

# NEW JERSEY REGISTER



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## REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS\*, PAGE 220.

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*\*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 **February 20, 1986**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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## ADMINISTRATIVE LAW

### (a)

#### OFFICE OF ADMINISTRATIVE LAW

#### Uniform Administrative Procedure Rules of Practice

#### Consolidated Cases

#### Exempt Agency Conduct

#### Proposed Amendment: N.J.A.C. 1:1-14.6

Authorized By: Ronald I. Parker, Acting Director,  
Office of Administrative Law.

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Proposal Number: PRN 1985-734.

Submit comments by February 20, 1986 to:  
Steven L. Lefelt, Deputy Director  
Office of Administrative Law  
Quakerbridge Plaza, Building 9  
Quakerbridge Road  
CN 049  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The State Administrative Procedure Act requires that most contested cases be heard either by the head of an agency or by an administrative law judge. Administrative law judges thus have jurisdiction to hear cases from numerous State agencies. However, agencies which are exempt under N.J.S.A. 52:14F-8(a) may continue to use their own hearing officers, whose jurisdiction is limited to cases from the exempt agency. A problem could arise when a contested case pending before the OAL is consolidated with a case from an exempt agency. Under the current rule, an exempt agency, when found to have the predominant interest in a consolidated case, may elect to have the case heard by its own personnel rather than an administrative law judge. Thus, if issues outside the jurisdiction of the exempt agency are involved, the hearer may be unable, jurisdictionally, to hear all of the consolidated issues. To avoid this potential jurisdictional problem, the amended rule provides that, in such cases, the agency hearing officer will be designated a special administrative law judge by the Director of the OAL, as permitted by N.J.S.A. 52:14F-6(b).

The OAL developed the amended rule after discussions with the Attorney General's office and with the Public Employment Relations Commission, which is an exempt agency.

#### Social Impact

The proposed amendment will eliminate jurisdictional problems that could arise in consolidated cases involving exempt agencies and avoid possible interagency confusion. The amendment will also insure that such cases comport with APA

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## NEW JERSEY REGISTER

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requirements regarding the conduct of administrative hearings.

#### Economic Impact

The proposed amendment will prevent the possibility of additional hearing expenses if, because of jurisdictional problems, consolidation of a case over which an exempt agency's hearer is presiding could not be maintained.

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

- 1:1-14.6: Determination of motions involving consolidation of cases from multiple agencies; contents of order; exempt agency conduct
- (a)-(c) (No change.)
- (d) When an agency exempt under N.J.S.A. 52:14F-8(a) is determined to have a predominant interest in a contested case, the **matter shall be heard by an administrative law judge unless the exempt agency [shall] decides, in its final order reviewing the judge's consolidation order, [whether] to have the matter heard [by an administrative law judge or] by its own personnel. If the exempt agency decides to have its own personnel hear the matter, but the hearer does not have jurisdiction over all issues within the scope of the agency's predominant interest, the hearer shall be designated a special administrative law judge as provided by N.J.S.A. 52:14F-6(b).**

## AGRICULTURE

### (a)

#### DIVISION OF RURAL RESOURCES

#### Soil and Water Conservation

#### Project Cost-Sharing: Eligible Projects

#### Proposed Amendments: N.J.A.C. 2:90-2.15, 2.17, 2.18 and 2.24

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

Authority: N.J.S.A. 4:24-3 and 4:1C-24.

Proposal Number: PRN 1985-735.

Submit comments by February 20, 1986 to:  
Samuel R. Race, Executive Secretary  
State Soil Conservation Committee, Room 203  
CN 330  
Trenton, New Jersey 08625  
Telephone: (609) 292-5540

#### Summary

Under the provisions of the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq. (P.L. 1983, c.32), qualified landowners are eligible to apply for State funding assistance for soil and water conservation projects approved and promulgated by the State Soil Conservation Committee (SSCC). The rules which regulate these projects are found at N.J.A.C. 2:90-2. This proposal will amend three of these projects, Irrigation Systems, (2.15); Permanent Open Drainage

Systems, (2.17); and Underground Drainage Systems, (2.18); and clarify cost share rates, (2.24).

In N.J.A.C. 2:90-2.15, Irrigation Systems, existing language specifies that permanently installed systems, mainlines, and wells are approved for cost-sharing. This broad language may be subject to interpretation. The proposed amendment will clarify those system components which are eligible for cost-sharing. Pumps, pipes in wells, above-ground sprinklers and power systems will not be eligible for cost-sharing except that pumps, filters and application equipment for water conserving trickle systems will be eligible for cost-sharing. In N.J.A.C. 2:90-2.17, Permanent open drainage systems, and N.J.A.C. 2:90-2.18, Underground drainage systems, cost-sharing is authorized on cropland. The term "cropland" may be subject to interpretation. The proposed amendments will define the term "cropland" as lands which have been cropped for at least three out of the last five years. This will conform to USDA criteria and allow technical assistance to be provided by the USDA-SCS.

The proposal regarding cost-share rates clarifies the extent of cost-sharing for conservation projects where variable cost and quality systems will effectively achieve the same results. The least cost-practice or system which is determined to be effective and functional will be the maximum basis for cost-sharing. An applicant may install a more expensive practice or system if it is determined to be effective and functional and in conformance with program standards and specifications but shall be responsible for any additional costs.

#### Social Impact

The proposal regarding irrigation systems will have a favorable social impact by eliminating subjective interpretation regarding the components which may be cost-shared for the enhancement of agricultural productivity on New Jersey's farmlands.

The proposal regarding drainage assistance will allow USDA-SCS technical assistance to landowners who request cost-sharing for drainage on "croplands." This proposal will minimize the impact to New Jersey fresh-water wetlands.

The proposed amendment to drainage projects will allow the USDA-SCS to provide technical assistance to landowners, thereby reducing food production costs.

The proposal for cost-share rates will eliminate any uncertainty regarding the type of project or project component that may be cost-shared. This proposal further provides flexibility so that farmers are not restricted in selecting alternate conservation systems of their choice which are determined to be equally effective.

#### Economic Impact

The proposed amendment for irrigation systems will have a beneficial economic impact by encouraging the installation and use of the most cost-effective and water efficient irrigation system components. Farmland productivity will be enhanced providing a larger and more reliable food supply to State residents.

The proposal for cost-share rates will assure that public funds will be expended for projects only to the extent of 50 percent of the cost for the least cost practices or systems which are functional and effective. Any additional costs for more costly practices or systems will be the responsibility of the applicant.

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

- 2:90-2.15 Irrigation systems
- (a) (No change.)
  - (b) The following types of practices are approved for irrigation systems:
    - 1.-3. (No change.)
    4. **Where existing systems are converted to, or new systems are installed for trickle or similar low volume, low-loss systems, cost-sharing is authorized for pumping, filtering and application equipment where such components are permanently installed.**
      - (c) The following special conditions are applicable to irrigation systems:
        1. Cost-sharing is not authorized for:
          - i. Portable pipe or any other normally portable equipment.
          - ii. **Pipe installed in the well (other than casing), pumps, and pumping equipment except as specified in (b)4 above.**
          - iii. **Installation of power supplies.**
          - iv. **Sprinklers or other above-ground water application equipment except as specified in (b)4 above.**
        - 2.-3. (No change.)
        - (d) (No change.)
- 2:90-2.17 Permanent open drainage systems
- (a) Permanent open drainage systems which dispose of excess water on farmlands may be applied to cropland **that has been cropped for at least three out of the last five years.**
    - (b)-(c) (No change.)
- 2:90-2.18 Underground drainage systems
- (a) Underground drainage systems which dispose of excess water may be applied to cropland **that has been cropped for at least three out of the last five years.**
    - (b)-(c) (No change.)
- 2:90-2.24 Cost-share rates
- (a)-(b) (No change.)
  - (c) **The least cost practice or system which is determined to be effective and functional shall be the basis for cost-share rates. An applicant may install a more expensive practice or system if it is determined to be effective and conforms to the standards and specifications in N.J.A.C. 2:90-2.3, but shall be eligible for reimbursement only for up to 50 percent of the least cost option described above.**

## BANKING

### (a)

#### DIVISION OF BANKING

#### Restrictions on Leeway Investments by Banks and Savings Banks

#### Proposed New Rule: N.J.A.C. 3:11-11

Authorized By: Mary Little Parell, Commissioner,  
Department of Banking.  
Authority: N.J.S.A. 17:9A-24.13 (P.L. 1985, c. 168).  
Proposal Number: PRN 1985-742.

Submit comments by February 20, 1986 to:  
Roger F. Wagner, Deputy Commissioner  
Department of Banking  
Division of Banking  
CN 040  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The legislature, in 1985, expanded the general investment powers of commercial banks with passage of Senate Bill Number 1085, which was signed into law by Governor Kean on May 17, 1985 as Chapter 168, P.L. 1985 (N.J.S.A. 17:9A-24.12). It is commonly referred to as the "Leeway Investment Bill." The bill also repealed Chapter 112, P.L. 1975 which had granted "leeway investment" authority to savings banks. Both savings banks and commercial banks are now given the same expanded investment authority under the new bill.

The purpose of the bill is to allow the aforementioned institutions some latitude in making investments beyond investments which are specifically set out in the law. Varying economic conditions and changing customer demands project the need for investment flexibility. It is impossible to fully forecast these future needs and, therefore, it is difficult for the legislature to individually legislate investment authority for every specific investment. The "leeway investment" authority granted through this legislation allow institutions latitude to make these investments. The law sets limitations on the amount of any individual investment and an overall limitation on the total dollar volume an institution may place in these "leeway investments."

As a further safeguard, the legislature provided that the Commissioner of Banking could adopt regulations as deemed appropriate to foster safe and sound banking practices and to promote the public interest. To this end, the Commissioner is proposing this regulation.

Institutions have been inquiring as to what areas of investment are open to them. The regulation sets out several general areas of investment for the guidance of these institutions. It also sets out a procedure for approval by the Commissioner of other investments. Additionally, record keeping rules are set out and it is made clear that subsidiary companies are subject to examination by the banking department.

**Social Impact**

With the adoption of the regulation, banks and savings banks will be able to move ahead with various "leeway investments." The public should gain through expanded services while the record keeping and examination requirements will afford the Department of Banking with adequate oversight to assure an orderly progression into these new endeavors.

The initially approved types of investment are considered to be in areas closely related to banking, while an application process will offer the ability for institutions to expand into other areas where it is deemed they may offer greater service to the public.

**Economic Impact**

The opening of new avenues of investment to banks and savings banks will give them the opportunity to expand sources of income. Stockholders and depositors should benefit from this potential source of additional revenue which could supply additional dividends and/or interest on deposits. The institution itself, through increased earnings, should be able to further expand services to customers resulting in continued economic growth in the communities they serve.

Full text of the proposed new rule follows.

**SUBCHAPTER 11. RESTRICTIONS OF LEEWAY INVESTMENTS**

**3:11-11.1 Definitions**

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

"Bank" means a bank as defined in N.J.S.A. 17:9A-1(1) and a savings bank as defined in N.J.S.A. 17:9A-1(13).

"Control" means the power to directly or indirectly vote 25 percent or more of the voting stock of a subsidiary company, the ability to control in any manner the election of a majority of a subsidiary company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a subsidiary company.

"Equity securities" means shares of common or preferred stock registered on a national securities exchange. Equity securities does not mean shares of stock of any bank, savings bank, savings and loan association, national banking association or bank holding company, nor does it mean securities issued by a subsidiary company.

"Capital funds" means capital, surplus, reserves, undivided profits and capital notes.

"Subsidiary company" means any corporation, partnership, association, joint venture or other business entity directly or indirectly controlled by a bank.

"Total liabilities" means total liabilities as defined in N.J.S.A. 17:9A-60(3), 60(6) and 60(8).

**3:11-11.2 Type of investment**

(a) Only to the extent and upon the conditions that have been authorized by N.J.S.A. 17:9A-24.12 and in accordance with the procedures and limitations contained in this subchapter:

1. A bank, by resolution of its board of directors, and without prior approval of the commissioner, may invest:
  - i. In equity securities;
  - ii. In subsidiary companies which engage in the activities prescribed in this subchapter; and
  - iii. Directly in those activities which are prescribed in this subchapter for subsidiary companies; and

2. A bank, by resolution of its board of directors, may apply to the commissioner for approval to make other investments. The application procedure and approval process shall be as provided in N.J.A.C. 3:11-11.9 and N.J.A.C. 3:11-11.10.

**3:11-11.3 Equity security investments**

(a) A bank shall be prohibited from investing, pursuant to N.J.S.A. 17:9A-24.12, in stocks, preferred or common, issued by a corporation in which it has made a stock investment under some other provision of law.

(b) A bank may invest in equity securities under N.J.S.A. 17:9A-24.12 provided that no bank shall make an investment in the stock of any corporation pursuant to this subchapter, except as otherwise provided by this subchapter, at any time when the total of all such investments in stocks of such corporation exceeds or if the making of such investment would cause such investment to exceed two percentum of the total outstanding shares of the preferred or of the common stock of such corporation or three percentum of the capital funds of the bank, whichever amount is less. A bank, by resolution of its board of directors, may apply to the Commissioner for approval to make an investment in equity securities beyond the maximum amount provided above. The application procedure and approval process shall be as provided in N.J.A.C. 3:11-11.9 and N.J.A.C. 3:11-11.10.

(c) This subchapter shall not prohibit a bank from making loans or incurring liabilities authorized by a provision of law other than N.J.S.A. 17:9A-24.12 to any corporation in which the bank has invested in the equity securities pursuant to this subchapter. The total liabilities of any person incurred by virtue of any provision of law, including this subchapter, are subject to the total liability limitations in N.J.S.A. 17:9A-62.

**3:11-11.4 Subsidiary companies**

(a) A bank shall be prohibited from contributing to the capital or investing in the capital stock of a subsidiary company, pursuant to N.J.S.A. 17:9A-24.12, in which it has a capital or stock investment pursuant to some other provision of law.

(b) A bank may contribute to the capital or invest in the capital stock of only those subsidiary companies which:

1. Engage in the activities prescribed in this subchapter; and/or
2. Are specifically approved by the commissioner.

(c) This subchapter shall not prohibit a bank from making loans or incurring liabilities authorized by a provision of law, other than N.J.S.A. 17:9A-24.12, to any subsidiary company in which the bank has contributed to the capital or invested in the capital stock pursuant to this subchapter. The total liabilities of any one subsidiary company to the bank incurred by virtue of any provision of law, including this subchapter, are subject to the total liability limitations in N.J.S.A. 17:9A-62.

**3:11-11.5 Permissible activities**

(a) A subsidiary company may engage in the following activities:

1. Originating, investing in, selling, purchasing (including purchasing participations in), servicing, or otherwise dealing in loans of any type which may be made by a bank;
2. Provide services primarily for other financial institutions (for example, accounting, auditing, clerical, consulting, data processing, investment advisory, managerial);
3. Acquiring improved or unimproved real property for the purpose of subdividing, developing, constructing improvements thereon, and reselling, leasing or operating such prop-

## BANKING

## PROPOSALS

erty for the production of income;

4. Providing real estate services (for example, brokerage, appraisal, inspection, property management, relocation services);

5. Providing equity and debt investments in corporations or projects designed primarily to promote community welfare, such as economic rehabilitation and development of low income areas by providing housing, services, or jobs for residents;

6. Providing travel agency and tax preparation services;

7. Providing insurance brokerage or agency services;

8. Providing securities services (for example, brokerage, investment advice);

9. Issuing letters of credit;

10. Issuing credit cards and engaging in credit care operations;

11. Acquiring personal property for the purpose of leasing such property;

12. Acting as underwriter for credit life insurance and credit accident and health insurance that is directly related to an extension of credit by the bank.

### 3:11-11.6 Subsidiary company compliance with law

Except as otherwise permitted by statute or regulation, all provisions of State banking laws applicable to the operations of the bank shall be equally applicable to the operations of its subsidiary company.

### 3:11-11.7 Prohibition against tie-in requirements

A bank shall not directly or indirectly condition any extension of credit, lease or sale of property of any kind, or furnish any service on the requirement that the customer shall obtain some other credit, property, or service from the bank or any subsidiary company of the bank, other than a condition or requirement that such bank shall reasonably impose to assure the soundness of the credit.

### 3:11-8 Examination of subsidiary companies

(a) Each subsidiary company shall be subject to examination and supervision by the Commissioner of Banking in the same manner and to the same extent as the bank. If upon examination the Commissioner shall ascertain that the subsidiary company is created or operated in violation of law or regulation or that the manner of operation is detrimental to the business of the bank and its depositors, the Commissioner may order the bank to dispose of all or part of such subsidiary upon such terms as he may deem proper. The cost of an examination into the condition of an existing business proposed to be acquired and operated as a subsidiary company shall be paid by the bank. The cost of any subsequent examinations of a subsidiary company shall be borne by the subsidiary company or the bank.

(b) A bank shall file a letter agreement with the Department of Banking, signed by both the bank and the subsidiary company, authorizing the Banking Department to conduct such examinations of the subsidiary company as the Commissioner deems appropriate.

### 3:11-11.9 Approval procedures for other investments

(a) A bank which seeks to make an investment or engage in any activity requiring the specific approval of the Commissioner shall submit a written application. Within 30 days of the filing of such application, the Commissioner shall notify the applicant in writing either that all information required by this section has been filed or that additional specified information must be filed. The Commissioner shall, within 90 days of the date of written notice that all required information

has been filed, endorse thereon his approval or disapproval.

(b) A bank which makes an application to the Commissioner as specified in this subchapter shall submit the following information:

1. The total amount, in dollars and as a percentage of assets and capital funds, of investments that the applicant seeks to make;

2. An identification of the applicant's investment thresholds as determined in accordance with N.J.S.A. 17:9A-24.12;

3. A description and quantification, as a dollar amount and as a percentage of assets and capital funds, of the applicant's outstanding investments pursuant to this subchapter;

4. A business plan which describes the proposed specific investment (including any existing investment made pursuant to other laws or regulations) and its anticipated financial impact on the applicant; and

5. Such other information as may be requested in writing by the Commissioner.

### 3:11-11.10 Criteria for approval

In determining whether to approve or deny any application for prior approval under this subchapter, the Commissioner shall consider the financial and managerial resources and future prospects of the bank and the investment involved, including the financial capability of the bank to make the proposed investment under this subchapter, conflicts of interest, unsafe and unsound banking practices and any other matter the Commissioner deems to be in the public interest.

### 3:11-11.11 Record keeping requirements

(a) For the purpose of monitoring the bank's diversification of investments made under the leeway provision (N.J.S.A. 17:9A-24.12) and to determine if the investments are in accordance with the applicable investment limitations, the bank is required to maintain records which will identify all such investments made under the leeway provision:

1. These subsidiary records shall contain a description of each leeway investment. The description should contain, but not be limited to the name of the person, partnership, corporation, other business entity, association or body politic (leeway entity) that the bank has invested in; its business address and the amount and form of the investment;

2. These subsidiary records shall also contain a detailed listing of any other investments or loans made to each leeway entity pursuant to other provisions of the law. Any other investments or loans shall include, but not be limited to, any loan or extension of credit by the bank to the leeway entity; the purchase by the Bank of securities, other assets, or obligations of the leeway entity under repurchase agreement; the discount by the Bank of promissory notes, bills of exchange, conditional sales contracts, or similar paper, with or without recourse, issued by the leeway entity and discounted for a third party; acceptances of securities issued by a leeway entity as collateral for any loan, and issuance of a guarantee, acceptance, or letter of credit on behalf of a leeway entity;

3. These subsidiary records shall be kept up to date in order that they tie into the bank's daily statement of condition.

## EDUCATION

### STATE BOARD OF EDUCATION

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

Submit comments by February 20, 1986 to:  
Joseph A. Vuono, Director  
Strategic Planning  
Department of Education  
225 West State Street  
Trenton, NJ 08625

### (a)

#### Governor's Teaching Scholars Program Program Rules

##### Proposed New Rules: N.J.A.C. 6:12

Authority: N.J.S.A. 18A:4-15 Chapter 209, Laws of 1985

Proposal Number: PRN 1985-728.

The agency proposal follows:

##### Summary

The State Board of Education, pursuant to N.J.S.A. 18A:4-15, proposes new rules pertaining to the Governor's Teaching Scholars Program, N.J.A.C. 6:12-1.1 through 6:12-1.14. The proposed new rules reflect the requirements necessary to administer the Governor's Teaching Scholars Program (GTSP). The GTSP is designed to attract highly qualified students to the field of teaching by providing a financial incentive to high school seniors to pursue teaching careers. The program will offer scholarship loans of up to \$7,500 per year, per person, to a minimum of 100 academically talented New Jersey high school students for the school year 1985-1986. The number of nominees in future years will be based on the appropriations for each specific year. High school seniors interested in becoming teachers in New Jersey are eligible to apply for the loans provided they meet rigorous academic and personal criteria.

Recipients of the scholarship loans may borrow up to a maximum of \$30,000 over a four-year period, presuming that the program continues. The entire amount borrowed including accrued interest may be redeemed upon successful teaching service in New Jersey public schools.

The major components of the program are as follows:

All public and non-public high school seniors who are legal residents of New Jersey and United States citizens, enrolled full time in an accredited high school, are eligible to apply for the loans. It is expected this program will annually be available to graduating high school students.

Scholarship loans will be based on academic excellence and exemplary personal qualifications.

The GTSP will be open to all students residing in the State of New Jersey. A goal of the program will be for the selection of minority students approximating the percentage of the minority population of the relevant graduating class. These loans will only be granted to students meeting the established criteria.

##### Social Impact

No one program can assure an ever-ready supply of qualified public school teachers, regardless of the offerings and incentives in the teacher education curriculum. However, the GTSP will provide a unique scholarship/loan program which can be completely redeemed by the student after a specified number of years as a public school teacher in New Jersey. The GTSP will offer loans to cover tuition, room, board, fees and necessary expenses, known as "the college budget," of up to \$7,500 per year to academically superior high school seniors who plan to enter the teaching profession. It is expected that this program will continue, thereby providing a continuous group of outstanding college graduates prepared to teach in the New Jersey public schools.

##### Economic Impact

The GTSP will provide loans to academically talented high school seniors who wish to pursue a career in teaching. The loan repayment will be based on years taught, location of teaching assignment, amount borrowed and interest accrued. The State of New Jersey appropriated the sum of \$750,000 for the implementation of the program. The terms and conditions of the loans shall be those established by the rules and regulations of the State Board of Education. However, loans may be redeemed for teaching service. No interest will accrue while the graduate is involved in teaching service under the redemption plan.

Full text of the proposed new rules follows:

#### CHAPTER 12

#### GOVERNOR'S TEACHING SCHOLARS PROGRAM (GTSP)

##### SUBCHAPTER 1. PROGRAM RULES

###### 6:12-1.1 Scope and purpose

The rules set forth in this chapter provide for the establishment of a selection and loan program for academically superior high school seniors who wish to pursue a career in teaching, to be known as the Governor's Teaching Scholars Program (GTSP).

###### 6:12-1.2 Definitions

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

"Academic progress" means attaining a minimum academic average of "B" in a full-time college or university program leading to graduation in a four year time period.

"Academic year" means the period between the time school opens in any school or under any district board of education after the general summer vacation until the next succeeding summer vacation.

"Academically superior" means that the student has reached a high school class rank in the upper one fifth of the student's graduating class at the end of the junior year.

"Accredited" means that the high school, college, or university has met the criteria and standards set by the appropriate accrediting agency, such as determined by the American Council on Education or the Middle States Association.

"Approved program" means a course of study either in teacher training or in a specialized field of study, indicated as an accepted curriculum program by the college or university selected.

"Full-time college student" means one who, in each semester, quarter or equivalent thereof, carries the minimum number of credit hours or other coursework necessary to constitute a full-time undergraduate courseload as defined by the college or university attended.

"Full-time high school student" means one who will graduate with the senior class in June of the academic year.

"GTSP" means Governor's Teaching Scholars Program in abbreviated form.

"Legal resident of New Jersey" means a student who has resided in the State of New Jersey for a period of not less than 12 consecutive months immediately prior to receiving the loan. The residence of a student is defined in terms of domicile. Domicile is defined as the place where a person has his or her true, fixed, permanent home and principal establishment, and to which, whenever absent, he or she has the intention of returning.

"Loan redemption schedule" means the plan whereby redemption (forgiveness) of the loan is based upon number of years taught in a public school in New Jersey and the schedule shall take into account the location of teaching assignment.

"Minority" means any United States citizen or permanent resident who is a member of a racial-ethnic group that has been historically disadvantaged in obtaining access to equal educational opportunities as designated by the United States Department of Education, Office of Civil Rights, including Blacks, Hispanics, Native Americans, Asians and Pacific Islanders.

"Qualified" means that the student has met the requirements as set forth in this subchapter.

"Rank" means a system whereby students are listed, highest to lowest, using the grade point average.

"Recipient" or "program participant" means one who has been recommended by the screening committee to participate in the program, notified of selection, and one who has formally accepted the terms and conditions to participate in the GTSP, thereby entering the loan program.

"Redeem" or "forgive" as applied to the loans means that they will be diminished by a specified percentage rate, based on the number of years the borrower has taught in New Jersey schools and the location of the teaching assignment.

"Urban," "critical geographic area," or "high priority location" means designation of a New Jersey school district as eligible for the New Jersey State Department of Education's 1984 Urban Initiative Program.

"Verified" means a signed and dated statement by the appropriate individual.

#### 6:12-1.3 Administration of the program

(a) The Governor's Teaching Scholars program (GTSP) shall be jointly administered by the Department of Education and the Higher Education Assistance Authority under the auspices of the Department of Higher Education. Their respective responsibilities shall be as follows:

1. The New Jersey Department of Education shall serve as the lender, guarantor and selector of the participants of this loan program and is required to:

i. Provide applications for the GTSP to all New Jersey public and private high schools;

ii. Provide information to candidates on details of the program;

iii. Convene a committee of at least 12 members appointed by the Commissioner of Education to review and recommend nominations to the GTSP. The commissioner shall fill any vacancy on the committee in a timely manner. The committee shall be composed of public and private school educators,

school administrators, a representative of the Department of Higher Education and a representative from the Department of Education;

iv. Compile follow-up information on graduates of the program and the impact of the loan program on the teaching profession;

v. Update and maintain files on applications and re-applications for the loans;

vi. Verify each student's enrollment and progress in a college or university;

vii. Provide for rendering assistance to college graduates in the GTSP in order that they may secure a teaching position in the State of New Jersey.

2. The New Jersey Department of Higher Education shall serve as the servicer of the loan program and is required to:

i. Administer the payments to colleges and universities selected by the recipients;

ii. Enter into the loan agreement with the nominees, setting forth conditions of repayment, including interest charges and redemption or forgiveness schedule;

iii. Maintain records and report on the status of the loans to the Commissioner of Education;

iv. Assume responsibility if the loan does not enter redemption by collection and/or pursuit of repayment of the loan.

#### 6:12-1.4 Program eligibility

(a) The GTSP will be open to all high school senior students from public and non-public high schools who are citizens of the United States and legal residents of the State of New Jersey who plan to attend an accredited college or university in the United States.

(b) A goal of the program is to select minority students approximating the minority population of the appropriate Statewide graduating class.

(c) The applicant must declare that entering the teaching profession in the State of New Jersey is an objective of his or her advanced schooling and shall enter the loan program with this understanding.

#### 6:12-1.5 Academic requirements

(a) To qualify for academic eligibility under the GTSP, an applicant must:

1. Rank in the upper one-fifth of his or her class at the end of the junior academic year in high school;

2. Attain a combined Scholastic Aptitude Test score of at least 1100;

3. Fulfill the requirements for participants as set forth in N.J.A.C. 6:12-1.6.

(b) Permission must be given by the student for the Department of Education to verify the information required in (a) above. This can be accomplished by the student authorizing the high school attended to release records to the screening committee.

#### 6:12-1.6 Loan application and selection process

(a) All high school senior students who are New Jersey residents and citizens of the United States having attained the level of academic achievement as previously set forth in N.J.A.C. 6:12-1.5 are considered eligible for the loan program. The applicant must submit in packet form:

1. An official transcript complete with grades from the first marking period of the applicant's senior academic year and class rank at the end of the junior academic year. If applicant's high school regulations require that this information be submitted directly by high school personnel, applicant must include a copy of a letter to the high school principal as evidence that the request has been made;

2. S.A.T. scores (P.S.A.T. and A.C.T. scores are not acceptable);

3. A profile of the applicant's high school and an explanation of its procedures for class ranking and grading;

4. A list of applicant's community and school activities, honors, awards and accomplishments, verified by the principal or principal's designee, and/or adult representative of community service on appropriate letterhead;

5. Two written recommendations submitted from school administrators, guidance counselors or teachers attesting to the applicant's interest in and aptitude for teaching;

6. A typewritten essay of no more than 300 words by the the applicant discussing his or her specific strengths that will contribute to an effective teaching career;

(b) The committee of educators appointed by the Commissioner of Education shall nominate eligible candidates for participation in the GTSP. The committee's nominations shall be based on criteria set forth in (a) above.

(c) The committee will reconvene to continue the process and to review the progress of the program each year that it continues.

(d) The commissioner shall select a minimum of 100 high school graduates eligible to receive the GTSP loans from the pool of students nominated by the selection committee as meeting the criteria for the GTSP. However, if the appropriation for a fiscal year changes, the number of nominees selected will reflect that change.

(e) The commissioner shall notify nominees of the selections on or before April 15 each year that the program continues.

6:12.1.7 Program participant responsibilities

(a) Students selected for GTSP participation shall:

1. Abide by all rules and regulations of the GTSP;

2. Maintain satisfactory academic progress in the college or university selected;

3. Be responsible for all tuition fees and other educational expenses not provided for in the loan program or in excess of the loan amount;

4. Represent and declare an intention to enter the teaching profession in a public school in the State of New Jersey upon graduation from college;

5. Provide a letter to the commissioner from the college or university indicating the cost of the schooling, known as the "college budget," each year that the student participates in the program;

6. Submit an official college or university transcript to the commissioner for review at the conclusion of each school year that the loan is in effect;

7. Submit an annual letter of intent to the commissioner to continue as a participant in the program;

8. Matriculate in an approved program of study in a college or university no later than the fall term immediately succeeding notification of the selection to the GTSP and continue in full-time attendance;

9. Report immediately in writing to the commissioner any changes in college attendance or career intentions;

10. Provide the Department of Education verification of registration for an academic term in an undergraduate degree program and appropriate transcripts when required.

(b) Program participants will be encouraged to:

1. Attend the yearly conference with recent nominees;

2. Provide updated information to the commissioner on the progress of their individual careers.

6:12-1.8 Source of loan funds

(a) The eligible student will be considered a Governor's Teaching Scholar if selected by the commissioner from the pool of nominees. The amount of the loan will depend on the tuition, room and board and necessary fees and expenses, known as the "college budget." Verification of this expense is provided in N.J.A.C. 6:12-1.7(a)5.

(b) The maximum loan amount received shall not exceed \$7,500 annually and \$30,000 aggregate over a four year period, contingent on the continuance of the program.

(c) The loan may not exceed the student's costs as determined by the educational institution which the student has selected less the total value of other scholarships and grants received by the participant for any given academic year.

(d) Interest will accrue on the loan from the time the first payment is made until the program is complete; however all interest is redeemable as set forth in N.J.A.C. 6:12-1.9.

(e) All checks issued by the Department of the Treasury must be negotiated within 90 days of their issuance. Checks are automatically cancelled if not cashed within 90 days.

(f) Interest will accrue during the summer months while the borrower is technically a full-time student.

6:12-1.9 Redemption

(a) Redemption (forgiveness) of the loan is contingent upon teaching service in the New Jersey public school system.

(b) Borrowers with earned baccalaureate degrees will be eligible for the redemption phase of the GTSP.

(c) Depending on the location of the teaching assignment, the principal balance of each loan will be cancelled with cumulative percentages as per the following schedule:

Urban Location (high priority)

Years teaching in New Jersey public schools:	1	2	3	4	
Rate of loan cancellation:	10%	20%	30%	40%	= 100% total redemption

Non-Urban Location

Years teaching in New Jersey public schools:	1	2	3	4	5	6	
Rate of loan cancellation:	5%	10%	10%	20%	25%	30%	= 100% total redemption

(d) Loans shall accrue interest at the time of disbursement and during the time a participant is enrolled as a full-time student in the program; however, the combination of principal and interest can be redeemed after graduation for full-time teaching service in the State of New Jersey. Interest will not accrue while the loan recipient is engaged in the approved redemption service. (Substitute teaching is not permitted as approved redemption service).

(e) Total cancellation of loan indebtedness will not exceed the maximum of \$30,000 plus accrued interest per student. Any other loans obtained by the borrower will not be eligible for loan redemption.

(f) The participant's loan indebtedness will be redeemed each year based on submission of a copy of:

1. The signed contract between the district board of education and the borrower indicating a full-time teaching agreement is in force, submitted by a specified date; and

2. A letter from the chief school administrator submitted by a specified date indicating a year of service has been completed.

(g) If the participant is deemed ineligible for loan redemption or chooses not to have the loans redeemed, the unpaid principal balance plus accruing interest will be assigned a rate determined by the State Board of Education consistent with rates assigned by the Assistance Authority of the Department of Higher Education, as with the PLUS Program, or three and

one-half percent above the rate of 91 day Treasury bills, at the time the loan enters repayment.

(h) If the participant is unable to secure a position as teacher, requests for deferment may be made as provided in N.J.A.C. 6:12-1.11(b).

#### 6:12-1.10 Terms of repayment

(a) Repayment of loans under the GTSP shall be governed under the following conditions:

1. Interest will begin to accrue with the issuance of the first check payable to the college or university of the recipient's choice;

2. Interest will be waived for a three-month period from the month of graduation until employment in September of the same year. The grace period will extend to those who present a bona fide contract of employment. Interest will accrue again on or as close to September 16 as possible if a copy of the contract has not been presented to the commissioner. The interest period will be deferred while the borrower is employed as a full-time teacher in the New Jersey public school system and is therefore participating in the redemption plan. (Substitute teaching is not permitted as approved redemption service).

#### 6:12-1.11 Special loan forgiveness

(a) In the case of a program participant's death or total and permanent disability, the loan will be forgiven.

(b) Requests for deferment or forgiveness of loans must be made by the borrower to the commissioner. Such requests shall be referred for an initial recommendation to a three member panel appointed by the commissioner. Following receipt of such recommendation, the commissioner shall issue a final determination and inform the Department of Higher Education of the decision.

#### 6:12-1.12 Termination and forgiveness of service

(a) Borrowers who terminate their participation in the program or who are not reemployed as teachers while in the redemption phase will notify the commissioner by certified mail within a 15 day time period of the termination.

(b) The Department of Education will then authorize the Higher Education Assistance Authority to issue a statement of indebtedness by the borrower to the State of New Jersey. The repayment schedule will be sent to the borrower by the Department of Higher Education.

(c) Failure to notify the Department of Education of the conditions specified in (a) above will constitute a violation of the contract between the borrower and the State of New Jersey and the Department of Education will advise the Higher Education Assistance Authority of the Department of Higher Education to take the necessary steps to ensure return of monies.

#### 6:12-1.13 Review and adjustments

The State Board of Education upon the recommendation of the commissioner may make periodic adjustments to the tuition amount.

#### 6:12-1.14 Appeals

If, for any reason, a student believes that the application of the rules in this subchapter results in an unfair determination of eligibility or selection, an appeal may be filed with the Commissioner of Education within 60 days of notification. Appeals should be in the form of a letter addressed to the Commissioner of Education, Department of Education, 225 West State Street, CN 500, Trenton, New Jersey 08625, and

should contain the student's full name, social security number, high school of attendance, and a description of the basis for the appeal.

(a)

### **Pupil Transportation Contracts**

#### **Proposed Amendment: N.J.A.C. 6:21-16.1**

Authority: N.J.S.A. 18A:4-15, 18A:39-21.

Proposal Number: PRN 1985-727.

The agency proposal follows:

#### **Summary**

District boards of education are required to submit all pupil transportation contracts and contract renewals on prescribed State forms to county superintendents of schools for approval, as prescribed in N.J.S.A. 18A:58-7 and N.J.A.C. 6:21-16.4. County superintendent of schools review and approve these contracts and renewals. District boards of education also submit a District Wide Cost Report and Student Transportation Route Reports as part of the procedure for applying for State aid. The data contained in these reports are reviewed by the county superintendent's office with assistance as needed from the Bureau of Pupil Transportation. The data are then submitted to the Division of Finance and entered into the computer for State aid calculations. State aid is calculated as detailed in N.J.A.C. 6:21-7.3.

District boards of education receive transportation aid in 10 monthly installments from September through June under the terms of N.J.S.A. 18A:7A-26. Payment is received two years after the approved expenditure.

The county superintendent's review and approval of transportation contracts and renewals consist of a review and approval as to the format of the contract and compliance with statute and code. However, the ultimate responsibility for determining items eligible for State aid is assigned to the Bureaus of Pupil Transportation and Audit within the Division of Finance pursuant to N.J.S.A. 18A:58-7.

The proposed amendment clarifies the role of the county superintendent in the approval of transportation contracts and the role of the Division of Finance in determining State aid for pupil transportation. Amendments in wording are also proposed to make the rule consistent with word usage throughout N.J.A.C. Title 6.

#### **Social Impact**

The proposed amendment will impact on all district boards of education providing transportation. The prescribed system addressing pupil transportation contracts, both original and renewals, advises district boards of education of the responsibility of the county superintendent and the Division of Finance in approval of pupil transportation contracts.

The proposed amendments will have a positive impact on district boards of education. It will clarify the transportation contract approval process at the county office and designate the responsibility for determining transportation State aid.

**Economic Impact**

The proposed amendment will not increase State nor local expenditures, but will clarify the review process and will permit the current system to be maintained.

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

6:21-16.1 [Regulations generally] **Rules**

(a) All contracts for transportation or renewals thereof shall be made in triplicate and shall be submitted to the county superintendent of schools for approval on or before September 1 in each year.

(b) Each contract or renewal thereof shall be accompanied by a certified copy of the minutes of the district board of education authorizing the contract.

(c) **Review and approval of transportation contracts by the county superintendent of schools is a review and approval as to form only. The final determination of State Transportation aid, if any, that is payable to a district board of education for approved transportation expenditures shall be made by the Bureaus of Pupil Transportation and Audit within the Division of Finance of the State Department of Education.**

[(c)](d) If the county superintendent of schools [shall approve] **approves** the contract or renewal, one copy shall be filed with the county superintendent, one with the district board of education, and one with the contractor.

(e) **If the county superintendent of schools approves the transportation contract or renewal thereof, this does not by itself guarantee that the local school district will receive State aid for pupil transportation expenditures.**

[Note:](f) All transportation contracts require the approval of the county superintendent of schools regardless of whether State aid is involved.

# ENVIRONMENTAL PROTECTION

## (a)

### DIVISION OF PARKS AND FORESTRY

#### Natural Areas and the Natural Areas System Designated Natural Area

#### Proposed Amendment: N.J.A.C. 7:2-11.22

Authorized By: Robert E. Hughey, Commissioner,  
Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3.

DEP Docket No. 068-85-12.

Proposal Number: PRN 1985-738.

A public hearing concerning this proposal will be held on:

February 11, 1986 at 6:30 P.M.

Belleplain State Forest Office

County Road 550

Belleplain and Woodbine Road

Woodbine, NJ 08270

Submit comments by February 20, 1986 to:

Howard Geduldig, Regulatory Officer

Office of Regulatory Services

Department of Environmental Protection

CN 402

Trenton, NJ 08625

The agency proposal follows:

#### Summary

The department proposes inclusion of Bear Swamp East in the Natural Areas System. Over time, the area proposed for inclusion would be managed to retain its present condition while land use in the surrounding areas would probably change. This area was acquired by the State through condemnation proceedings to preserve the ecological communities and relationships thereon and to manage endangered species habitats. This area is currently included in the Register of Natural Areas maintained by the Division of Parks and Forestry. Upon the advice of the Natural Areas Council on July 11, 1985, the Director of Parks and Forestry recommended to the Commissioner inclusion of this natural area in the system.

#### Social Impact

The inclusion of Bear Swamp East in the National Areas System should contribute to the direct and indirect enjoyment of present and future generations of the New Jersey public by preserving the natural resources contained in this natural area.

#### Economic Impact

The State expended moneys in condemnation to acquire Bear Swamp East in order to preserve its natural values. Completion of the preservation process, by its inclusion in the Natural Areas System, will protect the economic investment already made. Only minimal funding will be required to continue the management of this area in its natural state.

## ENVIRONMENTAL PROTECTION

## PROPOSALS

### Environmental Impact

It is anticipated that the environmental impacts of preservation of Bear Swamp East through the Natural Areas System can only be positive. In addition to preserving nesting habitat of bald eagles, an endangered species, numerous old growth plant communities will likewise be preserved. A management plan, to be developed subsequent to the area's inclusion in the system, will ensure such preservation.

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

7:2-11.22 Designated natural area

(a)-(f) (No change.)

(g) Atlantic Coastal Plain, Coastal Section, rules are as follows:

1.-9. (No change.)

#### 10. Bear Swamp East Natural Area:

i. Downe Township, Cumberland County;

ii. An area of 1550 acres ( $\pm$ ), bounded on the north by the Central Railroad of New Jersey right-of-way beyond which is the Edward G. Bevan Wildlife Management Area, on the east by the Downe-Commercial Township line and the Unimin Corporation property line, on the south by Hayleyville Road and property lines extending west therefrom to route 555 (Narrow Lane Road), and on the west by route 555;

iii. Designation Purposes: An area known to contain New Jersey's only nesting pair of bald eagles and several forest community types including one of the State's most mature swamp hardwood forests;

iv. Management Objectives: Preservation of ecological communities and relationships, management of bald eagle nesting site and other known and potential endangered species habitats;

v. Administering Agency: To be determined upon preparation of a management plan.

## THE COMMISSIONERS

Proposals numbered PRN 1985-739 and 740, concerning hard shell clam depuration, are jointly authorized by Robert E. Hughey, Commissioner, Department of Environmental Protection, and J. Richard Goldstein, Commissioner, Department of Health.

Submit comments by February 20, 1986 to:

Howard Geduldig  
Office of Regulatory Services  
Department of Environmental Protection  
CN 402  
Trenton, NJ 08625

**(a)**

### Hard Shell Clam Depuration Pilot Plant Program

#### Jointly Proposed Readoption: N.J.A.C. 7:17

Authority: N.J.S.A. 13:1D-9, 24:2.1 et seq. and 58:24-1 et seq.

DEP Docket No. 069-85-12.

Proposal Number: PRN 1985-739.

The agency proposal follows:

### Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 7:17 will expire on February 19, 1986. The Departments of Environmental Protection and Health propose both to jointly readopt this chapter.

N.J.A.C. 7:17 prescribes the requirements for the establishment and operation of a pilot hard clam (*Mercenaria mercenaria*) depuration plant. These rules were adopted to establish a program to determine whether hard clams taken from waters designated other than approved by the Department of Environmental Protection can be depurated, that is, cleansed, so as to reduce microbial contamination in these clams to acceptable levels.

Having made findings that these clams can be so depurated, but noting several program deficiencies, and having so reported to the Commissioners of Environmental Protection and Health, the interagency Task Force established at N.J.A.C. 7:17-2.1 has recommended to the commissioners the re-adoption of the existing pilot phase program regulations and amendments thereto cure program deficiencies.

A readoption without change is effective upon acceptance for filing by the Office of Administrative Law. Where amendments are incorporated in the readoption, the amended portions are not effective until publication of the adoption notice in the New Jersey Register, generally three weeks subsequent to acceptance for filing. In order to effect readoption of N.J.A.C. 7:17 and amendment thereof with a minimal period of lapse between rule expiration and readoption, the commissioners propose this readoption without change. Proposed amendments to the chapter appear elsewhere in this New Jersey Register.

A summary of the text of each substantive section of N.J.A.C. 7:17 follows.

### SUBCHAPTER 1. GENERAL PROVISIONS

7:17-1.1 Scope and purpose, explains that this chapter exists to establish and study the feasibility of hard clam depuration, that is, purification, to reduce microbial contamination to acceptable levels.

7:17-1.2 Construction, directs that this chapter be liberally construed to aid the applicable departments in discharging their statutory functions.

7:17-1.4 Definitions, directs the reader to the identical definitions at N.J.A.C. 7:12-1.

7:17-1.5 Procedures for obtaining necessary approvals, outlines the necessary approval documents (and their sources) for participants in the program.

### SUBCHAPTER 2. INITIAL PILOT PROGRAM

7:17-2.1 Pilot program operation, outlines the procedures for submission of applications to, processing of applications by, and other duties of, the interagency Task Force.

7:17-2.2 Specifications for hard clam depuration, prescribes construction and operation specifications for hard clam depuration.

### SUBCHAPTER 3. SPECIAL PERMITS

7:17-3.1 General Requirements, outlines the necessary permits issued by the Department of Environmental Protection for harvesting of shellfish from restricted waters.

7:17-3.2 Applications, describes the two permits applicable to the hard clam depuration program.

7:17-3.3 Special Permit Programs, outlines the principal

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**ENVIRONMENTAL PROTECTION**

terms and conditions associated with the permits discussed at N.J.A.C. 7:17-3.2.

**SUBCHAPTER 4. ENFORCEMENT**

7:17-4.1 Enforcement, assigns the appropriate enforcement duties to the applicable department.

**SUBCHAPTER 5. PERMIT CONDITIONS**

7:17-5.1 Permit conditions, proscribes the violation of any permit conditions.

**Social Impact**

The Department of Environmental Protection and the Department of Health do not anticipate any negative social impact from the proposed readoption of the hard clam depuration pilot plant program especially since the separately proposed amendments will clarify the permittee's responsibilities, and also assist the State in being more efficient and responsive in managing the program.

**Economic Impact**

It is anticipated that the proposed readoption will have a positive economic impact. The overall effect of the program over the years has been positive upon the economy of the State. Through the controlled harvest and sale of a shellfish product from Special Restricted and Seasonal Special Restricted waters, both the shellfish industry and the public have benefited economically.

The State will continue to encounter costs for enforcement, equipment, and administration.

**Environmental Impact**

Although the special permit programs make available to the public shellfish that would not otherwise be utilized, it is anticipated that a continuation of the sustained harvest of this State-managed renewable resource will neither deplete nor endanger the fishery.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:17.

**(a)**

**Hard Shell Clam Depuration Pilot Plant Program**

**Jointly Proposed Amendments: N.J.A.C. 7:17**

Authority: N.J.S.A. 13:1D-9, 24:2.1 et seq., 24:15-13, and 58:24-1 et seq.

DEP Docket No. 070-85-12.

Proposal Number: PRN 1985-740.

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66(1978), N.J.A.C. 7:17 will expire on February 19, 1986. The Departments of Environmental Protection and Health are proposing to jointly readopt this chapter elsewhere in this issue of the New Jersey Register.

N.J.A.C. 7:17 prescribes the requirements for the establish-

ment and operation of a pilot hard clam (*Mercenaria mercenaria*) depuration plant. These rules were adopted to establish a program to determine whether hard clams taken from waters designated other than approved by the Department of Environmental Protection can be depurated, that is, cleansed, so as to reduce microbial contamination in these clams to acceptable levels.

Having made findings that these clams can be so depurated, but noting several program deficiencies, and having so reported to the Commissioners of Environmental Protection and Health, the interagency Task Force established at N.J.A.C. 7:17-2.1 has recommended to the commissioners the re-adoption of the existing pilot phase program regulations and amendments thereto to cure program deficiencies.

A summary of the amendments to N.J.A.C. 7:17 follows.

Subchapter 1 General Provisions: Additions have been made to the definitions section (N.J.A.C. 7:17-1.4) in this subchapter to clarify and standardize certain commonly used terms.

Subchapter 2 Initial Pilot Program: The initial pilot program is being continued in its present form with new provisions that address changes in location and ownership. In addition, several plant operation changes are being made under N.J.A.C. 7:17-2.2, Specifications for Hard Clam Depuration, which relate to bacteriological testing and the requirements for depuration clam processing containers.

Subchapter 3 Special Permits: The General Requirements section (N.J.A.C. 7:17-3.1) has been expanded to satisfy the concerns of enforcement personnel. Additions to this section have been patterned after the National Marine Fisheries Services Lobster Management Plan and are designed to facilitate enforcement of the permit conditions by the department and other law enforcement personnel. Certain permit conditions in the Permit Programs section (N.J.A.C. 7:17-3.3) have been modified to better address the concerns of both the State and the industry in the operation of the program. The major changes that are contained in the proposal include: (1) an increase in the number of mother-craft that a depuration plant will be allowed to use, (2) the requirement that the plant owner or manager notify, on a day-to-day basis, the designated enforcement unit(s) as to the area(s) and hours intended to be worked, and (3) the requirement that the harvesters must remain both within one nautical mile and within sight of the designated mother-craft unless instructed otherwise by the designated enforcement unit(s).

**Social Impact**

The Department of Environmental Protection and the Department of Health do not anticipate any negative social impact from the proposed changes to the hard clam depuration pilot plant program. In fact, just the opposite would be true since these changes will clarify the permittee's responsibilities, and also assist the State in being more efficient and responsive in managing the program.

**Economic Impact**

It is anticipated that the proposed changes will have a positive economic impact on the program in making its continuation more likely. The overall effect of the program over the years has been positive upon the economy of the State.

**Environmental Impact**

The proposed changes to the hard clam depuration program will have no significant environmental impact.

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

7:17-1.3 [Authority] **Reserved**

[These rules are promulgated pursuant to N.J.S.A. 13:1D-6, N.J.S.A. 13:1B et seq., N.J.S.A. 24:2-1 et seq., N.J.S.A. 58:24-1 et seq. [(P.L. 1979, c.321)], and N.J.S.A. 24:15-13.]

7:17-1.4 Definitions

The definitions of those words and terms used in this chapter already defined at N.J.A.C. 7:12-1 shall be the same as the definitions of those words and terms set forth in N.J.A.C. 7:12-1.

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

“Alternate craft” means the vessel that is allowed to be used by a depuration/controlled purification plant owner or manager in the same manner and for the same purpose as a mother-craft in the absence of the latter.

“Bureau” means the Bureau of Shellfish Control in the Division of Water Resources.

“Designated enforcement unit(s)” means Marine Enforcement Unit in the Division of Fish, Game and Wildlife, Marine Bureau in the Division of State Police, and any authorized employee of the Bureau of Shellfish Control in the Division of Water Resources.

“Division” means the Division of Water Resources in the Department of Environmental Protection.

“Mother-craft” means the vessel used by a depuration/controlled purification plant owner or manager for harvest supervision, collection, and transportation, in conjunction with the hard clam depuration/controlled purification program.

7:17-1.5 Procedures for obtaining necessary approvals

(a) An applicant who wishes to participate in the Hard Shell Clam Pilot Plant Program shall obtain the necessary approval documents in the order set forth in this section:

[(a)] (b) The following [A]approvals are required for pilot plant operation:

1. (No change.)
2. Special Permit For A Depuration/Controlled Purification Facility To Possess Hard Clams (Mercenaria mercenaria), Permit No. [0]10 to be issued by the Bureau of Shellfish Control, Division of Water Resources, Department of Environmental Protection;

3.-4. (No change.)

[(b)] (c) The following [A]approvals are required for harvesters:

1. (No change.)
2. Special Permit to Harvest Hard Clams (Mercenaria mercenaria) from specified Special Restricted and Seasonal Special Restricted Waters of New Jersey For Further Processing At A State Permitted Depuration/Controlled Purification Facility, Permit No. [00]9 to be issued by the Bureau of Shellfish Control, Division of Water Resources, Department of Environmental Protection.

SUBCHAPTER 2. INITIAL PILOT PROGRAM

[(a)] Commencing from the date of adoption of these rules and for the three month period thereafter, the interagency Task Force heretofore appointed by the Commissioners of Health and Environmental Protection will accept proposals for the construction and operation of an initial pilot program hard clam depuration plant. Proposals should be sent to:

Hard Clam Depuration Task Force  
 State Department of Health  
 Consumer Health Services  
 Shellfish Program  
 1911 Princeton Avenue  
 Trenton, New Jersey 08648]

(a) Commencing from the effective date of these rules, the interagency Task Force appointed by the Commissioners of Health and Environmental Protection will continue to sanction a hard shell clam depuration pilot plant. Any submissions required below should be sent to:

Hard Clam Depuration Task Force  
 New Jersey State Department of Health  
 Environmental Health Services  
 CN 364  
 Trenton, N.J. 08625

1. A change in location or ownership of the sanctioned depuration plant shall require that the owner submit a new application available from the Task Force and obtain the necessary approval documents identified under N.J.A.C. 7:17-1.5.

i. If the plant location is changed, the operator of the translocated plant shall also submit plant construction plans for the new location which must be approved by the Task Force prior to construction. Before resumption of operations, the licenses, permits, and certifications required under N.J.A.C. 7:17-1.5, issued by the Department of Environmental Protection and the Department of Health, must be in possession of the plant owner.

ii. If the operation of the hard clam depuration plant is discontinued, the Task Force will accept proposals for the construction and operation of a new pilot plant from any person; provided, however, if the owner of the discontinued plant provides the Task Force with a copy of an executed contract evidencing the sale of the pilot depuration plant at the time the operation is discontinued and the buyer submits a new application to the Task Force within 30 days of contract execution, then the Task Force will not accept additional proposals for the construction and operation of a new pilot plant.

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

(e) No proposal will be accepted which does not [aver] demonstrate that all local requirements, including zoning approval, have been met.

(f) The Task Force will formally respond to all proposals. [within two weeks of the last day upon which proposals may be accepted.] Each response shall state the reason for acceptance (in the case of the program[(s)] chosen by the task force) or denial. Only the chosen pilot program[(s)] shall be announced publicly.

(g) If a [chosen] pilot [program] plant owner does not initiate construction within six months of its approval, the Task Force may withdraw its approval and publish public notice inviting submission of new proposals.

(h) (No change.)

(i) The Task Force will consider the overland transportation of clams from State waters to the depuration plant site. The pilot plant applicants [will] shall be required to submit a detailed plan outlining the means of transportation and the distance to the depuration plant from the landing site(s). The overland transportation system and site selection must be approved by the Task Force and the designated enforcement unit(s). The criteria to be considered include but are not limited to:

- 1.-2. (No change.)
3. Travel time; and
4. (No change.)

(j) Site selection and means of transportation will be considered in the evaluation of proposals submitted to the Task Force. If an overland transportation plan is approved, the Task Force in conjunction with the designated enforcement unit(s) will issue [a permit] **written approval** containing specific guidelines which shall be followed. Violation of the conditions of this [permit] **approval** may subject the holder to prosecution under N.J.S.A. 58:24-3 and N.J.A.C. 8:13-2.3. The permittee shall be responsible for the cost of any such enforcement action. The need for such enforcement shall be determined solely by the Task Force and designated enforcement unit(s).

Redesignate existing (j) as (k) (No change in text.)

[(k)] (l) [Once the pilot program] **If a new pilot plant is [actually] constructed and operational, the Department of Health may issue a provisional depuration certificate upon the approval of the Task Force.**

Redesignate existing (l)-(n) as (m)-(o) (No change in text.)

#### 7:17-2.2 Specificatoinis for hard clam depuration

(a) The specifications for the construction and operation of a hard clam (species *Mercenaria mercenaria*) depuration plant shall be the same as those regulations governing the depuration of soft shell clams (N.J.A.C. 8:13-2[.1 et seq.]) which regulations are hereby adopted by reference as if set forth in this subchapter at length with the following exceptions:

Redesignate existing (a)-(b) as (b)-(c) (No change in text.)

[(c)] (d) The tank(s) shall have the capacity to supply at least eight cubic feet of seawater per U.S. bushel of clams at the overflow level. (See N.J.A.C. 8:13-2.9(b)7i); [and]

[(d)] (e) The bacteriological quality of depurated hard shell clams will be established by the Task Force based on evaluation of data obtained during the pilot plant study. **The Task Force reserves the right to establish adjunct bacteriological testing in addition to the fecal coliform standards currently being utilized.** (See N.J.A.C. 8:13-2.12); and

(f) **The clam processing containers referred to in N.J.A.C. 8:13-2.9(c) shall be no deeper than three inches for hard clam depuration.**

### SUBCHAPTER 3. SPECIAL PERMITS

#### 7:17-3.1 General Requirements

(a) The Department of Environmental Protection may issue permits to take or harvest shellfish from waters [condemned or otherwise] restricted by regulations, as set forth in N.J.A.C. 7:12.

(b) [Said p] Permits may be issued to persons making application for purposes of transplanting, relaying, depletion, bait harvesting, depuration/controlled purification, research or other purposes approved by the Department of Environmental Protection.

(c) Each application shall be accompanied by a fee in the amount of \$25.00 (check or money order made payable to N.J. Department of Environmental Protection). Forms may be obtained from the Bureau of Shellfish Control [, Division of Water Resources, Department of Environmental Protection].

(d) [Said p] Permits may contain special conditions relating to their purpose, duration, area limitations, time limitations, methods of handling, identification and disposition of the shellfish, limitation on species and/or size of shellfish, and any other conditions deemed necessary by the Department of Environmental Protection to protect the health, safety and welfare of the public.

(e) **It shall be unlawful for any person issued a special permit or license, or any person on board a vessel to which a permit**

**or license has been issued, under the provisions of N.J.S.A. 58:24-1 et seq. and N.J.S.A. 50:2-1 et seq. to:**

1. **Throw or dump into the water or otherwise dispose of the contents of any pail, bag, basket, or any matter whatsoever after being signaled by any member of the designated enforcement unit(s), before the authorized officer has inspected the same.**

2. **Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search of the vessel by any member of the designated enforcement unit(s).**

(f) **The operator of any vessel and all others on board issued a special permit or license shall immediately comply with all lawful instructions issued by any member of the designated enforcement unit to facilitate safe boarding and inspection of the vessel, its gear, and catch for the purpose of enforcing these regulations.**

#### 7:17-3.2 Applications

(a) Applications for the special permits required under this chapter shall be submitted on forms supplied by the Department of Environmental Protection as follows:

[(a)] (b) Harvest of hard clams from Special Restricted and Seasonal Special Restricted waters for further processing, permit application [(WR009)] **WR9**; and

[(b)] (c) Possession of hard clams from Special Restricted and Seasonal Special Restricted waters for further procession, permit application [(WR010)] **WR10**.

#### 7:17-3.3 [Special] Permit programs

[(a)] A special permit is required to harvest hard clams from special restricted waters for further processing at a State permitted and certified depuration/controlled purification facility. This permit shall be numbered Special Permit No. 009. The permittee shall be known as the "harvester."

(a) **The purpose of Permit No. 9 (Hard Clam Depuration Harvesters Permit) is to allow hard clams to be harvested from Special Restricted and Seasonal Special Restricted waters and ultimately marketed after processing through a State permitted and certified depuration/controlled purification facility.**

[(b) Special] Permit No. [00]9 shall be valid only under the following specific conditions:

1. [Species are limited to hard clams (*Mercenaria mercenaria*).] **Only hard clams (*Mercenaria mercenaria*) shall be harvested under this permit.**

2. [Areas of harvest are limited to those designated by the Department of Environmental Protection as a condition of the Special Permit.] **Area(s) of harvest are limited to those specified on the charts attached to each permit or amended charts sent by the Bureau to the current mailing address of the permittee on record at the Bureau's Leeds Point office. These areas specified for harvest may consist of Special Restricted and Seasonal Special Restricted waters as classified by the department. All harvesters transferring clams to the same depuration/controlled purification plant shall at all times work both within one nautical mile and with sight of the associated mother-craft.**

3. [This permit shall apply only to the Special Restricted waters specified in (b) above.] **The permit shall apply only to the waters specified on the charts attached to the permit (as amended where applicable) provided with each permit and as further restricted on a day-to-day basis by the designated enforcement unit(s).**

4. **The inclusive dates of the permit [shall be] are specified on the face of the permit by the Department of Environmental Protection [unless revoked or suspended prior to that date for cause].**

5. (No change.)

6. The permittee [H]harvesting from the specified [Special Restricted waters] area(s) shall be subject to all State laws and regulations applicable to the harvest[ing] of oysters, clams or mussels from [a]Approved waters.

7. Harvesting from the [Special Restricted waters] specified [above shall] area(s) may be permitted Monday through Saturday of each week between the hours of sunrise and one hour before sunset, as listed in Trenton, except as provided by N.J.S.A. [50:2.11] **50:2-11.**

8. The harvester shall have this permit in his [or her] possession while [working] **operating** in the specified waters.

9. [Harvesting shall be done only from the boat identified on the fact of this permit. Said boat shall be required to fly the rectangular yellow flag with black numbers, provided with the permit, at least six feet above the highest structural point of the harvest boat. This flag shall be flown during all phases of the clamming operation.] **Vessels used by special permit holders in harvesting shall be marked with signs having a white background with legible black lettering (minimum six inches in height) giving the permittee's first initial and last name, special permit number, and associated depuration plant identification code letter assigned by the department, on both sides (amidships) of the permittee's harvest vessel, while participating in any phase of the program.**

[10. The harvester boats shall be under the direct supervision of the depuration/controlled purification facility's "mother craft" or "buy-boat", which will anchor in the designated area. The harvester's boat shall remain within one-half nautical mile and in sight of the designated "mother craft" or "buy-boat".]

[11.] **10.** Upon completion of the day's harvesting, all hard clams shall be transferred to the ["mother-craft"] [or buy-boat"]. No clams [are to] **shall** remain in the [harvester's boat] **specially** marked harvest vessel or [to] be transferred to [other boats] **vessels other than the designated mother-craft.**

**11. Harvest vessels and harvesters shall be under the direct supervision of the depuration/controlled purification facility's mother-craft which shall remain in the area(s) reported to the designated enforcement unit(s) by the depuration plant owner or manager. The harvest vessels and harvesters shall remain both within one nautical mile and within sight of the designated mother-craft, unless otherwise specified by the designated enforcement unit(s), during harvesting operations. Harvesting and transportation of shellfish beyond the aforementioned distances are prohibited. Only upon completion of the day's harvest and transfer thereof, may the permittee leave the area.**

12. Dredging and [similar] other illegal methods of harvesting are prohibited except as provided in N.J.S.A. 50:2-10.1 and 11.

13. All hard clams **harvested under this permit** shall be immediately sold to or sent to the depuration/controlled purification facility(s) for further processing. [No] **All** other species of shellfish shall not be removed from the harvest site. Only "U.S. Standard" bushels shall be used in the harvesting, transportation, and receiving of clams at the depuration/controlled purification facility unless written approval is given by the State Department of Health to use an alternate standard type of container. All reasonable measures shall be taken to assure that the containers of hard clams transported to the depuration/controlled purification facility are filled to capacity.

[14. The Department of Environmental Protection reserves the right to suspend or revoke Special Permit No. 009 at any time that is continued use may imperil the public health. Conviction of a shellfish violation as provided in N.J.S.A.

58:24-1 et seq. or N.J.S.A. 50:2-1 et seq. shall be adequate cause for the suspension and denial of all special permits issued by the New Jersey Department of Environmental Protection involving the harvest of shellfish from the waters of this State.]

[15.] **14.** Under adverse conditions of weather, (for example, bay and river icing) as determined by the [New Jersey Department of Environmental Protection] **designated enforcement unit(s)**, alternative methods of harvest and transportation of clams may be developed jointly between that segment of the shellfish industry associated with the depuration/**controlled purification** program and the various State agencies involved in the program's control. [Said alternative methods shall insure that the health, safety and welfare of the public are not compromised.] **Under no circumstances shall any shellfish be harvested or transported using such alternate methods without first having obtained express written permission from the designated enforcement unit(s).**

**15. Violations of these permit conditions shall subject the violator to prosecution under N.J.S.A. 58:24-1 et seq.**

[16. Permittees shall comply with the written instructions of the Department of Environmental Protection regarding certain waters where shellfish harvesting may be prohibited to protect the public health.]

[17. The harvester shall report his or her total catch to the designated enforcement unit(s) on a daily basis.]

**16. Any change of a permittee's address shall be reported by the permittee to the Bureau's Leeds Point office within one week of the change.**

[(c) Violation of special conditions in (b)1 through 16 above may subject the holder of Special Permit No. 009 to prosecution under N.J.S.A. 58:14-3 (P.L. 1979, c.321).

(d) A special permit is required for a certified depuration/controlled purification facility to possess hard clams from Special Restricted waters for further processing. This permit shall be numbered Special Permit No. 010. The permittee shall be known as the "possessor."]

(b) **The purpose of Permit No. 10 (Depuration Plant Permit To Possess Hard Clams) is to allow a depuration/controlled purification facility to possess hard clams harvested from Special Restricted and Seasonal Special Restricted waters for further processing. This permit also completes the control link between the initial or harvest phase of the depuration/controlled purification program at (a) above and the next or processing phase latter which is regulated by the New Jersey Department of Health.** [(e) Special] Permit No. [0]10 shall be valid only under the following specific conditions.

1. [Species are limited under said permit to hard clams (*Mercenaria mercenaria*).] **Only hard clams (*Mercenaria mercenaria*) shall be possessed under this permit.**

2. [This permit shall apply only to clams taken from water areas specified in (b)2 above.] **Purchases are limited to shellfish harvested from specified areas. Included with every permit are charts (which may be amended by the Bureau of Shellfish Control) of the harvest sites showing specific areas within the estuaries that may be harvested on any particular day. The depuration/controlled purification plant owner or manager shall verbally notify, on a day-to-day basis, the designated enforcement unit(s) as to the area(s) and hours intended to be worked under the provisions of this permit. All harvesters transferring clams to the same depuration/controlled purification plant shall at all times work both within one nautical mile and within sight of the associated mother-craft.**

3. [The inclusive dates of this permit shall be as specified by the Department of Environmental Protection unless re-

voked or suspended prior to that date for cause.] **The permit shall apply only to the waters specified on the attached charts attached to the permit (as amended where applicable) provided with each permit and as further restricted on a day to day basis by the designated enforcement unit(s).**

4. [No hard clams shall be procured from a harvester unless the harvester shall possess:

- i. A valid shellfish harvesting license issued by the N.J. Division of Fish, Game and Wildlife; and
- ii. A valid Special Permit No. 009 issued by the Bureau of Shellfish Control of the Division of Water Resources.]

**The inclusive dates of the permit are specified on the face of the permit by the Department of Environmental Protection.**

5. **The harvester from which the shellfish are purchased shall possess a valid NEW JERSEY COMMERCIAL SHELLFISH HARVESTING LICENSE issued by the New Jersey Division of Fish, Game and Wildlife and a valid Permit No. 9 issued by the Bureau.**

[5.] 6. [Compliance shall be maintained] **The permittee shall comply with all laws, rules and regulations promulgated by the Department of Environmental Protection and other agencies of the State of New Jersey.**

[6.] 7. Purchases of clams from the specified [Special Restricted waters] **area(s) shall be subject to all State laws and regulations applicable to the purchaser of oysters, clams or mussels from [a] Approved waters.**

[7.] 8. Records of purchases, including the harvester's name, address, date, quantity of purchase, and harvest site, shall be maintained for a period of not less than one year and shall be available for inspection by any authorized agent of the State. **In addition, the depuration plant operator shall provide monthly harvest reports to the Division of Fish, Game and Wildlife. Reporting forms and charts of the designated harvest areas shall be provided by the Division of Fish, Game and Wildlife. Such reports shall have the following information listed for each day:**

- i. **Harvest area (sub-area) worked;**
- ii. **Number of men working each area; and**
- iii. **Total number of clams harvested from each area.**

[8. The Department of Environmental Protection reserves the right to suspend or revoke this permit at any time that is continued use may imperil the public health. Conviction of violatoin of any of the conditions of Special Permit 010 or a shellfish violation as provided in N.J.S.A. 58:24-1 et seq. and N.J.S.A. 50:2-1 shall be adequate cause for the suspension and denial of all Special Permits issued by the New Jersey Department of Environmental Protection involving the purchase of shellfish from the waters of the State.]

9. **This permit and these regulations do [shall] not supersede current laws, regulations and rules promulgated by other agencies of the State of New Jersey.**

10. [It shall be the responsibility of the depuration/controlled purification facility to provide a "mother craft" or buy-boat" to be used for: (1) the direct supervision of clamming operations, and (2) a central point for the collection of the day's harvest of hard clams. The identification of said boat shall be reported to the designated enforcement unit(s) on a daily basis, if necessary. The maximum number of boats so designated as a "mother craft" or "buy-boat" shall be limited to two each (one regular and one alternate). Said boats shall be registered with the designated enforcement unit(s). To permit ready identification of the boats while harvesting operations are underway, a yellow pennant visible at a one nautical mile distance shall be flow.] **Vessels used by special permit holders in harvesting shall be marked with signs**

**having a white background with legible black lettering (minimum six inches in height) giving the permittee's first initial and last name, special permit number and associated depuration plant identification code letter assigned by the department, on both sides (amidships) of the permittee's harvest vessel while participating in any phase of the program.**

11. [The "mother craft" or "buy-boat" shall be of adequate size to permit the collection and transport of the day's harvest in a single load.] **Harvest vessels and harvesters shall be under the direct supervision of the depuration/controlled purification facility's mother-craft which shall remain in the area(s) reported to the designated enforcement unit(s) by the depuration plant owner or manager. Said harvest vessels and harvesters shall remain both within one nautical mile and with sight of the designated mother-craft, unless otherwise specified by the designated enforcement unit(s), during harvesting operations. Harvesting and transportation of shellfish beyond the aforementioned distances are prohibited. Only upon completion of the day's harvest and transfer thereof, may the permittee may leave the area.**

12. [Upon completion of the day's harvesting, all hard clams transferred to the "mother craft" or "buy-boat" shall be immediately transported by the "mother craft" or "buy-boat" to the respective depuration/controlled purification facility for storage and/or processing.] **It shall be the responsibility of the depuration/controlled purification facility to designate a mother-craft to be used for the direct supervision of clamming operations, a central point for the collection of the day's harvest of hard clams, and the transportation of these clams to the depuration/controlled purification plant. The identification of the mother-craft shall be reported verbally to the designated enforcement unit(s) on a daily basis.**

13. **The maximum number of mother-craft allowed for use at any one time by any single depuration/controlled purification facility shall be limited to two. The designated mother-craft is required to be present at all times during harvesting operations. In addition, alternate craft, which shall be subject to identification requirements identical to those imposed upon mother-craft, shall be allowed only as follows:**

i. **Where one or both designated mother-craft are not in use, the corresponding number of alternate craft shall be allowed to function in the same manner as the designated mother-craft that it replaces; provided, however, that the designated enforcement unit(s) is notified in advance of this substitution. Any single depuration/controlled purification facility shall be limited to the use of two craft, including both designated mother-craft and alternate craft functioning as mother-craft at any one time.**

ii. **While harvesting operations are in process, one alternate craft shall be allowed to transport clams from one or both of the designated mother-craft (or alternate craft functioning thereas) to the depuration/controlled purification plant.**

14. **To permit ready identification of the mother-craft during harvesting and transportation operations, a rigid yellow pennant shall be flown. This pennant shall be marked on both sides, with the associated depuration plant identification code letter in a contrasting color. The plant identification code letter shall be assigned by the department. The pennant shall be of such dimensions as to be readily visible by the unaided eye at a distance of one nautical mile. In addition, the mother-craft shall be identified with the name of the depuration facility painted in large letters, at least six inches high and of contrasting color, above the water line of the vessel.**

15. **Upon completion of the day's harvesting, all hard clams shall be transferred to the mother-craft. No clams shall remain in the specially marked harvest vessel or transferred to other**

vessels. These clams shall be immediately transported by the mother-craft to the respective depuration/controlled purification facility for storage and/or processing. Only "U.S. Standard" bushels shall be used in the harvesting, transportation, and receiving of clams at the depuration facility unless written approval is given by the State Department of Health to use an alternate standard type of container. All reasonable measures shall be taken to assure that the containers of hard clams transported to the depuration/controlled purification facility(s) are filled to capacity. During the unloading procedures from the mother-craft at the depuration/controlled purification facility, the containers of clams shall not be covered and shall be open to view.

[14.] 16. Under adverse conditions of weather (for example, bay and river icing) as determined by the [New Jersey Department of Environmental Protection] designated enforcement unit(s), alternate methods of harvest and transportation of clams may be developed jointly between the segment of the shellfish industry associated with the depuration/controlled purification program and the various State agencies involved in the program's control. Under no circumstances shall any shellfish be harvested or transported using such alternate methods without first having obtained express written permission from the designated enforcement unit(s). [Said alternative methods shall insure that the health, safety and welfare of the public are not compromised. When such conditions occur, they will be noted in the log of the designated enforcement unit(s) at the request of the respective depuration/controlled purification facility.]

[15. This permit shall apply only to clams procured from the specified Special Restricted waters and further specified on a day-to-day basis by the designated enforcement unit(s).]

17. Harvesting from the specified area(s) may be permitted Monday through Saturday of each week between the hours of sunrise and one hour before sunset, as listed in Trenton, except as provided by N.J.S.A. 50:2-11.

[13.] 18. Should overland transportation be utilized on a regular basis for the movement of hard clams from State waters to the depuration plant site, the operational plan for such a movement shall be approved by the Task Force on Hard Clam Depuration and the designated enforcement unit(s).

[(f)] 19. Violation of [special] the above conditions [in (e)] through 15 above may] shall subject the holder to prosecution under N.J.S.A. 58:24-1 et seq. [(P.L. 1979, c.321)].

SUBCHAPTER 4. ENFORCEMENT

7:17-4.1 Enforcement

Violations of N.J.A.C. 7:17-2 shall be enforced by the Department of Health pursuant to its authority under N.J.S.A. 24:2-1 et seq., N.J.S.A. 24:15-13, and N.J.S.A. 24:17-1[,] et seq. Violations of N.J.A.C. 7:17-3 shall be enforced by the Department of Environmental Protection pursuant to its authority under N.J.S.A. 13:1D-9 and N.J.S.A. 58:24-1 et seq. [(P.L. 1979, c.321)].

SUBCHAPTER 5. PERMIT CONDITIONS

7:17-5.1 Permit conditions

The permit contains specific conditions that are deemed necessary for the proper operation of the hard clam depuration program. No person shall violate any requirement or provision of any permit. All permittees are also required to comply with all other applicable statutes and regulation. Included in every

permit are charts of the harvest sites showing specific areas within the estuaries allowed to be harvested on a particular day as determined by the designated enforcement unit(s).

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Hard Clam Size Limits

Proposed New Rule: 7:25-9

Authorized By: Robert E. Hughey, Commissioner,  
Department of Environmental Protection.  
Authority: N.J.S.A. 23:2B-14 and 50:1-5.  
DEP Docket No. 067-85-12.  
Proposal Number: PRN 1985-737.

Submit comments by February 20, 1986 to:  
Gale Critchlow, Chief  
Bureau of Shellfisheries  
Division of Fish, Game and Wildlife  
1566-1570 Edgewood Avenue  
Trenton, NJ 08618

The agency proposal follows:

Summary

The proposed new rule specifies the minimum legal harvest size for hard clams and the penalty schedule for violation of this minimum. While generally reinstating the provisions of N.J.A.C. 7:25-9.1 and 7:25-9.2, which expired along with all of N.J.A.C. 7:25-9 on September 17, 1985, the three percent tolerance provision (that is, no violation where no more than three percent of the hard clams taken, possessed, sold, etc., are below the minimum legal harvest size) that was present in the expired rule is deleted and the penalty schedule has been modified.

Pursuant to N.J.S.A. 23:2B-5b, this proposal will be reviewed by the Marine Fisheries Council at its January 1986 meeting.

Social Impact

No adverse social impact is anticipated as a result of adoption of this proposal. The proposed new rule will continue the existing management of the hard clam resource essential to its continued availability for recreational and commercial harvest.

Economic Impact

No adverse economic impact is anticipated as a result of the adoption of this proposal. The proposed new rule will prevent the economic dislocations that could result from the harvest of undersized hard clams and associated destruction of the resource.

Environmental Impact

It is anticipated that the proposed new rule will have a positive environmental impact in that it will enhance the prospects for the continued viability of the hard clam resource.

Full text of the proposed new rule follows.

**SUBCHAPTER 9. HARD CLAM SIZE LIMITS**

**7:25-9.1 Scope**

This subchapter constitutes the rules governing the minimum size of hard clams allowed to be harvested in New Jersey. Nothing in this subchapter or in N.J.A.C. 7:12 or 7:17 shall prevent the harvest and replanting of hard clams with shell length less than one and one-half inches when such harvest and replanting are an express part of a program designed and directed by the department to prevent the loss of hard clams which might occur under conditions such as channel dredging or other destructive action.

**7:25-9.2 Purpose**

The purpose of this subchapter is to provide a means to control the minimum size of hard clams harvested in New Jersey.

**7:25-9.3 Construction**

These rules shall be liberally construed to permit the Department to effectuate the purposes of N.J.S.A. 50:1-5.

**7:25-9.4 Definitions**

The following term, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Clam hatchery" means any operation which obtains clams through the process of artificial spawning and culture methods.

**7:25-9.5 Taking of hard clams**

(a) No person shall take, attempt to take, possess, sell, offer for sale, purchase, or attempt to purchase hard clams, *Mercenaria mercenaria*, with a shell length less than one and one-half inches.

(b) Clams shall be culled by the harvester where taken, and all clams less than one and one-half inches in shell length shall be redeposited immediately on the bottom from where they were harvested.

(c) Possession and sale of hatchery-reared clams by a clam hatchery and purchase and possession of hatchery-reared clams from a clam hatchery shall be exempt from the provisions of (a) and (b) above provided that the purpose of this possession and sale or purchase is for planting and rearing hard clams to market size (that is, not less than one and one-half inches). Possession and/or sale of hatchery-reared seed clams less than one and one-half inches in length for the purpose of marketing and consumption shall not be exempt from the provisions of (a) and (b) above and shall not be permitted.

(d) Enforcement personnel shall seize all hard clams less than one and one-half inches in length which are in violation of N.J.A.C. 7:25-9.5 and return them to estuarine waters.

**7:25-9.6 Penalties**

(a) The penalty for a first offense violation of N.J.A.C. 7:25-9.5, where no more than 100 hard clams fail to meet the regulatory minimum, shall be as follows:

Number of clams	Penalty
1- 20	\$ 20.00
21- 40	\$ 50.00
41-100	\$100.00

(b) The penalty for a first offense violation of N.J.A.C. 7:25-9.5, where more than 100 hard clams fail to meet the regulatory minimum, shall be as prescribed at N.J.S.A.

23:2B-14a(1) for the first offense, that is, not less than \$100.00 or more than \$3,000 for the first offense.

(c) The penalty for any subsequent offense, regardless of number of hard clams involved, shall be as prescribed at N.J.S.A. 23:2B14(a)1 for any subsequent offense, that is, not less than \$200.00 or more than \$5,000.

**(a)**

**DIVISION OF ENVIRONMENTAL QUALITY**

**Public Notice: Pre-proposal of Amendment to the Air Pollution Control Act of 1954, P.L. 1985, c.12, N.J.S.A. 26:2C-1 et seq.**

**Reporting of Releases of Air Contaminants**

Submit comments by February 20, 1986 to:

Scott B. Dubin  
 Department of Environmental Protection  
 Office of Regulatory Services  
 CN 402  
 Trenton, NJ 08625

**Take notice** that effective January 29, 1985, P.L. 1985, c.12, also known as S-2480, amended sections 14, 14.1, 19 and 22 of the Air Pollution Control Act of 1954, P.L. 1954, c.212, N.J.S.A. 26:2C-1 et seq. (the "Act"). S-2480 provides, among other things, for the reporting of releases of air contaminants as follows:

"A person who causes a release of air contaminants in a quantity or concentration which poses a potential threat to public health, welfare or the environment or which might reasonably result in citizen complaints shall immediately notify the Department. A person who fails to so notify the Department is liable to the penalties and procedures prescribed in this section." (section 19e).

The Department intends to propose a new rule pursuant to S-2480 in the near future which will establish notice requirements. Notice of the proposal will appear in the Register inviting the public to attend a hearing and present testimony on the proposal. The Department intends that the new rule concerning Section 19(e) of the Act become effective in early 1986. This notice advises persons affected by the Act what the Department considers as constituting compliance with the Act until the new rule becomes effective. The notification requirements set forth below also constitute a pre-proposal of the new rule, upon which the Department will accept comments.

Notification pursuant to S-2480 must be given to the Department as follows:

(1) Immediate notification of a reportable air release to the Department's telephone Hotline, at (609) 292-7172; and

(2) A written confirmation, including such details of the incident as are known, within three calendar days to:

State of New Jersey  
 Department of Environmental Protection  
 Director, Division of Environmental Quality  
 CN 027  
 Trenton, New Jersey 08625

Persons providing immediate notice by telephone shall give the following information:

1. Name, position or title, and telephone number of the person calling;

2. Name and address of company in charge of or responsible for operations and equipment involved;

3. Identity, nature and location of the reportable air release, including but not limited to the source, cause, and quantity of each air contaminant released, duration of the release, and whether it is continuing at the time of the notice;

4. Measures taken to terminate the reportable air release or mitigate its effects;

5. Weather conditions at and around the location of the reportable air release including information on the wind direction and wind speed at the time of the reportable release;

6. A description of the neighboring community (e.g., urban, suburban or rural; residential, commercial) and identification and location of sensitive nearby establishments and institutions (e.g., hospitals, schools, nursing homes); and

7. Other agencies that have been notified, including appropriate local police, fire, and health officials, and federal officials.

In addition to the above immediate notice, a responsible person shall provide to the Department (609-292-7172) the following information within one hour of the initial notification:

1. Name and address of the property owner;

2. Actual or anticipated injuries to persons and damage to property, both on and off the site of the air release; and

3. An update of information provided in the initial notification.

Where there is a significant change in the quantity or rate of the air contaminants released to the outdoor atmosphere during a reportable release at a facility after the Department has been notified, the facility owner or operator shall immediately provide such information to the Department's Hotline at the telephone number provided above.

Within 15 calendar days from the date that the air release incident occurred, a summary report including any information given orally to the Department shall be made in writing to the Director, Division of Environmental Quality, from the owner or person in charge of the facility at which the release of the air contaminants occurred.

Submit comments by February 20, 1986 to:

John Calabria  
Chief, Health Planning Services  
New Jersey Department of Health, Room 604  
CN 360  
Trenton, New Jersey 08625

**Summary**

The Department is proposing the repeal of the current rule concerning hospital long-range strategic plans (N.J.A.C. 8:31-16.1) and its replacement with a new rule. Under the proposed provisions of the new rule:

1. Hospitals will be required to maintain a current Board-approved five year plan at the facility but will not be required to file it with either the Department or the local health systems agency.

Under the current rule hospitals are required to submit two copies of the plan to the Department.

2. The detailed format and development of the plan is left to the discretion of the hospital but it must include a two-year projection of anticipated certificate of need requests.

The current rules contain a relatively detailed description of information which must be included in the hospital's plan.

3. The hospital plans (inclusive of the certificate of need forecasts) will not be treated as public documents. However, the Department and the local health systems agencies may request information from these plans to support specific certificate of need applications. Information received in response to such requests may be made public only at the time or subsequent to the Department of Health's acceptance of these applications for certificate of need processing.

Since plans are currently required to be filed with the Department, their entire contents become public information.

4. All licensed hospitals will be required to file two-year projections of all anticipated certificate of need proposals to the Department on July 1 of each year. However, these forecasts will not be treated as public documents and failure to include a given certificate of need request within the plan can not constitute the sole criterion for denying such request.

5. All hospitals are required to annually submit certain demographic data to the Department of Health and the Health Systems Agency in their area. This data shall be deemed public information.

6. The provisions of N.J.A.C. 8:33-2.2 (Certificate of Need Application and Review Process) concerning long-range plans will no longer apply to facilities submitting applications for certificate of need.

**Social Impact**

Hospital long-range plan rules have been in effect since July 9, 1975. Their original purpose was to establish a well defined and thought-out planning process at each hospital in the State—a planning process which would contribute positively to the hospital's decision-making process. The Department believes the original purpose of the rules has been largely accomplished. Most, if not all, New Jersey hospitals have developed sound internal planning processes and have continued to call upon them as part of their internal decision-making processes. There is, however, the need to encourage the continuation of institutional long-range planning to serve decision-making needs.

The changes in the planning requirement, as proposed in the new rules, are expected to improve the usefulness of the documents to both the hospital and the Department by en-

**HEALTH**

**(a)**

The following proposals are authorized by J. Richard Goldstein, M.D., Commissioner, Department of Health; with the approval of the Health Care Administration Board.

**DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT**

**Hospital Long-Range Strategic Plans**

**Proposed Repeal and New Rule: N.J.A.C. 8:31-16.1**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b, 26:2H-12, and 47:1A-1 et seq.  
Proposal Number: PRN 1985-731.

couraging more accurate reporting of long-range planning intentions. In an increasingly competitive environment, the current requirement that hospital plans be treated as public documents has resulted in the submission of plans which do not always reflect actual institutional intent. This is because the documents, once submitted to the Department, become public documents and hospitals are increasingly reluctant to reflect their real agendas within plans to which their competitors will have access. Thus the plan is often skewed to cover all bases and does not reflect the real intent of the institution. As a result, its value to State and regional planners, as well as to the hospital itself, has been historically severely limited.

The Department expects that the proposed new rules will be of substantially more value to both the State, the hospital, and, ultimately, the public. The proposal honors the original intent of the current rule (the improvement of the decision-making process within the institution) and, because the public nature of the document is eliminated, more accurate reporting of anticipated institution plans and certificate of need information is expected.

#### **Economic Impact**

It is often not possible to tell from the current hospital plans whether they were prepared by in-house staff or outside consultants. In any event the cost of producing the plan is not given. However, it is likely that relatively large sums of money are expended on the development of the plan. If the plan is not reflective of actual institutional intent for the reasons noted above, then this is not money well spent. It is not the intent of the Department to have a hospital spend money merely to fulfill a regulatory requirements. It is its intent to encourage plans which promote cost savings and which serve the real needs of institutional decision-makers.

Besides offering hospitals greater flexibility in developing plans which serve their needs, the proposal also relieves the Department of the responsibility for reviewing plans that historically have all too often not reflected the real agendas of hospitals. Thus, all concerned with this process will save time (and thus money) under the requirements of the new rule and the products are expected to result in reliable planning documents which reflect actual long-range institutional intent.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 8:31-16.1. The Preface to the subchapter is also proposed for repeal.

Full text of the proposed new rule follows.

#### **8:31-16.1 Hospital long-range strategic plans**

(a) All hospitals shall prepare and maintain within their administrative offices a current Board-approved five year plan. These plans shall not be deemed to be public records under N.J.S.A. 47:1A-1 et seq., except for the information provided in response to the requirements specified in (i) below.

(b) The plan will be developed under the direction of the governing body of the hospital and will be prepared by a committee deemed appropriate by the hospital. The group will include representatives of the community served by the hospital.

(c) The plan should consist of information and analysis deemed necessary by the hospital to plan realistically and accurately for its future development and role in the health care system. However, the plan must include:

1. Identification of actions requiring certificate of need or

Section 1122 approval of the Social Security Act (P.L. 92-603) for two years into the future;

2. Anticipated submission dates of such certificate of need requests;

3. Anticipated costs and sources of funding for such certificate of need requests.

(d) All hospitals shall file that portion of the plan identified in (c)1 through 3 above with the Department of Health by July 1 of each year. Such information shall not be deemed to be public records under N.J.S.A. 10:4-1 et seq. The Department is prohibited from making public with institutional identifiers any information obtained under this section, except as provided in (f) below.

(e) Failure to include a given certificate of need request within the hospital's plan or within the certificate of need forecast filed with the Department in response to the requirements set forth in (d) above can not constitute the sole criterion for denying a certificate of need application.

(f) The Department and the local health systems agencies may request hospitals to submit information from their current Board approved plans to support specific certificate of need requests. Any information obtained by the Department and/or the health systems agencies as a result of such requests may be made public only at the time or subsequent to the Department's acceptance of the certificate of need applications for processing.

(g) The Department reserves the right at any time to require any licensed hospital subject to the provisions of this section to submit to it copies of its current Board approved plan for purposes of insuring compliance to this rule and with the covenants so specified in (a) and (d) that these plans shall not be deemed to be public records under N.J.S.A. 10:4-1 et seq.

(h) The provisions of N.J.A.C. 8:33-2.2 concerning long-range plans will no longer apply to facilities submitting applications for certificate of need.

(i) All hospitals shall report under separate cover to the Department of Health and Health Systems Agency in its area on July 1 of each year the following hospital-specific data, which shall be considered public information:

1. Patient origin studies by major service;
2. Description of the health professional staff;
3. Utilization patterns by service;
4. Medically underserved populations.

**(a)****FACILITIES RATE SETTING****Standard Hospital Accounting and Rate Evaluation (SHARE) Rate Review Guidelines; Capital costs****Proposed Amendments: N.J.A.C. 8:31A-7.4, 7.5 and 7.14**

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

Proposal Number: PRN 1985-730.

Submit comments by February 20, 1986 to:  
Charles A. Butacci, Director  
Facilities Rate Setting  
New Jersey Department of Health  
CN 360  
Trenton, NJ 08625

The agency proposal follows:

**Summary**

The purpose of the proposed amendments is to comply with Section 2314 of the Deficit Reduction Act (DEFRA) of 1984 which amends the Federal requirements regarding reimbursement under Medicare and Medicaid for capital related costs. The Medicaid revision which adds section 1902(a)(13)(B) to the act specifies that a State must provide assurance satisfactory to the Secretary of Health and Human Services that the payment methodology utilized by the State for payments to hospitals, skilled nursing facilities and intermediate care facilities can reasonably be expected not to increase such payments, solely as a result of a change of ownership, in excess of the increase which would result from the application of the Medicare requirements at Section 1861(V)(1)(o) of the act.

**Social Impact**

The proposed amendments provide an assurance that payment methodology used to establish Medicaid payments to Specialized and Rehabilitation hospitals under the SHARE system is reasonably expected not to result in an increase in payment based on a change in ownership that occurs on or after July 18, 1984 in excess of the increase which would result from application of Section 1861(V)(1)(o) of the Social Security Act. This amendment is beneficial to the consumer and the payer (Medicaid) as a cost containment measure which will also assure the security of the system.

**Economic Impact**

The proposed amendments impact Specialized and Rehabilitation Hospitals upon transfer of ownership and prevent excessive property cost reimbursement. This ensures that SHARE per diem rates for Medicaid patients will not be higher for capital related costs as a result of the transfer of ownership.

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

8:31A-7.4 Methodology for calculating Global Rates

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

2. The adjusted approved Global Rate will be calculated by adjusting the prior year's Global Rate in existence on December 1 by the following factors:

- i.-ii. (No change.)
- iii. Difference between the approved Global Rate and the projected reasonable costs for:
  - (1) Interest (in accordance with N.J.A.C. 8:31A-7.5(b)15.)
  - (2) Non-department depreciation and lease (in accordance with N.J.A.C. 8:31A-7.5(b)15.)
  - (3)-(4) (No change.)
  - iv.-v. (No change.)
  - 3.-7. (No change.)
  - (b) (No change.)

8:31A-7.5 Methodology for Alternate Rates

- (a) (No change.)
- (b) A proposed Alternate Rate will be developed from the following:
  - 1.-14. (No change.)

**15. Reimbursement for Medicaid patients for capital related costs (depreciation and interest) will be the lesser of the amounts determined from the asset value prior to a change in ownership or the asset value of the new owner on or after July 18, 1984. Costs (including legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies) attributable to the negotiation or settlement of the sale or the purchase of a capital asset are not reimbursable if the asset(s) has previously been reimbursed by Medicaid in accordance with the Rate Review regulations.**

8:31A-7.14 Retroactive adjustments

- (a) Since the Global Rate (or) the Alternate Rate will establish costs which are reasonable for establishing Reimbursement rates, the Final Payment Rate will be adjusted for the following items only:
  - 1.-3. (No change.)
  - 4. Items excluded from the economic factors as listed in N.J.A.C. 8:31A-7.9 and in accordance with N.J.A.C. 8:31A-7.5(b)15.
  - 5. (No change.)
  - (b) (No change.)

**(b)****HOSPITAL REIMBURSEMENT****Procedural and Methodological Regulations State Certified Utilization Review Organizations****Proposed Amendments: N.J.A.C. 8:31B-3.76 through 3.82**

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

Proposal Number: PRN 1985-732.

Submit comments by February 20, 1986 to:  
Faith Goldschmidt, Director Designate  
Reimbursement Systems, Development,  
Evaluation & Research  
New Jersey Department of Health  
CN 360  
Trenton, NJ 08625

The agency proposal follows:

#### Summary

The proposed amendments are intended to address inequities and difficulties that have evolved in the current system of utilization review. Public Law 1978, Chapter 83, is the framework for the prospective reimbursement system in New Jersey. It provides that reasonable payment may be made only for "appropriate and necessary" health care services of high quality required by each hospital's mix of patients. The prospective reimbursement system of payment by the case establishes reasonable rates for "typical" cases assigned to a correct Diagnosis Related Group (DRG) and remaining hospitalized for a period within an established number of days for the specific DRG. There is also a payment methodology for patients who are "atypical" because the hospitalization stay falls either below or above the established number of days for that DRG. These atypical patients are identified as outliers. The statutory obligation to review appropriateness and necessity is the responsibility of a qualified Utilization Review Organization (URO) having State certification as approved by the Department of Health. The URO may delegate the performance of the review to the individual hospital, provided certain criteria are met, while retaining the oversight and monitoring function.

The certified URO has the authority to direct the appropriate payer to deny payment to the hospital for unnecessary admissions and unnecessary days or services. The proposed amendments will extend the authority of the URO to deny payments retrospectively for typical and atypical cases within four months after the billing date, regardless of the delegated status of the hospital.

A performance evaluation for each State certified URO is accomplished each year by the Department of Health to ensure that the prescribed standards are met. The proposed amendments will expand the criteria used for the evaluation, along with imposing penalties on the UROs for non-compliance with notification requirements. It is the intent of the Department that specific performance evaluation criteria will be established in consultation with the UROs, payers, providers and interested parties to ensure implementation prior to the end of 1986.

In order to ensure that Utilization Review Organizations remain unbiased, the options for payer based organizations have been removed.

The Department emphasizes that the existing state utilization review regulations contain language in N.J.A.C. 8:31B-3.76(d) as follows: "Nothing in the regulations shall be construed to supersede or conflict with any part of Title XI B of the Social Security Act . . . or regulations adopted thereunder . . ." The inclusion of this subsection allows Medicare and Medicaid to follow the federal Title XI B guidelines (utilization review guidelines) even though all other payers are mandated to follow New Jersey's utilization review regulations.

#### Social Impact

The proposed amendments, allowing post-billing denials, will place a greater demand on hospital administration to guard against unnecessary admissions and procedures. As a result, greater emphasis can be expected to be placed on physicians to ensure that all services are medically necessary and appropriate. Consumers will have additional protection to avoid unnecessary hospitalization and procedures because UROs can impose post-billing denials.

The proposed amendments state specific criteria to be used by the URO for non-delegation of the hospital's utilization review system. This will result in uniform criteria being applied and standardization throughout the State. This should effect only a minimal number of hospitals, since the URO plans are presently quite similar in terms of delegation status.

The proposed changes in the annual State certified URO performance evaluation for qualification by the Department of Health will be of assistance to both parties as a standard process. This procedure will standardize the documentation required by the State from the UROs. This will enable the Department to more effectively analyze changing patterns in the health care delivery system and respond to institutional changes.

The payer selection procedure regarding State certified Utilization Review Organizations will allow those organizations to function as truly independent entities, regulated and monitored by the Department of Health. The potential for abuse that exists in any independent structure will be minimized by stricter reporting requirements and penalties for non-compliance.

#### Economic Impact

Post-billing denial of payments to the hospital within four months after billing may cause some loss of revenue, minimally diminish cash flow and create some billing problems. The more effective a hospital is in controlling unnecessary admissions and unnecessary outlier days, the less the negative impact. The increased efficiency should result in lower costs to payers and consumers. Hospitals will be at risk for four months after the billing date and must strive to improve their internal utilization review process because the atypical cases (outliers) present the greatest threat for financial loss.

The financial impact resulting from the implementation of the proposed uniform criteria for non-delegation of a hospital's review activities may result in the loss of utilization review monies to the hospital. The UROs now have similar policies to the proposed amendment; therefore, the impact should be minimal.

The specific requirements for performance evaluation regardless of the effectiveness of the URO activity in hospitals are included in the proposed amendments; therefore, the UROs will be emphasizing increased hospital management efficiency which should result in lower costs to the consumer.

There is currently only one URO for a specific geographical area, with minor exceptions; therefore, the proposed amendment allowing statewide activity for State certified UROs will have minimal impact on the hospital, consumer and the payer while encouraging a competitive environment.

The imposition of penalties on UROs for non-compliance may cause some financial liability if they are inefficient in their communication procedures. It may lessen payer liability by helping to ensure accurate payment of bills relative to utilization determination.

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

8:31B-3.76 Necessity and appropriateness of health care services

(a) L.78, c.83 provides that reasonable payment may be made only for "appropriate and necessary health care services of high quality required by (each) hospital's mix of patients." In order to discharge this statutory obligation, two systems are required: [T]he reimbursement system, payment by the

case, establishes reasonable rates for "typical" cases; patients who are correctly assigned to a Diagnosis Related Group (DRG). However, in order to apply the "necessary and appropriate" standard to "atypical" cases, as well as those assigned to DRGs, a system to review appropriateness and necessity is required. Such activity will be conducted by a **State certified** utilization review organization.

(b) This section sets forth minimum qualification criteria for **State certified** utilization review organizations, defines the appropriate uses for the findings of such organizations, prescribes the qualification procedure, and establishes a method for financing those organizations which do qualify. The criteria are designed to delineate the respective roles of payment and review so as to capitalize on the strengths of each. In this way, the systems may complement one another to the greatest degree, thereby promoting "effectiveness and efficiency of the health care system as a whole." L.78, c.83, Section 11C.

(c) Once designated by the Department as a [qualified] **State certified** Utilization Review Organization, the URO shall have access to only those hospital patient records for which it has direct review responsibility. The URO shall be required to maintain the confidentiality of the hospital and patient records. Access to this data will be allowed for the purpose of fulfilling review responsibility under these regulations.

(d) (No change.)

(e) Reporting: Minimum standards for uniform reporting by the **State certified** Utilization Review Organization utilizing the UB-PS data for those patients for which it has direct review responsibility shall be determined by the Department. Format and reporting timeframe will be [reviewed] **established by the Department in consultation with the Review Organizations including requirements to notify the Department, hospitals and payers when appropriate.**

#### 8:31B-3.77 Definitions

...  
 "Outliers" means patients who display atypical characteristics relative to patients assigned to DRGs [or have been transferred out from a New Jersey hospital to another.] (See N.J.A.C. 8:31B-5.2) [Outliers have lengths of stay either above or below the LOS trim points established for any given DRG.]

...  
 "Preadmission certification" means a form of health care review which occurs prior to a patient's admission to a hospital and consists of a determination of the medical necessity and appropriateness of the patient's elective admission [to a hospital level of care].

...  
 "Retrospective denial" means the post billing denial of payment, certified by the qualified Utilization Review Organization, for inappropriate admissions, days, and/or services.

...  
 "Skilled Nursing Facility (SNF)" means an institution which is primarily engaged in providing skilled nursing care and related services for inpatients who require medical supervision of their care [of] or rehabilitation services on a daily basis.

"State Certified Utilization Review Organization" means any Utilization Review Organization not affiliated with or the subsidiary of a payer, hospital, or hospital association who has submitted review plans to the Commissioner and has received State certification for statewide medical review activity. The URO is comprised of physicians who review the health care

provided to patients in hospitals. These physicians may be assisted by other health care professionals.

["Utilization Review Organization (URO)" means a group of physicians within a designated geographical area who review the health care provided to patients in area hospitals. Physicians may be assisted by other health care professionals.]

["Utilization review plan" means a description of utilization review activities to be prepared by the URO and approved by DOH. The plan shall describe methodology for determining hospital delegated status; the criteria and description of the methodology review; the criteria and description of the methodology to review the performance of delegated and non-delegated review and focus program.]

#### 8:31B-3.78 Criteria for qualification

(a) Applicability: Each inpatient in each hospital selected by Commissioner pursuant to L.78 c.83 sections 5b must be subject to review by a [qualified] **State certified** utilization review organization concerning the necessity and appropriateness of inpatient admissions and continuing stay. **At the direction of the Commissioner, review requirements may be extended to include, but not be limited to, patient services, for example, emergency, clinic, Mobile Intensive Care Unit (M.I.C.U.), rehabilitation, Magnetic Resonance Imaging (MDI), free standing patient care services and regionalized services.** The minimum set of activities required to so qualify are set forth below:

1. All cases: With respect to all cases, a [qualifying] **State certified** utilization review organization:

i.-viii. (No change.)

ix. Shall render a decision in any appeal within [30] **60** working days from the date of receipt of the appeal by the qualified Utilization Review Organization (URO). The appellant, or his insurer, shall not be liable for payment to the hospital until a decision on the appeal has been made and communicated to the parties affected. A qualified URO shall not be deemed in receipt of an appeal if the hospital involved is more than one month delinquent in payment of the Commission approved rate to be paid to the URO by the hospital. Any amount not paid to the hospital because of its delinquency in payment to the URO, and the failure to hear an appeal shall not be recoverable by the hospital through bad debt of charity write-offs, but shall become a loss of revenue to the hospital.

[(1) Effective January 1, 1984, discharges subsequent to that date and all DRG Patient Appeal requests must be submitted to the Department of Health for review within one year after discharge date. Any requests submitted thereafter will not be processed for appeal.]

2.-3. (No change.)

#### 8:31B-3.79 Use of findings

(a) Typical cases:

1. (No change.)

2. **Retrospective Denials of Payment: The State certified Utilization Review Organization shall identify retrospective denials (admissions, days, services) within four months after billing date and advise the appropriate payers so that payment may be denied regardless of hospital delegation status. If the claim has been paid the payer(s) will be entitled to a refund. The State certified Utilization Review Organization is responsible for notifying hospital, patient, payer and Department of Health of their review determination.**

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

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

(b) Atypical cases:

1. (No change.)

**2. Retrospective Denial of Payment:** The State certified Utilization Review Organization shall identify retrospective denials (admissions, days, services) within four months after billing date and advise the appropriate payers so that payment may be denied regardless of hospital delegation status. If the claim has been paid the payer(s) will be entitled to a refund. The State certified Utilization Review Organization is responsible for notifying hospital, patient, payer and Department of Health of their review determination.

[2.]3. Adjustment of Payment: Outliers

i.-ii. (No change.)

iii. (c) All cases: The [qualifying] State certified utilization review organization shall report all denials and adjustments to the hospital, the appropriate physician, and to the extent that it is identifiable, the payer [in a timely manner] within 60 days after a decision is rendered. Failure to comply with this provision will result in financial penalties to the URO in the amount of the approved URO rate per case as determined by the Commissioner. Continued non-compliance may result in de-certification. All denials and adjustments shall be compiled by diagnosis related group and by hospital, and reported to both the Hospital Rate Setting Commission and the Department by May 1 for the previous year. [on, at least, an annual basis.] However, except for adjustments made in accordance with N.J.A.C. 8:31B-3.71 through 3.86 above, any adjustment in a hospital's budget, or in a standard for a Diagnosis Related Group or set of Diagnosis Related Groups shall be made only by the Commission, upon recommendation by the Commissioner, pursuant to N.J.A.C. 8:31B-3.58, 3.64 or 3.65; or by the Commissioner through a change in the rate period or Schedules or Rates, approved by the Health Care Administration Board. (See N.J.A.C. 8:31B-3.87)

8:31B-3.80 Qualification procedure

(a) When deemed necessary by the Commissioner, the Department will provide public notice that applications are being accepted from organizations submitting review plans for statewide certification setting reasonable time frames for submission.

[(a)](b) Submission of Plans:

1. Any [payor, Professional Standards Review Organization] Utilization Review Organization [or other qualified entity] providing it is not affiliated with or the subsidiary of a payer, hospital or hospital association may submit to the Commissioner, a plan reasonable designed to meet the criteria set forth in N.J.A.C. 8:31B-3.78.

2. A plan [may] must be designed to cover all patients to be admitted by a hospital or group of hospitals, [or an appropriate portion thereof,] within the State and where appropriate, on a hospital-specific basis, may provide for a form of delegated review in which the hospital performs certain review functions, [with] while maintaining monitoring and oversight by the [qualifying] State certified Utilization Review Organization. Each plan shall be designed to effectively meet the criteria set forth in N.J.A.C. 8:31B-3.78. [in the most efficient manner and]. It shall include [a payment proposal.] the proposed costs for conducting those activities.

i. (No change.)

ii. Each plan which includes provision for delegated reviews shall include a description of how the performance of review at delegated hospitals will be monitored, and of the procedures for awarding and suspending delegation. This description shall include, but not be limited to:

(1) A provision that review procedures be conducted on a quarterly basis;

(2) A provision that a review be performed on a two and one-

half percent sample of all discharges representative of all classes of payers;

(3) A provision that when a disagreement rate of 10 percent is found in medically unnecessary admissions and/or 10 percent of total denied days, that the hospital be notified and a review scheduled for 90 days from the date of notification. If the subsequent review reveals that the disagreement rate continues in excess of 10 percent medically unnecessary admissions and/or 10 percent denied days, the URO will non-delegate the particular function and review the coordinator and/or physician advisor, for a period of one year. At the conclusion of one year of non-delegation, the hospital may petition the URO to regain delegated status. Delegated status will be granted upon evidence of less than 10 percent medically unnecessary admissions and/or less than 10 percent total denied days for two consecutive quarters.

iii. (No change.)

[(b)](c) Department review and recommendation:

1. (No change.)

2. [Special consideration shall be given to organizations which submit joint plans providing for coverage of wide geographical areas] In order to promote effectiveness and efficiency with respect to the health care system, the Department shall [seek to] avoid the undue proliferation of plans. [Where appropriate, the Department may approve more than one plan for a given hospital or region; however, it shall approve more than two plans for a given hospital only under extraordinary circumstances. In considering plans for certification, the Department shall give consideration to the views of hospitals in the areas involved.]

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

8:31B-3.81 Payment for utilization review services

(a) Proposal: The Commissioner shall propose to the Commission reasonable adjustments to the Schedule of Rates for all hospitals to which this subchapter is applicable, together with such terms and conditions as may promote efficiency and effectiveness with respect to the health care delivery system, taken as a whole. Consistent with the criteria set forth in N.J.A.C. 8:31B-3.78, such proposal[, which] shall be based on the Department's review, analysis, and findings as to the reasonableness of cost proposals under N.J.A.C. 8:31B-3.71 through 3.86 [shall be broken into the components defined in N.J.A.C. 8:31B-3.71 through 3.86] and shall further the necessity and appropriateness of health care services as specified in N.J.A.C. 8:31B-3.76.

(b) Commission Approval: Following a hearing pursuant to N.J.A.C. 8:31B-3.78 the Commission shall approve or modify, and direct an appropriate adjustment to the Schedule of Rates to which this provision applies. [In accordance with N.J.A.C. 8:31B-3.87(a)3 each affected hospital shall implement the approved adjustment consistent with the payor selection procedure set forth in (c) below.]

(c) Payer selection procedure: Payers are able to contract with any or all State certified UROs. The utilization review rate will be subject to approval of the Hospital Rate Setting Commission.

[1. Within 30 days of approval by the Commissioner of any plan in accordance with N.J.A.C. 8:31B-3.80 any payor may:

i. Subject to approval according to N.J.A.C. 8:31B-3.80, apply its own qualified utilization review organization and receive a full discount from the adjustment approved pursuant to N.J.A.C. 8:31B-3.81(b);]

ii. Contract] 1. A payer may contract directly with a [qualified] State certified utilization review organization and

receive a [full] discount from the adjustment approved pursuant to N.J.A.C. 8:31B-3.81(b);

[iii. Where delegated review has been approved, contract directly with the qualifying utilization review organization to monitor and assist delegated review conducted by hospitals, and receive an appropriate discount from the overhead and monitoring cost components of the adjustment approved pursuant to N.J.A.C. 8:31B-3.81(b); or]

[iv.]2. Whenever a payer fails to select [s](i), (ii) or (iii) above, it shall be deemed to have elected c(ii) or c(iii) above whichever is appropriate, with] a **State certified URO**, the **review will be the responsibility of the [qualified] State certified utilization review organization** responsible for reviewing the greatest proportion of **non-federal** cases in the hospital involved. [In the case of c(iii) above,] The payer shall pay the full utilization review **rate** [adjustment] to the hospital, which shall be responsible for remitting the appropriate amount to the [qualified] **State certified Utilization Review Organization** on a timely basis.

[2. Payers must notify the Department, hospitals, and all qualified utilization review organizations, or their election under (c)1 above, in writing. They may change their elections at any time subject to 60 days written notice.

3. Any payor with total utilization among its subscribers or beneficiaries of fewer than 500 days per 1,000 enrollees in the prior calendar year may apply to the Commission for a full discount from the adjustment without exercising options (c)1i, ii, or iii above or being subject to (c)1iv above.]

(d) **The DRG reimbursement per case includes the approved Utilization Review Rate; therefore, it is the responsibility of the hospital to remit the appropriate amount to the State certified Utilization Review Organization on a timely basis.**

8:31B-3.82 Performance standards for maintenance of qualification

(a) Within one year after certification, and each subsequent year thereafter, each [qualified] **State certified Utilization Review Organization** shall submit, in a form and manner to be prescribed by the Commissioner, such information and data as may be required to adequately assess the performance of such organizations in accordance with N.J.A.C. 8:31B-3.78 by **May 1**. [Qualification] **Certification** may be terminated on a finding of inadequate performance. [(See N.J.A.C. 8:31B-3.79(c))] **The Department of Health may request the following:**

1. **Additions to, or resubmission of, the original plan whenever major changes to N.J.A.C. 8:31B-3 render proposals inadequate to meet certification requirements;**

2. **Criteria for a standardized performance evaluation, established in consultation with the UROs, payers, providers and other interested parties, will include but not be limited to the following areas:**

i. **Cost effectiveness evaluation;**  
ii. **Changes in case-mix management;**  
iii. **Other activities which constitute a health care system benefit as a result of URO activity.**

3. **Report on communication with payers:**

i. **Documentation on URO data submitted in accordance with N.J.A.C. 8:31B-3.78 and 3.79.**

4. **The Department of Health may request payer and hospital documentation on URO compliance with N.J.A.C. 8:31B-3.78 and 3.79.**

## HUMAN SERVICES

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

(a)

### DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

#### Manual for Dental Services Procedure Codes and Descriptions

#### Proposed Readoption: N.J.A.C. 10:56-3

Authority: N.J.S.A. 30:4D-6b(3)(4), 7, 7a, 7b.  
Proposal Number: PRN 1985-733.

Submit comments by February 20, 1986 to:  
Henry W. Hardy, Esq.  
Administrative Practice Officer  
Division of Medical Assistance  
and Health Services  
CN-712  
Trenton, NJ 08625

The agency proposal follows:

#### Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:56-3, entitled Procedure Codes and Descriptions, expires on May 7, 1986. This proposal is designed to readopt this subchapter, which describes the procedure codes, narrative descriptions, and corresponding fee schedules for providers of dental services that participate in the New Jersey Medicaid Program.

The dental providers that use these procedure codes include hospital outpatient departments, independent clinics, and private dental practitioners.

The subchapter is divided into sections describing treatment procedures such as examination, radiography, prophylaxis, restorations, endodontics, periodontics, and prosthodontics. The applicable procedure codes, descriptions and fee schedules for specialist and non-specialist practitioners are contained in these sections. Providers must use the appropriate procedure code(s) when submitting a claim for service on behalf of a New Jersey Medicaid patient.

An administrative review has been conducted, and a determination made that the rule should be continued because it is necessary, adequate, reasonable, efficient, understandable and responsive for the purpose for which it was promulgated. Providers of dental services need to be informed of the services covered by the New Jersey Medicaid Program and the proper code to enter on the claim for in order to be reimbursed.

The rule has been amended to allow all dentists (that participate in the New Jersey Medicaid Program) to provide orthodontic treatment of Medicaid patients (R.1983 d.584 effective January 1, 1984).

Recently there was a comprehensive revision which revised procedure codes and increased fee schedules for selected procedures (R.1984 d.270, effective June 15, 1984). There is no change being made upon readoption.

**Social Impact**

The rule impacts on all Medicaid patients who need dental services and treatment. Providers affected by this rule are dentists, some hospitals that provide outpatient dental services, and independent dental clinics.

The rule should be continued because Medicaid patients will continue to need dental services and providers need to be reimbursed for rendering them.

**Economic Impact**

The Division of Medical Assistance and Health Services spent approximately 21 million dollars (federal-state share combined) in FY 1984 and about the same amount in FY 1985.

Providers of dental services are reimbursed in accordance with the fee schedules contained in the text of the rule. There are two schedules; one for specialists, the other for non-specialists.

There is no cost to the Medicaid patient for dental services and treatment.

Full text of the proposed re adoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:56-3.

**(a)**

**DIVISION OF YOUTH AND FAMILY SERVICES**

**Child Care  
Manual of Standards for Child Care Centers**

**Proposed Amendments: N.J.A.C. 10:122-4.4**

Authority: N.J.S.A. 30:5B-1 to 15.

Proposal Number: PRN 1985-743.

Submit comments by February 20, 1986 to:

J. Patrick Byrne, Chief  
Bureau of Licensing  
Division of Youth and Family Services  
One South Montgomery Street  
CN 717  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The State Child Care Center Licensing Act (N.J.S.A. 30:5B-1 to 15) requires the licensing of publicly and privately operated child care centers serving six or more children below six years of age. Currently, there are 1,750 child care centers licensed by the New Jersey Division of Youth and Family Services' Bureau of Licensing. Centers must comply with licensing regulations covering such areas as physical facility/life-safety; program and activities; administration/reporting/recordkeeping; transportation; and staffing and staff qualifications.

The staff qualification regulations that currently apply to centers that serve preschool-age children (children between 2 1/2 and 6 years of age) were revised and adopted in 1982 in a collaborative effort with the State's child care community. These regulations required for the first time that: 1) centers

serving from 31 to 60 preschool-age children have a full-time head teacher possessing both specified academic credentials and preschool teaching experience; and 2) centers serving from 16 to 30 preschool children have a qualified consulting (less than full-time) head teacher and a full-time group teacher who meets certain college course and preschool teaching experience requirements.

However, the revised regulations also included a "grandfather" option, permitting centers serving from 16 to 60 preschool-age children that had been utilizing a consulting head teacher as of January 1, 1982 to continue to do so on an interim basis without having to meet the new full-time group teacher and/or head teacher/requirements, provided that the center also had a full-time staff member who possessed either: at least two years of preschool teaching experience and 6 college credits in Early Childhood Education/Child Development; or at least three years of pre-school teaching experience. This option, or exception, could be exercised only until July 1, 1985, at which point centers serving from 16 to 30 children would have to meet the requirements of a full-time group teacher, while centers serving from 31 to 60 children would have to meet the requirements of a full-time head teacher.

This exception was adopted in 1982 because it had been determined that, while the vast majority of licensed child care centers could meet the new, stronger requirements, some 123 centers in the State would have suffered an economic hardship and staff disruptions if they were obligated to come into immediate compliance with the full-time group teacher/head teacher requirements. The exception allowed them to meet these staff qualification requirements on a gradual basis, thus avoiding or minimizing any undue disruptions or hardships to these programs.

The strategy worked well: of the 123 centers that qualified for the "grandfather" option, 105 had complied fully with the full-time group teacher/head teacher requirements as of July 1, 1985. Of the remaining 18 centers, some 15 centers have staff members who are now either completing necessary college courses or are waiting to take the National Teachers Examination (NTE) and will come into compliance by the time they renew their licenses to operate between now and January 1, 1988. As such, the Division is proposing here to extend the exception clause from its previous expiration of July 1, 1985 to January 1, 1988, permitting these centers the additional time needed to achieve compliance with the full-time group teacher/head teacher requirements.

However, there are three centers serving from 16 to 30 children that will be unable to meet the requirement of a full-time group teacher. In two of these centers, the full-time staff member meeting the staff qualification requirements under the "grandfather" option has also been the owner/operator of that center for many years and would have to close or sell the center if forced to comply with the full-time group teacher requirements. The third center utilizes a staff member who, while not meeting the group teacher requirements, has over 20 years of pre-school teaching experience and has been at this particular center for the past 14 years. This person would have to be terminated and replaced in order for the center to meet the group teacher requirements, resulting in undue personal hardship and disruptions to the center's program and operations.

In view of this, and since the Bureau of Licensing has found these centers to be operating in compliance with the regulations, the Division is also proposing to expand the exception clause, but in a limited way. Specifically, under this proposal,

only centers with day programs serving from 16 to 30 children that had been utilizing a consulting head teacher as of January 1, 1982 and a full-time staff member from January 1, 1983 to July 1, 1985 may continue to do so beyond January 1, 1988, provided that the full-time staff member has 20 or more years of preschool teaching experience. It should be emphasized also that once the full-time staff member is no longer employed at that center as a result of his/her resignation, retirement or termination from employment, the center would then be obligated to meet the requirement of a qualified full-time group teacher.

#### Social Impact

The proposal has no significant social impact, since it affects only 18 of some 1,750 licensed child care centers in the State. However, it has a positive social impact on those families served by these centers, since it permits them to continue operating without undue disruptions in service or closure.

#### Economic Impact

Similarly, since the exception pertains only to a small number of centers, there is no significant economic impact. However, the proposal has a positive economic impact on these centers, since it permits them to continue operating without disruptions in services or without causing hardship to existing staff.

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

#### 10:122-4.4 Exceptions

(a) Centers with day [drop-in and/or night] programs serving from 16 to 30 children that were utilizing a consulting head teacher as of January 1, 1982 shall:

1. Be permitted to continue utilizing a consulting head teacher and a full-time staff member who possesses:

i. Two years of teaching experience in a group program for children under six years of age and six college credits in early childhood education and/or child development. (The college credits should be acquired in teaching methods courses.); or

ii. Three years of teaching experience in a group program for children under six years of age. (The staff member should be enrolled in courses leading to six college credits in early childhood education and/or child development and the college credits should be acquired in teaching methods courses.); and

2. Be permitted to utilize a consulting head teacher and a full-time staff member as specified in (a)1 above until [July 1, 1985] **January 1, 1988**, at which time the center shall utilize a full-time head teacher or a consulting head teacher and a full-time group teacher.

(b) **Centers with day programs serving from 16 to 30 children that were:**

1. **utilizing a consulting head teacher as of January 1, 1982 and a full-time staff member from January 1, 1983 to July 1, 1985; and**

2. **utilizing a full-time staff member with twenty (20) years of teaching experience as of July 1, 1985 in a group program for children under six years of age; shall be permitted after January 1, 1988 to continue utilizing the consulting head teacher and the full-time staff member who was employed at the center as of 1/1/83, until the full-time staff member is no longer employed at the center due to his/her resignation, retirement, or termination from employment at which time the center shall ensure that the staff possesses the qualifications as specified in N.J.A.C. 10:122-4.3(d)2.**

[(b)] (c) Centers with day [drop-in and/or night] programs serving from 31 to 60 children that were utilizing a consulting head teacher as of January 1, 1982 shall:

1. Be permitted to continue utilizing a consulting head teacher and a full-time group teacher or a consulting head teacher and a full-time staff member who possesses the staff qualifications requirements as specified in (a)1 above, until [July 1, 1985] **January 1, 1988**, at which time the center shall utilize a full-time head teacher.

(d) **Any center qualifying for this exception that achieves compliance with the full-time group teacher/head teacher requirements, as appropriate, after July 1, 1985, shall continue to meet those requirements as specified in N.J.A.C. 10:122-4.3(d)2. and 3.**

## LABOR/HEALTH

(a)

### DIVISION OF WORKPLACE STANDARDS OCCUPATIONAL AND ENVIRONMENTAL HEALTH SERVICES

#### Asbestos Licenses and Permits

#### Jointly Proposed Amendments: N.J.A.C.

**12:120-1.1, 4.2, 4.4, 4.8, 5.2, 5.4, 5.7, 6.1, 6.3 and 6.11; 8:60-1.1, 4.2, 4.4, 4.8, 5.2, 5.4, 5.7, 6.1, 6.3 and 6.11**

Authorized By: Charles Serraino, Commissioner,  
Department of Labor, and J. Richard Goldstein,  
M.D., Commissioner, Department of Health.

Authority: N.J.S.A. 34:5A-39.

Proposal Number: PRN 1985-729.

Submit comments by February 20, 1986 to:

William J. Clark, Director  
Division of Workplace Standards  
New Jersey Department of Labor  
CN 054  
Trenton, New Jersey 08625-0054

With a copy to:

Kenneth D. Rosenman, M.D., Director  
Occupational and Environmental Health Services  
New Jersey Department of Health  
CN 360  
Trenton, New Jersey 08625-0360

#### Summary

The Department of Labor and Health jointly propose that N.J.A.C. 12:120 and 8:60, Asbestos Licenses and Permits, be amended in order to extend the validity of a license of an employer and a permit for an employee from one year to two years. The license and permit application fees will be paid on a biennial basis. Also, the renewal of a permit for an experienced asbestos worker will now conform to the statute. Lastly, there are minor editorial improvements to the text.

These rules are jointly adopted by the Department of Labor

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**LABOR/HEALTH**

and the Department of Health. The Department of Labor cites these rules as N.J.A.C. 12:120 and the Department of Health cites these rules as N.J.A.C. 8:60.

**Social Impact**

It is not expected that the proposed amendments will result in any social impact that is different from the initial impact made by the adoption of N.J.A.C. 8:60 and N.J.A.C. 12:120 in August 1985. The doubling of the licensing periods will be more convenient for employers and their employees, since attention to the matter of renewing licenses will only be necessary every other year. The same effect will apply to the State government, thereby reducing governmental administrative expenses.

**Economic Impact**

The extension of the validity of employers' licenses and employees' permits from one year each to two will result in economies to the State and will lessen application time for applicant employers and employees.

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

12:120-1.1 and 8:60-1.1 Title and citation

[This chapter shall be known and may be cited as N.J.A.C. 12:120, Asbestos Licenses and Permits.]

(a) **This chapter, as a Department of Labor rule, shall be known and may be cited as N.J.A.C. 12:120, Asbestos Licenses and Permits.**

(b) **This chapter, as a Department of Health rule, shall be known as and may be cited as N.J.A.C. 8:60, Asbestos Licenses and Permits.**

(c) **These rules are a joint adoption of the Department of Labor and the Department of Health.**

12:120-4.2 and 8:60-4.2 Application for license

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

(j) The application fee for a **biennial** license shall be **[\$100.00] \$200.00.**

(k)-(m) (No change.)

12:120-4.4 and 8:60-4.4 Granting of license

(a) (No change.)

(b) The license for an employer shall:

1.-4. (No change.)

5. **Be valid for [one year] two years** from date of issuance; and

6. (No change.)

(c) (No change.)

12:120-4.8 and 8:60-4.8 Renewal of license

(a) When applying for the [annual] **biennial** renewal of a license, it shall be necessary to submit a fee of **[\$100] \$200.00.**

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

(e) A duplicate, altered, defaced, mutilated or lost permit shall be replaced at a cost of **[\$5.00] \$10.00** only after review by the commissioner. Photostats, photographs or reproduction of a license shall have no status, and shall not be recognized.

12:120-5.2 and 8:60-5.2 Application for permit

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

(h) The applicable fee for a **biennial** permit shall be **[\$10.00] \$20.00.**

(i) (No change.)

(j) **The applicant shall provide two recent, recognizable, identical, passport photographs with the applicant's face being not less than three-quarters of an inch wide. The photograph shall be cropped to not more than three inches by three inches. One photograph shall be attached to the space provided on the application. The second photograph shall be laminated on the permit, if a permit is issued by the Department of Labor.**

[(j)](k) The fee for a permit shall be a check or money order made payable to the order of the Commissioner of Labor.

[(k)](l) No liability shall be assumed by the Division of Workplace Standards for loss in the transmission of the fee.

12:120-5.4 and 8:60-5.4 Granting a permit

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

(d) The permit shall be valid for [one year] **two years** from the date of issuance.

12:120-5.7 and 8:60-5.7 Renewal of permit

(a) When applying for the [annual] **biennial** renewal of a permit, the permittee [, except as otherwise provided for by (b) below,] shall:

1. Enclose the fee of **[\$10.00] \$20.00;** and

2. (No change.)

[(b)] When applying for the first renewal of a permit, a permittee who is an experienced asbestos worker shall:

1. Enclose the fee of **\$10.00;** and

2. Provide evidence of successful completion of the training course and examination thereon described in N.J.A.C. 12:150-5.4(a)1 and 8:60-5.4(a)1.]

[(c)](b) (No change in text.)

[(d)](c) An application for a renewal of an expired permit shall be approved provided:

1. A fee of **[\$10.00] \$20.00** is enclosed for [one year] **two years;**

2.-3. (No change.)

[(e)](d) (No change.)

[(f)](e) An altered, defaced, mutilated or lost permit shall be replaced at a cost of **[\$10.00] \$20.00,** only after review by the commissioner. Photostats, photographs or reproductions of a permit shall have no status, and shall not be recognized.

12:120-6.1 and 8:60-6.1 Scope of subchapter

This subchapter shall apply to the procedures and qualifications required to obtain certification from the Commissioner of Health for training courses on asbestos abatement as provided for in the [New Jersey Asbestos Application and Remediation Act (P.L. 1984, c.173.)] **Act.**

12:120-6.3 and 8:60-6.3 Application for certification of training courses

(a) An applicant for certification of an asbestos abatement training course shall submit the following information to the Department of Health:

1.-7. (No change.)

8. A list of the types, brand names and quantities of respirators to be used to demonstrate [and] fit test or flow test [respirators];

9.-13. (No change.)

12:120-6.11 and 8:60-6.11 Hearings for applicants [whose application for certification has been denied or whose certification has been revoked or suspended] **when certification has been denied, revoked or suspended.**

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

## LAW AND PUBLIC SAFETY

### (a)

#### DIVISION OF MOTOR VEHICLES

##### Enforcement Service Standards and Procedures to be Used by Licensed Reinspection Centers

##### Proposed Amendment: N.J.A.C. 13:20-33.1

Authorized By: Robert S. Kline, Acting Director,  
Division of Motor Vehicles.  
Authority: N.J.S.A. 39:8-23, 39:8-26 and 39:8-27(b).  
Proposal Number: PRN 1985-741.

Submit comments by February 20, 1986 to:  
Robert S. Kline, Acting Director  
Division of Motor Vehicles  
25 So. Montgomery Street  
Trenton, New Jersey 08666

The agency proposal follows:

##### Summary

Reinspection centers, which have been designated as official initial motor vehicle inspection stations pursuant to N.J.S.A. 39:8-26, are authorized by law to charge a fee for each initial inspection performed. The director determines the fee which official inspection stations may charge for initial inspections. N.J.A.C. 13:20-33.1(r) presently provides that the fee for an initial inspection shall not exceed one-half of the reinspection center's hourly labor charge. The fee determination adopted by the director on November 7, 1983 does not distinguish between passenger automobiles and commercial motor vehicles. At that time trucks registered at a gross weight in excess of 6,000 pounds and truck tractors were required to be systematically inspected and maintained by owners and were exempted from the annual inspection conducted at State inspection stations. Subsequently, (January 1, 1984 for trucks registered at a gross weight of less than 10,000 pounds and July 1, 1985, for gasoline-fueled trucks registered at a gross weight of 10,000 pounds or more and truck tractors) trucks and truck tractors were required to be inspected at State inspection stations. The initial inspection of trucks and truck tractors is more time consuming than the initial inspection of passenger automobiles. The director has determined that the average time for said inspection is one hour. The director has determined, therefore, that the fee for an initial inspection of a commercial motor vehicle registered in excess of 6,000 pounds shall be the hourly labor charge of the reinspection center.

##### Social Impact

The proposed amendment implements the director's determination that reinspection centers may charge their hourly labor charge when performing an initial inspection of a commercial motor vehicle. The charge is limited to one hour of labor. This charge is more in line with the actual time required to perform the initial inspection. The half-hour charge for the initial inspection of passenger motor vehicles does not ade-

quately compensate reinspection centers for the initial inspection of commercial vehicles which because of their design and equipment are more complex than passenger vehicles.

##### Economic Impact

There is no economic impact on the State. There will be an economic impact on those persons who utilize reinspection centers for initial inspections of commercial motor vehicles. Those persons will be charged a fee equal to the reinspection centers hourly rate for one hour of labor. This fee will compensate the reinspection center for time actually spent in conducting an initial inspection of a commercial motor vehicle.

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

13:20-33.1 General provisions; Class I and II licensees

(a)-(q) (No change.)

(r) A fee which an authorized reinspection center may charge for an initial inspection of a motor vehicle other than a commercial motor vehicle registered in excess of 6,000 pounds shall not exceed one-half of the reinspection center's hourly labor charge. A fee which an authorized reinspection center may charge for an initial inspection of a commercial motor vehicle registered in excess of 6,000 pounds shall not exceed the reinspection center's hourly labor charge and shall be limited to a charge for one hour of labor. The maximum fee for an initial inspection shall be posted on a prominent place on the premises. A copy of the fee shall also be sent to the Licensing Section of the Vehicle Inspection Bureau.

(s)-(u) (No change.)

## TRANSPORTATION

The following proposal is authorized by Roger A. Bodman, Commissioner, Department of Transportation.

Submit comments by February 20, 1986 to:

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

### (b)

#### Restricted Parking and Stopping

Routes U.S. 9 in Atlantic County; 17 in Bergen County; U.S. 30 in Atlantic County; 47 in Gloucester County; 49 in Salem County; 72 in Ocean County and 73 in Camden County.

##### Proposed Amendments: N.J.A.C. 16:28A-1.7, 1.9, 1.21, 1.33, 1.34, 1.39 and 1.40

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139 and 39:4-199.

Proposal Number: PRN 1985-719.

The agency proposal follows:

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**TRANSPORTATION**

**Summary**

The proposed amendments will establish "no parking" bus stop zones along Route U.S. 9 in Absecon City, Atlantic County; 17 in Ramsey and Upper Saddle River Boroughs, Bergen County; U.S. 30 in Mullica Township, Atlantic County and 47 in Westville Borough, Gloucester County and "no parking" zones along Routes 49 in Pennsville Township, Salem County; 72 in Stafford Township, Ocean County and 73 in Berlin Township, Camden County for the safe and efficient flow of traffic, the safe on/off loading of passengers at established bus stops, the enhancement of safety and the well-being of the populace.

Based upon requests from the local officials the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no parking" bus stop zones along Routes U.S. 9, 17, U.S. 30 and 47 and "no parking" zones along Routes 49, 72 and 73 were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.7, 1.9, 1.21, 1.33, 1.34, 1.39 and 1.40 based upon the requests from local officials and the traffic investigations.

**Social Impact**

The proposed amendments will establish "no parking" bus stop zones along Routes U.S. 9 in Absecon City, Atlantic County; 17 in Ramsey and Upper Saddle River Boroughs, Bergen County; U.S. 30 in Mullica Township, Atlantic County and 47 in Westville Borough, Gloucester County and "no parking" zones along Routes 49 in Pennsville Township, Salem County; 72 in Stafford Township, Ocean County and 73 in Berlin Township, Camden County for the safe and efficient flow of traffic, the safe on/off loading of passengers at established bus stops, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department and local officials will incur direct and indirect costs for its work force for mileage, personnel and equipment requirements. The local officials will bear the costs for the installation of "no parking" bus stop zones signs and the Department, the costs for the installation of "no parking" zones sign. Motorists who violate the rules will be assessed the appropriate fine.

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

**16:28A-1.7 Route U.S. 9**

(a) (No change.)

(b) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1.-38. (No change.)

**39. Along the westerly (southbound) side in Absecon City, Atlantic County.**

**i. Near side bus stops:**

**(1) New Jersey Avenue—Beginning at the northerly curb line of New Jersey Avenue and extending 105 feet northerly therefrom.**

**(2) Pitney Road—Beginning at the northerly curb line of Pitney Road and extending 105 feet northerly therefrom.**

**16:28A-1.9 Route 17**

(a) (No change.)

(b) The certain parts of State highway Route 17 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1.-6. (No change.)

**7. Along the westerly (southbound) side in Ramsey Borough, Bergen County:**

**i. Near side bus stops:**

**(1) Entrance ramp from Franklin Turnpike to Route 17 southbound—Beginning at the northerly curb line of the Entrance Ramp from Franklin Turnpike to Route 17 southbound and extending 105 feet northerly therefrom.**

**(2) Nottingham Road—Beginning at the northerly curb line of Nottingham Road and extending 120 feet northerly therefrom.**

**8. Along the westerly (southbound) side in Upper Saddle River Borough, Bergen County:**

**i. Far side bus stop:**

**(1) Lake Street—Beginning at the southerly curb line of Lake Street and extending 135 feet southerly therefrom.**

(c) (No change.)

**16:28A-1.21 Route U.S. 30**

(a) (No change.)

(b) The certain parts of State highway Route U.S. 30 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1.-15. (No change.)

16. (See proposal at 17 N.J.R. 2742(a).)

**17. Along the southerly (eastbound) side in Mullica Township, Atlantic County:**

**i. Near side bus stop:**

**(1) Wharton Park Boulevard—Beginning at the prolongation of the westerly curb line of Wharton Park Boulevard and extending 105 feet westerly therefrom.**

**18. Along the northerly (westbound) side in Mullica Township, Atlantic County:**

**i. Far side bus stop:**

**(1) Union Avenue—Beginning at the westerly curb line of Union Avenue and extending 100 feet westerly therefrom.**

**16:28A-1.33 Route 47**

(a) (No change.)

(b) The certain parts of State highway Route 47 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1.-5. (No change.)

**6. Along the northbound (easterly) side in Westville Borough, Gloucester County:**

**i. Near side bus stop:**

**(1) Almonesson Avenue—Beginning at the southerly curb line of Almonesson Avenue and extending 110 feet southerly therefrom.**

**16:28A-1.34 Route 49**

(a) (No change.)

(b) The certain parts of State highway Route 49 described

in this section are designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-5. (No change.)

**6. No stopping or standing in Pennsville Township, Salem County.**

**i. Along the northerly (westbound) side:**

**(1) From the westerly curb line of East Pittsfield Street to a point 445 feet westerly therefrom.**

16:28A-1.39 Route 72 and [Route 72] (Service Road, Old Route 72)

(a) The certain parts of State highway Route 72 and [Route 72] (Service Road, Old Route 72) described [herein below] in **this section** shall be [, and hereby are,] designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139[.].

1. No stopping or standing along both sides [of Route 72 (Service Road, Old Route 72)] in Stafford Township, Ocean County: [from its easterly terminus at West Thorofare and its westerly terminus at Manahawkin Bay.]

**i. From its easterly terminus at West Thorofare and its westerly terminus at Manahawkin Bay.**

[2. No stopping or standing along both sides of Route 72 in Stafford Township, Ocean County from the easterly curb line of Jennings Road to a point 2000 feet east of the easterly curb line of Jennings Road.]

**ii. From the easterly curb line of Jennings Road to a point 2000 feet east of the easterly curb line of Jennings Road.**

**2. No stopping or standing in Stafford Township, Ocean County:**

**i. Along the northerly (westbound) side:**

**(1) From a point 250 feet east of the easterly curb line of Mermaid Drive to a point 250 feet west of the westerly curb line of Mermaid Drive.**

16:28A-1.40 Route 73

(a) The certain parts of State highway Route 73 described in this section are designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139[.].

1.-6. (No change.)

7. (See proposal at 17 N.J.R. 2744(a).)

**8. No stopping or standing in Berlin Township, Camden County:**

**i. Along both sides:**

**(1) For the entire length in Berlin Township including all ramps and connections under the jurisdiction of the Commissioner of Transportation.**

# OTHER AGENCIES

## (a)

### CASINO CONTROL COMMISSION

#### Casino Hotel Alcoholic Beverage Control General Regulations Concerning Operating Conditions of Licensees

#### Proposed Amendment: N.J.A.C. 19:50-1.6

Authorized By: Casino Control Commission, Theron G. Schmidt, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(g), and 103(d) and (e).

Proposal Number: PRN 1985-724.

Submit comments by February 20, 1986 to:

Scott N. Silver  
Assistant Counsel  
Casino Control Commission  
Boardwalk at Tennessee Avenue  
Atlantic City, NJ 08401

The agency proposal follows:

#### Summary

N.J.S.A. 5:12-103(d) and (e) provide that, except as otherwise determined by the Casino Control Commission, the regulations promulgated by the Division of Alcoholic Beverage Control (A.B.C.) shall apply to Casino Hotel Alcoholic Beverage Licensees. The regulations of the A.B.C. (at N.J.A.C. 13:2-23.23) and of the Commission (at N.J.A.C. 19:50-1.6(u)) prohibit a retail alcoholic beverage licensee from removing an alcoholic beverage from its original container and placing the beverage in another container, (other than a container such as a glass, pitcher or carafe, which is sold at retail for on premises consumption). The rules of the A.B.C. (at N.J.A.C. 13:2-28) contain an exception to this prohibition for wine. Under this exception, a bartender may remove wine from its original container (such as a gallon bottle) to a smaller container (such as a carafe), and dispense the wine from the smaller container into the receptacle in which it will be sold (such as a glass). The rules of the Commission do not presently contain an exception to the prohibition against such activity. The proposed amendments parallels the A.B.C. exception and authorizes such activity, thereby bringing the Commission's rules into conformity with those of the A.B.C.

#### Social Impact

Because the proposed amendment addresses only the manner in which licensees store and dispense wine in service areas it will have no direct social impact on the general public, or the regulatory agencies.

To the extent the proposed amendment clarifies the position of the Commission in this matter, casino hotel alcoholic beverage licensees are benefited.

#### Economic Impact

Some Casino Hotel Alcoholic Beverage licensees are presently purchasing wine in smaller original containers, because

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**OTHER AGENCIES**

such containers are more easily handled by their bartenders than larger containers. The proposed amendment will allow licensees to purchase wine in larger containers without requiring them to sacrifice the ease of dispensing wine, by the glass, from smaller containers, as it will permit licensees to transfer wine from large original containers into smaller dispensing containers prior to retail sale by the glass. To the extent that the purchase of such larger original containers may effectuate an overall reduction in product cost to a licensee, the licensee may pass such savings on to its retail patrons, increase its profitability, or a combination of both. There will be no economic impact on the regulatory agencies.

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

- 19:50-1.6 General regulations concerning operating conditions of licensees
  - (a)-(x) (No change.)

(y) The holder of any casino hotel alcoholic beverage license authorizing the sale of alcoholic beverages for consumption in an authorized location may transfer wine from an original tax-paid barrel, cask, keg, or other container in the authorized location to another barrel, cask, keg, decanter, bottle or similar receptacle and serve such wine therefrom; provided, however, that the last barrel, cask, keg or other container from which the contents thereof were drawn shall have affixed thereto at all times a gummed label clearly identifying the contents thereof. The prescribed label shall be substantially in the form set forth below, and each statement made shall be true:

This tax paid (type of container) contains (type of brand) wine, received from (name and address of seller) on (date of receipt) (signature).

\_\_\_\_\_

# RULE ADOPTIONS

## COMMUNITY AFFAIRS

### DIVISION OF HOUSING AND DEVELOPMENT

#### (a)

#### Neighborhood Preservation Balanced Housing Program

#### Adopted New Rules: N.J.A.C. 5:14

Proposed: October 21, 1985 at 17 N.J.R. 2489(a).  
Adopted: December 16, 1985 by Gerome R. White, Jr.,  
Acting Commissioner, Department of Community  
Affairs.  
Filed: December 20, 1985 as R.1985 d.688, with technical  
changes not requiring additional public notice and  
comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 52:27D-320.

Effective Date: January 21, 1986.  
Expiration Date pursuant to Executive Order No.  
66(1978): December 1, 1990.

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

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 14

#### NEIGHBORHOOD PRESERVATION BALANCED HOUSING PROGRAM

#### SUBCHAPTER 1. GENERAL PROVISIONS

5:14-1.1 Purpose  
The purpose of the Neighborhood Preservation Balanced Housing Program shall be to deliver housing affordable to low and moderate income households in viable neighborhoods in fulfillment of Section 20 of the Fair Housing Act of 1985. Consistent with the Act, a substantial percentage of Program awards shall be made to projects and programs in those municipalities receiving State aid pursuant to P.L. 1978, c.14 (C.52:27D-178 et seq.) The Department shall also target a percentage of Program awards to the special needs of "at-risk" groups, including the elderly, handicapped and single-parent families.

5:14-1.2 Eligible applicants  
Municipal governments shall be the only eligible applicants to the Neighborhood Preservation Balanced Housing Program; except that the municipality may designate other public, private and/or non profit development entities as part of its application.

5:14-1.3 Eligible activities  
(a) The Department shall award loans and/or grants for those activities listed below. For any eligible activity that does not specifically require 100 percent occupancy by low and moderate income households, the Department shall fund a project if it includes a substantial percentage of low and moderate income units. A substantial percentage shall generally be a percentage which is larger than 20 percent.  
1. Rehabilitation of substandard housing units occupied or to be occupied by low and moderate income households;  
2. Creation of accessory apartments to be occupied by low and moderate income households;  
3. Conversion of nonresidential space to residential purposes provided a substantial percentage of the resulting housing units are to be occupied by low and moderate income households;  
4. Acquisition of real property; demolition and removal of buildings; or construction of new housing that will be occupied by low and moderate income households, or any combination thereof;  
5. Grants of assistance to eligible municipalities for costs of necessary studies, surveys, plans and permits, engineering, architectural and other technical services, cost of land acquisition and any buildings thereon, and cost of site preparation, demolition and infrastructure development for projects undertaken pursuant to an approved regional contribution agreement;  
6. Assistance to a local housing authority, nonprofit or limited dividend housing corporation or association for rehabilitation or restoration of housing units which it administers which:  
i. Are unusable or in a serious state of disrepair;  
ii. Can be restored in an economically feasible and sound manner; and  
iii. Can be retained in a safe, decent and sanitary manner, upon completion of rehabilitation or restoration; and  
7. Other housing program for low and moderate income housing including infrastructure projects directly facilitating the construction of low and moderate income housing not to exceed a reasonable percentage of the construction of the low and moderate income housing to be provided.

5:14-1.4 Definitions  
"Housing Region" shall mean a geographic area of no fewer than two nor more than four contiguous whole counties, as defined in "Mount Laurel II Challenge and Delivery of Low-Cost Housing" published by the Rutgers' Center for Urban Policy Research.  
"Low income household" shall mean a household whose gross annual earnings are less than 50 percent of the median income for the region. \*[Low income shall be considered synonymous with the term "very low income" in the document entitled "Section 8 Rental Assistance Program, Income by Family Size" published by the U.S. Department of Housing and Urban Development.]\*  
"Moderate income household" shall mean a household whose gross annual earnings are no less than 50 or more than 80 percent of the median income for the region. \*[Moderate income is synonymous with the term "low income" in the document entitled "Section 8 Rental Assistance Program, In-

## ADOPTIONS

come by Family Size" published by the U.S. Department of Housing and Urban Development.]\*

### SUBCHAPTER 2. FUNDING

#### 5:14-2.1 Funding cycles and application procedures

(a) The Department shall establish a deadline for one competitive funding cycle per year. Notice of such deadline shall be published in the New Jersey Register. During the competitive funding cycle, the Department shall accept applications from each housing region. Fundable projects shall receive firm or conditional commitments.

(b) If there are unallocated funds, the Department shall accept additional applications and make funding commitments to projects on a first come first served basis subject to the priorities outlined in 5:14-1.1.

(c) A municipality may submit unlimited applications, except that only one application per year shall be for a project designed to rehabilitate individual structure scattered through a designated neighborhood.

(d) The maximum project award shall be \$350,000. The Department may waive this limitation for what it considers compelling reasons.

(e) Multi-year commitments shall be considered by the Department on a case-by-case basis.

### SUBCHAPTER 3. FUNDNG CRITERIA

#### 5:14-3.1 Threshold criteria

(a) In order to be eligible for funding, an applicant shall demonstrate that:

1. At least 50 percent of housing units in a project will be affordable to low income households;
2. There is a plan to ensure that the required percentage of the program's beneficiaries are low and moderate income;
3. There is a plan to ensure that units will remain affordable and occupied by low and moderate income households;
4. The applicant or development entity has control of the project site;
5. The municipality has declared its intent to submit its fair share housing plan to the Affordable Housing Council or has agreed to a court ordered settlement of its low and moderate income housing obligation;
6. There is sufficient need for the program and the resources committed to the project are commensurate to the need.

#### 5:14-3.2 Competitive criteria

(a) Eligible applications shall be reviewed on the basis of project specific criteria and the Department's assessment of municipal need. In evaluating municipal need, the Department shall consider the municipality's ranking on the State Community Need Index and the municipality's low and moderate income housing obligation (as determined by the Department). The Department shall give priority to applications from municipalities receiving State aid pursuant to P.L. 1978 c. 14 (C. 52:27D-178 et seq.). Projects will be favored which:

1. Provide more than 50 percent of the housing units to low income households or provide housing units to a diversity of income groups within the low and moderate income ranges;
2. Use Neighborhood Preservation Balanced Housing funds and other subsidies most efficiently;
3. Are successful in containing total project costs;
4. Include a diversity of bedroom types of reasonable size;
5. Demonstrate progress in developing construction and administrative plans;

## ENVIRONMENTAL PROTECTION

6. Demonstrate progress in receiving financial commitments to the proposed project;

\*7.\* Are most likely to result in a stable neighborhood by addressing the needs of its residents.

(a)

### DIVISION OF HOUSING AND DEVELOPMENT

#### New Jersey State Housing Code

##### Readoption: N.J.A.C. 5:28

Proposed: May 20, 1985 at 17 N.J.R. 1174(a).

Adopted: December 16, 1985 by Gerome R. White, Jr., Acting Commissioner, Department of Community Affairs.

Filed: December 20, 1985 as R.1985 d.689, **without change**.

Authority: N.J.S.A. 2A:42-76.

Effective Date: December 20, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): December 20, 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. 5:28.

## ENVIRONMENTAL PROTECTION

### DIVISION OF WATER RESOURCES

(b)

#### Grants for Restoring Publicly Owned Freshwater Lakes

##### Adopted New Rules: N.J.A.C. 7:9-15

Proposed: September 16, 1985 at 17 N.J.R. 2182(a).

Adopted: December 21, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection.

Filed: December 27, 1985 as R.1985 d.717, **with a substantive and technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 58:10A et seq. and 58:11A-1 et seq.

Effective Date: January 21, 1986.

Expiration Date pursuant to Executive Order No.

66(1978): January 21, 1991.  
DEP Docket No. 050-85-08.

**Summary of Public Comments and Agency Responses:**

Comments were received during the comment period, which closed on October 16, 1985, from only one individual who made three comments.

COMMENT: N.J.A.C. 7:9-15.4 should include a definition of the term, "publicly owned freshwater lake," since all bodies of water within the boundaries of the State can be interpreted to be owned by the State, regardless of whether the State owns the surrounding land, because the State has an ownership interest in the water itself.

RESPONSE: Since all lakes can be interpreted in this way to be "publicly owned," the agency believes it is less repetitive and less ambiguous to define "freshwater lake" in N.J.A.C. 7:9-15.4 and to outline in detail in N.J.A.C. 7:9-15.5 the necessary qualifications which must be met by a freshwater lake in order to qualify for a grant.

COMMENT: N.J.A.C. 7:9-15.4 should also include in its definition of the term, "diagnostic-feasibility study," a reference to the more detailed definition of that term in the federal regulations.

RESPONSE: The agency does not want to limit itself to a federal type of diagnostic-feasibility study but wishes to maintain program flexibility with different requirements at different funding levels.

A State funded program would not necessarily have the same objectives as a Federally funded program.

COMMENT: The discussion of N.J.A.C. 7:9-15.12 in the Summary states that applications are prioritized if received before September 1 of each fiscal year, but the subsection itself does not include any language to that effect.

RESPONSE: The agency inadvertently left that language out of the subsection and has now included it.

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

**7:9-15.1 Scope of rules**

Unless otherwise provided by rule or statute, the following shall constitute the rules of the Department of Environmental Protection concerning policies and procedures for grants to assist local government in carrying out the restoration of publicly owned freshwater lakes pursuant to the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. and the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.

**7:9-15.2 Construction**

This subchapter shall be liberally construed to permit the department and its various divisions to discharge their statutory functions.

**7:9-15.3 Purpose**

(a) This subchapter is promulgated for the following purposes:

1. To set forth grant eligibility; and
2. To establish policies and procedures for distribution of funds to local governments for Phase I Diagnostic-feasibility studies and for Phase II Implementation activities.

**7:9-15.4 Definition**

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

"Applicant" means the governmental agency which has jurisdiction over or controls access to the freshwater lake.

"Department" means the Department of Environmental Protection.

"Diagnostic-feasibility study" means a two part study to determine a lake's current condition and to develop possible methods for lake restoration and protection.

"EPA" means the United States Environmental Protection Agency.

"Freshwater lake" means any inland pond, reservoir, impoundment, or other similar body of water that has recreational value, that exhibits no oceanic and tidal influences, and that has a total dissolved solids concentration of less than one percent.

**7:9-15.5 Grant eligibility**

(a) To be eligible for funding, an applicant shall meet the following criteria:

1. The freshwater lake shall offer public access through publicly owned contiguous land so that any member of the public may have the same or equivalent opportunity to enjoy privileges and benefits of the lake as any other member of the public or as any resident around the lake;

2. If user fees are charged for public use and access, the fees shall be used solely for maintenance of the access and recreational facilities or for improving the lake;

3. The freshwater lake shall not be used only as a source of drinking water;

4. The proposed project shall be consistent with the applicable adopted Water Quality Management Plan;

5. Chemical application programs for aquatic weed control are not eligible for funding; and

6. A lake that can be restored by controlling the discharge of pollutants from a point source through a municipal or industrial permit under section 402 of the Federal Clean Water Act, 33 U.S.C. 1342, or through the planning and construction of wastewater treatment facilities under section 201 of the Federal Clean Water Act, 33 U.S.C. 1281, shall not be eligible for funding.

**7:9-15.6 Types of grant assistance**

(a) The Department will administer the following types of grants pursuant to this subchapter:

1. Subject to the availability of funds, approved Phase I Diagnostic-Feasibility Studies will be funded through the Department pursuant to the following formulas:

- i. If an EPA grant is awarded for the project, a maximum of 70 percent of allowable costs shall be funded by EPA; a maximum of fifteen percent of allowable costs shall be funded by the Department; and the remainder of the costs shall be funded by the applicant.

- ii. If no EPA grant is awarded for the project, a maximum of 50 percent of allowable costs shall be funded by the Department and the remainder of the costs shall be funded by the applicant.

2. Subject to the availability of funds, approved Phase II Implementation activities will be funded through the Department pursuant to the following formulas:

- i. If an EPA grant is awarded for the project, a maximum of 50 percent of allowable costs shall be funded by EPA; a maximum of 40 percent of allowable costs shall be funded by the Department; and the remainder shall be funded by the applicant.

- ii. If no EPA grant is awarded for the project, a maximum of 50 percent of allowable costs shall be funded by the Department and the remainder of the costs shall be funded by the applicant.

3. In the event that legislation is enacted appropriating funds for a specific lake restoration project which indicates that a different funding formula shall be used, that funding formula designated by the legislature shall apply.

#### 7:9-15.7 (Reserved)

#### 7:9-15.8 Phase I grant assistance criteria

(a) Projects for Phase I grant assistance will be evaluated for funding based upon the following criteria:

1. Eligibility for federal funding;
  - i. Federal funding, when available, will provide up to 70 percent of the allowable costs of the project.
  - ii. The Department shall apply for federal funding for the project when these funds are available through EPA, under the Clean Lakes Program, established pursuant to section 314 of the Clean Water Act, and the regulations promulgated thereunder at 40 CFR 35.1600 et seq.;
2. Availability of local funding;
3. Accessibility of the lake to the public;
4. Population size and demography with a 15 mile radius of the lake;
5. The amount and kind of public transportation available for transport of the public to and from the public access points;
6. Consideration of whether other relatively clean publicly owned freshwater lakes within a 50 kilometer radius already adequately serve the population;
7. The historical uses of the lake and the need for and practicality of restoring the lake for those uses;
8. The degree to which the project considers the "open space" policies contained in sections 201(f), 201(g) and 208(b)(2)(A) of the Clean Water Act;
9. The reasonableness of the proposed costs relative to the proposed work, the likelihood that the project will succeed, and the potential public benefits;
10. The means for controlling anticipated adverse environmental impacts which could result from the proposed restoration of the lake;
11. Water quality in the lake, as indicated by existing data;
12. The technical feasibility of the proposed project approach and where appropriate, the estimated improvement in the lake water quality; and
13. The anticipated positive changes that the project would produce in the overall lake ecosystem, including the watershed, such as the net reduction in sediment, nutrient, and other pollutant loadings.

#### 7:9-15.9 Phase II grant assistance

(a) Projects for Phase II grant assistance will be evaluated for funding based upon the following criteria:

1. Eligibility for federal funding;
  - i. Federal funding, when available, will provide up to 50 percent of the cost of the project.
  - ii. The Department shall apply for federal funding for the project as set forth in N.J.A.C. 7:9-15.8(a)1ii.
2. The criteria contained in N.J.A.C. 7:9-15.8(a)1 through 13 will be considered; and
3. When a Phase I grant has been awarded, the Phase II project shall conform to the final plan selected under Phase I.

#### 7:9-15.10 Project period

- (a) The project period for Phase I projects shall not exceed three years.
- (b) The project period for Phase 2 projects shall not exceed four years.

#### 7:9-15.11 Public participation

(a) The applicant for a Phase I grant shall provide for, encourage, and assist public participation in developing a proposed lake restoration project. The applicant shall solicit public comment on the plan of study, prepare a summary of responses to the public comment, and submit the summary as part of the Phase I application.

(b) Phase I grant recipients shall solicit public comment in developing, evaluating, and selecting alternatives, in assessing potential adverse environmental impacts, and in identifying measures to mitigate any adverse impacts that were identified.

1. The grantee shall provide information relevant to these decisions in fact sheet or summary form and distribute such information to the public at least 30 days before selecting a proposed method of lake restoration.

2. The grantee shall hold a formal or informal meeting with the public after all pertinent information is distributed.

3. A formal public hearing shall be held if the grantee selects a lake restoration method which involves major construction, dredging, or significant modifications to the environment, or if the department determines that a hearing would be beneficial.

(c) Phase 2 grant applicants shall hold a formal public hearing if one has not been held subsequent to completion of Phase I and prepare a summary of the responses to all public comments. The applicant shall submit the summary along with copies of any written comments to the Department with the Phase 2 application.

#### 7:9-15.12 Program administration

(a) The program shall be administered by the Division of Water Resources.

(b) Within 90 days of receiving a complete application, the Department will either:

1. Conditionally approve the project for funding in an amount determined to be appropriate for the project, and if federal funding is available, submit the application to EPA for final approval;

2. Return the application to the applicant due to lack of funding; or

3. Disapprove the application and state the reasons for disapproval.

**\*(c) The Department will establish a priority list for all applications received before September 1 of each fiscal year.\***

**\*[(c)]\*\*(d)\*** Requests for further information concerning this program as well as program proposals should be directed to:

New Jersey Department of  
Environmental Protection  
Division of Water Resources  
CN 029  
Trenton, New Jersey 08625  
Attn: Lakes Management Coordinator

**(a)**

**HEALTH**

**DIVISION OF FISH, GAME AND WILDLIFE**

**(b)**

**Endangered, Nongame and Exotic Wildlife Possession Permit Fees**

**DIVISION OF LOCAL AND COMMUNITY HEALTH SERVICES**

**Adopted Amendment: N.J.A.C. 7:25-4.6**

**Depuration of Soft Shell Clams (*Mya Arenaria*)**

Proposed: November 4, 1985 at 17 N.J.R. 2589(a).  
 Adopted: December 24, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection.  
 Filed: December 27, 1985 as R.1985 d.716, **without change.**

**Adopted Amendments: N.J.A.C. 8:13-2.1, 2.4, 2.6, 2.7, 2.8, 2.9, 2.10, 2.11, 2.13, 2.14**

Proposed: June 3, 1985 at 17 N.J.R. 1370(a).  
 Adopted: December 20, 1985 by J. Richard Goldstein, M.D., Commissioner, Department of Health  
 Filed: December 23, 1985 as R.1985 d.691, **with substantive and technical changes** not requiring additional public notice and comments (see N.J.A.C. 1:30-3.5)

Authority: N.J.S.A. 23:2A-5.

Authority: N.J.S.A. 24:2-1

Effective Date: January 21, 1986.  
 Expiration Date pursuant to Executive Order No. 66(1978): March 25, 1989.  
 DEP Docket No. 059-85-10.

Effective Date: January 21, 1986.  
 Operative Date: N.J.A.C. 8:13-2.13(a) shall become operative April 1, 1986 to allow for an orderly transition of the bacteriological sampling activities from the private sector to a governmental laboratory.  
 Expiration Date pursuant to Executive Order No. 66(1978): August 2, 1987.

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

**Summary of Public Comments and Agency Responses:**

Full text of the adoption follows.

**RESPONSES:** The depuration industry represented by the law firm Wilson and Fasno submitted comments on June 18, 1985 expressing concern that the rule change that will require that the bacteriological testing be conducted by a governmental laboratory, namely the Monmouth County Health Department, would present a severe economic hardship to the industry. The industry representative took exception to several statements that were made in the summary and social impact statements which relate to this specific amendment. Subsequent to receiving the comments a meeting was held with the depuration industry and their representative on July 16, 1985. The governmental laboratory proposal was discussed in detail and a compromise was reached that would allow for greater flexibility in the sample collection schedule. Based upon the Department's agreement to modify N.J.A.C. 8:13-2.13, the industry representative submitted a letter on July 24, 1985 which stated that the changes proposed in the sampling schedule would be an acceptable compromise which could allow the depuration industry to support the proposed changes relative to Monmouth County Health Department conducting the bacteriological testing. Notwithstanding this change in the position of the industry the Department answers the specific comments submitted as follows:

- 7:25-4.6 Categories of permits, expiration, fees, sales receipt required, records and reports required
- (a)-(b) (No change.)
- (c) The possession permits shall require an annual issuance fee and inspection fee as listed:

Categories of Permits	Inspection Fee	Annual Fee
Individual Hobby	None	\$10.00
Scientific Holding	\$ 25.00	\$10.00
Zoological		
less than 10 animals	\$ 50.00	\$10.00
more than 10 animals	\$100.00	\$10.00
Pet Shop	\$ 90.00	\$10.00
Animal Dealer	\$ 90.00	
Animal Exhibitor		
Single Exhibit	\$ 25.00	\$10.00
Annual	\$100.00	\$10.00
Animal Theatrical Agency	\$100.00	\$10.00

(d)-(h) (No change.)

The Department proposed the regulation changes concerning the bacteriological testing because the current regulations which permits private laboratories to conduct the testing created serious enforcement problems for the Department.

**COMMENT:** The industry representative stated that no regulatory action has been taken by the Department.

**RESPONSE:** The Department records reveal that regulatory action was taken, penalties paid depuration plant oper-

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ators for failing to ensure that the required bacteriological tests were being conducted. Additionally, formal action was taken by the Department to suspend approval of a private laboratory because the required bacteriological tests were not being conducted.

**COMMENT:** The commentor suggested that the Department should provide a full time employee to oversee the operation of the laboratories.

**RESPONSE:** The Department does not believe that this is the best solution and would not completely resolve the bias that the Department believes can occur when a private laboratory associated with the depuration plant conducts their own testing.

**COMMENT:** The depuration industry stated that the delays involved with transporting the shellfish to a governmental laboratory and scheduling problems would have a serious economic impact.

**RESPONSE:** The industry agreed that the modifications made by the Department in the sampling schedule would alleviate their concern that the sampling logistics and testing time would create additional delays in their ability to market their clams, thereby mitigating the economic impact.

**COMMENT:** The industry representative stated that there have been no disease outbreaks attributed to depuration plants "as far as the memory of man can go."

**RESPONSE:** This statement is not factual because the Department did not implicate hard clams depurated in a New Jersey plant in 1983 and also directly linked a large disease outbreak to depurated clams served in New Jersey which were shipped from England during 1983.

The Department wishes to respond to the specific suggestions relative to several technical provisions of the regulations that do not relate to the governmental laboratory provision as follows:

**COMMENT:** The Department should not have the right before a hearing to suspend the shellfish certification of a depuration plant.

**RESPONSE:** The Commissioner of Health has the authority to suspend a license, pending a hearing when in his judgment the protection of public warrants such an action under provisions of the wholesale food establishment regulations N.J.A.C. 8:21-9.7. Depuration plants are required to hold a license as a wholesale food establishment and the amendment is intended to have the soft shell clam depuration regulations consistent with the existing authority under the wholesale food establishment regulations.

**COMMENT:** The Department should extend the period of time that clams can be depurated after harvest from 36 hours to 48 hours.

**RESPONSE:** The period of 36 hours was selected because if the Department extended the time to 48 hours, under certain harvesting schedules three consecutive days of harvest could occur. This would not be consistent with N.J.A.C. 8:13-2.9(d)1.iii, which does not allow more than two consecutive days catch of clams to be combined to make up a process batch. Storing clams for more than two days could impede the clams ability to depurate.

**COMMENT:** The Department should issue to the depuration plants flags or insignias to be shown or flown from a mother craft.

**RESPONSE:** The Department agrees that this provision could be open to interpretation but it does not believe that having the Department provide the pennants is necessary. The Department, in cooperation with the Department of Environmental Protection, Marine Enforcement Unit will draft

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specifications for the pennants that will indicate satisfactory compliance with this provision.

**COMMENT:** The Department should eliminate the provision that the mother craft shall be used for no other purpose during harvesting hours.

**RESPONSE:** Under the current wording a vessel is a "Mother Craft" if it is identified so by the name of the plant painted in large letters at least six inches high of contrasting color above the water line and is flying the yellow pennant. If the boat was not flying the pennant, and a removable sign was used identifying the vessel and it was not carrying clams, the vessel would not be considered a mother craft. The Department has added the words "during harvest operations" to further clarify this provision.

**COMMENT:** The industry stated that the industry could not comply with the three hour time requirement for cleaning and sanitizing equipment due to certain extraneous factors over which the plant operator has little control.

**RESPONSE:** The Department established a time requirement for cleaning because of problems determining whether the system was cleaned prior to reloading the tanks with clams. Once the tanks are filled, it is difficult for the Department's inspection staff to ascertain whether the ultraviolet purification and piping system are adequately cleaned. Also, if the system is not cleaned after the process is complete, the slime residues harden making it difficult to clean. On a number of occasions the Department has traced batches of clams not meeting the bacteriological standards to a failure to adequately clean the system. The shellfish regulations governing shucking shellfish, N.J.A.C. 8:13-1.7, requires that all parts of the shucking and packing areas shall be cleaned within two hours. This requirement has been in existence for many years and the Department has not found compliance problems with this segment of the industry. The cleaning is treated as a routine part of the operation. The Department believes that three hours is sufficient time to accomplish this important task, and believes that the depuration industry could comply without undue hardship.

**COMMENT:** The industry spokesman suggested that the Department should provide uniform record keeping forms.

**RESPONSE:** The Department does not believe it is necessary to print and supply record keeping forms. The problems concerning record keeping has been related for the most part to plant operators failing to record and provide accurate information, not the actual format of the forms.

The Department also received comments from the U.S. Food and Drug Administration, Region II, Senior Regional Shellfish Specialist as follows:

**COMMENT:** The Senior Shellfish Specialist suggested that the Department modify the definition of zero hour (0 hour) under N.J.S.A. 8:13-2.1 to clarify that zero hour begins when the last container is placed into the tanks.

**RESPONSE:** The Department agrees with the language change because the intent is to have the zero hour begin when the last container is placed into the tanks. The Department has added the suggested wording to the definition.

**COMMENT:** The federal commentor suggested that the Department replace the wording under Washing and Culling of Clams, N.J.A.C. 8:13-2.10, from "when necessary" to "approximately midway or between 20 or 30 hours." Also, he suggested that water in the tanks should be drained before the clams are removed.

**RESPONSE:** The Department believes that the current requirement is sufficient to accomplish the intended purpose of removing any accumulation of fecal material. The Department

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agrees with the suggestion that the water should be drained from the tanks before the clams are removed. The Department is incorporating the suggested change in the final adoption.

COMMENT: The federal commentator suggested that the Department not remove the provision under N.J.A.C. 8:13-2.14 which requires the plant operator record the seawater flow in gallons per minute.

RESPONSE: The Department is not convinced that it is necessary to re-instate this provision because the Department does not have a way of independently confirming that the previous information recorded is accurate. The regulations do require that the plant operator must maintain the minimum flow rates and action is taken when the investigators discover a reduced flow rate. The enforcement history of the plants does not indicate that the record keeping has ensured that the flow rates are always met.

COMMENT: The Federal Regional Shellfish Specialist suggested that the words depurated soft shell clams should appear on the tags; the plants should utilize serialized tags and the Department should limit the removal of the tags.

RESPONSE: The Department does not believe that it is necessary to have the word "Depurated" on the tags since the regulations require that the process batch number be present which indicates to the Department that the shellfish originate from a depuration plant. The Department believes that the suggestions concerning the use of serialized tags and the limiting the removal of tags has merit. The Department intends to consider these matters when it revises the Regulations Governing the Sanitation Handling, Shipping and Shucking of Shellfish, N.J.A.C. 8:13-1.1

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

## SUBCHAPTER 2. DEPURATION OF SOFT SHELL CLAMS (MYA ARENARIA)

### 8:13-2.1 Definitions

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

...

"Zero hour (0 hour)" means the time at which a tank or tanks become full with process water and the **\*container of the \*** last lot of clams are placed into the tanks for depuration.

### 8:13-2.4 Certificate requirements

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

(e) The certificate issued pursuant to these rules and regulations may be suspended or revoked for any violation of Title 24 of the Revised Statutes or of any rule or regulation of the department or when bacteriological data shows that the depuration process is not reducing fecal coliform levels to the standards set forth. Any violation of a special permit to possess shellfish harvested from special restricted waters issued by the Department of Environmental Protection is grounds for suspension or revocation of the certificate.

(f) The Department, when in its judgment the protection of the public health warrants, may, before hearing suspend the certification pending the hearing. When the certification has been suspended, the person shall have the right to an expedited hearing. In all other cases, the person shall be afforded the opportunity for a hearing 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 et seq., prior to the suspension or revocation of the license.

### 8:13-2.6 Plant design

The plant shall be designed in such a manner to prevent cross-contamination of untreated and treated clams. Separate washing and culling facilities with convenient supply of wash water approved by the department shall be provided for treated and untreated clams. Separate dry storage areas shall be provided for treated and untreated clams. The plant shall be provided with potable running water, electricity, and sewage disposal sufficient to meet all the specifications and carry out all the requirements set forth in these regulations.

### 8:13-2.7 Transportation of clams

(a) (No change.)

(b) The vessel(s) "Mother Craft" used to transport clams from the harvest site to the depuration plant shall be identified with the name of the depuration plant painted in large letters at least six inches high of contrasting color above the water line of the vessel and shall fly a yellow rigid pennant visible at one nautical mile. The mother craft shall be used for no other purpose other than for the **\*[harvesting,]\*** handling and transportation of clams to the identified depuration plant **\*during the harvesting operations\*.**

(c) Only "U.S. Standard" bushel/baskets shall be used in the harvesting, transportation and receiving of clams at the depuration plant unless written approval is given to use an alternate standard type of container. All reasonable measures shall be taken to assure that containers of clams received at the plant are filled to capacity.

(d) During the unloading procedures from the mother craft at the plant the containers of clams shall not be covered and shall be open to view.

### 8:13-2.8 Source seawater

(a) No seawater shall be used for depuration unless it meets the following requirements:

1. (No change.)

2. The source seawater shall be free of toxic chemicals, pesticides, detergents, dye stuffs, radioisotopes and marine toxins in concentrations which exceed established State/Federal regulations, or exist in concentrations deemed hazardous by State or Federal officials.

3. Salinity must be within 20 percent of the harvest area value, at the time of harvest, expressed in parts per thousand.

(b) The seawater in which the untreated clams are placed for controlled purification shall be of sufficient quality to assure optimal physiological activity. The following requirements shall be met either naturally or through treatment of the water.

1.-4. (No change.)

5 Temperature range shall be a minimum of 40 degrees F (4.4 degrees C) to a maximum of 68 degrees F (20 degrees C).

i.-ii. (No change.)

### 8:13-2.9 Plant equipment

(a) Hydraulic seawater system design and material rules are:

1.-2. (No change.)

3. Accurate flow control devices shall be installed in the process seawater system to assure that the flow requirements are being met and maintained.

4.-6. (No change.)

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

(d) Storage facilities shall provide for physical separation

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of the depurated from non-depurated clams and they shall be stored separately at all times.

1. Non-depurated clams which cannot be processed within the working day shall be placed in controlled storage. Storage room temperature should be within 5 degrees F of the processing seawater but shall not exceed 70 degrees F (21.1 degrees C).

i. The number of bushels of untreated clams in storage shall not exceed the amount which the system plant is capable of processing within a 36 hour period.

ii. Processing must begin within 36 hours of receipt of clams at the depuration plant.

iii. No more than two consecutive days catch of clams can be combined to make up a process batch.

OFFICE OF ADMINISTRATIVE LAW NOTE: The text of (d)l(iii), shown below, was never adopted and should not appear in the New Jersey Administrative Code. The text of (d)2, (e) and (f), however, is currently in effect and a part of N.J.A.C. 8:13-2.9. See: 14 N.J.R. 835(b).

l(iii). The combining of two consecutive days harvests shall be restricted to bad weather conditions which prevent the operator from obtaining a full harvest. The routine combining of two consecutive days harvest is prohibited unless written approval is received from the Department.]

2. Depurated clams shall be stored and transported under refrigeration temperature (45 degrees F) or (7.2 degrees C).

(e) Water purification system rules are:

1. An ultraviolet (UV) bacteriological reduction system shall be installed to provide seawater meeting a bacteriological quality of no more than one fecal coliform/100 ml samples at the UV unit outlet unless this quality can be met naturally and the water is not re-circulated. A re-circulating seawater system shall be so designed, installed and operated to assure that the water received UV treatment prior to entering the system.

i. The department will consider alternate methods of bacteriological reduction units if adequate scientific information is presented showing that the unit will produce process water of the required bacteriological quality; proper testing is conducted; and the practicability of units can be demonstrated.

ii. Chemicals such as chlorine or similar disinfecting compounds shall not be used to treat the process seawater, unless the water is de-chlorinated just prior to usage.

2. The ultraviolet (UV) sterilization unit shall meet the following minimum requirements:

i. The unit shall be designed and operated to deliver at peak load, at least one gallon per minute of treated water per U.S. bushel of clams.

ii. The unit shall have water flow control device(s) to prevent the water flow from exceeding the capacity of the unit regardless of the incoming pressure.

iii. A meter and recording chart shall be attached to the unit which will continuously monitor and record the following:

(1) Any changes in ultraviolet transmission of the water to be treated;

(2) Depreciation or reduction in the output of the intensity of the ultraviolet lamps.

iv. The recorder chart shall be calibrated in hours and days and the chart shall be marked to indicate "0", "24", "48", and "72" hour intervals for each process batch.

v. The ultraviolet system shall have provisions for in-place cleaning of the interior of the purification chamber, and ultraviolet tubes.

vi. The ultraviolet tubes shall be replaced when they reach a point of 60 per cent efficiency or 7,500 hours old. A log of tube intensity shall be kept daily which indicates the dates checked, the intensity readings, and tube life in hours.

(f) A water temperature recording device or devices shall be installed in a position to accurately record the process water temperature. The device shall be installed to meet the following requirements:

1. The recorder case shall be moisture-proof under normal operating conditions.

2. The temperature recording device shall be graduated with a range between 2 degrees F and 100 degrees F.

3. The chart shall be graduated with not less than 2 degrees F divisions, with not more than 40 degrees F per inch of scale, graduated in time scale divisions of not more than one hour.

4. An accurate indicating thermometer shall be provided to check the temperature recording device.

5. The chart shall have a rotation period of record for 72 hours and indicate a continuous recording for the 48/72 hour depuration process.

6. The recorded elapsed time as indicated by the temperature recorder chart rotation shall not exceed the time elapsed as compared to an accurate watch.

7. The chart support shall be provided with a pin or pins to puncture the chart in a manner to prevent improper or false rotation.

i. Temperature recording device operation:

(1) The temperature recording device shall be activated on the onset of the depuration process (0 hour).

(2) Charts shall identify the dates of process batch including lot number(s) and quantity of clams in each lot.

(3) Any unusual occurrences shall be recorded on the chart; such as system break-down or large temperature deviations.

## 8:13-2.10 Washing and culling of clams

Before depuration, clams shall be washed at the plant with water taken from a source approved by the department and culled to remove broken, cracked, dead or gaping clams. During the depuration process the tanks shall be drained and the tank and clams flushed of fecal matter, sand and debris when necessary to prevent an accumulation of these materials. After the depuration process is completed, **\*[clams]\* \*the water shall be drained from the tanks before the clams are removed. After the clams are removed from the tanks they\*** shall again be washed and culled to remove feces and to dispose of any dead, cracked, broken or gaping clams. Separate culling and washing facilities shall be provided for untreated and treated clams. All dead clams, or clams in broken or cracked shells shall be destroyed, or disposed of in a manner acceptable to the department such as being sold for bait purposes. Only depuration plants holding a valid shellfish bait permit issued by the Department of Environmental Protection shall be authorized to dispose of culled clams in this manner.

## 8:13-2.11 Cleaning and sanitizing of equipment

(a) Adequate facilities shall be provided for the proper washing, cleaning and sanitizing treatment of equipment, utensils, and building. All equipment and utensils utilized in the depuration plant shall be maintained in a clean condition. All clams and seawater contact surfaces shall be cleaned and sanitized at the frequencies listed as follows:

1. Process tanks and seawater distribution piping shall be drained of seawater after each process and tanks and racks shall be cleaned and sanitized within three hours after a process batch is removed from the system and rinsed of sanitizing residuals before another depuration process begins.

2. The seawater reservoir(s) used to hold incoming process seawater shall be drained and flushed after each process batch and cleaned and sanitized once a week.

3. Clam processing containers shall be cleaned and sanitized within three hours after removal of clams.

4. The ultraviolet or quartz tubes and tube chamber of the UV units(s) shall be cleaned within three hours after each deuration process.

#### 8:13-2.13 Bacteriological sampling

(a) Bacteriological sampling collection and analysis of deputed clams shall be conducted by a government operated laboratory approved by the department and subject to evaluation by the U.S. Food and Drug Administration. The Department shall reserve the right to approve a non-government laboratory, preferably not affiliated with the plant(s) being regulated on an interim basis when a government laboratory is not available. The following minimum sampling programs shall be followed:

1. Clam samples are to be taken randomly for each process batch of clams at the following intervals:

- i. (No change.)
- ii. Five samples per lot at \*[48 hours.]\* **\*a period of time between 40 and 48 hours. Samples taken prior to 48 hours which do not meet the bacteriological standards would have to be re-sampled and results received by the plant operator that show the process batch meets the bacteriological standards before being offered for sale.\***
- iii. Five samples per lot at "72" hours if found necessary.

2. A water sample of the ultraviolet (UV), treated water shall be taken directly from outlet of each UV unit each week.

(b) (No change.)

(c) Clam process batch(s) which do not meet the bacteriological standards set forth after 48 hours of deuration shall be further deputed for an additional 24 hours. Clam process batch(s) which do not meet the bacteriological standard after 72 hours of deuration cannot be further deputed and shall not be used for human food consumption and shall be disposed of in a manner approved by the department. The certificate holder shall notify the State Health Department shellfish program by telephone immediately upon receipt of bacteriological results which do not meet the standard after 48 or 72 hours of deuration.

(d) (No change.)

#### 8:13-2.14 Recordkeeping

(a) Each lot(s) of clams brought to the deuration plant shall be assigned a process batch number. A separate set of records shall be kept on the premises at all times for at least one year and be available for inspection upon request. All records shall be kept in indelible ink and shall indicate the following:

1. The process batch number of each process shall be recorded.

2. The harvest site shall be recorded, including the name of the estuary and identification (common name) of the center-point of site to within .25 nautical mile or the Department of Environmental Protection section identification numbers.

3.-13. (No change.)

14. The sales information to include date, number of bushels, person and address to whom sold shall be recorded at the time of sale and identified to the process batch.

15. Copies of the records required in this section shall be submitted to the Department, Shellfish Project, the 1st and 15th of each month.

(a)

## FACILITIES RATE SETTING

### Standard Hospital Accounting and rate Evaluation (SHARE) Economic Factor

**Adopted Repeal: N.J.A.C. 8:31A-9.1.**

**Adopted Amendment: N.J.A.C. 8:31A-9.2**

Proposed: October 21, 1985 at 17 N.J.R. 2495(a).

Adopted: December 17, 1985 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: December 20, 1985 as R.1985 d.685, **without change.**

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

Effective Date: January 21, 1986.

Expiration Date pursuant to Executive Order No. 66(1978): March 18, 1990.

#### Summary of Public Comments and Agency Responses:

Comments were received from the New Jersey Hospital Association and the Department of Human Services, Division of Medical Assistance and Health Services expressing approval of the proposed amendment.

Full text of the adoption follows.

#### 8:31A-9.1 Economic factor

(a) The industry-wide economic factor shall be comprised of the percentage changes in the following proxies for their relevant cost components weighted by their percentage of reported costs on SHARE Projected Actuals for all hospitals combined. The factor is determined exclusive of depreciation and facilities interest, lease, and utilities costs.

1. Labor 1:

i. Cost component: Non-physician salaries, physicians' salaries and fees;

ii. SHARE cost center: All Cost Centers for which employee salaries are reported; contracted services in ACU, ICU, NBN, SAC, SNF, EMR, CLN, and OHS cost centers except RSD; and physicians fees for RSD cost center;

iii. Proxy: Average Hourly Earnings—Hospital Workers (US);

iv. Source: Bureau of Labor Statistics (BLS), Average Hourly Earnings—Hospital Workers (US).

2. Labor 2:

i. Cost component: Interns, residents and fellows;

ii. SHARE cost center: Physicians' salaries in RSD cost center;

iii. Proxies: Percentage change in average stipend for house staff, Northeast Region, by number of residents per post-graduate year for New Jersey Hospitals;

iv. Source: Council of Teaching Hospitals and New Jersey Department of Higher Education.

3. Labor 3:

i. Cost component: Fringe benefits;

ii. SHARE cost center: Other expense reported in PFB,

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LFB, and PEN cost centers;

iii. Category 1: FICA:

(1) Proxy: Percentage change in Social Security Tax Rate compounded by changes in salaries (95 percent). Percentage change in Social Security Tax Rate compounded by change in rate base (5 percent);

(2) Source: U.S. Department of Health and Human Services, Social Security Bulletin and BLS, Average Hourly Earnings—Hospital Workers (US).

iv. Category 2: Workmen's Compensation:

(1) Proxy: Percentage change in Manual Rate compounded by percentage change in salaries;

(2) Source: New Jersey Compensation Rating and Inspection Bureau and BLS, Average Hourly Earnings—Hospital Workers (US).

v. Category 3: Unemployment Insurance:

(1) Proxy: Percentage change in unemployment insurance tax rate compounded by Rate Base (90 percent) Percent change in unemployment insurance tax rate compounded by rate base and salary changes (10 percent);

(2) Source: New Jersey Department of Labor and Industry and BLS, Average Hourly Earnings—Hospital Workers (US).

vi. Category 4: Disability Insurance:

(1) Proxy: Percentage change in disability insurance rate compounded by rate base (90 percent). Percentage change in disability insurance rate compounded by rate base and salary changes (10 percent);

(2) Source: New Jersey Department of Labor and Industry and BLS, Average Hourly Earnings—Hospital Workers (US).

vii. Category 5: Medical Insurance:

(1) Proxy: Percentage change in New Jersey Hospital Association group rate for Blue Cross/Blue Shield basic hospital and group Major Medical premium rates;

(2) Source: New Jersey Hospital Association.

viii. Category 6: Life Insurance:

(1) Proxy: Percentage change for New Jersey Hospital Association group life insurance premium rates;

(2) Source: New Jersey Hospital Association.

ix. Category 7: Pensions:

(1) Proxy: BLS, Average Hourly Earnings—Hospital Workers (US);

(2) Source: BLS, Average Hourly Earnings—Hospital Workers (US).

x. Category 8: Other policy fringe benefits:

(1) Proxy: BLS, Average Hourly Earnings—Hospital Workers (US);

(2) Source: BLS, Average Hourly Earnings—Hospital Workers (US).

4. Supplies 1:

i. Cost component: Office supplies;

ii. SHARE cost center: Supply costs reported in PHY, RSD, A&G, FIS, PCC, EDR, and MRD cost centers;

iii. Proxies: Producer Price Index (PPI): 0915-06 Office Supplies and Accessories (33 percent);

(1) PPI: 0913-0131.09 Paper, Unwatermarked Bond, No. 4 (67 percent).

iv. Source: BLS, Producer Price Index.

5. Supplies 2:

i. Cost component: Raw food;

ii. SHARE cost center: Supply costs reported in DTY cost center;

iii. Proxies: Consumer Price Index (CPI): Food at home (50 percent);

(1) PPI: 02 less 029,0261 and 0262 Processed food less feeds, less alcoholic and non-alcoholic beverages (50 percent).

iv. Source: BLS, Consumer Price Index and Produce Price Index.

6. Supplies 3:

i. Cost component: Other dietary supplies;

ii. SHARE cost center: Supply costs reported in DTY cost center;

iii. Proxies:

(1) PII: 0915-0333.03 Paper goods, hot cups (24.07 percent);

(2) PII: 0722 Unsupported plastic film and sheeting (12.03 percent);

(3) PII: 1261 Dinnerware (35.98 percent);

(4) PII: 0671 Soap and synthetic detergent (27.92 percent).

iv. Source: BLS, Producer Price Index.

7. Supplies 4:

i. Cost component: Housekeeping supplies;

ii. SHARE cost center: Supply costs reported in HKP cost center;

iii. Proxies:

(1) PPI: 0915-01 Sanitary paper and health products (30 percent);

(2) PPI: 0722 Unsupported plastic film and sheeting (30 percent);

(3) PPI: 0671 Soap and synthetic detergents (40 percent).

iv. Source: PLS, Producer Price Index.

8. Supplies 5:

i. Cost component: Laundry and linen supplies;

ii. SHARE cost center: Supply costs reported in L and L cost center;

iii. Proxies:

(1) PPI: 0671 Soap and synthetic detergents (60 percent);

(2) CPI: Household linens (40 percent);

iv. Source: PLS, Producer Price Index and Consumer Price Index.

9. Supplies 6:

i. Cost component: Drugs;

ii. SHARE cost center: Supply costs reported in PHM cost center;

iii. Proxies: PPI: 0635 Ethical (prescription) drugs (70 percent) 0636 Proprietary (over the counter) drugs (30 percent);

iv. Source: BLS, Producer Price Index.

10. Supplies 7:

i. Cost component: Laboratory supplies;

ii. SHARE cost center: Supply costs reported in LAB and BBK cost centers;

iii. Proxies:

(1) PPI: 138 Glass containers (40 percent);

(2) PPI: 061 Industrial Chemicals (60 percent);

iv. Source: BLS, Producer Price Index.

11. Supplies 8:

i. Cost component: Radiology supplies;

ii. SHARE cost center: Supply costs reported in RAD cost center;

iii. Proxies: PPI: 1542 Photographic supplies;

iv. Source: BLS, Producer Price Index.

12. Supplies 9:

i. Cost component: Medical/surgical supplies;

ii. SHARE cost center: Supply costs reported in ACU, ICU, NBN, SAC, SNF, EMR, CLN, OHS, ANS, CSS, DEL, DIA, EDG, NMD, ORR, OPM, PHT, RSP, THR, and CCA cost center;

iii. Proxies: CPI: Non-prescription medical equipment and supplies;

iv. Source: BLS, Consumer Price Index.

13. Supplies 10:

i. Cost component: Repairs and maintenance supplies;

(a)

## DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

### Surgical Facilities: Standards and General Criteria for the Planning and Certification of Need

#### Adopted Amendment: N.J.A.C. 8:33A-2.6

Proposed: October 21, 1985 at 17 N.J.R. 2497(a).  
Adopted: December 17, 1985 by J. Richard Goldstein,  
M.D., Commissioner, Department of Health (with  
approval of the Health Care Administration Board).  
Filed: December 20, 1985 as R.1985 d.680, **without  
change.**

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

Effective Date: January 21, 1986.

Expiration Date pursuant to Executive Order No.  
66(1978): April 15, 1990.

#### Summary of Public Comments and Agency Responses:

Written comments were received from one commenter during the thirty day comment period.

COMMENT: Hamilton Hospital stated that the proposed amendment supports the development of freestanding ambulatory surgical units at the expense of existing surgical facilities. The commenter cites the major capital investment required for the building of new resources, as well as the fixed costs associated with closed operating rooms, as examples of added expense resulting from this proposed amendment.

RESPONSE: The department does not consider the proposed amendment to be supportive of freestanding ambulatory surgical centers at the expense of existing surgical facilities. The Department recognizes a shift in surgical utilization patterns. This proposed amendment enables hospitals to respond to the demands of its patient population. In short, it enables hospitals to accommodate the shift away from inpatient operating rooms and into ambulatory settings.

COMMENT: Hamilton Hospital also states that the indirect costs—licensing, inspection, etc.—associated with freestanding ambulatory centers will also result in additional cost to be borne by the public.

RESPONSE: With regard to the financial concerns raised by Hamilton Hospital, the Department will carefully analyze the economic impact of all proposals submitted prior to recommending action on a project under the proposed amendment. Only if a project is financially feasible and results in lower health systems costs will the Department recommend approval.

COMMENT: Hamilton Hospital proposes an alternative regulation be proposed supporting and encouraging hospital based ambulatory surgical services focusing upon better use of existing space and manpower and surplus beds for admission and discharge.

RESPONSE: Even in the absence of the recommended alternative, the Department is supportive of hospital based outpatient surgical services. The Department takes the position that each facility must be allowed to evaluate its individual needs with regard to the delivery of surgical services. Based

- ii. SHARE cost center: Supply costs reported in OGS and PLT cost centers;
- iii. Proxies: CPI: Maintenance and repairs, commodities;
- iv. Source: BLS, Consumer Price Index.
- 14. Others 1:
  - i. Cost component: Repairs and maintenance services;
  - ii. SHARE cost center: Other expenses and contracted service costs reported in OGS and PLT cost centers;
  - iii. Proxy: CPI: Maintenance and repairs, services;
  - iv. Source: BLS, Consumer Price Index.
- 15. Other 2:
  - i. Cost component: Contracted laundry and linen;
  - ii. SHARE cost center: Contracted service costs reported in L and L cost center;
  - iii. Proxies:
    - (1) CPI: Laundry and dry cleaning other than coin operated (80 percent);
    - (2) CPI: Household linens (20 percent).
  - iv. Source: BLS, Consumer Price Index.
- 16. Other 3:
  - i. Cost component: Telephone;
  - ii. SHARE cost center: Other expense reported in A and G cost center;
  - iii. Proxy: CPI—Telephone services;
  - iv. Source: BLS, Consumer Price Index.
- 17. Other 4:
  - i. Cost component: Postage;
  - ii. SHARE cost center: Other expense reported in A&G and FIS cost center;
  - iii. Proxy: CPI: Postage;
  - iv. Source: BLS, Consumer Price Index.
- 18. Other 5:
  - i. Cost component: Travel and conference;
  - ii. SHARE cost center: Other expense reported in A&G and FIS cost center;
  - iii. Proxy: CPI: Transportation;
  - iv. Source: BLS, Consumer Price Index.
- 19. Other 6:
  - i. Cost component: Other services;
  - ii. SHARE cost center: Other expense reported in all cost center except INT, PLT, OGS, MAL, UTC, LFB, PFB, and PEN; Other expenses in A&G Cost Center not classified above; contracted service cost in Ancillaries, DTY, HKP, MRD, PCC, EDR, A&G and FIS cost centers;
  - iii. Proxies: CPI: Service less rent and medical care;
  - iv. Source: BLS, Consumer Price Index.

(b) This factor will be based on a projection of the various proxies for the following calendar year using the best available techniques. As annual actual data for both labor and non-labor portions of the factor become available, differences between the year's overall projected and actual values will be reconciled. The labor portion of the factor will be reconciled by adjusting the labor projection for the succeeding year and a retroactive adjustment will be made for the non-labor portion.

## ADOPTIONS

## HEALTH

upon the evaluation, the Department will, within the framework of the Surgical Facilities Regulation, work with the facilities to help them to achieve their goals.

Full text of the adoption follows.

### 8:33A-2.6 Criteria for review and approval

(a) No application for a new surgical facility, or increase in the number of operating rooms in an existing surgical facility, will be approved unless all of the following conditions are met:

1. The number of operating rooms proposed is needed when assessed according to the Surgical Need Methodology identified herein attached as Appendix A.

2. The utilization of the existing operating rooms available in the applicant's service area is expected to be in excess of 90 percent of their capacity according to the Surgical Need Methodology herein attached as Appendix B.

3. The applicant provides sufficient assurance that both licensure standards and Medicare certification standards will be met.

4. The applicant must document in its application the proportion of Medicaid-eligible and medically indigent persons residing in the proposed service area. In addition, the applicant must, in delivering the proposed service, provide care on a free or partial-pay basis to Medicaid-eligible and medically indigent persons at least in proportion to their representation in the approved service area.

5. The applicant indicates a willingness to seek contracts with health maintenance organizations.

6. The proposed costs and charges are deemed appropriate by the Department of Health.

7. The proposal minimizes increases in systemic health care costs.

8. The applicant indicates and documents that contacts with community organizations which serve low income populations have been initiated.

(b) Waivers may be considered where an HSA has petitioned a waiver identifying specific and quantifiable evidence that the methodology is inappropriate because of circumstances unique to a given application. The waiver, if approved, would apply only to the application for which the waiver is petitioned and the waiver request must give substantial evidence that in the absence of a waiver serious problems of access to a needed service would result.

(c) Exception to (a)1 and 2 above may be made where an applicant or a facility which is a subsidiary of an organization which has control of the applicant:

1. Has agreed, as part of the application, to close at least one inpatient operating room for each dedicated ambulatory surgical operating room proposed pursuant to the provisions of N.J.A.C. 8:33A-2.5.

(a)

## DIVISION OF HEALTH FACILITIES EVALUATION

### Standards for Licensure of Residential Health Care Facilities

#### Introduction

#### Adopted New Rules: N.J.A.C. 8:43-1

Proposed: October 21, 1985 at 17 N.J.R. 2498(a).

Adopted: December 17, 1985 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of Health Care Administration Board).

Filed: December 20, 1985 as R.1985 d.684, **without change.**

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

Effective Date: January 21, 1986.

Expiration Date pursuant to Executive Order No. 66(1978): January 21, 1991.

#### Summary of Public Comments and Agency Responses:

The Department received three letters of comment regarding the proposed new rules, N.J.A.C. 8:43-1, one letter from the New Jersey Association of Non-Profit Homes for the Aging, the second letter from the State of New Jersey, Office of the Ombudsman for the Institutionalized Elderly. No changes were made in the adopted new rules, N.J.A.C. 8:43-1.

COMMENT: The New Jersey Association of Non-Profit Homes for the Aging supports the training of operators, administrators, and managers of residential health care facilities as required in the adopted amendment, N.J.A.C. 8:43-1.3(d). The Association, however, recommended that Licensed Nursing Home Administrators be exempted from completing the training course approved by the New Jersey State Department of Human Services since it would be repetitious of the training required to become licensed by the New Jersey State Department of Health as a Licensed Nursing Home Administrator.

RESPONSE: The Department acknowledges the support of the New Jersey Association of Non-Profit Homes for the Aging. The Department concurs with the recommendation of the New Jersey Association of Non-Profit Homes for the Aging and will not require operators, administrators, or managers of residential health care facilities who are licensed by the Department as Licensed Nursing Home Administrators to complete the training course specified in N.J.A.C. 8:43-1.3(d).

COMMENT: "The New Jersey Association of Health Care Facilities (NJAHCF) strongly supports the attempt to ensure that residential health care facilities provide quality care for residents . . . NJAHCF recommends however, that the proposed regulation be revised to allow the Department of Health to approve the training course . . . to avoid unnecessary division of authority." The letter further stated that they New Jersey Association of Health Care Facilities "is in full agreement that the proposed requirement is valid only if the Department of Human Services continues to fund a training program."

**RESPONSE:** The Department acknowledges the support of the New Jersey Association of Health Care Facilities. In response to their recommendation that the Department of Health approve the training course, the Department contends that the acceptance of this recommendation would, in fact, create unnecessary division of authority since the course represents the cooperative efforts of three Department of State government, Community Affairs, Health, and Human Services, in developing this training course (see: 17 N.J.R. 2498(a)).

**COMMENT:** The State of New Jersey, Office of the Ombudsman for the Institutionalized Elderly supports the amendment to N.J.A.C. 8:43-1.3(d).

**RESPONSE:** The Department acknowledges the support of the State of New Jersey, Office of the Ombudsman for the Institutionalized Elderly.

**Full text** of the expired rules adopted as new rules appears in the New Jersey Administrative Code at N.J.A.C. 8:43-1.

**Full text** of the adopted amendment to the new rules follows.

8:43-1.3 Qualifications of operator, applicant or administrator

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

(d) The operator, administrator, or manager of a residential health care facility shall complete a training course approved by the Department of Human Services. Current operators, administrators, or managers shall complete the training course before July 1, 1987. An operator, administrator, or manager appointed on or after July 1, 1987, shall complete the training course within one year of his or her employment as the operator, administrator, or manager. The training course will be required only if there exists a training program funded by the Department of Human Services.

**(a)**

### Standards for Licensure of Hospital Facilities Personnel

#### Readoption: N.J.A.C. 8:43B-5

Proposed: October 21, 1985 at 17 N.J.R. 2501(b).  
Adopted: December 17, 1985 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of Health Care Administration Board).  
Filed: December 20, 1985 as R.1985 d.683, **without change**.

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

Effective Date: December 20, 1985.  
Expiration Date pursuant to Executive Order No. 66(1978): December 20, 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. 8:43B-5.

**(b)**

### Standards for Licensure of Hospital Facilities Renal Dialysis Services

#### Adopted Repeal: N.J.A.C. 8:43B-15

#### Adopted New Rule: N.J.A.C. 8:43B-15

Proposed: October 21, 1985 at 17 N.J.R. 2503(a).  
Adopted: December 17, 1985 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of Health Care Administration Board).  
Filed: December 20, 1985 as R.1985 d.682, **with substantive changes** not requiring additional public notice and comment (N.J.A.C. 1:30-3.5).

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

Effective Date: January 21, 1986.  
Expiration Date pursuant to Executive Order No. 66(1978): January 21, 1991.

#### Summary of Public Comments and Agency Responses:

The Department received four letters of comment regarding the proposed new rule during the comment period and responded to the commentors in writing.

The Renal Disease Program of the Department submitted the comments and recommendations of its Renal Advisory Committee which were developed at the September 18, 1985, meeting of the Renal Advisory Committee and at a subsequent meeting of a subcommittee of the Renal Advisory Committee formed to review the proposed subchapter, N.J.A.C. 8:43B-15. The Committee recommended that a nephrologist be, by definition, a physician who is certified in nephrology by the American Board of Internal Medicine, Inc., or the American Osteopathic Board of Internal Medicine, or who has completed a two-year approved fellowship in nephrology, and that a medical director (renal dialysis services) be, by definition, a physician who is Board-certified in nephrology. The suggested revisions to the proposed definitions allow physicians currently employed as nephrologists and medical directors to continue to serve in their present capacities. In the interest of consistency among the definitions, the Renal Disease Program suggested that the term "pediatric nephrologist" refer to a physician who is certified or eligible for certification in pediatric nephrology by the American Board of Pediatrics, Inc., or the American Osteopathic Board of Pediatrics.

None of the definitions were revised. The definitions of "medical director," "nephrologist," and "pediatric nephrologist" in N.J.A.C. 8:43B-15.1 specify minimum qualifications but do not prevent any facility from establishing more stringent requirements regarding staff qualifications if the facility wishes to do so. The adopted rules allow physicians currently employed as nephrologists and medical directors to continue to serve in their present capacities.

The Renal Advisory Committee made recommendations in the area of nurse staffing. These recommendations include a minimum ratio of one licensed nurse per two chronic renal dialysis patients; a minimum ratio of one registered professional nurse and one licensed nurse or ancillary person per nine chronic dialysis patients; a minimum of one registered professional nurse per patient receiving dialysis treatment in

the intensive/coronary care unit; a minimum of one license nurse per two chronic dialysis patients with medical complications, defined as "those patients whose condition reflects potential life threatening complications which may be accelerated by dialysis"; the continuous availability of at least one registered professional nurse trained in dialysis to provide "on call" dialysis care; and a minimum ratio of one registered professional nurse per two patients receiving home (self) care renal dialysis training.

The Department discussed the nurse staffing recommendations enumerated above with the Renal Advisory Committee at the November 20, 1985, meeting of the committee. The Department indicated that the recommendations need to be justified by the committee. Given the imminent expiration of N.J.A.C. 8:43B-15, it was not possible to delay adoption of the new rule, N.J.A.C. 8:43B-15, pending such justification. The Department, however, will consider amending the rules at a later date in response to receipt of information supporting the recommendations of the Renal Advisory Committee.

The Renal Advisory Committee's suggested definition of "self-care renal dialysis" was added to N.J.A.C. 8:43B-15.1. This addition clarifies the intent of the proposed rules and is not detrimental to renal dialysis patients. A definition of "ancillary personnel" was not added since the term "ancillary personnel" does not appear in the nurse staffing rules, N.J.A.C. 8:43B-15.14.

In addition to the recommendations of the Renal Advisory Committee, the Department received comments and recommendations from Morristown Memorial Hospital, the Mount Kemble Division of Morristown Memorial Hospital, and Middlesex General-University Hospital.

One of the commentors stated that the definition of "clinical note" in N.J.A.C. 8:43B-15.1 is "particularly excessive" and that "facilities are unable to increase staffing to accommodate the amount of paper work required by physicians, nurses, social workers, etc." The definition was not rewritten. The Department maintains that the information included in a clinical note is necessary and is not excessive. Furthermore, since the clinical note is written by the health care professional who renders the service, there is no need for the facility to increase staff as a result of the definition. Also, the definition clarifies, but does not differ in intent from, the definition of "clinical note" in the heretofore effective rule, N.J.A.C. 8:43B-15.11.

The Department disagrees with a comment that the definition of "administrator" in N.J.A.C. 8:43B-15.1 has been "significantly changed." Rather, the adopted definition is clearer than the definition which it is replacing. The commentor also recommended that the administrator be required to be "available to the facility" rather than "available in the facility during its hours of operation" as stated in N.J.A.C. 8:43B-15.9(a). The rule was not rewritten since N.J.A.C. 8:43B-15.9(a)3 allows for the designation of an alternate to act in the absence of the administrator.

One respondent, in addition to supporting the Department's efforts to revise the rules regarding renal dialysis, commented on the nurse staffing ratios specified in N.J.A.C. 8:43B-15. It was recommended that N.J.A.C. 8:43B-15.14(a)3 "allow for the one to one teaching ratio which is of paramount importance in the home training setting." The commentor stated that "clarification of the definitions of home care and self care dialysis will demonstrate the need for different staffing ratios." As noted above, a definition of "self-care renal dialysis" has been added to N.J.A.C. 8:43B-15.1. Neither the Department nor the Renal Advisory Committee, however, agrees that a

one nurse per home care renal dialysis training patient ratio is needed as a minimum requirement. The adopted rule allows, but does not require, implementation of the ratio suggested by the commentor. The respondent expressed concern about the nurse staffing requirements as they relate to chronic and pediatric renal dialysis services. Reasons for concern for the quality of care and the safety of patients included "the complexity and multiplicity of medical problems" of hospital chronic dialysis patients and "the diverse problems and special needs of the pediatric population . . . in the hemodialysis setting." A ratio of at least one registered nurse per two pediatric dialysis patients was recommended. The commentor also recommended that there be "a policy . . . for on-call availability" of a registered nurse in order to provide "appropriate emergency coverage for all renal dialysis patients." (See N.J.A.C. 8:43B-15.2(b)9 and N.J.A.C. 8:43B-15.5(b) for rules concerning continuity of care and care of patients during medical emergencies, respectively.) As in the case of the nurse staffing recommendations of the Renal Advisory Committee which were discussed above, the Department will consider amending the rules pertaining to nurse staffing levels when ample justification for making substantive changes is provided to the Department. The Department agrees that the appropriate levels of acuity of patient care should be considered in the establishment of staffing levels by the facility. The facility retains the flexibility to exceed the levels of nurse staffing minimally required by N.J.A.C. 8:43B-15.

One respondent suggested that N.J.A.C. 8:43B-15 make reference to the Department's policies regarding hepatitis and Acquired Immune Deficiency Syndrome (AIDS) screening and isolation procedures. It is not necessary to add such a reference with respect to hepatitis since N.J.A.C. 8:43B-15.6(b) requires the renal dialysis service to adhere to the recommendations of the United States Department of Health and Human Services, Centers for Disease Control, in "Hepatitis Surveillance," Report No. 41, September 1977. In response to the comment regarding AIDS screening and isolation, the letter of comment is being forwarded to the Division of Epidemiology and Disease Control of the Department for reply.

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

#### SUBCHAPTER 15. RENAL DIALYSIS SERVICES

##### 8:43B-15.1 Definitions and/or qualifications

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

"Acute renal dialysis" shall mean the rendering of dialysis to a patient with previously life-supporting renal function who has sustained abrupt loss of kidney function. Recovery of kidney function is expected in such patients.

"Administrator" shall mean a person with a baccalaureate degree and two years of administrative or supervisory experience in a health care facility. Additional years of experience and/or training in a health care facility may be substituted on a year for year basis in lieu of the required baccalaureate degree.

"Available" shall mean ready for immediate use (pertaining to equipment) or capable of being reached (pertaining to personnel), unless otherwise defined in these rules.

"Chronic renal dialysis" shall mean the rendering of dialysis to a patient with end stage renal dialysis in whom recovery of renal function is not expected.

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## ADOPTIONS

"Cleaning" shall mean the removal by scrubbing and washing, as with hot water, soap or detergent, and vacuuming, of infectious agents and of organic matter from surfaces on which and in which infectious agents may find conditions for surviving or multiplying.

"Clinical note" shall mean a written, signed, and dated notation made at each patient visit by each health care professional who renders a service to the patient, and shall include a description of signs and symptoms, treatment and/or medication(s) given, the patient's response, and any changes in physical or emotional condition. Clinical notes are written into the patient's medical record the day service is rendered.

"Communicable disease" shall mean an illness due to a specific infectious agent or its toxic products, which occurs through transmission of that agent or its products from a reservoir to a susceptible host.

"Contamination" shall mean the presence of an infectious or toxic agent in the air, on a body surface, on or in clothes, bedding, instruments, dressings, or other inanimate articles or substances, including water, milk, and food.

"Current" shall mean up-to-date, extending to the present time.

"Department" shall mean the New Jersey State Department of Health.

"Dietitian or dietary consultant" shall mean a person who:

1. Is registered or eligible for registration by the Commission on Dietetic Registration of the American Dietetic Association; or
2. Has a bachelor's degree from a college or university with a major in foods, nutrition, food service or institution management, or the equivalent course work for a major in the subject area; and has completed a dietetic internship accredited by the American Dietetic Association or a dietetic traineeship approved by the American Dietetic Association or has one year of full-time, or full-time equivalent, experience in nutrition and/or food service management in a health care facility; or
3. Has a master's degree plus six months of full-time, or full-time equivalent, experience in nutrition and/or food service management in a health care facility; and
4. Participates annually in continuing dietary education.

"Disinfection" means the killing of infectious agents outside the body, or organisms transmitting such agents, by chemical and physical means, directly applied.

1. "Concurrent disinfection" shall mean the application of measures of disinfection as soon as possible after the discharge of infectious material from the body of an infected person, or after the soiling of articles with such infectious discharges, all personal contact with such discharges or articles being minimized prior to such disinfection.

2. "Terminal disinfection" shall mean the application of measures of disinfection after the patient has ceased to be a source of infection, or after the facility's isolation practices have been discontinued. Terminal disinfection is rarely practiced; terminal cleaning generally suffices (see definition of "cleaning" above), along with airing and sunning of rooms, furniture, and bedding. Terminal disinfection is necessary only for diseases spread by indirect contact.

"Documented" shall mean a written, signed, and dated notation or statement.

"Full-time" shall mean relating to a time period established by the facility as a full working week, as defined and specified in the facility's policies and procedures.

"Governing authority" shall mean the organization, person, or persons designated to assume legal responsibility for the determination and implementation of policy for the manage-

ment, operation, and financial viability of the facility.

"Hospital" shall mean a health care facility as defined in N.J.A.C. 8:43B.

"Licensed nursing personnel" (license nurse) shall mean registered professional nurses or practical (vocational) nurses licensed by the New Jersey State Board of Nursing.

"Licensed practical nurse" shall mean a person who is so licensed by the New Jersey State Board of Nursing.

"Medical director (renal dialysis services)" shall mean a nephrologist. The same person shall not serve as medical director for more than two facilities providing renal dialysis services.

"Monitor" shall mean to directly observe, watch, or check.

"Nephrologist" shall mean a physician who is certified in nephrology or internal medicine or eligible for certification in nephrology by the American Board of Internal Medicine, Inc., or the American Osteopathic Board of Internal Medicine, or who has been granted privileges by the facility to provide services, equal to or higher than those provided by a Board-certified or Board-eligible physician.

"Nursing service staff" shall mean unlicensed workers, such as technicians and aides, who are employed to assist licensed nursing personnel. Nursing service staff are trained on the job in accordance with the staff education plan, and are experienced in renal dialysis procedures. Nursing service staff also includes licensed nursing personnel.

"Nursing supervisor" shall mean a person who is licensed by the New Jersey State Board of Nursing as a registered professional nurse, and who:

1. Has at least 12 months of experience in clinical nursing, and an additional six months of experience in nursing care of the patient with permanent kidney failure or undergoing kidney transplantation, including training in and experience with the renal dialysis process; or
2. Has 18 months of experience in nursing care of the patient on renal dialysis, or in nursing care of the patient with a kidney transplant, including training in and experience with the renal dialysis process.

"Patient care plan" shall mean a written plan, initiated and implemented in accordance with the policies and procedures of the facility, which documents an assessment of the patient, and the care and treatment to be provided, including the type, amount, frequency, and duration. Each service of the facility which provides care to the patient shall develop its own portion of the patient care plan. The patient care plan shall be kept current, shall be revised in accordance with the policies and procedures of the facility, and shall be developed in conjunction with the patient, next of kin and/or sponsor or guardian.

"Pediatric nephrologist" shall mean a physician who is certified or eligible for certification in pediatric nephrology by the American Board of Pediatrics, Inc., or the American Osteopathic Board of Pediatrics, or who has been granted privileges by the facility to provide services equal to or higher than those provided by a Board-certified or Board-eligible physician.

"Physician" shall mean a person who is licensed or authorized by the New Jersey State Board of Medical Examiners to practice medicine in the State of New Jersey.

"Registered professional nurse" shall mean a person who is so licensed by the New Jersey State Board of Nursing.

"Secondary care" shall mean care delivered by a specialist or subspecialist following referral by the primary care source. This may include ambulatory or inpatient care.

## ADOPTIONS

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**“Self-care renal dialysis” shall mean a dialysis treatment in which a trained self-care patient is responsible for a minimum of three of the following four steps involved in the dialysis treatment:**

1. Build or set up machine;
2. Cannulation;
3. Monitoring vital signs and machine pressures and flows;
4. Breakdown machine—not to include cleaning.\*

“Shift” shall mean a period of time established as a full working day, as defined in the hospital policy and procedure manual.

“Social worker” shall mean a person who has a master’s degree in social work from a graduate school of social work accredited by the Council on Social Work Education.

“Staff education plan” shall mean a written plan developed at least annually and implemented throughout the year which describes a coordinated program for staff education for each service, including inservice programs and education, staff development, on-the-job training and continuing education, and the intervals and times at which these shall be given. Each employee shall receive education to develop skills and increase knowledge so as to improve inpatient care. Inviting speakers to the facility, or occasional attendance by staff at programs or conventions, does not in itself constitute an acceptable staff education plan.

“Staff orientation plan” shall mean a written plan for the orientation of each new employee to the duties and responsibilities of the service to which he or she has been assigned, as well as to the personnel policies of the facility.

“Sterilization” shall mean a process of destroying all microorganisms, including those bearing spores, in, on, and around an object.

“Supervision” shall mean authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his or her sphere of competence, with initial direction and periodic on-site inspection of the actual set of accomplishing the function or activity.

“Direct supervision” shall mean supervision on the premises within view of the supervisor.

“Tertiary care” shall mean specialized inpatient care.

#### 8:43B-15.2 General requirements

(a) This subchapter shall apply to all hospitals providing renal dialysis services. The renal dialysis service shall be administered by the governing authority responsible for the management, control and operation of the hospital. It shall be subject to the rules, regulations, and inspections applicable to the hospital. The renal dialysis services included in this subchapter are:

1. Acute renal dialysis services;
2. Chronic renal dialysis services, including home (self) care renal dialysis training; and
3. Pediatric renal dialysis.

(b) A policy and procedure manual(s), which may supplement the hospital policy and procedure manual(s), for the organization and operation of the facility shall be established, implemented, and reviewed at intervals specified in the manual. Each review of the manual shall be documented, and the manual(s) shall be available at the facility to representatives of the Department at all times. The manual(s) shall include at least the following:

1. A written narrative of the program describing its philosophy and objectives, the staffing patterns, and the services provided by the facility;

2. An organizational chart delineating the lines of authority, responsibility, and accountability, so as to ensure continuity of care to patients;

3. A description of the system for maintenance of patient records while the facility is in operation, and in the event that the facility ceases its operation;

4. A description of the process of audit and evaluation (quality assurance) of patient care and staff performance;

5. Provision of medical care 24 hours a day, seven days a week;

6. A staff orientation plan and a staff education plan;

7. A system for referral of patients to sources of secondary and tertiary health care. A facility providing chronic renal dialysis services shall have a written transfer agreement with at least one hospital having an acute renal dialysis service and with at least one facility having a renal transplant program, if these services are not provided at the facility. A facility providing acute renal dialysis services shall have a written transfer agreement with at least one facility providing chronic renal dialysis services, if chronic renal dialysis services are not provided at the facility;

8. Policies and procedures for the maintenance of personnel records for each employee, including at least his or her name, previous employment, education background, license number and date of expiration (if applicable), health evaluation records, job description, and evaluations of job performance; and

9. The facility shall maintain written staffing patterns. Provision shall be made for substitute staff with equivalent qualifications to replace absent staff members. Staffing patterns shall be implemented to facilitate continuity of care to patients.

#### 8:43B-15.3 Patient care policies and procedures

(a) Patient care policies and procedures shall facilitate the continuity of care to patients and shall include, but not be limited to, policies and procedures for the following:

1. The provision for after-hours and emergency care and treatment, including a definition of emergency;

2. Care of patients, to ensure that each patient receives services in accordance with these rules;

3. A written patient care plan including initiation, implementation, review, and revision of the patient care plan;

4. The provision of dietary counseling and social work services. Social work services shall be provided by a social worker. Dietary counseling shall be provided by a dietitian or dietary consultant;

5. The provision of equipment and supplies which are suited to the age and type of patients;

6. Patient instruction and health education;

7. The provision of printed and/or written instructions and information for patients, including multilingual instructions as indicated. Information shall include, but not be limited to, tests and/or procedures needed, possible complications, a telephone number to call when needed, and instructions for obtaining care in an emergency;

8. Interpretation services, if the patient population is non-English speaking or for patients who are blind or deaf;

9. The safe-keeping of patients’ valuables when required;

10. Ensuring visual and auditory privacy of patients;

11. The control of smoking in the facility in accordance with N.J.S.A. 26:3D-1 et seq. and N.J.S.A. 26:3D-7 et seq.;

12. Establishment and implementation of a system whereby patient and staff grievances and/or recommendations, including those relating to patient rights, can be identified within

the facility. This system shall include a feedback mechanism through management to the governing authority, indicating that action was taken;

13. Patient rights;

14. Patients shall be permitted to bring their own food provided that it is consumed only in the renal dialysis area, and only by the patient. The facility shall develop a policy regarding the categories of food permitted in the renal dialysis treatment area;

15. All food served to patients in the renal dialysis service shall be provided in disposable food service equipment. The facility shall adhere to Chapter 12 of the New Jersey State Sanitary Code, N.J.A.C. 8:24;

16. Admission of patients, including limitations on admission based on diagnosis, type or degree of disability, medical condition, or other factors;

17. Discharge/termination, retention, and readmission of patients; and

18. Referral of patients and for use of consultant services.

(b) If home (self) care renal dialysis services are provided, the facility shall have written policies and procedures including, but not limited to, policies and procedures regarding the following:

1. A written outline of the home (self) care training program for the unsupervised performance of renal dialysis treatments by patients;

2. Surveillance of the patient's home adaptation through visitation of the patient's home by a registered professional nurse, including the frequency of home visitation;

3. Installation and maintenance of equipment in the home;

4. Testing and treatment of the water in the home; and

5. Ordering of supplies for the home on an ongoing basis.

(c) The facility shall ensure that if dialyzers are reused, they shall be reused in accordance with the Guidelines for Reuse of Dialyzers of the Renal Disease Program of the Department.

(d) When both acute and chronic renal dialysis patients are treated in the same area of the facility, they shall be scheduled for treatment so that acute renal dialysis patients are treated separately, either in a separate place (divided at least by privacy curtains), or at a separate time, from chronic renal dialysis patients.

#### 8:43B-15.4 Consultant services

(a) The facility shall have a written agreement, or its equivalent, for services not provided in the facility. The written agreement, or its equivalent, shall:

1. Be dated and signed by a representative of the facility and by the person or agency providing the service;

2. Specify each party's responsibilities, functions, and objectives, the time during which services are to be provided, the financial arrangements and charges, and the duration of the written agreement or its equivalent;

3. Specify that the facility retain administrative responsibility for services rendered;

4. Require that services are provided in accordance with these rules; and

5. Require the provision of written documentation to the facility, including, but not limited to, documentation of services rendered and recommendations made by the person or agency providing the service.

#### 8:43B-15.5 Emergency medical services

(a) The facility shall provide emergency medical services on the premises during its hours of operation to renal dialysis patients requiring such services.

(b) Written policies shall be developed and implemented regarding the care of patients during medical emergencies when the service is not in operation, while patients are receiving renal dialysis, and for patients who are on home (self) care renal dialysis.

(c) Personnel trained in use of emergency equipment and in cardiopulmonary resuscitation shall be available whenever there is a patient in the renal dialysis service.

(d) The facility shall establish and implement policies and procedures, approved by the pharmacy and therapeutics committee, or its equivalent, or by the medical director, regarding emergency kits and emergency carts. The policies and procedures shall:

1. Specify the locations, contents, frequency of checking contents (including expiration dates), and assignment of responsibility for checking contents;

2. Ensure that pediatric doses are provided in areas of the facility where pediatric emergencies may occur;

3. Ensure that emergency kits are secure but are not kept under lock and key; and

4. Ensure that the facility provides an emergency cart, an electrocardiogram machine, a cardiac defibrillator, oxygen, and an aspirator, in the renal dialysis service at all times.

#### 8:43B-15.6 Infection prevention and control program

(a) The facility shall establish and implement written policies and procedures regarding infection prevention and control, including, but not limited to, the following:

1. In accordance with the New Jersey Sanitary Code, a system for investigating, reporting, and evaluating the occurrence of all infections or diseases which are reportable or conditions which may be related to activities and procedures of the facility, and maintaining records for all patients or personnel having these infections, diseases, or conditions;

2. Reportable and other diseases shall be reported in accordance with N.J.A.C. 8:57-1 et seq. of the New Jersey State Sanitary Code, and amendments thereto;

3. Care of patients with communicable diseases;

4. Policies and procedures for exclusion from work, and authorization to return to work, for personnel with communicable diseases;

5. Surveillance techniques to minimize sources and transmission of infection;

6. Sterilization, disinfection, and cleaning practices and techniques used in the facility, including, but not limited to, the following:

i. Care of utensils, instruments, solutions, dressings, articles, and surfaces;

ii. Selection, storage, use, and disposition of disposable and nondisposable patient care items. Disposable items shall not be reused; dialyzers may be reused, in accordance with N.J.A.C. 8:43B-15.3(c);

iii. Methods to ensure that sterilized materials are packaged and labeled to maintain sterility and to permit identification of expiration dates; and

iv. Procedures for care of equipment and other devices that provide a portal of entry for pathogenic microorganisms;

7. Techniques to be used during each patient contact, including handwashing before and after caring for a patient; and

8. Criteria and procedures for isolation of patients.

(b) The renal dialysis service shall adhere to the recommendations of the United States Department of Health and Human Services, Centers for Disease Control, "Hepatitis Surveillance," Report No. 41, September 1977.<sup>1</sup>

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(c) All personnel shall receive orientation at the time of employment and continuing inservice education regarding the infection prevention and control program.

1 Copies of the report can be obtained from the United States Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, GA 30333.

## 8:43B-15.7 Water analysis and treatment

The facility shall have a water treatment system. Water used for dialysis shall conform to the requirements of the Association for the Advancement of Medical Instrumentation (AAMI).<sup>1</sup> The water shall be microbiologically analyzed monthly by a laboratory certified by the New Jersey State Department of Environmental Protection or licensed by the New Jersey State Department of Health. Trace element analysis shall be performed at least once every six months by a laboratory certified by the New Jersey State Department of Environmental Protection. Written records of all test results (mineral, biological, and water treatment equipment) and equipment maintenance shall be maintained in the facility.

1 The AAMI requirements may be obtained from either of the following sources: (1) Association for the Advancement of Medical Instrumentation, Suite 602, 1901 N. Fort Myer Drive, Arlington, VA. 22209; or (2) Environmental Health Services, New Jersey State Department of Health, CN 364, Trenton, NJ 08625.

## 8:43B-15.8 Housekeeping services

The facility shall establish and implement policies and procedures regarding cleaning and disinfecting of patient reclining chairs, beds (including mattresses), and renal dialysis machines between each instance of patient use, and daily cleaning and disinfecting of floors and walls in the renal dialysis service.

## 8:43B-15.9 Administrator

(a) The governing authority shall appoint an administrator who shall be available to the facility during its hours of operation.

1. In a facility where an administrator has both administrative and other functions, the facility shall maintain written documentation of the individual's time in each function.

2. The administrator's hours shall not be included in computation of staffing ratios for the renal dialysis service.

3. An alternate shall be designated in writing to act in the absence of the administrator.

## 8:43B-15.10 Medical director

(a) A medical director shall be appointed and shall be responsible for the direction, provision, and quality of medical care.

(b) The medical director shall be available to the renal dialysis service (available in this instance shall be able to arrive at the facility within 15 minutes of being called).

(c) The medical director shall designate, in writing, a physician to act in the absence of the medical director.

(d) The medical director shall ensure that a nephrologist is in the hospital and available during the course of acute renal dialysis treatment.

(e) The medical director shall ensure that consultation by a pediatric nephrologist shall be available to the pediatric renal dialysis service at all times during its hours of operation.

## 8:43B-15.11 Medical director's responsibilities

(a) The medical director shall be responsible for, but not limited to, the following:

1. Monitoring the professional performance of medical staff members who provide care to patients;

2. Developing and maintaining written objectives, philosophy, policies, a procedure manual, an organizational plan, and an evaluation plan for the renal dialysis service;

3. Participating in planning and budgeting for the renal dialysis service;

4. Coordinating and integrating the medical service with other patient care services to provide a continuum of care for the patient;

5. Ensuring that medical staffing patterns are implemented;

6. Assisting in developing and maintaining written job descriptions for medical staff, and assigning duties based upon education and training;

7. Participating in the development and maintenance of a system of patient care evaluation (quality assurance), including peer review and audit;

8. Assisting in the development and implementation of patient care policies;

9. Assisting in the development of, and participating in, orientation of staff to the facility; and

10. Assisting in determining staff education needs, and planning and organizing staff education programs.

## 8:43B-15.12 Nursing supervisor's appointment and responsibilities

(a) A nursing supervisor shall be appointed for the renal dialysis service. The nursing supervisor shall be responsible for the direction, provision, and quality of nursing care including, but not limited to, the following:

1. Developing and maintaining written objectives, philosophy, policies, procedure manual, and organizational and evaluation plan for the nursing service;

2. Participating in planning and budgeting for the nursing service, including recommending the number and levels of nursing personnel to be employed;

3. Coordinating and integrating the nursing service with other patient care services to provide a continuum of care for the patient;

4. Ensuring that nursing staffing patterns are implemented;

5. Assisting in developing and maintaining written job descriptions for nursing personnel, and assigning duties based upon education and training;

6. Ensuring that a registered professional nurse initiates the nursing portion of the patient care plan for each patient and assesses and reassesses the nursing needs of each patient;

7. Assisting in the development of patient care policies;

8. Participating in the development and maintenance of a system of patient care evaluation, including peer review and audit;

9. Assisting in the development of, and participating in, orientation of staff to the service;

10. Assisting in determining staff educational needs, and planning and organizing staff education programs;

11. Ensuring that licensed nursing personnel enter in the patient's medical record the nursing care plan (initiated by a registered professional nurse) and clinical notes; and

12. The nursing supervisor shall not be included in computation of the nurse:patient ratio.

## 8:43B-15.13 Responsibilities of nursing personnel

(a) In accordance with the State of New Jersey Nursing Practice Act, N.J.S.A. 45:11-23 et seq., The Standards of Practice for the Registered Nurse in the State of New Jersey and the Standards of Practice for the Licensed Practical Nurse in the State of New Jersey of the New Jersey State Board of Nursing (1983), and written job descriptions, nursing person-

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nel shall be responsible for providing nursing care including, but not limited to, the following:

1. Care of patients through health promotion, maintenance, and restoration;
2. Care toward prevention of infection, accident, and injury;
3. Assessing the patient's nursing care needs and providing nursing care services;
4. Monitoring the patient's response to treatment and nursing care;
5. Coordinating and integrating the nursing service with other patient care services to provide a continuum of care for the patient;
6. Teaching, supervising, and counseling the patient and the staff regarding nursing care and the patient's needs. Only a registered professional nurse shall initiate these activities, which may be reinforced by licensed nursing personnel; and
7. In accordance with written job descriptions and with these rules, nursing personnel shall enter in the patient's medical record the nursing portion of the patient care plan.

**8:43B-15.14. Nurse staffing**

(a) A minimum of one registered professional nurse shall be assigned to the renal dialysis service for each shift during which the renal dialysis service operates. The registered nurse may be considered as one of the total number of required nursing service staff members.

1. If acute renal dialysis services are provided, including acute pediatric renal dialysis, there shall be a minimum of one licensed nurse for each acute renal dialysis patient for each shift during which the renal dialysis service operates.
2. If chronic renal dialysis services are provided, there shall be a minimum of one nursing service staff member on duty for every three patients receiving chronic renal dialysis services on the premises.
3. If home (self) care renal dialysis training services are provided, a registered professional nurse shall be responsible for the supervision of the home (self) care renal dialysis training program, and there shall be a minimum of one licensed nurse on duty for every two patients on the premises receiving home (self) care renal dialysis training.
4. If self-care renal dialysis services are provided, there shall be a minimum of one licensed nurse on duty for every six patients on the premises receiving self-care renal dialysis.
5. If pediatric renal dialysis services are provided, there shall be a minimum of two nursing service staff members on duty for every three patients receiving chronic pediatric renal dialysis services on the premises.

**8:43B-15.15 Dietary counseling and social work services**

- (a) The facility shall provide dietary counseling and social work services.
- (b) The facility shall maintain the organization, management, and operation of these services in accordance with a written organizational plan which shall describe the responsibility, authority, and accountability relationships of personnel, the functional structure of the service, and the relationship of the service to other services. The facility shall establish and implement written policies and procedures for providing dietary counseling and social work services to renal dialysis patients.

**8:43B-15.16 Administrator's responsibilities**

- (a) The administrator or his or her designee(s) shall be responsible for, but not limited to, the following:
  1. Ensuring the provision, direction, and quality of dietary

- counseling and/or social services provided to patients;
2. The development and implementation of written objectives, standards of practice, policies, a procedure manual, and an organizational plan for dietary counseling and/or social services;
3. Coordinating and integrating the dietary counseling and/or social services with other patient care services in the facility and with services in the community to provide a continuum of care for the patient;
4. Assessing the patient's dietary and/or social service needs and providing counseling and/or social services;
5. Provision of consultation to staff;
6. Assisting in the development of, and participating in, staff orientation and staff education programs for the facility; and
7. Ensuring that dietary and/or social service personnel enter in the patient's medical record the dietary counseling and/or social service portion(s) of the patient care plan.

**8:43B-15.17 Medical records**

(a) Each patient shall have a medical record in accordance with N.J.A.C. 8:43B-7. The medical record shall be available to the renal dialysis service personnel. When the patient is receiving renal dialysis treatment, the record shall be in the renal dialysis service. The medical record shall include, but not be limited to, the following:

1. A signed, dated admission and medical history;
  2. A report of physical examination;
  3. The medical, nursing, social service, and dietary portions of the patient care plan; and
  4. Clinical notes.
- (b) The social worker may file information relating to the patient apart from the patient's medical record (for example, in the social service department), with an entry in the record indicating the availability of the additional material upon the social worker's approval.

**(a)**

**Standards for Licensure of Hospital Facilities Nurse-Midwifery Services**

**Adopted New Rules: N.J.A.C. 8:43B-16**

Proposed: October 21, 1985 at 17 N.J.R. 2512(a).  
 Adopted: December 17, 1985 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of Health Care Administration Board).  
 Filed: December 20, 1985 as R.1985 d.681, **with technical changes** not requiring additional public notice and comment (see: N.J.A.C. 1:30-3.5).

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

Effective Date: January 21, 1986.  
 Expiration Date pursuant to Executive Order No. 66(1978): December 20, 1990.

**Summary of Public Comments and Agency Responses:**  
 The Department received sixteen letters of comment regarding the proposed re-adoption with amendments of N.J.A.C. 8:43B-16 during the comment period and responded to the

commentors in writing. The letters submitted represented the comments of Chapter 2, Region II, of the American College of Nurse-Midwives, individual certified nurse-midwives, one physician practicing in New Jersey, the Director, Nurse-Midwifery Program and the Director, Nurse-Midwifery Services, School of Health Related Professions, University of Medicine and Dentistry of New Jersey. Two of the comment letters were signed by more than one person.

The commentors were unanimous in recommending that N.J.A.C. 8:43B-16 not be readopted since the practice of nurse-midwifery is regulated by the New Jersey State Board of Medical Examiners (see: N.J.A.C. 13:35-2.6 et seq.). The commentors indicated that the rules in N.J.A.C. 8:43B-16 were redundant and represented over regulation since the practice of nurse-midwifery is regulated by the New Jersey State Board of Nursing and the New Jersey State Board of Medical Examiners. The American College of Nurse-Midwives, Chapter 2, Region II, commented that the proposed rules were in conflict with the proposed "national guidelines set by the American College of Nurse-Midwives" and specified, in a telephone conversation, that the proposed rules, N.J.A.C. 8:43B-16.1(e)13 and N.J.A.C. 8:43B-16.2(a)4, were ambiguous and unclear. The American College of Nurse-Midwives, Chapter 2, Region II, and other commentors requested that nurse-midwifery practice be incorporated into N.J.A.C. 8:43B-8, Standards for Licensure of Hospital Facilities, Obstetric and Newborn Services, so that certified nurse-midwives will "become part of the perinatal team without biased, separate standards which presently segregate our practice."

The Department responded by acknowledging that the practice of nurse-midwifery is regulated by the New Jersey State Board of Medical Examiners. This fact, however, does not invalidate the propriety or need for licensure standards in the area of nurse-midwifery. Adoption of the proposed rules would enable Department surveyors to evaluate hospital services with respect to facility licensure standards without encroaching upon the authority of the New Jersey State Board of Medical Examiners to regulate professional practice. As noted in the proposal notice (see: 17 N.J.R. 2512(a)), the proposed readoption with amendments would eliminate rules pertaining to the scope of practice of midwives from N.J.A.C. 8:43B-16. The Department maintains, therefore, that the proposed rules are not redundant and would not interfere with the regulation of nurse-midwifery by the New Jersey State Board of Medical Examiners.

Furthermore, the New Jersey State Department of Health is mandated by statute (Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto) to license and regulate health care facilities in this State and to establish standards for the operation of these health care facilities. None of the commentors indicated specific proposed rules which would be in conflict with the rules of the New Jersey State Board of Medical Examiners and no specific recommendations for changing the proposed rules were offered. The Department is not aware of any conflicts between the adopted rules, N.J.A.C. 8:43B-16, and the rules of the New Jersey State Board of Medical Examiners. In addition, as indicated in the New Jersey Register, the Department intends to eventually incorporate N.J.A.C. 8:43B-16 into the recently promulgated rules N.J.A.C. 8:43B-8, Standards for Licensure of Hospital Facilities, Obstetric and Newborn Services, at a later date.

Comments were also received stating that the regulations are biased. The Department contends that the delineation of privileges would be required for any specified professional

personnel assigned to a department or service based upon the existing rules in N.J.A.C. 8:43B-6.2 for medical staff bylaws. Also, specific rules have been established in N.J.A.C. 8:43B-5.3 for the nursing service.

Based on a telephone conversation with a representative of Chapter 2, Region II, of the American College of Nurse-Midwives, two technical changes not detrimental to patient care were made in N.J.A.C. 8:43B-16 subsequent to the proposal. A deletion was made in N.J.A.C. 8:43B-16.1(e)13 regarding the process of evaluation of patient care to allow the facility more flexibility in determining the specific methods to be used in the evaluation process. This change will allow the evaluation of the professional practice of nurse-midwifery to be determined by a peer group so that one discipline will not impinge upon another discipline. The proposed N.J.A.C. 8:43B-16.2(a)4 was deleted in its entirety since the Department agrees that the rule was not clear and would be subject to different interpretations.

**Full text** of the adopted new rules appears in the New Jersey Administrative Code at N.J.A.C. 8:43B-16.

**Full text** of the adopted amendments to the new rules follows (additions shown in boldface with asterisks **\*thus\***; deletions shown in brackets with asterisks **\*[thus]\***).

#### SUBCHAPTER 16. NURSE-MIDWIFERY SERVICES

##### 8:43B-16.1 General provisions

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

(e) A policy and procedure manual, which may supplement the hospital policy and procedure manual, shall be developed with the participation of the nurse-midwifery staff and in consultation with other staff and shall serve as a guide for organization and operation of the nurse-midwifery service. The manual shall include:

1. (No change.)

2. A description of the obstetrical team on which the nurse-midwife functions, including the team's organization, composition, structure, and allocation of responsibility and accountability down to the patient care level. This shall include the role of the nurse-midwife on the obstetrical team, and her or his relationship to its other members. The obstetrical team shall include, but not be limited to, an obstetrician/gynecologist, a pediatrician, a nurse-midwife, a registered professional nurse, an anesthesiologist and/or a certified registered nurse anesthetist;

3. A delineation of the medical direction of the nurse-midwifery service, in accordance with regulations of the New Jersey State Board of Medical Examiners, and of the responsibilities of the obstetrician/gynecologist or designee. These shall include, but not be limited to, the following:

i.-ii. (No change.)

iii.-v. (Recodified from iv. through vi. with no change in text.)

4. (No change.)

5. Rules and regulations, incorporated into the medical bylaws, governing participation of nurse-midwives in the department of obstetrics and gynecology including, but not limited to, the following:

i. (No change.)

ii. Delineation of staff privileges for nurse-midwives, qualifications and procedures for their acceptance for staff privileges, conditions for retaining privileges, and process of revoking privileges. A list of nurse-midwives with staff privileges

shall be kept on file in the department of obstetrics and gynecology; and

iii. (Recodified from iv. with no change in text.)

6.-9. (No change.)

10.-12. (Recodified from 11., 13. and 14. with no change in text.)

13. A description of the process of evaluation of patient care\*[, including utilization and medical care review by medical, nursing and nurse-midwife members of the department of obstetrics and gynecology]\*;

14. (Recodified from 16. with no change in text.)

15. The role of nurse-midwives in patient and family counseling and education, including prenatal and postpartum care of mother and child, and family planning, if requested;

16. Methods used to encourage patient and family participation in planning for, and care during, pregnancy, childbirth, the postpartum period, and family planning, if requested;

17.-19. (Recodified from 19. through 21. with no change in text.)

20. Provisions to be made for continuity of patient care for mothers and infants, and for coordination of care with other services and personnel in the hospital; and

21. (Recodified from 25. with no change in text.)

(f) (No change.)

(g) The hospital shall establish and implement policies and procedures for nurse-midwifery personnel, including:

1. An orientation for each employee;

2.-3. (No change.)

(h) (No change.)

8:43B-16.2 Governing authority

(a) The governing authority of the hospital shall be responsible for the following:

1.-2. (No change.)

3. Adoption and documented review of the policy and procedure manual; **\*and\***

**\*[4. The holding of meetings at intervals stated in the policy and procedure manual, and documentation of such meetings through minutes, including a record of attendance; and]\***

**\*[5.]\*4.\* Establishment and implementation of a system whereby staff and patient grievances and/or recommendations can be identified within the nurse-midwifery service. This system shall include a "feedback" mechanism through management to the governing authority, indicating that remedial action was taken.**

8:43B-16.6 Definitions

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

"Certified registered nurse anesthetist (CRNA)" shall mean a person as defined by the New Jersey State Board of Nursing in N.J.A.C. 13:37-13.

"Nurse-midwife (CNM)" means a person who is licensed to practice nurse-midwifery by the New Jersey Board of Medical Examiners.

"Nurse-midwifery management plan" means a written plan developed and implemented by the nurse-midwife at the time of the patient's acceptance for nurse-midwifery services. It shall include an initial assessment of the patient, an evaluation of the patient's needs, goals, and care and treatment to be provided for the duration of the pregnancy, including laboratory studies and provision for the patient's health, psychosocial and nutritional needs.

"Obstetrician/gynecologist" shall mean a physician who is licensed or authorized by the New Jersey State Board of Medical Examiners to practice medicine in the State of New Jersey; is board-certified or board-eligible in obstetrics and gynecology, as defined by the American Board of Obstetrics and Gynecology, Inc., or the American Osteopathic Board of Obstetrics and Gynecology; or has been granted privileges by the hospital to provide service equal to or higher than those provided by a board-certified or board-eligible physician.

"Staff orientation plan" means a written plan for the orientation of each new employee to his\*[/\* \*or\* her duties and responsibilities, as well as to the personnel policies of the facility.

8:43B-16.7 (Reserved)

**DRUG UTILIZATION REVIEW COUNCIL**

**(a)**

**Interchangeable Drug Products**

**Adopted Amendment: N.J.A.C. 8:71**

Proposed: May 6, 1985, at 17 N.J.R. 1043(a).

Adopted: December 18, 1985 by the Drug Utilization Review Council, James Perhach, Ph.D., Chairman.

Filed: December 20, 1985 as R.1985 d.686, with portions of the proposal not adopted but still pending.

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

Effective Date: January 21, 1986.

Expiration Date pursuant to Executive Order No. 66(1978): April 2, 1989.

**Summary of Public Comments and Agency Responses:**

Regarding thioridazines: Sandoz, makers of the branded product, Mellaril, for which the proposed thioridazines are to be substituted, objected to the Cord and Zenith thioridazine products, stating that the Federal Food and Drug Administration (FDA) is reviewing the Sandoz contention that all generic substitutes for Mellaril can cause clinical problems, and also commented that the variability in the generics exceeds the limits of acceptability, as well as the statistical values being in an unacceptable range.

The Council demonstrated that these products, despite their differences from the branded product, could still be considered therapeutically equivalent to Mellaril, as the FDA advises.

The following products and their respective manufacturers were adopted:

Dipyridamole tabs 25, 50, 75 mg	Barr
Thioridazine HCl tabs 100 mg	Cord
Procainamide tabs, extended release 750 mg	Bolar
Thioridazine HCl tabs 10, 15, 25, 50, 100 mg	Zenith

The following products were not adopted but are still pending:

Isosorbide dinitrate S.L. tabs 10 mg	Barr
Isosorbide dinitrate tabs 20, 30 mg	Barr
Propranolol HCl tabs 10, 20, 40 mg	Lederle
Aminophylline tabs 100 mg	Cord
Dipyridamole tabs 25 mg	Bolar
Methyclothiazide tabs 5 mg	Pharm. Basics
Warfarin sodium tabs 2, 2.5, 5 mg	Pharm. Basics
Phentermine HCl caps 30 mg	Chelsea
Propranolol tabs 60 mg	Schering

Propranolol HCl tabs 80 mg	Duramed
Thioridazine HCl tabs 10, 15, 25, 50 mg	Cord
Deserpidine/methyclothiazide tabs 0.5/5 mg	Zenith
Disopyramide phosphate caps 100, 150 mg	Zenith
Fluphenazine HCl tabs 5 mg	Zenith
Ibuprofen tabs 300, 600 mg	Zenith
Meprobamate 200 mg with aspirin 325 mg tabs	Zenith
Methyldopa 250 mg/HCTZ 15 mg and 250 tabs mg/25 mg	Mylan
Methyldopa tabs 250, 500 mg	Zenith
Metoclopramide tabs 10 mg	Quantum
Propranolol HCl tabs 10, 20, 40, 60, 80, 90 mg	Zenith
Propranolol HCl tabs 40 mg	Mylan

OFFICE OF ADMINISTRATIVE LAW NOTE: Related Notices of Adoption appear at 17 N.J.R. 2042(b), 17 N.J.R. 2256(b) and 17 N.J.R. 2769(b).

OFFICE OF ADMINISTRATIVE LAW NOTE: Related Notices of Adoption appear at 17 N.J.R. 2557(a) and 17 N.J.R. 2769(a).

(a)

**Interchangeable Drug Products**

**Adopted Amendment: N.J.A.C. 8:71**

Proposed: July 15, 1985 at 17 N.J.R. 1733(a).  
 Adopted: December 18, 1985 by the Drug Utilization Review Council, James Perhach, Chairman.  
 Filed: December 20, 1985 as R.1985 d.687, with portions of the proposal **not adopted**, and portions of the proposal not adopted but still **pending**.

Authority: N.J.S.A. 24:6E-6(b).  
 Effective Date: January 21, 1986.  
 Expiration Date pursuant to Executive Order No. 66(1978): April 2, 1989.

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

The following products and their respective manufacturers were **adopted**:

<b>Hydralazine/HCTZ caps 25/25, 50/50, 100/50</b>	<b>Par</b>
<b>Vitamin B complex/minerals (Berocca Plus formula)</b>	<b>Pioneer</b>
<b>Diazepam tabs 2, 5, 10 mg</b>	<b>Zenith</b>
<b>Ibuprofen tabs 400, 600 mg</b>	<b>Mylan</b>
<b>Lorazepam tabs 0.5, 1, 2 mg</b>	<b>Quantum</b>
<b>Disopyramide phosphate caps 100, 150 mg</b>	<b>Mylan</b>
<b>Phenytoin extended caps 100 mg</b>	<b>Bolar</b>

The following products were not adopted:  
 Thioridazine HCl tabs 10, 15, 25, 50 mg Danbury

The following products were not adopted but are still pending:

Ethaverine HCl tabs 100 mg	Sidmak
Isometheptene mucate 65 mg, dichloralphenazone 100 mg, acetaminophen 325 mg caps	Central
Phenylephrine HCl ophth soln 2.5%	Pharmafair
Phenylephrine HCl ophth soln 10% (viscous)	Pharmafair
Phentermine HCl caps 30 mg	Duramed
Tolazamide tablets 250, 500 mg	Pharm Basics
Tolazamide tablets 100, 250, 500 mg	Duramed
Tolazamide tablets 100, 250, 500 mg	Par
Dipyridamole tabs 25, 50, 75 mg	Zenith
Dipyridamole tabs, 25, 50, 75 mg	Danbury

**HIGHER EDUCATION**

(b)

**BOARD OF HIGHER EDUCATION**

**Tuition Policies for Public Institutions  
 Student Residency; Unemployed Persons**

**Adopted New Rules: N.J.A.C. 9:5-1 and 9:5-2  
 Adopted Amendments: N.J.A.C. 9:5-1.2 and 1.5**

Proposed: October 7, 1985 at 17 N.J.R. 2326(a).  
 Adopted: December 23, 1985 by Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.  
 Filed: December 24, 1985 as R.1985 d.701, with **substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 18A:62-3; 18A:62-4; 18A:64-13.4; 18A:64A-23.4.

Effective Date: January 21, 1986.  
 Operative Date: July 1, 1986 for N.J.A.C. 9:5-1.2(b).  
 Expiration Date pursuant to Executive Order No. 66(1978): January 21, 1991.

**Summary of Public Comments and Agency Responses:**

The agency received no comments on the proposal. However, a change to N.J.A.C. 9:5-1.2(b) has been made upon adoption following a question raised by a member of the Board of Higher Education concerning dependent students whose parents leave the State.

Under current regulations, a student's domicile is governed by that of his or her supporting parents or guardians. If the student is attending college within New Jersey and their parents are domiciled in New Jersey, then the student will pay resident tuition and be eligible for state aid. If the parents relocate to another state while the student is attending college, then the student is no longer considered a domiciliary of New Jersey and must pay out-of-state tuition. This can cause great

financial hardship if it occurs in the midst of a student's collegiate attendance.

The amendment to N.J.A.C. 9:5-1.2(b) allows a student in this situation to maintain their resident tuition status and receive state financial aid. This will enable students, who continue to reside in New Jersey while attending college, to pay resident tuition. This standard will allow these students to complete their collegiate education at an institution of higher education in New Jersey and it will encourage these individuals to continue to live and work in this state following graduation.

**Full text** of the new rules appears in the New Jersey Administrative Code at N.J.A.C. 9:5-1 and 2.

**Full text** of the adopted amendments to the new rules follows (additions to proposal shown in boldface with asterisks **\*thus\***; deletions from proposal shown in brackets with asterisks **\*[thus]\***).

#### 9:5-1.2 Eligibility for New Jersey resident tuition

**\*(a)\*** Persons who have been domiciled within this State for a period of 12 months prior to initial enrollment in a public institution of higher education are presumed to be domiciled in this State for tuition purposes. Persons who have been domiciled within this State for less than 12 months prior to initial enrollment are presumed to be nondomiciliaries for tuition purposes.

**\*(b) Any dependent student, as defined in N.J.A.C. 9:5-1.1, who is domiciled in this State for tuition purposes and who is enrolled in an institution of higher education in New Jersey shall continue to be eligible for New Jersey resident tuition status despite his or her supporting parent(s) or guardian(s) change of domicile to another state, while such student continues to reside in New Jersey during the course of each academic year.\***

**\*(c)\*** Persons presumed to be nondomiciled **\*[for]\* \*or\*** persons who are presumed to be domiciled but whose domiciliary status is challenged by the institution, must prove their domicile according to this chapter.

#### 9:5-1.5 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

### (a)

#### DIVISION OF DEVELOPMENTAL DISABILITIES

##### Administration Appeal Procedure

##### Adopted New Rule: N.J.A.C. 10:48

Proposed: April 15, 1985 at 17 N.J.R. 876(b).

Adopted: December 13, 1985 by Geoffrey S. Perselay,  
Acting Commissioner, Department of Human Services.

Filed: December 17, 1985 as R.1985 d.673, **with substantive and technical changes** not requiring additional public notice and comment (See N.J.A.C. 1:30-3.5).

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

Effective Date: January 21, 1986.

Expiration Date pursuant to Executive Order No. 66(1978): January 21, 1991.

##### Summary of Public Comments and Agency Responses:

The Department received comments from the Public Advocate and the Office of Education within the Department of Human Services. The comments incorporated into this adoption served to clarify a particular standard.

The designation of "Division of Mental Retardation" was changed to the term "Division of Developmental Disabilities." In May 1985, the Division of Mental Retardation was officially renamed the Division of Developmental Disabilities.

The Public Advocate expressed concern that the regulations prohibited representation by attorney or other spokesperson at the informal conference. This regulation was not changed since the purpose of the informal review is to allow the individual and the agency parties to mutually resolve differences.

The second comment of the Public Advocate was concerning the ability of the Division Director to dismiss a non-contested appeal after the administrative conference. Standard 10:48-1.6(a)1 was revised to require that in such instances the Division Director set forth his reasons for doing so in writing.

Similarly, the Public Advocate expressed concern that the review officer may conduct a paper view of the appeal of an uncontested case. Standard 10:48-1.6(b)2 was amended to require that the reasons for conducting a paper review be set forth in writing.

Finally, the Public Advocate suggested that the notification of families of their right to appeal should be addressed. The agency agrees; a policy concerning this issue is currently in draft.

The Office of Education suggested that appeals relating to decisions on educational issues more clearly identify the role of that office. Standard 10:48-1.1(d) was amended to clarify that role.

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

CHAPTER 48  
ADMINISTRATION

## SUBCHAPTER 1. APPEAL PROCEDURE

## 10:48-1.1 General provisions

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

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

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

(d) **\*[Appeals relating to decisions on educational program issues involving clients of legal school age shall be submitted to the Department of Education.]\*** **\*Disputes relating to decisions on educational program issues involving clients of legal school age shall be discussed at a conference with the complainant and the educational service provider, and/or a conference with the complainant and the Office of Education, Department of Human Services. If agreement is not possible, further resolution of the dispute shall be made by written request to the Department of Education pursuant to N.J.A.C. 6:28-2.7\***

## 10:48-1.2 Definitions

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

"Administrative hearing" shall mean the proceeding which will be conducted by an Administrative Law Judge upon receipt of an appeal determined to be a contested matter or an appeal of a non-contested matter that is referred to the Office of Administrative Law by the Division Director for resolution.

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

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

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

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

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

## 10:48-1.3 Initial step: Informal Conference

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

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

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

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

## (e) Representation and procedure:

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

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

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

4. No transcripts of the proceedings shall be made.

**\*[10:48-1.5]\*\*10:48-1.4\*** Final step: Administrative Review or Administrative Hearing

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

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

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

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

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

(b) The Director, Division of **\*[Mental Retardation]\*** **\*Developmental Disabilities\*** or his/her designee shall review

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the complaint and determine if it is a contested or non-contested matter.

10:48-1.5 Contested cases

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

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

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

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

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

10:48-1.6 Non-contested cases

(a) If the matter is determined to be non-contested, the Director, Division of **\*[Mental Retardation]\* \*Developmental Disabilities\*** at his discretion, shall:

1. Dismiss the case, notifying the complainant that further appeal may be made to the Appellate Division of Superior Court. **\*If the Director dismisses the case he shall set forth his reasons for doing so in writing\***; or

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

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

(b) Administrative paper review:

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

2. A written decision shall be forwarded to the involved parties within 10 working days of the review. This shall be considered the Recommended Decision. **\*The written decision shall set forth the reasons for conducting a paper review.\***

(c) Administrative review conference:

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

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

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

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

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

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

(g) Representation and procedure:

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

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

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

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

**(a)**

**Medical Supplier Manual Reimbursement for Labor Charges**

**Adopted Amendments: N.J.A.C. 10:59-1.11**

Proposed: October 21, 1985 at 17 N.J.R. 2516(a).

Adopted: December 12, 1985 by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.

Filed: December 13, 1985 as R.1985 d.671, **without change.**

Authority: N.J.S.A. 30:4D-6b(12), 7, 7a, 7b.

Effective Date: January 21, 1986.

Expiration Date pursuant to Executive Order No.66(1978): August 15, 1989.

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

Full text of the adoption follows.

10:59-1.11 Repair policy

(a) (No change.)

(b) When repair is authorized:

1. Reimbursement for replacement parts shall be based on one of the following standards, whichever is less;

i. The provider's usual and customary charge to the general public; or

ii. An allowance determined reasonable by the Commissioner of Human Services, within the limitations set by Federal policy relative to reimbursement to individual providers.

2. Reimbursement for labor charge shall be \$20.00 per hour, divided into quarter hour increments of \$5.00.

3. Exceptions:

i.-iii. (No change.)

(c) (No change.)

**(a)****Long Term Care Services Manual  
Certification, Recertification and Plan of Care****Adopted Amendments: N.J.A.C. 10:63-1.5, 1.6,  
1.8, 1.13, 2.5 and 2.7.**

Proposed: September 3, 1985 at N.J.R. 2075(a).

Adopted: December 24, 1985 by Geoffrey S. Perselay,  
Acting Commissioner, Department of Human  
Services.

Filed: December 24, 1985 as R.1985 d.703, **without  
change.**

Authority: N.J.S.A. 30:4D-6a(4)(a)b(14), 7, 7a, 7b.

Effective Date: January 21, 1986.

Expiration Date pursuant to Executive Order 66(1978):  
N.J.A.C. 10:63-1, March 21, 1989; N.J.A.C. 10:63-2,  
May 18, 1988.

**Summary of Public Comments and Agency Responses:**

There were two comments submitted when this rule was proposed. The commentators were James E. Cunningham, President, New Jersey Association of Health Care Facilities, and Dennis R. Hett, Executive Director, New Jersey Association of Non-Profit Homes for the Aging.

Cunningham was concerned about the requirement that certification be done "on admission". He suggested the Division allow the initial certification to be done within 48 hours after the patient had been admitted to the long term care facility (LTCF). The Division's response is that federal regulations (42 CFR 456.280; 42 CFR 456.360) require the certification to be done "at the time of admission". A recent interpretation was contained in Section 9215 of the State Medicaid Manual issued by the United States Department of Health and Human Services, Health Care Financing Administration. This section of the manual indicates that the initial certification must be provided by a physician on or not more than 30 days prior to the patient's admission to the LTCF. This language appears in the text of the proposed rule (N.J.A.C. 10:63-1.5(c)1 at 17 N.J.R. 2076) and must remain unchanged upon adoption.

Hett's comment concerned the requirement that recertifications be conducted prior to a Medicaid patient's temporary absence from the LTCF due to therapeutic leave. The Division's response is that not all patients have to be recertified before going on therapeutic leave. The only patients that would need to be recertified are those whose recertification would expire during the time the patient was on therapeutic leave. Since the time frames for recertification are established by federal law (1903(g)(1) of the Social Security Act,) there can be no exception granted by the Division. These time frames appeared in the proposed text of the rule and are not being changed on adoption (N.J.A.C. 10:63-1.5(c)2).

Full text of the adoption follows.

**10:63-1.5 Utilization control**

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

(c) Certification and recertification: Certification is the process by which a physician who has knowledge of the case

attests to an individual's need for a specific type or level of care; recertification is the processing by which a physician who has knowledge of the case attests to an individual's continued need for a specific type or level of care.

1. Certification: A physician must certify in the patient's medical record the need for SNF, ICF-A or ICF-B level of care services in a LTCF. This certification must occur on the date of admission or not more than 30 days prior to admission to a LTCF. If the individual is already a patient in a LTCF, the certification must be signed not more than 30 days prior to the authorization date for Medicaid payment.

i. Periodicity, or the start of a cycle, begins at the date of admission or readmission. The cycle must be started again should a discharge and subsequent readmission occur, or a change in the level of care within the same facility, or a transfer to a new facility at either the same or different level of care.

2. Recertification: The need for care at a given level must be recertified as follows:

i. Recertification for Skilled Nursing Facility Services, Level III shall be conducted at least:

- (1) 30 days after the date of initial certification;
- (2) 60 days after the date of initial certification;
- (3) 90 days after the date of initial certification, and
- (4) every 60 days thereafter.

ii. Recertification for Intermediate Care Facility Services, Level IV-A or Level IV-B, shall be conducted at least:

- (1) 60 days after the date of initial certification;
- (2) 180 days after the date of initial certification;
- (3) 12 months after the date of initial certification;
- (4) 18 months after the date of initial certification;
- (5) 24 months after the date of initial certification; and
- (6) every 12 months thereafter.

iii. A recertification shall be considered to have been done on a timely basis if it was performed not later than 10 days after the date the recertification was otherwise required. When the patient's level of care is scheduled for recertification during a therapeutic leave, the physician must recertify before the patient leaves the facility.

(1) The long-term care facility must document "good cause" why such recertification did not meet the required schedule. Good cause shall include but not be limited to those situations beyond the long term care facility's control, e.g., employee strike, severe weather conditions, flood, quarantine of the facility, isolation of the patient, illness of the attending physician.

3. Additional conditions for certification/recertification: The following conditions must be met in order for a certification/recertification to be considered valid:

i. The certification/recertification is in writing and identifies a specific level of care;

ii. The certification/recertification is signed or initialed by the Medical Director, staff physician or attending physician, using his/her signature or initials. The signature or initials are not acceptable if they are rubber stamped unless the physician has initialed the stamped signature. The physician must date the certification/recertification on the same day he signs it;

iii. The certification/recertification must demonstrate the need for the level of care that the individual will receive or is receiving.

iv. The facility must be approved to provide the level of care that the individual is certified/recertified as needing.

4. The certification/recertification for all Medicaid patients must be maintained in the patient's medical record.

5. Any days billed by the long-term care facility that are not in compliance with the specific time frames and conditions

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for certification, recertification and plan of care will be considered non-certified days. The per diem reimbursement for the these non-certified days will not be made to the long-term care facility.

(d)-(h) (No change.)

**10:63-1.6 Authorization process**

(a)-(f) (No change.)

(g) Authorization procedure rules are:

1. Following notification from a LTCF of admission of a Medicaid eligible patient or the change in patient status from private/Medicare to Medicaid or a request for assessment by receipt of a form PA-4 (Certification of Need for Patient Care in Facility Other Than Public or Private General Hospital)—(Exhibit No. 28), from the County Welfare Agency, a referral is made to the Regional Staff Nurse in order to initiate a nursing assessment. If the referral involves a patient residing in the community, a referral is also made to the Medicaid Social Worker for a social assessment.

2. When the assessment of the patient is completed, the Local Administrator schedules a conference of the MET.

3. The MET will render a decision either to authorize or deny, in the following fashion:

i. (No change.)

ii. Deny long term care:

(1) (No change.)

(2) If the Medicaid patient has been currently authorized for long term care, an additional 20 day period of authorization from the date the written notice or denial is sent will be permitted in order to permit alternate placement. An MCNH-7 (Exhibit No. 3) covering this period is prepared and distributed in accordance with subsection (g)3i of this section.

(3) If, however, extenuating circumstances exists whereby placement cannot be made within the time frame defined in the Medicaid letter of denial, the facility may submit a request for a review of the situation in writing to the Chief, Bureau of Local Administration, Division of Medical Assistance and Health Services, CN 712, Trenton, N.J. 08625.

(4) (No change.)

(h)-(k) (No change.)

**10:63-1.8 Medical services and clinical records**

(a) Medical services are:

1. (No change.)

2. Standards for physicians in long term care facilities:

i.-iii. (No change.)

iv. Required documentation in patient's plan of care and treatment: The LTCF shall require that the health care of every patient is under the supervision of a New Jersey licensed physician who, based on the evaluation of the patient's immediate and long term needs, prescribes on a designated form a planned regimen of medical care.

(1) Each patient or an individual responsible for the patient shall designate a personal physician. If either is unable or unwilling to designate a personal physician, the Medical Director/Administrator of the facility shall designate one.

(2) A physician involved in the care of the patient must establish the Plan of Care. A Plan of Care must be established and signed on the date of or not more than 30 days prior to an individual's admission to a long-term care facility. The signature or initials are not acceptable if they are rubber stamped unless the physician has initialed and dated the stamped signature.

(3) For an individual who makes application for assistance while in a long-term care facility, the Plan of Care must be

established on or not more than 30 days prior to the date of authorization of Medicaid payment.

(4) The Medical Plan of Care and Treatment shall be reviewed by the attending physician with documentation by date and signature as often as appropriate to the Medicaid patient's needs as specified, but documentation with date and signature confirming this must be done at least every 30 days for Level III patients; 60 days for Level IV-A patients, and every 90 days for Level IV-B patients.

(5) The charge nurse and other appropriate personnel involved in the care of the patient shall assist in planning the total program of care.

(6) Orders concerning medications and treatment are in effect for the specified number of days indicated by the physician but in no case exceed a period of 30 days for Level III; 60 days for Level IV-A or 90 days for Level IV-B. Vague and blanket orders are not acceptable and within the above time frame it shall be incumbent upon the physician to review all orders and re-confirm in writing with signature and date.

Recodify (6)-(8) as (7)-(9) (No change in text.)

(10) Patients are to be examined by a physician at least once every 30 days for Level III, at least once every 60 days for Level IV-A and at least once every 90 days for Level IV-B. The physician will record and sign in the clinical record:

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

Recodify (10) and (11) as (11) and (12) (No change in text.)

v. (No change.)

(b) (No change.)

**10:63-1.13 Absence from facility (bed hold)**

(a) (No change.)

(b) (No change.)

1.-2. (No change.)

3. The absence of a Medicaid patient from the facility for this purpose must be authorized in writing by the patient's attending physician and included in the patient's plan of care. When the patient's level of care is scheduled for recertification during a therapeutic leave, the physician must recertify before the patient leaves the facility.

4.-6. (No change.)

**10:63-2.5 Forms other than billing transactions**

(a) In addition to the billing transaction forms described in section 4 of this subchapter, one other form must be submitted before payment can or will be made. This form is:

1. MCNH-30, Certification Statement;

(b) The content and completion procedure for the MCNH-30 form is described below.

(c) (No change.)

EDITOR'S NOTE: Exhibit X was adopted with these rules but is not reproduced herein. Further information on this Exhibit may be obtained from the Department of Human Services, Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625.

(d) The Medicaid Program requires that the long-term care facility report on a timely basis, any days billed by the long-term care facility that are not in compliance with the specified time frames and conditions for certification, recertification and plan of care as outlined in N.J.A.C. 10:63-1.5. These days will be considered non-certified days and the per diem reimbursement for these non-certified days will not be made to the long-term care facility. Exhibit XIV depicts a properly completed "Per Diem Deduction Request Form", MCNH-108 (6/85). The circled numerals on the Exhibit are cross referenced to the list below.

1. Item 1. Long-Term Care Facility: Enter the full name of the facility.
2. Item 2. Provider Number: Enter the unique four digit number assigned to the facility by the Bureau of Claims and Accounts.
3. Item 3. Date: Enter the date the form was completed.
4. Item 4 and 5. Address and Telephone No.: Enter the complete mailing address, including the telephone number.
5. Item 6. Reason for Per Diem Deduction: The reasons for a per diem deduction request are coded, (a) Certification; (b) Recertification and (c) Plan of Care. The appropriate code is to be entered in Item 9.
6. Items 7 and 8. Patient's Name and HSP (Medicaid) Case Number: Enter the patient's name and the complete ten digit case number and two digit person number assigned to the Medicaid recipient.
7. Item 9. Enter the appropriate code necessitating the request for a per diem deduction, see Item 6.
8. Items 10 and 11. Level of Care and Rate: Enter the level of care the Medicaid patient received and the appropriate per diem rate for the time period noted.
9. Items 12, 13 and 14. No. of Days: From: To: Enter the number of days and the dates of the non-compliance period.
10. Item 15. Signature: The signature of the individual completing the form.

EDITOR'S NOTE: Exhibit XIV was adopted with these rules but is not reproduced herein. Further information on this Exhibit may be obtained from the Department of Human Services, Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625.

10:63-2.6 Timing of submission of billing transactions

(a) Transaction Forms should be completed and may be submitted during the course of the billing month as billing activities occur. This procedure will provide an even workload for the facilities' administrative staffs and will permit the facility to make timely submission of the form as outlined below and on Exhibit I.

Due Date—Period Covered

1. 20th of the current billing month:  
first day through 15th day of the current billing month
2. 5th of the month following the billing month:  
the 16th through the last day of the billing month

NOTE: If no billing transactions need to be submitted for the billing month because there was no billing activity, providers must still submit Form MCNH-30 Certification Statement, described in section 2.5.

(b) (No change.)

10:63-2.7 Submission procedures

All applicable billing transaction forms must be submitted at least twice during the billing month (as described above) to the address below. In addition, the Form MCNH-30 Certification Statement must be submitted once each month to:

Department of Human Services  
Division of Medical Assistance and  
Health Services  
Bureau of Claims and Accounts  
CN 712  
Trenton, New Jersey 08625

(a)

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

**Adopted Amendments: N.J.A.C. 10:63-3.2, 3.5,  
3.10 and 3.19**

Proposed: October 7, 1985 at 17 N.J.R. 2331(a).  
Adopted: December 24, 1985 by Geoffrey S. Perselay,  
Acting Commissioner, Department of Human  
Services.  
Filed: December 24, 1985 as R.1985 d.705, **without  
change.**

Authority: N.J.S.A. 30:4D-6a(4)(a), b(14), 7, 7a, 7b.

Effective Date: January 21, 1986.  
Expiration Date pursuant to Executive Order 66(1978):  
November 29, 1989.

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

Full text of the adoption follows.

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 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.
2. (No change in text.)
3. (No change in text.)

10:63-3.2 Rate components

(a) The prospective rates will be "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:

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	Reported Cost	Excess
Case #1		
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	
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. (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.		
4.-5. (No change.)		

**(a)**

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

**Adopted Amendments: N.J.A.C. 10:69A-1.1, 1.2, 2.1, 4.1, 4.4, 5.3, 6.2, 6.4 and 6.10**

Proposed: October 7, 1985 at 17 N.J.R. 2332(a).  
 Adopted: December 12, 1985 by Geoffrey S. Perselay,  
 Acting Commissioner, Department of Human Services.  
 Filed: December 20, 1985 as R.1985 d.690 without change.

Authority: N.J.S.A. 30:4D-21, 22, 24.

Effective Date: January 21, 1986.  
 Expiration Date pursuant to Executive Order 66(1978):  
 April 26, 1988 for N.J.A.C. 10:69A.

Summary of public comments and agency responses:  
**No comments received.**

Full text of the adoption follows.

10:69A-1.1 Purpose and intent  
 (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, insulin syringes, and/or certain dia-

betic 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, 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, 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, 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 \$10,000 for single persons or \$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.)

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### 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 \$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 \$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.)

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 \$10,000 for single persons or \$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

### (a)

#### **Assistance Standards Handbook Retrospective Budgeting and Monthly Reporting Adopted New Rules: N.J.A.C. 10:82-1.10 and 1.11**

Proposed: October 21, 1985 at 17 N.J.R. 2518(a).

Adopted: December 23, 1985 by Geoffrey S. Perselay,  
Acting Commissioner, Department of Human  
Services.

Filed: December 26, 1985 as R.1985 d.710, **with a  
technical change** not requiring additional public notice  
and comment (see N.J.A.C. 1:30-3.5).

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

Effective Date: January 21, 1986.

Operative Date: February 1, 1986.

Expiration Date pursuant to Executive Order No.  
66(1978): July 20, 1988.

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

**Summary of Changes Subsequent to Proposal:**

At N.J.A.C. 10:82-1.10(b)2, the word "computer" has been  
changed to "computed" due to a publication error.

**Full text** of the adoption follows (addition to proposal shown in boldface with asterisks **\*thus\***; deletion from proposal shown in brackets with asterisks **\*[thus]\***).

### 10:82-1.10 Retrospective budgeting

(a) Eligibility and the amount of the assistance payment for all AFDC applicants and recipients must be determined using retrospective budgeting policy (see N.J.A.C. 10:90).

1. Retrospective budgeting policy shall be applied to recipients of Medicaid benefits, including AFDC-related Medicaid Only and Medicaid Special.

(b) Definitions: The following terms used in retrospective budgeting policy are defined in accordance with N.J.A.C. 10:90.

1. Prospective budgeting: Eligibility is determined (and the amount of assistance is computed for the first two months) based on the CWA's best estimate of income and circumstances which will exist in a month. This estimate shall be based on the CWA's reasonable expectation of current, past, or future circumstances.

2. Retrospective budgeting: The amount of assistance for a payment month is **\*[computer]\* \*computed\*** based on actual income or circumstances which existed in a previous month.

3. Budget month: The fiscal or calendar month from which income or circumstances of the eligible unit shall be used in computing the amount of the assistance payment.

4. Payment month: The fiscal or calendar month for which the CWA shall pay assistance. Payment is based upon income or circumstances in the budget month. In prospective budgeting, the budget month and the payment month are the same. In retrospective budgeting, the payment month is the second month after the budget month.

5. Processing month: In retrospective budgeting, the fiscal or calendar month between the budget month and payment month during which the eligible unit reports to the CWA income and circumstances for the budget month (and any other changes) and the CWA acts on the reported information to compute the assistance payment for the payment month.

6. Retrospective budgeting cycle: The retrospective budgeting cycle consists of three consecutive months: the budget month, processing month and payment month. In the retrospective budgeting cycle, income and circumstances existing in a budget month are reported by the eligible unit and acted upon by the CWA in the processing month to determine eligibility and compute the assistance payment for the payment month.

### 10:82-1.11 Monthly reporting

(a) Under the monthly reporting system, certain AFDC eligible units are required to report their income and circumstances and any expected changes in income and circumstances to the CWA every month by submitting a complete Monthly Status Report (MSR) form. The information reported on the MSR for a budget month is used by the CWA in the processing month to determine eligibility and compute the assistance payment for the corresponding month (see N.J.A.C. 10:90).

1. Certain AFDC eligible units are required to report income and circumstances and any expected changes in income and circumstances bimonthly by completing and submitting an MSR form to the CWA every other month.

2. Eligible units receiving Medicaid Only and Medicaid Special are not subject to monthly reporting under the AFDC program. However, AFDC eligible units who do not receive an assistance payment due to the \$10.00 limitation are subject to monthly reporting.

**(a)**

**Assistance Standards Handbook  
Exempt Resources**

**Adopted Amendment: N.J.A.C. 10:82-3.2**

Proposed: October 21, 1985 at 17 N.J.R. 2518(b).  
Adopted: December 23, 1985 by Geoffrey S. Perselay,  
Acting Commissioner, Department of Human  
Services.  
Filed: December 26, 1985 as R.1985 d.709, **without  
change.**

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

Effective Date: January 21, 1986.  
Operative Date: February 1, 1986.  
Expiration Date pursuant to Executive Order No.  
66(1978): July 20, 1988.

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

Full text of the adoption follows.

10:82-3.2 Exempt resources

- (a) (No change.)
- (b) The exempt resources are as follows:
  - 1.-2. (No change.)
  - 3. One motor vehicle, the equity value of which does not exceed \$1,500. Any excess equity value of a motor vehicle and the full equity of any other motor vehicle is countable toward the \$1,000 resource limit. If the vehicle is especially equipped with apparatus for the handicapped, the apparatus shall not increase the value of the vehicle. The equity value of a vehicle shall be the average wholesale value as indicated in the most recent April or October edition of the Red Book: Official Used Car Valuations, less encumbrances (legal debts).
    - i. An applicant or recipient may indicate that, for reasons such as, but not limited to, body damage or inoperability, a vehicle is in less than average condition. Any applicant or recipient who claims that the Red Book value does not apply to his or her vehicle shall be given the opportunity to acquire verification of the vehicle's value from another reliable source.
    - 4.-11. (No change.)

**(b)**

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

**Adopted Amendment: N.J.A.C. 10:85-3.2**

Proposed: October 7, 1985 at 17 N.J.R. 2338(a).  
Adopted: December 17, 1985 by Geoffrey S. Perselay,  
Acting Commissioner, Department of Human  
Services.  
Filed: December 23, 1985 as R.1985 d.692, **without  
change.**

Authority: N.J.S.A. 44:8-111(d) and 44:8-120.

Effective Date: January 21, 1986.  
Operative Date: February 1, 1986.  
Expiration Date pursuant to Executive Order No.  
66(1978): July 25, 1988.

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

Full text of the adoption follows.

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)l(iii) 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)l(iii) 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)l(iii) 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. 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

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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)l(iii) 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**

**Adopted Amendment: N.J.A.C. 10:85-3.4**

Proposed: October 7, 1985 at 17 N.J.R. 2339(a).

Adopted: December 17, 1985 by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.

Filed: December 23, 1985 as R.1985 d.693, **without change.**

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

Effective Date: January 21, 1986.

Operative Date: February 1, 1986.

Expiration date pursuant to Executive Order No. 66(1978): July 25, 1988.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text** of the adoption follows.

**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 or she (they) may have a valid claim; and certain other benefits and contributions of support which may become available.

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 repayment 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.

ii. (No change in text.)

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

(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.

**(b)**

**Food Stamp Program**

**Elderly or Disabled Defined; JTPA Income Exclusion**

**Adopted Amendment: N.J.A.C. 10:87-2.38 and 5.9**

Proposed: October 21, 1985 at 17 N.J.R. 2521(b).

Adopted: December 24, 1985 by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.

Filed: December 24, 1985 as R.1985 d.707, **without change.**

Authority: N.J.S.A. 30:4B-2; 7 CFR 271.2; Job Training Partnership Act of 1982 (P.L. 97-300).

Effective Date: January 21, 1986.

Operative Date: February 1, 1986.

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

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text** of the adoption follows.

**10:87-2.38 Elderly or disabled defined**

(a) Elderly or disabled member is defined as a member of a household who:

1. (No change.)

2. Is certified for Supplemental Security Income (SSI) benefits under Title XVI of the Social Security Act (including emergency benefits based on presumptive eligibility);

3. Is certified for disability or blindness payments under Title I, II, X, XIV or XVI of the Social Security Act;

4.-7. (No change.)

**10:87-5.9 Identification of income exclusions**

(a) Only the following shall be excluded from household income; and no other income shall be excluded.

1.-11. (No change.)

12. Income excluded by Federal law: Any income that is specifically excluded by any other law from consideration as income for the purpose of determining eligibility for the Food Stamp Program shall be excluded. The following qualify under this provision:

- i.-xi. (No change.)
- xii. Job Training Partnership Act: Any allowances, earnings or payments provided to individuals participating in programs classified under the Job Training Partnership Act of 1982 (Public Law 97-300).

**(a)**

**Home Energy Assistance  
Ineligibility of Strikers, Illegal Aliens, and  
Residents of Drug and/or Alcohol Abuse  
Centers; Increases in Income Eligibility  
Limits, Benefits Issued to Renters, Cooling  
and Emergency Assistance; and Emergency  
Rehousing Assistance Reimbursement**

**Readopted Amendment: N.J.A.C. 10:89-2.2,  
2.3, 3.2, 3.3, 3.4, 3.6, 4.1, and 5.1**

Proposed: November 18, 1985 at 17 N.J.R. 2791(a).  
Adopted: December 24, 1985 by Geoffrey S. Perselay,  
Acting Commissioner, Department of Human  
Services.  
Filed: December 24, 1985 as R.1985 d.708, with  
**substantive and technical changes** not requiring  
additional public notice and comment (see N.J.A.C.  
1:30-3.5).

Authority: N.J.S.A. 30:4B-2.

Effective Date: December 24, 1985.  
Expiration Date pursuant to Executive Order No.  
66(1978): September 11, 1990.

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

N.J.A.C. 10:89-2.3(b)4—Language was added for uniformity with regulations at N.J.A.C. 10:89-3.2(d) and N.J.A.C. 10:89-3.3(a)3iii dealing with ineligibility of program benefits for residents of drug and/or alcohol abuse centers.

10:89-3.4(a)6—This provision was updated to reflect current policy of authorizing emergency energy assistance during the months of December through May.

10:89-3.4(e)4—Language was revised for clarification and consistency with regulations currently being amended in the Assistance Standards Handbook at N.J.A.C. 10:82-5.10(c)1, which expand the specific time period for county welfare agencies to authorize emergency program benefits.

10:89-3.6—Publication errors were corrected.

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

10:89-2.2 Eligibility requirements

- (a) The household members shall be residents of New Jersey.
  - 1.-2. (No change.)
  - 3. Strikers and households that include striking members are ineligible for Home Energy Assistance benefits, in ac-

cordance with N.J.A.C. 10:81-3.47(a) and N.J.A.C. 10:87-3.19(a)7.

4. Illegal aliens are ineligible for Home Energy Assistance benefits. In cases where an illegal alien resides within an applicant household, the alien must be excluded from the HEA household size. If the illegal alien has monthly income in excess of \$225.00, the amount in excess of \$225.00 shall be counted as income to the household, and must be added to all other household income in determining the household's gross monthly income.

(b) (No change.)

(c) For all households including those receiving automatic payments (N.J.A.C. 10:89-3.1) the household's income must be less than or equal to the allowable gross monthly income eligibility limits for the applicable household size (N.J.A.C. 10:89-2.3(g)). Those denied may apply for special assistance again if their income is reduced.

(d) (No change.)

10:89-2.3 Income eligibility

(a) (No change.)

(b) Regardless of income eligibility, the following households are not eligible for program benefits:

1.-3. (No change.)

4. Residents of any licensed medical facility (hospital, skilled nursing facility or intermediate care facility) **\*,\* \*[or]\*** publicly operated community residence **\***, **or center for the treatment of drug and/or alcohol abuse\***; and

5. (No change.)

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

(g) Gross Income Eligibility Limits for Home Energy Assistance:

Household Size	Monthly Gross Income Limit
1	\$ 656
2	881
3	1106
4	1331
5	1556
6	1781
7	2006
8	2231
9	2456
10	2681
Each Additional Member	+225

10:89-3.2 Special energy assistance

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

(d) No special assistance shall be authorized for households residing in any licensed medical facility (hospital, skilled nursing facility or intermediate care facility), publicly operated community residence or center for the treatment of drug and/or alcohol abuse.

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

10:89-3.3 Cooling assistance

(a) Eligible households for which there is medical evidence that the health of at least one household member will be seriously endangered unless the household's living quarters are cooled, shall receive a one-time benefit in the amount of \$125.00 subject to the following provisions. This benefit is available in addition to any other benefit made under this program and will be paid directly to the household.

1.-2. (No change.)

3. The following households are not eligible for cooling assistance payments:

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i.-ii. (No change.)

iii. Residents of any licensed medical facility (hospital, skilled nursing facility or intermediate care facility) or publicly operated community residence and residents of centers for treatment of drug and/or alcohol abuse;

iv. (No change.)

**10:89-3.4 Emergency energy assistance**

(a) Emergency energy assistance is available to income eligible households and is subject to the following conditions:

1.-2. (No change.)

3. The amount of any emergency assistance shall be the lowest amount charged for the service performed by the household's energy supplier or for the purchase of fuel, but shall not exceed \$200.00 for the purchase of fuel oil, electricity, natural gas, bottled gas, kerosene, wood or coal. The fee for restoration of utility service shall be counted toward the \$200.00 maximum amount for purchase of electricity or natural gas.

4.-5. (No change.)

6. Emergency energy assistance will be authorized only during the months of December, January, February, March, **\*[and]\* April \*, and May\***.

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

(d) Emergency energy assistance for specific services:

1. Emergency energy assistance is authorized through the CWA when a household is without heat or is in danger of being without heat. Payments shall not be authorized for households unless the household owns and resides in the residence requiring the service, and may be made only for the following services:

- i. Furnace restart not to exceed \$100.00;
- ii. Minor furnace repairs up to \$100.00; or
- iii. Correction for infiltration of cold air (not to exceed \$100.00).

(e) Emergency temporary rehousing:

1.-3. (No change.)

4. The CWA is responsible for evaluation of the situation and determination of appropriateness of the reimbursement from program funds. The Director of the Division of Public Welfare, upon consideration of the CWA's recommendation, may authorize the reimbursement for a specified temporary period not to exceed **\*[the calendar month following the month in which the rehousing became necessary]\* \*60 days following the date on which the state of homelessness first becomes known to the county welfare agency\***.

5. Requests for Emergency Rehousing Assistance reimbursement must contain; in writing, the following information:

- i. Description of the client(s) heating related emergency which required the temporary rehousing;
- ii. Description of the CWA's response to the heating related emergency situation;
- iii. Duration of the heating related emergency;
- iv. Identification of rehousing expenses incurred. This must include the name of payee(s), check number/date and whether these expenses were originally reported as Emergency Assistance payments; and
- v. Identification of household(s) assisted including the name(s) and Social Security number(s) of all Emergency Rehousing Assistance recipients;

6. If the request for Emergency Rehousing Assistance reimbursement is approved, the HEA check, when received, must be credited against the account from which the payment was initially made;

7. If in an energy related emergency the CWA finds it necessary to reestablish an HEA eligible household in a new permanent living arrangement, the CWA may request reimbursement from Home Energy Assistance funds for payments made for security and/or utility deposits.

(f) (No change.)

**10:89-3.6 Payment schedule**

(a) Schedule A: Fuel Oil, Kerosene, Electricity:

HOUSEHOLD SIZE Region Designation	1 or 2		3 to 5		6 or more	
	Blue	Red	Blue	Red	Blue	Red
Monthly Income						
\$0-\$ 417.00	492	428	658	572	788	686
\$ 418.00-\$ 667.00	410	358	548	476	658	572
\$ 668.00-\$ 917.00	330	286	438	382	526	458
\$ 918.00-\$1167.00			328	286	394	342
\$1168.00-\$1583.00			220	190	262	228
Over \$1583.00					132	114

"Blue" means Sussex and Warren counties.  
"Red" means all other counties.

(b) Schedule B: Natural Gas:

HOUSEHOLD SIZE Region Designation	1 or 2		3 to 5		6 or more	
	Blue	Red	Blue	Red	Blue	Red
Monthly Income						
\$0-\$ 417.00	408	356	546	474	654	570
\$ 418.00-\$ 667.00	340	298	454	396	546	474
\$*[667.01]**\$668.00*-\$917.00	274	238	364	318	436	380
\$ 918.00-\$1167.00			272	238	328	284
\$1168.00-\$1583.00			182	158	218	190
Over \$1583.00					110	94

"Blue" means Sussex and Warren counties.  
"Red" means all other counties.

(c) Schedule C: All other fuel:

HOUSEHOLD SIZE Region Designation	1 or 2		3 to 5		6 or more	
	Blue	Red	Blue	Red	Blue	Red
Monthly Income						
\$0-\$ 417.00	322	280	430	372	516	448
\$ 418.00-\$ 667.00	268	234	358	312	430	374
\$ 668.00-\$ 917.00	216	188	286	250	344	298
\$ 918.00-\$1167.00			214	186	258	224
\$1168.00-\$1583.00			144	124	172	150
Over \$1583.00					86	74

"Blue" means Sussex and Warren counties.  
"Red" means all other counties.

(d) Schedule D: Renters:

HOUSEHOLD SIZE Region Designation	1 or 2		3 to 5		6 or more	
	Blue	Red	Blue	Red	Blue	Red
Monthly Income						
\$0-\$ 417.00	302	264	402	350	484	420
\$ 418.00-\$ 667.00	250	220	336	294	402	350
\$ 668.00-\$ 917.00	202	176	268	234	324	280
\$*[918.01]**\$918.00*-\$1167.00			200	176	244	210
\$1168.00-\$1583.00			134	116	162	142
Over \$1583.00					82	70

"Blue" means Sussex and Warren counties.  
"Red" means all other counties.

**10:89-4.1 Opportunity and decision to apply**

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

(d) At the time of application, the CWA shall advise the household of all program eligibility requirements and the method by which assistance will be provided. Additionally, the CWA shall assist the household in completing the application

**HUMAN SERVICES**

**ADOPTIONS**

and explain what elements of eligibility must be verified. The CWA must advise the household what verification is required and explain that the case will be denied if verification is not provided.

1. Verification requirements: The CWA shall assist the household in obtaining the required verification.

i. Required documentation: The following must be verified, documented and retained in the case record by the CWA prior to transmitting the application to DPW:

(1) (No change.)

(2) Social Security number of the applicant. If an applicant has not previously obtained a Social Security number, the CWA shall ensure that the applicant applies for a Social Security number by submitting Form SS-5. (Social Security numbers for all other adult household members shall be recorded);

(3)-(10) (No change.)

ii. (No change.)

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

(g) CWA responsibility for eligibility determinations: Generally applications will be processed through the DPW computer system to a decision. However, the CWA will be responsible for screening each HEA application to determine the following:

1.-3. (No change.)

4. (No change in text.)

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

10:89-5.1 Establishment of Home Energy Assistance Units

(a) County welfare agencies (CWAs) shall establish separate Home Energy Assistance units to handle applications and all related program activity. CWAs shall utilize existing staff or additional personnel as required to ensure that all applications are promptly taken, complete with all required information, coded according to Division of Public Welfare (DPW) instructions, transmitted to DPW within the time limits established in N.J.A.C. 10:89-4.1(e), and that all required verification is documented in the case record.

(b) (No change.)

**(a)**

**DIVISION OF YOUTH AND FAMILY SERVICES**

**Child Abuse Prevention and Treatment Act of 1974 Requirements**

**Adopted Amendment and New Rule: N.J.A.C. 10:129-2, 2.2**

Proposed: November 18, 1985 at 17 N.J.R. 2735(a).  
Adopted: December 24, 1985 by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.

Filed: December 24, 1985 as R.1985 d.706, **without change.**

Authority: N.J.S.A. 30:4C-4, 30:1-12, 9:6-8.15, 9:6-1, 9:6-8.9, 9:6-8.21.

Effective Date: January 21, 1986.

Expiration Date pursuant to Executive Order No. 66(1978): July 15, 1990.

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

Full text of the adoption follows.

**SUBCHAPTER 2. CHILD ABUSE PREVENTION AND TREATMENT ACT OF 1974 REQUIREMENTS**

10:129-2.2 Definition of sexual abuse

(a) The term "sexual abuse" includes:

1. The employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in, any sexually explicit conduct (or any simulation of such conduct) for the purpose of producing any visual depiction of such conduct; or

2. The rape, molestation, prostitution, or other such form of sexual exploitation of children, or incest with children, under circumstances which indicate that the child's health or welfare is harmed or threatened thereby.

(b) The term "child" or "children" means any individual who has not or individuals who have not attained the age of 18.

**INSURANCE**

**(b)**

**DIVISION OF ADMINISTRATION**

**Loss Reserve Opinions**

**Adopted New Rules: N.J.A.C. 11:1-21**

Proposed: November 4, 1985 at 17 N.J.R. 2596(a).

Adopted: December 24, 1985 by Hazel Frank Gluck, Commissioner, Department of Insurance.

Filed: December 26, 1985 as R.1985 d.711, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:23-1.

Effective Date: January 21, 1986.

Expiration Date pursuant to Executive Order No. 66(1978): January 21, 1991.

**Summary of Public Comments and Agency Responses:**

The Department received five comments concerning the proposed new rule. All the comments were from insurance companies.

COMMENT: There are not enough qualified actuaries, that is, fellows of the Casualty Actuarial Society with five years loss reserving experience, to prepare all the loss reserve opinions that must be submitted with annual statements.

RESPONSE: The Department agrees that this may be a problem. For that reason, the rule is being amended in two ways to respond to this problem.

First, the definition of qualified actuary is being broadened to include fellows of the Casualty Actuarial Society with three years experience in loss reserving instead of five years experience. Associates of the Casualty Actuarial Society with five years experience in loss reserving also meet the definition.

Second, in order that the qualified actuaries available have the most opportunity to prepare the loss reserve opinions, the opinion will be required to be submitted not later than June 30. The rest of the Annual Statement is due April 1 so that companies have four extra months in which to have the opinion prepared.

COMMENT: This rule will not improve the financial integrity of companies. The opinion of a qualified actuary will not differ from that of the company's employees who provide the underlying data for the opinion.

RESPONSE: A qualified actuary, as defined by the rule, will have the expertise to properly analyze the data necessary to prepare the loss reserve opinion. Preparation of the opinion by a qualified actuary will ensure that this important part of the annual statement accurately reflects the financial position of the company.

COMMENT: Members in good standing of the American Academy of Actuaries are qualified to prepare the loss reserve opinions.

RESPONSE: The American Academy of Actuaries includes actuaries who are not qualified in property and casualty insurance. The Department believes that its definition identifies individuals most qualified to prepare the opinion. There may be people qualified to prepare loss reserve opinions who do not meet the definition in the rule. However, the Department does not wish to evaluate the qualifications of specific individuals. The rule sets an objective standard that is closely related to the expertise necessary to prepare the opinion.

COMMENT: The opinion language should conform to that of the NAIC blank and require good and sufficient reserves instead of the rule's requirement of reasonable reserves.

RESPONSE: The Department believes that the term "good and sufficient" pertaining to reserves does not accurately describe the kind of conclusion an actuary can reach. An actuary cannot certify that reserves are sufficient for all claims. The rule calls for reserves to be certified as reasonable and to make it clear what that means a definition has been added. "Reasonable" means with a good and sufficient reason and neither excessive nor inadequate.

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

## SUBCHAPTER 21. LOSS RESERVE OPINIONS

### 11:1-21.1 General requirements

(a) Every licensed company writing property and casualty insurance in New Jersey must submit, as an addendum to the Annual Statement, a statement of opinion relating to loss and loss adjustment expense reserves for all lines of business written by the company.

1. The statement of opinion shall be in the form of a letter and must be submitted by **\*June 30\***[April 1]\*.

2. The statement of opinion shall be prepared and signed by a qualified actuary.

i. A "qualified actuary" shall mean a fellow in good standing of the Casualty Actuarial Society with **\*three\***[five]\* years **\*recent\*** experience in loss reserving\*, or an associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving.\*

(b) Failure to file the statement of opinion in the form and time frame specified in this subchapter will subject the company to the penalties described in N.J.S.A. 17:23-2.

(c) The statement of opinion must consist of a paragraph identifying the actuary, a scope paragraph describing the subjects on which an opinion is to be expressed and describing the scope of the actuary's review, and an opinion paragraph expressing the conclusions of the actuary. One or more additional paragraphs may be needed in individual cases if the actuary must qualify the opinion or explain some aspect of the annual statement which is not already sufficiently explained in the annual statement.

(d) N.J.A.C. 11:1-21.3 and 11:1-21.4 provide examples for illustrative purposes, of language which in typical circumstances would be included in the remainder of the statement of opinion. The illustrative language should be modified as needed to meet the circumstances of a particular case, and the actuary should in any case use language which clearly expresses his or her professional judgment.

### 11:1-21.2 Identification paragraph

(a) The opening paragraph must indicate the actuary's relationship to the company.

1. For a company actuary, the opening paragraph of the opinion should contain the sentence: "I, (name and title of actuary), am an officer (employee) of (named insurer) a fellow of the Casualty Actuarial Society and meet the requirements of a qualified actuary."

2. For a consultant, the opening paragraph of the opinion should contain the sentence: "I, (name and title of consultant), am associated with the firm of (name of firm if applicable). I am a fellow of the Casualty Actuarial Society meeting the requirements of a qualified actuary and have been retained by the (name of insurer) with regard to loss and loss adjustment expense reserves."

### 11:1-21.3 Scope paragraph

(a) The scope paragraph must contain a sentence such as the following: "I have examined the assumptions and methods used in determining reserves as shown in the annual statement of the company as prepared for filing with New Jersey Department of Insurance, as of December 31, 19\_\_\_\_." The paragraph should list those items and amounts with respect to which the actuary is expressing an opinion. The list must include but not necessarily be limited to:

1. Reserve amount for unpaid losses.

2. Reserve amount for unpaid loss adjustment expenses.

(b) If the actuary has examined the underlying records and/or summaries, the scope paragraph must also include a sentence such as the following: "My examination included such review of the assumptions and methods used and of the underlying basis records and/or summaries and such tests and calculations as I considered necessary."

(c) If the actuary has not examined the underlying records and/or summaries, but has relied upon those prepared by the company, the scope paragraph must include a sentence such as one of the following:

1. "I relied upon underlying records and/or summaries prepared by the responsible officers or employees of the company or group to which it belongs. In other respects, my examination included such review of the assumptions and methods used and such tests of the calculations as I considered necessary."

2. "I relied upon (name of firm) for the accuracy of the underlying records and/or summaries. In other respects, my examination included such review of the underlying assump-

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tions and methods used and such tests of the calculations as I considered necessary.”

11:1-21.4 Opinion paragraph

(a) The opinion paragraph must include a sentence which covers at least the points listed in the following illustration: “In my opinion, the amounts carried in the balance sheet on account of the items identified above:

1. Are computed in accordance with generally accepted loss reserving practices and are fairly stated in accordance with sound loss reserving principles;

2. Are based on factors relevant to policy provisions;

3. Meet the requirements of the insurance laws of (state of domicile); and

4. Make a reasonable provision for all unpaid loss and loss expense obligations of the Company under the terms of its policies and agreements.”

\*i. Reasonable in (a)4 above shall mean with good and sufficient reason, being in the judgment of the actuary neither inadequate nor excessive.\*

(b) If there has been any material change in the assumptions and/or methods from those of previous statements of opinion, that change should be described in the statement of opinion by inserting a phrase such as: “A material change in assumptions (and/or methods) was made during the past year, but such change accords with accepted loss reserving practices.” A description of the change should follow, including how it affects reserve amounts.

(c) If unable to form an opinion, the actuary should refuse to issue a statement of opinion. If the opinion is adverse or qualified, the actuary should issue an adverse or qualified opinion explicitly stating the reason(s) for such opinion.

**LABOR**

**(a)**

**BOARD OF MEDIATION**

**Arbitration**

**Adopted New Rule: N.J.A.C. 12:105**

Proposed: October 21, 1985 at 17 N.J.R. 2526(a).

Adopted: December 19, 1985 by Charles Serraino, Commissioner, Department of Labor.

Filed: December 24, 1985 as R.1985 d.702, **without change.**

Authority: N.J.S.A. 34:13A-1 et seq., specifically 34:13A-11.

Effective Date: January 21, 1986.

Expiration Date pursuant to Executive Order No. 66(1978): January 21, 1991.

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

Full text of the expired rules adopted as new may be found in the New Jersey Administrative Code at N.J.A.C. 12:105.

Full text of the adopted amendment to the new rules follows.

12:105-4.5 Postponements and adjournments

(a) The postponing of a scheduled hearing or the adjourning of a hearing is entirely within the discretion of the arbitrator.

(b) If either or both of the parties seek a postponement or cancellation within seven calendar days of the time agreed upon for the conduct of a hearing or the continuance of a hearing, the party or parties responsible for the postponement or cancellation shall be liable for payment of the arbitrator's full fee resulting from the cancellation or postponement.

**LAW AND PUBLIC SAFETY**

**(b)**

**DIVISION ON CIVIL RIGHTS**

**Rules of Practice and Procedure**

**Adopted Amendments: N.J.A.C. 13:4-1.1 through 13:4-15.4**

Proposed: November 4, 1985 at 17 N.J.R. 2682(a).

Adopted: December 18, 1985 by Pamela S. Poff, Director, Division on Civil Rights.

Filed: December 24, 1985 as R.1985 d.697, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 10:5-8(g) and 10:5-18.

Effective Date: January 21, 1986.

Expiration Date pursuant to Executive Order No. 66(1978): January 21, 1991.

**Summary of Public Comments and Agency Response: No comments received.**

Full text of the adoption follows (additions to proposal shown in boldface with asterisks \*thus\*).

**CHAPTER 4**

**RULES OF PRACTICE AND PROCEDURE**

**SUBCHAPTER 1. GENERAL PROVISIONS**

13:4-1.1 Scope of rules

The following provisions shall constitute the practice and procedure and shall govern all proceedings in the Division on Civil Rights. When a case is transmitted to the Office of Administrative Law, or the Director elects to hear the contested case, the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1, et seq., shall govern proceedings in that case. Whenever these rules refer to procedures to be followed after transmittal to the Office of Administrative Law, such references shall also be deemed to apply to instances where the Director elects to hear a contested case pursuant to N.J.S.A. 52:14F-8.

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13:4-1.3 Practice where rules do not govern

(a) The Director may rescind, amend or expand these rules from time to time as necessary to comply with N.J.S.A. 10:5-1, et seq., and such new rules shall be filed with the Office of Administrative Law.

(b) In any matter that arises not governed by these rules, the Director shall exercise his or her discretion.

13:4-1.4 Definitions

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

“Administrative law judge” means any person appointed pursuant to N.J.S.A. 52:14F-5(1).

...

“Bureau Chief” means an executive employee of the Division on Civil Rights who shall exercise such powers of the Division as the Director may from time to time delegate to him or her.

...

“Director” means the Director of the Division on Civil Rights who shall act for the Attorney General of New Jersey as chief executive officer of the Division in his or her place and with his or her powers.

...

“Field investigator” means any employee of the Division designated under Civil Service as “Field Investigator, Division on Civil Rights.”

“Office of Administrative Law” or “OAL” refers to the agency created by N.J.S.A. 52:14F-1, et seq.

“Office of the Division” means the office located at 1100 Raymond Boulevard, Newark, New Jersey, and the offices located at 369 Broadway, Paterson, New Jersey; 35 West State Street, Trenton, New Jersey; 130 Broadway, Camden, New Jersey; Arcade Building, 1325 Boardwalk, Atlantic City, New Jersey; and any additional offices which may from time to time be established.

...

**SUBCHAPTER 2. INVESTIGATIONS**

13:4-2.1 Director’s investigations

(a) The Director, pursuant to N.J.S.A. 10:5-6.1; 10:5-8(c), g, h, i, j; 10:5-9.1, may, on his or her own motion or on the motion of any person entitled to be a complainant under N.J.A.C. 13:4-3.3, conduct investigations to determine the extent to which industries, groups of industries, business persons, or groups of business persons, or other persons or groups of persons are complying with the Law Against Discrimination.

(b) (No change.)

(c) In connection with an investigation of the operation of any real property, as defined by N.J.S.A. 10:5-5n, the director may require the submission of information concerning the race, creed, color, national origin, ancestry, handicap, marital status, sex, or nationality of the occupants of such real property, the terms and conditions on which the sale or lease of said real property is to be made to the general public, the vacancy rate of such real property subject to rent, the plans for advertising or notifying the public of the availability of said real property for rental or sale, the standard form docu-

ments used in the rental or sale of such real property, and such other information as may be reasonably necessary to carry out the provisions of the Law Against Discrimination.

(d) In connection with an investigation of any employer as defined by N.J.S.A. 10:5-5(e), the Director may require the submission of information concerning:

1. The race, creed, color, national origin, handicap, ancestry, age, marital status, sex, nationality or military status of employees.

2.-6. (No change.)

(e) An investigation by the Division may be conducted either prior to or subsequent to the filing of a complaint.

**SUBCHAPTER 3. COMMENCEMENT OF ACTION**

13:4-3.1 Manner actions commenced

Any action may be commenced by the filing of a verified complaint at the offices or with any official or field investigator of the Division.

13:4-3.2 Preparing complaints

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

13:4-3.3 Filing complaints and other pleadings

(a) A complaint shall be deemed filed on the date it is received in any office of the Division, or on the date it is received by any official or field investigator of the Division.

(b) (No change.)

(c) The filing of a complaint or any other pleading shall be proven by the official stamp of the Division or by the signature of any official, employee or field investigator and his or her written notation indicating the date of receipt.

(d) (No change.)

13:4-3.4 Form of complaints

(a) A complaint shall be filed upon a printed form approved by the Director.

(b) The complaint shall be entitled in the Department of Law and Public Safety, Division on Civil Rights, and shall set forth in the caption the names of the complainants and respondents.

13:4-3.5 Contents of complaint

(a) The complaint shall set forth in separate numbered paragraphs the following:

1.-2. (No change.)

3. A statement of whether the race, creed, color, national origin, nationality, handicap ancestry, marital status, sex, military status or age of the complainant gave rise to the alleged discrimination;

4.-5. (No change.)

6. A statement giving all pertinent facts as to whether any other action, either criminal or civil, has been instituted in the matter. Complainant shall notify the Division if at any time during the pendency of the complaint, he or she files a complaint with any other agency or court concerning the matter which is the subject of the Verified Complaint;

7. (No change.)

8. The county in which the alleged discrimination took place.

**SUBCHAPTER 4. PARTIES**

13:4-4.1 Aggrieved persons

(a) Any individual, or group of individuals, partnership, educational institution, association, labor organization, corporation, legal representative, trustee, trustee in bankruptcy,

receiver or fiduciary may file or through an attorney at law, file a verified complaint for any practice violative of the Law Against Discrimination which affects the complainant, the complainant's family or any person whom the complaint represents.

(b) The enumeration in (a) above of parties who may file a complaint includes, but is not limited to, groups and associations dedicated to the elimination of discrimination in the sale and rental of real property, in the hiring and promotional practices of employers and unions, and in the operation of public accommodations.

#### 13:4-4.2 State officials who may file

(a) The Attorney General, the Director, the Commissioner of Labor, or the Commissioner of Education may also file a complaint alleging unlawful discrimination.

(b) The Director on his or her own behalf may file a complaint, intervene, or join as a complainant in any complaints filed by parties enumerated in N.J.A.C. 13:4-4.1 (Aggrieved persons) and by parties enumerated in this Section.

#### 13:4-4.3 Rights of parties; notification of settlement

(a) Any aggrieved person enumerated in N.J.A.C. 13:4-4.1 (Aggrieved persons) and N.J.A.C. 13:4-4.2 (State officials) who files a complaint shall be considered a party to any proceeding in the Division resulting from the filing of such complaint and shall have the rights of a party enumerated by these rules and by the Law Against Discrimination.

(b) If any complainant enumerated in N.J.A.C. 13:4-4.1 (Aggrieved persons) and N.J.A.C. 13:4-4.2 (State officials who may file) files a complaint with the Division, on behalf of any individual or individuals, the proceeding initiated by such complaint shall, if the Director finds the continuation of the proceeding is in the public interest, proceed to conclusion, including the issuance of any lawful order by the Director, even if the grievances of any individual person represented by the above aggrieved persons have been satisfactorily ameliorated.

(c) (No change.)

(d) Where the Director has filed a complaint which seeks relief for one or more unnamed members of a protected class, the Director shall have the discretion to settle such complaint on such terms as the Director deems appropriate.

### SUBCHAPTER 6. OTHER PLEADINGS

#### 13:4-6.1 Findings of probable cause

(a) After the filing of the complaint, the Director may cause an investigation to be made by a field investigator of the Division as to the allegations of the complaint. The investigation may include a fact-finding conference pursuant to N.J.A.C. 13:4-2.3, document and information requests, and any other investigative methods authorized by N.J.S.A. 10:5-8(i).

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

(d) If a finding of no probable cause is made, whether before or after investigation of a complainant's allegations, all complainants and respondents shall be notified of such a finding.

#### 13:4-6.2 Motions

(a) The procedure governing all motions made prior to transmittal of a case to the Office of Administrative Law shall be in accordance with the rules governing the New Jersey courts, except where otherwise provided under these rules.

After transmittal, the procedure shall be in accordance with N.J.A.C. 1:1-1.1, et seq.

(b) (No change.)

#### 13:4-6.3 Amended pleadings

(a) Prior to transmittal of a case to the Office of Administrative Law, the complainant with the approval of the Director may file an amended complaint with the Division.

(b) Following transmittal of a case to the Office of Administrative Law, any motion to amend a complaint shall be initially presented to the administrative law judge hearing the matter.

(c) Using the standards set forth in N.J.A.C. 1:1-6.3, any pleading may be amended during or after hearing with leave of the administrative law judge to conform to the evidence presented.

#### 13:4-6.4 Orders of Director

(a) The Director shall issue such orders as may be necessary to effectuate the processing and determination of a case and may enter an order of dismissal at any time. Cases pending before the OAL shall be subject to the procedures set forth at N.J.A.C. 1:1-1.1, et seq.

(b) (No change.)

#### 13:4-6.5 Motion to intervene

(a) Prior to transmittal any person interested in or associated with the matters alleged in a complaint may file an original and two copies of a motion to intervene and shall serve an additional copy on each respondent and complainant by registered or certified mail, return receipt requested.

(b) (No change.)

(c) Following transmittal motions to intervene shall be made pursuant to N.J.A.C. 1:1-12.1 et seq.

### SUBCHAPTER 7. SERVICE OF OTHER PLEADINGS

#### 13:4-7.1 Method of service

(a) Prior to transmittal to OAL, unless otherwise instructed by the Director, every order and subsequent pleading to the original complaint, every motion and every written notice, brief or memorandum of law shall be served by mailing copies to all parties, by registered or certified mail, return receipt requested, within three days of said filing.

(b) (No change.)

(c) When any party has appeared through or is represented by an attorney, service upon such attorney shall be deemed valid service upon the party in all cases unless timely written notice of withdrawal or substitution of such attorney is served upon the Director and all other parties.

#### 13:4-7.2 (Reserved)

### SUBCHAPTER 8. INVESTIGATORY DEPOSITIONS AND INTERROGATORIES

#### 13:4-8.1 Investigation by Division on Civil Rights

(a) (No change.)

(b) The Director may issue such subpoenas as he or she deems necessary to aid the investigatory process.

#### 13:4-8.2 Discovery of the Division files

(a) After a Finding of Probable Cause has been issued by the Director, after transmittal to OAL pursuant to N.J.S.A. 10:5-13, after any final determination has been issued, or after any other agency closure, a party may, upon written request and notice to all other parties, receive discovery of the following information in the Division's file:

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1. Statements made by any person during the course of the Division's investigation, other than work product of Division employees, intra-agency communications and attorney-client communications.

2. All factual written reports of the field investigator.

3. (No change.)

(b) If it appears that a party's purpose in seeking discovery is to oppress any party or to delay the resolution of the case, the Director may refuse, terminate, or limit discovery as the circumstances warrant, including issuance of protective orders. When the case is pending before the OAL, any objections relating to discovery of the Division's files shall be made to the OAL with notice provided \*to\* the Director of the Division.

(c) The Division's fee for copying documents requested pursuant to this section shall be \$.25 per page. The Director may waive or modify this fee in the case of an indigent party or in other extraordinary situations for good cause. The Division's fee scale shall not apply to requests granted pursuant to N.J.S.A. 47:1A-2.

**13:4-8.3 Interrogatory default procedure**

(a) If a respondent has been served with a verified complaint and the Director has issued interrogatories pursuant to N.J.S.A. 10:5-8(i), and notice of the consequences of the failure to answer interrogatories has been given to respondent, and respondent fails either to answer the interrogatories or to file a motion to strike interrogatories within the time specified therein, the Director may:

1.-2. (No change.)

NOTICE (No change.)

(b) In the event the respondent files a motion to strike interrogatories within the time set to answer interrogatories, said motion shall be supported by affidavit and/or brief and shall be ruled upon by the Director on the motion papers without oral argument; if said motion is granted the interrogatories shall be stricken and if said motion is denied the Director shall then follow the procedure set forth in (a) above or enter any other appropriate order.

(c) (No change.)

(d) Any order for entry of default must be supported by an affidavit of a field investigator or other Division employee authorized by the Director. The affidavit shall recite:

1.-4. (No change.)

5. That the complainant had filed his allegation of discrimination within the time prescribed by law.

(e) Within ten days after the entry of default, the Director shall serve notice of the entry of default and supporting affidavit upon the respondent. The notice shall inform respondent that the case will be transmitted to the OAL for hearing on a default basis and that transmittal will occur twenty days after receipt by respondent of the notice of entry of default. The notice shall also inform respondent of the opportunity provided by (g) below for petitioning the Director to vacate the entry of default.

(f) Twenty days after respondent receives notice of the entry of default the Director shall transmit the case to OAL for the purpose of a hearing on the complainant's proofs of the allegation of discrimination on a default basis.

(g) At any time after entry of default and before transmittal the respondent may petition the Director who may vacate the entry of default and reopen the case for good cause shown. The respondent's assertion of good cause shall be in affidavit form and shall include the full and complete answers to all interrogatories.

(h) If the Director vacates the entry of default at any time prior to the date of transmittal, then said transmittal shall be cancelled by the Director, and the complaint shall instead proceed to any investigation finding as to probable cause, conciliation or public hearing as provided by these rules.

(i) At a default hearing the proofs shall consist of the order of entry of default, the supporting affidavit and any other evidence proffered by the complainant, and the only cognizable issues shall be whether the facts established by the complainant and admitted by respondent constitute an act of discrimination, and if so, the amount of damages or other recommended relief. No evidence proffered by the respondent shall be admitted at a default hearing.

(j) After receiving the recommendation of the ALJ, the Director shall enter a final order pursuant to N.J.S.A. 10:5-17.

(k) If discrimination is found by the Director, the final order shall require the respondent to take any affirmative action which in the judgement of the Director is necessary to both eliminate any discrimination and make the complainant whole.

(l) This order shall be the only final order provided for by this rule; all other orders provided by this rule shall be interlocutory in nature.

**13:4-8.4 Depositions by Division and parties**

(a) On written motion of any party or the Division, prior to transmittal of a case to OAL, the Director may order that the testimony of any material witness residing within or without the State be taken by deposition in the manner prescribed by law for depositions in civil actions. Such motion may be granted only if it sets forth:

1.-3. (No change.)

(b) No depositions shall be taken for any reasons or by any manner other than that contained in (a) above, except in exceptional circumstances, prior to transmittal of a case to OAL.

**SUBCHAPTER 9. SUBPOENAS**

**13:4-9.1 Issuance of investigatory subpoenas by Director**

(a) The Director shall issue subpoenas in the name of the Division, and the subpoenas shall direct the person designated to attend personally and, if necessary, to attend with any books, records, documents and any other evidence which relates to any matter under investigation.

(b) (No change.)

(c) The subpoena shall direct the person designated to answer to the subpoena at a time and place which shall be determined by the Director in his or her discretion.

(d) (No change.)

(e) Where a respondent is a corporation and is represented by an attorney, the Director may issue a notice in lieu of subpoena requiring respondent to produce documents or to produce its employees to attend any investigatory proceeding. Said notice in lieu of subpoena shall be served upon respondent's attorney in the manner set forth in N.J.A.C. 13:4-9.2.

(f) Following transmittal of a case to OAL for hearing, the procedures set forth at N.J.A.C. 1:1-1.1, et seq., shall govern the issuance of subpoenas.

**13:4-9.2 Service of subpoenas**

(a) (No change.)

(b) Accompanying all subpoenas shall be a check in an amount sufficient to cover the costs for one day's attendance and such mileage as may be allowed by law in civil matters in the courts of the State of New Jersey; but no fee shall be

allowed where a subpoena requires only the production of documents which may be produced by mailing copies of said documents to the Division.

13:4-9.3 Enforcement of depositions, interrogatories, subpoenas, other investigatory orders

(a) If any person shall fail to appear at the time designated in a subpoena, or shall fail to comply with an order of the Director for the taking of depositions, interrogatories, or other investigatory procedures, or shall fail to provide information as requested pursuant to a lawful investigation, he or she shall be subject to the appropriate enforcement provisions of N.J.S.A. 10:5-8i, 10:5-19 and 10:5-26, as well as the provisions of N.J.A.C. 13:4-8.3 (Interrogatory default procedure).

(b) If the subpoena or order has been issued at the instance of the Director or Division, the application to the court required by said Statute shall be in the name of the Division, and if it shall be at the instance of any party, he \*or she\* shall likewise apply to the Court to enforce the subpoena, as relator in the name of the Division.

SUBCHAPTER 10. CONSOLIDATION

13:4-10.1 Consolidation or severance of complaints

(a) Whenever the Director deems it necessary, he or she may order that any complaint filed with the Division and any proceedings which may have been initiated with respect thereto be consolidated with or severed from any other complaint which may have been instituted with the Division.

(b) Following transmittal of a case to the Office of Administrative Law, all motions to sever or consolidate shall be initially presented to the OAL, pursuant to N.J.A.C. 1:1-1.1, et seq. Subject to the requirements of N.J.S.A. 10:5-13, requests for consolidation of cases pending before the Division with cases pending before OAL but involving the jurisdiction of other agencies shall be handled in accordance with N.J.A.C. 1:1-1.1, et seq.

SUBCHAPTER 11. CONCILIATION

13:4-11.1 Conciliation conference; notice; failure to attend

(a) After a finding of probable cause, the Director or his or her representative shall schedule a conciliation conference in accordance with N.J.S.A. 10:5-14.

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

(e) Failure to attend the conciliation conference may be deemed to be an unsuccessful attempt at conciliation.

SUBCHAPTER 12. HEARINGS

13:4-12.1 When hearings ordered

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

(f) When a complainant files a request with the Division pursuant to subsection (c) above, complainant thereby waives any right to have an attorney for the Division prosecute the complaint. The parties shall, however, send copies of all pleadings, briefs and memoranda to the Division's attorney at the same time as filing such papers with OAL. The Division's attorney may attend preliminary proceedings such as prehearing conferences in order to determine the appropriateness of intervention, and may intervene on behalf of the Division in any case pursuant to N.J.S.A. 10:5-13.

13:4-12.3 Temporary injunction

If the Director determines that the interests of the complainant may be irreparably damaged by the lapse of time before a hearing could be scheduled or between the scheduling of a

hearing and the ultimate disposition of the matter in the Division, he/she shall instruct the attorney for the Division to seek such temporary injunctive relief in the Superior Court of New Jersey, pursuant to N.J.S.A. 10:5-14.1, as may be appropriate to preserve the rights of the complainant. Where a complainant is proceeding pro se or through a private attorney, pursuant to N.J.S.A. 10:5-13, the complainant may apply to the Court for temporary injunctive relief.

13:4-12.4 Conduct of hearings

The procedure for conducting hearings, issuing initial decisions and issuing final orders shall be governed by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1, et seq.

SUBCHAPTER 13. (RESERVED)

13:4-13.1 (Reserved)

SUBCHAPTER 14. REOPENED PROCEEDINGS

13:4-14.1 Reopened proceedings for cause

The Director may upon his or her own motion, or upon motion of any party or of the attorney for the Division, reopen the proceedings, but such action shall not be a matter of right and shall only be for good cause shown.

SUBCHAPTER 15. ORDERS OF DIRECTOR

13:4-15.1 Orders of Director

At any time during the course of the proceedings, the Director may enter such orders as he or she may deem appropriate to further the intent and purposes of the Law Against Discrimination, N.J.S.A. 10:5-1, et seq. When a case is within the jurisdiction of the OAL, the procedures set forth at N.J.A.C. 1:1-1.1, et seq., shall apply.

13:4-15.2 Protection of witnesses; preventing reprisals

(a) No person who has been, is or will be a respondent in a proceeding before the Division on Civil Rights shall discharge, evict, expel or otherwise discriminate or take any other reprisal against any person because he or she has opposed any practices or acts forbidden under the Law Against Discrimination or because he or she has filed a complaint, testified or assisted in any proceeding under the Law Against Discrimination.

(b) For the purposes of this section, all persons who have been, are or will be respondents in proceedings before said Division shall be considered to be within the continuing jurisdiction of the Division and shall be subject to appropriate order of the Director of the Division as in the case of an unlawful reprisal, including such interim orders as may be deemed necessary to preserve the status quo and to protect the best interests of the parties.

13:4-15.3 No probable cause as final order

The following shall also be considered a final order: a finding of no probable cause pursuant to N.J.A.C. 13:4-6.1 (Findings of Probable Cause). \_\_\_\_\_

**(a)**

**DIVISION OF MOTOR VEHICLES  
DEPARTMENT OF DEFENSE**

**Enforcement Service  
Special National Guard Plates**

**Readoption: N.J.A.C. 13:20-36.1 and 36.2**

Proposed: November 4, 1985 at 17 N.J.R. 2602(a).  
Adopted: December 10, 1985 by Robert S. Kline, Acting  
Director, Division of Motor Vehicles, and Major  
General Francis R. Gerard, Adjutant General,  
Department of Defense.  
Filed: December 18, 1985 as R.1985 d.678, **without  
change.**

Authority: N.J.S.A. 39:3-27.14.

Effective Date: December 18, 1985.  
Expiration Date pursuant to Executive Order No.  
66(1978): December 18, 1990.

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

**Full text** of the readoption appears in the New Jersey Ad-  
ministrative Code at N.J.A.C. 13:20-36.

**(b)**

**DIVISION OF MOTOR VEHICLES**

**Licensing Service  
New Jersey Licensed Motor Vehicle Dealers**

**Adopted New Rule: N.J.A.C. 13:21-15.6**

Proposed: January 21, 1985 at 17 N.J.R. 169(a).  
Adopted: December 12, 1985 by Robert S. Kline, Acting  
Director, Division of Motor Vehicles.  
Filed: December 24, 1985 as R.1985 d.699, **with  
substantive changes** not requiring additional public  
notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 39:10-3, 39:10-4, 39:10-11, 39:10-19  
and 39:10-20.

Effective Date: January 21, 1986.  
Expiration Date pursuant to Executive Order No.  
66(1978): September 14, 1989.

**Summary of Public Comments and Agency Responses:**

Written comments were received from the New Jersey Auto-  
mobile Dealers Association (NJADA).

NJADA recommended that dealer license suspension be  
predicated upon a dealer's presentation of an altered title  
document to the Division of Motor Vehicles. The Division of  
Motor Vehicles has accepted this recommendation so that the  
substantive change adopts the NJADA position. NJADA also

suggested that the proposed new rule proscribe a dealer from  
"knowingly and intentionally" presenting an altered title to  
the Division. The Division has rejected this recommendation  
because it would inappropriately establish a criminal *mens rea*  
for a violation of an administrative rule. NJADA further  
recommended that the proposed new rule provide that the  
alteration of the title document be "reasonably detectable  
from a routine review of the motor vehicle title or any other  
title documents". The Division has accepted this recommen-  
dation so that the substantive change reflects the NJADA  
position. Lastly, NJADA suggested a three-tier suspension  
system. The Division has rejected this position but has agreed  
to decrease the periods of suspension which may be imposed  
for violations of the new rule. The substantive change to the  
proposed new rule reflects the lower periods of suspension  
which the Division believes adequately responds to the nature  
of the violation.

The substantive changes provide that a motor vehicle deal-  
er's presentation of an altered title to the Division of Motor  
Vehicles or reassignment of an altered title to a subsequent  
purchaser may constitute cause for the suspension of the  
motor vehicle dealer license. The proposed rule specified that  
the dealer's acceptance of an altered title would constitute  
cause for the suspension of the motor vehicle dealer license.  
The substantive change addresses the matter of altered titles  
in a more practicable way. A dealer's presentation of an alter-  
ed title to the Division or reassignment of an altered title to  
a subsequent purchaser, rather than mere acceptance of same,  
may subject the dealer to a license suspension. A dealer may  
accept an altered title and return same upon discovery of the  
alteration without incurring a license suspension. The substan-  
tive change promotes vigilance on the part of dealers and  
protects the public interest.

The proposed substantive changes also broaden the regu-  
lation to include the presentation of altered titles received from  
a province or other jurisdiction. This will enable the Division  
to penalize dealers who present altered titles received from  
Canadian provinces or foreign countries.

The proposed substantive changes also clarify the standard  
that a dealer will be held to in reviewing title documents for  
alterations. The proposed rule set forth the standard for deal-  
ers as follows: "where said alteration should have been de-  
tected by a person of ordinary intelligence". The substantive  
change sets the standard as "where said alteration was reason-  
ably detectable by a person of ordinary intelligence from a  
routine review of the motor vehicle title or any other title  
document". Dealers will therefore be held to a "reasonable  
man" standard.

The proposed substantive changes also modify the  
suspension periods which may be imposed for violations of  
the rule. Dealers will be subject to a suspension for a period  
not to exceed 15 days for a first violation instead of the 90  
day suspension provided for in the proposed rule. Dealers will  
be subject to a suspension for a period of not less than 15  
days nor greater than 90 days for a second violation instead  
of for a period of not less than 90 days as provided for in  
the proposed rule.

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

13:20-15.6 \*[Acceptance]\* **\*Presentation or reassignment\*** of  
altered title documents; suspension; period of  
suspension; refusal to renew license

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(a) No motor vehicle dealer licensed pursuant to N.J.S.A. 39:10-19 **\*nor any person on his behalf\*** shall **\*[accept, from any person]\*** **\*present to the Division or reassign to a subsequent purchaser\*** a motor vehicle title issued by this or any other state, **\*province or jurisdiction\*** or any other title document, which contains any erasure, obliteration, correction, or any other alteration where said alteration **\*[should have been detected]\*** **\*was reasonably detectable\*** by a person of ordinary intelligence **\*from a routine review of the motor vehicle title or any other title document.\***

(b) A motor vehicle dealer who violates (a) above may have his motor vehicle dealer's license suspended for the periods as set forth in (c) below, pursuant to the provisions set forth in N.J.S.A. 39:10-20.

(c) For the purpose of suspending a motor vehicle dealer's license pursuant to (b) above, each document **\*[accepted]\*** **\*presented or reassigned\*** shall constitute a separate violation. For a first violation the dealer's license **\*[shall]\*** **\*may\*** be suspended for a period less than the unexpired period of the license or **\*[90]\*** **\*15\*** days, whichever period is lesser. For subsequent violations the dealer's license shall be suspended for a period **\*[less than the unexpired period of the license or not less than 90 days]\*** **\*of not less than 15 days\*** **\*[whichever is lesser]\*** **\*or more than 90 days.\***

(d) The Director may refuse to renew a dealer license where the applicant has had two or more violations of (a) above which resulted in a suspension pursuant to (b) above.

**(a)**

**BOARD OF ACCOUNTANCY**

**Change of Address**

**Adopted New Rule: N.J.A.C. 13:29-1.4**

Proposed: July 1, 1985 at 17 N.J.R. 1639(a).  
Adopted: December 9, 1985 by Paul Kurisko, C.P.A.,  
President, State Board of Accountancy.  
Filed: December 24, 1985 as R.1985 d.695, **without change.**

Authority: N.J.S.A. 45:2B-8(g).

Effective Date: January 21, 1986.  
Expiration Date pursuant to Executive Order No.  
66(1978): June 3, 1990.

**Summary of Public Comments and Agency Responses:**

**Full text** of the adoption follows.

13:29-1.4 Change of address

A licensee of the Board of Accountancy shall notify the Board in writing of any change of address from that currently registered with the Board and shown on the most recently issued license. Such notice shall be given no later than 60 days following the change of address.

**(b)**

**Successful Applicants**

**Adopted Amendment: N.J.A.C. 13:29-1.11**

Proposed: September 3, 1985 at 17 N.J.R. 2092(a).  
Adopted: December 9, 1985 by Paul M. Kurisko,  
C.P.A., President, New Jersey State Board of  
Accountancy.  
Filed: December 24, 1985 as R.1985 d.700, **without change.**

Authority: N.J.S.A. 45:2B-6(g).

Effective Date: January 21, 1986.  
Expiration Date pursuant to Executive Order No.  
66(1978): June 3, 1990.

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

**Full text** of the adoption follows.

13:29-1.11(a) Successful applicants

(a) Applicants who satisfy the requirements of this subchapter shall pay a fee of \$14.00 which reflects the cost of the issuance of a certified public accountant's certificate and of a character investigation by the State Police.

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

**(c)**

**Registered Municipal Accountants  
Application; Requirements**

**Adopted Repeal and New Rule: N.J.A.C.  
13:29-2.1**

Proposed: September 3, 1985 at 17 N.J.R. 2092(b).  
Adopted: December 9, 1985 by Paul M. Kurisko,  
C.P.A., President, New Jersey State Board of  
Accountancy.  
Filed: December 24, 1985 as R.1985 d.696, **without change.**

Authority: N.J.S.A. 45:2B-34.

Effective Date: January 21, 1986.  
Expiration Date pursuant to Executive Order No.  
66(1978): June 3, 1990.

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

**Full text** of the adoption follows.

13:29-2.1 Applications; requirements

Every applicant for the registered municipal accountant's examination shall submit to the Board a written application on a form to be provided by the Board and a photograph (two

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inches by two inches in size, bust picture, front view, without a hat, taken within 30 days prior to application), provided that the applicant must hold in good standing a New Jersey license as a certified public accountant.

### (a)

#### BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

##### Title Blocks

**Adopted Repeal: 13:40-1 and 40-2**

**Adopted New Rules: N.J.A.C. 13:40-1**

Proposed: November 4, 1985 at 17 N.J.R. 2602(b).

Adopted: December 5, 1985 by New Jersey State Board of Architects, Sol Seid, President.

Filed: December 24, 1985 as R.1985 d.694, **without change.**

Authority: N.J.S.A. 45:8-27 et seq.

Effective Date: January 21, 1986.

Expiration Date pursuant to Executive Order No. 66(1978): February 7, 1988.

##### Summary of Public Comments and Agency Responses:

Two comments were received which expressed approval of the proposed rule. Receipt of the letters was acknowledged by the Board.

Full text of the adoption follows.

#### SUBCHAPTER 1. TITLE BLOCKS AND SEALS FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

##### 13:40-1.1 Sealing documents

All sealing of documents must be done with an impression-type seal. A rubber stamp facsimile of the seal may not be used.

##### 13:40-1.2 Title block on drawings; forms; removal

(a) Every licensee shall provide a title block on all drawings (except renderings), and similar information on the title page of all specifications which are prepared and sealed.

(b) The title block shall be in such form as the Board may adopt or approve.

(c) Such title block shall be distinct and separate from any other title block, plaque, or any similar device of illustration or lettering.

(d) The title block shall be lettered on the drawing in such a manner as to reproduce clearly on all prints and reproductions thereof.

(e) No person shall remove a title block from any print or reproduction.

##### 13:40-1.3 Title block contents

(a) The title block shall contain:

1. The name and location of the project;
2. The name of the engineering or land surveying individual firm, partnership, corporation, professional association or professional service corporation;

3. The full name and certificate number of the person(s) in responsible charge;

4. The title "professional engineer" or "land surveyor";

5. The handwritten signature of the person(s) in responsible charge and the date when signed.

(b) An appropriate title block shall be provided on a site plan which shall be included in any set of drawings of a building project. Any plan including land surveying data must also bear the title block or identity of the land surveyor who performed the land surveying work.

(c) The title block may contain the initials of the draftsmen or checker, and dates, drawing numbers, revision numbers and such similar incidental items as are customary in practicing engineers' or land surveyors' offices, provided that the name of the person(s) in responsible charge is readily discernible from the other information on the document and contained within the heavy borderline of the title block.

##### 13:40-1.4 Proposed title block form

Any licensee may submit a proposed form of title block to the State Board of Professional Engineers and Land Surveyors for approval.

##### 13:40-1.5 Title block use for professional engineer and land surveyor work project

In the event the project contains the work of both a professional engineer and land surveyor, any individual licensed in both professions may use the title "professional engineer and land surveyor" in one title block.

##### 13:40-1.6 Subtitle block of independent professional

If a project includes the work of any other licensed professional, not under the immediate supervision of the licensee in responsible charge and not otherwise identified in accordance with N.J.A.C. 13:40-7, a subtitle block of that professional firm or individual must appear on all plans involving that profession.

### (b)

#### DIVISION OF CONSUMER AFFAIRS

##### Charitable Fund Raising

**Adopted New Rules: N.J.A.C. 13:48-1 through 11**

Proposed: May 20, 1985 at 17 N.J.R. 1244(a).

Adopted: December 23, 1985 by Irwin I. Kimmelman, Attorney General of New Jersey.

Filed: December 24, 1985 as R.1985 d.698, **without change.**

Authority: N.J.S.A. 45:17A-15.

Effective Date: January 21, 1986.

Expiration Date pursuant to Executive Order No. 66(1978): January 21, 1991.

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

Full text of the adoption follows.

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### CHAPTER 48

#### CHARITABLE FUND RAISING

##### SUBCHAPTER 1. CHARITIES REGISTRATION AND INVESTIGATION SECTION

###### 13:48-1.1 Charities Registration and Investigation Section

The Charities Registration and Investigation Section, an agency of the Division of Consumer Affairs, shall be the body charged with the administration and enforcement of the Charitable Fund Raising Act of 1971.

###### 13:48-1.2 Chief

The Chief of the Charities Registration and Investigation Section shall be the individual charged with the day-to-day conduct of the Section and with such specific duties as the Attorney shall delegate.

###### 13:48-1.3 Powers and responsibilities delegated to the chief

(a) The chief shall be the individual responsible for carrying out:

1. The prescription, amendment and acceptance of all forms for filing with the Attorney General pursuant to any provisions of the Act or rules promulgated thereunder requiring the prescription and/or filing of forms;

2. The recording of all information required to be filed with or otherwise directed to the Attorney General pursuant to any provision of the Act or rules promulgated thereunder requiring the submission of any information or the giving of any notice to the Attorney General or his agents;

3. The maintenance of all information and records submitted and/or kept pursuant to the Act or rules promulgated thereunder for public inspection as the law requires or permits, and the setting of reasonable times and conditions for such public inspections;

4. The collection, receipt and recording of all fees and moneys required to be paid by the Act or rules promulgated thereunder;

5. The cancellation or withdrawal of registration for failure to file reports or supply information including such authority to require additional information and to grant extensions as is vested in the Attorney General by any of the provisions of the Act or the rules promulgated thereto;

6. The initial determination of whether or not to treat any party as subject to any or all of the requirements of the Act, including but not limited to those parties claiming exemptions;

7. The prescription of standards and classifications of accounts to be submitted;

8. The inspection either personally or through an agent, of such books and records as are made subject to inspection by the Attorney General or his designees pursuant to any provisions of the Act or rules promulgated thereunder;

9. The sending of notice and copy of process;

10. The initial approval or disapproval of professional fund raisers' bonds;

11. The initial approval or disapproval of any contract or written statement;

12. The giving of notice to accomplish registration or discontinue solicitation, including the initial determination of whether this section is being violated;

13. The power to further delegate such ministerial duties under the Act and rules promulgated thereunder as the supervisor may deem appropriate to staff members of the charities Registration and Investigation Section.

###### 13:48-1.4 Powers retained by the Attorney General

(a) Nothing contained in this subchapter shall be construed to constitute a delegation by the Attorney General of the authority to institute suit or of the authority to issue and promulgate rules and regulations or of the authority to personally hear and/or decide such matters as may be provided by law.

(b) The Attorney General shall have the authority in all cases to supplement, amend, modify, reverse or override any decision made by the chief pursuant to this subchapter.

##### SUBCHAPTER 2. GENERAL PROVISIONS

###### 13:48-2.1 Applicability

These rules shall govern the registering of charities pursuant to the Charitable Fund Raising Act of 1971, and the enforcement of the provisions of that Act.

###### 13:48-2.2 Definitions

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

"Act" means the Charitable Fund Raising Act of 1971 as amended and/or supplemented.

"Charities Registration Section (C.R.S.\*)" means the Section within the Division of Consumer Affairs of the Department of Law and Public Safety to which the Attorney General of the State of New Jersey has delegated the authority and responsibility of enforcing the Act.

"Attorney for the Charities Registration Section" means a Deputy Attorney General or special counsel appointed or assigned by the Attorney General of New Jersey to represent and render legal services to the Charities Registration Section of the Division of Consumer Affairs.

"Complainant" means any person, including the Attorney General, director or chief, alleging an unlawful practice.

"Director" means the Director of the Division of Consumer Affairs, Department of Law and Public Safety.

"Respondent" means any person charged with an unlawful practice.

"Chief" means the Chief of the Charities Registration Section.

###### 13:48-2.3 Construction

(a) The provisions of this chapter shall be liberally construed to permit the charities Registration Section to discharge its statutory functions and to carry out the intent of the Legislature as expressed in the Act.

(b) The chief may, upon notice to all parties, in the interest of justice, relax the application of these rules.

###### 13:48-2.4 Practice when rules do not govern

In any matter that arises not governed by these rules, the director and/or chief shall exercise their discretion.

##### SUBCHAPTER 3. ORGANIZATION AND GENERAL PROCEDURES OF THE CHARITIES REGISTRATION SECTION

###### 13:48-3.1 C.R.S. repository of public information

The C.R.S. shall be the State repository for public information concerning charity solicitation in the State of New Jersey.

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### 13:48-3.2 Forms

In order to carry out its function, the C.R.S. shall utilize such forms as it shall deem appropriate, which forms may be amended, supplemented and/or replaced in the discretion of the chief.

### 13:48-3.3 Completion and return of forms

The C.R.S. will send an appropriate form or statement to any organization or individual to which the Act may be applicable. These forms shall be completed and returned to the C.R.S. within 15 days of receipt.

### 13:48-3.4 Determination of registrability

Upon receipt of the completed forms the C.R.S. shall determine whether the applicant is registrable or entitled to an exemption. Should it appear that the applicant is entitled to an exemption, the C.R.S. may seek additional information by questionnaire form, telephone inquiry or otherwise.

### 13:48-3.5 Determination that Act has been satisfied

Should the C.R.S. determine that an entity is registrable as a charitable organization, or that an individual is registrable as a professional fund raiser or professional solicitor, the C.R.S. will send the entity or individual the appropriate form. Upon receipt of the completed form and registration fee and in the case of a professional fund raiser, the required bond, the C.R.S. shall review the submitted documents and determine whether the requirements of the Act have been satisfied.

### 13:48-3.6 Letter indicating status

The C.R.S. shall, within 10 days of receipt of the completed form or forms, issue a letter informing the entity or individual either that it is properly registered, or that further information is required. No solicitation may take place by any registrable entity or individual prior to the issuance by the C.R.S. of a letter stating registration to be complete.

### 13:48-3.7 Bond required for registration of professional fund raiser

Registration of a professional fund raiser shall not be considered complete until the bond required by N.J.S.A. 45:17A-8(a) has been received. The obligor of such bond shall be the registered entity.

### 13:48-3.8 Reporting function

(a) Within six months following the close of the charitable organization's fiscal year, the charitable organization shall file the appropriate form together with such other information as may be required by the Charities Registration Section detailing the financial position of the organization. The chief may for good cause shown extend the time for filing of the annual financial report up to an additional six months provided that the C.R.S. receives a request for an extension of time in writing prior to the due date of the annual financial report.

(b) Professional fund raisers shall report to the C.R.S. within 20 days after the completion of a fund raising event, or, in the case of an extended fund raising campaign, in accordance with the requirements of N.J.A.C. 13:48-8.5, on a form designed for this purpose. The Chief of the Charities Registration Section may for good cause shown grant a 30-day extension for the filing of the above-mentioned professional fund raiser reports provided that a request is received in writing prior to the due date of the financial report.

### 13:48-3.9 Completed forms to be public records

All forms submitted shall be a matter of public record unless the director or chief shall for good cause otherwise provide.

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Public access to these documents shall be provided consistent with the provisions of the law.

### SUBCHAPTER 4. (RESERVED)

### SUBCHAPTER 5. RULES OF PRACTICE FOR SUMMARY PROCEEDINGS

#### 13:48-5.1 Administrative cancellation of registration

(a) This section shall apply:

1. When a charitable organization has failed to file its annual financial report within six months following the close of its fiscal year or has failed to file such financial report during an extension allowed by the Charities Registration Section or has failed to submit additional information as has been requested by the Charities Registration Section within the time allowed; or

2. When a professional fund raiser has failed to file a financial report within 20 days of the close of a fund raising drive, or, in the case of an extended fund raising campaign, in accordance with the requirements of N.J.A.C. 13:48-8.5, or has failed to submit such additional information as has been requested by the Charities Registration Section within the time allotted therefor.

(b) In the event of such failure, the chief shall notify the entity or individual in question of the proposed cancellation of its registration. Such notice shall contain the offer of an administrative hearing to be held if possible within 14 days of such notice upon request of the registered entity or individual.

(c) If neither such request nor the outstanding information is received, the proposed cancellation shall become effective 15 days after the day following the date of the notice. No further solicitation or collections shall take place thereafter.

(d) If the registered entity desires a hearing, it shall communicate such a desire in accordance with the instructions set forth in the letter of proposed cancellation. The issues at such a hearing shall be limited to whether or not the entity has submitted the requested information or such mitigating circumstances which would render the cancellation improper or inappropriate.

(e) The hearing, if requested, shall be before the Attorney General or such other person as may be authorized by law. The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1-1 et seq.

#### 13:48-5.2 Contracts between charitable organizations, professional fund raisers and professional solicitors

(a) "Contract" shall mean the total compensation agreement between a professional fund raiser and/or a professional solicitor and a charitable organization, which shall include, but not be limited to, the written arrangement between the parties.

(b) "Expenses incurred" shall mean any and all expenses reasonably related to the solicitation activities or campaigns of a professional fund raiser.

(c) Every contract or written arrangement between a professional fund raiser and/or professional solicitor and a charitable organization shall be filed with the C.R.S. within 10 days of the execution or completion of this agreement, except that where all parties to the agreement are located out of the State of New Jersey, and where none of the parties contemplates

## LAW AND PUBLIC SAFETY

## ADOPTIONS

solicitation in this State when the agreement is executed or completed, and the decision to solicit in this State is subsequently made, said agreement shall be filed within 10 days of such decision. In the event that the written contract does not fully and accurately disclose the total compensation agreement between a professional fund raiser and/or professional solicitor and a charitable organization, including, but not limited to, the manner in which expenses incurred are to be paid, a written statement supplementing or amending the written contract shall also be submitted.

(d) The chief shall examine the contract, including all relevant terms and information and ascertain whether the requirements of the Act and these rules have been satisfied. If the chief determines that the Act or these rules have not been fully satisfied, the chief shall disapprove such agreement in writing within 10 days after its filing.

(e) No charitable organization, professional fund raiser or professional solicitor shall carry out an executed contract or commence solicitation in this State unless at least 10 days have elapsed since its filing with the C.R.S. without notice of disapproval.

(f) Any party to a disapproved contract may seek a hearing by filing a written request with the chief within 30 days following notice of the disapproval.

(g) The hearing, if requested, shall be before the Attorney General or such other person as may be authorized by law. The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1-1 et seq.

### SUBCHAPTER 6. RELATIONS BETWEEN CHARITABLE ORGANIZATIONS AND PROFESSIONAL FUND RAISERS

#### 13:48-6.1 Contracts with paid personnel; filing

Any charitable organization required to register under the Act which retains or utilizes paid personnel to carry on all or part of its fund raising function shall file with the C.R.S. a contract or, where no written contract exists, a written statement in lieu thereof, clearly setting forth the relationship of such persons to the organization. For the purpose of this section, "paid personnel" shall include without limitation those persons whose compensation is contingent on the amount of money, pledges or other property collected as a result of their efforts, regardless of whether or not they ultimately in fact receive any remuneration.

#### 13:48-6.2 Determination of nature of relationship

Where a claim is made that none of the parties involved is a professional fund raiser or professional solicitor, the chief shall, within 10 business days of the receipt of such contract or statement, make a preliminary determination as to whether the relationship is one of bona fide employment, and shall so notify the organization and person or persons involved in writing. No fund raising or soliciting shall be engaged in by the persons in question until such notification shall have been received.

#### 13:48-6.3 Contracts found to involve professional fund raisers

Should the chief determine either preliminarily or subsequently that any of the persons in question is in fact a professional fund raiser, the person or persons involved shall be notified that he must comply with statutory registration and

bonding requirements. Should the chief determine that the contract or arrangement does not comply with the Act or these rules, he shall disapprove the contract pursuant to the Act and these rules.

#### 13:48-6.5 Contracts found to involve professional solicitors

Should the chief determine either preliminarily or subsequently that any of the persons involved is in fact a professional solicitor, the person or persons involved shall be so notified and instructed to register.

#### 13:48-6.5 Factors to be considered in determination of nature of relationship

(a) The chief shall have the power to make such investigation as he may deem relevant in determining whether any party to a contract or arrangement is in fact a professional fund raiser or professional solicitor subject to the provisions of the Act applicable thereto. The investigation may continue after a preliminary determination has been made. In reaching a determination the following factors, without limitation, may be deemed relevant:

1. The extent of control which the organization may and in practice does exercise over the means by which the fund raising is carried out;

2. The means of compensation, with particular regard to whether the individual has been compensated by salary or commission;

3. The duration of the employment, with particular regard to whether the individual has been hired to carry out a specific project;

4. Compliance or noncompliance with all law and regulations affecting employment, including income and other tax withholding laws and regulations;

5. The nature of the charitable organization and project or appeal;

6. Which party incurs the expenses involved in a given appeal, project or program, and where the risk of loss lies in the event of an unsuccessful appeal, project or program;

7. Such other factors as may be relevant.

#### 13:48-6.6 Rebuttable presumption of nonemployee status in certain cases

A finding that a person's compensation is determined solely on a percentage basis, or that his employment is limited to a single project or appeal, or that he incurs a risk of financial loss on any appeal, project or program, shall raise a rebuttable presumption that the person is not a bona fide employee.

#### 13:48-6.7 Revised determination based on additional investigation

In the event that the chief shall determine after additional investigation that a relationship preliminarily decided to be one of bona fide employment is in fact otherwise, the charitable organization and party involved shall be so notified in writing. The parties shall thereafter have 10 days either to request a hearing or comply with the appropriate requirements of the Act.

#### 13:48-6.8 Hearing

Any party shall have leave to apply for a hearing on the chief's decision, whether preliminary or subsequent, within 10 days of notification. Such hearing shall be held before the Attorney General or such other person as may be authorized by law. The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1-2 et seq.

**ADOPTIONS****LAW AND PUBLIC SAFETY****SUBCHAPTER 7. EVENTS OR SHOWS PLANNED OR RUN BY A PROFESSIONAL FUND RAISER****13:48-7.1 Contracts or agreements involving events or shows for charitable organization**

Any contract, or if no written contract exists, a written description of the nature of the agreement, between a charitable organization and other person or persons to produce, conduct, manage, plan or run a show or other event to which admission is charged and/or requested for the purposes of raising funds for the charitable organization, shall be filed with the C.R.S. within 10 days of the conclusion or execution of said contract or agreement. A rebuttable presumption shall exist that any person or entity contracting to produce, conduct, manage, plan or run such an event is a professional fund raiser wherever it appears that a substantial portion of the sales or solicitation appeal relies on the charitable nature of the organization.

**13:48-7.2 Determination that contract or agreement involves professional fund raiser or professional solicitor**

Should the C.R.S. determine that one or more of the parties to the contract is or may be a professional fund raiser or professional solicitor, it shall so notify all parties to the contract within 10 days after its filing. The contract shall then be treated as one between a professional fund raiser and/or professional solicitor and charitable organization, and all of the requirements of the Act and these rules shall apply. The C.R.S. shall have 10 days after notice is given to the parties of their status to disapprove the contract. Any party aggrieved by either determination shall have 30 days after the disputed notice is received to request a hearing before the Attorney General or such other person as may be authorized by law. The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1-1 et seq.

**13:48-7.3 Contract or agreement not to be carried out until expiration of notice period**

No person shall carry out a contract to produce, conduct, manage, plan or run a show or event for a charitable organization unless at least 10 days have elapsed since its filing with the C.R.S. without notice that the C.R.S. considers a relationship of professional fund raiser and/or professional solicitor to a charitable organization to exist, or that the C.R.S. has in any manner disapproved the contract. Where the C.R.S. determines that a relationship of professional fund raiser and/or professional solicitor to a charitable organization exists, no person shall carry out or execute the contract in question until at least 10 days have elapsed from notice of such determination without notice of disapproval. Where appropriate, the C.R.S. may combine notice of its determination of status with notice of disapproval.

**13:48-7.4 Tickets purported to be used for charitable purposes**

No charitable organization, professional solicitor or professional fund raiser shall state in a solicitation that tickets for an event or show will be used to send beneficiaries from an institution, institutions, organization or organizations to that show or event unless there is on file with the Charities Registration Section an affidavit from an officer or officers of each such institution or institutions, organization or organizations, stating that said institution or organization is

participating in the program and that adequate procedures for the transportation and supervision of the beneficiaries will be provided.

**13:48-7.5 Manifest of tickets**

If the professional fund raiser is responsible for the sale of tickets to the show or event such tickets shall be consecutively numbered and a manifest of such tickets shall be presented to the charitable organization prior to the payment of the professional fund raiser's fee, and shall be included in the professional fund raiser's report to the C.R.S.

**SUBCHAPTER 8. REPORTING REQUIREMENTS****13:48-8.1 Accrual basis**

All financial statements filed with the Charities Registration Section shall reflect the use of the accrual basis of accounting.

**13:48-8.2 Annual financial reports; independence defined; form of certification required**

(a) For the purpose of this section and N.J.S.A. 45:17A-6(a), a public accountant or certified public accountant shall not be considered independent if, without limitation, he, or his firm, or one of his partners, or a member of a firm with which he is associated:

1. During the period of his professional engagement by the charitable organization, or at the time of expressing his opinion, had or was committed to acquire any direct financial or interest or material, indirect financial interest in the charitable organization; or

2. During the period of his professional engagement by the charitable organization, or at the time of expressing his opinion, or during the reporting period, was connected with the charitable organization as a trustee, director, officer, or key employee, unless the position was purely honorary and carried with it no managerial or fiduciary responsibilities or duties; or

3. Participated directly or indirectly in loans or exchange of funds as principal or agent with the charitable organization; or

4. Stands in any other relationship with the charitable organization or its trustees or directors such as would be expected by a reasonable objective observer to bias substantially the professional judgment of the accountant. Notwithstanding the provisions of this section, lack of independence shall not be found where neither the accountant nor the charitable organization knew or should have known that a potentially prejudicial or improper relationship exists or existed.

(b) Each organization required to submit reports shall file said reports with the C.R.S. on such forms as the chief shall prescribe. Such forms shall be signed by the president or other authorized officer and the chief fiscal officer of the organization. Every form shall be accompanied by a signed statement by an independent public or certified public accountant certifying either:

1. That the financial statement and balance sheet therein fairly represent the financial operations and position of the organization; or

2. That the independent public or certified public accountant is unable to so certify, in which case the accountant shall attach a Report of Audit setting forth the reasons for his inability to provide the statutory certification, and with specific reference to the reporting form submitted. In the event such a negative certification is submitted, the chief shall determine

what additional steps must be taken before the report will be accepted for filing.

#### 13:48-8.3 Appointment of accountant

The independent public accountant utilized by the organization shall be appointed only by vote of the Board of Trustees of such organization.

#### 13:48-8.4 Reporting by chapters of registered charitable organizations

Any chapter of a registered charitable organization which is authorized to expend moneys raised and/or in fact expends such moneys must file an appropriate annual report, in addition to the annual financial report filed by the parent organization.

#### 13:48-8.5 Extended fund raising campaigns

(a) "Extended fund raising campaign" shall mean any fund raising drive or campaign lasting more than 12 months.

(b) In the event the professional fund raiser is engaged in an extended fund raising campaign or any part thereof, the professional fund raiser shall file reports on the appropriate form by the 10th day of the month following a year in which any fund raising took place and a consolidated form 30 days after the completion of the drive.

### SUBCHAPTER 9. SOLICITATION CONDUCT

#### 13:48-9.1 Solicitations involving advertising or acknowledgment in publications

(a) Where contributions are solicited by or on behalf of a charitable organization by means of offering advertising or other acknowledgment of contribution in a magazine, tabloid, newspaper or other publication published, owned, operated or controlled by the charitable organization or other party in contractual relationship with the charitable organization or its parent or affiliate:

1. The date of expected publication and expected circulation shall be clearly expressed to the contributor during the initial solicitation.

2. Such publication shall be identified with a publication date.

3. Every registered charitable organization which publishes or causes to be published such a publication shall as part of the reporting requirement furnish to the Charitable Registration Section a copy of such publication within 10 days of its initial distribution accompanied by a statement of circulation from any recognized circulation audit bureau or an affidavit from an officer of the charitable organization attesting to the circulation of such publication.

4. In the event such publication shall be cancelled or unreasonably delayed all monies received in anticipation of advertising or acknowledgment of contribution in such publication shall be promptly refunded.

#### 13:48-9.2 Use of misleading names, symbols or statements prohibited

No charitable organization, professional fund raiser, professional solicitor or other solicitor shall use a name, symbol or statement so closely related to that used by another charitable organization or government agency that the use thereof would tend to confuse or mislead the public. Failure to comply with this provision shall be deemed a violation of the Act.

#### 13:48-9.3 Repeat solicitations; misrepresentations prohibited

(a) When a request for a charitable contribution is denied, neither the charitable organization nor any of its agents shall knowingly resolicit the person or organization denying the request until a reasonable period has elapsed. For the purpose of this section a rebuttable presumption shall exist that any period of less than three months is not reasonable.

(b) When an agent or authorized official of an organization denies a request to purchase or contribute, the charitable organization shall not knowingly contact a different official and attempt further solicitation of the organization until a reasonable period, as defined above, has elapsed, nor shall the charitable organization or any of its agents knowingly misrepresent the original denial as an agreement, approval or request for further information.

#### 13:48-9.4 Agreement to contribute required before bill or invoice submitted; false claims prohibited burden

No charitable organization, professional fund raiser, professional solicitor or other solicitor shall falsely claim that any person has authorized an advertisement or contribution. Nor shall they cause an invoice or bill to be sent to a person as evidence of purchase or contribution unless that person has expressly agreed to so purchase or contribute. A request for information or literature concerning the charity's operation or activities, or a request for a proposal of purchase or contribution, shall not be considered an agreement to purchase or contribute. Once there has been submitted evidence of a lack of agreement to purchase or contribute, the burden of establishing such agreement shall rest upon the solicitor.

#### 13:48-9.5 Intimidation prohibited

No charitable organization or its agents shall use any solicitation or collection technique which would tend to intimidate the public.

#### 13:48-9.6 Telephone or verbal solicitation

(a) In any campaign by or on behalf of a charitable organization which shall use telephone or verbal solicitation, the professional fund raiser or, if the organization has no professional fund raiser, the organization, shall first file with the C.R.S. a copy of the solicitation text to be used, certified as true and correct by an officer of the charitable organization.

(b) Every charitable solicitation text used in the State of New Jersey shall clearly state:

1. The name and address of each organization or fund on behalf of which all or any part of the money collected will be utilized for charitable purposes;

2. The nature of the charitable purpose or purposes for which all or any part of the money collected will be utilized;

3. The amount, stated as a percentage of the total purchase price, or if no purchase is involved, of the total contribution, that will be given to each organization or fund, and the amount, stated as a percentage of the total purchase price or contribution, that will be utilized for each charitable purpose;

4. The nontax-exempt status of the organization or fund, if the organization or fund for which the money is being solicited does not have a charitable tax exemption under both Federal and State law;

5. Where a purchase is involved, the percentage of the total purchase price which may be deducted as a charitable contribution under Federal law.

SUBCHAPTER 10. EXEMPTIONS

13:48-10.1 Solicitations for named persons; loss of exemptions

Any group or individual soliciting for a named person who is exempt shall retain such exemption only so long as no expenditures are made out of the funds collected for any purpose other than the direct use and benefit of the named beneficiary. Any group or individual making such an expenditure, and not otherwise entitled to an exemption, shall register with the C.R.S. within 10 days of such expenditure.

13:48-10.2 Solicitations for named persons; filing of statement

Where an exemption for registration is accorded an individual or group, upon disbursement of funds the trustees of such fund shall file with the Charitable Registration Section a statement detailing the names and addresses of such trustee or trustees and detailing to whom such funds were disbursed and the amount so disbursed.

13:48-10.3 Comity exemptions

The chief may in his discretion accord a foreign charitable organization an exemption from the registration and/or reporting requirements of the Act where such exemption has been granted by the state of incorporation, provided that the requirements for exemption of the state of incorporation are substantially similar to those of the State of New Jersey.

SUBCHAPTER 11. MISCELLANEOUS RULES

13:48-11.1 Reciprocal agreements

The chief may enter into reciprocal agreements with any Federal, State or local authorities to effect a standardization of registration and/or reporting requirements or for the purpose of exchanging any information received pursuant to the Act.

13:48-11.2 Exploitation of fact of registration prohibited

No charitable organization, professional fund raiser or professional solicitor shall use or exploit the fact of registration so as to lead the public to believe that such registration constitutes an endorsement or approval by the State of New Jersey or the Attorney General.

13:48-11.3 Severability

If any section, subsection, paragraph, sentence or other part of these rules shall be adjudged unconstitutional or invalid, or shall by legislative action become inapplicable, such judgment or legislative action shall not affect, invalidate or impair the remainder of these rules, but shall be confined in its effect to the section, subsection, paragraph, sentence or other part of these rules directly affected by the legislation or directly involved in the controversy in which judgment shall have been rendered.

(a)

DIVISION OF CRIMINAL JUSTICE

Arson Investigators  
Training Requirements

Adopted Amendments: N.J.A.C. 13:76-1.2, 1.3, 3.2, and 4.1.

Proposed: August 19, 1985 at 17 N.J.R. 2011(a).  
Adopted: December 16, 1985 by Donald R. Belsole,  
Director, Division of Criminal Justice.  
Filed: December 18, 1985 as R.1985 d.679, **without change.**

Authority: N.J.S.A. 40A:14-7.1, 52:17B-97 et seq., and P.L. 1985, c.150.

Effective Date: January 21, 1986.

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

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

Full text of the adoption follows.

13:76-1.2 Applicability

The provisions of this Chapter 76, promulgated by the Director of the Division of Criminal Justice, shall apply to all municipalities that assign full time or part-time to an arson investigation unit, any full-time paid member of a paid or part-paid fire department or force with the same powers of authority of police officers, within the municipality, while engaged in the actual performance of arson investigation duties.

13:76-1.3 Definitions

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

“Arson Investigator” means any full-time paid member of a paid or part-paid municipal fire department or force, assigned full-time or part-time to an arson investigation unit who has received a certification in accordance with these provisions.

13:76-3.2 Certification procedures

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

(f) No more than one member of a paid or part-paid fire department or force of a municipality having a population of 50,000 or less according to the latest Federal decennial census who is assigned to an arson investigation unit on a part-time basis shall be eligible for application for certification.

13:76-4.1 In-service training requirements

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

(c) All certified Arson Investigators who are authorized by the municipal governing body to carry a weapon pursuant to N.J.S.A. 2C:39-6b(8) additionally shall be required to re-qualify with their service weapon at least twice annually and in accordance with the firearms requalification program developed by the county prosecutor and approved by the Division of Criminal Justice in accordance with the Attorney General directive of June 17, 1985.

# TRANSPORTATION

(a)

## THE COMMISSIONER

### Vehicles Exempted from the Table of Maximum Gross Weights Temporary Exemptions

#### Adopted Amendment: N.J.A.C. 16:32-2.3

Proposed: August 5, 1985 at 17 N.J.R. 1868(a).  
Adopted: December 3, 1985, James A. Crawford,  
Assistant Commissioner for Transportation Services  
and Planning.

Filed: December 16, 1985 as R.1985 d.672, **without  
change.**

Authority: N.J.S.A. 27:1A-6, 39:3-84 and 39:3-84.1.

Effective Date: January 21, 1986.

Expiration Date pursuant to Executive Order No.  
66(1978): April 15, 1990.

#### Summary of Public Comments and Agency Response:

On August 5, 1985, the Department of Transportation proposed an amendment to N.J.A.C. 16:32-2 et seq. "Vehicles Exempted from the Table of Maximum Gross Weights" which was adopted on April 15, 1985 as 17 N.J.R. 975(a). This amendment granted relief to out-of-state vehicles which would have a temporary exemption from the bridge formula if they were registered in New Jersey.

COMMENT: Mr. & Mrs. Ebanks, RD 2, Box 174, New Tripoli, PA 18066 stated that "the appearance of unfair discrimination against out-of-state truck operators to me is not appearing so—it is open and shut discrimination," and hoped that the proposal comes into effect very shortly, and that they be kept informed.

RESPONSE: The Ebanks letter was acknowledged and they were advised that information will be forwarded when the rule is adopted.

COMMENT: Mr. Clifford J. Heath, President, New Jersey Asphalt Pavement Association, (NJAPA), Seven Centre Drive, Suite 7, Jamesburg, New Jersey 08831, states that the Association welcomed the opportunity to add support to the proposed amendment, which allows the Bridge Formula exemption to certain classes of vehicles registered in the State of New Jersey now to be extended to those same exempted vehicles when operated in the State of New Jersey, and the correction of the inequitable situation which arose from strict adherence by enforcement personnel to the earlier interpretation. They thanked the Department for the expeditious handling of this issue.

RESPONSE: The Department welcomed the favorable comment made by NJAPA.

COMMENT: Mr. Paul T. Stalknecht, Managing Director, New Jersey Motor Truck Association, 160 Tices Lane, East Brunswick, NJ 08816, stated that the Association supports the proposal which will eliminate unfair competitive restrictions as provided in the regulation granting temporary exemption

for specific classes of vehicles from federal bridge formula truck weight enforcement.

RESPONSE: The Department accepts the support from the New Jersey Motor Truck Association which represents 1,300 member companies.

In view of the favorable comments received, the amendment to N.J.A.C. 16:32-2.3 was adopted without change.

Full text of the adoption follows.

16:32-2.3 Temporary exemptions

(a) Under authority granted by N.J.S.A. 39:3-84.1; (c) the following classes of vehicles when operated in the State of New Jersey are exempted from compliance with the Table of Maximum Gross Weights, N.J.S.A. 39:3-84b(5), known as the "federal bridge formula," until October 1, 1988.

1.-9. (No change.)

# TREASURY-GENERAL

## DIVISION OF PENSIONS

(b)

### State Health Benefits Commission Retired Employees' Coverage

#### Adopted Amendments: N.J.A.C. 17:9-6.1 and 6.3

Proposed: October 7, 1985 at 17 N.J.R. 2386(a).  
Adopted: December 17, 1985 by the State Health  
Benefits Commission.

Filed: December 18, 1985 as R.1985 d.676, **without  
change.**

Authority: N.J.S.A. 52:14-17.27.

Effective Date: January 21, 1986.

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

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

Full text of the adoption follows.

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.

(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.

(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.

**(a)**

**State Health Benefits Commission  
Coverage for Prospective Retirants**

**Adopted Amendment: N.J.A.C. 17:9-6.2**

Proposed: November 4, 1985 at 17 N.J.R. 2604(a).

Adopted: December 17, 1985 by the State Health Benefits Commission, Gaius Mount, Acting Secretary.

Filed: December 18, 1985 as R.1985 d.677, **without change.**

Authority: N.J.S.A. 52:14-17.27.

Effective Date: January 21, 1986.

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

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

**Full text of the adoption follows.**

**17:9-6.2 Coverage for prospective retirants**

(a) (No change.)

(b) Any employee, upon retirement, or an eligible survivor of such employee will be notified by regular mail of his or her right to continuous coverage in the State Health Benefits Program. The retired employee or eligible survivor must, within a 15-day period following the receipt of the letter offering retired coverage, submit the appropriate application and charges for such coverage, if required. Any retired employee or eligible survivor not responding within the 15-day period shall receive a second notice by certified mail.

# EMERGENCY ADOPTIONS

## HUMAN SERVICES

### DIVISION OF PUBLIC WELFARE

For the following concurrent proposals, submit comments by February 20, 1986 to:

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

These amendments 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 the emergency amendments are being proposed for reoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

### (a)

#### Food Stamp Program Utility Allowance Standards

#### Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 10:87-5.10 and 12.1

Emergency Amendment Adopted: November 25, 1985  
by Geoffrey S. Perselay, Acting Commissioner,  
Department of Human Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)):  
December 3, 1985.

Emergency Amendment Filed: December 27, 1985 as  
R.1985 d.713.

Authority: N.J.S.A. 30:4B-2; the Food Stamp Act of  
1977, as amended (7 USC 2014); 7 CFR 273.10(a)1;  
USDA Administrative Notice—A-30-85; 7 CFR  
272.3(c)(1)(ii).

Emergency Amendment Effective Date: December 27,  
1985.

Emergency Amendment Operative Date: January 1,  
1986.

Emergency Amendment Expiration Date: February 24,  
1986.

Concurrent Proposal Number: PRN 1985-746.

The agency emergency adoption and concurrent  
proposal follows:

#### Summary

The United States Department of Agriculture (USDA) has issued policy, (based on Federal regulations at 7 CFR 273.10(a)1) through Administrative Notice A-30-85, which states that recipients of energy assistance vendor payments are not entitled to utilize a standard utility allowance in comput-

ing total shelter costs for food stamp purposes. Thus, those recipients would be forced to claim actual expenses. In order to avoid placing such households on actual expenses, which would be error prone and burdensome both to the client and administratively, USDA has granted approval of a waiver, pursuant to 7 CFR 272.3(c)(1)(ii), allowing the use of two additional standards which are lower than the current standards and take into consideration receipt of such assistance.

The Heating Utility Allowance/Vendor (HUA/Vendor) is for use by households responsible for their primary source of heat but in receipt of an energy assistance vendor payment. The amount is \$154.00. The full HUA for use by households responsible for their primary source of heat but not in receipt of an energy assistance vendor payment remains at \$186.00. The Standard Utility Allowance/Vendor (SUA/Vendor) is for use by households responsible for a major utility expense other than heat and in receipt of an energy assistance vendor payment. The amount is \$92.00. The full SUA for use by households responsible for a major utility but not in receipt of an energy assistance vendor payment remains at \$111.00.

N.J.A.C. 10:87-5.10 is being revised to indicate that households that receive energy assistance by vendor payment (including two-party checks) and elect to use a utility standard are entitled only to the lower of the appropriate standard. N.J.A.C. 10:87-12.1 is being amended to include the two additional standards in the table of income deductions.

#### Social Impact

The use of the two additional utility standards will accommodate recipients of energy assistance vendor payments in that such households will not be forced to claim actual expenses in computing total shelter costs for food stamp purposes. Some households will experience a slight decrease in benefits. However, it should be noted that, contingent upon individual situations, households having utility expenses in excess of the allowance standards may still elect to have actual expenses used in their eligibility and benefit computation if it will be advantageous for them. While it will be necessary for clients and county welfare agencies to consider an additional factor in order to determine eligibility for the appropriate standard, this methodology will provide for a more effective and efficient administration of the program.

#### Economic Impact

Households previously entitled to a full HUA will experience a reduction in total shelter costs of \$32.00. Those previously entitled to the full SUA will experience a reduction of \$19.00 in total shelter costs. Due to the cap on the shelter deduction (\$139.00), many households will receive no loss in benefits even though total shelter costs are reduced. The maximum loss in benefits to any household would be approximately \$10.00 per month for HUA and \$6.00 per month for SUA.

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

10:87-5.10 Income deductions

(a) Deductions from income will be allowed only for the following expenses of the household:

1.-4. (No change.)

5. Shelter cost deduction: Monthly shelter costs in excess of 50 percent of the household's income after the deductions in (a)1, 2, 3, and 4 above have been allowed, shall be deducted. However, in no event shall the shelter deduction alone or in combination [will] with the dependent care deduction in (a)4 exceed the amount in N.J.A.C. 10:87-12.1 (Appendix A, Table I) unless the household contains a member who is elderly or disabled as defined in N.J.A.C. 10:87-2.38. These households shall receive an excess shelter deduction for the monthly cost that exceeds 50 percent of the household's monthly income after all other applicable deductions. Households receiving Title II disability payments for dependents of a disabled individual are not eligible for the unlimited excess shelter deduction unless the disabled individual is a member of the household.

i.-iii. (No change.)

iv. Utility standard: Households which incur certain utility costs separate and apart from their rent or mortgage payments are entitled to claim the appropriate utility allowance (see N.J.A.C. 10:87-12.1, Table I, Appendix A) in accordance with the following provisions.

(1) Households which pay directly for their primary source of heat separate and apart from rent or mortgage may claim [the] a heating utility allowance (HUA) as follows: **households whose utility costs are paid in part by an energy assistance vendor payment are entitled only to the HUA/Vendor standard; households not receiving energy assistance vendor payments may claim the HUA/Non-Vendor standard.** The CWA shall verify that the household is responsible for primary heating costs.

(A) Households that are charged only for excess heating costs are not eligible for [the] an HUA.

(B) Households that are responsible only for secondary sources of heat are not eligible for [the] an HUA.

(C) Households that heat with wood must actually purchase the wood to be used as fuel to be eligible for [the] an HUA.

(D) Renters who are billed by their landlords for heating fuel costs according to actual usage as determined by individual metering may claim [the] an HUA.

(2) Households which do not incur heating costs separate and apart from rent or mortgage but which incur a utility charge (other than telephone, water, sewerage, or garbage collection fees) are entitled to use [the] a standard utility allowance (SUA) as follows: **households whose utility costs are paid in part by an energy assistance vendor payment are entitled only to the SUA/Vendor standard; households not receiving energy assistance vendor payments may claim the SUA/Non-Vendor standard.** The CWA shall verify that the household incurs such utility charge.

(3)-(5) (No change.)

(6) Households not entitled to use [the SUA or HUA] a utility allowance may claim actual utility expenses in accordance with (a)5i(3) above.

(7) When a household shares a residence and the utility costs with other individuals, the [SUA or HUA] utility allowance shall be divided equally among the parties which contribute to meeting the utility costs. In such cases, the household shall only be permitted to use its share of the utility allowance, unless the household elects to use its actual costs.

10:87-12.1 Income deduction table

TABLE I

Income Deductions

Standard Deduction	\$ 98.00
Dependent Care/Shelter Deduction	\$139.00
Uniform Telephone Allowance	\$ 12.40
Standard Utility Allowance/Non-Vendor	\$111.00
<b>Standard Utility Allowance/Vendor</b>	<b>\$ 92.00</b>
Heating Utility Allowance/Non-Vendor	\$186.00
<b>Heating Utility Allowance/Vendor</b>	<b>\$154.00</b>

(a)

**Medicaid Only  
New Eligibility Computation Amounts**

**Adopted Emergency Amendment and  
Concurrent Proposal: N.J.A.C. 10:94-5.4,  
5.5, 5.6 and 5.7**

Emergency Amendment Adopted: November 27, 1985  
by Geoffrey S. Perselay, Acting Commissioner,  
Department of Human Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)):  
December 4, 1985.

Emergency Amendment Filed: December 27, 1985 as  
R.1985 d.714.

Authority: N.J.S.A. 44:7-87 and Section 1902(a) of the  
Social Security Act.

Emergency Amendment Effective Date: December 27,  
1985.

Emergency Amendment Operative Date: January 1,  
1986.

Emergency Amendment Expiration Date: February 24,  
1986.

Concurrent Proposal Number: PRN 1985-747.

The agency emergency adoption and concurrent proposal  
follows:

**Summary**

The amendments to N.J.A.C. 10:94 increase the Medicaid Only computation amounts at N.J.A.C. 10:94-5.4(a)12, 5.5(d) and 5.7(e) and the income eligibility standards at N.J.A.C. 10:94-5.6(c)5. The amendments align Medicaid Only income eligibility for the aged, blind, and disabled with the Supplemental Security Income (SSI) program. Section 1902(a) of the Social Security Act requires that Medicaid Only eligibility be determined by the same criteria as applies in the SSI program. The revised income eligibility and computation amounts reflect the 3.1 percent Federal cost-of-living increase in SSI payment levels effective January 1, 1986. The Medicaid "Cap" for persons in Title XIX facilities is set at 300 percent of the Federal SSI benefit level for an individual. The amendments must be implemented, effective January 1, 1986, to maintain compliance with Federal law.

**Social Impact**

The increase in standards and income computation amounts used in the eligibility process theoretically expands the population of potentially eligible persons. However, based on past experience, little increase in caseload because of the amendment is anticipated. Specifically, while the increase in the Medicaid "Cap" expands the number of persons potentially eligible, the limited number of Medicaid beds available precludes a significant increase in the number of persons who would actually receive Medical assistance under this standard.

**Economic Impact**

Past experience with similar increases in standards has demonstrated that there will be an insignificant economic impact on the public and State and county welfare agencies administering the program.

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

10:94-5.4 Includable income

(a) Any income which is not specifically excluded under the provisions of N.J.A.C. 10:94-5.3 shall be includable in the determination of countable income. Such income shall include, but is not limited to, the following:

- 1.-11. (No change.)
- 12. Support and maintenance furnished in-kind (community cases): Support and maintenance encompasses the provision to an individual of his or her needs for food, clothing, and shelter at no cost or at a reduced value. Persons determined to be "living in household of another" in accordance with N.J.A.C. 10:94-5.6 shall not be considered to be receiving in-kind support and maintenance as the income eligibility levels have been reduced in recognition of such receipt. Persons not determined to be "living in household of another" who receive in-kind support and maintenance shall be considered to have unearned income in the amount of:

[128.33]**\$132.00** for an individual  
 [182.67]**\$188.00** for a couple

- i. (No change.)
- 13. (No change.)
- (b) (No change.)

10:94-5.5 Deeming of income

- (a)-(c) (See proposal at 17 N.J.R. 2732(a).)
- (d) A table for deeming computation amounts follows:

TABLE A  
 Deeming Computation Amounts

1. Living allowance for each ineligible child		\$[163.00] <b>168.00</b>
2. Remaining income Support amount	Head of Household \$[162.50]	Receiving Support and Maintenance \$[108.34] <b>112.00</b>
3. Spouse to Spouse Deeming-Eligibility Levels		
a. Residential Health Care Facility	\$[638.05]	<b>654.05</b>
b. Eligible individual living alone with ineligible spouse	\$[676.36]	<b>697.36</b>
c. Living alone or with others	\$[519.25]	<b>535.25</b>
d. Living in household of another	\$[369.65]	<b>380.31</b>
4. Parental Allowance—Deeming to Child(ren)		
Remaining income is:		Parent & Spouse of Parent
a. Earned only	1 Parent \$[650.00]	of Parent \$[976.00] <b>1,008.00</b>
b. Unearned only	\$[325.00] <b>336.00</b>	\$[488.00] <b>504.00</b>
c. Both earned and unearned	\$[325.00] <b>336.00</b>	\$[488.00] <b>504.00</b>

10:94-5.6 Income eligibility standards

- (a)-(b) (No change.)
- (c) Non-institutional living arrangements:
  - 1.-4. (No change.)
  - 5. Table B follows:

TABLE B

Variations in Living Arrangements	Medicaid Eligibility Income Standards	
	Individual	Couple
I. Residential Health Care Facility	\$[475.05 ] <b>486.05</b>	\$[931.36] <b>953.36</b>
II. Living Alone or with Others	\$[356.25 ] <b>367.25</b>	\$[513.36] <b>529.36</b>
III. Living Alone with Ineligible Spouse	\$[513.36 ] <b>529.36</b>	
IV. Living in Household of Another	\$[260.98 ] <b>268.31</b>	\$[418.43] <b>429.09</b>
V. Title XIX Approved Facility:	\$[975.00†] <b>1,008.00†</b>	
Includes persons in acute general hospitals, skilled nursing facilities, intermediate care facilities (level A, B, and ICFMR) and licensed special hospitals (Class A, B, C) and Title XIX psychiatric hospitals (for persons under age 21 and age 65 and over) or a combination of such facilities for a full calendar month.		

†Gross income (that is, income prior to any income exclusions) is applied to this Medicaid "Cap."

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

10:94-5.7 Deeming from sponsor to alien

- (a)-(d) (No change.)
- (e) To determine the amount of income to be deemed to an alien, the CWA shall proceed as follows:
  - 1. (No change.)
  - 2. Subtract \$[325.00] **336.00** for the sponsor, \$[487.50] **504.00** for the sponsor if living with his or her spouse, \$[650.00] **672.00** for the sponsor if his or her spouse is a co-sponsor.
  - 3. Subtract \$[162.50] **168.00** for any other dependent of the sponsor who is or could be claimed for Federal Income Tax purposes.
  - 4. (No change.)
  - 5. (No change.)

**(a)**

**Service Programs for Aged, Blind, or Disabled Supplemental Security Income Payment Levels**

**Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 10:100, Appendix A**

Emergency Amendment Adopted: December 4, 1985 by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): December 4, 1985.

Emergency Amendment Filed: December 27, 1985 as R.1985 d.712.

Authority: N.J.S.A. 44:7-87 and Section 1618(a) of the Social Security Act.

Emergency Amendment Effective Date: December 27, 1985.

Emergency Amendment Operative Date: January 1, 1986.

**EMERGENCY ADOPTIONS**

**HUMAN SERVICES**

Emergency Amendment Expiration Date: February 24, 1986.

Concurrent Proposal Number: PRN 1985-745.

The agency emergency adoption and concurrent proposal follows:

**Summary**

Section 1618(a) of the Social Security Act requires the State to maintain supplemental payments in the Supplemental Security Income (SSI) program at levels no lower than those in effect in December 1976. This effectively requires the State to "pass-through" to SSI recipients the full amount of any Federal cost-of-living adjustment (COLA). The amendment reflects payment levels in the SSI program which include the 3.1 percent Federal cost-of-living increase effective January 1, 1986.

**Social Impact**

The amendment provides for an increase in payment levels to eligible low-income aged, blind, and disabled individuals. The increase will enable such persons to maintain a measure of parity with the increased cost of living.

**Economic Impact**

The increase in State expenditures over existing levels is estimated to be \$193,000 through the end of calendar year 1986. Increased cost to county governments is estimated at \$64,000 for the same period. This rule will not impact administratively on the Department or county governments as the Supplemental Security Income program is administered by the Social Security Administration.

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

10:100, Appendix A

**The New Jersey Supplemental Security Income Payment Levels**

Living Arrangement Categories	Payment Level [1/1/85] 1/1/86
<b>Eligible Couple</b>	
Licensed Medical Facility (Hospital, Skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence of 16 or less	[\$50/488.00†] <b>\$50/504.00†</b>
Residential Health Care Facilities and certain residential facilities for children and adults	[\$931.36] <b>\$953.36</b>
Living Alone or with Others	[\$513.36] <b>\$529.36</b>
Living in Household of Another, Receiving Support and Maintenance	[\$418.83] <b>\$429.09</b>
<b>Eligible Individual</b>	
Licensed Medical Facility (Hospital, Skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence of 16 or less	[\$25/325.00†] <b>\$25/336.00†</b>
Residential Health Care Facilities and certain residential facilities for children and adults	[\$475.05] <b>\$486.05</b>
Living Alone or with Others	[\$356.25] <b>\$367.25</b>
Living with Ineligible Spouse (No other individuals in household)	[\$513.36] <b>\$529.36</b>
Living in Household of Another, Receiving Support and Maintenance	[\$260.98] <b>\$268.31</b>

†The lower figure applies when Medicaid payments with respect to an individual equal an amount over 50 percent of the cost of services provided in a month.

# MISCELLANEOUS NOTICES

## COMMUNITY AFFAIRS

(a)

### THE COMMISSIONER

#### New Home Warranty and Builders' Registration

N.J.A.C. 5:25

Waiver of Executive Order No. 66(1978)

Authorized By: Governor Thomas H. Kean

**Take notice** that the New Home Warranty and Builders' Registration regulations adopted by the Department of Community Affairs, N.J.A.C. 5:25, were due to expire on January 1, 1986 pursuant to the sunset provision of Executive Order No. 66(1978). As a result of the expiration, there would have been a lapse in the Department's authority to enforce standards for the warranting of new homes and the registration of new home builders in New Jersey.

At the request of Acting Commissioner Jerome R. White, Jr., Governor Kean examined this matter and found that a lapse in the Department's authority to enforce these standards would work to the detriment of the health, safety and welfare of the general public. This lapse would impede the effectiveness and enforcement of an important consumer protection program carried out by the Department.

Accordingly, as Governor of the State of New Jersey and by virtue of the authority vested in him by Executive Order 66(1978) to grant a waiver of the requirements in that Order with regard to any administrative regulation and having determined that good cause exists, Governor Kean on December 26, 1985, ordered and directed that the provisions of Executive Order No. 66 be waived as regards the Department of Community Affairs New Home Warranty and Builders' Registration regulations, N.J.A.C. 5:25, for the period January 1, 1986 through February 3, 1986, inclusive of both dates.

## ENVIRONMENTAL PROTECTION

(b)

### DIVISION OF WATER RESOURCES

#### NJPDES 1985-86 Annual Fee Report and Proposed Fee Schedule

#### Public Hearing

**Take notice** that the Department of Environmental Protection will hold a **public hearing** to present the New Jersey Pollutant Discharge Elimination System (NJPDES) 1985-86 Annual Fee Report and the proposed Fee Schedule for fiscal

year 1986. The hearing will be held on **Thursday, March 6, 1986 at 10:00 A.M.** at the Labor Education Center, Ryders Lane and Clifton Avenue, on the Cook College, Rutgers University Campus, New Brunswick, New Jersey.

The Annual Fee Report and Assessment of Fees will be mailed January 20, 1986 to all NJPDES permittees and will be available for inspection at the Division of Water Resources, 1474 Prospect Street, Trenton, N.J. during normal working hours and at all Depository Libraries beginning January 20, 1986. Contact Debra Hammond, Bureau of Permits Administration at (609) 984-4428 for further information.

## LAW AND PUBLIC SAFETY

(c)

### DIVISION OF MOTOR VEHICLES

#### 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 name and address of an applicant who has filed an application for a Contract Carrier Permit.

CONTRACT CARRIER  
(NON-GRANDFATHER)

M.J. Rudolph Corporation  
1245 Starboard Street  
Port Newark, NJ 07114

Protests 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 this application.

## TREASURY-GENERAL

(d)

### DIVISION OF BUILDING AND CONSTRUCTION

#### Architect-Engineer Selection

#### Notice of Assignments: December 17, 1985

Solicitations of design services for major projects are made by notices published in construction trade publications and newspapers and by direct notification of professional associations/societies and listed, prequalified New Jersey consulting firms. For information on DBC's prequalification and assignment procedures, call (609) 984-6979.

Last list dated November 13, 1985.

The following assignments have been made:

**MISCELLANEOUS NOTICES**

**TREASURY-GENERAL**

DBC No.	PROJECT	A/E	CCE		Competitive Fee Proposals	
W006	Facility Consultant Liberty State Park Dept. of Environmental Protection	John C. Morris Associates, Inc.	\$ 10,000 Services		Howard Needles Tammen & Bergendoff 2.20% Paulus, Sokolowski & Sartor, Inc. 3.62% VEP Associates, Inc. 4.95%	
W007	Facility Consultant Liberty State Park Dept. of Environmental Protection	Becker, Bendixen, Murphy, Herbst	\$ 15,000 Services	P483	Historic Village Area Surveying Double Trouble State Park Lacey and Berkeley Township Ocean County, NJ	Robert W. Lee Assoc., Inc. \$ 5,000 Services
M662	Window Replacement Cedar Grove & Woodbridge Division of Youth & Family Services Residential Centers	Thomas E. Torricelli, AIA	\$ 20,000			
M662-01	Window Replacement Ewing & Vineland Division of Youth & Family Services Residential Centers	Lovrek Associates, PC	\$ 20,000			Competitive Fee Robert W. Lee Associates, Inc. \$ 5,000 Lump Sum Geod Corporation \$13,991 Lump Sum
C284-01	Repairs to Gymnasium Pilasters Training School for Boys Jamesburg, NJ	Matthew L. Rue, AIA	\$ 20,000			
T180	New Electrical Services DOT Maintenance Facility Metuchen, NJ	Barnickel Engineering	\$ 12,000			
H833	Refurbish Core Walls & Floors Ramapo College Mahwah, NJ	Architects Di Geronimo, PA	\$ 140,000			
A493	Renovations to Distribution Center Division of Purchase & Property Trenton, NJ	St. Onge Ruff, Inc.	\$ 930,000			
C301	Topographic Survey Privatization of Leesburg Wastewater Treatment Plant Cumberland County, NJ	Long Engineering & Survey	\$ 13,070 Services			
T182	Pre-Engineered Maintenance Building DOT Maintenance Facility Jersey City, NJ	Thomas E. Torricelli, AIA	\$ 69,400			
R002	Facility Consultant Dept. of Human Services	Matthew L. Rue, AIA	\$ 15,000 Services			
H846	Phase II-Tidelands Athletic Field Jersey City State College Jersey City, NJ	Howard Needles Tammen & Bergendoff	\$1,200,000			

**(a)**

**Architect/Engineer Selection Board Meetings**

In accordance with Chapter 231, Laws of 1975, known as the "Open Public Meeting Act", this office announces the Architect/Engineer Selection Board meetings scheduled for 1986. Each Wednesday at 9:00 A.M., except January 1 and February 12, 1986, the meetings will convene at the following location:

Conference Room No. 1 (8th Floor)  
Taxation Building  
50 Barrack Street  
Trenton, N.J. 08625

# REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

## A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

**At the bottom of the index listing for each Administrative Code Title is the date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the November 4, 1985 issue.**

**If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers.** A proposal may be adopted up to one year after its initial publication in the Register. Failure to timely adopt a proposed rule requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(d).

### Terms and abbreviations used in this Index:

**N.J.A.C. Citation.** The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

**Proposal Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

**Document Number.** The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1985 d.300 means the three hundredth rule adopted in 1985.

**Adoption Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

**Transmittal.** A number and date verifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

**N.J.R. Citation Locator.** An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

# N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
17 N.J.R. 1 and 140	January 7, 1985	17 N.J.R. 1701 and 1818	July 15, 1985
17 N.J.R. 141 and 236	January 21, 1985	17 N.J.R. 1819 and 1954	August 5, 1985
17 N.J.R. 237 and 338	February 4, 1985	17 N.J.R. 1955 and 2070	August 19, 1985
17 N.J.R. 339 and 502	February 19, 1985	17 N.J.R. 2071 and 2170	September 3, 1985
17 N.J.R. 503 and 634	March 4, 1985	17 N.J.R. 2171 and 2318	September 16, 1985
17 N.J.R. 635 and 762	March 18, 1985	17 N.J.R. 2319 and 2484	October 7, 1985
17 N.J.R. 763 and 858	April 1, 1985	17 N.J.R. 2485 and 2584	October 21, 1985
17 N.J.R. 859 and 1006	April 15, 1985	17 N.J.R. 2585 and 2710	November 4, 1985
17 N.J.R. 1007 and 1158	May 6, 1985	17 N.J.R. 2711 and 2814	November 18, 1985
17 N.J.R. 1159 and 1358	May 20, 1985	17 N.J.R. 2815 and 2934	December 2, 1985
17 N.J.R. 1359 and 1460	June 3, 1985	17 N.J.R. 2935 and 3032	December 16, 1985
17 N.J.R. 1461 and 1608	June 17, 1985	18 N.J.R. 1 and 128	January 6, 1986
17 N.J.R. 1609 and 1700	July 1, 1985	18 N.J.R. 129 and 234	January 21, 1986

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
<b>ADMINISTRATIVE LAW—TITLE 1</b>				
1:1-3.8	Attorney disqualification from a case	18 N.J.R. 2(a)		
1:2-2.1	Civil Service cases: pre-proposal concerning conference hearings	17 N.J.R. 2072(a)		
1:2-2.1, 2.4	Conference hearings and employee/employer disputes	17 N.J.R. 2712(a)		
1:6A-3.2	Adjournment and Department of Education settlement conferences	17 N.J.R. 2073(a)	R.1985 d.539	17 N.J.R. 2606(a)
1:6A-5.4	Special education hearings: placement of child pending an appeal	17 N.J.R. 2586(a)		
1:30	Agency rulemaking	18 N.J.R. 3(a)		
<b>(TRANSMITTAL 15, dated October 21, 1985)</b>				
<b>AGRICULTURE—TITLE 2</b>				
2:32-2.36, 3	Sire Stakes Program: appeals	17 N.J.R. 2320(a)		
2:48-5	Use of coupons in milk promotions	17 N.J.R. 2486(a)	R.1985 d.649	18 N.J.R. 77(a)
2:53-3	Milk sales below cost by stores	Emergency	R.1985 d.648	17 N.J.R. 3014(a)
2:90-1.5, 1.14	Soil conservation plan certifications; minor subdivisions	17 N.J.R. 2172(a)		
2:90-1.13	Soil conservation: extraction activity	17 N.J.R. 1957(a)		
<b>(TRANSMITTAL 34, dated October 21, 1985)</b>				
<b>BANKING—TITLE 3</b>				
3:1-2.24	Modification of Commissioner's Order restricting stock transfers	17 N.J.R. 2487(a)		
3:1-11.1	Savings banks and loans to affiliated persons	17 N.J.R. 2073(b)	R.1985 d.556	17 N.J.R. 2606(b)
3:1-12	Multiple-party deposit accounts	17 N.J.R. 2488(a)	R.1985 d.660	18 N.J.R. 77(b)
3:1-15	Availability of funds deposited in individual accounts: written disclosure	18 N.J.R. 13(a)		
3:6-10	Savings banks: unsecured days funds transactions	17 N.J.R. 2936(a)		
3:6-11	Short-term investments for trust cash	17 N.J.R. 2937(a)		
3:6-15	Savings banks and loans to affiliated persons	17 N.J.R. 2073(b)	R.1985 d.556	17 N.J.R. 2606(b)
3:19-1	Home repair financing	18 N.J.R. 15(a)		
3:26-4.1	State savings and loan parity with Federal associations	17 N.J.R. 2713(a)		
3:38-5.2	Return of borrower's commitment fee	17 N.J.R. 2488(b)		
3:41	Readoption of Cemetery Board rules	17 N.J.R. 1704(a)	R.1985 d.573	17 N.J.R. 2749(a)
<b>(TRANSMITTAL 28, dated September 16, 1985)</b>				
<b>CIVIL SERVICE—TITLE 4</b>				
4:1-5.1, 8.26, 8.27	Appeals concerning removal from eligible list for medical reasons	17 N.J.R. 1957(b)	R.1985 d.661	18 N.J.R. 77(c)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
4:1-10.1, 10.2	Noncompetitive and labor appointments	17 N.J.R. 2937(b)		
4:1-12.12	Restorations to promotional lists	17 N.J.R. 645(a)		
4:1-23	Grievances and minor discipline	17 N.J.R. 2587(a)		
4:2-12.1, 12.2	Appeals concerning removal from eligible list for medical reasons	17 N.J.R. 1957(b)	R.1985 d.661	18 N.J.R. 77(c)
4:2-23	Grievances and minor discipline	17 N.J.R. 2587(a)		
4:3-12.1, 12.2	Appeals concerning removal from eligible list for medical reasons	17 N.J.R. 1957(b)	R.1985 d.661	18 N.J.R. 77(c)
4:3-23	Grievances and minor discipline	17 N.J.R. 2587(a)		

(TRANSMITTAL 27, dated September 16, 1985)

**COMMUNITY AFFAIRS—TITLE 5**

5:10-24.4	Parking for handicapped residents of multiple dwellings	18 N.J.R. 16(a)		
5:11-2.1	Uniform Fire Code enforcement and relocation assistance	17 N.J.R. 2938(a)		
5:11-6.1	Prior filing of Workable Relocation Assistance Plans	17 N.J.R. 2321(a)		
5:12-2.4, 2.5	Homelessness Prevention Program: eligibility and priorities	17 N.J.R. 2939(a)		
5:14	Neighborhood Preservation Balanced Housing Program	17 N.J.R. 2489(a)	R.1985 d.688	18 N.J.R. 162(a)
5:18-1.1, 1.3, 1.4, 1.5, 2.4, 2.5, 2.7, 2.8, 2.12, 3.1, 3.2	Uniform Fire Code	17 N.J.R. 1015(b)	R.1985 d.611	17 N.J.R. 2870(a)
5:18-1.1, 1.4, 1.5, 1.6, 2.3, 4	Uniform Fire Code, Fire Safety Code	17 N.J.R. 1161(a)		
5:18A-2.1—2.4, 2.6, 3.2, 3.3, 4.1, 4.3, 4.4	Fire Code Enforcement	17 N.J.R. 1015(b)	R.1985 d.611	17 N.J.R. 2870(a)
5:18B-3.2	High Level Alarms	17 N.J.R. 1015(b)	R.1985 d.611	17 N.J.R. 2870(a)
5:23-2.14, 4.18, 4.20	UCC: annual construction permits	17 N.J.R. 2490(a)		
5:23-2.15, 2.21	UCC: engineers and architects	17 N.J.R. 1033(a)		
5:23-3.11, 4.22, 4.24, 4.25	Uniform Construction Code: premanufactured construction	17 N.J.R. 1169(a)		
5:23-3.15	UCC: Plumbing Subcode	17 N.J.R. 2714(a)		
5:23-5.4, 5.5	UCC inspectors: experience requirements	17 N.J.R. 1821(a)	R.1985 d.612	18 N.J.R. 80(a)
5:23-5.11	Uniform Construction Code: revocation of licenses	18 N.J.R. 16(b)		
5:25	New Home Warranties and Builders' Registration	17 N.J.R. 2816(a)		
5:28	Readopt State Housing Code	17 N.J.R. 1174(a)	R.1985 d.689	18 N.J.R. 163(a)
5:37	Municipal, County and Authority Employees Deferred Compensation Programs	17 N.J.R. 1960(a)	R.1985 d.598	17 N.J.R. 2749(b)
5:80-4	Housing and Mortgage Finance	17 N.J.R. 1174(b)		
5:80-8	Housing and Mortgage Finance Agency: housing project occupancy requirements	17 N.J.R. 1620(a)		
5:80-17, 18	Housing and Mortgage Finance: prevailing wages; debarment from contracting	17 N.J.R. 1174(b)	R.1985 d.559	17 N.J.R. 2607(a)
5:80-20	HMFA housing projects: applicant and tenant income certification	17 N.J.R. 2321(b)		

(TRANSMITTAL 34, dated October 21, 1985)

**DEFENSE—TITLE 5A**

(TRANSMITTAL 1, dated May 20, 1985)

**EDUCATION—TITLE 6**

6:3-1.2	Board of school estimate: correction			17 N.J.R. 2753(a)
6:11-3	Teacher education: Basic Certification Requirements	17 N.J.R. 2181(a)	R.1985 d.665	18 N.J.R. 85(a)
6:11-7	Standards for State approval of teacher preparation	17 N.J.R. 1708(a)	R.1985 d.613	17 N.J.R. 2884(a)
6:20-2.13	Local districts: overexpenditure of funds	17 N.J.R. 2939(b)		
6:22	School facility planning services	17 N.J.R. 650(a)		
6:43-1.3	Vocational and technical education: schools designated "other than full-time day"	17 N.J.R. 2940(a)		

(TRANSMITTAL 35, dated October 21, 1985)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
<b>ENVIRONMENTAL PROTECTION—TITLE 7</b>				
7:1-7	Hazardous substance discharges: reports and notices	17 N.J.R. 1826(a)		
7:1F	Industrial Survey Project rules: waiver of Executive Order No. 66	17 N.J.R. 866(a)		
7:1G	Worker and Community Right to Know Act: U.S. Court of Appeals decision	_____	_____	17 N.J.R. 2794(b)
7:2-12	Open lands management	17 N.J.R. 866(b)		
7:7-2.2	Wetlands maps in Ocean County	17 N.J.R. 1710(a)		
7:7E	Revisions to Coastal Resources and Development rules	17 N.J.R. 1466(a)		
7:7E	Coastal Resource and Development revisions: extension of comment period	17 N.J.R. 1797(b)		
7:7E	Coastal Resource and Development Policies: correction to Code and proposed revisions	17 N.J.R. 1797(c)		
7:9-15	Restoration of publicly-owned freshwater lakes	17 N.J.R. 2182(a)	R.1985 d.717	18 N.J.R. 163(b)
7:11-2.2, 2.3, 2.9	Sale of water from Delaware and Raritan Canal and Spruce Run/Round Valley Reservoirs	18 N.J.R. 17(a)		
7:12-2.7	Hard clam relay program	17 N.J.R. 2185(a)	R.1985 d.634	17 N.J.R. 2971(b)
7:13-7.1	Flood hazard area along Long Brook and Manasquan River	17 N.J.R. 2324(a)		
7:13-7.1(c)29	Floodway delineations within Maurice River Basin	17 N.J.R. 2186(a)		
7:13-7.1(d)14	Flood hazard along Lamington River in Morris County	17 N.J.R. 2324(a)		
7:13-7.1(d)47	Redelineation of Pine Brook in Bergen County	17 N.J.R. 2074(a)		
7:13-7.1(d)49	Floodway delineations in Union County	17 N.J.R. 1965(a)		
7:13-7.1(d)53	Floodway delineations in Raritan Basin (Project H)	17 N.J.R. 2492(a)		
7:13-7.1(h)	Floodway delineations in Hackensack Basin	17 N.J.R. 1175(a)		
7:13-7.1(i)	Floodway delineations in Central Passaic Basin Projects G and R	17 N.J.R. 1176(a)		
7:19-6.10	Water supply management in critical areas	17 N.J.R. 1966(a)	R.1985 d.596	17 N.J.R. 2753(b)
7:19A-1.4	Emergency water supply: residential and nonresidential users defined	17 N.J.R. 1967(a)	R.1985 d.595	17 N.J.R. 2754(a)
7:19B-1.3	Emergency water supply: residential and nonresidential users defined	17 N.J.R. 1967(a)	R.1985 d.595	17 N.J.R. 2754(a)
7:25-4.6	Nongame and exotic wildlife: possession permit fees	17 N.J.R. 2589(a)	R.1985 d.716	18 N.J.R. 166(a)
7:25-5.12	Use of steel-jaw leghold traps	17 N.J.R. 2714(b)		
7:25-6	1986-87 Fish Code	17 N.J.R. 2187(a)	R.1985 d.646	17 N.J.R. 2972(a)
7:25-14	Readopt rules on Crab Pots	17 N.J.R. 1830(a)	R.1985 d.560	17 N.J.R. 2608(a)
7:25-15.1	Hard clam relay program	17 N.J.R. 2191(a)	R.1985 d.633	17 N.J.R. 2976(a)
7:25-16.1	Defining freshwater fishing lines	17 N.J.R. 2193(a)	R.1985 d.597	17 N.J.R. 2755(a)
7:25-17	Disposal and possession of dead deer	17 N.J.R. 2715(a)		
7:25-18	Marine fisheries	Emergency	R.1985 d.674	18 N.J.R. 102(a)
7:25-19	Atlantic Coast harvest season	17 N.J.R. 2494(a)		
7:26-1.4, 1.6, 9.1, 12.1	Tolling agreements and reclamation of hazardous waste	17 N.J.R. 1968(a)		
7:26-1.4, 7.4, 9.1, 12.1, 12.8	Reuse of hazardous waste	17 N.J.R. 2716(a)		
7:26-1.4, 9.3	Above-ground tank storage of hazardous waste	17 N.J.R. 1501(a)	R.1985 d.620	17 N.J.R. 2885(a)
7:26-1.7	Waste management: on-site disposal of construction debris	17 N.J.R. 1040(a)	R.1985 d.666	18 N.J.R. 99(a)
7:26-1.7	Solid waste disposal: exemption from registration	17 N.J.R. 1368(a)		
7:26-1.8	Solid waste disposal: land application operations	17 N.J.R. 2945(a)		
7:26-2.6, 2.7	Disposal of asbestos waste	17 N.J.R. 2719(a)		
7:26-3	Waste management: readopt Collection and Haulage rules	17 N.J.R. 1041(a)	R.1985 d.558	17 N.J.R. 2609(a)
7:26-6.5	Solid waste flow: Ocean County	17 N.J.R. 2590(a)		
7:26-6.5	Solid waste flow: Camden County	17 N.J.R. 2591(a)		
7:26-7.4, 8.3, 8.15, 9.2, 10.6, 10.	Restriction of land disposal of hazardous waste	17 N.J.R. 779(a)		
7:26-8.1, 8.2, 8.19, 9.3, 9.7, 12.2	Hazardous waste management	17 N.J.R. 2941(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
7:26-12.9	Correction to Administrative Code: Short-term permit for hazardous waste treatment			17 N.J.R. 2794(a)
7:26-14	Resource Recovery grants and loans: extension of comment period	17 N.J.R. 242(a)		
7:26-16.4	Solid and hazardous waste: transporters and facilities	17 N.J.R. 518(a)		
7:27-14.3	Diesel-powered motor vehicles: idle standard	16 N.J.R. 2887	R.1985 d.610	17 N.J.R. 2887(a)
7:27-15.6	Gas-fueled motor vehicle: idle standard	16 N.J.R. 2889	R.1985 d.610	17 N.J.R. 2887(a)
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)		
7:30	Pesticide Control Code	17 N.J.R. 242(b)	R.1985 d.557	17 N.J.R. 2609(b)
7:45	Delaware Raritan Canal State Park: Review Zone rules	17 N.J.R. 1711(a)		

(TRANSMITTAL 35, dated October 21, 1985)

**HEALTH—TITLE 8**

8:9-1.11	State Sanitary Code: disposal of unclaimed cremains	17 N.J.R. 2325(a)		
8:9-1.11	Disposal of cremains: public hearing	17 N.J.R. 2835(a)		
8:13-2.1, 2.4, 2.6—2.11, 2.13, 2.14	Depuration of soft shell clams	17 N.J.R. 1370(a)	R.1985 d.691	18 N.J.R. 166(b)
8:21-7	Frozen dessert products	17 N.J.R. 1986(b)	R.1985 d.591	17 N.J.R. 2755(b)
8:21-10	Designated fluid milk products	18 N.J.R. 59(b)		
8:31-26.5	Family planning facilities: licensure fee	17 N.J.R. 1999(a)	R.1985 d.581	17 N.J.R. 2768(a)
8:31A-9.1, 9.2	SHARE economic factor	17 N.J.R. 2495(a)	R.1985 d.685	18 N.J.R. 170(a)
8:31B-3	Hospital reimbursement: procedure and methodology	17 N.J.R. 2000(a)	R.1985 d.551	17 N.J.R. 2633(a)
8:31B-3.5, 3.22, 3.54	Hospital reimbursement: "efficiency standard"	17 N.J.R. 2946(a)		
8:31B-3.19	RIM methodology for nursing cost allocation: implementation date	17 N.J.R. 2464(a)		
8:31B-3.31, 3.51	Hospital reimbursement: graduate medical education	17 N.J.R. 2947(a)		
8:31B-4	Hospital reimbursement: financial elements and reporting	17 N.J.R. 2004(a)	R.1985 d.550	17 N.J.R. 2637(a)
8:33A-2.6	Surgical facilities: criteria for review and approval	17 N.J.R. 2497(a)	R.1985 d.680	18 N.J.R. 172(a)
8:33F-1.2, 1.6, App. B	Renal disease: regional end-stage services	17 N.J.R. 2948(a)		
8:34-1.8	Nursing home administrators: limitations on responsibility	18 N.J.R. 74(a)		
8:34-1.9	Reexamination for Nursing Home Administrator's License	18 N.J.R. 75(a)		
8:34-1.31	Licensing of nursing home administrators	17 N.J.R. 2212(a)		
8:43-1	Residential health care facilities	17 N.J.R. 2498(a)	R.1985 d.684	18 N.J.R. 173(a)
8:43B-1.14	Hospital facilities: psychiatric patient rights	17 N.J.R. 665(a)		
8:43B-5	Licensure of hospital facilities: personnel	17 N.J.R. 2501(b)	R.1985 d.683	18 N.J.R. 174(a)
8:43B-5, 15, 16	Standards for licensure of Hospital Facilities: waiver of sunset provision			17 N.J.R. 2501(a)
8:43B-8.16	Obstetric and newborn services: use of oxytocic agents	17 N.J.R. 2213(a)		
8:43B-8.33—8.44	Newborn care services: physical plant standards	17 N.J.R. 519(a)		
8:43B-15	Hospital facilities: renal dialysis services	17 N.J.R. 2503(a)	R.1985 d.682	18 N.J.R. 174(b)
8:43B-16	Hospital facilities: nurse-midwifery services	17 N.J.R. 2512(a)	R.1985 d.681	18 N.J.R. 180(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)		
8:53	Implementation of Local Health Services Act	17 N.J.R. 2836(a)		
8:57-1.19, 1.20, -6	Cancer registry	17 N.J.R. 2836(b)		
8:65-5	Controlled dangerous substances: records and reports of registrants	17 N.J.R. 524(a)	R.1985 d.606	17 N.J.R. 2890(a)
8:65-8	Controlled dangerous substances: manufacture, distribution, disposal and nondrug use	17 N.J.R. 2721(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
8:65-10.1	Controlled dangerous substances: 3, 4-methylenedioxyamphetamine	17 N.J.R. 2214(a)	R.1985 d.669	18 N.J.R. 87(a)
8:65-10.1	Temporary placement of Meperidine analogs MPPP and PEPAP into Schedule I	17 N.J.R. 2950(a)		
8:65-11.2	Narcotic treatment programs: registration fee	17 N.J.R. 359(a)		
8:71	Additions to generic drug list (see 17 N.J.R. 1295(a), 1562(a), 2043(a), 2556(a))	17 N.J.R. 158(a)		
8:71	Generic drug list additions (see 17 N.J.R. 2042(b), 2556(b), 2769(a))	17 N.J.R. 1043(a)	R.1985 d.686	18 N.J.R. 182(a)
8:71	Generic drug list additions (see 17 N.J.R. 2557(a), 2769(b))	17 N.J.R. 1733(a)	R.1985 d.687	18 N.J.R. 183(a)
8:71	Generic drug list additions	17 N.J.R. 2842(a)		

(TRANSMITTAL 32, dated October 21, 1985)

**HIGHER EDUCATION—TITLE 9**

9:2-1	Minority Faculty Advancement Loan Program	17 N.J.R. 1512(a)	R.1985 d.567	17 N.J.R. 2640(a)
9:2-2	Fund for Improvement of Collegiate Education: policies and procedures	17 N.J.R. 2724(a)		
9:2-4.1	Eligibility for Alternate Benefit Program	17 N.J.R. 1635(a)	R.1985 d.588	17 N.J.R. 2770(a)
9:2-11	Veterans Tuition Credit Program	17 N.J.R. 2844(a)		
9:2-12.1, 12.2	Teacher education: degree standards	17 N.J.R. 1515(a)	R.1985 d.589	17 N.J.R. 2771(a)
9:2-12.2	Teacher education: curriculum	17 N.J.R. 22(b)		
9:5-1, 2	Tuition policies at public institutions	17 N.J.R. 2326(a)	R.1985 d.701	18 N.J.R. 183(b)
9:7-2.3	Status of foreign nationals	18 N.J.R. 19(a)		
9:7-2.9	Student assistance programs: award combinations	17 N.J.R. 2725(a)		
9:7-3.1	Tuition Aid Grants: 1985-86 Award Table	17 N.J.R. 2050(a)	R.1985 d.572	17 N.J.R. 2643(a)
9:7-3.1	Tuition Aid Grant Program: 1986-87 Award Table	18 N.J.R. 19(b)		
9:7-3.3, 5.9, 6.8	Student assistance program revisions	17 N.J.R. 1734(a)	R.1985 d.571	17 N.J.R. 2644(a)
9:7-4.1	Garden State Scholars: eligibility	17 N.J.R. 2007(a)	R.1985 d.570	17 N.J.R. 2644(b)
9:7-4.1, 4.2, 4.3, 4.5, 4.8	Garden State Scholarship Program	17 N.J.R. 2726(a)		
9:7-8	Vietnam Veterans Tuition Aid Program	17 N.J.R. 1735(a)	R.1985 d.569	17 N.J.R. 2645(a)
9:8	Jobs, Science and Technology Bond Act: policies and procedures	17 N.J.R. 1516(a)	R.1985 d.566	17 N.J.R. 2646(a)
9:9-1.2	Guaranteed Student Loan Program: second borrowing	17 N.J.R. 1518(a)	R.1985 d.568	17 N.J.R. 2648(a)
9:9-1.6	Guarantee Student Loans and payment of insurance fee	17 N.J.R. 2727(a)		
9:9-1.16	Interest liability on defaulted student loans	17 N.J.R. 2728(a)		
9:9-9.2	Direct PLUS program and co-signer requirement	17 N.J.R. 2728(b)		
9:11, 12	Educational Opportunity Fund Program rules	17 N.J.R. 2214(b)		

(TRANSMITTAL 28, dated August 19, 1985)

**HUMAN SERVICES—TITLE 10**

10:36-1	Patient supervision at State psychiatric hospitals	17 N.J.R. 2593(a)		
10:36-1	Patient supervision at State psychiatric hospitals: public hearing	18 N.J.R. 20(a)		
10:36-2	Clinical review procedures for special status psychiatric patients	17 N.J.R. 2951(a)		
10:37	Community Mental Health Services	17 N.J.R. 2222(a)	R.1985 d.605	17 N.J.R. 2894(a)
10:42	Developmental Disabilities: Emergency Mechanical Restraint	17 N.J.R. 1832(a)		
10:47	Private Licensed Facilities for Developmentally Disabled	16 N.J.R. 2902(a)	R.1985 d.540	17 N.J.R. 2648(b)
10:48	Division of Mental Retardation: appeal procedures	17 N.J.R. 876(b)	R.1985 d.673	18 N.J.R. 184(a)
10:49-1.1	Administration Manual: retroactive Medicaid eligibility	17 N.J.R. 2729(a)		
10:49-1.4	Narcotic and drug abuse treatment centers	17 N.J.R. 1235(a)		
10:50	Transportation Services: HCFA Common Procedure Coding System	17 N.J.R. 1519(b)		
10:51-1, 2	Pharmacy Manual: pharmaceutical services and billing procedures	17 N.J.R. 2223(a)	R.1985 d.594	17 N.J.R. 2772(a)
10:51-1.14, 5.16	Pharmaceutical services: ineligible prescription drugs	17 N.J.R. 2730(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
10:51-4	Consultant Pharmacist Services	17 N.J.R. 2731(a)		
10:52-1.1, 1.20	Ambulatory surgical centers	16 N.J.R. 3153(a)	R.1985 d.532	17 N.J.R. 2894(b)
10:52-1.16	Termination of pregnancy in licensed health care facilities	17 N.J.R. 1375(a)		
10:52-1.17	Out-of-state inpatient hospital services	17 N.J.R. 2225(a)		
10:52-1.21	Narcotic and drug abuse treatment centers	17 N.J.R. 1235(a)		
10:53-1.1, 1.16	Ambulatory surgical centers	16 N.J.R. 3153(a)	R.1985 d.532	17 N.J.R. 2894(b)
10:53-1.14	Termination of pregnancy	17 N.J.R. 1375(a)		
10:54	Physician Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:54-1.23	Termination of pregnancy	17 N.J.R. 1375(a)		
10:55	Prosthetic-Orthotic Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:57	Podiatry Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:58	Nurse Midwifery Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:59	Medical Supplier Manual: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:59-1.11	Medical Supplier Manual: repair of durable medical equipment	17 N.J.R. 2516(a)	R.1985 d.671	18 N.J.R. 186(a)
10:59-1.12	Medical Supplier Manual: correction			17 N.J.R. 2691(c)
10:59-2.1—2.11	Medical Supplier Manual: billing procedures	17 N.J.R. 2326(b)	R.1985 d.628	17 N.J.R. 2977(a)
10:60-1.1, 1.2, 2.2, 2.3, 3.1	Personal care assistant services: hours per week and rate of reimbursement	17 N.J.R. 2327(a)	R.1985 d.656	18 N.J.R. 87(b)
10:60-2.2, 3.1	Personal care assistant services: procedure codes	17 N.J.R. 2330(a)	R.1985 d.656	18 N.J.R. 87(b)
10:61	Independent Laboratory Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:62	Vision Care: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:63-1.5, 1.6, 1.8, 1.13, 2.5, 2.7	Long term care facilities: certification and plan of care	17 N.J.R. 2075(a)	R.1985 d.703	18 N.J.R. 187(a)
10:63-3	Vision Care Manual: billing procedures	17 N.J.R. 2731(b)		
10:63-3.2, 3.5, 3.10, 3.19	Reimbursement to long-term care facilities	17 N.J.R. 2331(a)	R.1985 d.705	18 N.J.R. 189(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)	R.1985 d.532	17 N.J.R. 2894(b)
10:66-1.2, 1.6, 3.3	Narcotic and drug abuse treatment centers	17 N.J.R. 1235(a)		
10:66-1.6	Termination of pregnancy	17 N.J.R. 1375(a)		
10:66-1.6, 3.3	Personal care assistant services: hours per week and rate of reimbursement	17 N.J.R. 2327(a)	R.1985 d.656	18 N.J.R. 87(b)
10:66-3.3	Personal care assistant services: procedure codes	17 N.J.R. 2330(a)	R.1985 d.656	18 N.J.R. 87(b)
10:67	Psychological Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:69A-1.1, 1.2, 2.1, 4.1, 4.4, 5.3, 6.2, 6.4, 6.10	PAAD: eligibility standards	17 N.J.R. 2332(a)	R.1985 d.690	18 N.J.R. 190(a)
10:81-2.7, 3.18	PAM: continued absence; WIN registration	17 N.J.R. 2333(a)		
10:81-2.16, 3.18	PAM: photo IDs; ex-WIN children	17 N.J.R. 2335(a)		
10:81-10.7	PAM: eligibility for refugee and entrant programs	17 N.J.R. 2227(a)		
10:81-11.2, 11.7, 11.9, 11.20	PAM: child support paternity	17 N.J.R. 2845(a)		
10:81-11.3, 11.9	PAM: Social Security numbers; restriction of information	17 N.J.R. 2516(b)		
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)		
10:81-11.19	PAM: distribution of arrearage payments for child support	17 N.J.R. 1238(a)	R.1985 d.585	17 N.J.R. 2774(a)
10:82-1.7, 2.3	Correction to Administrative Code			17 N.J.R. 2917(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
10:82-1.10, 1.11	ASH: retrospective budgeting and monthly reporting	17 N.J.R. 2518(a)	R.1985 d.710	18 N.J.R. 191(a)
10:82-2.19	ASH: recovery of overpayments	17 N.J.R. 2847(a)		
10:82-3.2	ASH: exempt resources	17 N.J.R. 2518(b)	R.1985 d.709	18 N.J.R. 192(a)
10:82-3.9, 3.11, 3.14, 4.13	ASH: evaluation of legally responsible relatives in AFDC	18 N.J.R. 20(b)		
10:82-3.11	ASH: correction to Administrative Code			17 N.J.R. 2691(b)
10:82-5.3	ASH: child care	17 N.J.R. 1835(a)	R.1985 d.586	17 N.J.R. 2774(b)
10:82-5.10	ASH: emergency assistance	17 N.J.R. 2336(a)		
10:82-5.10	ASH: emergency assistance	17 N.J.R. 2337(a)		
10:85-3.2	GAM: determination of unemployability	17 N.J.R. 547(a)		
10:85-3.2	GAM: nursing home patients from out-of-state	17 N.J.R. 2338(a)	R.1985 d.692	18 N.J.R. 192(b)
10:85-3.3	GAM: unearned income exclusion	17 N.J.R. 2849(a)		
10:85-3.3, 5.2	GAM: hospital notices and billings	17 N.J.R. 2519(a)		
10:85-3.4	GAM: disposal of resources	17 N.J.R. 2339(a)	R.1985 d.693	18 N.J.R. 193(a)
10:85-3.4	GAM: eligibility in other programs	17 N.J.R. 2520(a)		
10:85-3.4	GAM: disposal of assets	17 N.J.R. 2952(a)		
10:85-3.4	GAM: parent-sponsored aliens	18 N.J.R. 21(a)		
10:85-5.2, 11.2	GAM: inpatient hospital care	17 N.J.R. 2521(a)		
10:85-5.3	GAM: outpatient mental health care	17 N.J.R. 1836(a)	R.1985 d.565	17 N.J.R. 2665(a)
10:85-5.3	GAM: nursing home bed-hold payments	17 N.J.R. 2953(a)		
10:85-6.4	GAM: final reporting requirements	17 N.J.R. 1837(a)	R.1985 d.584	17 N.J.R. 2775(a)
10:85-10.1	GAM: "Workfare" defined	17 N.J.R. 2849(b)		
10:85-10.8	GAM: work registration violations and Food Stamp recipients	17 N.J.R. 1838(a)	R.1985 d.618	17 N.J.R. 2900(a)
10:86	Repeal obsolete AFDC Work Incentive Program rules	17 N.J.R. 1838(b)		
10:87-2.38, 5.9	Food Stamp Program: elderly or disabled defined; JTPA income exclusion	17 N.J.R. 2521(b)	R.1985 d.707	18 N.J.R. 193(b)
10:87-5.10, 12.1	Food Stamp Program: utility allowance standards	Emergency	R.1985 d.713	18 N.J.R. 214(a)
10:87-12.1, 12.2	Food Stamp Program: income deductions, maximum coupon allotments	17 N.J.R. 2564(a)	R.1985 d.647	17 N.J.R. 2978(a)
10:89-2.2, 2.3, 3.2, 3.3, 3.4, 3.6, 4.1, 5.1	Home energy assistance	17 N.J.R. 2791(a)	R.1985 d.708	18 N.J.R. 194(a)
10:90-2.2, 2.3, 2.4, 2.6, 3.3, 4.1—4.10, 5.1, 5.2, 5.6, 6.1, 6.2, 6.3	Monthly Reporting Policy Handbook	17 N.J.R. 1839(a)		
10:94-1.6, 3.14	Medicaid Only: ineligible individuals	17 N.J.R. 2522(a)		
10:94-3.6	Medicaid Only: change of county of residence	17 N.J.R. 2523(a)		
10:94-4.1	Medicaid Only: resource eligibility	17 N.J.R. 2524(a)		
10:94-4.1	Medicaid Only: availability of resources in third-party situations	17 N.J.R. 2954(a)		
10:94-5.4, 5.5, 5.6, 5.7	Medicaid Only: eligibility computation amounts	Emergency	R.1985 d.714	18 N.J.R. 215(a)
10:94-5.5	Medicaid Only: deeming of income	17 N.J.R. 2732(a)		
10:94-7, 8, 9	Medicaid Only program for aged, blind and disabled	17 N.J.R. 2340(a)		
10:100-App. A	Supplemental Security Income payment levels	Emergency	R.1985 d.712	18 N.J.R. 216(a)
10:109	Public Assistance Staff Development Program	18 N.J.R. 22(a)		
10:121-2	Adoption subsidy	18 N.J.R. 24(a)		
10:123-3.2	Personal needs allowance: residential health care and boarding homes	17 N.J.R. 2955(a)		
10:129-2	Child abuse prevention	17 N.J.R. 2735(a)	R.1985 d.706	18 N.J.R. 196(a)

(TRANSMITTAL 33, dated October 21, 1985)

**CORRECTIONS—TITLE 10A**

10A:4	Inmate discipline	18 N.J.R. 27(a)		
10A:31-3.7, 3.12	Adult county facilities: new inmate processing	17 N.J.R. 2229(a)	R.1985 d.604	17 N.J.R. 2901(a)
10A:31-3.12, 3.15	Adult county facilities: medical screening of new inmates	17 N.J.R. 2343(a)		
10A:31-3.12, 3.15	Medical screening of new inmates in county facilities: public hearing	17 N.J.R. 2955(b)		
10A:34	County correctional facilities	17 N.J.R. 2525(a)		

(TRANSMITTAL 11, dated May 20, 1985)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
<b>INSURANCE—TITLE 11</b>				
11:1-18	Approval of business names	17 N.J.R. 41(a)		
11:1-19	Uniform registration of branch offices	17 N.J.R. 42(a)		
11:1-20	Property and casualty/liability coverage: cancellations, nonrenewals and mid-term premium increases	17 N.J.R. 2460(a)	R.1985 d.627	17 N.J.R. 2978(b)
11:1-20, 22	Cancellation and nonrenewal of property and casualty/liability policies	17 N.J.R. 2956(a)		
11:1-20:1	Property and casualty/liability coverage	Emergency	R.1985 d.626	17 N.J.R. 2915(a)
11:1-21	Property/casualty insurers: preparation of annual loss reserve opinions	17 N.J.R. 2596(a)	R.1985 d.711	18 N.J.R. 196(b)
11:2-19	Approval of insurance schools and company training programs	16 N.J.R. 2920(b)	R.1985 d.608	17 N.J.R. 2901(b)
11:2-19.2	Continuing education	18 N.J.R. 44(a)		
11:2-20	License renewal: continuing education requirement	17 N.J.R. 2962(a)		
11:2-23	Advertisement of life insurance and annuities	16 N.J.R. 2926(a)	R.1985 d.600	17 N.J.R. 2776(a)
11:3-10	Auto physical damage claims	16 N.J.R. 3170(a)	R.1985 d.629	17 N.J.R. 2988(a)
11:3-17	Automobile rate filings	16 N.J.R. 2936(a)	R.1985 d.609	17 N.J.R. 2905(a)
11:3-20	Reporting excess profits	17 N.J.R. 370(a)		
11:3-20	Automobile insurers: financial disclosure and excess profit reporting	17 N.J.R. 2597(a)		
11:3-21	Reduced PIP premium charges	16 N.J.R. 3286(a)	R.1985 d.654	18 N.J.R. 89(a)
11:4-2	Replacement of life insurance and annuities	17 N.J.R. 887(a)		
11:4-2	Replacement of life insurance and annuities	17 N.J.R. 2344(a)		
11:4-20	Coverage of the handicapped	18 N.J.R. 44(b)		
11:4-24	Smoker and nonsmoker mortality tables	17 N.J.R. 2348(a)	R.1985 d.617	17 N.J.R. 2907(a)
11:4-26	Annuity mortality tables	17 N.J.R. 2349(a)	R.1985 d.616	17 N.J.R. 2908(a)
11:4-27	Reporting of liquor law liability loss experience	18 N.J.R. 45(a)		
11:5-1.3	Licensing of real estate brokers and salespeople	17 N.J.R. 2350(a)		
11:5-1.15	Real estate advertising	17 N.J.R. 2351(a)		
11:5-1.15, 1.25	Advertising of real estate; sale of interstate property	17 N.J.R. 666(a)		
11:5-1.20	Payment of fees prescribed by Real Estate License Act	17 N.J.R. 2353(a)		
11:5-1.28	Approved real estate schools: requirements	17 N.J.R. 376(a)		
11:5-1.29	Real estate license applicants: record checks	17 N.J.R. 2230(a)	R.1985 d.601	17 N.J.R. 2779(a)
11:16	Provider verification of services	17 N.J.R. 47(a)		
11:17-1	Surplus lines insurance guaranty fund surcharge	17 N.J.R. 1045(b)		

(TRANSMITTAL 31, dated October 21, 1985)

<b>LABOR—TITLE 12</b>				
12:15-1.3	Maximum weekly benefit rates for Unemployment Compensation and State Plan Disability	17 N.J.R. 2079(a)	R.1985 d.545	17 N.J.R. 2666(a)
12:15-1.4	Taxable wage base subject to Unemployment Compensation contributions	17 N.J.R. 2079(b)	R.1985 d.546	17 N.J.R. 2667(a)
12:15-1.5	Unemployment Compensation contribution rate for government units	17 N.J.R. 2079(c)	R.1985 d.543	17 N.J.R. 2607(b)
12:15-1.6	Base week for Unemployment Compensation and State Plan Disability claims	17 N.J.R. 2080(a)	R.1985 d.544	17 N.J.R. 2667(c)
12:15-1.7	Alternate earnings test for benefits eligibility	17 N.J.R. 2080(b)	R.1985 d.542	17 N.J.R. 2668(a)
12:16-4.8	Determining employee's 1986 taxable wage base	17 N.J.R. 2850(a)		
12:16-4.10	Temporary disability payments under private plans	17 N.J.R. 2850(b)		
12:16-5.2	Due dates of employer's combined Forms UC-27/WR-30	17 N.J.R. 2851(a)		
12:17-10	Refund for unemployment benefits	17 N.J.R. 2525(b)	R.1985 d.657	18 N.J.R. 91(a)
12:17-11	Unemployment compensation and pension offset	17 N.J.R. 2736(a)		
12:70	Field sanitation for seasonal farm workers	17 N.J.R. 1860(a)		
12:105	Board of Mediation: arbitration	17 N.J.R. 2526(a)	R.1985 d.702	18 N.J.R. 198(a)
12:235	Practice and procedure before Division of Workers' Compensation	17 N.J.R. 2081(a)		
12:235-1.5	Maximum weekly benefit rate for Workers' Compensation	17 N.J.R. 2090(a)	R.1985 d.541	17 N.J.R. 2668(b)

(TRANSMITTAL 25, dated October 21, 1985)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
<b>COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A</b>				
12A	Departmental rules; small business set-aside contracts	16 N.J.R. 1955(a)	R.1985 d.421	17 N.J.R. 2683(a)
<b>LAW AND PUBLIC SAFETY—TITLE 13</b>				
13:4	Division on Civil Rights: practice and procedure	17 N.J.R. 2682(a)	R.1985 d.697	18 N.J.R. 198(a)
13:19-10.1	Motor vehicle driver violations: point assessment	17 N.J.R. 2231(a)	R.1985 d.599	17 N.J.R. 2780(a)
13:20-25	Approval of motor vehicle safety glazing materials and other equipment	18 N.J.R. 47(a)		
13:20-32.16	Motor vehicle reinspection centers	17 N.J.R. 676(a)		
13:20-33.6	Glazing inspection standards for motor vehicles	17 N.J.R. 894(a)		
13:20-36.1, 36.2	Special National Guard Plates	17 N.J.R. 2602(a)	R.1985 d.678	18 N.J.R. 203(a)
13:21-2	Motor Vehicle Licensing Service: Statutory Language Interpretation	17 N.J.R. 2090(b)	R.1985 d.576	17 N.J.R. 2780(a)
13:21-5.11	Registration of vehicles subject to Federal Heavy Vehicle Use Tax	17 N.J.R. 2737(a)		
13:21-7	Student driver permits	18 N.J.R. 48(a)		
13:21-8.2	Photo IDs and driver license application procedure	18 N.J.R. 49(a)		
13:21-15.6	Auto dealers: acceptance of altered title documents	17 N.J.R. 169(a)	R.1985 d.699	18 N.J.R. 203(b)
13:21-20	Motor home title certificates	17 N.J.R. 2353(b)	R.1985 d.644	17 N.J.R. 2991(a)
13:27	Rules of Board of Architects	17 N.J.R. 2851(b)		
13:27-8.11	Certified landscape architects: title block contents	17 N.J.R. 1864(a)	R.1985 d.538	17 N.J.R. 2668(c)
13:29-1.4	Change of address by licensed accountants	17 N.J.R. 1639(a)	R.1985 d.695	18 N.J.R. 204(a)
13:29-1.11	Fee for CPA certificate	17 N.J.R. 2092(a)	R.1985 d.700	18 N.J.R. 204(b)
13:29-2.1	Applicants for registered municipal accountant's test	17 N.J.R. 2092(b)	R.1985 d.696	18 N.J.R. 204(c)
13:30-8.1	Board of Dentistry: fee schedule	17 N.J.R. 378(a)		
13:30-8.3, 8.14	Board of Dentistry licensee requirements	17 N.J.R. 1864(b)	R.1985 d.548	17 N.J.R. 2669(a)
13:34-1.1	Marriage counseling: annual license fees and charges	17 N.J.R. 1527(a)	R.1985 d.549	17 N.J.R. 2669(b)
13:35-1A.4	Clinical clerkships for foreign medical graduates	17 N.J.R. 2010(a)	R.1985 d.564	17 N.J.R. 2670(a)
13:35-2.4	Approval of colleges of chiropractic	17 N.J.R. 2231(b)	R.1985 d.631	17 N.J.R. 2991(b)
13:35-2.15	Physician-nurse anesthetist standards	17 N.J.R. 796(a)		
13:35-3.11	Licensure of foreign medical school graduates	18 N.J.R. 50(a)		
13:35-4.2	Termination of pregnancy	17 N.J.R. 2738(a)		
13:35-6.4	Pre-proposal: professional conduct of Medical Board licensees	17 N.J.R. 894(b)		
13:37-1.4	Nursing licensees: reporting unlawful conduct	17 N.J.R. 2232(a)	R.1985 d.607	17 N.J.R. 2908(b)
13:37-2.1, 2.3, 3.5, 4.1, 4.3-4.6, 5.1, 5.5	Licensing of nurses	17 N.J.R. 1529(a)	R.1985 d.592	17 N.J.R. 2781(a)
13:37-6.2	Delegation of nursing tasks by RPNs	17 N.J.R. 2354(a)		
13:38-3.2	Board of Optometrists: reexamination	17 N.J.R. 677(a)		
13:39-3.10	Practice of pharmacy: qualifying examinations	17 N.J.R. 2528(a)	R.1985 d.670	18 N.J.R. 92(a)
13:39A-1	Board of Physical Therapy: organization and administration	17 N.J.R. 2355(a)		
13:39A-2	Authorized practice by physical therapists	17 N.J.R. 2356(a)		
13:39A-3	Unlawful practices by physical therapists	17 N.J.R. 2358(a)		
13:39A-3.2	Pre-proposal: fee splitting and kickbacks by physical therapists	17 N.J.R. 2360(a)		
13:39A-4	Unlicensed practice of physical therapy	17 N.J.R. 2361(a)		
13:39A-5	Physical therapy applicants: required credentials	17 N.J.R. 2362(a)		
13:40-1, 2	Title block contents on drawings, site plans and land surveys	17 N.J.R. 2602(b)	R.1985 d.694	18 N.J.R. 205(a)
13:40-6.1	Professional engineers and land surveyors: application, examination, and licensing fees	17 N.J.R. 2860(a)		
13:41-4	Board of Professional Planners: readopt preparation of site plan rules	17 N.J.R. 1240(a)		
13:42-1.5	Psychological Board licensees: notification of current address	17 N.J.R. 896(a)	R.1985 d.621	17 N.J.R. 2909(a)
13:44-1.2, 1.3, 1.4, 2.4, 2.9, 2.14, 2.15, 6	Veterinarian licensure	17 N.J.R. 1739(a)	R.1985 d.622	17 N.J.R. 2909(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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-2	Motor vehicle advertising practices	17 N.J.R. 2861(a)		
13:45A-14	Unit pricing in retail establishments	17 N.J.R. 2232(b)	R.1985 d.643	17 N.J.R. 2991(c)
13:45A-24	Sale of grey market merchandise	17 N.J.R. 2866(a)		
13:47B-1.20	Weights and measures: National Bureau of Standards Handbook 44	17 N.J.R. 2233(a)	R.1985 d.636	17 N.J.R. 2993(a)
13:47B-1.24	Weights and measures: central registry for security sealing devices	17 N.J.R. 2234(b)	R.1985 d.638	17 N.J.R. 2993(b)
13:47C-3.6	Standard for treated lumber	17 N.J.R. 2234(b)	R.1985 d.645	17 N.J.R. 2993(c)
13:48	Charitable fund raising	17 N.J.R. 1244(a)	R.1985 d.698	18 N.J.R. 205(b)
13:54	Regulation of firearms businesses	18 N.J.R. 51(a)		
13:70-4.1, 4.17, 4.19, 4.20, 4.21	Thoroughbred racing: fingerprint checks and licensing	17 N.J.R. 2362(a)	R.1985 d.639	17 N.J.R. 2994(a)
13:70-4.15	Thoroughbred racing: farms and training centers	17 N.J.R. 1393(a)	R.1985 d.635	17 N.J.R. 2995(a)
13:70-6.57	Thoroughbred rules: workout program	17 N.J.R. 2529(a)	R.1985 d.663	18 N.J.R. 92(b)
13:70-14A.11	Thoroughbred racing: urine testing of track personnel	17 N.J.R. 1640(a)	R.1985 d.602	17 N.J.R. 2912(a)
13:70-14A.11	Thoroughbred racing: urine testing and confidentiality of information	17 N.J.R. 2363(a)	R.1985 d.641	17 N.J.R. 2996(a)
13:71-7.1	Harness racing: fingerprint checks and licensing	17 N.J.R. 2364(a)	R.1985 d.640	17 N.J.R. 2996(b)
13:71-7.26	Harness racing: farms and training centers	17 N.J.R. 1393(b)	R.1985 d.637	17 N.J.R. 2996(c)
13:71-18.2	Harness racing: urine testing of track personnel	17 N.J.R. 1641(a)	R.1985 d.603	17 N.J.R. 2913(a)
13:71-18.2	Harness racing: urine testing and confidentiality of information	17 N.J.R. 2364(b)	R.1985 d.642	17 N.J.R. 2997(a)
13:75-1.5	Violent crimes compensation: filing of claims	17 N.J.R. 2010(b)	R.1985 d.630	17 N.J.R. 2998(a)
13:76-1.2, 1.3, 3.2, 4.1	Arson investigators	17 N.J.R. 2011(a)	R.1985 d.679	18 N.J.R. 211(a)

(TRANSMITTAL 35, dated October 21, 1985)

**PUBLIC UTILITIES—TITLE 14**

14:1-1, 6	BPU: general provisions; petitions	17 N.J.R. 2235(a)	R.1985 d.624	17 N.J.R. 2998(b)
14:3-4.7	Adjustment of utility bills	17 N.J.R. 2236(a)		
14:5-3	Electric meters	17 N.J.R. 2237(a)	R.1985 d.625	17 N.J.R. 2998(c)
14:6-1.1	Intrastate transportation of natural gas	17 N.J.R. 2740(a)		
14:10-5	Inter LATA telecommunications carriers	17 N.J.R. 2012		
14:18-11	Pre-proposal: Renewal of CATV municipal consents and certificates of approval	17 N.J.R. 1394(a)		

(TRANSMITTAL 25, dated September 16, 1985)

**ENERGY—TITLE 14A**

14A:21	Home Energy Savings Program	17 N.J.R. 2365(a)	R.1985 d.632	17 N.J.R. 2998(d)
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(TRANSMITTAL 16, dated October 21, 1985)

**STATE—TITLE 15**

15:10	Election rules	17 N.J.R. 2381(a)		
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(TRANSMITTAL 15, dated August 19, 1985)

**PUBLIC ADVOCATE—TITLE 15A**

(TRANSMITTAL 1, dated March 20, 1978)

**TRANSPORTATION—TITLE 16**

16:22	Urban revitalization, special demonstration and emergency project rules	17 N.J.R. 2385(a)		
16:28A-1.2, 1.10, 1.15, 1.18, 1.19, 1.21, 1.23, 1.36, 1.46, 1.67	Bus stops and parking restrictions throughout State	17 N.J.R. 2742(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)	R.1985 d.536	17 N.J.R. 2670(b)
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)	R.1985 d.534	17 N.J.R. 2671(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
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)	R.1985 d.535	17 N.J.R. 2673(a)
16:28A-1.32, 1.34, 1.36, 1.40, 1.42	Additional parking restrictions in Essex, Monmouth, Cumberland, Camden and Warren counties	17 N.J.R. 2744(a)		
16:28A-1.71	Bus stops along Route 67 in Fort Lee	17 N.J.R. 2967(a)		
16:29-1.49, 1.50, 1.51	No passing zones on Routes 26, 91 and 35	17 N.J.R. 2967(b)		
16:31-1.4	No left turn on Route 35 in Old Bridge, Aberdeen and Keyport	Emergency	R.1985 d.578	17 N.J.R. 2681(a)
16:32-2.3	Temporary exemptions from Federal bridge formula	17 N.J.R. 1868(a)	R.1985 d.672	18 N.J.R. 212(a)
16:44-1.2	Classification of project bidders	17 N.J.R. 2746(a)		
16:51	Pre-proposal: Practice before Office of Regulatory Affairs	17 N.J.R. 2867(a)		
16:53-9.1	Autobuses: public liability insurance	17 N.J.R. 2149(a)	R.1985 d.574	17 N.J.R. 2783(a)
16:56-7.1	Airport safety improvement aid	17 N.J.R. 2017(a)		
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