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REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS*, PAGE 2467.

VOLUME 17 NUMBER 19

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(Includes rules filed through September 16, 1985)

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

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RULE PROPOSALS

Interested persons may submit, in writing, information or arguments concerning any of the following proposals until **November 6, 1985.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

AGRICULTURE

(a)

DIVISION OF MARKETS

Sire Stakes Program Rules Appeals

Proposed Amendment: N.J.A.C. 2:32-2.36
Proposed New Rules: N.J.A.C. 2:32-3

Authorized By: Sire Stakes Board of Trustees; Arthur R. Brown, Jr., Secretary of Agriculture.
Authority: N.J.S.A. 5:5-91.
Proposal Number: PRN 1985-534.

Submit comments by November 6, 1985 to:
John J. Repko, Director
Division of Markets
State Department of Agriculture
CN 330
Trenton, New Jersey 08625
Telephone: (609) 292-5536

The agency proposal follows:

Summary

The success of the New Jersey Sire Stakes Program has brought disputes and questions as to procedure and decision making. While these matters have been handled in accordance with the accepted New Jersey Administrative Procedures Act, these procedures are unknown to laymen and unfamiliar to some members of the Bar of New Jersey and other states. To obviate any questions on the matter, the Sire Stakes Board has determined that the codification of the existing appeals process would prevent such misunderstandings and proposes to codify the procedure as part of the Sire Stakes Program Rules.

Social Impact

The amendment and proposed new rules will provide to all participants in the Sire Stakes Program a clear understanding of the appeal procedure followed in any contested matter.

Economic Impact

The proposed amendment and new rules will, by codification of the appeal process, be more economical to the participants and the administrators of the Sire Stakes Program in time, effort and expense.

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

2:32-2.36 Supervising Race Secretary

(a) A member of the New Jersey Sire Stakes staff will be appointed Supervising Race Secretary at all future Fair meets. [Furthermore, the] **The** New Jersey Sire Stakes Board Secretary is responsible for the complete supervision of the New Jersey Sire Stakes Program as it pertains to the Fairs.

(b) Nothing herein shall be construed to rescind or replace any of the powers, rules or regulations of the New Jerey Racing Commission at any race.

NEW JERSEY REGISTER

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

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SUBCHAPTER 3. APPEALS

2:32-3.1 Right of appeal

(a) Any person aggrieved by any action or inaction by the Board of Trustees, or its representatives, may request an informal meeting with the Board to settle any dispute, or seek clarification of the Board's rules and regulations. The Board shall respond, in writing, to any such request stating the reasons for its determination.

(b) If any dispute is required by law or regulation to be handled formally, or if a party is dissatisfied with an informal determination, or if the Board determines the matter contested, the matter shall be treated in accordance with the Administrative Procedure Act (N.J.S.A. 52:14B-1, et seq. and N.J.S.A. 52:14F-1, et seq.), and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1-1.

2:32-3.2 Appeal from decisions of Supervising Race Secretary

When any decision is made by any person representing the Board of Trustees pursuant to the law of New Jersey or rules of the Board of Trustees, said decision may be appealed to the Board of Trustees and a hearing requested.

2:32-3.3 Nature of proceedings

All hearings before the Board of Trustees will be de novo proceedings and shall be accompanied by notice and an opportunity to be heard.

2:32-3.4 Appeal procedure

In the event that an appeal is taken to the Board of Trustees, said appeal and one copy, must be filed, in writing, at the office of the Board of Trustees within 20 days of the date of the receipt of the decision by the person representing the Board of Trustees.

2:32-3.5 Acting on appeals

The Board of Trustees shall act on all appeals in accordance with the laws of the State of New Jersey and the rules and regulations promulgated by the Board of Trustees.

2:32-3.6 Hearing; Costs

The applicant shall be responsible for any costs incurred in connection with any hearing held pursuant to the right of appeal contained in this subchapter and the laws of the State of New Jersey.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Relocation Assistance
Workable Relocation Assistance Plans

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

Authorized By: John P. Renna, Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:31B-10 and 20:4-10.
Proposal Number: PRN 1985-530.

Submit comments by November 6, 1985 to:
Michael L. Ticktin, Esq.
Administrative Practice Officer
Division of Housing and Development
CN 804
Trenton, New Jersey 08625

Summary

The relocation assistance regulations now require any public agency that intends to conduct any activity resulting in relocation to first file a Workable Relocation Assistance Plan (WRAP) with the Department of Community Affairs for approval. Prior filing of such plans is unreasonable and impractical in those cases where displacement arises as a result of emergency code enforcement in buildings that are found to be unsafe or to otherwise constitute an imminent hazard to public health, safety or welfare. The proposed amendment will eliminate the need for prior filing of a WRAP in cases involving displacement as a result of code enforcement in unsafe or other hazard situations. The obligations of a displacing agency to provide relocation assistance and to maintain records and reports of all relocation activities are not affected by this proposed amendment. Also unaffected are those displacements for which the WRAP requirement was originally intended, namely those involving acquisition of property for public use.

Social Impact

Code enforcement agencies will be able to act quickly and effectively in imminent hazard situations without having to file a report that serves no real purpose in such a situation.

Economic Impact

The proposed amendment will provide a saving of time that would otherwise be spent in preparing, filing and reviewing these WRAPS.

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

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

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

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

(b)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Certification and Recertification of Income

Proposed New Rules: N.J.A.C. 5:80-20

Authorized By: Feather O'Connor, Executive Director/Secretary of the New Jersey Housing and

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Mortgage Finance Agency.
Authority: N.J.S.A. 55:14K-5g and 55:14K-8b.
Proposal Number: PRN 1985-541.

Submit comments by November 6, 1985 to:
William F. Abele, Esq.
Director of Policy Development
New Jersey Housing and Mortgage Finance Agency
3625 Quakerbridge Road, CN18550
Trenton, New Jersey 08650-2085

The agency proposal follows:

Summary

The New Jersey Housing and Mortgage Finance Agency serves as an advocate for promoting the supply, construction, rehabilitation and improvement of adequate and affordable housing in the State. To fulfill its objective, the Agency acts as a mortgage lender to housing sponsors who wish to construct, rehabilitate or improve housing projects for low and moderate income citizens. The proposed new rules focus on the procedure for certifying the income of applicants for admission to such housing projects and for periodically recertifying income of tenants residing in such housing projects.

Social Impact

The proposed rule is established to effectuate the general purpose of the Agency including: 1) to stimulate the construction, rehabilitation and improvement of adequate and affordable housing in the State so as to increase the number of housing opportunities for New Jersey residents particularly those of low and moderate income; 2) to enhance the production capacity of the private sector toward meeting the housing needs of residents of New Jersey; 3) to assist in the revitalization of the State's urban areas; and 4) to respond to changing housing demographic and economic circumstances for the development of innovative and flexible financing vehicles. The new rules will have an impact on all tenants in Agency-financed projects and all Housing Sponsors of Agency-financed projects. In particular, the proposed rules will enable the Agency to verify that applicants for admission to housing projects meet prescribed income limitations. Additionally, the rules will ensure that tenants receiving the benefits of residing in Agency-financed projects continue to meet the income limitations for residing in such housing projects.

Economic Impact

Through its sale of tax exempt bonds, the Agency is able to make mortgage loans for new construction of multi-family housing projects or the rehabilitation of existing units upon application by qualified housing sponsors. Since the program's inception over $1.2 billion in loans have been issued for such housing. The proposed rules will enable the Agency to continue to meet its goals to provide low and moderate income housing to the residents of the State of New Jersey. In particular, the proposed rules will enable the Agency to assure itself that housing projects continue to be occupied by tenants of low and moderate income. Additionally, those tenants whose income has increased beyond prescribed limitations during occupancy and those who fail to recertify income pursuant to the proposed rules will be subject to a surcharge in their apartment rent.

Full text of the proposed new rules follows.

SUBCHAPTER 20. CERTIFICATION AND RECERTIFICATION OF INCOME

5:80-20.1 Authority

This subchapter is promulgated pursuant to the authority of N.J.S.A. 55:14K-8b.

5:80-20.2 General applicability

(a) Regulations within this subchapter shall apply to all families occupying a unit within a housing project.

(b) In addition to (a) above, any family occupying a unit within a housing project which is assisted by subsidies provided by the Department of Housing and Urban Development, such as Section 8 Housing Assistance Payments and Section 236 Interest Reducation Payments, or which is financed pursuant to Section 103(b)(4) of the Internal Revenue Code, or which is financed by a loan from the Agency which is insured or guaranteed by the United States or any agency thereof, may be required to comply with additional Federal regulations, if applicable, regarding certification and recertification of income. In such cases, the Agency shall notify families that they are residing in housing projects which are subject to such Federal regulation. In the event there are any inconsistencies between the regulations in this subchapter and said Federal regulations, the Federal regulations shall prevail.

5:80-20.3 Documentation

(a) Each family applying for admission to or occupying a unit within a housing project shall provide information and documentation which verifies, to the satisfaction of the Agency, the family's annual income. The documentation which the Agency shall require families to submit to housing sponsors may include but is not necessarily limited to:

1. A copy of the first page of their most recent Federal income tax return, or a signed certification stating that no tax return was filed;
2. Permission for the Agency and Housing Sponsor to contact the Internal Revenue Service for additional information and/or copies of a family's income tax returns;
3. Verification of employment;
4. Check stubs from employers, pensions, annuities, social security, unemployment, public assistance and workers' compensation;
5. A copy of court order for alimony and child support;
6. Confirmation of income from assets (for example, bank statements).

(b) In addition to documentation required pursuant to (a) above, any family occupying a unit within a housing project assisted by subsidies provided by HUD, such as Section 8 and 236, and/or financed pursuant to Section 103(b)(4) of the Internal Revenue Code, may be required to submit additional documentation as required by Federal regulations regarding certification and recertification of income.

5:80-20.4 Calculation of income

(a)For families occupying a unit which is assisted by HUD subsidies such as Section 8 and 236 or families occupying a unit within a housing project financed pursuant to Section 103(b)(4) of the Internal Revenue Code, where such unit is restricted to families of low and moderate income as defined in Section 103(b)(12)(c), gross aggregate family income shall be calculated in accordance with applicable Federal regulations.

(b) For all other families, gross aggregate family income shall be calculated by the total annual income of all family members, from whatever source derived, including but not

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limited to pension, annuity, retirement and social security benefits. However, the calculation for gross aggregate family income shall not include such income as the Agency determines may be excluded. Such excludable income shall include but is not limited to the following:

1. Income from a dependent minor under 18 years of age, who is not the head of household or spouse of the head of household;

2. Lump-sum additions to family assets such as inheritances, capital gains, insurance payments included under health, accident, hazard or worker's compensation policies, and settlements for personal or property losses.

3. For income from dependents who are secondary wage earners but who are not included within (b)1 above, an allowance for such wages up to a maximum of $3,000.

5:80-20.5 Recertification periods

(a) Family income shall be recertified on an annual basis for:

1. Families occupying a unit which is assisted by HUD subsidies, such as Section 8 and 236;

2. Families occupying a unit within a housing project financed under Section 103(b)(4) of the Internal Revenue Code where such unit is restricted to families of low and moderate income as defined in Section 103(b)(12)(c).

(b) Family income shall be recertified at least every three years but not more than once each year, for all other families not included within (a)1 or 2 above.

(c) Housing sponsors shall notify each family in writing, not more than 95 days and not less than 85 days prior to expiration of a family's lease, that they must recertify family income. Such notification shall include but is not necessarily limited to:

1. A statement that families must recertify within 30 days of the notice;

2. A list of the documentation required for recertification;

3. A statement that families who fail to recertify income are subject to penalties as set forth in N.J.A.C. 5:80-20.6 along with a list of those penalties.

(d) Housing sponsors must submit family recertifications to the Agency not more than 50 days prior to the expiration of a family's lease.

(e) Failure of the housing sponsor to comply with the time requirements in (c) and (d) above shall not relieve families of their obligation to complete their recertification within 30 days of receiving notice to recertify.

5:80-20.6 Failure to recertify

(a) Any family which fails to recertify income after notification pursuant to this subchapter shall be subject to the following penalties:

1. For families occupying a unit which is assisted by HUD subsidies, such as Section 8 and 236, such subsidies shall be terminated, requiring families to pay market rent;

2. For all other families, they shall be subject to imposition of surcharges pursuant to N.J.A.C. 5:80-20.8, or may be subject to eviction pursuant to N.J.A.C. 5:80-20.9.

(b) Families subject to penalties imposed pursuant to (a) above, upon satisfactory completion of recertification, may have subsidies restored, provided said subsidies are available, or may, with Agency approval, have surcharges removed.

5:80-20.7 Adjustments in rent; termination of tenancy

(a) For families occupying a unit assisted by HUD subsidies such as Section 8 and 236, upon recertification of income, a family's HUD subsidy may be adjusted or terminated as needed to comply with applicable HUD regulations.

(b) For all other projects, families may be subject to surcharges pursuant to N.J.A.C. 5:80-20.8, or may be subject to eviction pursuant to N.J.A.C. 5:80-20.9.

(c) Upon recertification, Housing Sponsors must assure that the project contains the required number of low and moderate income families as required by N.J.A.C. 5:80-8.3.

5:80-20.8 Surcharges

(a) Upon recertification, if the gross aggregate family income exceeds the maximum income limit pursuant to N.J.A.C. 5:80-8.2 by 25 percent or less, the family shall continue to occupy the unit without the imposition of any surcharges. If the gross aggregate family income exceeds the maximum income limit by more than 25 percent, the family may continue to occupy the unit, subject to payment of a surcharge as outlined in (c) below. Such surcharges may only be imposed with approval of the Agency. When imposing surcharges, housing sponsors shall give families notice that they may be subject to eviction if their income continues to exceed the maximum income limit for six months.

(b) Families subject to surcharges for failing to complete the recertification process shall be surcharges at the maximum rate outlined in (c) below. Housing sponsors may impose surcharges for failure to recertify without Agency approval.

(c) Surcharges imposed shall be based upon a family's unit rent in accordance with the following schedule:

Percentage That Gross Aggregate Income Exceeds The Maximum Income Limit	Surcharge On Unit Rent
Up to and including 125%	None
In excess of 125% up to and including 130%	5%
In excess of 130% up to and including 135%	10%
In excess of 135% up to and including 140%	15%
In excess of 140% up to and including 145%	20%
In excess of 145% up to and including 150%	25%
In excess of 150%	30%

(d) Housing sponsors shall pay the surcharge to the municipality granting tax exemption to the project but only up to an amount that, together with payments made to the municipality in lieu of taxes and for any land taxes, equals 25 percent of the total rents or carrying charges of the project for the current and any prior years that the project has been in operation. For projects on which the Agency has made a loan, financed with the proceeds of bonds issued prior to January 1, 1973 and remainder of the surcharge or the total surcharge, if tax exemption has not been granted, shall be paid into the Agency's housing finance fund securing the bonds issued to finance the project. For projects financed on or after January 1, 1973, any remainder of the surcharge or the total surcharge, if tax exemption has not been granted, shall be paid to the Agency. Surcharges imposed for failure to recertify shall be paid to the Agency.

(e) Surcharges shall be imposed upon expiration of the lease provided families have received 30 days notice pursuant to N.J.A.C. 5:80-20.5. Families which have not received 30 days notice prior to lease expiration shall not have surcharges imposed until the 30 day notice has expired.

5:80-30.9 Eviction

(a) Families who fail to recertify income following notification pursuant to N.J.A.C. 5:80-20.5 may, with Agency approval, be evicted by the housing sponsor.

(b) Upon recertification, families whose gross aggregate

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family income exceeds the maximum income limit pursuant to N.J.A.C. 5:80-8.2 by more than 25 percent and continues to do so for at least six months may, with Agency approval, be evicted by the housing sponsor.

(c) Housing sponsors shall make a written demand and give notice for delivery of possession of the unit in accordance with N.J.S.A. 2A:18-61.1 et seq.

5:80-20.10 Confidentiality

Housing Sponsors shall maintain files on the certification and recertification of family income at the project. Such files are to be kept as confidential and shall not be accessible to nor shall information contained therein be disclosed to any person except authorized representatives of the Housing Sponsor, Agency, HUD or a person with proper legal authority. Housing sponsors shall require identification from each person claiming authority to review such confidential files and maintain a list of individuals who have been provided access to same. If a Housing sponsor is not satisfied that a person requesting review has proper authority, review shall be denied and the matter referred to the Agency for final determination. Any copies of family files sent to the Agency pursuant to the certification or recertification process shall be maintained in the same confidential manner.

ENVIRONMENTAL PROTECTION

DIVISION OF WATER RESOURCES

Proposals numbered PRN 1985-544 and 545 are authorized by Robert E. Hughey, Commissioner, Department of Environmental Protection.

Submit written comments by November 20, 1985 to:
Clark Gilman
Bureau of Flood Plain Delineation
Division of Water Resources
CN 029
Trenton, N.J. 08625

(a)

Flood Hazard Area Delineation

Revision of the Delineated Flood Hazard Area of Long Brook and the Manasquan River in Howell Township, Monmouth County

Proposed Amendment: N.J.A.C. 7:13-7.1

Authority: N.J.S.A. 13:1D-1 et seq. and 58:16A-50 et seq.
DEP Docket No. 052-85-09.
Proposal Number: PRN 1985-544.

A **public hearing** concerning this proposal will be held on:
November 20, 1985, 1:00 P.M.
Howell Township Municipal Bldg.
Preventorium Road
Howell, N.J.

The agency proposal follows:

Summary

The proposed amendment provided for the application of rules concerning the development and use of land in designated flood hazard areas to a revised area of the Long Brook from its mouth upstream to Strickland Road and the Manasquan River from approximately 3080 feet upstream of Long Brook to approximately 2340 feet downstream of Long Brook. Rules concerning delineated flood hazard areas are designed to preserve the flood carrying capacity of New Jersey's waterways and to minimize the threat to the public safety, health and general welfare caused by flooding.

Social Impact

The proposed delineation applies added flood protection to a more accurately defined flood hazard area along the waterways involved. The need for such added protection is revealed by past floods which have affected this area.

Economic Impact

The proposed amendment will have only a minor economic impact. The delineation will more clearly define the flood hazard area, thus resulting in less requirements for flood insurance. Minor reductions in property value could result by restricting future development in the floodway and requiring elevated construction designs in flood fringe areas. However, minor property value diminution could be offset by the savings to governmental bodies and private homeowners due to little or no future rehabilitation and rescue expenditures from flood damage in the delineated area.

No change in the text of N.J.A.C. 7:13-7.1 is required. A map showing the approximate location of the revised delineated flood hazard area may be reviewed at Office of Administrative Law and at the Bureau of Flood Plain Delineation at 1911 Princeton Avenue, Lawrenceville, New Jersey.

(b)

Flood Hazard Area Delineation

Delineated Flood Hazard Area along the Lamington River; Hunterdon-Somerset-Morris County Line.

Proposed Amendment: N.J.A.C. 7:13-7.1

Authority: N.J.S.A. 13:1D-1 et seq. and 58:16A-50 et seq.
DEP Docket No. 053-85-09.
Proposal Number: PRN 1985-545.

A **public hearing** concerning this proposal will be held on:
November 18, 1985, 1:00 P.M.
Chester Township Municipal Building
Park Road
Chester, N.J.

The agency proposal follows:

Summary

The proposed amendment provides for the application of rules concerning the development and use of land in the desig-

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nated flood hazard area to a portion of the Lamington River in the Raritan Basin from the Hunterdon-Somerset-Morris County Line to 1350 feet downstream of Ironia Road. Rules of delineated flood hazard areas are designed to preserve the flood carrying capacity of New Jersey's waterways and to minimize the threat to the public safety, health and general welfare caused by flooding.

Social Impact

The proposed delineation applies added flood protection to Chester and Washington Township in Morris County. The need for such added protection is revealed by past floods which have affected this area. The flood hazard area rules restrict development in flood fringe areas by limiting the impact which such development may have on the flood carrying capacity of the concerned waterway.

Economic Impact

The proposed amendment will have only minor economic impact. The delineation will more clearly define the flood hazard area, thus resulting in less requirements for flood insurance. Minor reductions in property value could result by restricting future development in the floodway and requiring elevated construction designs in flood fringe areas. However, minor property value diminution could be offset by the savings to governmental bodies and private homeowners due to little or no future rehabilitation and rescue expenditures from flood damage in the delineated area.

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

7:13-7.1 Delineated floodways

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

(d) A list of streams in the Passaic-Hackensack Basin and a list of delineated streams in the Raritan Basin follow:

1.-13. (No change.)

14. 4-23-73	Lamington River	Mouth to 1080 feet downstream of the Somerset-Morris County boundary line. **From the Hunterdon-Somerset-Morris County line to 1350 feet downstream of Ironia Road.**

15.-52. (No change.)

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

A map showing the approximate location of the delineated flood hazard area may be reviewed at Office of Administrative Law and at the Bureau of Flood Plain Delineation at 1911 Princeton Avenue, Lawrenceville, New Jersey.

HEALTH

(a)

PUBLIC HEALTH COUNCIL

Chapter V—State Sanitary Code Disposal of Cremains

Proposed New Rule: N.J.A.C. 8:9-1.11

Authorized By: Evelyn Geddes, Chairperson, Public Health Council, and J. Richard Goldstein, M.D., Commissioner, Department of Health.

Authority: N.J.S.A. 26:7-18.3 and 26:1A-7.

Proposal Number: PRN 1985-546.

A **public hearing** concerning this proposal will be held on:
November 12, 1985 at 9:30 A.M.
New Jersey State Department of Health
Commissioner's Conference Room
Room 805, Health-Agriculture Building
John Fitch Plaza
Trenton, New Jersey

Submit comments by November 15, 1985 to:
Murray Stern, Esq.
Office of Legal Services
State Department of Health
CN360
Trenton, NJ 08625

The agency proposal follows:

Summary

Chapter 385, L. 1983 provides that a person may dispose of the cremains of a dead human body which has not been claimed by a relative or friend within one year from the date of cremation, if that person made a diligent effort to identify, locate, and notify a friend or relative.

Prior to enactment of this law, funeral directors were obliged to retain the receptacle containing the cremains of a dead human body, since they had no previous authority to dispose of same.

Section 3 of the Act authorized the Commissioner of the Department of Health to promulgate rules and regulations necessary to effectuate the purpose of the Act.

Furthermore, N.J.S.A. 26:1A-7 authorizes the Public Health Council to establish a State Sanitary Code, which may include sanitary regulations regulating the preparation, handling, transportation, burial or other disposal, disinterent and reburial of dead human bodies. Until now, no rules authorizing disposal of unclaimed cremains were promulgated pursuant to that authority. Thus, as noted above, funeral directors were obliged to retain the receptacle containing the unclaimed cremains of a dead human body.

The proposed new rule will assist funeral directors in disposing of the cremains of dead human bodies, by providing guidelines describing the manner in which such cremains may be disposed.

Social Impact

The guidelines established in this new rule will assure that a diligent effort is made to locate a friend or relative of a deceased human who has been cremated, before the cremains of that deceased human are disposed of by the funeral director.

Further, disposal of such cremains must be accomplished in a dignified manner.

Previously, no guidelines existed which enabled funeral directors to dispose of unclaimed cremains. The proposed new rule will allow funeral directors to dispose of such cremains, which have been accumulating in funeral homes for years.

Economic Impact

The new rule should have no economic impact on the general public. Funeral directors may experience a slight eco-

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nomic impact, in that they will be financially responsible for disposing of unclaimed cremains.

Full text of the proposed new rule follows.

8:9-1.11 Disposal of unclaimed cremains

(a) The purpose of this section is to establish general guidelines for the purpose of assisting funeral directors in their efforts to dispose of cremains which have been left with the funeral director for at least one year after cremation and after the funeral director has made a diligent effort, pursuant to N.J.S.A. 26:7-18.2 to identify, locate, and notify a relative or friend of the deceased.

(b) Any person who has complied with the provisions of N.J.S.A. 26:7-18.2 may dispose of the cremains of a dead human body by scattering same at sea or by interring same on land in a dignified manner.

(c) No claims shall be made by any person against any person who invokes the provisions of N.J.S.A. 26:7-18.2 or this regulation, nor shall any liability be attendant to such invocation.

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Tuition Policies for Public Institutions Student Residency; Unemployed Persons

Proposed New Rules: N.J.A.C. 9:5-1 and 9:5-2 Proposed Amendment: N.J.A.C. 9:5-1.5

Authorized By: Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.
Authority: N.J.S.A. 18A:62-3; 18A:62-4; 18A:64-13.4; 18A:64A-23.4.
Proposal Number: PRN 1985-543.

Submit comments by November 6, 1985 to:
Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
225 West State Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978) N.J.A.C. 9:5-1 and 9:5-2 expired October 3, 1985. Since the rules have expired pursuant to the Order, they are proposed as new rules but with an amendment to the expired text of N.J.A.C. 9:5-1.5.

The Board of Higher Education by statute is empowered to set policies concerning residency and tuition policies with regard to attendance at public institutions of higher education within the State. The proposed rules cover the following areas: determination of student dependency, determination of residency, proof of eligibility and domicile and tuition waivers for foreign nationals, senior citizens and unemployed workers.

Social Impact

The proposed new rules, if adopted, will govern procedures whereby foreign nationals, senior citizens and unemployed persons may attend college on a tuition free or tuition reduced basis. The rules thereby assist and improve the opportunity and ability of these groups to obtain employment.

Economic Impact

The new rules, if adopted, will govern procedures for several groups to attend college on a tuition free or tuition reduced basis. In some instances, especially unemployed workers and senior citizens, the rules will allow many persons to attend college who otherwise would be financially unable to do so. The rules also restrict the benefit of low priced tuition for resident students to those persons who have lived in the State for a significant period of time prior to attending college.

Full text of the proposed amendment follows (additions indicated in boldface **thus;**).

10:1.5 Senior citizens

(a) Public colleges and universities may enroll senior citizens**, as defined by N.J.S.A. 18A:62-3,** in regularly scheduled credit or non-credit courses without payment of tuition, on a space available basis, provided that tuition paying students constitute the minimum number required for the course.

(b) (No change.)

HUMAN SERVICES

The following proposals, except PRN 1985-453, are authorized by Geoffrey S. Perselay, Esq., Acting Commissioner, Department of Human Services.

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

For proposals numbered PRN 1985-453, 532, 536, 537 and 538, submit comments by November 6, 1985 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN 712
Trenton, NJ 08625

(b)

Medical Supplier Manual Billing Procedures

Proposed Readoption: N.J.A.C. 10:59-2.1, 2.3 through 2.5, 2.7, 2.8, 2.10, 2.11 Proposed Readoption with Amendments: N.J.A.C. 10:59-2.2, 2.6, 2.9

Authority: N.J.S.A. 30:4D-6b(12), 7, 7a, 7b.
Proposal Number: PRN 1985-536.

The agency proposal follows:

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Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:59-2, entitled Medical Supplier Manual, Billing Procedures, expires on December 1, 1985.

Subchapter 2, entitled Billing Procedures, sets forth the Division's requirements for claim submittal for providers of durable medical supplies and equipment. This subchapter includes such topics as the time frame for claim submittal, patient identification, prior authorization, and instructions for completion of the claim form.

An administrative review has been conducted, and a determination made that the rules are necessary, adequate, reasonable, efficient and responsive for the purpose for which they were promulgated. Approved Medicaid providers need to be aware of the proper procedures for claim completion and submittal so that they can be reimbursed for the services they rendered.

The rules were amended to indicate the HCFA-1500 was the appropriate claim form to be used when submitting a claim for patients who have both Medicare and Medicaid coverage. (See R. 1981 d. 249, effective July 9, 1981.) On readoption, there are some amendments being proposed. N.J.A.C. 10:59-2.2 will now contain a reference to N.J.A.C. 10:49-1.12, which contains the requirements for timely submittal of claims and follow-up inquiries for noninstitutional providers. There is no change in the actual time frames.

There is a technical amendment to N.J.A.C. 10:59-2.6. The listing of Medicaid District Offices (MDOs) is being deleted from N.J.A.C. 10:59-2.9, and a reference is being added to refer the reader to N.J.A.C. 10:49-1, Appendix A, which contains the new listing of the MDOs.

Social Impact

Medicaid patients may require medical suppliers and equipment, such as hospital beds, wheelchairs, oxygen equipment, etc. Approved Medicaid providers, including pharmacists and medical supply dealers, must submit claims correctly to be reimbursed by Medicaid. There are approximately 300 medical supply dealers and 1500 pharmacies who are listed as Medicaid providers (of medical supplies and equipment).

The rules should be continued so Medicaid patients can receive needed supplies and equipment.

Economic Impact

Medicaid patients are not required to contribute towards the cost of these items.

There is no change in the basis of reimbursement associated with this readoption.

The Division of Medical Assistance and Health Services will spend approximately 5.7 million dollars (federal-state share combined) in Fiscal Year 1985 on medical supplies.

The rules need to be continued so providers can be reimbursed and the Division can claim federal matching funds.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:59-2.

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

10:59-2.2 General policy

(a) Billing should be done on a monthly basis. [In all cases, claims must be submitted no later than 90 days after the last date services were rendered:] **In all cases, claims must be submitted, and follow-up inquiries made, in accordance with the time frames for noninstitutional providers set forth at N.J.A.C. 10:49-1.12.**

1. (No change.)

10:59-2.6 Combination Medicare/Medicaid claims

All services allowable under Medicare which are provided to an individual eligible for both Medicare and Medicaid benefits should be billed on the Health Insurance Claim Form (HCFA-1500), and the claims are to be sent directly to the Medicare Intermediary Prudential Medicare Claims Division IV, P.O. Box 4000, Linwood, NJ 08221. Providers should understand that they are agreeing to accept assignment when billing in this manner. In order to obtain Medicaid consideration, the provider must record the correct New Jersey Health Services Program Case and Patient Person Number in item 8 in addition to the Health Insurance Claim Number in item 2 of form HCFA-1500 (A sample HCFA-[1490] **1500** is shown as Exhibit I.) Medicare will process the claim and forward it to the Medicaid Program.

10:59-2.9 Jurisdiction for authorization of services; directory of Medicaid District Offices (MDO)

(a) (No change.)

(b) Exceptions include the following:

1.-3. (No change.)

4. Patients from State institutions: For eligible Medicaid recipients from State institutions the first two digits of the Health Services Program Identification Number identify the institution. Specific Medicaid District Offices, **which are identified at N.J.A.C. 10:49-1, Appendix A,** have been assigned to handle prior authorization requests for patients from each institution:

IF PATIENT'S HSP IDENTIFICATION NUMBER BEGINS WITH	RESIDENCE IS IN:	CONTACT THE MEDICAID DISTRICT OFFICE BELOW:
31	Greystone Park Psychiatric Hospital	Morris
32	Trenton Psychiatric Hospital	Mercer
33	Marlboro Psychiatric Hospital	Monmouth
34	Ancora Psychiatric Hospital	Camden
35	N.J. Neuro-psychiatric Institute	Hunterdon
36	Arthur Brisbane Child Center	Monmouth
37	Bergen Pines	Bergen
38	Essex County Psychiatric Geriatric Center	Essex
41	Vineland State School	Cumberland
42	North Jersey Training School Totowa	Passaic
44	Woodbine State School	Atlantic
45	New Lisbon State School	Burlington
46	E.R. Johnstone Training & Research Center	Burlington
47	Woodbridge State School	Middlesex
48	Hunterdon State School	Hunterdon
90	Family Care	Mercer

Delete the Directory of Medicaid District Offices which currently appears on page 59-14 of the New Jersey Administrative Code.

(a)

Home Care Services Manual; Independent Clinic Services Manual

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Personal Care Assistant Services; Increase in Hours per Week and Rate of Reimbursement

Proposed Amendments: N.J.A.C. 10:60-1.1, 1.2, 2.2, 2.3, 3.1; 10:66-1.6, 3.3

Authority: N.J.S.A. 30:4D-6b(2)(3)(16), 7, 7a, 7b; 42 CFR 440.170(f).

Proposal Number: PRN 1985-538.

The agency proposal follows:

Summary

This proposal contains amendments to the Personal Care Assistant Program, which is designed to provide services to elderly and disabled Medicaid patients residing in the community.

The proposal increases the availability of personal care assistant services to a maximum of 25 hours per week. The current limitation is set at 20 hours per week.

The rate of reimbursement is also being increased from up to $8.00 per hour to a maximum of $8.30 per hour. The maximum rate for a half-hour (of personal care assistant services) is being increased from $4.00 to $4.15. The maximum group rate is being increased from $6.00 to $6.24 per hour, and from $3.00 to $3.12 for half-hour time periods.

The proposal also establishes a procedure code (9442) for a nursing reassessment visit which may be provided at least once every six months, or more frequently if the patient's condition warrants. The reimbursement for the reassessment nursing visit is up to $20.00. The rate of reimbursement for the initial nursing assessment visit remains the same (up to $25.00). It should be noted that the federal regulations governing personal care services require supervision by a registered nurse (42 CFR 440.170(f)(2)).

The proposal also enables a patient to receive the services under both the home health and personal care programs simultaneously, if the services of a home health aide and a personal care assistant are not provided at the same time to the same person.

The proposal also allows the Division of Developmental Disabilities (DDD) to provide Medicaid funded personal care services to persons in adult foster care homes.

In general, the proposal is designed to benefit those Medicaid patients who require supportive services to remain in the community.

This proposal should be read in conjunction with the proposal that establishes procedure codes for half-hour increments of service and appears in this issue of the New Jersey Register.

Social Impact

This proposal is designed to increase the availability of services that would be available to Medicaid patients residing in the community. The maximum number of hours for personal care assistant services is being increased 25 hours per week. In addition, a patient could receive services under both the home health and personal care programs simultaneously. Persons in DDD adult foster care homes may also receive personal care services.

The rule also impacts on providers of personal care services, which include certified, licensed hom health agencies or by a proprietary or voluntary non-profit homemaker agency. These agencies will be able to provide greater services to Medicaid patients due to the increase in the number of hours.

Economic Impact

It is estimated that the proposed fee increase contained in this proposal will result in an increase of approximately $650,000 (federal-state share combined) for personal care assistant services for the Division of Medical Assistance and Health Services in Fiscal Year 1986.

The economic impact on providers will vary, depending on the number of Medicaid patients for whom they provide services.

Medicaid patients are not required to contribute towards the cost of personal care assistant services.

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

10:60-1.1 Scope

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

1. (No change.)

i. (No change.)

ii. **The** Personal Care Assistant Service[s] **Program** may [not] be provided simultaneously with **the** Home Health [services] **Program, as long as the services of a home health aide and personal care assistant worker are not provided at the same time to the same patient.**

2.-3. (No change.)

(c) Homemaker (Proprietary and voluntary non-profit) agencies will be approved to provide Personal Care Assistant Service[s], [and] the Initial Nursing Assessment Visit **and** the **Personal Care Assistant Nursing Reassessment Visit** only as outlined in N.J.A.C. 10:60-2.2.

10:60-1.2 Definitions

. . .

"Homemaker agency" means a proprietary or voluntary non-profit agency approved by the Department of Human Services, Division of Medical Assistance and Health Services to provide Personal Care Assistant Service[s], [and] the Initial Nursing Assessment Visit **and the Personal Care Assistant Nursing Reassessment Visit** only. The following conditions must be met:

1.-3. (No change.)

. . .

"Occupational therapist" means [an individual] **a person** who is registered by the American Occupational Therapy Association, or a graduate of a program in occupational therapy approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association.

. . .

"Physical therapist" means [an individual] **a person** who is a graduate of a program of physical therapy approved by both the Council on Medical Education of the American Medical Association and the American Physical Therapy Association or its equivalent; and

i.-ii. (No change.)

10:60-2.2 Personal care assistant service

(a) Personal Care Assistant Service may be provided by a certified, licensed home health agency or by a proprietary or voluntary non-profit homemaker agency. [These services] **The Personal Care Assistant Service Program** may [not] be provided simultaneously with **the** Home Health [services] **Pro-**

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gram, as long as the services of a home health aide and personal care assistant worker are not provided at the same time to the same patient.

(b) (No change.)

1.-2. (No change.)

3. Medicaid reimbursement will not be made for personal care assistant service provided to Medicaid eligible recipients in:

i.-iv. (No change.)

v. Intermediate care facility; **and**

[vi. Division of Mental Retardation adult foster care homes; and]

[vii]**vi.** (No change.)

(c) (No change.)

(d) Duties of the registered professional nurse:

1.-2. (No change.)

3. A personal care assistant nursing reassessment visit may be provided at least once every six months, or more frequently if the recipient's condition warrants, to reevaluate the recipient's need for continued care.

(e) (No change.)

(f) Reimbursement:

1. The following are all inclusive maximum rates for personal care assistant services, [and] the initial nursing assessment visit **and the personal care assistant nursing reassessment visit.** No direct or indirect cost over and above these established rates will be considered for reimbursement. A provider may not charge the New Jersey Medicaid Program in excess of present charges for other payors.

i. Personal care assistant services are limited to a maximum of [20] **25** hours per week at a reimbursement rate up to [$8.00] **$8.30** per hour for individual patient Code No. [0056] **Z1600;** and

ii. Up to [$4.00] **$4.15** per half-hour for individual patient; Code No. [9428] **Z1611;** and

iii. Up to [$6.00] **$6.24** per hour for a group rate (two or more patients, with a maximum of eight patients in the same residential setting at the same time). Code No. [0057] **Z1605;** and

iv. Up to [$3.12] **$3.12** per half-hour for a group rate (two or more patients, with a maximum of eight patients in the same residential setting at the same time) Code No. [9429] **Z1612;** and

v. Up to $25.00 may be billed for an initial nursing assessment visit. Code No. [0055.] **Z1610; and**

vi. Up to $20.00 may be billed for a nursing reassessment visit. Code No. Z1613.

10:60-2.3 Requirements for authorization of covered services

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

(d) Prior authorization for home health care services and personal care assistant services:

1. (No change.)

i. An initial visit to evaluate the need for home health services or personal care assistant services does not require prior authorization. Following the initial visit, prior authorization is required for all services provided to the Medicaid eligible person not covered under Medicare. **This includes a personal care assistant nursing reassessment visit which may be provided at least once every six months, or more frequently if the recipient's condition warrants, to reevaluate the need for continued care.**

ii. (No change.)

2.-9. (No change.)

(e) Service Limitations: When the cost of home health care is equal to or in excess of the cost of institutional care over a period of six months, the Medical Consultant may opt to limit or deny future requests for home health services. Personal Care Assistant services are limited to a maximum of [twenty] **25** hours per week.

10:60-3.1 Home care services billing procedures

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

(f) Procedure Codes for personal care assistant services:

Code	Description
1. [0055]**Z1610**	Initial Nursing Assessment Visit
2. [0056]**Z1600**	Personal Care Assistant Service (Individual)—per hour.
3. [0057]**Z1605**	Personal Care Assistant Service (Group)—per hour; care provided involves two or more patients, with a maximum of eight patients in the same residential setting at the same time.
4. [9428]**Z1611**	Personal Care Assistant Service (Individual)—one-half hour.
5. [9429]**Z1612**	Personal Care Assistant Service (Group)—one-half hour, per patient; care provided involves two or more patients, with a maximum of eight patients in the same residential setting at the same time.
6. Z1613	**Nursing Reassessment Visit.**

(g) (No change.)

10:66-1.6 Scope of services

(a)-(m) (No change.)

(n) Other services rules are as follows:

1.-4. (No change.)

5. (No change.)

6. (No change.)

i. (No change.)

ii. An initial visit to evaluate the need for personal care assistant service does not require prior authorization. Following the initial visit, prior authorization is required for all services provided to the Medicaid eligible person not covered under Medicare. This includes a nursing reassessment visit which may be provided at least once every six months, or more frequently if the recipient's condition warrants, to reevaluate the recipient's need for continued care. (See N.J.A.C. 10:66-3.3(n).

10:66-3.3 Procedure code listing

(a)-(m) (No change.)

(n) Personal care assistant services: The following are all inclusive rates for personal care assistant services (group and individual), [and] initial nursing assessment visit **and nursing reassessment visit.** No direct or indirect cost over and above these established rates will be considered for reimbursement.

. . .

Code [0056] **Z1600** individual rate—personal care assistant service—up to [$7.40] **$7.70** per hour/maximum [20] **25** hours per week.

Code [9428] **Z1611**—individual rate—personal care assistant service—up to [$3.70] **$3.85** per half-hour/maximum [20] **25** hours per week.

Code [0057] **Z1605** group rate personal care assistant service—care provided involves two or more patients, with a maximum of eight patients in the same residential setting at the same time—up to [$6.00] **$6.24** per hour/per patient/maximum [20] **25** hours per week.

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Code [9429] **Z1612**—group rate personal care assistant service—care provided involves two or more patients, with a maximum of eight patients in the same residential setting at the same time—up to [$3.00] **$3.12** per half-hour/per patient/maximum [20] **25** hours per week.

. . .

Code **Z1610**—up to $25.00 may be billed for an Initial Nursing Assessment Visit.

Code No. Z1613—up to $20.00 may be filled for a nursing reassessment visit.

(a)

Home Care Services Manual; Independent Clinic Services Manual Personal Care Assistant Services: New Procedure Codes

Proposed Amendments: N.J.A.C. 10:60-2.2, 3.1 and 10:66-3.3

Authorized By: George J. Albanese, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-6b(2) (3) (16), 7, 7a, 7b; 42 CFR 440.170(f).

Proposal Number: PRN 1985-453.

The agency proposal follows:

Summary

This proposal will create two new procedure codes that will allow providers of personal care assistant services to bill in half-hour increments. Procedure code 9428 has been established for individual patients. The basis of reimbursement for providers of personal care will be one-half of their current hourly rate. The respective rates are specified in the text below.

Procedure code 9429 will be used for patients living in groups, which would apply to two or more patients, with a maximum of eight patients, in the same residential setting at the same time.

The group rate for half-hour personal care assistant services will be one-half the current hourly rate as specified in the text below.

The Division is making the change because a review of claims processed by the Prudential Insurance Company, acting as fiscal agent for the Division, has indicated the need to establish procedure codes that will enable providers to bill in half-hour increments.

Social Impact

Medicaid patients who require personal care assistant services will continue to receive them. For example, if the patient received two and one half hours of personal care assistant services on a given day, the provider's billing would reflect this.

The rule impacts on independent mental health clinics who are under contract to the Department of Human Services, Division of Mental Health and Hospitals, and on certified licensed Home Health Agencies and voluntary Non-Profit Homemaker Agencies. These provider groups are already providing personal care assistant services.

Economic Impact

Medicaid patients are not required to contribute to the cost of personal care assistant services.

Providers of personal care assistant services will be able to submit claims in a half-hour as well as hourly increments. The rate of reimbursement for one-half hour of service is one-half the provider's current hourly rate.

The economic impact on the Division will be minimal. There is no increase in the hourly rate for personal care assistant services. The only change being made is that when providers use either procedure codes 9248 or 9249, indicating one-half hour of service, they will be reimbursed at one-half their hourly rate.

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

10:60-2.2 Personal care assistant services

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

(f) Reimbursement

1. (No change.)

i. (No change.)

ii. **Up to $4.00 per half-hour for individual patient; Code 9428; and**

Recodify ii. as **iii.** (No change in text.)

iv. Up to $3.00 per half-hour for a group rate (two or more patients, with a maximum of eight patients in the same residential setting at the same time; Code 9429; and

Recodify iii. as **v.** (No change in text.)

10:60-3.1 Home care services billing procedures

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

(f) Procedure Codes for Personal Care Assistant Services:

Code	Description
1. 0055	Initial Nursing Assessment Visit
2. 0056	Personal Care Assistant Service (Individual)—**per hour.**
3. 0057	Personal Care Assistant Service (Group)—**per hour;** care provided involves two or more patients, with a maximum of eight patients in the same residential setting at the same time.
4. 9428	**Personal Care Assistant Service (Individual)—one-half hour.**
5. 9429	**Personal Care Assistant Service (Group)—one-half hour, per patient; care provided involves two or more patients, with a maximum of eight patients in the same residential setting at the same time.**

10:66-3.3 Procedure code listing

(a)-(m) (No change.)

(n) Personal care assistant services: The following are all inclusive rates for personal care assistant services (group and individual) and initial nursing assessment visit. No direct or indirect cost over and above these established rates will be considered for reimbursement.

Code **0056** individual rate—personal care assistant service—up to $7.40 per hour/maximum 20 hours per week.

Code 9428—individual rate—personal care assistant service—up to $3.70 per half-hour/maximum 20 hours per week.

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Code **0057** group rate personal care assistant service—care provided involves two or more patients, with a maximum of eight patients in the same residential setting at the same time—up to $6.00 per hour/**per patient**/maximum 20 hours per week.

Code 9429—group rate personal care assistant service—care provided involves two or more patients, with a maximum of eight patients in the same residential setting at the same time—up to $3.00 per half-hour/per patient/maximum 20 hours per week.

Code **0055** up to $25.00 may be billed for an Initial Nursing Assessment Visit.

(a)

Long Term Care Services Manual Cost Study, Rate Review Guidelines and Report System; Change in Ownership

Proposed Amendment: N.J.A.C. 10:63-3.2, 3.5, 3.10 and 3.19

Authority: N.J.S.A. 30:4D-6a(4)(a), b(14), 7, 7a, 7b.
Proposal Number: PRN 1985-532.

Submit comments by November 6, 1985 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance
and Health Services
CN 712
Trenton, NJ 08625

Any comments submitted may be reviewed at the above address. A copy of the proposed changes are available for public review at the 16 Medicaid District Offices and the 21 County Boards of Social Services.

The agency proposal follows:

Summary

This proposal is being submitted in order to assure that New Jersey is in compliance with Section 2314 of P.L. 98-369, which is the Deficit Reduction Act (commonly referred to as DEFRA) of 1984.

The cited federal law concerns the valuation of assets as a result of a transfer in ownership and has the effect of limiting capital-related cost increases under Medicare and Medicaid for hospitals and nursing facilities (including ICF/MR). For those states that reimburse for capital-related costs based on depreciation and interest, the costs to the new owner must now be based on the lesser of the historical cost to the owner of record on July 18, 1984 or the purchase price of the asset. Additionally, states which reimburse for depreciation must provide for its recapture consistent with Medicare's recapture provision.

By amending this rule, New Jersey will modify its present dual rate system of reimbursing the lower of historical or screened rates. Historical rates contain the capital-related costs of depreciation and interest; screened rates contain an overall Capital Facilities Allowance (CFA) determined by appraised values independent of actual costs. By eliminating the historical rate determination, reimbursement for capital-related costs will not be based on depreciation and interest. Therefore, asset revaluation, as well as depreciation recapture upon transfer of ownership will become moot issues. The Capital Facilities Allowance component of the per diem Medicaid rates, once established, remains unchanged and is not affected by ownership transfers.

A clause regarding consideration of the existence of firms arms-length leases is being eliminated. This reference is no longer applicable for current reimbursement purposes.

Social Impact

The proposed amendments have minimal social impact because their primary effect will be on the reimbursement to long term care facilities (LTCFs).

The amendments should have no impact on the availability of nursing home services to Medicaid patients who require this type of care.

Economic Impact

The use of single rate CFA system will result in an estimated annual increase of approximately 3.2 million dollars (federal-state share combined) in expenditures for the New Jersey Medicaid Program. This increase is due to the fact that approximately 80 of the 253 nursing homes participating in the Medicaid program will receive an increase in their per diem rate as a result of this proposed rule change. The increase will affect those facilities currently receiving historical rates because they will receive the higher CFA rate under the amended rule.

The amendments impact on those LTCFs that participate in the New Jersey Medicaid Program. The actual impact on a particular LTCF would have to be determined on a case-by-case basis.

Medicaid patients are required to contribute towards the cost of their care in an LTCF from their available income.

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

SUBCHAPTER 3. COST STUDY, RATE REVIEW GUIDELINES AND REPORTING SYSTEM FOR LONG-TERM CARE FACILITIES

FOREWORD

These revised guidelines in the long-term care facility reimbursement formula have been developed to meet the following overall goals:

[1. To comply with Federal requirements for a "reasonable cost related" formula;

2. To provide sufficient reimbursement to assure adequate levels of patient care;]

1. To comply with Federal requirements that rates are reasonable and adequate to meet the cost that efficiently and economically operated facilities must incur to provide care in conformity with applicable State and Federal laws, regulations and quality and safety standards.

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

[4.]**3.** (No change in text.)

10:63-3.2 Rate components

(a) The prospective rates will be [established at the lower

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of actual historical costs per day plus a return on net equity (except for voluntary and governmental facilities) after adjustments to the Management, Administrator, Assistant Administrator and Legal Fees cost areas as explained in N.J.A.C. 10:63-3.5(b)2, 3, 4, or] "screened" rates per day calculated by applying standards and reasonableness criteria ("screens") to the following five rate components as identified on reporting Schedule A:

1.-5. (No change.)

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

10:63-3.5 General service expenses

(a) (No change.)

(b) (No change.)

1.-7. (No change.)

8. The following examples illustrate this procedure assuming reasonableness limits are established at $100,000 and $5,000 for other general services and legal fees respectively:

Case #1	Reported Cost	Excess
Other general services	$110,000	$10,000
Legal Fees	7,000	
Case #2		
Other general services	$ 98,000	
Legal Fees	7,000	$ 2,000
Case #3		
Other general services	$ 99,000	—0—
Legal Fees	4,500	

[Historical, unscreened rates (after Management, Administrator, Assistant Administrator adjustments) would reflect elimination in the Legal Fee area $2,000, $2,000 and zero in the above examples.]

10:63-3.10 Buildings

(a)-(m) (No change.)

(n) (No change.)

1. Situation where an existing debt must be refinanced in connection with obtaining funds to expand existing LTCFs;

[2. The existence of firm arms-length leases whose terms cannot be modified;]

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

(o)-(p) (No change.)

10:63-3.19 Working capital provision and total rates

(a) (No change.)

1.-2. (No change.)

3. This result will be multiplied by the rates developed for each class of patient to develop the working capital provision for that patient class. [This working capital provision will only be applied to LTCFs receiving a CFA rate.]

4.-5. (No change.)

(a)

Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual Increased Eligibility Standards

Proposed Amendment: N.J.A.C. 10:69A-1.1, 1.2, 2.1, 4.1, 4.4, 5.3, 6.2, 6.4, 6.10

Authority: N.J.S.A. 30:4D-21, 22, 24.
Proposal Number: PRN 1985-537.

The agency proposal follows:

Summary

This proposal concerns two recent amendments to the New Jersey Medical Assistance and Health Services Act as it pertains to the Pharmaceutical Assistance to the Aged and Disabled Program (PAAD).

The income eligibility standards have been increased to $13,250 for single individuals, and to $16,250 for married persons (P.L. 1985, C. 209, effective August 1, 1985). Therefore, N.J.A.C. 10:69A-6.2, entitled Income Standards, is being amended accordingly.

The proposal also indicates that diabetic testing materials can be covered under the PAAD program. (P.L. 1985, C. 55, signed February 22, 1985 and effective 90 days after enactment).

In addition, PAAD beneficiaries whose incomes are below certain levels are required to complete a renewal application every two years, because experience has shown that generally their income levels do not rapidly increase above the statutory levels. Therefore, single persons whose income is below $10,000 and married couples whose income is below $13,000 annually will receive a letter with their eligibility card asking them to notify the PAAD program if their income exceeds the administrative limits. Therefore, the figures contained in N.J.A.C. 10:69A-5.3(b), entitled Eligibility Effective Date, and N.J.A.C. 10:69A-6.10, entitled Eligibility Period, are used for administrative purposes only.

In essence, the proposal recognizes the statutory amendments which raised income eligibility levels and covered diabetic testing materials.

Social Impact

It is estimated that the increased eligibility levels will enable approximately 20,000 additional persons to qualify for PAAD benefits. Those PAAD beneficiaries who require diabetic testing materials will be able to have them covered by the PAAD program.

The proposal also impacts on providers of pharmaceutical services, who will be reimbursed for providing services to PAAD beneficiaries, in accordance with Medicaid policies and procedures.

Economic Impact

An additional six million dollars was appropriated for PAAD in Fiscal Year 1986 to provide for the additional persons who will qualify for PAAD. The appropriation also provides for coverage of diabetic testing material, but the cost of this particular service is expected to be minimal.

PAAD beneficiaries are required by law to contribute a $2.00 co-payment for prescription drugs covered under the PAAD program.

There is no change in the reimbursement rate to providers of pharmaceutical services.

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

10:69A-1.1 Purpose and intent

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(a) It is intended that Pharmaceutical Assistance to the Aged and Disabled (PAAD) shall extend assistance to certain persons whose level of income disqualifies them for medical assistance under the Medical Assistance Health Services Act but who have significant needs for prescribed drugs and/or insulin, insulin needles, [and] insulin syringes, **and/or certain diabetic materials** and are unable to fully meet the cost of such items.

(b) (No change.)

10:69A-1.2 Legal authority

(a) (No change.)

1.-4. (No change.)

5. Chapter 499, Laws of 1981, effective March 1, 1982[.] **; and**

6. Chapter 209, Laws of 1985, effective August 1, 1985.

10:69-2.1 Definitions

. . .

"PAAD Co-pay" means the amount of $2.00 which must be paid by each PAAD beneficiary to the pharmacy toward the cost for each prescription for a legend drug and/or insulin, insulin syringes, [and] insulin needles, **and certain diabetic testing materials.** The co-pay is not reimbursable by the PAAD. The $2.00 co-payment shall be paid in full by each eligible person to the pharmacist at the time of each purchase of prescription drugs, and shall not be waived, discounted or related in whole or in part.

. . .

"Prescription drugs" means all **approved** legend drugs, including any interchangeable drug products contained in the latest list approved and published by the Drug Utilization Review Council in conformance with the provisions of the "Prescription Drug Price and Quality Stabilization Act", and insulin, insulin syringes, [and] insulin needles **and certain diabetic testing materials** when prescribed.

1. The term "prescription drugs" includes:

i.-iii. (No change.)

iv. Diabetic testing materials including blood glucose reagent strips which can be visually read, urine monitoring strips, tapes and tablets and bloodletting devices and lancets (electronically monitored devices are not included).

10:69A-4.1 Statutory limitations

By statute, the Pharmaceutical Assistance to the Aged and Disabled Program is limited to payment or reimbursement to pharmacies for the reasonable cost of prescription drugs, **insulin, insulin syringes, insulin needles and certain diabetic testing materials** for eligible persons which exceeds a $2.00 co-payment per prescription, which is to be paid by each PAAD beneficiary.

10:69A-4.4 Beneficiary co-payment

(a) No direct payment to beneficiaries will be made under the PAAD program, except as noted in (b) below. The beneficiary must pay the pharmacy a non-refundable $2.00 co-payment per prescription or per purchase of insulin, insulin syringes, [or] insulin needles **or diabetic testing materials.**

(b) (No change.)

10:69A-5.3 Eligibility effective date

(a) (No change.)

A PAAD beneficiary must renew his/her eligibility every year unless his/her annual income is below [$9,000] **$10,000** for single persons or [$12,000] **$13,000** for married persons. In that case, he/she would renew every two years. Approximately four months prior to his/her **eligibility** expiration date, PAAD will advise the beneficiary if he/she is eligible for biennial eligibility, or if he/she will be required to complete a renewal form.

1.-2. (No change.)

10:69A-6.2 Income standards

(a) Any single permanent resident of New Jersey who is 65 years of age and over or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits must have an annual income of less than [$12,000] **$13,250** to be eligible for PAAD.

(b) Any married permanent resident of New Jersey who is 65 years of age and over or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits must have a combined (applicant and spouse) annual income of less than [$15,000] **$16,250** to be eligible for PAAD.

(c)-(i) (No change.)

10:69A-6.4 Residence

(a) (No change.)

1.-2. (No change.)

3. The following are examples of sources of evidence of residence:

i. (No change.)

[ii. Copy of applicant's Social Security check;]

Recodify iii-ix as **ii-viii.** (No change in text.)

10:69A-6.10 Eligibility period

(a) A PAAD eligibility card is effective for one year. The PAAD beneficiary must renew his/her eligibility every year unless his/her income is below [9,000] **$10,000** for single persons or [$12,000] **$13,000** for married persons. In that case, he/she would receive an updated eligibility card automatically for the second year, and would complete a renewal application every two years.

(b) No change.)

DIVISION OF PUBLIC WELFARE

For proposals numbered PRN 1985-519, 520, 521, 522, 523, 539 and 540, submit comments by November 6, 1985 to:

Audrey Harris, Director
Division of Public Welfare
CN 716
Trenton, N.J. 08625

(a)

Public Assistance Manual
Continued Absence; WIN Registration

Proposed Amendments: N.J.A.C. 10:81-2.7 and 3.18

Authority: N.J.S.A. 44:7-6 and 44:10-3; 45 CFR 224.20(a), 45 CFR 244.50(h) and 45 CFR 224.51(a)(1) and (2).

Proposal Number: PRN 1985-523.

The agency proposal follows:

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Summary

N.J.A.C. 10:81-2.7(d) is being amended to clarify policy and establish procedures regarding the determination of continued absence in the Aid to Families with Dependent Children (AFDC) program when it comes to the attention of county welfare agency (CWA) staff that a parent who is allegedly "absent" may not, in fact, be absent. The new language provides that when CWAs receive information that an AFDC recipient and his or her children are "living with" or being "frequently visited" by the allegedly absent parent of one or more of the children, the CWA shall immediately begin a comprehensive investigation of the family situation. If, upon completion of such investigation, the CWA determines that the allegedly absent parent is not truly absent and thus the children are no longer eligible for assistance due to lack of deprivation of parental support, assistance shall be terminated. However, in order for the CWA to establish that such parent is not to be considered continually absent, conclusive evidence must exist of the parent's provision of maintenance, physical care, and guidance to the child(ren). Unless all three parental functions are present, the absent parent shall be considered "continually absent."

Federal regulations at 45 CFR 224.20(a) provide that all non-exempt applicants and recipients of AFDC must register for WIN as a condition of eligibility for assistance. N.J.A.C. 10:81-3.18(b)4 is amended to clarify this registration requirement with respect to eligible units containing stepparents. In AFDC-C cases where a stepparent is designated as an individual whose presence in the home is essential to the well-being of the spouse and is thus included in the eligible unit, the principal earner in the household shall be required to register for the Work Incentive (WIN) program. In such cases, if the principal earner registers and does not refuse to participate or accept employment without good cause, the other parent shall be exempt from work registration in accordance with the provisions at N.J.A.C. 10:81-3.18(b)2ii(7).

Regulations at N.J.A.C. 10:81-3.18(g)1 provide that all mandatory WIN registrants refusing to register for the WIN program shall be offered counseling for a 60-day period and that all AFDC-C and -F payments made during the counseling period shall be issued in the form of protective or vendor payments and shall include the needs of the individual refusing to cooperate. However, changes to Federal regulations at 45 CFR 224.51 deleted references to the 60-day counseling period and eliminated the requirement to include in the AFDC grant the needs of non-exempt individuals who refuse to register for WIN. To conform with Federal regulations, N.J.A.C. 10:81-3.18(g)1 is amended to delete those provisions, and replaced with language concerning sanctions that had been listed at N.J.A.C. 10:81-3.18(g)2. A reference to the 60-day counseling period is also deleted at N.J.A.C. 10:81-3.18(f).

New language is added at N.J.A.C. 10:81-3.18(g)2 to state that the effective date of sanctions for refusal or failure without good cause to participate in the WIN program will be the first payment month the individual's needs are removed from the AFDC grant. Sanction periods of three and six payment months for the first and subsequent occurrences, respectively, for refusal or failure to participate in the WIN program are also specified. N.J.A.C. 10:81-3.18(g)3 is amended to reflect those sanction periods. The effective date and duration of sanction periods conform to Federal regulations at 45 CFR 224.50(h) and 45 CFR 224.51(a)(1) and (2).

Language is being changed at N.J.A.C. 10:81-3.18(k)1i(3) to clarify that under the AFDC-F segment, the definition of unemployed includes the provision that intermittent work performed by the principal earner, rather than the father, was under the 100 hour standard for two months prior to the eligibility determination.

Social Impact

The proposed amendments clarify policy and procedures, and provide for uniformity with Federal regulations. As such, they provide for a positive social impact. The only negative impact to be seen is on those clients who do not observe the rules and thus incur the penalties contained therein.

Economic Impact

Little or no new economic impact should be seen from the proposed amendments, other than some savings in assistance and administrative costs realized from policy clarification and uniformity of rules.

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

10:81-2.7 Deprivation of parental support in AFDC-C

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

(d) Absence: Continued absence of the parent from the home constitutes deprivation of parental support or care. Absence will be considered continued when it interrupts or terminates the parent's functioning as a provider of maintenance, physical care, or guidance for the child, and the known or indefinite duration of the absence precludes the parent's performance of his or her function in planning for the present support or care of the child. If these conditions exist, the parent may be absent for any reason, and he or she may have left only recently or sometime previously.

1. When information is received that an AFDC recipient and his or her children are "living with" or being "frequently visited" by the allegedly absent parent of one or more of the children, the CWA shall immediately commence a comprehensive investigation of the family situation. Such investigation shall include:

i. Checking with appropriate authorities, for example, the Division of Motor Vehicles, the Postal Service, utility and telephone companies, employers and landlords to ascertain whether the allegedly absent parent's address is the same as the recipient's address;

ii. Obtaining information from collateral sources to determine whether the parent is living at the recipient's address, or, if he or she only visits, how often and for how long (affidavits of these circumstances or, more importantly, agreements to testify, if necessary, should be obtained);

iii. Observing the family home (on more than one occasion);

iv. Interviewing both the AFDC recipient and the allegedly absent parent as to the status of their living arrangements, the frequency, duration, and nature of his or her visits to the family home, the present fanancial arrangements between them, confronting them with the information previously obtained from independent sources, and permitting them an opportunity to admit, deny, contradict or explain any or all of it; and

v. Following up all leads obtained during the interview, to confirm or disapprove assertions made during the interview.

2. When the investigation is completed, the CWA shall determine whether the parent is continually absent. If it is determined that the parent is residing with the eligible unit, such parent is not to be considered continually absent. If it has been determined that the parent is not residing with the eligible unit, in order to establish that such parent is not to be considered continually absent, evidence must exist of the parent's provision

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of three parental functions: maintenance, physical care, and guidance to the child(ren). Unless all three parental functions are present, the "absent" parent shall be considered continually absent. Evidence supporting the determination of continued absence must be fully documented in the case record.

3. If the CWA is convinced that the parent is not absent and the family is no longer eligible for AFDC-C based on deprivation of parental support or care, the CWA shall terminate assistance. The adverse action notice shall give as the reason for the action that the "absent" parent is either living in the home or that his or her presence in the home is such that he or she can no longer be considered to be continually absent therefrom, and cite the appropriate regulations.

(e) (No change.)

10:81-3.18 Employment and training requirements

(a) (No change.)

(b) AFDC-C and -F segments (WIN Counties): County welfare agencies, as agents of the United States Department of Labor in those geographical areas designated as WIN counties are responsible, through the income maintenance staff, for determining who is required to register for WIN by completing Form PA-401, WIN Case Review Document (see appendix C).

1.-3. (No change.)

4. In AFDC-C cases where the stepparent is designated as an individual whose presence in the home is essential to the well-being of the spouse and thus included in the eligible unit (see N.J.A.C. 10:82-2.9), the procedures below are to be followed with respect to WIN/ES registration:

i. Criteria identified in N.J.A.C. 10:81-3.18(k)10 shall be used to determine who is the principal earner in the household.

ii. The eligible unit member designated as the principal earner shall be required to register with WIN, or if exempt in accordance with N.J.A.C. 10:81-3.18(b)2ii(4), shall be registered with ES.

iii. If the principal earner refuses or fails to register with WIN or ES, as appropriate, the penalty specified in N.J.A.C. 10:81-3.18(b)3i shall be imposed.

iv. When the principal earner is registered and has not refused to participate or accept employment without good cause, the other parent shall be exempt from work registration in keeping with N.J.A.C. 10:81-3.18(b)2ii(7).

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

(f) **Failure to report for appraisal interview:** When a mandatory registrant fails to appear for a second scheduled appraisal interview and a determination of "without good cause" has been established, such registrant shall be deregistered by ES/WIN. The [CWB] **CWA** shall be notified of the individual's failure to participate. [(Sixty-day counseling is not applicable in such situations.)]

(g) **Refusal to participate:** The determination of refusal [/] **or** failure to participate is the responsibility of ES/WIN and shall be binding upon the CWA.

[1. When a mandatory WIN registrant is determined to have refused to participate in the WIN program, AFDC-C or -F payments shall be in the form of protective or vendor payments, including the needs of the registrant, so long as the individual is accepting 60-day counseling. He/she shall not be deregistered while accepting such counseling.]

[2.]**1. Sanctions:** A mandatory WIN registrant who is deregistered for refusal without good cause to participate in WIN shall be subject to the following sanctions:

i. If the individual is the parent or parent-person receiving AFDC-C, he[/] **or** she will be deleted from the elegible unit, and assistance in the form of protective **or vendor** payments will be provided. **The sanctioned parent or parent-person may not be the payee for such protective or vendor payments, unless the CWA is unable to locate a suitable protective payee (see N.J.A.C. 10:81-4.10(e)).**

ii.-iv. (No change.)

2. Sanction periods: The sanctions in (g)1 above shall become effective on the first day of the first payment month that the sanctioned individual's needs are removed from the AFDC grant. When a mandatory WIN registrant receiving AFDC-C or -F payments has been found to have failed or refused without good cause to participate in the WIN program or has terminated employment, or has refused to accept employment without good cause, the following sanction periods shall apply:

i. For the first occurrence, the individual shall be deregistered for three payment months.

ii. For the second and subsequent occurrences, the individual shall be deregistered for six payment months.

3. Individuals who are deregistered on the basis of a "without good cause" determination may, upon application and an indication to WIN project staff of a willingness to participate, again register for WIN [after 90 days have elapsed since deregistration]. **For the first occurrence, such individuals may again register after three payment months have elapsed since the effective date of the deregistration.** [Such individuals who are again deregistered following a "without good cause" finding,] **For the second and subsequent occurrences, such individuals** shall not be registered or reaccepted into the WIN program unless satisfactory evidence is given of willingness to participate and six **payment** months have elapsed since the effective date of the latest deregistration.

4.-6. (No change.)

(h)-(j) (No change.)

(k) To qualify for AFDC-F, the following criteria must be met:

1. The principal earner has been unemployed for at least 30 days prior to the receipt of public assistance.

i. Unemployed is defined as:

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

(3) Participating in work which exceeds the 100 hour per month standard but is intermittent and the excess is of a temporary nature, as evidenced by the fact that the [father] **principal earner** was under the 100 hours standard for the two prior months and is expected to be under the standard during the next month.

2.-10. (No change.)

(l) (No change.)

(a)

Public Assistance Manual Photo Identification Cards; Child Care Payments for Ex-WIN Children

Proposed Amendments: N.J.A.C. 10:81-2.16, 3.18

Authority: N.J.S.A. 44:7-6, 44:10-3; 45 CFR 233.20(a)(2)(v) and 233.20(a)(11)(i)(C).

Proposal Number: PRN 1985-519.

The agency proposal follows:

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Summary

The amendments contained herein are being proposed as a result of a review of State regulations conducted by the United States Department of Health and Human Services, Office of Family Assistance. These amendments where applicable will ensure conformity with Federal regulations.

Current regulations at N.J.A.C. 10:81-2.16 state that photo identification (ID) cards shall be routinely issued to recipients of Aid to Families with Dependent Children (AFDC), but shall not be a condition of eligibility for assistance. This is inconsistent with text at N.J.A.C. 10:81-7.15(d), which requires, as a condition of eligibility, that all payees in AFDC be issued photo ID cards except for reasons of religious belief or disfigurement. N.J.A.C. 10:81-7.15(d)3 and 4 provide that persons refusing to be photographed because of religious belief or disfigurement are permitted to accept an ID card without a photograph. Thus, N.J.A.C. 10:81-2.16 is being revised to provide that photo ID cards shall be issued to payees in AFDC as a condition of eligibility for assistance, subject to the exceptions at N.J.A.C. 10:81-7.15(d)3 and 4.

Regulations at N.J.A.C. 10:81-3.18(j) provide that when child care payments through the Work Incentive (WIN) program will cease because the client has obtained employment, Form DYFS 7-39, Letter of Notification, shall be sent to the client by the Separate Administrative Unit of the Division of Youth and Family Services (DYFS/SAU) 45 days prior to such action. The Separate Administrative Unit and all of its functions have been transferred from DYFS to the Bureau of Employment Programs in the Division of Public Welfare (DPW/BEP). Language is thus being changed at N.J.A.C. 10:81-3.18(j) to indicate that Form DYFS 7-39 shall be issued by DPW/BEP.

N.J.A.C. 10:81-3.18(j)1 currently provides that if the costs of child care arranged by the DYFS/SAU exceed the rates authorized in N.J.A.C. 10:82-5.3, and the county welfare agency (CWA) cannot make adequate, less costly arrangements for child care, the total cost of child care incident to employment shall be allowed. However, Federal regulations at 45 CFR 233.20(a)(11)(i)(C) stipulate that State agencies are to disregard the cost of such child care from the monthly income of the client, up to a maximum of $160.00 per month per child. Thus, child care costs are to be met by the client, not by the CWA, as implied by current State rule. As a result of the Federal review, N.J.A.C. 10:81-3.18(j)1 is being amended merely to delete obsolete language and bring that passage into conformity with N.J.A.C. 10:82-2.8(a)2 and the Federal rule cited above.

Social Impact

The proposed amendments will have a positive social impact by providing for uniformity of State rules, deleting obsolete material, and ensuring, where applicable, conformity with Federal regulations, thus reducing the likelihood of error in the administration of the AFDC program.

Economic Impact

Savings in public assistance expenditures and administrative costs may be experienced from this proposed amendment, as it provides for a more uniform application of program policy consistent with Federal regulations, where appropriate.

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

10:81-2.16 Photo identification cards

Photo [I]identification cards will be issued routinely to recipients [but will in no case be a condition of issuing a check] **as a condition of eligibility for assistance (also see N.J.A.C. 10:81-7.15(d)3 and 4).**

10:81-3.18 Employment and training requirements

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

(j) **Payment of child care for ex-WIN children:** When provision of child care through the WIN program will cease due to the client's obtaining employment, a Letter of Notification, Form DYFS 7-39, shall be issued by the [DYFS/SAU] **Division of Public Welfare/Bureau of Employment Programs (DPW/BEP)** 45 days prior to such action. Upon receipt of the notification, the [CWB] **CWA** shall adjust the client's grant to reflect the costs of child care, effective as of the date the client assumes responsibility for payment of such care. Such costs shall be deducted in accordance with [the Assistance Standards Handbook] **N.J.A.C. 10:82-2.8(a)2.**

[1. If the costs of the child care arranged by the DYFS/SAU are in excess of the rates authorized in the Assistance Standards Handbook, the CWB may make other less costly but adequate child care arrangements. If no other such child care can be located, the actual total cost of child care incident to employment shall be allowed.

i. When limited earnings preclude full payment of child care costs by a former active WIN participant, such costs in excess of available earned income may be made as an additional payment from the CWB's administrative/services account.]

[2.]**1.** The [CWB] **CWAs** shall confirm the client's grant adjustment by completing Form DYFS 7-40, Child Care Action Notice. The effective date of such adjustment will be the day following the date indicated on the DYFS 7-39 form.

i. The [DYFS/SAU] **DPW/BEP** copy of [f]Form DYFS 7-40 must be received in that office no later than 20 days prior to the client's assumption of responsibility for child care payments.

(k) (See proposal in this issue.)

(l) (No change.)

(a)

Assistance Standards Handbook
Emergency Assistance

Proposed Amendment: N.J.A.C. 10:82-5.10

Authority: N.J.S.A. 44:7-6 and 44:10-3.
Proposal Number: PRN 1985-520.

The agency proposal follows:

Summary

The proposed amendment at N.J.A.C. 10:82-5.10 revises emergency assistance (EA) regulations with respect to applicants and recipients in the Aid to Families with Dependent Children (AFDC) program. The amendment will allow county welfare agencies (CWAs) to authorize payments for the actual cost of emergency shelter for a temporary period of up to 60 days following the date that the state of homelessness first becomes known to the CWA. The proposed rule expands the current regulation limiting EA for emergency shelter to the calendar month following the month in which the emergency becomes known, and provides that the state of homelessness

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becomes known to the CWA before the 60 day time period commences.

Social Impact

Positive social impact is expected as a result of the amendment at N.J.A.C. 10:82-5.10. Those AFDC families who experience a state of homelessness will be benefited since the proposed rule will have the effect of providing payment for emergency shelter during three months: the month in which the state of homelessness becomes known to the CWA, the following month, and part of the next following month, subject to the 60 day limit. The proposed rule will more accurately reflect the average duration of a homelessness situation in the AFDC program. CWAs will be benefited by the establishment of a specific time period for CWAs to authorize EA payments for emergency shelter, which will ensure uniformity throughout the State for provision of such payments.

Economic Impact

The amendment may result in a slight increase in EA payments for emergency shelter since the time period for which CWAs may authorize such payments has been expanded slightly. However, the effect of any increase on total EA expenditures statewide will likely be negligible.

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

10:82-5.10 Emergency assistance

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

(c) When there has been substantial loss of shelter, food, clothing or household furnishings by fire, flood or other similar natural disaster, or when, because of an emergent situation over which they had no control or opportunity to plan in advance, the eligible unit is in a state of homelessness and the county welfare agency determines that the providing of shelter and/or food and/or emergency clothing, and/or minimum essential house furnishings are necessary for health and safety, such needs may be recognized in accordance with the regulations and limitations in the following sections:

1. Emergency shelter: When an actual state of homelessness exists or is manifestly imminent, the county welfare agency shall authorize payment of the actual cost of adequate emergency shelter arrangements at the most reasonable rate available, for a specified temporary period not to exceed [the calendar month following the month in] **60 days following the date on** which the state of homelessness first becomes known **to the county welfare agency.**

i. (No change.)

2.-5. (No change.)

(d)-(e) (No change.)

(a)

Assistance Standards Handbook Emergency Assistance

Proposed Amendment: N.J.A.C. 10:82-5.10

Authority: N.J.S.A. 44:7-6 and 44:10-3.
Proposal Number: PRN 1985-521.

The agency proposal follows:

Summary

The proposed amendment will expand the provision of Emergency Assistance in the Aid to Families with Dependent Children (AFDC) program to AFDC families concurrently receiving protective services from the Division of Youth and Family Services (DYFS) in the Department of Human Services.

Under the proposal, a county welfare agency (CWA) may authorize Emergency Assistance payments to those subject AFDC families who are faced with an actual or imminent state of homelessness, regardless of whether the family had control of or opportunity to plan for the circumstances which precipitated the emergency. The proposed rule sets forth conditions that must be met by the AFDC family to qualify for Emergency Assistance under this section, which are consistent with those eligibility requirements of N.J.A.C. 10:82-5.10(a) through (e). If the family is determined eligible for Emergency Assistance, payments may be provided for emergency shelter, food, clothing, house furnishings and temporary care for children.

Currently, payments for emergencies experienced by such families are made by DYFS and are funded by State and county moneys. Transferring this segment of AFDC families to the scope of Federal emergency assistance regulations will permit the Department to take advantage of 50 percent Federal financial participation for such expenditures.

Social Impact

The proposed rule will provide for positive social impact by broadening the rules under which AFDC families might receive emergency assistance. It will avoid placement of children in foster care situations as a response to actual or imminent homelessness. The proposed rule will enable the Department and the State to further meet its objective of keeping needy low-income families intact.

Economic Impact

The proposal will have a positive economic impact in the form of savings in State and county assistance expenditures. Approximately 2,000 families per year receiving State/county-funded aid for emergencies through DYFS will be assisted under the proposed rule. The gross assistance cost is estimated to be $496,000, representing $248,000 in Federal funds, $186,000 in State funds and $62,000 in county funds. Therefore, the proposed savings to the State and counties should be the amount of the Federal share ($248,000).

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

10:82-5.10 Emergency assistance

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

(c) (See proposal in this issue.)

(d)-(e) (No change.)

(f) Emergency assistance to AFDC families concurrently receiving Division of Youth and Family Services (DYFS) protective services:

1. This section authorizes county welfare agencies to provide emergency assistance to those AFDC families which concurrently receive protective services from DYFS and are faced with an actual or imminent state of homelessness, regardless whether the eligible unit had control of or opportunity to plan for the circumstances which precipitated the emergent situation. Emergency assistance granted shall be in accordance with N.J.A.C. 10:82-5.10(c), provided all of the following conditions are met:

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i. Emergency assistance uner (f)1 above has not been granted within the previous 12 months;

ii. The county welfare agency has received detailed written documentation from DYFS of the unit's actual or imminent state of homelessness and of the fact that provision of emergency assistance is essential for maintenance of a cohesive family unit;

iii. The appropriate District Office Manager of DYFS has certified that the family is receiving DYFS protective services;

iv. The actual or imminent state of homelessness occurred no more than seven calendar days prior to the request for emergency assistance under (f)1 above. Temporary arrangements made during any part of the aforementioned time period do not negate the existence of a state of homelessness;

v. The unit was eligible to receive or received AFDC in the month prior to the month in which the grant of emergency assistance is provided; and

vi. The unit received protective services from DYFS for a continuous period of 60 calendar days immediately preceding the request for emergency assistance.

2. Families receiving DYFS protective services who apply and are determined eligible for AFDC at time of application are eligible for emergency assistance under this section provided that the actual or imminent state of homelessness occurred within the seven calendar days immediately prior to application for AFDC. All conditions of (f)1i through vi above must also be met.

3. AFDC families not receiving protective services from DYFS are not eligible for emergency assistance under this section until the unit has received protective services from DYFS for a continuous period of 60 calendar days prior to the request for emergency assistance. All conditions of (f)1i through vi above must also be met.

(a)

General Assistance Manual
Nursing Home Patients from Out-of-State

Proposed Amendment: N.J.A.C. 10:85-3.2

Authority: N.J.S.A. 44:8-111(d) and 44:8-120.
Proposal Number: PRN 1985-522.

The agency proposal follows:

Summary

The proposed amendment restates the criteria to be considered in the determination of residence of nursing home patients from out-of-State in the General Assistance program. Since under current statute, N.J.S.A. 44:8-120, the payment responsibility in General Assistance for persons in medical institutions lies with the municipality of "customary place of abode," there is technically no New Jersey municipality responsible for nursing homes patients from out-of-State. It was, therefore, necessary to assign such responsibility lest these patients be left without care. There is no intended change in policy. The regulations are being restated in order to align them with the comparable section of the Medicaid Only program at N.J.A.C. 10:94-3.8. There have been no major problems because of the differences in wording, but the Department believes that, for purposes of uniformity of operation, the use of similar wording whenever possible reduces the number of potential problems and misunderstandings.

In general, the determination of residence for the General Assistance program lies with the client and the client's intentions and purposes. If the person has forsaken residence elsewhere in order to assume residence in New Jersey, the person is accepted as having such residence and the payment responsibility is assigned to the municipality to which the person has moved.

Social Impact

Since there is no substantive change in policy, the social impact of this amendment is expected to be minimal. Its purpose and expected effect is to reduce or eliminate potential conflict between programs. Alignment of the wording is expected to provide for smoother program operation by reducing the potential for misunderstanding or for gaps or overlaps in the service delivery system.

Economic Impact

The economic impact of this change will be limited to the administrative cost savings to be achieved by preventing misunderstanding and eliminating conflicts. It is not possible, of course, to quantify such savings. There being no substantive change in policy, there will be no other economic impact on any client, nursing home, municipality, or on the State itself.

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

10:85-3.2 Application process

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

(f) Resident defined: A resident of a municipality is a person who maintains a permanent customary home in the municipality, a person who is in the municipality with intention to remain, a person who did maintain such a home prior to entering a medical facility, or a person who enters a New Jersey medical facility from out of state and qualifies as a resident in accordance with (f)1iii below. No time intervals are relevant so long as the home is not established for a temporary purpose such as for a visit or vacation. A resident may live in his or her own home, a rented home or apartment, the home of a friend or relative, in a boarding home or, in accordance with (f)1iii below, in a residential medical facility.

1. A person in a hospital, nursing home, intermediate care facility, maternity home or a center for treatment of drug or alcohol abuse shall be considered a resident of the last municipality in which he or she was a resident prior to entering the facility. (Exception: A GA recipient who continues to reside in a municipality in which GA payment status was acquired prior to May 31, 1978 by reason of having achieved "legal settlement" there as a private patient in a medical institution will continue to be considered as living at that municipality.) When the last municipality of residence, other than a medical facility, was not in New Jersey and the person qualifies in accordance with (f)1iii below, that person shall be considered a resident of the municipality in which the medical facility is located. Only facilities which are licensed by the New Jersey Department of Health in the stated categories are to be recognized as being a temporary residence of an applicant or recipient for medical care. See (f)5 below for determination of municipal responsibility.

i.-ii. (No change.)

[iii. A person who enters a New Jersey medical facility directly from out of state shall be considered a New Jersey resident for purposes of the General Assistance program if all of the following exist:

(1) The person makes a clear statement of intention to

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remain in New Jersey; and

(2) There is a reason, other than the availability of assistance, for the move to New Jersey, e.g., nearness to relatives, unavailability of medical treatment elsewhere; and

(3) The medical care being provided will be required for an indefinite period; and

(4) There is no clear indication that the person has retained residence out of the state; and

(5) The state of prior residence does not recognize the person as having continuing residence there for assistance purposes.]

iii. Whenever an individual enters this State in order to receive medical care, and applies for General Assistance to meet all or a portion of the costs of such care, the fact that the immediate purpose of the move was to secure medical care does not, in and of itself, have the effect of making the person ineligible for the General Assistance program. It is the responsibility of the MWD to evaluate all such cases and to make an eligibility determination, considering carefully all of the following criteria.

(1) Whether the move is a temporary one, being solely for the purpose of receiving medical care for a limited time;

(2) Whether the move is part of a carefully conceived social service plan which would serve to meet other requirements of the individual in addition to purely physical needs, for example, a person moves to a nursing home in order to be closer to relatives who are interested in the person's welfare;

(3) Whether there is a clear expression of intent on the part of the individual to remain permanently in this State;

(4) Whether there is objective evidence that the individual has, in fact, abandoned or not abandoned residence in the state from which he or she came;

(5) Whether the state in which the individual previously resided recognizes him or her as having continuing eligibility in that jurisdiction under the Medicaid program or any other program providing payment for medical care.

iv. If, after full consideration of the factors in (f)1iii above, the MWD is satisfied that the individual has become a resident of this State, then the person shall, for purposes of determination of General Assistance payment responsibility, be considered a resident of the municipality in which the person is present.

2.-5. (No change.)

(g) (See proposal at 17 N.J.R. 547(a).)

(h) (No change.)

(a)

General Assistance Manual Resources: Disposal

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

Authority: N.J.S.A. 44:8-111(d).
Proposal Number: PRN 1985-539.

The agency proposal follows:

Summary

Experience in the area of disposal of resources has shown that case inquiries, as required by N.J.S.A. 44:8-121, are impeded and decisions delayed because current regulations contain no starting point for case review. The amendment to N.J.A.C. 10:85-3.4(a) will, if adopted, place with the applicant the responsibility for the explanation of prior transactions which were made for less than adequate consideration. It would do this by inserting the rebuttable presumption that any such transaction was made in order to defeat program requirements. A transaction made for any other purpose would not, of course, produce any bar to eligibility.

N.J.A.C. 10:85-3.4(g) places into New Jersey Administrative Code a section of New Jersey Statute, N.J.S.A. 44:1-95, which had heretofore been implemented directly from the statute. It states, as does the statute, that a municipal welfare director may in certain circumstances bring action for recovery of assistance granted.

Social Impact

The incidence of cases involving prior transactions for less than adequate consideration is very low. But when they do occur, they usually involve nursing home patients. The strains on family life at such time make discussions with and among applicants and family members difficult. With this clearer delineation of responsibility at N.J.A.C. 10:85-3.4(a), it is expected that the necessary discussions and the resulting decisions will be expedited, thereby producing a beneficial social impact. The amendment at N.J.A.C. 10:85-3.4(g) will serve to make local welfare officials more aware of the statutory recovery authority. Similarly, those recipients who may be subject to recovery action may become aware of the provision with a reduction in the risk of misunderstanding.

Economic Impact

Improper disposal, that is, divestiture of a resource without adequate consideration, is a bar to eligibility. Proper disposal is not such a bar. The only change proposed at N.J.A.C. 10:85-3.4(a) is that which will assist in the determination of the propriety of the disposal. There is no change in eligibility requirements. To the extent that the improved clarity is helpful in reaching a correct decision more promptly, there may be a small administrative cost saving. No change in assistance payments is expected.

The amendment at N.J.A.C. 10:85-3.4(g) imposes no new element in the determination of eligibility or level of assistance grants. Nor would it impose any new requirement for action by the local agencies or for repayment by former recipients or their estates.

To the extent that the presence of the information in the New Jersey Administrative Code makes some local welfare directors newly aware or more aware of a source of recovery, some of them may find actionable situations and may move on them when they might not have done so otherwise. There is, of course, no way to estimate how many dollars, if any at all, will be recovered as a result of the added awareness. Because of the low incidence of actionable cases in the General Assistance caseload, it is not likely that there will be any significant change in the level of recovery. For the same reason, it is unlikely that the threat of recovery action will serve as a significant deterrent to the filing of applications.

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

10:85-3.4 Resources

(a) **Definition:** For purposes of this manual, resources are defined as real or personal property which is within the control of one or more of the individuals applying for General Assistance or to which [he/she] **he or she** (they) may have a valid claim; and certain other benefits and contributions of support which may become available.

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1. (No change.)

2. No person shall be eligible for assistance within one year after having disposed of a resource for less than adequate consideration or after having abandoned a resource of value when such proposal or abandonment was made for the purpose of qualifying for assistance or of avoiding repaymnet of assistance. Any assistance granted by reason of non-disclosure during such one year period represents an overpayment and is to be processed accordingly.

i. There shall be an initial presumption, rebuttable, that the abandonment of any resource of value, exempt, or otherwise, or the disposal of any resource, exempt or otherwise, for less than adequate consideration, was made for the purpose of qualifying for assistance or of avoiding repayment of assistance.

[i]**ii.** (No change in text.)

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

(e)-(f) (See proposal at 17 N.J.R. 548(a).)

(g) Recovery: In any instance in which it is ascertained that a recipient or former recipient, living or dead, has real or personal property above that necessary for his or her maintenance and the maintenance of a spouse and minor children, the director of welfare may bring suit in the New Jersey Superior Court for recovery of all assistance paid. Includable in the property to be claimed in the suit is the amount of any insurance upon the life of any former recipient, if the terms of the policy permit, when the proceeds of the insurance are not needed for the expenses of the last illness and funeral expenses of the former recipient or for support of a widow(er) or minor children.

(a)

Medicaid Only Manual
Other Payments, Responsibilities, and Medical Assistance for the Aged Continuation

Proposed Readoption: N.J.A.C. 10:94-7, 8 and 9

Proposed Amendments: N.J.A.C. 10:94-7.1 through 7.5, 8.1 through 8.8, and 9.2 and 9.5

Authority: N.J.S.A. 44:7-87 and 30:4D-7.
Proposal Number: PRN 1985-540.

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:94-7, 8 and 9 will expire on October 18, 1987, June 4, 1986, and December 20, 1987, respectively.

In accordance with the "sunset" provisions of the executive order, the Department of Human Services proposes to readopt subchapters 7, 8, and 9 of N.J.A.C. 10:94. These subchapters are necessary for the continued operation of the Medicaid Only program for the aged, blind, and disabled.

The Medical Assistance and Health Services Act (N.J.S.A. 30:4D) was effective January 1, 1970. With implementation of Title XVI of the Social Security Act on January 1, 1974, the State was required to determine Medicaid eligibility for aged, blind, and disabled individuals in accordance with Federal rules prescribed for the Supplemental Security Income (SSI) program.

The provisions of N.J.A.C. 10:94 were adopted pursuant to the authority of N.J.S.A. 44:7-6 and were filed on May 24, 1976, as R. 1976 d. 157, which became effective on July 1, 1976 (see 7 N.J.R. 464(d), and 8 N.J.R. 287(d)).

N.J.A.C. 10:94-7 provides general provisions regarding other services and payments which Medicaid Only recipients are eligible to received. Such services and service payments include homemaker services, transportation and/or travel costs for health care, and child care in certain situations. Eligible applicants and recipients, as defined by the State Plan for Title XX of the Social Security Act, receive such services in accordance with the policy and procedures set forth by the Division of Youth and Family Services, the State agency responsible for social services. Additionally, this subchapter directs county welfare agencies (CWAs), under certain circumstances, to provide payment for burial and funeral expenses on behalf of aged, blind, or disabled "Medicaid Only" recipients. Subchapter 7 was amended, effective October 18, 1982 (R. 1982 d. 354), to delete reference to an obsolete manual and reference the then new, codified Special Payments Handbook: Aged, Blind and Disabled (N.J.A.C. 10:100).

The current text of subchapter 8, filed as R. 1981 d. 177, completely replaced the original text. N.J.A.C. 10:94-8 sets forth other agency responsibilities and procedures regarding the determination of continuing eligibility in the Medicaid Only program. Specifically, these rules direct CWAs to redetermine eligibility for Medicaid Only at least once every 12 months. As a part of that process, the recipient, or his or her authorized representative, must execute a formal application (Form PA-1G) for continuation of Medicaid Only benefits. The CWA must conduct a personal interview and review all factors of eligibility, complete all appropriate forms, document the case record with all pertinent information and formally recommend that eligibility be continued, suspended, or terminated. These rules establish a uniform system for determining the eligibility for all applicants and redetermining eligibility for all recipients under the same criteria established by the Federal government for eligibility determinations in the SSI program.

Additionally, subchapter 8 prescribes the requirements for redetermination of medical eligibility by the Division of Public Welfare's Bureau of Medical Affairs. After complete review, such application for continuation of Medicaid Only benefits must be acted upon by the director of the CWA and thereafter be presented to the agency's board for formal decision. Language is being added at N.J.A.C. 10:94-8.1(d)1 to clarify that, in those counties not having welfare boards, the authority for final action as to the disposition to continue, suspend or terminate eligibility rests with the Director of Welfare. This revision merely clarifies procedure for those counties not having and not required to have welfare boards. The remainder of subchapter 8 provides rules regarding notices of agency decisions, complaints and fair hearings, fraudulent receipt of assistance, reporting of criminal offenses, safeguarding information and nondiscrimination. Those rules refer the reader to the appropriate sections of N.J.A.C. 10:81 because the policies and procedures referenced in that chapter of the Administrative Code are equally applicable to the Medicaid Only program.

In accordance with P.L. 1982, chapter 49 (FY 1983 State Appropriations Act), funding for the Medical Assistance for the Aged (MAA) program, N.J.A.C. 10:93, was discontinued. At the same time, the Legislature appropriated funds for the Medical Assistance to the Aged Continuation (MAAC) program for FY 1983. Funding of the MAAC program has been

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appropriated annually since that time. The MAAC program was limited to those individuals certified as eligible for MAA on or before June 30, 1982. The caseload was converted by a companion change to N.J.A.C. 10:94-9 to the special category of medical assistance designated MAAC, adopted effective December 20, 1982 pursuant to the authority of N.J.S.A. 44:7-81 and 87 (R. 1982 d. 461). At time of adoption, the Department acknowledged the absence of instructions relevant to applications pending for MAA at the close of business on June 30, 1982. Upon further review, the Office of the Attorney General issued an opinion which advised that individuals whose MAA applications were filed on or before June 30, 1982 and who were eligible in accordance with MAA regulations and case circumstances in effect on that date were to be accepted into the MAAC program. Language is being added to N.J.A.C. 10:94-9.2 to specifically identify that group of individuals. However, this revision does not reflect any change in policy as all such cases were processed at the time that opinion was issued.

Subchapter 9 specifies those individuals eligible for continued medical assistance under the MAAC program, sets forth recertification requirements, provides that once an MAAC case is terminated for any reason it may not be reopened under MAAC, and directs CWAs to review each ase for potential eligibility for other assistance programs, specifically SSI and Medicaid Only.

The proposed amendments found in this readoption are technical in nature and update cross-references and terminology, correct typographical errors found in Administrative Code, and add clarifying language regarding form numbers and form names. Additionally, the proposal corrects the addresses for the Division of Public Welfare and the Division of Medical Assistance and Health Services. All amendments contained in thsi proposed readoption are nonsubstantive changes and do not reflect any change in existing policy.

The Division of Public Welfare conducted an internal review and evaluation of the rules contained in subchapters 7, 8, and 9 of N.J.A.C. 10:94 prior to noticing for readoption. After such review of the rules, that agency determined the rules to be adequate, reasonable, and responsive to the purposes for which they were promulgated.

Social Impact

The Medicaid Only program for the aged, blind, and disabled and the MAAC provisions contained therein provide an opportunity for needy individuals to secure medical care and services which they could not otherwise afford. In the most recent month for which data is available (April 1985), there were 29,665 persons eligible for Medicaid Only of which 26,973 received medical services. Data for the same month indicate that 322 persons remained eligible for benefits under the MAAC provisions of which 274 received services. If the MAAC program were not available, many of these financially needy individuals would forego necessary medical treatment. Since the proposed revisions to these subchapters merely provide clarifying language and technical revisions, there is no social impact resulting from these amendments.

Economic Impact

In the most recent month for which data is available (April 1985), expenditures for Medicaid Only-aged, blind, and disabled were approximately $38 million. Those Medicaid expenditures were subject to Federal financial participation, that is, matchable by the Federal government at a rate of 50 percent. Expenditures for the MAAC population were approximately $147,600. The State funds the full cost of MAAC expenditures.

As indicated in the social impact, the proposed revisions to these subchapters will have no effect on the population served, thus there is no fiscal impact on recipients, the Department or CWAs administering the program.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:94-7, 8, and 9.

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

10:94-7.1 General provisions

Medicaid Only recipients, like [s]Supplemental [s]Security [i]Income (SSI) recipients are eligible to receive services and related service payments for services identified [in section 2 of this subchapter] **at N.J.A.C. 10:94-7.2** and for payment of burial and funeral expenses as authorized [in section 5 of this subchapter] **by N.J.A.C. 10:94-7.5.** Such payments as deemed necessary and appropriate by the county welfare [board] **agency** shall be paid either directly to the vendor of the service or by a check issued to the eligible person.

10:94-7.2 Services and service payments

Eligible applicants and recipients as defined under the State Plan for Title XX of the Social Security Act may receive the services and related service payments specified in the State Plan. The Division of Youth and Family Services is responsible for providing the county welfare [board] **agency** with policies and procedures regarding these service programs, including [these] **those** specified in [section 3 of this subchapter] **N.J.A.C. 10:94-7.3.**

10:94-7.3 Other service payments

Eligible applicants and recipients of Medicaid Only are also eligible to receive certain service payments as authorized [in Section 510 of the Assistance Standards Handbook] **at N.J.A.C. 10:82-5.2 through 5.4.** [This] These include[s] payments for expenses incident to homemaker service, travel costs for health care, and child care in certain situations.

10:94-7.4 Emergency assistance payments

Eligible applicants and recipients of Medicaid Only are not eligible to receive emergency assistance as defined in [Section 530 of the Assistance Standards Handbook] **N.J.A.C. 10:82-5.10.**

10:94-7.5 Payment of burial and funeral expenses

The county welfare [board] **agency** is directed, under certain situations, to provide payments for burial and funeral expenses on behalf of Supplemental Security Income [(SSI)] and adult "Medicaid Only" recipients, as well as [formal] **former** Old Age Assistance, Disability Assistance and Assistance for the Blind recipients. The procedure authorizing these payments is **located** [in] **at** N.J.A.C. 10:100-3.3 through 3.9. [(Special Payments Handbook; Aged, Blind and Disabled)].

10:94-8.1 Other **agency** responsibilities

(a) Determination of continuing eligibility: The eligibility of each case shall be redetermined at least **once** every 12 months. This redetermination provides an opportunity to evaluate the total situation and enables the Income Maintenance (IM) worker to ascertain whether the individual's eligibility has changed.

1. It shall be the agency's responsibility to review indications of ineligibility as they occur and to discontinue Medicaid

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Only eligibility when appropriate and without delay. **The agency shall notify each applicant/recipient of any agency decision that relates to his or her eligibility status in accordance with the provisions of** [(See] N.J.A.C. 10:94-8.1(e) **and 8.3.** [)]

2. The individual, or [his/her] his or her authorized representative, shall execute a formal written application, **Form PA-1G, Application and Affidavit for Medical Assistance Only (Aged, Blind, or Disabled),** for continuance of assistance at least once every 12 months.

(b) Process of redetermination:

1. Personal interview: The IM worker shall coduct a face to face interview regarding application for continuance of Medicaid Only and shall assist in the completion of the [continuance] **application** form, **Form PA-1G,** if necessary.

2.-4. (No change.)

(c) Recording and recommendation: A [s]Summary [r]Report, **Form PA-2D,** [of] **concerning** all pertinent information shall be [made] **completed** for each contact with the individual, whenever it occurs. Whenever a change in circumstances affects any facet of eligibility, a Medicaid Eligibility Worksheet (Form PA-1E) and a Worksheet and [a]Authorization for Public Assistance (Form PA-3A) shall be prepared. The summary shall clearly state the basis for any suspension of eligibility or termination. Following each redetermination of eligibility, it is the responsibility of the IM worker to recommend on form PA-3A that eligibility be continued, suspended, or terminated.

(d) Disposition of application for continuance: Following supervisory approval, an application for continuance shall be acted upon by one of the following methods:

1. Action by executive authority: The Director of Welfare (or [his/her] **his or her** authorized representative) shall, by [his/her] **his or her** legal authority, continue, suspend, or terminate eligibility when, in [his/her] **his or her** judgment, such action should be taken in advance of welfare board action. Such cases shall thereafter be presented to the welfare board at its next meeting. **In those counties not having welfare boards, the authority for final action as to the disposition to continue, suspend or terminate eligibility shall rest with the Director of Welfare and the provisions of (d)2 below shall not apply.**

2. Action by the welfare board: The following applications for **Medicaid Only** continuation shall be routinely presented to the welfare board for decision:

i.-ii. (No change.)

3. (No change.)

(e) Notice of agency decision: Each applicant/**recipient** shall receive written notice of any agency decision which relates to [his/her] **his or her** eligibility status at least 10 days prior to any change in [his/her] **his or her** eligibility status.

10:94-8.2 Redetermination of medical eligibility

(a) Redetermination of disability and blindness factors:

1. Requirement: There shall be redetermination **of the factors** of disability and blindness for every Medicaid Only recipient at intervals set by the Bureau of Medical Affairs, except those **recipients** who are currently receiving SSA Disability Insurance Benefits. The redetermination review date is designated on Form PA-8, Record of Action: Medical Eligibility Factor (see N.J.A.C. 10:94-3.13(g)).

2. Evidence of continuation of disability or statutory blindness: An individual who has been determined to be disabled or statutorily blind shall, if requested with reasonable notice, present [himself/herself] **himself or herself** for and submit to examinations or tests, and shall submit medical and other evidence necessary for the purpose of determining whether [he/she] **he or she** continues to be disabled or statutorily blind.

3. Procedures for county welfare agency:

i. Scheduling of "redetermination review" date: In Medicaid Only cases, the CWA shall take into account the redetermination review date on Form PA-8 in scheduling both the annual review and interim visits. **The** CWA may adjust the date for case submittal to the Bureau of Medical Affairs to coincide as closely as is practical with either the annual review or with an interim visit, but such adjustment shall assure that the case will be submitted not more than two months earlier and in no event later than the date originally set on Form PA-8.

(1) (No change.)

ii. IM worker's control: The IM worker shall organize [his/her] **his or her** caseload controls (notebooks, index, etc.) so that [he/she] **he or she** will be alerted sufficiently in advance of redetermination review dates to enable [him/her] **him or her** to obtain any specific medical information or reports requested on the last Form PA-8. The data and reports so submitted must be "current."

iii.-v. (No change.)

10:94-8.3 Notice of county welface agency decision

The county welfare agency shall promptly notify, in writing, the applicant for, or recipient of, Medicaid Only of any agency decision. The policies and procedures outlined in [the Public Assistance Manual,] N.J.A.C. 10:81-7.1 through 7.6[,] shall be followed.

10:94-8.4 Complaints and fair hearings

(a) It is the right of every applicant for or recipient of Medicaid Only to be afforded the opportunity for a fair hearing in the manner established by the policies and procedures set forth in [the Public Assistance Manual,] N.J.A.C. 10:81-6, regarding complaints and fair hearings ([S]see N.J.A.C. 1:1). Complaints and fair hearings regarding Medicaid Only eligibility should be referred to: [the Division of Public Welfare, Bureau of Administrative Review and Appeals.]

Division of Public Welfare
Bureau of Administrative Review and Appeals
CN 716
Trenton, New Jersey 08625

(b) In situations where an applicant or recipient is denied medical services to which [he/she] **he or she** feels **that** [he/she] **he or she** is entitled, a request for a hearing and a brief explanation of the situation should be sent to:

Director
Division of Medical Assistance and Health Services
[324 East State Street] **CN 712**
Trenton, New Jersey 08625

10:94-8.5 Fraudulent receipt of assistance

To protect the assistance agency and the public against the commission of fraud, the policies and procedures as defined in [the Public Assistance Manual,] N.J.A.C. 10:81-7.40 through 7.45[,] (fraudulent receipt of assistance)[,] shall apply to the Medicaid Only [P]program.

10:94-8.6 Reporting criminal offenses to law enforcement authorities

Investigation of new applications or investigations for redetermination of eligibility may on occasion present indications to the county welfare agency that a crime may have been committed. In such a situation, the procedures outlined in [the Public Assistance Manual,] N.J.A.C. 10:81-7.46 (reporting

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criminal offenses to law enforcement authorities)[,] are to be followed.

10:94-8.7 Safeguarding information

The Federal Social Security Act requires that a state must provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of public assistance. Therefore, the policies and procedures outlined in [the Public Assistance Manual,] N.J.A.C. 10:81-7.30 through 7.35 (safeguarding information)[,] apply to the Medicaid Only [P]**p**rogram.

10:94-8.8 Nondiscrimination in public assistance programs

Title VI of the Federal Civil Rights Act of 1964 (Public Law 88-352) and Section 504 of the Federal Rehabilitation Act of 1973 prohibit discrimination on the ground of race, color, national origin, or handicap in the administration of a program for which Federal funds are received. Therefore, the policies and procedures relating to [this] **those** acts, as outlined in [the Public Assistance Manual,] N.J.A.C. 10:81-7.36 through 7.38 (nondiscrimination in public assistance programs)[,] are to be strictly observed.

10:94-9.2 Initial certification

(a) Certification begins for those persons and only for those persons who were in certified status in the MAA program at the close of business on June 30, 1982 **and those persons that filed MAA applications on or before June 30, 1982 and whose eligibility was established in accordance with regulations and case circumstances in effect on that date.** The initial certification period in MAAC consists of the remainder of the current MAA certification period (see N.J.A.C. 10:94-9.4(a)).

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

10:94-9.5 Eligibility for other programs

(a) (No change.)

(b) Referral: If eligibility is found for regular Medicaid Only, the CWA will convert the case accordingly. If potential eligibility is found for a program administered by another agency, the CWA will make referral promptly and will institute procedures for follow-up of the referral. Upon acceptance of the individual into any other program through which medical costs are met, the CWA will terminate the MAAC case.

CORRECTIONS

(a)

DIVISION OF ADULT INSTITUTIONS

Adult County Correctional Facilities Medical Examinations

Proposed Amendments: N.J.A.C. 10A:31-3.12 and 3.15

Authorized By: New Jersey Department of Corrections, William H. Fauver, Commissioner.
Authority: N.J.S.A. 30:1-15 and 30:1B-10.
Proposal Number: PRN 1985-529.

Submit comments by November 6, 1985 to:
Louis J. Scavo, Chief
Bureau of County Services
Department of Corrections
Whittlesey Road, P.O. Box 7387
Trenton, New Jersey 08628

Summary

The New Jersey Department of Corrections, pursuant to the authority of N.J.S.A. 30:1-15 and 30:1B-10, proposes to amend N.J.A.C. 10A:31-3.12 and 10A:31-3.15 which concerns the provisions for medical screening of new inmates admitted into Adult County Correctional Facilities.

The proposed amendment to N.J.A.C. 10A:31-3.12(b)1iv makes minor changes in the wording of the original provision. The original text of N.J.A.C. 10A:31-3.12(b)1iv reads as "Medical screening, including tests for infectious disease;". The proposed amendment would delete the language "including tests for infectious disease:" and revise the wording to "as detailed in 10A:31-3.15 Medical, dental, and health service care. The amended rule would provide the nature, type and standards of medical care and personnel needed for screening of inmates at the time of admission at adult county correctional facilities and before inmates are housed or admitted to general population whereas the original regulation noted only that this procedure had to be followed at the time of inmate's admission to an adult county correctional facility and before the inmate was sent to housing or general population.

The proposal to amend N.J.A.C. 10A:31-3.15,11 will identify the nature of the medical screening to be performed at the adult county correctional facilities (hereinafter referred to as the facilities). Under the proposed amendment, the facilities are required to medically screen the inmates, to schedule inmates for physical examinations and tests deemed to be necessary by the physician at the facilities at the time of the inmate's admission to the facility. The proposed rule explains the manner in which the medical results are to be recorded and possible suggestions as to what components of medical screening should include.

Social Impact

The proposed amendments will not have any signficant social impact since the medical procedures detailed are presently performed at the facilities. The only perceptible social impact these amendments will have is that the proposed rules more specifically detail the procedures, the standards and the nature of the procedures to be utilized in medical screening of the inmates at the time of admission to the facilities and before the inmate is housed or included in the general population at the facilities.

Economic Impact

The proposed amendments will not affect the costs of the procedures to be followed for medical screening of inmates at the facilities because the adult county correctional facilities have these procedures for medical screening of incoming inmates currently in place and are presently operated in compliance with the proposed amendments.

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

10A:31-3.12 Reception, orientation, release and property control

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(a) (No change.)

(b) The standards pertaining to reception, orientation, release, and property control shall provide that:

1. Procedures for admitting new inmates shall include, but not be limited to the following:

i.-iii. (No change.)

iv. [Medical screening including tests for infectious disease;] **Medical screening as detailed in N.J.A.C. 10A:31-3.15 Medical, dental and health service care;**

v.-xiv. (No change.)

2.-9. (No change.)

10A:31-3.15 Medical, dental and health service care

(a) (No change.)

(b) The standards pertaining to medical, dental, and health service care shall provide the following:

1.-10. (No change.)

11. [Receiving screening shall be performed on all inmates upon admission to the facility and before their placement in the general population or housing area. The findings shall be recorded on a printed screening form approved by the responsible physician. The screening shall include inquiry into:]

Upon admission, all inmates shall be medically screened and scheduled for a physical examination and any tests determined to be necessary by the facility's responsible physician. The medical screening shall be performed on all inmates prior to their placement in the general population or housing area. The findings shall be recorded on a printed screening form approved by the responsible physician. Suggested screening should include inquiry into the following:

i.-vii. (No change.)

12.-34. (No change.)

INSURANCE

The following proposals are authorized by Hazel Frank Gluck, Commissioner, Department of Insurance.

Submit comments by November 6, 1985 to:
Verice M. Mason, Director
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, New Jersey 08625

(a)

DIVISION OF LIFE AND HEALTH

Replacement of Life Insurance and Annuities

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

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

Proposal Number: PRN 1985-550.

The agency proposal follows:

Summary

The Department received numerous comments from the industry in response to the proposal of the regulation on replacement of life insurance and annuities, published in the April 15, 1985 New Jersey Register (17 N.J.R. 887). Because the various revisions made may be considered by some to be substantive changes, and due to the overall importance of this regulation to both the industry and consumers, it is necessary to repropose the regulation.

The requirement for a thirty day delay in issuance of a policy in replacement transactions drew the largest number of comments. The commenters argued that this delay was unnecessary in light of the 20 day "free-look" period after delivery of the policy. The Department was persuaded by these comments and has deleted this requirement. It is agreed that the difficulties which would arise from delaying the issuance of a life insurance policy outweigh any benefit derived from the delay. The Department is satisfied that the normal period of delay, coupled with the 20 day free-look requirement, will allow the policyowner sufficient time to contact the existing insurer.

Likewise, the requirement that a Policy Summary be left with an applicant at the time of application was the target of many comments. It was pointed out that a Policy Summary, by definition, must contain certain data that is not available until the application is made. Since the Policy Summaries are prepared by the companies, rather than the agents, it is not possible to have the Policy Summaries prepared at the time of application. In response to these comments, the Regulation has been revised so that the Policy Summary is not required to be given to the applicant until 10 working days after the application is received by the companies' underwriting departments. This will allow time for the Policy Summaries to be prepared and, if the policy is issued within ten working days, the Policy Summary can be delivered with the policy. Otherwise, the Policy Summary will give the applicant an outline of the policy against which he can compare other coverages prior to receiving the actual policy.

Many of the companies indicated that the form required for the Notice Regarding Replacement as described at N.J.A.C. 11:4-2.4(b) and N.J.A.C. 11:4-2.7(b) would result in unnecessary costs. The "No Carbon Required" paper and the "no postage necessary" stamp are costly items, the Department was told. Furthermore, in many instances, the costs would be wasted when the applicant does not take advantage of the mechanism for notifying the existing insurer. The commenters pointed out an additional logistical problem in that it would be difficult for an agent to have available, at the time the Notice must be completed, the addresses of the existing companies.

While the Department is committed to giving the applicant the option of notifying the existing insurer, there is no desire to impose unnecessary costs on insurers which may ultimately inflate premiums. Therefore, the Department has revised the format of the Notice to relieve the companies of the burden of these costs. It is believed the resulting format will still provide the applicant with the opportunity to obtain information and/or counseling from the existing insurer.

A few comments related to the content of the Notice Regarding Replacement. The commenters felt that it was rather strongly worded and would "discourage" replacement. Except for minor changes, the Notice remains basically as originally proposed. It is believed that without the mandatory notice to the existing insurer, a strong Notice is needed to achieve a balance. The Notices were designed to cause an applicant to give careful consideration to the replacement and to encourage the applicant to contact the existing insurer. The Department

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feels the content of the Notices is objective and in no way discouraging.

A number of other minor changes were made to include a later effective date allowing companies lead time to comply with the new requirements, to modify the definition of a "Registered Contract" and to make the remainder of the Regulation consistent with the major revisions the Department has made.

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

N.J.A.C. 11:4-2.2 is a definitions section, and N.J.A.C. 11:4-2.3 lists transactions which are exempted from the requirements of the new subchapter.

N.J.A.C. 11:4-2.4 outlines the duties of agents and brokers. These duties include submitting to the insurer information as to whether the transaction is a replacement and, whan a replacement is involved, providing the applicant with a Notice Regarding Replacement and copies of all written or printed communications used for presentation to the applicant.

N.J.A.C. 11:4-2.5 lists the duties of all insurers, which include informing field representatives of the provisions of this subchapter.

N.J.A.C. 11:4-2.6 states the duties of insurers that use agents and brokers. Examples of such duties include requiring agents or brokers to submit to the insurer a list of all of the applicant's existing life insurance or annuities that will be replaced, and requiring the replacing insurer to send a Policy Summary to the applicant within ten working days after the application is received by the company.

N.J.A.C. 11:4-2.7 lists the duties of insurers with respect to direct response sales. Listed among these duties is the requirement whereby an insurer who proposes a replacement is to obtain from the applicant information concerning existing life insurance or annuity policies to be replaced.

N.J.A.C. 11:4-2.8 sets forth the penalties which may be invoked for failure to comply with this subchapter.

N.J.A.C. 11:4-2.9 is a separability provision.

Social Impact

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

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

Economic Impact

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

AGENCY NOTE: The Department intends to make this subchapter operative 60 days after its effective date.

Full text of the rule proposed for repeal can be found in the New Jersey Administrative Code at N.J.A.C. 11:4-2.

Full text of the proposed new rule follows.

SUBCHAPTER 2. REPLACEMENT OF LIFE INSURANCE AND ANNUITIES

11:4-2.1 Purpose

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

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

11:4-2.2 Definitions

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

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

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

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

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

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

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

11:4-2.3 Exemptions

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

1. Credit life insurance;
2. Group life insurance or group annuities;
3. An application to the existing insurer that issued the existing life insurance and a contractual change or a con-

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version privilege is being exercised; and

4. Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company.

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

11:4-2.4 Duties of agents and brokers

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

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

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

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

1. Present to the applicant, not later than at the time of taking the application, a "Notice Regarding Replacement" in the form as described in Exhibit A in duplicate. The Notice shall be signed by both the applicant and the agent or broker. The Notice shall be printed in 10 point type, with all capitalized words and the third paragraph in boldface type. The original shall be left with the applicant.

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

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

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

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

11:4-2.5 Duties of all insurers

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

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

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

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

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

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

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

ii. A copy of the Replacement Notice provided the applicant pursuant to N.J.A.C. 11:4-2(b)1.

2. Each existing insurer or such insurer's agent or broker shall, within 10 days from the date a request is received from the policyholder, furnish the policyowner with a Policy Summary for the existing life insurance or a ledger statement containing Policy Data on the existing policy and/or annuity. Such Policy Summary or ledger statement shall be completed in accordance with the provisions of N.J..C. 11:4-11.1 et seq. except that information relating to premiums, cash values, death benefits and dividends, if any, shall be computed from the current policy year of the existing life insurance. The Policy Summary or ledger statement shall include the amount of any outstanding indebtedness, the sume of any dividend accumulations or additions, and may include any other information that is not inviolation of any regulation or statute. Cost indices and equivalent level annual dividend figures need not be included unless requested by the applicant. When annuities are involved, the disclosure information shall contain comparable data. The replacing insurer may request the existing insurer to furnish it with a copy of the Summaries or ledger statement, which shall be furnished within five working days of the receipt of the request.

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

(c) The replacing insurer shall send a Policy Summary to the applicant within 10 working days after the application is received by the company.

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

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

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

(a) If in the solicitation of a direct response sale the insurer did not propose the replacement, and a replacement is involved, the insurer shall send to the applicant with the policy a Notice Regarding Replacement as described in Exhibit B. The Notice shall be printed in 10 point type with all capitalized words and the third paragraph in boldface type.

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

1. Provide to applicants with or as a part of the application a Replacement Notice as described in Exhibit B, in duplicate.

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

11:4-2.8 Penalties

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

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

11:4-2.9 Severability

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

EXHIBIT A
NOTICE REGARDING REPLACEMENT

IMPORTANT MESSAGE FROM THE NEW JERSEY INSURANCE DEPARTMENT:

If you are thinking of buying a new life insurance policy or discontinuing or changing an existing policy, comparison shopping can save you substantial sums of money.

It is to your benefit to compare life insurance products. Your existing company will provide you with a policy summary (a written statement describing the elements of your policy) and cost index information if you notify the company of your intention to replace your current policy. Both of these items make it easy and convenient to compare your present coverage with that which the agent has proposed. FAILURE TO COMPARE MAY COST YOU MONEY.

The New Jersey Department of Insurance suggests that you consider the following points before deciding whether to replace your existing insurance.

ITEMS TO CONSIDER

1. If the policies are basically similar, premiums for a new policy may be higher because rates generally increase as your age increases.

2. Cash value and dividends, if any, may grow more slowly under a new policy initially because of the initial costs of issuing a policy. Or, the policy you are purchasing may not build any equity at all. Which type fits your needs?

3. Your present insurance company may be able to make a change in the terms of your existing policy to meet your changing needs. This may be more favorable than replacing existing insurance with new insurance.

4. If you borrow against an existing policy to pay premiums on a new policy, death benefits payable under your existing policy will be reduced by the amount of unpaid loan, including unpaid interest.

5. Current interest rates are not guaranteed. Guaranteed interest rates are usually considerably lower than current rates. What rates are guaranteed?

6. Do premiums remain level or are they subject to change? Up or down?

7. A participating policy is one that pays dividends. Dividends may materially reduce the cost of insurance over the life of the contract. While dividends are not guaranteed, you can ask to review the company's dividend payment history to get an idea of how much it pays. Have you considered the projected dividends in calculating the fiscal cost of the insurance?

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

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

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

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

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

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

I would like cost index information, also. ____

The following policy(ies) may be replaced as a result of this transaction:

Insurer	Insured	Policy Number
_____	_____	_____
_____	_____	_____
_____	_____	_____

Applicant's Signature	Date	Agent's Signature	Date
_____		_____	

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

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EXHIBIT B
NOTICE REGARDING REPLACEMENT

IMPORTANT MESSAGE FROM THE NEW JERSEY INSURANCE DEPARTMENT:

If you are thinking of buying a new life insurance policy or discontinuing or changing an existing policy, comparison shopping can save you substantial sums of money.

It is to your benefit to compare life insurance products. Your existing company will provide you with a policy summary (a written statement describing the elements of your policy) and cost index information if you notify the company of your intention to replace your current policy. Both of these items make it easy and convenient to compare your present coverage with that which the agent has proposed. FAILURE TO COMPARE MAY COST YOU MONEY.

The New Jersey Department of Insurance suggests that you consider the following points before deciding whether to replace your existing insurance.

ITEMS TO CONSIDER

1. If the policies are basically similar, premiums for a new policy may be higher because rates generally increase as your age increases.
2. Cash value and dividends, if any, may grow more slowly under a new policy initially because of the initial costs of issuing a policy. Or, the policy you are purchasing may not build any equity at all. Which type fits your needs?
3. Your present insurance company may be able to make a change in the terms of your existing policy to meet your changing needs. This may be more favorable than replacing existing insurance with new insurance.
4. If you borrow against an existing policy to pay premiums on a new policy, death benefits payable under your existing policy will be reduced by the amount of unpaid loan, including unpaid interest.
5. Current interest rates are not guaranteed. Guaranteed interest rates are usually considerably lower than current rates. What rates are guaranteed?
6. Do premiums remain level or are they subject to change? Up or down?
7. A participating policy is one that pays dividends. Dividends may materially reduce the cost of insurance over the life of the contract. While dividends are not guaranteed, you can ask to review the company's dividend payment history to get an idea of how much it pays. Have you considered the projected dividends in calculating the fiscal cost of the insurance?
8. When a new policy is issued, the suicide and incontestable provisions (which could enable an insurer to deny your claim) run for a two year period from the issue date. If your existing policy is more than two years old, these provisions have expired.
9. An agent typically earns the majority of commission from the first year's premium on a new policy, and thus has an incentive to propose a new policy.

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

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

(a)

DIVISION OF ACTUARIAL SERVICES

Smoker and Nonsmoker Mortality Tables

Proposed New Rule: N.J.A.C. 11:4-24

Authority: N.J.S.A. 17:1C-6(e); N.J.S.A. 17B:19-8a(i); N.J.S.A. 17B:25-19g; and N.J.S.A. 17B:25-19h(viii).
Proposal Number: PRN 1985-551.

The agency proposal follows:

Summary

N.J.S.A. 17B:19-8a(i) and 17B:25-19h(viii) provide that the only mortality tables which may be substituted for those referenced in the statute are those adopted after September 11, 1981 by the National Association of Insurance Commissioners (NAIC) and approved by regulation promulgated by the Commissioner. These tables may be used by insurers to determine minimum reserves and nonforfeiture values.

Many insurance companies currently charge less to insure people who do not smoke. However, current mortality tables do not reflect the variation in mortality rates being experienced by smokers and nonsmokers. This variation is not being reflected in policy minimum values and discourages some companies from passing the benefit on to nonsmokers. These new tables should help to alleviate this problem.

N.J.A.C. 11:4-24.1 states the purpose of the proposed new subchapter.

N.J.A.C. 11:4-24.2 defines the various mortality tables referred to in the rule.

N.J.A.C. 11:4-24.3 provides, in the determination of minimum cash surrender values, amounts and periods of nonforfeiture benefits and reserve liabilities, for: substitution of smoker and nonsmoker tables; a six-year age setback on female lives when using the 1958 CSO and CET Tables; and conditions to be met when separate smoker and nonsmoker rates are used. Consistency is also required in the use of mortality tables for plans of insurance once the 1980 CSO table is elected.

N.J.A.C. 11:4-24.4 is a separability provision.

Social Impact

The proposed new subchapter would allow the use of mortality tables that reflect differences in mortality between smokers and nonsmokers in determining minimum reserve liabilities and policy values. The ability of insurers to use lower case surrender and nonforfeiture values for nonsmokers and higher cash surrender and nonforfeiture values for smokers may encourage some insurers to offer lower rates to nonsmokers and higher rates to smokers. The recognition by insurers of improved life expectancy for nonsmokers and decreased life expectancy for smokers could perhaps induce some people to stop smoking in order to enjoy the lower premiums.

Economic Impact

Insurers that choose to use the smoker and nonsmoker mortality tables can expect to receive reduced premiums from nonsmokers and great premiums from smokers. However, the change in premiums should be offset by the better risks and lesser reserve liabilities offered by nonsmokers and the worse risks and higher reserve liabilities which the smokers represent.

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Insurers may anticipate an increase in new business by selling to nonsmokers.

Insureds can expect an increase or decrease in premium costs, and a corresponding increase or decrease in nonforfeiture values, depending on whether the individual is a smoker or nonsmoker.

The Department of Insurance may incur administrative costs in reviewing new filings, but these costs will be absorbed in its existing budget.

Full text of the proposed new rule follows.

SUBCHAPTER 24. SMOKER AND NONSMOKER MORTALITY TABLES

11:4-24.1 Purpose

The purpose of this subchapter is to authorize the use of mortality tables adopted after September 11, 1981 by the National Association of Insurance Commissioners in determining minimum nonforfeiture standards and minimum valuation standards.

11:4-24.2 Definitions

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

"1980 CSO Table" means that mortality table, consisting of separate rates of mortality for male and female lives, prescribed by N.J.S.A. 17B:19-8a(i) and N.J.S.A. 17B:25-19h(viii) and referred to therein as the Commissioners 1980 Standard Ordinary Mortality Table, with or without Ten Year Select Mortality Factors.

"1980 CET Table" means that mortality table, consisting of separate rates of mortality for male and female lives, prescribed by N.J.S.A. 17B:25-19h(viii) and referred to therein as the Commissioners 1980 Extended Term Insurance Table.

"1958 CSO Table" means that mortality table prescribed by N.J.S.A. 17B:9-8a(i) and N.J.S.A. 17B:25-19g and referred to therein as the Commissioner 1958 Standard Ordinary Mortality Table.

"1958 CET Table" means that mortality table prescribed by N.J.S.A. 17B:25-19g and referred to therein as the Commissioners 1958 Extended Term Insurance Table.

"Smoker and nonsmoker mortality tables" means the mortality tables with separate rates of mortality for smokers and nonsmokers derived from the 1980 CSO, 1980 CET, 1958 CSO and 1958 CET tables defined above and approved by the National Association of Insurance Commissioners in December 1983.

"Composite mortality tables" means the 1980 CSO, 1980 CET, 1958 CSO and 1958 CET mortality tables defined above, as they were originally published with rates of mortality that do not distinguish between smokers and nonsmokers.

11:4-24.3 Smoker and nonsmoker mortality tables

(a) In determining minimum cash surrender values, minimum amount and minimum periods of nonforfeiture benefits, and minimum reserve liabilities for any policy of insurance delivered or issued for delivery in this State after the operative date of N.J.S.A. 17B:25-19h(xi) for that policy form and before January 1, 1989, at the option of the insurer and subject to the conditions in (e) below, the following tables may be substituted:

1. The 1958 CSO Smoker and Nonsmoker Mortality Tables may be substituted for the 1980 CSO Table; and
2. The 1958 CET Smoker and Nonsmoker Mortality Tables may be substituted for the 1980 CET Table.

(b) For any category of insurance issued on female lives using 1958 CSO or 1958 CET smoker and Nonsmoker Mortality Tables in determining minimum cash surrender values, minimum amounts and minimum periods of nonforfeiture benefits, and minimum reserve liabilities, such minimum values may be calculated according to an age not more than six years younger than the actual age of the insured.

(c) Once an election has been made to use a 1980 CSO Mortality Table for a plan of insurance, the substitution in (a) above shall not be available for any subsequent new plan of insurance.

(d) In determining minimum cash surrender values, minimum amounts and minimum periods of nonforfeiture benefits, and minimum reserve liabilities for any policy of insurance delivered or issued for delivery in this State after the operative date of N.J.S.A. 17B:25-19h(xi) for that policy, at the option of the insurer and subject to the conditions in (e) below, the following tables may be substituted:

1. The 1980 CSO Smoker and Nonsmoker Mortality Tables may be substituted for the 1980 CSO Table; and
2. The 1980 CET Smoker and Nonsmoker Mortality Tables may be substituted for the 1980 CET Tables.

(e) For each policy form with separate rates for smoker and nonsmokers, an insurer may:

1. Use composite mortality tables to determine minimum cash surrender values, minimum amounts and minimum periods of nonforfeiture benefits and minimum reserve liabilities;
2. Use smoker and nonsmoker mortality tables to determine the valuation net premiums and minimum reserves, if any, required by N.J.S.A. 17B:19-8e and use composite minimum amounts and minimum periods of nonforfeiture benefits and basic minimum reserve liabilities; or
3. Use smoker and nonsmoker mortality tables to determine minimum cash surrender values, minimum amounts and minimum periods of nonforfeiture benefits and minimum reserve liabilities.

11:4-24.4 Separability

If any provision of this subchapter or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(a)

Annuity Mortality Tables

Proposed New Rule: N.J.A.C. 11:4-26

Authority: N.J.S.A. 17:1C-6(e) and N.J.S.A. 17B:19-8a(ix).

Proposal Number: PRN 1985-552.

The agency proposal follows:

Summary

N.J.S.A. 17B:19-8a(ix) provides that an individual annuity table used by insurers in determining the minimum standard of valuation for individual annuity and pure endowment contracts must be adopted by the National Association of Insurance Commissioners and approved by regulation

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promulgated by the Commissioner. The proposed new subchapter, N.J.A.C. 11:4-26, approved the use of two new mortality tables to determine the minimum standard of valuation for annuity and pure endowment contracts.

The new tables will increase the insurer's minimum reserve requirement for individual annuity and pure endowment contracts.

N.J.A.C. 11:4-26.1 states the purpose of the proposed new subchapter.

N.J.A.C. 11:4-26.2 describes the two tables referred to in the rule.

N.J.A.C. 11:4-26.3 states that the 1983 Table "a" is approved for use, at the discretion of the companies, in the valuation of individual annuity or pure endowment contracts issued on or after September 11, 1981.

N.J.A.C. 11:4-26.3(b) mandates the use of the 1983 Table "a" for any annuity or pure endowment contract issued on or after January 1, 1987.

N.J.A.C. 11:4-26.4(a) states that the 1983 GAM and "a" Tables are approved for use, at the discretion of the companies, in the valuation of any annuity or pure endowment purchased on or after September 11, 1981 under a group annuity or pure endowment contract.

N.J.A.C. 11:4-26.4(b) mandates the use of the 1983 GAM Table for any annuity or pure endowment purchased on or after January 1, 1987 under a group annuity or pure endowment contract.

N.J.A.C. 11:4-26.5 is a separability provision.

Social Impact

The new subchapter will require insurers to maintain a higher minimum reserve, and thus they will benefit from a 1984 federal income tax law. The insureds, through the insurers, will also benefit from this tax law. This impact, however, is more economic than social.

Economic Impact

The new mortality tables reflect longer life expectancies. By mandating the use of these new tables, the proposed new subchapter will require insurers to maintain higher minimum reserves in order to provide annuity payments over a longer period of time.

A 1984 federal income tax law permits insurers to take deductions for reserve increases only when the reserves are calculated on the minimum basis prescribed by the existing state statutes. When a total of 26 state permit the use of these tables, insurers will be able to take advantage of this law. Without this tax advantage, the lower mortality rate would result in either an increase in the cost of an annuity contract or a decrease in the annuity payment. The tax benefit will be passed on to the consumers.

The Department of Insurance does not expect to be affected economically by this proposed new subchapter.

Full text of the proposed new rule follows.

SUBCHAPTER 26. ANNUITY MORTALITY TABLES

11:4-26.1 Purpose

The purpose of the new subchapter is to recognize new mortality tables, the 1983 Table "a" and the 1983 GAM Table, for use in determining the minimum standard of valuation for annuity and pure endowment contracts.

11:4-26.2 Definitions

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

"1983 Table 'a' " means that mortality table adopted as a recognized mortality table for annuities in June, 1982 by the National Association of Insurance Commissioners.

"1983 GAM Table" means that mortality table adopted as a recognized mortality table for annuities in December, 1983 by the National Association of Insurance Commissioners.

11:4-26.3 Individual annuity or pure endowment contracts

(a) The 1983 Table "a" is approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after September 11, 1981.

(b) The 1983 Table "a" shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 1987.

11:4-26.4 Group annuity or pure endowment contracts

(a) The 1983 GAM Table and the 1983 Table "a" are approved as group annuity mortality tables for valuation and, at the option of the company, either table may be used for purposes of valuation for any annuity or pure endowment purchased on or after September 11, 1981 under a group annuity or pure endowment contract.

(b) The 1983 GAM Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 1987 under a group annuity or pure endowment contract.

11:4-26.5 Separability

If any provision of this subchapter or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(a)

DIVISION OF THE REAL ESTATE COMMISSION

Qualifications for Licensing: Broker and Broker-Salesperson

Proposed Amendment: N.J.A.C. 11:5-1.3

Authority: N.J.S.A. 45:15-10.1 and 45:15-17.
Proposal Number: PRN 1985-547.

The agency proposal follows:

Summary

The proposed amendment confirms the existing practice of the Commission to require a broker's apprenticeship that consists of full time employment during normal business hours. Recently the Commission has received, and been required to disapprove, the apprenticeship of broker candidates who maintain other full time employment during normal business hours. This proposed amendment further defines "full time" for the information of those seeking a broker's license.

The existing language, "full time," has been consistently construed to mean during normal business hours of approx-

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imately 9:00 A.M. to 5:00 P.M. weekdays for several reasons. First, a broker must obtain not only experience in selling or leasing property, which can be gathered at odd hours on evenings and weekends, but also a full knowledge of the real estate brokerage business, including substantial contact with other licensees as well as lawyers, banks, financial institutions, engineers and surveyors, title insurers and others involved in the sale of property. Such experience is only evident when the applicant serves his or her apprenticeship during normal office or business hours. Second, a thorough apprenticeship requires a degree of commitment to learning; evening, weekend or vacation work as a salesperson is insufficient to immerse the applicant in all phases of the business necessary to serve the public properly as a broker. Finally, a real estate broker must be in full time supervision of his or her office. N.J.A.C. 11:5-1.18(a) requires that all offices be open to the public during ususal business hours. Since the only real difference in license status between a broker and a salesperson is that a broker may maintain his or her own office, the qualification clarified in this proposed amendment helps ensure that those granted brokers' licenses work full time in the brokerage business.

Social Impact

The proposed amendment impacts upon the public served by licensed real estate brokers and real estate broker license applicants. Since it merely further defines existing language, it has no substantial social impact, except upon those broker applicants not presently working full time during normal business hours. It has a positive social impact on that limited class, in that it clearly informs them of the qualifications for licensure.

Economic Impact

The proposed amendment impacts upon the Division of Real Estate Commission and upon the limited number of broker license applicants who presently do not work full time during normal business hours. It has a positive economic impact on those prospective applicants, in that it advises them against expending the time and effort required to meet other qualifications unless they qualify by full time employment during normal business hours during a two-year apprenticeship. It has a positive economic impact on the Division of the Real Estate Commission, in that it will serve to reduce applications by such applicants, which must be reviewed and denied in accordance with procedural standards.

Full text of the proposal follows, (additions shown in boldface **thus;**).

11:5-1.3 Qualifications for licensing; broker and broker-salesperson

(a) The Commission defines the word "apprenticeship," as used in N.J.S.A. 45:15, to require a broker-salesperson relationship wherein an adequate knowledge of the methods, techniques and terminology of the business, as well as the pitfalls for the public and licensees alike, has been engendered by intimate, intensive and successful contact with diverse aspects of the real estate business under the guidance and direction of a licensed broker. In order to satisfy the above requirement, an applicant must have been so employed full time **during normal business hours (9:00 A.M. to 5:00 P.M. weekdays)** during his apprenticeship as a salesperson. In addition, the applicant and the broker under whom he serves his apprenticeship shall see to it that the apprenticeship includes practices and experiences in all aspects of the real estate business as set forth in N.J.S.A. 45:15-3.

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

(a)

Advertising

Proposed Amendment: N.J.A.C. 11:5-1.15

Authority: N.J.S.A. 45:15-6.
Proposal Number: PRN 1985-549.

The agency proposal follows:

Summary

This proposal amends N.J.A.C. 11:5-1.15(m) to conform with developing law on the regulation of professional advertising. The present N.J.A.C. 11:5-1.15(m) prohibits real estate brokers from advertising "free" goods or services unrelated to the real estate transaction process. During the past several years the Real Estate Commission has disapproved or punished the circulation of a wide variety of advertising or promotional material. Nevertheless, beginning with *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976) and *Bates v. State Bar,* 433 U.S. 350 (1977), a substantial body of law has developed that limits the right of government agencies to regulate purely commercial speech. Most recently, the Illinois Supreme Court in *Coldwell Banker Residential Real Estate Services of Illinois, Inc. v. Clayton,* Ill. _____(1985) found provisions of the Illinois Real Estate Broker and Salesmen License Act, similar in effect to the present N.J.A.C. 11:5-1.15(m), unconstitutional as violating the First and Fourteenth amendments to the Federal Constitution. The thrust of these cases is that a state agency may not prohibit truthful commercial advertising in the absence of a substantial state interest.

The proposed amendment requires that real estate broker advertising be truthful, that claims be proveable, and that advertising not be misleading. It then defines "misleading" in several paragraphs as follows:

1. Misstating facts or creating false impressions;
2. Containing statements which, though true, imply non-existent state of facts;
3. Offering free or discounted goods or services without clearly specifying all relevant facts, terms and conditions;
4. Offering items that will be provided by the property owner without stating that such items are included in the price;
5. Reprinting published materials in a manner that is not truthful, representative or pertinent;
6. Making untrue or unfair reference to competitors;
7. Containing a photograph, sketch or diagram that is not representative of, or is inconsistent with, the individuals, firm or property to which it relates;
8. Offering free or discounted appraisals;
9. Not complying with the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. and its rules.

Paragraphs 1, 2, 3, 4 and 5 are ordinary definitions applicable generally to misleading advertising and need no detailed explanation. Paragraphs 6, 7 and 8 are specifically relevant to real estate professional advertising.

Paragraph 6 requires that specifics of free offerings be disclosed in advertising. If real estate licensees choose to make

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such offers, this section requires that they provide in the advertisement all necessary information so that the consumer may exercise informed free choice in deciding whether to accept or pursue it.

Paragraph 7 requires brokers who act as agents for specific principals to disclose when items advertised in addition to the property itself are supplied by the principal, rather than the broker. This is actually a term or condition of the offer in that it relates only to a specific property. Licensees must include such a term to advise consumers that the item may not be available on other properties, will be available even though they act through co-operating brokers, and is subject to any final agreement on the transaction.

Paragraph 8 prohibits brokers from offering free or discount formal appraisals. A formal appraisal is valuable only because it is an independent professional judgment. One making it should not have an interest in the transaction, and consumers should not be misled that a formal appraisal by an interested party may be credible generally in the industry.

Paragraph 9 incorporates prohibitions included in the Consumer Fraud Act and its implementing administrative rules. By including it the licensee is notified that violation of this related law may risk action against his or her real estate license. A finding of violation in an action by the Attorney General to enforce that statutes or its rules will be substantial evidence in any administrative action against the licensee.

The proposed rule at subsection (n) includes an affirmative defense for those whose advertising is circulated in national or interstate media, provided an appropriate legend is included. This defense recognizes the reality of national media, and New Jersey's geography as containing parts of major metropolitan areas. It places the burden of proof on the potential violator to go forward with evidence and prove that the elements of the defense exist. These elements include that it was circulated casually in New Jersey, that is, the advertising was directed to consumers in other states, but because of the media's distribution or broadcast range it could not be avoided. Secondly, the advertising does not specifically relate to property in the state, in which New Jersey residents are most likely to be interested and respond. Thirdly, a legend included by the advertiser advises the reader, viewer or hearer that the advertising is not an offer to New Jersey residents. A legend such as "void where prohibited" would be insufficient to meet this requirement. A legend such as "this offer is not being made to residents of New Jersey" would be sufficient, as would a legend including New Jersey with other specified jurisdictions.

N.J.A.C. 11:5-1.15(o) prohibits advertising lotteries and other games of change in the promotion of professional real estate services for the sale of property by real estate licensees. N.J.S.A. 45:15-17(g) prohibits use of such promotions; this section confirms that advertising them is prohibited. It is important that licensees be advised that such prohibitions remain in effect despite the substantial change in N.J.A.C. 11:5-1.15(o).

This amendment restates the expressed policy of the Legislature contained in the License Act. Moreover, by prohibiting the promotion of real estate sales and brokerage services through lotteries, games of chance and the like, it focuses the consumer's attention on the transaction itself rather than sweepstakes, contests and such. While an offer of free or discounted services could be made in broker advertising, the offer to provide them must be clearly stated, not left to chance. This prohibition is consistent with the present New Jersey Consumer Fraud Act, as well as general prohibitions by which all forms of gambling continue to be highly regulated. The Commission's resources should be directed to regulating market functions, not supervising contests.

Social Impact

This proposal impacts upon real estate licensees and the public. It should have a positive social impact in the market for real estate brokers' services as it prohibits misleading advertising. It should have a positive social impact on the public to the extent it implements recent court decisions expressing social policy. Additionally, it provides a clear statement that dishonest or misleading real estate advertising is a violation of the License Act and its rules. In the past, prosecutions for false advertising were required to be made under N.J.S.A. 45:15-17a, making "false promises or substantial misrepresentations". To establish a violation of N.J.S.A. 45:15-17a, it was necessary to prove that there was detrimental reliance on the advertising, and that the advertising had an impact on the transaction. The proposed amendments prohibit inaccurate or misleading advertising per se and permit a direct sanction.

Economic Impact

This proposal impacts upon the Division of the Real Estate Commission, its licensees and buyers and sellers of real property. It should have a positive impact on the Commission. Presently between 10 and 20 percent of the complaints or inquiries received annually from the public deal with alleged violations of the advertising rules, particularly the present N.J.A.C. 11:5-1.15(m). This proposal limits the Commission's role to investigating and prosecuting dishonest advertising. It should have a positive economic impact on real estate licensees as it permits honest competition. It should have a positive economic impact on the consumers of real estate services to the extent that honest competition benefits market forces.

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

11:5-1.15 Advertising rules

(a)-(l) (No change.)

(m) [Except as herein provided, no free offering, including the offering of a free appraisal, shall be made in any advertisement or promotional material. "Appraisal" as used herein is given its technical meaning as a complete study and analysis by a specialist or expert to ascertain fair market value using a process in which all factors that would fix price in the market place must be considered.

1. Nothing herein shall be construed as prohibiting the use of such words as "included" or "included in the purchase price" in reference to items included by owner in the sale of any real estate property or interest therein.

2. Free offerings ancillary to the real estate transaction process, including but not limited to offerings of market studies, seminars or offerings in the nature of promotional items of token value, such as calendars or pens, are not prohibited. A market study is not an appraisal as herein defined.] **Claims and representations contained in advertising shall be accurate and provable and shall not be misleading. An advertisement is misleading if:**

1. It misstates facts or creates false impressions;

2. It contains a statement which, though true, implies a nonexistent state of facts;

3. It reprints published material in a manner that is not truthful, representative or pertinent;

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4. It makes untrue or unfair reference to competitors;

5. It contains a photograph, sketch or diagram that is not representative of, or is inconsistent with, the individuals, firm or property to which it relates;

6. It offers free or discounted goods or services without clearly specifying all relevant facts, terms and conditions of the offer;

7. It offers items that will be provided by the property owner without stating that such items are included in the price;

8. It offers a free or discounted appraisal as an inducement to list or buy real property ("appraisal" as used is given its technical meaning as a complete study and analysis by a specialist or expert to ascertain market value using a process by which all relevant factors are considered);

9. It does not comply with the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, et seq., and rules promulgated pursuant to that statute. A finding by the Attorney General that a real estate licensee has engaged in an unlawful practice under the Consumer Fraud Act will be considered by the Real Estate Commission as substantial evidence that the licensee has violated this rule.

n. It shall be an affirmative defense in any prosecution for a violation of (m) above that:

1. The advertisement was circulated casually in New Jersey by national or interstate media;

2. That the property specified, if any, is not within this state;

3. The advertisement stated in a manner reasonably calculated to attract attention that it does not contain any offer to New Jersey residents.

(o) No real estate licensee shall advertise any plan, scheme or method for the sale or promotion of the sale of real estate or an interest therein which involves a lottery, contest, game, prize, drawing or the offering of a lot or parcel or lots or parcels for promotional purposes.

(a)

Payment of Fees as Prescribed by Statute

Proposed Amendment: N.J.A.C. 11:5-1.20

Authority: N.J.S.A. 45:15-6.
Proposal Number: PRN 1985-548.

The agency proposal follows:

Summary

The proposed amendment requires that license and other fees paid to the Real Estate Commission be paid only by money order, certified or bank check, or by check on a broker's business account. This amendment is intended to prohibit the payment of the various license fees by salespersons and broker-salespersons by their own uncertified personal checks.

During the past two years the Commission has experienced an increase in the number of dishonored checks. This results in substantial additional administrative time by Commission personnel in collecting these funds. Although fines may be imposed against the maker of a check drawn on insufficient funds, often such checks are drawn on a personal checking account of someone other than the applicant.

Since all salespersons and broker-salespersons must be licensed to a broker, and since all brokers are required to maintain separate trust and business accounts, salespersons who pay their own license fees can pay them to their broker. The broker can then submit his check for the license fees of the salesperson or broker-salesperson.

Social Impact

The proposed amendment will impact on the personnel of the New Jersey Real Estate Commission and upon its licensees. It will have a positive social impact on the Commission in that it will improve administrative workflow by minimizing the number of dishonored checks that must be processed. Licensees will now have to pay their license fees through the broker's business account, or by certified or bank check, or money order.

Economic Impact

The proposed amendment will impact on the personnel of the New Jersey Real Estate Commission and upon its licensees. It will have a positive economic impact for Commission personnel in that it will reduce the personnel costs by reducing the time necessary to be spend collecting dishonored checks. It will have no significant impact upon licensees, except the slight cost of individual per check bank charges.

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

11:5-1.20 Payment of fees as prescribed by statute

Any and all fees prescribed by the Real Estate License Act shall be paid by **broker's business account check, certified or bank** check or money order payable to the State Treasurer of New Jersey. No cash or currency shall be accepted.

LAW AND PUBLIC SAFETY

(b)

DIVISION OF MOTOR VEHICLES

Licensing Service
Motor Home Title Certificates

Proposed Readoption: N.J.A.C. 13:21-20
Proposed Amendment: N.J.A.C. 13:21-20.2

Authorized By: Robert S. Kline, Acting Director, Division of Motor Vehicles.
Authority: N.J.S.A. 39:10-4.
Proposal Number: PRN 1985-555.

Submit comments by November 6, 1985 to:
Robert S. Kline, Acting Director
Division of Motor Vehicles
25 So. Montgomery Street
Trenton, New Jersey 08666

The agency proposal follows:

Summary

The Division of Motor Vehicles proposes to readopt the provisions of N.J.A.C. 13:21-20.1 through 13:21-20.5 concerning motor home title certificates. These rules were filed and became effective on October 30, 1980 and will expire on October 29, 1985. The rules are now to be readopted in accordance

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with Executive Order 66(1978).

The rules implement the provisions of the "Motor Vehicle Certificate of Ownership Law" (N.J.S.A. 39:10-1 et seq.) pertaining to the issuance of certificates of origin and certificates of ownership for motor homes. N.J.A.C. 13:21-20.1 (Definitions) defines those terms which are used in the subchapter. N.J.A.C. 13:21-20.2 (Assignment and affixation of vehicle identification number) provides that a first-stage manufacturer of a motor home shall assign and affix a vehicle identification number on the incomplete chassis or van. This section also provides that a multi-stage manufacturer of a type "A" motor home shall affix the vehicle identification number assigned by the first-stage manufacturer in a conspicuous place on the completed vehicle. This section requires that the vehicle identification number assigned by the first-stage manufacturer be used on applications for certificates of ownership and registration.

N.J.A.C. 13:21-20.3 (Certificate of origin) provides that first-stage manufacturers and multi-stage manufacturers of motor homes shall execute and deliver a certificate of origin for each new motor home in accordance with N.J.S.A. 39:10-8 and N.J.A.C. 13:21-4.1.

N.J.A.C. 13:21-20.4 (Transfer of ownership of new motor homes) provides that an owner of a new motor home shall transfer ownership thereof by assigning the multi-stage manufacturer's certificate of origin and delivering it and the first-stage manufacturer's certificate of origin to the new owner. The certificate of ownership issued to the new owner shall reflect the vehicle identification number assigned by the first-stage manufacturer and the name of the multi-stage manufacturer.

N.J.A.C. 13:21-20.5 (Certificates of ownership for used motor vehicles converted into motor homes) provides for the issuance of a certificate of ownership to an owner of a used motor vehicle which has been converted into a motor home. The owner must submit an application with statutory fee, the certificate of ownership for the used motor vehicle, photographs of the exterior and interior of the used motor vehicle clearly depicting the permanently installed life support systems, a certified weight slip for the converted motor vehicle and a pencil tracing of the vehicle identification number for the used motor vehicle.

The Division of Motor Vehicles has reviewed the rules in accordance with Executive Order 66 and has determined that they are "necessary, adequate, reasonable, efficient, understandable and responsive to the purposes for whch they were promulgated." The rules provide an efficient procedure for the administration of the "Motor Vehicle Certificate of Ownership Law" and protect the public interest in an area relating to the regulation and control of certificates of origin and certificates of ownership to new and used motor homes. The rules will continue to protect the public interest in this regard.

Social Impact

The rules proposed for readoption promote the public interest in matters relating to the issuance of certificates of origin and certificates of ownership to new and used motor homes. The rules assist in preventing the sale, purchase, possession or use of stolen motor homes, or motor homes with fraudulent titles, in this State.

Economic Impact

There is an economic impact on the State in administering the certificate of ownership law although the exact cost is not readily quantifiable. There is a beneficial economic impact on the public to the extent that these rules regulate and control titles to motor homes so as to limit the sale, purchase, disposal, possession, use or operation of stolen motor homes, or motor homes with fraudulent titles in this State.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 13:21-20.

Full text of the proposed amendment to the readoption follows (additions indicated in boldface **thus**).

13:21-20.2 Assignment and affixation of vehicle identification number

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

(e) First-stage and multi-stage manufacturers shall assign and affix a vehicle identification number in accordance with the format, content and general physical requirements for vehicle identification numbers prescribed by the National Highway Traffic Safety Administration at 49 C.F.R. 565.1 et seq. and 49 C.F.R. 571.115.

(a)

BOARD OF NURSING

Delegation of Nursing Tasks

Proposed New Rule: N.J.A.C. 13:37-6.2

Authorized By: Board of Nursing, Sylvia Edge, R.N., M.A., President.
Authority: N.J.S.A. 45:11-24.
Proposal Number: PRN 1985-556.

Submit comments by November 6, 1985 to:
Sister Teresa L. Harris, Executive Secretary
State Board of Nursing
1100 Raymond Boulevard, Room 319
Newark, New Jersey 07102

Summary

The proposed new rule establishes that a registered professional nurse may assign the performance of certain simple nursing functions to other nurses, and/or ancillary personnel within the following stated limitations:

1. The registered nurse will remain solely responsible for assessing the needs of the patient.
2. The registered nurse will make an independent nursing judgment that ancillary personnel have the appropriate skill and knowledge to perform the assigned duty.
3. The registered nurse will train, directly supervise and evaluate performance of the task.
4. The only tasks which may be assigned are those which have been approved by the Board of Nursing, either through its general guidelines or by the Board on a case-by-case basis, whichever is applicable.

Social Impact

The proposed new rule will have a favorable impact on the public. The rule codifies what has already been the long-standing common practice throughout the nursing community. It is accepted common practice for a nursing aide to work under the supervision of a registered nurse and to assist that

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nurse as required in the treatment and care of patients. The new rule will assure that nursing care is rendered by an individual qualified and properly trained to perform it; that there is adequate supervision and evalution of these individuals, and that there is a recognized mode of accountability available in cases where negligent or improper performance of these functions occur.

Economic Impact

The new rule will have a favorable economic impact. It will reduce the cost of health care by increasing the uses of L.P.N.s, and unlicensed aides and technicians. It will maintain high standards of health care by assuring that only those duties which can be safely assigned will be so assigned in accordance with specific guidelines established by the Board of Nursing and in accordance with the independent judgment of an individual nurse who has assessed the patient and will be responsible for training supervising and evaluation execution of the nursing regimen.

Full text of the proposed new rule follows.

13:37-6.2 Delegation of nursing tasks

(a) A registered professional nurse may assign certain nursing tasks which provide for the support and restoration of life and well-being to other nurses, and/or ancillary personnel, provided:

1. The Registered Professional Nurse shall remain responsible for teaching, training, directly supervising and evaluating the effective execution of the nursing regimen; and

2. The Registered Professional Nurse shall maintain responsibility for assessing, reassessing and evaluating the client and she shall make an independent judgment on the propriety of assigning nursing tasks to another on a case-by-case basis; and

3. The assignment of nursing tasks shall be made only in accordance with Guidelines established by the Board of Nursing. In the event an area of proposed assignment is not adequately addressed in these Guidelines, the issue shall be referred to the Board of Nursing for its evaluation and determination on the propriety of said assignment.

STATE BOARD OF PHYSICAL THERAPY

Proposals numbered PRN 1985-524, 525, 526, 527 and 528, and pre-proposal PPR 1985-7 are authorized by the New Jersey State Board of Physical Therapy, Helen Ransky, P.T., Chairman.

Submit comments by November 6, 1985 to:
Patricia E. Stuart
Executive Secretary
New Jersey State Board of Physical Therapy
1100 Raymond Boulevard
Newark, New Jersey 07102

(a)

Agency Organization and Administration

Proposed New Rules: N.J.A.C. 13:39A-1

Authority: N.J.S.A. 45:9-37.11 et seq., specifically 45:9-37.18(f) and N.J.S.A. 45:1-21.

Proposal Number: PRN 1985-524.

The agency proposal follows:

Summary

The proposed new rules set forth certain responsibilities and authorities of the officers and Executive Secretary of the New Jersey State Board of Physical Therapy which was newly created by P.L. 1983, c.297 (N.J.S.A. 45:9-37.11 et seq.). Of particular importance, is the clear articulation of the delegation of authority to the chairman to act on an interim basis with respect to applications for temporary suspensions and other matters requiring review prior to the date of the next board meeting. The rules also provide that a review procedure will be available to applicants failing the examination. Finally, the proposed subchapter provides notice of the fees to be charged for examination, licensure and other services that may be provided by the Board.

Social Impact

The proposed new rules will ensure that the board will be in a position to discharge its statutory duties, with a clear delineation of responsibilties of its Executive Secretary. Further, the fees, as represented herein, are calculated to provide the Board with the revenue necessary to establish itself as an independent regulatory agency and maintain appropriate standards in the profession.

Economic Impact

The fees, as set forth in the proposed regulation, have been based upon a careful evaluation of the current and anticipated fiscal status of the Board. Certainly licensees and applicants will directly feel the economic impact of the rule since most fees are increased over the level which had been previously established by the Board of Medical Examiners, which was formerly assigned the responsibility for supervising the registration of physical therapists and physical therapist assistants. These increases will assure that the Board will have adequate resources to continue the efficient regulation of the practice of physical therapy. The remaining sections of the proposal are not expected to have any significant economic impact.

Full text of the proposed new rule follows.

CHAPTER 39A
STATE BOARD OF PHYSICAL THERAPY

SUBCHAPTER 1. AGENCY ORGANIZATION AND ADMINISTRATION

13:39A-1.1 Election of officers

The membership of the New Jersey Board of Physical Therapy shall once each year elect a chairman, vice chairman and a secretary. 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 and an express delegation of responsibility, the vice chairman shall assume all of the duties of chairman.

13:39A-1.2 Delegation of authority to act on emergent applications

The chairman shall be authorized to hear and decide emergent applications by the Attorney General made pursuant to N.J.S.A. 45:1-22 for the temporary suspension of any license. The chairman may also undertake such other interim action

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as may be required by circumstances arising prior to the next meeting date of the Board, provided that said action is subsequently presented to the Board for its review and action (for example, giving tentative approval to the settlement of a matter about to be heard or during the pendency of a hearing at the Office of Administrative Law.) Any decision made by the chairman pursuant to this rule shall be placed on the agenda of the Board at its next regularly scheduled meeting for the purpose of its review. In so far as it is practicable, the Board shall be provided with a transcript of the record made before the chairman and the parties will be permitted to supplement the record with written submissions.

13:39A-1.3 Duties of the Executive Secretary

(a) The duties of the Executive Secretary include, but shall not be limited to, the following:

1. To establish the content of agenda of each meeting of the Board and be responsible for disseminating the agenda and any documents relating to those agenda entries to Board members, the Attorney General and the Director of Consumer Affairs and to make copies of the agenda of the open public session of the Board meeting available to the interested parties;

2. To prepare and maintain the minutes of every regularly scheduled meeting of the Board as well as any scheduled meeting of any committee for which the Board has directed that minutes shall be maintained;

3. To be responsible for making arrangements for the conduct of any examination administered pursuant to the Physical Therapy Act;

4. To discharge the following functions, without the necessity of referral to and consideration by the Board:

i. To review and respond to correspondence and telephonic communications which seek information concerning the Physical Therapy Act, regulations promulgated thereunder, or any public records of the Board;

ii. To attempt, where appropriate, to resolve consumer complaints by making contact with a licensee to determine if any amicable resolution can be reached without Board action;

5. To refer to the Board for its review:

i. Any correspondence which seeks an interpretation of a statute or a regulation as applied to a particular fact situation;

ii. Any information which appears to disclose a violation of law;

6. To prepare and file the required notices in compliance with the Open Public Meetings Act;

7. To prepare and forward Uniform Penalty Letters (UPL), as appear at N.J.A.C. 13:27.51, at the direction of the Board or a committee thereof to licensees or other persons believed to have violated the Physical Therapy Act or the regulations promulgated thereunder.

13:39A-1.4 Examination review procedure

An applicant who has failed an examination shall be permitted a reasonable opportunity to review his or her test. The applicant shall be advised in writing that such a right to review exists and that the review may be conducted at the office of the Board during regular business hours. In no case, shall the Board be required to compromise the validity of a standardized examination for the purposes of making this review available.

13:39A-1.5 Fees and charges

(a) The following fees shall be charged by the New Jersey State Board of Physical Therapy.

1. Examination fee for Physical Therapist $125.00
2. Examination fee for Physical Therapist Assistant $110.00
3. Licensure by endorsement fee for Physical Therapist $100.00
4. Temporary License Fee ..... $ 60.00
5. Renewal of Physical Therapist License ..... $ 60.00
6. Renewal of Physical Therapist Assistant License ..... $ 60.00
7. Restoration charge for lapsed license ..... $ 60.00
8. Provision of duplicate license ..... $ 10.00
9. Certification of eligibility for examination ... $ 25.00

(a)

Authorized Practice

Proposed New Rules: N.J.A.C. 13:39A-2

Authority: N.J.S.A. 45:9-37.18(f) and N.J.S.A. 45:1-21.
Proposal Number: PRN 1985-525.

The agency proposal follows:

Summary

The proposed new rules define and clarify what the newly created Board of Physical Therapy will deem to be authorized practice by its licensees. N.J.A.C. 13:39A-2.1 sets forth the definitions which the Board seeks to adopt. Each of the components of the practice of physical therapy which the Legislature has identified—treatment, examination and instruction—is defined in detail. The Board is also seeking to define what licensees may accept as evidence that the direction of an authorized health care provider has been obtained prior to the initiation of physical therapy treatment. For example, verbal prescriptions will be deemed acceptable, if memorialized within two weeks. In addition to the presently accepted practice of commencing physical therapy treatment upon a physician prescription, the Board will deem it appropriate for a physical therapist to initiate therapy after physician has given a clearance. The Board proposes to adopt this interpretation in recognition of clear statutory language contained at N.J.S.A. 45:9-37. The use of the term "direction" is considered by the Board to be a legislative recognition that physical therapists need no longer work "under the supervision" of a physician as had been required by N.J.S.A. 45:9-37, repealed by P.L. 1983, c. 297. The definitional section also articulates the level of supervision which a physical therapist must exercise over a physical therapist assistant.

Although physical therapists may not initiate patient treatment without a physician review and clearance, the Board's construction of N.J.S.A. 45:9-37.11 et seq. would permit physical therapists to engage in examination of a patient without physician referral, so long as treatment is not rendered. Thus, consumers will be able to seek the services of a physical therapist without first having a physician recommend that course. The Board believes that such a modification of the present practice is authorized by N.J.S.A. 45:9-37.13. The Legislature has provided that physician direction must be obtained prior to the initiation of therapy. No such requirement is found at N.J.S.A. 45:9-37.14 with respect to physical therapy examination and instruction. N.J.A.C. 13:39A-2.2 would also reiterate the legislative determination that a physician's direction is not necessary prior to making a modification in a physical therapy treatment plan.

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N.J.A.C. 13:39A-2.3 clarifies those activities in which a physical therapist assistant may engage and delineates the responsibilities that a supervising physical therapist must bear. Finally, 13:39A-2.4 identifies the tasks which may be delegated by a physical therapist to unlicensed persons.

Social Impact

It is believed that the proposed new rules will expand the options available to consumers who may desire physical therapy services by permitting them to obtain physical therapist examination without a physician referral. Patients, thus, will not be as dependent on the physician's choice of therapist and will be free to utilize a physical therapist whom they feel is better equipped to meet their needs. Any patients who are not desirous of exercising this option, of course, may still rely on the advice of their physician. By clearly delineating the responsibilities of a supervising physical therapist and the permissible activities in which a physical therapist assistant may engage, the rules assure that the public will be receiving the highest quality care.

Economic Impact

By recognizing that the Legislature has intended to permit a physical therapist to be an entry point into the health care system, the Board, through the adoption of this rule, will be infusing competition into the health care marketplace. Of course, since physician clearance will still be required prior to the initiation of treatment, a cost will be borne by the consumer.

Full text of the proposed new rule follows.

SUBCHAPTER 2. AUTHORIZED PRACTICE

13:39A-2.1 Definitions

(a) The following words and terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Direct supervision," when used in reference to physical therapist assistant, means the presence of the supervising physical therapist on site, readily available to respond to an emergency during any treatment procedure.

"Physical therapy examination" includes a taking of a patient's history of complaint, a hands-on evaluation or assessment of objective symptoms presented as well as the utilization of tests and measures to assist the physical therapist in the evaluation of the patient's objective signs and symptoms including, but not limited to, the use of tests to assess postural alignment; joint mobility and function; muscle and nerve function, including electrophysiologic status; movement skill; gait; necessity for assistive devices; fit of orthoses and prostheses; cardiopulmonary function; sensory and motor function, including related pain and tenderness; and performance of activities required in daily living; but does not include the examination of any person conducted for the purpose of diagnosing any disease or organic condition. Nothing herein is intended to preclude a physical therapist from conducting an examination within the scope of his practice or taking a history which is designed to ascertain if contraindications to therapy may be present and thus the referral to a plenary licensed physician warranted.

"Physical therapy instruction" includes the provision of consultative, educational or other advisory services for the purpose of preventing or reducing the incidence and severity of physical disability, bodily malfunction or pain from injury, disease or other physical condition or for the purpose of providing information to patients or groups of interested persons regarding the value of physical therapy agents and measures in general or with regard to specific physical conditions.

"Physical therapy practice" includes physical therapy treatment and physical therapy examination and instruction.

"Physical therapy treatment" includes the administration of physical therapy measures, activities, agents or devices, including but not limited to postural correction; joint mobilization; range of motion exercise; muscle and soft tissue stretching; muscle strengthening exercise; balance and coordination exercises; massage techniques; pre and post-natal exercises; growth and development programs; biofeedback techniques; perceptual training; electrophysiologic tests and modalities; pulmonary hygiene treatment; breathing exercises; postural drainage; gait training; hydrotherapy and paraffin bath when used for preventative or therapeutic purposes to correct or limit physical disorders or dysfunctions.

"Physician direction" includes any one of the following:

1. Written prescription of a licensed physician, dentist or other authorized health care provider;
2. Documentation of physician clearance for the patient for treatment which may include a countersigning of the physical therapist's proposed plan of treatment;
3. Verbal prescription, in person or via telephone, which shall be memorialized by the prescriber in writing within two weeks. But, in no case, will physician direction be construed to have been provided on the basis of a patient's representation that he or she has obtained a physician's clearance.

13:39A-2.2 Authorized practice by a licensed physical therapist

(a) A licensed physical therapist may initiate physical therapy treatment, but only after having received physician direction.

(b) A licensed physical therapist may engage in the following activities and practices without physician direction:

1. Physical therapy examination;
2. Physical therapy instruction;
3. Modification of physical therapy treatment previously initiated upon physician direction.

13:39A-2.3 Authorized practice by a licensed physical therapist assistant

(a) A licensed physical therapist assistant may initiate patient physical therapy treatment and engage in the practice of physical therapy at the direction of and under the direct supervision of a licensed physical therapist who has received physician direction. A licensed physical therapist assistant may not initiate physical therapy treatment upon the direction of a physician or other authorized health care provider.

(b) A licensed physical therapist assistant must document treatments given, but such documentation does not relieve the supervising physical therapist from the responsibility of reviewing entries and documenting the initial evaluation, countersigning monthly progress notes and documenting discharge summaries.

(c) A licensed physical therapist assistant may not perform a physical therapy examination, develop a treatment plan, modify a treatment plan, or engage in physical therapy instruction, including, but not limited to, the recommendation of assistive devices and modifications of the patient's physical environment without the approval of the supervising physical therapist.

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13:39A-2.4 Delegation to unlicensed persons

(a) Activities which may be delegated to unlicensed persons by physical therapists include routine tasks relating to the cleanliness and maintenance of equipment and the physical plant and the management of the business aspects of the practice and such other assignments with respect to patient care as may be specifically made by the physical therapist, including patient transport, positioning of the patient and undressing and dressing.

(b) An unlicensed person shall not:

1. Advise, teach, or instruct patients concerning their condition or disability;

2. Carry out testing or evaluation procedures;

3. Make notations on a patient's permanent record;

4. Attach electrodes of any kind to the skin;

5. Administer any of the following modalities, or such other modalities as the Board may from time to time recognize, in light of developing technology:

i. Ultraviolet rays;

ii. Ultrasound;

iii. Electromagnetic rays;

iv. Laser;

v. Diathermy.

6. Vary exercise equipment parameters without direct licensed physical therapist supervision;

7. Provide therapeutic massage;

8. Assist in administering physical agents to a patient who has not had a direct initial evaluation by a licensed physical therapist.

(a)

Unlawful Practices by Licensees

Proposed New Rules: N.J.A.C. 13:39A-3

Authority: N.J.S.A. 45:9-37.18(f) and N.J.S.A. 45:1-21.
Proposal Number: PRN 1985-526.

The agency proposal follows:

Summary

The proposed rule at N.J.A.C. 13:39A-3.1 sets forth the standards to which physical therapists will be held in the conduct of their practice. At subsection (a), the rule identifies the requisite elements of an appropriate physical therapy patient record. Subsections (c), (d), (e) and (f) preclude certain charges by a physical therapist. Subsections (g), (h), (i), (j) and (l) require that certain disclosures be made to consumers so that they may make reasoned choices about the services offered and may make known to the Board any dissatisfaction that they may have with those services.

At N.J.A.C. 13:39A-3.3, certain activities are expressly identified to be outside the scope of physical therapy. Specifically, a physical therapist will be subject to disciplinary sanction by the Board if he begins treatment of a patient without a physican direction as defined at N.J.A.C. 13:39A-2.1(f). Further, the therapist is restricted from performing x-rays and breast or pelvic examinations (unless specifically warranted). Finally, as a supplement to the statutory prohibition on diagnosing set forth at N.J.S.A. 45:9-37, a physical therapist would be prohibited from representing physical therapy treatment to cure or remedy for any disease or organic condition.

Social Impact

This proposed rule provides the framework for the Board to discharge its responsibilities. By clearly articulating the standard to which physical therapists and physical therapist assistants will be held, the Board will assure that practitioners will have adequate notice of a uniform code of conduct and consumers will have a notice of a method for redress if dissatisfied with services. The rule essentially codifies what the Board believes to be the accepted standards in practice today, and thus the social impact of the adoption of this rule will be the achievement of consistency and uniformity in the regulation of the practice of physical therapy.

Economic Impact

To the extent that this proposed rule expressly identifies business practices which will be deemed to be misconduct, (i.e., charging for unnecessary services—subsection (o), charging for the preparation of insurance forms—subsection (c), charging interest on unpaid accounts without prior notice—subsection (e), and charging for unrecorded treatment—subsection (f)), there obviously will be an economic impact upon those practitioners who presently engage in those practices. So too, the provisions requiring disclosure of fees, ownership, license numbers and the notice providing consumers with the address of Board so that they may comment on services, will lead to a better informed consuming public and thus more competition within the practice. The provision relating to advertising is similar to that under which physical therapists were operating when regulation of the practice was entrusted to the Board of Medical Examiners and thus there should be no significant economic impact associated with the adoption of this provision. Probably, the most significant economic impact can be anticipated will arise from the Board's enforcement of subsection (m), (n) and (o) which make it unlawful to charge excessive fees for services, as well as render and charge for unnecessary services. Aggressive enforcement of these sections, where it appears that an over utilization of physical therapy services is occurring could result in a substantial benefit to the public both directly through billings to them and indirectly through insurance premiums. Little, if any economic impact, is anticipated with regard to N.J.A.C. 13:39A-3.3 since the identified activities are presently deemed to be outside the scope of the practice of physical therapy.

Full text of proposed new rule follows.

SUBCHAPTER 3. UNLAWFUL PRACTICES BY LICENSEES

13:39A-3.1 Business practices

(a) The following acts or business practices shall be deemed to be professional misconduct in violation of 45:9-37.11 et seq. and N.J.S.A. 45:1-21(e):

1. Failure to maintain written, contemporaneous patient records which shall include:

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

ii. Documentation of physician direction and efforts taken to obtain memorialization of verbal orders;

iii. A plan of care indicating the goals of the treatment program, the type of treatment, and the frequency and expected duration of treatment;

iv. Dated and signed documentation of each treatment rendered;

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v. Dated and signed progress notes;

vi. Documentation of any changes in the treatment program;

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

viii. A discharge summary which includes the reason for discharge and outcome of physical therapy treatment and the status of the patient at the time of discharge;

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

2. Failure to provide copies of a patient's record of physical therapy treatment within fifteen days of a written request by the patient or any person who the patient has designated to receive such records. Nothing herein, however, should be construed to prohibit a licensed physical therapist from charging a reasonable fee to the patient for the cost of reproduction of a medical record. The withholding or delaying of a record due to a patient's failure to pay a fee for services rendered is expressly prohibited;

3. Requiring a patient or a third party payor to pay a fee for the preparation of insurance claim form, except that nothing herein shall preclude a physical therapist from charging a patient a reasonable fee for the preparation of a written report;

4. 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 physical therapy treatment;

5. 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 physical therapy treatment;

6. Requiring a patient or a third party payor to pay for any physical therapy examination, treatment or other services not documented in a patient chart in a manner consistent with N.J.A.C. 13:39A-4.1(a);

7. Failure to make available a written fee schedule to any interested person upon a request;

8. Failure to include on all bills submitted to a patient or third party payor, the provider's current license number;

9. Failure to post in a conspicuous place a copy of a licensee's biennial renewal certificate;

10. Failure to post in a conspicuous place in any office or health care facility at which the practice of physical therapy is conducted a notice containing the name, mailing address and telephone number of the Board and the following statement:

NOTICE

(Names of licensee, license held) (is) (are) licensed to engage in the practice of physical therapy by the New Jersey State Board of Physical Therapists, 1100 Raymond Boulevard, Room 513, Newark, New Jersey 07102.

11. 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, deceptive or unfair statement or claim. A false, fraudulent, misleading, deceptive or unfair statement includes but is not limited to any statement or claim which:

i. Contains a misrepresentation of facts; or

ii. Is likely to mislead or deceive because it fails to make full disclosure of relevant facts; or

iii. Contains any testimonial or laudatory statement, or other statement or implication that the licensee's professional services are of an exceptional quality; or

iv. Is intended or likely to create a false or unjustified expectation of favorable results; or

v. Implies educational attainments or license in recognition not supported in fact; or

vi. States or implies that the licensee has received formal recognition as a specialist in any aspect of the practice of physical therapy, if this is not the case; or

vii. Represents 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 do not disclose all variables affecting the fees that will in fact be charged; or

viii. Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived; or

ix. Uses techniques of communication which appear to intimidate, exert undue influence or undue pressure over a prospective patient; or

x. Contains offers of gratuitous services or offers of services for a sum equivalent thereto; or

xi. Contains offers of discounts for services without stating the usual and customary fee on which the discount will be taken and the period of time during which the offer can be accepted by a prospective patient.

12. Use or participation in the use of any form of public communication relating to a business entity offering physical therapy services which fails to include the name of the person holding an ownership interest in the advertising entity and the professional license held by each of those persons, except that if the entity is owned by more than four persons, the notice need only include the names of officers in that entity and the licenses they hold;

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

i. The time and effort required;

ii. The novelty and difficulty of the professional treatment;

iii. The skill required to perform the treatment properly;

iv. Any requirements or conditions imposed by the patient or by the circumstances;

v. The nature and length of the professional relationship with the patient;

vi. The experience, reputation and ability of the licensee performing the services;

vii. The nature and circumstances under which the services were provided (for example, emergency, home visit).

14. Undertake to render treatment or to conduct testing which in light of the patient's history and findings are unwarranted and unnecessary;

15. Charge a fee to a patient or a third party payor for a treatment or other physical therapy service which is unwarranted and unnecessary pursuant to 14 above.

13:39A-3.2 (Reserved)

13:39A-3.3 Scope of physical therapy

(a) The following acts and practices shall be deemed to be outside the scope of physical therapy and upon proof that a licensee is engaging in such conduct he or she may be subject to disciplinary action:

1. The initiation of treatment without the direction of a physician as defined at N.J.A.C. 13:39A-2.1;

2. The conduct of a breast or pelvic examination unless specifically related to the patient's diagnosis and physical therapy treatment;

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3. The taking of radiological studies;

4. The representation of physical therapy treatment to be a cure or remedy for disease or organic condition unrelated to physical disability for which physical therapy services have been sought.

(a)

Unlawful Practices by Licensees Fee Splitting; Kickback Prohibition

Notice of Pre-Proposal: N.J.A.C. 13:39A-3.2

Authority: N.J.S.A. 45:9-37.18(f), N.J.S.A. 45:9-37.21 and N.J.S.A. 45:1-21; pre-proposed pursuant to N.J.A.C. 1:30-3.2.

Pre-Proposal Number: PPR 1985-7.

The New Jersey State Board of Physical Therapy thereafter may propose a rule on this subject in the New Jersey Register.

NOTICE OF INTENT TO CONSIDER A RULE
INVITATION TO ATTEND AN INFORMAL CONFERENCE

In addition to prohibiting traditional kick-back arrangements by physical therapists (paragraph 1, making payments for referrals; paragraph 2, accepting payments for referral; paragraph 3, accepting goods or payments for prescribing or recommending devices), this pre-proposed regulation would require the physical therapist to disclose to a patient, whenever he has a financial arrangement with a physician to whom he has referred a patient, or from whom he accepts referrals. The Board feels that the patients have a right to know when any health care professional stands to gain a profit from a referral, even if that profit is derived through increased revenues to a business entity which employs the referrer, or in which the referrer may hold an ownership interest (paragraph 5 and paragraph 6). The Board also believes that the physical therapist should be required to inform the patient that he is free to seek the therapy setting, therapist or physician of his choice and that he may continue to receive the services from the referrer even if he or she rejects the referral recommended.

The regulation also addresses certain billing practices in an effort to assure that consumers are fully apprised of the value of the services that they are receiving. Where a physical therapist may be in association with a physician, the patient's bill should reflect the actual cost of the physical therapy services, as represented by the amount which the physical therapist will receive for the services he or she renders. The patient, of course, may be charged an additional sum to cover overhead and administrative charges. Thus, the patient and third party payors will have a true concept of where their health care dollars are going and entrepreneurs seeking to earn a profit on the rendition of physical therapy services will, at the least, be required to disclose what portion of the patient care is attributable to the professional service being rendered (paragraph 8). The rule would also make it clear that the physical therapist may not charge a patient a fee for referral, where he himself renders no service (paragraph 7).

Finally this regulation, as it appears in this pre-proposal, recognizes that physical therapists may be involved in rendering services to the public in non-therapeutic settings (that is, health spas, exercise classes). Such services, though they may have a beneficial effect on the recipients, are not the equivalent of physical therapy. Accordingly, the Board believes that where services are rendered by a physical therapist which are not intended to be therapeutic, they should not be described as physical therapy. Similarly, the physical therapist providing such non-therapeutic services, should not represent him or herself to be a physical therapist in that context, since such representations may lead the public and possibly third party payors to believe that therapy is being offered and received.

Finally, this pre-proposal at paragraph 10, seeks to assure that in whatever setting a physical therapist may choose to work, he shall remain free to exercise his own professional judgment in determining when physical therapy should be undertaken, when it should be continued and when it should be stopped. Accordingly, the physical therapist is put on notice that he or she will be held responsible for the rendition of unnecessary services, even if such services are rendered at the direction of a referrer and, even if, the referrer may be the physical therapist's employer or business associate.

Thus, without limiting the employment opportunities for physical therapists, the Board through this regulation is seeking to address what it perceives as a growing trend in the health care system of having physical therapy services delivered by therapists who are in the employ of or otherwise beholden to persons who possess the capacity to authorize the initiation of treatment. Such arrangements allow physicians or other referrers to derive a profit from physical therapy services without allowing consumers to know where their health care dollar is going. The pre-proposed rule insures that appropriate notice is given to consumers with regard to their freedom of choice and with regard to the actual costs involved in the rendition of professional services.

Comments from all interested parties are welcome. The Board is scheduled to discuss this pre-proposed regulation in the public session at its regular monthly meeting on October 22, 1985. Persons who may wish to participate in the discussion may be recognized by the chairman in her discretion and should sufficient interest be demonstrated, additional opportunity to be heard may be scheduled.

Full text of the pre-proposed new rule follows.

13:39A-3.2 Fee splitting, kickback prohibition

(a) The following acts or practices shall be deemed to be in violation of N.J.S.A. 45:9-37.21 and/or professional misconduct pursuant to N.J.S.A. 45:1-21(d):

1. Providing any payment or any other form of remuneration to any health care professional authorized to direct the initiation of physical therapy treatment for a referral of any specific patient or any number of patients;

2. Accepting or agreeing to accept any payment or other form of remuneration from any person licensed as a health care professional authorized to direct the initiation of physical therapy treatment for the referral of any specific patient or any number of patients;

3. Accepting or agreeing to accept from any person, firm or corporation any fee, commission, rebate, gift or other form of remuneration for the prescribing, ordering, or promoting the sale of a device, appliance or other item or service; except that nothing herein shall preclude a licensed physical therapist from accepting a product or commodity which can be used as a sample by patients, provided that the physical therapist does not charge patients for items so obtained;

4. Failure to inform patients, in writing, prior to the rendering of any service, that notwithstanding any professional af-

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filiation, including an employment relationship or contractual arrangement which the physical therapist may have with a physician or other health care professional authorized to direct the initiation of physical therapy, the patient is free to seek the services of the physical therapist, physician or therapy setting of his or her choice;

5. Failure to inform patients, in writing, prior to making a referral for the purpose of obtaining a clearance for physical therapy treatment, of any professional affiliation, including an employment relationship or contractual arrangement, which the physical therapist has with the physician, other health care professional authorized to direct the initiation of physical therapy or business entity to whom the physical therapist is referring the patient;

6. Failure to inform patients, in writing, prior to performing an examination or rendering physical therapy treatment, of any professional affiliation, including an employment relationship or contractual arrangement, which the physical therapist has with the physician or other health care professional authorized to direct the initiation of physical therapy or business entity with which such professional is affiliated, who has directed the initiation of physical therapy treatment;

7. Charge any patient a fee for making a referral to a physician or other health care professional authorized to direct the initiation of physical therapy treatment for the purpose of obtaining clearance for physical therapy. Nothing herein shall preclude a physical therapist from charging a patient for a physical therapy examination conducted prior to referral;

8. Permit his or her services to be billed to a patient by a physician or other health care professional authorized to direct the initiation of physical therapy who referred that patient or the business entity with whom that referrer is affiliated or associated for an amount greater than that which the therapist would actually receive unless the bill discloses that portion of the fee actually paid to the physical therapist and that portion attributable to administrative and overhead costs;

9. Use or permit the use of his professional education, degree, title or license in connection with the rendition of services, which are not designed to be therapeutic or to represent his services as "physical therapy," or permit his services to be represented as "physical therapy" where those services are not intended to be therapeutic;

10. Render treatment when, in the exercise of his professional judgment, the physical therapist, may deem such treatment to be unnecessary, even if he has received a direction from a physician or other health care professional authorized to direct the initiation of treatment with whom he may have a professional affiliation, including an employment relationship or contractual arrangement.

(a)

Unlicensed Practice

Proposed New Rules: N.J.A.C. 13:39A-4

Authority: N.J.S.A. 45:9-37.18(f) and N.J.S.A. 45:1-21.
Proposal Number: PRN 1985-527.

The agency proposal follows:

Summary

The proposed new rules are intended to identify and clarify when the Board will deem an individual to be engaging in the unlicensed practice of physical therapy and, accordingly, when it will contemplate the initiation of appropriate enforcement proceedings. Fundamental to any effort to map out the contours of where the practice of physical therapy and the practice of medicine begin, end and overlap, is the Board's recognition that the practice of physical therapy involves more than the application of physical modalities and agents. The skill and judgment which a trained physical therapist brings to the patient enables him to devise and execute a plan which is responsive to the patient's needs over both the long and short run. While the Board recognizes that the Board of Medical Examiners has recently promulgated a regulation, N.J.A.C. 13:35-6.14, which authorizes its licensees to delegate the task of administering certain identified physical modalities to unlicensed aides, the Board of Physical Therapy remains concerned that the public will be led to believe that physical therapy is being offered and provided by such unlicensed personnel. Although N.J.A.C. 13:35-6.14 expressly requires the delegating licensee to retain the responsibility to determine the appropriateness of a modality and to instruct the aide in its use, the Board holds the view that that service should not be offered to the public as "physical therapy" unless personally rendered by the physician or other authorized health care provider. Similarly, third party payors should not be led to believe that skilled and licensed personnel are rendering physical therapy treatment, when an unlicensed aide is applying a modality. The rule is intended to notify unlicensed individuals and those health care providers who employ such persons as to the acts and practices which it will deem to be the unlicensed practice of physical therapy.

Social Impact

The proposed new rule will aid consumers in their attempts to obtain the highest quality health care. Though unlicensed aides may be permitted to administer modalities, they and their employers should not be permitted to lead the public into believing that physical therapy is being performed.

Economic Impact

Consumers and third party payors, by operation of this regulation, will be assured that when they seek out the services of persons offering physical therapy, they are paying for skilled personnel. Persons now employing aides and representing the services that they provide to be physical therapy may, of course, suffer an economic loss, if consumers are made aware that care is available elsewhere.

Full text of the proposed new rule follows.

SUBCHAPTER 4. UNLICENSED PRACTICE

13:39A-4.1 Acts amounting to unlicensed practice

(a) For the purpose of the Board's construction of N.J.S.A. 45:9-37.10, the following acts or practices shall be deemed to be the unlicensed practice of physical therapy:

1. Offering by means of advertisement or soliciting physical therapy examination, instruction or treatment by any person who does not hold a license as a physical therapist, a physical therapist assistant, M.D., D.O. or D.P.M. (to the extent authorized by N.J.S.A. 45:5-7), even if that person has been instructed or directed to offer that treatment or render that treatment by a physical therapist, physical therapist assistant, M.D., or D.O. or D.P.M.;

2. The use of the words physical therapy, physical therapist,

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physiotherapy, physiotherapist or such similar words or their related abbreviations in connection with the offering of physical therapy agents, measures and services which are utilized in the rendition of physical therapy treatment by any person who does not hold a license as a physical therapist, a physical therapist assistant, an M.D., D.O., or D.P.M. even if that person has been instructed or directed to use such terminology by a physical therapist, physical therapist assistant, M.D., D.O., or D.P.M.;

3. Billing any patient or third party payor for "physical therapy" or "physiotherapy" in connection with the use of physical therapy agents, measures or services, if the individual who personally rendered the services does not hold a license to practice physical therapy, medicine and surgery or podiatry;

4. The offering or advertisement of physical therapy agents, measures or services by a limited licensee of the Board of Medical Examiners unless the context of such offering or advertisement reveals that such services are directly related to the practice authorized by the Board of Medical Examiners and the wording of the offering would not lead members of the general public to assume that the advertiser is authorized to practice physical therapy or physiotherapy without limitation.

13:39A-4.2 Aiding and abetting unlicensed practice

It shall be unlawful for a licensee to aid or assist any person engaging in any of the practices identified at N.J.A.C. 13:39A-4.1

(a)

Credentialing of Applicants for Licensure as Physical Therapists or Physical Therapist Assistants

Proposed New Rules: N.J.A.C. 13:39A-5

Authority: N.J.S.A. 45:9-37.18(f) and N.J.S.A. 45:1-21.
Proposal Number: PRN 1985-528.

The agency proposal follows:

Summary

Proposed new rule N.J.A.C. 13:39A-5.1 sets forth the credentials which the applicants for licensure as physical therapists must present to the Board. Specifically, the rule provides for recognition of graduates of accredited programs in the United States and identifies the elements of a curriculum which will be accepted from foreign trained applicants. Additionally, passing scores are expressly codified at N.J.A.C. 13:39A-5.2 along with the standard deviation. N.J.A.C. 13:39A-5.5 allows the Board discretion to evaluate credentials presented by applicants licensed in other jurisdictions.

Social Impact

The proposed new rules codify what is presently the policy of the Board, while at the same time, reserves for the Board, discretion in assessing applicants from foreign jurisdictions and sister states.

Economic Impact

Since the rules recognize current policies, little, if any, economic impact is anticipated.

Full text of the proposed new rule follows.

SUBCHAPTER 5. CREDENTIALING OF APPLICANTS

13:39A-5.1 Educational credentials for physical therapy applicants

(a) Applicants for examination shall submit to the Board satisfactory proof of:

1. Graduation from a program in physical therapy which has been approved for the education and training of physical therapists or physical therapist assistants by an accrediting agency recognized by the council on Post-secondary Accreditation and the United States Department of Education, or;

2. With respect to foreign trained applicants, graduation from or successful completion of a program which shall have included 120 credits of which 60 or more shall be in courses relating to the practice of physical therapy and, at least 45 of which shall be in courses of general academic study.

13:39A-5.2 Examination standards for physical therapist applicants

Physical therapist applicants submitting satisfactory proof of educational attainment as set forth in N.J.A.C. 13:39-5.1 shall be admitted to take a written examination administered by the Board or such standardized examination as the Board may select pursuant to N.J.S.A. 45:9-37.25. Upon satisfactory passage of such examination, an applicant shall be deemed eligible for licensure. Satisfactory passage of the examination shall be attained upon receipt of a converted score of 70 percent, which corresponds to 1.5 standard deviations below the mean raw score on the national norm. Applicants may retake failed portions of the examination without being required to retake the entire examination.

13:39A-5.3 (Reserved)

13:39A-5.4 (Reserved)

13:39A-5.5 Endorsement

Applicants possessing a valid license issued by another state may be deemed eligible for licensure in New Jersey without the examination as provided by N.J.A.C. 13:39A-5.2 if the criteria for licensure in that state are deemed by the Board to be substantially equivalent to those required in New Jersey and the applicant has not previously failed the examination administered by the Board. Nothing herein shall preclude the Board, in its discretion, from deeming an applicant, who possesses a license issued by another jurisdiction, who has failed the examination administered by the Board, to be eligible for licensure.

NEW JERSEY RACING COMMISSION

Proposals numbered PRN 1985-553, 554, 557 and 558 are authorized by the New Jersey Racing Commission, Harold G. Handel, Executive Director.

Submit comments by November 6, 1985 to:
Bruce H. Garland, Deputy Director
New Jersey Racing Commission
CN 088 Justice Complex
Trenton, New Jersey 08625

(b)

Thoroughbred Rules
Licenses; Fingerprints; Photos

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Proposed Amendment: N.J.A.C. 13:70-4.1
Proposed Repeals: N.J.A.C. 13:70-4.17, 4.19, 4.20 and 4.21

Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1985-553.

The agency proposal follows:

Summary

The amendments and repeals are proposed in order to bring the fingerprint rule into line with recent changes in the charges required by the State Police and F.B.I. for fingerprint checks. The amendments provide flexibility should there be future charges in the fee required. In addition, the amendments clarify the existing practice of requiring veterinarians to be licensed with a $50.00 annual fee and reduces duplication and repetition by combining regulations dealing with fingerprints.

Social Impact

The proposal will have a positive social impact since it allows the Commission to direct a fee for fingerprint checks consistent with the fee charged by the reviewing agency. All persons licensed by the Commission and all employees of the racing associations and employees of contractors doing work for track associations will be directly affected by the proposed amendments.

Economic Impact

The economic impact is not one that will effect the Racing Commission at all. However, it will cost licensees at least two additional dollars for fingerprint checks. At present, there is no fee for State Police review and there is a $12.00 fee for F.B.I. Effective October 1, 1985, State Police charges will be $12.00 and F.B.I. charges will be $14.00.

Full text of the rules proposed for repeal appears in the New Jersey Administrative Code at N.J.A.C. 13:70-4.17, 13:70-4.19, 13:70-4.20 and 13:70-4.21.

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

13:70-4.1 Persons required to have licenses; **fingerprints and photographs**

(a) The following persons shall be required to take out a license from the Racing Commission and the annual fee shall be as follows:

1.-16. (No change.)

17. Veterinarians: $50.00

(b) [All original applicants in any category shall be required to submit with their application, in addition to the prescribed fee, a money order or bank check in the amount of $12.00 payable to the Federal Bureau of Investigation. Renewal applicants shall make a similar submission upon direction of the Commission.]

All persons licensed by the Commission and all employees of the racing associations and/or employees of contractors doing work for the track associations will be required to be fingerprinted and photographed at the discretion of the Commission. The applicant must pay for the cost of the fingerprint card checks. The Commission will direct the fee, which will be consistent with the charge set by the reviewing agency for the type of inquiry requested; for example, State, Federal, State and Federal, name check. Owners who, because of extenuating circumstances, cannot come into New Jersey to be fingerprinted and photographed during a racing year, will be issued conditional licenses only and will not be permitted access to the stable area or paddock at any New Jersey track until photographed and fingerprinted by the Racing Commission. Holders of a conditional license will not be eligible for passes at any of the tracks in New Jersey.

(a)

Thoroughbred Rules
Urine Testing

Proposed Amendment: N.J.A.C. 13:70-14A.11

Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1985-554.

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 13:70-14A.11 are the result of suggestions made by Federal District Court Judge Brotman in his decision denying a preliminary injunction in the matter of *Shoemaker v. Handel.* Judge Brotman suggested that the Racing Commission clarify the regulations concerning storage of and access to information. The amendments classify all information received in the urine testing process as confidential, except for use with respect to a ruling issued pursuant to the rule or any administrative or judicial hearing with regard to such a ruling. Access to information is limited to designated persons and release of information must be approved by the Executive Director or his designee. Finally, the amendments specify that information is to be stored in the Executive Director's office for one year.

Social Impact

The social impact of the proposed amendments is positive. The amendments clearly identify all information received as confidential except for a few limited purposes necessary to enforce the rule. This protects all participants and eliminates any ambiguities that may have been present in the original regulation.

Economic Impact

The economic impact is negligible. The amendments do not change any existing procedures and do not require any additional personnel, equipment or cost.

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

13:70-14A.11 Urine test

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

(e) [The results of any urine test shall be treated as confidential, except for their use with respect to a ruling issued pursuant to this rule, or any administrative or judicial hearing with regard to such a ruling. Access to the reports of any

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"positive" results shall be limited to the Commissioners of the New Jersey Racing Commission, the Executive Director and/or his designee and the subject jockey, except in the instance of a contested matter.]

Any information received in the process of obtaining a urine sample, including but not limited to medical information, the results of any urine test, and any reports filed as a result of attending a Supervisory Treatment Program shall be treated as confidential, except for their use with respect to a ruling issued pursuant to this rule, or any administrative or judicial hearing with regard to such a ruling. Access to the information received and/or reports of any positive results and/or reports from a Supervisory Treatment Program shall be limited to the Commissioners of the New Jersey Racing Commission, the Executive Director and/or his designee, Counsel to the Racing Commission and the subject, except in the instance of a contested matter. In the instance of a contested matter, any information received and reports prepared shall not be disclosed without the approval of the Executive Director or his designee.

(f) Information received and reports prepared pursuant to this rule shall be stored in a locked secure area in the office of the Executive Director for a period of one year, after which time, they shall be destroyed. However, the Commission may maintain the information received and reports on individuals who have violated this rule for the purpose of recording the number of violations and the results of supervisory treatment, and for use should future violations occur.

(a)

Harness Rules
Licenses; Fingerprints; Photos

Proposed Amendment: N.J.A.C. 13:71-7.1

Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1985-558.

The agency proposal follows:

Summary

The proposed amendments will bring the fingerprint rule into line with recent changes in the charges required by the State Police and F.B.I. for fingerprint checks. The amendments provide flexibility should there be future charges in the fee required. In addition, the amendments clarify the existing practice of requiring veterinarians to be licensed with a $50.00 annual fee.

Social Impact

The proposal will have a positive social impact since it allows the Commission to direct a fee for fingerprint checks consistent with the fee charged by the reviewing agency. All persons licensed by the Commission and all employees of the racing associations and employees of contractors doing work for track associations will be directly affected by the proposed amendments.

Economic Impact

The economic impact is not one that will effect the Racing Commission at all. However, it will cost licensees at least two additional dollars for fingerprint checks. At present, there is no fee for State Police review and there is a $12.00 fee for F.B.I. Effective October 1, 1985, State Police charges will be $12.00 and F.B.I. charges will be $14.00.

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

13:71-7.1 Persons required to have licenses; **fingerprints and photographs**

(a) The following persons shall be required to take out a license from the New Jersey Racing Commission and the annual fee therefor shall be as follows:

1.-11. (No change.)

12. Veterinarians: $50.00

(b) [All original applicants in any category shall be required to submit with their license application, in addition to the prescribed fee, a money order or bank check in the amount of $12.00 payable to the Federal Bureau of Investigation. Renewal applicants shall make a similar submission upon direction of the Commission.]

All persons licensed by the Commission and all employees of the racing associations and/or employees of contractors doing work for the track associations will be required to be fingerprinted and photographed at the discretion of the Commission. The applicant must pay for the cost of the fingerprint and card checks. The Commission will direct the fee, which will be consistent with the charge set by the reviewing agency for the type of inquiry requested; for example, State, Federal, State and Federal, name check. Owners who, because of extenuating circumstances, cannot come into New Jersey to be fingerprinted and photographed during a racing year, will be issued conditional licenses only and will not be permitted access to the stable area or paddock at any New Jersey track until photographed and fingerprinted by the Racing Commission. Holders of a conditional license will not be eligible for passes at any of the tracks in New Jersey.

(b)

Harness Rules
Urine Testing

Proposed Amendment: N.J.A.C. 13:71-18.2

Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1985-557.

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 13:71-18.2 are the result of suggestions made by Federal District Court Judge Brotman in his decision denying a preliminary injunction in the matter of *Shoemaker v. Handel.* Judge Brotman suggested that the Racing Commission clarify the regulations concerning storage of and access to information. The amendments classify all information received in the urine testing process as confidential, except for use with respect to a ruling issued pursuant to the rule or any administrative or judicial hearing with regard to such a ruling. Access to information is limited to designated persons and release of information must be approved by the Executive Director or his designee. Finally,

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the amendments specify that information is to be stored in the Executive Director's office for one year.

Social Impact

The social impact of the proposed amendments is positive. The amendments clearly identify all information received as confidential except for a few limited purposes necessary to enforce the rule. This protects all participants and eliminates any ambiguities that may have been present in the original regulation.

Economic Impact

The economic impact is negligible. The amendments do not change any existing procedures and do not require any additional personnel, equipment or cost.

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

13:71-18.2 Urine test

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

(e) [The results of any urine test shall be treated as confidential, except for their use with respect to a ruling issued pursuant to this rule, or any administrative or judicial hearing with regard to such a ruling. Access to the reports of any "positive" results shall be limited to the Commissioners of the New Jersey Racing Commission, the Executive Director and/or his designee and the subject driver, except in the instance of a contested matter.]

Any information received in the process of obtaining a urine sample, including but not limited to medical information, the results of any urine test, and any reports filed as a result of attending a Supervisory Treatment Program shall be treated as confidential, except for their use with respect to a ruling issued pursuant to this rule, or any administrative or judicial hearing with regard to such a ruling. Access to the information received and/or reports of any positive results and/or reports from a Supervisory Treatment Program shall be limited to the Commissioners of the New Jersey Racing Commission, the Executive Director and/or his designee, Counsel to the Racing Commission and the subject, except in the instance of a contested matter. In the instance of a contested matter, any information received and reports prepared shall not be disclosed without the approval of the Executive Director or his designee.

(f) Information received and reports prepared pursuant to this rule shall be stored in a locked secure area in the office of the Executive Director for a period of one year, after which time, they shall be destroyed. However, the Commission may maintain the information received and reports on individuals who have violated this rule for the purpose of recording the number of violations and the results of supervisory treatment, and for use should future violations occur.

ENERGY

(a)

THE COMMISSIONER

Home Energy Savings Program

Proposed Readoption with Amendments: 14A:21

Authorized By: Charles A. Richman, Acting Commissioner, Department of Energy.
Authority: N.J.S.A. 52:27F-11(q)
Proposal Number: PRN 1985-559.

Submit comments by November 6, 1985 to:
Edward J. Linky, Chief
Officer of Regulatory Affairs
Department of Energy
101 Commerce Street
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Home Energy Savings Program (HESP) Regulations expand upon the Residential Conservation Service State Plan that the Department submitted to the U.S. Department of Energy. These rules were originally adopted on November 21, 1980. Pursuant to Executive Order No. 66(1978) these rules would otherwise expire on November 21, 1985. The purpose of these regulations is to encourage the installation of energy conservation measures in new and existing houses by residential customers of investor-owned electric and gas utilities and home heating suppliers.

The regulations require each covered utility to send an announcement of the HESP Program annually until 1990 to each of its eligible customers. Each covered utility is required to:

(1) provide a program audit to each eligible customer who requests an audit;

(2) provide a list of participating installers and suppliers who install or sell program measures; and

(3) provide information on financing of program measures and actual assistance in arranging installation of any program measure upon request by any eligible customer.

The regulations require participating home heating suppliers to provide a heating unit analysis to each eligible customer who requests a program audit. The regulations set forth the grounds for disqualification of home heating suppliers.

The rules prescribe audit contents and procedures and the qualifications for auditors and inspectors of program measures. The regulations as amended set forth the grounds for disqualification of auditors and inspectors. The regulations require covered utilities to perform inspections of installations to determine if they are in compliance with applicable installation standards.

The audit contents have been streamlined to reflect the experience gained since the program's inception. More data gathering on the part of the auditor will be required. Certain measures that were shown not to be cost effective have been eliminated.

The Department will compile and maintain a Master Record of installers and suppliers who install and sell program measures and desire to participate in the HESP Program. The regulations set forth the requirements for participation in the HESP Program by installers and suppliers of program measures. The rules prescribe the grounds for exclusion or removal from the Master Record. Covered utilities and participating home heating suppliers are required to submit certain reports and to maintain certain records regarding the HESP Program.

The rules prescribe the method of customer billing for ser-

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vices performed pursuant to the HESP Program by a covered utility or a participating heating supplier. The regulations proscribe covered utilities and participating home heating suppliers from terminating or otherwise restricting utility or fuel service upon customer default for payments due for any services under the HESP Program.

Social Impact

The regulations will have a positive social impact because energy conservation by program participants will reduce the need for new power plant construction and its attendant societal costs. In addition, the reduction in the use of imported fossil fuels through conservation will add to the security of the United States.

Economic Impact

The job climate in New Jersey will improve because small businesses, in the form of home heating suppliers and program measure installers and suppliers, will maintain and expand their customer bases respectively. Existing jobs will be preserved and new jobs created.

The administration and enforcement of these rules will not have an economic effect on the Department since the Department will not be required to spend additional funds beyond those already being spent for personnel to administer the regulations.

The costs of program implementation to the covered utilities will be offset by the reduction in cost of any future power plant construction.

Environmental Impact

It is anticipated that the regulations will have a positive impact on the environment. The reduction in power plant construction because of energy conservation will limit potential sources of air pollution. In addition, the reduction in emissions from residential heating units through equipment repair and replacement will benefit the localities where those heating units are located.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 14A:21.

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

CHAPTER 21
HOME ENERGY SAVINGS PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

14A:21-1.1 Scope and purpose

(a) The following rules implement the **Home Energy Savings Program (HESP) that expands upon** the Residential Conservation Service (RCS) State Plan which the Department submitted to the U.S. Department of Energy [pursuant to the National Energy Conservation Policy Act, P.L. No. 95-619, as amended by the Energy Security Act, P.L. No. 96-294, and 10 C.F.R. Part 456].

(b) The purpose of the [RCS] **HESP** Program is to encourage the installation of energy conservation measures and renewable resource measures in **new and** existing houses by residential customers of investor-owned electric and gas utilities and home heating suppliers.

14A:21-1.2 Definitions

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

. . .

"Covered utility" means [in any calendar year a public utility which during the second preceding calendar year had either:

1. Sales of natural gas for purposes other than resale which exceeded 10 billion cubic feet; or

2. Sales of electric energy for purposes other than resale which exceed 750 million kilowatt-hours.] **an investor owned utility providing natural gas or electric energy, or both, in New Jersey and holding a certificate of public convenience and necessity from the Board of Public Utilities pursuant to N.J.S.A. 48:1 et seq.**

. . .

["Direct gain glazing systems" means the use of south-facing (+ or -45 degrees of True South) panels of insulated glass, fiberglass, or other similar transparent substances that admit the sun's rays into the living space where the heat is retained. Glazing is either double-paned, or single-paned equipped with movable insulation;]

. . .

"Eligible customer" means a person who:

1. Owns **and**/or occupies a residential building; and

2. Receives a fuel bill from a covered utility or participating home heating supplier for fuel used in such residential building.

["Energy audit" or "program audit" means an on-site evaluation of a residential dwelling by qualified utility personnel or participating home heating suppliers during which the applicability of program practices and program measures will be evaluated. Applicable program practices will be detailed to the homeowner and general cost, saving and payback estimates will be discussed. Any program measures found applicable to the residence will have specific cost, saving and payback estimates calculated and provided to the homeowner. All estimates will be provided in person, unless the home owner specifies otherwise.]

"Energy conservation measures" means the following measures in a residential building:

1. Caulking.
2. Weatherstripping.
3. Furnace efficiency modifications.
4. Replacement central air conditioner.
5. Ceiling insulation.
6. Wall insulation.
7. Floor insulation.
8. Rim [joint] **joist** insulation.
9. Duct insulation.
10. Pipe insulation.
11. Water heater insulation.
12. Storm window **and door.**
13. Thermal window **and door.**
14. [Storm or thermal door.] **Window heat gain and loss retardant materials.**
15. [Heat reflective and heat absorbing window or door material]

[16.]Devices associated with electric load management techniques.

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[17.]**16.** Clock thermostat.
17. Solar hot water systems.
18. Replacement solar swimming pool heaters.
19. Solar Sunspace.
20. Any other measure designated by the Department.

"Energy conserving practices" or "program practices" means:
1. Heating unit efficiency maintenance and adjustments.
2. Optimizing the burner firing rate.
3. Nighttime temperature setback.
4. Reducing thermostat settings in winter.
5. Raising thermostat settings in summer.
6. Water flow reduction in showers and faucets.
7. Reducing hot water temperatures.
8. Reducing energy use when a home is unoccupied.
9. Plugging leaks in attics, basements, and fireplaces.
10. Sealing leaks in pipes and ducts.
11. Efficient use of shading.
12. Any other low or no-cost practice designated by the Department [and approved by the U. S. Department of Energy] which:
i. Saves energy; and
ii. Does not require the installation of any energy conservation [or renewable resource] measure.

["EIL" means the Department's Energy Information Line.]

"Furnace efficiency modifications" means:
1. Replacement furnace or boilers;
2. Furnace replacement burner (oil-fired unit);
3. Flue opening modification.
[4. Intermittent ignition device.]

. . .

["Heat reflective and heat absorbing window or door material" means a window or door glazing material with exceptional heat-absorbing or heat-reflecting properties; or reflective or absorptive films and coatings applied to an existing window or door which thereby result in exceptional heat-absorbing or heat-reflecting properties. It is applicable only in electric-heated homes.]

"Home Energy Savings Program (HESP)" means the program required to be implemented under this chapter.

"Home heating supplier" means a person who sells or supplies home heating fuels (including No. 2 home heating oil, kerosene, **coal, wood,** butane, and propane) to an eligible customer for consumption in a residential building. The term also applies to any person who offers [oil] heating unit maintenance on a contractual or emergency basis.

["Indirect gain systems" means the use of panels of insulated glass, fiberglass or other transparent substances that direct the sun's rays onto specially constructed thermal walls, ceilings, rockbeds, or containers of water or other fluids where heat is stored and radiated.]

"Installer's warranty" [which] means the written warranty by the installer for the installation of any [residential energy conservation or renewable resource] **program** measure [by the installer for the installation of any such measure offered under the RCS Program,] that **stipulates that** [at a minimum,] any defect in materials, manufacture, design, or installation found within one year from the date of installation shall be remedied without charge and within a reasonable period of time.

["Intermittent ignition device" means a device which, when installed in a gas-fired furnace or boiler, automatically ignites the gas burner and replaces a gas pilot light.]

"Manufacturer's warranty" which means the written warranty by the manufacturer of a [residential energy conservation measure or renewable resource] **program** measure offered under the [RCS] **HESP** Program that the eligible customer for whom the measure is installed, the installer who installs the measure, and the supplier of the measure shall, for those measures found within one year from the date of installation to be defective due to materials, manufacture or design, at a minimum, be entitled to obtain, within a reasonable period of time and at no charge, appropriate replacement parts or materials[;].

"Master Record" means the record of qualified installers, [lenders,] and suppliers compiled by the Department pursuant to N.J.A.C. 14A:21-9.

"Participating home heating supplier" means any home heating supplier who wishes to participate in the [RCS] **HESP** Program and complies with this chapter.

["Passive solar space heating and cooling systems" means systems that make most efficient use of, or enhance the use of, natural forces-including solar insulation, winds, night time coolness and opportunity to lose heat by radiation to the night sky—to heat or cool living space by the use of conductive, convective or radiant energy transfer. Passive solar systems include only:
1. Direct gain glazing systems;
2. Indirect gain systems;
3. Solaria/sunspace systems;
4. Window heat gain and loss retardants.]

"Payback" means the amount of time a customer would need to recover the cost of an investment in a program practice or measure from the energy saved by that measure or practice. All payback estimates will use a simple payback calculation: cost of investment/energy saving from first year. All payback estimates will be given in [ranges of] years.

. . .

"Program announcement" means the information and offer of services required to be sent by each covered [electric] utility to every eligible customer in their service area pursuant to N.J.A.C. 14A:21-2.

"Program audit" means an on-site evaluation of a residential dwelling by a program auditor during which the applicability of program measures is evaluated.

"Program auditor" means any individual employed **by the Department or** by a covered utility or home heating supplier or under contract with a covered utility, [or] home heating supplier **or the Department** who meets all of the qualifications contained in N.J.A.C. 14A:21-7.2 and has successfully [completed] **passed** a Department auditor test.

"Program inspector" means any individual employed by the Department or by a covered utility or home heating supplier or under contract with a covered utility, home heating supplier or the Department who meets all of the qualifications contained in N.J.A.C. 14A:21-7.3 and has successfully passed a Department inspector test.

"Program measures" means energy conservation measures and [renewable resource measures] **energy conserving practices.**

. . .

"Reducing energy use when a home is unoccupied" means reducing the thermostat setting to 55 degrees F. when a home is [empty] **unoccupied** for four hours or longer in the heating season, turning an air conditioner off in the cooling season when **the home is unoccupied** [no one is home], and turning a water heater off when a home is vacant for two days or longer.

"Reducing hot water temperatures" means manually setting back the water heater thermostat [setting] to 120 degrees F.,

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and reducing the use of heated water for clothes washing.

"Reducing thermostat settings in winter" means limiting the maximum **daytime** thermostat control setting for the heating unit to 65 degrees F. during the heating season.

["Renewable resource measures" means the following measures in or with respect to a residential building:

1. Solar domestic hot water systems.
2. Passive solar space heating and cooling systems.
3. Wind energy devices.
4. Replacement solar swimming pool heaters.]

"Replacement central air conditioner" means a central air conditioner which replaces an existing central air conditioner of the same fuel type and which reduce[d]s the amount of fuel consumed due to an increase in efficiency.

. . .

"Residential building" means any building used for residential occupancy which:

[1. Is not a new building to which final standards under Section 304(a) and 305 of the Energy Conservation and Production Act apply;]

1. Is more than one year old.

2. Has a system for heating, cooling or both heating and cooling living spaces; and

3. Contains at least one, but not more than four, dwelling units. **Multi-family dwellings not centrally heated or cooled, mobile homes,** townhouses and rowhouses in rows of more than four separate houses are included in this definition [but garden apartment complexes which contain clusters of four apartment units or less are not].

["Residential Conservation Service (RCS) Program" means the program required to be implemented pursuant to the New Jersey Residential Conservation Service State Plan and this chapter, which shall be known in New Jersey as the Home Energy Savings Program.]

"Rim [joint] **joist** insulation" means a material primarily designed to resist heat flow which is installed along the foundation under the first level conditioned area of a building.

"Sealing leaks in pipes an ducts" means installing caulking in any leak in a heating or cooling duct, tightening or plugging any leaking joints in hot water or steam pipes, and replacement of washers in leaking water valves.

"Solar domestic hot water systems" means equipment designed to absorb the sun's energy and to use this energy to heat water for use in a residential building other than for space heating [, including thermosiphon hot water heaters].

"[Solaria/] **Solar** sunspace system[s]" means a structure of glass, fiberglass or similar transparent material which is attached to the South-facing (+ or -45 degrees of True South) wall of a structure which allows for air circulation to bring heat into the residence, and which is able to be closed off from the residential structure during periods of low solar insolation [; and].

"[Storm or thermal door" means:

1. A second door, installed outside or inside a prime door, creating an insulating air space;

2. A door with enhanced resistance to heat flow through the glass area by affixing two or more sheets of glazing material; or

3. A prime exterior door with a R-value of at least 2.]

"Storm window **or door**" means a window **or door** or glazing material placed outside or inside an ordinary or prime window **or door**, creating an air space, to provide greater resistance to heat flow than the prime windows **or doors** alone.

"Supplier warranty" which means the written warranty by the supplier of a [residential energy conservation or renewable resource] **program** measure offered under the [RCS] **HESP** Program, provided, at a minimum, to any person who purchases the measure from such supplier a warranty equivalent to a manufacturer's warranty.

"Thermal window **or door**" means a window **or door** unit with improved thermal performance through the use of two or more sheets of glazing material affixed to a window **or door** frame to create one or more insulated air spaces. [It may also have an insulating frame and sash.]

"Water flow reduction in showers and faucets" means placing a device in a shower head or faucet to limit the maximum flow to [three] **2.75** gallons per minute **at 80 pounds per square inch of water pressure**, or replacing existing shower heads or faucets with those having built-in provisions for limiting the maximum flow to [three] **2.75** gallons per minute **at 80 pounds per square inch of water pressure.**

["Wind energy devices" means equipment that uses wind energy to produce energy in any form for personal residential purposes.]

"Window heat gain **and heat loss** retardants **and sunlight control devices"** mean[s] those mechanisms which significantly reduce summer heat gain through South-facing (+ or -45 degrees of True South) windows **and which significantly reduce heat loss through windows in winter** by use of devices such as awnings, insulated rollup shades (external or internal), metal or plastic solar screens, or moveable rigid insulation.

SUBCHAPTER 2. PROGRAM ANNOUNCEMENT

14A:21-2.1 Scope

[Beginning January 26, 1981, each covered electric utility shall send a program announcement of the RCS program to each of its eligible customers in the State. Such announcements shall be in a form provided by the Department. Such program announcement may be cycled by the covered utilities by route services areas. All program announcements shall be sent to all eligible customers no later than April 30, 1981. After an initial cycling period, each covered electric utility shall send a program announcement to each of its eligible customers at least once every two years until January 1, 1985.]

Beginning January 26, 1986, each covered utility shall at its own expense send a program announcement to its eligible customers in the State. All program announcements shall be sent to all eligible customers at least once a year until January 1, 1995. Such program announcements may be cycled by the covered utilities by route service areas. The program announcements shall be in a form provided, or approved in advance by the Department. The Department shall have a minimum of 30 calendar days from the date of proposed form submittal by the covered utility to approve, reject or otherwise modify the form of the proposed program announcement.

A program announcement shall be sent with either the customer's utility bill or mailed independently to each customer. The program announcement shall be reinforced with a promotional campaign approved in advance by the Department. The Department shall have a minimum of 30 calendar days from the date of the proposed promotional campaign submittal by the covered utiltiy to approve or reject the proposed promotional campaign.

14A:21-2.2 Contents and prohibitions

(a) The program announcement [shall] **may** include all of the following for a typical New Jersey residential building, as specified from time to time by the Department:

1. A list **and description** of [RCS] program measures [ap-

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plicable to each category of residential building. These categories are: electric-heated, gas-heated, oilheated, and electric-heat-pump-heated dwellings].

2. Estimated saving expressed in ranges of dollars [, for a New Jersey residential building,] that result from taking advantage of individual [RCS] program measures over one year's time [in each category of residential building]. Such estimated savings shall be calculated by the Department from time to time and shall be made available for use by the covered utilities.

3. [A list of low-cost or no-cost energy conserving practices and an estimate of savings expressed in ranges of dollars that result from taking advantage of these energy conserving practices over one year's time individually or as a group. Such estimated savings shall be calculated by the Department from time to time and shall be made available for use by the covered utilities.]

[4.] A description and offer of available [RCS] program services, instructions as to how to apply for them, and the cost, if any, for each service, including instructions on how to apply for a program audit.

[5. A description of RCS program benefits and how they may be obtained.

6. The following disclosure, conspicuously placed on the program announcement:

"Energy savings depend on may factors. The estimates contained in this announcement are based on estimates for average houses. Your costs and savings may vary according to the size of your house, the type of fuel used, your family size and your energy-using habits. Because of the various situations listed above, you may save more or less than savings listed. The energy audit which will be performed on your home will provide more specific estimates. In addition, savings from individual measures installed together may be less as a whole than the total of each measure installed individually."

7. A brief explanation of state and federal energy tax credits.

8. A brief explanation of the Weatherization Assistance Program for Low-Income Persons and who is eligible to receive benefits therefrom.

9. A list of covered utilities' telephone numbers and the number of the EIL and instructions on how to participate in the RCS program.]

(b) The program announcement shall not include:

1. Any brand names or advertising for sale, installation or financing of [RCS] program measures [or practices]; or

2. Any information on products which are not [RCS] program measures [or program practices].

14A:21-2.3 New customers

(a) Each covered electric utility shall identify and send a program announcement to each new customer within 60 **calendar** days **of the service hook-up.**

(b) Each covered utility shall inform each new customer in writing **within 60 calendar days of the service hook-up** that upon request, the customer may receive at no charge, a copy of the results of any past program audit of the customer's residence which a covered utility may have performed pursuant to this chapter.

SUBCHAPTER 3. PROGRAM SERVICES AND PROGRAM AUDITS

14A:21-3.1 Program services

(a) All covered utilities shall offer and provide, upon request, the following program services to all eligible customers:

1. A program audit of all applicable program measures [and practices] in a form to be prescribed **or approved** by the Department;

2. Lists of participating installers [and lenders] **and** suppliers who install **or** sell [or finance] program measures, [at no charge] **and in a form specified or approved by the Department;**

3. [Assistance in arranging financing or installation of program measures, at no charge] **A list of all available programs that fund program measures, including loans, grants and tax credits;**

4. Participation in conciliation procedures, [at no charge]; and

5. Conservation literature in a form specified **or approved** by the Department [,at no charge].

(b) All covered utilities shall designate [those areas and/or] commercial office(s) **with a toll-free telephone number(s)** which will receive customer requests for program service. [Such designations shall be stated on the program announcement.]

(c) All covered utilities receiving requests for program services from eligible customers shall record the requests and the arrangements made by the **covered** utility for the audit [on an input] **in a** form to be prescribed by the Department. All such records shall contain the following information, if available, from the customer:

1. Name and address of customer;

2. Type of program services requested;

3. Dates scheduled for providing the services, and date services were completed;

4. [Family size;] **Dwelling type**

5. Type of fuel used;

6. Time customer is home most often;

7. Media sources from which customer heard about program;

8. The name of the customer's home heating supplier [if the residence is heated with oil];

9. The name of the customer's **covered** utilities; [and]

10. Information on whether the customer qualifies for [Lifeline or Low-Income Weatherization Program.] **a program audit free of charge; and**

11. Phone number where the customer can be reached during the daytime.

(d) The [EIL] **Department** shall also receive requests from eligible customers for program services and shall record the same information required by N.J.A.C.14A:21-3.1(c).

14A-21:3.2 Arrangement of program audit

(a) If an eligible customer who heats with electricity or gas contacts the [EIL] **Department** and requests a program audit, the [EIL] **Department** shall refer that request to an appropriate covered utility.

(b) If an eligible customer who heats with oil contacts the [EIL] **Department** and requests a program audit, the [EIL] **Department** shall refer that request, except for that part which requires a heating unit analysis to an appropriate covered utility. The [EIL] **Department** shall determine whether the customer's heating supplier is a participating home heating supplier. If so, the [EIL] **Department** shall refer the customer's request for a heating unit analysis to that participating home heating supplier. If the customer's [oil] **home heating** supplier is not a participating home heating supplier, the [EIL] **Department** shall choose a participating home heating supplier located in the customer's geographic service area to perform the heating unit analysis part of the program audit. The [EIL] **Department** shall make the selection in a random and non-

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discriminatory manner from the list of participating home heating suppliers who have registered with the [EIL] **Department**. The Department shall notify the customer of the referral.

(c) Upon receiving a referral from the [EIL] **Department** each covered utility and participating home heating supplier shall promptly contact the eligible customer to arrange for an appointment to provide the applicable program audit and services or heating unit analysis.

(d) If a covered utility receives a request for a program audit from a customer who heats with [oil] **fuel purchased from a home heating supplier** the utility shall record the same information required by N.J.A.C.14A:21-3.1(c), and refer the request for a heating system analysis to the [EIL] **Department** for review and referral.

[(e) If an eligible customer desires a covered utility or participating home heating supplier to provide cost, savings and payback estimates for heating unit efficiency modifications with respect to a heating unit which uses as its primary source of energy any fuel source of energy other than that sold by that covered utility or participating home heating supplier, the eligible customer must request such audit in writing by signing a form made available by that utility or participating home heating supplier which includes the following statement:

> "If your home is heated by a source of fuel other than (state the type sold by the covered utility or participating home heating supplier) only the supplier of the other fuel may audit your heating unit unless you specifically request us to audit your heating unit. Federal law requires that such request be in writing. If you want us to audit your heating unit, although we do not supply the fuel for it, please sign below."

A copy of the completed form shall be given to the customer upon signing, and a copy retained by the covered utility or participating home heating supplier.]

14A:21-3.3 Timing and preconditions

(a) All covered utilities shall provide [an] **a program** audit [of gas and electric cooling and gas heating units and the building structure] to determine applicable program measures and their estimated costs, savings and paybacks within 30 **working** days of receipt of a request or referral. If the demand for such services becomes too great, that utility must so notify the Department, in writing, and contact each eligible customer requesting the services within 30 **working** days of the request or referral to set up an appointment and complete the program audit within 60 **working** days of the date of the request or referral.

(b) All participating home heating suppliers shall provide oil-fired heating unit analyses to determine applicable program measures and their estimated costs, savings and paybacks within 30 **working** days of receipt of a request or referral. If the demand for such services becomes too great, the participating home heating supplier must so notify the Department, in writing, and contact each eligible customer requesting such services within 30 **working** days of the request or referral to set up an appointment and complete the analysis within 60 **working** days of the date of the request or referral.

(c) No covered utility or participating home heating supplier shall require any eligible customer to purchase or perform any other audit, service, product or measure as a precondition to receiving any program service.

(d) No covered utility or participating home heating [service] supplier shall discriminate unfairly among eligible customers participating in the [RCS] program.

[14A:21-3.4 Program practices]

[(a) As part of every program audit each covered utility shall provide a list of program practices which consist of basic energy conservation opportunities appropriate for every home. The auditor shall:

1. Determine the applicability of each practice;
2. Explain each one of the applicable practices to the eligible customer;
3. Explain the importance of completing applicable program practices before any program measure is installed; and
4. Provide savings estimates stated in ranges of dollars and payback estimates for these practices singly and/or collectively.

(b) The program practices shall consist of the following:

1. Heating unit efficiency maintenance and adjustments;
2. Optimization of the burner firing rate (oil-fired units only);
3. Night-time temperature setback;
4. Reducing thermostat settings in winter;
5. Raising thermostat settings in summer;
6. Water flow reduction in showers and faucets;
7. Reducing hot water temperatures;
8. Reducing energy use when a home is unoccupied;
9. Stopping infiltration paths in attics, basements and fireplaces;
10. Sealing leaks in pipes and ducts;
11. Efficient use of shading; and
12. Any other practice which the Department determines is appropriate.]

[14A:21-3.5 Program measures: Energy conservation and renewable resource measures]

[(a) The structural and heating and cooling unit analyses shall determine the applicability of the following energy conservation measures:

1. Insulation: wall, attic, floor, rim joist, duct, pipe, water heater;
2. Caulking;
3. Weatherstripping;
4. Replacement furnaces or boilers;
5. Replacement burner (oil-fired units only);
6. Flue opening modifications (gas-fired units only);
7. Electrical or mechanical ignition devices (gas-fired units only);
8. Storm or thermal windows and doors;
9. Heat reflective and heat absorbing windows or door material;
10. Load management devices;
11. Clock thermostats; and
12. Replacement central air conditioners;

(b) If an eligible customer heats with oil, a participating home heating supplier shall perform the oil-fired heating unit analysis of that unit pursuant to N.J.A.C.14A:3-3.

(c) The solar and wind analysis shall determine the applicability of the following renewable resource measures:

1. Solar domestic hot water systems;
2. Passive solar space heating systems;
3. Wind energy devices.

(d) The applicability of renewable resource measures (solar and wind) shall be determined by the auditor at the time of the structural analysis.]

14A:21-3.[6]**4** Applicability of program measures

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(a) (No change.)

(b) A program measure is applicable in a residence if:

1.-3. (No change.)

[4. With respect to wind energy devices:

i. The average annual wind speed, measured at the nearest measuring station or determined from wind atlas data, is greater than 10 mph; and

ii. There are no major wind obstructions over 55 feet high, greater than 30 feet wide, within 100 feet of a potential location for the wind energy device;]

5. through 14. renumbered **4.** through **13.** (No change in text.)

[15. With respect to direct gain glazing systems, the living space of the residence has either a south facing (or -45 degrees of True south) wall or an integral south facing (or -45 degrees of True South) roof which is free of major obstruction to solar radiation. In addition, adequate area in the south facing wall exists for the addition of windows;

16. With respect to indirect gain systems, the living space of the residence has either a south facing (or -45 degrees of True South) wall or an integral south facing (or -45 degrees of True South) roof, which is free of major obstruction to solar radiation; and

i. Trombe wall evaluation is only made if the south facing wall is of solid masonry construction and adequate area exists on the south facing wall for the addition of Trombe wall glazing;

ii. Water wall evaluation is made only if the floor of the dwelling is slab on grade or of adequate structural integrity and adequate area exists on the south facing wall for the addition of water wall glazing; or

iii. Thermosyphan Air Panel evaluation is made only if the south facing is other than solid masonry and adequate area exists on the south facing wall for the addition of a Thermosyphan Wall Panel;]

[17]**14.** With respect to solar sunspace systems, an evaluation is made only if adequate ground area in front or beside a south facing wall exists for the addition of a sunspace system and if adequate solar radiation is present on the south side[; and].

[18. With respect to passive solar heat gain retardants, an evaluation is made only if the residence has central or wall unit air conditioning.]

14A:21-3.[7]**5** Cost, savings and payback estimates

(a) (No change.)

(b) All costs, savings and payback estimates for a gas-fired heating unit shall be [determined] **based** upon an evaluation of the unit's seasonal efficiency. This evaluation shall be based upon [estimated peak (tune-up)] steady state efficiency corrected for cycling losses, pursuant to a procedure to be provided to the auditor by the Department.

(c) (No change.)

(d) All costs, savings and payback estimates for an applicable solar hot water system shall be based upon the following information which shall be disclosed to the eligible customer:

1. Square feet of collector;

[2. Collector characteristics, including glazing materials and other collector materials;]

[3]**2.** [Storage system, if needed, including] The capacity of storage;

[4. Any freeze protection, if needed;]

[5]**3.** Estimated percent of the [space and/or] water heating load to be met by solar energy; and

[6]**4.** [Site preparation needed] **Location of collectors.**

(e) All costs, savings and payback estimates for applicable [passive solar space heating and cooling] **solar sunspace** systems shall be based upon the following information [which shall be disclosed to the eligible customer]:

[1. The applicable system, which the auditor shall draw];

[2]**1.** The estimated percent of the heating load to be met by the system;

[3]**2.** The approximate dimensions of such system; and

[4]**3.** The collection storage characteristics[, including the recommended heat capacity of storage].

[(f) All costs, savings and payback estimates for applicable wind energy devices shall be based upon the following information which shall be disclosed to the customer:

1. Installation costs estimates, based upon commercially available wind devices of a kilowatt rating appropriate to the level of electrical demand in the customer's residence;

2. Estimates of energy savings provided in the form of a function of an average yearly wind speed for such system used;

3. Average yearly wind speed at the nearest wind measurement station and the relationship between that data and the likely wind speeds at the residence; and

4. Description of the type of wind energy device used by the auditor in preparing the energy savings estimates.]

[(g) All costs, savings and payback estimates for solar hot water systems, passive solar space heating and cooling systems, and wind energy devices shall contain the following disclosure conspicuously placed on the audit results:

> "THE COST, SAVINGS AND PAYBACK ESTIMATES YOU RECEIVE ARE BASED ON SYSTEMS WHICH MAY BE DIFFERENT FROM THE ONES YOU PURCHASE. ALSO THESE ESTIMATES WERE NOT DETERMINED USING ACTUAL CONDITIONS BUT USING SIMULATED MEASUREMENTS. THEREFORE, THE COST SAVINGS AND PAYBACKS WE HAVE ESTIMATED MAY BE DIFFERENT FROM THOSE WHICH ACTUALLY OCCUR."]

14A:21-3.[8]**6** Results of the program audit

(a) As part of every program audit each auditor shall provide a written list on a form provided or approved by the Department of energy conserving practices at the time of on-site evaluation. The auditor shall:

1. Determine the applicability of each practice;

2. Explain each one of the applicable practices to the eligible customer;

3. Explain the importance of completing applicable program practices before any energy conservation measure is installed;

[(a)]**(b)** Upon completion of the **program** audit, every auditor shall provide the program audit results [in person, on site and] in writing **within 10 working days** to each eligible customer who receives a program audit. The program audit results shall be in a form prescribed **or approved** by the Department. [If the eligible customer is not present or otherwise declines an in-person presentation, the auditor shall leave the information and a telephone number which the eligible customer may call to review the audit results.] **The auditor shall provide a telephone number which the eligible customer may call to review the audit results.**

[(b)]**(c)** Program audits results shall include the following:

1. Home characteristics to include:

i. Number of occupants;

ii. Building type;

iii. Approximate age of building;

iv. Space heating fuel type;

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v. Space heating efficiency, assumed or actual;
vi. Space heating system type;
vii. Water heating fuel type;
viii. Water heating system type;
ix. Building square footage;
x. Annual heating cost.

[1.]**2.** An estimate of the total costs (materials and labor), expressed in [ranges of] dollars [, of installation by an installer of] **for** each applicable program measure addressed in the program audit;

[2.]**3.** An estimate of the total cost, expressed in [ranges of] dollars, of installation by the customer of each applicable program measure addressed in the program audit; however, such estimates shall not be provided for replacement central air conditioners, wall insulation, furnace efficiency modifications, devices associated with load management techniques, [domestic solar hot water or wind energy devices] **and thermal windows.**

[3.]**4.** An estimate of the savings, expressed in [ranges of] dollars, which would occur during the first year from installation of each applicable program measure addressed in the program audit;

[4.]**5.** An estimate of payback expressed in [ranges of] years for installation of each applicable program measure addressed in the program audit;

[5.]**6.** The following disclosure, conspicuously placed **and highlighted**;

"THE PROCEDURES USED TO MAKE THESE ESTIMATES ARE CONSISTENT WITH NEW JERSEY DEPARTMENT OF ENERGY CRITERIA FOR RESIDENTIAL [ENERGY] **PROGRAM** AUDITS. HOWEVER, [THE] ACTUAL INSTALLATION COSTS [YOU INCUR] AND [THE] ENERGY SAVINGS YOU REALIZE FROM INSTALLING THESE MEASURES MAY [BE DIFFERENT] **DIFFER** FROM THE ESTIMATES CONTAINED IN THIS AUDIT REPORT. [ALTHOUGH THE ESTIMATES ARE BASED ON MEASUREMENTS OF YOUR HOUSE, THEY ARE BASED ON ASSUMPTIONS WHICH MAY NOT BE TOTALLY CORRECT FOR YOUR HOUSEHOLD.] TOTAL SAVINGS FROM THE INSTALLATION OF MORE THAN ONE PROGRAM MEASURE WILL PROBABLY BE LESS THAN THE SUM OF SAVINGS OF EACH MEASURE INSTALLED INDIVIDUALLY."

[6. An estimate of the annual normal maintenance costs, if appropriate, of each applicable program measure; and]

7. An example of the effect that the installation of one energy conservation measure has on the energy savings of a related energy conservation measure. The example shall be in a form provided or approved by the Department.

[7.]**8.** The possible economic benefits to the customer of existing federal **or State** tax incentives, with one sample calculation of the effect of the tax benefit on the cost to the customer of installing [an applicable renewable resource measure and one sample calculation of the effect on the cost of installing] an applicable energy conservation measure.

14A:21-3.[9]**7** Additional information

[(a) Every auditor shall present the following to an eligible customer upon the completion of the program audit;

1. An explanation of program benefits and a brief description of how an eligible customer can qualify for such benefits. The description of the benefits and eligibility criteria shall be prepared by the Department;

2. Lists of participating installers, lenders and suppliers of program measures and an explanation of how to use the lists;

3. An explanation of the benefits of the Weatherization Assistance Program for Low-Income Persons and a brief description of who is eligible for such assistance; and

4. Conservation literature in a form specified by the Department.]

[(b)] Every auditor shall provide an eligible customer with a written statement of any substantial interest in which the auditor or the auditor's employer has, directly or indirectly, in the sale or installation of any program measure.

14A:21-3.[10]**8** Prohibitions

(No change in text.)

SUBCHAPTER 4. ARRANGING INSTALLATION

14A:21-4.1 Services provided

(a) (No change.)

1.-3. (No change.)

4. Telephone assistance available through the covered utility by [either] a toll-free number [or the acceptance of collect calls from eligible customers]. The toll-free number [or the fact of acceptance of collect calls for this purpose] shall be placed conspicuously on all lists and written information distributed pursuant to this section.

14A:21-4.2 Prohibitions

(No change.)

SUBCHAPTER 5. ARRANGING FINANCING

14A:21-5.1 Services provided

(a) Upon request by an eligible customer, each covered utility shall promptly arrange financing for the purchase and installation of any program measure. The[se] arranging of services shall include:

1. Distribution of lists of lenders [prepared from a Master Record provided by the Department]. The lists shall be available upon request at each commercial office of each covered utility or by mail from the utility[, and shall also be provided upon the completion of a program audit];

2. Written information explaining the standards for credit applications, and loan applications, and the availability of financial assistance though lenders. Such written information shall be distributed by each covered utility to all eligible customers who receive an audit or upon request from an eligible customer. This information shall be available by mail or at each utility area office or other easily accessible designated locations of the utility. Such written information shall be in a form prescribed **or approved** by the Department;

3. In-person assistance about the selection of lenders, shopping for loans and filling out loan applications provided by trained personnel who shall be available in at least one specified location during business hours and/or at several locations during designated hours; and

4. Telephone assistance available through the covered utility by [either] a toll-free number [or the acceptance of collect calls from eligible customers]. The toll-free number [or the fact of the acceptance of collect calls for this purpose] shall be placed conspicuously on all lists and written information distributed pursuant to this section.

14A:21-5.2 Prohibitions

(a) When providing any arranging services, no covered util-

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ity shall recommend, select or provide information about any lender if such recommendation would unfairly discriminate among lenders. However, if a utility finances program measures, it may so inform the customer and fairly describe the service. No covered utility, when providing or arranging services, shall discriminate unfairly among eligible customers, among suppliers, installers or among program measures.

[(b) No covered utility shall provide any such arranging service with any lender not included on the current Master Record of lenders at the time it provides the service.

(c) No covered utility shall provide any arranging services for any measure which is not a program measure.]

SUBCHAPTER 6. CUSTOMER BILLING, TERMINATION OF SERVICE AND PAYMENTS

14A:21-6.1 Services required

(a) (No change.)

(a) When billing a customer for any costs for any program service, including arranged loans, each covered utility and participating home heating supplier shall identify the charges and list them separately on every bill rendered for these charges.

(b) Each covered utility shall allow eligible customers to include payments for those charges along with payments for their utility bill. When receiving a payment from a customer that includes payment for utility service or fuel and payment for any program service, the utility shall credit the [remainder] **portion of the payment that exceeds the charge for utility service or fuel** to program charges, unless the customer specified otherwise.

14A:21-6.2 Prohibitions

No covered utility or participating home heating supplier shall terminate or otherwise restrict service or fuel to any eligible customer upon customer default for program services [and program loans].

14A:21-6.3 Payments

(a) (No change.)

(b) No eligible customer shall be charged more than $15.00 for a program audit [,provided however that]. [a]Any eligible customer who is **either** eligible for a "lifeline credit" pursuant to N.J.S.A. 48:2-29.15 et seq. **or lives in a household where the gross annual income is less than or equal to 150 percent of the poverty level income for that household as defined by the U.S. Department of Health and Human Services guidelines** shall receive a program audit at no cost.

(c) (No change.)

SUBCHAPTER 7. AUDITORS, INSPECTORS, AND INSTALLERS: QUALIFICATIONS AND TESTING

14A:21-7.1 General

(a) All auditors and inspectors of program measures shall be qualified by the Department as to basic skills necessary to perform such tasks. Each auditor and inspector shall take a written test, prepared and administered by the Department, prior to being qualified to conduct audits and/or inspections. **The Department may require that evidence of sucessful completion of energy auditor or inspector training be presented prior to testing.** The Department may retest any or all auditors and/or inspectors upon notice as audit procedures or installation standards change, or for good cause as determined by the Department.

(b) Any home heating supplier who has previously passed a Department-approved test and has been qualified by the Department may apply for and receive a waiver of testing and qualification standards as set forth herein. Any home heating supplier may apply for and receive a waiver of testing and qualification standards if such person submits written proof which, in the opinion of the Department, establishes that the person has sufficient training in conducting testing and analysis of program measures applicable to [oil-fired] heating units.

(c) (No change.)

14A:21-7.2 Qualifications of auditors

(a) Persons conducting a program audit shall [individually or collectively] have the following qualifications:

1. (No change.)

4. A general knowledge of the different types of each applicable program measure, the advantages, disadvantages and applications of each; and any applicable [U.S. Department of Energy] installation standards [which pertain to those measures];

5. The capability to conduct the program audit, including:

i. Familiarity with the energy conserving practices required to be audited;

ii. Ability to determine the applicability of program measures; and

iii. A proficiency in the pertinent auditing procedures for each applicable program measure;

6. Where a heating unit efficiency modification is an applicable program measure[, and the source of fuel for the existing furnace or boiler is gas,] a working ability to calculate the seasonal efficiency **and steady-state efficiency** of the furnace or boiler;

[7. Where a heating unit efficiency modification is an applicable program measure, and the source of fuel for the existing furnace or boiler is oil, a working ability to calculate the steady state efficiency of the furnace or boiler as required by N.J.A.C.14A:3-3;]

[8]7. Where a solar energy measure is an applicable program measure, an understanding of the nature of solar energy and its residential applications, including:

i. Insolation;

ii. Shading;

iii. Heat capture and transport; and

iv. Where appropriate, heat transfer for hot water and space heating;

[9. Where a wind energy device is an applicable program measure, an understanding of the nature of wind energy and its residential applications, including:

i. Wind availability;

ii. Effects of obstructions;

iii. Wind capture;

iv. Power generation; and

v. Interfaces with residential and utility power lines; and]

[10.]8. The ability to convey this information and the results of the program to eligible customers in easily understandable terms.

(b) [Auditors] **Home heating suppliers** may be qualified to conduct a specific part of an audit and **may** [shall] be tested accordingly.

14A:21-7.3 Qualifications for inspectors

(a) Inspectors of program measures shall be thoroughly familiar with applicable [U.S. Department of Energy] installation standards. Inspectors shall be able to examine installations for compliance with applicable installation standards.

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(b) Inspectors may be qualified to conduct inspections of one or more types of **program measure** installations, and shall be tested and qualified accordingly by the Department.

[14A:21-7.4 Qualifications for installers]

[(a) Installers of program measures shall be thoroughly familiar with U.S. Department of Energy installation standards.

(b) All installers shall have a minimum of six months experience in installing each program measure they are applying to be listed for.

(c) Installers of vent dampers and solar systems, urea formaldehyde insulation and intermittent ignition devices shall provide proof that they have successfully completed one of the following:

1. Manufacturer's installation training;
2. Private or county vocational school training; or
3. Any other U.S. Department of Energy approved training program.]

14A:21-7.4 Disqualification of auditors and inspectors

(a) The Department may disqualify any auditor or inspector from participating in the program.

(b) Grounds for disqualification include,but are not limited to the following:

1. Violation, within three years prior to the date of application, of any laws governing the conduct of occupations or professions regulated by the state(s) in which the applicant has done business;

2. Violation of the Federal Organized Crime Control Act of 1970 or conviction for fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice or any other offense indicating a lack of business integrity or honesty by the applicant, or if the applicant is a corporation, partnership or other business entity, by a person who is a principal of the corporation, partnership or business entity;

3. Violation of any federal or state anti-trust statues, or Federal Anti-Kickback Act;

4. Violation of any laws governing hours of labor, minimum wage standards, discrimination in wages or child labor, and Equal Employment Opportunity laws;

5. Any other cause affecting the responsibility of a auditor or inspector of such a serious and compelling nature as may be determined by the Department to warrant disqualification, including such conduct as may be prescribed by law or regulation even though such conduct has or may not be prosecuted as a violation of such a regulation; or

6. Failure to fully comply with all applicable requirements of this chapter.

14A:21-7.5 Procedures for disqualification

(a) Any auditor or inspector whom the Department plans to disqualify from participating in the program shall receive written notice from the Department of the disqualification and the grounds therefor at least 30 days before such disqualification.

(b) The Department shall allow the auditor or inspector to respond in writing to the allegations contained in the notice. All such responses must be received by the Department no later than 30 days after receipt of the proposed agency action. Disqualification from participation shall constitute final agency action.

(c) An auditor or inspector who has been disqualified by the Department may file a request for reconsideration after one year. The request for reconsideration shall be accompanied by a statement, under oath, setting forth substantial and appropriate grounds for reconsideratrion which shall be supported by documentary evidence. Substantial and appropriate grounds include, but are not limited to:

1. Newly discovered material evidence that the Department erred in its previous decision;

2. Reversal of a conviction of an offense or civil judgement which formed the basis of the Department's previous decision, on material grounds;

3. Actual change of ownership or effective control; and

4. Elimination of the causes for which disqualification occurred.

(d) The Department shall review the request for reconsideration and shall, within 45 days of its receipt, notify the auditor or inspector of its decision whether to allow the auditor or inspector to continue to participate in the HESP Program.

14A:21-7.6 Audit subcontractors

(a) Covered utilities may subcontract HESP program audits. In developing bid specifications, advertising for bids and awarding contracts and subcontracts, covered utilities shall give consideration to participation by small businesses and minority-owned businesses. The covered utilities shall furnish the Department evidence of compliance with the above requirement.

SUBCHAPTER 8. INSPECTION OF INSTALLATIONS

14A:21-8.1 Mandatory inspections

(a) All inspections of the following installations of program measures shall be conducted pursuant to the Uniform Construction Code, N.J.A.C. 5:23-1.1 et seq.: 1. Flue opening modifications:

2. Electrical or mechanical ignition systems;

3. Solar water heating systems and [passive space heating] **solar sunspace** systems;

[4. Wind energy systems]

[5]**4**. All major heating and cooling system modifications; and

[6]**5**. All types of **in-wall** blown or poured insulation.

(b) (No change.)

14A:21-8.2 Random inspections

(a) Random inspections shall be made of all program measures installed by participating installers. [except those measures listed in N.J.A.C.14A:21-8.1(a). Random inspections shall be made of four of the first 10 installations of all participating installers, required to be inspected hereunder. Ten percent of all installations of each participating installer shall be inspected; however, the initial four inspections shall count toward the entire ten percent.]

(b) At least one inspection shall be performed during the life of the program of the work of every participating installer who makes an installation of a program measure [for which there is a U.S. Department of Energy installation standard].

(c) Each [listed installer shall] **audit recipients may** submit to the Department a work order in a form prescribed by the Department for each installation at the time of the entry of the contract for installation [with an eligible customer]. The Department shall review all submitted work orders and choose which installations shall be inspected on a random basis.

(d) The Department shall promptly notify a covered utility, which services the geographic area of the installation, of the name, address and telephone number of the [eligible customer] **audit recipients**, and the type of installation needed to be inspected. The covered utility shall promptly contact the [eligible customer] **audit recipient** and inform [him/her] **them** of the proposed inspection, and arrange an appointment within two weeks. The covered utility shall provide an inspec-

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tor, qualified by the Department to inspect that type of installation, to make an inspection report of the site to determine compliance with applicable installation standards.

(e) Upon completion of the inspection, the inspector shall make a written report stating the following ([C]copies of such report shall be provided to the [customer] **audit recipient**, the installer and the Department no later than one week from the date of the inspection.):

1.-5. (No change.)

(f)-(g) (No change.)

(h) Upon receipt of a notice of reinspection, the utility shall contact the [eligible customer] **audit recipient** to arrange for a reinspection. The reinspection report shall contain the same information as in (d) above. Copies of the report shall be provided to the customer, the installer and the Department no later than one week of the date of reinspection.

(i) (No change.)

(j) The Department shall review complaints made by [eligible customers] **audit recipients** of faulty or improper installations by participating installers, and may, in its discretion, notify a covered utility to provide an inspection of the customer's residence by a qualified inspector. Upon receipt of such a notice, the covered utility shall comply and conduct an inspection and report the results **in compliance with the requirements in this subcapter.**

SUBCHAPTER 9. MASTER RECORD OF INSTALLERS [,LENDERS] AND SUPPLIERS

14A:21-9.1 General requirements

(a) The Department shall compile and maintain a Master Record of installers [,lenders] and suppliers of program measures who participate in the [RCS] **HESP** Program. The Department shall provide an application to any installer [,lenders] or supplier of program measures who notifies the Department that [he wishes] **they wish** to become a participant.

(b) (No change.)

(c) The Department shall update the Master Record every 30 days and shall promptly notify covered utilities [and the EIL] of any changes in its content.

(d) (No change.)

(e) Each application must be accompanied by a non[-]refundable application fee of $25.00 payable to the New Jersey Department of Energy-HESP by [certified] check or money order. **The Department at its discretion may waive all or part of the application fee.**

14A:21-9.2 Installers: Requirements for participation

(a) To be eligible for inclusion on the Master Record an installer must submit a certified application to the Department which shall include the following;

1.-3. (No change.)

4. A detailed list of any liens, stop notices or claims filed against or by reason of any project undertaken or supervised by the [applicant] **installer** within the past three years, including any administrative or judicial complaints **and any claims filed with the Better Business Bureau, the New Jersey Division of Consumer Affairs or its subdivisions, or any similar state, county or municipal agency**, and the disposition of same.

5. (No change.)

6. Verification that the installer carries comprehensive public liability insurance adequately protecting the installer from liability for bodily injury, including death, and/or property damage arising out of the installer's performance. Such insurance shall be in amount not less than [$100,000 for bodily injury for each person,] $300,000 for bodily injury for each occurrence plus [$100,000] **$250,000** for property damage for each occurrence[.]**or in an amount not less than $500,000 per occurrence for bodily injury and property damage liability. The policy shall contain an endorsement for contractual liability. Every year thereafter the installer shall provide the Department with a certification of insurance;**

7. (No change.)

8. A statement that the installer agrees not to discriminate among [eligible customer] **audit recipients** participating in the [RCS] **HESP** Program.

[9. Agreement to supply the Department with a copy of any work order for any residence in which the installer performs work pursuant to the RCS Program, upon entry of the contract;]

[10]**9**. A statement with accompanying documentation that the installer meets all applicable installer qualifications;

[11]**10**. A statement that all program measures installed by the installer pursuant to the [RCS] **HESP** Program shall be covered by a written manufacturer's and installer's warranty **for one year**; and

[12]**11**. An agreement that the installer shall use only materials which [are labeled as meeting applicable U.S. Department of Energy] **meet applicable** material standards [in the installation of program measures pursuant to RCS Program].

(b) The installer shall agree to provide the following to any [eligible customer] **audit recipient** who selects that installer from a program list:

1. A written contract detailing the installation to be done;

2. A statement that the installation shall be in compliance with all [U.S. Department of Energy] **applicable** material and installation standards;

3. A written provision in the contract stating a specific time period for the completion of all work, with specific penalties for failure to complete an installation on time; however, the installer shall not be liable for those penalties due to acts of God or labor strikes;

4. A written guarantee that any violation in the installation of [U.S. Department of Energy] **applicable** material and/or installation standards shall be corrected by the installer at no additional cost to the eligible customer within one month of discovery and notice to the installer;

5. Written assurance that all program measures installed by the installer carry a manufacturer's and/or installer's warranty pursuant to N.J.A.C. 14A:21-9.2(a)[11]**10**; and

6. Agreement to participate in program customer conciliation procedures.

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

[14A:21-9.3 Lenders: Requirements for participation]

[(a) To be eligible for inclusion on the Master Record a lender shall complete a certified application to the Department which shall include the following:

1. An agreement to comply with all applicable federal and state laws concerning lenders;

2. An agreement to supply the Department with sample copies of any and all loan application forms which will be used for loans made pursuant to the RCS Program, and explanation of each;

3. A statement of the geographical area which the lender services; and

4. An agreement to supply the Department with reports of all loans made to eligible customers pursuant to the RCS Program.

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(b) The lender shall agree to provide the following to any eligible customer who selects that lender from a program list:

1. The lender shall agree not to take security in real property that is used as the customer's principal residence unless the customer acknowledges in writing that he/she is aware of the consequences of default on the loan;

2. A rebate of unearned finance charges if a customer prepays a loan, either voluntarily or as a result of default. If prepayment is a result of a default, the rebate shall be computed from the day of acceleration; and

3. A written agreement to participate in program customer conciliation procedures.]

14A:21-9.[4]**3** Suppliers: Requirements for participation

(a) To be eligible for inclusion on the Master Record, a supplier shall complete a certified application to the Department which shall include the following:

1. An agreement to supply measures which meet applicable [U.S. Department of Energy] material standards, and which are labeled as complying with the specific standards for that product;

2.-5. (No change.)

[6. An agreement to supply eligible customers with a written statement at the time of sale that the measures purchased meet U.S. Department of Energy material standards, or that the measures carry a warranty, whichever is applicable; and]

[7]**6. An** [A]agreement that all program measures supplied shall be covered by a **one year** supplier's warranty.

14A:21-9.[5]**.4** Withdrawal from the [RCS] **HESP** program

Any supplier [,lender] or installer may voluntarily withdraw from the program and may be removed from the Master Record upon 30 days written notice to the Department. However, any person who so notifies the Department of withdrawal must continue to abide by all requirements for participation and extend all benefits due for all eligible customers who contracted with the person while the participant was included on the Master Record.

14A:21-9.[6]**5** Exclusion

(a) The Department shall have the power to exclude persons from participating and from being included on the Master Record of installers [,lenders] or suppliers.

(b) Grounds for exclusion include, but are not limited to, the following:

1.-4. (No change)

5. Violation of any laws governing hours of labor, minimum wage standards, discrimination in wages or child labor**, and Equal Employment Opportunity laws**;

6. Any other cause affecting the responsibility of an installer, [lender] or supplier of such a serious and compelling nature as may be determined by the Department to warrant exclusion, including **but not limited to unresolved claims, liens or stop notices or** such conduct as may be prescribed by law or regulation even though such conduct has or may not be prosecuted as a violation of such law or regulation; and

7. (No change.)

14A:21-9.[7]**6** Removal

(a) Any person may be removed by the Department from the Master Record of installers [,lenders] or suppliers.

(b) (No change.)

14A:21-9.[8]**7** Procedures for removal or exclusion

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

(c) A person who has been excluded or removed from the Master Record by the Department may reapply, after one year, for reconsideration. The application shall be accompanied by a new certified application setting forth substantial and appropriate grounds for reconsideration, supported by documentary evidence, together with payment of a new application fee. Substantial and appropriate grounds include, but are not limited to:

1.-4. (No change.)

(d) (No change.)

14A:21-9.[9]**8** Temporary suspension

The Department may, in its discretion, temporarily suspend any listed installer [,lender] or supplier pending removal from the Master Record, if the Department determines that retaining that person on the Master Record would immediately harm present or potential eligible customers. The Department shall, within five days of such decision to suspend, notify the person in writing of the suspension and the grounds. The person shall have five days within which to respond to the allegations in writing to the Department.

14A:21-9.[10]**9** Disclosure

(No change in text.)

SUBCHAPTER 10. LISTS OF INSTALLERS [,LENDERS] AND SUPPLIERS

14A:21-10.1 General contents

(a) All lists of installers [,lenders] and suppliers of program measures shall contain the name, address and telephone number of each supplier [,lender] and installer on the Master Record which is in or contiguous to the covered utility's service territory and an indication of which types of program measures a supplier or installer sells or installs and in which geographical areas. Identification of program measures shall not include brand names.

(b) All lists shall contain an effective date **and expiration date** on the first page[,]**. The expiration date shall be 45 days after the effective date.** [and shall include immediately below the date the following statement:

"THIS LIST IS EFFECTIVE FOR FORTY-FIVE (45) DAYS FROM THE DATE STATED ABOVE, AFTER THAT THE INFORMATION CONTAINED ON THIS LIST MAY CHANGE. YOU MUST USE A CURRENT LIST FOR CURRENT INFORMATION AND THE FULL SCOPE OF HOME ENERGY SAVINGS PROGRAM BENEFITS. IF YOU WISH A CURRENT LIST CONTACT YOUR UTILITY."]

14A:21-10.2 Installer lists

(a) All lists of installers shall include a statement that installation arranging services are available from covered utilities [and shall include the particular utility's toll-free number, designated area office, or the acceptance of collect calls as required by N.J.A.C. 14A:21-4.1].

(b) All lists of installers [shall] **may** contain [the following statements:]

[1. "ANY ELIGIBLE CUSTOMER WHO RECEIVES UTILITY ARRANGING OF INSTALLATION OR WHO RECEIVES AN INSTALLER LIST, AND HAS PROGRAM MEASURES INSTALLED BY AN INSTALLER CHOSEN FROM THAT LIST, IS ENTITLED TO THE FOLLOWING PROGRAM BENEFITS:]**information that any eligible customer who receives utility arranging of installation or who receives an installer list, and has program measures installed by an installer chosen from that list, is entitled to the following program**

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benefits:

1. [A MANUFACTURER'S AND INSTALLER'S ONE YEAR WARRANTY FOR EVERY PROGRAM MEASURE, EXCEPT CAULKING AND WEATHERSTRIPPING;]

A manufacturer's and installer's one year warranty for every program measure, except caulking and weatherstripping;

2. [MATERIALS WHICH MEET U.S. DEPARTMENT OF ENERGY STANDARDS;
3. INSTALLATIONS WHICH MEET APPLICABLE U.S. DEPARTMENT OF ENERGY INSTALLATION STANDARDS;]

Installations which meet applicable installation standards;

[4. ENFORCEMENT OF STANDARDS THROUGH A MANDATORY POST-INSTALLATION INSPECTION OR INCLUSION IN THE POOL OF CUSTOMERS FROM WHICH RANDOM INSPECTIONS WILL BE MADE, WHICHEVER IS APPLICABLE;]

3. Enforcement of standards through a mandatory post-installation inspection or inclusion in the pool of customers from which random inspections will be made, whichever is applicable;

[5. ACCESS TO PROGRAM CONCILIATION AND REDRESS PROCEDURES; AND]

4. Access to program conciliation and redress procedures;

[6. ASSURANCE THAT A LISTED INSTALLER HAS AGREED TO COMPLY WITH ALL APPLICABLE PROGRAM REQUIREMENTS.]

5. ssurance that a listed installer has agreed to comply with all applicable program requirements.

[IN ORDER TO ENSURE THAT YOU WILL RECEIVE THESE BENEFITS TO WHICH YOU ARE ENTITLED UNDER THE PROGRAM, PLEASE FILL OUT THE ATTACHED FORM INDICATING THAT YOU SELECTED YOUR INSTALLER FROM THIS LIST. THIS FORM SHOULD BE RETURNED TO THE NEW JERSEY DEPARTMENT OF ENERGY. IF THERE IS NO FORM, CONTACT THE DEPARTMENT, THE ENERGY INFORMATION LINE OR YOUR UTILITY TO OBTAIN ONE.]

6. That in order to ensure program benefits, appropriate forms should be returned to the New Jersey Department of Energy.

[IN ADDITION, YOU MUST INFORM THE INSTALLERS ON THIS LIST FROM WHOM YOU SOLICIT BIDS THAT THE WORK IS BEING DONE UNDER THE NEW JERSEY HOME ENERGY SAVINGS PROGRAM (HESP). ALL INSTALLERS WHO PERFORM WORK UNDER HESP WILL BE REQUIRED TO FILL OUT A WORK ORDER AND RETURN IT TO THE DEPARTMENT."]

7. That installers on this list must be informed that the work is being done under the New Jersey Home Energy Savings Program (HESP).

["INCLUSION OF ANY INSTALLER ON THIS LIST DOES NOT IMPLY THAT THE INSTALLER IS RECOMMENDED OR SELECTED BY THE NEW JERSEY DEPARTMENT OF ENERGY OR YOUR UTILITY, NOR DOES THE DEPARTMENT OR UTILITY IN PROVIDING THIS LIST GUARANTEE OR WARRANTY THE TYPE OR QUALITY OF THE WORK TO BE PERFORMED."]

8. That inclusion of any installer on this list does not imply that the installer is recommended or selected by the New Jersey Department of Energy or your utility, nor does the department or utility in providing this list guarantee or warranty the type of quality of the work to be performed.

[14A:21-10.3 Lenders lists]

[(a) All lists of lenders shall include a statement that financing arranging services are available from covered utilities and shall include the particular utility's toll-free number, designated area offices, or the acceptance of collect calls as required by N.J.A.C. 14A:21-5.1.

(b) All lists of lenders shall contain the following statements:

1. "ANY ELIGIBLE CUSTOMER WHO RECEIVES COVERED UTILITY ARRANGING OR FINANCING OR WHO RECEIVES A LIST OF LENDERS AND CHOOSES ONE FROM THAT LIST TO FINANCE PROGRAM MEASURES, IS ENTITLED TO RECEIVE THE FOLLOWING PROGRAM BENEFITS:
1. ACCESS TO PROGRAM CONCILIATION AND REDRESS PROCEDURES; AND
2. ASSURANCE THAT A LISTED LENDER HAS AGREED TO COMPLY WITH ALL APPLICABLE PROGRAM REQUIREMENTS.

IN ORDER TO ENSURE THAT YOU RECEIVE THE BENEFITS TO WHICH YOU ARE ENTITLED, YOU MUST INFORM THE LENDERS YOU SELECT FROM THIS LIST THAT THE LOAN YOU ARE REQUESTING IS BEING MADE UNDER THE NEW JERSEY HOME ENERGY SAVINGS PROGRAM (HESP). YOU ARE NOT ENTITLED TO THE FULL SCOPE OF PROGRAM BENEFITS, INCLUDING INSPECTION OF INSTALLATION OR PROGRAM MEASURES, UNLESS YOU CHOOSE AN INSTALLER FROM A LIST OF PARTICIPATING INSTALLERS. THIS LIST CAN BE OBTAINED FROM YOUR UTILITY COMPANY."

2. "FINANCIAL ASSISTANCE UNDER THE SOLAR ENERGY AND ENERGY CONSERVATION BANK ACT MAY BE AVAILABLE FROM LISTED LENDERS.
3. "THE STATE OF NEW JERSEY OFFERS LOW INTEREST HOME IMPROVEMENT LOANS FOR ENERGY CONSERVATION AND RENEWABLE RESOURCE MEASURES. ASK ONE OF THE LISTED LENDERS FOR ELIGIBILITY CRITERIA AND OTHER REQUIREMENTS.
4. "INCLUSION OF ANY LENDER ON THIS LIST DOES NOT IMPLY THAT THE LENDER IS RECOMMENDED OR SELECTED BY THE NEW JERSEY DEPARTMENT OF ENERGY OR YOUR UTILITY."]

14A:21-10.[4]**3** Supplier lists

All lists of suppliers [shall] **may** contain the following [statements:] **information that any eligible customer who purchases any program measure from a listed supplier who indicates that the program measure meets applicable material standards or carries program measures warranty is entitled to the following benefits:**

[1. "ANY ELIGIBLE CUSTOMER WHO PURCHASES ANY PROGRAM MEASURE FROM A LISTED SUPPLIER WHO INDICATES THAT THE PROGRAM MEASURE MEETS APPLICABLE U.S. DEPARTMENT OF ENERGY MATERIALS STANDARDS OR CARRIES THE PROGRAM

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MEASURES WARRANTY IS ENTITLED TO THE FOLLOWING BENEFITS:]

1. [A SUPPLIER'S ONE-YEAR WARRANTY FOR EVERY PROGRAM MEASURE EXCEPT CAULKING AND WEATHERSTRIPPING:]

A supplier one-year warranty for every program measure except caulking and weatherstripping;

2. [ACCESS TO PROGRAM CONCILIATION AND REDRESS PROCEDURES; AND]

Access to program conciliation and redress procedures;

3. [ASSURANCE THAT LISTED SUPPLIERS HAVE AGREED TO COMPLY WITH ALL APPLICABLE PROGRAM REQUIREMENTS. IN ORDER TO RECEIVE HOME ENERGY SAVINGS PROGRAM (HESP) BENEFITS YOU MUST OBTAIN FROM THE SUPPLIER AND PRESENT UPON REQUEST TO THE NEW JERSEY DEPARTMENT OF ENERGY, A WRITTEN STATEMENT THAT THE PROGRAM MEASURE YOU PURCHASE MEETS U.S. DEPARTMENT OF ENERGY MATERIALS STANDARDS OR THE PROGRAM MEASURE WARRANTY [WHICHEVER IS APPLICABLE."]

Assurance that listed suppliers have agreed to comply with all applicable program requirements; and

[2. INCLUSION OF A SUPPLIER ON THIS LIST DOES NOT IMPLY THAT THE SUPPLIER IS RECOMMENDED OR SELECTED BY THE NEW JERSEY DEPARTMENT OF ENERGY OR YOUR UTILITY."]

4. That inclusion of a supplier on this list does not imply that the supplier is recommended or selected by the New Jersey Department of Energy or the customer's utility.

14A:21-10.[5]**4** Updating lists

All covered utilities shall keep all lists of installers [,lenders] and suppliers current, and shall promptly [update lists with information about included, withdrawn, removed and reinstated participants whenever the Department updates the Master Record of installers, lenders and suppliers] **place in service revised lists received from the Department.**

SUBCHAPTER 11. HOME HEATING SUPPLIERS

14A:21-11.1 Participation by home heating suppliers

Home heating suppliers may participate in the [RCS] **HESP** Program to the extent provided by this chapter.

14A:21-11.2 Requirements for participation

To be eligible to participate in the [RCS] **HESP** Program a home heating supplier shall notify the Department in writing of [his] **its** intention to participate and agree to comply with all applicable requirements of this chapter.

14A:21-11.3 Voluntary withdrawal

(No change.)

14A:21-11.4 Disqualification

(a) (No change.)

(b) Grounds for disqualification include, but are not limited to, the following:

1. Violation, within three years prior to the date of application, of any laws governing the conduct of occupations or professions regulated by the state(s) in which the applicant has done business;

2.-3. (No change.)

4. Violation of any laws governing hours of labor, minimum wage standards, discrimination in wages or child labor, **and Equal Employment Opportunity laws;**

5.-6. (No change.)

7. Falsification or willful omission of any information reported by the Department.

14A:21-11.5 Procedures for disqualification

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

(d) The Department shall review the request for reconsideration and shall, within 45 days of its receipt, notify the home heating supplier of its decision whether to allow the home heating supplier to continue to participate in the [RCS] **HESP** Program.

SUBCHAPTER 12 REPORTING AND RECORD KEEPING

14A:21-12.1 Reporting: Covered utilities

(a) Each covered utility shall submit the following information in writing to the Department on [May 1, 1981] **May 30, 1986** and annually thereafter through [May 1, 1986] **May 30, 1990** for the 12 month period ending the preceding April 1;

1. Whether the utility is engaged in supplying, installing, or financing any program measures pursuant to N.J.A.C. 14A:21.13 or 14A:21-14 and a description of the program(s);

2. The approximate number of eligible customers and, [if available,] the percentage of those customers for whom the utility is the primary heating fuel supplier;

3. The number of eligible customer who have requested each service and the number of requests the utility has fulfilled, including:

i. The number of program audits performed;

ii. The number of **program** lists requested;

iii. The number of [installations and the number of loans] **loans and grants and the number of related installations** arranged by the utility; and

iv. The number of installations [, if any,] of program measures which the covered utility supplied, installed or financed pursuant to N.J.A.C. 14A:21-13 or 14A:21-14;

4. The number and function of people assigned to the utility's program, including part-time employees;

5. The costs incurred by the utility in providing each service under the [RCS] **HESP** Program including separately those costs paid by individual customers for services received, and those costs paid by all ratepayers; [and]

[6. Such other information as the Department may require.]

6. The number of program announcements mailed;

7. The dates program announcements were mailed;

8. A description of other promotional activity;

9. The response rate to promotional activity;

10. The number and nature of customer complaints;

11. Utility's annual budget for the HESP program including:

i. Salaries and wages;

ii. Advertising;

iii. Printing;

iv. Transportation

v. Postage;

vi. Other budget information the Department may require.

12. Average total cost per program audit;

13. Average cost a subcontracted auditing firm charged per program audit; and

14. Such other information as the Department may require for program evaluation.

(b) Each covered utility shall submit the following information in writing [to] **and in a form provided or approved by** the Department on the [15th] **10th** of each month [beginning

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February 15,1981] for the preceding month:

1. The number of eligible customers who have requested each program service and the number of requests the utility has fulfilled [, including] **that may include**:

i. The number of program audits requested by **housing** [fuel] type and the number of program audits performed **by fuel type;**

ii. The number of eligible customers requesting [assistance in arranging] financing;

iii. [The number of eligible requesting assistance in arranging installation;

iv. The number of eligible customers requesting assistance in arranging supplying; and

v.] The number of eligible customers requesting **or receiving** each one of the following:

(1) Workbook I;

(2) Workbook II;

(3) Insulation Guide; [or]

(4) Financing Guide;

(5) Audit Reference Guide; and

(6) Program Lists.

iv. The number of audits completed within 1-30 days, 31-60 days and over 60 days.

2.-3. (No change.)

4. The number of post-installation inspections [performed] **requested**;

5. The number of post-installation inspections found to be satisfactory and the number found to be unsatisfactory; [and]

6. The total number of [input forms] **service requests** completed pursuant to N.J.A.C. 14A:21-3.1.

7. The number of ineligible customers;

8. The number of audits cancelled;

9. The number of audits uncompleted; and

10. Such other information as the Department may require.

[14A:21-12.2 Reporting: Participating home heating suppliers]

[Each participating home heating supplier shall submit the following information in writing to the Department on May 1, 1981 and annually thereafter through May 1, 1986 for the 12 month period ending the preceding April 1:

1. The approximate number of eligible customers;

2. The number of oil-fired heating unit analyses performed and the cost to the customer and the home heating supplier; and

3. Such other information as the Department may require.]

14A:21-12.[3]**2** Record-keeping: Covered utilities

(a) Each covered utility shall keep the following records for the periods indicated and shall make them available to [the U.S. Department of Energy and] the Department upon request:

1. The name and address of each eligible customer who **requests or** receives a program audit **and name of the program auditor,** which shall be kept for five years from the date of the program audit;

2.-3. (No change.)

4. The name and address of each eligible customer for whom a covered utility arranges installation or financing [of program measures], which shall be kept for five years from the date of such arrangement;

5. (No change.)

6. The names of the individuals who have met the qualification criteria for auditors [,installers] and inspectors. These records shall be [:

i. U]updated within a reasonable period of time following each implementation of the qualification procedures [; and

ii. Maintained separately for installers and inspectors of flue opening modifications, electrical or mechanical ignition devices and wind energy devices].

14A:21-12.[4]**3** Record-keeping: Participating home heating suppliers

(a) Each participating home heating supplier shall keep the following records for the periods indicated and shall make them available to [the U.S. Department of Energy and] the Department upon request:

1. The name and address of each eligible customer who **requests or** receives an oil-fired heating unit analysis as part of a program audit, which shall be kept for five years from the date of the heating unit analysis;

2.-3. (No change.)

4. If the participating home heating supplier supplies fuel, the amount and cost of fuel purchased each month or other billing period for the 12 months prior to and following each heating unit analysis for each of its own eligible customers participating in the [RCS] **HESP** Program, which shall be kept for two years from the date of such heating unit analysis; and

5. The names of individuals who have met the qualification criteria for auditors [and installers]. These records shall be [:

i. U]updated within a reasonable period of time following each implementation of the qualification procedures. [; and

ii. Maintained separately for installers of flue opening modifications, and electrical or mechanical ignition devices and wind energy devices].

SUBCHAPTER 13. UTILITY FINANCING OF ENERGY CONSERVATION AND RENEWABLE RESOURCE MEASURES

14A:21-13.1 Utility financing

[Subject to BPU regulation and approval, all covered utilities may finance the purchase and installation of energy conservation and renewable resource measures provided that, whenever any covered utility undertakes to finance its lending program for energy conservation and renewable resource measures through financial institutions, the utility shall (to the extent such utility determines feasible, consistent with good business practice, and not disadvantageous to its customers) seek funds for such financing from financial institutions located throughout the area covered by the lending program.]

(a) All financing arrangements offered by covered utilities for the purchase and installation of program measures shall be submitted to the Department for review and approval prior to implementation.

1. The Department shall review the financing arrangements with respect to substantive content and implementation strategies.

2. All submissions shall specify the following:

i. The types of financing available (loans, rebates, utility bill credits, etc.) and any terms and conditions applicable thereto;

ii. Restricting or limitations on customer participation, if any, and, the justification therefor;

iii. The manner in which financing will be made available (through the covered utility, financial institutions, etc.);

iv. The effect of the financing arrangement on competition in the relevant markets;

v. Such other information as the Department may require.

(b) Documentation concerning the costs of implementing the financing arrangements specified in (a) above may be submitted to the BPU for a determination of the manner and extent to

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which such costs may be recovered by the covered utility. The covered utility shall provide copies of all such submissions to the Department at the same time they are submitted to the B.P.U.

SUBCHAPTER 14. UTILITY SUPPLY AND INSTALLATION OF ENERGY CONSERVATION AND RENEWABLE RESOURCE MEASURES

14A:21-14.1 Prohibition

Except as provided in this subchapter, no covered utility shall supply or install any [energy conservation or renewable resource] **program** measure.

14A:21-14.2 General exception

(a) The prohibition contained in N.J.A.C. 14A:21-14.1 shall not apply to any [energy conservation or renewable resource] **program** measure supplied or installed by a covered utility through contracts between such utility and independent suppliers or installers where the customer requests such supply or installation and each such supplier or installer:

1. Is on the Master Record of suppliers and installers referred to in N.J.A.C. 14A:21-9;

2. Is not subject to the control of the utility, except as to the performance of such contract, and is not an affiliate or a subsidiary of such utility; and

3. If selected by the utility, is selected in a manner consistent with (b) below.

(b) Activities of a covered utility under (a) above:

1. May not involve unfair methods of competition;

i. Covered utilities must use certified licensed contractors where such skills are required by the nature of the work and the New Jersey Uniform Construction Code (N.J.S.A. 32:27-119 et seq.)

ii. Covered utilities cannot by way of advertising or other marketing inducements indicate that work performed by their contractor is superior to comparable work performed by any other contractor list on the Master Record.

2. May not have a substantial adverse effect on competition in the area in which such activities are undertaken nor result in providing to any supplier or installer an unreasonably large share of contracts for the supply or installation of [energy conservation or renewable resource] **program** measures. **Substantial adverse competition will be determined on a case by case basis;**

3. Shall be undertaken in a manner which provides, subject to reasonable conditions the utility may establish to insure the quality of supply and installation of [energy conservation and renewable resource] **program** measures, that any financing by the utility of such measures shall be available for the supply or installation by any supplier or installer on the Master Record referred to in N.J.A.C. 14A:21-9 or for the purchase of such measures to be installed by the customer;

4. Shall be undertaken, to the extent practicable and consistent with (b)1, (b)2 and (b)3 above, in a manner which minimizes the cost of [energy conservation and renewable resource] **program** measures to such customers; and

5. Shall include making available upon request a current estimate of the average price of supply and installation of [energy conservation renewable resource] **program** measures subject to the contracts entered into by the utility under (a) above.

14A:21-14.3 Utility supply and installation

(a) No covered utility shall undertake the supply or installation of any [energy conservation or renewable resource] **program** measure pursuant to the exception contained in N.J.A.C 14A:21-14.2 without the prior approval of the Department and the BPU.

(b) Any covered utility which wishes to engage in the supply or installation of any [energy conservation or renewable resource] **program** measure pursuant to the exception contained in N.J.A.C. 14A:21-14.2 shall:

1. Submit to the Department and the BPU a program proposal which shall include the following:

i. A description of the [energy conservation or renewable resource] **program** measure to be supplied or installed, including a description of the products;

ii. The geographical areas where the [energy conservation or renewable resource] **program** measure will be installed;

iii. Additional suppliers and installers. A program must contain a procedure for expanding the number of suppliers and/or installers as demand for the service increases.

iv. Procedures for the selection of suppliers and installers. Such procedures shall provide, at a minimum, for individual notice about the selection of subcontractors to each supplier and installer (as appropriate) whose name appears on the HESP lists distributed by the utility in the area to be served by the supply or installation program. **The selection procedures shall not discriminate unfairly among suppliers and installers but shall consider the quality and cost of product and installation and geographical area;**

v. **A copy of the standard contract to be used between the utility and the selected suppliers and installers;**

vi. The number of subcontractors to be selected; and

vii. A description of the quality control procedures.

2.-6. (No change.)

(c) In approving a program proposal, the Department and the BPU shall issue a written decision (available to the public) regarding the following determinations:

1.-6. (No change.)

7. That the utility's procedures for selecting subcontractors [(]provided under (b)(1) above[)] shall provide to small and minority-owned businesses a fair chance to participate in the subcontracting program.

14A:21-14.4 Exception for certain measures

(No change.)

14A:21-14.5 Exception for existing supply and installation

(a) Any supply or installation of any [energy conservation or renewable resource] **program** measure that the covered utility was engaged in on November 9, 1978, shall not be subject to the prohibition contained in N.J.A.C. 14A:21-14.1:

1. During such time as applications for determinations with respect to such activity, filed in accordance with 10 C.F.R. 456.507, are pending; and

2. Upon a final determination that such [energy conservation or renewable resource] **program** measure was being supplied or installed on November 9, 1978 by the utility seeking the determination.

(b) Any supply or installation of any [energy conservation or renewable resource] **program** measure which the covered utility had by November 9, 1978, broadly advertised that it would supply or install, or with respect to which the utility had by November 9, 1978, completed substantial preparations for supplying or installing shall not be subject to the prohibition contained in N.J.A.C. 14A:21-14.1:

1.-2. (No change.)

14A:21-14.6 Waivers

(No change.)

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STATE

(a)

DIVISION OF ELECTIONS

Election Rules

Proposed Repeal and New Rules: N.J.A.C. 15:10

Authorized By: Jane Burgio, Secretary of State.
Authority: N.J.S.A. 19:23-45 et seq., 19:4-10 et seq. and 19:31-6 et seq.
Proposal Number: PRN 1985-510.

Submit comments by November 6, 1985 to:
Charles C. Hager
Assistant Counsel
Department of State
CN 300
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules, N.J.A.C. 15:10, revise, update, and replace the current text of Chapter 10 which is being repealed. Many of the existing Election Division Rules are out of date, or do not reflect current law. Rather than promulgate amendments to existing regulations, the Division proposes new rules, which will replace Chapter 10 in its entirety.

Social Impact

The new rules do not change to any significant degree the procedures voters are to follow in by-mail registration, political party declaration, election district mapping, or absentee ballot application. New Jersey has an efficient and open voting system, and the proposed new rules are designed to preserve that efficiency and openness.

Economic Impact

The new rules will have little economic impact. Since the system remains substantially the same, and no filing fees are assessed, no costs to the public are presented that are not already incurred, that is, time lost for registration and voting, postage costs, and the effect of use of registration as a political campaigning tactic. To the extent the current rules have any economic impact, so will the new rules.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 15:10.

Full text of the proposed new rules follows.

SUBCHAPTER 1. VOTER REGISTRATION BY MAIL

Authority
N.J.S.A. 19:31-6, specifically 19:31-6.9.

15:10-1.1 Availability of forms; reasonable quantity defined

(a) A bona fide organization or individual candidate for public office may request a reasonable quantity of voter registration forms from the county voter registration official of the county or counties in which the organization operates or the candidate is seeking public office. The number requested shall be limited to two percent of the total number of registration forms which the county voter registration official has available at the time of the request. There shall be no limit as to the number of requests that such an organization or candidate may make. The county voter registration official shall maintain a record of all organizations and individual candidates requesting 100 or more such forms.

(b) An individual, who is not a candidate for public office, may request in person from the county voter registration official of each county up to 25 voter registration forms, and shall be entitled to the forms. There shall be no limit as to the number of requests such an individual may make. An individual making such a request by telephone shall be entitled to at least two forms.

(c) The term "organization" shall be defined as broadly as possible for purposes of these rules.

15:10-1.2 Reordering forms; notification

When the supply of voter registration forms has reached a level of 25 percent of the amount of such forms previously allocated to a county, the county voter registration official shall notify the Office of the Secretary of State, which shall then take appropriate steps to supply the county with an adequate number of forms to meet reasonably expected needs.

15:10-1.3 Acceptance of photocopies and reproductions of form

(a) The county voter registration official shall accept and validate legible photocopies and reproductions of voter registration forms, provided that such photocopied or reproduced forms comply with the provisions of these rules and applicable statutory requirements.

(b) The county voter registration official may adopt a numbering system or other method of identifying the supply of voter registration forms, but such system or method shall not be used to prevent the acceptance and validation of voter registration forms which would otherwise be valid.

(c) Any photocopies and reproductions must be true facsimiles of the official voter registration form.

15:10-1.4 Acceptance of registrants after the 29th day before any election

(a) Any form not postmarked, but dated by the registrant on or before the 29th day before any election shall be deemed timely, provided that the registration form is received by mail not later than the 25th day prior to the election. If the 25th day prior to the election falls on a day when the county voter registration office is not open, then the deadline is extended to the first business day thereof.

(b) Any registrant whose timely voter registration form was rejected by the commissioner of registration, superintendent of election, or Secretary of State, on or before the 29th day prior to any election and whose validly completed form is received by the commissioner of registration or superintendent of elections, whichever appropriate, at any time before the day of an enusing election shall be entitled to vote in that election.

15:10-1.5 Completion of the form

(a) A registrant must complete the voter registration form and have the voter registration form witnessed by a qualified voter of this State. The witness may supply the county of his residence, but shall supply his street address and the municipality wherein the witness resides.

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(b) The county voter registration official shall place the original voter registration form onto the original permanent registration form that is used by the district board of elections at any election; and shall place a photocopy or other facsimile of the voter registration form onto the duplicate permanent registration form.

(c) In order for the registrant to be deemed validly registered, the following items on the voter registration form must be completed in the following manner:

1. The printed name of the registrant is validly completed if the registrant's entire last name and the first initial appears on registration form. Failure to insert the whole first and/or middle name(s) or middle initial shall not render the form invalid.

2. The address of the applicant is validly completed by supplying the street address, municipality and county. The supplying of a rural mailing address or post office box number without supplying a street address shall render the form invalid. Failure to supply an apartment number or zip code shall not render the voter registration form invalid.

3. Failure to supply a rural mailing address, shall not render the voter registration form invalid. The county voter registration official may, in his discretion, make an investigation to determine the proper information for this item.

4. The date is validly completed if the statement "over 18 years" or its substantial equivalent is placed on the registration form by the registrant. The registration form shall also be deemed validly completed if, by statement of year of birth, the registrant could only be over 18 years of age, even if the day and/or month of birth are not completed. If it appears that the registrant is 17 years of age, the entire birth date must be complete for item 4 to be validly complete.

5. Failure to designate the prior place of registration shall not render the form invalid.

6. The form is validly completed by checking one of the appropriate boxes either native born or naturalized citizen. Failure to supply the location and/or date of naturalization shall not render the form invalid.

7. The signature is validly completed by supplying the full and last name and the insertion of a date. Signature in pencil shall not invalidate the registration form; however, the registrant shall be required to submit his signature in ink on the first occasion that he wishes to vote. If the registrant's legal "signature" is a form of printing, the printed name shall be valid.

8. Witness information is validly completed by insertion of the first initial, the entire last name of the witness, and the signature of the witness. The witness must also supply an address which is sufficient so that the county voter registration official may contact the witness if he so desires. The witness must also date his signature. Failure to insert county, full first, and/or middle names, middle initial or zip code shall not render the form invalid.

(d) The county voter registration official may request a mail registrant to complete any omitted or incomplete items on the registrtion form the first time the registrant appears to vote.

(e) The Secretary of State, or county voter registration official, may reject any voter registration form if the county of residence is not ascertainable from the submitted form. In the event the form is returned, the appropriate officer shall notify the registrant pursuant to N.J.A.C. 15:10-1.6 with instructions to forward to the appropriate county voter registration official.

15:10-1.6 Notification to registrant

(a) When the voter registration form is accepted or rejected, the registrant shall be notified by regular mail.

(b) If a voter registration form is rejected, the denied registrant shall be notified in writing of the precise reason(s) for the rejection, and of the manner by which the reason(s) for rejection may be cured. If the form is rejected because of an omission, the county voter registration official shall return to the denied registrant the incomplete form; otherwise, the commissioner shall send a blank voter registration form. If a form ultimately rejected was received by the county voter registration official in accordance with N.J.S.A. 15:10-1.4(a), the attempted registrant shall be notified in writing of the right to vote in the immediately ensuing election in accordance with N.J.A.C. 15:10-1.4(b).

(c) On the face of such notification in the upper left-hand corner shall be printed the words: "Do Not Forward. Return Postage Guaranteed. If Not Delivered In Two Days, Return to Superintendent of Elections." In those counties not having a superintendent of elections, the form shall be returned to the "Commissioner of Registration."

15:10-1.7 Signatures

(a) When a mail registrant attempts to vote for the first time, such voter must sign his or her name on the reverse side of the permanent registration form maintained by the county voter registration official.

(b) The signatures on the voter registration form and the reverse side of the permanent registration form must match before the voter will be allowed to vote.

15:10-1.8 Sample and instruction ballots

(a) In election districts where the primary language of the registered voters is Spanish, the sample ballots for primary and general election shall be printed bilingually in English and Spanish in their entirety, excepting names of candidates, including public questions, and mailed to each registered voter.

(b) In such election districts, ballots together with such sample instructions printed bilingually in English and Spanish shall be displayed prominently at all such polling places on election day.

(c) The official primary and general election ballots in the actual voting booth at the polling place need not be printed bilingually.

15:10-1.9 Out-of-office registration

(a) The statutory term "out-of-office registration" shall be defined as broadly as possible to include all registration conducted by the county voter registration official at any location other than his office. Out-of-office registration facilities may be stationary or fixed vehicles or buildings, or mobile vehicles. The nature, number and route of any moving facility shall be subject to approval by the Secretary of State.

(b) The place or places designated by the county voter registration official other than his office shall be publicized in a newspaper circulated in the municipality, containing such desginated place or places. The publication shall include the addresses and dates and hours of operation of such designated place or places and shall be made pursuant to N.J.S.A. 19:12-7. Nothing in these rules shall prohibit a county voter registration official from voluntarily publicizing the places designated more than is required by these rules.

(c) Whenever any individual or organization, other than the commissioner of registration, superintendent of elections, the commissioner's or superintendent's duly authorized clerk, conducts registration activities, whether by door-to-door canvassing, mobile techniques or otherwise, there need be no

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publication whatsoever by the individual, organization, commissioner or superintendent.

15:10-1.10 Secretary of State as agent for purposes of mail registration

(a) The Secretary of State shall be an agent of each county voter registration official. Completed voter registration forms may be returned to the Office of the Secretary of State, Election Division, CN-304, Trenton, New Jersey, 08625-0304. The Secretary of State shall cause such forms to be immediately forwarded to the appropriate county voter registration official.

(b) Voter registration forms may also be filed directly with the appropriate county voter registration official.

SUBCHAPTER 2. VOTER DECLARATION OF POLITICAL PARTY

Authority

N.J.S.A. 19:23-45 et seq., specifically 19:23-45.3.

15:10-2.1 General provisions

(a) A voter becomes a member of a political party by either:

1. Having voted in a previous primary of that party;

2. By filing a declaration of membership in that party. The declaration must be signed and filed with the municipal clerk or appropriate county election officer no later than the 50th day preceding the primary. However, a voter who has not previously voted in a party primary may vote in any primary without filing any declaration.

3. By being a member of the county committee of the party of a public official holding office to which he has been elected or appointed as a member of that political party.

(b) In the event such day falls on a Saturday, Sunday, or legal holiday, the county voter registration official shall accept as timely filed those voter declaration cards which he receives on the first regular business day following the 50th day before the primary election.

15:10-2.2 Who must file declarations

(a) To determine whether a voter must file a declaration, three steps should be followed:

1. It must be determined whether the voter has ever voted in a primary election under the voter's current registration;

2. If so, it must be determined in which political party primary the voter participated when the voter cast the most recent primary ballot;

3. If the voter now wishes to participate in the primary election of a different political party, the voter must file a declaration.

(b) A voter who has never previously participated in a primary election under the voter's current registration need not file a declaration of party preference.

(c) If a voter cast a ballot in a primary several years ago, that voter must file a declaration in order to vote in the primary of another party. The passage of time has no effect on the status of the voter as a member of a political party. However, if a voter cast a ballot in a primary under a previous registration, even though that registration was in the same county, the voter is still deemed not to have voted in a previous primary under the voter's current registration.

15:10.2.3 Responsibilities of municipal clerks

(a) Municipal clerks should obtain and have available for distribution voter declaration forms.

(b) Upon receipt of a signed declaration or a written statement declaring political party membership, the municipal clerk should mark on the form or statement the date on which it was filed with him or her.

(c) The municipal clerk should accurately maintain a registry of declarations received showing the name and address of the voter the political party declared and the date received.

(d) Once it has been dated and recorded, the municipal clerk should submit the form or statement to the county voter registration official.

(e) Appropriate measures should be taken to insure that the forms are properly delivered in the condition in which they were received. Immediately after the expiration of the deadline for the receipt of forms (that is, 50 days before the primary election), the municipal clerk should deliver those forms in his possession to the county voter registration official.

(f) In the event that declaration forms or statements are lost or damaged in transit, the municipal clerk may rely upon the records maintained by him or her to advise the county voter registration official of the declarations received, but this measure should only be used after all reasonable means of locating or repairing the original forms or statements have been exhausted.

15:10-2.4 Responsibilities of county election officers

(a) The superintendent of elections in all counties having a superintendent of elections and the commissioner of registration in all other counties has complete responsibility for the permanent registration of all eligible voters within their respective counties and for the enforcement of the provisions of N.J.S.A. 19:23-45 et seq.

(b) The appropriate county election officer must distribute the declaration forms prepared by the Department of State to all municipal clerks and to other sources where, in the judgment of the officer, there is a substantial likelihood that such forms will be distributed to the voting public.

(c) Upon receipt of a signed declaration form or statement, the election officer should immediately mail an acknowledgment to the voter indicating the political party the voter declared. The acknowledgment must also indicate that, if the voter believes that he or she has not filed a declaration, or that an error has occurred, the voter must so advise the officer by either personally appearing, writing or telephoning within two weeks. The voter must be informed that, in the absence of any response, the voter will be deemed to be a member of the political party declared. In the event a voter submits a written, signed statement to the effect that he or she has not filed a declaration or that an error occurred, whatever the case may be, the records of the commissioner of registration or superintendent of elections shall reflect this action.

15:10-2.5 Appearance at polls; declaration not required from excused voters

Voters who are not required to file a delcaration card under N.J.S.A. 19:23-45 do not have to make a written declaration when appearing at the polls to participate in the primary election. It is sufficient that the voter proceeds to vote in the primary of one party and is thereby deemed to be a member of that party.

15:10-2.6 Method of filing declaration of political party membership

(a) The Department of State has prepared party declaration forms which may be obtained from the appropriate county voter registration official or municipal clerk. Upon filling out the form the voter shall file the completed form with the superintendent of elections or commissioner of registrtion, whichever appropriate, in the county in which he resides. The voter may also file the party declaration form with the munici-

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pal clerk of the municipality wherein he resides.

(b) Any voter wishing to file a declaration of political party membership is not required to use those forms provided by the Secretary of State. However, the voter should prepare a written statement indicating that he or she is a member of a political party. The statement should be signed by the voter. The name and full address should appear and the statement should be dated by the voter.

15:10-2.7 Effect of prior registration and voting

(a) Any voter who has voted in a primary election under a current registration shall vote in the same party as he or she has previously voted, unless the voter has filed a party declaration form in accordance with these rules.

(b) If a voter has registered to vote in a previous year, but has failed to vote in any primary election, then at the first primary election which the voter wishes to vote, he shall declare the party in whose primary he wishes to vote. The voter shall then be allowed to vote in the primary of the political party of his declared choice.

15:10-2.8 Availability of declaration forms

(a) A bona fide organization or individual candidate for public office may request a reasonable number of declaration forms from the county voter registration official in each county in which the organization functions or where the candidate is seeking public office. The number requested may be limited to two percent of the total number of declaration forms which the appropriate election official has available at the time of such request. There shall be no limit as to the number of requests that such a candidate or organization may make. The appropriate election official shall maintain a record of all organizations and individual candidates requesting 100 or more forms.

(b) Any individual who is not a candidate for public office, may request from the appropriate election official of each county up to 25 declaration forms and shall be entitled to those forms. There shall be no limit as to the number of requests such an individual may make. An individual making such a request by telephone shall be entitled to at least two such forms.

(c) The term "organization" shall be defined as broadly as possible for the purposes of these rules.

(d) Declaration forms shall be prepared in the Spanish language for use by individuals or organizations requesting them.

SUBCHAPTER 3. ELECTION DISTRICT MAPS

Authority

N.J.S.A. 19:4-10 et seq., specifically 19:4-16.

15:10-3.1 General provisions

(a) The county board of elections shall cause to have prepared an up-to-date map of the county and of each constituent municipality clearly delineating the boundary of each election district (established in conformance with N.J.S.A. 19:4-10 et seq.), contained therein and of each ward contained therein. Maps shall also be maintained showing all legislative districts, freeholder districts, and congressional districts, or part thereof which are within the county. A word description of said boundaries shall be attached to each such map.

(b) The county board of elections shall file three copies of such maps and descriptions with the Secretary of State. One copy of each such map and description shall also be filed with the county clerk. A copy of the municipal map shall also be filed with the clerk of the appropriate municipality. Within 30 days of any changes in the boundaries of any of the aforementioned districts, the county board of elections shall file revised maps and descriptions in the same manner.

(c) Election district boundaries shall follow visible, easily recognized features (for example, streets, railroad tracks, drainage features such as streams, creeks and lakes, and topographical features such as ridges) which are to be indicated on the various maps.

(d) Election district boundaries shall be drawn in red. Where the boundary of an election district and the boundary of a constituent municipality or a county line are the same, the common boundary shall be shown as a single green line. The boundaries of wards shall be drawn as an orange line drawn adjacent to the election district boundary.

(e) Where the election district boundary coincides with a county or municipal boundary which does not follow a physical feature, the first address number (in rural areas, the first rural route box number) on either side of the boundary shall be listed on the map next to the boundary. If there are no address numbers or box numbers near the respective sides, both sides shall be marked with a zero.

(f) The number of each election district shall be clearly shown in red within its boundaries.

(g) The accuracy of the election district boundaries shall be certified on each map sheet by the county board of elections, or by its designated agent, as follows: "I certify that, to the best of my knowledge, the election district boundaries shown on this map are those legally in effect and are accurate of this date." This statement shall be signed and dated, and the title of the signer shall be indicated.

(h) No election district shall be divided during the period commencing 75 days before the primary or the general election. No election districts shall, except with the prior approval of the Secretary of State, be created, abolished, divided or consolidated between January 1 of a year whose last digit is seven, and December 1 of any year whose last digit is zero.

(i) Failure to follow the color requirements for these maps shall cause rejection of them by the Secretary of State.

15:10-3.2 Maps of counties; specifications

(a) The county map shall clearly delineate the boundaries of the constitutent municipalities.

(b) The size of the map shall conform to the provisions of N.J.S.A. 46:23-9.11(b). These maps shall be one of four standard sizes; namely:

1. Eight and one-half inches by 13 inches; or
2. Thirty inches by 42 inches; or
3. Twenty-four inches by 36 inches; or
4. Fifteen inches by 21 inches.

(c) These dimensions shall be measured from cutting edges. The scale of the map shall be clearly indicated on the map. The date (month/year) of the map shall be indicated. If the map has been updated, the date (month/year) shall be shown.

15:10-3.3 Maps of municipalities; specifications

(a) The municipal map shall not exceed 30 inches by 42 inches. The scale shall not be so small that the information on the map is difficult to read. The scale should generally range between one inch = 800 feet and one inch = 1,600 feet. The scale should be clearly indicated on the map. Each municipal map shall, wherever practicable, be composed of one sheet and, where not practicable, of a series of sheets, in which event all maps of a series shall be of the same scale.

(b) Maps shall include all existing roads and streets. "Paper" or undeveloped streets or roads (that is, those for which no scraping or road bed has been taken) shall not be

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shown. Railroad tracks and major drainage features (for example, rivers, lakes, creeks, streams, etc.) shall be shown and the names of such features shall be indicated.

(c) Other features or symbols (for example, churches, schools, factories, underground utility lines, land use and zoning symbols or shadings, symbols for vegetation cover, topographic contour lines, and similar items that obscure the basic street and road pattern and names) shall be excluded. All features, names, titles and symbols shall be clearly shown and legible.

(e) The effective date (date/month/year) of the current municipal boundary, if different from that in effect on January 1, 1980, shall be specified on the map.

15:10-3.4 Maps of congressional, legislative and freeholder districts

(a) The boundaries of congressional districts shall be shown by a thin broken line (---) or yellow line drawn adjacent to the election district boundary line. The boundaries of legislative districts shall be shown by a thin dotted line (. . . . .) o blue line drawn adjacent to the election district boundary line. The boundaries of county freeholder districts, where such freeholder districts are established, shall be shown by a thin broken and dotted line (-.-.-.-) or brown line drawn adjacent to the election district boundary.

SUBCHAPTER 4. ABSENTEE BALLOTS

Authority
N.J.S.A. 19:57-1 et seq., specifically 19:57-4.1(b).

15:10-4.1 Printing absentee ballot applications

(a) The reproduction of absentee ballot applications, under the statute (N.J.S.A. 19:57-8), is the responsibility of the county clerks at the cost and expense of the individual counties.

(b) The requirements of the Secretary of State are:

1. The applications be printed in post card style;

2. The size be four inches wide by 9¼ inches long (to be mailed in a number 10 envelope);

3. Be printed on sufficient quality cardboard stock to withstand printing and mailing;

4. There be no additions, deletions or changes from the prescribed form and text, except as incidental to printing;

5. Each county clerk shall print, type or stamp the clerk's name and address on the mailing panel and insert the name of the county on the military form in the space provided for the home address of the applicant.

15:10-4.2 Completion requirements; civilian absentee ballot application; generally; authorized messenger

(a) The completed civilian absentee ballot application must be received by the appropriate county clerk not later than seven days prior to the election unless the applicant applies in person or is sick or confined.

(b) If the applicant is sick or confined, an authorized messenger may deliver the application to the approprirate county clerk's office before 3:00 P.M. on the day prior to the election. Both the applicant and the authorized messenger must complete the application if the applicant is sick or confined.

(c) The text of the civilian absentee ballot application is hereby made a part of these rules. Copies of such text may be obtained from the Office of the Secretary of State.

SUBCHAPTER 5. DEFINITIONS

Authority
N.J.S.A. 19:32-1.

15:10.5.1 County voter registration official; defined

The county voter registration official is the commissioner of registration or the superintendent of elections, whichever title is applicable in a particular county.

TRANSPORTATION

(a)

LOCAL AID

Urban Revitalization, Special Demonstration and Emergency Project Regulations

Proposed New Rules: N.J.A.C. 16:22

Authorized By: Roger A. Bodman, Commissioner, Department of Transportation.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:8-1 to 9.
Proposal Number: PRN 1985-535.

Submit comments by November 6, 1985 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66(1978), the Department proposes as new rules N.J.A.C. 16:22 concerning Urban Revitalization, Special Demonstration and Emergency Projects. These rules were filed and became effective July 18, 1980. Under the Executive Order, they expired on July 17, 1985.

The rules outline the general provisions of the 1979 Transportation Bond Issue Funds as appropriated by the Legislature for urban revitalization, special demonstration and emergency projects. These funds will be used to implement projects which will significantly improve economic and social conditions, particularly in older cities, demonstrate innovative transportation techniques that could benefit other municipalities in New Jersey and permit rapid construction, reconstruction or rehabilitation of emergency projects which would reduce undue hardship to the traveling public or correct unsafe conditions in a timely fashion. The rules specify the objectives, standards, design criteria and procedures for filing applications and agreements for funds.

The Department wishes to maintain the rules in N.J.A.C. 16:22 because of existing projects under the 1979 Transportation Bond Issue Funds.

Social Impact

The proposed rules impact on counties and municipalities since they outline the procedures followed in State Aid to local governments as appropriated by the Legislature. The rules are necessary to provide and promote uniformity in disbursement of the funds and avoid ambiguity or confusion in the procedures and disbursement.

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Economic Impact

Funds under this program are appropriated by the Legislature from the States share of the costs for reconstruction or rehabilitation of emergency projects that would reduce undue hardship to the traveling public or correct unsafe conditions. Funding is allocated according to the formula set forth in the legislation appropriating the funds. Any reduction in funding would adversely affect the Department's capability to fund counties and municipalities which would further affect the economic well-being of the populace they serve.

Full text of the expired rules proposed as new rules appears in the New Jersey Administrative Code at N.J.A.C. 16:22.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

State Health Benefits Commission Retired Employees' Coverage

Proposed Amendments: N.J.A.C. 17:9-6.1 and 6.3

Authorized By: Gaius Mount, Acting Secretary, State Health Benefits Commission.
Authority: N.J.S.A. 52:14-17.27.
Proposal Number: PRN 1985-542.

Submit comments by November 6, 1985 to:
Gaius Mount, Acting Secretary
State Health Benefits Commission
20 West Front St.
CN 295
Trenton, N.J. 08625

The agency proposal follows:

Summary

The proposed amendments are intended to afford health benefits coverage to certain retirees of employers who now choose to participate in the State Health Benefits Program. The amendments specify the requirements a retired employee must satisfy in order to be eligible for coverage. The amendments also limit coverage to that which the employee had prior to the date the employer became a participating member.

Social Impact

The proposed amendments will affect retirees of employers who are now entering into the State Health Benefits Program as well as their former employers. In some cases, they could also affect the qualified dependents of such retirees. The retirees and dependents will be eligible for health benefits under the proposed amendments.

Economic Impact

To the extent that such new enrollees in the State Health Benefits Program may experience additional health expenses that were not previously anticipated, the proposed amendments may increase costs within the State Health Benefits Program.

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

17:9-6.1 Retired employees defined
(a)-(d) (No change.)
(e) The definition of "retired employee" shall include any former employee who retired from a State or locally administered retirement system on or after July 1, 1964, or the spouse of the former employee of an employer who becomes a participating employer if the employee or spouse:
1. Is receiving a periodic retirement allowance or survivorship benefit from a State or locally administered retirement system;
2. Was insured under a group medical insurance plan of the employer immediately prior to the date the employer became a participating employer; and
3. Elects to enroll in the State Health Benefits Program at the time the employer becomes a participating employer.
[(e)]**(f)** The definition of "retired employee" shall not include an employee who on cessation of employment, elects a vested, deferred retirement benefit under which payments begin at a future date.
[(f)]**(g)** The employer liability for charge payments on behalf of eligible retired employees which includes those employees who are eligible to receive long-term disability benefits is payable in accordance with the provisions of N.J.S.A. 52:14-17.32 and 17.38.

17:9-6.3 Retired coverage; limitations
(a)-(d) (No change.)
(e) Coverage for a retired employee or the spouse of a retired employee of an employer who becomes a participating employer in the State Health Benefits Program shall be limited to that which is comparable to the coverage which the employee or spouse had under the group medical insurance plan of the employer immediately prior to the date the employer became a participating employer.

(b)

STATE INVESTMENT COUNCIL

Common Pension Funds A and C

Proposed New Rules: N.J.A.C. 17:16-32 and 17:16-38

Authorized By: Roland M. Machold, Director, Division of Investment.
Authority: N.J.S.A. 52:18A-91.
Proposal Number: PRN 1985-518.

Submit comments by November 6, 1985 to:
Roland M. Machold, Director
Division of Investment
349 West State Street
CN 290
Trenton, New Jersey 08625

The agency proposal follows:

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Summary

Pursuant to Executive Order 66 (1978), N.J.A.C. 17:16-32 and 17:16-38 expired on January 17, 1984. Since the rules have expired, the Division is proposing the expired text as new rules without changes.

The rules establish Common Pension Funds A and C for the purpose of investing in common stocks and short-term investments respectively, and provide for the issuance of units of certificates of ownership purchased by the participating pension funds.

The rules specify which participants may invest in the funds; what investments are permissible; certificates of ownership; date and method of valuation; admission date; distribution of appreciation; limitations and liquidation.

Social Impact

Common Pension Funds A and C provide investment vehicles for various participating funds under the jurisdiction of the State Investment Council. The Common Pension Funds may provide higher returns by consolidation of the participating funds for the purpose of investment, thereby reducing administrative costs and benefiting pension fund participants.

Economic Impact

The consolidation of the participating funds for investment purposes centralizes investment functions and reduces costs to the State and the respective pension funds.

Full text of the expired rules proposed as new rules appears in the New Jersey Administrative Code at N.J.A.C. 17:16-32 and 17:16-38.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Sales and Use Tax
Gasoline Service Station Equipment

Proposed Amendment: N.J.A.C. 18:24-24.2

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

Authority: N.J.S.A. 54:32B-1.1 et seq., specifically 54:32B-24.

Proposal Number: PRN 1985-533.

Submit comments by November 6, 1985 to:
Nicholas Catalano
Assistant Chief Tax Counselor
Division of Taxation
50 Barrack Street, CN 269
Trenton, New Jersey 08646

The agency proposal follows:

Summary

The proposed amendment with regard to underground tanks and concrete poured for the purpose of preventing underground tanks from floating with respect to motor fuel service stations will return the rule to what it was prior to the adoption of the amendments made at 14 N.J.R. 348(a) on April 15, 1982. The reason for the change is the holding of the Tax Court that such underground tanks remain personal property after installation. *Exxon Corporation v. Township of East Brunswick, et al.*, Tax Court of New Jersey, July 2, 1985, Docket No. BP 441A and Superior Court, Law Division Docket No. L-64809-81 (consolidated).

Social Impact

Motor fuel service stations and lessees will be able to determine that underground tanks and concrete poured for the purpose of preventing underground tanks from floating will be taxed as personal property for sales and use tax purposes and are not considered to be an addition to real property.

Economic Impact

The economic impact on the owner of the underground tanks and concrete poured for the purpose of preventing underground tanks from floating will be a tax benefit if the real property tax is higher in the municipality of installation and one value and rate will prevail rather than 567 municipal real property tax values and rates. The sales tax rate is six percent of the installed price and is not an annual levy on assessed value.

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

18:24-24.2 Items subject to sales tax

(a) The following items are deemed to be personal property for the purposes of the Sales Tax Act:

1. (No change.)
2. [(Reserved)] **Underground tanks;**
3.-14. (No change.)

(b) The following charges are also deemed to be connected with the installation of tangible personal property, and taxable as such:

1. [(Reserved)] **Concrete poured for the purpose of preventing underground tanks from floating;**
2.-3. (No change.)

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RULE ADOPTIONS

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WASTE MANAGEMENT BOARD OF PUBLIC UTILITIES

Interdistrict and Intradistrict Solid Waste Flow

Joint Adopted Amendment: N.J.A.C. 7:26-6.5

Proposed: March 4, 1985 at N.J.R. 517(a).
Adopted: August 26, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection, and September 10, 1985 by Barbara A. Curran, President, Board of Public Utilities.
Filed: September 16, 1985 as R.1985 d.503, **without change.**

Authority: N.J.S.A. 13:1B-3, 13:1E-6, 13:1E-23 and 48:13A-1 et seq.

DEP Docket No. 010-85-02.
Effective Date: October 7, 1985.
Expiration Date pursuant to Executive Order No. 66 (1978): December 5, 1987.

Summary of Public Comments and Agency Responses:
On March 4, 1985, the Department of Environmental Protection (DEP) and the Board of Public Utilities (BPU) proposed an amendment to the waste flow rules, N.J.A.C. 7:26-6.5, to direct waste types 10, 13, 23, 25 and 27 generated within Hunterdon County municipalities to the Hunterdon County transfer station, facility number 1006B, located in Clinton Township, Hunterdon County, prior to disposal at facilities currently specified by the DEP and the BPU. This rule is being adopted to ensure that collector/haulers will utilize the transfer station, which shall be owned by Hunterdon County but operated by a private party.

A public hearing on the proposed amendment was held on March 21, 1985 in Clinton Township (Annandale) and was attended by approximately 10 persons, four of whom commented on the proposal. The DEP and the BPU have received the transcript of the hearing and the written comments submitted during the comment period, which closed on April 3, 1985. The following is a summary of the major issues raised which were relevant to the proposal and the agencies' responses. Copies of a more complete "Response to Comments and Questions" document may be obtained from Barbara M. Greer, Office of Regulatory Services, Department of Environmental Protection, CN 402, Trenton, New Jersey 08625.

Comment: How can the DEP and the BPU propose a rule adoption when all the necessary data to evaluate the proposal is not available?

Response: Although the details of the proposed contract for the facility were not available at the time of the rule proposal, the BPU and the DEP have waited until Hunterdon County signed an agreement with the transfer station operator before adopting this rule. Thus, the necessary data became available to evaluate the rule proposal which was required to conform the rules with the adopted Hunterdon County Plan amendment.

Comment: Which firm will operate the Hunterdon County transfer station and where will the county's solid waste be disposed of in Pennsylvania?

Response: On June 3, 1985, Hunterdon County signed a contract with Browning Ferris Industries (BFI) to operate the transfer station for a five-year period. As part of the contract, Hunterdon's solid waste shall be disposed of at the Keystone Landfill in Dunmore, Pennsylvania.

Comment: What will be the tipping fee at the Hunterdon County transfer station?

Response: The BFI contract specifies that the county shall pay the transfer station operator $35.16 for each ton of waste to be handled at the facility. The county has announced that it will create a utilities authority to oversee operations at the transfer station and establish tipping fees. The county intends to charge the transporters the same or a similar rate as charged by BFI. The $35.16 per ton rate to the County is fixed for a five-year period, but may be adjusted to reflect changes in the Consumer Price Index.

Comment: Will it be less expensive for collector/haulers to go directly to Pennsylvania landfills for disposal rather than utilize the county's transfer station?

Response: The county believes that collector/haulers will find the transfer station economically attractive. The $35.16 per ton rate (or $10.55 per cubic yard) is comparable to rates now being charged by Pennsylvania landfills. Also, collector/haulers will save on transportation and maintenance costs and will have a quicker turn-around time by utilizing the transfer station when compared to going directly to a Pennsylvania landfill.

Comment: Will the tariff granted to the transfer station operator be set well in advance of the facility's operation so that the collector/haulers have the necessary time to adjust their tariffs appropriately?

Response: Hunterdon County intends to create a utilities authority to set the rates at the transfer station. By virtue of this action, BPU approval of the transfer station's tariff shall not be required. The county intends to set the rates to be charged at the transfer station well in advance of operation of the facility to allow the collector/haulers to adjust their BPU tariffs appropriately.

Comment: The Board of Public Utilities has not done an economic analysis of the proposed waste flow change.

Response: The BPU has reviewed the BFI—Hunterdon County disposal agreement, has participated in the public hearing, and reviewed all written comments with respect to the proposed rule change. Its review of these materials has enabled the BPU to appropriately assess the economic impact of this proposed rule change.

Full text of the adoption follows.

7:26-6.5 District waste flow planning requirements and

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disposal facility designations.

(No change.)

(a)-(j) (No change.)

(k) Waste flows within, into and out of the Hunterdon County District:

1.-2. (No change.)

3. All waste types 10, 13, 23, 25, and 27 generated from within Hunterdon County municipalities shall be transported to the Hunterdon County transfer station, facility number 1006B, located in Clinton Township, Hunterdon County, prior to disposal at facilities specified above.

(l)-(v) (No change.)

COMMISSION ON RADIATION PROTECTION

(a)

General Provisions
Industrial and Nonmedical Radiography

Adopted Amendments: N.J.A.C. 7:28-1.4 and 7:28-17.1 through 17.6
Adopted New Rules: N.J.A.C. 7:28-17.7 and 17.8

Proposed: July 1, 1985 at 17 N.J.R. 1626(a).
Adopted: September 11, 1985 by Max Weiss, Ph.D., Chairman, Commission on Radiation Protection
Filed: September 16, 1985 as R.1985 d.502, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 13:1D-7 and 26:1D-7.

DEP Docket No. 031-85-05.
Effective Date: October 7, 1985.
Expiration Date pursuant to Executive Order No. 66 (1978): December 19, 1988 for N.J.A.C. 7:28-1; October 7, 1990 for 7:28-17.

Summary of Public Comments and Agency Responses:

The Commission on Radiation Protection held a public hearing on July 17, 1985 at 4:00 P.M. at the New Jersey State Museum Auditorium, Trenton, New Jersey concerning this proposal and proposed amendments to N.J.A.C. 7:28-19 (Medical Exposure to Ionizing Radiation by Radiologic Technologist) appearing in the July 1, 1985 Register at 17 N.J.R. 1632. No testimony was presented at the hearing nor were any written comments received on either proposal.

The Department has amended N.J.A.C. 7:28-17.3(b) and 17.8(c) to correct typographical errors. The Department has also amended N.J.A.C. 7:28-17.5(e) to require that employers provide any person acting as a radiographer or radiographer's assistant with the following personnel monitoring devices: a film badge and either a pocket dosimeter or pocket chamber.

Personnel monitoring devices provide a record of radiation exposure received by employees. This record will act as an indicator of whether the employer's radiation program effectively minimizes such exposure. The requirement to provide the devices should not result in more than a minimal economic impact since such practice is already standard and since the cost of such devices is low.

N.J.A.C. 7:28-17.5(e) will supplement and is consistent with requirements in N.J.A.C. 7:28-7.4 (use of personnel monitoring equipment) and N.J.A.C. 7:28-17.7(c) (Cabinet x-ray systems) N.J.A.C. 7:28-7.4 requires that an owner of a radiation source supply appropriate personnel monitoring equipment to and require that it be used by persons who enter a controlled area under certain circumstances. (See definitions of "owner" and "controlled area" in N.J.A.C. 7:28-1.4(a).) N.J.A.C. 7:28-17.7(c) requires an owner to supply appropriate monitoring equipment to individuals who operate, set up or maintain cabinet radiography units.

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

SUBCHAPTER 1. GENERAL PROVISIONS

7:28-1.4 Definitions

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise. Additional words and terms, applicable to a specific subchapter only, will be found in that subchapter.

(a) General Terms: (No change.)

(b) Ionizing radiation terms:

"Shielded position" means the location within the radiographic-exposure device or storage container which, by manufacturer's design, is the proper location for storage of the sealed source.

"X-ray tube" means an electron tube which is designed for the conversion of electrical energy into x-ray energy.

(c) Non-ionizing radiation terms: (No change.)

SUBCHAPTER 17. INDUSTRIAL AND NONMEDICAL RADIOGRAPHY

7:28-17.1 Scope

(a)This subchapter establishes radiation-safety requirements for persons utilizing sealed sources, radiographic-exposure devices or ionizing radiation-producing machines for industrial and nonmedical radiography.

(b) The requirements of this subchapter are in addition to the requirements of N.J.A.C. 7:28-1 through 7:28-13.

(c) (No change.)

7:28-17.2 Definitions

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

"Cabinet X-ray system" means an ionizing radiation-producing machine with the x-ray tube installed in an enclosure which, independent of existing architectural structures except the floor on which it may be placed, is intended to contain at least that portion of a material being irradiated, provide radiation attenuation, and exclude personnel from its interior during generation of x-radiation, including but not limited to all x-ray systems designed primarily for the inspection of carry-on baggage at air, railroad, and bus terminals, and similar facilities, and all x-ray systems designed primarily for the inspection of letters, periodicals, and packages in mailrooms. An x-ray tube used within a shielded part of a building or x-ray equipment which may temporarily or occasionally

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incorporate portable shielding, is not considered a cabinet x-ray system.

"External surface" means the outside surface of the cabinet x-ray system, including the high-voltage generator, doors, access panels, latches, control knobs, and other permanently mounted hardware and including the plane across any aperture or port.

"Industrial radiography" means the examination of the macroscopic structure of materials by nondestructive methods using sources of radiation.

"Shielded room radiography" means industrial radiography which is conducted in an enclosed room, the interior of which is not occupied during radiographic operations.

"Temporary job site" means any location where industrial radiography is performed other than the location(s) listed in a license or registration issued by the Department pursuant to N.J.A.C. 7:28-3 or 7:28-4.

7:28-17.3 Registration and licensing requirements

(a) All owners of ionizing radiation-producing machines shall comply with N.J.A.C. 7:28-3.

(b) All owners of sealed sources or radiographic-exposure devices *[either of which utilize radioactive materials specified in N.J.A.C. 7:28-4.2 (Requirements), are subject to the licensing requirements of N.J.A.C. 7:28-4 (Licensing) of this Chapter]* shall comply with N.J.A.C. 7:28-3 and 7:28-4.

7:28-17.4 Equipment control

(a) The permissible levels of radiation from radiographic-exposure devices and storage containers shall be as follows:

1. Radiographic-exposure devices measuring less than four inches from the sealed source storage position to any external surface of the device shall not produce a radiation level in excess of 50 milliroentgens per hour at least six inches from any point on the external surface of the device.

2. Radiographic-exposure devices measuring a minimum of four inches from the sealed source storage position to any external surface of the device and all storage containers for sealed sources or for radiographic-exposure devices shall not produce radiation levels in excess of 200 milliroentgens per hour at any point on the external surface and 10 milliroentgens per hour at one meter from any point on the external surface.

3. The radiation levels specified in 1 and 2 above are with the sealed source in the shielded or "off" position.

(b) (No change.)

(c) Each radiographic-exposure device and each storage container shall be provided with a lock or outer locked container designed to prevent unauthorized or accidental removal of a sealed source or its change from a shielded to an unshielded position. All ionizing radiation-producing machines, radiographic-exposure devices and storage containers shall be kept locked at all times except when under the direct surveillance of a radiographer or of a radiographer's assistant or as provided in N.J.A.C. 7:28-17.6(a).

(d) Locked radiographic-exposure devices and storage containers shall be physically secured to prevent tampering or removal by unauthorized personnel.

(e) The owner shall maintain sufficient calibrated and operable radiation-survey instruments to make physical radiation surveys as required by N.J.A.C. 7:28-17.6(c) and by N.J.A.C. 7:28-7. The requirements for the radiation-survey instruments are as follows:

1. Each radiation-survey instrument shall be calibrated at intervals not to exceed three months and the instrument shall be recalibrated after each servicing involving other than battery replacement. An operational check source test shall be performed on each radiation-survey instrument prior to its use.

2. Records shall be maintained of each date of calibration and the operational check source test results.

3. (No change.)

(f) The replacement of any sealed source fastened to or contained in a radiographic-exposure device and leak testing, repair, tagging, opening or any other modification of any sealed source shall be performed only by persons specifically authorized by the Department, a Federal agency or any Agreement state.

(g) (No change.)

(h) Requirements regarding any leaking sealed source shall be as follows:

1. Any test conducted pursuant to (g) above which reveals the presence of 0.005 microcuries or more of removable radioactive material shall be considered evidence that a sealed source is leaking.

2. The owner shall immediately withdraw any leaking sealed source above from use and shall cause it to be decontaminated and repaired in accordance with (f) or to be disposed of in accordance with N.J.A.C. 7:28-11.

3. Within five working days after obtaining results of the test performed pursuant to (g) above, a report shall be filed with the Department describing the equipment involved, the test results, and the corrective action taken.

(i) (No change.)

(j) Each owner shall conduct an ongoing inventory and keep a written record of each sealed source that is received, possessed, and used. This record shall include the date of receipt of each sealed source, the identity and quantity of the radioactive material contained within each sealed source, the date and to whom each sealed source is assigned and of the location at which each sealed source is to be used, the date that each sealed source is returned for storage at the owner's facility, the date that the source is returned for replacement, and the date of calibration.

(k) Each owner shall maintain current logs, which shall be kept available for inspection by the Department at the address specified in the license, showing for each radiation source the following information.

1. A description, or make and model number of the ionizing radiation-producing machine, or of the radiographic-exposure device or storage container in which the sealed source is located;

2-3. (No change.)

(l) Each owner conducting industrial radiography at a temporary job site shall make the following records available at that site for inspection by the Department:

1. A copy of the owner's current license to possess or use radioactive materials issued by the Department pursuant to N.J.A.C. 7:28-4.

2. A copy of the owner's current registration of a radioactive material or ionizing radiation-producing machine issued by the Department pursuant to N.J.A.C. 7:28-3;

3. A copy of the owner's current license to possess or use radioactive materials issued by the United States Nuclear Regulatory Commission;

4. A copy of the owner's operating and emergency procedures prepared pursuant to N.J.A.C. 7:28-17.5(d);

5. A copy of N.J.A.C. 7:28;

6. Survey records required pursuant to N.J.A.C. 7:28-17.6(c) for the period of operation at the site;

7. Daily pocket dosimeter records for the period of operation at the site required to be made pursuant to N.J.A.C.

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7:28-17.5(e)2;

8. A copy of the latest instrument calibration and the original log of daily instrument operational check source test results for the specific devices in use at the site required to be made pursuant to (e)1 and 2 above; and

9. A copy of the record of leak test results made pursuant to (g)4 above.

7:28-17.5 Personal radiation safety requirements for radiographers

(a) The owner shall not permit any person to act as a radiographer until such person:

1. Has been instructed by a qualified individual in the subjects outlined in (b) below and has demonstrated an understanding of those subjects by passing a written examination given by a qualified individual;

2. Has received copies of and instruction in the applicable sections of this Chapter and the owner's operating and emergency procedures required pursuant to (d) below, and demonstrated an understanding of this Chapter and the procedures specified therein; and

3. Has demonstrated competence to use the ionizing radiation-producing machines, radiographic-exposure devices, sealed sources, related handling tools and survey instruments which will be employed in his assignment.

(b) The outline of the course for radiographer's training is as follows:

1. Fundamentals of radiation safety:

i. (No change.)

ii. Units of radiation dose and quantity of radioactivity;

iii. (No change.)

iv. Levels of radiation from ionizing radiation-producing machines and radioactive materials;

v. Methods of controlling radiation dose;

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

2. Radiation detection instrumentation to be used:

i. Use of ionizing radiation survey instruments:

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

ii-iii. (No change.)

3. Radiographic equipment to be used:

i. Ionizing radiation-producing machines;

ii. Radiographic-exposure devices;

iii.-iv. (No change.)

4.-5. (No change.)

(c) The owner shall not permit any person to act as a radiographer's assistant until such person:

1. Has received copies of and instruction in the owner's operating and emergency procedures, required pursuant to (d) below, and has demonstrated an understanding of the procedures; and

2. Has demonstrated competence to use under the personal supervision of the radiographer the ionizing radiation-producing machines, radiographic-exposure devices, sealed sources, related handling tools and radiation-survey instruments which will be employed in his assignment; and

3. Has been instructed by a qualified individual in the subjects outlined in (b) above, and has demonstrated an understanding of those subjects by written examination given by a qualified individual.

(d) The owner shall prepare written operating and emergency procedures which shall include instructions in at least the following:

1. The handling and the use of ionzing radiation-producing machines, sealed sources and radiographic-exposure devices to be employed such that no person is likely to be exposed to radiation doses in excess of the limits established in N.J.A.C. 7:28-6;

2.-3. (No change.)

4. Methods and occasions for locking and securing ionizing radiation-producing machines, radiographic-exposure devices, storage containers and sealed sources;

5. (No change.)

6. Transporting sealed sources to field locations, including packing of radiographic-exposure devices and storage containers in the vehicles, posting of vehicles, and control of the sealed sources during transportation;

7.-9. (No change.)

(e) The owner shall not permit any person to act as a radiographer or as a radiographer's assistant unless *[, at all times during radiographic operations]* ***the owner has supplied to each such person and requires that*** each such person shall wear a film badge and either a pocket dosimeter or pocket chamber. The requirement for use of film badges, pocket dosimeters, and pocket chambers are as follows:

1.-5. (No change.)

7:28-17.6 Precautionary procedures in radiographic operations

(a) During each radiographic operation the radiographer or radiographer's assistant shall maintain a direct surveillance of the operation to protect against unauthorized entry into a high radiation area, except as follows:

1. Where the high radiation area is equipped with a control device which shall either cause the level of radiation to be reduced below that at which an individual might receive a dose of 100 millirems in one hour upon entry into the area, or shall energize a conspicuous visible and audible alarm signal in such a manner that the individual entering and the owner or the supervisor of the activity are made aware of the entry; or

2. (No change.)

(b) Notwithstanding any provisions in N.J.A.C. 7:28-10.8, areas in which radiography is being performed shall be conspicuously posted as required by N.J.A.C. 7:28-10.2 and 7:28-10.3.

(c) No radiographic operation shall be conducted unless calibrated and operable ionizing radiation-survey instrumentation as described in N.J.A.C. 7:28-17.4(e) is available and used at each site where radiographic exposures are made. In addition to the requirements of N.J.A.C. 7:28-7, radiation surveys shall be made and recorded as follows:

1. Physical radiation surveys shall be made as necessary during radiographic exposures to determine compliance with N.J.A.C. 7:28-6.

2. (No change.)

3. After radiographic operations employing a sealed source or sources have been completed, a physical radiation survey shall be made to determine that each sealed source is in its shielded condition prior to securing the radiographic-exposure device and storage container as specified in N.J.A.C. 7:28-17.4(a) and (c).

4. Clear and legible records shall be kept of the surveys that are required by (c) 1 and 3 above and maintained for inspection by the Department.

7:28-17.7 Cabinet x-ray systems

(a) No person shall operate or permit the operation of a cabinet x-ray system unless such system meets the requirement of N.J.A.C. 7:28-17.1, 7:28-17.2, 7:28-17.3, and 7:28-17.7.

(b) No person shall operate or permit any other person to operate a cabinet x-ray system until the operator has received a copy of the operator's manual, has been trained in the

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operating procedures for the system, and has demonstrated competence in operating the system. The owner shall maintain a copy of the operator's manual in the proximity of the system.

(c) Each owner shall supply appropriate personnel monitoring equipment to and shall require that it be used by every individual who operates, makes "set-ups", or performs maintenance on a cabinet radiography unit.

(d) Radiation emitted from the cabinet x-ray system shall not exceed an exposure of 0.5 milliroentgen in one hour at any point five centimeters outside the external surface.

(e) No cabinet x-ray system shall be placed into operation until a radiation survey is made by a qualified individual demonstrating that the exposure level in (d) above is not exceeded. Where an operating system is subsequently modified, repaired or moved to a new location an additional survey shall be performed, and operation shall not resume until a survey demonstrates compliance with this limit. The owner shall perform such additional surveys as required by the Department or as determined by a qualified individual. The owner shall maintain a record of all surveys performed and shall make such records available to the Department for inspection.

(f) Safety interlocks shall be provided on cabinet x-ray systems as follows:

1. Each door of a cabinet x-ray system shall have a minimum of two safety interlocks installed in such a manner that the opening of any door would disconnect the energy supply circuit to the high-voltage generator.

2. Each access panel on a cabinet x-ray system shall have at least one safety interlock.

3. Following interruption of x-ray generation by the functioning of any safety interlock, a manually reset control button shall be activated before x-ray generation can resume.

4. Failure of any single component of the cabinet x-ray system shall not cause failure of more than one required safety interlock.

5. Safety interlocks shall be tested for operation at intervals not to exceed six months. A record of these tests shall be maintained for inspection by the Department.

(g) A cabinet x-ray system shall have a permanent floor. Any support surface to which a cabinet x-ray system is permanently affixed may be deemed the floor of the system.

(h) Warning labels shall be provided on cabinet x-ray systems and shall meet the following requirements:

1. There shall be permanently affixed or inscribed on the cabinet x-ray system at the location of any controls which can be used to initiate x-ray generation a clearly legible and visible label bearing the statement or words having a similar meaning: "CAUTION: X-RAYS PRODUCED WHEN ENERGIZED"; and

2. There shall be permanently affixed or inscribed on the cabinet x-ray system adjacent to each port a clearly legible and visible label bearing the statement or words having a similar meaning: "CAUTION: DO NOT INSERT ANY PART OF THE BODY WHEN SYSTEM IS ENERGIZED: X-RAY HAZARD".

(i) All cabinet x-ray systems shall be provided with the following controls and indicators:

1. A key-actuated control to insure that x-ray generation is not possible with the key removed;

2. A control button or control switch to initiate and terminate the generation of x-rays other than by the functioning of a safety interlock or the main power control;

3. A warning light at the control button or control switch that indicates when and only when x-rays are being generated. This light shall be clearly labeled with the words: "X-RAY ON";

4. A warning light which indicates when and only when x-rays are being generated. This warning light shall be visible from each door, access panel, and port and shall be clearly labeled with words: "X-RAY ON".

5. A meter which indicates the kilovoltage and current during the generation of x-rays at each x-ray control button or control switch unless the x-ray tube current is preset.

(j) Cabinet x-ray systems designed primarily for the inspection of carry-on baggage at airline, railroad, and bus terminals, and similar facilities, shall be provided with means to insure that an operator is present at the control area in a position which permits surveillance of the ports and doors during the generation of x-radiation as follows:

1. During an exposure or preset succession of exposures of one-half second or greater duration, the system shall contain a mechanism to enable the operator to terminate the exposure or preset succession of exposures at any time.

2. During an exposure or preset succession of exposures of less than one-half second duration, there shall be a mechanism provided to allow completion of the exposure in progress but shall enable the operator to prevent additional exposures.

7:28-17.8 Shielded room radiography

(a) No person shall operate or permit the operation of any ionizing radiation-producing machine, radiographic-exposure device, or sealed source used in shielded room radiography unless the equipment, installation, and personnel meet the requirements of N.J.A.C. 7:28-17.1 through 7:28-17.6 and 7:28-17.8.

(b) No person shall operate or permit any person to operate an ionizing radiation-producing machine, radiographic-exposure device, or sealed source used in shielded room radiography until such operator has completed the following requirements:

1. The operator has met the requirements of N.J.A.C. 7:28-17.5;

2. The operator has received a copy of and instruction in N.J.A.C. 7:28-1 through 7:28-13 and 7:28-17 and a copy of the owner's operating and emergency procedures as required by N.J.A.C. 7:28-17.5(d) and has demonstrated an understanding of the procedures and regultions by written examination given by a qualified individual; and

3. The operator has demonstrated competence to operate appropriate safety systems.

(c) Each owner shall supply appropriate personnel monitoring equipment and shall require that it be used by every individual who operates, makes "set-ups," or performs maintenance on an ionizing radiation-producing machine, radiographic***-exposure*** device, or sealed source used in shielded room radiography.

(d) The enclosed room in which shielded room radiography is conducted shall be shielded so that no location on the exterior exceeds the radiation levels and limits established in N.J.A.C. 7:28-6. No industrial radiography shall be conducted in a shielded room until a radiation survey is first made to insure compliance with these radiation levels and limits. A record of this survey shall be maintained and a copy shall be available for inspection by the Department.

(e) No person shall enter an enclosed room in which shielded room radiography is performed until after a physical radiation survey is conducted to determine whether the ionizing radiation producing machine is off or the radiographic-exposure device or the sealed source is in the shielded or "off"

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position. A record shall be maintained of the date and exposure rate measured for each physical radiation survey and shall be made available for inspection by the Department.

(f) The radiation surveys required in (d) and (e) above shall be made with a radiation survey instrument measuring radiation at the energies and at the exposure rates to be encountered. This instrument shall have an operational check source test conducted prior to each use and shall be calibrated at intervals not to exceed one year and shall be recalibrated after each servicing other than a battery replacement. Records shall be maintained of each date of calibration and the daily operational check and shall be made available for inspection by the Department.

(g) Adequate methods shall be provided to restrict the access of personnel and the public to any and all shielded room radiography areas to prevent the exposure of any person to radiation in excess of the level limits of N.J.A.C. 7:28-5, 7:28-6 and 7:28-17. No person is permitted to remain within the enclosed room where shielded room radiography is being performed.

(h) All ionizing radiation-producing machines, radiographic-exposure devices, and sealed sources used in shielded room radiography and all objects exposed thereto shall be confined within an installation or structure designed or intended for radiography and in which radiography is regularly performed in accordance with the following requirements:

1. A reliable interlock or other mechanism shall be installed at each means of access to the shielded room which will turn off the source(s) of radiation if a person tries to enter or open the door to the shielded room.

2. A door-fastening mechanism shall be installed so that the door to the shielded room can be opened from the inside at all times in case of emergency.

3. A visible and audible signal alarm system shall be installed within the shielded room which will be actuated at a reasonable length of time before the power to the radiation source can be activated which enables persons in the vicinity of the shielded room to take appropriate protective actions.

4. One or more scram or emergency buttons shall be installed at a highly visible and easily accessible location or locations within the shielded room that will terminate the power to the source of radiation. This scram or emergency button shall be installed so that it shall require manual resetting before the power to the source of radiation can be reactivated.

5. Each source of radiation used in shielded room radiography shall be provided with a lock at the control panel to prevent unauthorized use of the source.

6. If more than one source of radiation is used in the same shielded room, all such sources of radiation shall meet the requirements of 1-5 above.

(a)

Medical Exposure to Ionizing Radiation by Radiologic Technologists

Adopted Amendments: N.J.A.C. 7:28-19.2, 19.3, 19.4, 19.6, 19.9 and 19.10

Proposed: July 1, 1985 at 17 N.J.R. 1632(a).
Adopted: September 11, 1985 by Max Weiss, Ph.D., Chairman, Commission on Radiation Protection.
Filed: September 16, 1985 as R.1985 d.501, with **technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 13:1D-7 and 26:2D-7, and specifically 26:2D-24 et seq., as amended by P.L. 1984, c.242.

DEP Docket No. 030-85-05.
Effective Date: October 7, 1985.
Expiration Date pursuant to Executive Order No. 66 (1978): August 20, 1989.

Summary of Public Comments and Agency Responses:
The Commission on Radiation Protection held a public hearing on July 17, 1985 at 4:00 P.M. at the New Jersey State Museum Auditorium, Trenton, New Jersey concerning this proposal and proposed amendments to N.J.A.C. 7:28-1 and -17 (General Provisions, and Industrial and Non-Medical Radiography) appearing in the July 1, 1985 Register at 17 N.J.R. 1626. No one made any comments at the hearing, nor were any written comments received on either proposal.

The words "lower leg" have been added to N.J.A.C. 7:28-19.6(e) for clarification.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus.***).

7:28-19.2 Definitions

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

"Podiatric x-ray technology (LRT(P))" means a person, other than a licensed practitioner, whose practice of radiologic technology is limited to the operation of x-ray machines as used by podiatrists on the lower leg and foot area for diagnostic purposes only.

7:28-19.3 General Provisions

(a)-(f) (No change.)

(g) The Board shall establish criteria and standards for programs of diagnostic, radiation therapy, dental, chest, or podiatric x-ray technology and approve these programs upon findings that the standards and criteria have been met.

7:28-19.4 Licensure procedure

(a) (No change.)

(b) In addition to the requirements of (a) above, any person seeking to obtain a license in a specific area of radiologic technology must comply with the following applicable requirements:

1.-4. (No change.)

5. Each applicant for a license as a podiatric x-ray technologist (LRT(P)) shall have satisfactorily completed the basic curriculum for podiatric radiography as approved by the Board or its equivalent as determined by the board.

7:28-19.6 Practice of radiologic technology

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

(e) The practice of podiatric x-ray technology shall include patient measurement, proper positioning, selecting adequate technique factors on control panel, demonstrating anatomy as requested by physician, selecting proper distance, exercising proper principles of radiation protection and making x-ray exposures. The application of x-rays to a human being by

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podiatric x-ray technologists is restricted to the distal third ***lower leg*** (tibia/fibula) which shall include the ankle and foot area and shall not include the knee joint.

7:28-19.9 Program approval
(a)-(c) (No change.)
(d) The Board shall establish criteria and standards for programs of chest, dental, and podiatric radiography and approve such programs upon finding that the standards and criteria have been met.
(e)-(q) (No change.)

7:28-19.10 Use of medical ionizing equipment by students
(a) (No change.)
(b) Students enrolled in and attending a Board approved diagnostic, chest, dental, or podiatric radiologic technology program may apply radiation to a human being for necessary diagnostic purposes only at the approved clinical facilities of the sponsoring institutions.
1.-2. (No change.)
(c)-(e) (No change.)

(a)

PINELANDS COMMISSION

Pinelands Comprehensive Management Plan

Adopted Amendments and New Rules: N.J.A.C. 7:50-2.11, 4.12 through 4.92

Proposed: August 5, 1985 at 17 N.J.R. 1918(a).
Adopted: September 6, 1985 by the New Jersey Pinelands Commission, Terrence D. Moore, Executive Director.
Filed: September 12, 1985 as R.1985 d.494, **with technical and substantive changes** not requiring additional public notice and comment (N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 13:18A-6j.

Effective Date: September 12, 1985.
Expiration Date pursuant to Executive Order No. 66 (1978): Exempt.

Summary of Public Comments and Agency Responses:
No testimony was offered at the public hearing; however, the Pinelands Commission received three letters commenting on the proposal. The comments recommended that:

1. The Commission, in adopting these procedural rules, continue to protect the Pinelands.

2. N.J.A.C. 7:50-4.14(b) be revised to specify that an applicant may obtain from the administrative officer of a municipality a certified list of names and addresses of property owners to whom notice of the pending application must be given. Such a requirement, which parallels the Municipal Land Use Law (N.J.S.A. 40:55D), would permit a municipality to charge 25 cents per name or $10.00, whichever is greater, for such a list.

It was also recommended that an identical provision be added in the notice requirements of N.J.A.C. 7:50-4.53(c), 4.62(b), and 4.73(b).

3. The applicant be notified of any comments submitted on a pending application and that the applicant be afforded an opportunity to respond to those comments.

The Pinelands Commission's response is as follows:

1. These rules are procedural in nature and do not relate to the environmental or land use standards which govern development in the Pinelands. Therefore, the rules will not in any way affect the protection of the Pinelands.

2. These sections of the rules are being amended to require that the administrative officer of the municipality provide the certified lists in accordance with N.J.S.A. 40:55D-12(c). This is the same list the administrative officer prepares for applications submitted pursuant to the Municipal Land Use Law. The administrative officer can charge the applicant for the list as provided for in that statute.

3. The rules are being revised to provide the applicant with a notice that the Pinelands Commission has received public comments. The applicant will be responsible for contacting the Pinelands Commission to review the public comments submitted.

The Pinelands Commission has also made other minor changes in the rules. These changes are intended to clarify the meaning of certain provisions, and to revise other provisions as follows:

1. Clarify in N.J.A.C. 7:50-4.14(c)3, 4.53(e)3, 4.62(c)3 and 4.73(c)3 that the mandated notice of the application stated that written comments received within 10 days of the notice will be considered by the Pinelands Commission. This language conforms to the requirements in (c)2 (or (e)2) of those Sections that the Commission could take action after the 10 day comment period was over. The added language does not alter the time period in which action could be taken but simply serves to reemphasize to interested persons that their comments need to be sent within 10 days so they can be considered.

2. Clarify N.J.A.C. 7:50-4.19(b), 4.22(b), and 4.25(b) as to who is to be given notice by certified mail and who is to be given notice by regular mail. These changes are intended to make these notice requirements consistent with other similar notice requirements in the Comprehensive Management Plan.

3. Insert in N.J.A.C. 7:50-4.24 a new subsection (b) and in N.J.A.C. 7:50-4.26 a new subsection (c) to make clear that in reviewing final local approvals and denials that the Pinelands Commission can only approve the application if it conforms to the requirements set forth in N.J.A.C. 7:50-4.16. N.J.A.C. 7:50-4.16 precludes the granting of any approval unless the requirements of that Section have been met. The new subsections are being added so that someone looking at these Sections is immediately aware that the requirements of N.J.A.C. 7:50-4.16 must be met in order for an approval to be granted.

4. Insert in N.J.A.C. 7:50-4.27 the date July 15, 1985 as the date which the emergency rules which preceded these rules took effect. The language in the proposed rules referred to this date verbally as it was not known at the time of the proposal when the emergency rules would take effect. Once this date was established, it was believed that using the actual date would be much clearer to the users of these rules.

5. Insert in N.J.A.C. 7:50-4.63 language to clarify that the Executive Director can only recommend to the Pinelands Commission that an application for a Waiver of Strict Compliance be approved if the requirements of N.J.A.C. 7:50-4.66 are met. N.J.A.C. 7:50-4.66 already states that an application for a Waiver can only be approved if the requirements of that Section are met. This addition is simply to make clear that the Executive Director can recommend an approval of a Waiver only if a Waiver can be approved by the Commission pursuant to the standards set forth in N.J.A.C. 7:50-4.66.

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6. Clarify N.J.A.C. 7:50-4.66(a)iii to reflect the Commission's consistent interpretation and application of that Section that the waiver provision for projects with valid municipal development approvals expired on January 14, 1984. This expiration date is based upon the requirements of the Municipal Land Use Law and applies to all applications for Waivers which were not completed by that date.

7. Delete from N.J.A.C. 7:50-4.65 the proposed revision which would permit the Pinelands Commission to act on applications for waivers of strict compliance before the time for entering a reconsideration request expires. Pursuant to N.J.A.C. 7:50-4.91, interested parties may request an administrative hearing on a recommendation by the Commission's Executive Director before the Pinelands Commission itself renders a final decision on the matter.

Consistent with its procedures for other types of applications and to ensure impartiality in deciding these matters, the Pinelands Commission can not act upon the Executive Director's recommendation for waivers of strict compliance until all interested parties have had an opportunity to seek an administrative hearing through the reconsideration process.

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

7:50-2.11 Definitions

Certificate of Compliance

See N.J.A.C. 7:50-4.11 through 4.27 (Development in Areas without Certified Local Plans)

7:50-4.12 Applicability

The provisions of this Part shall be applicable to all development in any portion of the Pinelands Area located in any jurisdiction where the master plan or land use ordinances have not been certified by the Commission, except for those activities specifically excepted in N.J.A.C. 7:50-4.1.

7:50-4.13 Compliance with this part required for development in uncertified areas

Subject to the provisions of N.J.A.C. 7:50-4.12, no person shall carry out any development in any portion of the Pinelands Area located within the jurisdiction of a municipality with an uncertified master plan or land use ordinance without first complying with all applicable procedures set out in this Part. Any decision made pursuant to this Part shall supersede any local decision. All development shall adhere to the terms of any decision made pursuant to this Part. No local decision shall be made which imposes any requirements which in any way contravenes any standard contained in this Plan.

7:50-4.14 Application for development approval in uncertified municipalities

(a) An application for development in uncertified municipalities shall be submitted to the Commission in accordance with the requirements of N.J.A.C. 7:50-4.2(b) (Application Requirements).

(b) In addition to the requirements of N.J.A.C. 7:50-4.2(b), an applicant for major development, as defined in N.J.A.C. 7:50-2.11 of the Plan, shall provide notice of the application for *[Pinelands]* development *[approval]* as follows:

1. Notice shall be given by publication in the official newspaper of the municipality in which the parcel is located, if there is one, or in a newspaper of general circulation in the municipality as provided for in N.J.S.A. 40:55D-12(a); and

2. Notice shall be given to owners of all real property within 200 feet of the subject property as provided for in N.J.S.A. 40:55D-12(b). ***The administrative officer of the municipality shall provide a certified list of said property owners as provided for in N.J.S.A. 40:55D-12(c).***

(c) *[Said]* ***The*** notice ***in (b) above*** shall state:

1. The nature of the application pending before the Pinelands Commission, including a description of the proposed development;

2. That action may be taken on the application after 10 days from the date the notice is published and mailed;

3. That written comments on the application may be submitted to the Pinelands Commission and that all such comments ***received within 10 days of the mailing or publication of the notice*** will be considered in the review of the application;

4. That the application is available for inspection at the office of the Pinelands Commission;

5. The address and phone number of the Pinelands Commission; and

6. That any person who provides comments or requests a copy of the Executive Director's *[findings and conclusion]* ***determination*** shall be provided a copy of said *[findings and conclusion]* ***determination.***

(d) If the applicant significantly modifies the proposed development from that described in the most recent notice given pursuant to (b) and (c) above, then the applicant shall again provide the notice mandated by said subsections so that the notice accurately describes the proposed development.

(e) No application for which the above notice is required, shall be deemed complete until proof that the requisite notice has been given is received.

(f) The Executive Director shall not issue a Certificate of Compliance for any application for which the above notice is required until 5 days after the 10 day comment period set forth herein has expired. ***If any public comments have been received concerning the application, the Executive Director shall inform the applicant that public comments have been submitted prior to issuing a Certificate of Compliance.***

7:50-4.15 Action by Executive Director on application

Within ninety days following the receipt of a complete application for development, the Executive Director shall review the application and all information submitted by the applicant or any other person relating to the application and upon completion of such review issue a Certificate of Compliance stating whether the application should be approved, approved with conditions or disapproved. The application may be approved or approved with conditions only if the development as proposed, or subject to any conditions which may be imposed, conforms to each of the minimum standards for development approval established by N.J.A.C. 7:50-4.16 below. The Executive Director may propose in said Certificate of Compliance any reasonable condition which he finds is necessary to achieve the objectives of this Plan. The Executive Director shall provide a copy of the Certificate of Compliance to the applicant, the Commission, interested persons, including all persons who have submitted information concerning the application, as well as all persons who have requested a copy of said decision, and any persons, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2) (Persons entitled to notice.)

7:50-4.16 Standards for uncertified areas

(a) No local approval may be granted by an uncertified municipality and no approval may be granted pursuant to this Part unless the proposed development:

1. Satisfies all of the criteria and standards established in

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N.J.A.C. 7:50-5 (Minimum standards for land uses and intensities) and 6 (Management Programs and Standards) of this Plan, provided, however, that all optional elements of Article 6 shall be mandatory for any jurisdiction which is uncertified; and

2. Is otherwise consistent with the objectives of the Federal Act, the Pinelands Protection Act and this Plan.

7:50-4.17 Certificate of Compliance required for determination of completeness and action

No local permitting agency shall determine that any application for development is complete or take any action on any application for development unless the application is accompanied by a Certificate of Compliance issued pursuant to N.J.A.C. 7:50-4.15.

7:50-4.18 Report requirements of local permitting agency with respect to applications for development

(a) General requirement: Every local permitting agency shall give notice to the ***Pinelands*** Commission, as hereinafter specified, of the filing of, and ***of any*** changes to, *[any application for development]* and of ***any*** hearings and meetings concerning *[the filing]* and ***of the*** disposition of every application for development filed with it. Failure to provide said notices shall void any local decision for which such notices were not provided.

(b) Notice of application: Within seven days following a determination of completeness of an application for development, or any change to any application for development which was previously filed, notice of such application shall be given by the local agency, *[by mail]* ***in writing,*** to the Commission. The notice shall be in such form as the Executive Director shall from time to time specify; but each such notice shall contain at least the following information:

1. The name and address of the applicant;

2. The legal description and street address, if any, of the property which the applicant proposes to develop;

3. A brief description of the proposed development, including uses and intensity of uses proposed;

4. The docket number of the Certificate of Compliance issued by the Executive Director and the date on which it was issued;

5. The date on which the application, or change thereto, was filed and any docket or other identifying number assigned to such application by the local permitting agency;

6. The local permitting agency with which the application or change thereto was filed;

7. The content of any change made to any such application since it was filed with the Commission; and

8. The nature of the local approval or approvals being sought.

(c) Notice of hearings and meetings: Notice of any hearing, public meeting or other formal proceeding at which an application for development is to be considered shall be given to the Commission by the local agency *[by mail or delivery of the same to the principal office of the Commission]* ***in writing*** not less than five days prior to such meeting, hearing or proceeding and shall be in such form as the Executive Director shall from time to time specify. Each notice shall contain at least the following information:

1. The name and address of the applicant;

2. The docket number of the Certificate of Compliance issued by the Executive Director and the date on which it was issued;

3. The date, time and location of the meeting, hearing, or other formal proceeding;

4. The name of the local permitting agency or representative thereof which will be conducting the meeting, hearing, or other formal proceeding;

5. Any written reports or comments received by the local permitting agency on the application for development which have not been previously submitted to the Commission; and

6. The purpose for which the meeting, hearing or other formal proceeding is to be held.

(d) Notice of preliminary approval: Notice of any grant of preliminary site plan or subdivision approval or any other preliminary approval of any application for development provided for by the Municipal Land Use Law or any county or municipal ordinance shall be given to the Commission by the local agency, by certified mail, within five days following such grant or approval. Such notice shall be in such form as the Executive Director shall from time to time specify, but shall contain at least the following information:

1. The name and address of the applicant;

2. The legal description and street address, if any, of the property which the applicant proposes to develop;

3. The docket number of the Certificate of Compliance issued by the Executive Director and the date on which it was issued;

4. The date on which the preliminary approval was granted;

5. Any written reports or comments received by the local permitting agency on the application for development which have not been previously submitted to the Commission;

6. A copy of the resolution or other documentation of the preliminary approval which was granted and a copy of the plans which were approved; and

7. The names and addresses of all persons who actively participated in the local proceedings.

(e) Notice of final determination: Notice of any final determination with respect to any application for development shall be given to the Commission by the local agency by, certified mail, within five days following such determination and shall be in such form as the Executive Director shall from time to time specify; but such notice shall contain at least the following information:

1.The name and address of the applicant;

2. The legal description and street address, if any of the property which the applicant proposes to develop;

3. The docket number of the Certificate of Compliance issued by the Executive Director and the date on which it was issued; and

4. A copy of the resolution or other documentation of the local permitting agency approving or denying the applicant and, if the application was approved, a copy of any final site or subdivision plan or plat or similar plan which was submitted by the applicant.

7:50-4.19 Commission review following preliminary approval

(a) Decision to review local approval: Upon receipt of any notice of ***preliminary*** local approval given pursuant to N.J.A.C. 7:50-4.18(d), the Executive Director shall review the application for development and all other information in the file, the Certificate of Compliance and the local action and determine whether the local action conforms to the requirements of this Plan. If the Executive Director determines that the proposed development, as approved by the local agency, may not conform to the minimum standards set forth in N.J.A.C. 7:50-4.16, he shall initiate the review procedures set forth in this Section. If the Executive Director determines that the proposed development, as approved by the local agency,

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conforms to the minimum standards set forth in N.J.A.C. 7:50-4.16 the preliminary approval will not be reviewed by the Commission.

(b) Notice of decision and hearing: Within thirty days following receipt of any notice of preliminary approval issued pursuant to N.J.A.C. 7:50-4.18(d) *[Notice of preliminary approval]*, the Executive Director shall give notice of his determination by certified mail to the applicant, ***and*** the local permitting agency which granted such preliminary approval, ***and by regular mail to*** the Commission, interested persons, including all persons who have submitted information concerning the application, as well as all persons who have requested a copy of said decision, and any persons, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2) (Persons entitled to notice). If the Executive Director determines that the preliminary approval should be reviewed by the Commission, the notice shall indicate that the applicant, the local permitting agency or any interested person may, within twenty-one days of mailing of such notice, request that a hearing be held before an Administrative Law Judge pursuant to the procedures (Reconsideration) for the purpose of reviewing such preliminary approval.

(c) Notices to interested persons: If the Executive Director determines that a preliminary approval shall be reviewed by the Commission and a hearing has been requested pursuant to (b) above, he shall notify all persons who actively participated in the proceedings before the local permitting agency and all persons who submitted information on the application to the Commission, that they may participate in any proceedings held pursuant to this Part.

(d) No action by applicant prior to receipt of notice: No person shall carry out any development pursuant to any preliminary approval granted by any local permitting agency until he has received notice provided for in (b) above. If such notice indicates that the Commission *[intends to]* ***will*** conduct a review of such preliminary approval pursuant to this Section, no development shall be carried out until such review has been completed.

7:50-4.20 Decision on review

(a) If no hearing is requested *[by the applicant or the local permitting agency]* pursuant to N.J.A.C. 7:50-4.19(b) *[Notice of decision and hearing]*, the Executive Director shall within 60 days review the application, all other information in the file, the Certificate of Compliance and the local approval and determine whether the preliminary approval is in conformance with the minimum standards of this Plan. The Executive Director may recommend the Commission approve the preliminary approval, approve the preliminary approval with conditions or disapprove the preliminary approval. The Executive Director shall give written notification of his findings and conclusions to the applicant, the Commission, the local approving agency, interested persons, including all persons who have submitted information concerning the application, as well as all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2) (Persons entitled to notice).

b. Review by the commission: If a hearing is requested pursuant to N.J.A.C. 7:50-4.19(b) *[(Notice of decision and hearing)]*, the Commission shall, upon receipt of the *[findings of fact and recommendations]* ***initial decision*** of the Administrative Law Judge, review *[such findings and recommendations]* ***the initial decision***, the application and the record of the hearing ***only***, and approve, approve with conditions, or disapprove the preliminary approval. If no hearing is requested pursuant to N.J.A.C. 7:50-4.19(b), the Commission shall, after receipt of the Executive Director's recommendation, review said recommendation, the application, other material in the file, the Certificate of Compliance and the local approval ***only*** and approve, approve with conditions or disapprove the preliminary approval.

(c) Effect of the determination:

1. If the Commission disapproves any preliminary approval of an application for development, the local permitting agency shall within 30 days revoke such preliminary approval, and, thereafter, deny approval of such application.

2. If the Commission approves a preliminary approval subject to conditions, the local permitting agency shall, within thirty days, modify its preliminary approval to include all conditions imposed by the Commission, and shall grant final approval only if the application for final approval demonstrates that such conditions have been or will be met by the applicant.

7:50-4.21 Notice of changes made subsequent to local preliminary approval

(a) Each local permitting agency shall give notice to the Commission of any design, engineering or other changes made to any application for development by an applicant subsequent to any local preliminary approval reported to the Commission pursuant to N.J.A.C. 7:50-4.18*[(b)]* and ***(d)*** *[Notice of preliminary approval]*, including changes made in response to conditions imposed by the Commission pursuant to N.J.A.C. 7:50-4.20 *[(Decision on review)]*, to the Executive Director, within five days of receipt of such changes. Such notice shall be in such form as the Executive Director shall from time to time specifiy but shall contain at least the following information:

1. The name and address of the applicant;

2. The legal description and street address, if any, of the property which the applicant proposes to develop;

3. The docket number of the Certificate of Compliance issued by the Executive Director and the date on which it was issued;

4. Copies of any amended application, site or subdivision plans, plats and other documents reflecting such changes; and

5. A brief description of the nature of such changes.

(b) Any such changes shall be subject to review by the Commission pursuant to N.J.A.C. 7:50-4.19 *[(Commission review following preliminary approval)]* and 7:50-4.20 *[(Decision on Review)]* in the same manner as the original preliminary approval.

7:50-4.22 Commission review following final local approval

(a) Decision to review local approval: Upon receipt of any notice of ***final*** local approval given pursuant to N.J.A.C. 7:50-4.18(e), the Executive Director shall review the application for development, all other information in the file, the Certificate of Compliance and the local action and determine whether the local action conforms to the requirements of this Plan. If the Executive Director determines that the proposed development, as approved by the local agency, may not conform to the minimum standards set forth in N.J.A.C. 7:50-4.16, he shall initiate the review procedures set forth in this Section. If the Executive Director determines that the proposed development, as approved by the local agency, conforms to the minimum standards set forth in N.J.A.C. 7:50-4.16 the final approval will not be reviewed by the Commission.

(b) Notice of decision and hearing: Within fifteen days

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following receipt of any notice of final determination given pursuant to N.J.A.C. 7:50-4.18(e)*[(Notice of final determination)]*, the Executive Director shall give notice of his determination by certified mail to the applicant, ***and*** the local permitting agency which granted such approval, ***and by regular mail to*** the Commission, interested persons, including all persons who have submitted information concerning the application, as well as all persons who have requested a copy of said decision, and any persons, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2) (Persons entitled to notice). If applicable, such notice shall set a date, time and place for public hearing as required by N.J.A.C. 7:50-4.23 *[(Public hearing)]*.

(c) No person shall carry out any development pursuant to an approval of an application for development which has been granted by any local permitting agency until he has received the notice provided for in (b) above. If such notice provides that the Commission intends to review such approval pursuant to N.J.A.C. 7:50-4.23 *[(Public hearing)]* and 4.24 *[(Decision on review)]*, no development shall be carried out unitl such review has been completed.

7:50-4.23 Public hearing

If the Executive Director determines that the approval should be reviewed by the Commission, he shall, within forty-five days following receipt of the notice of final determination given pursuant to N.J.A.C. 7:50-4.18(e), conduct a public hearing to be held pursuant to the procedures set out in N.J.A.C. 7:50-4.3 of this Plan. The applicant shall have the burden of going forward and the burden of proof at the public hearing. However, an applicant may, at his option, waive all time limits for review imposed by the Pinelands Protection Act or this Plan and request that the hearing be held by an Administrative Law Judge pursuant to the procedures established in N.J.A.C. 7:50-4.91 (Reconsideration). *[Within forty-five days following receipt of the findings of fact, conclusion and recommendation of the Administrative Law Judge, the Commission shall issue a final order.]*

7:50-4.24 Decision on review

(a) Determination by Commission: If a hearing is held pursuant to N.J.A.C. 7:50-4.3 (Commission hearing provisions), the Commission shall, within forty-five days following the notice given pursuant to N.J.A.C. 7:50-4.22(b) *[(Notice of decision and hearing)]*, review the application, the file and the record of the hearing ***only*** and make a determination as to whether the proposed development should be approved, approved with conditions or disapproved. If a hearing is held before an Administrative Law Judge pursuant to N.J.A.C. 7:50-4.91 (Reconsideration), the Commission shall *[upon]* within 45 days of ***receipt of the*** *[proposed findings of fact and recommendation]* initial decision* of the Administrative Law Judge, review such findings and recommendations, the record of the hearing and the application ***only*** and approve, approve with conditions or disapprove the proposed development.

(b) Standards: The development shall be approved or approved with conditions only if the Commission determines that the development as proposed, or with any conditions which are imposed, conforms with the minimum standards established in N.J.A.C. 7:50-4.16 *[(Standards for uncertified areas)]*.

(c) Effect on Commission's decision:

1. If the Commission disapproves the final local approval of any such application, the local permitting agency shall within 30 days revoke such approval and, thereafter, deny final approval of such application.

2. If the Commission approves the local permitting agency's approval of any such application subject to conditions, the local permitting agency shall within thirty days modify its approval to include all conditions imposed.

7:50-4.25 Commission review following local denial

(a) Decision to review local denial: Upon receipt of any notice of a local denial given pursuant to N.J.A.C. 7:50-4.18(e), the Executive Director shall review the application for development, all other information in the file, the Certificate of Compliance and the local action and determine whether the local action conforms to the requirements of this Plan. If the Executive Director determines that the proposed development ***may*** conform*[s]* to the minimum standards set forth in N.J.A.C. 7:50-4.16 and that the local denial *[is]* ***may be*** contrary to the standards of the Plan, he shall initiate the review procedures set forth in this Section. If the Executive Director determines that the proposed development does not conform to the minimum standards set forth in N.J.A.C. 7:50-4.16 or that the local denial is based on matters not regulated by the Plan and is not contrary to any such standards, the local denial will not be reviewed by the Commission.

(b) Notice of decision and hearing: Within thirty days following receipt of any notice of a denial issued pursuant to N.J.A.C. 7:50-4.18(e) the Executive Director shall give notice of his determination by certified mail to the applicant, ***and*** the local permitting agency which denied the applicant, ***and by regular mail to*** the Commission, interested persons, including all persons who have submitted information concerning the application, as well as all persons who have requested a copy of said decision, and any persons, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2) (Persons entitled to notice). If the Executive Director determines that the denial should be reviewed by the Commission, the notice shall indicate that the applicant, the local permitting agency or any interested person may, within twenty-one days of mailing of such notice, request that a hearing be held before an Administrative Law Judge pursuant to the procedures established by N.J.A.C. 7:50-4.91 (Reconsideration) for the purpose of reviewing *[such preliminary approval]* ***the denial***.

(c) Notices to interested persons: If the Executive Director determines that a denial shall be reviewed by the Commission and a hearing has been requested pursuant to (b) above, he shall notify all persons who actively participated in the proceedings before the local permitting agency and all persons who submitted information on the application to the Commission, that they may participate in any proceedings held pursuant to this Part.

7:50-4.26 Decision of review

(a) If no hearing is requested *[by the applicant or the local permitting agency]* pursuant to N.J.A.C. 7:50-4.25(b) *[(Notice of decision and hearing)]*, the Executive Director shall within 60 days review the application and all other information in the file, *[and]* the Certificate of Compliance and the local *[action]* ***denial*** and determine whether the denial is in conformance with the minimum standards of this Plan. The Executive Director may recommend that Commission approve the application, approve the application with conditions or disapprove the application *[or]* ***and*** allow the local denial to stand. The Executive Director shall give written notification of his findings and conclusions to the applicant, the Commission, the local approving agency, interested persons, including all persons who have submitted information

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concerning the application, as well as all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2) (Persons entitled to notice).

(b) Review by the Commission: If a hearing is requested pursuant to N.J.A.C. 7:50-4.25(b) *[(Notice of decision and hearing)]*, the Commission shall, upon receipt of the *[findings of fact and recommendations]* ***initial decision*** of the Administrative Law Judge, review *[such findings and recommendations]* ***the initial decision***, the application, *[the file]* and the record of the hearing ***only***, and approve, approve with conditions, or disapprove the application *[or let the local denial stand]*. If no hearing is requested pursuant to N.J.A.C. 7:50-4.25(b), the Commission shall after receipt of the Executive Director's recommendation, review said recommendation, the application, the Certificate of Compliance, other material in the file and the local *[approval]* ***denial only*** and approve, approve with conditions or disapprove the application *[or]* ***and*** allow the local denial to stand.

(c) Standards: the development shall be approved or approved with conditions only if the Commission determines that the development as proposed, or with any conditions which are imposed, conforms with the minimum standards established in N.J.A.C. 7:50-4.16 and that the local denial is based on matters regulated by the Plan.

*[c]***(d)* Effect of the Determination

1. If the Commission approves an application which received a local denial the local permitting agency shall revoke the denial, and, thereafter, approve of such application within 30 days.

2. If the Commission approves, subject to conditions, an application which received a local denial, the local permitting agency shall, within thirty days, revoke its denial and grant approval subject to the conditions imposed by the Commission.

7:50-4.27 Effect of pinelands development approval

A Pinelands Development Approval issued pursuant to the provisions of this part previously in effect shall have the same effect as a Certificate of Compliance issued pursuant to N.J.A.C. 7:50-4.15 (Action by Executive Director on application) unless the applicant received a valid local approval prior to *[the adoption of the amendments which incorporated this Section into the Plan]* ***July 15, 1985***. If such a valid local approval was granted, the Pinelands Development Approval shall continue to have the same force and effect as if this Part had not been amended.

7:50-4.28 through 7:50-4.30 (Reserved)

Recodify existing 7:50-4.21 through 4.33 as 4.31 through 4.43 (No change in text.)

7:50-4.44 through 7:50-4.50 (Reserved)

Recodify existing 7:50-4.41 and 4.42 as 4.51 and 4.52 (No change in text.)

7:50-4.53 Pre-application conference and submission requirements

(a) Request for pre-application conference: Prior to initiating any development within the Pinelands, a public agency shall submit a request for a pre-application conference to the Executive Director pursuant to N.J.A.C. 7:50-4.2(a).

(b) Submission requirement: Following the completion of the pre-application conference, the public agency shall submit such information which the Executive Director determines is necessary to enable the Commission to review the proposed development for conformity with the standards of this Plan.

(c) In addition to the requirements of (a) and (b) above a public agency seeking approval for major development, as defined in N.J.A.C. 7:50-2.11 of the Plan, ***which will be located on a specific parcel***, shall provide notice of the application for public development as follows:

1. Notice shall be given by publication in the official newspaper of the municipality in which the parcel is located, if there be one, or in a newspaper of general circulation in the municipality as provided for in N.J.S.A. 40:55D-12(a);

2. Notice shall be given to owners of all real property within 200 feet of the subject property as provided for in N.J.S.A. 40:55D-12(b). ***The administrative officer of the municipality shall provide a certified list of said property owners as provided for in N.J.S.A. 40:55D-12(c)***; or

(d) In addition to the requirements in *(a) ***and*** (b) above, a public agency seeking approval for major development, as defined in N.J.A.C. 7:50-2.11 of the Plan, *[for a proposed development]* ***which will*** not ***be*** located on a specific parcel, including a proposed development located within a right-of-way or easement, shall provide notice of the application for public development as follows:

1. Notice shall be given by publication in any official newspaper of the Pinelands Commission having general circulation in any municipality in which the proposed development is located; and

2. Notice shall be given by publication in the official newspapers, if any, of all municipalities in which the proposed development will be located or if there is no official newspaper in any such municipality then in a newspaper of general circulation in that municipality.

(e) The notice *[required by]* ***in*** (c) and (d) above *[is as follows]* shall state:

1. The nature of the application pending before the Pinelands Commission, including a description of the proposed development;

2. That action may be taken on the application after 10 days from the date the notice is published and mailed;

3. That written comments on the application may be submitted to the Pinelands Commission and that all such comments ***received within 10 days of the mailing or publication of the notice*** will be considered in the review of the application;

4. That the application is available for inspection at the office of the Pinelands Commission;

5. The address and phone number of the Pinelands Commission; and

6. That any person who provides comments or requests a copy of the Executive Director's findings and conclusion shall be provided a copy of said findings and conclusion and that any interested person who is aggrieved by said determination is entitled to a hearing by requesting a reconsideration of the determination.

(f) If the applicant significantly modifies the proposed development from that described in the most recent notice given pursuant to (b), (c) and (d) above, then the applicant shall again provide the notice mandated by said subsections so that the notice accurately describes the proposed development.

(g) No application for which the above notice is required, shall be deemed complete until proof that the requisite notice has been given is received.

(h) The Executive Director's action on any application for which the above notice is required shall not be taken until 5 days after the 10 day comment period set forth herein has expired. ***If any public comments have been received concerning the application, the Executive Director shall inform the applicant that public comments have been submitted prior to making a***

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recommendation on the application for public development.*

7:50-4.54 Review of submission by Executive Director

Within 30 days following receipt of, a completed application for public development, the Executive Director shall review application and all information submitted by the applicant or any other person relating to the application and upon completion of such review make a determination whether the application should be approved, approved with conditions or disapproved. The application may be recommended for approval or approval with conditions only if the development as proposed, or subject to any conditions which may be imposed, conforms to each of the minimum standards for development approval established by N.J.A.C. 7:50-*[4.56]* ***4.57***. The Executive Director may attach to any determination to recommend approval of an application any reasonable condition which he finds is necessary to achieve the objectives of this Plan. The Executive Director shall give written notification of his findings and conclusion to the applicant, the Commission, interested persons, including all persons who have submitted information concerning the application, as well as all persons who have requested a copy of said decision, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2) (Persons entitled to notice).

7:50-4.55 Reconsideration rights

[(a)] Any interested person who is aggrieved by any determination made by the Executive Director pursuant to this Part may within 15 days seek reconsideration of the Executive Director's determination by the full Commission as provided by N.J.A.C. 7:50-4.91 (Reconsideration). ***Additional information not included in the Executive Director's determination may only be presented to the Pinelands Commission by requesting a hearing pursuant to N.J.A.C. 7:50-4.91.***

7:50-4.56 Action by Commission

[b] At the next regular Commission meeting after the time for reconsideration under N.J.A.C. 7:50-4.91 has expired and no interested person has requested a hearing, the Commission may approve the determination of the Executive Director or refer the determination of the Executive Director to the Office of Administrative Law. If the Pinelands Commission fails to take any action at said meeting, the determination of the Executive Director shall be referred to the Office of Administrative Law unless an extension of time for the Commission to act is approved pursuant to N.J.A.C. 7:50-4.4 (Waiver of time limits). If the Executive Director's determination is referred to the Office of Administrative Law, the referral shall be treated as a petition for reconsideration in accordance with the provisions of N.J.A.C. 7:50-4.91 (Reconsideration).

7:50-*[4.56]***4.57*** (No change in text.)

7:50-*[4.57]***4.58*** Limits on public agency actions

No public agency shall carry out any development which has been disapproved by the Commission pursuant to this Part, nor shall any public agency initiate any proposed development which has been approved with conditions by the Commission pursuant to this Part unless the conditions imposed are incorporated into the proposed development.

7:50-4.61 (No change in text.)

7:50-4.62 Application

(a) An application for a waiver shall be submitted to the Commission in accordance with the requirements of N.J.A.C. 7:50-4.2(b). An application for waiver may be filed prior to filing an application for development. If during review of an application for development it appears necessary to obtain a waiver, the applicant may apply for a waiver; such application shall stay the time period for review set forth in Parts II or III of this subchapter as the case may be.

(b) In addition to the requirements in (a) above, an applicant requesting a Waiver of Strict Compliance shall provide notice of the application for a Waiver of Strict Compliance as follows:

1. Notice shall be given by publication in the official newspaper of the municipality in which the parcel is located, if there be one, or in a newspaper of general circulation in the municipality as provided for in N.J.S.A. 40:55D-12(a).

2. Notice shall be given to owners of all real property within 200 feet of the subject property as provided for in N.J.S.A. 40:55D-12(b). ***The administrative officer of the municipality shall provide a certified list of said property owners as provided for in N.J.S.A. 40:55D-12(c).***

(c) The notice in (b) above shall state:

1. The nature of the application pending before the Pinelands Commission, including a description of the proposed development and a statement of all Waivers sought;

2. That action may be taken on the application after 10 days from the date the notice is published and mailed;

3. That written comments on the application may be submitted to the Pinelands Commission and that all such comments ***received within 10 days of the mailing or publication of the notice*** will be considered in the review of the application;

4. That the application is available for inspection at the office of the Pinelands Commission;

5. The address and phone number of the Pinelands Commission; and

6. That any person who provides comments or requests a copy of the Executive Director's findings and conclusion shall be provided a copy of said findings and conclusion and that any interested person who is aggrieved by said determination is entitled to a hearing by requesting reconsideration of the determination.

(d) If the applicant significantly modifies either the proposed development or the requested Waivers from that described in the most recent notice given pursuant to (b) and (c) above, then the applicant shall again provide the notice mandated by said subsections so that the notice accurately describes the proposed development and the requested Waiver.

(e) No application for a Waiver of Strict Compliance shall be deemed complete until proof that the requisite notice has been given is received.

(f) The Executive Director's action on any application for which the above notice is required, shall not be taken until 5 days after the 10 day comment period set forth herein has expired. ***If any public comments have been received concerning the application, the Executive Director shall inform the applicant that public comments have been submitted prior to making a recommendation on the application for a Waiver of Strict Compliance.***

7:50-4.63 Action by Executive Director on application

Within ninety days following the receipt of a complete application for waiver, the Executive Director shall review the application and all information submitted by the applicant and any other person relating to the application and upon completion of such review make a determination whether the application should be approved, approved with conditions or disapproved. ***The application may be recommended for ap-***

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proval or approval with conditions only if the applicant, subject to any conditions which may be imposed, meets the standards for a Waiver of Strict Compliance established in N.J.A.C. 7:50-4.66.* The Executive Director shall give written notification of his findings and conclusion to the applicant, the Commission, interested persons, including all persons who have submitted information concerning the application as well as all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2).

7:50-*[4.64]****4.65*** Action by Commission

If at the next regular Commission meeting after *[notification of the Executive Director's]* ***determination, no request for reconsideration under N.J.A.C. 7:50-4.91 has been received and*** the time for reconsideration under N.J.A.C. 7:50-4.91 has expired ***and no request for reconsideration has been received***, the Commission may approve the determination of the Executive Director or refer the determination of the Executive Director to the Office of Administrative Law. *[If at said Commission meeting, no request for reconsideration under N.J.A.C. 7:50-4.91 has been received but the time for reconsideration has not expired, the Commission may either refer the determination of the Executive Director to the Office of Administrative Law or approve the Executive Director's determination. However, such an approval of the Executive Director's determination shall only take effect after the time for reconsideration has expired and no request for reconsideration has been received.]* If the Commission fails to take any action at said meeting, the determination of the Executive Director shall be referred to the Office of Administrative Law unless an extension of time for the Commission to act is approved pursuant to N.J.A.C. 7:50-4.4 (Waiver of time limits). If the Executive Director's determination is referred to the Office of Administrative Law, the referral shall be treated as a petition for reconsideration in accordance with the provisions of Part VIII of this Subchapter.

7:50-*[4.65]****4.66*** Standards

(a) An application for a waiver shall be approved only if an extraordinary hardship or compelling public need is determined to have been established under the following standards:

1. The particular physical surroundings, shape or topographical conditions of the specific property involved would result in an extraordinary hardship, as distinguished from a mere inconvenience, if the provisions of this Plan are literally enforced. The necessity of acquiring additional land to meet the minimum lot size requirements of this Plan shall not be considered an extraordinary hardship, unless the applicant can demonstrate that there is no adjacent land which is reasonably available. An applicant shall be deemed to have established the existence of extraordinary hardship only if he demonstrates, based on specific facts, one of the following:

i. (No change.)

ii. ***For any application for a Waiver of Strict Compliance which was completed by January 14, 1984,*** the applicant can demonstrate that in good faith reliance on a valid municipal development approval, he has made expenditures of such a nature and amount that he is unable to secure a minimum reasonable rate of return on those expenditures under a strict application of the minimum standards of this Plan. In determining whether an applicant can secure a minimum reasonable rate of return, the Commission shall employ the following criteria:

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

(2)-(5) (No change.)

6. Any waiver previously approved under the final subdivision standard contained in the now repealed (a)1iii of this Section shall continue to be subject to the condition that the waiver shall expire after two years if substantial construction of improvements is not commenced, or if fewer than 10% of the total number of lots in the subdivision are sold or built upon within any succeeding twelve-month period.

7:50-*[4.66]****4.67*** Effect of grant of waiver

Any waiver granted under the provisions of this part shall only be considered a waiver of the particular standard which the Commission waived. It shall not constitute an approval of the entire development proposal.

*[7:50-4.67]****7:50-4.64*** Reconsideration rights

Any interested person who is aggrieved by any determination made by the Executive Director pursuant to this part may within 15 days seek reconsideration by the Commission of the Executive Director's determination as provided by N.J.A.C. 7:50-4.91. ***Additional information not included in the Executive Director's determination may be presented to the Pinelands Commission only by requesting a hearing pursuant to N.J.A.C. 7:50-4.91.***

7:50-4.68 through 7:50-4.70 (Reserved)

Recodify existing 7:50-4.61 and 4.62 as 4.71 and 4.72 (No change in text.)

7:50-4.73 Request for interpretation

(a) A request for a letter of clarification or interpretation shall be initiated by requesting a pre-application conference pursuant to N.J.A.C. 7:50-4.2(a) (PRE-APPLICATION CONFERENCE). This request shall set forth the clarification or interpretation requested and the facts or the circumstances which are the basis for the request for an interpretation, together with any proposed clarification or interpretation desired by the applicant. The applicant shall include all information determined to be necessary by the Executive Director after the pre-application conference. Within 30 days after receipt of a request for a letter of clarification or interpretation, the Executive Director shall inform the applicant of any additional information which is required in order to make a determination of the requested clarification or interpretation.

(b) An applicant for a letter of clarification or interpretation involving a specific parcel, except where the letter of interpretation involves solely the question of the number of Pinelands Development Credits which are attributed to a specific parcel, shall provide notice of the application as follows:

1. Notice shall be given by publication in the official newspaper of the municipality in which the parcel is located, if there be one, or in a newspaper of general circulation in the municipality as provided for in N.J.S.A. 40:55D-12(a); and

2. Notice shall be given to owners of all real property within 200 feet of the subject property as provided for in N.J.S.A. 40:55D-12(b). ***The administrative officer of the municipality shall provide a certified list of said property owners as provided for in N.J.S.A. 40:55D-12(c).***

(c) The notice in (b) above shall state:

1. The nature of the application pending before the Pinelands Commission, including a statement of the requested interpretation or clarification and, if known, a description of the proposed development;

2. That action may be taken on the application after 10 days

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from the date the notice is published and mailed;

3. That written comments on the application may be submitted to the Pinelands Commission and that all such comments ***received within 10 days of the mailing or publication of the notice*** will be considered in the review of the application;

4. That the application is available for inspection at the office of the Pinelands Commission;

5. The address and phone number of the Pinelands Commission; and

6. That any person who provides comments or requests a copy of the Executive Director's findings and conclusion shall be provided a copy of said findings and conclusion and that any interested person who is aggrieved by said determination is entitled to a hearing by requesting a reconsideration of the determination.

(d) If the applicant significantly modifies either the proposed development or the requested letter of interpretation or clarification from that described in the most recent notice given pursuant to (b) ***and (c)*** above, then the applicant shall again provide the notice mandated by said subsection so that the notice accurately describes the proposed development or requested letter of interpretation or clarification.

(e) No application for which the above notice is required, shall be deemed complete until proof that the requisite notice has been given is received.

(f) The Executive Director's action on any application for which the above notice is required shall not be taken until 5 days after the 10 day comment period set forth herein has expired. ***If any public comments have been received concerning the application, the Executive Director shall inform the applicant that public comments have been submitted prior to issuing the letter of interpretation or clarification.***

7:50-4.74 Interpretation by Executive Director

(a) Except as provided in N.J.A.C. 7:50-4.75, the Executive Director shall, within 45 days following the receipt of a completed request for clarification or interpretation, review the application and all information submitted by the applicant or any other person relating to the application and upon completion of such review issue a letter of clarification or interpretation. Prior to the issuance of the letter, an analysis of all pending requests for letters of interpretations will be submitted to the Commission for its review at its regular monthly meeting. A copy of the letter shall be provided to the appropriate township or county clerk, planning board , the environmental commission, if any , interested persons, including all persons who have submitted information concerning the application as well as all persons who have requested a copy of said determination and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2). The letter issued by the Executive Director shall specify the grounds, reasons and analysis upon which the clarification or interpretation is based. In the event the Executive Director fails to render a letter of clarification or interpretation within forty-five days or such longer period of time as may be agreed to by the applicant, the request for clarification or interpretation shall be deemed to have been denied. Nothing in this Section shall be construed to prevent any person from resubmitting a request for clarification or interpretation.

Recodify existing 7:50-4.65 through 4.69 as 4.75 through 4.79 (No change in text.)

7:50-4.80 (Reserved)

Recodify existing 7:50-4.71 through 4.75 as 4.81 through 4.85 (No change in text.)

7:50-4.86 through 7:50-4.90 (Reserved)

Recodify existing 7:50-4.81 and 4.82 as 4.91 and 4.92 (No change in text.)

HEALTH

(a)

CERTIFICATE OF NEED PROGRAM

Certificate of Need Application and Review Process

Adopted Repeal: N.J.A.C. 8:33
Adopted New Rule: N.J.A.C. 8:33

Proposed: May 20, 1985 at 17 N.J.R. 1190(a).
Adopted: September 13, 1985 by J. Richard Goldstein, M.D., Commissioner of Health; with approval of the Health Care Administration Board.
Filed: September 13, 1985 as R.1985 d.498, **with changes** not in violation of N.J.A.C. 1:30-3.5.

Authority: N.J.S.A. 26:2H-1 et seq.

Effective Date: October 7, 1985.
Expiration Date pursuant to Executive Order No. 66 (1978): October 7, 1990.

Summary of Public Comments and Agency Responses:

Written comments were received during the comment period from the following interested persons:

Morristown Memorial Hospital
Central Jersey Health Planning Council, Inc.
Joseph Sokolowski
Saint Francis Hospital
Home Health Agency of New Jersey, Inc.
Rutgers Community Health Plan
Meridian, Inc.
Saint Barnabas Medical Center
Barnert Memorial Hospital Center
Overlook Hospital
Charles A. Buttaci
New Jersey Association of Health Care Facilities
Interstate Health Planning Corporation
Intercare Health Systems, Inc.
St. Joseph's Hospital and Medical Center
Hospital Planning and Marketing Society of New Jersey
Joint filing by: Morristown Memorial Hospital, Hackensack Medical Center, The Valley Hospital, Cooper Hospital/University Medical Center
Monmouth Medical Center, Middlesex General-University Hospital, and Hunterdon Medical Center

COMMENT: A number of commenters advocated the elimination of the Certificate of Need process entirely. The most common points raised in support of this position were the competitive inequities in the health care regulatory system when one segment (private practice) of that industry goes unregulated. In addition some comments received on behalf

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when one segment (private practice) of that industry goes unregulated. In addition some comments received on behalf of hospitals indicated a perceived inability to compete for the market to provide health care services outside the hospital setting and attributed that inability to the Certificate of Need regulations.

RESPONSE: The Department recognizes the competitive inequities in New Jersey's health care system created by the fact that the private practice of medicine operates outside the Certificate of Need review process. However, when faced with the two choices available in handling this situation: doing away with the Certificate of Need regulations, or broadening their scope to include all providers of a service for which there is a Department planning regulation, the Department has chosen to propose legislation to bring the corporate practice of medicine under Certificate of Need review. Action on that proposed legislation is pending before the Legislature.

It is felt that within the context of the delivery of health services, rules are essential to insuring that equitable access to needed health care services is available, that quality of care is maintained, and that the public is protected against unnecessary increase in both aggregate hospital costs and aggregate medical costs.

In addition, the Department is currently working with the New Jersey Hospital Association to achieve a better understanding of all specific ambulatory services that group wishes to see exempted from Certificate of Need review. The Association has agreed to identify those services they feel should be exempted. At the conclusion of the Department's examination of these issues with the Hospital Association, the Commissioner may propose amendments to these regulations to exempt specific outpatient services from Certificate of Need review.

COMMENT: One hospital took exception to N.J.A.C. 8:33-1.3(n) arguing that the proposed regulations do not provide a remedy by way of appeal or any other means for an applicant, who was part of a batch review process and whose application was denied to appeal the approval of those applications approved in the batch.

RESPONSE: An applicant who has been denied a Certificate of Need and was part of a batch of applications may appeal that denial and may also appeal any and all Certificate of Need approvals given in that batch. The courts have determined that decisions of the Commissioner of Health to grant a Certificate of Need are final agency decisions, appealable as of right to the Superior Court, Appellate Division. (See National Nephrology Foundation v. Dougherty, 138 N.J. Super 470 (App. Div. 1976).)

COMMENT: It was suggested that the more appropriate wording of N.J.A.C. 8:33-2.11(a)(2), in order to accomplish the goals of that regulation would be:

Any change in the proposed method of financing, which will result in an increase in capital-related operating costs of 10 percent or more shall be considered a change in the financing of the project and shall follow the administrative review process.

RESPONSE: The Department has agreed to this proposed language change as more accurately reflecting the proper method of calculating changes in financing.

COMMENT: One commenter suggested that 8:33-1.4(a)(3) which provides that "Any modernization/renovation/construction project below the thresholds noted does not require a Certificate of Need and will not be accepted for processing unless it falls under another provision of the regulations which would require review," should be supplemented with language indicating that the sponsor/owner of such a project is free to approach the rate setting authority for possible facility allowance or service reimbursement.

RESPONSE: Policies regarding how rate setting will handle costs of projects, both capital costs and operating costs, which are implemented without Certificate of Need review will be articulated in rate setting regulation and is outside the scope of these Certificate of Need procedural regulations.

COMMENT: In an effort to handle the question of "paper beds or services" one commenter suggested including language to preclude the granting of extensions of time to previously granted Certificates of Need beyond three years for long-term care facilities; four years for acute inpatient facilities and two years for all other facilities.

RESPONSE: The Department declines to take such a rigid approach to the handling of extensions of Certificates of Need and feels that the regulation as proposed (8:33-2.14) provides sufficient safeguards against the existence of paper beds or services for extended periods of time. Further, it is felt that the Commissioner should have flexibility in dealing with holders of Certificates of Need that have encountered problems in obtaining required approvals from other governmental agencies.

COMMENT: One commenter questions whether Transfer of Ownership review requirements apply to "new and existing providers."

RESPONSE: Certificate of Need approval is required for the transfer of all existing, licensed health care facilities or licensed existing beds, services or equipment.

COMMENT: 8:33-2.13(a)(1) provides that an HMO is not required to obtain a Certificate of Need to develop or provide ambulatory services unless such services are the subject of an approved Department of Health regionalized service planning regulation. Rutgers Community Health Plan asks that the exemption include services for which there is a regionalized planning regulation unless such a requirement is also imposed on fee-for-service providers with which HMOs compete.

RESPONSE: As previously stated the Department has proposed legislation which will require that such fee-for-service providers obtain Certificate of Need approval to provide services which are the subject of a regionalized planning regulation.

COMMENT: One commenter took exception to the language in 8:33-2.11(a)(3)(iv) which requires a Certificate of Need for a change in scope if an approved project is to be relocated and that relocation will result in substantially changed patterns of usage for the proposed service. That commenter argued that the language of the regulation was too arbitrary and that for long-term care projects a relocation of a project within county lines should not require a review.

RESPONSE: The Department has redrafted this provisions in an effort to clarify the rule in keeping with the goals sought in requiring a review when projects are relocated. The new language states:

> Relocation of the proposed project from one county to another or from municipalities with a population greater than 50,000 to another municipality or to an area which results in problems of access to populations proposed to be served requires a full review. . .

The Department remains committed to the need for a review of project relocations as indicated in the regulation as a means to assure that projects approved because they propose to provide access to a certain population honor that commitment. For example, if a long term care facility is approved

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because it is proposed to be located in an urban area where there has been an identified need for such services the Department would not want that provider to have the ability to implement that Certificate of Need in a suburban area of a county without Departmental review and approval.

COMMENT: Some commenter asked that a determination on a Certificate of Need (CON) application be rendered by the Commissioner within a set period of time and that failure to act by that deadline should result in automatic approval of an application.

RESPONSE: Since the Commissioner must review a number of facts and recommendations concerning each application, experience has proven that granting the Commissioner a flexible time frame within which to reach decisions of CON applications (decisions are to be rendered approximately three months after the beginning of the review process) will best serve the process. Indeed the New Jersey Hospital Association has asked that when the Department of Health is considering imposing conditions on a CON approval that were not reviewed during the public process that applicants be given an opportunity to meet with Department staff to discuss those conditions. Rigid time frames may well thwart Departmental efforts to accommodate such requests.

COMMENT: One commenter sought clarification of 8:33-1.3(w).

RESPONSE: The operator of a proposed facility or service should submit and sign a Certificate of Need application with 100 percent of the ownership of the proposed facility service or equipment accounted for in the Certificate of Need application (N.J.A.C. 8:33-1.3(v).)

COMMENT: Some commenters took exception to the proposed requirement that all CON applications involving capital costs, submitted by hospitals, document a fixed 15 percent equity contribution to the project.

RESPONSE: The Department now proposes a more flexible approach to the equity contribution requirement. Hospital applicants will be required to make some equity contribution to all such projects. The Department will then use 15 percent, with a reduction of one-half of one percent for each percentage point a hospital's uncompensated care percentage exceeds the statewide average as a guideline in reviewing such applications, and will review arguments made by an applicant as to why a 15 percent equity contribution is unreasonable. St. Barnabas Hospital argues it is unfair to reduce the equity contribution requirement for hospitals providing higher than average levels of uncompensated care, and St. Joseph's Hospital argues that the reduction should be one-half of one percent of a hospital's uncompensated care load exclusive of the provision which allows the exemption only to the extent that the hospital's percentage exceeds the statewide average. The Department feels that the regulation as proposed on the subject of a reduction in required equity for hospitals with high uncompensated care volume is the fairest handling of the issue.

COMMENT: A number of commenters felt 8:33-1.3(u), which requires an applicant to own, have a lease interest, or have an option to purchase or lease the site where a proposed facility, service or equipment will be located, is an overly costly and burdensome means of assuring timely implementation of approved projects.

RESPONSE: The Department remains committed to the requirement enunciated in this provision for applications for inpatient services. This regulation is meant to discourage the inadvertent or purposeful hoarding of services by those individuals who, for whatever reason, do not implement a project for which a Certificate of Need has been granted. This behavior reduces the number of providers of such services, thereby limiting access to and raising the cost of health care.

However, after consultation with the New Jersey Hospital Association on this subject, the Department has now included an addition to this provision stating:

> Applicants submitting applications to provide services not subject to this section (non-patient services) will have 90 days from the date of Certificate of Need approval to provide the Department with documented evidence of ownership of the site for the service, facility, or equipment or with a purchase or lease option for the site of the service facility or equipment.

COMMENT: A number of commenters sought inclusion of a provision of exempting from Certifcate of Need review the initiation of services with costs and/or operating budgets of $250,000 or less annually. The Hospital Association expressed specific concern regarding the ability of their constituent members to compete for the outpatient market in being subject to Certificate of Need regulatory requirement when other providers are exempt by statute.

RESPONSE: The Department recognizes this concern, however feels it is best remedied by amendment to the enabling statute as proposed in pending legislation. A monetary threshold below which a health care facility could implement a new service without a Certificate of Need creates a loophole in the regulation with potentially serious ramifications. For instance a new heart transplantation program could be instituted for as little as $16,000, well under the threshold proposed. Thus the State could see transplantation programs operating without Departmental review; programs that could, from a quality of care perspective, constitute a danger to patient care. As previously mentioned the Department will anwer this concern in its work with the Hospital Association to identify specific outpatient services appropriate for deregulation and shall propose amendments to these rules to reflect these changes.

COMMENT: A number of commenters asked that the thresholds contained in N.J.A.C. 8:33-1.4(a) include a provision for adjustments for inflation.

RESPONSE: The Department agrees some handling of this concern is necessary. An addition to this regulation will be made indicating that the Commissioner will report to the HCAB annually on inflation and its effect on health care costs and, when appropriate, will recommend adjustments to the thresholds.

COMMENT: A number of commenters found the language of 8:33-1.4(b)(4) and (5) to be arbitrary. Those provisions list instances when a Certificate of Need is required, specifically those proposals which change patterns of patient usage.

RESPONSE: The Department has changed these provisions to make the language more specific while still meeting the goal meant to be accomplished by this provision. These provisions have been combined to state:

> A Certificate of Need will be required for an expansion, termination, reduction or relocation of a facility, service or equipment in a manner which results in problems of access to populations historically served or proposed to be served by the facility, service or equipment.

COMMENT: One commenter pointed out that for consistency the same exception to 8:33-1.4(b)(1) should apply to 8:33-2.6(a)(1).

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RESPONSE: The Department agrees and will include the exception at 8:33-2.6(a)(1).

COMMENT: A number of commenters argued that facilities which have Certificate of Need approval but are not yet licensed should be eligible for transfer approval (8:33-2.10(b)(3).)

RESPONSE: The Department has a strong interest in, and the responsibility of, assuring that the entity receiving Certificate of Need approval is indeed the entity which ultimately implements the project. The Department remains committed to that end and feels a regulatory change in this area is inappropriate and inconsistent with the statutory and regulatory goals. The sale of a Certificate of Need is explicitly prohibited.

COMMENT: Two commenters felt that during a review of an application for a change in cost or scope to a previously approved CON it was inappropriate for the Department to re-evaluate the need for the project.

RESPONSE: The Department recognizes that in the course of projecting need that approved and not yet implemented projects are discounted from need projections. As a result, the Department recognizes the validity of the commenter's argument and removed this criterion in the final text.

COMMENT: One commenter argued that 8:33-2.15(a), which states that capital reimbursement for a project will be predicated upon the higher of actual patient volume or the volume projected in the approved application, is a failure on the Department's part to bear its responsibility of analyzing the appropriateness of an applicant's projections.

RESPONSE: The Department will continue to review an applicant's utilization projections for reasonableness. This regulation is included to foster forecasts in Certificate of Need applications that are as accurate as possible and to hold applicants accountable for the content of their applications. In addition, a high level of reliability is sought in this area as the financial feasibility review is impacted upon by these projections.

COMMENT: On the subject of CON application fees one commenter felt the proposed increases to be excessive while a second commenter felt the fees should vary for profit making and not-for-profit applicants.

RESPONSE: The Department views the proposed fee increases as reasonable and feels a single fee structure with universal application is fair and appropriate. Moreover, the Certificate of Need Program cannot meet program costs from application revenues alone and is largely supplemented by Federal health planning funds. These funds have been provided through a Continuing Resolution and there is a reasonably strong possibility that absent a reauthorization bill, they may be red-inked in an effort to reduce the Federal deficit. With the pending loss of Federal revenues, it is essential to raise application fees to cover program expenses. Most States with fee schedules charge a percentage of total project costs. New Jersey's fee ceiling of $1,000 is among the lowest in the nation.

COMMENT: One commenter saw an inconsistency in provisions 8:33-1.3(x) and 8:33-2.5(5) and (6). The former provides for CON approval to reopen beds, services, facilities or equipment after ceasing operation for 18 months. The latter requires CON approval for a decrease in total number of licensed beds.

RESPONSE: The Department does not view these provisions as inconsistent. N.J.A.C. 8:33-1.3(x) is included in an effort to handle those situations where beds, services or equipment are taken out of usage for extended periods of time without CON approval. This regulation gives the Department the authority to consider these services non-existent. The characterization of these services as non-existent becomes important when providers propose new similar services in the same area, and the question of what services exist becomes a factor for review.

COMMENT: One commenter argues that a 45-day completeness review period is too long.

RESPONSE: It is felt that a more thorough completeness review, with sufficient time to conduct such a review, will aid the Department in identifying additional material needed during the review process thereby decreasing the need for application deferrals. It is hoped that this extension of time for completeness review will help reduce the increasing number of applications that are deferred in order to give applicants time to submit additional information. In addition, this provision is supported by the State's HSAs. It should be noted that the change in the completeness period does not affect the date a particular CON cycle will begin.

COMMENT: One commenter argues that the time frame for submission of Letters of Intent should not be increased from thirty days to sixty days prior to application submission.

RESPONSE: This additional time will afford the Department an opportunity to:

(a) better plan for the application to be submitted;

(b) notify various divisions within the Department of the Letters of Intent and receive their comments on such letters;

(c) contact the applicant where necessary and appropriate to work with the applicant in preparing an application or in identifying potential problems.

Thirty days has proved to be an unrealistic time frame within which to accomplish the above. In addtion, for projects proposing construction, modernization, renovation, bed additions or equipment acquisition in excess of three million dollars, 90 days is necessary to accomplish the above goals.

COMMENT: Some commenters found the language "substantial reduction of health care service" found at N.J.A.C. 8:33-2.6(2) to be too vague.

RESPONSE: The full text of this provision is as follows:

> Discontinuance or substantial reduction of any health care service for which a facility is recognized for reimbursement will require a Certificate of Need. Sixty days prior to the substantial reduction of any such health care service the facility must notify the Department in writing of this intent. Based upon indicators of need, access, and economic viability, the Department, after consultation with the appropriate Health System Agency(ies), shall determine whether such reduction in services requires a Certificate of Need review and shall notify the facility of its determination within sixty days of receipt of the notice of intent.

The provision regarding substantial reduction is included in an effort to assure that services are not reduced to an extent that, in effect, the service is discontinued and thereby circumvent the CON process. Upon request, the Department will give applicants a preliminary determination on a given set of facts as to whether a CON is required.

COMMENT: A number of commenters wrote voicing concern over the proposed regulation requiring that any amount of stock or interest in a health care facility will require a Certificate of Need for a transfer of ownership. It was felt that this requirement proved unworkable for corporate facilities which are publicly transferred.

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RESPONSE: The Department has agreed to revise the regulation to require applications for a transfer of ownership in the event that **10 percent or more** of the interest in a health care facility is traded.

COMMENT: One commenter asks that within N.J.A.C. 8:33-2.12, on the subject of demonstration projects, criteria be developed to indicate when applications for demonstration projects will be subject to a full review.

RESPONSE: Because technology and the health care system are changing so rapidly, rigid criteria in this area is not felt to be practical or desirable. In recent months applications for CON demonstration projects underwent full review in the area of Magnetic Resonance imaging and Lithotripsey. Because these areas of very expensive technology are still in the early stages of development a limited introduction of these services into the State was felt to be appropriate. In addition, a full review of these applications was desirable in order to receive the benefit of input from the HSAs and the SHCC. The Department has found this handling of demonstration projects (those with major impact on the health delivery system receiving a full review and those with more limited impact receiving an administrative review) a workable one. What constitutes a major impact on health care delivery in this rapidly changing environment does not lend itself to development of rigid criteria at this time.

COMMENT: A few commenters pointed out that N.J.A.C. 8:33-2.14(a)(1) states that if a project or portions thereof have not been **completed** within one year an extension of time on the Certificate of Need is necessary.

RESPONSE: The language of this provision has been amended as follows:

> If the project or portions thereof have not been substantially completed within one year of the Certificate of Need will be deemed terminated except that the Commissioner may review the Certificate of Need for further periods if the applicant documents substantial progress towards completion of the project. **For purposes of this provision a project shall be substantially completed if equipment has been purchased, a new service has commenced operation, or for construction or renovation projects expenditure of 10 percent of the total project cost has been made on actual construction costs.**

COMMENT: One commenter indicates that 8:33-4.1(a), which lengthens the completeness review period for administrative reviews from 15 days to 30 days, is not in keeping with the intent to have these reviews done quickly and without major expenditure of time and effort.

RESPONSE: The Department agrees and will continue to review application for completeness within 15 days after a review cycle begins. This will allow Commissioner action on these applications within 45 to 60 days of submission.

COMMENT: The Department received a number of comments regarding N.J.A.C. 8:33-1.3(s) in the General Policy section which prohibits the processing of Certificate of Need applications from applicants with major violations because the term "major violation" was not sufficiently defined.

RESPONSE: In order to better define what is meant by major violation the following language change has been made:

> No Certificate of Need application will be processed from any applicant with existing non-waiverable violations of licensure standards which, as determined by the department, threaten the life and safety of patients. An exception will be made in the case of applications submitted for the purpose of correcting such recognized violations. An exception to this provision may also be granted for applications submitted for the closure or substantial reduction of underutilized beds, services or equipment.

COMMENT: One commenter requests that the language of 8:33-2.14(a)(2), wherein it states that an extension of time may be granted if the applicant is engaged in litigation to reverse an adverse zoning decision before the Superior Court, Law Division or Chancery Division be changed to "shall be granted."

RESPONSE: Experience has indicated that this sort of litigation may, in some instances, be extremely protracted. The Department feels that extensions should be granted for a reasonable period of time in order that applicants may exercise their appeal rights in zoning cases. However, it is not in keeping with the Commissioner's responsibility to provide for the timely provision of needed health care services to be required to extend the life of a CON to accommodate zoning litigation in all cases. The length of time needed to complete litigation and the urgency of the need for proposed services weigh in favor of providing the Commissioner discretion in this area.

COMMENT: One commenter expressed the opinion that Certificate of Need applicants should not be required to provide an analysis of the need for a proposed project when the State Health Plan, the HSP or both document a need for the type of project proposed.

RESPONSE: The Department believes that it is inappropriate and contrary to good health planning to relieve an applicant of any responsibility to document the need for this particular project. This would be especially true in a competitive batch for inpatient bed-related services where the state bed need calculations are expressed as guidelines.

It is important for the review process to understand that each applicant has carefully considered and planned his application. Without an explanation of need as seen by the applicant, this understanding would not be possible. In addition, it is difficult to understand how any applicant could determine the specific manner in which to meet a need, specific services to be provided and in what quantity, and financial requirements without some analysis of need.

COMMENT: One commenter believes the proposed definition of "medically underserved" indicates that included in that group are all persons living in a federally defined medically underserved area.

RESPONSE: The definition as proposed does not include "all persons living in a federally defined medically underserved area" in the definition of "medically underserved" nor is that the intent of the Department.

COMMENT: One commenter argues that bed additions of 10 beds or addition of beds equal to or exceeding 10 percent of existing licensed capacity should be handled by administrative review for all facilities rather than for residential health care facilities only.

RESPONSE: The Department feels that bed additions of this magnitude for facilities other than residential health care facilities should be reviewed by the HSAs and the SHCC as to community impact. Those bodies should offer the Commissioner recommendation on such proposals.

COMMENT: With regard to N.J.A.C. 8:33-2.10(f) one commenter submits that a transfer of ownership from one not-for-profit entity to another not-for-profit entity should not receive a full review but rather should be handled by an administrative review.

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RESPONSE: 8:33-2.10(f) requires a full review for the transfer of ownership of hospitals. The Department, SHCC, and HSAs believe that the transfer of a hospital facility can have profound impact on the community involved and that this community should have the opportunity to review the transfer and any associated impact in a public form. The full review process provides this opportunity.

COMMENT: One commenter asks that a definition of "total approved project cost" be included in the definitions section.

RESPONSE: The Department feels a technical definition of this term is unnecessary as the phrase is used to mean what is stated—the total project cost approved in a Certificate of Need approval.

COMMENT: One commenter asks that the regulations include a provision granting applicants permission to be heard at the SHCC review committee meeting and meetings of the full SHCC.

RESPONSE: The volume and complexity of applications precludes the SHCC from hearing comments from applicants. Applicants are given the opportunity to be heard through the local review process and the HSAs are given the opportunity to speak on behalf of those applicants during the State public review process.

COMMENT: Mr. Joseph Sherber, representing Intercare Health Systems, Inc., alleges that Initial Decisions rendered by Administrative Law Judges are summarily dismissed by the Health Care Administration Board and advocates elimination of Board review.

RESPONSE: It is the Department's position that Health Care Administration Board review of contested CON matters is thorough and thoughtful and decisions have been in conformance with New Jersey's Health Facilities Planning Act and Department regulations.

Elimination of Board review in this area would be contrary to the Planning Act and the New Jersey Administrative Procedures Act.

COMMENT: One commenter argues that when hospitals transfer services from the acute care hospital to outside the hospital (unbundle) that profits generated from the service should not be required to be dedicated to support direct or indirect health care services provided by either the hospital from which the sevices were transferred or the entity providing the transferred service.

RESPONSE: The Department and the SHCC remain committed to this requirement in an effort to thwart hospital efforts to unbundle profit generated services in such a way as to remove revenues from serving the health care system. It is the Department's position that to allow this would result in unnecessary health care increases.

COMMENTS: One commenter argues that N.J.A.C. 8:33-1.3(m) which states "any applicant that has a CON in any appeal process may not file a similar CON application in the same county while such appeal is under consideration" should be extended to preclude application to provide similar services anywhere in the State.

RESPONSE: The Department has changed the wording of this regulation to preclude a similar CON application which "proposes to serve the same service area identified in the application under appeal."

It is felt, however, that an application to provide similar services in another service area constitutes a new and different application. For example, an applicant who has had an application to provide long-term care services in Essex County denied should not be prohibited from submitting an application to provide long term care services in Cape May County while the Essex county application is in the appeal process.

COMMENT: One commenter objects to the requirement that 100 percent of the ownership in a project be identified in a Certificate of Need application, specifically mentioning the failure of this provision to accommodate sale of limited partnership interests in a project after Certificate of Need approval.

RESPONSE: The Department is studying the issues raised by the commenter and may propose regulatory changes in this area at a later date.

COMMENT: Some commenters were confused regarding 8:33-2.1 on the subject of Access Criteria. These commenters interpreted this provision to require the services listed in that section to be provided.

RESPONSE: The regulation clearly **does not** mandate that an applicant provide these services but that he demonstrate how the proposed project will offer equal access to low income persons, racial, ethnic groups, women, and handicapped persons, the elderly and other underserved groups.

COMMENT: One comment indicated an objection to 8:33-1.3(h) which provides that "in case of an application by a health care facility established or operated by any recognized religious body or denomination, the needs of the members of such religious body or denomination for care and treatment in accordance with their religious or ethical convictions may be considered to be public need," stating that special consideration should not be given to such groups.

RESPONSE: Inclusion of this provision is required by the Health Facilities Planning Act and is supported by the Department.

COMMENT: One commenter states that the definition of "Inpatient Screeing Bed" is unrealistic in that a maximum stay of 72 hours is often, by necessity, extended for a period of up to 10 days to accommodate an appropriate transfer of the patient.

RESPONSE: This definition is taken from N.J.A.C. 8:43E-3.1 et seq. (Certificate of Need: Psychiatric Inpatient Beds; Inpatient Screening Standards). The Department acknowledges the validity of the comment and will thoroughly research the issue during a forthcoming review of N.J.A.C. 8:43E-3.1 et seq.

COMMENT: One commenter objects to the exemption of HMOs from Certificate of Need review.

RESPONSE: This exemption, to the extent granted, is mandated by Federal Law.

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

CHAPTER 33
CERTIFICATE OF NEED: APPLICATION AND REVIEW PROCESS

SUBCHAPTER 1. GENERAL PROVISIONS

FOREWORD

The purpose of these rules is to identify procedures and policies for conducting Certificate of Need activities pursuant to N.J.S.A. 26:2H-1 et seq. (1971 Health Facilities Planning Act), Public Law 92-603 (Section 1122 of the Social Security Act), Public Law 93-641 (The National Health Planning Resources Development Act of 1974), and the Health Planning and Resources Development Amendments of 1979 (Public

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Law 96-79). These rules may be amended as necessary to best implement the provisions of the State and Federal laws and to reflect changing economic and systemic conditions within the health care system.

Health Care Facilities, as defined by the above referenced statutes and laws, and described within these rules should direct all inquiries regarding Certificate of Need to:

Certificate of Need Program
New Jersey State Department of Health
CN 360
Health-Agriculture Building
John Fitch Plaza
Trenton, New Jersey 08625
(609) 292-6552

In addition, before filing an application, applicants are also encouraged to contact the Health Systems Agency in the proposed service area to examine the relationship of the proposed project with the agency's plans, guidelines, and criteria. Applicants should refer to Exhibits 1 and 2 for information and assistance in determining how their proposed service area relates to the appropriate Health Systems Agencies. If the proposed service area overlaps more than one planning area, the applicant should work with each of the applicable agencies.

8:33-1.1 Introduction

(a) All inquiries regarding Certificate of Need policy and/or process, or the particular application of Certificate of Need regulations to a proposed service or facility, shall be directed in writing to the Certificate of Need Program of the State Department of Health.

(b) If a Certificate of Need is determined to be required, the facility or service representative shall be provided with the appropriate application forms and instructions for properly completing such forms by the Certificate of Need Program.

(c) These rules supersede the previously published regulations "Guidelines and Criteria for Submission of Applications For Certificate of Need" effective August 6, 1981.

8:33-1.2 Filing fees

(a) Below is the schedule of fees required when submitting applications for the Certificate Need. Fees must be paid in full at the time applications are filed with the Certificate of Need Program. Certified checks, cashiers' checks or money orders must be made payable to Treasurer, State of New Jersey. No cash or personal checks will be accepted.

Facility Category	Fee Required
Hospitals	$1,000
Nursing Homes	1,000
Residential Health Care Facilities	500
All other Health Care Facilities (for example group homes for the menatally retarded, halfway houses, other homes for the care of those with special health problems)	500

(b) Projects as noted in N.J.A.C. 8:33-4 which require administrative review shall file, in accordance with the above procedure, the appropriate fee designated for the type of facility or service involved:

Hospitals	$500
Nursing Homes	500
All Other Health Care Facilities	250

8:33-1.3 General statements of public policy

(a) It is the public policy of the State that hospital and related health care services of the highest quality, of demonstrated need, efficiently provided, properly utilized, and at a reasonable cost are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the State, promote the financial solvency of hospitals and similar health care facilities and contain the rising cost of health care facilities and contain the rising cost of health care services, the State Department of Health has been designated as the sole agency in this state for comprehensive health planning under the "National Health Planning and Resources Development Act of 1974" (Federal Law 93-641), as amended and supplemented. In this role the Department shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and related health care services planning, health care facility cost containment programs, as well as planning with all public and private institutions whether State, County, municipal, incorporated or not incorporated, serving principally as nursing or maternity homes, residential health care facilities, or as facilities for the prevention, diagnosis, or treatment of human disease, pain, injury, deformity, or physical condition(s). All such institutions shall be subject to the provisions established.

(b) The Commissioner, to implement the provisions and purposes stated above, shall have the power to inquire into the accessibility to and availability of health care services and the operation of health care facilities and to conduct periodic inspections of such facilities with respect to the fitness and adequacy of the premises, equipment, personnel, rules and bylaws and the adequacy of financial resources and sources of future revenues.

(c) No health care facility shall be constructed or expanded, and no new health care services shall be instituted except upon application for and receipt of a Certificate of Need.

(d) No agency of the State or of any county or municipal government shall approve any grant of funds for, or issue any license to, a health care facility which is constructed or expanded, or which institutes a new health care service, in violation of established policy.

(e) No final arrangement or commitment for financing the development of a proposed Certificate of Need project shall be made unless a Certificate of Need has been granted.

(f) No Certificate of Need shall be issued unless the action proposed in the application for such certificate is necessary to provide required health care in the area to be served, can be economically accomplished and maintained, and will contribute to the orderly development of adequate and effective health care services. In making such determinations there shall be taken into consideration the availability of facilities or services which serve as alternatives or substitutes, the need for special equipment and services in the area, the possible economies and improvement in services to be anticipated from the operation of joint central services, the adequacy of financial resources and sources of present and future revenues, the availability of sufficient manpower in the several professional disciplines, the accessibility to and availability of health care services to low income persons, and such other factors as may be established by regulation. The Commissioner shall cause appropriate surveys and studies to be made concerning the need for health care facilities and keep current records and statistics thereon by designated areas or regions of the State.

(g) Recommendations concerning Certificate of Need shall be governed and based upon the principles and considerations

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set forth in these rules or applicable state policy.

(h) In case of an application by a health care facility established or operated by any recognized religious body or denomination, the needs of the members of such religious body or denomination for care and treatment in accordance with their religious or ethical convictions may be considered to be public need.

(i) The Commissioner shall establish minimum requirements and the needs for health care facilities in each area or region of the State, taking into consideration the recommendations of the Health Systems Agencies and the Statewide Health Coordinating Council. Such requirements and needs are specified in detail in Department of Health Planning Regulations adopted pursuant to N.J.S.A. 26:2H-1 et seq. and the New Jersey State Health Plan and State Medical Facilities Plan which are the standards, guidelines and criteria for the review of Certificate of Need applications. However, in every case, it is the responsibility of the applicant to adequately and appropriately demonstrate the need for the proposed project. It is not incumbent upon the review process to demonstrate lack of need. All applications shall be reviewed for conformance with the regulations which are in effect at the time the application is accepted for processing.

(j) Application for a Certificate of Need shall be made to the Department and shall be in such form and contain such information as the department may prescribe. The Department shall charge a non-returnable fee for the filing of an application for a Certificate of Need. The fee will be established by regulation. Application forms are available from the Certificate of Need Program.

(k) Using the documents stated at N.J.A.C. 8:33-1.3(i), as well as other applicable criteria, the Health Systems Agencies and the Statewide Health Coordinating Council shall provide full consideration of each application submitted to them and shall develop recommendations thereon. Such recommendations, whether favorable or unfavorable, shall be forwarded to the Commissioner within 90 days of the date the application was accepted for processing by the Department of Health.

(l) Certificates of Need shall be issued by the Commissioner based upon criteria and standards established by the Commissioner.

(m) Pursuant to N.J.S.A. 26:2H-9, no such Certificate shall be denied without the approval of the Health Care Administration Board. If the Commissioner's decision is contrary to the recommendation of the Statewide Health Coordinating Council, the Health Systems Agency or the applicant, that body shall be granted the opportunity of a fair hearing. The Commissioner or his designee shall furnish the board in writing his recommendations with supporting reasons. Any applicant who has a Certificate of Need in any appeal or hearing status may not file a similar Certificate of Need applicatino in the same county while such appeal or hearing is under consideration. Certificate of Need Application in the same *[county]* ***service area*** while such appeal or hearing is under consideration.

(n) Requests for a fair hearing are discussed in N.J.A.C. 8:33-3.6(g).

(o) The sale of approved Certificates of Need is prohibited. Ownership of approved Certificates may be transferred only under the conditions identified at N.J.A.C. 8:33-2.10(e). The ownership of an existing licensed health care facility, beds, services, or equipment is transferable as described at N.J.A.C. 8:33-2.10.

(p) A Certificate of Need shall be valid for one year from the date of issue. An extension of the cerrificate may be considered pursuant to criteria defined at N.J.A.C. 8:33-2.14(a)1 and 2.

(q) All approved projects shall be monitored by the Department of Health and other appropriate agencies to assure compliance with stated policies, all standards (including appropriate construction codes), the approved application's contents, approved costs, and all conditions of approval. Whenever conditions are attached to an approved application, the applicant must file a progress report on meeting such conditions with the Certificate of Need Program annually for the first two years of the project commencing with the receipt of a license. The Department of Health may require additional reports if they deem these reports to be necessary.

(r) Any conditions placed on a Certificate of Need approval shall become part of the licensure requirements for that approved facility. Failure to comply with approved Certificate of Need conditions or reporting requirements may result in licensure or rate action by the Department and may be considered by the Department when reviewing subsequent Certificate of Need applications.

(s) No Certificate of Need application will be approved from any applicants with existing *[major violations of licensure standards, as determined by the Department, including but not limited to conditions which threaten the life and safety of patients or employees]* ***non-waiverable violations of licensure standards which, as determined by the Department, threaten the life and safety of patients.*** An exception will be ***made*** in the case of applications submitted for the purpose of correcting recongnized major licensure deficiencies. An exception to this provision may also be granted for applications submitted for the closure or substantial reduction of underutilized beds, services, or equipment.

(t) The Certificate of Need review process shall consider the fully proposed capital cost, including financing and carrying costs, of any proposed service, facility, or equipment and the operating costs and revenues, generally to one year beyond the break-even point.

(u) No Certificate of Need applications ***for inpatient services*** shall be accepted for processing unless the applicant documents in the application that he owns the site where the facility's services or equipment will be located, or has an ownership or lease option for such site which is valid at least through the Certificate of Need processing period. ***Applicants submitting applications to provide other than inpatient services will have 90 days from the date of Certificate of Need approval to provide the Department with documented evidence of ownership of the site for the service, facility or equipment or with a purchase of lease option for the site of the service, facility or equipment.***

(v) 100 percent of the ownership of the proposed facility, service or equipment must be accounted for in the Certificate of Need application. Each and every principal involved in the proposal must be identified along with the percentage of his or her interest. If the principles are a corporation, each and every stockholder holding 10 percent or more interest in the corporation also must be identified.

(w) The operator of the proposed facility, service, or equipment must file and sign the application. In the case of transfer of ownership the current owner must file and sign a supplement to the application.

(x) Any health care facility which has closed or substantially ceased operation of any of its beds, facilities, services, or equipment for a period of 18 months or longer shall require a Certificate of Need before reopening such beds, facilities, services, or equipment.

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8:33-1.4 Thresholds

(a) The monetary thresholds applied to applications for Certificate of Need review include:

1. Acquisition of major moveable equipment $400,000
2. Modernization/renovation/construction:
i. Hospitals $600,000
ii. Long-term care facilities $600,000
iii. All other health care facilities $600,000
3. Any modernization/renovation/construction project below the thresholds noted at N.J.A.C. 8:33-1.4(a)2 does not require a Certificate of Need and will not be accepted for processing unless they include any activity noted at N.J.A.C. 8:33-1.4(b)1.-7.

4. The Department will report to the Health Care Administration Board annually on inflation and its effect on health care costs and, when appropriate, will recommend adjustments to the thresholds.

(b) The following activities require a Certificate of Need regardless of the amount of capital or operating cost involved:

1. Initiation of any new health care service (except as modified in Exhibit 3B for component services that do not exceed the monetary thresholds identified in N.J.A.C. 8:33-1.4(a)).
2. Regionalized services which are identified in Department of Health planning regulations.
3. Bed additions, reductions, or conversions.
4. *[Expansions or relocation of a facility, service or equipment to an area that substantially changes the pattern of usage for such facility, service, or equipment.]* ***Expansion, termination, reduction or relocation of a facility, service or equipment in a manner which results in problems of access to populations historically served or proposed to be served by the facility, service or equipment.***

[5. Termination or substantial reduction of any service which required or would require a Certificate of Need to initiate.]

[6.] ***5.*** Transfer of any hospital patient care service from one corporate entity to another.

[7.] ***6.*** Transfers of ownership.

(c) See N.J.A.C. 8:33-2.4-2.9 for additional thresholds and further detail on the thresholds noted at N.J.A.C. 8:33-1.4(a) and (b).

8:33-1.5 Batching cycles and deadlines dates

(a) There shall be 12 review cycles for non-batched Certificate of Need applications in a year. The beginning of each cycle shall be the fifteenth day of each month and a decision should be rendered by the Commissioner of Health approximately three months after the beginning of the review process.

(b) Deadlines for initial submission of applications shall be no later than the first day of the month preceding the beginning of a review cycle.

(c) The Calendar for the non-batched Certificate of Need review process follows:

Deadline for Initial Submission		Cycle Begins		Commissioner's Decision Due	
December	1	January	15	April	15
January	1	February	15	May	15
February	1	March	15	June	15
March	1	April	15	July	15
April	1	May	15	August	15
May	1	June	15	September	15
June	1	July	15	October	15
July	1	August	15	November	15
August	1	September	15	December	15
September	1	October	15	January	15
October	1	November	15	February	15
November	1	December	15	March	15

(d) Batching cycles: Applications pertaining to the following services, facilities, and equipment must be batched according to the following review cycles:

Category		Deadline for Actual Submission	Cycle Begins
Hospital bed additions; modernization/renovation/ new construction of $10 million or more (two phase process)	Phase 1:	July 1	August 15
		Jan. 1	Feb. 15
	Phase 2:	Administrative Review—may be submitted for any cycle.	
Long term care bed additions; new construction		Oct. 1	Nov. 15
		Feb. 1	Mar. 15
		June 1	July 15
CAT scanners; PET scanners; nuclear medicine equipment; magnetic resonance imaging		Apr. 1	May 15
		Aug. 1	Sept. 15
		Dec. 1	Jan. 15
Megavoltage therapy equipment		Apr. 1	May 15
		Aug. 1	Sept. 15
		Dec. 1	Jan. 15
Cardiac diagostic and surgical services, modernization/ renovation and equipment		May 1	June 15
		Sept. 1	Oct. 15
		Jan. 1	Feb. 15
End stage renal disease equipment and services		May 1	June 15
		Sept. 1	Oct. 15
		Jan. 1	Feb. 15
Home Health Care Services		Apr. 1	May 15
		Aug. 1	Sept. 15
		Dec. 1	Jan. 15
Surgical Facilities and Services (inpatient and free-standing)		July 1	Aug. 15
		Jan. 1	Feb. 15
Emergency Transport & MICU Services		Oct. 1	Nov. 15
		Feb. 1	Mar. 15
		June 1	July 15
Other Ambulatory Care Services (initiation and expansion; does not include renovating only to hospital outpatient services)		Apr. 1	May 15
		Aug. 1	Sept. 15
		Dec. 1	Jan. 15

8:33-1.6 Definitions

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

"Administrative Review Process" means the review by the Department of Health of an application meeting certain specified criteria, with the Health Systems Agency having the option for review and presentation of recommendations to the Department. Such a review process is generally of shorter duration than the full review process and normally does not include a review by the Statewide Health Coordinating Council.

"Affected persons" mean the applicant; any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health care facilities within that geographic area; the health systems agency for the health service area in which the project is to be offered or

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developed, Health Systems Agencies serving contiguous health systems areas; health care facilities and health maintenance organizations in the health service area in which the project is to be offered or developed which provide services similar to the proposed services under review; health care facilities and health maintenance organizations which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide such similar services in the future; third party payors who reimburse health care facilities for services in the future; third party payors who reimburse health care facilities for services in the health service area in which the project is proposed to be located; and any agency which establishes rates for health care facilities or HMOs located in the health service area in which the project is proposed to be located.

Alcoholism services" mean the following:

1. Outpatient services: The provision of scheduled, or non-scheduled, non-residential diagnostic and primary alcoholism treatment services by a detoxification, residential treatment center or hospital.

2. Residential treatment: The provision of an intermediate term (28 days average) therapeutic residential program of comprehensive structured alcoholism treatment services, medical support and a wide range of supportive services for detoxified individuals.

3. Detoxification service: The provision of short-term (two to seven days) residential care and serviced for the reception and observation of intoxicated persons; the detoxification of intoxicated persons; the counseling of alcoholics to motivate their further treatment, and the referral of detoxified persons to appropriate treatment programs for continued care.

"Applicant" means an individual, a partnership, a corporation (including associations, joint-stock companies, and insurance companies) a State, or a political subdivision or instrumentality (including a municipal corporation) of a State that will be the operator of the proposed service, facility or equipment, except in the case of a transfer of ownership where the applicant means the proposed new owner(s) of the service, facility, or equipment with the current owner(s) required to file and sign a supplement to the transfer application.

"Bed capacity" means the licnsed number of beds by service within the facility.

"Change in the cost of financing" means an increase in financing related charges for the project; or an increase in the annual interest rate for the financing.

"Change in the method of financing" means a change in the source of financing for a project (for example a change from tax-exempt bonds to taxable bonds), or a change in the amount of project costs which are to be paid from cash, fund raising, grants or other sources other than mortgages, loans or leases.

"Change in project scope" is defined as a deviation from the approved project which results in an increase or decrease in any one of, but not limited to the following:

1. Number of beds by service;
2. Major moveable equipment;
3. Array of services:
4. Service area;

[5. Square footage to be constructed or renovated;]

*[6.]***5.*** Access or availability to the approved project.

"Construction" means the erection, building, or substantial acquisition, alteration, reconstruction, improvement, renovation, extension or modification or a health care facility, including its equipment, the inspection and supervision thereof; and the studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary thereto.

"Deferral" means a voluntary request to the Department by a Certificate of Need applicant or the acceptance of a request from a reviewing body by an applicant to suspend further review of a submitted application for a limited period of time.

"Drug abuse services" mean the following:

1. Detoxification: The modality in which there is planned withdrawal from drug dependency supported by use of prescribed medication.

2. Maintenance: The modality in which methadone and/or any of its derivatives is administered over a long period of time in order to either maintain patients at a stable degree or, by slow reduction of the dosage, achieve a drug-free state.

3. Drug-free residential: The modality that does not include any chemical agent or medication as the primary part of drug treatment but where the client resides in a drug abuse treatment unit other than a prison or hospital.

4. Drug-free outpatient (including day care): The modality that does not include any chemical agent or medication as the primary part of the drug treatment. The client resides outside the clinic but attends the clinic or participates in drug abuse treatment programs.

"Equipment system" means a group of equipment units, which operate together to perform a function. For example, the central processing unit of a computer and its peripheral equipment comprise an equipment system. The bedside cardiac monitor units and the nursing console form an equipment system.

"Equipment unit" is an apparatus that can perform its designated function by itself without the addition of any other component.

"Financing Charges" mean charges, fees and costs incurred by a health care facility in connection with obtaining financing for a project, including, but not limited to: points, discount, financing fees and other charges by the financing agency, authority, bank or trustee; interest on borrowings during construction, net of any interest earnings derived from the investment of borrowed funds; fees of bond counsel, counsel to the lender and counsel to the trustee, if any; fees of accountants and feasibility or other financial consultants; a reserve for debt service equal to one year's principal and interest; charges for title insurance, mortgage insurance, bond insurance or other insurance required in connection with the financing; and rating service fees, printing costs and other costs incurred in connection with the financing; provided that where financing is being provided with tax exempt bonds, an application for a Certificate of Need will be deemed to include a reserve for debt service of one year's principal and interest and a reasonable underwriter's discount or financing fee, as approved by the bond issuing authority.

"Fixed equipment" means equipment which is attached to the physical plant of a facility.

"Full Review Process" means the review of an application by the Health Systems Agency(ies) and the Statewide Health Coordinating Council as well as the Department of Health. Such a review process generally results in a decision within 90 days of the beginning of a review cycle.

"Health care facility" means the facility or institution, whether public or private, principally engaged in providing services for health maintenance, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, including, but not limited to, a general hospital, special hospital, mental hospital, public health center, diagnostic center,

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treatment center, rehabilitation center, extended care facility, skilled nursing home, nursing home, intermediate care facility, tuberculosis hospital, chronic disease hospital, maternity hospital, outpatient clinic, dispensary, home health care agency, residential health care facility and bio-analytical laboratories or central services facility serving one or more such institutions but excluding institutions that provide healing solely by prayer and excluding such bio-analytical laboratories as are independently owned and operated, and are not owned, operated, managed or controlled in whole or in part, directly or indirectly by any one or more health care facilities and the predominant source of business of which is not by contract with health care facilities within the State of New Jersey and which solicit or accept specimens and operate predominantly in interstate commerce. Exhibits 3A and 3B provide examples of some types of the services provided by a health care facility.

"Health care service" means the preadmission, outpatient, inpatient, and post-discharge care provided in or by a health care facility, and such other items or service as are necessary for such care, which are provided by or under the supervision of a physician for the purposed of health maintenance or diagnosis or treatment of human disease, pain, injury, disability, deformity, or physical condition, including, but not limited to nursing service, home care nursing and other paramedical service, ambulance service associated with a health care facility, service provided by an intern, resident in training or physician whose compensation is provided through agreement with a health care facility, laboratory service, medical social service, drugs, biologicals, supplies, appliances, equipment, bed and board, but excluding services provided by a physician in his private practice or by practitioners of healing solely by prayer, and services provided by first aid, rescue and ambulance squads as defined in the "New Jersey Highway Safety Act of 1971," P.L. 1971, C. 351.

"Health maintenance organization" or HMO means a public or private organization organized under the N.J.S.A. 26:2J-1 et seq. and which is qualified under section 1310 (D) of Title XIII of the Federal Public Health Services Act or which is state certified and meets the definition of HMO under section 1122 of the Social Security Act (which definition reads "an HMO is an organization which (1) provides or otherwise makes available to enrolled participants Health Care Services, Hospitalization, Laboratory, X-Ray, Emergency and Preventive Services and out of area coverage; (2) is compensated (except for co-payments) for the provision of the basic health care services listed in clause (1) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided, and which is fixed without regard to the frequency, extent, or kind of health care service actually provided; and (3) provides physician's services primarily, (I) directly through physicians who are either employees or partners of such organization, or (II) through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.").

"Health systems agency" (HSA) means an officially recognized health systems agency formed under the provision of Federal Public Law 93-641, as amended and supplemented.

"Inpatient psychiatric units" mean a setting for continuous 24-hour diagnostic, treatment and therapeutic mental health services housing organized medical, nursing and ancillary treatment staffs for patients who have any of a variety of psychiatric disorders. These units include the following types:

1. "Adult Open Acute Psychiatric Beds" mean licensed psychiatric beds in a designated and separate unit of a New Jersey hospital, for the provision of intensive treatment and rehabilitation of persons who are experiencing an acute episode of psychiatric disorder. Admissions to the unit generally have a length of stay which averages 30 days or less.

2. "Inpatient Screening Beds" mean licensed psychiatric beds within or contiguous to a licensed psychiatric unit of a licensed New Jersey hospital which have been designated as Mental Hospital beds by the Commissioner of the Department of Human Services. Such beds are for the provision of intensive treatment, evaluation, and stabilization of adults who are experiencing an acute episode of a phsychiatric disorder. All persons admitted to the unit must be under involuntary commitment order. Maximum stay under involuntary commitment order in an inpatient screening bed is 72 hours.

3. "Closed Acute Psychiatric Beds" mean licensed psychiatric beds in a separate unit of a licensed New Jersey hospital which have been designated as Mental Hospital beds by the Commissioner of the Department of Human Services. Such beds are for the provision of intensive treatment and rehabilitation services for persons who are experiencing an acute episode of a psychiatric disorder. Admissions to the unit have an average length of stay of less then 30 days.

4. "Intermediate Psychiatric Beds" mean licensed psychiatric beds in a New Jersey psychiatric (special) hospital, established for the purpose of providing intensive treatment and rehabilitation of persons who are experiencing an acute episode of a psychiatric disorder, who have been determined to require provision of a more comprehensive and specialized program of psychiatric services than prescribed by Department of Health licensure standards governing Adult Open Acute Psychiatric units. Admissions to the Intermediate Psychiatric unit or facility have an average length of stay between 30 to 60 days.

5. "Child Acute Psychiatric Bed" means any separate unit or facility, or sub-unit of an existing licensed psychiatric unit or facility, established for the provision of intensive treatment and rehabilitation of individuals age 18 and under, who are experiencing an acute episode of a psychiatric disorder. Certificate of Need applications including children's psychiatric beds are governed by N.J.A.C. 8:43E-4.1 et seq.

"Major moveable equipment" means equipment which generally is not attached to the physical plant of a facility and has for depreciation purposes a predetermined life.

"Mandatory replacement of equipment and/or mandatory renovations to facilities" means replacement of equipment or renovations for one or more of the following reasons (the "mandatory" nature of the replacement or renovation shall be determined by the Department of Health):

1. Required as a result of a mandate from any Federal, State, county or municipal governmental agency.

2. Required to operate the health care facility without harm or major disruption to the care of patients.

3. Examples of this type of replacement would include the breakdown of a heating and/or cooling plant within a facility or a malfunction rendering inoperable the power plant of a facility.

"Mobile intensive care services" (MICU) mean hospital managed clinical services provided for emergency prehospital care of the acutely ill or injured patient; they consist of the trained/certified personnel and equipment necessary to provide advanced life support techniques such as administration of medications, intravenous fluids, airway maintenance and defibrillation as authorized under Public Law 1973, Chapter 229; they are provided under the remote on-line medical direction of qualified hospital staff in accordance with pre-

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established treatment protocols; and they treat only acute patients and supplement the basic life support care administered by emergency ambulance services. Each mobile intensive care unit is staffed by a minimum of two persons who may be paramedics qualified under N.J.S.A. Title 26, Chapter 2K; nurses certified by a hospital to provide advanced life support, or physicians.

"Medically underserved" groups shall mean all population groups including racial and ethnic minorities, migrant workers, the handicapped, Medicaid recipients, women and families with incomes below 80 percent of the median income for either the state or the Standard Metropolitan Statistical Area in which they reside, and other identifiable segments of the population which currently fail to use health care services in numbers approximately proportionate to their presence in the population as adjusted to account for their need for such services.

"Modernization" includes the alteration, expansion, major repair (to the extent permitted by regulations), remodeling, replacement, and renovation of existing buildings (including initial equipment thereof), and the replacement of obsolete equipment of existing buildings.

"New health care service" means the addition of a health service which was not offered by or on behalf of the facility within the previous 12 months. New Health Care Service may result from addition of staff, acquisition of equipment through purchase, lease or donation, and/or the creation of a new service area.

"Nonbed related psychiatric care" includes the following which is to be considered a health care service must meet standards as prescribed by the Rules and Regulations Governing Community Mental Health Services and State Aid under the Community Mental Health Services Act (N.J.A.C. 10:37-1 et seq.):

1. Outpatient care: A setting in which the recipient receives relatively brief services, usually less than three hours, on an individual or group basis. The setting is usually a clinic similar facility, but may be in the recipient's home or some other setting. Services provided by an outpatient program include Counseling, Assessment and Evaluation, Service Procurement (case management), and Treatment and Therapy.

2. Partial care (partial hospitalization): A setting in which a planned program of mental health services are generally provided in sessions of three or more hours per day to groups of recipients.

3. Emergency screening: A setting in which short-term interventions are available to clients in need on an immediate basis. The mode of intervention may be by: telephone, such as a 24-hour "hot-line;" outreach, such as a home visit; or at a facility easily accessible to clients with an acute need for mental health services, such as a hospital emergency room. Services may include Assessment and Evaluation, Counseling, Medical/Psychiatric Care, Treatment and Therapy, Information and Referral, and Service Procurement.

"Not Accepted for Processing" means the Department of Health may decide not to accept for review an application submitted in an incorrect batch or one that is inappropriately submitted for administrative review.

"Null and Void" and "nullification" means the termination of a Certificate of Need by the Commissioner of Health prior to the expiration of the Certificate.

"Optional replacement of equipment" means replacement by equipment which will perform more analyses, operate more efficiently, economically or reliably or in some manner improve operations in a unit.

"Similar equipment units" mean pieces of equipment which are similar in function and appearance. For example, a manually operated bed and an electrically operated bed are similar units. A 1,000 power microscope and 500 power microscope are similar units. A coulter counter and a microscope are not similar units.

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

"Statewide health coordinating council" means the Statewide Health Coordinating Council formed under the provision of Federal Public Law 93-641, as amended and supplemented.

"Total Project Cost" means all costs associated with the proposed project, including all capital costs, carrying and financing costs, interest on borrowings during construction, and lease/rental agreements. Total project costs exclude any contingency amounts.

"Withdrawal" means a voluntary written request to the department by a Certificate of Need applicant to cease any further review of a submitted application. Such a request shall be considered final by the Department and no further consideration or review shall be given to the "withdrawn" application.

SUBCHAPTER 2. CRITERIA FOR SUBMISSION OF CERTIFICATE OF NEED APPLICATIONS

8:33-2.1 Access criteria

(a) Each applicant for Certificate of Need must demonstrate how the proposed project offers equal access to low income persons, racial and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups. In determining the extent to which the proposed service provides equal access and availability to the aforementioned populations, the applicant shall address in writing the following:

1. The extent to which medically underserved populations currently use the applicant's service or similar services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved;

2. The performance of the applicant in meeting its obligation, if any, under any applicable State and Federal regulations requiring provision of uncompensated care, community services, or access by minorities and handicapped persons to programs receiving Federal financial assistance (including the existence of any civil rights access complaints against the applicant);

3. The extent to which Medicare, Medicaid and medically indigent patients are served or are proposed to be served by the applicant;

4. The extent to which the applicant offers a range of means by which a person will have access and availability to its service (for example, outpatient services, admission by house staff, admission by personal physician);

5. In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the need that the population presently served has for the service, the extent to which that need will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups, and the elderly to obtain needed health care;

6. The amount of charity care, both free and below cost

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service, that will be provided by the applicant. In determining eligibility for this care the applicant shall use the eligibility categories A and B of the Hill-Burton Act regulations 42 CFR 124.501 et seq.;

7. Access to public or private transportation to the proposed project must be documented;

8. As applicable, effective communication between the staff of the proposed project and non-English speaking people and those with speech, hearing, or visual handicaps must be documented; and

9. Where applicable, the extent to which the project will eliminate architectural barriers to care for handicapped individuals.

(b) No Certificate of Need shall be granted to any facility that currently fails to provide or fails to contractually commit to provide services to medically underserved populations residing or working in its service area as adjusted for indications of need. In addition, no Certificate of Need shall be granted to any facility that fails to commit it will inform the public, especially medically underserved individuals, of its obligation to provide free and below cost services to eligible individuals and of its obligation not to discriminate against low income persons, minorities, and handicapped individuals.

8:33-2.2 Long range plans

(a) No applications for Certificate of Need from a hospital shall be processed by the Department unless the applicant has submitted to the Department an acceptable long-range plan in accordance with N.J.A.C. 26:2H-1 et seq. and N.J.A.C. 8:31-16.1.

8:33-2.3 Letters of intent

(a) Any person or organizational entity intending to submit any Certificate of Need application shall first file a Letter of Intent in such detail as may be necessary to inform the Department of Health and the applicable Health System Agency(ies) of the scope and nature of the intended project. Such letter must be submitted to the Department and the applicable Health Systems Agency(ies) not less than 90 days before the initial submission of an application for construction, modernization, renovation, bed additions, or equipment acquisition in excess of 3 million dollars and at least 60 days before submitting an application for any other type of project. Letter of Intent forms are available from the Certificate of Need Program. No application will be accepted for processing if the required Letter of Intent was not filed on a timely basis.

8:33-2.4 Buildings

(a) The following criteria shall apply to buildings:

1. Regardless of cost, a Certificate of Need is required for any purchase, rental, lease, donation or construction of a building which will:

i. Establish a new health care facility;

ii. Replace an existing bed related health care facility;

iii. Establish a bed related satellite location for an existing health care facility;

iv. Involve the relocation and replacement of an existing non-bed related health care facility into a new health service area or to an area that *[substantially changes the patient usage for the facility]* ***result in problems of access to populations historically served by the facility.***

v. Establish a non-bed satellite service of an existing health care facility into a new health service area.

8:33-2.5 Bed capacity

(a) The following criteria shall apply to bed capacity:

1. Any increase in the total number of licensed beds requires a Certificate of Need. Any project involving an increase in total licensed beds, where the total cost of the entire project is 10 million dollars or greater shall follow the review process described at N.J.A.C. 8:33-1.5(d) and 8:33-2.7(a)11.

2. Any increase in the total number of residential health care beds of upo to ten beds or ten percent of existing licensed capacity, whichever is less, requires a Certificate of Need and shall follow the administrative review process outlined in N.J.A.C. 8:33-4.8; any increases greater than this shall be subject to full review.

3. The relocation of beds from one physical facility or site to another requires a Certificate of Need.

4. Any change in the number of beds within categories licensed for a facility that will not affect the total number of licensed beds, or result in a capital expenditure requires a Certificate of Need and shall follow the administrative review process outlined in N.J.A.C. 8:33-4.8.

5. Any decrease in the total licensed bed capacity of a facility which under generally accepted accounting principles, will result in a capital expenditure, requires a Certificate of Need.

6. Any decrease in the total number of licensed beds which will not involve a capital expenditure requires a Certificate of Need and will follow the administrative review process outlined in N.J.A.C. 8:33-4.9.

8:33-2.6 Health care services

(a) The following criteria shall apply to health care services:

1. Implementation of any new health care service, ***except as modified in Exhibit 3B for component services that do not exceed the monetary thresholds identified at N.J.A.C. 8:33-1.4(a))*** regardless of the amount of capital or operating expenditures requires a Certificate of Need.

2. Discontinuance ***or substantial reduction*** of any health care service for which a facility is recognized for reimbursement will require a Certificate of Need. Sixty days prior to the substantial reduction of any such health care service the facility must notify the Department in writing of this intent. Based upon indicators of need, access, and economic viability, the Department, after consultation with the appropriate Health System Agency(ies), shall determine whether such reduction in services requires a Certificate of Need review and shall notify the facility of its determination within sixty days of receipt of the notice of intent.

3. Mandatory implementation of a new health care service requires a Certificate of Need and shall follow the administrative review process outlined in N.J.A.C. 8:33-4.10.

4. A Certificate of Need is required whenever a health care facility wishes to transfer to another corporate entity, in whole or in part, any patient care service and shall follow the administrative review process outlined in N.J.A.C. 8:33-4.2(c).

8:33-2.7 Equipment and modernization

(a) The following criteria shall apply to equipment and modernization:

1. The acquisition of any major moveable equipment through purchase, lease, or donation whose cost including installation and renovation under generally accepted accounting principles results in a total project cost of $400,000 or more requires a Certificate of Need.

2. A Certificate of Need is required for acquisition of a group of similar equipment units or an equipment system for which cumulative total project costs are $400,000 or more, or are expected to be $400,000 or more, within a 12-month period.

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3. Acquisition of major moveable equipment not owned and operated by a health care facility also requires a Certificate of Need if the equipment will be used to provide services to any inpatients of one or more health care facilities and the acquisition results in a total project cost of $400,000 or more per unit of equipment or for an equipment system including installation. Such applicants are subject to the Letter of Intent requirements identified at 8:33-2.3. Such acquisition applications may be subject to the batching requirements identified at N.J.A.C. 8:33-1.5(d).

4. The addition of renal dialysis stations and operating rooms, regardless of the amount of capital or operating expenditures requires a Certificate of Need.

5. Mandatory replacement of moveable equipment, as defined at N.J.A.C. 8:33-1.6, in excess of the cost regulations for replacement requires a Certificate of Need and shall follow the administrative review process outlined in N.J.A.C. 8:33-4.3.

6. A Certificate of Need is required for the acquisition of fixed equipment, or the modernization/renovation/new construction of a health care facility which under generally accepted accounting principles results in a total project cost over a 12-month period of time of:

i. $600,000 or more for all hospitals;

ii $600,000 or more for all long-term care facilities;

iii. $600,000 or more for all other health care facilities.

7. Replacement of existing equipment with the same equipment which exceeds the dollar thresholds indicated at N.J.A.C. 8:33-2.7(a)1 and 8:33-2.7(a)2 shall follow the administrative review process described at 8:33-4.4 unless the Department, in consultation with the appropriate Health Systems Agency(ies), determines a full review is necessary. This applies to replacement equipment that maintains existing capability and does not include up-grading to a new technology or a new capability. Any replacement that results in an upgrading of capability requires a full review.

8. Mandatory replacement of fixed equipment and/or mandatory renovations to facilities as defined at N.J.A.C. 8:33-1.6 in excess of the monetary thresholds for equipment replacement or renovations requires a Certificate of Need and shall follow the administrative review process outlined in N.J.A.C. 8:33-4.3.

9. Acquisition of telephone or computer systems in excess of $400,000 requires a Certificate of Need and shall follow the administrative review process outlined in N.J.A.C. 8:33-4.11.

10. Acquisition of fixed equipment and/or renovations to facilities dealing exclusively with energy conservation and management in excess of the cost thresholds for optional replacements or renovations requires a Certificate of Need and shall follow the administrative review process outlined in N.J.A.C. 8:33-4.14.

11. For projects involving hospital bed additions, modernization/renovation, or new construction which under generally accepted accounting principles results in a total project cost of 10 million dollars or more, the applicant is required to submit two separate Certificate of Need applications as follows:

i. The first application shall address the need for the project and its conformance with appropriate Departmental regulations, the State Health Plan, and the area's health systems plan. The application shall be a request to undertake facility planning studies and for conceptual drawings with scope and cost estimates indicating various architectural options for the construction/modernization/renovation;

ii. If the first application is approved the second application shall be submitted following consultation with the Department and appropriate Health Systems Agency staff regarding the findings of the facility planning studies and architectural, planning, and cost options. This Certificate of Need request shall follow the administrative review process outlined in N.J.A.C. 8:33-4.15 and shall be for the specific construction/modernization/renovation option the applicant has chosen and shall include capital cost and operating cost estimates;

iii. Applications shall be batched according to the schedule specified in N.J.A.C. 8:33-1.5(d).

8:33-2.8 Batching

(a) Applications pertaining to the following services, facilities, and equipment must be considered in relation to each other ("batched") according to the schedule specified in N.J.A.C. 8:33-1.5(d):

1. Hospital bed additions/modernization/renovation/new construction of 10 million dollars or more.

2. Long-term care bed additions/new construction.

3. Computerized tomography (CT) services; positron emission tomography (PET) services; nuclear medicine equipment; magnetic resonance imaging.

4. Megavoltage therapy equipment.

5. Cardiac diagnostic and surgical services, including modernization/renovation/new construction and the acquisition and/or replacement of equipment.

6. End-stage renal disease equipment and services.

7. Home health care services.

8. Surgical services (inpatient and free-standing).

9. Emergency transport and MICU services.

10. Ambulatory care services.

11. Others as defined by specific planning regulations.

(b) Any equipment acquisition which is subject to Certificate of Need batching requirements must be processed in the appropriate batch and cannot be included as part of another application such as a facility modernization/renovation/construction project.

(c) Applications which satisfy the requirements of N.J.A.C. 8:33-2.6(a)3, 8:33-2.7(a)5, 7, 8, 9, and 10 are not required to be batched.

8:33-2.9 Facility/service planning

(a) The following criteria shall apply to facility and/or service planning:

1. A Certificate of Need is required when the expenditures required for plans, feasibility studies, surveys, designs, or architectural drawings are $150,000 or more in a lump sum amount or over a 12-month period.

2. Expenditures for plans, feasibility studies, surveys, designs, or architectural drawings less than $150,000 but more than $50,000 (cumulative expenditures over a 12-month period) require a Certificate of Need and shall follow the administrative review process outlined in N.J.A.C. 8:33-4.4.

8:33-2.10 Transfer of ownership

(a) Certificates of Need are not transferable in whole or in part. Only the ownership of an existing, licensed health care facility, or licensed, existing beds, services, or equipment is transferable.

(b) Transfer of ownership procedures pertain exclusively to existing licensed health care facilities. If there is an acquisition or a transfer of ownership which will increase or establish an interest in a health care facility as defined in N.J.A.C. 8:33-1.6 through sale, lease or by other means a Certificate of Need is required. The process for obtaining a Certificate of Need

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shall follow the administrative review process outlined in N.J.A.C. 8:33-4.2. An acquisition or a transfer of ownership which will increase or establish an interest in a health care facility as defined in N.J.A.C. 8:33-1.6 shall be deemed to take place if:

1. Corporations:

i. There is an acquisition by or a transfer of ownership to an individual, partnership or corporation through purchase, lease, donation, gift, stock option, etc., of *[any amount]* ***10 percent or more*** of a corporation's outstanding stock (preferred or common);

ii. There is acquisition of the physical assets of a corporation, partnership or individually owned health care facility by a newly formed or existing corporation, even if there is a common membership for both boards of directors.

2. Partnerships:

i. There is acquisition by or a transfer of ownership to an individual, partnership, or corporation of any amount of the existing partnership's total capital interest;

ii. There is acquisition of the physical assets of a corporation, partnership or individually owned health care facility by a newly formed or existing partnership.

3. Proprietorship:

i. There is a purchase of the physical assets of a health care facility.

(c) The application for transfer of ownership must specify each and every principal involved in the facility and service and their percentage of ownership. The entire ownership must be identified in the application.

(d) If the facility being transferred has any partially implemented or unimplemented Certificate of Need approvals, approval of the transfer of ownership of the existing, licensed facility shall null and void these Certificate of Need approvals.

(e) At the discretion of the Department, an exception to N.J.A.C. 8:33-2.10(a) and (b) may be permitted and the transfer of ownership process may be allowed to proceed on an unimplemented Certificate of Need approval for facility construction if all the following criteria are satisfied:

1. The transfer process only involves a change in the type of organizational entity owning the facility (for example, a change from a corporation to a partnership or vice versa).

2. There has been no change in the principals awarded the original Certificate of Need.

3. There has been no change in the percentage owned by any of the principals awarded the original Certificate of Need.

4. The change in type of organizational entity must be as a result of changes in the requirements of a government agency and enhance the likelihood of obtaining financing.

(f) The transfer of ownership of any licensed general acute care, special hospital and psychiatric hospital shall follow the full review process and may not be processed under the administrative review process.

8:33-2.11 Changes in cost/scope

(a) The following criteria shall apply to changes in cost or scope:

1. Any proposed change in the cost of an approved project shall require a change of cost review and shall follow the administrative review process outlined in N.J.A.C. 8:33-4.7. However, under no circumstances shall an approved certificate receive more than one administrative review for proposed changes involving cost. Thus, any subsequent proposed changes involving cost, regardless of the absolute or percentage of change, shall require a full review.

2. Any change in the proposed method of financing which will result in an increase in *[the debt service charges included in operating costs of]* ***capital-related operating costs*** of 10 percent or more shall be considered a change in the financing of the project and shall follow the administrative review process outlined in N.J.A.C. 8:33-4.7.

3. Any significant change in the scope of an approved project requires a Certificate of Need. A significant change consists of any of the following:

i. Increase or decrease in the number or category of approved beds;

ii. Deletion of approved major moveable equipment;

iii. Addition, substantial reduction, as determined by the Department, or elimination of any of the standard categories of health care services;

iv. Relocation of the proposed project from one county to another or from municipalities with a population greater than 50,000 to any other municipality, or to an area *[that substantially changes the patterns of usage of the project]* ***which results in problems of access to populations proposed to be served*** requires a full review; any other relocation shall follow the administrative review process outlined in N.J.A.C. 8:33-4.14, except where the Department, in consultation with the appropriate Health Systems Agency(ies), determines that the proposed relocation may diminish access to patients *[historically]* ***proposed to be*** served, a full review may be required; or

v. Any increase or decrease of ten percent or more of the total approved square footage to be renovated and/or constructed that also results in an increase in total approved project costs requires a full review; any increase or decrease of less than ten percent of the total approved square footage for such projects that also result in an increase in total project costs shall follow the administrative review process outlined in N.J.A.C. 8:33-4.7.

4. The Department shall not process any applications for changes in scope and/or cost when the changes in scope and/or cost have already occurred and have been implemented by the time the application is submitted for processing unless the Commissioner determines that the changes arose from extraordinary unforeseeable circumstances outside the applicant's control.

[5. During the course of a review of a change in cost, financing, or scope the need for the original approved project will be reexamined.]

*[6.]***5.*** The approval of a change in cost, financing, or scope application shall not extend the expiration date of the original approval. If an extension of the expiration date is also desired, such request, along with reasons for the request, must be specifically made in writing in the change in cost, financing, or scope application.

8:33-2.12 Demonstration/research projects

(a) The following criteria shall apply to demonstration/research projects:

1. Implementation of any unique demonstration or research project requiring a Certificate of Need, but for which criteria and standards for licensure have not been established, shall follow the administrative review process as outlined in N.J.A.C. 8:33-4.12 unless the Department determines that a full review is necessary.

2. Applications approved for demonstration or research projects should incur only minimal costs for physical plant construction and/or renovation until the completion of the demonstration period and criteria and standards for licensure have been developed.

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3. At the time of review the Department shall establish a time-frame within which the demonstration shall function. The Department shall issue a report regarding the demonstration and, depending upon the results, shall issue appropriate standards and criteria.

8:33-2.13 Health maintenance organizations

(a) The following criteria shall apply to health maintenance organizations (HMO):

1. A Certificate of Need shall not be required for an HMO to develop its ambulatory care facility or to provide basic and supplemental ambulatory services except where such services are the subject of an approved Department of Health regionalized service planning regulation.

2. A Certificate of Need shall not be required when an exemption has been granted by the Commissioner of Health for the offering of an inpatient institutional health service, the acquisition of major medical equipment for the provision of an inpatient institutional service or the obligation of a capital expenditure for the provision of an inpatient institutional health service by:

i. An HMO or combination HMOs if:

(1) The HMO or combination of HMOs has in the service area of the HMO or the service area of the HMOs in combination, an enrollment of at least fifty thousand individuals;

(2) The facility in which the service will be provided is or will be reasonably accessible to such enrolled individuals; and

(3) At least 75 percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such HMO or combination of HMOs.

ii. A health care facility if:

(1) The facility primarily provides inpatient health services, and

(2) The facility is controlled directly or indirectly by an HMO or combination of HMOs which has, in the service area of the HMO or combination of HMOs an enrollment of at least fifty thousand individuals; and

(3) The facility is geographically located so that the service will be reasonably accessible to such enrolled individuals; and

4. At least 75 percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such HMO or combination of HMOs; or

iii. A health care facility (or portion thereof) if:

(1) The facility is leased by an HMO or combination of HMOs which has in the service area an enrollment of at least fifty thousand individuals and on the date the application is submitted under 4 below at least fifteen years remain in the term of the lease;

(2) The facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals; and

(3) At least 75 percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such HMO.

3. For the purposes of this section, "indirect control of a health care facility" includes circumstances in which a majority of the members of the board of a hospital corporation are employees, officers or directors of an HMO, or in which members of the board of an HMO are the same as members of the board of a hospital corporation.

4. An HMO, or combination of HMOs, or health care facility shall not be exempt from obtaining a Certificate of Need before offering an institutional health service, acquiring major medical equipment, or obligating capital expenditures unless:

i. It has submitted an application for exemption to the Certificate of Need program and the appropriate Health Systems Agency(ies);

ii. The application contains such information to show that the HMO or combination of HMOs meet the requirements of 2. above.

iii. The Commissioner of Health approved such application.

(1) The Commissioner shall approve an application for exemption if the applicable requirements of 2. above have been met or will be met on the date the proposed activity for which an exemption was requested will be undertaken.

5. A health care facility (or portion thereof) or medical equipment for which an exemption was granted may not be sold or leased, a controlling interest in the facility, or equipment or in a lease of the facility or equipment may not be acquired, and a health care facility described in 2.iii above which was exempted may not be used by any person other than the lessee described in 2.iii above unless a Certificate of Need has been granted for the sale, lease, acquisition, or use, or the Commissioner of Health determines, upon application, that the entity which intends to buy or lease the facility or equipment, or acquire the controlling interest in it, or which intends to use it, is an HMO or a combination of HMOs which have applied for and been granted exemption.

8:33-2.14 Extensions of time

(a) The following criteria shall apply to extensions of time:

1. A Certificate of Need is valid for one year from the date of issue. If the project or portions thereof have not been ***substantially*** completed within this time frame the uncompleted project or portions shall be deemed to be terminated except that the Commissioner may renew the Certificate for further periods if the applicant documents substantial progress towards completion of the project. For construction or renovations projects no renewal of the Certificate will be granted unless preliminary construction plans have been submitted to the Department. ***For purposes of this provision a project shall be substantially completed if equipment has been purchased, a new service has commended operation, or for construction or renovation projects expenditure of 10 percent of the total project cost has been made on actual construction costs.***

2. Substantial progress shall mean:

i. That the applicant owns the land, has a lease, or option that is valid during the extension period; and,

ii. That financing has been secured or will be by the end of the extension period. If financing is not secured by the end of the first extension period, the Certificate will be deemed null and void; and,

iii. That required approvals by other governmental agencies (e.g., CAFRA, Pinelands Commission) have been granted or are submitted and in process of review; and,

iv. That plans have been submitted on a timely bases.

3. The only exception to N.J.A.C. 8:33-2.14(a)2 is that an extension of time may be granted if the applicant is engaged in litigation to reverse an adverse zoning decision before the Superior Court of New Jersey, Law Division or Chancery Division.

4. Applications for extension of time shall follow the administrative review process outlined at N.J.A.C. 8:33-4.6.

8:33-2.15 Financial criteria

(a) The following financial criteria shall apply in the review

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of all applications:

1. For purposes of Certificate of Need review, equity shall mean a non-operating asset contribution which will reduce the size of the total debt. It may include cash, other liquid assets, and the fair appraised market value of land owned by an applicant which is the viable site for the proposed project.

2. For all hospital applications involving a capital cost, each applicant *[must document that 15 percent of the total project cost, including all financing and carrying costs, is available in the form of equity defined at N.J.A.C. 8:33-2.15(a)(1).]* ***will be required to make some equity contribution to all such projects. The Department will then use 15 percent of the total project cost as a guideline for the equity contribution requirement in reviewing such applications and will review arguments made by an applicant as to why a 15 percent equity contribution is unreasonable.*** In licensed general acute care hospitals only, this 15 percent equity *[requirement]* ***guideline*** may be reduced by one-half of one percent per each full percentage point the hospital uncompensated care percentage exceeds the statewide average uncompensated care percentage for acute care hospitals. All other applications must document that 10 percent of the total project cost, including all financing and carrying cost, is available in the form of equity.

3. Each applicant must document that the project's cost will be financed through the least cost method of financing.

4. It shall be a condition of any approved Certificate of Need application that capital reimbursement will be predicated upon the higher of actual patient volume or the volume projected in the approved application and the rate calculation will be adjusted to reflect this condition.

8:33-2.16 Violation of licensure standards

(a) No Certificate of Need applications will be approved from any applicants with existing *[major violations of licensure standards, as determined by the Department, including but not limited to conditions which threaten the life and safety of patients or employees]* ***non-waiverable violations of licensure standards which, as determined by the Department, threaten the life and safety of patients.*** The only exception will be in the case of applications submitted for purpose of correcting such recognized major licensure deficiencies. ***An exception to this provision may also be granted for applications submitted for the closure or substantial reduction of underutilized beds, services, or equipment.***

SUBCHAPTER 3. THE REVIEW PROCESS

8:33-3.1 Development of applications

(a) Before filing an application, applicants are encouraged to contact the Health Systems Agency in the proposed service area to examine the relationship of the proposed project with the agency's plans, guidelines, and criteria. Applicants should refer to Exhibit 1 for information and assistance in determining how the proposed service area relates to the appropriate Health Systems Agencies. If the proposed service area overlaps more than one planning area, the applicant should work with each of the Health Systems Agencies.

(b) Separate applications shall be required for projects having component parts of such a nature where the Department determines that these component parts properly require a separate review under the review criteria.

(c) The Department of Health will not accept for review a resubmission of an application denied by the Health Care Administration Board until 90 days after its action unless new facts indicate a need has recently developed. The determination relating to the acceptability of the new facts will be made by the Department of Health.

8:33-3.2 Submission of applications; cycles

(a) When complete, three copies of the application shall be submitted to the appropriate Health Systems Agency(ies) simultaneously with eight copies to:

Certificate of Need Program
New Jersey State Department of Health
CN 360
John Fitch Plaza
Trenton, New Jersey 08625 (609) 292-6552

(b) There are 12 review cycles for non-batched Certificate of Need applications each year. The beginning of each cycle is the fifteenth day of each month. The Commissioner of Health should render a decision on or about the fifteenth day of the month, three months from the beginning of the review process.

8:33-3.3 Review for completeness

(a) The Department of Health shall make the determination of the completeness status of applications. Health Systems Agencies must provide the Department with written recommendations by the twentieth day of each month on the completeness of applications. The Department will review the Health Systems Agency recommendations and make a decision on completeness by the beginning of each review cycle and will notify both the applicant and the applicable Health Systems Agency(ies) in writing of its determination. Only complete applications will be processed. If an application has been determined incomplete, the Department shall notify the applicant and the appropriate Health Systems Agency(ies) citing the specific deficiencies in the application.

(b) Applications may be determined to be incomplete only once. After the applicant has forwarded the appropriate information, the application will be processed in the closest appropriate cycle beginning after receipt of the additional information.

(c) Once an application has been determined to be complete and submitted to the review process, no subsequent submission of information will be accepted, unless specifically requested in writing by the Department or the Health Systems Agency(ies). The Health Systems Agency questions and subsequent responses must be submitted to the Department on a timely basis.

(d) An application submitted in the incorrect batch or inappropriately requesting administrative review may be declared not accepted for processing by the Department of Health. The Department will notify the applicant of this decision and return the filing fee.

8:33-3.4 Notificaton to affected persons

(a) The Department of Health shall submit written notification to the Health Systems Agency for the health service area in which the proposed project is to be offered or developed and Health Systems Agencies serving contiguous health systems areas, of the beginning of a review and the proposed schedule for the review. Notification to members of the public will be provided through newspapers of general circulation.

(b) Upon receipt of a letter of intent to apply for a Certificate of Need, the Health Systems Agencies shall identify and notify all potential affected persons.

8:33-3.5 Role of the Statwide Health Coordinating Council

(a) The Statewide Health Coordinating Council shall act as

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the coordinating agency for the recommendations of the Health Systems Agencies, and other State departments as necessary in all substantive review matters.

(b) The Statewide Health Coordinating Council shall furnish written findings to the Commissioner which give the basis for any recommendations made by the council. Such written findings shall be forwarded to the Commissioners within 75 days after the beginning of a review cycle.

8:33-3.6 Procedures for state agency review

(a) Applicants are required to submit to the Department of Health (State Agency) in such form and manner, and containing such information as the Department shall prescribe and publish, such information as the Department may require concernaing the subject of such review. Such information requirements may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

(b) The Department of Health may require the submission of periodic reports by providers of health services and other persons subject to Certificate of Need requirements respecting the development of proposals subject to Certificate of Need review (see N.J.A.C. 8:33-1.3(q)).

(c) The Commissioner shall make his decision and supporting reasons in writing. The decision will be sent to the applicant and to the appropriate Health Systems Agency, and shall be available to others upon request. In the case of a project proposal of an HMO the decision will be sent to the regional office of the Department and Health and Human Services at the time these are sent to the applicant.

(d) The Commissioner may not make his final decision subject to any condition unless the condition directly relates to the criteria for State Agency Review (see N.J.A.C. 8:33-3.7), criteria prescribed by State regulation, promotes the legislative intent of the enabling legisation (Chapters 136 and 138, Laws of New Jersey 1971), or Public Law 93-641 as amended, or related to material presented in the application itself.

(e) The Department of Health shall notify, upon their request, providers of health services and other persons subject to Certificate of Need requirements of the status of the State Agency review of Certificate of Need project proposals, findings made in the coure of such review, and other information respecting such review.

(f) Pursuant to N.J.S.A. 26:2H-9, if the Commissioner disapproves a Certificate of Need application, the applicant shall be granted an opportunity for fair hearing to contest the Commissioner's action. In addition, the Statewide Health Coordinating Council and the Health Systems Agency shall be granted an opportunity for fair hearing when the Commissioner acts contrary to either of their recommendations concerning a Certificate of Need application.

(g) A request for a fair hearing shall be made to the Department of Health within 30 days of receipt of notification of the Commissioner's decision. The fair hearing shall be conducted according to N.J.S.A. 52:14F-1 et seq. and the uniform Administrative Procedure Rules of Practice (N.J.A.C. 1:1). The Health Care Administration Board within 30 days of receiving all appropriate hearing records or, in the absence of a request for a hearing within 30 days of receiving the denial recommendations of the Commissioner, shall make its determination.

(h) Any affected person may, for good cause shown, request of the State Agency in writing a public hearing for purposes of reconsideration of a final decision of the State Agency regarding a Certificate of Need application. A decision request for a public hearing shall be deemed to have shown good cause if it presents significant relevant information not previously considered, demonstrates that there have been significant changes in factors or circumstances relied upon in reaching the final decision, demonstrates that the State Agency has materially failed to follow its procedures in reaching the final decision or provides such other basis for a public hearing as the State Agency determines to constitute good cause. A request for such a public hearing must be received within 30 days of the Commissioner's decision. The public hearing shall commence within 30 days of receipt of the request. The State Agency shall make written findings which give the basis for its decision within 45 days after conclusion of such public hearing.

(i) Upon the request of any affected person, the decision of the Commissioner to issue, deny, or null and void a Certificate of Need or to grant or deny an exemption shall be administratively reviewed by the State Agency. The request must be received within 30 days of the Commissioner's decision, and the review must commence within 30 days of receipt of the request. The decision of the reviewing agency must be made in writing within 45 days after the conclusion of the review and shall be sent to the person proposing the project, the person requesting the review, the appropriate Health Systems Agency, and to others upon request. The decision of the reviewing agency shall be considered the final decision of the State Agency, unless the matter is remanded for further action or consideration.

(j) After the commencement of a public hearing in the course of review or a public hearing for reconsideration of a State Agency decision and before a decision is made, there shall be no ex parte contacts between any person cting on behalf of the applicant or holder of a Certificate of Need, or any person opposed to the issuance or in favor of nullification of a Certificate of Need and any person in the State Agency who exercises any responsibility for reviewing the application or nullification. Ex parte communication is defined as an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given. It shall not include requests for status reports on any matter or proceeding. Any communications made after commencement of the public hearing that are placed in the record of the proceedings are not ex parte and are not prohibited.

(k) If the State Agency's decision is contrary to the recommendation made by either the Health Systems Agency or the Statewide Health Coordinating Council, the State Agency shall submit to the appropriate organization a statement of the reasons for not accepting the recommendation. If the final decision is not consistent with the goals of the applicable health systems planor the priorities of the applicable annual implementation plan, the State Agency shall submit to the appropriate Health Systems Agency a written, detailed statement of the reasons for the variation.

(l) The determination of the Health Care Administration Board is the final decision of the State Agency where the Commissioner of Health has denied a project application or where his decision is contrary to the recommendation of the Statewide Health Coordinating Council or the Health Systems Agency and a fair hearing is requested and held. After the Health Care Administration Board has denied a project or acted contrary to the Statewide Health Coordinating Council or Health Systems Agency, such action may be appealed to the Appellate Division of the Superior Court.

(m) If the Department of Health determines that the holder of an approved Certificate is not making a good faith effort

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to implement the project, the Commissioner may, after considering any recommendation made by the appropriate Health Systems Agency, null and void the Certificate. Prior to such a determination, the Department must notify the holder of the Certificate of its intent to initiate the nullification process. The holder of the Certificate shall have 30 days from the date of such notice to submit written documentation regarding the significant or substantial progress (see N.J.A.C. 8:33-2.14(a)1 and 2) which has been made in implementing the Certificate. Therefore, the nullification process shall follow the procedure in N.J.A.C. 8:33-3.4 through 3.6.

8:33-3.7 Criteria for State Agency review

(a) Projects will be reviewed by personnel of the Department as deemed appropriate. Criteria adopted for reviews may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed. Review evaluation, and recommendations will be based upon the following:

1. The relationship of the health service being reviewed to the applicable health systems plan, annual implementation plan, State Health Plan, other State plans and policies, and State health planning regulations.

2. The relationship of services reviewed to the long range development plan (if applicable) of the applicant.

3. The availability of less costly or more effective alternative methods of providing the services to be offered, expanded, reduced, relocated, or eliminated.

4. The immediate and long-term financial implications of the proposal as well as the probable effect of the proposal on the costs of and charges for providing health services by the applicant proposing the service, and the probable effect on the costs of providing services within the health delivery system in the area and the State. These financial implications include, but are not limited to:

i. Capital costs;

ii. Operating costs;

iii. Income to at least one year beyond break-even; and

iv. Estimated impact on the costs and revenues of other providers of the same service to the same service area.

5. The need that the population served or to be served has for the services proposed and the extent to which all residents of the area will have access to those services, particularly low income persons, racial and ethnic minorities, women, handicapped persons, other underserved groups, and the elderly.

i. In the case of a reduction or elimination of a service, including the relocation of a facility or service, the need that the population presently served has for the service, the extent to which that need will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability to obtain needed health care of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups, and the elderly.

6. The contribution of the proposed service in meeting the health related needs of members of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services (for example, low income persons, racial and ethnic minorities, women, and handicapped persons), particularly those needs identified in the applicable health systems plan, annuall implementation plan, and State Health Plan and State health planning regulations as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the State Agency shall consider:

i. The extent to which medically underserved populations currently use the applicant's service in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved;

ii. The performance of the applicant in meeting its obligation, if any, under any applicable Federal regulations requiring provision of uncompensated care, community services, or access by minorities and handicapped persons to programs receiving Federal financial assistance (including the existence of any civil rights access complaints against the applicant);

iii. The extent to which Medicare, Medicaid and medically indigent patients are served by the applicant;

iv. The ways the applicant offers a range of means by which a person will have access to its services (e.g., outpatient services, admission by house staff, admission by personal physician); and

v. How and to what extent the applicant will provide services to the medically indigent.

7. The relationship of the services proposed to be provided to the existing health care system of the area in which the services are proposed to be provided.

8. The availability of resources (including health personnel, management personnel, and funds for capital and operating needs) for the provision of the services proposed to be provided and the need for alternative uses of these resources as identified by the applicable health systems plan, annual implementation plan, State Health plan, and State health planning regulations.

9. The possible economies and improvements in services to be anticipated from the operation of joint central services for the regionalization of services.

10. The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services, if applicable.

11. The extent to which the health professions school and professional training in the area will have access to the services for training purposes if it is a regional service.

12. Special needs and circumstances of those applicants which provide a substantial portion of their services on a Statewide or regional basis.

13. The special needs and circumstances of HMOs. These needs and circumstances shall be limited to:

i. The needs of enrolled members and reasonably anticipated new members of the HMO for the proposed health services proposed to be provided by the organization; and

ii. The current availability of the new health service from non-HMO providers or other HMOs in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO. In assessing the availability of these health services from these providers, the agency shall consider only whether the services from these providers:

(1) Would be available under a contract of at least five years' duration;

(2) Would be available and conveniently accessible through physicians and other health professionals associated with the HMO. (For example—whether physicians associated with the HMO have or will have full staff privileges at a non-HMO hospital);

(3) Would cost no more than if the services were provided by the HMO; and

(4) Would be available in a manner which is administratively feasible for the HMO.

14. The special needs and circumstances of biomedical and

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behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.

15. In the case of a construction project:

i. The costs and methods of the proposed construction, including the costs and methods of providing and conserving energy; and

ii. The probable impact of the construction project reviewed on the costs of providing health services by the person prposing the construction project and on the costs and charges to the public of providing health services by other persons.

16. The special circumstances for conserving energy.

17. The estimated impact on price competition for the service in comparison to the health care delivery system taken as a whole, including physician charges.

18. Improvements or innovations in the financing and delivery of health services which foster competition while maintaining quality and cost effectiveness.

19. The efficiency and appropriateness of using existing services and facilities similar to those proposed.

20. Evaulating the character and competence of the sponsor(s) based upon State licensure, survey records, or other information of State regulatory agencies.

21. Such other factors as may be established by regulation.

22. In the case of existing services or facilities, the documented quality of care provided by those facilities in the past.

23. When an application is made by an osteopathic or allopathic facility for a Certificate of Need to construct, expand, or modernize a health care facility, acquire major medical equipment, or add services, the need for that construction, expansion, modernization, acquisition of equipment, or addition of services shall be considered on the basis of the need for and the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. The State Agency shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels.

24. All access factors identified at N.J.A.C. 8:33-2.1.

8:33-3.8 Required findings on access

(a) For each project it approves, the State Agency shall make a written finding (which shall take into account the current accessibility of the facility as a whole) on the extent to which the project will meet the State Agency's criteria as specified in N.J.A.C. 8:33-2.1, 3.7(a)5 and 6 except in the following cases:

1. Where the project has been determined by a State or Federal agency to be mandatory; or

2. Where the project is a proposed capital expenditure not directly related to the provision of health services or to beds or major medical equipment; or

3. Where the project is projected by or on behalf of an HMO or a health care facility which is controlled, directly or indirectly, by an HMO.

(b) In any case where the State Agency finds that an approved project does not satisfy the State Agency's criteria based on the considerations in N.J.A.C. 8:33-3.7(a)5 or 6, it may, if it approves the application, impose the condition that the applicant take affirmative steps to meet those criteria.

(c) When this written finding is required, the State Agency, in evaluating the accessibility of the project, must take into account the current accessibility of the facility as a whole. If the State Agency disapproves a project for failure to meet the need and access criteria, it must so state in its written findings.

(d) In any case where the State Agency finds that a project does not satisfy the State Agency's criteria based on the considerations in N.J.A.C. 8:33-3.7(a)5 or 6, it shall so notify in writing the applicant and the appropriate Regional Office of the Department of Health and Human Services.

8:33-3.9 Functions of health systems agencies

(a) Each Health Systems Agency shall have as its primary responsibility the provision of effective health planning for its health service area and the promotion of the development within the area of health services, manpower, and facilities which meet identified needs, reduce documented inefficiencies, and implement the health plans of the agency. Proposed projects must be reviewed and recommendations developed in conformity with the health systems plan and annual implementation plan of the agency. Recommendations need not be based solely on policies established by the State or the Commissioner of Health since this would remove the consideration of areawide or local needs or circumstances from the review process.

(b) The specific responsibilities or activities expected of Health System Agencies are:

1. Assistance to the sponsor in the completion of appropriate application forms.

2. Written notification to affected persons of the beginning of a review, which shall include notification of the proposed schedule for the review, of the period within which a public hearing may be requested by persons directly affected by the review, and of the manner in which notification will be provided of the time and place of any hearing so requested.

3. Provision for public hearing in the course of agency review if requested by one or more persons directly affected by the review.

4. Evaluation of the public need for each proposal with general consideration given to the items specified in the criteria for State Agency review (N.J.A.C. 8:33-3.7).

5. Provision for written findings which give the basis for any decision or recommendation made by the Health Systems Agency. Such findings must include the items specified in the required findings on access (N.J.A.C. 8:33-3.8).

6. Evaluation of the public need for each proposal with special consideration given to:

i. The conformity of the proposal with locally developed criteria and guidelines for planning health facilities, including conformity to local zoning requirements;

ii. The unique population characteristics of the service area involved, considering how it might affect the local demand for service including:

(1) The age-sex composition of the population;

(2) Changes in the population;

(3) The educational/employent level of the population;

(4) The population density and housing pattern of the area;

(5) Factors affecting travel and travel time in the area.

iii. The unique economic characteristics of the service area involved, vis-à-vis the proposal, including:

(1) The availability of disposable income;

(2) The availability of third party payment mechanisms;

(3) The availability of alternate service programs;

(4) The accessibility of and availability of health care services to medically underserved persons.

iv. The conformity of the proposal with the State Health Plan, the State Medical Facilities Plan, State planning regulations, and other applicable State criteria. If a waiver to a regulation or plan is requested, the following shall apply:

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(1) Waivers to a planning regulation will be granted only if permitted in the language of the regulation itself. Waivers to the State Health Plan, State Medical Facilities Plan, or other applicable criteria will be considered only where justified on the basis of unique reasons. Such a waiver only will apply to the specific project under review. Reasons for the waiver must be specified in writing by the Health Systems Agency to the Department.

(2) Where a Health Systems Agency board agrees that a waiver is justified, it must offer in the Health Systems Agency project abstract its specific reasons for supporting the waiver request.

(c) The following activities are not the responsibility of the Health Systems Agencies:

1. Involvement in architectural plans review of approved projects.

2. Construction monitoring of approved projects.

3. Determining compliance with Departmental licensure requirements.

(d) The following activities are not the primary responsibility of the Health Systems Agencies:

1. Evaluating the character and competence of the sponsor(s) based upon State licensure, survey records, or other information of State regulatory agencies.

2. Evaluating the financial competence of the sponsor(s) and the feasibility of the proposal based upon the records of the Health Economics Program of the Division of Health Planning and Resources Development.

(e) After the Health Systems Agency has completed its primary responsibility it may submit comments on N.J.A.C. 8:33-3.9(d) if it has the capabilities and time to do so.

(f) The Health Systems Agency may recommended changes in an application deemed complete and not subject to batching (as defined at N.J.A.C. 8:33-1.5(d)) as long as such recommended changes are within the limits identical to an administrative review. The Health Systems Agency and the applicant must inform the State in writing of any such changes at least one week before the Statewide Health Coordinating Council's Review Committee meeting.

8:33-3.10 Modification of applications

(a) No application for Certificate of Need shall be modified or altered by an applicant after the deadline date for application submission. Additional information shall be permitted only in direct response to written questions submitted to the applicant by the Department or the Health Systems Agency(ies) as specified at N.J.A.C. 8:33-3.3(c).

(b) Under no circumstances may an application be modified or altered to change the number or category of inpatient beds or any services after the application submission deadline date. An applicant desiring to make such a modification or alteration shall be required to withdraw the application from the current cycle and submit a new application for the next monthly review cycle or the next batch.

(c) Exceptions to (a) and (b) above may only be permitted in the case where a non-batched application is modified or altered in a non-substantive way in the Health Systems Agency review process. Non-substantive shall mean that the modification or alteration, if proposed separately, would either not require a Certificate of Need review or would only require a review through the administrative process (see N.J.A.C. 8:33-3.9(f)).

8:33-3.11 Deferral of applications

(a) An applicant may request a deferral for up to a total of four months or, for batched applications, into the next batch, whichever is shorter. If the applicant fails to reactivate the application within this time frame it will be declared withdrawn.

(b) The Health Systems Agency, the Statewide Health Coordinating Council or its Review Committee, or the Department may request an applicant to defer the review. Acceptance of such request for deferral is the option of the applicant. If an applicant does not accede to the deferral request the application shall continue under review. In batched applications, *[all applicants in the batch and within the same service area or county must accede to a request for deferral or none may be deferred. The only exception shall be when an appliant accedes to a deferral with the explicit understanding that other applications in the same batch and service area or county may continue to be processed.]* ***the deferral shall be into the next review cycle for that batched service.***

(c) An applicant may accept a deferral request by one or more of the review agencies identified at 8:33-3.11(b) for a period not to exceed one year. Such a deferred applicant may be required by the Department to submit updated information prior to reactivation of the application. If for any reason such a deferred application is not acted on within the one year period, the applicant will be required to submit a new application.

1. Reactivated applications with no changes or with only a change in cost shall continue in the review process from the point of deferral.

2. Reactivated applications with any change in project scope will be treated as a new application and subject to full review beginning at the local level.

(d) When a deferral is requested or accepted by an applicant, the applicant shall provide written confirmation.

(e) The Department of Health will not accept any requests for a deferral once the Statewide Health Coordinating Council's Review Committee has made its recommendation.

8:33-3.12 Conditions on approval

(a) Conditions may be placed on Certificate of Need approval if they relate to material presented in the application itself, are prescribed in State regulation, relate to the criteria specified in N.J.A.C. 8:33-3.7, or promote the intent of Chapters 136 and 138, Laws of New Jersey 1971 (N.J.S.A. 26:2H-1 et seq.).

(b) Any conditions, placed on a Certificate of Need approval shall become part of the licensure requirements of the approved facility.

(c) When conditions are included in the Commissioner of Health's approval letter, the applicant must file a progress report on meeting such conditions with the Certificate of Need Program at least 12 months from the date of approval and at any other time when requested by the Department in writing. Failure to file such reports may result in the nullification of the approved Certificate of Need or fines and penalties imposed through licensure action.

SUBCHAPTER 4. ADMINISTRATIVE REVIEW PROCESS

8:33-4.1 Statement of purpose

(a) The administrative review process may be used in the following situations:

1. Emergency situations which demand rapid action;

2. The size of the project in relation to that of the facility argues against major expenditure of effort in review; and,

3. The Commissioner determines that, flexibility of the review process is critical.

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(b) Applications will be reviewed to determine the completeness of the required information.

(c) The appropriate Health Systems Agency(ies) shall be notified prior to the beginning of the administrative review process.

(d) The timetable for the review period is as follows:

1. Deadlines for initial submission of applications shall be no later than the fifteenth day of the month preceding the beginning of a review cycle.

2. Within *[30]* **15** days of the end of the filing deadline, the Department shall notify the applicant of the completeness status of the application.

3. A decision by the Commissioner of Health is generally forthcoming within 45-60 days. The appropriate Health Systems Agency(ies) will be notified of this decision.

(e) Administrative reviews do not include the Statewide Health Coordinating Council. The Health Systems Agency has the option of reviewing applications under the administrative review process but must do so within the identified time frames.

(f) The determination of whether or not a project is eligible for processing under the administrative review process rests with the Department of Health.

(g) Applications for administrative review may be obtained from and must be filed with:

Certificate of Need Program
New Jersey State Department of Health
CN 360
Health-Agriculture Building
John Fitch Plaza
Trenton, New Jersey 08625 (609) 292-6552

8:33-4.2 Transfer of ownership/services

(a) Only the ownership of an existing, licensed health care facility, or licensed, existing beds, services, or equipment is transferable.

(b) Minimum information required for review shall include the following:

1. Trade name of facility.

2. Indication of type of facility, i.e. nursing home, hospital, etc.

3. Corporations:

i. For privately held corporations, information required for review shall include:

(1) Latest financial statements of the existing health care facility.

(2) Latest Medicaid cost report, if any, of the existing health care facility.

(3) Current rates and other charges.

(4) List of all present stockholders, percentage of shares held, names of directors and officers before acquisition or transfer.

(5) Change of directors, officers, leases and/or operator(s) if any, due to acquisition or transfer, including changes resulting from leases or similar transactions.

(6) Where interests is being acquired by transfer, list name or names of all stockholders transferring, percentage of interest before transfer, percentage of interest being transferred; list all parties to whom interest is transferred and the percentage of interest each will hold.

(7) Name of legal counsels if any, representing parties transferring under (b)3i.(6) above.

(8) List any financial business transactions the prospective owner and/or operator and lessee(s), if any, has had directly or indirectly with the health care facility within the last three years.

(9) List number of patient days, staffing pattern and operating expenses for the most current year prior to the transfer and the first full yer after the transfer occurs.

ii. For public corporations, information required for review shall include:

(1) Items in (b)3i.(1) through (3), (5), and (8) through (9) above required by privately held corporations must be completed;

(2) Where interest is not being purchased on a public exchange, list name or names of stockholders transferring, percentage of interest before transferred, percentage of interest being transferred by each; list all parties to whom interest is transferred and the percentage of interest each will hold.

(3) Name of legal counsel, if any, representing parties transacting under (2) above.

iii. For newly formed or existing corporations purchasing physical assets, information required shall include:

(1) Copy of contract of purchase.

(2) Items in (b)3.i(1) through (3), (5), and (8) through (9) above required by privately held corporations must be completed; list all parties to whom interest is transferred and the percentage of interest each will hold.

(3) Financial statements of newly formed or existing corporations before acquisition of physical assets.

(4) Pro-forma statements reflecting cost of physical assets at acquisition.

(5) Name of Legal Counsels representing parties.

4. For partnerships, information required for review shall include:

i. Latest financial statements of the existing health care facility;

ii. Latest Medicaid cost report, if any, of the existing health care facility;

iii. Current rates and other charges;

iv. List of present partners, percentage of capital interest;

v. List of partners and/or operators and/or lessees after acquisition and percentage of capital interest being transferred by each;

vi. List of all partners after transfer, percentage of capital interest, name of partner or partners transferring, percentage of capital interest being transferred by each;

vii. Name of legal counsel, if any, representing parties transacting under subparagraph v. or vi. of this paragraph;

viii. List any financial business transactions the prospective partner and/or lessee, and/or operator has had directly or indirectly with the health care facility within the last three years;

ix. List number of patient days, staffing pattern and operating expenses before the transaction and projected.

5. For newly formed or existing partnership purchasing physical assets, information required shall include:

i. Copy of contract of purchase;

ii. Subpargraphs (b)4 i.-iv., vi., and viii.-ix. above must be completed;

iii. Financial statements of newly formed or existing partnership before acquisition of physical assets;

iv. Pro-forma and appraisal statements reflecting cost of physical assets at acquisition;

v. Name of legal counsel representing parties.

6. For Proprietorships, information required for review shall include:

i. Copy of contract of purchase;

ii. Latest financial statements of the existing health care facility;

iii. Latest Medicaid cost report, if any, of the existing health

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care facility;

iv. Current rates and other charges;

v. Financial statement of prospective owner and/or lessee and/or operator prior to acquisition, including changes resulting from leases or similar transactions;

vi. Pro-forma statements reflecting cost of physical assets at acquisition;

vii. Name of legal counsels representing parties;

viii. List any financial transactions the propsective owner and/or lessee and/or operators have had directly or indirectly with the health care facility within the last three years;

ix. List number of patient days, staffing pattern and operating expenses before the transaction and projected.

7. Give a complete description of the financing of the acquisition or transfer:

i. Where payment is made in full or in part with other than cash give description of item or items, date acquired, cost at acquisition, depreciation, if any, and method of determining payment value if greater than book value. State if prospective owner (stockholders, partnership, or individual) ever had directly or indirectly an interest in the item or items being transferred;

ii. A schedule of long term loans, mortgages, notes and other payables owed by the prospective owners;

iii. A list of names and addresses of individuals, partnerships or corporations holding the liabilities. Identify amount, method of payment, and any interest thereon.

8. A description of any lease or rental arrangements and a copy of documentation of such arrangements.

9. A copy of the latest governmental property tax assessment which indicates the value of the facility and land.

(c) The following principles shall apply in the review of applications for the transfer of services from an acute care hospital:

1. A Certificate of Need is required whenever a hospital wishes to transfer to another corporate entity, in whole or in part, any patient care service as defined in N.J.A.C. 8:33 (Exhibits 3A and 3B).

2. The applicant must document in writing in the application that the following will be the policy at the transferred service:

i. Any such service transferred in whole must provide indigent care at the same level as provided for that same service in the two (2) years preceding the application or at a level commensurate with other hospitals in the area over the preceding two years, whichever is greater.

ii. Any such service transferred in part must, together with the applicant hospital, provide in the aggregate the same level of indigent care as provided for that same service in the two years preceding the application or at a level commensurate with other hospitals in the area over the preceding two (2) years, whichever is greater.

3. The applicant must document at the time of application that implementation of the proposed transfer of service will not violate any bond covenant or any loan and security agreement between itself and the New Jersey Health Care Facility Financing Authority or any other financing agency.

4. At the time of application, the applicant must provide a quality assurance and review program for the health services to be provided and agree in writing that such a program will be implemented at the proposed service.

5. No portion of the operating or capital costs incurred by or related to the proposed service will be incorporated into rates approved for the acute care hospital transferring the service. Any losses generated by this proposed service cannot be used as a justification for increases in the rates of the acute care hospital transferring the service.

6. It is expected that any surpluses generated from the operation of the transferred service will be dedicated to support, either directly or indirectly, health care services provided by either the hospital from which the services were transferred or by the entity actually providing the transferred service.

(d) Applications shall be reviewed by appropriate staff within the Department of Health for the purpose of providing information to the Commissioner to assist in the final decision.

(e) As identified at N.J.A.C. 8:33-2.10 the transfer of ownership of any licensed general acute care hospital, special hospital and psychiatric hospital shall follow the full review process and may not be processed under administrative review.

(f) Within 45 days after initiation of the review cycle, a decision from the Commissioner shall be forthcoming.

8:33-4.3 Mandatory replacement of equipment and renovations to existing facilities

(a) When the health and safety of the patient is immediately at risk, and the capital costs exceed the thresholds identified in Subchapter 1 of this Chapter, an application for administrative review must be filed.

(b) Minimum information required for review shall consist of:

1. A project description, captial cost and operating cost, square footage (if any), service(s) affected, completion date, equipment involved, source of funds and other relevant information.

2. Justification for the proposed project should include:

i. An explanation of the mandatory nature of the replacement, including opinions regarding hazards and safety effects upon patient care by experienced professionals, or notification from Federal, State, county or municipal governmental agencies. The Department shall make the determination about the mandatory nature of the project;

ii. A narrative explanation of how the project will foster economies, if any, within the patient charge structure;

iii. Utilization statistics both inpatient and outpatient that demonstrate the necessity for the equipment or structure;

iv. Age of equipment to be replaced and/or structure to be renovated.

(c) Applications shall be reviewed by appropriate staff within the Department of Health for the purpose of providing information to assist the Commissioner in making the final decision.

(d) Within 45 days after initiation of the review cycle, a decision from the Commissioner shall be forthcoming.

8:33-4.4 Optional replacement of equipment

(a) Applicants may request replacement equipment acquisitions to be reviewed under the administrative review process.

(b) The administrative review process may be used only if the new equipment maintains existing capability and does not include upgrading to a newer technology that expands the range of service.

(c) The Department, in consultation with the appropriate Health Systems Agency(ies), shall determine during the completeness review period whether or not the application shall be reviewed under the administrative review process. If it is determined that an administrative review is not appropriate, the applicant shall be notified in writing after the completeness review period. The applicant may elect to have the application

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be reviewed under the full review process and submit the required additional filing fee; or the applicant may elect to withdraw the application and submit a new one. In either event, if the application is deemed to require a full review, it will, if applicable, fall under the batching requirements identified at N.J.A.C. 8:33-1.5(d).

(d) Minimum information required for review shall consist of:

1. An explanation of what is to be done, square footage (if any), services affected, completion date, equipment involved, source of funds, and other relevant information;

2. A description of why the present equipment must be replaced, including age of equipment, downtime, repair costs, and safety factors.

3. Utilization statistics, both inpatient and outpatient, that demonstrate the necessity for the equipment to be maintained.

4. Identification of the capital costs, operating costs and revenues, if appropriate, to one year beyond break-even. Also, identification of all cost savings, if appropriate.

5. An explanation of the disposal of the equipment that is being replaced. If the equipment will be retained for "back-up", the new equipment shall be considered an addition to the service and shall not be eligible for consideration under the administrative review process.

(e) Applications shall be reviewed by appropriate staff within the Department for the purpose of providing information to assist the Commissioner in making the final decision.

(f) Within 45 days after initiation of the review cycle, a decision from the Commissioner shall be forthcoming.

8:33-4.6 Expenditures for studies, surveys, designs, architectural drawings and so forth under $150,000 but more than $50,000

(a) Minimum information required shall consist of:

1. The purpose of study.

2. The source of funds.

3. The name and address of consulting firm, if any, with which the facility has contracted or anticipates to contract and reasons for use of an outside consultant.

4. The amount to be expended.

(b) Applications shall be reviewed by appropriate staff within the Department of Health for the purpose of providing information to assist the Commissioner in making the final decision.

(c) Within 45 days initiation of the review cycle, a decision from the Commissioner shall be forthcoming.

8:33-4.5 Extensions of implementation dates

(a) A request for an extension of the time set in the Commissioner's letter of approval to implement a project must be filed at least 60 days prior to such deadline.

(b) A request for an extension of time may be granted only if the applicant has documentated that substantial progress towards completion of the project has occured. Substantial progress is defined at N.J.A.C. 8:33-2.14(a)2.

(c) A copy of the request for the extension shall be filed with the appropriate Health Systems Agency(ies). Such agency shall forward its recommendation to the Department.

(d) Minimum information required for review includes:

1. Date of original approval.

2. Information delineating previous extensions requested and approved.

3. Amount of additional time requested.

4. Reasons justifying necessity for extension:

i. Such reasons should include any supporting documentation such as letters from zoning boards, licensure departments, municipalities, or other regulatory bodies.

(e) Applications shall be reviewed by appropriate Departmental staff, and Health Systems Agencies who shall report to the Certification of Need Program within 45 days after receipt of a completed application.

(f) Within 45 days after initiation of the review cycle, a decision from the Commissioner shall be forthcoming.

8:33-4.7 Change in cost, financing or scope

(a) Approved applicants whose projects increase in cost as defined in Subchapter 1 of this chapter and/or whose total square footage changes as defined in N.J.A.C. 8:33-2.11(a)3.v. must file for a change in cost and/or scope.

(b) Minimum information required includes:

1. New project costs by category, that is, architectural fees, major moveable equipment, renovation contracts, and so forth; new square footage.

2. Justification for increase by category including such factors as but not limited to economic factors, licensure requirements, grant requirements, and so forth; justification for any changes in total square footage.

3. If there is to be a new financing alignment, describe what it will be with supporting documentation and the reasons for the change.

(c) The Certificate of Need Program shall circulate to appropriate staff the change in cost applications for review and comment and forward to the Commissioner of Health for a final decision.

(d) Within 45 days after initiation of the review cycle, a decision from the Commissioner shall be forthcoming.

8:33-4.8 Change in the number of categorically licensed beds; increase in total number of residential health care beds up to 10 beds or 10 percent whichever is less

(a) Applicants for a change in the number of categorically licensed beds as defined in Subchapter 1 of this chapter may file for an administrative review.

(b) Minimum information required includes:

1. Number of beds to be reclassified by licensed category; or,

2. Number of residential health care beds to be added.

3. Such factors as necessary to justify the project including description of service area, effect on operating expenses, current utilization rates and utilization trends by service, required changes in staffing patterns, assurances that the impact on existing and approved facilities will foster optimum utilization and factors affecting travel time in area and availability of manpower for staffing.

(c) Applications shall be reviewed by appropriate Departmental staff and community Health Systems Agencies who shall respond to the Certificate of Need Program within 20 days upon receipt of a complete request.

(d) Within 60 days after initiation of the review cycle, a decision from the Commissioner shall be forthcoming.

8:33-4.9 Decrease in total number of licensed beds

(a) Applicants for a decrease in the total number of licensed beds as defined in Subchapter 1 of this chapter may file for an administrative review.

(b) Minimum information required includes:

1. Explanation of beds by service involved in the project, number of beds affected, services affected, and total number of beds available at the completion of the project.

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2. Description of service area to be affected, including such demographic information as necessary to justify the program.
3. Impact on existing facilities in the service area.
4. Utilization and utilization trends for all services affected by the change.
5. Required changes in staffing patterns.
6. Effect on operating expenses.
(c) Applications shall be reviewed by appropriate Departmental staff and Health Systems Agencies who shall respond to the Certification of Need Program within 45 days after receipt of a completed application.
(d) Within 60 days after initiation of the review cycle, a decision from the Commissioner shall be forthcoming.

8:33-4.10 Mandatory new health care services
(a) When it becomes necessary to implement a new health care service as a result of Federal, State, county or municipal governmental requirements, applicants may file for an administrative review.
(b) Minimum information required for review includes:
1. An explanation of the proposed service.
2. Documentation of the mandatory nature of the service.
3. Cost impact information which includes capital costs, operating costs and revenues to one year beyond break-even.
4. Projected utilization statistics.
(c) The Department shall determine the mandatory nature of the project.
(d) Application shall be reviewed by appropriate staff within the Department of Health for the purpose of providing information to assist the Commissioner in making the final decision.
(e) Within 45 days after initiation of the review cycle, a decision from the Commissioner shall be forthcoming.

8:33-4.11 Telephone systems and computer systems
(a) Applicants for telephone and computer systems may file for an administrative review.
(b) Minimum information required for review includes:
1. Type of equipment to be acquired.
2. Total purchase cost value, financing arrangements, and financing sources.
3. Utilization statistics, both inpatient and outpatient, that show the necessity for the equipment to be acquired and maintained.
4. Effect of the acquisition on the economics of the cost center where it will be placed and the effect on the patient charge structure.
(c) Applications shall be reviewed by appropriate staff within the Department of Health for the purpose of providing information to assist the Commissioner in making the final decision.
(d) Within 60 days after initiation of the review cycle, a decision from the Commissioner shall be forthcoming.

8:33-4.12 Demonstration or research project
(a) Applicants for a demonstration or research project may file for an administrative review. It is mandatory that an applicant verify in writing with the Department that the proposed project may be considered as a demonstration or research project (see N.J.A.C. 8:33-2.12).
(b) Minimum information required shall be:
1. A completed Certificate of Need application form.
2. The project narrative must address the specific criteria and standards for licensure which will be studied, if appropriate.
3. The duration of the demonstration period must be specified.
4. The evaluation criteria must be specified.
(c) The review process rules are as follows:
1. Simultaneously with the filing of an application with the Certificate of need program, a copy shall be sent to the Health Systems Agency in which the project is located. The Health Systems Agency will forward its recommendation to the Commissioner within 30 days after receipt of the application.
2. If appropriate, the Commissioner of Health shall appoint an advisory committee for the project. If the advisory committee is appointed to review the application, it will forward its comments directly to the Commissioner within 30 days after receipt of the application.
(d) Within 45 days after initiation of the review cycle, a decision from the Commissioner shall be forthcoming if it is done under administrative review.
(e) Evaluation period rules are as follows:
1. An approved Certificate of Need for a demonstration or research project shall be conditionally issued for the life of the project. During the conditional period, the Alternative Health Systems program will monitor the project and make reports when necessary to the Commissioner. Project evaluation reports will be solicited from the Health Systems Agency in which the project is located. Copies of all project evaluation reports will be sent to all the health systems agencies for information purposes.
2. Upon completion of the demonstration period, final project reports including any evaluations conducted will be submitted by the project director and Department staff to the Commissioner, the advisory committee and the Health Systems Agencies.
3. The Advisory Committee will review and advise the Commissioner on each demonstration or research project which has shown unproductive results. The Commissioner may consider this advice and any other pertinent data before making a final determination of revocation of a Certificate of Need.
4. After the demonstration period, if the project has been determined successful, the State Licensing, Certification and Standards Service will be requested to develop criteria and standards for licensure, when appropriate.

8:33-4.13 Energy conservation projects
(a) When an applicant wishes to expend capital funds in excess of the criteria outlined in N.J.A.C. 8:33-1 and 2 and the project exclusively involves energy conservation, such applicant may file for administrative review.
(b) Minimum information required for review includes:
1. An explanation of what is to be done, including capital cost and operating cost, square footage (if any), completion date, materials used, equipment involved, source of funds and other relevant information.
2. Justification for the proposed project should include:
i. A narrative explanation that documents that the facility has established an energy data baseline which is normalized for climatic changes;
ii. A narrative explanation of how the proposed project will influence the normalized energy data baseline;
iii. An explanation of how the existing recommendations for energy conservation opportunities for the area to be renovated will be affected by the current application.
(c) Applications shall be reviewed by appropriate staff within the Department of Health for the purpose of providing information to assist the Commissioner in making the final decision.
(d) Within 45 days after initiation of the review cycle, a decision from the Commissioner shall be forthcoming.

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8:33-4.14 Relocation of an approved project within the same county

(a) Applicants for the relocation of an approved project within the same county may file for an administrative review provided that the relocation is not from a municipality with a population greater than 50,000. However, as indicated at N.J.A.C. 8:33-2.11(a)3.iv, after consultation with the appropriate Health Systems Agency concerning access, the Department may determine that the proposed relocation shall be subject to full review.

(b) Minimum information required for review includes:

1. An explanation of what is to be done and a justification of the proposed relocation. This shall include the effects of the relocation on capital and operating costs; financing; access of the population the original approval was to serve; programmatic or service changes; and changes in patient mix, charges, or fees.

2. Impact on existing facilities in the proposed new location.

3. Revised dates of implementation of the Certificate.

(c) the Certificate of Need Program shall circulate to appropriate staff such applications for review and comment and forward to the Commissioner of Health for a final decision.

(d) Within 45 days after initiation of the review cycle, a decision from the Commissioner shall be forthcoming.

8:33-4.15 Architectural and cost review of hospital construction/modernization/renovation projects

(a) After a hospital applicant has satisified the requirements identified at N.J.A.C. 8:33-2.7(a)11 for projects with a total project cost of 10 million dollars or more, such applicant shall file for the administrative review of the specific construction/modernization/renovation option chosen.

(b) Minimum information required includes:

1. Outline of all construction options that were considered.

2. Reasons that the specific option requested for review was chosen.

3. Capital cost estimates for all options.

4. Operating cost estimates for all options.

(c) Applications shall be reviewed by appropriate staff within the Department of Health for the purpose of providing informatin to assist the Commissioner in making the final decision.

(d) Within 90 days after initiation of a review cycle, a decision from the Commissioner shall be forthcoming.

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EXHIBIT 1

HEALTH SERVICE AREAS FOR THE STATE OF NEW JERSEY

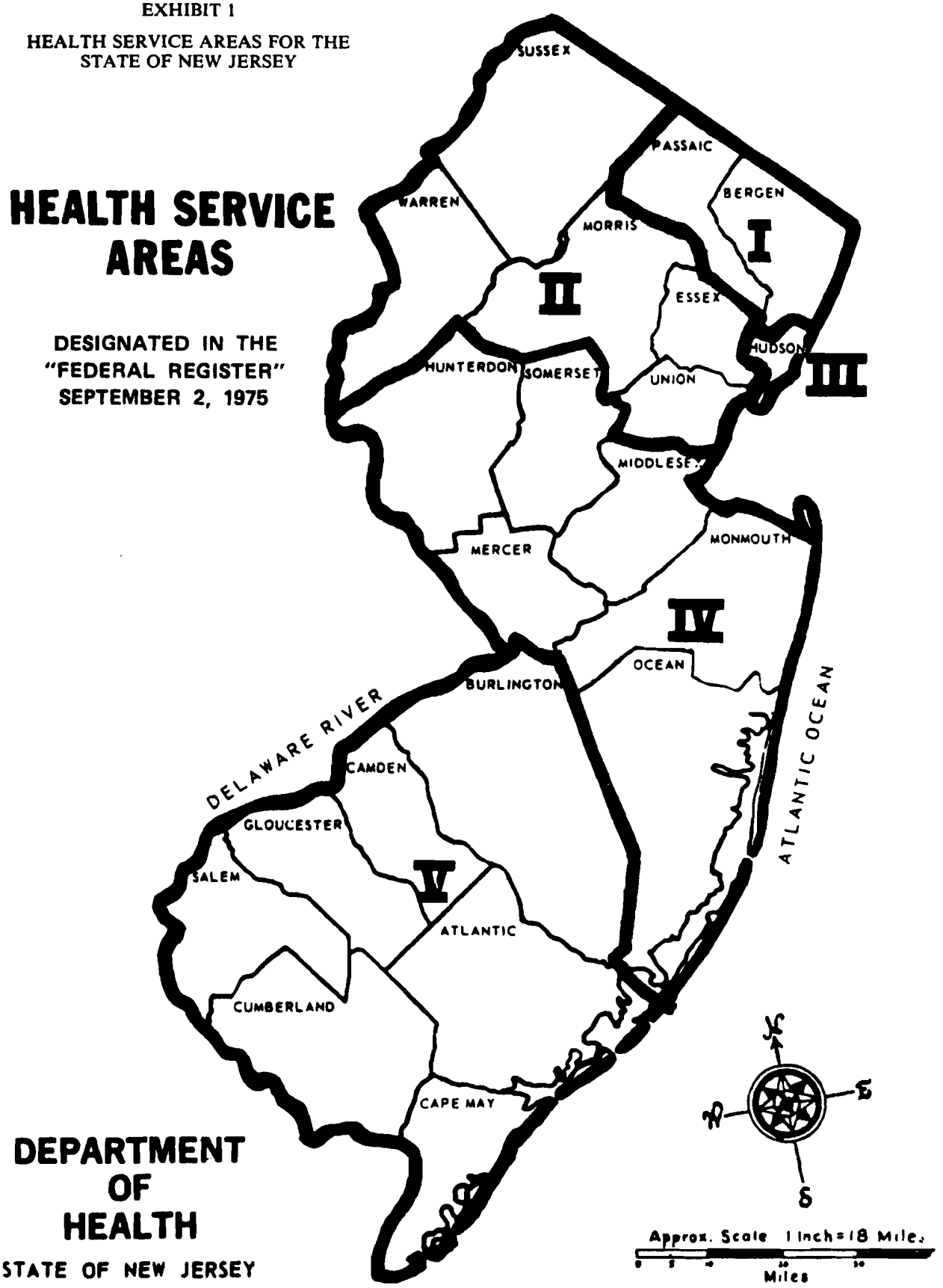

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EXHIBIT 2

HEALTH SYSTEMS AGENCIES IN NEW JERSEY

AREA I	Bergen-Passaic Health Systems Agency 15-01 Broadway Fairlawn, New Jersey 07410 Marvin Burton, Executive Director (201) 794-8640	Bergen Passaic
AREA II	Regional Health Planning Council 8-10 Park Place Newark, New Jersey 07102 Martin Parker, Executive Director (201) 622-3280	Essex Morris Sussex Union Warren
AREA III	Hudson Health Systems Agency 871 Bergen Avenue Jersey City, New Jersey 07306 Jesse Huang, Executive Director (201) 451-5024	Hudson
AREA IV	Central Jersey Health Planning Council, Inc. CN 5259 Princeton, New Jersey 08540 Edward Peloquin, Executive Director (609) 452-2320	Mercer Middlesex Monmouth Hunterdon Ocean Somerset
AREA V	Southern NJ Health Systems Agency, Inc. Kor-Center East Interstate Industrial Park Belmar, New Jersey 08030 Daniel Apostolu, Executive Director (609) 933-0641	Atlantic Burlington Camden Cape May Cumberland Gloucester Salem

EXHIBIT 3A

STANDARD CATEGORIES OF HEALTH CARE SERVICES

Note: The installation or implementation of any of the specified health care services as shown below, which have not been previously provided by the health care facility will require a Certificate of Need. Please refer to Exhibit 3B for a sample listing of health services which lie within the STANDARD CATEGORIES.

A. Bed-related
1. Medicine, surgery
2. Obstetrics, gynecology
3. Pediatric
4. Intensive care (ICU)
5. Cardiac care (CCU)
6. Rehabilitation
7. Long term care
8. Residential health care
9. Adult acute psychiatric
10. Adult sub-acute psychiatric
11. Children's acute psychiatric
12. Children's sub-acute psychiatric
13. Alcohol detoxification
14. Alcohol residential treatment
15. Drug free residential (therapeutic community)

B. Non-bed-related
1. Outpatient and clinic services
2. Emergency room services
3. Diagnostic radiology
4. Nuclear medicine
5. Laboratory services
6. Physical medicine
7. Dentistry
8. Vocational/disability services
9. Social services
10. Home health agency
11. Drug rehabilitation—outpatient drug free
12. Alcohol rehabilitation
13. Free-standing health screening centers
14. Mobile multiphasic health testing services
15. Outpatient mental health care
16. Partial hospitalization
17. Mental health emergency/screening
18. Drug rehabilitation-detoxification/maintenance

C. Special Services
1. Renal dialysis
2. Cardiac diagnostic services
3. Burn center
4. Neurosurgery
5. Cardiac surgical services
6. Organ transplant/organ procurement
7. Therapeutic radiation
8. Organ bank
9. Blood bank
10. Perinatal intensive care
11. Health maintenance organizations
12. Hemophilia services
13. Hospice program
14. Any service for which regionalization criteria or health planning regulations have been developed
15. Mobile intensive care services
16. Computed tomographic (CT) scanning services
17. Medical day care
18. Other new health/medical care technologies

EXHIBIT 3B

HEALTH CARE SERVICES WITHIN THE STANDARD CATEGORIES

Note: Within some of the STANDARD CATEGORIES OF HEALTH CARE SERVICES are those component services which are considered to be sub-elements of such CATEGORIES. The component services are listed below and shown within the appropriate STANDARD CATEGORY. If any health facility or organization is currently providing one or more component services within a STANDARD CATEGORY the implementation of additional component services within that STANDARD CATEGORY shall not be regarded as the institution of a new health care service. Thus, the addition of a component service within a previously existent STANDARD CATEGORY shall not require a Certificate of Need application provided that the institution of the service does not exceed the monetary limits as stated in N.J.A.C. 8:33.

A. Bed-related

1. Medicine Surgery

Component Services:

Alergy	General
Anesthesiology	Ophthalmology
Communicable Disease	Thoracic

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Dermatology
Endocrinology
Gastroenterology
Cardiac Care (Non-CCU)
Physical and Medical Evaluation
Family Practice
Internal Medicine
Pulmonary Functions and Inhalation Therapy
Geriatric
Urology
Eye, Ear, Nose, Throat
Neurology
Otorhinoloryngology
Proctology
Orthopedic
Urology
Cystoscopy
Oral
Plastic

2. Obstetrics, gynecology
3. Pediatric
4. Intensive care (ICU)
   (All ICU excluding separate Cardiac Care Unit and spearate Neo-natal Intensive Care Unit)
5. Cardiac Care (CCU)
6. Adult acute psychiatric

Component Service:

Mental Health Emergency/Screening

7. Adult sub-acute psychiatric
8. Children's sub-psychiatric
9. Children's sub-acute psychiatric
10. Rehabilitation
11. Long term care
12. Residential health care
13. Alcohol detoxification
14. Alcohol residential treatment
15. Drug free residential (therapeutic community)

B. Non-bed-related

1. Outpatient and Clinic Services

Allergy
Arthritis
Cardio-vascular
Cerebral Palsy
Cystic Fibrosis
Dermatology
Diabetes
Employee Health
Endorcinology
Eye, Ear, Nose, Throat
Family Planning
Genito-Urinary
Glaucoma
Gynecology
Hypertension
Inoculation
Medical
Muscular Dystrophy
Neurology
Obstetrics
Parasitology
Pediatrics
Podiatry
Proctology
Psychiatric
Sickle Cell Anemia
Speech
Hearing
Surgery
Thoracic
Toxemia
Tuberculosis
Tumor Cancer
Venereal disease
Diagnostic and Preventive Medicine
Private Ambulatory Service
Home Care Program
Out-Reach Clinic
Ambulance Service affiliate with a health care facility
Day Accommodation Surgery

2. Emergency Room Services
3. Diagnostic Radiology

Component Services:

Diagnostic X-Ray
Cinefluorography
Ventriculography
Angio-Cardiology

4. Nuclear Medicine
5. Laboratory Services

Component Services:

Microbiology
Clinical Chemistry
Serology
Hematology
Pathology
Histopathology
Autopsy
Basal-Metabolism

6. Physical Medicine

Component Services:

Physical Therapy
Occupational Therapy
Speech Therapy
Recreational Therapy
Audiology
Prosthetics, Brace Fitting

7. Dentistry

Component Services:

Oral Surgery
Operative/Restorative Dentistry
Endodontia
Prostodontia
Periodontia
Orthodontia

8. Vocational Services Disability Services

Component Services:

Vocational Evaluation
Vocational Counseling
Pre-Vocational Experiences
Special Education Services
Vocational Training
Sheltered Employment
Travel Training for the Blind
Deafness
Blindness
Tuberculosis
Cardiac Conditions
Orthopedic Conditions
Neurology

9. Social Services

Component Services:

Social Casework Department
Family Planning Service
Recreation (non-medical)
Social Study and Evaluation
Social Group Work

10. Home Health Agency
11. Drug rehabilitation—outpatient drug free
12. Drug rehabilitation—detoxification/maintenance
13. Alcohol rehabilitation
14. Free-standing health screening centers
15. Mobile multiphasic health testing services
16. Outpatient mental health care
17. Partial hospitalization
18. Mental health emergency screening

C. Special Services

1. Renal Dialysis

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2. Cardiac Diagnostic Services
3. Burn Center
4. Neurosurgery
5. Cardiac Surgical Services
6. Organ transplant/organ procurement
7. Therapeutic Radiation

Component Services:

X-Ray Therapy
Orthovoltage X-Ray Therapy
Radium Therapy
Megavoltage X-Ray Therapy
Gamma Beam Therapy

8. Organ Bank
9. Blood Bank
10. Perinatal Services
11. Health Maintenance Organizations
12. Hemophilia Services
13. Computed tomographic (CT) scanning services
14. Medical day care
15. Position emission tomography services
16. Magnetic resonance imaging services

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Standards and Criteria for the Demonstration of Extracorporeal Shock Wave Lithotripsey (ESWL) Services

Adopted New Rule: N.J.A.C. 8:33B

Proposed: July 15, 1985 at 17 N.J.R. 1728(a).
Adopted: September 13, 1985 by J. Richard Goldstein, M.D., Commissioner of Health; with approval of the Health Care Administration Board.
Filed: September 13, 1985 as R.1985 d.497, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq.

Effective Date: October 7, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): October 7, 1990.

Summary of Public Comments and Agency Responses:
Written comments were received from one commentor during the 30-day public comment period.

COMMENT:
Jersey Kidney Specialists, an applicant for Certificate of Need approval for the provision of ESWL services during the established demonstration, outlined the following four points:

1. During the demonstration, the limiting of applications to hospitals filing separately or consortia which include either hospital members exclusively or hospital members filing jointly with other interested parties as such encourages inpatient services rather than outpatient services.

2. Referrals are more likely to be made to a freestanding facility as opposed to a hospital based center.

3. N.J.A.C. 8:33B-1.3(f) requires that preference in the placement of the lithotripter demonstration units shall be given to teaching hospitals. It is felt that this is inappropriate and that preference for site location in this instance should be based partially on commitment by the manufacturer for delivery of a unit.

4. In services such as lithotripsey it may be more appropriate to achieve the benefit of teaching programs by assuring that the service is available to residents and that the physicians providing the care are committed to clinical training in a freestanding setting.

RESPONSE:

1. The Department does not consider this criterion to be an incentive to provide this service on an inpatient basis. Nor does it provide an incentive to even physically locate the equipment within the hospital building. The NMR regulation has similar language and the recent NMR batch indicated a range of service settings selected by hospital applicants—from within the hospital physical plant to freestanding buildings some distance from the applicant hospitals. The Department expects (and has received) the same for this service.

The Department believes that the proposed physical placement of the service (in terms of quality, access, and cost) is an important issue for all participants in the CN review process to consider as they render recommendations to the Commissioner of Health.

2. The Department has yet to see reliable data indicating that referrals to a freestanding center are more likely than referrals to a hospital based center.

3. The Department feels strongly that health planning should be based upon cost, accessibility, availability, and quality of care issues. To essentially allow manufacturer's business decisions to dictate the health planning function of the State of New Jersey would be extremely irresponsible and would not encourage the orderly development of health care services.

4. The Department is in full accord with assuring that ESWL services are made available to residents and physicians so that they may become proficient in the use of this new technology. As a limited demonstration, it was felt that this goal could best be achieved as part of a teaching hospital setting. The Department however, will evaluate all proposals according to their ability to meet the intent of the demonstration.

Full text of the adoption follows.

CHAPTER 33B
EXTRACORPOREAL SHOCK WAVE LITHOTRIPSEY

SUBCHAPTER 1. LITHOTRIPTER SERVICES

8:33B-1.1 Introduction

(a) Extracorporeal shock wave lithotripsey (ESWL) is a newly developed, Medicare approved therapeutic modality designed to treat upper ureter and kidney stones non-invasively. Shock waves are externally introduced into the body thereby creating sufficient pressure on a stone so that the stone disintegrates eventually crumbling into granular sized particles. The particulate residue of the stone is then eliminated with the urine.

(b) Extracorporeal shock wave lithotripsey treatment offers both promising benefits to patients and to the health system. Because it can destroy stones without surgery, it eliminates

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risk associated with surgery, reduces the length of time a patient must be hospitalized, and reduces the costs associated with kidney stone removal. The average length of stay associated with conventional surgical removal of kidney stones is between seven and 14 days. The recuperative period following discharge is usually three to four weeks. The average length of stay associated with ESWL is four days. Most patients are then able to fully resume their lifestyle within a week of discharge.

(c) The Department of Health recognizes that the introduction of the lithotripter will have profound implications for kidney stone patients. However it also raises a number of planning issues which must be given serious consideration. Namely, the lithotripter device is costly in itself and additional renovation and/or construction costs to house the unit can bring the total cost to over $2 million. In addition to cost, another issue which needs to be addressed is the lithotripter's application for a very limited and specific population. ESWL can potentially replace surgical intervention in 80-90 percent of those patients for whom surgical removal of kidney stones would have been the only treatment of choice. The device however is limited in application solely to this population. The Department is also concerned about the impact of the growing acceptance of other new stone treatment modalities such as percutaneous lithotripsey and newly developed drugs that selectively inhibit stone formation.

(d) The demonstration period will provide the Department with the opportunity to evaluate and analyze findings as they relate to planning concerns.

8:33B-1.2 Definitions

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

"Department" means the New Jersey Department of Health.

"Extracorporeal shock wave lithotripsey (ESWL)" means the technique by which kidney stones are disintegrated through the use of shock waves sent through water.

"Lithotripter" means a medical device which removes kidney stones without surgical intervention.

8:33B-1.3 Demonstrations

(a) The Commissioner of Health will establish a lithotripter demonstration period during which two applications will be approved Statewide.

(b) The Statewide demonstration period will begin with the date of initial operation of the first approved unit and will continue for a period of two years. However the demonstration period can be shortened by the Commissioner of Health upon the recommendation of the Statewide Health Coordinating Council. The applicant will be required to identify in its application the anticipated date of initial operation.

(c) Once the demonstration approvals, two units Statewide, are issued, the Department of Health shall not process any other applications for lithotripters until the conclusion of the demonstration period, not to exceed two years, beginning with the date of operation of the first lithotripter demonstration.

(d) The Commissioner of Health in issuing approvals for lithotripter demonstrations shall solicit the recommendations of the Statewide Health Coordinating Council (SHCC) and each of the State's five Health Systems Agencies (HSAs).

(e) During the demonstration the Department will limit applications for lithotripters to hospitals filing separately or consortia which include either hospital members exclusively or hospital members filing jointly with other interested parties.

(f) Preference in the placement of the lithotripter demonstration units shall be given to teaching hospitals filing Certificate of Need applications either separately or jointly with other interested parties.

8:33B-1.4 Utilization

(a) Utilization standards are based on the number of patients who may receive ESWL treatment.

(b) Volume of patients diagnosed with and hospitalized for urinary calculi located in either the kidney or upper ureter is an indicator of potential ESWL candidates. Applicants must therefore document sizable volumes of patients diagnosed and surgically treated by the applicant for removal of calculi located in the upper ureter or the kidney during the past three years.

(c) In order to maintain quality and deliver this service in a cost-effective manner, the applicant must document the availability of a minimum volume of ESWL patients. The minimum acceptable number of ESWL patients per device per year is 500. For purposes of reviewing applications in the demonstration batch, priority shall be given to applicants who can demonstrate volumes above the minimum acceptable number.

8:33B-1.5 Personnel requirements

(a) Each applicant for a certificate of need for a lithotripter must provide the Department with written documentation that the following minimal staff complement will be available on a full time basis to the ESWL unit.

1. 1.0 urologist/surgeon;
2. 1.0 registered nurse;
3. 1.0 anesthiologist;
4. 1.0 technician.

(b) In addition, sufficient supportive personnel consistent with the efficient delivery of quality ESWL services should be assigned to the ESWL unit (for example, aides, secretaries, clerk).

8:33B-1.6 Program considerations

(a) Applicants must have the following available at a minimum, either on site or through formal, written agreements:

1. Active radiology and urology programs;
2. Teaching and research backup;
3. An established referral urological practice; and
4. An appropriate specialty backup.

8:33B-1.7 Data requirements

(a) The following information shall be reported by the applicant on a bi-annual basis to the Department of Health's Health Planning Services Program:

1. Characteristics of patients: age, sex, residence, insurance coverage, specific diagnosis, source of referral;
2. Treatment protocols and selection criteria;
3. Type of anesthesia used, for example, general, epidural or spinal; length of treatment (including preparation time), length of hospitalization, length of recuperative period;
4. Staff requirement (by type of personnel) for the ESWL treatment;
5. Expenses and revenues relating to lithotripsey treatments will be separately identified on cost reporting forms which must be submitted to the Department on an annual basis;
6. Adverse patient reactions and contra-indicators.

8:33B-1.8 Accessibility

(a) Applicants must document that ESWL services shall be made available to all patients regardless of the patients' race, religion, sex, age or ability to pay.

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8:33B-1.9 Regional distribution-cooperative multi-institution applications

(a) Recognizing that the lithotripter will have application for a limited and select population, the device lends itself to regional distribution with the following requirements:

1. Applicants must develop cooperative agreements with other institutions;

2. Shared or multi-institution applicants must provide formal written agreements providing for inter-hospital referral and transfer agreements. The purpose for these arrangements is to insure adequate followup after the lithotripsey treatment.

8:33B-1.10 Financial criteria

The applicant must provide full written documentation of the purchase and operational costs of the unit. This analysis must include direct as well as indirect costs, construction/renovation costs, and cost impact analysis upon radiology and urology departments. In addition, the application must include a projection of costs and revenues to at least two years beyond the breakeven point.

8:33B-1.11 Physical requirements

The applicant must provide physical plans showing adequate space to house the unit, accommodate patient needs (pre- and post-treatment), and support staff needs. The plans must be reviewed and approved by the New Jersey Department.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Home Care Services Manual
Home Health Services and Personal Care Assistant Services

Readoption with Amendments: N.J.A.C. 10:60-1, 2 and 3

Proposed: January 7, 1985 at 17 N.J.R. 28(a).
Adopted: August 27, 1985 by Geoffrey S. Perselay, Esq., Acting Commissioner, Department of Human Services.
Filed: August 27, 1985 as R.1985 d.488, **with substantive changes not** requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 30:4D-6b(2)(5)(16), 7, 7a, 7b; 30:4D-12; 42 CFR 440.70 Home Health Services, 42 CFR 440.170(f) Personal Care Services.

Effective Date for Readoption: August 27, 1985.
Effective Date for Amendments: October 7, 1985.
Operative Date of Amendments: November 1, 1985.
Expiration Date pursuant to Executive Order No. 66 (1978): August 27, 1990.

Summary of Public Comments and Agency Responses:

For purposes of this summary, the word "Department" shall refer to the New Jersey Department of Human Services; the word "Division" shall refer to the Division of Medical Assistance and Health Services.

This proposal appeared in the January 7, 1985 issue of the Register. The 30-day comment period allowed by law expired on February 6, 1985. George J. Albanese, the Department's Commissioner at that time, granted an extension for filing comments until March 8, 1985.

Although this proposal prompted a considerable number of comments, the commentators can be consolidated into two basic groups. The homemaker agencies, both voluntary nonprofit and proprietary, and the county boards of social services were generally supportive of the proposal to include proprietary homemaker agencies as providers of personal care assistant services.

The New Jersey Home Health Agency Assembly and its constituent agencies favored admission of the proprietary agencies but were concerned about the manner in which these proprietary agencies would be accepted for participation into the New Jersey Medicaid Program. The Home Health Agency Assembly's concern was that the accreditation process as contained in the original proposal presented a potential conflict of interest because one of the accrediting bodies would be the Home Care Council of New Jersey, which is essentially composed of homemaker agencies. This organization suggested that either the Department or Division establish a quality assurance committee to develop standards, criteria for evaluation and inspection methods.

The Department's response was to conduct a series of meetings, attended by representatives of the Home Health Agency Assembly, Home Care Council of New Jersey, Home Health Services and Staffing Association of New Jersey, and employees of several state agencies, including the Department, the Division, the New Jersey Department of Health, and the New Jersey Division of Consumer Affairs. As a result of these meetings, a decision was made to modify the original proposal to establish a separate Commission on Accreditation by the Home Care Council of New Jersey. This Commission will be composed of representatives of the homemaker agencies, both proprietary and voluntary nonprofit, home health agencies, and public representatives, and will function as an independent accrediting body.

Some commentators made reference to the National Homecaring Council, and were generally supportive of this body's accrediting procedures.

It should be noted that accreditation is one part of the process for homemaker agencies to become an approved New Jersey Medicaid provider. The Department and/or the Division will still be responsible for determining whether a provider meets all the program requirements for participation.

The Home Health Agency Assembly also questioned the requirement that home health agencies be required to submit cost reports to the Prudential Insurance Company, whereas homemaker agencies are not required to file cost reports. The Division's response is that home health agencies are reimbursed on a cost-related basis, and consequently these agencies must report their costs in order to determine a rate. Homemaker agencies are reimbursed on a fee-for-service basis and therefore cost reports do not have to be filed. However, the New Jersey Medicaid Program monitors both types of providers to insure fiscal accountability.

Summary of Changes Between Proposal and Adoption:

The textual change being made on adoption is to amend the conditions for Medicaid participation to reflect the inde-

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pendence of the Commission on Accreditation established by the Home Care Council of New Jersey. Therefore, additional language was added to the definitions in N.J.A.C. 10:60-1.2.

There were also some codification changes made to insure consistency.

Full text of the adopted amendments to the readoption follows (additions to proposal indicated in boldface with asterisks ***thus***). See related proposal in this issue.

SUBCHAPTER 1. GENERAL PROVISIONS

10:60-1.1 Scope

(a) The Home Care Services Manual includes home health care services provided by a certified licensed home health agency and personal care assistant services provided by both a certified licensed home health agency and a homemaker agency (proprietary and voluntary non-profit).

(b) Home health agencies (certified licensed) must provide nursing services and homemaker-home health aide services. Certain medical supplies must be provided by the agency. Medical equipment and appliances must be arranged for by the agency. Additional services may include physical therapy, occupational therapy, speech-language pathology services, medical social services, personal care assistant services, and other health care related services.

1. Medicaid reimbursement is available for these services when provided to Medicaid eligible patients in their places of residence, such as a private home, residential hotel, residential health care facility, rooming house and boarding home, but not in a hospital, skilled nursing facility or intermediate care facility. Prior authorization is required for all services/visits except for the initial evaluation visit.

i. In residential health care facilities the personal care and househould services of either a homemaker-home health aide or personal care assistant are excluded.

ii. Personal Care Assistant Services may not be provided simultaneously with home health services.

2. (No change in text.)

3. (No change in text.)

(c) Homemaker (proprietary and voluntary non-profit) agencies will be approved to provide Personal Care Assistant Services and the Initial Nursing Assessment Visit only as outlined in N.J.A.C. 10:60-2.2.

10:60-1.2 Definitions

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

. . .

"Discharging planning" means that component part of a total individualized plan of care formulated by all members of the agency's health care team, together with the patient and/or his family or interested person which anticipates the health care needs of the patient in order to provide for continuity of care. Such planning aims to provide humane and psychological preparation to enable the patient to adjust to his changing needs and circumstances.

"Home health agency" means a public or private agency or organization, either proprietary or non-profit, or a subdivision of such an agency or organization, which qualifies as follows:

1. Is approved by the New Jersey State Department of Health including requirements for Certificate of Need and licensure when applicable.

2. Is certified as a home health agency under Title XVIII (Medicare) Program.

3. Is approved for participation as a home health agency provider by the New Jersey Medicaid Program.

"Homemaker Agency means a proprietary or voluntary non-profit agency approved by the Department of Human Services, Division of Medical Assistance and Health Services, to provide Personal Care Assistant Services and the Initial Nursing Assessment Visit only. The following conditions must be met:

1. The agency has received the initial approval and is being evaluated for accreditation by ***either the Commission on Accreditation for Home Care established by*** the Home Care Council of New Jersey or the National Homecaring Council which should be completed within six months from the date of the initial approval; or

2. The agency is approved and accredited by ***either the Commission on Accreditation for Home Care established by*** the Home Care Council of New Jersey or the National Homecaring Council, and

3. The agency is approved and accredited by ***either the Commission on Accreditation for Home Care established by*** the Home Care Council of New Jersey or the National Homecaring Council on an annual basis.

"Homemaker-home health aide" means a person who has successfully completed a training program in personal care services approved by the New Jersey State Department of Health and who is assigned and supervised by a registered professional nurse of the home health agency.

"Levels of care" means two levels of home health care services, acute and chronic, provided by a certified, licensed home health agency, as needed, to Medicaid eligible patients, upon request of the attending physician.

1. "Acute" home health care is a concentrated and/or complex professional and non-professional service on a continuing basis where there is anticipated change in condition and services required. Acute home health care services may be requested and authorized for a period up to 60 days. Services may be reauthorized as needed.

2. "Chronic" home health care is either a long or short-term uncomplicated professional and non-professional care where there is no anticipated change in condition and services required. Chronic home health care services may be requested and authorized for a period up to six months. Services may be reauthorized as needed.

. . .

"Medical Consultant" means a licensed physician based in the Medicaid District Office whose responsibility is to review and evaluate requests for prior authorization for various medical services for the New Jersey Medicaid Program.

. . .

"Occupational therapist" means an individual who is registered by the American Occupational Therapy Association, or a graduate of a program in occupational therapy approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association.

"Personal care assistant" means a person who:

1. Successfully completed the 60 hour home health aide training and certification requirements of the New Jersey Department of Health.

2. Is primarily involved in the treatment and care of elderly and disabled individuals living in their own homes in the community.

3. Is assigned and supervised by a registered professional

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nurse of a Medicaid approved personal care assistant provider agency.

"Personal Care Assistant Services" means health related tasks performed by a qualified individual in a recipient's home, under the supervision of a registered professional nurse, as certified by a physician in accordance with a written plan of care and prior authorized by the State Agency.

"Physical therapist" means an individual who is a graduate of a program of physical therapy approved by both the Council on Medical Education of the American Medical Association and the American Physical Therapy Association or its equivalent; and

i. if practicing in the State of New Jersey must be licensed by the State of New Jersey;

ii. if practicing out-of-state must be licensed in the state in which practicing (if applicable).

"Plan of care" means the individualized and documented program of health care services provided by all members of the home health agency or personal care assistant services provider involved in the delivery of home care services to a patient. The plan includes short and long-term goals for rehabilitation, restoration or maintenance made in cooperation with the patient and/or responsible family member or interested person. Appropriate instruction of patient, and/or the family or interested person as well as a plan for discharge are also essential components of the treatment plan. The plan is reviewed periodically and revised appropriately according to the observed changes in the patient's condition.

. . .

"Speech-language pathologist" means a person who meets the education and experience requirements for a Certificate of Clinical Competence in speech-language pathology services granted by the American Speech-Language-Hearing Association; or meets the educational requirements for certification and is in the process of accumulating the supervised experience for a Certificate of Clinical Competence in the appropriate area (such as speech-language pathology services) granted by the American Speech-Language-Hearing Association.

SUBCHAPTER 2. COVERED HOME CARE SERVICES (HOME HEALTH CARE SERVICES AND PERSONAL CARE ASSISTANT SERVICES)

10:60-2.1 Home health care services

(a) Home health care services covered by the New Jersey Medicaid Program must be prior authorized and are limited to those services provided directly by a home health agency approved to participate in the New Jersey Medicaid Program or through arrangement of that agency for other services.

(b) Covered home health care services are those provided according to medical, nursing and other health care related needs as documented in the individual plan of care on the basis of medical necessity and on the goals to be obtained and/or retained.

(c) Home health care services must be directed toward rehabilitation and/or restoration of the patient to the optimal level of physical and/or mental functioning, self-care and independence, or directed toward maintaining the present level of functioning and preventing further deterioration, or directed toward providing supportive care in declining health situations.

(d) The type of home health agency services covered include professional nursing by a public health nurse, registered professional nurse, or licensed practical nurse; homemaker-home health aide services, physical therapy, occupational therapy, speech-language pathology services, medical social services, nutritional services, certain medical supplies, and personal health care assistant services.

1. Nursing services: (No change in text.)

2. Homemaker-home health aide services: Homemaker-home health aide services are performed by a New Jersey certified homemaker-home health aide under the direction and supervision of a home health agency registered professional nurse. Services include personal care, health related tasks and household duties. In all areas of service, the homemaker-home health aide shall encourage the well members of the family, if any, to carry their share of responsibility for the care of the patient as per the written established plan of care.

i. (No change in text.)

ii. The registered professional nurse, in accordance with the physician's plan of care, prepares written instructions for the homemaker-home health aide to include the amount and kind of supervision needed, the specific needs of the patient and the resources of the patient, the family, and other interested persons. Supervision of the homemaker-home health aide shall be provided by the registered professional nurse or appropriate professional staff member at a minimum of one visit every two weeks when in conjunction with skilled nursing, physical, occupational or speech-language therapy. In all other situations, supervision shall be provided at the frequency of one visit every 30 days. Supervision may be provided up to one vist every 60 days with written justification in the agency's records.

iii. (No change in text.)

3. Special therapies:

i. Special therapies, include physical therapy, speech-language pathology services, and occupational therapy. Special therapists must review the initial plan of care and any change in the plan of care with the attending physician and the professional nursing staff of the home health agency. The attending physician must be given an evaluation of the progress of therapies provided as well as the patient's reaction to treatment and any change in the patient's condition. The attending physician must approve of any changes in the plan of care and delivery of therapy services.

ii. (No change in text.)

iii. Special therapists shall provide instruction to the home health agency staff, the patient, the family and/or interested persons in follow-up supportive procedures to be carried out between the intermittment services of the therapists to produce the optimal and desired results.

(1) (No change in text.)

(2) Speech-language pathology service: When the agency provides or arranges for speech-language pathology services, they shall be provided by a certified speech-language pathologist. The duties of a speech-language pathologist shall include but not be limited to the following:

(A) (No change in text.)

(B) Developing long and short-term goals and applying speech-language pathology service procedures to achieve identified goals;

(C)-(E) (No change in text.)

(3) Occupational therapy: (No change in text.)

4. Medical social services: (No change in text.)

5. Nutritional services: (No change in text.)

6. Medical Supplies: Medical supplies (other than drugs and biologicals) including but not limited to gauze, cotton bandages, surgical dressing, surgical gloves, and rubbing alcohol are normally supplied by the home health agency to enable the agency to carry out the plan of care established

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by the attending physician and agency staff.

i. When a patient requires an unusual or an excessive amount of medical supplies costing more than $30.00 per the period of authorization approved in Section 23 of the FD-139, prior authorization for the supplier must be received from the appropriate Medicaid District Office. An approved medical supply dealer requests authorization by completing an MC-11 Form. The home health agency may also request authorization to furnish these medical supplies by completing an FD-139, section 22. Requests for prior authorization of an unusual or an excessive amount of medical supplies must be accompanied by a personally signed, legible prescription from the attending physician.

7. Medical equipment: Medical equipment means an item, article or apparatus which is used to serve a medical purpose, is not useful to a person in the absence of disease, illness or injury and is capable of withstanding repeated use (durable). When durable medical equipment costing more than $30.00 per the period of home health care authorization is essential in enabling the home health agency to carry out the plan of care for a patient, a request for authorization for the equipment must be made by an approved medical supply dealer. The authorization, which is requested of the Medicaid District Office, requires a personally signed, legible prescription from the attending physician. Durable medical equipment either rented or owned by the home health agency cannot be billed to the New Jersey Medicaid Program.

10:60-1.4 recodified as 10:60-2.3, see below.

10:60-2.2 Personal care assistant service

(a) Personal care assistant service may be provided by a certified, licensed home health agency or by a proprietary or voluntary non-profit homemaker agency. These services may not be provided simultaneously with home health services.

(b) Personal care assistant services are health related tasks performed by a qualified individual in a recipient's home, under the supervision of a registered professional nurse, as certified by a physician in accordance with a written plan of care and prior authorized by the State Agency. These services are available from a home health agency or a homemaker agency.

1. (No change in text.)

2. Personal care assistant services are reimbursable when provided to Medicaid eligible recipients in:

i. Their places of residence, such as a:

(1) private home;

(2) rooming house;

(3) boarding home.

3. Medicaid reimbursement will not be made for personal care assistant service provided to Medicaid eligible recipients in:

i. Residential health care facility;

ii. Class C boarding home;

iii. Hospital;

iv. Skilled nursing facility;

v. Intermediate care facility;

vi. Division of Mental Retardation adult foster care homes; and

vii. Division of Youth and Family Services foster care homes.

4. Personal care assistant services provided by a family member are not covered services.

(c) Description of performance:

1. Activities of daily living—performed by a Personal Care Assistant include but are not limited to:

i.-xi. (No change in text.)

2. Household duties that are essential to the patients health and comfort—performed by a Personal Care Assistant include but are not limited to:

i.-ix. (No change in text.)

3. Health related activities—performed by a certified Personal Care Assistant are limited to:

i.-vii. (No change in text.)

(d) Duties of the registered professional nurse: (no change.)

1.-2. (No change.)

(e) Recordkeeping

1. Clinical records and reports shall be maintained for each patient covering the medical, nursing, social and health related care in accordance with accepted professional standards. Such information must be readily available, as required, to representatives of the New Jersey Medicaid Program or its agents.

(f) Reimbursement

1. The following are all inclusive maximum rates for personal care assistant services and the initial nursing assessment visit. No direct or indirect cost over and above these established rates will be considered for reimbursement. A provider may not charge the New Jersey Medicaid Program in excess of present charges for other payors.

i. Personal care assistant services are limited to a maximum of 20 hours per week at a reimbursement rate up to—$8.00 per hour for individual patient. Code No. 0056; and

ii. Up to $6.00 per hour for a group rate (two or more patients, with a maximum of eight patients in the same residential setting at the same time). Code No. 0057; and

iii. Up to $25.00 may be billed for an Initial Nursing Assessment Visit. Code 0055.

10:60-2.3 Requirements for authorization of covered services

(a) This section outlines requirements governing the provision of home care services as well as the procedures to follow when requesting authorization to provide services.

(b) Home Health Care Services: Requirements for authorization of Home Health Care Services are outlined as follows:

1. (No change in text.)

2. (No change in text.) recodify 1. through 11. as i. through xi. (No change in text.)

xii. Discharge planning in all areas of care (coordinated with short and long-term goals);

(1) As a significant part of the plan of care, a patient's potential for improvement is periodically reviewed and appropriately revised. These revisions should reflect changes in the medical, nursing, social and emotional needs of the patient, with attention to the economic factors when considering alternative methods of meeting these needs.

(2) (No change in text.)

xiii. (No change in text.)

3. Medical Care: recodify 1. through 4. as i. through iv. (No change in text.)

4. Nursing Care:

i. (No change in text.)

ii. (No change in text.)

iii. A determination shall be made of the patient's psychosocial needs in relation to the utilization of other community resources.

iv. (No change in text.)

5. Required records and reports: Federal requirements for clinical records and reports shall be met and include but not necessarily be limited to the following:

i. Clinical records containing pertinent past and current

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information according to accepted professional standards shall be maintained by the home health agency for each patient receiving home health care services. The clinical record shall include at least the following:

(1) Plan of care as described in N.J.A.C. 10:60-2.3(a)2;

(2) (No change in text.)

(3) (No change in text.)

ii. (No change in text.)

iii. (No change in text.)

iv. (No change in text.)

v. Transfer of the patient to alternative health care shall include transfer of appropriate information from the patient's record.

(c) Personal Care Assistant Services: Requirements for authorization of personal care assistant services are outlined as follows:

1. Certification by the attending physician in accordance with a written plan of care;

2. Performed under the supervision of a registered professional nurse; and

3. Prior authorization of a plan of care by the Division of Medical Assistance and Health Services.

(d) Prior authorization for home health care services and personal care assistant services:

1. Prior authorization for home health services and personal care assistant services means approval by the Medicaid District Office. Requests for authorizations are to made to the Medicaid District Office. Home health services and personal care assistant services should not be provided until the authorization is received.

i. An initial visit to evaluate the need for home health services or personal care assistant services does not require prior authorization. Following the initial visit, prior authorization is required for all services provided to the Medicaid eligible person not covered under Medicare.

ii. If the attending physician orders an evaluation for physical, speech-language or occupational therapy, an appropriate qualified therapist may make an initial visit to evaluate the need for special therapies (physical, speech-language or occupational) without prior authorization. All subsequent therapy visits require prior authorization.

2. How to Obtain Prior Authorization: The Request for Home Care Authorization or Reauthorization, FD-139, should be promptly completed by the attending physician, relevant agency or provider staff and submitted for review and authorization by the appropriate Medicaid District Office. If the information is insufficient to render a decision, it may be necessary to communicate directly with the attending physician and/or provider, or, in exceptional cases, to conduct a home assessment, or to return the request. To facilitate processing, the FD-139 form incorporates the attending physician's prescription, the plan of care and the request for prior authorization of services into a single document.

3. In requesting authorization or reauthorization, a written plan of care completed on a form FD-139, Request for Home Care Authorization or Reauthorization, must be submitted to the Medicaid District Office for approval. If granted, such authorization may not exceed 60 days for acute cases and six months for chronic cases under the Home Health Care Program and six months for the Personal Care Assistant Program. Authorizations are renewable upon submission of an updated plan of care on a form FD-139. Additional information may be submitted to or be requested by the Medicaid District Office staff to support the plan of care.

4. Completing the Request for Home Care Authorization or Reauthorization, FD-139, (See Exhibit I) for Home Health Services and Personal Care Assistant Services. All items must be typed or printed clearly.

i. Items 1-8. Copy the patient's name, HSP (Medicaid) Case Number and person number exactly as they appear on the Medicaid Eligibility Identification Card/Validation Form;

(1) Enter patient's sex, age, address, Social Security Account Number and telephone number;

ii. Items 9-10. Enter the attending physician's name and telephone number;

iii. Items 11-13. Enter provider information;

iv. Item 14. If services to be provided are not allowable under Medicare or if Medicare benefits have been exhausted and a Medicare beneficiary is involved, item 14 must be signed by the Home Health Agency certifying that the agency has determined the services described are not covered by the Medicare Program (Title XVIII) or have verified that the patient's benefits have been exhausted and no additional billing will be submitted to Medicare for this patient.

(1) Since Personal Care Assistant Service is not a Medicare covered service, item 14 should not be completed;

v. Item 15. Designate the type of program; Home Health Care Services, Community Care Services or Personal Care Assistant Services;

vi. Items 16-21. Enter information;

vii. Item 22. Request information:

(1) Enter starting and ending dates of service;

(2) Enter number of visits/hours per week; charges/fee, per visit/per hour; total hours per period and fees;

(3) Enter signatures of physician and agency representative.

viii. Item 23. Disregard; For Division Use Only.

5. While an authorization for home care services is in effect and the condition of the patient changes, indicating a need for additional or different services, the agency, after consultation with the attending physician, may request authorization for these additional services from the Medicaid District Office. If the need is urgent, the request may be made and granted by telephone for no more than three additional visits and/or treatments. A new written plan of care on a completed Form FD-139 shall be submitted to the Medicaid District Office for written authorization.

6. Distribution of form FD-139 (four-part snap-out): The Fiscal Agent (Contractor) copy, one Provider copy and the Medicaid District Office copy are submitted to the Medicaid District Office, with the agency retaining the second Provider copy.

i. Upon approval or denial of the request, the fiscal agency (contractor) copy and provider copy will be returned to the agency providing the service. The Medicaid District Office will retain its copy.

7. Submission of authorization or reauthorization to the appropriate fiscal agent (contractor):

i. For Home Health Care Services: If the Request for Home Care Authorization or Reauthorization, FD-139, is approved, the Fiscal Agent copy must accompany the Home Health Claim (MC-3C3-Exhibit II) and be submitted to the appropriate Fiscal Agent for reimbursement.

ii. For Personal Care Assistant Services: If the Request for Home Care Authorization or Reauthorization, FD-139, is approved, the Fiscal Agent copy must accompany the Independent Outpatient Health Facility Claim form (MC-14-Exhibit V) and be submitted to the Prudential Insurance Company for reimbursement.

8. Period covered by authorization or reauthorization:

i. For Home Health Care Services: An approved request

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for Home Care authorization or reauthorization will be valid for a maximum of 60 days for acute cases or a maximum of six months for chronic cases. Periods of authorization will be included on the FD-139 (Item 23).

ii. For Personal Care Assistant Services: An approved request for Personal Care Assistant Services authorization or reauthorization will be valid for a maximum for six months. Periods of authorization will be included on the FD-139 (Item 23).

9. Renewing or extending a plan of care:

i. If home health care or personal care assistant service is needed beyond the period authorized, the attending physician will decide if the plan of care should be continued on the same basis or whether changes in frequency of service, etc., are needed, based on the condition of the patient. The agency will submit the new request for authorization or reauthorization (FD-139) to the appropriate Medicaid District Office. The Medicaid Office may require a copy of the most recent progress report in the process of evaluating the request for authorization or reauthorization.

(e) Service limitations: When the cost of home care is equal to or in excess of the cost of institutional care over a period of six months, the Medical Consultant may opt to limit or deny future requests for home health services.

Personal care assistant services are limited to a maximum of twenty hours per week.

SUBCHAPTER 3. BILLING PROCEDURES FOR HOME CARE SERVICES (HOME HEALTH CARE SERVICES AND PERSONAL CARE ASSISTANT SERVICES)

10:60-3.1 Home care services billing procedures

(a) For all Home Health Care Services provided by a certified licensed home health agency, a Home Health Claim, MC-3C, must be submitted and received by the appropriate Fiscal Agent (Blue Cross or the Prudential Insurance Company) within 12 months from the earliest date of service on the claim form. (See N.J.A.C. 10:49-1.12)

(b) For all Personal Care Assistant Services provided by a home health and homemaker agency, an Independent Outpatient Health Facility form, MC-14, must be submitted and received by the Prudential Insurance no later than 90 days after the last date the services were rendered and no later than 12 months from the earliest date of service on the claim form. (See N.J.A.C. 10:49-1.12)

1. Claims not submitted timely will not be approved for payment in those instances where it is demonstrated that the claim could have been submitted and resubmitted within the time limitation as defined.

(c) Medicare/Medicaid coverage:

1. When the patient is covered under both Medicare and Medicaid, a HCFA-1487 Medicare form, (Home Health Agency Report and Billing, Hospital and Medical Insurance Benefits—Social Security Act), should be completed (Exhibit III). Item 14 (Block E) of the HCFA-1487 form must be checked and the HSP (Medicaid) Case Number and Person Number must be indicated. Prior authorization is not required.

2. Since Personal Care Assistant Services is not a Medicare covered service, item 14 on the FD-139 should not be completed.

3. For Home Health Care Service: If service is not covered under the Medicare Program or when Medicare benefits are exhausted, a Medicaid Home Health Claim form (MC-3C3) must be completed. Prior authorization is required before providing services to a Medicaid recipient. See Section 10:60-1.4(c).

4. When only part of a particular service provided on the same day is covered by Medicare, a separate Medicaid Home Health Claim form (MC-3C3) must be submitted with a copy of the approved FD-139 attached for the non-covered portion of the service. Prior authorization is required.

(d) Completing the Home Health Claim Form (MC-3C3), all items must be typed or printed clearly.

1. Item 1: Copy the patient's last name and first name, exactly as they appear on the Validation Form/Medicaid Eligibility Identification Card.

2. Item 2: Copy the Case last name and first name, exactly as they appear on the Validation Form/Medicaid Eligibility Identification Card.

3. Item 3: Indicate patient's sex by entering "X" in the appropriate block.

4. Item 4: Use six (6) digits to enter the patient's birthdate (e.g., May 6, 1977 is written 05/06/77). If only the year is known, enter the year. If birthdate is unavailable, submit claim without birthdate.

5. Item 5: Use six (6) digits to indicate the date when approved home health care was initiated (e.g., 02/01/81).

6. Item 6: Use six (6) digits to indicate the date of the first service for which you are billing on this claim (e.g., 02/20/81).

7. Item 7: Use six (6) digits to indicate the date of the last service for which you are billing on this claim (e.g., 03/25/81).

8. Item 8: Enter the number of visits being billed.

9. Item 9: This information is usually preprinted. If not preprinted, write in provider name and address.

10. Item 10: Enter the patient's Medical Record Number.

11. Item 11 and 12: Copy the patient's HSP (Medicaid) Case Number and Person Number exactly as they appear on the Validation Form/Medicaid Eligibility Identification Card. The complete number consists of a ten digit case number and a two digit individualized person number.

12. Item 13: This information is usually preprinted. If the information is not preprinted enter your agency's six digit provider number.

13. Items 14 and 15: Enter the patient's address and telephone number. Complete as fully as possible.

14. Items 16 and 17: If the patient was referred by a physician from another setting, you must indicate the 9 digit Individual Medicaid Practitioner (IMP) Number and the name of the referring practitioner.

15. Item 18. Patient Certification, see N.J.A.C. 10:49-1.26.

16. Items 19 and 20: Enter the 9 digit Individual Medicaid Practitioner (IMP) Number and the name of the attending physician. If the attending physician is a "non-participating" physician (in the Medicaid Program), the Home Health Agency must write "NON PAR" in the space indicated. This item must be completed on all claim forms.

17. Item 20a: Enter the Physical Case Manager's name and 9 digit IMP Number if the recipient is enrolled in the Medicaid Personal Physician Plan (MP Plan).

i. If an IMP number of a physician is not known, the Home Health Agency may call the physician and obtain the number or it may call the Fiscal Agent's toll free number for this information (see N.J.A.C. 10:60-3.3)

ii. This item must be completed on all claim forms if the recipient is enrolled in the MP Plan.

18: Item 21: Prior authorization is required for services following the initial visit. A claim for the initial evaluation

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visit must be submitted to the appropriate Fiscal Agent on the Home Health Claim form, MC-3C3, with the comment in the "Remarks" section "initial visit only". Copy the prior authorization number designated by the Medicaid District Office on the FD-139 form. Attach FD-139 to claim when submitting for payment.

19. Item 22: Type of Service: Enter date of each service opposite the code which appropriately describes the service. Use only two (2) dates per line item if the services were not given on consecutive days; if the services were provided on consecutive days, for example: 10/8; 10/9; 10/10; more than two (2), but not more than five (5), dates per line item can be submitted for reimbursement:

i. 02 ..... (Skilled Nursing Care) 10/7; 10/9

ii. 03 ..... (Homemaker-Home Health Aide)

iii. 10 ..... (Physical Therapy)

iv. 11 ..... (Speech-Language Therapy)

12. ..... (Occupational Therapy)

20. Item 23: Complete this item for patients under 21 years of age.

i. Ask the patient and/or referring physician or clinic whether the illness requiring services was detected during an EPSDT screening.

ii. Indicate if this patient is such a referral by checking the appropriate block.

21. Item 24: Check the block, if services indicated on the claim are ascribable to "Family Planning". These should include Home Health visits related to contraception or subsequent to family planning related surgical procedures.

22. Item 25: Indicate the source of Third Party Payment, by entering the appropriate digit in the block. Do not leave blank; if none, enter "0".

23. Item 26: Indicate the patient's status by entering the appropriate digit in the block. If plans for home health care extend beyond this billing period, enter "1", still patient.

24. Item 27: Using six digits, enter the date of the last visit under the plan of treatment, or the date of admission to the hospital, skilled nursing facility or intermediate care facility.

25. Item 28: Using standard medical terminology, enter all the diagnoses which relate to the condition requiring the current services. The primary diagnosis is the illness or condition which was the primary reason for the services. Other diagnoses should be shown under secondary.

i. Enter the primary and secondary diagnosis codes as obtained from the International Classification of Diseases, ICD-9-CM, Adapted (ICDA). Use the basic three (3), four (4), or five (5) digit diagnosis code. For example: Acidosis 250.1 is written 2501. Insert the code on the MC-3C3 billing form just as it appears.

26. Item 29: Enter the number of visits and charges for the period covered by the claim in the appropriate column.

i. Use lines 27 and 28 to list additional services.

ii. Enter the total charges on line 98.

27. Item 30: Reserved solely for other insurance coverage.

28. Items 29 and 30: Cannot be completed on the same claim form.

i. If the patient is covered under Medicare, see Section 2.1(b).

ii. If the patient does not have Medicare coverage, enter charges not covered by other insurance on line 32 of item 30.

(1) The amount received from the other insurer must be entered on the bottom line, "Third Party Payment Amount".

29. Item 31: Check as appropriate.

i. If the patient's illness or injury is work related, enter name and address of employer.

ii. Indicate whether injury resulted from an automobile accident.

iii. If the injury or illness is related to an auto accident, enter the auto insurance carrier and policy number in item 32 below.

30. Item 32: Check appropriate block to indicate whether the patient has other health insurance, liability coverage, or No Fault Auto Coverage.

i. If yes, you must attach a copy of the denial notice or a copy of the explanation of payment from the carrier.

ii. Enter the name of the carrier and policy number under which other health insurance benefits are available.

31. Item 33: Read the Provider Certification carefully.

i. An authorized representative of the Home Health Agency must sign the MC-3C3 before the claim can be considered for payment.

ii. Indicate the billing date which is the date the claim is mailed. The billing date cannot be earlier than the "Claim Thru Date," item 7.

32. REMARKS: Use this space to enter additional information.

33. Items 34-39: Leave blank; for Fiscal Agent use only.

(e) Completing the Independent Outpatient Health Facility Claim form (MC-14) for Personal Care Assistant Services.

1. Items 1-4. Copy the Patient's Name, HSP (Medicaid) Case Number, Person Number and address exactly as they appear on the Medicaid Eligibility Identification Card/Validation Form;

2. Items 5-6. Indicate the patient's age and identify the patient's sex;

3. Item 7. Check the appropriate block to indicate whether the patient has other health insurance, liability coverage or No Fault Auto Coverage. If you are aware that the other coverage will not cover the services provided, please indicate so on the claim form. If yes, attach a copy of the decline notice or a copy of the explanation of payment from the Carrier;

4. Item 8. Leave blank;

5. Item 9. If not preprinted, write the provider's name, address, provider number and the telephone number.

6. Item 10. Check as appropriate. If patient's illness or injury is work related, enter the name and address of employer. Indicate whether injury resulted from an automobile accident;

7. Item 11. Leave blank;

8. Item 12. Do not write in this space; for Division use only;

9. Item 13A. Enter date(s) of each visit;

13B. Enter procedure code. The procedure codes are listed in (f) below and also in your approval letter;

13C. Enter diagnosis (written narrative and number description);

13D. Describe procedure or service;

13E. Personal Care Assistant Service providers are to utilize this item to indicate the place where the service was provided. Applicable codes are:

2-Patient's Home;

4-Boarding Home;

9-Other (Rooming House).

13F. Enter your standard charge for the appropriate service;

10. Item 14. Leave blank;

11. Item 15. Enter facility IMP Number;

12. Item 16 and 16a. Leave blank;

13. Item 17. Patient Certification, See N.J.A.C. 10:49-1.26;

14. Item 18. Read the Provider Certification carefully. The provider must sign the MC-14 before the claim can be con-

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sidered for payment. Indicate the billing date which is the date the claim is mailed.

(f) Procedure Codes for Personal Care Assistant Services:

Code	Description
1. 0055	Initial Nursing Assessment Visit
2. 0056	Personal Care Assistant Service (Individual)
3. 0057	Personal Care Assistant Service (Group) Care provided involves two or more patients, with a maximum of eight patients in the same residential setting at the same time.

(g) For reimbursement, submit the Fiscal Agency copy of the Independent Outpatient Health Facility Claim form, MC-14, to:

The Prudential Insurance Company
P.O. Box 1900
Millville, New Jersey 08332

1. Refer any questions regarding claim prepartion to the Medicaid Claim Division II (609) 293-2175 or the toll-free number 1-800-582-7052.

10:60-3.2 Submitting corrected claims

To correct a previously submitted claim, the Home Health Agency and Personal Care Assistant Services provider should reproduce a legible copy of the submitted claim. Corrections should be made in red in the appropriate items. The corrected claim should be marked DEBIT-ADJ in the upper right hand margin. If all charges and visits reported on the previously submitted claims are to be deleted, mark it CANCEL ONLY. A corrected claim should be submitted if the charges change by more than $1.00.

10:60-3.3 Toll free telephone service

Refer any questions pertaining to Individual Medicaid Practitioner (IMP) Numbers to 1-800-582-7052. This toll free service is available from 8:00 A.M. to 4:00 P.M. Monday through Friday, except holidays.

10:60-3.4 Assessment of interest on overpayments (Home Health Agency Services Only)

(a) When a Home Health Agency files a cost report and the report indicates that there has been an overpayment, full refund should be remitted with the report. In situations where this is not done, or where the Fiscal Agent, Blue Cross or Prudential, discovers an overpayment during desk review, field audit, or final settlement, the Fiscal Agent will, within seven days of discovery, contact the provider and attempt to recoup the overpayment by obtaining a refund in a lump sum.

(b) If the provider is unable to make a lump sum refund, the Fiscal Agent will, within 30 days after the date it notifies the provider that an overpayment exists, work out a repayment agreement by a series of set-offs against interim payments or by a combination of set-offs and cash repayments or through cash repayments only.

(c) The type of arrangement to be worked out with the provider is left to the discretion of the Fiscal Agent. The Fiscal Agent shall, as a matter of policy, attempt to recoup the overpayment as quickly as possible. The period of recovery shall not exceed 12 months unless a longer period of repayment is approved by the Director, Division of Medical Assistance and Health Services.

(d) Effective 30 days after the adopting of this regulation, all repayment agreements, including those in existence at the time of adoption, shall be in writing, signed by a duly authorized officer of the provider organization and an appropriate representative of the Fiscal Agent.

(e) If a repayment arrangement cannot be concluded within 30 days of notification by the Fiscal Agent, the Fiscal Agent shall make recovery through deductions from interim payments. In this instance, full recovery shall be made within 120 days from the date of initial contact.

(f) Recovery of the overpayments shall be made without regard to disputes in whole or in part of the Fiscal Agent's determination of the overpayment or pending appeals with the Provider Reimbursement Review Board (PRRB). As appeals are adjudicated, appropriate adjustments will be recognized and payments made.

(g) In all instances where full repayment cannot be made within 30 days of the Fiscal Agent's initial contact, interest shall be charged on the outstanding balance on the fifteenth of every month. The amount of interest shall be at the maximum legal rate on the date of the repayment agreement or thirty days after the date of initial contact, whichever is sooner.

(h) Where the discovery of an overpayment is prevented or burdened by errors contained within the cost report, either inadvertently or willfully, interest shall be charged as of the fifteenth of the first month (after) the cost filing was originally due.

(i) When cost filings are submitted more than 120 days after the close of the Home Health Agency's fiscal year and an overpayment is determined, interest shall be charged beginning on the fifteenth of the first month (after) the cost filing was originally due.

10:60-3.5 Automated Data Exchange.

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

(c) Any provider approved for an Automated Data Exchange claim submission system must comply with all regulations and restrictions set forth by the New Jersey Medicaid Program.

(d) (No change in text.)

DIVISION OF PUBLIC WELFARE

(a)

Assistance Standards Handbook
Deeming of Sponsor's Income and Resources to a Sponsored Alien

Adopted Amendments: N.J.A.C. 10:82-3.13

Proposed: June 17, 1985 at 17 N.J.R. 1523(a).
Adopted: September 10, 1985 by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.
Filed: September 11, 1985 as R.1985 d.491, **without change.**

Authority: N.J.S.A. 44:7-6 and 44:10-3; 45 CFR 233.51.

Effective Date: October 7, 1985.
Expiration Date pursuant to Executive Order No. 66 (1978): July 7, 1988.

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

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Full text of adoption follows.

10:82-3.13 Eligibility of sponsored aliens and deeming of sponsor's income and resources to a sponsored alien

(a) The income and resources of an alien's sponsor shall be deemed to be unearned income and resources of an alien applying for AFDC for the first time after September 30, 1981 for a period of three years following the alien's entry into the United States. For purposes of this section, a sponsor is an individual, a public or private agency or organization who executed an affidavit of support or similar agreement on behalf of an alien (who is not the child of the sponsor or the sponsor's spouse) as a condition of the alien's entry into the United States. No income or resources shall be deemed from a sponsor who is (or whose spouse is) receiving AFDC or SSI.

1. These deeming provisions do not apply to any alien who is:

i. Admitted as a conditional entrant refugee to the United States as a result of the application of the provision of section 203(a)(7) (in effect prior to April 1, 1980) of the Immigration and Nationality Act;

ii. Admitted as a refugee to the United States as a result of the application of the provisions of section 207(c) (in effect after March 31, 1980) of the Immigration and Nationality Act;

iii. Paroled into the United States as a refugee under section 212(d)(5) of the Immigration and Nationality Act;

iv. Granted political asylum by the Attorney General under section 208 of the Immigration and Nationality Act;

v. A Cuban or Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980 (Public Law 96-422); or

vi. The dependent child of the sponsor or sponsor's spouse.

2. (No change.)

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

(e) Eligibility and reporting of income and resources: For a period of three years following entry for permanent residence into the United States, the sponsored alien who is not exempt from deeming under (a)1. above shall provide the CWA with any information and documentation necessary to determine the income and resources of the sponsor and the sponsor's spouse (if applicable and if living with the sponsor) that can be deemed available to the alien, and obtain any cooperation necessary from the sponsor.

1. Change in circumstances and deeming: If the alien's circumstances change during the three-year period such that the alien is no longer exempt from or subject to deeming in accordance with (a)1i through vi above, the CWA shall reflect the resulting change in unearned income in the assistance payment.

2. Ineligibility: A sponsored alien is ineligible in any month in which adequate information concerning the income and resources of the sponsor or sponsor's spouse (if living with the sponsor) is not provided, regardless of the reason the alien failed to provide the information.

3. Unsponsored family members: Unsponsored family members are not ineligible if a sponsored alien fails to provide information concerning the sponsor or sponsor's spouse (if living with the sponsor). However, any income the unsponsored family members actually receive from the sponsor must be reported and considered in determining their eligibility.

(f) Income and resources which are deemed to an alien shall not be considered in determining the need of other unsponsored members of the alien's family except to the extent the income and resources are actually available. The sponsor's obligatory contribution shall not exceed the per capita share of the eligible unit's adjusted allowance for the alien(s) for whom the sponsor is liable.

(g) Overpayments to aliens: Any individual sponsor of an alien, and the alien, shall be jointly and severally, liable for any overpayment of AFDC made to the alien during the three years after the alien's entry into the United States that was caused by the sponsor's failure to provide correct information under the provisions of this section, except as provided in 1 below.

1. When a sponsor is found to have good cause or to be without fault for not providing information to the CWA, the sponsor will not be held liable for the overpayment and recovery will not be made from this sponsor.

2. Overpayment recovery: An overpayment for which the alien or the sponsor and the alien are liable as described above shall be repaid to the CWA or recovered in accordance with the provisions of N.J.A.C. 10:82-2.19. If the CWA is unable to recover the overpayment through this method, the overpayment shall be withheld from future payments to which the alien or the alien and the individual sponsor are entitled under:

i. Any State administered or supervised program established by the Social Security Act; or

ii. (No change.)

(a)

Home Energy Assistance Handbook

Readoption: N.J.A.C. 10:89
Adopted Amendments: N.J.A.C. 10:89-Foreword, 2.2, 3.4, 4.1, 5.2, and 5.6

Proposed: July 15, 1985 at 17 N.J.R. 1737(a).

Adopted: September 10, 1985 by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.

Filed: September 11, 1985 as R.1985 d.492, **without change.**

Authority: N.J.S.A. 30:4B-2; Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35).

Effective Date of Readoption: September 11, 1985.

Effective Date of Amendments: October 7, 1985.

Expiration Date pursuant to Executive Order 66 (1978): September 11, 1990.

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

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:89.

Full text of the adopted amendments follows.

FOREWORD

The Low Income Home Energy Assistance Act of 1981 (Title XXVI of Omnibus Budget Reconciliation Act of 1981) authorizes grants to states to provide assistance to eligible low income households to offset rising costs of home energy that

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are excessive in relation to household income. The term "home energy" means a source of heating or cooling in residential dwellings.

Under the Act, responsibility for Federal administration of the program is assigned to the U.S. Department of Health and Human Services. The N.J. Department of Human Services, Division of Public Welfare (DPW), has been designated the single state agency to administer the energy program.

The county welfare agencies (CWAs), acting as the local administrative agencies, are responsible for accepting and processing program applications and the verification of program eligibility factors.

This Home Energy Assistance Handbook sets forth the regulations and procedures relative to the provision of energy assistance to, or on behalf of, eligible individuals.

The regulations and procedures in this chapter are conditioned upon the principles of public assistance as contained in N.J.A.C. 10:81 (Public Assistance Manual). Regulations regarding complaints, safeguarding information, nondiscrimination, and fraudulent receipt of assistance, as delineated in N.J.A.C. 10:81, are likewise applicable to the administration of this program.

This Handbook is a public document and it is available in accordance with the conditions and procedures set forth in N.J.A.C. 10:81-1.13.

Any questions regarding the application of the regulations contained within this manual shall be referred to the Home Energy Assistance Unit of DPW.

DPW is working with representatives of the American Indian population of New Jersey to determine the number of eligible households in this group and to ensure that they are adequately serviced.

10:89-2.2 Eligibility requirements

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

(d) The value of resources is not considered in the determination of eligibility for benefits under this program.

10:89-3.4 Emergency energy assistance

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

(c) Emergency purchase of fuel:

1. The CWA is authorized to issue a one-time emergency payment for the purchase of fuel oil or other fuel used for residential heating.

2.-3. (No change.)

(d)-(f) (No change.)

10:89-4.1 Opportunity and decision to apply

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

(c) Households desiring HEA assistance must complete a separate Form EP-1, Home Energy Assistance Application. The application must be completed and signed at sites designated by the CWA of the country in which the household resides. The application shall be signed by the household member responsible for payment of heating or cooling costs or by his or her authorized representative and by the CWA worker and supervisor.

1.-2. (No change.)

3. The CWA shall document the date of application recording on the application the date it was received by the CWA. The period for determination of program eligibility or ineligibility and notification of the household of the determination is calculated from the date the application is filed.

4.-5. (No change.)

(d)-(j) (No change.)

10:89-5.2 Notice requirements

(a) (No change.)

(b) The Division of Public Welfare or the CWA, as appropriate, will generate notices (Notice of Home Energy Assistance Action, Form EP-2) informing the household of any action taken on its application. The CWA is responsible for promptly mailing Form EP-2 to the household.

1. This notice of eligibility or denial (Form EP-2) is sent to applicants for the Home Energy Assistance Program.

2. (No change.)

3. For households which are denied, Form EP-2 will advise the household of the reason for denial.

(c) Households receiving automatic payments shall receive a notice, (Notice of Home Energy Assistance Action, Form EP-2) included with the energy payment. The notice will advise the household of the amount of assistance to which they are entitled.

(d)-(e) (No change.)

10:89-5.6 Outreach requirement

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

(d) CWAs may initiate other outreach activities as they deem appropriate.

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

LAW AND PUBLIC SAFETY

(a)

BOARD OF MEDICAL EXAMINERS

Requirements for Issuing Prescriptions for All Medications; Information Required on Label When Physician or Podiatrist Dispenses Medication

Adopted Amendment: N.J.A.C. 13:35-6.6

Proposed: August 5, 1985 at 17 N.J.R. 1866(a).
Adopted: September 11, 1985 by Board of Medical Examiners, Edward W. Luka, M.D., President.
Filed: September 16, 1985 as R.1985 d.505, **without change.**

Authority: N.J.S.A. 45:9-2

Effective Date: October 7, 1985.
Expiration Date pursuant to Executive Order No. 66 (1978): August 1, 1988.

Summary of Public Comments and Agency Responses:

The Board received two comments regarding the proposed amendment. The past president of the New Jersey Academy of Family Physicians, Salvatore Dallio, congratulated the Board on its effort to protect the public and cautioned that frequently unfinished medication dispensed by physicians is consumed not by the patient it was intended for but by members of the patient's family.

The Board responded in writing, thanking the physician for supporting the Board's efforts to protect the public and ex-

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pressing regret that the Board's regulations could not prevent the conduct of patients who endanger their families by permitting improper ingesting of medication.

The second comment, which was received from the University of Medicine and Dentistry endorsed the amendment. The Board thanked UMDNJ President Stanley Bergen for his support of the amendment.

Full text of the adoption follows.

13:35-6.6 Requirements for issuing prescriptions for and dispensing all medications; special requirements for prescribing or dispensing controlled drugs

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

(h) Every physician and podiatrist shall assure that each container of medication dispensed directly to a patient is labeled in a legible manner with at least the following information:

1. Physician's or podiatrist's full name;
2. Full name of patient;
3. Date medication is dispensed;
4. Expiration date of medication;
5. Name, strength and quantity of medication dispensed;
6. Adequate instructions for the patient regarding the frequency of administration of the medication;
7. When a physician or podiatrist dispenses a pharmaceutical sample which has been packaged and labeled by the manufacturer and such sample package contains the information required by 5. and 6. above, the information listed in 1 through 3, inclusive, above need not be added;
8. When a physician or podiatrist dispenses a medication, other than a sample exempted pursuant to 7. above, in a container without sufficient space for the information required by this subsection, the container shall be placed in a large container or envelope, and the larger container or envelope shall be labeled as indicated in this subsection;
9. Each container of medication dispensed shall contain only one type of medication;

i. (No change.)

(a)

BOARD OF OPTOMETRISTS

Licensure by Examination; Reexamination

Adopted Amendment: N.J.A.C. 13:38-3.2

Proposed: July 1, 1985 at 17 N.J.R. 1639(b).
Adopted: September 11, 1985 by State Board of Optometrists, Maxwell M. Kaye, O.D., President.
Filed: September 16, 1985 as R.1985 d.504, **without change.**

Authority: N.J.S.A. 45:12-4.

Effective Date: October 7, 1985.
Expiration Date pursuant to Executive Order No. 66 (1978): October 7, 1990.

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

Full text of the adoption follows.

13:38-3.2 Reexamination

An applicant for licensure failing the first examination shall be permitted to take any of the next two succeeding examinations conducted by the Board. An applicant failing the examination twice must take courses approved by the Board before taking the examination a third and fourth time. This same procedure shall prevail after each two failures.

ENERGY

(b)

THE COMMISSIONER

Used Oil Recycling

Adopted New Rule: N.J.A.C. 14A:3-11

Proposed: August 5, 1985 at 17 N.J.R. 1866(b).
Adopted: September 16, 1985 by Leonard S. Coleman, Jr., Commissioner, Department of Energy.
Filed: September 16, 1985 as R.1985 d.506, **without change.**

Authority: N.J.S.A. 52:27F-11(q).

Effective Date: October 7, 1985.
Expiration Date pursuant to Executive Order No. 66 (1978): October 7, 1990.

Summary of Public Comments and Agency Responses:

Comment: The Camden County Department of Solid Waste Management states that according to the New Jersey Department of Environmental Protection, used oil reprocessing facilities are required to be licensed as storage or treatment facilities and that used oil from these facilities cannot be sold for use as a fuel unless the consumer has a valid air pollution control permit for that particular fuel.

Camden County claims that since there is no re-refining facility in New Jersey or the region which is capable of refining used oil into lubricating oil and that since no company or individual has a permit to buy reprocessed or unprocessed used oil and use it as fuel in New Jersey, the New Jersey Department of Energy should drop its requirements on the collection of used oil by service stations or place everyone impacted by this regulation on notice that used oil cannot be used as a fuel in New Jersey.

Response: The New Jersey Department of Environmental Protection has promulgated a series of regulations which govern the transport, storage, and recycling of used oils. Those regulations insure environmental safeguards from the transportation to the end users and specify the technical requirements for the use of used oil as a fuel or fuel supplement.

The purpose of the New Jersey Department of Energy's regulations is to conserve non-renewable petroleum resources, to preserve and enhance the quality of the environment, and to protect the public health and welfare. The Department recognizes that the improper disposal of used oils into the environment is a Statewide problem. It also recognizes that

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while there are no re-refining facility in the State, there are facilities in the surrounding state which reprocess used oils which are used as fuel or fuel supplement in those surrounding states. The Department has held several meetings with the New Jersey Department of Environmental Protection, Camden County and others to discuss issues concerning the reprocessing and burning of used oils in New Jersey. Therefore, the Department believes that it should continue with its program that has been recognized as a national model for other State's to emulate, and which has promoted awareness of the proper disposal, increased collection, and recycling of used motor oils. The program has also provided an additional avenue for municipalities to receive State recycling grants for the recovery of used oils.

Full text of the adoption follows.

SUBCHAPTER 11. USED OIL

14A:13-11.1 Short title

This subchapter shall be known and may be cited as the "Used Oil Recycling Regulations".

14A:3-11.2 Scope and purpose

(a) Unless otherwise provided by statute or rule, this subchapter shall govern the collections, storage, recycling, use and disposal of used oil.

(b) The purpose of this subchapter is to conserve nonrenewable petroleum resources, to preserve and enhance the quality of the environment, and to protect the public health and welfare.

14A:3-11.3 Definitions

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

"Department" means the New Jersey Department of Energy.

"Oil retailer" means any person who sells to consumers more than 500 gallons of lubricating or other oil annually in containers for use off the retailer's premises.

"Recycle" means to prepare used oil for reuse as a petroleum product or petroleum product substitute by refining, re-refining, reclaiming, reprocessing, or to use used oil in a manner that substitutes for a petroleum product made from new oil.

"Used oil" means a petroleum based on synthetic oil which is used in an internal combustion engine as an engine lubricant, or as a product used for lubricating transmissions, gears or axles, which through use, storage or handling has become unsuitable for its original purpose due to the presence of chemical or physical impurities or loss of original properties.

"Used oil collection site" means any Division of Motor Vehicles reinspection station, oil retailer, or retail service station, which has a used oil collection tank(s) existing on the premises, or any site which accepts used oil for recycling.

"Used oil collection tank" means any tank, whether above or below ground, into which used oil is drained.

"Used oil hauler" means any person who collects and transports more than 500 gallons of used oil annually over public highways.

"Used oil recycler" means any person who recycles more than 5,000 gallons of used oil annually.

"Used oil storage facility" means any place that receives more than 10,000 gallons of used oil annually, but does not include a used oil collection site.

14A:3-11.4 Standard

(a) No person shall dispose of used oil except to a used oil collection site. However, no person shall dispose of more than five gallons of used oil per day to any used oil collection site.

(b) No person shall discharge water, antifreeze, industrial waste or any other contaminant into a used oil collection tank.

14A:3-11.5 Posting requirements

(a) All oil retailers shall post and maintain, at or near the point of sale, a durable and legible sign, not less than 11 inches X 15 inches in size, informing the public of the importance of the proper collection and disposal of used oil, and how and where used oil may be properly disposed of.

(b) All operators of used oil collection sites shall post and maintain a durable and legible sign not less than 11 inche. X 15 inches in size, so that it is easily visible to the public, informing the public that it is a collection site for the disposal of used oil.

14A:3-11.6 Used oil collection sites

(a) All used oil collection sites shall accept without charge up to five gallons of used oil per day from any person. No used oil collection site shall accept more than five gallons of used oil per day from any person.

(b) The operator of a used oil collection site shall collect used oil in a manner which is safe for users of the site.

(c) The operator of a used oil collection site shall transfer used oil only to a used oil hauler, a used oil recycler, or the operator of a used oil storage facility who complies with the Department of Environmental Protection's special waste manifest system, N.J.A.C. 7:26-7.

14A:3-11.7 Used oil haulers

(a) All used oil haulers shall comply with the Department of Environmental Protection's special waste manifest system, N.J.A.C. 7:26-7. Compliance with N.J.A.C. 7:26-7 shall include the total amount collected, and an itemization of the amounts transferred to other used oil haulers, used oil storage facilities, used oil recyclers, including those facilities not located in the State of New Jersey.

(b) Used oil haulers shall transfer use oil only to other used oil haulers, used oil storage facilities or used oil recyclers who comply with N.J.A.C. 7:26-7.

14A:3-11.8 Used oil products

(a) Any product made in whole or in part from used oil may be represented as substantially equivalent to a product made from new oil for a particular use if substantial equivalency has been determined in accordance with rules prescribed by the Federal Trade Commission under Section 383(d)(1)(A) of the Energy Policy and Conservation Act (P.L. 94-163) or if the product conforms fully with specifications applicable to that product made from new oil. Otherwise the product shall be represented as made from used oil.

(b) To assure conformance with the minimum standards for recycled oil, the Department may require oil recyclers to conduct, or may cause to be conducted, appropriate laboratory analysis of samples of recycled oil.

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TRANSPORTATION

(a)

NEW JERSEY TRANSIT CORPORATION

Senior Citizen and Disabled Resident Transportation Assistance Act Program Guidelines and Procedures

Adopted New Rule: N.J.A.C. 16:78

Proposed: June 17, 1985 at 17 NJR 1532(a).
Adopted: July 18, 1985 by Albert R. Hasbrouck, III, Assistant Executive Director, New Jersey Transit Corporation.
Filed: September 4, 1985 as R.1985 d.490, **without change.**

Authority: N.J.S.A. 27:25-5(e), N.J.S.A. 27:25-32(a).

Effective Date: October 7, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): October 7, 1990.

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

Full text of the adoption follows.

CHAPTER 78
SENIOR CITIZEN AND DISABLED RESIDENT TRANSPORTATION ASSISTANCE ACT PROGRAM GUIDELINES AND PROCEDURES

SUBCHAPTER 1. GENERAL OVERVIEW

16:78-1.1 Purpose

(a) The general purpose of the Senior Citizen and Disabled Resident Transportation Assistance Program is to make available and accessible transportation so that senior citizens and disabled residents may obtain the necessities of life, including, but not limited to, employment, post-secondary education, social and recreational activities, shopping, and non-emergency medical services.

(b) The purposes of this program are as follows:

1. To assist counties to:

i. Coordinate the activities of the various participants in this program in providing the services to be rendered at the county level and between counties, and

ii. Develop and provide accessible feeder transportation service to accessible fixed-route transportation services where such services are available, and accessible local transit service to senior citizens and the disabled, which may include, but will not be limited to, door-to-door service, feeder service, fixed route service, local fare subsidy, and user-side subsidy, which may include, but will not be limited to, private rider or taxi fare subsidy.

2. To enable the Corporation to:

i. Coordinate the program within and among counties;

ii. Render technical information and assistance to counties eligible for assistance under these guidelines; and

iii. Develop, provide and maintain those portions of capital improvements that afford accessibility to fixed route and other transit services which make rail cars, rail stations, bus shelters and other bus equipment accessible to senior citizens and the disabled.

16:78-1.2 Definitions

The following words and terms, as used in this chapter, shall have the following meanings:

"Accessible" means a service or facility that can be used by all individuals, including those who cannot negotiate steps or who can negotiate steps only with great difficulty.

"Board" means Board of Directors of the New Jersey Transit Corporation.

"Consumers" means senior citizens or disabled persons. In addition, for purposes of meeting the 51 percent minimum requirement for consumers on local senior citizen and disabled advisory committees, parents or legal guardian of disabled minors and non-professional advocates for mentally or emotionally disabled persons will be considered consumers.

"Corporation" means the New Jersey Transit Corporation.

"Demand responsive service" means a transportation mode in which a vehicle operates on demand to a variety of different origins and destinations.

"Disabled" means any individual who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, is unable without special facilities or special planning or design to utilize mass transportation facilities and services as effectively as persons who are not so affected. Escorts may be allowed to use this service pursuant to rules established by the individual operators.

"Eligible counties" means counties submitting a proposal meeting the program guidelines.

"Fixed route service" means a transportation mode in which a vehicle operates on a regular basis along a predetermined route according to a schedule.

"General administration" means the management activities necessary to implement the purpose and objectives of the Senior Citizen and Disabled Resident Transportation Assistance Program. The NJ TRANSIT audit required by the Act will be funded as one of these management activities.

"Geographic region" means one of the following regions of the State: the Northern Region encompassing the counties of Bergen, Essex, Hudson, Morris, Passaic, Sussex, Union, Warren; the Central Region encompassing the counties of Hunterdon, Mercer, Middlesex, Monmouth, Ocean and Somerset; and the Souther Region encompassing those counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, and Salem.

"Local fare subsidy" means an arrangement in which the designated recipient contracts with private and/or public operators of public transportation to reduce the fare to the senior citizen and disabled persons.

"New Jersey Special Services Citizen Advisory Committee" means a committee representing advocacy groups from senior citizens and the disabled and other interested parties appointed by the Executive Director of New Jersey Transit.

"Private ride" means a program whereby the designated recipient reimburses an individual or volunteer who provides transportation to senior citizens and disabled persons on an incidental and non-commercial basis.

"Senior citizen" means any individual who is 60 years of age or older.

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"Taxi fare subsidy" means an arrangement in which the designated recipient contracts with a taxi operator to reduce its fare to senior citizens and disabled persons.

"Technical assistance" means those activities, of NJ TRANSIT or its representatives, designed to assist local designated recipients in the planning, organizing, implementing, operating, monitoring, and evaluating existing and future transportation services. The result of technical assistance activities is improvement of the efficiency, effectiveness and safety of transportation provided to the senior citizens and disabled persons.

"User side subsidy" means a program in which the designated recipient makes tickets available to senior citizens and disabled persons to purchase transportation at reduced rates.

SUBCHAPTER 2. APPORTIONMENT

16:78-2.1 General

In each fiscal year there is authorized to the Corporation from the Casino Revenue Fund established pursuant to section 145 of P.L. 1977, c.110 (N.J.S.A. 5:12-145) a sum equal to 7.5 percent of the revenues deposited in the Casino Revenue Fund during the preceding fiscal year, as determined by the State Treasurer.

16:78-2.2 Formula

(a) Moneys under this program will be allocated by the Corporation in the following manner:

1. 75 percent will be available to be allocated to eligible counties for the purposes specified under N.J.A.C. 16:78-1.1(b)1. of the program.

2. 25 percent will be available for use by the Corporation for the purposes specified under N.J.A.C. 16:78-1.1(b)2. of the program and for the general administration of the program, but no more than 10 percent of the total moneys allocated under this program will be used for the general administration of the program.

(b) The amount of money which each eligible county may receive will be based upon the number of persons 60 years of age and older residing in that county expressed as a percentage of the whole number of persons resident in this State of 60 years and older, as provided by the U.S. Bureau of the Census. As similar data becomes available for the disabled population, such data will be used in conjunction with the senior citizens data to determine the county allocation formula. No eligible county will receive less than $150,000 nor more than 10 percent of the total funds available for allocation to the counties during a fiscal year under this program. No matching funds are required.

16:78-2.3 Funds availability

(a) Available funds must be committed by June 30 of each year or they will revert back to the General Casino Fund.

(b) The total NJ TRANSIT portion of the annual appropriation can be committed immediately upon adoption of a budget. A budget will be adopted using the following process. The Office of Special Services shall have the lead role in preparing the annual program budget. All organization units with eligible projects will submit requests with justification to the Office of Special Services, where requests will be put into priority order. That list will then be reviewed by the NJ TRANSIT Special Services Citizen Advisory Committee. The priority list and Special Services Citizen Advisory Committee comments will then be submitted to the Capital Program Committee for action, normally with the entire capital program. The Budget Office will be asked to review each project for opening budget impacts. The list of projects is then forwarded to the Executive Committee for action. The Board will then be asked to review and adopt the program. The Special Services staff shall complete Project Initiation Forms and work with appropriate staff at NJ TRANSIT Bus, Rail and Corporate to coordinate activities.

(c) The funds will be committed to a county upon notification of a grant awarded by NJ TRANSIT to the designated recipient.

1. The county or its designated recipient must submit an application to NJ TRANSIT prior to March 15 for funds available for the state fiscal year starting the following July 1. For the state fiscal year 1986, the Office of Special Services may extend the application deadline when warranted. In no case will an extension be given beyond July 15, 1985.

2. County contracts must coincide with a June 30 fiscal year-end and require at least quarterly financial reports to be submitted within 30 days of the end of the quarter. This is a reimbursement program. Requests for reimbursement may be monthly. When warranted, monthly advances may be given, but payments will be withheld if financial reports are not received when due.

3. The balance of county funds remaining unexpended by the county on June 30 can be used by the county in the succeeding fiscal year by having the succeeding fiscal year contract modified by NJ TRANSIT. In no case can a county carry-over more than the previous years allocation to that county, with the exception of carry-over fiscal years 1984 and 1985 funds to fiscal year 1986. These carry-over contract modifications will only be approved by NJ TRANSIT if the services to be provided have been included in the most recently approved county plan. Newly proposed services that have been subject to the same review process as the county plan may also be approved as a modification. Unexpended county funds in excess of the previous years allocation will be reallocated as specified in N.J.A.C. 16:78-2.4.

16:78-2.4 Transfer of allocations

Any funds either not applied for by the deadlines specified in N.J.A.C. 16:78-2.3(c) or excess unexpended funds will be made available for reallocation to those counties which have an application on file by the deadline, and have not reached the maximum allocation for that fiscal year (see N.J.A.C. 16:78-2.2(b)).

SUBCHAPTER 3. ELIGIBILITY

16:78-3.1 Eligible recipients

(a) The governing body of the county is an eligible recipient and may make application to the Board for moneys available under N.J.A.C. 16:78-2.2(a)1. The governing body of a county may relinquish this designation to an agency, group or groups to replace it as the applicant. Relinquishing this designation requires that a public hearing be held. NJ TRANSIT will deal with only one applicant from each county.

(b) The purpose of the public hearing is to afford an opportunity for senior citizens, the disabled and other interested individuals or parties, to comment on the appropriateness of such designation.

16:78-3.2 Eligible service areas

The recipients are allowed to provide service beyond county and State boundaries under this program, and are strongly encouraged to do so, as long as services benefit eligible residents of New Jersey (see N.J.A.C. 16:78-5.4(c)). At a minimum, recipients must provide service into contiguous counties.

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16:78-3.3 Eligible activities

(a) Eligible county activities are as follows:

1. The development and provision of additional or expanded accessible feeder transportation service to accessible fixed-route transportation services must be provided where such services are available, and accessible local transit service to senior citizens and the disabled, which may include but not be limited to door-to-door service, fixed-route service, local fare subsidy, and user-side subsidy which may include but not be limited to private ride or taxi fare subsidy and to coordinate the activities of the various participants in this program in providing the services to be rendered at the county level and between counties. Only passenger transportation services are eligible for reimbursement under this program. The transport and/or delivery of meals or other goods is not an eligible activity under this program. Transportation services for medical purposes are eligible as long as they are of a non-emergency nature. Specifically, eligible activities include, but are not limited to, the following:

i. Planning: analysis and inventory of needs, existing services; determination of unmet needs, development of county's coordination plan, analysis of costs, etc.

ii. Capital investment: purchase of vehicles, lifts, radios and other necessary equipment.

iii. Operating costs: any activity related to providing transportation services. Such activities include drivers' salaries, maintenance, insurance, gas and oil, dispatching expenses, driver training, etc.

2. The recipients must make serious efforts to provide transit service for disabled persons needing employment and post-secondary education transportation.

(b) Eligible NJ TRANSIT activities are as follows:

1. Technical assistance to render technical information and assistance to counties eligible for assistance. Such activities may include but not be limited to the collecting and dissemination of information on the coordination of transportation services and funding sources, vehicle scheduling, routing, and dispatching, specifications for vehicle procurement and maintenance.

2. Accessible capital improvements which include the design and purchase of capital improvements that provide additional or expanded accessible fixed route and other transit service. These accessible capital improvements include improvements to rail cars, rail stations, buses, bus facilities, and other related rail and bus facilities which make transportation services accessible to senior citizens and disabled persons.

3. Operating costs associated with the operation and maintenance of additional and expanded accessible capital improvements.

4. The administration of the program within and among the counties as well as coordinate NJ TRANSIT's improvements allowed under the program. The total dollars allowed for general administration of these activities may not exceed 10 percent of the total moneys allocated under this program.

5. The planning of Statewide activities leading to improved additional or expanded accessible transit services.

16:78-3.4 Coordination plan requirements

(a) In order for a county to be eligible for assistance under the program, the governing body of that county or an agency, group or groups authorized by the governing body will develop a county plan for that assistance in accordance with the program regulations. The plan must be reviewed by the local citizen advisory committee. The county plan will be approved by the governing body of that county and then be subject to approval by the NJ TRANSIT Board of Directors.

(b) Recipients are required to coordinate the activities of the various participants in the program. Mere cooperation is not sufficient. Coordination involves at least some of the following activities:

1. Central gasoline purchasing
2. Central vehicle maintenance
3. Centralized vehicle dispatch
4. Centralized passenger trip request
5. Centralized billing and accounting

(c) Usually, the best economies of scale are realized through actual consolidation of all the transit activities. It is intended that recipients incorporate these coordination activities not only among their own transit operators, but to also make efforts to attract other local transit operators to join the coordinated system.

(d) The county plan shall include, but not be limited to the following:

1. Provisions for the coordination of existing and future transportation services at the county level and for intercounty transportation services;

2. Information as to what existing accessible and non-accessible transportation services are available;

3. What additional and/or expanded accessible and non-accessible transportation services will be provided;

4. The methods that will be utilized to deliver these services;

5. The anticipated financial costs to be incurred from the implementation of the services; and

6. The financial resources to be put in place to meet these costs, including fares and/or voluntary contributions/donations.

(e) Beginning with the Fiscal Year 1987 application, the recipient must include a plan as described in (d) above. The plan must be updated annually and a copy of the updated plan included in subsequent applications for funding.

(f) In order to afford individuals the capability of influencing transportation decisions at all stages of development, the governing body of each county must appoint a citizen advisory committee. The objective of the committee is to advise the recipient on planning, implementing and operating coordinated transportation services at the county level.

(g) The governing body may choose to appoint an existing advisory committee to satisfy the objective set forth herein. However, committee membership must consist of at least 51 percent consumers (for example, senior citizens and disabled residents) of the service.

(h) The recipient shall provide NJ TRANSIT with the following information about the local citizen advisory committee:

1. Committee By-Laws
2. Membership, terms of office, positions
3. List of consumers
4. Notice of meetings
5. Copy of minutes

SUBCHAPTER 4. PROGRAM DEVELOPMENTS AND MANAGEMENT

16:78-4.1 General

NJ TRANSIT in conjunction with the NJ TRANSIT Special Services Citizen Advisory Committee, its other advisory bodies, representatives and associations of counties, and other interested parties, has developed these regulations for transportation assistance to senior citizens and the disabled. The instrumentalities of local government, particularly

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the counties of this State, should play a major role in facilitating the provision of that transportation assistance, NJ TRANSIT in conjunction with the New Jersey Department of Transportation's Office of Coordination, and the counties, should coordinate existing transportation services provided at the local level including but not limited to those services funded by any other State agency, and establish coordinated inter-county transportation services.

16:78-4.2 Regional public hearings

In January of each year the Corporation will conduct at least one public hearing in each of the three geographic regions in order to gather information from interested parties as to the efficiency of the program. A minimum of 30 days notice will be given to every municipal clerk within that geographic region before these meetings. NJ TRANSIT and the local recipients of aid will make reasonable efforts to provide transit service to the public hearings. These public hearings shall be held at accessible locations.

16:78-4.3 Annual audit

The Corporation will cause an annual audit to be made of the program and will, if not conducted by the Corporation, employ a recognized accounting firm for that purpose. The expenses of conducting the audit will be considered as part of the cost of the general administration of the program. Each local recipient will cause an audit to be made of the local program on at least a bi-annual basis. The local recipient's audit will be paid for out of local funds received through this program. If the audit is not conducted by the designated recipient, a recognized accounting firm shall be employed by the designated recipient.

16:78-4.4 Technical assistance

The Corporation will be entitled to call upon the assistance, or contract for services, of any State department, board, bureau, commission or agency as may be necessary to implement the provisions of this program.

16:78-4.5 Reporting requirements

The Corporation will submit an annual report to the Legislature by October 1 of each year covering the period of the previous State fiscal year. The report will cover the status of this program including any recommendations concerning the general improvements of mass transit for the senior citizens and the disabled. The local recipients of aid will provide information to the Corporation, as requested on a timely basis to assist the Corporation in preparing this report. Copies of the annual report will be made available to each local recipient, as well as each county's governing body. Reports shall also be made available to the County Transportation Association (CTA) and the Council on Special Transit (COST).

SUBCHAPTER 5. LOCAL ASSISTANCE APPLICATION

16:78-5.1 General

(a) The governing body of an eligible county, or an agency, group, or groups designated as an applicant by the county after a public hearing in which senior citizens and disabled residents will have an opportunity to comment on the appropriateness of such designation, may make application to the Board for moneys available under N.J.A.C. 16:78-2.2(a)1. The application will be in the form of a proposal to the Board. This proposal will include:

1. Description of proposed services
2. Budget
3. Description of coordination efforts
   i. At the County Level
   ii. With other Counties
   iii. With existing Fixed Routes
4. Description and certification of maintenance of effort
5. Description of public involvement
6. Transcript of public hearing
7. Freeholder resolutions
   i. Approving designated recipient
   ii. Approving application
8. Reporting Requirements

16:78-5.2 Description of proposed services

(a) The proposed services should be described as follows:

1. Indicate the service or services to be provided. Eligible types of service include, but are not limited to, door-to-door service, fixed-route service, local fare subsidy, and user-side subsidy which may include, but not be limited to, private ride or taxi fare subsidy.

2. Describe the fleet of vehicles to be used in the program. Specify the age, type, mileage, funding source and condition of all vehicles in the fleet. Provide a five year capital replacement schedule.

3. Describe the days of the week, and the hours of the day that service will be available. For each type of service to be provided.

4. Describe the procedure that a prospective passenger would follow in order to register for and receive transportation, including a description of any advance reservation systems that may be used. Identify any phone numbers that consumers need to be aware of.

5. Describe marketing efforts.

16:78-5.3 Budget

The application must contain a program budget which identifies expense categories as identified in *Coordinating Transportation Services for the Elderly and Handicapped, Volume 2, A Model Uniform Billing and Accounting System for Coordinated Transportation Systems.* This publication is sponsored by the United States Department of Transportation and is available from the National Technical Information Service, Springfield, Virginia 22161. These categories must be aggregated into Administration, Planning, Operation, and Capital expense functions. Two budgets should be submitted. The first should include program expenses. The second budget should only reflect the Senior Citizen and Disabled Resident Transportation Assistance Program expenses. Both budgets should be prepared using a July 1 to June 30 fiscal year.

16:78-5.4 Coordination

(a) The application must include a description of the means by which the applicant will coordinate intra-county transportation, inter-county transportation and existing accessible fixed route services described in (b) through (d) below. This description should show that the recipient is implementing the comprehensive planning document described in N.J.A.C. 16:78-3.4 beginning with the Fiscal Year 1987 application.

(b) Intra-county coordination describes the means by which the applicant will coordinate accessible and non-accessible transportation services which operate within the county. Any agencies or organizations which the applicant has an agreement or letter of intent, whereby the applicant will provide transportation service to the senior citizens and disabled residents within the county should also be listed.

(c) Inter-county coordination describes the means by which the applicant will coordinate accessible and non-accessible transportation services which operate between counties. Any

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agencies or organizations which the applicant has an agreement or letter of intent, whereby the applicant will provide transportation service to the senior citizens and disabled residents between counties should also be listed (Copies of the agreements or letters of intent should be available upon request).

(d) Accessible fixed route coordination describes the means by which the applicant will coordinate existing, expanded, or additional accessible and non-accessible transportation for senior citizens and disabled residents with existing accessible fixed routes operated by public or private operators. Any public or private operators of accessible fixed route service which operate in or through the service area to which the applicant will provide accessible connecting service to should also be listed.

16:78-5.5 Description and certification of maintenance of effort (MOE)

(a) The purpose of the Senior Citizen and Disabled Resident Transportation Assistance Program is to provide for additional or expanded transportation services to senior citizens and disabled residents. Therefore, designated recipients must maintain the same level of funding for senior citizen and disabled transportation services as prior years.

(b) In order to comply with this Maintenance of Effort (MOE) requirement, the application must contain senior citizen and disabled resident transportation non-capital expense data from the past two years prior to the implementation of the Senior Citizen and Disabled Resident Transportation Assistance Program. This data should include non-capital expenditures of the designated recipient and/or applicant and any other agency, group, or groups which will participate in the coordinated transportation program. Data from groups joining the coordinated system since the implementation of the Senior Citizen and Disabled Resident Transportation Assistance Program must be added to the original MOE. The data from the new groups should cover the two year period immediately preceeding their joining the coordinated system.

(c) The applicant must complete a Maintenance of Effort Certification and Schedule, the form of which will be provided by NJ TRANSIT.

16:78-5.6 Public involvement

(a) In order to assure than an opportunity is afforded to any interested individual, agency, group, or groups to comment on the appropriateness of an application it will be necessary to hold a public hearing. A transcript of the hearing must be attached to the application.

1. The governing body of the recipient will also provide an opportunity for interested parties to provide the governing body with any facts, materials, or recommendations that would be of assistance regarding the efficacy of the local program.

(b) Notice of any public hearing required to be held pursuant to these rules will be published at least 30 days prior to the date of the public hearing in at least two newspapers circulating in the specific geographic area in which the meeting is to be held. Notice of any hearing will also be transmitted, at least 30 days in advance thereof, to every municipal clerk within the specified geographic area where the meetings will be held and to NJ TRANSIT. All public hearings held pursuant to these rules will be held at locations which are accessible to senior citizens and the disabled. NJ TRANSIT and the local recipients of aid will make reasonable efforts to provide transit service to the public hearings.

(c) The extent of efforts to involve the public in preparation of the application should be described. Public participation, should include senior citizens and disabled individuals, advocacy organizations representing seniors and disabled persons, public and social service agencies, public and private operators of existing transportation services. In particular, the efforts, other than those required in (a) and (b) above, should also be described.

16:78-5.7 Governing body resolution

(a) The governing body of each county is designated as the recipient of funds available under this program. If the governing body so chooses to relinquish this designation to an agency, or group it will be necessary for the Board of Chosen Freeholders to pass a resolution designating the agency or group. This resolution must be included in the application. A new resolution is not required for each annual application if the designated recipient remains the same.

(b) The governing body or the appropriate elected official of the designated recipient must pass a resolution and/or authorize the submission of an application. This resolution or authorization must be submitted with the application. The resolution or authorization should provide authority for the recipient to enter into a contractual agreement with NJ TRANSIT to implement the program.

TREASURY-GENERAL

(a)

OFFICE OF THE TREASURER

Charitable Fund-Raising Campaigning Among State Employees

Readopted New Rule: N.J.A.C. 17:28

Proposed: August 5, 1985 at 17 N.J.R. 1931(a).
Adopted: September 13, 1985 by William L. Stringer, Deputy State Treasurer.
Filed: September 13, 1985 as R.1985 d.496, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 52:14-15.9cl and 52:18A-30.

Effective Date: September 13, 1985
Effective Date pursuant to Executive Order No. 66 (1978): September 13, 1990.

Summary of Public Comments and Agency Responses:
The rules adopted by the Department of the Treasury on July 15, 1985, under the emergency adoption procedure, were drafted in consultation with members of the Campaign Steering Committee through a series of meetings in June and July 1985, as contemplated by the Public Employees Charitable Fund-Raising Act of 1985. The Campaign Steering Committee consists of representatives from the Black United Fund, International Services Agencies, National Health Agencies, United Ways of New Jersey and the United Negro College Fund. In addition, other interested charitable agencies attended the meetings between the Campaign Steering Committee and the

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State Treasurer's Office. A complete list has been filed with Office of Administrative Law.

Although no written comments to the rules adopted under the emergency procedure were received, the Campaign Steering Committee urged that suggestions made by the International Services Agencies and the Delaware Valley United Way (contained in the file), made before the rules were adopted, be reconsidered.

The first suggestion concerned a form of automatic participation renewal for charitable fund-raising organizations. This procedure was suggested to save time, money and to simplify administration by the State Treasurer. While it was suggested that the State Treasurer could use his or her discretion when considering which organizations should be granted automatic renewal, that suggestion was rejected by the Treasurer as being without regulatory safeguards. Instead, a simplified participation renewal was included into the rule at N.J.A.C. 17:28-2.8(e) and (f). As adopted here, any organization which qualified for the previous year's campaign would only be required to submit with its application new financial information which demonstrates that the organization meets the requirements of sections 7(e) and (f) of the Act. The rule further requires that organizations which opt for this participation renewal procedure notify the State Treasurer of any change in the organization's status under the Internal Revenue Code of 1954 or of any changes in its bylaws or officers. A similar renewal procedure and notification requirement was adopted for unaffiliated agencies at N.J.A.C. 17:28-3.4(e) and (f).

A second substantive change was urged by members of the Campaign Steering Committee and the Campaign Manager, the Delaware Valley United Way. They recommended that N.J.A.C. 17:28-4.6 be changed so that cash contributions that are designated to a particular charitable organization or agency also meet the $26.00 minimum requirement. That change has been adopted to ensure that designated cash contributions are sufficient to cover administrative costs.

The rules adopted under the emergency procedure, and which are being readopted here, originally described an application procedure and planning period for the campaign that began in July 1985. That provision was made exclusively for the 1985-86 Campaign because the Public Employee Charitable Fund-Raising Act was not enacted until April of 1985. To ensure that the 1985-86 Campaign could take place on schedule, application to and planning for the campaign had to be completed within a couple of months. However, it had always been the intention of the Department of Treasury, as well as that of the Campaign Steering Committee, that future campaigns would allow for approximately 10 months of planning. Therefore, the application period for the Campaign Steering Committee should commence in November of the year prior to the Campaign. For example, the application period for the 1986-87 will begin in November 1985. This change is reflected in the readopted rule. The change also required minor changes in dates throughout the chapter so that all dates conform to the extended application and planning period.

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

CHAPTER 28
[PUBLIC] ***STATE*** EMPLOYEE CHARITABLE FUND-RAISING CAMPAIGN

SUBCHAPTER 1. GENERAL PROVISIONS

17:28-1.1 Purpose

(a) The purpose of the regulations in this chapter is to:

1. Provide a convenient channel through which State employees may support the efforts of charitable fund-raising organizations and charitable agencies while minimizing disruption to the work place and cost to the taxpayers that fund-raising may entail;

2. Establish a system for the planning and conduct of charitable fund-raising campaigns among State employees in order to ensure that the funds will be collected and distributed in a reasonable manner; and

3. Provide eligible charitable organizations and charitable agencies access to the public work place for soliciting and collecting such contributions.

17:28-1.2 Scope

No deductions shall be made from compensation payable to State employees by the State Treasurer or his agents, or from compensation payable to employees of any instrumentality of the State, not payable by the State Treasurer, for the payment of contributions to any charitable fund-raising organization or charitable agency pursuant to N.J.S.A. 52:14-15.9cl, unless such organization or agency complies with the requirements of this chapter.

17:28-1.3 Definitions

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

"Affiliated charitable agency" means a charitable agency which is affiliated with a charitable fund-raising organization participating in the Campaign for the purpose of directly sharing in funds raised by the organization.

"Campaign manager" means a charitable fund-raising organization which manages a charitable fund-raising campaign.

"Campaign volunteer" means a public employee who volunteers to assist the Campaign Manager in the administration of the Campaign.

"Charitable agency" means a volunteer, not-for-profit organization which provides health, welfare, or human care services to individuals.

"Charitable fund-raising campaign" (Campaign) means an annual payroll deduction campaign organized pursuant to the Public Employee Charitable Fund-Raising Act, N.J.S.A. 52:14-15.9cl, to receive and distribute the voluntary charitable contributions of public employees.

"Charitable fund-raising organization" means a volunteer, not-for-profit organization which receives and distributes voluntary charitable contributions.

"Compensation" means compensation payable by the State Treasurer to a State employee.

"Day" means a working day.

"Payroll deduction" means a contribution deducted from a State employee's compensation pursuant N.J.S.A. 52:14-15.9cl.

"State" means the State of New Jersey or any instrumentality thereof.

"State employee" means any person employed by, or holding a public office, or position of, the State or any board, body, agency or commission thereof, whose compensation is payable by the State Treasurer.

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

"Unaffiliated charitable agency" means a charitable agency

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which provides health, welfare, or human care services within New Jersey and which is not affiliated with a charitable fund-raising organization.

"Undesignated contributions" means funds contributed to a charitable fund-raising campaign with no designation by the contributor as to the recipient charitable fund-raising organization or charitable agency.

17:28-1.4 Forms

In order to carry out its functions, the Department of the Treasury shall use such forms as it shall deem appropriate. Such forms may be amended, supplemented and/or replaced at the discretion of the State Treasurer.

SUBCHAPTER 2. CHARITABLE FUND-RAISING CAMPAIGN STEERING COMMITTEE

17:28-2.1 General provisions

(a) The Campaign Steering Committee is the operational unit of the State Campaign. Its actions on behalf of the member charitable fund-raising organizations shall be binding; it may assign functions, organize subgroups, and enlist others in its activities as it deems necessary in order to carry out its responsibilities.

(b) The underlying philosophy that shall govern the actions of the Campaign Steering Committee and the relationship among participating charitable fund-raising organizations is that no one organization shall function in a manner that will be detrimental to other participating organizations or to agencies participating in the Campaign.

(c) The Campaign Steering Committee shall convene on or before *[August 6, 1985]* ***February 1*** at the call of the State Treasurer.

(d) Each member shall have one vote.

(e) No action can be taken if objected to by at least five members of the Campaign Steering Committee.

17:28-2.2 Membership

The Campaign Steering Committee shall consist of one representative of each of the charitable fund-raising organizations eligible to participate in the State Campaign pursuant to N.J.S.A. 52:14-15.9c7a-f, one representative of a State public employee labor union to be chosen by the presidents of the various labor unions which represent State employees and one representative of the executive branch of State Government to be appointed by the Governor.

17:28-2.3 Term of membership

The term of membership for each member of the Campaign Steering Committee shall *[run until March 1, 1986.]* ***be for one year*** The representative of a State employee labor union and the executive branch of State Government shall be eligible for reappointment by the presidents of the various labor unions representing State employees and the Governor, respectively. A charitable fund-raising organization shall be eligible to renew its membership, annually, contingent upon the successful completion of the application process.

17:28-2.4 Duties of Campaign Steering Committee

(a) The Campaign Steering Committee shall:

1. Elect a Chairman to conduct the meetings of the Campaign Steering Committee, who shall serve *[until March 1, 1986]* ***for one year*** and who shall be eligible for re-election;

2. Recommend an honorary campaign chairman to be appointed by the Governor;

3. Elect and oversee a Campaign Manager;

4. Review the applications of charitable agencies wishing to participate in the Campaign; and

5. Establish policies and procedures for the operation and administration of the Campaign.

17:28-2.5 Eligibility of fund-raising organizations

(a) The requirements for eligibility of a charitable fund-raising organization are set forth in N.J.S.A. 52:15-14.9c7.

(b) The burden of demonstrating eligibility shall rest with the applicant.

17:28-2.6 Membership procedure

(a) The State Treasurer ***shall*** publish*[ed]* in the New Jersey Register a Public Notice of application for charitable fund-raising organizations wishing to participate on the Campaign Steering Committee ***at least 30 days prior to the application due date.*** These applications are due in the Office of the State Treasurer by *[July 15, 1985.]* ***December 1.***

(b) Within 10 days of the close of the application due date, the State Treasurer shall notify each applicant of its eligibility or ineligibility for the Campaign Steering Committee. In cases of ineligibility, the notice shall set forth reasons for such ineligibility.

17:28-2.7 Appeal procedure

(a) Any charitable fund-raising organization receiving notice of ineligibility shall have 10 days from receipt of such notice to submit to the State Treasurer any additional information addressing any deficiencies in the application.

(b) Within 10 days of receipt of any additional information, the State Treasurer shall convene a special appeal panel consisting of the representative of the various labor unions representing State employees and of the representative of the executive branch of State government to review the charitable fund-raising organization's application and any additional documentation or information submitted by the charitable fund-raising organization to address any deficiency in the application as determined by the State Treasurer.

(c) The special appeal panel shall conduct its review within 10 days and in that time shall make its recommendation in writing to the State Treasurer.

(d) The State Treasurer shall have five days from receipt of the recommendation of the special appeal panel to review the recommendation and supplemental application materials, make his or her final determination regarding the eligibility of the charitable fund-raising organization to participate on the Campaign Steering Committee, and notify the organization of his or her decision. The decision of the State Treasurer shall be final.

17:28-2.8 Application form/organization

(a) The State Treasurer shall prepare an application form for charitable fund-raising organizations wishing to participate on the Campaign Steering Committee.

(b) In addition to a completed application form, the applicant must submit:

1. With respect to the requirements set forth in N.J.S.A. 52:14-15.9a,b, and c, an Internal Revenue Service Letter of Determination or other proof from the Internal Revenue Service that the applicant:

i. Is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code;

ii. Qualifies for tax deductible contributions under section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code; and

iii. Is not a private foundation as defined in section 509(a) of the Internal Revenue Code; and

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2. With respect to the requirements set forth in N.J.S.A. 52:14-15.9c7e, annual financial reports which demonstrate that the organization raised, in each of its fiscal years preceding its application to participate in a Campaign, at least $35,000 from individual citizens of New Jersey; and

3. With respect to N.J.S.A. 52:14-15.9c7f, annual financial reports which demonstrate that the organization raised at least $60,000 and distributed that sum among a minimum of 15 charitable agencies in each of its two fiscal years preceding its application to participate in a State Campaign.

(c) The application may also require any general background information of the applicant charitable fund-raising organization which may aid the State Treasurer in his or her determination of an organization's eligibility.

(d) Those wishing to receive an application can do so by making a request either orally or in writing to the State Treasurer, Office of the State Treasurer, State House, CN 002, Trenton, New Jersey, 08625, (609) 292-1038.

(e) Charitable fund-raising organizations, which were found eligible by the State Treasurer to participate on the Campaign Steering Committee for Campaign immediately prior to the Campaign being applied for, shall be required only to submit to the State Treasurer its most recent financial information which shall specifically address the requirements of (b)2 and 3 above.

(f) Charitable fund-raising organizations found eligible to participate on the Campaign Steering Committee, under (e) above, shall be required to notify the State Treasurer of any change in the organization's status under the Internal Revenue Code of 1954 and of any new officers or bylaw within 45 days of any such change.

SUBCHAPTER 3. CHARITABLE FUND-RAISING CAMPAIGN

17:28-3.1 Eligibility

(a) A charitable fund-raising organization eligible for membership on the Campaign Steering Committee shall be eligible to participate in the Campaign.

(b) A charitable agency shall be eligible to participate in the Campaign if it is affiliated with a charitable fund-raising organization which is participating in the Campaign or if the agency meets the requirements of N.J.S.A. 52:14-15.9c7a-e.

1. The burden of demonstrating eligibility shall rest with the applicant.

17:28-3.2 Application procedure

(a) See N.J.A.C. 17:28-2.6 for the application procedure of charitable fund-raising organizations.

(b) The application procedure for charitable agencies is as follows:

1. The State Treasurer ***shall*** publish*[ed]* in the New Jersey Register a Public Notice of application for charitable agencies wishing to participate in the Campaign ***at least 30 days prior to the application due date.*** These applications are due in the Office of the State Treasurer *[on or before August 1, 1985.]* ***by December 1.*** The State Treasurer, in conjunction with the Campaign Steering Committee shall review the applications.

2. Within 10 days of the close of the application due date, the State Treasurer shall notify each agency of its eligibility or ineligibility to participate in the campaign. In cases of ineligibility, the notice shall set forth the reasons for such ineligibility.

3. Any charitable agency receiving notice of ineligibility shall have 10 days from receipt of such notice to submit to the State Treasurer any additional information addressing any deficiencies in the application.

4. Within 10 days of receipt of any additional information, the State Treasurer shall convene a meeting of the representative of the various labor unions representing State employees and the representative of the executive branch of State government to review the charitable agency's application and any documentation or information submitted by the charitable agency to address any deficiency in the application as determined by the State Treasurer and the Campaign Steering Committee.

5. The special appeal panel shall conduct its review within five days and in that time shall make its recommendation in writing to the State Treasurer.

6. The State Treasurer shall have five days in which to review the recommendation of the special appeal panel and the supplemental application materials, make his or her final determination as to the eligibility of the charitable agency to participate in the Campaign and notify the agency of his or her decision. The decision of the State Treasurer shall be final.

17:28-3.3 Application form/affiliated charitable agency

Affiliated Charitable agencies wishing to participate in the Campaign shall be certified as affiliated by their charitable fund-raising organization.

17:28-3.4 Application form/unaffiliated charitable agency

(a) The State Treasurer shall prepare an application form for unaffiliated charitable agencies wishing to participate in the Campaign.

(b) In addition to a completed application form, the applicant must submit:

1. With respect to the requirements set forth in N.J.S.A. 52:14-15.9a,b, and c, an Internal Revenue Service Letter of Determination or other proof from the Internal Revenue Service that the applicant:

i. Is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code;

ii. Qualifies for tax deductible contributions under section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code; and

iii. Is not a private foundation as defined in section 509(a) of the Internal Revenue Code; and

2. With respect to the requirements set forth in N.J.S.A. 52:14-15.9c7e, annual financial reports which demonstrate that the agency raised, in each of its fiscal years preceding its application to participate in a Campaign, at least $15,000 from individual citizens of New Jersey.

(c) The application may also require any general background information of the applicant charitable agency which may aid the State Treasurer in his or her determination of an agency's eligibility.

(d) Those wishing to receive an application can do so by making a request either orally or in writing to the State Treasurer, Office of the State Treasurer, State House, CN 002, Trenton, New Jersey, 08625, (609) 292-1038.

(e) Unaffiliated charitable agencies, which were found eligible by the State Treasurer to participate in the Campaign immediately prior to the Campaign being applied for, shall be required only to submit to the State Treasurer its most recent financial information which shall specifically address the requirements of (b)2 above.

(f) Unaffiliated charitable agencies found eligible to participate in the Campaign, under (e) above, shall be required to notify the State Treasurer of any change in the agency's status under the Internal Revenue Code of 1954 and of any new officers or bylaws within 45 days of any such changes.

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SUBCHAPTER 4. CAMPAIGN ADMINISTRATION

17:28-4.1 General provision

The provisions of this subchapter shall apply to State employees whose compensation is payable by the State Treasurer.

17:28-4.2 Campaign period

(a) The campaign solicitation period will be scheduled for a continuous ten week period during the months of September, October, November and December; but, in any event it shall not extend beyond December 10 *[,1985].*

(b) Participating charitable fund-raising organizations and charitable agencies may not engage in educational activities among State employees at the work site of the State employees during the Campaign period.

(c) Participating charitable fund-raising organizations and charitable agencies may not engage in solicitation activities among State employees at the work site of the State employee during the non-Campaign period.

17:28-4.3 Campaign literature

(a) The Campaign Steering Committee shall be responsible for the design, printing and distribution of Campaign pledge/designation cards and other Campaign literature.

(b) The State Treasurer shall approve, prior to distribution, the content of any Campaign pledge/designation card, Campaign literature and/or other materials to be distributed to State employees during the course of a Campaign to ensure that the information contained in these materials is accurate and fair. The State Treasurer shall also approve, prior to distribution, the form of any Campaign materials to ensure compliance with administrative requirements of the Campaign.

17:28-4.5 Form of contribution

Employees may contribute to eligible charitable fund-raising organizations and/or charitable agencies either cash or a specified amount to be deducted from their compensation each pay period.

17:28-4.6 Designated contribution

Employees may designate, on a Campaign pledge/designation card, their contribution to a specific charitable fund-raising organization and/or charitable agency, and/or may select the undesignated option. *[For]* ***Designated*** contributions through, ***either*** the payroll deduction ***or in cash*** shall be a minimum of $.50 per week ($1.00 per pay period, $26.00 per year) per organization or agency designated. The minimum contribution requirement shall be met for each additional organization or agency designated.

17:28-4.7 Distribution of contributions

(a) Designated contributions shall be distributed in a manner established by the Campaign Steering Committee and in accordance with the wishes of the designating State employee.

(b) Undesignated contributions shall be distributed to participating campaign organizations in the same proportion that these organizations received designated funds.

17:28-4.8 Selection and use of campaign volunteers

(a) The Campaign Manager shall designate at least one campaign volunteer to represent each payroll account.

(b) At the close of the Campaign, the campaign volunteers shall:

1. Collect from State employees the completed pledge/designation cards and any cash contributions; and

2. Return to Centralized Payroll the completed pledge portion of the pledge/designation cards; and

3. Return to the Campaign Manager the designation portion of the pledge/designation cards and all cash contributions received by the campaign volunteers.

SUBCHAPTER 5. CAMPAIGN ACCOUNTING

17:28-5.1 General provisions

The provisions of this subchapter shall apply to State employees whose compensation is handled through Centralized Payroll.

17:28-5.2 Payroll deductions

(a) Upon receipt of the completed pledge cards, and for each pay period, Centralized Payroll shall deduct the total amount of contribution, as requested by each State employee, from the employee's payroll check.

(b) At the end of each pay period Centralized Payroll shall determine and the Office of Management and Budget shall certify the total amount deducted by State employees for charitable fund-raising.

(c) The State Treasurer shall issue a check for the total amount of contribution to the Campaign Manager.

(d) An employee may exercise his or her option of cancelling his or her deduction for charitable contributions by submitting a completed cancellation card to his or her payroll clerk.

17:28-5.3 Campaign accounting

At the end of each pay period Centralized Payroll shall provide to the Campaign Manager information containing the total amount contributed by each employee to charitable fund-raising organizations and charitable agencies participating in the Campaign.

17:28-5.4 Costs

(a) The operation of the payroll deduction system will be provided by State Government as a service to its employees in the same manner that other authorized deductions are provided.

(b) Other Campaign costs including, but not limited to the design, printing or preparation, and distribution of campaign materials and Campaign accounting and administration to be conducted by the Campaign Manager shall be payable by the Campaign Steering Committee from contributions. These costs shall not exceed 10 percent of the total amount of contributions.

SUBCHAPTER 6. BOARDS, COMMISSIONS AND AUTHORITIES

17:28-6.1 General provision

For the purposes of this subchapter, boards, commissions and authorities shall mean State-level public boards, commissions and authorities in the State having paid staffs whose compensation is not payable by the State Treasurer.

17:28-6.2 Procedure for boards, commissions and authorities

(a) The State Treasurer shall provide to the Campaign Manager a listing of boards, commissions and authorities.

(b) The State Treasurer shall notify each board, commission and authority on such list of the existence of a State Campaign. Such notification shall direct each board, commission, authority to allow its employees to participate in the Campaign.

(c) The provisions of Subchapter 4, except for N.J.A.C. 17:28-4.1 and 4.8, shall apply to employees of boards, commissions and authorities.

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(d) In order to facilitate charitable fund-raising among employees of the boards, commissions and authorities, the Campaign Manager shall select Campaign volunteers in the manner described in Subchapter 4;

(e) At the close of the Campaign, the Campaign volunteers shall:

1. Collect from employees of the boards, commissions and authorities the completed pledge/designation cards and any cash contributions.

2. Return to the appropriate payroll clerk or fiscal officer of each board, commission and authority the completed pledge portion of the pledge/designation cards; and

3. Return to the Campaign Manager the designation portion of the pledge/designation cards and all cash contributions received by the campaign volunteers.

(f) The payroll or fiscal officer of each board, commission and authority shall prepare a statement for the Campaign Manager exhibiting the total amount contributed by employees of the boards, commissions and authorities thorugh the use of the payroll deduction.

(g) The payroll or fiscal officer of each board, commission and authority shall be responsible for deducting from compensation paid to its employees the amount requested and to remit that amount to the campaign manager.

(h) An employee may exercise his or her option of cancelling his or her deduction for charitable contributions by submitting a completed cancellation card to his or her payroll clerk.

17:28-6.3 Costs

(a) The operation of the payroll deduction system will be provided by each board, commission and authority as a service to its employees in the same manner that other authorized deductions are provided.

(b) Other Campaign costs including, but not limited to the design, printing or preparation, and distribution of campaign materials and Campaign accounting and administration to be conducted by the Campaign Manager shall be payable by the Campaign Steering Committee from contributions. These costs shall not exceed 10 percent of the total amount of contributions.

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

(a)

Targeting of Authority Assistance

Adopted Amendment: N.J.A.C. 19:30-4.4

Adopted: September 13, 1985 by New Jersey Economic Development Authority, James J. Hughes, Jr., Executive Director.

Filed: September 16, 1985 as R.1985 d.499, **without change.**

Authority: N.J.S.A. 34:1B et seq., specifically 34:1B-5(1).

Effective Date: October 7, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): July 16, 1989.

Summary of Public Comments and Agency Responses:

One letter of comment was received from a professional management consultant in New Jersey. The letter did not express any concerns regarding the amendment to the targeting regulation, but was supportive of the Authority's proposal to finance non-profit organization projects in municipalities which are not targeted. The letter indicated that Authority financing for these types of projects could be important particularly in depressed rural areas of the State.

The Authority did not respond, as response was neither requested nor necessary.

Full text of the adoption follows.

19:30-4.4 Projects exempted

(a) Nothwithstanding the provisions of N.J.A.C. 19:30-4.1:

1. The following projects shall be eligible for Authority financial assistance regardless of location:

i. Agriculture, forestry and fishing;

ii. Construction industry;

iii. Manufacturing;

iv. Transportation, communication, electric, gas and sanitary sewers;

v. Wholesale trade;

vi. Motion picture production, distribution and allied services;

vii. Research, development, medical and commercial testing laboratories;

viii. Proprietary hospitals, nursing homes and outpatient care facilities;

ix. Data processing, business, secretarial and vocational schools, except vocational high schools;

x. Computer and data processing services;

xi. Facilities described in Section 103(c)(4) and (5) of the Internal Revenue Code (6 U.S.C. 103(c)(4) and (5)), which include;

(1) Airports, docks, wharves, mass commuting facilities, parking facilities, storage or training facilities; and

(2) Convention or trade show facilities; and

(3) Industrial pollution control projects.

xii. An office building in which a single user occupies a minimum of 20,000 square feet of total rental square feet;

xiii. Projects undertaken by organizations which qualify for exemption from taxation pursuant to Section 501(c) of the Internal Revenue Code (26 U.S.C. 501(c)).

(b) (No change.)

(b)

Private Activity Bonds Reallocation and Carryforward

Adopted New Rule: N.J.A.C. 19:30-7

Proposed: July 15, 1985 at 17 N.J.R. 1750(a).

Adopted: September 13, 1985 by New Jersey Economic

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Development Authority, James J. Hughes, Jr., Executive Director.

Filed: September 16, 1985 as R.1985 d.500, **without change.**

Authority: N.J.S.A. 34:1B et seq., specifically 34:1B-5(1), and Executive Order No. 85 (1984).

Effective Date: October 7, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): October 7, 1990.

Summary of Public Comments and Agency Responses:

The Authority received one written comment pursuant to its publication in the N.J. Register of the proposed rule on Private Activity Bonds Reallocation and carryforward. This came from the Division of Planning, Office of Management and Budget, N.J. Dept. of the Treasury.

The letter contained questions primarily related to the Federal Deficit Reduction Act of 1984, which made Executive Order No. 85 necessary, as well as a question regarding a specific reallocation. The questions did not pertain to the substance of the rule which was proposed, and as such did not constitute comments on the rule. This fact aside, the Authority did respond to the letter in writing. However, the particulars are not germane to the publication of this rule adoption.

Full text of the adoption follows.

SUBCHAPTER 7. PRIVATE ACTIVITY BONDS REALLOCATION AND CARRYFORWARD

19:30-7.1 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 Federal Deficit Reduction Act of 1984 and specifically Section 103(n) of the Internal Revenue Code, as same may be amended and supplemented.

"Authority" means the New Jersey Economic Development Authority.

"Carryforward project" means projects within the meaning of proposed U.S. Treasury Regulations, Section 1.103(n)(4)(T), as same may be adopted, amended and supplemented.

"Issuer" means any public entity, other than the Authority, authorized under the laws of the State of New Jersey to issue private activity bonds.

"Private activity bonds" means bonds within the meaning of Section 103(n) of the Internal Revenue Code, as same may be amended and supplemented.

"Project" means a project within the meaning of the New Jersey Economic Development Authority Act, specifically, N.J.S.A. 34:1B-2(h).

"Reallocation" means a reallocation by the Authority to another issuer of a jportion of the State ceiling amount for the issuance of private activity bonds pursuant to Executive Order No. 85 (1984).

"State ceiling amount" means the limit on the amount of private activity bonds which may be issued by the State pursuant to the Act.

19:30-7.2 Restrictions on issuance of private activity bonds

No issuer shall issue private activity bonds for any project unless said issuer has first received in writing a reallocation from the Authority in an amount equivalent to the amount of the bonds to be issued for that project.

19:30-7.3 Application for reallocation

(a) Any issuer may apply to the Authority for a reallocation of a portion of the State ceiling amount. The application for such reallocation shall contain the following information:

1. The name and address of the issuer;

2. The name, location and a description of the project, including its address (by its street or, if none, by a general description designed to indicate its specific location) and the general type of facility;

3. The name, address and Taxpayer Identification Number (TIN) of the initial owner, operator or manager of the project;

4. The date of adoption by the issuer of a bond resolution or earlier "similar official action" towards the issuance of bonds for the project or purpose. A copy of the resolution or written evidence of such similar official action shall be attached to the application;

5. The portion of the State ceiling amount that the issuer requests be reallocated for the project or purpose, and that the amount of all outstanding private activity bonds issued by the issuer within the two years preceding the date of application by the issuer for a reallocation;

6. The anticipated date on which private activity bonds are to be issued by the issuer and whether the issuer will elect to designate the project as a carryforward project; and

7. Such other information as may be requested by the Authority.

(b) For purposes of this section, in case of an application pertaining to a project for which the initial owner, operator or manager is to be selected pursuant to a competitive bidding process, the reallocation application may include up to three prospective addresses for the project, and the name, address, and TIN of more than one prospective initial owner, operator or manager, if all persons included as prospective owners, operators, or managers have met all applicable conditions, if any, to submit proposals to own, operate or manage the project.

(c) At the time of filing an application, the issuer shall also submit a letter to the Authority which sets forth the reasons why the purposes for which the reallocation is requested are consistent with the economic development objectives of the State, as established by the Authority, and the requested reallocation should have priority over other anticipated reallocations or issuances by the Authority. In this regard, the issuer shall describe the number of jobs to be created as a result of the project, the location of the project and the public importance or necessity of the project.

19:30-7.4 Determination by the Authority; time limitations for issuance of bonds

(a) Within 40 days of receipt of an application for a reallocation, the Authority shall notify the issuer of the portion of the State ceiling amount reallocated to the issuer, which notification shall contain a certification of no consideration for the reallocation in accordance with the Act. All actions taken by the Authority regarding such applications shall be subject to approval by the Governor pursuant to N.J.S.A. 34:1B-4(i).

(b) Such reallocation shall cease to be effective if the private activity bonds reallocated to the issuer are not issued (by delivery and payment) within 45 days of the date of notice

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of reallocation unless an application for an extention of the reallocation is filed with the Authority no less than five days prior to the expiration of the initial 45 day period and is approved by the Executive Director of the Authority; provided, however, that in the event the reallocation expires, the issuer may resubmit its application for a reallocation.

(c) Notwithstanding (a) and (b) above:

1. If the Authority reallocates a portion of the State ceiling amount to an issuer after November 15 of any calendar year, the private activity bonds issued with respect to such reallocation must be issued by the issuer within 30 days of the date of notice of reallocation;

2. If the reallocation is made after December 1 of any calendar year, the private activity bonds issued with respect to such reallocation must be issued by the issuer within 15 days of the date of notice of reallocation; and

3. If the reallocation requested by an issuer in any calendar year is for a carryforward project, such request shall be acted upon by the Authority in accordance with (d) below.

(d) If the private activity bonds which are to be issue dpursuant to a reallocation request will not be issued before the close of the calendar year in which the application for reallocation is made, the issuer must so notify the Authority. In that event, it shall be the responsibility of the issuer to comply with the requirements for election and carryforward of projects, as set forth in Part 1 of Title 26 of the Code of Federal Regulations, Section 1.103(n). The issuer shall be solely responsible for the preparation and filing of a Carryforward Election of Unused Private Activity Bond Limitations in accordance with that Section (Internal Revenue Service Form 8328 or any similar form required subsequently). A copy of the election which the issuer has or will file with the Internal Revenue Service with respect to any project for which a reallocation has been made by the Authority during any calendar year shall be provided to the Authority on or before December 20 of that year; provided, however, that if the reallocation is made after December 20, a copy of the election which the issuer has or will file with the Internal Revenue Service shall be provided to the Authority no later than the date required by the Internal Revenue Service for filing such election.

(e) On the date of issuance of private activity bonds pursuant to a reallocation by the Authority, the issuer shall give notice thereof to the Authority's office of Legal Services by telephone, which notice shall be confirmed by certified mail to the Executive Director of the Authority. A copy of Internal Revenue Service Form 8038 shall also be mailed to the Authority at that time.

19:30-7.5 Effects of non-compliance

The failure of any issuer to abide by the provisions of this subchapter may, at the discretion of the Authority, result in the forfeiture of futurer reallocations to the issuer.

CASINO CONTROL COMMISSION

(a)

Accounting and Internal Controls

Patron Credit

Adopted Amendments: N.J.A.C. 19:45-1.27

Proposed: May 20, 1985 at 17 N.J.R. 1254(a).
Adopted: September 11, 1985 by the Casino Control Commission, Walter N. Read, Chairman.
Filed: September 12, 1985 as R.1985 d.493, **without change.**

Authority: N.J.S.A. 5:12-63(c), 5:12-69, 5:12-70(g) and (l) and 5:12-101.

Effective Date: October 7, 1985.
Operative Date: December 1, 1985.
Expiration Date pursuant to Executive Order No. 66 (1978): April 7, 1988.

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

Full text of the adoption follows.

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

(a)-(h) (No change.)

(i) The casino licensee's credit department shall:

1. Comply with the requirements of either 2 or 3 below whenever:

i. A patron's credit file has been inactive for a six month period; or

ii. A patron has failed to completely pay off his credit balance at least once within a six month period; or

iii. A check is returned to any casino by a patron's bank; or

iv. Any information is received by a casino licensee's credit department which reflects negatively on the patron's continued credit worthiness; or

v. The information in the patron's credit file, as required by (c)1 through (c)4 above, has not been verified for a twelve month period.

2. Reverify the patron's address, current casino credit limits, outstanding balances, outstanding indebtedness, and personal check account information, as required by (c)1 through (c)4 above.

3. Suspend the patron's credit privileges. If a patron's credit privileges have been suspended, the procedures required by (c)1 through (c)4 above shall be performed before that patron's credit privileges are reinstated; provided, however, if the suspension is the result of the requirement of 1.iii. above, the casino licensee may alternatively reinstate the patron's credit privileges by complying with the requirements of (j) below.

(j) (No change.)

(k) All transactions affecting a patron's outstanding indebtedness to the casino licensee shall be recorded in chronological order in the patron's credit file and credit transactions shall be segregated from the safekeeping deposit transactions. The following information shall be included:

1.-5. (No change.)

6. The date, amount and check number of each check returned to the casino licensee by the patron's bank and the reason for its return;

7. The outstanding balance after each transaction; and

8. The date, amount and check number of any checks which

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have been partially or completely written off by the casino licenseea and a brief explanation of the reason for such write off.

(l)-(o) (No change.)

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

(a)

Procedure for Counting and Recording Contents of Drop Boxes

Adopted Amendment: N.J.A.C. 19:45-1.33

Proposed: July 15, 1985 at 17 N.J.R. 1752(a).
Adopted: September 11, 1985 by the Casino Control Commission, Walter N. Read, Chairman.
Filed: September 12, 1985 as R.1985 d.495, **without change.**

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

Effective Date: October 7, 1985.
Expiration Date pursuant to Executive Order No. 66 (1978): April 7, 1988.

Summary of Public Comments and Agency Responses: The Division of Gaming Enforcement indicated no objection to the adoption of the amendment as proposed. Agency Response: Accepted.

Full text of the adoption follows.

19:45-1.33 Procedure for counting and recording contents of drop boxes

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

(h) Procedures and requirements for conducting the count shall be the following:

1. (No change.)

2. The contents of each drop box shall be emptied on the count table and either manually counted separately on the count table or counted on an approved currency counting machine located in a conspicuous location on, near or adjacent to the count table, which procedures shall at all times be conducted in full view of the closed circuit television cameras located in the count room;

3. (No change.)

4. The contents of each drop box shall be segregated by a count team member into separate stacks on the count table by denominations of coin and currency and by type of form, record, or document except that the Commission may permit the utilization of a machine to automatically sort currency by denomination;

5. Each denomination of coin and currency shall be counted separately by one count team member who shall place individual bills and coins of the same denomination on the count table in full view of a closed circuit television camera after which the coin and currency shall be counted by a second count team member who is unaware of the result of the original count and who, after completing this count, shall confirm the accuracy of his total, either orally or in writing, with that reached by the first count team member, except that the Commission may permit a casino licensee to perform an aggregate count by denomination of all currency collected in substitution of the second count by drop box if the Commission is satisfied that the original count is being performed automatically by a machine that counts and automatically records the amount of currency and that the accuracy of the machine has been suitably tested and proven.

6.-10. (No change.)

(i) (No change.)

(j) (No change.)

ADMINISTRATIVE LAW

(b)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules of Practice

Conduct of Contested Cases; Appearances and Representation

Adopted Amendment: N.J.A.C. 1:1-3.7

Proposed: August 5, 1985 at 17 N.J.R. 1820(a).
Adopted: September 12, 1985 by Ronald I. Parker, Acting Director, Office of Administrative Law.
Filed: September 18, 1985 as R.1985 d.508, **without change.**

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
Effective Date: October 7, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): May 15, 1990.

Summary of Public Comments and Agency Responses: The OAL received one comment from the New Jersey State Bar Association which approved of the regulation as proposed. Therefore, the rule has been adopted without change.

Full text of the adoption follows.

1:1-3.7 Appearances and representation

(a) (No change.)

(b) An attorney from any other jurisdiction, of good standing there, may, at the discretion of the judge, be admitted for the one occasion to participate in the proceeding in the same manner as an attorney of this State by complying with the following procedures:

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1. An attorney authorized to practice in New Jersey, pursuant to New Jersey Supreme Court Rule 1:21-1, may move the admission for the one occasion of an attorney from another jurisdiction who is in good standing in the other state. Forms are available from the OAL for this purpose.

2. Each motion seeking admission for the one occasion shall be served in all parties and have attached a supporting affidavit, signed by the out-of-state attorney, which shall state that payment has been made to the Client's Security Fund and Ethics Financial Committee. The affidavit shall state how he or she satisfies each of the conditions for admission, including good cause, set forth in R. 1:21-2(a). The out-of-state attorney shall also agree in the affidavit to comply with the dictates of R. 1:21-2(b).

3. An annual payment made to the Client's Security Fund and Ethics Financial Committee shall entitle the out-of-state attorney to appear in subsequent matters during the payment year, provided the out-of-state attorney otherwise qualifies for admission.

4. An order granting admission shall set forth the limitations upon admission established in R. 1:21-2(b).

5. A judge may, at any time during the proceeding and for good cause shown, revoke permission for the attorney to appear.

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EMERGENCY ADOPTIONS

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Higbee Beach Wildlife Management Area

Adopted Emergency New Rule: N.J.A.C. 7:25-2.20

Emergency New Rule Adopted: September 17, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
Gubernatorial Approval (See N.J.S.A. 52:14B-4(c)): September 16, 1985.
Emergency New Rule Filed: September 20, 1985 as R.1985 d.514.

Authority: N.J.S.A. 23:2A-7.

Emergency New Rule Effective Date: September 20, 1985.
Emergency New Rule Operative Date: September 22, 1985.
Emergency New Rule Expiration Date: November 21, 1985.
DEP Docket No. 054-85-09.
Concurrent Proposal Number: PRN 1985-581.

Submit comments by November 6, 1985 to:
Barbara M. Greer, Assistant Director
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

This new rule was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4).

The agency emergency adoption and concurrent proposal follows:

Summary

The new rule restricts consumptive and non-consumptive activities on the Higbee Beach Wildlife Management Area during the core period of use of the area by migrating raptors including such sensitive species as the bald eagle and peregrine falcon. Non-consumptive use will be restricted to certain designated trails and fields during this perod. Group size shall be restricted by permit. All hunting will be prohibited during this period.

Social Impact

A primary purpose of this regulation is to lessen the adverse impacts upon migrating raptors that can result from unrestricted human use, whether consumptive or non-consumptive, of the area used by these sensitive birds. Sportsmen may feel adversely affected by the prohibition of hunting activities prior to the onset of the small game season. Likewise, non-consumptive users may feel adversely affected by the substantial limitations on their freedom of action during this same period. The restrictions on non-consumptive users should also contribute to higher quality study and recreational use by bird watchers in that the subject of their observations, that is, the raptors, should continue their undisturbed use of the area. Of greater importance, the potential for dangerous conflict when hunters take to the field at the same time that large numbers of bird watchers are observing raptor migrations will be removed by these regulations.

Economic Impact

No adverse economic effects are anticipated for users of the Higbee Beach Wildlife Management Area. Increased costs to the Department should be minimal especially when compared to the costs for enforcement that would be necessary with relatively unrestricted use of the area.

Environmental Impact

The adopted new rule should have a substantially positive environmental impact in that the threat to critical habitat will be reduced through use restrictions. Additionally, potential harassment of raptors during their migration by consumptive users of the area should cease while potential harassment by non-consumptive users should be substantially reduced. Finally, scientific studies designed to assess the effects of human use on bird use of the same habitat will be facilitated by these restrictions. These studies should provide the basis for improved management contributing to further positive environmental impacts.

Full text of the emergency new rule and concurrent proposal follows.

[7:25-2.20]**7:25-2.21** (No change in text.)

7:25-2.20 Higbee Beach

(a) In addition to all regulations prescribed in this subchapter affecting the designated Wildlife Management Areas listed at N.J.A.C. 7:25-2.18, the following additional regulations shall apply to the public use of the Higbee Beach Wildlife Management Area:

1. From sunrise on September 22 until 8:00 A.M. on November 2 of each year, use of the Higbee Beach Wildlife Management Area shall be limited to trails designated on the map posted at the parking lot, and on maps available at the division's Endangered and Nongame Species Program office located at the Higbee Beach Wildlife Management Area;

2. Two of the five fields on the Higbee Beach Wildlife Management Area are designated on the map described at 1 above as "refugee areas" and observations of these fields will be permitted only from blinds established and maintained by the division's Endangered and Nongame Species Program;

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provided, however, permits for observation from established trails within the "refugee areas," in addition to those designated trails described at 1 above, may be issued by the division's Endangered and Nongame Species Program office upon written request received in the division's Trenton office at least five days in advance of effective date of the permit and provided the specific permitted activity is consistent with the intent of this section;

3. During the time period specified at 1 above, group size will be limited to five people; provided, however, permits for groups numbering more than five people will be available at no charge from the division's Endangered and Nongame Species Program office located at the Higbee Beach Wildlife Management Area; and

4. All early season hunting activities are prohibited prior to the opening day of the regular small game season set each year by the Fish and Game Council and appearing at N.J.A.C. 7:25-5 (generally, the Saturday closest to November 10).

INSURANCE

(a)

DIVISION OF ADMINISTRATION

Cancellation and Nonrenewal of Property and Casualty/Liability Insurance Policies

Adopted Emergency New Rules and Concurrent Proposal: N.J.A.C. 11:1-20

Emergency New Rules Adopted: September 16, 1985 by Hazel Frank Gluck, Commissioner, Department of Insurance.

Gubernatorial Approval (See N.J.S.A. 52:14B-4(c)): September 16, 1985.

Emergency New Rules and Concurrent Proposal Filed: September 17, 1985 as R.1985 d.507.

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

Emergency New Rules Effective Date: September 17, 1985.

Emergency New Rules Expiration Date: November 16, 1985.

Concurrent Proposal Number: PRN 1985-569.

Submit comments by November 6, 1985 to:
Verice M. Mason, Director
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, New Jersey 08625

These new rules were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (See N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of these emergency rules are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rules become effective upon acceptance for filing by the Office of Administrative Law (See N.J.A.C. 1:30-4.4(d).

The agency emergency new rules and concurrent proposal follows:

Summary

The Department of Insurance is receiving numerous complaints from both agents and insureds concerning mid-term cancellations, block cancellations and nonrenewals of entire lines of insurance, the failure to provide timely notice of such terminations and mid-term increases in premiums with respect to property and casualty/liability insurance coverages. These actions by insurers have a severely detrimental effect on insureds and the economic environment in general. It is, therefore, necessary to adopt this subchapter which governs the circumstances by which property and casualty/liability insurance policies may be cancelled or nonrenewed in order to prevent further financial harm to the insureds of this State.

The new rule institutes procedures whereby the standards or reasons which an insurer may offer as a basis for a proposed mid-term cancellation as well as a nonrenewal must be reviewed and approved by the Department. This review procedure will help to eliminate unfair termination of coverage and the resulting undue financial hardship currently being experienced by policyholders. Further, mid-term premium increases are prohibited and block cancellations and nonrenewals of entire lines of insurance are restricted under the new rule.

N.J.A.C. 11:1-20.1 provides the scope of the new subchapter, and N.J.A.C. 11:1-20.2 provides the mechanism for the approval of nonrenewals and cancellations. Section 2 requires that the reason or standard for a proposed termination be submitted to the Commissioner for approval at least 90 days prior to the expiration date of affected policies. The Commissioner is to approve or disappove the reason and advise the insurer, in writing, within 30 days.

N.J.A.C. 11:1-20.3 addresses nonrenewal and cancellation notice requirements. In particular, the section provides a schedule by which notices are to be given to insureds and the mandatory information which must be contained in such notices. Each notice must contain the standard or reason upon which the termination of insurance is premised. Other than for cancellation based upon moral hazard or nonpayment of premum, the notice must also apprise the insured that the Commissioner has approved the basis for termination. Finally, the section mandates that notices contain a statement advising policyholders of their right to file a complaint with the Insurance Department and, further, directs insurers to furnish a copy of the Department's Consumer Complaint Form with each notice.

N.J.A.C. 11:1-20.3(c)1 and (c)2 describe the terms "nonpayment of premium" and "moral hazard," respectively, and set forth certain standards which are applicable to such terminations. N.J.A.C. 11:1-20.3(g) outlines the method by which the notices of cancellation and nonrenewal are to be delivered to the insured.

N.J.A.C. 11:1-20.4 requires that all property and casualty/liability policies contain specific provisions relating to the cancellation or nonrenewal of coverage.

N.J.A.C. 11:1-20.5 enumerates prohibited acts. Mid-term premium increases, reductions in the amount or type of coverage, block cancellation or nonrenewal of entire lines of insurance, withdrawing from classes of business, and termin-

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ating an appointed agent to achieve block cancellation or nonrenewal of entire lines of insurance are prohibited or restricted under the provisions of this section. This section also prohibits policies which are inconsistent with this subchapter.

N.J.A.C. 11:1-20.6 is a separability provision.

N.J.A.C. 11:1-20.7 is a penalty provision. This section delineates the various statutory citations under which the Commissioner may impose sanctions. In addition, this section specifies that the Commissioner may order the reinstatement of an insured's policy without lapse in coverage, if it is determined that coverage was improperly terminated by the insurer.

Social Impact

These new rules will protect the public by prohibiting detrimental termination practices as well as mid-term premium increases and/or reductions in coverage. Requiring prior approval by the Commissioner of the insurer's basis for nonrenewal or cancellation will ensure that the standard or reason being utilized by the insurer meets applicable statutory requirements. The complaint filing mechanism specified in the rule will also protect policyholders by providing a procedure through which a possibly unwarranted termination may be contested. Finally, the notice and mailing requirements of the rule will ensure that policyholders receive timely notice and adequate information regarding a cancellation or renewal of coverage.

The new rules will assist the Insurance Department in monitoring the marketplace to ensure that the insurance-buying public receives fair and equitable treatment from insurers that is consistent with the laws of this State.

Economic Impact

The unwarranted cancellations and nonrenewals and the mid-term premium increases which this rule will prohibit impose undue financial hardship upon policyholders. Further, such practices precipitate insurance availability and affordability crises which result in the closure of many business and the curtailment of employer's operations.

Insurers will incur additional expenses in modifying their procedures to meet the notice and mailing requirements of the rule. The limitations which are imposed on an insurer's ability to terminate or modify coverage under this rule may result in an increased exposure to loss; however, the Department believes that rating systems utilized by insurers contemplate such exposure.

The Department will incur additional costs in implementing the procedures for the review and approval of cancellation and nonrenewal standards. To the extent that the Department receives a larger number of consumer complaints as a result of this rule, administrative costs will also increase. It is expected that such costs will be absorbed within the current budget. However, the review of the underwriting guidelines and the processing of policyholder complaints will occasion the need for additional staff.

Full text of the emergency new rules and concurrent proposal follow.

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

11:1-20.1 Scope

(a) This subchapter shall apply to all property and casualty/liability insurance policies except workers' compensation insurance, accident and health insurance and, to the extent this subchapter may be inconsistent with applicable statutes and regulations, policies covering automobiles as defined at N.J.S.A. 39:6A-3.

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

11:1-20.2 Approval of nonrenewals and cancellations

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

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

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

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

11:1-20.3 Nonrenewal and cancellation notice requirements

(a) No policy shall be nonrenewed upon its expiration date unless a void notice of nonrenewal has been mailed or delivered to the insured in accordance with the provisions of this subchapter. Each renewal shall offer coverage at least as favorable to the insured as the expiring policy and at the same limits and terms, subject to changes approved by the Commissioner that had become effective since the commencement of the current policy period. With respect to payment of the renewal premium, notice shall be given not more than 45 days nor less than 30 days prior to the due date of the premium and shall clearly state the effect of nonpayment of the premium by the due date.

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

(c) No cancellation, other than a cancellation based upon nonpayment of premium or for moral hazard as defined in paragraphs 1 and 2 below, shall be valid unless notice is mailed or delivered by the insurer to the insured, and to any designated mortgagee not named in the policy as the insured, not more than 45 nor less than 30 days prior to the effective date of such cancellation.

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

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

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

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

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

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

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

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

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

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

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

(g) No nonrenewal or cancellation shall be valid unless:

1. Notice sent by certified mail; or

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

(h) For the purposes of this subchapter, the failure by the insurer to issue and deliver a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer, or to issue and deliver a certificate or notice extending the term of a policy beyond its policy period or term shall be deemed a nonrenewal.

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

11:1-20.4 Policy provisions

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

1. Nonpayment of premium;

2. Material misrepresentation;

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

4. Substantial breaches of contractual duties, conditions or warranties.

11:1-20.5 Prohibitions

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

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

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

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

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

11:1-20.6 Separability

If any provision of this subchapter or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

11:1-20.7 Penalties

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

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MISCELLANEOUS NOTICES

EDUCATION

(a)

STATE BOARD OF EDUCATION

Approved Secondary School Summer Sessions

Notice of Correction: N.J.A.C. 6:27-3

Take notice that an error appears in the New Jersey Administrative Code at N.J.A.C. 6:27-3.3(a) concerning Admission of pupils. The adoption notice of this rule which appeared in the February 19, 1985 issue of the New Jersey Register at 17 N.J.R. 424 is also incorrect. In accordance with the "sunset" and other provisions of Executive Order No. 66 (1978), the State Board of Education readopted, with amendments, N.J.A.C. 6:27-3.1 through 6:27-3.4. Due to printing errors the full text of N.J.A.C. 6:27-3.3(a) was not included in the New Jersey Administrative Code or the February 19, 1985 Register.

The current text as found in the New Jersey Administrative Code at N.J.A.C. 6:27-3.3(a) and in the February 19, 1985 issue of the Register at 17 N.J.R. 424 is corrected to read as follows:

6:27-3.3 Admission of pupils

(a) The assignment of pupils in summer session for remedial courses shall be based on the permission from the principal of the school which the pupil regularly attends, naming the subjects which the pupil may take and the purpose for which each subject is taken. **In remedial work, two subjects shall be regarded as a maximum.**

(b) (No change.)

(b)

Special Education
Pre-School Handicapped
Termination of Special Services

Invalidation of N.J.A.C. 6:28-3.5(d) and 6:28-3.5(e)8

Public Notice

On June 27, 1985, the Superior Court, Appellate Division, rendered a decision concerning *In the Matter of Repeal of N.J.A.C. 6:28 And Adoption of New Rule N.J.A.C. 6:28.*

In its decision the court invalidated N.J.A.C. 6:28-3.5(e)8 which defined "pre-school handicapped" (for the purpose of eligibility for local special education and related services) as

> a condition which seriously impairs a child's functioning and which has a high predictability of seriously impairing normal educational development.

The court held that the regulation impermissibly narrowed the statutory language of N.J.S.A. 18A:46-6 which the rule purportedly implemented.

The court also invalidated N.J.A.C. 6:28-3.5(d) which explains when the staff of a district board of education may terminate special services to a person between three and twenty-one years of age. The rule states:

> The child study team, after parental notification, shall terminate a pupil's eligibility when sufficient written documentation is presented to indicate that pupil no longer requires special education and/or related services.

The court held that the authority to terminate services when "sufficient written documentation is presented" is inconsistent with Federal law, State statutes and implementing State regulations.

This notice is published by the Office of Administrative Law as a matter of public information pursuant to the provisions of N.J.A.C. 1:30-1.13.

ENVIRONMENTAL PROTECTION

(c)

DIVISION OF WASTE MANAGEMENT

Information To Be Filed with Division

Administrative Correction: N.J.A.C. 7:1E-3.2

Take notice that, pursuant to N.J.A.C. 1:30-2.7, an administrative correction has been made to N.J.A.C. 7:1E-3.2(c) concerning information to be filed with the Division of Waste Management. The new name of the unit to be contacted and its change of address in N.J.A.C. 7:1E-3.2(c) is:

> Field Operations Compliance and Enforcement
> Division of Waste Management
> New Jersey Department of
> Environmental Protection
> CN 407
> Trenton, New Jersey 08625
> Attention: Discharge Cleanup Organizations
> Submission

(d)

DIVISION OF WATER RESOURCES

Public Hearing on the Proposed Amendment to the upper Delaware Water Quality Management Plan

Public Notice

Take notice that the Warren County Board of Chosen Freeholders and the Borough of Washington, Warren County has

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requested an amendment to the Upper Delaware Water Quality Management (WQM) Plan. This amendment provides for the dissolution of the Warren County-Pohatcong Creek Sewerage Authority as a wastewater facilities planning area and management agency, and creates the Washington-Mansfield wastewater facilities planning area consisting of Washington Borough, Washington Township, and Mansfield Township, Warren County. In this planning area, each municipality will be responsible for conducting their own wastewater management planning, in coordination and consultation with the other two municipalities. Washington Borough, Washington Township, and Mansfield Township will each be designated as a management agency for the planning and management (to construct, manage, and maintain), of wastewater treatment conveyance works, collectors, and other systems as necessary.

The Washington Borough Sewerage Treatment Plant (STP) currently serves the centralized sewage treatment needs of the Borough and certain adjacent areas of Washington Township. This treatment facility is currently designed to treat .85 million gallons per day (mgd) for discharge to Shabbecong Creek with an anticipated future expansion to 1.2 mgd. All wastewater requiring centralized treatment in the areas of Washington Township draining to the Pohatcong Creek will be conveyed to the Washington Borough STP for treatment and discharge.

Areas of Washington Township outside the Pohatcong Creek watershed and service area of the Borough STP that may require centralized wastewater treatment and conveyance systems shall utilize regional wastewater facilities based upon planning to be conducted by Washington Township and subject to the approval of the Department. In addition, if centralized wastewater treatment facilities are required for portions of Mansfield Township in the future, then these facilities shall also be regional and be based upon planning conducted by Mansfield Township subject to the approval of the Department.

This notice is being given to inform the public that a nonadversarial public hearing will be held by the New Jersey Department of Environmental Protection (NJDEP) on the above mentioned plan amendment. The hearing will be held on October 24, 1985 from 10:00 A.M. to 2:00 P.M. in the Council Chambers, Washington Borough Hall, 100 Belvidere Avenue, Washington, N.J. All information dealing with the aforesaid WQM Plan, and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Planning and Standards, 25 Arctic Parkway, CN-029, Trenton, N.J. 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 either at the public hearing or within 15 days following the hearing to George Horzepa, Bureau of Planning and Standards, at the NJDEP address cited above. 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.

HEALTH

(a)

HOSPITAL REIMBURSEMENT

N.J.A.C. 8:31B-3.19 Patient Care Cost Findings: Direct Costs per Case, Physician and Non-Physician
Implementation Date Change
Footnotes for RIMs Methodology for Nursing Cost Allocation

Authorized By: J. Richard Goldstein, M.D., Commissioner, Department of Health (with the approval of the Health Care Administration Board).

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

Take notice that N.J.A.C. 8:31B-3.19, footnotes 1, 2 and 3 are amended to read as follows (additions indicated in boldface **thus;** deletions indicated in brackets [thus]).

[1]Patient days will be employed as the Measures of Resource Use to allocate MSA, PED, PSA, and OBS nursing costs until [1986] **1987**, at which time Relative Intensity Measures (RIMs) for Case-mix Nursing Performance Study will be used. A RIM is a Measure of Resource Use which is derived from nursing activity, and is used to distribute reported general nursing costs based upon the relationship between nursing activity and costs. While patient days are used, the MSA, PED, PSA, OBS centers will be combined into ACU and ICU, CCU and BCU will be combined into ICU. All other routine centers will remain as above. Effective [1986] **1987**, patients that are cared for in the ICU, CCU, or NNI will have the Special Care Unit Days used as the cost calculation for Measure of Resource Use for the Length of Stay (LOS) in the Special Care Unit and the appropriate Relative Intensity Measure (RIM) equation will be utilized for all additional days.

[2]Effective [1986] **1987**, Patient Specific Attributes, as identified in Appendix X will replace the total LOS statistics. These characteristics captured from Uniform Bills—Patient Summaries include clinical characteristics and Length of Stay which have been demonstrated by research to account for variations in the consumption of nursing activity.

[3]Inpatient clinic visits shall be treated as separate outpatient clinic visits. The **delay in the** date of implementation for the Relative Intensity Measures (RIMs) Methodology is in response to the industry's need for additional time to make appropriate changes in the patient billing procedure[,] **and** charge structure and [other modifications that may be necessary.] **to meet the need of the Department of Health for additional time to generate the "RIM" rate reports for all hospitals. The significant change in the rate setting outlier reimbursement in 1985 impacts the appropriate evaluation of the RIMs Methodology. The need for other modifications must be determined during the 1986 evaluation period for the benefit of the industry.**

HUMAN SERVICES

(b)

DIVISION OF PUBLIC WELFARE

Assistance Standards Handbook

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Other Payments

Notice of Correction: N.J.A.C. 10:82-5.10

Take notice that errors appear in the New Jersey Administrative Code at N.J.A.C. 10:82-5.10 concerning emergency assistance. N.J.A.C. 10:82-5.10 should have appeared as follows:

10:82-5.10 Emergency assistance

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

(c) When there has been substantial loss of shelter, food, clothing or household furnishings by fire, flood or other similar natural disaster, or when, because of an emergent situation over which they had no control or opportunity to plan in advance, the eligible unit is in a state of homelessness and the county welfare agency determines that the providing of shelter and/or food and/or emergency clothing, and/or minimum essential house furnishings are necessary for health and safety, such needs may be recognized in accordance with the regulations and limitations in the following sections:

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

3. Emergency clothing allowance: **Funds from the regular assistance grant or funds considered in developing the amount of that grant are not to be considered in computing the amount of payment for replacement of clothing lost or destroyed in the incident or occurrence giving rise to the emergency.** When necessary, payments to enable members of the eligible unit to purchase minimum essential clothing for physical health and safety may be granted, not to exceed the amounts stated below:

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

4. Emergency house furnishings allowance: Allowances for those items deemed urgent and essential to the physical health and safety of the eligible unit shall not exceed the maximums listed below.

i. Funds from the regular assistance grant or funds considered in developing the amount of that grant are not to be considered in computing the amount of payment for replacement of house furnishings lost or destroyed in the incident or occurrence giving rise to the emergency.

(No change in table.)

5. (No change in text.)

(d) Rules concerning victims of domestic violence are:

1. In situations where an applicant or recipient indicates that he or she and his or her children have left their customary residence because of domestic violence, payment of emergency assistance may be authorized under the following conditions:

i. The family is in a state of homelessness due to imminent or demonstrated violence which imperils the health and safety of one or more members of the eligible unit.

ii. (No change in text.)

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

4. The regular grant of assistance (including calculated earned income and exempt income) is not to be counted in the determination of eligibility for or the amount of emergency assistance payments authorized for "temporary" emergency arrangements in a shelter or othe accommodations.

i. When plans for more permanent living arrangements are made, any funds actually available to the client are to be counted in the determination of emergency assistance payments for **shelter** and utility deposits.

(e) Return of child from foster care placement:

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

5. CWAs shall report to DPW on emergency assistance payments as to those cases **for which emergency assistance was granted to return a child from foster care placement. DYFS shall monitor such cases** in order to evaluate the effectiveness of such assistance in reducing foster care placements and foster care costs.

6. (No change in text.)

LAW AND PUBLIC SAFETY

(a)

Bulk Commodities Application

Public Notice

Take notice that Robert S. Kline, Acting Director, Division of Motor Vehicles pursuant to the authority of N.J.S.A. 39:5E.11 hereby lists the names and addresses of applicants who have filed an application for a Contract Carrier Permit.

CONTRACT CARRIER (NON-GRANDFATHER)
Thed Napp—Grecco Company
1500 McCarter Highway
Newark, New Jersey 07104

John A. Meyer & Son Trucking, Inc.
RD 4 Box 838
Long Bridge Road
Branchville, New Jersey 07826

Protest in writing and verified under oath may be presented by interested parties to the Director of Motor Vehicles within 20 days following the publication date of an application.

TRANSPORTATION

OFFICE OF REGULATORY AFFAIRS

(b)

Petition for Public Convenience and Necessity for Regular Route Autobus Operating Authority

Take notice that, pursuant to the decision of the U.S. Court of Appeals in *Hudson Transit Lines, Inc. v. United States,* Nos. 84-4105 and 84-4107 et al. (2d Cir. June, 1985), it is illegal to engage in autobus service to Atlantic City casinos involving another stop in New Jersey, unless the carrier operating such service possesses operating authority issued by the New Jersey Department of Transportation (the "Department"). The interstate Commerce Commission ("ICC") certificate a carrier may hold does not authorize the carrier to conduct bus service to Atlantic City casinos. Motor carriers formerly operating to

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Atlantic City gambling casinos under authority issued by the ICC who wish to continue such service are required to obtain a Certificate of Public Convenience and Necessity (a "Certificate") issued by the Department. The Department's office of Regulatory Affairs processes petitions for Certificates.

The Department's process of reviewing petitions for Certificates to conduct for-hire casino bus trips in New Jersey that are filed by carriers formerly holding ICC authority for such trips will include a rebuttable presumption against certain motions to intervene. Such a presumption shall be for the purpose of denying motions to intervene, or portions thereof, that essentially are based upon the contention that the granting of the Certificate will substantially and specifically affect the movant.

To establish this presumption, the petitioning carrier must show that:

1. In the 10-month period proceding the filing of the petition with the Department, the petitioner has provided continuous service along the same route and stops requested in its petition.

2. It will operate the route with substantially the same schedule as that used under its ICC authority.

3. It will operate the route with the same fare as that approved by the ICC; and that any increase or decrease in said fare will be in accordance with New Jersey's Zone of Rate Freedom regulations contained in N.J.A.C. 16:53D.

Further, a petitioner will be required to submit documentation for the purpose of establishing the presumption. Such documentation may include copies of drivers' trip tickets or invoices; dispatchers' records or number run sheets that clearly indicate the frequency of runs on a petitioner's former ICC route to Atlantic City casinos.

The Department's policy regarding the rebuttable presumption shall remain in effect after a period of nine months from the date hereof. Additionally, petitioners requesting certificates to operate routes formerly operated under ICC authority must meet all of the Department's requirements, including determinations as to fitness.

Any ICC carrier that fails to file a petition with the Department for a Certificate on or before November 1, 1985, and who conducts autobus operations to Atlantic City casinos after said date, shall be subject to an Order to Show Cause issued by the Department. Petitions and related correspondence should be addressed to:

New Jersey Department of Transportation
Office of Regulatory Affairs
McCarter Highway and Market Street
P.O. Box 10009
Newark, NJ 07101

Statement of Ownership, Management and Circulation (Act of August 12, 1970: Section 3685, Title 39, United States Code) 1A. Title of publication: NEW JERSEY REGISTER. 1B. Publication number: 03006069. 2. Date of filing: September 23, 1985. 3. Frequency of issue: Biweekly. A. Number of issues published annually: 24. B. Annual subscription price: $75 controlled circulation; $150 first class. 4. Location of known office of publication: New Jersey Office of Administrative Law, Quakerbridge Plaza, Bldg. 9, Quakerbridge Rd., CN 301, Trenton, NJ 08625. 5. Location of general business offices of the publisher: New Jersey Office of Administrative Law, CN 301, Trenton, NJ 08625. 6. Names and addresses of publisher, editor, managing editor. Publisher: New Jersey Office of Administrative Law, CN 301, Trenton, NJ 08625. Editor: Norman Olsson, New Jersey Office of Administrative Law, CN 301, Trenton, NJ 08625. Managing Editor: Karen Garfing, New Jersey Office of Administrative Law, CN 301, Trenton, NJ 08625. 7. Owner: Office of Administrative Law, State of New Jersey, CN 301, Trenton, NJ 08625. 8. Known bondholders, mortgagees, and other security holders owning or holding one percent or more of total amount of bonds, mortgages or other securities: None. 9. Purpose, function, and nonprofit status of this publication and the exempt status for Federal income tax purposes: Has not changed during preceding 12 months. 10. Average number copies each issue during preceding 12 months. A. Total no. copies printed: 2,927. B. Paid circulation. 1. Sales through dealers and carriers, street vendors and counter sales: None. 2. Mail subscription: 2,289. C. Total paid circulation: 2,289. D. Free distribution by mail, carrier, or other means, samples, complimentary, and other free copies: 463. E. Total distribution (sum of C and D): 2,752. F. Copies not distributed. 1. Office use, leftover, unaccounted, spoiled after printing: 175. 2. Returns from news agents: None. G. Total (sum of E and F should equal net press run shown in A): 2,927. Actual number of copies of a single issue published nearest to filing date. A. Total no. copies printed: 2,850. B. Paid circulation. 1. Sales through dealers and carriers, street vendors and counter sales: None. 2. Mail subscription: 2,262. C. Total paid circulation: 2,262. D. Free distribution by mail, carrier, or other means, samples, complimentary, and other free copies: 454. E. Total distribution (sum of C and D): 2,716. F. Copies not distributed. 1. Office use, leftover, unaccounted, spoiled after printing: 134. 2. Returns from news agents: None. G. Total (sum of E and F should equal net press run shown in A): 2,850. 11. The statements made by me above are correct and complete: Norman Olsson, Editor.

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REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the May 6, 1985 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to timely adopt a proposed rule requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(d).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1985 d.300 means the three hundredth rule adopted in 1985.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A number and date verifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

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N.J.R. CITATION LOCATOR

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16 N.J.R. 2475 and 2708	October 1, 1984	17 N.J.R. 859 and 1006	April 15, 1985
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5:28	Readopt State Housing Code	17 N.J.R. 1174(a)		
5:31-2.1—2.5, 4.1, 4.2, 7.1—7.7	Local authorities: accounting principles, auditing and budgeting	17 N.J.R. 1823(a)		
5:31-7.5	Local authorities: audit reports	17 N.J.R. 504(a)	R.1985 d.283	17 N.J.R. 1409(b)
5:37	Municipal, County and Authority Employees Deferred Compensation Programs	17 N.J.R. 1960(a)		
5:51-1.4, 1.5	Local provision of recreational services for handicapped persons	17 N.J.R. 1463(a)	R.1985 d.444	17 N.J.R. 2105(a)
5:80	Rules of the Housing and Mortgage Finance Agency	17 N.J.R. 505(a)	R.1985 d.241	17 N.J.R. 1258(b)
5:80-4	Housing and Mortgage Finance	17 N.J.R. 1174(b)		
5:80-8	Housing and Mortgage Finance Agency: housing project occupancy requirements	17 N.J.R. 1620(a)		
5:80-17, 18	Housing and Mortgage Finance: prevailing wages; debarment from contracting	17 N.J.R. 1174(b)		

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DEFENSE—TITLE 5A

5A:2	Leaves of absense for members of National Guard	17 N.J.R. 646(a)	R.1985 d.242	17 N.J.R. 1267(a)

EDUCATION—TITLE 6

6:3-1.10	Standards for determining seniority	17 N.J.R. 1033(b)	R.1985 d.397	17 N.J.R. 1874(a)
6:3-1.17, 1.23	School facility planning services	17 N.J.R. 650(a)		
6:11-3	Teacher education: Basic Certification Requirements	17 N.J.R. 2181(a)		
6:11-7	Standards for State approval of teacher preparation	17 N.J.R. 1708(a)		
6:20-2	Readopt Local Bookkeeping and Accounting rules	17 N.J.R. 1361(a)	R.1985 d.452	17 N.J.R. 2105(b)
6:20-5.3, 5.4	State facility pupil assignments: district of residence	17 N.J.R. 344(a)	R.1985 d.208	17 N.J.R. 1076(a)
6:20-5.5	Asbestos removal and encapsulation reimbursement	17 N.J.R. 863(a)	R.1985 d.340	17 N.J.R. 1648(a)
6:21-1	Readopt Pupil Transportation Standards	17 N.J.R. 1365(a)	R.1985 d.451	17 N.J.R. 2107(a)
6:21-5	Standards for school buses	17 N.J.R. 1035(a)	17 N.J.R. 396	17 N.J.R. 1875(a)
6:22	School facility planning services	17 N.J.R. 650(a)		
6:28-3.2, 3.6, 6.1, 6.3, 8.3	Special Education	17 N.J.R. 345(a)	R.1985 d.209	17 N.J.R. 1077(a)
6:29-6.4	Athletics procedures	17 N.J.R. 659(a)	R.1985 d.281	17 N.J.R. 1410(a)
6:30-1.4	Fees for GED test	17 N.J.R. 1367(a)	R.1985 d.450	17 N.J.R. 2108(a)
6:68-2	Library assistance: readopt Incentive Grant Program rules	17 N.J.R. 346(a)	R.1985 d.207	17 N.J.R. 1078(a)

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ENVIRONMENTAL PROTECTION—TITLE 7

7:1-4	Fee schedule for Environmental Cleanup Responsibility Act	17 N.J.R. 1622(a)	R.1985 d.487	17 N.J.R. 2260(a)
7:1-7	Hazardous substance discharges: reports and notices	17 N.J.R. 1826(a)		
7:1C-1	90-day construction permits	16 N.J.R. 3243(a)	R.1985 d.316	17 N.J.R. 1544(a)
7:1E	Readopt rules on Discharges of Petroleum and Other Hazardous Substances	17 N.J.R. 865(a)	R.1985 d.377	17 N.J.R. 1759(b)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:1F	Industrial Survey Project rules: waiver of Executive Order No. 66	17 N.J.R. 866(a)		
7:1F	Industrial Survey Project rules: new expiration date	_____	_____	17 N.J.R. 1139(b)
7:1G	Right to Know Act: Federal district court ruling	_____	_____	17 N.J.R. 1139(c)
7:1H	Readopt County Environmental Health administrative rules	17 N.J.R. 1463(b)	R.1985 d.420	17 N.J.R. 2020(b)
7:2-2.14, 3.4, 3.5	Use of State Park lands	17 N.J.R. 778(a)	R.1985 d.421	17 N.J.R. 2020(c)
7:2-12	Open lands management	17 N.J.R. 866(b)		
7:4-2	Register of Historic Places: continuation of selection criteria	_____	_____	17 N.J.R. 1795(d)
7:6-1.37	Waiver of maximum tow line length for parasailing exhibitions	_____	_____	17 N.J.R. 1801(a)
7:7-2.2	Wetlands maps in Ocean County	17 N.J.R. 1710(a)		
7:7E	Readopt Coastal Resource and Development Policies	17 N.J.R. 1465(a)	R.1985 d.422	17 N.J.R. 2021(a)
7:7E	Revisions to Coastal Resources and Development rules	17 N.J.R. 1466(a)		
7:7E	Coastal Resource and Development revisions: extension of comment period	17 N.J.R. 1797(b)		
7:7E	Coastal Resource and Development Policies: correction to Code and proposed revisions	17 N.J.R. 1797(c)		
7:7E-7.2	Correction to Administrative Code: Coastal Resource and Development Policies	_____	_____	17 N.J.R. 1140(a)
7:9-4, Index D	Surface water classifications: Hackensack and Hudson rivers	17 N.J.R. 1625(a)	R.1985 d.466	17 N.J.R. 2109(a)
7:9-4, 5	Surface water quality and treatment of wastewater discharges	16 N.J.R. 3080(a)	R.1985 d.249	17 N.J.R. 1270(a)
7:9-5.4	Correction: Policy concerning disinfection of wastewater	16 N.J.R. 3080(a)	R.1985 d.249	17 N.J.R. 1759(c)
7:9-15	Restoration of publicly-owned freshwater lakes	17 N.J.R. 2182(a)		
7:11-2.3, 2.5, 2.8—2.12	Delaware and Raritan Canal water supply system	17 N.J.R. 11(a)	R.1985 d.402	17 N.J.R. 1879(a)
7:12-1.3, 1.4	Shellfish-growing water classifications	17 N.J.R. 661(a)	R.1985 d.290	17 N.J.R. 1412(a)
7:12-2.7	Hard clam relay program	17 N.J.R. 2185(a)		
7:13-1.11(c)27	Floodways along Pequest River in Sussex and Warren counties	16 N.J.R. 1306(a)	R.1985 d.218	17 N.J.R. 1080(a)
7:13-7.1(c)17	Redelineation of Delaware River in Harmony Township, Warren County	17 N.J.R. 151(a)	R.1985 d.319	17 N.J.R. 1550(a)
7:13-7.1(c)29	Floodway delineations within Maurice River Basin	17 N.J.R. 2186(a)		
7:13-7.1(c)30	Floodway delineation along Paulins Kill	16 N.J.R. 2397(a)	R.1985 d.217	17 N.J.R. 1080(b)
7:13-7.1	Paulins Kill floodway delineation: public hearing	16 N.J.R. 2885(a)		
7:13-7.1(d)47	Redelineation of Pine Brook in Bergen County	17 N.J.R. 2074(a)		
7:13-7.1(d)49	Floodway delineations in Union County	17 N.J.R. 1965(a)		
7:13-7.1(d)50	Floodway delineation along North Branch Foulerton's Brook	16 N.J.R. 2398(a)	R.1985 d.320	17 N.J.R. 1551(a)
7:13-7.1(d)51	Floodways along North Branch Raritan (Project U)	16 N.J.R. 1307(a)	R.1985 d.329	17 N.J.R. 1648(b)
7:13-7.1(h)	Floodway delineations in Hackensack Basin	17 N.J.R. 1175(a)		
7:13-7.1(i)	Floodway delineations in Central Passaic Basin Projects G and R	17 N.J.R. 1176(a)		
7:14A-1.8	Fee schedule for NJPDES permits and applicants	17 N.J.R. 13(a)	R.1985 d.315	17 N.J.R. 1551(b)
7:14A-1.8	Correction: NJPDES fee schedule	17 N.J.R. 13(a)	R.1985 d.315	17 N.J.R. 1882(a)
7:19-5.11	Correction: Acquisition costs	16 N.J.R. 3380(a)	R.1985 d.182	17 N.J.R. 1559(a)
7:19-6.10	Water supply management in critical areas	17 N.J.R. 1966(a)		
7:19A-1.4	Emergency water supply: residential and nonresidential users defined	17 N.J.R. 1967(a)		
7:19B-1.3	Emergency water supply: residential and nonresidential users defined	17 N.J.R. 1967(a)		
7:20	Dam Safety Standards	16 N.J.R. 790(a)	R.1985 d.214	17 N.J.R. 1081(a)
7:25-2.20	Higbee Beach Wildlife Management Area	Emergency	R.1985 d.514	17 N.J.R. 2459(a)
7:25-4.2, 4.14, 4.17	Possession of endangered and nongame species	17 N.J.R. 516(a)	R.1985 d.251	17 N.J.R. 1289(a)
7:25-4.13, 4.17	Status of the osprey	17 N.J.R. 350(a)	R.1985 d.215	17 N.J.R. 1091(a)
7:25-5	1985-86 Game Code	17 N.J.R. 1177(a)	R.1985 d.419	17 N.J.R. 2021(b)
7:25-6	1986-87 Fish Code	17 N.J.R. 2187(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:25-7.10, 7.11	Taking of oysters and mussels	16 N.J.R. 3385(a)	R.1985 d.401	17 N.J.R. 1883(a)
7:25-12.1	Close of sea clam season	———	———	17 N.J.R. 1142(a)
7:25-14	Readopt rules on Crab Pots	17 N.J.R. 1830(a)		
7:25-15.1	Hard clam relay program	17 N.J.R. 2191(a)		
7:25-16.1	Defining freshwater fishing lines	17 N.J.R. 2193(a)		
7:25-18	Readopt Marine Fisheries rules	17 N.J.R. 1188(a)	R.1985 d.386	17 N.J.R. 1883(b)
7:25-18.5	Marine fisheries: general net rules	Emergency	R.1985 d.240	17 N.J.R. 1334(a)
7:25-23	Permit to kill wild deer	17 N.J.R. 350(b)	17 N.J.R. 250	17 N.J.R. 1289(b)
7:25A	Oyster management	17 N.J.R. 352(a)	R.1985 d.216	17 N.J.R. 1092(a)
7:25A-1.9	Closure of certain Delaware Bay oyster beds	———	———	17 N.J.R. 1795(c)
7:26-1.4, 1.6, 9.1, 12.1	Tolling agreements and reclamation of hazardous waste	17 N.J.R. 1968(a)		
7:26-1.4, 9.3	Above-ground tank storage of hazardous waste	17 N.J.R. 1501(a)		
7:26-1.7	Waste management: on-site disposal of construction debris	17 N.J.R. 1040(a)		
7:26-1.7	Solid waste disposal: exemption from registration	17 N.J.R. 1368(a)		
7:26-3	Waste management: readopt Collection and Haulage rules	17 N.J.R. 1041(a)		
7:26-6.5	Solid waste flow: Atlantic County	17 N.J.R. 517(b)	R.1985 d.317	17 N.J.R. 1560(a)
7:26-6.5	Solid waste flow: Hunterdon County	17 N.J.R. 517(a)	R.1985 d.503	17 N.J.R. 2388(a)
7:26-7.4, 8.3, 8.15, 9.2, 10.6, 10.	Restriction of land disposal of hazardous waste	17 N.J.R. 779(a)		
7:26-8.13, 8.16	Hazardous waste from non-specific sources; hazardous constituents	17 N.J.R. 354(a)	R.1985 d.248	17 N.J.R. 1290(a)
7:26-8.15	Hazardous waste management: warfarin and zinc phosphide	17 N.J.R. 356(a)	R.1985 d.375	17 N.J.R. 1760(a)
7:26-9.10, 9.11, App. A.	Hazardous waste facilities: closure letters of credit	17 N.J.R. 241(a)	R.1985 d.247	17 N.J.R. 1291(a)
7:26-10.5	Tank storage containment requirements	17 N.J.R. 152(a)	R.1985 d.318	17 N.J.R. 1560(b)
7:26-14	Resource Recovery grants and loans	16 N.J.R. 3385(b)		
7:26-14	Resource Recovery grants and loans: extension of comment period	17 N.J.R. 242(a)		
7:26-16.4	Solid and hazardous waste: transporters and facilities	17 N.J.R. 518(a)		
7:27-13.1, 13.2, 13.5-13.8	Ambient air quality standards	16 N.J.R. 1767(a)	R.1985 d.252	17 N.J.R. 1292(a)
7:27-14.3	Diesel-powered motor vehicles: idle standard	16 N.J.R. 2887		
7:27-15.4	Air pollution and gas-fueled motor vehicles	17 N.J.R. 781(a)	R.1985 d.331	17 N.J.R. 1649(a)
7:27-15.6	Gas-fueled motor vehicle: idle standard	16 N.J.R. 2889		
7:27-16	Air pollution by volatile organic substances	17 N.J.R. 1969(a)		
7:27B-3	Determination of volatile organic substances from source operations	17 N.J.R. 2194(a)		
7:27B-4.6	Lead test paper procedure	17 N.J.R. 781(a)		
7:27B-4.6, 4.7	Air pollution and gas-fueled motor vehicles	17 N.J.R. 781(a)	R.1985 d.331	17 N.J.R. 1649(a)
7:28-1.4, 17	Industrial and nonmedical radiology	17 N.J.R. 1626(a)	R.1985 d.502	17 N.J.R. 2389(a)
7:28-12	Transportation of radioactive material	17 N.J.R. 1369(a)	R.1985 d.387	17 N.J.R. 1884(a)
7:28-19.2, 19.3, 19.4, 19.6, 19.9, 19.10	Podiatric x-ray technology	17 N.J.R. 1632(a)	R.1985 d.501	17 N.J.R. 2393(a)
7:29-1.1—1.5	Noise control: extension of comment period	16 N.J.R. 2405(a)		
7:30	Pesticide Control Code	17 N.J.R. 242(b)		
7:36	Green Acres Program	16 N.J.R. 2405(b)	R.1985 d.400	17 N.J.R. 1885(a)
7:38	Wild and scenic rivers system	17 N.J.R. 1986(a)		
7:45	Delaware Raritan Canal State Park: Review Zone rules	17 N.J.R. 1711(a)		
7:50-2.11, 4.12-4.92	Pinelands comprehensive management	17 N.J.R. 1918(a)	R.1985 d.494	17 N.J.R. 2394(a)

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HEALTH—TITLE 8

8:7-1	Licensure of persons for public health positions	17 N.J.R. 1926(a)	R.1985 d.476	17 N.J.R. 2265(a)
8:13-2.1, 2.4, 2.6—2.11, 2.13, 2.14	Depuration of soft shell clams	17 N.J.R. 1370(a)		
8:19	Readopt Newborn Hearing Screening rules	17 N.J.R. 869(a)	R.1985 d.380	17 N.J.R. 1892(a)
8:21-7	Frozen dessert products	17 N.J.R. 1986(b)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:31-26.3, 26.4	Health care facilities: employee physicals; child abuse	16 N.J.R. 3249(a)	R.1985 d.440	17 N.J.R. 2100(a)
8:31-26.5	Health care facilities: licensure fees	17 N.J.R. 664(a)	R.1985 d.372	17 N.J.R. 1760(b)
8:31-26.5	Health care facilities licensure fee	17 N.J.R. 664(a)	R.1985 d.414	17 N.J.R. 2032(a)
8:31-26.5	Family planning facilities: licensure fee	17 N.J.R. 1999(a)		
8:31B-2, 3, 4	Hospital Rate Setting rules: temporary waiver of expiration	16 N.J.R. 2733(a)		
8:31B-3	Hospital reimbursement: procedure and methodology	17 N.J.R. 2000(a)		
8:31B-3.19	RIM methodology for nursing cost allocation: implementation date	16 N.J.R. 2848(b)		
8:31B-3.23	Correction: Hospital reimbursement	16 N.J.R. 2733(b)		
8:31B-3.72	Hospital reimbursement: periodic rate adjustments	17 N.J.R. 872(a)	R.1985 d.349	17 N.J.R. 1652(a)
8:31B-3.79	Hospital reimbursement: post-acute care patients	17 N.J.R. 873(a)	R.1985 d.359	17 N.J.R. 1761(a)
8:31B-4	Hospital reimbursement: financial elements and reporting	17 N.J.R. 2004(a)		
8:33	Certificate of Need application and review process	17 N.J.R. 1190(a)	R.1985 d.498	17 N.J.R. 2403(a)
8:33A-1.1	New and expanded surgical services: deferral of need applications	16 N.J.R. 2734(a)		
8:33B	Extracorporeal Shock Wave Lithotripsey (ESWL)	17 N.J.R. 1728(a)	R.1985 d.497	17 N.J.R. 2431(a)
8:33F-1.4	Renal disease services: acute hemodialysis standards	17 N.J.R. 874(a)	R.1985 d.360	17 N.J.R. 1762(a)
8:33G-1	Computerized tomography services	17 N.J.R. 1214(a)	R.1985 d.411	17 N.J.R. 2033(a)
8:33H	Long-Term Care Facilities and Services: readopt Certificate of Need rules	17 N.J.R. 1216(a)	R.1985 d.413	17 N.J.R. 2034(a)
8:34-1.31	Licensing of nursing home administrators	17 N.J.R. 2212(a)		
8:43-3.22	Fire safety in residential health care facilities	17 N.J.R. 1731(a)		
8:43-4	Residential Health Care Facilities: readopt Administration rules	17 N.J.R. 1231(a)	R.1985 d.412	17 N.J.R. 2042(a)
8:43-4.13	Residential health care: personal needs allowance	17 N.J.R. 1731(b)		
8:43A	Licensure of ambulatory care facilities	16 N.J.R. 3254(a)	R.1985 d.438	17 N.J.R. 2110(b)
8:43B-1.14	Hospital facilities: psychiatric patient rights	17 N.J.R. 665(a)		
8:43B-8.16	Obstetric and newborn services: use of oxytocic agents	17 N.J.R. 2213(a)		
8:43B-8.33—8.44	Newborn care services: physical plant standards	17 N.J.R. 519(a)		
8:43E-1	Hospital Policy Manual: Certificate of Need rules	17 N.J.R. 1220(a)		
8:44-2.10	Reportable occupational and environmental diseases and poisons	17 N.J.R. 1831(a)		
8:45	Clinical laboratory services	17 N.J.R. 268(a)	R.1985 d.243	17 N.J.R. 1294(a)
8:51-1-6	Local boards: recognized public health activities and minimum standards	17 N.J.R. 1633(a)	R.1985 d.477	17 N.J.R. 2270(a)
8:57-1	Readopt Reportable Disease rules	17 N.J.R. 784(a)	R.1985 d.363	17 N.J.R. 1764(a)
8:57-1.13	Reportable occupational and environmental diseases and poisons	17 N.J.R. 1831(a)		
8:57-4.15	Immunization of school children: mumps vaccine	17 N.J.R. 358(a)	R.1985 d.264	17 N.J.R. 1414(a)
8:60	Asbestos licenses and permits	17 N.J.R. 1676(a)	R.1985 d.468	17 N.J.R. 2275(a)
8:60-2, 6	Asbestos training courses	17 N.J.R. 741(a)	R.1985 d.262	17 N.J.R. 1417(b)
8:65-1	Controlled Dangerous Substances: readopt Registration rules	17 N.J.R. 1508(a)	R.1985 d.459	17 N.J.R. 2132(a)
8:65-5	Controlled dangerous substances: records and reports of registrants	17 N.J.R. 524(a)		
8:65-6	Controlled dangerous substances: Federally-required order forms	17 N.J.R. 528(a)	R.1985 d.457	17 N.J.R. 2135(a)
8:65-7.3	Controlled dangerous substances: issuing of prescriptions	17 N.J.R. 876(a)	R.1985 d.461	17 N.J.R. 2138(a)
8:65-10.1	Add 3-Methylfentanyl to Schedule I	17 N.J.R. 1511(a)	R.1985 d.458	17 N.J.R. 2138(b)
8:65-10.1	Controlled dangerous substances: 3, 4-methylenedioxymethamphetamine	17 N.J.R. 2214(a)		
8:65-10.5	Reschedule Buphenorphine to Schedule V	17 N.J.R. 1234(a)	R.1985 d.460	17 N.J.R. 2138(c)
8:65-11.2	Narcotic treatment programs: registration fee	17 N.J.R. 359(a)		
8:71	Generic drug list additions (see 16 N.J.R. 2672(b), 17 N.J.R. 200(b), 957(b), 1296(a))	16 N.J.R. 1436(a)	R.1985 d.295	17 N.J.R. 1561(a)
8:71	Generic drug list additions (see 17 N.J.R. 201(a), 957(c), 1296(b)	16 N.J.R. 2483	R.1985 d.297	17 N.J.R. 1562(b)

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8:71	Additions to generic drug list (see 17 N.J.R. 1295(a), 1562(a))	17 N.J.R. 158(a)	R.1985 d.415	17 N.J.R. 2043(a)
8:71	Generic drug list additions	17 N.J.R. 1043(a)	R.1985 d.410	17 N.J.R. 2042(b)
8:71	Genric drug list additions	17 N.J.R. 1733(a)		

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HIGHER EDUCATION—TITLE 9

9:2-1	Minority Faculty Advancement Loan Program	17 N.J.R. 1512(a)		
9:2-1, 2, 3, 8, 9	Repeal (See 9:6)	16 N.J.R. 2209(a)	R.1985 d.244	17 N.J.R. 1296(c)
9:2-4, 6, 7, 12, 13	Readopt Administrative Policies for colleges and universities	16 N.J.R. 2216(a)	R.1985 d.309	17 N.J.R. 1563(a)
9:2-4.1	Eligibility for Alternate Benefit Program	17 N.J.R. 1635(a)		
9:2-12.1, 12.2	Teacher education: degree standards	17 N.J.R. 1515(a)		
9:2-12.2	Teacher education: curriculum	17 N.J.R. 22(b)		
9:6	State College: policies and standards	16 N.J.R. 2209(a)	R.1985 d.244	17 N.J.R. 1296(c)
9:6-1.2, 3.1, 3.4, 3.5, 3.6, 3.11, 4.4, 4.7, 5.2, 5.13	State Colleges: policies and standards	17 N.J.R. 160(a)	R.1985 d.244	17 N.J.R. 1296(c)
9:7-2.4, 2.9	Student assistance programs: eligibility; award combinations	R.1985 d.787(a)	R.1985 d.338	17 N.J.R. 1653(a)
9:7-3.1	Tuition Aid Grants: 1985-86 Award Table	Emergency	R.1985 d.430	17 N.J.R. 2050(a)
9:7-3.3, 5.9, 6.8	Student assistance program revisions	17 N.J.R. 1734(a)		
9:7-4.1	Garden State Scholars: eligibility	17 N.J.R. 2007(a)		
9:7-4.1, 4.7, 4.8	Distinguished Scholars Program	17 N.J.R. 787(b)	R.1985 d.339	17 N.J.R. 1654(a)
9:7-8	Vietnam Veterans Tuition Aid Program	17 N.J.R. 1735(a)		
9:8	Jobs, Science and Technology Bond Act: policies and procedures	17 N.J.R. 1516(a)		
9:9-1.2	Guaranteed Student Loan Program: second borrowing	17 N.J.R. 1518(a)		
9:9-1.6	Student loan applications: prohibited fee	16 N.J.R. 3281(b)	R.1985 d.311	17 N.J.R. 1564(a)
9:11, 12	Educational Opportunity Fund Program rules	17 N.J.R. 2214(b)		
9:14	Readopt Independent College and University Assistance rules	17 N.J.R. 25(a)	R.1985 d.245	17 N.J.R. 1303(a)

(TRANSMITTAL 25, dated April 15, 1985)

HUMAN SERVICES—TITLE 10

10:37	Community Mental Health Services	17 N.J.R. 2222(a)		
10:42	Developmental Disabilities: Emergency Mechanical Restraint	17 N.J.R. 1832(a)		
10:44-A-1.1—1.5, 2.2, 2.4, 3.1, 3.3, 4.3, 5.2, 9	Community residences for developmentally disabled; Supportive Living Programs	16 N.J.R. 1438(a)	R.1985 d.258	17 N.J.R. 1304(a)
10:47	Private Licensed Facilities for Developmentally Disabled	16 N.J.R. 2902(a)		
10:48	Division of Mental Retardation: appeal procedures	17 N.J.R. 876(b)		
10:49-1	Administration Manual: readopt General Provisions	17 N.J.R. 532(a)	R.1985 d.246	17 N.J.R. 1307(a)
10:49-1.4	Narcotic and drug abuse treatment centers	17 N.J.R. 1235(a)		
10:49-7	Reinstatement of Medicaid provider	17 N.J.R. 1519(a)	R.1985 d.463	17 N.J.R. 2139(a)
10:50	Transportation Services: HCFA Common Procedure Coding System	17 N.J.R. 1519(b)		
10:50-1.2, 1.5, 1.6	Invalid coach services: oxygen equipment; carrier charges	17 N.J.R. 1373(a)	R.1985 d.427	17 N.J.R. 2044(a)
10:50-1.5, 1.6	Reimbursement for ambulance and invalid coach services	17 N.J.R. 1637(a)	R.1985 d.473	17 N.J.R. 2271(a)
10:51-1, 2	Pharmacy Manual: pharmaceutical services and billing procedures	17 N.J.R. 2223(a)		
10:51-1.13, 1.14, 3.12, App. A	Pharmaceutical services: "vaccine" reimbursement	17 N.J.R. 1237(a)		
10:51-1.17, 3.15	Pharmaceutical services: dispensing fee and capitation rates	17 N.J.R. 1044(a)	R.1985 d.369	17 N.J.R. 1766(a)
10:51-5.1, 5.16	PAAD: diabetic testing material	17 N.J.R. 1521(a)	R.1985 d.462	17 N.J.R. 2139(b)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:52-1.1, 1.20	Ambulatory surgical centers	16 N.J.R. 3153(a)		
10:52-1.16	Termination of pregnancy in licensed health care facilities	17 N.J.R. 1375(a)		
10:52-1.17	Out-of-state inpatient hospital services	17 N.J.R. 2225(a)		
10:52-1.21	Narcotic and drug abuse treatment centers	17 N.J.R. 1235(a)		
10:53-1.1, 1.16	Ambulatory surgical centers	16 N.J.R. 3153(a)		
10:53-1.14	Termination of pregnancy	17 N.J.R. 1375(a)		
10:53-2	Special Hospital Services: admission and billing	17 N.J.R. 544(a)	R.1985 d.257	17 N.J.R. 1317(a)
10:54	Physician Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:54-1.23	Termination of pregnancy	17 N.J.R. 1375(a)		
10:54-3	Procedure Code Manual: immunizations	17 N.J.R. 546(a)	R.1985 d.211	17 N.J.R. 1094(a)
10:54-3	Procedure Code Manual: fees for laboratory services	17 N.J.R. 1376(a)		
10:55	Prosthetic-Orthotic Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:55-3.1	Fee increases for shoe appliances	17 N.J.R. 1522(a)	R.1985 d.429	17 N.J.R. 2045(a)
10:57	Podiatry Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:58	Nurse Midwifery Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:59	Medical Supplier Manual: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:59-1.2, 1.4, 1.9, 1.12	Medical Supplier Manual: recycling of durable medical equipment	16 N.J.R. 2048(a)	R.1985 d.376	17 N.J.R. 1894(a)
10:59-1.7, 1.13, 1.14, 3.2	Fee increases for shoe appliances	17 N.J.R. 1522 (a)	R.1985 d.429	17 N.J.R. 2045(a)
10:60	Readopt Home Care Services Manual	17 N.J.R. 28(a)	R.1985 d.488	17 N.J.R. 2433(a)
10:60-4	Community Care Waiver Program for Elderly and Disabled	16 N.J.R. 3161(a)	R.1985 d.263	17 N.J.R. 1415(a)
10:61	Independent Laboratory Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:61-1.2	Medicaid participation by State, county and municipal labs	16 N.J.R. 3162(a)	R.1985 d.237	17 N.J.R. 1318(a)
10:62	Vision Care: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:63-1.5, 1.6, 1.8, 1.13, 2.5, 2.7	Long term care facilities: certification and plan of care	17 N.J.R. 2075(a)		
10:63-1.6	Changes in level of long-term care	16 N.J.R. 2049(a)	R.1985 d.384	17 N.J.R. 1895(a)
10:63-3.17	Long Term Care Services: adjustments to base period data	17 N.J.R. 1736 (a)		
10:64	Hearing Aid Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:66	Independent Clinic Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:66-1.1, 1.2, 1.3, 1.6, 1.7, 1.9	Ambulatory surgical centers	16 N.J.R. 3153(a)		
10:66-1.2, 1.6, 3.3	Narcotic and drug abuse treatment centers	17 N.J.R. 1235(a)		
10:66-1.5	Independent Clinic Manual: mental health services	17 N.J.R. 1377(a)	R.1985 d.428	17 N.J.R. 2046(a)
10:66-1.6	Termination of pregnancy	17 N.J.R. 1375(a)		
10:67	Psychological Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:69A-1.2, 2.1, 5.3, 5.6, 6.1, 6.4, 6.6, 6.10, 6.11	Pharmaceutical Assistance for Aged and Disabled	17 N.J.R. 367(a)	R.1985 d.259	17 N.J.R. 1318(b)
10:81-3.27	PAM: transmission of data to receiving county	17 N.J.R. 878(a)	R.1985 d.344	17 N.J.R. 1655(a)
10:81-3.34	PAM: temporary absence of children from home	17 N.J.R. 163(a)	R.1985 d.312	17 N.J.R. 1565(a)
10:81-10.7	PAM: eligibility for refugee and entrant programs	17 N.J.R. 2227(a)		
10:81-11.1, 11.4, 11.12	PAM: continuing IV-D services for families that lose AFDC	17 N.J.R. 164(a)	R.1985 d.210	17 N.J.R. 1094(b)
10:81-11.7, 11.9	PAM: child support and health benefits	17 N.J.R. 165(a)	R.1985 d.219	17 N.J.R. 1095(a)
10:81-11.9	PAM: reimbursement by counties to State	17 N.J.R. 369(a)		
10:81-11.9	Public Hearing: County reimbursement to State for Tax Setoff Program for child support enforcement	17 N.J.R. 1526(a)		
10:81-11.18	PAM: weekly second family adjustment	17 N.J.R. 879(a)	R.1985 d.343	17 N.J.R. 1655(b)

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10:81-11.19	PAM: distribution of arrearage payments for child support	17 N.J.R. 1238(a)		
10:82-1.2	AFDC payment levels: comments	17 N.J.R. 880(a)	R.1985 d.341	17 N.J.R. 2272(a)
10:82-1.2, 2.13, 3.11, 5.11	ASH: AFDC payment standards	17 N.J.R. 880(a)	R.1985 d.341	17 N.J.R. 1656(a)
10:82-2.2	ASH: initial grant computation	17 N.J.R. 546(b)	R.1985 d.299	17 N.J.R. 1566(a)
10:82-2.19, 3.2	Correction to Administrative Code: Assistance Standards Handbook	_____	_____	17 N.J.R. 1143(b)
10:82-3.13	ASH: eligibility of sponsored alien and sponsor's income	17 N.J.R. 1523(a)	R.1985 d.491	17 N.J.R. 2440(a)
10:82-4.11, 4.12	ASH: income from apartments, rooms, or housekeeping units	17 N.J.R. 1045(a)	R.1985 d.385	17 N.J.R. 1895(b)
10:82-5.3	ASH: correction to Administrative Code	_____	_____	17 N.J.R. 1801(c)
10:82-5.3	ASH: child care	17 N.J.R. 1835(a)		
10:85-3.2	GAM: determination of unemployability	17 N.J.R. 547(a)		
10:85-3.2, 10.6	GAM: willingness to work and penalty period	16 N.J.R. 2741(a)		
10:85-3.3	GAM: monthly assistance payment for residential health care	16 N.J.R. 2742(a)		
10:85-3.3	General Assistance rate in residential health care facilities	_____	_____	17 N.J.R. 485(c)
10:85-3.4	GAM: suits and claims	17 N.J.R. 548(a)	R.1985 d.298	17 N.J.R. 1566(b)
10:85-4.1	General Assistance payment levels: comments	17 N.J.R. 882(a)	R.1985 d.342	17 N.J.R. 2272(a)
10:85-4.1, 9.4	General Assistance payment levels	17 N.J.R. 882(a)	R.1985 d.342	17 N.J.R. 1658(a)
10:85-4.6	GAM: correction to Administrative Code	_____	_____	17 N.J.R. 1802(a)
10:85-5.2	Correction to Administrative Code: General Assistance Manual	_____	_____	17 N.J.R. 1339(b)
10:85-5.3	GAM: outpatient mental health care	17 N.J.R. 1836(a)		
10:85-5.3	GAM: correction to Administrative Code	_____	_____	17 N.J.R. 2051(b)
10:85-6.4	GAM: final reporting requirements	17 N.J.R. 1837(a)		
10:85-10.8	GAM: work registration violations and Food Stamp recipients	17 N.J.R. 1838(a)		
10:86	Repeal obsolete AFDC Work Incentive Program rules	17 N.J.R. 1838(b)		
10:87-1.14	Food Stamp Program: disclosure of information	17 N.J.R. 1377(b)	R.1985 d.475	17 N.J.R. 2273(a)
10:87-2.21, 2.24, 2.28, 2.31, 2.35, 9.7, 11.29	Food Stamp Program revisions	17 N.J.R. 883(a)	R.1985 d.346	17 N.J.R. 1659(a)
10:87-5.7	Food Stamp Program: treatment of moneys used to repay overpayments	17 N.J.R. 986(a)	R.1985 d.313	17 N.J.R. 1567(a)
10:87-12.3, 12.4, 12.7	Food Stamp Program:maximum allowable income	17 N.J.R. 1793(a)	R.1985 d.480	17 N.J.R. 2273(b)
10:89	Home Energy Assistance Handbook	17 N.J.R. 1737(a)	R.1985 d.492	17 N.J.R. 2441(a)
10:89-2.3	Correction to Administrative Code: Home Energy Assistance Handbook	_____	_____	17 N.J.R. 1444(b)
10:90-2.2, 2.3, 2.4, 2.6, 3.3, 4.1—4.10, 5.1, 5.2, 5.6, 6.1, 6.2, 6.3	Monthly Reporting Policy Handbook	17 N.J.R. 1839(a)		
10:90-4.8	Correction to Administrative Code: Monthly Reporting Policy Handbook	_____	_____	17 N.J.R. 1143(c)
10:94-3.16	Medicaid district office	17 N.J.R. 38(a)	R.1985 d.291	17 N.J.R. 1416(a)
10:94-4.5, 4.6, 4.7	Medicaid Only: resource eligibility and limits	17 N.J.R. 1525(a)	R.1985 d.474	17 N.J.R. 2274(a)
10:122-2.3, 2.6, 3.2, 3.3, 4.1, 4.3, 4.6, 6.8, 6.9	Child care centers	17 N.J.R. 548(b)	R.1985 d.314	17 N.J.R. 1568(a)
10:123-3	Residential health care and boarding homes: readopt Personal Needs Allowance rules	17 N.J.R. 1526(b)	R.1985 d.426	17 N.J.R. 2046(b)
10:129-2	Confidentiality of child abuse records	17 N.J.R. 885(a)	R.1985 d.373	17 N.J.R. 1766(b)

(TRANSMITTAL 28, dated April 15, 1985)

CORRECTIONS—TITLE 10A

10A:31-3.7, 3.12	Adult county facilities: new inmate processing	17 N.J.R. 2229(a)		
10A:71	State Parole Board rules	16 N.J.R. 3391(a)	R.1985 d.213	17 N.J.R. 1096(a)

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11:1-2.5-2.8	Property-liability: rate counsel participation	16 N.J.R. 2918(a)		
11:1-5.2	Fire and casualty coverage: cancellation notice requirement	———	———	17 N.J.R. 1939(a)
11:1-16	Request for rate decrease	16 N.J.R. 3169(a)		
11:1-18	Approval of business names	17 N.J.R. 41(a)		
11:1-19	Uniform registration of branch offices	17 N.J.R. 42(a)		
11:1-20	Property and casualty/liability coverage: cancellations, nonrenewals and mid-term premium increases	Emergency	R.1985 d.507	17 N.J.R. 2460(a)
11:2-19	Approval of insurance schools and company training programs	16 N.J.R. 2920(b)		
11:2-20	License renewal: continuing education requirement	16 N.J.R. 2922(a)		
11:2-21	Property and casualty coverage: underwriting guidelines	16 N.J.R. 2924(a)		
11:2-23	Advertisement of life insurance and annuities	16 N.J.R. 2926(a)		
11:3-7	Automobile Reparation Reform Act rules: 90-day waiver of expiration	16 N.J.R. 2414(a)		
11:3-7	Automobile Reparation Reform Act rules	16 N.J.R. 3417(a)		
11:3-8	Nonrenewal of auto insurance policies	16 N.J.R. 2930(a)		
11:3-10	Auto physical damage claims	16 N.J.R. 3170(a)		
11:3-16	Private passenger automobile rate filings	16 N.J.R. 2934(a)		
11:3-17	Automobile rate filings	16 N.J.R. 2936(a)		
11:3-18	Filing review procedures	16 N.J.R. 2937(a)		
11:3-20	Reporting excess profits	17 N.J.R. 370(a)		
11:3-21	Reduced PIP premium charges	16 N.J.R. 3286(a)		
11:4-2	Replacement of life insurance and annuities	17 N.J.R. 887(a)		
11:4-9	Annuity and deposit fund disclosure	16 N.J.R. 2939(a)		
11:4-16, 17, 18	Readopt health insurance standards	17 N.J.R. 554(a)	R.1985 d.221	17 N.J.R. 1129(a)
11:4-21	Readopt Limited Death Benefit Forms	17 N.J.R. 891(a)	R.1985 d.325	17 N.J.R. 1660(a)
11:4-25	Social security disability offset	16 N.J.R. 3287(a)		
11:5-1.15, 1.25	Advertising of real estate; sale of interstate property	17 N.J.R. 666(a)		
11:5-1.28	Approved real estate schools: requirements	17 N.J.R. 376(a)		
11:5-1.29	Real estate license applicants: record checks	17 N.J.R. 2230(a)		
11:10-1	Dental plan organizations	16 N.J.R. 2230(a)	R.1985 d.374	17 N.J.R. 1768(a)
11:10-2	Employees' dental benefit plans	17 N.J.R. 45(a)	R.1985 d.220	17 N.J.R. 1129(b)
11:16	Provider verification of services	17 N.J.R. 47(a)		
11:17-1	Surplus lines insurance guaranty fund surcharge	17 N.J.R. 1045(b)		
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LABOR—TITLE 12				
12:15-1.1	Unemployment Compensation: contributions, records and reports	16 N.J.R. 2488(b)		
12:15-1.1, 1.2	Unemployment and Temporary Disability Benefits programs: purpose and scope	17 N.J.R. 1378(a)	R.1985 d.423	17 N.J.R. 2046(c)
12:15-1.3	Maximum weekly benefit rates for Unemployment Compensation and State Plan Disability	17 N.J.R. 2079(a)		
12:15-1.4	Taxable wage base subject to Unemployment Compensation contributions	17 N.J.R. 2079(b)		
12:15-1.5	Unemployment Compensation contribution rate for government units	17 N.J.R. 2079(c)		
12:15-1.6	Base week for unemployment compensation and temporary disability	17 N.J.R. 2007(b)		
12:15-1.6	Base week for Unemployment Compensation and State Plan Disability claims	17 N.J.R. 2080(a)		
12:15-1.7	Alternate earnings test for benefits eligibility	17 N.J.R. 2080(b)		
12:35	Workfare rules	17 N.J.R. 1048(a)	R.1985 d.404	17 N.J.R. 1896(a)
12:56	Readopt Wage and Hour rules	17 N.J.R. 2008(a)		
12:57	Readopt Wage Orders for Minors	17 N.J.R. 2009(a)		
12:58	Readopt Child Labor rules	17 N.J.R. 2009(b)		
12:70	Field sanitation for seasonal farm workers	17 N.J.R. 1860(a)		

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12:120	Asbestos licenses and permits	17 N.J.R. 1676(a)	R.1985 d.468	17 N.J.R. 2275(a)
12:120-2, 6	Asbestos training courses	17 N.J.R. 741(a)	R.1985 d.262	R.1985 d.1417(b)
12:200	Liquefield Petroleum Gas rules	17 N.J.R. 1379(a)	R.1985 d.403	17 N.J.R. 1899(a)
12:235	Practice and procedure before Division of Workers' Compensation	17 N.J.R. 2081(a)		
12:235-1.5	Maximum weekly benefit rate for Workers' Compensation	17 N.J.R. 2090(a)		

(TRANSMITTAL 21, dated April 15, 1985)

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

12A	Departmental rules; small business set-aside contracts	16 N.J.R. 1955(a)	R.1985 d.421	17 N.J.R. 2683(a)

LAW AND PUBLIC SAFETY—TITLE 13

13:1-4.6	Police Training Commission: radar instructor certification	17 N.J.R. 377(a)	R.1985 d.226	17 N.J.R. 1130(a)
13:1-5.1, 6.1, 8.1	Police officer training and certification	17 N.J.R. 1239(a)	R.1985 d.405	17 N.J.R. 1899(b)
13:2-4	ABC: readopt rules on Issuance or Transfer of Municipal Retail Licenses	17 N.J.R. 1052(a)	R.1985 d.332	17 N.J.R. 1661(a)
13:2-20	ABC: readopt rules on Transportation by Licensees; Transit Insignia	17 N.J.R. 1054(a)	R.1985 d.333	17 N.J.R. 1662(a)
13:23.16, -24, -35	ABC preproposal: industry marketing and sales practices	17 N.J.R. 3292(a)		
13:2-33	ABC: readopt Brand Registration rules	17 N.J.R. 794(a)	R.1985 d.279	17 N.J.R. 1423(a)
13:2-40	ABC: readopt rules on Issuances of IDs by County Clerks	17 N.J.R. 1380(a)	R.1985 d.395	17 N.J.R. 1900(a)
13:3-3.5, 3.6, 7.9	Amusement games control	17 N.J.R. 1058(a)	R.1985 d.334	17 N.J.R. 1664(a)
13:13	Discrimination against handicapped persons	17 N.J.R. 671(a)	R.1985 d.305	17 N.J.R. 1574(a)
13:13-1.3, 2.2, 2.3	Correction: Discrimination against handicapped persons	17 N.J.R. 671(a)	R.1985 d.305	17 N.J.R. 1773(a)
13:19-10.1	Motor vehicle driver violations: point assessment	17 N.J.R. 2231(a)		
13:19-13.1, 13.2, 13.3	Motor vehicle insurance surcharges	17 N.J.R. 893(a)	R.1985 d.482	17 N.J.R. 2281(a)
13:20-28	Readopt rules on Inspection of New Motor Vehicles	17 N.J.R. 1059(a)	R.1985 d.379	17 N.J.R. 1901(a)
13:20-32.16	Motor vehicle reinspection centers	17 N.J.R. 676(a)		
13:20-33.6	Glazing inspection standards for motor vehicles	17 N.J.R. 894(a)		
13:21-1.3, 1.4, 1.5	Driver licenses and social security numbers	16 N.J.R. 2746(a)	R.1985 d.307	17 N.J.R. 1579(a)
13:21-2	Motor Vehicle Licensing Service: Statutory Language Interpretation	17 N.J.R. 2090(b)		
13:21-4	Readopt rules on Motor Vehicle Titles	17 N.J.R. 377(b)	R.1985 d.200	17 N.J.R. 1131(a)
13:21-11.13	Temporary initial registration of motor vehicles	17 N.J.R. 1863(a)		
13:21-14	Readopt rules on licensing of bus drivers	17 N.J.R. 556(a)	R.1985 d.205	17 N.J.R. 1131(b)
13:21-15.6	Auto dealers: acceptance of altered title documents	17 N.J.R. 169(a)		
13:27-8.11	Certified landscape architects: title block contents	17 N.J.R. 1864(a)		
13:28-4.1	Board of Beauty Culture Control fee schedule	17 N.J.R. 1638(a)	R.1985 d.464	17 N.J.R. 2139(c)
13:29-1.1—1.6, 1.8—1.12	Board of Accountancy general rules	17 N.J.R. 557(a)	R.1985 d.287	17 N.J.R. 1424(a)
13:29-1.4	Change of address by licensed accountants	17 N.J.R. 1639(a)		
13:29-1.11	Fee for CPA certificate	17 N.J.R. 2092(a)		
13:29-2.1	Applicants for registered municipal accountant's test	17 N.J.R. 2092(b)		
13:29-2.1, 2.2, 2.3	Registered municipal accountants	17 N.J.R. 559(a)	R.1985 d.286	17 N.J.R. 1426(a)
13:30-8.1	Board of Dentistry: fee schedule	17 N.J.R. 378(a)		
13:30-8.3	Board of Dentistry licensee requirements	17 N.J.R. 1864(b)		
13:30-8.4, 8.6	Dentistry: specialty practice; professional advertising	17 N.J.R. 378(a)	R.1985 d.253	17 N.J.R. 1320(a)
13:30-8.4, 8.6	Correction: Specialties in dentistry	17 N.J.R. 378(a)	R.1985 d.253	17 N.J.R. 1665(a)
13:34-1.1	Marriage counseling: annual license fees and charges	17 N.J.R. 1527(a)		
13:35-1A.4	Clinical clerkships for foreign medical graduates	17 N.J.R. 2010(a)		
13:35-2.4	Approval of colleges of chiropractic	17 N.J.R. 2231(b)		
13:35-2.15	Physician-nurse anesthetist standards	17 N.J.R. 796(a)		
13:35-3.1-3.4	Licensing of medical practitioners	17 N.J.R. 561(a)	R.1985 d.224	17 N.J.R. 1131(c)
13:35-4.2	Termination of pregnancy	17 N.J.R. 1865(a)		

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13:35-6.4	Pre-proposal: professional conduct of Medical Board licensees	17 N.J.R. 894(b)		
13:35-6.6	Directly dispensed medication by physicians and podiatrists	17 N.J.R. 1866(a)	R.1985 d.505	17 N.J.R. 2442(a)
13:35-6.13	Medical examiners board: fee schedule	17 N.J.R. 562(a)	R.1985 d.223	17 N.J.R. 1132(a)
13:36-2.10, 2.12, 4.4, 4.13, 5.1, 5.6, 5.9, 6.8, 7.1, 7.2	Mortuary science rules	17 N.J.R. 797(a)	R.1985 d.293	17 N.J.R. 1580(a)
13:37-1	Programs in nursing education	17 N.J.R. 51(a)	R.1985 d.285	17 N.J.R. 1426(b)
13:37-1.2, 1.21, 1.23-1.25	Programs in nursing education	17 N.J.R. 1528(a)	R.1985 d.483	17 N.J.R. 2282(a)
13:37-1.4	Nursing licensees: reporting unlawful conduct	17 N.J.R. 2232(a)		
13:37-2.1, 2.3, 3.5, 4.1, 4.3-4.6, 5.1, 5.5	Licensing of nurses	17 N.J.R. 1529(a)		
13:38-3.2	Board of Optometrists: reexamination	17 N.J.R. 677(a)		
13:38-3.2	Reexamination for optometry licensure	17 N.J.R. 1639(b)	R.1985 d.504	17 N.J.R. 2443(a)
13:38-5.1	Board of Optometrists: fee schedule	17 N.J.R. 677(a)	R.1985 d.254	17 N.J.R. 1323(a)
13:40-3.2, 4.1, 5.1	Professional engineers and land surveyors: Board rules	17 N.J.R. 799(a)	R.1985 d.465	17 N.J.R. 2140(a)
13:40-8	Engineers and land surveyors: release of project records	17 N.J.R. 1027(a)	R.1985 d.225	17 N.J.R. 1133(a)
13:40-9	Supervision of engineering and land surveying projects	17 N.J.R. 2067(b)	R.1985 d.222	17 N.J.R. 1134(a)
13:41-1	Board of Professional Planners: readopt Seal rules	17 N.J.R. 1060(a)	R.1985 d.424	17 N.J.R. 2047(a)
13:41-3.2	Board of Professional Planners: fee schedule	17 N.J.R. 1061(a)	R.1985 d.443	17 N.J.R. 2141(a)
13:41-4	Board of Professional Planners: readopt preparation of site plan rules	17 N.J.R. 1240(a)		
13:42-1.5	Psychological Board licensees: notification of current address	17 N.J.R. 896(a)		
13:43-3.4	Certified Shorthand Reporting exam: conditional credit	17 N.J.R. 801(a)	R.1985 d.288	17 N.J.R. 1431(a)
13:43-3.5	Shorthand reporting licensees: change of address notification requirement	17 N.J.R. 801(b)	R.1985 d.289	17 N.J.R. 1431(b)
13:44-1.2, 1.3, 1.4, 2.4, 2.9, 2.14, 2.15, 6	Veterinarian licensure	17 N.J.R. 1739(a)		
13:44-4.1	Veterinary medicine: training certificate fee	17 N.J.R. 383(a)	R.1985 d.364	17 N.J.R. 1773(b)
13:44C-1.1	Audiology and Speech Language Pathology Advisory Committee: fees and charges	17 N.J.R. 1062(a)		
13:44D	Public moving and warehousing	17 N.J.R. 1382(a)		
13:45A-9	Merchandise advertising: readopt rules	17 N.J.R. 678(a)	R.1985 d.256	17 N.J.R. 1323(b)
13:45A-14	Unit pricing in retail establishments	17 N.J.R. 2232(b)		
13:45A-16	Home improvement practices: readopt rules	17 N.J.R. 679(a)	R.1985 d.255	17 N.J.R. 1325(a)
13:45A-22	Kosher meat and poultry dealers: inspections and recordkeeping	17 N.J.R. 1241(a)	R.1985 d.407	17 N.J.R. 1901(b)
13:45A-23	Deceptive watercraft repair practices	17 N.J.R. 680(a)	R.1985 d.306	17 N.J.R. 1581(a)
13:46	Boxing Rules	16 N.J.R. 2962(a)	R.1985 d.284	17 N.J.R. 1432(a)
13:47B-1.20	Weights and measures: National Bureau of Standards Handbook 44	17 N.J.R. 2233(a)		
13:47B-1.24	Weights and measures: central registry for security sealing devices	17 N.J.R. 2234(a)		
13:47C-3.6	Standard for treated lumber	17 N.J.R. 2234(b)		
13:48	Charitable fund raising	17 N.J.R. 1244(a)		
13:51-3.5, 3.6	Chemical breath testing: approved instruments	17 N.J.R. 1531(a)	R.1985 d.441	17 N.J.R. 2141(b)
13:59	Background checks for licensing and employment purposes: user fees	17 N.J.R. 1743(a)	R.1985 d.481	17 N.J.R. 2282(b)
13:70-3.46	Thoroughbred rules: horsemen's bookkeeper account	17 N.J.R. 173(a)	R.1985 d.204	17 N.J.R. 1135(a)
13:70-4.15	Thoroughbred racing: farms and training centers	17 N.J.R. 1393(a)		
13:70-6.53	Thoroughbred rules: qualifications as New Jersey bred	17 N.J.R. 271(a)	R.1985 d.203	17 N.J.R. 1135(b)
13:70-14A.11	Thoroughbred racing: urine testing of track personnel	17 N.J.R. 1640(a)		
13:71-7.26	Harness racing: farms and training centers	17 N.J.R. 1393(b)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:71-18.2	Harness racing: urine testing of track personnel	17 N.J.R. 1641(a)		
13:75-1.5	Violent crimes compensation: filing of claims	17 N.J.R. 2010(b)		
13:76-1.2, 1.3, 3.2, 4.1	Arson investigators	17 N.J.R. 2011(a)		

(TRANSMITTAL 30, dated April 15, 1985)

ENERGY—TITLE 14A

14:1-1, 6	BPU: general provisions; petitions	17 N.J.R. 2235(a)		
14:1-5.2, 5.3	Filings with Board of Public Utilities	17 N.J.R. 802(a)	R.1985 d.439	17 N.J.R. 2142(a)
14:3-4.7	Adjustment of utility bills	17 N.J.R. 2236(a)		
14:3-8.1, 8.2	Suggested formulae for extension of utility service	17 N.J.R. 174(a)	R.1985 d.202	17 N.J.R. 1136(a)
14:3-10.9	Petitions by solid waste collectors	16 N.J.R. 3292(b)		
14:5-3	Electric meters	17 N.J.R. 2237(a)		
14:9-6.11	Correction: Acquisition costs	16 N.J.R. 3380(a)	R.1985 d.182	17 N.J.R. 1559(a)
14:10-5	Inter LATA telecommunications carriers	17 N.J.R. 2012		
14:17-6.8, 6.14, 6.17	CATV: system and stock transfers; rate increase filing procedures; public hearing requirement	17 N.J.R. 1062(b)	R.1985 d.449	17 N.J.R. 2142(b)
14:18-2.9	CATV pole attachment rate methodology	17 N.J.R. 1589(b)	R.1985 d.425	17 N.J.R. 2047(b)
14:18-3.10	CATV installation: compensation for taking	17 N.J.R. 563(a)	R.1985 d.337	17 N.J.R. 1666(a)
14:18-11	Pre-proposal: Renewal of CATV municipal consents and certificates of approval	17 N.J.R. 1394(a)		

(TRANSMITTAL 21, dated April 15, 1985)

ENERGY—TITLE 14A

14A:3-4.4	Energy Subcode: thermal efficiency standards	16 N.J.R. 2748(a)	R.1985 d.478	17 N.J.R. 2283(a)
14A:3-11	Used oil recycling	17 N.J.R. 1866(b)	R.1985 d.506	17 N.J.R. 2443(a)
14A:7	Submission and handling of confidential information	17 N.J.R. 1745(a)	R.1985 d.470	17 N.J.R. 2284(a)
14A:13-1.2, 1.8-1.11, 1.13, 1.14	Energy conservation in State buildings	17 N.J.R. 1747(a)	R.1985 d.471	17 N.J.R. 2286(a)
14A:20-1	Energy conservation planning and evaluation	16 N.J.R. 3293(a)		

(TRANSMITTAL 14, dated October 15, 1984)

STATE—TITLE 15

15:2-1.1, 1.3, 1.4	Commercial recording: expedited service	17 N.J.R. 897(a)	R.1985 d.327	17 N.J.R. 1670(a)
15:2-1.5	Commercial recording: fee payment for expedited service	17 N.J.R. 898(a)	R.1985 d.326	17 N.J.R. 1671(a)

(TRANSMITTAL 14, dated January 3, 1984)

PUBLIC ADVOCATE—TITLE 15A

(TRANSMITTAL 1, dated March 20, 1978)

TRANSPORTATION—TITLE 16

16:1	Records management	17 N.J.R. 564(a)	R.1985 d.409	17 N.J.R. 1903(a)
16:6	Relocation assistance	17 N.J.R. 565(a)	R.1985 d.435	17 N.J.R. 2143(a)
16:20A-4.4	Municipalities qualified for depressed rural centers aid	17 N.J.R. 565(b)	R.1985 d.233	17 N.J.R. 1325(b)
16:21	State aid to counties and municipalities; readopt rules	17 N.J.R. 566(a)	R.1985 d.434	17 N.J.R. 2143(b)
16:28-1.79	Route 94 speed limits, Sussex County	17 N.J.R. 384(a)	R.1985 d.198	17 N.J.R. 1137(a)
16:28A-1.4, 1.31, 1.33	Bus stops on Route 4 in Hackensack and Routes 45 and 47 in Deptford	17 N.J.R. 1396(a)	R.1985 d.393	17 N.J.R. 1903(b)
16:28A-1.7	Parking on U.S. 9 in Berkeley Township	17 N.J.R. 1063(a)	R.1985 d.355	17 N.J.R. 1774(b)
16:28A-1.7, 1.19, 1.21, 1.31, 1.32	Parking on Routes U.S. 9, 28, U.S. 30, 45, U.S. 46	17 N.J.R. 898(b)	R.1985 d.328	17 N.J.R. 1671(b)
16:28A-1.7, 1.24	Bus stops on U.S. 9 and 34 in Old Bridge	17 N.J.R. 1064(a)	R.1985 d.354	17 N.J.R. 1774(a)
16:28A-1.7, 1.38, 1.51, 1.71	Parking on U.S. 9 in Marlboro, Routes 71 in Asbury Park, 168 in Camden, and 67 in Fort Lee	17 N.J.R. 2013(a)		
16:28A-1.7, 1.45	Parking on U.S. 9 in Ocean County and Route 94 in Sussex County	17 N.J.R. 1250(a)	R.1985 d.390	17 N.J.R. 1904(a)
16:28-1.9, 1.19, 1.21, 1.23, 1.33, 1.38, 1.41, 1.57, 1.104	Parking on Routes 17, 28, U.S. 30, 33, 47, 71, 77, U.S. 206 and U.S. 40-322	17 N.J.R. 802(b)	R.1985 d.294	17 N.J.R. 1583(a)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:28A-1.13, 1.27, 1.30	Bus stops on U.S. 22 in Kenilworth, Routes 38 in Cherry Hill and 44 in Paulsboro	17 N.J.R. 1397(a)	R.1985 d.394	17 N.J.R. 1905(a)
16:28A-1.18	Parking on Route 27 in Metuchen	17 N.J.R. 1642(a)	R.1985 d.467	17 N.J.R. 2288(a)
16:28A-1.18	Parking on Route 27 in Union County	17 N.J.R. 1251(a)	R.1985 d.391	17 N.J.R. 1906(a)
16:28A-1.18, 1.21, 1.37, 1.40, 1.55, 1.56, 1.57, 1.69	Parking on Routes 27 in Middlesex County, U.S. 30 in Hammonton, 70 in Cherry Hill, 73 in Mt. Laurel, U.S. 202, 202-206 and 206 in Bedminster, and 124 in Springfield	17 N.J.R. 2014(a)		
16:28A-1.20, 1.25, 1.29, 1.64, 1.65	Parking and bus stops on Routes 29, 35, 42, 41 and 15	17 N.J.R. 1398(a)	R.1985 d.392	17 N.J.R. 1906(b)
16:28A-1.21, 1.26, 1.31, 1.38, 1.61, 1.71	Parking and bus stops on U.S. 9W, U.S. 30, Routes 36, 45, 67 and 71	17 N.J.R. 1064(b)	R.1985 d.356	17 N.J.R. 1774(c)
16:28A-1.31, 1.46	Parking on Route 45 in Mantua, U.S. 130 in Penns Grove and Carneys Point	17 N.J.R. 2016(a)		
16:28A-1.35	Route 52 in Cape May County	17 N.J.R. 898(b)	R.1985 d.365	17 N.J.R. 1776(a)
16:28A-1.36	Parking on Route 57 in Warren County	17 N.J.R. 1251(a)	Withdrawn	17 N.J.R. 2053(a)
16:28A-1.96	Route 183 parking, Sussex County	17 N.J.R. 384(a)	R.1985 d.198	17 N.J.R. 1137(a)
16:30-6.4	Weight limit on Route 45 in Gloucester County	17 N.J.R. 1337(a)	R.1985 d.389	17 N.J.R. 1907(a)
16:30-12	Truck weigh stations on Interstate Highway System I-78, I-80, I-287 and I-295	17 N.J.R. 987(a)	R.1985 d.357	17 N.J.R. 1778(a)
16:31-1.1	No left turn on US 206 in Hillsborough	17 N.J.R. 1250(a)	R.1985 d.390	17 N.J.R. 1904(a)
16:31-1.4	No left turn on Route 35 in Shrewsbury	17 N.J.R. 566(b)	R.1985 d.206	17 N.J.R. 1138(a)
16:32-2.3	Temporary exemptions from Federal bridge formula	17 N.J.R. 1868(a)		
16:33	Construction control	17 N.J.R. 567(a)	R.1985 d.433	17 N.J.R. 2143(c)
16:41A-6.1	Outdoor advertising permit fees	17 N.J.R. 385(a)	R.1985 d.230	17 N.J.R. 1325(c)
16:43	Junkyards adjacent to public highways: readopt rules	17 N.J.R. 567(b)	R.1985 d.432	17 N.J.R. 2144(a)
16:44-5.1	Receipt of bids: requirements	16 N.J.R. 3191(a)		
16:53-9.1	Autobuses: public liability insurance	Emergency	R.1985 d.445	17 N.J.R. 2149(a)
16:56-4.1	Airport safety improvement aid	17 N.J.R. 1067(a)	R.1985 d.366	17 N.J.R. 1779(a)
16:56-7.1	Airport safety improvement aid	17 N.J.R. 2017(a)		
16:62	Air safety and hazardous zoning	16 N.J.R. 860(b)	R.1985 d.173	17 N.J.R. 977(b)
16:62-5.1, 8, 9, 10	Air safety and hazardous zoning	17 N.J.R. 1869(a)		
16:78	Senior Citizen and Disabled Resident Transportation Assistance Act Program	17 N.J.R. 1532(a)	R.1985 d.490	17 N.J.R. 2445(a)

(TRANSMITTAL 29, dated April 15, 1985)

TREASURY-GENERAL—TITLE 17

17:1-1.8	State pension checks and signature cards	17 N.J.R. 1068(a)	R.1985 d.348	17 N.J.R. 1673(a)
17:1-1.10	Minimum adjustments to pension accounts	17 N.J.R. 1642(b)	R.1985 d.442	17 N.J.R. 2144(b)
17:1-2.3	Alternate Benefit Program: salary reduction and deduction	17 N.J.R. 2350(b)		
17:1-4.11	PERS: purchase of service credit by certain nurses	17 N.J.R. 900(a)	R.1985 d.321	17 N.J.R. 1586(a)
17:2-1.4	PERS: election of member-trustee	17 N.J.R. 2238(a)		
17:3-2.1	Teachers' Pension and Annuity Fund: eligibility for enrollment	17 N.J.R. 2238(b)		
17:3-2.3	Teachers' pension and annuity: full-time employment	17 N.J.R. 60(a)		
17:3-3.2	Teachers' Pension and Annuity: contributory insurance benefits	17 N.J.R. 1252(a)	R.1985 d.431	17 N.J.R. 2144(c)
17:3-6.21	Teachers' Pension and Annuity: special veterans' retirement	17 N.J.R. 2239(a)		
17:4	Readopt Police and Firemen's Retirement System rules	17 N.J.R. 805(a)	R.1985 d.330	17 N.J.R. 1673(b)
17:5	State Police Retirement System rules	17 N.J.R. 2018(a)		
17:5-5.5	State Police Retirement: outstanding loans	16 N.J.R. 2997(a)		
17:8	Supplemental Annuity Collective Trust: readopt rules	17 N.J.R. 682(a)	R.1985 d.378	17 N.J.R. 1907(b)
17:9-1.5	State Health Benefits Program: voluntary termination by employer	17 N.J.R. 1399(a)		
17:16-6.1	Permissible purchases for funds under control of Director of Investment	17 N.J.R. 2093(a)		
17:16-7.1, 7.2, 7.3, 7.4, 8	Debt issue ceiling on long-term corporate issues	17 N.J.R. 2093(b)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
17:16-17.3	State Investment Council: common and preferred stock limitations	17 N.J.R. 2239(b)		
17:16-27	Investment Council: certificates of deposit	17 N.J.R. 60(b)	R.1985 d.201	17 N.J.R. 1907(c)
17:16-31.3-31.11	Cash Management Fund: method of accounting	17 N.J.R. 2095(a)		
17:16-39.1, 39.3	Capital requirements for bankers acceptance eligibility	17 N.J.R. 2095(b)		
17:19-2.10	Classification of bidders: settlement conferences	16 N.J.R. 2751(a)	R.1985 d.436	17 N.J.R. 2048(a)
17:20-5	Revocation or suspension of Lottery agent's license	17 N.J.R. 272(b)	R.1985 d.308	17 N.J.R. 1586(b)
17:28	Charitable fund raising and public employees: payroll deduction campaigns	17 N.J.R. 1931(a)	R.1985 d.496	17 N.J.R. 2449(a)
17:29	Charitable fund raising and local government	Emergency	R.1985 d.469	17 N.J.R. 2294(a)

(TRANSMITTAL 29, dated April 15, 1985)

TREASURY-TAXATION—TITLE 18

18:7-1.15, 4.5, 4.11, 11.7	Corporation Business Tax: investment company, subsidiary, indebtedness, timely filing	17 N.J.R. 1537(a)		
18:7-1.17, 11.15	Consolidated casino business tax returns	17 N.J.R. 901(a)	R.1985 d.453	17 N.J.R. 2145(a)
18:7-5.1, 5.2, 5.4	Corporation Business Tax: entire net income base	17 N.J.R. 1538(a)		
18:7-5.12-5.16	Corporation Business Tax: net operating loss carryover	17 N.J.R. 2096(a)		
18:7-14.12, 14.17—14.20	Corporation Business Tax: prior issuance of tax clearance certificate	17 N.J.R. 1252(b)	R.1985 d.383	17 N.J.R. 1909(a)
18:12A-1.2	County tax boards: member education	17 N.J.R. 683(a)	R.1985 d.261	17 N.J.R. 1439(a)
18:15-2.1—2.6	Farmland assessments	17 N.J.R. 903(a)	R.1985 d.310	17 N.J.R. 1587(a)
18:17-4.1	Local property tax: assessor duties	17 N.J.R. 1870(a)		
18:23A	Tax maps	17 N.J.R. 1068(b)	R.1985 d.381	17 N.J.R. 1910(a)
18:24-2.3	Sales and use tax: ADP record retention	17 N.J.R. 2240(a)		
18:24-12	Sale of food and drink	17 N.J.R. 178(a)	R.1985 d.280	17 N.J.R. 1440(a)
18:25	Luxury Tax rules	17 N.J.R. 2241(a)		
18:26-11.1	Transfer Inheritance Tax: spousal waiver	17 N.J.R. 2241(b)		
18:35-1.18	Extension of time to file Gross Income Tax Return	17 N.J.R. 1643(a)	R.1985 d.454	17 N.J.R. 2146(a)
18:37	Spill Compensation and Control Tax rules	17 N.J.R. 1074(a)	R.1985 d.382	17 N.J.R. 1915(a)
18:37-2.2	Transfer of hazardous substances other than petroleum or its products	17 N.J.R. 1540(a)	R.1985 d.455	17 N.J.R. 2147(a)

(TRANSMITTAL 28, dated April 15, 1985)

TITLE 19 SUBTITLES A-L—OTHER AGENCIES (Except Casino Control Commission)

19:1	Repealed rules of New Jersey Mortgage Finance Agency	17 N.J.R. 505(a)	R.1985 d.241	17 N.J.R. 1258(b)
19:4-4.33, 4.35, 4.36, 4.37, 4.39, 4.40, 4.42, 6.28	Hackensack Meadowlands waterfront recreation zone	16 N.J.R. 3423(b)	R.1985 d.408	17 N.J.R. 1916(a)
19:4-4.142	Meadowlands: granting zoning variances	17 N.J.R. 1871(a)		
19:4-5.6, 5.6A, 6.28	Zoning changes	16 N.J.R. 2351(a)	Expired	
19:4-6.28	Official zoning map	16 N.J.R. 3423(b)	R.1985 d.212	17 N.J.R. 1138(b)
19:4-6.28	Change in zoning designation	17 N.J.R. 385(b)		
19:4-6.28	Meadowlands: official zoning map change	17 N.J.R. 1872(a)		
19:25-1, 7, 11	Readopt General Provisions, Use of Deposited Funds, Reporting of Contributions	17 N.J.R. 683(b)	R.1985 d.238	17 N.J.R. 1326(a)
19:25-2.6	Facsimile signatures	17 N.J.R. 1399(b)	R.1985 d.238	17 N.J.R. 1917(b)
19:25-15.3, 15.12, 16.3, 16.10	Continuing political committees	17 N.J.R. 684(a)	R.1985 d.239	17 N.J.R. 1326(b)
19:30-4.4	Targeting of EDA assistance	17 N.J.R. 1872(b)	R.1985 d.499	17 N.J.R. 2454(a)
19:30-7	Economic Development Authority: private activity bonds	17 N.J.R. 1750(a)	R.1985 d.500	17 N.J.R. 2454(b)

(TRANSMITTAL 25, dated February 19, 1985)

TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION

19:41-2.8	Fire safety unit	16 N.J.R. 3195(a)
19:41-9.1, 9.4, 9.19, 9.20	Crediting of Casino Control Fund surplus; fees for services to other agencies	17 N.J.R. 2242(a)
19:43, 45	Pre-proposal: Rules governing casino industry bus operations	17 N.J.R. 1401(a)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
19:45-1.1, 1.25	Acceptance by casinos of checks issued by other casinos	17 N.J.R. 2245(a)		
19:45-1.25	Patron credit and identity verification: revised operative date	_____	_____	17 N.J.R. 1917(b)
19:45-1.27	Patron credit	17 N.J.R. 181(a)	R.1985 d.229	17 N.J.R. 1327(a)
19:45-1.27	Correction: Granting of patron credit	17 N.J.R. 181(a)	R.1985 d.229	17 N.J.R. 1673(c)
19:45-1.27	Patron credit	17 N.J.R. 1254(a)	R.1985 d.493	17 N.J.R. 2456(a)
19:45-1.33	Counting and recording contents of drop boxes	17 N.J.R. 1752(a)	R.1985 d.495	17 N.J.R. 2457(a)
19:45-1.37	Issuance and use of tokens for slot machines	17 N.J.R. 184(a)		
19:46-1.26, 1.27, 1.33	Issuance and use of tokens for slot machines	17 N.J.R. 184(a)		
19:47-2.4, 3.4, 4.3	Opening of the table for gaming	17 N.J.R. 61(a)	R.1985 d.228	17 N.J.R. 1332(a)
19:52-1.4	Correction: Prohibited entertainment activities	_____	_____	17 N.J.R. 1684(a)

(TRANSMITTAL 14, dated March 18, 1985)

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