical P.I.P. Only with Tort Threshold of:	
		\$200	Threshold Index Amount†	\$200	Threshold Index Amount†
0	With				
	Without				
\$ 500	With				
	Without				
\$1,000	With				
	Without				
\$2,500	With				
	Without				

†Note: Due to the inflation index, the tort threshold amount is subject to change on January 1 of each year.

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(b)

STATE BOARD OF EXAMINERS OF OPHTHALMIC DISPENSERS AND OPHTHALMIC TECHNICIANS

Fee Schedule

Adopted Amendment: N.J.A.C. 13:33-1.41

Proposed: December 7, 1987 at 19 N.J.R. 2242(a).
 Adopted: January 7, 1988 by Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, James L. Kymer, President.
 Filed: January 12, 1988 as R.1988 d.66, **without change**.
 Authority: N.J.S.A. 52:17B-41.13 and 45:1-3.2.
 Effective Date: February 1, 1988.
 Expiration Date: March 18, 1990.

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

Full text of the adoption follows.

13:33-1.41 Fee schedule

(a) The following fees shall be charged by the Board effective upon promulgation.

1. Examination:	
i. Ophthalmic Dispenser	\$100.00
ii. Ophthalmic Technician	75.00
iii. Qualifying Technical	75.00
2. Reexamination:	
i. Ophthalmic Dispenser	75.00
ii. Ophthalmic Technician	50.00
iii. Qualifying Technical	50.00
3. License:	
i. Ophthalmic Dispenser	75.00
ii. Ophthalmic Technician	50.00
iii. Branch Office Ophthalmic Dispenser	50.00
iv. Branch Office Ophthalmic Technician	50.00
4. Biennial Renewal:	
i. Ophthalmic Dispenser	170.00
ii. Ophthalmic Technician	130.00
iii. Branch Office Ophthalmic Dispenser	120.00
iv. Branch Office Ophthalmic Technician	80.00
5. Permits:	
i. Temporary	50.00
ii. Apprentice Dispenser	75.00
iii. Apprentice Technician	50.00
6. Permit renewal:	
i. Apprentice Dispenser	50.00
ii. Apprentice Technician	50.00
7. Late renewal of license or permit	50.00

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ADOPTIONS

8. Late application for licensure	50.00
9. Replacement certificate of registration:	
i. License	25.00
ii. Branch Office License	25.00
iii. Permit	15.00

(a)

DIVISION OF CRIMINAL JUSTICE

Distribution of Forfeited Property

Adopted New Rule: N.J.A.C. 13:77

Proposed: August 17, 1987 at 19 N.J.R. 1534(b).

Adopted: December 18, 1987, by W. Cary Edwards, Attorney General.

Filed: January 8, 1988 as R.1988 d.63, without change.

Authority: N.J.S.A. 2C:64-6.

Effective Date: February 1, 1988.

Expiration Date: February 1, 1993.

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

Full text of the adoption follows.

CHAPTER 77

ATTORNEY GENERAL'S STANDARDS
FOR THE EQUITABLE DISTRIBUTION TO
CONTRIBUTING LAW ENFORCEMENT AGENCIES
OF FORFEITED PROPERTY

SUBCHAPTER 1. GENERAL PROVISIONS

13:77-1.1 Purpose

(a) The standards in this chapter govern the division and distribution of property forfeited pursuant to N.J.S.A. 2C:64-1 et seq. The standards are promulgated to provide guidance and prior notice regarding the procedures governing the use of forfeited property and to ensure the equitable distribution of such property in accordance with the statutory intent. When property is forfeited as a result of the combined efforts of more than one law enforcement agency, each law enforcement agency contributing to the forfeiture is to share proportionately in the forfeiture proceeds. Where property cannot be divided, the general policy is to sell the property and divide the proceeds among all participating law enforcement agencies. The forfeited property shall be used solely for law enforcement purposes and shall be divided in a manner which will enhance law enforcement efforts and cooperation. It is recognized that standards for division of the property among agencies must be promulgated in order to foster a consistency of result through a balanced approach. It is further recognized that a too rigid method of apportionment of forfeited property would often not provide the best use of the property and thus not fully serve the law enforcement interests of New Jersey as a whole. The standards in this chapter are intended to further these general purposes and shall be interpreted accordingly.

(b) The prosecuting agency shall determine the contributive share to be apportioned to each participating law enforcement agency, including that of the prosecuting agency itself. The prosecuting agency shall divide the forfeited property or its proceeds equitably and fairly, and in accordance with these standards, with any law enforcement agency through its funding entity where the law enforcement agency participated in the surveillance, investigation, arrest or prosecution which resulted in the forfeiture. The funding entity shall fully credit the participating law enforcement agency with its contributive share of the forfeited property, which share is to be dedicated solely for law enforcement purposes in accordance with these standards.

13:77-1.2 Legal authority

(a) Under N.J.S.A. 2C:64-6 and N.J.S.A. 2C:64-7, the Attorney General or the county prosecutor, whichever is the prosecuting agency, is to divide the forfeited property according to each law enforce-

ment agency's contribution to the surveillance, investigation, arrest or prosecution which resulted in the forfeiture.

(b) These standards are promulgated pursuant to the authority of the Attorney General to establish rules and regulations governing the division and distribution of forfeited property under N.J.S.A. 2C:64-6.

13:77-1.3 Delegation of authority of Attorney General in apportionment

Where the Attorney General is the prosecuting agency, the Director of the Division of Criminal Justice is designated to act on behalf of the Attorney General in determining the relative contributions of participating law enforcement agencies so that an equitable division of forfeited property can be made. Accordingly, the Director of the Division of Criminal Justice is directly responsible for the administration and execution of the standards governing forfeiture.

13:77-1.4 Definitions

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

"Contributive share" means the proportionate share of forfeited property which is allocated by the prosecuting agency in the exercise of its discretion to any participating law enforcement agency based on the participating law enforcement agency's relative contribution to the surveillance, investigation, arrest or prosecution.

"Entity" means the funding entity or entity having budgetary control over a participating law enforcement agency. In the case of a State law enforcement agency, that entity shall be the State Treasury.

"Forfeited property" means property, proceeds and monies seized and subject to a confirming final judgment pursuant to N.J.S.A. 2C:64-3.

"Investigative unit" means a State law enforcement investigative agency, bureau, division, section or other unit that engages in criminal investigations, surveillances or arrests and which is under the control, direction or supervision of a department of the State.

"Law enforcement purpose" means a purpose which is calculated to enhance a law enforcement agency's ability to conduct criminal investigations, surveillances, arrests and prosecutions and to respond more fully to the effects of crime and, for purposes of these rules, shall be beyond that allocated by the law enforcement agency's annual budget. A law enforcement purpose shall include expenditures to defray the costs of protracted or complex investigations; to educate the public in crime prevention techniques; to provide additional technical assistance or expertise, which may, for example, include participation in funding the purchase of Statewide automated fingerprint identification equipment, an automated uniform offense and arrest report system, the purchase of surveillance and undercover transportation and investigation equipment, and computer hardware and software to enhance the coordination of intelligence information among the law enforcement agencies of a county and the State; to provide matching funds to obtain Federal law enforcement enhancement grants, or for such other purposes as the Attorney General may from time to time authorize.

"Participating law enforcement agency" means a law enforcement agency, including a State investigative unit or a county multi-agency strike force or task force, which substantially contributes to the surveillance, investigation, arrest or prosecution which results in a forfeiture.

"Prosecuting agency" means either the Attorney General or the county prosecutor, whichever in a particular case bears the responsibilities for prosecuting the defendant or filing the forfeiture action.

"State law enforcement agency" means any department of the State which by itself or through any subordinate investigative unit or other agency, which it controls, directs or supervises, engages in law enforcement activities. The Department of Law and Public Safety shall be the State law enforcement agency for all investigative activity conducted by its investigative units.

ADOPTIONS

SUBCHAPTER 2. DISPOSITION OF AUTHORITY

13:77-2.1 Contraband

Property defined in N.J.S.A. 2C:64-1 which has been forfeited shall be destroyed if it can serve no lawful purpose or it presents a danger to the public health, safety or welfare.

13:77-2.2 Law Enforcement Trust Fund for prosecuting agency

All forfeited property other than contraband, or any proceeds resulting from the forfeiture and all monies seized or forfeited, shall become the property of the entity funding the prosecuting agency effecting the forfeiture, and shall if feasible be placed in a dedicated Law Enforcement Trust Fund established by that entity. All interest or income earned on or with forfeited property in the Law Enforcement Trust Fund shall remain in the Trust Fund to be used for the payment of asset maintenance costs and to assure liquidity of the fund to pay other costs, such as security interests, and may not be used for any other purpose without prior approval by the Attorney General. Property or monies needed as evidence shall be maintained separately and, when approved by the prosecuting agency, shall be transferred to the Law Enforcement Trust Fund.

13:77-2.3 Disbursements from Law Enforcement Trust Fund

(a) The property, proceeds and monies shall be distributed from the dedicated Law Enforcement Trust Fund in the following order:

1. Security interests: When the prosecuting agency effecting the forfeiture has decided to retain the forfeited property, upon which there are recorded liens, for law enforcement use, and there are sufficient monies deposited in the Law Enforcement Trust Fund, payments shall first be made from the Fund to any innocent lessor or any other innocent person holding a perfected security interest in the forfeited property, up to the amount of his or her interest in that property. Payment for security interests shall be a ministerial function of the funding entity upon the request of the prosecuting agency.

2. Asset maintenance and forfeiture prosecution costs: Before shares are calculated based on each law enforcement agency's relative contribution, payment from the Law Enforcement Trust Fund will be made to the entity funding the prosecuting agency for certain direct, out-of-pocket costs. Where applicable, and upon the direction of the prosecuting agency, the funding entity shall compensate any other person, entity or agency for payment of these costs. The asset maintenance and forfeiture prosecution costs shall be paid by the funding entity upon demand by the prosecuting agency before distribution from the Law Enforcement Trust Fund of the remainder of the forfeited property. These reimbursable costs shall include expenses incurred for the care, custody and disposal of the seized and forfeited property, such as, for example, filing and recording fees, brokerage fees, advertising costs, insurance or bond premiums, appraisal or inspection fees, service, repair, restoration, maintenance or storage fees, and any necessary costs incurred to protect the value of an asset, including, for example, the costs of operating any business enterprise. The funding entity responsible for maintaining and administering the Law Enforcement Trust Fund may be reimbursed for the reasonable expense of administering the Trust Fund, upon the approval of the prosecuting agency.

3. Contributive share: After deductions are made for security interests and asset maintenance and forfeiture prosecution costs, payments shall be made from the Law Enforcement Trust Fund to the participating law enforcement agency—State, county, local or other—through its funding entity, where the law enforcement agency contributed to the surveillance, investigation, arrest or prosecution resulting in the forfeiture, in proportion to that agency's relative contribution as determined by the prosecuting agency pursuant to N.J.A.C. 13:77-4.1 and 13:77-4.2. Payment shall be made to the Special Law Enforcement Fund established for the participating law enforcement agency by its funding entity.

13:77-2.4 Forfeiture fund for participating law enforcement agency

(a) The contributive share of a county or municipal participating law enforcement agency shall be placed in a Special Law Enforcement Fund established by the entity funding the law enforcement agency which receives the forfeited property. All interest or income earned on or with this forfeiture fund shall remain in the fund for the sole

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use of the law enforcement agency. Monies in a Special Law Enforcement Fund shall be used for law enforcement purposes only and may not be used for payment of regular salaries or to create new personnel positions. If approved by the Attorney General, forfeiture funds may be used to pay the salaries of temporary employees hired for a specific function, such as persons with a special expertise which is needed for a particular investigation. Funds may be expended from the forfeiture fund only upon the request of the participating law enforcement agency, accompanied by a written certification that the request complies with the provisions of this chapter, and only upon appropriation to the participating law enforcement agency in accordance with the accepted budgetary provisions of its funding entity.

(b) Forfeited property, proceeds or monies, and interest or income thereon, distributed to a State level law enforcement agency or which remains in the State Law Enforcement Trust Fund shall be placed in a dedicated fund or funds established in the Department of Treasury. This fund shall be administered by the department of the State responsible for the State law enforcement agency, and monies from the fund shall be apportioned by the head of the responsible State department, in his or her discretion, to the various participating investigative units and other law enforcement agencies which are under its control or direction. The department head of the responsible department of State may not use the forfeiture funds for payment of regular salaries or to create new personnel positions without the approval of the Department of Treasury and in conformity with applicable law, except that the Attorney General may authorize payment of the salary of a temporary employee.

13:77-2.5 Use of forfeiture funds

Funds derived from forfeited property may be expended only for law enforcement purposes as defined in N.J.A.C. 13:77-1.4. All expenditures are subject to certification of availability by the funding entity, which certification should not be unreasonably and untimely withheld. Forfeiture funds shall not be a source of revenue to meet normal operating needs of the law enforcement agency. No funding entity shall anticipate forfeitures or proceeds therefrom in the adoption and approval of the budget for its law enforcement agency.

SUBCHAPTER 3. DISPOSITION OF INDIVISIBLE FORFEITED PROPERTY

13:77-3.1 Policy for disposing indivisible forfeited property

Where forfeited property, including motor vehicles, cannot be divided as required by N.J.S.A. 2C:64-7, the general policy of this State shall be to sell the property and divide the proceeds as set forth in N.J.A.C. 13:77-4.1 and 13:77-4.2, rather than to retain the property for law enforcement use. Where, however, full value cannot be obtained for indivisible forfeited property and where the property is needed for law enforcement use, the prosecuting agency effecting the forfeiture may determine to retain the forfeited property for official use.

13:77-3.2 Procedures for disposing indivisible forfeited property

If the prosecuting agency decides to distribute indivisible forfeited property to a participating law enforcement agency, the participating law enforcement agency must reimburse the entity funding the prosecuting agency for any monies that were expended by that entity in furtherance of securing a perfected interest in or clear title to the forfeited property. If the participating law enforcement agency does not agree to such reimbursement, or if other agreement cannot be reached by all interested parties, the forfeited property shall be sold and the proceeds shall be distributed as set forth in N.J.A.C. 13:77-4.1 and 13:77-4.2.

SUBCHAPTER 4. APPORTIONMENT OF FORFEITED PROPERTY

13:77-4.1 Procedures for apportioning forfeited property

(a) Calculation of the contributive share of any participating law enforcement agency is to be determined in the discretion of the prosecuting agency. The distribution decision of the prosecuting agency shall generally reflect the relative contribution of any law enforcement agency participating in any of the acts which led to the seizure or forfeiture of the property.

(b) A participating law enforcement agency shall submit a written request for distribution on an approved form within 10 days of the seizure and file the request with the prosecuting agency. Where the prosecuting agency intends to seek a share of the forfeited property, it is to document its own prosecution costs on a written request form which shall be retained and made available for the review of any other participating law enforcement agency. The request by any law enforcement agency must include an identification of the property against which the claim is made; details regarding the law enforcement agency's participation, including the amount of money and manpower expended in pursuing the case; the intended use of the property; and an estimate of the relative percentage contribution of each participating law enforcement agency.

13:77-4.2 Criteria for apportioning forfeited property

(a) In determining the contributive share of any participating law enforcement agency, the prosecuting agency shall consider the following enumerated factors:

1. The amount of money directly expended in pursuing the case: These funds, while "out-of-pocket" costs of the case itself, generally are not directly tied to an asset seized for forfeiture. Thus, these expenditures are not to be included with the asset maintenance and forfeiture prosecution costs of N.J.A.C. 13:77-2.3(a)2 which are to be deducted prior to calculation of the law enforcement agency's contributive share. Payments for information or assistance relating to or in furtherance of a law enforcement investigation are costs associated with the underlying criminal investigation itself, independent of a forfeiture action. Nevertheless, because the expended money represents an identifiable out-of-pocket expense, the prosecuting agency shall generally reimburse such costs as fully as possible in determining a law enforcement agency's contributive share.

2. The agency which initiated the case: The initiating law enforcement agency may well have been able to proceed with a criminal investigation without the assistance of others. To the extent that agency collaborated with other law enforcement agencies to further an investigation and develop a more significant case, it should not "lose" the value of an asset which it may in the normal course, and without assistance from other law enforcement agencies, have obtained independently. In these circumstances, the contributive share of the initiating law enforcement agency may be calculated in a greater than pure percentage contribution fashion in order to encourage and foster future law enforcement cooperation. Furthermore, the agency which initiated the case may have made an insignificant manpower contribution to the forfeiture. For example, a stop by a State Trooper could result in a find of a large cache of drug money. The few moments expended by the trooper would be far less than expended in the prosecution of the case itself, which could, indeed, result in a major prosecution if the investigation could ascend the drug distribution hierarchy. Nevertheless, the "but for" nature of the trooper's act may warrant a greater contributive share for his agency than would be calculated solely by considering manpower or costs expended.

3. The agency which identified the asset: An asset may, for example, be identified as subject to forfeiture by using evidence contained in financial records, just as inconsistencies between one's net worth or purchases and legitimate known sources of income can reveal illegal income. Investigative accounting techniques may show that unlawfully acquired income was used to infiltrate or purchase a business or indirectly to acquire other apparently legitimate property. Thus, demonstration of a connection between the proceeds of crime and property would enable the forfeiture of that asset. Under these circumstances, the law enforcement agency's identification of the asset or business as an ultimate product of criminal activity could significantly expand the value of forfeiture in a particular case and may be appropriately rewarded.

4. The manpower expended in pursuing the case, including overtime costs: Manpower expenditures provide a reasonable indication of a law enforcement agency's efforts in pursuing a case, and thus its contribution to the overall law enforcement effort. It will undoubtedly be difficult or impossible to be completely accurate, however, in evaluating this cost, since officers will rarely work on only one case.

5. The relative needs of the law enforcement agencies involved: Generally, these needs are not to be a factor in calculating a contributive share. In an unusual case involving a particularly large forfeiture, however, this would become a consideration in order to assure that forfeited assets are in fact used to enhance law enforcement efforts. The Attorney General, as chief law enforcement officer of the State, or the prosecutor, as chief law enforcement officer of a county, should, in making a decision distributing forfeited property, take into account the needs of the law enforcement agencies within his jurisdiction. Thus, from a public policy perspective, the prosecuting agency may in its discretion determine that division of forfeited property be made other than in a purely mathematical allocation based on contribution.

6. Alternative availability of the asset to the agency in the near future from other seizures: If two participating law enforcement agencies are equally entitled to forfeited property or proceeds and one of the agencies, but not the other, regularly obtains forfeited funds, it is proper to consider that fact in calculating a contributive share. In general, of course, contributive shares are to be calculated on each participating law enforcement agency's relative contribution. Nevertheless, as discussed above, a factor to consider in dividing forfeitures is the overall effect on law enforcement within the State. Where tangible and indivisible property is to be distributed (see N.J.A.C. 13:77-3.2), the prosecuting agency, in deciding which participating law enforcement agency is to have the use of the property, should consider whether either agency may be able to obtain similar property alternatively in the near future.

SUBCHAPTER 5. FEDERAL EQUITABLE TRANSFER

13:77-5.1 Requests for Federal equitable transfers

Notice of all requests, by any law enforcement agency, State, county, local or other, for equitable transfer of forfeited property pursuant to 21 U.S.C.A. §881(e) and regulations promulgated pursuant to that section shall be given to the Office of the Attorney General and the appropriate county prosecutor. Such information shall be included in the Attorney General's Annual Report on Seized and Forfeited Property. Federally forfeited property shall be transmitted in accordance with N.J.A.C. 13:72-2.2 to the entity funding the prosecuting agency for distribution by the prosecuting agency pursuant to this chapter.

SUBCHAPTER 6. MONITORING, REPORTING AND AUDITING PROCEDURES

13:77-6.1 Monitoring, reporting and auditing procedures

(a) A law enforcement agency distributing, receiving or expending forfeited property, proceeds or money shall maintain the full records documenting these distributions, receipts and expenditures. Every law enforcement agency distributing, receiving or expending such property or funds shall submit a quarterly report documenting those distributions, receipts and expenditures to the Attorney General and the appropriate county prosecutor, on forms promulgated by the Attorney General. The quarterly report shall specify, for that period, the type, the approximate value, and disposition of the property received and the amount of any proceeds received or expended. In August of each year, every law enforcement agency distributing, receiving or expending forfeited property shall submit a report to the entity funding that agency documenting the distributions, receipts and expenditures of forfeited property or funds.

(b) All county prosecutors and the Attorney General shall maintain record documenting the type of offense, if any, upon which the forfeiture was premised; the amount forfeited; any monies received from the forfeited property which was sold and the proceeds derived from that sale; as well as any expenditures connected with obtaining a perfected security interest or clear title to the retained forfeited property (see N.J.A.C. 13:77-2.3(a)1) and with maintaining forfeited property and related costs (see N.J.A.C. 13:77-2.3(a)2). When forfeited property is retained for law enforcement use, the justification for not liquidating the asset shall be documented. The above information shall be submitted to the Office of the Attorney General on a quarterly basis and shall be included in the Attorney General's Annual Report on Seized and Forfeited Property.

ADOPTIONS

(c) The Attorney General reserves the right to audit the forfeiture records of any law enforcement agency. This right shall not restrict or impede the Attorney General's supervisory power pursuant to the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq., or any other law, rule, regulation, directive, opinion or agreement. The Attorney General may assess the county prosecutors for the cost of conducting annual audits of forfeiture records. These administrative costs shall be within a maximum established by agreement from time to time between the Attorney General and a majority of the county prosecutors, with the costs to be assessed on a pro rata basis among all counties based on the amount of forfeiture funds received within the county.

SUBCHAPTER 7. PENDING FORFEITURE ACTIONS**13:77-7.1 Distribution of forfeited property**

The standards in this chapter shall govern the distribution of all forfeited property for which a judgment of forfeiture is entered on or after December 1, 1986, the effective date of P.L. 1986, c.135 (N.J.S.A. 2C:64-6 and 2C:64-7).

TRANSPORTATION**TRANSPORTATION OPERATIONS****(a)****Speed Limits****Route U.S. 30 in Camden County****Adopted Concurrent Proposal: N.J.A.C. 16:28-1.57**

Proposed: November 16, 1987 at 19 N.J.R. 2211(a).

Adopted: December 24, 1987, John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design.

Filed: December 31, 1987 as R.1988 d.51, **without change**.

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

Effective Date: February 1, 1988.

Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28-1.57 Route U.S. 30

(a) The rate of speed designated for the certain parts of State highway Route U.S. 30 described in this section shall be established and adopted as the maximum legal rate of speed thereat:

1. For both directions of traffic:

i.-xxiii. (No change.)

xxiv. In Lindenwold and Laurel Springs Boroughs, Camden County:

(1) 30 mph school speed zone within the Lindenwold School No. 1 zone, St. Lawrence Parochial School zone and the Overbrook Junior High 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 and closing hours, between 125 feet east of Summit Avenue (approximate milepost 46.05) and 300 feet east of Whitehorse Avenue (approximate milepost 45.55).

(b)**Restricted Parking and Stopping****Routes N.J. 35 in Ocean County, N.J. 47 in****Gloucester County, N.J. 49 in Salem County and N.J. 50 in Cape May County****Adopted Amendments: N.J.A.C. 16:28A-1.25, 1.33, 1.34 and 1.100**

Proposed: November 16, 1987 at 19 N.J.R. 2127(a).

Adopted: December 17, 1987, John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design.

TRANSPORTATION

Filed: December 31, 1987 as R.1988 d.52, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-138(g), 39:4-139 and 39:4-199.

Effective Date: February 1, 1988.

Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28A-1.25 Route 35

(a) The certain parts of State Highway Route 35 described in this section 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.-17. (No change.)

18. No stopping or standing in Seaside Park and Seaside Heights Boroughs, Ocean County:

i. Along both sides:

(1) Within the entire limits of Seaside Park Borough and Seaside Heights Borough including all ramps and connections thereto which are under the jurisdiction of the Commissioner of Transportation except in areas of approved bus stops and time limit parking.

19.-21. (No change.)

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

(e) The certain parts of State highway Route 35 described in this subsection shall be designated and established as "time limit parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established time limit parking zones:

1. In Seaside Park Borough, Ocean County:

i. West side:

(1) One hour time limit parking between 4th and 5th Avenues from 8:00 A.M. to 6:00 P.M. daily.

(2) One hour time limit parking between 10th and 11th Avenues from 8:00 A.M. to 6:00 P.M. daily.

(3) One hour time limit parking between 8th and 9th Avenues from 8:00 A.M. to 6:00 P.M. daily.

(4) One hour time limit parking between K and L Streets from 8:00 A.M. to 6:00 P.M. daily.

ii. East side:

(1) One hour time limit parking between L and M Streets from 8:00 A.M. to 6:00 P.M. daily.

(2) One hour time limit parking between 8th and 9th Avenues from 8:00 A.M. to 6:00 P.M. daily.

(3) One hour time limit parking between 12th and 13th Streets from 8:00 A.M. to 6:00 P.M. daily.

16:28A-1.33 Route 47

(a) (No change.)

(b) The certain parts of State highway Route 47 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-7. (No change.)

8. Along the southbound (westerly) side in Glassboro Borough, Gloucester County:

i. Far side bus stop:

(1) Grove Street—Beginning at the southerly curb line of Grove Street and extending 100 feet southerly therefrom.

9. Along the northbound (easterly) side in Glassboro Borough, Gloucester County:

i. Mid-block bus stops:

(1) Between High Street and Grove Street.

(2) Beginning 490 feet south of the southerly curb line of High Street and extending 135 feet southerly therefrom.

16:28A-1.34 Route 49

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

(c) The certain parts of State highway Route 49 described in this subsection shall be designated and established as "no parking" zones

TRANSPORTATION

ADOPTIONS

where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1. Along East Broadway westbound on the northerly side in the City of Salem, Salem County:

i. Far side bus stop:

(1) Market Street—Beginning at the westerly curb line of Market Street and extending 110 feet westerly therefrom.

ii. Near side bus stop:

(1) Front Street—Beginning at the easterly curb line of Front Street and extending 155 feet easterly therefrom.

16:28A-1.100 Route 50

(a) The certain parts of State highway Route 50 described in this section shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1. (No change.)

2. No stopping or standing in Upper Township, Cape May County:

i. Along both sides from Dennisville Road—School House Lane/Reading Road to the Upper Township—Corbin City corporate line.

(a)

Turns

Route N.J. 82 in Union County

Adopted New Rule: N.J.A.C. 16:31-1.24

Proposed: November 16, 1987 at 19 N.J.R. 2128(a).

Adopted: December 17, 1987, John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design.

Filed: December 31, 1988 as R.1988 d.53, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-183.6, 39:4-123.

Effective Date: February 1, 1988.

Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:31-1.24 Route 82

(a) Turning movements of traffic on the certain parts of Route 82 described in this section are regulated as follows:

1. No left turn west on Morris Avenue to south into driveways for 2801 Morris Avenue (Money Store) and north from the driveways of 2801 Morris Avenue (Money Store) to west on Morris Avenue.

MISCELLANEOUS NOTICES

EDUCATION

(a)

STATE BOARD OF EDUCATION

State Aid: Teaching Staff Member Minimum Salary

Notice of Correction: N.J.A.C. 6:20-5.6

Take notice that an error appears in the June 2, 1986 issue of the New Jersey Register at 18 N.J.R. 1199(a) concerning Teaching staff member minimum salary State aid. The text of N.J.A.C. 6:20-5.6 should have appeared as follows:

6:20-5.6 Teaching staff member minimum salary State aid

(a) (No change.)

(b) For the purposes of the Teacher Quality Employment Act, full-time employment shall mean the number of hours in a day and the number of days in a week the district board of education prescribes for a teaching staff member to receive the full salary designated for their step on the district board of education's salary schedule.

(c)-(k) (No change.)

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF ENVIRONMENTAL QUALITY

New Jersey Radiological Emergency Response Plan Public Hearing

Take notice that pursuant to "The Radiation Accident Response Act," N.J.S.A. 26:2D-37 et seq., the Department of Environmental Protection in cooperation with the Division of State Police will hold a public hearing to determine the adequacy and effectiveness of the New Jersey Radiological Emergency Response Plan (RERP). The hearing will be held on:

March 1, 1988 at 7:00 P.M.
Ocean County Administrative Building
Room 119
101 Hooper Avenue
Toms River, New Jersey 08754

In addition to accepting public comments, the following speakers will appear at the hearing: the Director of the Office of Emergency Management, Division of State Police and the Chief, Bureau of Nuclear Engineering, Department of Environmental Protection.

Copies of the New Jersey RERP may be obtained from the Office of Emergency Management, State Police Headquarters, West Trenton, New Jersey and from the Ocean County Office of Emergency Management, Robert J. Miller Air Park, Route 530, Berkeley Township, New Jersey.

For additional information contact:

Stephen F. Stasolla, Nuclear Engineer
Bureau of Nuclear Engineering
Department of Environmental Protection
CN 411
Trenton, N.J. 08625
(609) 530-4022

(c)

DIVISION OF WATER RESOURCES

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would approve the Borough of Palmyra Wastewater Management Plan (WMP). This WMP would allow the expansion of the existing Palmyra Sewage Treatment Plant from 0.53 million gallons per day

(MGD) to 1.05 MGD and would expand the sewer service area with the Borough.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 401 East State Street, Third Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzempa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzempa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

HEALTH

(d)

OFFICE OF THE COMMISSIONER

Notice of Availability of Applications for HealthStart Outreach Grants

Take notice that on February 1, 1988, grant applications for proposals to support supplemental outreach activities for the Comprehensive Maternity Care Services and Comprehensive Pediatric Services (HealthStart) will be available from the Department of Health.

This notice is being given to inform potential HealthStart providers that nine one-year grants of \$20,000 each will be made available to hire community-based paraprofessionals who will provide supplemental outreach services. This project is funded by a grant from the Ford Foundation to the Department of Health.

Interested persons may request the HealthStart Supplement Outreach Grant Application by writing Linda Holmes, Department of Health, Office of the Commissioner, CN 360, Trenton, New Jersey 08625 or by calling (609) 633-3666. The deadline for submitting applications in the first grant award period is March 1, 1988. An announcement of grant awards will be made April 1, 1988. The second grant award period requires applications to be submitted by November 1, 1988. An announcement of grant awards for the second grant award period will be made December 15, 1988.

(e)

DIVISION OF OCCUPATIONAL AND ENVIRONMENTAL HEALTH (DEPARTMENT OF HEALTH)

DIVISION OF ENVIRONMENTAL QUALITY (DEPARTMENT OF ENVIRONMENTAL PROTECTION)

DIVISION OF WORKPLACE STANDARDS, AND OFFICE OF THE COMPTROLLER, FINANCE AND ACCOUNTING (DEPARTMENT OF LABOR)

GOVERNOR'S RIGHT TO KNOW ADVISORY COUNCIL

Worker and Community Right to Know Act

HEALTH

MISCELLANEOUS NOTICES

Public Hearing

Take notice that pursuant to the "Worker and Community Right to Know Act", N.J.S.A. 34:5A-1 et seq., the Department of Health, Department of Environmental Protection and Department of Labor, in conjunction with the Governor's Right to Know Advisory Council, will hold a public hearing to receive information, advice, testimony and recommendations from the public concerning the implementation of the Act, as follows:

Wednesday, March 9, 1988
 10:00 AM to 5:00 PM
 New Jersey State Library
 First Floor Meeting Room
 185 West State Street
 Trenton, New Jersey

The purpose of the hearing will be to receive public comments about the implementation of the Right to Know Act by the State, the effect of the Community Right to Know provision of the Superfund amendments on the New Jersey Right to Know Act, the problems employers and employees are having concerning compliance with the Right to Know law, and positive actions that have occurred as a result of the requirements of the law.

The Departments of Health and Environmental Protection would like to hear suggestions regarding substances which should be added or deleted to the Right to Know Hazardous Substance List. Any suggested revisions should be based on and accompanied by documented scientific evidence.

Persons who wish to testify should call Mary Baird at (609) 984-2202. The record will be kept open for 15 days beyond March 9, 1988 for the receipt of written comments, which should be sent to: Richard Willinger, Right to Know Project, New Jersey Department of Health, CN 368, Trenton, New Jersey 08625.

INSURANCE

(a)

THE COMMISSIONER

Notice of Public Hearing on Exportable List

Take notice that Kenneth D. Merin, Commissioner of the Department of Insurance, announces that the Department will hold a public hearing to determine classes of insurance for which no reasonable or adequate market exists among authorized insurers on February 19, 1988, at 10:00 A.M., at:

Department of Personnel
 Rom 102
 201 East State Street
 Trenton, New Jersey 08625

Consideration will be given to the 49 classes of coverage declared eligible to export on February 21, 1987. In addition, interested persons are invited to submit other proposed classes of coverage for listing.

Interested persons may submit in writing, data, views or arguments relevant to the Exportable List on or before February 16, 1988. These submissions should be addressed to:

Department of Insurance
 Financial Examinations Division
 Surplus Lines Examining Office
 CN 325
 Trenton, New Jersey 08625

Classes of Coverage Eligible to Export

1. Amusement Devices
2. Amusement Parks and Carnivals Liability
3. Animal Mortality, Horses Only
4. Armored Cars
5. Automobile—Race Tracks Liability
6. Auto Rates
7. Aviation, Crop Dusters
8. Bowling Alleys
9. Burglary and Robbery for Check Cashing, Money Exchange and Installment Sales Houses Only
10. Business Interruption—Valued Per Diem Form Only

11. Cleaners' and Dyers' Bailee Coverage in Municipalities over 100,000 Population
12. Commercial Excess Liability Insurance
13. Differences on Condition (Parasol)
14. Environmental Impairment Liability Insurance
15. Errors and Omissions for the Following Groups:
 - a. Associations
 - b. Collection Agencies
 - c. Franchisers
 - d. Freight Forwarders
 - e. Insurance Audit and Engineering Firms
 - f. Management Consultants
 - g. Police Professional
 - h. Seedmans
 - i. Trustees
 - j. Testing Laboratories
 - k. Other shown as Class A Rated by an authorized rating bureau and any coverages or classes not specifically rated by an authorized rating bureau
16. Excess Auto Physical Damage for Private Passenger and Commercial (value over \$39,000)
17. Excess of First Loss Insurance
18. Excess Loss and Excess Aggregate for Self-Insurers Public Liability and Workers' Compensation
19. Excess Property Insurance
20. False Arrest and Other Personal Injury Liability Classes
21. Fine Arts Dealers
22. Fire and Allied Lines on Buildings Occupied as Auction Markets, Farmers Markets and Contents of Such Buildings
23. Fireworks Display
24. First Loss Insurance
25. Golf Driving Range
26. Hole-In-One
27. House Movers and Building Demolition
28. International Movers Insurance Plan
29. Kidnapping Insurance
30. Liquor Law Liability
31. Manufacturers and Contractors Liability for Floor Waxers, Building Maintenance People, Window Washers and Exterminators
32. Mortgage Impairment
33. Personal Articles Floaters Only
34. Picnics/Excursions
35. Pony Rides/Riding Academies
36. Products Liability and Products Recall Coverage
37. Professional Liability for the Following:
 - a. Associated Persons (Licensed by the Commodity Futures Trading Commissions)
 - b. Chiropractors
 - c. Clinical Laboratories
 - d. Divorce Mediation
 - e. Hospices
 - f. Massage and Reducing Salons
 - g. Medical Health Care Agencies
 - h. Medical Personnel Pools
 - i. Psychologists
 - j. Real Estate Appraisers
 - k. Salon Sun Tan Beds
 - l. Stress Testing Centers
 - m. Title Abstractors
 - n. Veterinarians
 - o. Other coverages shown as Class A Rated by an authorized rating bureau and any coverage or classes not specifically rated by an authorized rating bureau
38. Rain Insurance
39. Retrospective Penalty Indemnity
40. Short-Term (not over 30 days) Drive-Away Auto Insurance with \$15,000/\$30,000 Bodily Injury and \$15,000 Property Damage Limits on Vehicles owned and operated by Military Personnel except for vehicles registered in New Jersey
41. Short-Term Entertainment Events, Rock Festivals
42. Short-Term Association Meetings and Conventions
43. Skating Rinks, Roller and Ice Skate-Board Parks
44. Sporting Events (Casual)
45. Swim Clubs/Swim Pools

MISCELLANEOUS NOTICES

- 46. Truck Physical Damage Coverages for Non-Fleet (one to five) trucks over 7,800 pounds, including Trailers and/or Trailer Interchange
- 47. Vacant Buildings—Fire, Extended Coverage and Vandalism
- 48. Warehouseman's Legal Liability
- 49. Physical Damage Insurance for Limousines used for Public or Liv-ry Conveyance of Passengers

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Notice of Applications for Certificate of Public Convenience Permits

Take notice that Glenn R. Paulsen, Director, Division of Motor Vehicles pursuant to the authority of N.J.S.A. 39:5E.11, hereby list the name and address of an applicant who has filed an application for a common carrier's Certificate of Public Convenience Permit.

COMMON CARRIER (NON-GRANDFATHER)
 Industrial Trucking Service Corp.
 ("ITSC")
 Route 232 & Swamp Road
 P.O. Box 196
 Penns Park, PA 18943

Protests in writing and verified under oath may be presented by interested parties to the Director, Division of Motor Vehicles, 25 South Montgomery Street, Trenton, New Jersey 08666, within 20 days (February 22, 1988) following the publication of notice of an application.

(b)

DIVISION OF CONSUMER AFFAIRS

Practice of Audiology and Speech-Language Pathology

Proposed Repeal: N.J.A.C. 13:44C-1.1

Proposed New Rules: N.J.A.C. 13:44C-1.1 through 13:44C-9.1

Take notice that a public hearing regarding the proposed repeal of N.J.A.C. 13:44C-1.1 and the reproposal of new rules N.J.A.C. 13:44C-1.1 through 13:44C-9.1 will be held at the auditorium of Essex County Community College, 303 University Avenue, Newark, New Jersey, on Tuesday, February 23, 1988 at 10:30 A.M.

Interested persons who wish to be heard at the public hearing should submit a synopsis of their anticipated testimony to:

Richard Weisman, Executive Director
 Advisory Committee on Audiology and
 Speech-Language Pathology
 1100 Raymond Boulevard, Room 510
 Newark, New Jersey 07102

TREASURY-GENERAL

(c)

DIVISION OF BUILDING AND CONSTRUCTION

Architect-Engineer Selection

Notice of Assignments—Month of December

Solicitations of design services for major projects are made by notices published in construction trade publications and newspapers and by direct notification of professional associations/societies and listed, pre-qualified New Jersey consulting firms. For information on DBC's pre-qualification and assignment procedures, call (609) 984-6979.

Last list dated December 2, 1987.

TREASURY-GENERAL

The following assignments have been made:

DBC No.	PROJECT	A/E	CCE
C357	Feasibility Study Relocation of Modular Structures Various Locations	CUH2A	\$8,000 Services
M688	Roof Replacement-Testing Hospital & Seven Residential Cottages Woodbridge Developmental Center Woodbridge, NJ	Shimel & Sor Testing Labs	\$780 Services
M565	Art Work-Honorarium Rehabilitation Center for the Blind New Brunswick, NJ	Edwin Schlossberg, Inc.	\$250 Services
M565	Art Work-Honorarium Rehabilitation Center for the Blind New Brunswick, NJ	Donald Lipski	\$250 Services
M565	Art Work-Honorarium Rehabilitation Center for the Blind New Brunswick, NJ	Sandy Gellis	\$250 Services
M565	Art Work-Honorarium Rehabilitation Center for the Blind New Brunswick, NJ	Wopo Holup	\$250 Services
M565	Art Work-Honorarium Rehabilitation Center for the Blind New Brunswick, NJ	Herbert Cooke	\$250 Services
A285-11	Scale Model DEP Office Building Trenton, NJ	Carol Hahn	\$341 Services
P577	Slope Stabilization Hamburg Mountain Wildlife Management Area Sussex County, NJ	John Zanetakos Assoc., Inc.	\$2,500 Services
P388	Testing/Inspection Services Nature Center Cheesequake State Park Matawan, NJ	Ambric Testing Assoc. of NJ	\$6,480 Services
C332-02	Site Investigation for Possible Relocations for Floating Prison	Robert I. Price	\$8,000 Services
M565	Wall Mural Rehabilitation Center for the Blind & Visually Impaired New Brunswick, NJ	Wopo Holup	\$30,000 Artist Services
D041	Facility Consultant-FY 88 Dept. of Corrections	Grad Partnership	\$10,000 Services
D043	Facility Consultant-FY 88 Dept. of Corrections	R. M. Shoemaker Co.	\$25,000 Services
D044	Facility Consultant-FY 88 Dept. of Corrections	CUH2A	\$10,000 Services
Y019	Facility Consultant-FY 88 Dept. of Transportation	Kitchen & Assoc., PA	\$10,000 Services
R019	Facility Consultant-FY 88 Dept. of Human Services	M. Benton & Assoc.	\$10,000 Services
R020	Facility Consultant-FY 88 Dept. of Human Services	Leslie M. Dennis & Son	\$10,000 Services
X028	Facility Consultant-FY 88 Division of Motor Vehicles	Kruger Kruger Albenberg	\$50,000 Services
X029	Facility Consultant-FY 88 Division of Motor Vehicles	Lammey & Giorgio	\$50,000 Services
X030	Facility Consultant-FY 88 Division of Motor Vehicles	Eugene O'Connor, AIA	\$50,000 Services
S220	Headquarters Warehouse/ Admin. Complex N.J. Division of State Police W. Trenton, NJ	Vaughn Organization, PC	\$9,000,000

COMPETITIVE PROPOSALS

	Vaughn Organization, PC	3.975%	
	Faridy Thorne Maddish	4.50%	
	Armstrong Jordan Pease	4.88%	
S221	New Troop A Headquarters Facility N.J. Division of State Police Hammonton, NJ	Zywotow & Eckert, AIA, Architects	\$6,500,000

COMPETITIVE PROPOSALS

	Faridy Thorne Maddish, PA	5.25%
	Tarquini Organization, PA	5.75%
	Zywotow & Eckert, AIA, Architects	5.90%

TREASURY-GENERAL

MISCELLANEOUS NOTICES

S214 New Three Lane Inspection Facility Basco Associates, PA \$2,000,000
with Service Core
N.J. Division of Motor Vehicles
Livingston, NJ

COMPETITIVE PROPOSALS

Basco Associates, PA 3.72%
Blender-Feitlowitz & Associates 3.75%
Gilbert L. Seltzer & Associates 3.75%
Armstrong Jordan Pease, Architects 5.20%

S218 New Two Lane Inspection Facility Kolbe & Poponi
with Service Core
Division of Motor Vehicles
Hamilton Township, Atlantic County,
NJ

COMPETITIVE PROPOSALS

Kolbe & Poponi 2.94%
Wasleski Steelman Sindoni Wertz 5.35%
Armstrong Jordan Pease, Architects 5.74%

(a)

Architect/Engineer Selection Board Meetings

In accordance with Chapter 231, Laws of 1975, known as the "Open Public Meeting Act", the Division of Building and Construction announces the Architect/Engineer Selection Board meetings scheduled for 1988. Each Wednesday at 9:00 A.M., the meetings will convene at the following location:

Conference Room #1 (8th Floor)
Taxation Building
W. State and Barrack Streets
Trenton, N.J. 08625

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

**Average Wholesale Price of Cigarettes
Cigarette Surtax Rate**

Public Notice

Take notice that the purpose of complying with the requirements of Chapter 40, P.L. 1982, sec. 4 (N.J.S.A. 54:40A-8.2), John R. Baldwin,

Director of the Division of Taxation, hereby gives notice that, based upon the best available current data, the average wholesale price of cigarettes in this State during the succeeding six months commencing January 1, 1988, is \$0.5419 for each 10 cigarettes or fraction thereof.

Therefore, the cigarette surtax due for such six months, pursuant to Sec. 302, P.L. 1948, c.65 (N.J.S.A. 54:40A-8), as amended, shall be \$0.04 for each 10 cigarettes or fraction thereof.

OTHER AGENCIES

(c)

**HACKENSACK MEADOWLANDS DEVELOPMENT
COMMISSION**

**Petition for Rulemaking
Empire Tract**

N.J.A.C. 19:4-5.3

Petitioner: Empire Ltd.

Authority: N.J.S.A. 52:14B-4(f).

Take notice that on December 22, 1987 petitioner filed a petition with the Hackensack Meadowslands Development Commission requesting a rezoning from Island Residential-4 to a new mixed-use development zone.

Specifically, the petitioner is requesting a rezoning from the existing specially planned area which is primarily residential in nature with ancillary commercial development to a new specially planned area which would include a mix of residential, commercial, office, hotels, cultural and recreational facilities and a mass transit center.

Petitioner states that its proposal would include provisions for affordable housing in compliance with the needs of the area. Additionally, Empire Ltd. notes that its proposed amendment could make up for development losses elsewhere in the Meadowlands District.

After due notice, this petition will be considered by the Hackensack Meadowslands Development Commission in accordance with the provisions of N.J.S.A. 52:14B-4(f).

EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by **Title** and **Chapter**. If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the **Title** Table of Contents for each executive department or agency and on the **Subtitle** page for each group of chapters in a Title. Please disregard all expiration dates appearing elsewhere in a Title volume.

This listing is revised monthly and appears in the first issue of each month.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date
1:1	5/4/92
1:5	10/20/91
1:6	5/4/92
1:6A	5/4/92
1:7	5/4/92
1:10	5/4/92
1:10A	5/4/92
1:10B	10/6/91
1:11	5/4/92
1:13	5/4/92
1:20	5/4/92
1:21	5/4/92
1:30	2/14/91
1:31	6/17/92

AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	9/3/90
2:2	10/3/88
2:3	6/18/89
2:5	6/18/89
2:6	9/3/90
2:7	9/29/88
2:9	7/7/91
2:16	5/7/90
2:22	7/6/92
2:23	6/6/88
2:24	2/11/90
2:32	6/1/92
2:48	11/27/90
2:50	5/1/92
2:52	6/7/90
2:53	3/3/91
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)
2:68	8/1/88
2:69	10/3/88
2:70	5/7/90
2:71	9/1/88
2:72	9/1/88
2:73	7/18/88
2:74	9/1/88
2:76	8/29/89
2:90	6/24/90

BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/6/91
3:2	4/15/90
3:6	3/3/91
3:7	9/16/90
3:11	3/19/89
3:13	11/17/91
3:17	6/18/91
3:18	1/19/93
3:19	3/17/91
3:21	2/2/92

N.J.A.C.	Expiration Date
3:22	5/21/89
3:23	7/6/92
3:24	8/20/89
3:25	8/17/92
3:26	12/31/90
3:27	9/16/90
3:28	12/17/89
3:30	10/17/88
3:38	10/5/92
3:41	10/16/90

PERSONNEL (CIVIL SERVICE)—TITLE 4/4A

N.J.A.C.	Expiration Date
4:1	1/28/90
4:2	1/28/90
4:3	6/4/89
4:4	12/5/91
4:6	5/5/91
4A:6	1/4/93
4A:10	11/2/92

COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:3	9/1/88
5:4	10/5/92
5:10	12/1/88
5:11	3/1/89
5:12	1/1/90
5:13	12/24/92
5:14	12/1/90
5:17	6/1/89
5:18	2/1/90
5:18A	2/1/90
5:18B	2/1/90
5:19	2/1/93
5:22	12/1/90
5:23	4/1/88
5:24	9/1/90
5:25	3/1/91
5:26	3/1/91
5:27	6/1/90
5:28	12/20/90
5:29	6/18/91
5:30	6/1/88
5:31	12/1/89
5:37	11/18/90
5:38	11/7/88
5:51	9/1/88
5:70	7/9/92
5:71	3/1/90
5:80	5/20/90
5:91	6/16/91
5:92	6/16/91
5:100	5/7/89

DEPARTMENT OF DEFENSE—TITLE 5A

N.J.A.C.	Expiration Date
5A:2	5/20/90

EDUCATION—TITLE 6

N.J.A.C.	Expiration Date
6:2	3/1/89
6:3	8/18/88
6:8	1/5/92
6:11	12/12/90
6:12	4/2/91
6:20	8/9/90
6:21	8/9/90
6:22	9/3/90
6:24	4/2/91
6:26	1/24/90
6:27	1/24/90
6:28	6/1/89
6:29	3/25/90
6:30	8/31/88
6:31	1/24/90
6:39	10/18/89
6:43	4/7/91
6:46	10/5/92
6:53	7/7/92
6:64	5/1/88
6:68	4/12/90
6:69	6/4/91
6:70	1/25/90
6:79	11/25/92

ENVIRONMENTAL PROTECTION—TITLE 7

N.J.A.C.	Expiration Date
7:1	9/16/90
7:1A	6/5/92
7:1C	6/17/90
7:1D	12/1/88
7:1E	7/15/90
7:1F	4/20/92
7:1G	10/1/89
7:1H	7/24/90
7:1I	11/18/88
7:2	7/19/88
7:4	Expired 8/16/84
7:6	12/19/88
7:7	5/7/89
7:7E	7/24/90
7:7F	1/19/93
7:8	2/7/88
7:9	1/21/91
(Except for 7:9-1 which expired 4/25/85)	
7:10	9/4/89
7:11	6/6/88
7:12	6/6/88
7:13	5/4/89
7:14	4/27/89
7:14A	6/4/89
7:14B	12/21/92
7:15	4/2/89
7:17	4/7/91
7:18	8/6/91
7:19	4/15/90
7:19A	2/19/90
7:19B	2/19/90
7:20	5/6/90
7:20A	12/19/88
7:22	1/5/92
7:23	6/18/89
7:24	5/19/91
7:25	2/18/91
(Except for 7:25-1 which expired 9/17/85)	
7:25A	5/6/90
7:26	11/4/90
7:27	Exempt
7:27B-3	Exempt
7:28	10/7/90
7:29	3/18/90

N.J.A.C.

7:29B
7:30
7:36-1
7:36-2
7:36-3
7:36-4
7:36-5
7:36-6
7:36-7
7:37
7:38
7:45

Expiration Date

2/1/93
12/4/92
8/5/90
Expired 1/9/86
Expired 1/9/86
8/5/90
Expired 1/9/86
Expired 1/9/86
8/5/90
Exempt
9/18/90
Expired 1/11/85

HEALTH—TITLE 8

N.J.A.C.

8:7
8:8
8:9
8:13
8:19
8:20
8:21
8:21A
8:22
8:23
8:24
8:25
8:26
8:31
8:31A
8:31B
8:33
8:33A
8:33B
8:33C
8:33D
8:33E
8:33F
8:33G
8:33H
8:33I
8:33J
8:33K
8:34
8:39
8:40
8:41
8:42
8:42A
8:42B
8:43
8:43A
8:43B
8:43E
8:43F
8:43G
8:44
8:45
8:48
8:51
8:52
8:53
8:57
8:59
8:60
8:61
8:65
8:70
8:71

Expiration Date

9/16/90
5/21/89
2/18/91
9/8/92
6/28/90
3/4/90
11/18/90
4/1/90
8/4/91
12/17/89
4/4/88
5/20/88
8/4/91
11/5/89
3/18/90
10/15/90
10/7/90
4/15/90
10/7/90
8/20/89
2/1/87
6/23/92
1/14/90
7/20/89
7/19/90
9/15/91
5/17/89
4/16/89
11/18/88
6/20/88
4/15/90
2/17/92
8/17/92
6/12/91
8/1/88
1/21/91
9/3/90
1/21/91
12/11/92
3/18/90
9/8/91
11/7/88
5/20/90
8/20/89
9/16/90
12/15/91
8/4/91
6/18/90
10/1/89
5/3/90
10/6/91
12/2/90
9/17/88
4/2/89

HIGHER EDUCATION—TITLE 9

N.J.A.C.

9:1
9:2

Expiration Date

1/17/89
6/17/90

N.J.A.C.	Expiration Date	N.J.A.C.	Expiration Date
9:3	10/17/88	10:122	8/6/89
9:4	10/30/91	10:122A	Exempt
9:5	1/21/91	10:122B	9/10/89
9:6	5/20/90	10:123	7/20/90
9:6A	1/4/93	10:124	12/7/92
9:7	4/13/88	10:125	7/16/89
9:8	11/4/90	10:127	9/19/88
9:9	10/3/88	10:129	10/11/89
9:11	1/17/89	10:130	9/19/88
9:12	1/17/89	10:131	12/7/92
9:14	5/20/90	10:132	1/5/92
9:15	10/25/88	10:141	2/21/89

HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1	5/6/88
10:2	1/5/92
10:3	9/19/88
10:4	1/3/88
10:5	12/19/88
10:6	2/21/89
10:12	1/5/92
10:36	8/18/91
10:37	11/4/90
10:38	5/28/91
10:40	3/15/89
10:42	8/18/91
10:43	9/1/88
10:44	10/3/88
10:44A	2/7/88
10:44B	4/15/90
10:45	9/19/88
10:47	11/4/90
10:48	1/21/91
10:49	8/12/90
10:50	3/3/91
10:51	10/28/90
10:52	2/19/90
10:53	4/29/90
10:54	3/3/91
10:55	3/11/90
10:56	8/26/91
10:57	3/3/91
10:58	3/3/91
10:59	3/3/91
10:60	8/27/90
10:61	3/3/91
10:62	3/3/91
10:63	11/29/89
10:64	3/3/91
10:65	11/5/89
10:66	12/15/88
10:67	3/3/91
10:68	7/7/91
10:69A	4/26/88
10:69B	11/21/88
10:70	6/16/91
10:71	1/6/91
10:80	8/23/89
10:81	10/15/89
10:82	10/29/89
10:85	1/30/90
10:87	3/1/89
10:89	9/11/90
10:90	10/14/92
10:94	1/6/91
10:95	8/23/89
10:97	4/16/89
10:99	2/19/90
10:100	2/6/89
10:109	3/17/91
10:112	2/17/89
10:120	9/26/88
10:121	3/13/89
10:121A	12/7/92

CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:1	7/6/92
10A:3	10/6/91
10A:4	7/21/91
10A:5	10/6/91
10A:6	11/2/92
10A:8	11/16/92
10A:9	1/20/92
10A:10-6	8/17/92
10A:16	4/6/92
10A:17	12/15/91
10A:18	7/6/92
10A:31	2/4/90
10A:32	3/4/90
10A:33	7/16/89
10A:34	4/6/92
10A:70	Exempt
10A:71	4/15/90

INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	2/3/91
11:1-20	7/7/88
11:1-22	7/7/88
11:2	12/2/90
11:3	1/6/91
11:4	12/2/90
11:5	11/7/88
11:7	10/19/92
11:10	7/15/90
11:12	10/27/91
11:13	11/12/92
11:14	7/2/89
11:15	12/3/89
11:16	2/3/91

LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:15	8/19/90
12:16	4/1/90
12:17	1/6/91
12:20	11/5/89
12:35	8/5/90
12:45	5/2/88
12:46	5/2/88
12:47	5/2/88
12:48	5/2/88
12:49	5/2/88
12:51	6/30/91
12:56	9/26/90
12:57	9/26/90
12:58	9/26/90
12:90	12/17/89
12:100	11/5/89
12:105	1/21/91
12:110	1/19/93
12:120	5/3/90
12:175	12/9/88

N.J.A.C.	Expiration Date
12:190	1/4/93
12:195	9/6/88
12:200	8/5/90
12:235	5/5/91

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

N.J.A.C.	Expiration Date
12A:10-1	8/15/89
12A:11	9/21/92
12A:12	9/21/92
12A:100-1	9/8/91

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	7/19/88
13:1C	Expired 12/1/83
13:2	8/5/90
13:3	8/1/88
13:4	1/21/91
13:10	5/27/89
13:13	6/17/90
13:18	4/1/90
13:19	8/23/89
13:20	12/18/90
13:21	12/16/90
13:22	1/7/90
13:23	6/4/89
13:24	11/5/89
13:25	3/18/90
13:26	10/17/88
13:27	4/1/90
13:27A	11/1/87
13:28	9/3/90
13:29	6/3/90
13:30	4/15/90
13:31	12/12/91
13:32	10/23/92
13:33	3/18/90
13:34	11/21/88
13:35	11/19/89
13:36	11/19/89
13:37	2/11/90
13:38	10/7/90
13:39	1/6/91
13:39A	7/7/91
13:40	9/3/90
13:41	9/3/90
13:42	11/3/88
13:43	9/8/88
13:44	8/20/89
13:44B	11/2/92
13:44C	6/2/91
13:45A	12/16/90
13:46	6/3/90
13:47	2/2/92
13:47A	10/5/92
13:47B	1/4/89
13:47C	8/20/89
13:48	1/21/91
13:49	12/19/88
13:51	4/27/92
13:54	10/5/91
13:58	9/7/89
13:59	9/16/90
13:60	1/20/92
13:70	2/25/90
13:71	2/25/90
13:75	8/20/89
13:76	9/6/88
13:77	2/1/93

PUBLIC UTILITIES—TITLE 14

N.J.A.C.	Expiration Date
14:1	12/16/90
14:3	5/6/90
14:5	12/16/90
14:6	3/3/91
14:9	4/15/90
14:11	1/27/92
14:10	9/8/91
14:17	5/7/89
14:18	7/29/90

ENERGY—TITLE 14A

N.J.A.C.	Expiration Date
14A:2	4/17/89
14A:3	10/7/90
14A:5	10/19/88
14A:6	8/6/89
14A:7	9/16/90
14A:8	9/20/89
14A:11	9/20/89
14A:12	2/7/88
14A:13	2/2/92
14A:14	2/6/89
14A:20	2/3/91
14A:21	11/21/90
14A:22	6/4/89

STATE—TITLE 15

N.J.A.C.	Expiration Date
15:2	3/7/88
15:3	7/7/91
15:5	2/17/92
15:10	2/18/91

TRANSPORTATION—TITLE 16

N.J.A.C.	Expiration Date
16:1	8/5/90
16:2	10/3/88
16:6	9/3/90
16:13	5/7/89
16:16	11/7/88
16:17	11/7/88
16:20A	12/17/89
16:20B	12/17/89
16:21	9/3/90
16:21A	8/20/89
16:22	2/3/91
16:25-12	Expired 2/5/84
16:25-13	Expired 2/5/84
16:26	8/6/89
16:27	9/8/91
16:28	11/7/88
16:28A	11/7/88
16:29	11/7/88
16:30	11/7/88
16:31	11/7/88
16:31A	10/20/88
16:32	4/15/90
16:33	9/3/90
16:41	7/28/92
16:41A	2/19/90
16:41B	3/4/90
16:43	9/3/90
16:44	10/3/88
16:49	3/18/90
16:51	4/6/92
16:53	3/19/89
16:53A	4/15/90
16:53C	9/19/88
16:53D	5/7/89

N.J.A.C.	Expiration Date
16:54	4/7/91
16:55	11/7/88
16:56	6/4/89
16:60	11/7/88
16:61	11/7/88
16:62	4/15/90
16:72	3/31/91
16:73	1/30/92
16:75	6/6/88
16:76	12/19/88
16:77	1/21/90
16:78	10/7/90
16:79	10/20/91

TREASURY-GENERAL—TITLE 17

N.J.A.C.	Expiration Date
17:1	6/6/88
17:2	12/17/89
17:3	6/6/88
17:4	7/1/90
17:5	12/2/90
17:6	2/19/89
17:7	6/6/88
17:8	6/27/90
17:9	6/6/88
17:10	6/6/88
17:12	8/15/89
17:16	12/2/90
17:19	3/18/90
17:20	11/7/88
17:25	6/18/89
17:27	11/7/88
17:28	9/13/90
17:29	10/18/90
17:30	5/4/92

TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:3	4/23/89
18:5	4/16/89
18:6	4/2/89
18:7	4/2/89
18:8	4/2/89
18:9	8/12/88
18:12	8/12/88
18:12A	8/12/88
18:14	8/12/88

N.J.A.C.	Expiration Date
18:15	8/12/88
18:16	8/12/88
18:17	8/12/88
18:18	4/2/89
18:19	4/6/89
18:22	4/2/89
18:23	4/2/89
18:23A	8/5/90
18:24	8/12/88
18:25	1/6/91
18:26	8/12/88
18:30	4/2/89
18:35	8/12/88
18:36	2/4/90
18:37	8/5/90
18:39	9/8/92

OTHER AGENCIES—TITLE 19

N.J.A.C.	Expiration Date
19:3	6/19/88
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	11/7/88
19:4A	5/2/88
19:8	6/1/88
19:9	7/13/88
19:12	8/7/91
19:16	8/7/91
19:17	7/15/88
19:25	1/9/91
19:30	10/7/90
19:40	9/26/89
19:41	5/17/88
19:42	5/17/88
19:43	4/27/89
19:44	10/13/88
19:45	4/7/88
19:46	5/4/88
19:47	5/4/88
19:48	10/13/88
19:49	3/29/88
19:50	5/23/88
19:51	8/14/91
19:52	9/25/91
19:53	5/4/88
19:54	4/15/88
19:61	7/7/91
19:65	7/7/91
19:75	1/17/89

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 December 7, 1987 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.1988 d.1 means the first rule adopted in 1988.

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 series number and supplement 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: SUPPLEMENT NOVEMBER 16, 1987

NEXT UPDATE: SUPPLEMENT DECEMBER 21, 1987

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
19 N.J.R. 261 and 324	February 2, 1987	19 N.J.R. 1475 and 1588	August 17, 1987
19 N.J.R. 325 and 392	February 17, 1987	19 N.J.R. 1589 and 1676	September 8, 1987
19 N.J.R. 393 and 430	March 2, 1987	19 N.J.R. 1677 and 1758	September 21, 1987
19 N.J.R. 431 and 476	March 16, 1987	19 N.J.R. 1759 and 1858	October 5, 1987
19 N.J.R. 477 and 586	April 6, 1987	19 N.J.R. 1859 and 1926	October 19, 1987
19 N.J.R. 587 and 672	April 20, 1987	19 N.J.R. 1927 and 2086	November 2, 1987
19 N.J.R. 673 and 794	May 4, 1987	19 N.J.R. 2087 and 2224	November 16, 1987
19 N.J.R. 795 and 898	May 18, 1987	19 N.J.R. 2225 and 2324	December 7, 1987
19 N.J.R. 899 and 1006	June 1, 1987	19 N.J.R. 2325 and 2510	December 21, 1987
19 N.J.R. 1007 and 1120	June 15, 1987	20 N.J.R. 1 and 124	January 4, 1988
19 N.J.R. 1121 and 1258	July 6, 1987	20 N.J.R. 125 and 220	January 19, 1988
19 N.J.R. 1259 and 1352	July 20, 1987	20 N.J.R. 221 and 320	February 1, 1988
19 N.J.R. 1353 and 1474	August 3, 1987		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-8.2	De novo review by OAL and previous hearing record	19 N.J.R. 1761(a)	R.1987 d.519	19 N.J.R. 2388(a)
1:1-14.1	Media coverage of public hearings	20 N.J.R. 127(a)		
1:1-14.4	Failure to appear at proceeding	19 N.J.R. 1591(b)	R.1987 d.506	19 N.J.R. 2388(b)
1:1-14.5	Ex parte communications and agency heads	19 N.J.R. 1761(b)		
1:30-1.2, 2.8	Use of appendices	19 N.J.R. 675(a)		

Most recent update to Title 1: TRANSMITTAL 1987-5 (supplement November 16, 1987)

AGRICULTURE—TITLE 2				
2:71-2.4, 2.5, 2.6	Jersey Fresh Logo program	19 N.J.R. 2327(b)		

Most recent update to Title 2: TRANSMITTAL 1987-8 (supplement November 16, 1987)

BANKING—TITLE 3				
3:1-1.1	Maximum interest rate on first mortgages on residences with one to six units	19 N.J.R. 2089(a)		
3:1-14	Revolving credit equity loans	19 N.J.R. 1594(a)		
3:2-1.1, 1.2, 1.3, 1.4	Advertising by financial institutions	19 N.J.R. 1355(a)		
3:6-4	Banks and savings banks: action upon detection or discovery of crime	19 N.J.R. 1595(a)	R.1988 d.28	20 N.J.R. 183(a)
3:6-9	Capital stock savings bank: change in control	19 N.J.R. 1762(a)		
3:10-8, 9	Banks and savings banks: mortgage loan practices	19 N.J.R. 1356(a)		
3:11-12	Commercial loans by savings banks	19 N.J.R. 1679(b)		
3:13-2.2, 4.3, 4.4	Bank holding companies: financial filings	20 N.J.R. 127(b)		
3:18-10	Secondary mortgage loan licensure	19 N.J.R. 1929(a)	R.1988 d.36	20 N.J.R. 183(b)
3:23-2.1	Secondary mortgage loan licensure	19 N.J.R. 1929(a)	R.1988 d.36	20 N.J.R. 183(b)
3:27-6, 7	Savings and loan associations: mortgage loan practices	19 N.J.R. 1358(a)		
3:38-4, 5, 7	Mortgage bankers and brokers: loan practices	19 N.J.R. 1360(a)		
3:42	Pinelands Development Credit Bank: procedural rules	20 N.J.R. 128(a)		

Most recent update to Title 3: TRANSMITTAL 1987-6 (supplement October 19, 1987)

CIVIL SERVICE—TITLE 4				
4:1-16.1-16.6, 24.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)		
4:1-17, 18, 20, 26	Repeal (see 4A:6-1, 2, 3, 4, 5)	19 N.J.R. 1764(a)	R.1988 d.13	20 N.J.R. 54(a)
4:2-16.1, 16.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)		
4:2-17, 18, 20, 26	Repeal (see 4A:6-1, 2, 3, 4, 5)	19 N.J.R. 1764(a)	R.1988 d.13	20 N.J.R. 54(a)
4:3-16.1, 16.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)		
4:3-17, 20	Repeal (see 4A:6-1, 2, 3, 4, 5)	19 N.J.R. 1764(a)	R.1988 d.13	20 N.J.R. 54(a)
4:4	Repeal (see 4A:6-6)	19 N.J.R. 1774(a)	R.1988 d.11	20 N.J.R. 67(a)

Most recent update to Title 4: TRANSMITTAL 1987-4 (supplement November 16, 1987)

PERSONNEL—TITLE 4A				
4A:6-1, 2, 3, 4, 5	Leaves, hours of work, employee development	19 N.J.R. 1764(a)	R.1988 d.13	20 N.J.R. 54(a)
4A:6-1.3, 1.10	Sick leave: leave without pay	20 N.J.R. 133(a)		
4A:6-6	Awards Program	19 N.J.R. 1774(a)	R.1988 d.11	20 N.J.R. 54(a)
4A:8	Layoffs	19 N.J.R. 1363(a)		

Most recent update to Title 4A: TRANSMITTAL 1987-2 (supplement November 16, 1987)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
COMMUNITY AFFAIRS—TITLE 5				
5:11-1.2, 2.1	Relocation assistance: lawful occupancy; eligibility	19 N.J.R. 1596(a)	R.1987 d.518	19 N.J.R. 2388(c)
5:11-3.5	Relocation assistance: scheduling of payments	19 N.J.R. 1930(a)	R.1988 d.41	20 N.J.R. 185(a)
5:12-1.1, 2.1, 2.4	Homelessness Prevention Program: eligibility for temporary assistance	19 N.J.R. 1777(a)		
5:13	Limited dividend and nonprofit housing corporations and associations	19 N.J.R. 1861(a)	R.1988 d.49	20 N.J.R. 256(a)
5:14-1.1-1.4, 2.1-2.3, 3.1-3.23, 4.1-4.6	Neighborhood Preservation Balanced Housing Programs	19 N.J.R. 589(a)		
5:18-2.4, 2.5, 2.6, 2.8	Uniform Fire Code: life hazard uses; annual registration fees	19 N.J.R. 1680(a)	R.1987 d.508	19 N.J.R. 2266(a)
5:19	Continuing care retirement communities: disclosure requirements	19 N.J.R. 597(a)	R.1988 d.60	20 N.J.R. 256(b)
5:23-1.1, 3.10, 4.40, 5.2, 5.4, 5.18, 5.20, 5.21-5.26	UCC: local agency classification; appeal boards; licensing	19 N.J.R. 1264(a)	R.1987 d.509	19 N.J.R. 2270(a)
5:23-2.38, 3.11, 7.2, 7.3, 7.100-7.116	Barrier free subcode: recreation standards	19 N.J.R. 1270(a)		
5:23-3.2	Uniform Construction Code: commercial farm buildings	19 N.J.R. 1778(a)		
5:23-3.2	Commercial farm building subcode: public hearings	19 N.J.R. 1862(a)		
5:23-3.18	Energy Subcode: checkmetering in multifamily buildings; lighting efficiency in existing buildings	19 N.J.R. 1862(b)	R.1988 d.50	20 N.J.R. 268(a)
5:23-8	Asbestos Hazard Abatement Subcode	19 N.J.R. 902(a)	R.1987 d.525	19 N.J.R. 2389(a)
5:80-21	Housing and Mortgage Finance: single family loans	18 N.J.R. 2238(a)	R.1978 d.517	20 N.J.R. 70(a)
5:80-26	Housing resale and rental affordability control	19 N.J.R. 802(a)		
5:92-1.3, 6.1	Council on Affordable Housing: rehabilitation component and credits	19 N.J.R. 1863(a)		
5:92-5.14	Council on Affordable Housing: low and moderate income split	19 N.J.R. 1597(a)	R.1988 d.27	20 N.J.R. 71(a)
5:92-12.11	Council on Affordable Housing: rental surcharge	19 N.J.R. 1597(a)		
5:92-16	Council on Affordable Housing: accessory apartments	19 N.J.R. 2089(b)		
5:100-2.5	Failure to report suspected abuse or exploitation of institutionalized elderly	19 N.J.R. 1686(a)		
5:100-2.5	Failure to report suspected abuse or exploitation of institutionalized elderly: extension of comment period	19 N.J.R. 2090(a)		

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6:3-2	Transfer of pupil records	20 N.J.R. 133(b)		
6:20-3.1	Reproposed: Determining tuition rates for sending and receiving districts	19 N.J.R. 2329(a)		
6:22-1.1-1.7, 2.1-2.5, 3.1, 3.4	School facility planning services	20 N.J.R. 3(a)		
6:28-11	Special education pilot project	20 N.J.R. 14(a)		
6:31-1	Bilingual education	19 N.J.R. 1126(a)	R.1987 d.523	19 N.J.R. 2397(a)
6:64	County and local library services	19 N.J.R. 1931(a)		
6:79-1	Child nutrition programs	19 N.J.R. 1599(a)	R.1987 d.524	19 N.J.R. 2399(a)

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7:1-3, 4	Environmental Cleanup Responsibility Act rules	19 N.J.R. 681(a)	R.1987 d.528	19 N.J.R. 2435(a)
7:1C-1.2, 1.5	90-day construction permits: fee structure for treatment works approvals	20 N.J.R. 135(a)		
7:1G-2.1, 2.2, 4.1, 4.2, 5.4	Worker and Community Right to Know: hazardous substances and materials	19 N.J.R. 438(a)		
7:1G-2.1, 2.2, 4.1, 4.2, 5.4	Worker and Community Right to Know: extension of comment period	19 N.J.R. 2234(a)		
7:1G-3.2, 5.2, 7	Worker and Community Right to Know: assessment of civil administrative penalties for nondisclosure of information	19 N.J.R. 703(a)		
7:1G-3.2, 5.2, 7	Worker and Community Right to Know: extension of comment period	19 N.J.R. 2234(b)		
7:2-11	Natural Areas System	18 N.J.R. 2349(b)	R.1987 d.533	19 N.J.R. 2409(a)
7:3-2	Management of privately-owned woodlands: approved foresters list	20 N.J.R. 137(a)		
7:6-3.10	Water-skiing on Lake Hopatcong	20 N.J.R. 138(a)		
7:7-2.1, 2.3	Coastal Permit Program: CAFRA exemptions; waterfront development	19 N.J.R. 807(a)		
7:7-2.2	Coastal wetlands maps for Gloucester County	19 N.J.R. 2090(b)		
7:7A	Freshwater Wetlands Protection Act rules	19 N.J.R. 2330(a)		
7:7A-8.1	Freshwater Wetlands Protection Act rules: correction	20 N.J.R. 22(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:7E-3.41, 3.46, 7.14, 8.11	Hudson River waterfront development	20 N.J.R. 139(a)		
7:7F	Shore Protection Program	19 N.J.R. 2091(a)	R.1988 d.43	20 N.J.R. 186(a)
7:8	Storm water management	19 N.J.R. 2227(a)		
7:8-1.3, 1.7, 2.1, 2.2, 2.6, 3.4, 3.6	Stormwater management	19 N.J.R. 488(a)	R.1987 d.513	19 N.J.R. 2276(a)
7:9-1	Sewer systems and wastewater treatment plants	19 N.J.R. 2227(b)		
7:10-10.2, 11.2, 15	Safe Drinking Water Program fees	20 N.J.R. 142(a)		
7:10-16	Maximum Containment Levels (MCLs) for hazardous contaminants in drinking water	19 N.J.R. 2228(a)		
7:10-16.13, 16.14, 16.15	Hazardous contaminants in drinking water: pre-proposal concerning short-term action levels, sampling response levels, and unregulated and total volatile organics	19 N.J.R. 2231(a)		
7:11-1	Use of Water Supply Authority property	19 N.J.R. 1274(a)		
7:11-2.2, 2.3, 2.9, 2.13	New Jersey Water Supply Authority rates and charges	20 N.J.R. 144(a)		
7:13-7.1	Redelineation of Hackensack River in Oradell	19 N.J.R. 1935(a)		
7:13-7.1(b)	Redelineation of Jumping Brook in Neptune	19 N.J.R. 2233(a)		
7:13-7.1(d)	Redelineation of Raritan River and Peters Brook: repropoed	19 N.J.R. 167(b)		
7:13-7.1(d)	Redelineation of Big Bear Brook, Mercer County	19 N.J.R. 1933(a)		
7:13-7.1(d)	Redelineation of Carter's Brook, Middlesex County	19 N.J.R. 1933(b)		
7:13-7.1(d)	Redelineation of Lawrence, Ireland, Mae, Harry's and Oakeys brooks in Mercer and Middlesex counties	19 N.J.R. 1934(a)		
7:14A-5.12	Hazardous waste management: closure and post-closure financial assurance	19 N.J.R. 2349(a)		
7:14A-6.4	Groundwater monitoring parameters for hazardous waste facilities	19 N.J.R. 1863(b)		
7:14A-8	NJPDES permit program: public notice and comment	19 N.J.R. 1864(a)	R.1988 d.59	20 N.J.R. 269(a)
7:14A-11.1	Hazardous waste management: public access to records and information	19 N.J.R. 1869(a)	R.1988 d.57	20 N.J.R. 273(a)
7:14B	Underground storage tanks	19 N.J.R. 1477(a)	R.1987 d.531	19 N.J.R. 2417(a)
7:22-3.4, 3.6-3.11, 3.13, 3.32, 4.4, 4.6-4.11, 4.13, 4.32, 5.11	Wastewater Treatment Financing Program	19 N.J.R. 1600(a)		
7:22-9	Wastewater treatment: contract awards to small, female, and minority-owned businesses	19 N.J.R. 1604(a)		
7:25-1	Shellfishing license program	19 N.J.R. 2358(a)		
7:25-6	1988-89 Fish Code	19 N.J.R. 1385(a)	R.1988 d.15	20 N.J.R. 72(a)
7:25-18.5	Drifting and anchored gill net seasons; netting mesh in staked gill net fishery	19 N.J.R. 1609(a)		
7:26-1.1, 1.4, 1.6, 2.1, 7.5, 8.1, 8.2, 8.13, 8.15, 9.1, 10.7, 11.5, 11.6, 12.1, 12.3	Solid waste defined; hazardous waste recycling	19 N.J.R. 1035(a)	R.1987 d.534	19 N.J.R. 2426(a)
7:26-1.4, 8.2, 8.3, 8.5, 8.12, 8.14, 9.4, App. A, 12.1, 12.5, 12.12	Hazardous waste management	19 N.J.R. 1936(a)		
7:26-1.4, 9.8-9.11, 9.13, App. A, 12.3	Hazardous waste management: closure and post-closure financial assurance	19 N.J.R. 2349(a)		
7:26-1.9, 12.2, 17	Hazardous waste management: public access to records and information	19 N.J.R. 1869(a)	R.1988 d.57	20 N.J.R. 273(a)
7:26-2.13	Solid waste facilities: recordkeeping	19 N.J.R. 171(a)		
7:26-2.13	Recordkeeping at solid waste facilities: extension of comment period for proposal at 19 N.J.R. 171(a)	19 N.J.R. 2364(a)		
7:26-3.2, 3.4	Compliance with designated truck routes by solid waste registrants and operators	19 N.J.R. 1610(a)	R.1987 d.535	19 N.J.R. 2434(a)
7:26-6.5	Interdistrict and intradistrict solid waste flow: Hunterdon, Morris, Ocean and Warren counties	19 N.J.R. 1142(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Cumberland and Gloucester counties	19 N.J.R. 1481(a)		
7:26-8.14	Ethylene bisdithiocarbamic acid (EBDC) production	19 N.J.R. 1938(a)		
7:26-8.19, 10.6	Hazardous waste management: approval of alternate test methods; surface impoundments	19 N.J.R. 1482(a)	R.1987 d.514	19 N.J.R. 2278(a)
7:26-9.1, 9.3, 10.8, 11.4, 12.1	Hazardous waste management	18 N.J.R. 2356(a)	R.1987 d.532	19 N.J.R. 2424(a)
7:26-9.1, 9.3, 10.4, 10.8, 11.4, 12.1, 12.2	Hazardous waste management: extension of comment period	19 N.J.R. 263(c)		
7:26-12.2	Hazardous waste facilities: application signatories	19 N.J.R. 11(b)	R.1988 d.56	20 N.J.R. 276(a)
7:26-14.1, 14A	Resource Recovery and Solid Waste Disposal Facility Loans	19 N.J.R. 828(a)		

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7:26B	Environmental Cleanup Responsibility Act rules	19 N.J.R. 681(a)	R.1987 d.528	19 N.J.R. 2435(a)
7:27-16.1, 16.3	Stage II recovery of gasoline vapors	19 N.J.R. 1938(b)	R.1988 d.44	20 N.J.R. 186(a)
7:29B	Determination of noise from stationary sources	19 N.J.R. 1483(a)	R.1988 d.58	20 N.J.R. 278(a)
7:29B	Determination of noise from stationary sources: extension of comment period	19 N.J.R. 2092(a)		
7:31-1, 2, 3, 4	Toxic Catastrophe Prevention Act program	19 N.J.R. 1687(a)		
7:31-1, 2, 3, 4	Toxic Catastrophe Prevention Act program: extension of comment period	19 N.J.R. 2092(b)		
7:30	Pesticide Control Code	19 N.J.R. 1611(a)	R.1988 d.9	20 N.J.R. 75(a)
7:36	Green Acres Program	19 N.J.R. 2358(b)		
7:45	Delaware and Raritan Canal: State Park review zone	20 N.J.R. 23(a)		

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8:31B-3.7, 3.17, 3.27, 3.51, 3.55, 3.73, 4.42	Hospital reimbursement for existing capital indebtedness	19 N.J.R. 1145(a)	R.1988 d.24	20 N.J.R. 77(a)
8:31B-3.24, 3.51, 3.71, 3.73	Hospital reimbursement: indirect costs	19 N.J.R. 1147(a)	R.1988 d.25	20 N.J.R. 82(a)
8:31B-3.38	Apportionment of full financial elements	19 N.J.R. 1279(a)		
8:31B-4.38	Hospital reimbursement: uncompensated care coverage for outpatient dialysis	19 N.J.R. 2092(c)		
8:31B-4.62	Hospital reimbursement: outpatient HealthStart maternal and pediatric care	19 N.J.R. 2365(a)		
8:33E-1.1, 1.2, 1.3	Certificate of Need: cardiac diagnostic facilities	19 N.J.R. 1282(a)		
8:33E-2.2, 2.3, 2.4	Certificate of Need: cardiac surgery centers	19 N.J.R. 1283(a)		
8:33F-1.2, 1.4	Back-up and acute hemodialysis treatment: annual inpatient admissions for applicant hospital	19 N.J.R. 2093(a)		
8:33G-3.11	Long-term care beds for former psychiatric hospital patients	19 N.J.R. 614(a)		
8:43E-1	Certificate of Need policy manual for health care facilities and services	19 N.J.R. 1872(a)	R.1988 d.21	20 N.J.R. 86(a)
8:43E-1	Repeal (see 8:43I-1)	19 N.J.R. 2365(b)		
8:43E-2	Psychiatric inpatient beds: adult open acute	19 N.J.R. 1873(a)	R.1988 d.22	20 N.J.R. 86(b)
8:43E-3	Psychiatric inpatient screening beds	19 N.J.R. 1875(a)	R.1988 d.20	20 N.J.R. 88(a)
8:43E-4	Children's acute psychiatric beds	19 N.J.R. 1876(a)	R.1988 d.19	20 N.J.R. 88(b)
8:43E-4	Child and adolescent acute psychiatric beds	19 N.J.R. 2094(a)		
8:43E-5	Intermediate adult and special psychiatric beds	19 N.J.R. 1877(a)	R.1988 d.18	20 N.J.R. 89(a)
8:43G-1	Repeal (see 8:43I-1)	19 N.J.R. 2365(b)		
8:43I-1	Hospital Policy Manual	19 N.J.R. 2365(b)		
8:61-2	Retrovir (AZT) reimbursement program	19 N.J.R. 2067(a)	R.1988 d.6	20 N.J.R. 89(b)
8:65-7.14	Controlled substances: Schedule III and IV prescription refills	19 N.J.R. 1612(a)		
8:65-7.14	Schedules III and IV prescription refills: withdrawal of proposal	20 N.J.R. 32(a)		
8:71	Interchangeable drug products (see 19 N.J.R. 641(a), 880(a), 1314(a), 1644(b), 2279(a))	19 N.J.R. 13(a)	R.1987 d.522	19 N.J.R. 2402(a)
8:71	Interchangeable drug products (see 19 N.J.R. 1312(b), 1644(a), 2278(b), 2400(a))	19 N.J.R. 615(a)	R.1988 d.32	20 N.J.R. 191(a)
8:71	Interchangeable drug products (see 19 N.J.R. 2279(b), 2401(a))	19 N.J.R. 1488(a)	R.1988 d.31	20 N.J.R. 190(a)
8:71	Interchangeable drug products	19 N.J.R. 1878(a)	R.1988 d.33	20 N.J.R. 191(b)
8:71	Interchangeable drug products	20 N.J.R. 146(a)		

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HIGHER EDUCATION—TITLE 9

9:5-1.1	Independent student status	19 N.J.R. 2372(a)		
9:6A	State college personnel system	19 N.J.R. 1613(a)	R.199 d.14	20 N.J.R. 89(a)
9:7	Student Assistance Board: scholarship and tuition aid programs	20 N.J.R. 33(a)		
9:7-2.3	Student assistance and foreign nationals	19 N.J.R. 2101(a)		
9:7-2.6	Independent student status	19 N.J.R. 2101(b)		
9:7-3.2	1988-89 Tuition Aid Grant Award Table	20 N.J.R. 147(a)		
9:7-9.9, 9.11, 9.12	Congressional Teacher Scholarship Program	19 N.J.R. 2102(a)		
9:9-1.12, 1.13, 1.16	Repayment of student loans: nonconverted accounts	19 N.J.R. 1619(a)		
9:11-1.1, 1.7, 1.8, 1.22, 1.23	EOF grant awards for approved part-time enrollment	19 N.J.R. 2373(a)		
9:11-1.3, 1.4	Educational Opportunity Fund: eligible non-citizens: independent student status	19 N.J.R. 2234(c)		
9:11-1.4	Educational Opportunity Fund: student dependency status defined	19 N.J.R. 266(a)	R.1987 d.491	19 N.J.R. 2281(a)
9:11-1.5	EOF: financial eligibility for undergraduate grants	19 N.J.R. 499(a)	R.1987 d.492	19 N.J.R. 2282(a)
9:11-1.7	Equal Opportunity Fund grants: graduate awards	19 N.J.R. 1879(a)		
9:11-2	Martin Luther King Physician-Dentist Scholarship Program	19 N.J.R. 2374(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
HUMAN SERVICES—TITLE 10				
10:4	Communication with communities regarding development of group homes	19 N.J.R. 1976(a)		
10:4	Communication with communities regarding development of group homes: extension of comment period	20 N.J.R. 149(a)		
10:8	Personal needs allowance for indigent persons in State and county institutions	19 N.J.R. 617(a)		
10:44A	Licensed community residences for developmentally disabled	20 N.J.R. 149(b)		
10:49-1.3-1.6	HealthStart: comprehensive maternity and pediatric care services	19 N.J.R. 1978(a)	R.1988 d.62	20 N.J.R. 278(b)
10:49-1.4	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:50-1.1-1.5, 2.3-2.8, 3.1, 3.2	Livery service for ambulatory Medicaid patients	19 N.J.R. 2103(a)		
10:51-1.6, 1.11, 1.16, 1.18, 3.5, 3.10, 3.14, 5.14, 5.18	Pharmacy Manual: payment limits for Medicaid and PAAD reimbursement	19 N.J.R. 2203(a)	R.1988 d.48	20 N.J.R. 288(a)
10:51-1.17	Medicaid and PAAD: legend drug dispensing fee	19 N.J.R. 1711(a)	R.1987 d.530	19 N.J.R. 2402(b)
10:51-5.6	Pharmaceutical Assistance to Aged and Disabled: income limits	19 N.J.R. 2375(a)		
10:52-1.6, 1.8	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:52-1.7	HealthStart	19 N.J.R. 1978(a)	R.1988 d.62	20 N.J.R. 278(b)
10:53-1.5, 1.7	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:53-1.6	HealthStart	19 N.J.R. 1978(a)	R.1988 d.62	20 N.J.R. 278(b)
10:54-1.1, 1.2	HealthStart	19 N.J.R. 1978(a)	R.1988 d.62	20 N.J.R. 278(b)
10:58-1.2, 1.3	HealthStart	19 N.J.R. 1978(a)	R.1988 d.62	20 N.J.R. 278(b)
10:61-2.4, 2.5	Independent laboratories: standardized claim form	19 N.J.R. 1779(a)		
10:64-1.4, 2.1, 2.2, 2.5, 2.6, 3.5	Hearing aid providers: standardized claim form	19 N.J.R. 1779(a)		
10:66-1.3, 1.6	HealthStart	19 N.J.R. 1978(a)	R.1988 d.62	20 N.J.R. 278(b)
10:66-3	Family planning services provided by independent clinics	19 N.J.R. 2376(a)		
10:69A-1.2, 6.2, 6.6, 6.10	PAAD income limits	19 N.J.R. 2375(a)		
10:69C	Statewide Respite Care Program	19 N.J.R. 1712(a)		
10:71-5.4, 5.5, 5.6, 5.7	Medicaid Only computation amounts and income eligibility standards	Emergency (expires 3-4-88)	R.1988 d.55	20 N.J.R. 207(a)
10:81-8.22, 14.20	PAM: extension of Medicaid benefits to certain employed persons	19 N.J.R. 2206(a)	R.1988 d.47	20 N.J.R. 291(a)
10:81-11.7	Child support enforcement program	19 N.J.R. 1879(b)		
10:81-11.18	PAM: child support guidelines	18 N.J.R. 2178(a)	R.1987 d.498	19 N.J.R. 2282(b)
10:82-2.6	Initial eligibility in AFDC	19 N.J.R. 1781(a)	R.1988 d.38	20 N.J.R. 193(a)
10:82-4.15	Lump sum income and AFDC eligibility	19 N.J.R. 1782(a)	R.1988 d.40	20 N.J.R. 193(b)
10:85-1.5	General Assistance Program audits	19 N.J.R. 2376(b)		
10:85-3.5	GAM: monthly case reviews	19 N.J.R. 2111(a)		
10:85-4.6	Emergency Assistance in GA program	19 N.J.R. 1715(a)	R.1988 d.26	20 N.J.R. 96(a)
10:85-4.8	GAM: funeral and burial expenses	19 N.J.R. 1619(b)	R.1988 d.39	20 N.J.R. 194(a)
10:85-5.3	General Assistance Manual: deadline for medical bills	20 N.J.R. 162(a)		
10:85-6.3	General Assistance Program statement of refunds: preparation of Form GA-12	19 N.J.R. 2377(a)		
10:86	AFDC Work Incentive Program	20 N.J.R. 162(b)		
10:87-5.9	Food Stamps eligibility: income exclusion and utility allowance payments	19 N.J.R. 1986(a)		
10:87-11.21, 11.28	Liability for overissuance of food stamp benefits	20 N.J.R. 162(c)		
10:87-12.1, 12.2	Food Stamp Program: income deductions and maximum coupon allotments	19 N.J.R. 1916(a)	R.1987 d.529	19 N.J.R. 2402(c)
10:89-2.2, 2.3, 3.2, 3.3, 3.4, 3.6, 4.1	Home Energy Assistance program	19 N.J.R. 2208(a)	R.1988 d.46	20 N.J.R. 291(b)
10:100-3.7	Chargeable CWA for funerals and burials	20 N.J.R. 163(a)		
10:100, App. A	Supplemental Security Income payment levels	Emergency (expires 3-4-88)	R.1988 d.54	20 N.J.R. 208(a)
10:121A	Adoption Agencies: Manual of Standards	19 N.J.R. 1519(a)	R.1987 d.505	19 N.J.R. 2288(a)
10:124	Children's shelter facilities and homes	19 N.J.R. 1394(a)	R.1987 d.504	19 N.J.R. 2300(a)
10:131	Adoption Assistance and Child Welfare Act of 1980	19 N.J.R. 1285(a)	R.1987 d.503	19 N.J.R. 2301(a)

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CORRECTIONS—TITLE 10A

10A:3-4.1	Off-duty carrying of firearms	19 N.J.R. 1717(a)	R.1987 d.515	19 N.J.R. 2302(a)
10A:3-4.1	Off-duty carrying of firearms: peace officer titles	20 N.J.R. 42(a)		
10A:4-1.2	Girl's Unit at Skillman: disciplinary process	19 N.J.R. 1531(a)	R.1987 d.526	19 N.J.R. 2403(a)
10A:4-9.18	Inmate discipline: suspending sanctions	19 N.J.R. 1717(b)	R.1988 d.61	20 N.J.R. 294(a)
10A:9-4.5	Inmate classification: increasing custody status	19 N.J.R. 1782(b)	R.1988 d.30	20 N.J.R. 194(b)
10A:9-4.5	Reduction of inmate custody status	19 N.J.R. 2235(a)		
10A:10-6.3, 6.6	International transfer of inmates	19 N.J.R. 1620(a)	R.1988 d.29	20 N.J.R. 194(c)
10A:16-11	Special medical unit	20 N.J.R. 163(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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10A:71-3.2, 3.4, 3.18-3.23, 3.25-3.28, 3.30, 3.43, 6.9	Parole Board rules	19 N.J.R. 1396(b)		

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11:1-25	Official department mailing list: address information	19 N.J.R. 2236(a)	R.1988 d.64	20 N.J.R. 294(b)
11:3-22.3	Submission of automobile coverage option survey	19 N.J.R. 2237(a)	R.1988 d.65	20 N.J.R. 295(a)
11:3-23	Dangerous drivers or drivers with excessive claims	19 N.J.R. 1880(a)	R.1987 d.527	19 N.J.R. 2403(b)
11:4-2	Replacement of life insurance policy	19 N.J.R. 1286(a)		
11:4-16.6	Basic hospital expense coverage	20 N.J.R. 172(a)		
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11:4-19	Optional coverage for pregnancy and childbirth benefits	20 N.J.R. 43(a)		
11:4-28	Group coordination of health care benefits	19 N.J.R. 845(a)		
11:5-1.23	Full cooperation among real estate brokers and waiver of cooperation	19 N.J.R. 1621(a)		
11:5-1.23	Real estate licensee's obligation to disclose certain information concerning a property and to submit to a seller all written offers: pre-proposal	19 N.J.R. 2238(a)		
11:5-1.25	Sale of interstate real properties: advertisements	19 N.J.R. 1718(a)		
11:5-1.27	Real estate brokers pre-licensure course	19 N.J.R. 1051(a)		
11:13	Commercial lines insurance	19 N.J.R. 1783(a)	R.1987 d.512	19 N.J.R. 2302(b)
11:17-1, 2, 5	Insurance producer licensing: pre-proposed new rules	19 N.J.R. 2112(a)		

Most recent update to Title 11: TRANSMITTAL 1987-8 (supplement October 19, 1987)

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12:100-5.2, 6.2, 7	Public employees and exposure to toxic and hazardous substances	19 N.J.R. 267(a)		
12:110	Public employee occupational safety and health	19 N.J.R. 1941(a)	R.1988 d.42	20 N.J.R. 195(a)
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13:35-1.5	Participation in medical residency programs	19 N.J.R. 2243(a)		
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13:35-6.7	Medical examiners board: prescribing of amphetamines and sympathomimetic amine drugs	19 N.J.R. 1786(a)		
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13:37-12.1	Board of Nursing fee schedule	19 N.J.R. 1886(a)	R.1987 d.536	19 N.J.R. 2405(a)
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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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13:45A-24	Sale of gray market merchandise	19 N.J.R. 179(a)	Expired	
13:45A-25.1	Sellers of health club services: registration fee	19 N.J.R. 1967(a)	R.1988 d.23	20 N.J.R. 103(a)
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13:46-12.13	Boxing show hygiene	19 N.J.R. 1886(b)	R.1988 d.8	20 N.J.R. 103(c)
13:47C-2.1	Meat, poultry, fish and shellfish sold by net weight	19 N.J.R. 1787(b)	R.1988 d.35	20 N.J.R. 204(a)
13:47C-2.5	Weights and measures: ready-to-eat foods	19 N.J.R. 2124(a)		
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13:70-20.11	Thoroughbred racing: entering or starting nerved horses	19 N.J.R. 1788(a)		
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13:70-29.53	Thoroughbred racing: trifecta wagering	19 N.J.R. 2385(a)		
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13:71-27.50	Harness racing: trifecta wagering	19 N.J.R. 2385(b)		
13:75-1.6	Violent crimes compensation: eligibility of claims	19 N.J.R. 1967(b)		
13:76-1.3, 3.1, 3.2, 5.1	Arson investigation training	19 N.J.R. 1788(b)		
13:77	Equitable distribution of forfeited property to law enforcement agencies	19 N.J.R. 1534(b)	R.1988 d.63	20 N.J.R. 296(a)

Most recent update to Title 13: TRANSMITTAL 1987-11 (supplement November 16, 1987)

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14:18-3	Cable TV: pre-proposal for telephone service standards	19 N.J.R. 2125(b)		

Most recent update to Title 14: TRANSMITTAL 1987-6 (supplement September 21, 1987)

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Most recent update to Title 14A: TRANSMITTAL 1987-3, (supplement September 21, 1987)

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Most recent update to Title 15: TRANSMITTAL 1987-1, (supplement February 17, 1987)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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17:20-4	Licensure as ticket sales agent of State Lottery	19 N.J.R. 1969(a)		
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17:20-7	Payment of State Lottery prizes	19 N.J.R. 1889(b)		
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Most recent update to Title 17: TRANSMITTAL 1987-8 (supplement August 17, 1987)

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18:15-1.1	Woodland management plan: correction to proposal	19 N.J.R. 1640(a)		
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Most recent update to Title 18: TRANSMITTAL 1987-6 (supplement November 16, 1987)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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19:4-6.28	Rezoning in East Rutherford	19 N.J.R. 1975(a)		
19:8-1.1, 3.1	Tolls on Garden State Parkway	20 N.J.R. 49(a)		
19:9-1.6	Sleeping in parked vehicles	19 N.J.R. 1637(b)		
19:9 Exh. A	Prequalification of bidders for widening contracts	19 N.J.R. 2129(b)		
19:17-2.1, 3.1-4.5	PERC Appeal Board procedure: rescheduled public hearing	19 N.J.R. 404(a)		
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Most recent update to Title 19: TRANSMITTAL 1987-6 (supplement October 19, 1987)

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19:45-1.1	Affiliation and slot machine mix	19 N.J.R. 1890(a)	R.1988 d.34	20 N.J.R. 205(a)
19:45-1.2, 1.46	Reporting of complimentary items and services	19 N.J.R. 1975(b)		
19:45-1.25	Verification of travelers checks	20 N.J.R. 51(a)		
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19:49	Junkets	20 N.J.R. 181(a)		
19:53-1.3, 1.13	Casino licensee's EEO/AA office	19 N.J.R. 1638(b)		
19:53-1.5	Pre-proposal: Affirmative action employment goals for handicapped or disabled persons	19 N.J.R. 1182(a)		
19:54-2.2	Affiliation and slot machine mix	19 N.J.R. 1890(a)	R.1988 d.34	20 N.J.R. 205(a)

Most recent update to Title 19K: TRANSMITTAL 1987-8 (supplement November 16, 1987)



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