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REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS*, PAGE 3504.

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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 **January 16, 1985.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

ADMINISTRATIVE LAW

OFFICE OF ADMINISTRATIVE LAW

The following proposals are authorized by Ronald I. Parker, Acting Director, Office of Administrative Law.

Address comments and inquiries to:
Steven L. Lefelt, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9
Quakerbridge Road
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Trenton, New Jersey 08625

(a)

Rules of Special Applicability Experimental Conference Hearings and Civil Service Cases

Proposed Readoption: N.J.A.C. 1:2-2

Authority: N.J.S.A. 52:14F-56(e), (f) and (g).
Proposal Number: PRN 1984-719.

The readoption of these rules becomes effective upon acceptance for filing by the Office of Administrative Law of a notice of their readoption.

The agency proposal follows:

Summary

The OAL is proposing to readopt in order to extend its rules governing conference hearings in certain Civil Service contested cases.

These rules were developed to test the effectiveness of conference hearings in rendering the hearing process speedier, simpler and less formal than the existing plenary hearing procedures found in N.J.A.C. 1:1-1 et seq. The conference hearing rules apply to contested cases from the Civil Service Commission dealing with layoffs, disciplinary actions other than termination from employment, and termination after probationary work period, and, upon request of the employee, to cases dealing with termination from employment.

Since the conference hearing rules were first adopted, the OAL has been monitoring their effectiveness in reducing the formality, complexity and overall length of the hearing process.

The OAL has recently established a Committee to evaluate and reform, if necessary, its uniform rules, (N.J.A.C. 1:1-1 et seq.), which will expire on June 19, 1985 pursuant to the requirements and criteria of Executive Order 66(1978). At the same time, it will be reviewing the possibility of expanding the summary proceedings rules, (N.J.A.C. 1:2-1 et seq.) which will expire on March 21, 1985, to other appropriate cases and integrating them into the Uniform Administrative Rules of Practice. In order to prevent the lapse of the summary proceedings rules prior to the completion of the Committee's review and recommendations, the OAL is proposing to readopt so as to extend the expiration date for the summary proceedings rules to coincide with the expiration date for the uniform rules.

The text of the proposed readoption does not differ from the conference hearing rules currently in effect.

Social Impact

It is anticipated that the continuation of the conference hearing procedures will reduce the length of the hearing process in certain Civil Service cases and, thus, alleviate the lingering anxiety of employees and the continuing on-the-job conflict and ill will between employees and employers which may occur during the pendency of these proceedings.

Economic Impact

It is anticipated that the continuation of the conference hearing procedures will reduce the length of the hearing process and save the parties and the OAL considerable time and

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expense, while working no inconvenience to the Department of Civil Service.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 1:2-2.

(a)

Rules of Special Applicability "Hearings on the Papers" and Motor Vehicle Cases

Proposed Readoption: N.J.A.C. 1:2-3

Authority: N.J.S.A. 52:14F-56(e), (f) and (g).
Proposal Number: PRN 1984-720.

The readoption of these rules becomes effective upon acceptance for filing by the Office of Administrative Law of a notice of their readoption.

The agency proposal follows:

Summary

The OAL is proposing to readopt in order to extend its rules governing "hearings on the papers" in certain Division of Motor Vehicles (DMV) contested cases.

These rules were developed to test the effectiveness of paper hearings in rendering the hearing process speedier, simpler and less formal than the existing plenary hearing procedures found in N.J.A.C. 1:1-1 et seq. The hearing on the papers rules apply to contested cases from the DMV involving excessive point violations, other than license revocations, and Merit Rating Plan surcharges. Since these rules were first adopted, the OAL has been monitoring their effectiveness in reducing the formality, complexity and overall length of the hearing process.

The OAL has recently established a Committee to evaluate and reform, if necessary, its uniform rules, (N.J.A.C. 1:1-1 et seq.), which will expire on June 19, 1985 pursuant to the requirements and criteria of Executive Order 66(1978). At the same time, it will be reviewing the possibility of expanding the summary proceedings rules, which will expire on March 21, 1985, to other appropriate cases and integrating them into the Uniform Administrative Rules of Practice. In order to prevent the lapse of the summary proceedings rules (N.J.A.C. 1:2-1 et seq.) prior to the completion of the Committee's review and recommendations, the OAL is proposing to readopt so as to extend the expiration date for the summary proceedings rules to coincide with the expiration date for the uniform rules.

The text of the proposed readoption does not differ from the paper hearing rules currently in effect.

Social Impact

The readoption of the rules will save time by eliminating the necessity in every case for face-to-face hearings, saving the administrative law judge not only travel time but also time involved in scheduling and conducting in-person hearings. The readoption of the rules will continue to provide an orderly procedure for processing excessive points and surcharge cases which will benefit the licensees, DMV and the OAL.

Economic Impact

The proposed readoption will afford the OAL sufficient time to complete its evaluation of the current summary proceedings process and to develop the most timely, expeditious and cost-saving management of its cases. It is anticipated that the continuation of the current paper hearing procedures will significantly reduce the time and cost involved in these hearings to the benefit of the licensee, DMV and the OAL.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 1:2-3.

COMMUNITY AFFAIRS

DIVISION OF HOUSING AND DEVELOPMENT

The following proposals are authorized by John P. Renna, Commissioner, Department of Community Affairs.

Address comments and inquiries to:
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Administrative Practice Officer
Division of Housing and Development
CN 804
Trenton, New Jersey 08625-0804

(b)

Uniform Fire Code; Fire Code Enforcement; High Level Alarms

Proposed New Rules: N.J.A.C. 5:18, 5:18A, and 5:18B

Authority: N.J.S.A. 52:27D-192 et. seq., specifically 52:27D-198 and 52:27D-219.
Proposal Number: PRN 1984-715.

A **public hearing** on the proposed new rules will be held on January 9, 1985 at 10:00 A.M. in the General Assembly Chamber of the State House, West State Street, Trenton, New Jersey.

The agency proposal follows:

Summary

N.J.A.C. 5:18—New Jersey Uniform Fire Code:

The proposed New Jersey Uniform Fire Code (hereinafter cited as the Code), is divided into four Subchapters. Subchapters 1 and 2 are entitled "General Provisions" and "Administration and Enforcement", respectively. Subchapter 3, the "Fire Prevention Code," consists of an amended version of the current edition of the Building Officials and Code Administrators, Inc., known as the BOCA Basic/National Fire Prevention Code. Subchapter 4, which has not yet been proposed, will be the "State Fire Safety Code," which will contain retroactive requirements for buildings, structures and premises classified as "life hazard uses". (N.J.A.C. 5:18-1.1).

The Code is being promulgated by the Commissioner of Community Affairs by authority of the "Uniform Fire Safety Act," (P.L. 1983, c. 383, N.J.S.A. 52:27D-192 et seq.) (hereinafter cited as the Act) (N.J.A.C. 5:18-1.2). It is intended to establish standards of maintenance, based upon nationally-recognized good practice, to safeguard life and property from

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fire and explosion. (N.J.A.C. 5:18-1.3). It applies to both new and existing buildings. It does not supersede local laws and codes which are more restrictive, but it does preempt other State regulations concerning fire safety. It does not, however, preempt N.J.A.C. 5:23, the State Uniform Construction Code. (N.J.A.C. 5:18-1.4).

Existing buildings constructed in conformity with the building codes in effect at the time of construction, which have been properly maintained and have been used for the use originally permitted, are exempt from subchapter 3 requirements concerning fire protection of structural elements (except as required under the Uniform Construction Code) and isolation of hazardous operations, except that fire safety devices may be required. Existing buildings subject to subchapter 4, however, bust be brought into conformity with all applicable subchapter 4 requirements. (N.J.A.C. 5:18-1.4).

The Code is to be enforced by local enforcing agencies, which are required by statute to be either local fire departments, fire districts or county fire marshalls. The Department of Community Affairs will serve as enforcing agency in any municipality in which no local enforcing agency has been designated by ordinance. (N.J.A.C. 5:18-2.1).

The Bureau of Fire Safety of the Department of Community Affairs (hereinafter cited as the Bureau), will publish a quarterly roster of enforcing agencies. This roster will list the enforcing agencies having jurisdiction for life hazard uses in each municipality. (N.J.A.C. 5:18-2.1).

County fire marshalls who have been authorized by the board of chosen freeholders to serve as enforcing agencies shall have jurisdiction over county facilities and concurrent jurisdiction with local enforcing agencies over municipal facilities. The Bureau shall have concurrent jurisdiction with county and local enforcing agencies over county and municipal facilities. (N.J.A.C. 5:18-2.1).

Each enforcing agency is empowered to inspect all properties, other than owner-occupied one- and two-family dwellings, as often as necessary to discover hazardous conditions and have them corrected. Multiple inspections by different agencies are to be coordinated to avoid unnecessary inconvenience to owners and occupants of properties and orders are to be coordinated for consistency. Inspectors are to report to other agencies any observed violations within those agencies' jurisdiction. Police personnel may be requested to assist in the enforcement of the Code. Inspectors are given a right of entry and authorized to obtain warrants if entry is denied. (N.J.A.C. 5:18-2.1).

The fire official of the enforcing agency is required to investigate, or have investigated, all fire or explosions resulting in loss of life, serious injury or property damage. The fire official is to take charge of all physical evidences in cases where arson is suspected, to secure the property and to cooperate in the investigation and prosecution of the case. Records are to be kept on all reported fires in life hazard uses. (N.J.A.C. 5:18-2.1).

Owners of buildings having life hazard uses are to have concurrent responsibility with owners of life hazard uses within their buildings for Code compliance. The Bureau will determine who is to be held responsible for compliance in each case, but no one may be required to abate a violation over which he has no control. (N.J.A.C. 5:18-2.2).

Property owners or lessees are allowed to apply to the enforcing agency for a variance from the requirements of any regulation. A variance may only be granted if the enforcing agency finds that strict compliance would result in practical difficulty and that the variance, if granted, would not unreasonably jeopardize the safety of building occupants, firefighters or the general public. Variances in facilities subject to regulation by State agencies may not be granted except after consultation with the agency. Financial hardship alone is not grounds for a variance. (N.J.A.C. 5:18-2.3).

Variance applications must be made in writing and must provide special information to indicate that the requirements for the variance have been met. Enforcing agencies must act on variance application within 30 days. Failure of the enforcing agency to respond in writing within 30 days is deemed a denial, from which the applicant may appeal. Copies of variance applications and decisions shall be retained by the enforcing agency as permanent records, and copies shall also be provided to the Bureau. (N.J.A.C. 5:18-2.3).

Buildings or uses which are life hazard uses must be registered with the Department of Community Affairs. All owners of properties are required to return any registration survey sent to them by the Bureau or the local enforcing agency within 30 days. If a use is found by the Bureau to be a life hazard use, the owner of the use must file an application for a certificate of registration with the Bureau. The application shall be on a form prescribed by the Department of Community Affairs. When more than one life hazard use exists at a property, each must be separately registered, except if two or more life hazard uses are part of the same storage or manufacturing operation. (N.J.A.C. 5:18-2.4).

The owner of each life hazard use is required to appoint an agent for receiving orders and notices issued by the Department of Community Affairs. If ownership of a life hazard use is transferred, the new owner must register within 30 days of the transfer. (N.J.A.C. 5:18-2.6).

Failure to file a registration application after having been given written notice by the Bureau to do so will make an owner liable for a $500.00 penalty for each violation. The Department may collect this penalty by filing a certificate of debt and a docketed judgement in the Superior Court. Such a judgement has the same effect as a judgement won in court. The owner still retains the right of appeal. The same docketed judgement procedure may be used by the Department for collecting unpaid annual fees. (N.J.A.C. 5:18-2.6).

Annual fees may be collected by local enforcing agencies rather than by the Department when the Department has so provided. (Whether collected by the Department or by the local enforcing agency, the annual fee revenue will be divided on a 20 percent—Department, 80 percent—enforcing agency basis, pursuant to N.J.A.C. 5:18A-2.6).

Life hazard uses are defined and classified as type A, B, C, or D. The classification determines the annual fee and the frequency of inspection, which may be summarized as follows:

Type	Annual Fee	Inspections
A	$ 75.00	Every 12 months
B	$ 400.00	Every 12 months
C	$ 700.00	Every 3 months
D	$1200.00	Every 3 months

(N.J.A.C. 5:18-2.5; 2.8).

The uses that are in the different categories are as follows:

Type A Life Hazard Uses

1. Service stations and other locations where flammable and/or combustible fuels are stored and dispensed to motor vehicles and all buildings or structures used for the storage (except parking garages) or service of motor vehicles.

2. Daycare centers and day nurseries.

3. Hotels or motels, two stories or more, with any interior means of egress and not defined as a type B life hazard use.

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4. Rooming and Boarding Houses, including halfway houses, group homes, community residences and residential health care facilities.

5. Eating and drinking establishments with a maximum permitted occupancy of less than 50 in which alcoholic beverages are consumed.

6. Eating establishments with a maximum permitted occupancy of 50 or more and less than 200 in which no alcoholic beverages are consumed.

7. Eating establishments with a maximum permitted occupancy of 50 or more and less than 200 in which alcoholic beverages are consumed but which are primarily eating establishments.

8. Aboveground storage of more than 660 gallons, but less than 50,000 gallons of flammable or combustible liquids. (N.J.A.C. 5:18-2.4).

Type B Life Hazard Uses:

1. Any high rise structure.

2. Prisons and other facilities where residents, occupants, or inmates are kept under restraint.

3. Institutional and similar facilities, including acute alcoholism treatment, outpatient surgery, renal dialysis facilities, abortion clinics, and birthing centers.

4. Motion Pictures theaters without a theatrical stage.

5. Eating and drinking establishments with a maximum permitted occupancy of 50 or more and less than 200 which are primarily drinking establishments.

6. Eating and drinking establishments with a maximum permitted occupancy of 200 or more which are primarily eating establishments.

7. Retail stores and other mercantile uses which exceed 12,000 square feet in gross floor area.

8. Hotels or motels which exceed three stories or 100 rooms and which have any interior exitways.

9. Stadiums, race tracks and other similar exterior places of amusement with grandstands.

10. Any windowless space with a maximum permitted occupancy of 50 or more persons, regardless of use, not complying with provisions of section 1702.15 of the BOCA Basic/National Building Code.

11. Buildings with a maximum permitted occupancy of 100 or more in which persons assemble for entertainment or amusement not otherwise classified herein, such as art galleries, exhibition halls, museums, recreation centers, lecture halls without fixed seating, and transportation terminals.

12. Industrial and Commercial uses which incorporate any of the following materials or processes:

i. Spray or dipping operations involving paint, varnish, lacquer, stain, or other flammable or combustible liquids;

ii. Equipment, processes, and operations which involve dust, which, if mixed with air becomes explosive, such as grain bleachers or elevators; flour, starch or feed mills; malt houses, wood flour manufacturing plants; or plants that pulverize aluminum, coal, cocoa, magnesium, spices, or sugar;

iii. Crop ripening or coloring processes;

iv. Lumber yards and wood working plants in which more than 100,000 board feet of lumber is to be stored;

v. Tire recapping or rebuilding plants;

vi. Organic coating manufacturing operations making more than one gallon of an organic coating in a working day;

vii. Manufacturing of articles of cellulose nitrate plastics, including the use of cellulose nitrate plastics in the manufacture or assembly of other articles;

viii. Processing, handling or use of more than 100 cubic feet of combustible vegetable or animal fibers, including, among others, readily ignitable and free burning fibers such as cotton, sisal, heneguer, ixtle, jute, hemp, tow, cocoa fiber, oakum, baled waste, baled waste paper, kapok, hay, straw, Spanish moss, excelsior, certain synthetic fabrics, and cloth in the form of scraps and clippings;

ix. The manufacture of matches;

x. The manufacture of explosives or blasting agents; or

xi. The manufacture, processing, blending or refining of flammable or combustible liquids; or

xii. Welding or cutting operations except where covered by a type 1 permit.

13. Storage uses which involve the following materials and substances:

i. More than 2500 cubic feet gross volume of combustible empty packing cases, boxes, barrels, pallets, or similar containers;

ii. More than 2500 cubic feet gross volume of rubber tires, baled cotton, rubber, cork, other similarly combustible materials;

iii. Cellulose nitrate motion picture films or cellulose nitrate (pyroxylin) plastics in quantities which exceed 25 pounds;

iv. More than 100 cubic feet of combustible vegetable or animal fibers, except that unlimited quantities of hay, straw and other agricultural products may be stored in or near farm buildings located outside closely built areas;

v. Matches exceeding 25 cases in the aggregate;

vi. Explosives or blasting agents; or

vii. Aboveground storage of more than 50,000 gallons of flammable and combustible liquids.

14. Buildings used for dry cleaning purposes.

15. Buildings with atrium spaces three or more stories in height in buildings which exceed 12,000 square feet of gross floor area. (N.J.A.C. 5:18-2.4).

Type C Life Hazard Uses:

1. Theaters incorporating a raised stage, platform or thrust stage, proscenium curtain, fixed or portable scenery loft, lights, mechanical appliances or other theatrical accessories and equipment and equipped with fixed seats.

2. Night clubs, dance halls, discotheques without a theatrical stage, and eating and drinking establishments which are primarily drinking establishments with a maximum permitted occupancy of 200 or more.

3. Places of amusement which are designed to disorient the occupant such as haunted houses, fun houses, tunnels of love and similar uses.

4. Institutional and similar facilities including hospitals and long-term care facilities which house people suffering from physical limitation due to age, health or handicaps. (N.J.A.C. 5:18-2.4).

Type D Life Hazard Use:

1. Covered mall buildings which exceed 12,000 square feet of gross floor area. (N.J.A.C. 5:18-2.4).

In addition to the registration of life hazard uses, certain activities and uses are required to be done only with permits. The permits are classified into five types, the application fees for which are as follows:

Type 1—$ 25.00
Type 2—$ 100.00
Type 3—$ 200.00
Type 4—$ 300.00
Type 5—$1000.00 (N.J.A.C. 5:18-2.8).

Activities and uses in each permit class are as follows:

Type 1 permit:

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i. Bonfires;

ii. The use of a torch or flame-producing device to remove paint from any building or structure;

iii. Tents exceeding 1200 square feet or 30 feet in any dimension (excluding canopies), whether single or made-up of multiple smaller units when used for purposes which would constitute a life hazard use were the use to be found in a building;

iv. Individual portable kiosks or displays when erected in a covered mall for a period of less than 90 days, and when not covered by a Type 2 permit;

v. The use of any open flame or flame producing device, in connection with any public gathering, for purposes of public entertainment, amusement or recreation in places of public assembly.

vi. Welding or cutting operations except where the welding or cutting is performed in areas registered as a type B life hazard use;

vii. The possession or use of explosives or blasting agents;

viii. Helistops: or

ix. The occasional use in any building of a multipurpose room, with a maximum permitted occupancy of 100 or more for amusement, entertainment or merchantile type purposes. (N.J.A.C. 5:18-2.7).

2. Type 2 permit:

i. Bowling lane resurfacing and bowling pin refinishing involving the use and application of flammable liquids or materials;

ii. Fumigation or thermal insecticide fogging;

iii. Membrane covered cable and air supported structures covering an area in excess of 120 square feet erected for a period of less than 90 days;

iv. Carnivals and circuses employing mobile structures used for human occupancy;

v. The use of a covered mall in any of the following manners:

(1) Placing or constructing temporary kiosks, display booths, concession equipment or the like in more than 25 percent of the common area of the mall;

(2) Temporarily using the mall as a place of assembly;

(3) Using open flame or flame devices;

(4) Displaying liquid or gas fueled powered equipment; or

(5) Using liquified petroleum gas, liquified natural gas, and compressed flammable gas in containers exceeding five pounds capacity. (N.J.A.C. 5:18-2.7).

3. Type 3 permit:

i. Industrial processing ovens or furnaces operating at approximately atmospheric pressures and temperatures not exceeding 1400 degrees Farenheit which are heated with oil or gas fuel or which contain flammable vapors from the product being processed; or

ii. Any wrecking yard or junk yard;

iii. The storage or discharging of fireworks. (N.J.A.C. 5:18-2.7).

4. Type 4 permit:

i. Storage or use at normal temperature and pressure of more than 2000 cubic feet of flammable compressed gas or 6000 cubic feet of nonflammable compressed gas;

ii. The production or sale of cryogenic liquids; the storage or use of more than 10 gallons of liquid oxygen, flammable cryogenic liquids or cryogenic oxidizers; or the storage of more than 500 gallons of nonflammable, non-toxic cryogenic liquids;

iii. The storage, handling, and processing of flammable, combustible and unstable liquids in containers and portable tanks as required by subchapter 3 of this Code;

iv. To store or handle (except medicines, beverages, foodstuffs, cosmetics, and other common consumer items, when packaged according to commonly accepted practices):

(1) More than 55 gallons of corrosive liquids;

(2) More than 500 pounds of oxidizing materials;

(3) More than 10 pounds of organic peroxides;

(4) More than 500 pounds of nitromethane;

(5) More than 1000 pounds of ammonium nitrate;

(6) More than one microcurie of radium not contained in a sealed source;

(7) More than one millicurie of radium or other radiation material in a sealed source or sources;

(8) Any amount of radioactive material for which a specific license from the Nuclear Regulatory Commission is required; or

(9) More than 10 pounds of flammable solids.

v. Any installation of liquified petroleum gas or liquified natural gas utilizing storage containers of over 2000 gallons individual water capacity or with an aggregate water capacity exceeding 4000 gallons;

vi. The melting, casting, heat treating, machining or grinding of more than 10 pounds of magnesium per working day; or

vii. Heliports. (N.J.A.C. 5:18-2.7).

5. Type 5 permit:

i. Airports. (N.J.A.C. 5:18-2.7).

Type 4 permits are not required if the storage or activity is carried on in a registered life hazard use. Applications for permits are made to the fire official of the enforcing agency, who is required to do such tests or inspections as may be necessary to make sure that the activity or use for which the permit is requested will comply with the Code.

Permits are to be valid for one year or until revoked, unless otherwise specified in the regulations. Permits are not transferable and any change in use, operation or tenancy will require a new permit. Permits may be revoked by the fire official if the Code has been violated, or conditions of the permit have been violated, or if the permit was obtained based upon false statements or material misrepresentations. (N.J.A.C. 5:18-2.7).

Permits become invalid if the work or activity does not start within six months or is suspended or abandoned for six months. Permits may not be issued unless the permit fee has been paid. Permits issued under local fire prevention codes in effect prior to this Code may remain valid for up to one year if the permit requirements were substantially the same as those established under this Code. (N.J.A.C. 5:18-2.7).

The fire official or his representative has the power and the obligation to order dangerous materials or conditions removed or corrected. Examples of such conditions and materials are given in the Code. (N.J.A.C. 5:18-2.9).

Property owners are at all times responsible for preventing and correcting violations of the Code in their properties. Fire protection equipment, alarms and means of egress must be properly maintained, except in vacant buildings with the approval of the fire official. Occupants can be held liable for violations that they create. (N.J.A.C. 5:18-2.9).

Fire officials, when they find violations, are required to give written notice stating the nature of the violation, giving the appropriate citation, and specifying a time within which the violation must be corrected. A reasonable time for correction of the violation must be allowed, except in the case of an imminent hazard to health and safety, which must be corrected immediately. (N.J.A.C 5:18-2.9).

When an owner acts in good faith to correct a violation but needs additional time, he may make a written request to the

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fire official for an extension. The request must indicate what has been done, what remains to be done, why an extension is necessary and when the work will be completed. An application for an extension is deemed to be an admission that the violation notice is correct and that the violations do or did exist. (N.J.A.C. 5:18-2.9).

If an order to correct a violation is not complied with within the time allowed, the fire official is required to start enforcement proceedings, which may include obtaining court orders to abate violations or otherwise stop unlawful acts, ordering buildings closed or removed and levying civil penalties. Notices and orders are required to be served in the manner set forth in the Act. (N.J.A.C. 5:18-2.9; 2.10).

Appeals from orders to local enforcing agencies may be taken to the Construction Board of Appeals, established under the State Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq., having jurisdiction in the municipality. Appeals from orders of the Department of Community Affairs may be taken to a hearing before the Office of Administrative Law, with the final decision being issued by the Commissioner of Community Affairs. (N.J.A.C. 5:18-2.11).

Hearing requests must be made within 15 days of receipt of the notice or order complained of. In imminent hazard cases, the hearing must be held and the decision issued within 48 hours. If a Construction Board of Appeals fails to provide for a hearing within 48 hours, the owner may apply to the Department of Community Affairs for a hearing. (N.J.A.C. 5:18-2.11).

In accordance with the Act, penalties may be assessed in an amount not greater than $5,000 per violation. If a violation remains unabated after notice is given to abate, the $5,000 penalty can be levied on a daily basis. Unpaid penalties may be sued for in the Superior, county district or municipal court. All penalties received by a municipality are required to be appropriated for the enforcement of the Act. A person who fails to pay a money judgment may be subject to civil imprisonment for not more than six months. (N.J.A.C. 5:18-2.12).

Maximum penalties are established for specific violations as follows:

1. Failure to respond to a registration application survey when one is served—$500.00 maximum each occurrence.

2. Failure to pay the required annual registration fee on time—an amount equal to the amount of unpaid fee.

3. Failure to obtain a required permit prior to commencing an operation, process or activity for which a permit is required.

i. Type 1 permit—a maximum of $100.00 for each occurrence.

ii. Type 2 permit—a maximum of $500.00 for each occurrence.

iii. Type 3, 4, 5 permit—a maximum of $1,000 once.

4. Failure to obtain a required permit after being ordered to do so while continuing the operation, process or activity for which the permit is required—a maximum of $5,000 per day during which the operation, process, or activity continues without application having been made.

5. Failure to install required protection equipment after having been given written notice of the requirement to do so—a maximum of $1,000 per violation per day.

6. Failure to abate any violation after having been given notice of the violation—a maximum of $500.00 per violation per day.

7. Storage of any material in violation of this Code or the conduct of any process in violation of this Code—a maximum of $500.00 per violation per day that this violation continues.

8. Blocking, locking, or obstructing required exits:

i. In a place of public assembly—a maximum of $5,000 per occurrence;

ii. In any other place—a maximum of $1,000 per occurrence.

9. Disabling or vandalizing any fire suppression or alarm system:

i. In a place of public assembly—a maximum of $5,000 per occurrence;

ii. In any other place—a maximum of $1,000 per occurrence.

10. Failure to obey a notice of imminient hazard and order to vacate—$5,000 per day the failure continues.

11. Failure to obey an order to close for fixed period of time issued pursuant to this subsection—$5,000 per day that the failure continues.

12. Obstructing the entry of an authorized inspector into the premises—$500 per occurrence.

13. Any willfully false application for a permit or registration—a maximum of $1,000 per occurrence.

14. Any other act or ommission prohibited by the Act or the Regulations but not enumerated in the subsection—a maximum of $5,000 per violation per day.

The enforcing agency is given the right to compromise and settle penalty claims. Penalties shall not be compromised unless the violations are abated. (N.J.A.C. 5:18-2.12).

The regulations restate provisions of the Act which allow enforcing agencies to order hazardous structures vacated, closed or removed and provide for prompt reinspection after an imminent hazard violation is declared by the owner to have been corrected, for reconsideration hearings in imminent hazard cases and for punitive closing of life hazard uses in which violations are found which constitute a clear danger to human life and are willful or grossly negligent in nature or in violation of a prior order. (N.J.A.C. 5:18-2.13; 2.14). Properties subject to punitive closing may be kept closed for up to 60 days and until a certificate of continued occupancy is obtained from the construction official. (N.J.A.C. 5:18-2.15).

The fire official is further given the power to order the evacuation of unsafe premises and all occupants are required to comply with any such evacuation order. (N.J.A.C. 5:18-2.16).

Provision is made for additional penalties for unabated violations when the violations directly or indirectly result in a fire. The additional penalty is to be in the amount of the cost to the local fire service of suppressing the fire. (N.J.A.C. 5:18-2.17).

Provision is also made for a certificate of Fire Code status, to be issued upon request of the owner or buyer of a property by the enforcing agency. A person who buys a property without a certificate stating that there are no violations of record or unpaid fees or penalties shall be deemed to have notice of any outstanding violations, fees or penalties and shall be responsible for abatement and/or payment. (N.J.A.C. 5:18-2.18).

Subchapter 3, the Fire Prevention Code, consists of the "BOCA Basic/National Fire Prevention Code/1984," with all subsequent revisions and amendments, as modified by the Department. (N.J.A.C. 5:18-3.1). Significant modifications include the elimination of references to permits and of article One, entitled "Administration and Enforcement," use of the terms "construction official" and "State Uniform Construction Code," testing requirements for portable kerosene heaters (UL 647), prohibition of portable kerosene heaters in all buildings other than one- and two-family homes, requirements for kerosene containers, securing of vacant structures,

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testing of fire alarm, smoke control pressurization and smoke removal systems, and testing of emergency recall in elevators. There is required to be one fire extinguisher per 2,500 square feet in institutional buildings. (N.J.A.C. 5:18-3.2).

Generally, subchapter 3 does not impose retroactive requirements. Where compliance with a building code is required in an existing building, it is to the building code in effect when the building was constructed. Subchapter 4, which is referred to in this proposal but which will be proposed as a future amendment, will require retrofitting of certain buildings to remove hazardous conditions.

N.J.A.C. 5:18A—Regulations for Fire Code Enforcement

The Regulations for Fire Code Enforcement are divided into four Subchapters. Subchapter 1 contains general provisions, subchapter 2 concerns the establishment, organization and disbanding of local enforcing agencies, subchapter 3 concerns the administration and enforcement of N.J.A.C. 5:18—the New Jersey Uniform Fire Code—and subchapter 4 concerns the certification of fire officials and inspectors. (N.J.A.C. 5:18A-1.1).

N.J.A.C. 5:18A is intended to supplement N.J.A.C. 5:18 by establishing detailed requirements for the establishment and administration of enforcing agencies. (N.J.A.C. 5:18A-1.3).

The respective jurisdictions of local and county enforcing agencies are delineated. Local enforcing agencies, where created, are given jurisdiction over all privately-owned buildings within the geographical limits and concurrent jurisdiction with any county enforcing agency (that is, county fire marshall) in municipal-and county-owned buildings. The local enforcing agency also has concurrent jurisdiction with the Bureau of Fire Safety in buildings leased by State agencies. (N.J.A.C. 5:18A-2.2).

County enforcing agencies, where created, have jurisdiction over buildings owned by the county or by a county or regional authority and concurrent jurisdiction over municipally-owned buildings with local enforcing agencies. A county enforcing agency only has jurisdiction in privately-owned buildings where it has been designated as the local enforcing agency of a municipality. (N.J.A.C. 5:18A-2.2).

The Bureau has concurrent jurisdiction with local and county enforcing agencies and has responsibility for enforcing the Fire Code wherever there is no local enforcing agency and in all buildings owned or leased by any State agency. (N.J.A.C. 5:18A-2.2).

Enforcing agencies are empowered to adopt internal rules not inconsistent with the Fire Code Regulations or their intent. (N.J.A.C. 5:18A-2.2).

Local enforcing agencies can only be created by ordinance of the municipal governing body. Governing bodies shall be required to designate as a local enforcing agency any fire department or fire district serving all or part of the municipality that requests such designation and shall not designate any other enforcing agency unless requested to do so by the chief of the fire department or board of commissioners of the fire district, as the case may be. Where two or more departments or districts exist within a municipality, different provision may be made for the area served by each. (N.J.A.C. 5:18A-2.3).

Where no local enforcing agency is established, the Bureau of Fire Safety will serve as enforcing agency. (N.J.A.C. 5:18A-2.3).

An ordinance creating a local enforcing agency is required to include a designation of the enforcing agency, provisions acceptable to the fire department or fire district for the appointment of a fire official and any fire inspectors, a means for coordinating multiple fire departments or districts within the territory of a single enforcing agency so that one person or board can recommend appointments on behalf of the entire local fire service, a designation of the enforcing agency responsible for periodic inspections of life hazard uses, any locally mandated inspection or permit requirements in addition to those established by N.J.A.C. 5:18, together with corresponding fees, and a provision indicating whether or not the local enforcing agency is authorized to collect annual registration fees. The ordinance may also include local amendments to N.J.A.C. 5:18-3 (the State Fire Prevention Code) or N.J.A.C. 5:18-4 (the State Fire Safety Code), but may not include any amendments to N.J.A.C. 5:18-1 or 5:18-2. Prior ordinances which might conflict with the Code can be repealed if the ordinance so provides.

When two or more enforcing agencies are created within a municipality, the ordinance may establish different local permit and inspection requirements for the areas served by the respective enforcing agencies. (N.J.A.C. 5:18A-2.3).

In counties having a county fire marshall, the county fire marshall may be designated as the county enforcing agency by resolution or ordinance of the board of chosen freeholders. The resolution or ordinance shall specify whether the county enforcing agency is to be available to enforce the Code generally for municipalities that request it to do so, or to enforce the Code upon municipal request only for life hazard uses, or to limit its activities to county facilities. If the county enforcing agency is to inspect life hazard uses, the resolution or ordinance must specify whether the county enforcing agency will collect fees paid by owners of life hazard uses or whether the fees are to be collected by the Bureau and the county's share remitted by the Bureau. The county may also establish additional permit or inspection requirements for areas within its jurisdiction. (N.J.A.C. 5:18A-2.4).

The Bureau is designated as the State enforcing agency. The Bureau shall be responsible for all inspections in municipalities or parts of municipalities not served by a local or county enforcing agency and for all life hazard use inspections where neither the local nor the county enforcing agency has elected to conduct such inspections. (N.J.A.C. 5:18A-2.5).

Annual registration fees for life hazard uses may be collected by either the local enforcing agency or the Bureau. If the local enforcing agency does the collection, it shall retain 80 percent of the funds and remit 20 percent to the Bureau. If the Bureau is the collecting agency, it retains 20 percent and remits 80 percent to the local enforcing agency. In either case, the money collected and subsequently remitted is deemed to be held in trust and funds are to be remitted by the end of the calendar quarter following the quarter in which they were collected.

Permit fees are to be collected and retained by the enforcing agency having jurisdiction. Revenue received by a local enforcing agency must be appropriated by the governing body to the local enforcing agency for enforcement of the Code. (N.J.A.C. 5:18A-2.6).

Neither the Bureau nor the local enforcement agency is required to make payment to the other for fees due but not received. (N.J.A.C. 5:18A-2.6).

A municipality or county that establishes an enforcing agency must file a copy of the ordinance or resolution with the Bureau within two weeks of final adoption. The Bureau will enforce the Code in all jurisdictions for which no ordinance or resolution has been filed. The Bureau will compile and maintain a Register of Enforcing Agencies which will identify the enforcing agency currently having general and life

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hazard use jurisdiction in each municipality or portion thereof. Changes in enforcing agency status will become effective upon publication in the Register of Enforcing Agencies. (N.J.A.C. 5:18A-2.7).

Technical amendments to the Code may be locally adopted, provided that they do not require a building conforming to the State Uniform Construction Code to meet more restrictive standards. Local amendments are required to be filed with the Bureau, but their validity does not depend upon filing. Upon the request of any person, the Commissioner may make a determination as to whether a local amendment is more restrictive than the State Uniform Construction Code. (N.J.A.C. 5:18A-2.8).

No person employed by an enforcing agency may inspect any property in which he or his family have an economic interest. The State or county enforcing agency will inspect any property in which a local official or inspector has an economic interest. Enforcement personnel must file annual disclosure forms listing all income from properties subject to the Code with the governing body. A municipality or county may establish more restrictive conflict-of-interest requirements. (N.J.A.C. 5:18A-2.9).

The Bureau shall regularly monitor local enforcing agencies to determine if the Code is being properly enforced. When visiting a local enforcing agency, Bureau representatives will check whether the fire official and inspectors are certified, when fees are being properly collected and accounted for, whether required inspections are being done, whether records are properly maintained, whether required enforcement procedures are observed, whether there is an effective program to find life hazard uses and activities requiring permits and whether the local agency is adequately staffed and is in conformity with all requirements of the regulations. The Bureau may order any corrective action it may deem appropriate and may, if necessary, take over life hazard use enforcement responsibility. This responsibility may be returned to the local enforcing agency when the Commissioner determines that the Code will be properly enforced. (N.J.A.C. 5:18A-2.10).

Each local enforcing agency shall be administered by a fire official who shall be responsible for the enforcement of the Code and the regulations. He shall be assisted by as many inspectors as may be necessary. If the local enforcing agency inspects life hazard uses, the fire official and inspectors must be certified by the Bureau. The local enforcing agency is to obtain necessary legal counsel from the municipality. (N.J.A.C. 5:18A-3.2).

The local enforcing agency shall maintain a central file system to include all properties requiring periodic inspections or permits. Records shall be public, except for those records, such as those dealing with trade secrets involving hazardous materials, which are required by law to be kept confidential. (N.J.A.C. 5:18A-3.4).

The fire official is required to coordinate enforcement of the Uniform Fire Code and the State Uniform Construction Code and to give all necessary notices to the construction and fire protection subcode officials. The fire official shall help the fire protection subcode official in determining whether proposed work will correct a cited violation and shall not abate violations until all approvals necessary under the State Uniform Construction Code have been obtained. (N.J.A.C. 5:18A-3.5).

In cases of fire code violations in State-licensed facilities, the fire official is required to give notice of the violations to the State agency which licenses the facility. State agencies are to send lists of facilities licensed in each jurisdiction to the respective fire officials, are to notify fire officials of pending inspections so that they may participate and shall notify fire officials of any fire violations found. The fire official and the State agency shall each obtain the other's consent prior to the granting of any variance from the fire code. (N.J.A.C. 5:18A-3.5).

Subchapter 4 of chapter 18A concerns the certification of fire officials and inspectors by the Bureau, which is empowered to issue certifications and to suspend or revoke them for cause. (N.J.A.C. 5:18A-4.1). Any suspension or revocation, or any other notice or order of the Bureau, may be appealed to the Commissioner through an administrative hearing before the Office of Administrative Law. Hearing requests must be made within 15 days of receipt of the notice complained of and must include a statement of issues to be raised at the hearing. (N.J.A.C. 5:18A-4.2).

No person shall serve as a fire official or fire inspector enforcing the Uniform Fire Safety Act after July 1, 1985 if he is not certified by the Bureau. In the event of a vacancy, a local enforcing agency has 30 days in which to hire a certified person. No life hazard use inspections may be made if no certified inspector is employed. From the 61st day after the vacancy and thereafter, the Bureau shall assume responsibility for enforcing the Act in the jurisdiction. Any person who enforces the Act in life hazard uses while uncertified or who appoints an uncertified person as fire official for life hazard uses or who fails to notify the Bureau of a vacancy may be subject to a civil penalty of $500.000. (N.J.A.C. 5:18A-4.3).

In order to become certified, an applicant must show that he has:

1. Served as a fire inspector for at least the period from May 10, 1983 to May 10, 1984; or
2. Received a certificate of completion for a course in Fire Prevention and Control given by Building Officials and Code Administrations, International (BOCA) after January 1, 1978 (a certificate for the correspondence course being valid only if issued prior to May 10, 1984); or
3. Successfully completed an educational program approved by the Bureau; or
4. Holds a valid license as an ICS or HHS fire protection subcode official's license.

The Bureau may refuse to issue a certification if adequate proof of qualification is not presented or if the applicant has done anything that would be grounds for revocation. (N.J.A.C. 5:18A-4.4). Certifications are valid for two years and may be renewed upon submission of proof that the applicant continues to be qualified. Fees must be paid before certifications or renewed certifications will be issued. (N.J.A.C. 5:18A-4.5).

If a person's certification is revoked, he may apply for reinstatement once all loss caused by an improper act or omission of the applicant has been corrected, the applicant has been legally rehabilitated and all conditions imposed in the revocation decision have been satisfied. However, no new certification may be issued to a person convicted of any crime related to fire code enforcement. (N.J.A.C. 5:18A-4.5).

Certifications may be revoked or suspended or civil penalties of up to $500.00 imposed for violation of the regulations, fraud in the obtaining of certification, aiding unauthorized fire code inspection, fraud, deceit, gross negligence or misconduct in office, incompetence, failure to report a bribe offer, false or misleading statements to the Department or failure to comply with orders of the Department. The Department may also issue letters of reprimand, warning or censure when appropriate. Conviction of a crime, or of any offense in connection with code enforcement, will result in revocation. Sanctions may be imposed on the basis of sanctions imposed

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by the Bureau of Construction Code Enforcement. All sanctions imposed by the Department may be appealed to an administrative hearing. (N.J.A.C. 5:18A-4.6).

The initial application fee and the renewal fee are each set at $20.00. (N.J.A.C. 5:18A-4.7).

Educational programs conducted by licensed institutions of higher education, fire schools or public or nonprofit fire academies may be accepted for certification preparation. The school sponsoring the program must meet Department requirements as to organization and record maintenance, statement of objectives, grading procedures, student guidance, faculty competence, use of qualified part-time facility and self-evaluation. The course must include coverage of specified topics in both Fire Code administration and technical matters, including various types of uses classified as life hazard uses, various processes and activities subject to permit requirements and life safety systems of buildings and uses. Courses must include at least eight hours of instruction in these topics. (N.J.A.C. 5:18A-4.8). Applications for approval of courses must be submitted at least 60 days prior to the beginning of classes and must include the required information necessary to show that the course qualifies as a prerequisite to certification. (N.J.A.C. 5:18A-4.9).

When a course is approved, a letter of approval will be issued to the school and the course will be placed on a list of approved courses which will be publicly available. Approval may be revoked if a course no longer meets Department requirements. Retroactive approval may be granted to any otherwise qualified course given after January 1, 1978. (N.J.A.C. 5:18A-4.9).

N.J.A.C. 5:18B—High Level Alarms

This chapter establishes standards for high level alarms in flammable liquid storage tanks filled by pipeline. It is authorized by the High Level Alarm Act, (P.L. 1984, c.31). It covers installation of high level alarms, their maintenance and testing, standards of acceptability of high level alarms, fire and emergency plans for storage terminals, and procedures for overflow prevention, testing, enforcement and record keeping. (N.J.A.C. 5:18B-1.1; 2.1).

Exceptions to the requirements of the regulations may only be granted if no harm to workers, firefighters or the public will result, if there is practical difficulty for the owner and if alternative protection is provided. Applications for variations must be filed in writing with the Department and must contain all required information. The application must be acted upon in writing within 20 business days. Failure of the Department to act will constitute a denial. (N.J.A.C. 5:18B-2.2; 2.3; 2.4).

The Department may order terminals vacated or closed, or forbid further shipment of flammable liquids, if any violation of the regulations is found that constitutes an imminent hazard to workers, firefighters or the public. Any such order must be in writing and must state the time by which any necessary action must be taken. A reinspection must be conducted within 48 hours of receipt by the Department of written notice that the violation has been corrected. If the Department finds that the violation has indeed been corrected, it shall rescind its order and occupancy or use may be resumed immediately. (N.J.A.C. 5:18B-2.5).

An owner who wishes to appeal an imminent hazard order of the Department may request an administrative hearing. The hearing shall be held, and a decision issued, within 48 hours of receipt by the Department of the hearing request. (N.J.A.C. 5:18B-2.5).

A penalty of not more than $5,000 may be levied by the Department for each day that a violation remains unabated after the date fixed for abatement, except while an appeal is pending. Additional penalties may be levied in the amount of the cost to the local fire service of putting out any fire resulting in any way from an unabated violation. The penalty provisions of the Uniform Fire Safety Act, including civil imprisonment for nonpayment, which are, by law, applicable to violation of the High Level Alarm Act, (P.L. 1984, c.31), are restated in these regulations. (N.J.A.C. 5:18B-2.6).

Upon request of the owner or purchaser of a terminal, the Department will issue a certificate indicating any outstanding violations or penalties. A person who purchases a terminal without having obtained a certificate indicating the absence of penalties and violations will be deemed to have knowledge of all violations of record and will be liable for all unpaid penalties of record. (N.J.A.C. 5:18B-2.6).

Within three months of the effective date of these regulations, every existing terminal required to have a high level alarm system must submit plans and specifications to the Department together with an application containing certain required information. (N.J.A.C. 5:18B-2.6).

Any action taken by the Department on an owner's application, or any penalty assessment, may be appealed to an administrative hearing. Application for a hearing must be made within 20 business days of receipt of written notice of the Department's action. (N.J.A.C. 5:18B-2.8).

Applications for high level alarm installations shall include the owner's name and address and the name and address of the in-state agent of a non-resident or corporation, the address of the facility where the alarm is to be installed, a description of how the installation will meet the requirements of the regulations, and formal, written procedures for preventing overflows. A certification that a copy of the emergency plan has been filed with the local fire official must also be provided. An application for a construction permit must be filed with the Department. (N.J.A.C. 5:18B-2.9).

Subchapter 3 of Chapter 18B concerns technical requirements. (N.J.A.C. 5:18B-3.1).

Each terminal at which a tank filled by pipeline with flammable liquids is located must be equipped with a high level alarm system that will activiate a predetermined level in each tank so that there will be adequate time to shut off the flow and prevent overfills. The alarm system must be maintained as recommended by the manufacturer and shall be tested every three months. Records of tests shall be maintained. Prior to installation of a new system, the assembled components must have been tested by a recognized testing laboratory and approved for their intended use. (N.J.A.C. 5:18B-3.2).

Alarm systems must provide audible signals both for the reaching of the maximum allowable level and for trouble in the alarm system. If a terminal is not attended full-time by sufficient qualified personnel, the alarm system must automatically shut off the flow when the maximum allowable level in a tank is reached or when there is a power failure in the alarm system. (N.J.A.C. 5:18B-3.2)

Written procedures shall be established to prevent overfilling of tanks. They shall include the use of the alarm system and the responsibilities of the various employees in making sure the system is properly maintained and used. (N.J.A.C. 5:18B-3.3). A fire and emergency plan must include a list of products stored or processed at the terminal and their location, in-plant firefighting systems and equipment and methods of contacting necessary personnel in event of an emergency. A copy of this plan shall be filed with the local fire service. (N.J.A.C. 5:18B-3.4).

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Existing systems will be accepted if they meet the requirements for operation, maintenance, testing, overfill prevention and the fire and emergency plan. Owners must notify the Department of the existence of any system. (N.J.A.C. 5:18B-3.5).

Social Impact

These regulations, once adopted, will implement the Uniform Fire Safety Act and the High Level Alarm Act which supplements it, except for retrofit requirements that will be adopted later as N.J.A.C. 5:18-4.1 et seq. As a result of these regulations, the State will, for the first time, have uniform minimum fire safety standards and a system for making sure that it is everywhere enforced by qualified people. The regulations will ensure that the State is protected by a uniform, minimum fire safety code which will protect life and property within the State from the danger and destruction of fire and explosion. The regulations will upgrade fire safety standards in order to protect occupants of buildings, fire-fighters and the general public. If the regulations are properly enforced, the end result will be more detection and correction of fire hazards, with consequent savings of lives and property throughout the State.

Economic Impact

While the greatest economic impact will be felt when the retrofit requirements of N.J.A.C. 5:18-4.1 et seq. become operative, the rules now being proposed will impose annual registration for life hazard uses, permit fees for those uses and activities that require permits and penalties considerably more substantial than those now available for violation of municipal fire safety ordinances. The registration and permit fees are intended to cover the cost of inspection. The penalties are intended to be severe enough to act as a deterrent to continuing violation and, in certain cases, to reimburse the fire service for the cost of extinguishing fires attributable to the violations.

The Fire Safety Commission, which reviewed the proposed rules and worked with the Department in their preparation, and the Department itself are well aware of the economic impact of a major program such as this which is intended to make existing buildings and properties in New Jersey safer than they have been before. The requirements imposed by these rules are such that it should be economically feasible for all but the most unsafe buildings to comply. Those buildings that are hazardous and cannot be brought into compliance will indeed have to be closed, to the presumed economic detriment of the owners.

Full text of the proposed new rules follows.

CHAPTER 18
UNIFORM FIRE CODE

SUBCHAPTER 1. GENERAL PROVISIONS

5:18-1.1 Title: divisions into subchapters

(a) The regulations contained in this chapter shall be known as the "New Jersey Uniform Fire Code" and are referred to herein as the Code.

(b) The Code is divided into four parts:

1. Subchapter 1 is entitled "General Provisions" and may be cited throughout the Code as N.J.A.C. 5:18-1, and when referred to in Subchapter 1 of this chapter, may be referred to as this subchapter.

2. Subchapter 2 is entitled "Administration and Enforcement" and may be cited throughout the Code as N.J.A.C. 5:18-2, and when referred to in subchapter 2 of this chapter, may be referred to as this subchapter.

3. Subchapter 3 is entitled "Fire Prevention Code", and may be cited throughout the Code as N.J.A.C. 5:18-3, and when referred to in subchapter 3 of this chapter, may be referred to as this subchapter. Subchapter 3 consists of the latest edition of the Basic/National Fire Prevention Code, as prepared and recommended by the Building Officials and Code Administrators International (BOCA), which is adopted and incorporated herein by reference including any future amendments.

4. Subchapter 4 is entitled "State Fire Safety Code" and may be cited throughout the Code as N.J.A.C. 5:18-4 and when referred to in subchapter of this chapter, may be referred to as this subchapter.

5:18-1.2 Authority

This Code is promulgated by the Commissioner of the Department of Community Affairs pursuant to authority of the "Uniform Fire Safety Act" (P.L. 1983, c.383, N.J.S.A. 52:27D-192 et seq).

5:18-1.3 Intent and purpose

(a) It is the intent of this Code to prescribe regulations consistent with nationally recognized good practice for the safeguarding to a reasonable degree of life and property from the hazards of fire and explosion arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the use or occupancy of buildings or premises.

(b) Where no specific standards or requirements are specified in this Code, or contained within other applicable laws (or adopted codes) or ordinances, compliance with the standards of the National Fire Protection Association or other nationally recognized fire-safety standards as are approved by the fire official shall be deemed as prima facie evidence of compliance with the stated intent of this Code.

(c) Whenever in the Fire Protection Code adopted in subchapter 3 of this chapter, reference is made to the Appendix, the provisions in the Appendix shall not apply unless specifically adopted herein.

5:18-1.4 Applicability

(a) The provisions of this Code shall apply equally to new and existing buildings, uses and conditions, as hereinafter provided.

(b) The provisions contained in this Code shall not be construed as applying to the transportation of any article or substance shipped under the jurisdiction of and in compliance with the regulations perscribed by the military forces of the United States or the transportation of flammable or combustible liquids or hazardous materials or chemicals subject to the regulation and control of the United States Department of Transportation.

1. The fire official shall have jurisdiction to order the correction of any dangerous condition created by any transportation conveyance.

2. Nothing in this section shall be deemed to limit the right of any local government to adopt ordinances governing the routing of vehicles transporting flammable or combustible liquids or hazardous materials or chemicals.

(c) Nothing in this Code shall be construed, interpreted or applied to abrogate, nullify or abolish any law, ordinance or code adopted by any local government regulating the repair, removal, demolition, use, location, occupancy or maintenance of buildings specifically provided herein. When any provision of this Code is found to be in conflict with any

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zoning, safety, health or other applicable law, ordinance or code of the jurisdiction existing on the effective date of this Code or hereafter adopted, the provision which establishes the higher standard for the promotion and protection of the safety and welfare of the public shall prevail.

(d) No other regulation pertaining to fire safety adopted by any State agency pursuant to State or Federal law shall have any force or effect, except that a regulation pertaining also to matters other than fire safety shall continue to be effective to the extent that it does not conflict with any provision of this Code. This Code shall be the sole State minimum requirement pertaining to fire prevention and fire safety.

(e) The planning, design and construction of new buildings and structures to provide the necessary egress facilities, fire protection and built-in fire protection equipment shall be controlled by the New Jersey Uniform Construction Code, N.J.A.C. 5:23-1 et seq.; and any alterations, additions or changes in buildings required by the provisions of this Code which are within the scope of the Uniform Construction Code shall be made in accordance therewith, unless specifically provided otherwise by this Code.

(f) Existing buildings shall be treated as follows:

1. Buildings built under and in full compliance with the codes in force at the time of construction or alteration thereof, and that have been properly maintained and used for such use as originally permitted, shall be exempt from the requirements of subchapter 3 of this Code pertaining to any of the following matters:

i. Fire protection of structural elements except as provided for existing buildings under the Uniform Construction Code;

ii. Isolation of hazardous operations: provided, however, that the fire official may require the installation of fire safety devices or systems (fire extinguishers, fire alarms, fire detection devices, sprinklers or similar systems) where, in the judgment of the fire official, they are necessary to provide safety to life and property.

iii. In lieu of requiring the installation of safety devices or systems or when necessary to secure safety in addition thereto, the fire official may prescribe limitations on the handling and storage of materials or substances or upon operations that are liable to cause fire, contribute to the spread of fire, or endanger life or property.

2. The requirements established for existing buildings by subchapter 4 of this Code shall apply to all buildings subject to them regardless of when the building was constructed or whether they met construction codes applicable to them at the time they were erected and first occupied.

(g) When adequate fire protection is not being provided in a building, structure or premises as herein required or where such fire protection is deemed necessary by the fire official due to hazardous or dangerous conditions involving the occupancy of a building or structure, special fire protection equipment shall be installed in accordance with the requirements of the fire official and Uniform Construction Code.

5:18-1.5 Definitions

The following terms shall have the meanings indicated except where the context clearly requires otherwise. Where a term is not defined then the definition of that term found within Uniform Construction Code, N.J.A.C. 5:23-1.4, shall govern:

"Act" means the Uniform Fire Safety Act, P.L. 1983, c.383, N.J.S.A. 52:27D-192 et seq., and includes all acts amendatory and supplementary thereto and all regulations adopted pursuant thereto.

"Bureau" means the Bureau of Fire Safety in the Division of Housing and Development of the Department of Community Affairs.

"Chief" means the chief of the Bureau of Fire Safety.

"Commissioner" means the Commissioner of the Department of Community Affairs or his delegate.

"Department" means the New Jersey Department of Community Affairs.

"Fire Official" means a person certified by the Commissioner of the Department of Community Affairs and appointed or designated to direct the enforcement of the Code by the appointing authority of a local enforcing agency and also means any certified fire inspector working under the direction of the fire official.

"High-rise structure" means any building or structure having floors used for human occupancy located either more than six stories or more than 75 feet above the lowest level accessible to a fire department vehicle.

"Incidental use" means a use supplemental to the main use of a building where the area devoted to such use does not occupy more than 10 percent of the area of any floor.

"Life hazard use" means a building or structure, or part thereof, classified in any of the use groups in the BOCA Basic/National Building Code and defined as such in subchapter 2 of this chapter. "Life hazard use" shall also mean and include high rise structure as defined in this section.

"Local enforcing agency" means a municipal fire department, fire district or county fire marshall authorized by municipal ordinance to enforce the Act within a specific local jurisdiction, or where such authorization has not been granted by local ordinance, it means the Department of Community Affairs.

"Maximum permitted occupancy" means the maximum number of persons which can be accommodated by the means of egress of a building or use established in accordance with section 808.0 of the 1984 edition of the Building Subcode of the Uniform Construction Code or the number of occupants established by Table 806 of the 1984 edition of the Building Subcode or any alternative maximum occupancy established by the Fire Official; whichever is lesser.

"Owner" means a person who owns, purports to own, manages, rents, leases or exercises control over a building, structure or premises.

"Protective equipment" means any equipment, device, system or apparatus permitted or required by the commissioner to be constructed or installed in or upon a building, structure or premises for the purpose of protecting the occupants or intended occupants thereof, fire fighters or the public generally from fire or products of combustion.

"Use" or "Use group" means the use to which a building, portion of a building, or premises, is put as defined by the New Jersey Uniform Construction Code. It shall also mean and include any place whether constructed, manufactured or naturally occuring, whether fixed or mobile, which is used for human purposes or occupancy which use would subject it to the provisions of this Code if it were a building or premises.

5:18-1.6 Effective date

(a) The provisions of this Code pertaining to registration of life hazard uses, registration application, and annual registration fees and the collection thereof shall be effective upon promulgation of this Chapter.

(b) The remaining provisions of the Code shall become operative July 1, 1985. All fire prevention and fire safety regulations incorporated in any part of the State of New Jersey or adopted by any agency of the State of New Jersey,

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except a county, municipality, or a fire district, shall continue in effect until July 1, 1985 and shall thereafter be superseded by this code and of no further force or effect.

(c) The provisions of this Code found in subchapter 4 shall become operative on July 1, 1985 except that the fire official may require partial or full compliance sooner where an imminent hazard shall have been found to exist or except that any provision of subchapter 4 which establishes a requirement which currently exists under any law or regulation of this State shall take effect upon promulgation of this chapter.

5:18-1.7 Severability

(a) If any provision of the Code or the application thereof to any person or circumstances is held invalid, the invalidity shall not effect other provisions or applications of the Code which can be given effect and to this end the provisions of the Code are severable.

SUBCHAPTER 2. ADMINISTRATION AND ENFORCEMENT

5:18-2.1 Enforcement authority

(a) It shall be the duty and responsibility of the fire official to enforce the provisions of this Code as set forth herein.

1. Where no local enforcing agency has been created by the local governing body having jurisdiction then it shall be the duty and responsibility of the Bureau of Fire Safety in the Department of Community Affairs (hereinafter cited as the Bureau), to enforce the provisions of this Code as herein set forth for life hazard uses or whenever conditions which constitute an imminent hazard are found to exist. The Bureau shall publish quarterly a roster of enforcing agencies which shall determine the enforcing agency having general jurisdiction and the enforcing agency having jurisdiction for life hazard uses in each municipality, fire district and fire department area in the State. The listing shall determine the agency that has jurisdiction.

2. In any county in which a county fire marshall has been appointed, and has been authorized by resolution or ordinance of the board of chosen freeholders to serve as a local enforcing agency under the Act, the county fire marshall shall serve as the local enforcing agency for all county-owned or-leased facilities subject to the Act and shall have concurrent jurisdiction with the local enforcing agency for all facilities owned or leased by a local government or any instrumentality thereof.

3. The Bureau shall enforce the provisions of this Code, as herein set forth, for all facilities owned by the State or any board, commission or authority thereof, and shall have concurrent jurisdiction with the local enforcing agency or the county fire marshall for all facilities owned or leased by State, county and local governments and any instrumentality thereof.

(b) The fire official shall inspect all structures and premises, except single-family and two-family dwellings occupied by the holder of title to the property and dwelling units within two-family and multi family dwellings, as often as may be necessary for the purpose of ascertaining and causing to be corrected any conditions liable to cause fire, contribute to the spread of fire, interfere with fire operations, endanger life or any violations of the provisions or intent of this Code or any other ordinance affecting fire safety. Inspections shall not, in the absence of good cause, include occupied dwelling units.

(c) Whenever, in the enforcement of the fire code and other codes and ordinances, it becomes necessary to subject a given building to multiple inspections in the same general time frame, it shall be the duty of all involved inspectors to coordinate their inspections and administrative orders as much as possible so that the owners and occupants of the structure shall not be subjected to inspections more numerous than necessary, nor multiple conflicting orders. Whenever an inspector from any agency or department observes an apparent or actual violation of some provisions of some law, ordinance or code of the jurisdiction, not within the inspector's authority to enforce, the inspector shall report the findings to the official having jurisdiction in order that such official may institute the necessary corrective measures.

(d) Whenever requested to do so by the fire official, or his authorized representative, the chief of police may assign such available police officers as in his discretion may be necessary to assist the fire official in enforcing the provisions of this Code.

(e) Whenever necessary to make an inspection to enforce any of the provisions of this Code, or whenever the fire official or his authorized representative has reasonable cause to believe that there exists in any building or upon any premises any condition which makes such building or premises unsafe, the fire official or his authorized representative may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the fire official by this Code, provided that if such building or premises be occupied, he shall first present proper credentials and demand entry; and if such building or premises be unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and demand entry.

1. No owner or occupant or any other persons having charge, care or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the fire official or his authorized representative for the purpose of inspection and examination pursuant to this Code. If the owner or occupant denies entry, the fire official or his authorized representative shall obtain a proper warrant or other remedy provided by law to secure entry.

(f) The fire official shall investigate, or cause to be investigated, every reported fire or explosion occurring within the jurisdiction that involves the loss of life or serious injury or causes destruction or damage to property. Such investigation shall be initiated immediately upon the occurrence of such fire or explosion; and if it appears that such an occurrence is of a suspicious nature, the fire official shall take charge immediately of the physical evidence, and in order to preserve any physical evidence relating to the cause or origin of such fire or explosion, take means to prevent access by any person or persons to such building, structure or premises until such person designated by law to pursue investigations into such matters become involved and shall further cooperate with such authorities in the collection of evidence and prosecution of the case.

(g) The fire official shall keep a record of all reported fires in life hazard uses and all facts concerning the same, including investigative findings and information as to the cause, origin and the extent of such fires and the deaths, injuries, and damage caused thereby.

(h) As provided in the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., neither a governmental agency nor a public employee is generally liable for injury caused by failure to inspect any property or by inadequate or negligent inspection of any property. A public employee is not liable if he acts in good faith in enforcing any law.

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5:18-2.2 Responsibility for compliance

Owners of buildings which are, or which contain, a life hazard use, shall have concurrent responsibility with any owners of any life hazard uses within such buildings for compliance with the Code. Where building owners and use owners are separate persons, responsibility for compliance with the Code shall be determined by the fire official, provided that no person shall be required to abate any violation which he has no power to abate or to require to be abated.

5:18-2.3 Variances

(a) Upon the application of a property owner or lessee with the consent of the owner, the fire official may grant a variance from the requirements of a regulation or standard adopted pursuant to the Act; provided, however, that no variance shall be granted unless it is determined that strict compliance would result in practical difficulty and that the variance, if granted, would not unreasonably jeopardize the safety of the occupants or intended occupants, fire fighters or the public generally.

1. In any facility subject to regulation by any State agency, no variance shall be granted except after consultation with that State agency.

2. Financial hardship alone shall not be grounds for a variance.

(b) An application for a variance shall be made in writing, shall be filed with the fire official and shall set forth the following information:

1. The requirements of the regulation from which a variance is sought;

2. The manner in which strict compliance with the regulation would result in practical difficulty;

3. The nature and extent of the practical difficulty; and

4. Feasible alternatives which would adequately protect the occupants or intended occupants, fire fighters and the public generally.

(c) Within 30 days after receiving an application for a variance, the fire official shall grant or deny the application in writing, stating the reasons for his action.

1. An application which is not granted within 30 days shall be deemed to have been denied.

2. A denial of an application for a variance may be appealed in the same manner as any other ruling of the fire official.

(d) Copies of all variance applications and records of the action taken on them shall be maintained as permanent public records by the fire official.

1. A local fire official shall promptly provide the Bureau with copies of all decisions granting or denying variances after they have been rendered.

5:18-2.4 Life hazard uses defined

(a) The buildings, uses, and premises contained in this section constitute life hazard uses which are subject to registration and periodic inspection requirements established by this Subchapter. Where two or more life hazard uses exist at the same building or premises, each one shall be considered as separate and distinct for the purposes of this Code.

(b) The following are type A life hazard uses:

1. Service stations and other locations where flammable and/or combustible fuels are stored and dispensed to motor vehicles and all buildings or structures used for the storage (except parking garages) or service of motor vehicles;

2. Daycare centers and day nurseries;

3. Hotels or motels, two stories or more, with any interior means of egress and not defined as a type B life hazard use;

4. Rooming and Boarding Houses, including halfway houses, group homes, community residences and residential health care facilities;

5. Eating and drinking establishments with a maximum permitted occupancy of less than 50 in which alcoholic beverages are consumed;

6. Eating establishments with a maximum permitted occupancy of 50 or more and less than 200 in which no alcoholic beverages are consumed;

7. Eating establishments with a maximum permitted occupancy of 50 or more and less than 200 in which alcoholic beverages are consumed, but which are primarily eating establishments;

8. Aboveground storage of more than 660 gallons, but less than 50,000 gallons of flammable or combustible liquids.

(c) The following are type B life hazard uses:

1. Any high rise structure;

2. Prisons and other facilities where residents, occupants, or inmates are kept under restraint;

3. Institutional and similar facilities, including acute alcoholism treatment, outpatient surgery, renal dialysis facilities, abortion clinics, and birthing centers;

4. Motion picture theaters without a theatrical stage;

5. Eating and drinking establishments with a maximum permitted occupancy of 50 or more and less than 200 which are primarily drinking establishments;

6. Eating and drinking establishments with a maximum permitted occupancy of 200 or more which are primarily eating establishments;

7. Retail stores and other mercantile uses which exceed 12,000 square feet in gross floor area;

8. Hotels or motels, four stories or more or exceeding 100 rooms and which have any interior means of egress;

9. Stadiums, race tracks and other similar exterior places of amusement with grandstands;

10. Any windowless space with a maximum permitted occupancy of 50 or more persons, regardless of use, not complying with provisions of section 1702.15 of the BOCA Basic/National Building Code;

11. Buildings with a maximum permitted occupancy of 100 or more in which persons assemble for entertainment or amusement not otherwise classified herein, such as art galleries, exhibition halls, museums, recreation centers, lecture halls without fixed seating, and transportation terminals;

12. Industrial and commercial uses which incorporate any of the following materials or processes:

i. Spray or dipping operations involving paint, varnish, lacquer, stain, or other flammable or combustible liquids;

ii. Equipment, processes, and operations which involve dust, which, if mixed with air becomes explosive, such as grain bleachers or elevators; flour, starch or feed mills; malt houses, wood flour manufacturing plants; or plants that pulverize aluminum, coal, cocoa, magnesium, spices, or sugar;

iii. Crop ripening or coloring processes;

iv. Lumber yards and wood working plants in which more than 100,000 board feet of lumber is to be stored;

v. Tire recapping or rebuilding plants;

vi. Organic coating manufacturing operations making more than one gallon of an organic coating in a working day;

vii. Manufacturing of articles of cellulose nitrate plastics, including the use of cellulose nitrate plastics in the manufacture or assembly of other articles;

viii. Processing, handling or use of more than 100 cubic feet of combustible vegetable or animal fibers, including, among others, readily ignitable and free burning fibers such

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as cotton, sisal, heneguer, ixtle, jute, hemp, tow, cocoa fiber, oakum, baled waste, baled waste paper, kapok, hay, straw, Spanish moss, excelsior, certain synthetic fabrics, and cloth in the form of scraps and clippings;

ix. The manufacture of matches;

x. The manufacture of explosives or blasting agents;

xi. The manufacture, processing, blending or refining of flammable or combustible liquids; or

xii. Welding or cutting operations except where covered by a type 1 permit.

13. Storage uses which involve the following materials and substances;

i. More than 2500 cubic feet gross volume of combustible assembled and empty packing cases, boxes, barrels, pallets, or similar containers;

ii. More than 2500 cubic feet gross volume of rubber tires, baled cotton, rubber, cork, other similarly combustible material;

iii. Cellulose nitrate motion picture films or cellulose nitrate (pyroxylin) plastics in quantities which exceed 25 pounds;

iv. More than 100 cubic feet of combustible vegetable or animal fibers, except that unlimited quantities of hay, straw and other agricultural products may be stored in or near farm buildings located outside closely built areas;

v. Matches exceeding 25 cases in the aggregate;

vi. Explosive or blasting agents; or

vii. Aboveground storage of more than 50,000 gallons of flammable and combustible liquids.

14. Buildings used for dry cleaning purposes;

15. Buildings with atrium spaces three or more stories in height in buildings which exceed 12,000 square feet of gross floor area.

(d) The following are type C life hazard uses:

1. Theaters incorporating a raised stage, platform or thrust stage, proscenium curtain, fixed or portable scenery loft, lights, mechanical appliances or other theatrical accessories and equipment and equipped with fixed seats;

2. Night clubs, dance halls, discotheques without a theatrical stage, and eating and drinking establishments which are primarily drinking establishments with a maximum permitted occupancy of 200 or more;

3. Places of amusement which are designed to disorient the occupant such as haunted houses, fun houses, tunnels of love and similar uses;

4. Institutional and similar facilities including hospitals and long-term care facilities which house people suffering from physical limitation due to age, health or handicaps.

(e) The following are type D life hazard uses:

1. Covered mall buildings which exceed 12,000 square feet of gross floor area.

5:18-2.5 Required inspections

(a) All life hazard uses shall be inspected for compliance with the provisions of this Code periodically but not any less often then specified herein:

1. Type A life hazard uses: once every 12 months.

2. Type B life hazard uses: once every 12 months.

3. Type C life hazard uses: once every 3 months.

4. Type D life hazard uses: once every 3 months.

(b) Where a use is found to be free of violation, the enforcing agency shall issue a certificate of inspection, which shall be posted by the owner of the use in a conspicuous location therein.

5:18-2.6 Registration of buildings and uses

(a) Whenever the Commissioner or any local enforcing agency shall have cause to believe a building or use is a life hazard use, then the Commissioner or the agency shall submit a registration survey to the owner of the building or use. It shall be a violation of the Code for an owner to fail to complete and return such a survey within 30 days.

(b) The owner of a life hazard use shall file with the Commissioner, upon forms provided by the Commissioner, an application for a certificate of registration. Each application shall include at least the following information:

1. The name, address, and telephone number of the applicant;

2. Where the applicant is a corporation, the names and residential addresses of each officer, director and stock holder holding more than 10 percent of the stock. Stock holder information shall not be required for a publicly traded stock corporation;

3. Where the applicant is a corporation, the name, address, and telephone number of the agent for service of process. The address must be a physical location and shall not be a post office box;

4. A description of the use being applied for, including:

i. Geographical location, including street address, and tax lot and block numbers;

ii. Height of building in which use is located;

iii. Location of use in building;

iv. Floor area of use;

v. Capacity when the use is public assembly; and

vi. Description of processes carried out or material stored when it is process or storage which causes the use to be subject to registration.

5. A description of any storage or activity which would require a type 4 permit pursuant to this subchapter except for the exception provided by N.J.A.C. 5:18-2.7(b);

6. Where the owner of the use and the owner of the building in which it is located are not the same then the application shall include the same information for the owner of the building as is herein required for the owner of the use;

7. The name, address, physical location and telephone number of the person responsible for the maintenance of the premises.

8. The name of the fire and liability insurance carriers, the policy number and policy amount.

(c) Upon receipt of the application, and the required registration fee, the Commissioner shall forthwith issue to the owner of the life hazard use a certificate of registration, which shall be posted by the owner of the use in a conspicuous location therein but only upon subsequent receipt of a certificate of inspection. The certificate of registration shall be in such form as may be prescribed by the Commissioner.

(d) Where more than one life hazard use exists at a given building or premises or where one or more life hazard uses occur within a high rise building or other life hazard use such as a night club within a hotel, then each such life hazard use shall be separate and distinct and shall be registered separately. However, where more than one life hazard use exists as part of the same storage or manufacturing operation only the most hazardous storage or manufacturing life hazard use is required to be registered.

(e) When applying for registration, and thereafter as required by (d) above, the owner of each life hazard use shall appoint an agent for the purpose of receiving service of process and orders or notices issued by the Commissioner pursu-

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ant to the Act. Each agent shall be either a resident of this State or a corporation licensed to do business in this State.

(f) If the ownership of a life hazard use is transferred, whether by sale, assignment, gift, intestate succession, testate devolution, reorganization, receivership, foreclosure or execution process, the new owner shall file with the Commissioner, within 30 days of the transfer, an application for a certificate of registration pursuant to (a) above and appoint an agent for the service of process pursuant to (d) above.

(g) If an owner of a life hazard use has not fulfilled the requirements of this Section, the Commissioner shall notify the owner in writing that he is in violation of this Section and shall order that registration by accomplished within 30 days. The notice and order shall include an accurate restatement of the subsection with which the owner has not complied.

1. If the owner has not complied with the order of the Commissioner within 30 days of the date on which it was mailed, the Commissioner shall order him to pay $500.00 for each registration. Pursuant to N.J.S.A. 52:27D-201, the Commissioner may issue a certificate to the clerk of the Superior Court stating that the owner is indebted for the payment of the penalty and the clerk shall immediately enter upon his record of docketed judgments the name of the owner and of the Department, a designation of the statute under which the penalty is imposed, the amount of the penalty certified and the date the certification was made. The making of the entry shall have the same effect as the entry of the docketed judgment in the office of the clerk but without prejudice to the owner's right of appeal.

(h) The owner of each life hazard use in the State shall pay to the Department an annual fee in the amount specified in this subchapter. The annual registration fee shall be paid when due.

1. When authorized by the Commissioner, the collection of the annual registration fee shall be the responsibility of the local enforcing agency. Where such authorization has been given, it shall be the responsibility of the owner to pay the fee to the local enforcing agency.

(i) The owner of a life hazard use shall pay the annual fee within 30 days of the day on which it is demanded by the Department or the local enforcing agency. If he fails to do so, the Department or the local enforcing agency may, pursuant to N.J.S.A. 52:27D-201, issue a certificate to the clerk of the Superior Court stating that the owner is indebted to the Department for the payment of the annual fee and the clerk shall immediately enter upon his record of docketed judgments and the name of the owner and of the Department, a designation of the statute under which the fee is assessed, the amount of the fee certified and the date the certification was made. The making of the entry shall have the same effect as the entry of a docketed judgment in the office of the clerk, but without prejudice to the owner's right of appeal.

5:18-2.7 Permits required

(a) It shall be unlawful to engage in any business activity involving the handling, storage or use of hazardous substances, materials or devices; or to maintain, store or handle materials; to conduct processes which produce conditions hazardous to life or property; to install equipment used in connection with such activities; or to establish a place of assembly without first obtaining a permit from the fire official.

(b) Permits shall be obtained from the fire official for any of the following listed activities or uses. Permits shall at all times be kept in the premises designated therein and shall at all times be subject to inspection by the fire official. Type 4 permits shall not be required when the storage or activity requiring a permit is carried on at a premises registered as a life hazard use in accordance with this subchapter.

1. Type 1 permit:

i. Bonfires;

ii. The use of a torch or flame-producing device to remove paint from any building or structure;

iii. Tents exceeding 1200 square feet or 30 feet in any dimension (excluding canopies), whether single or made up of multiple smaller units when used for purposes which would constitute a life hazard use were the use to be found in a building;

iv. Individual portable kiosks or displays when erected in a covered mall for a period of less than 90 days, and when not covered by a Type 2 permit;

v. The use of any open flame or flame producing device, in connection with any public gathering, for purposes of entertainment, amusement, or recreation in places of public assembly;

vi. Welding or cutting operations except where the welding or cutting is performed in areas registered as a type B life hazard use;

vii. The possession or use of explosives or blasting agents;

viii. Helistops; or

ix. The occasional use in any building of a multipurpose room, with a maximum permitted occupancy of 100 or more for amusement, entertainment or mercantile type purposes.

2. Type 2 permit:

i. Bowling lane resurfacing and bowling pin refinishing involving the use and application of flammable liquids or materials;

ii. Fumigation or thermal insecticide fogging;

iii. Membrane covered cable and air supported structures covering an area in excess of 120 square feet erected for a period of less than 90 days.

iv. Carnivals and circuses employing mobile structures used for human occupancy;

v. The use of a covered mall in any of the following manners:

(1) Placing or constructing temporary kiosks, display booths, concession equipment or the like in more than 25 percent of the common area of the mall;

(2) Temporary using the mall as a place of assembly;

(3) Using open flame or flame devices;

(4) Displaying liquid or gas fueled powered equipment; or

(5) Using liquified petroleum gas, liquified natural gas, and compressed flammable gas in containers exceeding 5 pound capacity.

3. Type 3 permit:

i. Industrial processing ovens or furnaces operating at approximately atmospheric pressures and temperatures not exceeding 1400 degrees Farenheit which are heated with oil or gas fuel or which contain flammable vapors from the product being processed;

ii. Any wrecking yard or junk yard; or

iii. The storage or discharging of fireworks.

4. Type 4 permit:

i. Storage or use at normal temperature and pressure of more than 2000 cubic feet of flammable compressed gas or 6000 cubic feet of nonflammable compressed gas;

ii. The production or sale of cryogenic liquids; the storage or use of more than 10 gallons of liquid oxygen, flammable cryogenic liquids or cryogenic oxidizers; or the storage of more than 500 gallons of nonflammable, non-toxic cryogenic liquids;

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iii. The storage, handling, and processing of flammable, combustible, and unstable liquids in containers and portable tanks as required by subchapter 3 of this Code;

iv. To store or handle (except medicines, beverages, foodstuffs, cosmetics, and other common consumer items, when packaged according to commonly accepted practices):

(1) More than 55 gallons of corrosive liquids;

(2) More than 500 pounds of oxidizing materials;

(3) More than 10 pounds of organic peroxides;

(4) More than 500 pounds of nitromethane;

(5) More than 1000 pounds of ammonium nitrate;

(6) More than one microcurie of radium not contained in a sealed source;

(7) More than one millicurie of radium or other radiation material in a sealed source or sources;

(8) Any amount of radioactive material for which a specific license from the Nuclear Regulatory Commission is required; or

(9) More than 10 pounds of flammable solids.

v. Any installation of liquified petroleum gas or liquified natural gas utilizing storage containers of over 2000 gallons individual water capacity or with an aggregate water capacity exceeding 4000 gallons;

vi. The melting, casting, heat treating, machining or grinding of more than 10 pounds of magnesium per working day; or

vii. Heliports.

5. Type 5 permit:

i. Airports,

(c) Application for a permit required by this Code shall be made to the fire official in such form and detail as the fire official shall prescribe. Applications for permits shall be accompanied by plans or drawings as required by the fire official for evaluation of the application.

(d) Before a permit is issued, the fire official or the fire official's designated representative shall make or cause to be made such inspections or tests as necessary to assure that the use and activity for which application is made complies with the provisions of this Code.

(e) A permit shall constitute permission to maintain, store or handle materials, or to conduct processes which produce conditions hazardous to life or property, or to install equipment used in connection with such activities in accordance with the provisions of this Code. Such permissions shall not be construed as authority to violate, cancel or set aside any of the provisions of this Code. Said permit shall remain in effect until revoked, or one year unless otherwise specified. Permits are not transferable and any change is use, operation or tenancy shall require a new permit.

(f) Plans approved by the fire official are approved with the intent they comply in all respects to this Code. Any omission or error on the plans does not relieve the applicant of complying with all applicable requirements of this Code.

(g) The fire official may revoke a permit or approval issued under the provisions of this Code if upon inspection any violation of the Code exists, or if conditions of a permit have been violated, or if there has been any false statement or misrepresentation as to material fact in the application, data or plans on which the permit or approval was based.

(h) Any permit issued shall become invalid if the authorized work or activity is not commenced within six months after issuance of the permit, or if the authorized work or activity is suspended or abandoned for a period of six months after the time of commencement except as provided for in N.J.A.C. 5:18-3.

(i) A permit shall not be issued until the designated fees have been paid.

(j) A permit issued under a pre-existing local fire prevention code shall remain valid for no more than one year from the date it was issued. A new permit issued under this Code shall not be required if the requirements for the previous permit were substantially the same as those established by this Code.

5:18-2.8 Fees, registration and permit

(a) The annual registration fee for life hazard uses shall be as follows:

1. Type A-$75 per year;
2. Type B-$400 per year;
3. Type C-$700 per year;
4. Type D-$1,200 per year.

(b) The application fee for a permit shall be as follows:

1. Type 1-$25;
2. Type 2-$100;
3. Type 3-$200;
4. Type 4-$300;
5. Type 5-$1,000.

5:18-2.9 Enforcement procedures

(a) Whenever the fire official or the fire official's designated representative shall find in any structure or upon any premises dangerous or hazardous conditions or materials as follows, the fire official shall order such dangerous conditions or materials to be removed or remedied in accordance with the provisions of this Code:

1. Dangerous conditions which are liable to cause or contribute to the spread of fire in or on said premises, building or structure or endanger the occupants thereof;

2. Conditions which would interfere with the efficiency and use of any fire protection equipment;

3. Obstructions to or on fire escapes, stairs, passageways, doors or windows, liable to interfere with the egress of occupants or the operation of the fire department in case of fire;

4. Accumulations of dust or waste material in air conditioning or ventilating systems or grease in kitchen or other exhaust ducts;

5. Accumulations of grease on kitchen cooking equipment, or oil grease or dirt upon, under or around any mechanical equipment;

6. Accumulations of rubbish, waste, paper, boxes, shavings, or other combustible materials, or excessive storage of any combustible material;

7. Hazardous conditions arising from defective or improperly used or installed electrical wiring, equipment or appliances;

8. Hazardous conditions arising from defective or improperly installed equipment for handling or use of combustible, explosive or otherwise hazardous materials;

9. Dangerous or unlawful amounts of combustible, explosive or otherwise hazardous materials; or

10. All equipment, materials, processes or operations which are in violation of the provisions and intent of this Code.

(b) The owner shall be responsible for the safe and proper maintenance of the building, structure, premises or lot at all times. In all new and existing buildings and structures, the fire protection equipment, means of egress, alarm devices and safeguards required by this Code and other jurisdictional ordinances, shall be maintained in a safe and proper operating condition except in the case of vacant buildings with the approval of the fire official.

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(c) If an occupant of a building creates conditions in violation of this Code, by virtue of storage, handling and use of substances, materials, devices and appliances, the occupant can be held responsible for the abatement of said hazardous conditions.

(d) Whenever the fire official observes an apparent or actual violation of a provision of this Code or other code or ordinance under the fire official's jurisdiction, the fire official shall prepare a written notice of violation describing the condition deemed unsafe, including the appropriate Code section, and specifying time limits for the required repairs or improvements to be made to render the building, structure or premises safe and secure.

1. Unless an imminent hazard to health and safety is posed, the fire official shall permit such time period for correction as is reasonable in the context of the situation.

(e) The fire official may grant extensions of time whenever he shall determine that despite diligent effort compliance cannot be accomplished within the time specified in the notice.

1. No extension shall be granted unless it is requested in writing by the owner. A request for extension shall set forth the work which has been accomplished, the work that remains, the reason why an extension is necessary and the date by which the work will be completed.

2. An application for an extension shall be deemed to be an admission that the notice of violation is factually and proceedurally correct and that the violations do or did exist.

(f) If the notice of violation is not complied with within the time specified by the fire official, the fire official shall institute the appropriate enforcement proceedings to restrain, correct or abate such violation or to require removal or termination of the unlawful use of the building or structure in violation of the provisions of this Code or of any order or direction made pursuant thereto. The fire official shall request the police department of the jurisdiction to make arrests for any offense against this Code or orders of the fire official affecting the immediate safety of the public and shall file any necessary complaints.

(g) Any person, firm or corporation violating any of the provisions of the Code or failing to comply with any order issued pursuant to any section thereof, shall be subject to the penalties provided herein. Each day that a violation continues, after a service of notice as provided for in this Code, shall be deemed a separate offense.

(h) The imposition of the penalties herein described shall not prevent the fire official from instituting appropriate action to prevent unlawful construction or to restrain, correct or abate a violation; or to prevent illegal occupancy of a building, structure or premises; or to stop an illegal act, business or use in a building or structure or in or about any premises.

5:18-2.10 Service of notice and orders

(a) Notice, rules, decisions and orders required or permitted to be issued and served pursuant to the act shall be served as follows:

1. On the owner:

i. By certified mail to the person designated as owner or agent on the certificate of registration, in the municipal tax records, or in the records of the Secretary of State; however, if the certified mailing is returned, the original letter shall be remailed to the last known address of the person by ordinary mail;

ii. By serving the document on the Secretary of State, who shall be deemed the owner's agent for service of process; except that reasonable efforts have first been made to serve the owner or his agent by certified mail and that a copy of the document be posted in a conspicuous location on the premises. Conspicuous location shall include the walls of the front vestibule or any common foyer or hallway immediately inside the main front entrance;

iii. By personal delivery of the document to the owner; or

iv. By leaving the document at the office or dwelling unit of the owner with a person 14 years of age or older.

2. On any other person:

i. By certified mail to the person at his last known address; however, if the certified mailing is returned, the original letter shall be remailed to the last known address of the person by ordinary mail;

ii. By personal delivery of the document to the person; or

iii. By leaving the document at the office or dwelling unit of the person with an individual 14 years of age or older.

(b) The date of personal service or the third day after mailing shall be considered the date of service.

5:18-2.11 Appeals

(a) A ruling, action, order or notice of a local enforcing agency may be appealed to the municipal or county construction board of appeals in a manner pursuant to section 9 of the State Uniform Construction Code Act. P.L. 1975, C, 217, having jurisdiction in the municipality in which the building, structure or premises is located.

1. Copies of a letter requesting an administrative hearing before a Construction Board of Appeals shall be sent to the offices of the Construction Board of Appeals and to the local enforcing agency.

(b) In any case in which the Department of Community Affairs serves as enforcing agency, a ruling, action, order or note of the Commissioner may be appealed to an administrative hearing which shall be conducted by the Officer of Administrative Law, with the commissioner or his designee issuing the final decision.

1. A request for an administrative hearing to appeal a ruling, action, order or notice of the commissioner shall be addressed to: Hearing Coordinator, Division of Housing and Development, Department of Community Affairs, CN 804, Trenton, N.J. 08625.

(c) All hearing requests, whether to a construction board of appeals or to the Department, shall be made within 15 days after date of service by the person making the appeal of the ruling, action, order or notice complained of.

(d) If an owner shall appeal an order to vacate, close or remove a building, structure or premises or to abate a violation within a specified period of time and such order was issued in response to an imminent hazard to life safety, a hearing shall be conducted and a final decision issued within 48 hours of receipt of the hearing request by the Construction Board of Appeals or the Department. If no hearing is held by a construction board of appeals within 48 hours of receipt of a request, an owner may apply to the Department for a hearing. Failure to issue a decision shall constitute a denial of an owner's appeal.

5:18-2.12 Penalties

(a) No person shall:

1. Obstruct, hinder, delay or interfere by force or otherwise with the Commissioner or any local enforcing agency in the exercise of any power or the discharge of any function or duty under the provisions of this Code;

2. Prepare, utter or render any false statement, pertaining to reports, documents, plans or specifications permitted or required under the provisions of this Code;

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3. Render ineffective or inoperative, or fail to properly maintain, any protective equipment or system installed, or intended to be installed, in a building or structure;

4. Refuse or fail to comply with a lawful ruling, action, order or notice of the Commissioner or a local enforcing agency; or

5. Violate, or cause to be violated, any of the provisions of this Code.

(b) A person who violates or causes to be violated a provision of (a) above shall be liable to a penalty of not more than $5,000. for each violation. If a violation of (a) above is of a continuing nature, each day during which the violation remains unabated after the date fixed in the order or notice for the correction or termination of the continuing violation shall constitute an additional and separate violation, except while an appeal from the order is pending.

(c) The Commissioner or a local enforcing agency may levy and collect penalties in the amounts set forth in this section, but not in excess of the maximum amounts set forth in (e) below for different types of violations. If the administrative penalty order has not been satisfied by the thirtieth day after its issuance, the penalty may be sued for, and recovered by and in the name of the Commissioner or the enforcing agency, as the case may be, in a civil action by a summary proceeding under "the Penalty Enforcement Law," (N.J.S.A. 2A:58-1 et seq.) in the Superior Court, county district court or municipal court. All moneys recovered in the form of penalties by a municipality shall be paid into the treasury of the municipality and shall be appropriated for the enforcement of the Act. A person who fails to pay immediately a money judgement rendered against him pursuant to this subsection may be sentenced to imprisonment by the court for a period not exceeding six months, unless the judgement is sooner paid.

(d) A person shall be deemed to have violated or caused to have violated a provision of (a) above if an officer, agent or employee under his control and with his knowledge has violated or caused to have violated any of the provisions of (a) above.

(e) The enforcing agency shall assess a civil penalty whenever such shall be likely to assist in bringing about compliance. The penalty shall be in such amount as the enforcing agency deems necessary and appropriate to bring about compliance except that penalties shall not exceed those set forth below for the various types of violations listed.

1. Failure to respond to a registration application survey when one is served-$500.00 maximum each occurrence.

2. Failure to pay the required annual registration fee on time-an amount equal to the amount of the unpaid fee.

3. Failure to obtain a required permit prior to commencing an operation, process or activity for which a permit is required.

i. Type 1 permit—a maximum of $100.00 for each occurrence.

ii. Type 2 permit—a maximum of $500.00 for each occurrence.

iii. Type 3, 4, or 5 permit—a maximum of $1,000 once.

4. Failure to obtain a required permit after being ordered to do so while continuing the operation, process or activity for which the permit is required—a maximum of $5,000 per day during which the operation, process, or activity continues without application having been made.

5. Failure to install required protection equipment after having been given written notice of the requirement to do so—a maximum of $1,000 per violation per day.

6. Failure to abate any violation after having been given notice of the violation—a maximum of $500.00 per violation per day.

7. Storage of any material in violation of this Code or the conduct of any process in violation of the Code—a maximum of $500.00 per violation per day that this violation continues.

8. Blocking, locking, or obstructing required exits:

i. In a place of public assembly—a maximum of $5,000 per occurrence;

ii. In any other place—a maximum of $1,000 per occurrence.

9. Disabling or vandalizing any fire suppression or alarm device or system.

i. In a place of public assembly—a maximum of $5,000 per occurrence;

ii. In any other place—a maximum of $1,000 per occurrence.

10. Failure to obey a notice of imminent hazard and order to vacate—a maximum of $5,000 per day the failure continues.

11. Failure to obey an order to close for fixed period of time issued pursuant to this Subsection—a maximum of $5,000 per day that the failure continues.

12. Obstructing the entry of an authorized inspector into a premises—a maximum of $500.00 for each occurrence.

13. Any willfully false application for a permit or registration—a maximum of $1,000 for each occurrence.

14. Any other act or ommission prohibited by the Act or the Regulations but not enumerated in this subsection—a maximum of $5,000 per violation per day.

(f) The enforcing agency shall have the right to compromise or settle any claim arising out of the assessment of a penalty provided such compromise or settlement shall be likely to bring about compliance. No claim shall be finally compromised or settled so long as the violation which caused its assessment remains in existence.

5:18-2.13 Injunctive relief

The enforcing agency may petition the Superior Court for mandatory injunctive relief enforcing an order issued pursuant to the Act. The Superior Court may proceed in a summary manner or otherwise, and shall have power to grant temporary relief or a restraining order as it may deem just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside, in whole or in part, any order issued pursuant to the Act.

5:18-2.14 Imminent hazards

(a) If upon an inspection of a building, structure or premises the enforcing agency discovers a violation of the Act that constitutes an imminent hazard to the health, safety or welfare of the occupants or intended occupants, fire fighters, or the public generally, the enforcing agency may issue and cause to be served on the owner of the building, structure or premises a written order directing that the building structure or premises be vactaed, closed, or removed forthwith or that the violation be corrected within the period specified in the order. The order shall state the nature of the violation and the date and hour by which the building, structure or premises shall be vacated, closed or removed or the violation shall be abated.

(b) The enforcing agency shall reinspect the building, structure or premises within 48 hours of receiving written notice from the owner of a building, structure or premises vacated or closed, or ordered to be vacated or closed, stating that the violation has been terminated. If, upon reinspection, the enforcing agency determines that the violation has been termi-

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nated, it shall rescind the order requiring the vacation of the building, structure or premises and occupancy may be resumed immediately; provided that if the reinspection is not made by the local enforcing agency within 48 hours of the receipt of the notice, the owner may apply to the Chief, Bureau of Fire Safety in The Department of Community Affairs for a reinspection.

(c) If the owner of a building, structure or premises denies that a violation justifying an order pursuant to this section to vacate, close, remove, or abate within a specified time exists, the owner may apply to the Director, Division of Housing and Development or Construction Board of Appeals, as the case may be, for a reconsideration hearing. The hearing shall be conducted, and a final decision issued, within 48 hours of the receipt of the request. Failure to issue a decision shall constitute denial of the owner's appeal; provided that, in the case of an appeal to the construction board of appeals, if the hearing is not held within two working days of the receipt of the request, the owner may apply to the Director, Division of Housing and Development for an administrative hearing and the decision shall be rendered by the Commissioner within two working days of the receipt of the application for the hearing.

5:18-2.15 Punitive closing

(a) If the enforcing agency finds a violation of the provisions of the Act in a life hazard use to be willful or grossly negligent, or to be in violation of a previously issued order, and to constitute a clear danger to human life, in addition to ordering the building, structure or premises vacated and closed until the violation is abated, the enforcing agency may order the building, structure or premises to remain vacated and closed for a further period not to exceed 60 days and until such time as a certificate of continued occupancy, issued pursuant to regulations authorized by section 6 of the "State Uniform Construction Code Act," P.L. 1975, C. 217 (C.52:27D-124) shall be obtained by the owner.

(b) If the owner of a building, structure or premises denies that a violation exists justifying an order to remain closed for the period of time indicated in the order, the owner may apply to the Commissioner, or Construction Board of Appeals, as the case may be, for a reconsideration hearing. The hearing shall be conducted and a final decision issued, within 48 hours of receipt of the request. Failure to issue a decision shall constitute denial of the appeal.

5:18-2.16 Evacuation of unsafe premises

(a) When, in the opinion of the fire official, there is actual and potential danger to the occupants or those in the proximity of any building, structure or premises because of unsafe structural conditions, or inadequacy of any means of egress, the presence of explosives, explosive fumes or vapor, or the presence of toxic fumes, gases or materials, the fire official may order the immediate evacuation of said buildings, structure or premises. All of the occupants so notified shall immediately leave the building, structure or premises and persons shall not enter or reenter until authorized to do so by the fire official.

(b) Any person who shall refuse to leave, interfere with the evacuation of other occupants or continue any operation after having been given an evacuation order except such work as that person is directed to perform to remove a violation or unsafe condition shall be deemed to have violated this Code, and shall be subject to arrest as provided in N.J.A.C. 5:18-2.9(f).

5:18-2.17 Fire department costs

When an owner has been given notice of the existence of a violation of this Code and has not abated the violation, he shall be liable to a penalty in the amount of the actual cost to the fire department of suppressing any fire, directly or indirectly resulting from the violation. Such cost shall be certified to the fire official by the chief of the department or company involved. The fire official shall assess the amount certified and collect it in the manner specified herein for penalties.

5:18-2.18 Certificate of Fire Code status

(a) Upon request of the owner or bonafide purchaser of a building or structure, the enforcing agency having jurisdiction over the building or structure shall issue a certificate either enumerating the violations indicated by its records to be unabated and the penalties or fees indicated to be unpaid, or stating that its records indicate that no violations remain unabated and no penalties or fees remain unpaid.

(b) A person who purchases a property without having obtained a certificate stating that there are no unabated violations of record and no unpaid fees or penalties shall be deemed to have notice of all violations of record and shall be liable for the payment of all unpaid fees or penalties.

(c) The fire official may establish a reasonable fee for issuing such a certificate.

SUBCHAPTER 3. FIRE PREVENTION CODE

5:18-3.1 Code adopted

(a) Pursuant to authority of the Uniform Fire Safety Act, P.L. 1983, c.383, N.J.S.A. 52:27D-192 et seq.), the Commissioner hereby adopts the model code of the Building Officials and Code Administrators, Inc., known as "the BOCA Basic/National Fire Prevention Code/1984," including all subsequent revisions and amendments thereto. This code is hereby adopted by reference as the State Fire Prevention Code, subject to the modifications set forth in N.J.A.C. 5:18-3.2.

(b) Copies of this code may be obtained from the sponsor at: BOCA International, 4051 West Flossmoor Road, Country Club Hills, Illinois 60477.

5:18-3.2 Modifications

(a) The following articles or sections of the State Fire Prevention Code are modified as follows:

1. Article 1 ("Administration and enforcement") is deleted in its entirety.

2. The following amendments are made to article 2 ("Definitions"), section F-201.0—general definitions:

i. The definition of the term "approved" is amended to delete the term "other authority having jurisdiction" and, in lieu thereof, to substitute the term "the Department".

ii. The term "building official" is deleted and the term "construction official" is substituted in lieu thereof herein and throughout the code.

iii. The term "building code" is added and is defined as "the New Jersey State Uniform Construction Code, including all of its component subcodes".

iv. The term "portable kerosene-fired heater" is added and is defined as follows: "A non-flue-connected, self-contained, self-supporting heater, with integral fuel reservoir, that is intended to be carried from one location to another.

v. The term "solid fuel-fired heater is added and is defined as follows: "A flue connected heater, fired with solid fuels, such as a fireplace, fireplace insert or stove, free standing wood stove or similar solid fuel-fire appliance."

3. Article 3 (General Precautions Against Fire") is amended as follows:

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i. Sections F-301.2, F-303.2, F-305.2, F-307.3 and F-307.3.1 are deleted.

ii. The words "listed in Appendix A" are deleted from section F-314.1.

iii. The following new sections F-315.0, F-315.1, F-315.1.1, F-315.1.2, F-315.1.3, F-315.2, F-315.3 and F-315.4 are added:

F-315.0 Fire Safety & Evacuation Plan

F-315.1 General: A fire safety and evacuation plan shall be prepared as set forth in this section where required by Sections F-315.1. through F-315.1.3.

F-1.1 Use Group R-1: All Use Group R-1 buildings.

F-315.1.2 Use Group I: All Use Group I buildings.

F-315.1.3 High rise buildings: All high rise buildings as defined in the building code listed in Appendix A.

F-315.2 Fire safety plan: The fire safety plan shall be approved by the fire official and shall be distributed by the owner to all tenants and employees.

F-315.3 Evacuation plan: The evacuation plan shall be conspicuously posted on every floor for the occupants' use.

Exception: In R-1 Use Groups the evacuation plan shall be posted on the inside of each guest room door.

F-315.4 Maintenance: The fire safety and evacuation plan shall be maintained to reflect changes in the use and physical arrangement of the building.

iv. The following new sections F-316.0, F-316.1, F-316.2, F-316.2.1, F-316.2.2 and F-316.3 are added:

F-316.0 Portable Kerosene Fired and Solid Fuel Fired Heaters

F-316.1 Clearances: Portable kerosene fired and solid fuel fired heaters shall be operated and installed with the minimum clearance to combustibles for which the appliance has been tested.

Exception: Clearances may be reduced in accordance with the mechanical subcode of the uniform construction code.

F-316.2 Portable kerosene fired heaters: Portable kerosene fired heaters shall be tested in accordance with UL 647 and bear the label of an approved testing agency complying with the criteria for labeling specified in the mechanical subcode of the uniform construction code.

F-316.2.1 Sale: Portable kerosene fired heaters shall not be offered for sale unless a conspicuous sign is posted at the point of sale and display indicating that the use of portable kerosene fired heaters is prohibited in all buildings except one and two family dwellings and is prohibited by ordinance in some municipalities in all dwellings.

F-316.2.2 Containers: Containers for kerosene shall be either of a plastic or metal construction with fill and vent openings. The container shall be blue with white lettering. The word "Kerosene" shall be displayed around the perimeter of the container.

F-316.2.3 Prohibited use: The use of portable kerosene fired heaters is prohibited in all Use Groups except R-3 as defined by the uniform construction code.

F-316.3 Chimneys: Chimneys connected to solid-fuel fired heaters shall be inspected annually and maintained free of significant deposits of creosote and soot.

Exceptions:

1. Use Group R-3 single family dwellings.

2. Chimneys serving fireplaces which are not equipped with fireplace stoves or inserts.

v. The following new sections F-317.0, F-317.1, F-317.2 and F-317.3 are added:

Section F-317.0 Vacant and Abandoned Buildings and Structures

F-317.1 Securing of Buildings: All buildings or structures that are, or hereafter become vacant as a result of damage, fire, or abandonment shall be secured against unauthorized entry as ordered by the fire official. Structures which appear to be in damage of collapse shall be referred to the building official for remedial action in accordance with the building code.

F-317.2 Utilities: All utilities which represent a potential sources of ignition shall be disconnected in a manner approved by the fire official.

F-317.3 Fire Protection Systems: Fire protection systems shall be maintained as required by Section F-403.4.

4. Article 4 ("Fire Protection Systems") is amended as follows:

i. Section F-400.2 is amended to read as follows:

"Installations: Before any fire alarm, detection or fire suppression system is installed, enlarged or extended, a construction permit shall be secured from the construction official".

ii. Section F-402.0 is deleted.

iii. Section F-404.6 is deleted and the following new sections F-404.6, F-404.6.1, F-404.6.2 and F-404.6.3 substituted in lieu thereof:

F-404.6 Fire Alarm System: Automatic and manual fire alarm systems and each of their components shall be tested annually in accordance with sections F-404.6.1 through F-404.6.3.

F-404.6.1 Alarm Test: An alarm shall be simulated for each zone of the system and shall cause the alarm to be audibly and/or visually received throughout the entire building and at the control panel.

F-404.6.2 Supervision: The supervisory circuits of each zone shall be tested in accordance with the manufacturer's instructions and cause a trouble signal to be received both audibly and visually at the control panel.

F-404.6.3 Power Failure: A failure of the main power supply to the fire alarm system shall be simulated. The emergency power supply shall then be capable of indicating, both audibly and visually, trouble and alarm signals at the control panel.

iv. Section F-404.7 is deleted.

v. Section F-404.8 is deleted and the following new sections F-404.8.1, F-404.8.1.1, F-404.8.1.2, F-404.8.1.3, F-404.8.1.4, F-404.8.2, F-404.8.2.1 F-404.8.2.2, F-404.8.2.3.1, and F-404.8.3.2 substituted in lieu thereof

F-404.8.1 Smoke Control Systems Tests: Smoke control systems shall be tested in accordance with Section F-404.8.1.1 through F-404.8.1.4,

F-404.8.1.1 Smoke Detection Systems: Smoke detection systems utilized to activate smoke control systems shall be tested on accordance with Section F-404.6.

F-404.8.1.2 Equipment Controls: Smoke control systems shall be placed into operation by manual and automatic means. The proper sequence and operation of system components shall be verified when the system is activated.

F-404.8.1.3 Pressurization Systems: For pressurization systems, pressurization systems, pressure readings shall be taken with all doors closed to verify that the system maintains the pressure differential required by the building code.

F-404.8.1.4 Smoke Removal Systems: For smoke removal systems, exhaust discharge readings shall be taken to verify that the system maintains the exhaust capacity required by the building code.

F-404.8.2 Emergency Generators: Tests shall be performed on emergency and standby power generation systems in accordance with Sections F-404.8.2.1 through F-404.8.2.2.

F-404.8.2.1 Simulated Power Failure: The main power supply shall be interrupted and cause the generator to start automatically under full load.

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F-404.8.2.2 Time Limits: Emergency power shall be supplied by the generator in 10 seconds or less under full load. Standby power shall be supplied by the generator in 60 seconds or less under full load.

F-404.8.3 Emergency Elevator Operation: Elevators shall be tested in accordance with Sections F-404.8.3.1 through F-404.8.3.2.

F-404.8.3.1 Emergency Recall Operation: Upon simulated activation of an elevator lobby detector, the elevator controller shall cause all elevator cars that serve that lobby to return nonstop to the designated lobby, and prevent further operation of the elevators without the use of an emergency service key.

F-404.8.3.2 Emergency Car Operation: The emergency service keys shall be utilized to place the recalled elevators into emergency operation and to verify proper functioning of the elevator for fire service operation.

vi. Section F-408.4.1 is amended to read as follows: Plans and specifications: Plans and specifications for the installation, extension, modification, alteration or removal from service of any automatic fire suppression system shall be submitted to the construction official and a permit shall be secured prior to the commencement of any work.

vii. Section F-408.5 is amended to read as follows: Permit: Upon approval of plans and specifications, a construction permit shall be issued by the construction official. Each system installed, extended, modified, altered or removed from service shall require a separate permit.

viii. The following new section F-409.2.5 is added:

F-409.2.5 Institutional Buildings: Hospitals, nursing homes, prisons, and group homes shall be provided with one fire extinguisher for each 2,500 square feet of floor area but not less than one per floor, and one in each kitchen.

ix. Section F-411.0 is deleted.

5. Article 5 ("Means of Egress") is amended as follows:

i. The words "listed in Appendix A" are deleted from sections F-500.1 and F-502.2.

ii. Sections F-501.1, F-501.2, F-501.3, and F-501.4 are deleted and the following new sections F-501.1, F-501.2, F-501.3 and F-501.4 substituted in lieu thereof.

F-501.1 Maintenance: All means of egress elements such as egress doors and their hardware, corridors, stairways, fire escapes, and similar egress components shall be maintained in a safe and operable condition at all times, and be available for immediate use. The fire official may require a load test on any exterior stairway or fire escape to determine structural stability.

F-501.2 Obstructions: A person shall not at any time place any encumbrance within or upon any element of a means of egress which reduces its width to less than that required by the building code. Draperies or similar decorative hangings shall not obstruct the view of, nor access through, any element of a means of egress. Mirrors shall not be placed in or adjacent to a means of egress in any manner which may confuse the direction of egress.

F-501.3 Exits: Exits shall not be used for any purpose other than a means of egress. Spaces within a stairway enclosure shall not be utilized for storage or location of any materials or items. Exterior spaces below and within ten feet horizontally of fire escapes and exterior stairs shall not be utilized for the storage of combustible materials or location of refuse containers.

F-501.4 Exit Access Corridors: Enclosed exit access corridors shall be maintained free of accumulations of flammable or combustible materials at all times.

Exceptions:

1. Decorative items affixed directly to walls or ceilings.

2. Furniture located within seating or waiting areas which does not reduce the required width of the corridor.

6. Section F-600.2 is deleted from article 6 (airports, heliports and helistops).

7. Section F-700.2 is deleted from article 7 (Application of Flammable Finishes).

8. Article 8 (Bowling Establishments) is amended as follows:

i. Section F-800.2 is deleted.

ii. The words "listed in Appendix A" are deleted from section F-801.1 and the words "in effect at the time of first occupancy" substituted in lieu thereof.

9. Article 9 (Dry Cleaning Plants) is amended as follows:

i. The words "a permit obtained from the fire official" are deleted from section F-900.2 and the words "the permit required by this code" substituted in lieu thereof.

ii. The words "listed in Appendix A" are deleted from section F-901.1 and the words "in effect at the time of the first occupancy" substituted thereof.

iii. The words "listed in Appendix A" are deleted from section F-901.2.

10. Section F-1000.2 is deleted from article 10 (Dust Explosion Hazards).

11. Article 11 (Crop Ripening or Coloring Processes) is amended as follows:

i. Section F-1100.2 is deleted.

ii. The words "listed in Appendix A" are deleted from section F-1100.1 and the words "in effect at the time of first occupancy" substituted in lieu thereof.

iii. Paragraph 4. of section F-1101.4 is amended to read as follows: Kerosene heaters shall be installed in accordance with the applicable provisions of the building code.

12. Section F-1200.2 is deleted from article 12 (Fumigation and Thermal Insecticidal Fogging).

13. Article 13 (Lumber Yards and Woodworking Plants) is amended as follows:

i. Section F-1300.2 is deleted.

ii. The words "listed in Appendix A" are deleted from section F-130.1 and the words "in effect at the time of first occupancy" substituted in lieu thereof.

14. Article 14 (Ovens and Furnaces) is amended as follows:

i. Section F-1400.2 is entitled "Plans" and the sentence "Any oven or furnace to which this code applies shall not be operated without a permit from the fire official." is deleted.

ii. The words "listed in Appendix A" are deleted from section F-1401.1 and the words "in effect at the time of first occupancy" substituted in lieu thereof.

15. Article 15 (Places of Assembly and Education) is amended as follows:

i. Section F-1500.2 is deleted.

ii. Section F-1500.3 is amended to delete the words "50 or more".

iii. Section F-1500.4 is amended to delete the words "listed in Appendix A".

iv. The words "listed in Appendix A" are deleted from section F-1501.1 and the words "in effect at the time of first occupancy" substituted in lieu thereof.

16. Article 16 (Service stations and garages) is amended as follows:

i. Section F-1600.2 is deleted.

ii. The words "listed in Appendix A" are deleted from section F-1600.2.1 and the words "in effect at the time of first occupancy" substituted in lieu thereof.

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iii. Section F-1600.2.2 is deleted.

iv. The words "plumbing code listed in Appendix A" are deleted from Section F-1604.3 and the words "building code" substituted in lieu thereof.

17. Article 17 (Tents, Air-supported, and other Temporary Structures) is amended as follows:

i. The words "listed in Appendix A" are deleted from section F-1700.1.

ii. Sections F-1700.1.1 and F-1700.2 are deleted.

iii. Sections F-1700.3 is amended to read as follows:

Inspections: The entire membrane or air-supported structure system shall be inspected at regular intervals to assure that the installation is maintained in proper condition.

iv. The word "tents" is deleted from the introductory sentence of section F-1702.1 and the words "membrane" substituted therefore.

18. Article 18 ("Vehicle Tire Rebuilding Plants") is amended as follows:

i. Section F-1800.2 is deleted.

ii. The words 'listed in Appendix A" are deleted from section F-1801.1 and the words "in effect at the time of first occupancy" substituted in lieu thereof.

iii. The words "listed in Appendix A" are deleted from section F-1801.2.

iv. The words "listed in Appendix A" and "by the building code listed in Appendix A" are deleted from section F-1801.3.

v. The words 'listed in Appendix A" following the words "building code" are deleted from section F-1801.4.

19. Article 19 (Vehicle Wrecking Yards, Junkyards and Waste Material Handling Plants) is amended as follows:

i. Section F-1900.2 is deleted.

ii. The words "listed in Appendix A" are deleted from section F-1901.1 and the words "in effect at the time of first occupancy" substituted in lieu thereof.

20. Article 20 (Welding or Cutting, Calcium Carbide and Acetylene Generators) is amended as follows:

i. Sections F-2000.2, F-2000.2.1 and F-2000.3 are deleted.

ii. Section F-2002.1 is amended to read as follows:

General: The layout, arrangement and construction of buildings and structures designed and approved for welding shall comply with the applicable requirements of the building code in effect at the time of first occupancy for the appropriate use group classification, and shall be provided with fire protection and fire extinguishing equipment as required by that code. Buildings and structures and their service equipment shall be maintained in safe and sound condition as required by this code.

iii. Sections F-2003.2 and F-2006.7 are deleted.

21. Article 21 (Cellulose Nitrate Motion Picture Film) is amended as follows:

i. The sentence "A person shall not store, keep or have on hand more than 25 pounds (11.35 kg) of nitrate film without securing a permit from the fire official for such activity" is deleted from section F-2100.2.

ii. The words "listed in Appendix A" are deleted from section F-2101.1.

22. Article 22 (Cellulose Nitrate (Pyroxylin) Plastics) is amended as follows:

i. Section F-2200.2 is deleted.

ii. The words "listed in Appendix A" are deleted from section F-2201.1.

23. Article 23 (Combustible Fibers) is amended as follows:

i. Section F-2300.2 is deleted.

ii. The words "listed in Appendix A" are deleted from section F-2301.1 and the words "in effect at the time of first occupancy" substituted in lieu thereof.

iii. The words "listed in Appendix A" are deleted from section F-2301.2.3.

24. Article 24 (Compressed Gases) is amended as follows:

i. Section F-2400.2 is deleted.

ii. The words "listed in Appendix A" are deleted from section F-2401.9.

25. Article 25 (Cryogenic Liquids) is amended as follows:

i. Section F-2500.2 is deleted.

ii. The words "listed in Appendix A" after the words "building code" are deleted from section F-2501.2.

26. Article 26 (Explosives, Ammunition and Blasting Agents) is amended as follows:

i. Section F-2600.2 is deleted.

ii. The introductory line of section F-2600.2.1 is amended to read as follows: Prohibited explosives: The following explosives shall not be permitted.

iii. The words "as required under section F-2600.2" are deleted from section F-2600.3.

iv. The words "under section F-2600.2" are deleted from section F-2602.1.

v. The words "listed in Appendix A" are deleted from section F-2600.2 and the words "in effect at the time of first occupancy" substituted in lieu thereof.

27. Article 27 (Fireworks) is amended as follows:

i. The sentence "The manufacture of fireworks is prohibited within the jurisdiction." is deleted from section F-2700.1.

ii. Section F-2700.2 is deleted.

28. Article 28 (Flammable and Combustible Liquids) is amended as follows:

i. Section F-2800.2 is deleted.

ii. The sentence "Permit and inspection fees which are required by ordinance shall accompany all applications." is deleted from section F-2800.3.

iii. The words "listed in Appendix A" are deleted and the words "in effect at the time of first occupancy" substituted in lieu thereof in sections F-2801.1, F-2801.7 and F-2805.3.

iv. Paragraph 5 of section F-2804.5 is amended to read as follows: Periodic tests of underground tank storage systems may be required by the fire official to determine that leakage has not occurred.

29. Article 29 (Hazardous Material and Chemicals) is amended as follows:

i. Section F-2900.2 is deleted.

ii. The words "listed in Appendix A" are deleted from section F-2902.1 and the words "in effect at the time of first occupancy" substituted in lieu thereof.

30. Article 30 (Liquified Petroleum Gases) is amended as follows:

i. Section F-3000.2 is deleted.

ii. The words "by section F-2000.2" are deleted from section F-3000.3.

iii. The words "listed in Appendix A" are deleted from section F-3004.1 and the words "in effect at the time of first occupancy" substituted in lieu thereof.

31. Article 31 (Magnesium) is amended as follows:

i. Section F-3100.2 is deleted.

ii. The words "listed in Appendix A" are deleted from section F-3103.1 and the words "in effect at the time of first occupancy" substituted in lieu thereof.

32. Article 32 (Matches) is amended as follows:

i. Section F-3200.2 is deleted.

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ii. The words "listed in Appendix A" are deleted from section F-3201.1 and the words "in effect at the time of first occupancy" substituted in lieu therefor.

33. Article 33 (Organic Coatings) is amended as follows:

i. Section 3300.2 is deleted.

ii. The words "listed in Appendix A" after the words "building code" are deleted from section F-3301.1 and F-3303.1 and the words "in effect at the time of first occupancy" substituted in lieu thereof in each case.

CHAPTER 18A
FIRE CODE ENFORCEMENT

SUBCHAPTER 1. GENERAL PROVISIONS

5:18A-1.1 Title; scope; division into parts

(a) These regulations shall be known as the "Regulations for Fire Code Enforcement" and are referred to herein as the "regulations".

(b) The regulations contain four separate parts:

1. Subchapter 1 contains general provisions pertaining to Fire Code enforcement and may be cited throughout these regulations as N.J.A.C. 5:18A-1 and when referred to in subchapter 1 of this chapter, may be cited as this subchapter.

2. Subchapter 2 controls matters pertaining to the creation, establishment, organization and disbanding of local enforcing agencies and may be cited throughout these regulations as N.J.A.C. 5:18A-2, and when referred to in subchapter 2 of this chapter may be cited as this subchapter.

3. Subchapter 3 controls matters pertaining to the administration and enforcement of the New Jersey Uniform Fire Code (N.J.A.C. 5:18) and may be cited throughout these regulations as N.J.A.C. 5:18A-3, and when referred to in subchapter 3 of this chapter, may be cited as this subchapter.

4. Subchapter 4 controls matters pertaining to the certification of fire officials and fire inspectors and may be cited throughout these regulations as N.J.A.C. 5:18A-4, and when referred to in subchapter 4 of this chapter, may be cited as this subchapter.

5:18A-1.2 Authority

These regulations are promulgated by the Commissioner of the Department of Community Affairs pursuant to the authority conferred by the Uniform Fire Safety Act (P.L. 1983, c.383; N.J.S.A. 52:27D-192 et seq.).

5:18A-1.3 Intent and purpose

(a) It is the intent and purpose of the regulations to ensure that:

1. All areas of the State are protected by the enforcement of a uniform minimum Fire Code which will protect the lives of the State's citizens;

2. Uniform, thorough, and adequately funded fire safety inspections are performed to protect the public wherever buildings and uses which pose a serious life safety hazard are found;

3. Penalties for violators are swiftly assessed and commensurate with the gravity of the offense;

4. Fire Code enforcement is efficient and coordinated to eliminate duplication of effort and confusion on the part of the public; and

5. The standards enforced on the State and local levels are interpreted consistently.

5:18A-1.4 Definitions

(a) As used in these regulations:

"Act" means the Uniform Fire Safety Act (PL 1983 c.383, N.J.S.A. 52:27D-192 et seq.)

"Board of Appeals" means the Construction Code Board of Appeals created by the State Uniform Construction Code Act (PL 1975, c.217, N.J.S.A. 52:27D-119 et seq.).

"Bureau" means the Bureau of Fire Safety in the Division of Housing and Development of the Department of Community Affairs.

"Code" means the Uniform Fire Code adopted as N.J.A.C. 5:18.

"Commissioner" means the Commissioner of the Department of Community Affairs.

"County enforcing agency" means a county fire marshall designated by a board of chosen freeholders to enforce the Code.

"Department" means the Department of Community Affairs.

"Fire company" means a private volunteer organization established for the purpose of fighting fires.

"Fire department" means a paid or part paid fire department or one or more volunteer fire companies which have been contracted with to provide fire protection to a municipality or a fire district.

"Fire district" means a district established pursuant to N.J.S.A. 40A:14-70 for the purpose of providing fire fighting services.

"Fire official" means a person certified by the Commissioner of Community Affairs and appointed or designated to direct the enforcement of the Code by the appointing authority of a local enforcing agency and also means any certified fire inspector working under the direction of the fire official.

"Fire subcode official" means the official appointed pursuant to the New Jersey Uniform Construction Code to enforce the Fire Protection Subcode.

"Health care facility" means facilities licensed by the New Jersey Department of Health including hospitals, long term care facilities, residential care facilities, acute alcohol treatment facilities; outpatient surgery facilities, renal dialysis facilities; abortion clinics and birthing centers.

"Local enforcing agency" means a municipal fire department, fire district, or county fire marshall authorized by municipal ordinance to enforce the act within a specific local jurisdiction; or where such authorization has not been granted by local ordinance, it means the Department of Community Affairs.

"Life hazard use" means any life hazard use designated by the Code as defined in N.J.A.C. 5:18-1.5.

"Owner" means a person who owns, purports to own, manages, rents, leases, or exercises control over a building, structure, premises or use.

5:18A-1.5 Effective date

These regulations shall take effect immediately upon promulgation.

5:18A-1.6 Severability

(a) If any provision of the regulation or the application thereof to any person or circumstances is held invalid, the invalidity shall not effect other provisions or applications of the regulations which can be given effect and to this end the provisions of the regulations are severable.

(b) Nothing contained in these regulations shall be deemed to invalidate or control the provisions of or the enforcement of any pre-existing municipal ordinance pertaining to fire safety nor to limit the existing powers of any county or municipal official to enforce the provisions of any pre-existing law, ordinance, or code pertaining to fire safety.

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SUBCHAPTER 2. ENFORCING AGENCIES; ESTABLISHMENT AND RESPONSIBILITIES

5:18A-2.1 Title; scope; intent

(a) This subchapter, adopted pursuant to the "Uniform Fire Safety Act" and entitled "Enforcing Agencies, Establishment and Responsibilities" shall be known and may be cited throughout the regulations as N.J.A.C. 5:18A-2.

(b) This subchapter shall control matters relating to the establishment, structure, organization, jurisdictional responsibilities and the interrelationship of enforcing agencies.

(c) This subchapter seeks to provide an efficient administrative structure for enforcing agencies through which effective enforcement can take place, inconsistency of Code interpretation and enforcement can be avoided, uniformity of systems and procedures encouraged, and the public health and safety protected. Such intent shall be given full effect in the construction of any specific provision of this subchapter.

5:18A-2.2 Matter covered; jurisdictions; exceptions

(a) Except as is otherwise provided in (c) below, the provisions of this subchapter shall apply to all agencies with an enforcement responsibility under the Act and regulations.

(b) Jurisdictional responsibilities for enforcing the Code are as follows:

1. Local enforcing agencies, where created, shall be responsible for enforcement of the Code for:

i. All privately owned buildings subject to the Code within the jurisdictional limits of the local enforcing agency;

ii. All publicly owned buildings owned by any municipality or local authority, county, or county or regional authority located within the jurisdictional areas of the local enforcing agency. When a county enforcing agency has been created, this jurisdiction shall be concurrent with that of the county enforcing agency; and

iii. All buildings leased, in whole or part, by the State of New Jersey or any part of its boards, commissions, agencies or authorities, provided that the jurisdiction of the local enforcing agency in such buildings shall be concurrent with that of the Bureau.

2. County enforcing agencies, where created, shall be responsible for enforcement of the Code for:

i. All privately owned buildings subject to the Code located in the jurisdictional areas where the municipality has designated the county enforcing agency to enforce the Code;

ii. All publicly owned buildings owned by the county or any county or regional authority located in the county; and

iii. Concurrent jurisdiction with the local enforcing agency for all buildings owned by a municipality or local authority.

3. The Bureau shall be responsible for enforcing the Code:

i. Where a local enforcing agency has not been created nor has a county enforcing agency been designated to enforce the Code;

ii. In all buildings owned by the State of New Jersey or any of its boards, commissions, agencies or authorities; and

iii. Have concurrent jurisdiction with any local or county enforcing agency.

4. For the purpose of this subsection "owned" shall mean and include "leased."

(c) Exceptions to these rules follows:

1. Agencies created by Interstate Compact shall conform to the Code but shall not be subject to the enforcement jurisdiction of any local, county or state enforcing agency.

2. The United States and agencies of the United States except that property leased by the United States or any of its agencies or instrumentalities shall be subject to the jurisdiction of the local or county agency as the case may be in the same manner as any other privately owned building.

(d) Any type of enforcing agency may individually adopt further rules for their internal governance, not inconsistent with any specific provision of this subchapter, or its stated intent.

5:18A-2.3 Local enforcing agencies; establishment

(a) Creation of a local agency shall be subject to the following:

1. A local enforcing agency shall only be created by ordinance adopted by the municipal governing body.

2. The governing body shall be required to establish a local enforcing agency if requested to do so by any fire department or fire district within its limits.

3. The governing body shall designate a county enforcing agency or local enforcing agency to enforce the Code within the limits of a fire department only if requested to do so by the fire department or the Board of Commissioners of the fire district, as the case may be.

4. The governing body shall have no authority to create a local enforcing agency, other than the county fire marshall, outside the fire department organization unless requested to do so pursuant to 3, above.

5. Where a municipality has two or more departments or districts within its limits it may make different provisions for each depending upon the wishes of the respective department and districts.

6. Where a municipality has no fire department or chooses to rely on the services of a fire department from a neighboring municipality, then the governing body may, with the consent of that fire department, designate it to enforce the Code or the governing body may designate the county enforcing agency or the Department of Community Affairs.

7. No ordinance shall be required where the fire department or district wishes to let enforcement become the responsibility of the State. The State will automatically assume jurisdiction where no ordinance is adopted.

(b) An ordinance creating one or more local enforcing agencies shall include at least the following provisions:

1. A designation of the organization, office or agency to enforce the Code. Any organization, office, or agency so designated shall become a part of the municipal government for the purposes of these regulations.

2. Provisions governing the appointment of a fire official and such fire inspectors as may be necessary to enforce the Code. The ordinance must contain a provision specifying who makes the appointment. Such provision must be acceptable to the fire department or fire district.

3. When two or more fire department chiefs have jurisdiction within the jurisdictional area served by a local enforcing agency, the ordinance shall provide a mechanism, such a single chief, chief's association, an association of fire districts, fire district commissioners, a municipal official, or a similar representative for the purpose of recommending appointments to the local appointing authority.

4. Nothing in this subsection shall be construed as in any way derogating from or limiting the right of any person under Title II of the Revised Statutes (Civil Service).

5. A designation of the agency which will be responsible for the periodic inspection of life hazard uses. This agency may be the local enforcing agency, the county enforcing agency, or the Department. The ordinance shall not designate any agency which does not have at least one paid inspector.

6. Establish any desired local requirements for mandated periodic inspections over and above those required by the Code.

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7. Establish any desired local permit requirements over and above those required by the Code.

8. Designate either the local enforcing agency or the State Bureau of Fire Safety (hereinafter cited as the Bureau) to collect and account for the annual registration fees established by the Code. The income to the local enforcing agency shall be the same in either case.

9. Set any fees for locally required periodic inspections or permits.

10. Adopt any local amendments desired to subchapters 3 or 4 of N.J.A.C. 5:18, the State Fire Prevention Code and/or the State Fire Safety Code. No amendment to subchapters 1 or 2 of the State Fire Code is permitted.

11. Repeal any earlier ordinances which the governing body may deem to conflict with or cause confusion with the State Uniform Fire Code.

12. Where the governing body shall create two or more agencies because there are two or more departments or districts within its limits then the following shall apply:

i. Differing permit and periodic inspection requirements may be established for different agencies;

ii. The ordinance shall include the established jurisdictional limits of each agency. There shall be no geographical overlap.

13. The municipal governing body need not adopt the State Uniform Fire Code, which shall be adopted by the Commissioner and be binding everywhere in the State.

(c) Effective date of establishment of enforcing agency shall be as follows:

1. When a municipality adopts an ordinance establishing a local enforcing agency, the effective date of the establishment of that agency shall be as specified in the ordinance.

2. If no local enforcing agency has been established by July 1, 1985, or a local enforcing agency has been established but no election has been made by that date to enforce the Code in life hazard uses, the Bureau shall enforce the Code in life hazard uses within the municipality, or within such portion of the municipality as is not served by a local enforcing agency which enforces the Code in life hazard uses.

3. When, at any time after July 1, 1985, a municipality adopts an ordinance creating a local enforcing agency authorized to enforce the Code in life hazard uses, or the municipality or fire district, or county, as the case may be, adopts an ordinance or resolution authorizing an existing local enforcing agency to enforce the Code in life hazard uses, and a copy of the ordinance or resolution as the case may be, has been filed with the Bureau, the effective date of the assumption by the local enforcing agency of enforcement responsibility in life hazard uses shall be the date of the next quarterly publication of the Registry of Enforcing Agencies.

4. If the Bureau determines that a local enforcing agency is not properly enforcing the Code in life hazard uses, and, also, with regard to imminent hazard, the Bureau may assume responsibility for enforcing the Code in life hazard uses and with regard to imminent hazards within the territorial jurisdiction of the local enforcing agency. In any such case, the effective date shall be as established by the Bureau in its notice of findings.

5. If the Commissioner returns jurisdiction to a local enforcing agency pursuant to N.J.A.C. 5:18A-2.10, the effective date shall be the date of the next quarterly publication of the Registry of Enforcing Agencies following the Commissioner's decision.

6. When the Bureau assumes responsibility pursuant to N.J.A.C. 5:18A-4.3(c). then the effective date shall be the 61st day after the vacancy occurs unless the Bureau grants a 30 day extension as provided in N.J.A.C. 5:18A-4.3(c).

5:18A-2.4 County enforcing agency; establishment

(a) A county enforcing agency shall only be created by an ordinance or resolution of the Board of Chosen Freeholders, but only when the Board shall have created a county fire marshall.

(b) Only a county fire marshall shall be designated to serve as a county enforcing agency.

(c) The ordinance or resolution shall specify whether the county enforcing agency shall:

1. Limit its activity to the inspection of county facilities;

2. Be available to inspect life hazard uses upon designation by a local governing body;

3. Be available to enforce the Code on behalf of a local enforcing agency upon designation by a local governing body;

4. Where the ordinance or resolution indicates that the county will inspect life hazard uses or enforce the Code fully on behalf of a municipality or fire department or fire district then the ordinance or resolution shall specify whether the fees established by the Code are to be collected and accounted for by the county fire marshall or the Bureau. The income to the county shall be the same in either case;

5. Where the county desires to establish additional periodic inspections, permits, and/or fees beyond those specified on the Code for areas within its jurisdiction then the ordinance shall so provide.

5:18A-2.5 State enforcing agency; establishment

(a) The Bureau of Fire Safety in the Division of Housing and Development is constituted as the State enforcing agency for the purpose of administering and enforcing the Code and these regulations in those areas where a local enforcing agency has not been established or a local governing body has not elected to inspect life hazard uses and has not delegated that responsibility to a county fire marshall.

(b) The Bureau of Fire Safety shall also carry out any other responsibility of the Department under the Code or these regulations.

5:18A-2.6 Collection of and accounting for fees and penalties

(a) State collection of registration fees shall be as follows:

1. Where the local ordinance or county resolution so provides, the Bureau of Fire Safety shall annually bill for and take such steps as may be necessary to collect the annual registration fees provided for by the code.

2. Where the Bureau of Fire Safety collects the fees it shall remit 80 percent of the amount collected to the local enforcing agency. This payment shall be disbursed by the end of the quarter next succeeding the one in which the fees were collected.

3. The 80 percent local share shall not be considered State funds but rather local funds held in trust by the State.

(b) Local or county collection of registration fees shall be as follows:

1. Where the local ordinance or county resolution so provides, the local enforcing agency shall annually bill for and take such steps as may be necessary to collect the annual registration fees provided for by the Code.

2. In order to make local collection possible, the Bureau of Fire Safety shall provide the local enforcing agency with a copy of the registry of life hazard uses.

3. Where the local enforcing agency collects the fee it shall remit 20 percent of the fee to the Bureau of Fire Safety. This payment shall be disbursed by the end of the quarter next succeeding the one in which it was collected. For the purpose of this subsection quarters shall be deemed to end on March 31, June 30, September 30 and December 31.

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4. The 20 percent State share shall not be considered local funds but State funds held in trust by the local enforcing agency.

(c) Permit fees provided for by the Code or any local ordinance or any penalties collected shall be collected by and retained fully by the enforcement agency having jurisdiction.

(d) All revenues collected by the Bureau of Fire Safety shall be deposited in the Fire Safety Revolving Fund created by the Treasurer of the State of New Jersey. Expenditures may be made from the fund to carry out any of the responsibilities of the Bureau of Fire Safety.

(e) All revenues received by a local enforcing agency shall be appropriated by the local governing body to the local enforcing agency for the purpose of enforcing the Code.

(f) Neither the local enforcing agency nor the Bureau of Fire Safety shall have any obligation to each other in respect of fees due but not collected in any given quarter.

5:18A-2.7 Registry of agencies

(a) Each municipality which passes an ordinance establishing a local enforcing agency shall file a copy of same with the Bureau of Fire Safety within two weeks of final adoption. Each county which passes an ordinance or resolution establishing a county enforcing agency shall file a copy of same with the Bureau of Fire Safety within two weeks of adoption. Any municipality or county which later amends a resolution or an ordinance which established an enforcing agency shall file a copy of the amendments with the Bureau of Fire Safety within two weeks of adoption. A municipality or county which does not file an ordinance shall be deemed not to have passed one. The Bureau of Fire Safety shall enforce the Code in those jurisdictions.

(b) The Bureau of Fire Safety shall compile those ordinances and shall quarterly issue a Registry of Enforcing Agencies. The Registry shall be made available to the general public and shall show what agency is responsible to enforce the Code and what agency is responsible to inspect life hazard uses in every Fire Code jurisdictional area of the State.

(c) The status of any enforcing agency with respect to responsibility to enforce the Code or inspect life hazard uses shall change upon publication of the change in the Registry next succeeding the adoption of the ordinance or resolution which makes the change.

5:18A-2.8 Amendments to the Code

(a) Local amendments to the technical standards of the State Fire Code are permitted to be adopted by ordinance but no such amendment shall require a building which complies with the Uniform Construction Code (N.J.A.C. 5:23) to conform to a more restrictive standard.

(b) Any amendments adopted to the State Fire Code shall be filed with the Bureau of Fire Safety. Failure to file shall not affect the validity of the amendment.

(c) Whenever any person believes that a locally adopted amendment establishes a more restrictive requirement than that established for the same building or circumstance by the Uniform Construction Code, then that person may apply to the Commissioner for a determination pursuant to N.J.S.A. 52:14B-8.

1. Any such application shall be writing and shall set forth the particular provision of the local amendment which is allegedly more restrictive and the reasons the person believes it to be so.

2. The Commissioner shall issue a preliminary ruling stating whether or not the amendment establishes a more restrictive requirement and shall notify the applicant and the local enforcing agency. Each party shall have shall have 30 days in which to file exceptions to the preliminary ruling after which the Commissioner shall adopt it as originally set forth or as modified and make it a final ruling.

3. A final ruling which finds an amendment to the Code adopted by local ordinance to be more restrictive shall set forth each particular in which the ordinance is more restrictive. Those particulars shall be declared invalid and shall be of no further force or effect.

5:18A-2.9 Conflict of interest

(a) No person employed by an enforcing agency, whether paid or unpaid, as a fire official or fire inspector shall carry out any inspection or enforcement procedure with respect to any property or business in which he or she or a member of his or her immediate family has an economic interest.

(b) Where an inspection or enforcement procedure is necessary or required in any such property or business then the fire official shall arrange for the inspection or enforcement to be carried out by the county enforcing agency or the Bureau of Fire Safety.

(c) Persons subject to this section shall annually report any income or benefits received from any property or business subject to the Code to the municipal governing body. This report shall list the sum total of such income received and each source.

(d) This section shall not apply to the ownership of stock or other investment instrument of any corporation listed on any national stock exchange.

(e) Nothing herein shall prohibit a county or a municipality from establishing, by ordinance or resolution, more restrictive provisions regarding conflict of interest.

5:18A-2.10 Departmental monitoring

(a) The Bureau of Fire Safety shall institute a regular program of monitoring local enforcing agencies to ensure that the Code is being properly enforced. This monitoring program shall provide for a regular schedule of random field visits as well as monitoring visits in response to complaints.

(b) When making a monitoring visit the bureau shall determine:

1. Whether the fire official and any inspectors are certified in accordance with the requirements of these regulations;

2. Whether all fees are being received and properly accounted for and whether required collection procedures are being implemented in the case of delinquent fees;

3. Whether all required periodic inspections of life hazard uses are being carried out when required by law;

4. Whether all inspections required in conjunction with required permits are being carried out;

5. Whether records are being maintained for all inspections;

6. Whether enforcement action as required by the Code is being taken when violations are found or when the owner fails to correct them;

7. Whether the local enforcing agency has an effective program to discover unregistered life hazard uses or activities which require a permit which do not have them;

8. Whether the local enforcing agency has an adequate number of inspectors and other staff for its workload;

9. Whether the local enforcing agency is in violation of any requirement of these regulations.

(c) If the Bureau determines that a local enforcing agency has failed to properly enforce the Code, then the Bureau shall notify the local enforcing agency of this determination and direct corrective action as needed.

(d) The local enforcing agency shall have 15 days in which to contest the Bureau's findings by filing exceptions in writing

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with the Bureau. The Bureau shall consider any such exceptions and issue a final finding.

(e) Where the local enforcing shall fail to take corrective action or where the failure to enforce the Code is pervasive and substantial then the Bureau shall notify the local enforcing agency of its determination or final finding and shall thereafter assume responsibility for all inspection and enforcement with respect to life hazard uses within the jurisdiction of the local enforcing agency. All fees and penalties associated with the enforcement in life hazard uses shall from that date forward be paid to the Bureau.

(f) Where the Bureau has assumed responsibility due to the failure of a local agency to properly enforce the Code, the local agency may petition the Commissioner to return jurisdiction. The petition shall set forth the corrective action the local enforcing agency has taken or will take to ensure proper enforcement of the Code. The Commissioner may return jurisdiction if he or she finds that the Code will be properly and fully enforced.

SUBCHAPTER 3. ORGANIZATION, ADMINISTRATION AND ENFORCEMENT

5:18A-3.1 Applicability

The provision of this subchapter shall apply to all local and county enforcing agencies. The term local enforcing agency shall mean and include county enforcing agencies whenever the term is used in this chapter.

5:18A-3.2 Local enforcing agencies; organization

(a) The fire official shall be appointed in the manner provided for in the ordinance establishing the local enforcing agency. He shall serve as the chief administrator of the agency. He shall establish the day to day operating routines of the agency and shall coordinate the activities of any inspectors or other staff. He shall be certified in accordance with subchapter 4 of this chapter if the local enforcing agency inspects life hazard uses for compliance with the Code.

(b) The municipality and the fire department shall ensure that the enforcing agency has an adequate number of inspectors to complete all necessary inspections and review all permit applications and act on them in a timely manner as well as sufficient staff to ensure that enforcement actions are taken in a timely manner when violations are found and not corrected. Any inspectors engaged in the inspection of life hazard uses shall be certified as specified in Subchapter 4 of this chapter.

(c) The local enforcing agency shall be under the supervision of and subject to direction from the authority having jurisdiction and such subordinate officers as he or she may designate.

(d) The municipality shall specifically appoint legal counsel to assist the local enforcing agency to enforce the Code. The designated agency attorney shall advise the agency and undertake such actions at law as the fire official shall deem necessary to gain compliance with the Code.

(e) When two or more fire department chiefs have jurisdiction within the physical area served by a local enforcing agency, the ordinance shall provide a mechanism, such as a single chief, chief's association, an association of fire districts, fire district commissioners, a municipal official, or a similar representative for the purpose of supervising and directing the local appointing authority.

5:18A-3.3 Duties of fire officials

(a) The fire official shall enforce the code and the regulations and shall:

1. Ensure that all life hazard uses are inspected in accordance with the schedule established by the Code;
2. Ensure that notices of violations are served whenever inspections reveal violations;
3. Provide that permit applications are available and assist the public on preparing them when necessary;
4. Review all permit applications for completeness as to form;
5. Ensure that the inspection required for the issuance of a permit is performed in a timely manner;
6. Ensure that no activity or use which requires a permit is carried out without one;
7. Ensure that all life hazard uses are registered;
8. Assist the Bureau when requested, with any registration survey;
9. Coordinate with the fire subcode official where work to be done to comply with the Fire Code requires a construction permit;
10. Collect all fees and penalties due the local enforcing agency and ensure that they are properly accounted for;
11. Ensure that all requests for variances are properly prepared, documented and approved or denied in a timely manner;
12. Ensure that all appeals are promptly referred to the Construction Code Board of Appeals;
13. Record all notices of violation and determine the amount of all penalties for non-compliance;
14. Ensure that a report of every inspection is completed and properly filed;
15. Take reasonable measures to determine when imminent hazards exist and enforce the law as provided for by the Code;
16. File such reports as the Bureau may from time to time require;
17. Supervise the work of any assigned inspectors or enforcement personnel to ensure completeness and accuracy;
18. Ensure that any agency staff members requiring certification have been certified;
19. Ensure that the procedures of the local enforcing agency conform to the requirements of the Code and the regulations;
20. Prepare and obtain reports required by the regulations;
21. Attend meetings and hearings as required by the Code and the regulations;
22. Coordinate the activities of the local enforcing agency with other Code enforcement agencies and State agencies having a related interest or responsibility;
23. Carry out such other functions as are necessary and appropriate to the position of fire officials;
24. Respond to and cause to be investigated any complaints brought under the State Fire Code.

5:18A-3.4 Records

(a) The local enforcing agency shall maintain a central file system for each property, building or use which requires a periodic inspection or a permit. The files shall contain all information, including inspection reports, correspondence, notices and orders, and so forth, relevant to each property, building or use. The files shall contain or indicate the storage location of all plans and reports too bulky for inclusion in the central file. The files and records of the local enforcing agency shall be open to Bureau review and audit and public inspection at reasonable times. File copies of all documents shall be retained in the official records as provided by law.

(b) Any record required by law to be kept confidential, including, but not limited to, records of trade secrets related

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to hazardous or potentially hazardous substances, shall not be open to public inspection.

5:18A-3.5 Coordination with construction and fire subcode officials

(a) The fire official shall ensure that the construction official and fire subcode official are notified when a notice of violation directs work which will require construction permit. He shall assist the fire subcode official to determine whether the work for which a permit is applied will correct the violation.

(b) The fire official shall ensure that a permit was obtained and any work done was approved by the construction official and fire subcode official before a violation is abated.

5:18A-3.6 Coordination for State licensed facilities

(a) The provisions of this section shall apply to the following types of facilities which are licensed by State agencies:

1. Department of Human Services:

i. Day care centers;

ii. Day nurseries;

iii. Community residences for the developmentally disabled.

2. Department of Health:

i. Health care facilities.

3. Department of Community Affairs:

i. Rooming houses;

ii. Boarding homes.

(b) The fire official shall ensure that State agencies are notified when one or more violations of the Fire Code are found in such facilities.

(c) Any State licensing agency shall notify the fire official having jurisdiction of any inspection in order that the fire official might take part. When this is not possible or practical then the agency shall notify the fire official of any Fire Code violations found. Any such State agency shall send a list of the facilities it licenses to the fire official.

(d) Any State agency which enforces the Fire Code as a part of any licensing standard and any fire official shall each consult with the other before any variance to the Fire Code is granted. The concurrence of both shall be required before the variance shall be granted. A copy of any variance granted shall be filed with the Bureau.

(e) Wherever a difference of interpretation pertaining to the Code arises between the fire official and a State agency having licensing jurisdiction then either the official, the agency or the owner may apply to the Bureau for a final interpretation and ruling which shall be requested and furnished in writing.

SUBCHAPTER 4. CERTIFICATION OF FIRE OFFICIALS

5:18A-4.1 Title; scope; intent

(a) This subchapter of the regulations adopted pursuant to authority of the Uniform Fire Safety Act, entitled "Certification of fire officials," shall be known and may be cited throughout the regulations as subchapter 4, and when referred to in this part of the regulations may be cited as "this Subchapter".

(b) Unless otherwise specifically provided, all references to article or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such article, section or provision of this subchapter.

(c) This subchapter shall control all matters relating to qualifications for the certification of all fire officials and inspectors engaged in or to be engaged in the administration and enforcement of the New Jersey Uniform Fire Code, including procedures for application, issuance, denial and revocation of certifications; approval of training and/or educational programs offered to meet the requirements for certification of fire officials, application fees for a certification, and enforcement of penalties for violations of this subchapter.

(d) The New Jersey Uniform Fire Code has been adopted to ensure public safety and welfare. In order for the Code to be enforced adequately and effectively, fire officials will need to have sufficient knowledge and competence to administer and interpret the Code's standards. This can best be achieved through the creation of an education and training program and the development of certification requirements.

1. It is the purpose of this subchapter to establish standards and procedures for the certification of fire officials, including but not limited to fire officials and inspectors, and to require all persons performing duties with respect to the inspection for compliance with the New Jersey Uniform Fire Code in any political subdivision within this State, to be certified as provided in this subchapter.

5:18A-4.2 Authority; hearings

(a) The following rules concern Office of Fire Code Enforcement certification:

1. There is hereby established in the Bureau of Fire Safety, Division of Housing and Development, an Office of Fire Code Enforcement Certification. The office shall consist of such employees of the Department of Community Affairs as may be required for the efficient operation of this subchapter.

2. The Bureau of Fire Safety responsibilities, in addition to all others provided in this subchapter, are as follows:

i. To issue such certification as may be called for herein when warranted and to affix the seal of the Commissioner thereon;

ii. To keep accurate records of all applications for a certification and official action thereon, and to make such records available for inspection by the public at all reasonable times; and

iii. To suspend or revoke a certification provided for herein upon the establishment of cause as set forth in N.J.A.C. 5:18A-4.6.

(b) The following rules concern hearings:

1. Any person aggrieved by any notice, action, ruling or order of the Bureau, with respect to this Subchapter, shall have a right to a hearing before the Office of Administrative Law. The final decision in any such case shall be issued by the Commissioner.

2. The aggrieved person must request a hearing. The request must be made within 15 days after receipt of the action or ruling being contested. The request shall be mailed to the Hearing Coordinator, Division of Housing and Development, Department of Community Affairs, CN 804, Trenton, New Jersey 08625. The request for hearing shall raise all issues that will be set forth at the hearing.

5:18A-4.3 Certification required

(a) After July 1, 1985 no person shall carry out the duties of fire official or fire inspector unless that person is certified pursuant to this subchapter. The term "carry out the duties" shall mean and include representing oneself as authorized to carry out inspection of life hazard uses on behalf of the Commissioner, issuing orders pursuant to the Act, and assessing or imposing any of the penalties provided for by the Act.

(b) After July 1, 1985 no local enforcing agency shall employ any person to enforce the provisions of the Uniform Fire

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Code at a life hazard use, unless that person shall be certified in accordance with the provisions of this subchapter.

(c) When a local enforcing agency, which enforces the Code in lieu of the Commissioner, and which has employed persons certified pursuant to this subchapter for life hazard use inspections has a vacancy that leaves the agency without a certified fire official, then the agency shall appoint a certified person to the position within 30 days of the vacancy having occurred. If such an appointment is not made then the local enforcing agency shall notify the Chief, Bureau of Fire Safety, and the governing body of the municipality of the vacancy within 30 days, of its having occurred. The local agency shall not perform any life hazard use inspections during any period it does not employ a certified inspector. The Bureau shall assume responsibility for enforcement of the Code from the 61st day forward.

1. The Bureau may grant a 30 day extension during which time the Bureau can assist if necessary.

(d) The following shall be deemed a violation of the Uniform Fire Safety Act subject to a penalty of not more than $500.00 for each offense:

1. To carry out inspections or issue notices or orders pursuant to the Act in connection with life hazard uses if not certified;

i. This shall not preclude notifying the owner of a life hazard use of a perceived violation observed by any firefighter during the course of any normal fire service activity, such as routine inservice inspections. A copy of such notification shall be transmitted to the fire official for appropriate action.

2. To appoint or employ a person who is not certified to carry out the responsibilities of fire official in connection with life hazard uses; or

3. To fail or notify the Bureau of Fire Safety concerning a vacancy as required by this subsection.

5:18A-4.4 Requirements for certification

(a) Any candidate for certification in Fire Code enforcement pursuant to this subchapter shall submit an application to the Office of Fire Code Enforcement Certification in the Bureau of Fire Safety accompanied by the required fee established at N.J.A.C. 5:18A-4.7. The application shall include such information and documentation as the Bureau may require.

(b) A certification shall be issued to any applicant who meets any one of the following four standards:

1. A person who served as a fire inspector in the fire service for all of the period between May 10, 1983 and May 10, 1984. Such person shall have been appointed to the position of an inspector by the appointing authority having jurisdiction and shall have been vested with authority to enforce a validly adopted fire prevention or fire safety code. Such appointments shall be verified by a letter signed by the appointing authority. The performance of inspections which are supplementary to the primary duty of a fire fighter shall not be considered experience as a fire inspector.

2. A person who has received a certificate of completion for a course in Fire Prevention and Control administered by the Building Official and Code Administrators International (BOCA) after January 1, 1978. A certificate of completion for the BOCA correspondence course in Fire Prevention and Control shall be valid only if issued prior to May 10, 1984.

3. A person who has successfully completed an educational program approved by the Bureau pursuant to N.J.A.C. 5:18A-4.9.

4. A person who holds a valid license as an ICS or HHS fire protection subcode official issued by the New Jersey Bureau of Construction Code Enforcement pursuant to N.J.A.C. 5:23-5.

(c) The Bureau shall determine by examination of the application and review of any supporting documents, including any evidence of experience, training and/or education submitted whether an applicant is qualified for certification for which the application has been made. If the application is satisfactory, the Bureau shall issue a certification to the applicant upon payment of the required fee. This certification will show that the person has met the established requirements and is entitled to be employed in the State in accordance with the provisions of these regulations. The Bureau may deny or refuse to issue a certification to an applicant upon proof that there has been any act or omission which would constitute grounds for revocation under this Subchapter.

5:18A-4.5 Renewal of certification

(a) The Bureau shall issue a certification following submission of an application, payment of the required fee, and verification by the Office of Fire Code Enforcement certification that the applicant meets the requirements for the certification established herein.

(b) Every two years any certification already issued shall be renewed upon submission of an application, payment of the required fee, and verification by the Office of Fire Code Enforcement certification that the applicant has met such continuing educational requirements as may be established by the Commissioner. The Bureau shall renew the certification previously issued for a term of two years. The renewal date shall be 60 days prior to the expiration date.

(c) The Bureau shall issue, upon application a duplicate certification of the appropriate type and specialty upon a finding that the certification has been issued and the applicant is entitled to such certification to replace the one which has been lost, destroyed, or mutilated. Payment of a fee as may be established by the Commissioner shall be required.

(d) Where the holder of a certification has allowed the certification to lapse by failing to renew the certification as provided for in (b) above, a new application and certification shall be required. If such application is made within six months of the certification having lapsed, then application may be made in the same manner as a renewal, but the application shall be accompanied by the fee for a new application. Upon a finding that a certification was previously held that any applicable continuing education requirements have been satisfied the certification shall be issued. Where the former certification has lapsed for a period exceeding six months, a new application shall be required in accordance with N.J.A.C. 5:18A-4.4.

(e) After revocation of a certification upon any of the grounds set forth in these regulations, the Bureau may not renew or reinstate such certification; however, a person may file a new application for a certification with the Bureau. When it can be shown that all loss caused by the act or omission for which the certification was revoked has been fully satisfied, that the applicant has been legally rehabilitated and that all conditions imposed by the decision of revocation have been compiled with, the Bureau may issue a new certification. No new certification shall be issued if the cause for revocation was conviction of a crime of any degree which crime was in connection with Fire Code enforcement.

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5:18A-4.6 Revocation of certifications and alternative sanctions

(a) The Bureau may suspend and/or revoke a certification, and/or assess a civil penalty of not more than $500.00, if the Department determines that the holder:

1. Has violated any of the provisions of the Uniform Fire Code regulations;

2. Has obtained a certification by fraud or misrepresentation, or the person named in the certificate has obtained it by fraud or misrepresentation;

3. Has aided or abetted in practice as a certified enforcement official or inspector any person not authorized to practice as a certified Fire Code enforcement official or inspector under the provisions of these regulations;

4. Has fraudulently or deceitfully practiced as a certified Fire Code enforcement official or inspector;

5. Has been grossly negligent or has engaged in misconduct in the performance of any of his duties;

6. Has failed, over a period of time, to maintain a minimally acceptable level of competence;

7. Has been found to have failed to report an offer or bribe or other favor in a proceeding under the Act or other appropriate law of this or any other State or jurisdiction;

8. Has failed to comply with any order issued by the Department;

9. Has made a false or misleading written statement, or has made a material omission in any submission to the Department;

10. Has failed to enforce the Uniform Fire Code; or,

11. Has violated any provision of this chapter or of N.J.A.C. 5:18.

(b) The Bureau, in addition or as an alternative, as the case may be, to revoking or suspending a license, or assessing a penalty, may issue a letter or warning, reprimand, or censure with regard to any conduct which, in the judgment of the department, warrants a letter of warning, reprimand, or censure. Such letter, in addition to any other filing requirements, shall be made a part of the licensing file of the individual.

(c) Conviction of a crime, or an offense in connection with the practice as a licensed Code enforcement official or inspector, shall result in revocation of a certification.

(d) Any sanctions imposed by the Bureau of Construction Code Enforcement pursuant to N.J.S.A. 52:27D-119 et seq. shall constitute grounds for imposition of sanctions under this subsection.

(e) Any person agrieved by any action of the bureau pursuant to this Chapter shall be entitled to a hearing before the Office of Administrative Law in accordance with the Administrative Procedure Act as provided in N.J.A.C. 18A-4.2.

5:18A-4.7 Fees

(a) No application for a certification shall be acted upon unless the application is accompanied by a fee as follows:

1. The initial application fee shall be $20.00.

2. The two-year renewal application fee shall be $20.00.

5:18A-4.8 Standards for educational programs

To carry out their responsibilities, Code enforcement officials must be fully knowledgeable about Fire Code standards and be adequately prepared to administer and enforce them properly. Fire Code enforcement education programs must meet certain standards to ensure Code enforcement officials have the necessary technical and administrative training to effectively enforce the Uniform Fire Code at the local level. This section and N.J.A.C. 5:18A-4.9 adopts standards for Fire Code enforcement official education programs. Procedures governing the approval of such educational programs are set forth in N.J.A.C. 5:18A-4.10.

5:18A-4.9 Organizational, administrative, and operational functions of the Fire Code enforcement educational programs

(a) Programs for the effective education of Code enforcement officials are expected to operate with appropriate purposes and objectives. An institution or organization seeking initial and continuing approval of educational programs shall include in its application clearly defined statements of such purposes and objectives.

(b) Sound educational programs can be operated effectively only when supported by adequate institutional arrangements. Accordingly, only programs offered by or under the auspices of institutions of higher education, licensed by the New Jersey Department of Higher Education, fire schools, or fire training academies operated by Federal, State, County or local Government, or non-profit organizations organized for purposes which include the training of fire fighting and Fire Code enforcement personnel, can be considered for approval.

1. Provision shall be made within the organization or institution for orderly methods of obtaining and filing information relative to candidates applying for admission to Code enforcement official education programs.

(c) An organization or institution shall have evaluation procedures to assess the quality of its students when they complete programs and as a minimum establish and apply pass/fail criteria.

(d) An organization or institution shall assume that:

1. Each student shall be advised where to secure guidance and who is officially responsible for his program. Attention must be given to a plan for maintaining desirable student-faculty relationships.

2. It is the responsibility of the institution to maintain an adequate system of student personnel accounting, including a permanent cumulative record of each student enrolled. To facilitate ready interpretation by the Bureau, the graduate is entitled to an intelligible and adequate transcript of record, including a statement of the course title.

(e) Faculty members shall be competent in the field and have contacts with Fire Code enforcement environments and other sources so their teaching and research are current and relevant.

1. The quality of the faculty is one of the more important factors in judging the effectiveness of an institution. Appraisal of the faculty shall be made in terms of its competence to provide the program for which approval is being sought. Each faculty member shall have a high degree of competency in his area. The faculty consists of those instructors who teach the curricula and all personnel who direct students in all types of activities included as part of the curriculam. Those who teach courses shall be familiar with practices in Fire Code enforcement and/or fire protection technology generally.

2. The institution, recognizing that an appropriate faculty is one of the major determinants of the quality of its education program, shall make provision for the use of the part-timer or adjunct faculty.

i. No individual who has ever had a license suspended for a period of six months or more or has ever had a license or certification revoked for any reason set forth in N.J.A.C. 5:23-5.11 or N.J.A.C. 5:18A-4.6 shall be eligible to instruct Fire Code enforcement educational programs.

3. Faculty certification (reserved).

4. Each organization or institution shall undertake a continuing program of faculty and instructor evaluation in order

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to assure that instruction is adequate and shall take such remedial actions as may be necessary where it is not.

(f) The course of study shall consist of a planned pattern of instruction and experiences designed to meet the following standards. The course shall provide at least eight contact hours of instruction not including examination and support time and it shall ensure by examination technical competence in the following subject areas:

1. The theory of fire code enforcement;
2. Administration and enforcement of fire codes;
3. The life safety systems of buildings and uses including but not limited to means of egress, fire suppression systems, fire alarm systems, and methods for limiting the flame spread, flammability or combustibility of materials;
4. The safe use and maintenance of facilities, buildings and uses which are subject to the New Jersey Uniform Fire Code including but not limited to:
   i. Airports, heliports and helistops;
   ii. Application of flammable finishes;
   iii. Bowling alleys;
   iv. Dry cleaning plants;
   v. Dust explosion hazards;
   vi. Fruit ripening processes;
   vii. Lumber yards and woodworking plants;
   viii. Oil burning equipment;
   ix. Ovens and furnaces;
   x. Places of assembly;
   xi. Service stations and garages;
   xii. Tents and air supported structures;
   xiii. Welding or cutting;
   xiv. Places of amusement; and
   xv. High level alarms.
5. The safe handling of materials which pose a fire hazard, including but not limited to:
   i. Cellulose nitrate products;
   ii. Combustible fibers;
   iii. Compressed gasses;
   iv. Cryogenic liquids;
   v. Explosives, ammunition and blasting agents;
   vi. Fireworks;
   vii. Flammable and combustible liquids;
   viii. Hazardous materials and chemicals such as oxidizing materials, radioactive materials, unstable (reactive) chemicals, and poisonous gases;
   ix. Liquified petroleum gases and liquified natural gases;
   x. Magnesium;
   xi. Matches; and
   xii. Organic coatings.

5:18A-4.10 Procedure for applying educational programs

(a) Any eligible institution or organization may submit any course for approval as an educational program required by N.J.A.C. 5:18A-4.8. The application shall be in letter form, be submitted at least 60 days prior to the first class session of the course and contain all the information specified below.

1. A course that provides a minimum of eight contact hours required by N.J.A.C. 5:18A-4.9(f) will be acceptable even if part of a longer course of study which covers additional material.

(b) Each application shall be submitted in the name of the institution or organization by a person authorized to do so. It shall contain the following minimum information:

1. The name of the course or program;
2. A description of the length of each session, the frequency of the sessions and the total number of sessions;
3. An outline showing the course or program content by session;
4. A description of any texts or materials to be used. The description shall identify whether the text or materials will be mandatory or suggested;
5. A description of the institution's or organization's standard for faculty members who will be employed to instruct the course or program;
6. An estimate of the number of times the course will be offered;
7. A statement that the institution or organization will notify the Bureau if the program is withdrawn or changed at anytime;
8. A statement that the institution or organization will conduct the course or program in accordance with N.J.A.C. 5:18A-4.8 herein and will maintain such records as are therein required; and
9. A statement of the charges the institution has established for the course or program.

(c) The Bureau reserves the right to undertake such reviews as may be necessary to verify the accuracy of an application or conformity with these regulations. The institution, by submitting an application, expressly agrees to cooperate in such reviews.

(d) Upon verification that the program or course will satisfy the education program requirements, the Bureau will:

1. Issue a letter of approval to the institution or organization which letter shall contain any terms or conditions of such approval;
2. Place the name of the institution and the course on the Bureau's list of approved courses. That list will be made available to the public.

i. Any approval shall be limited in that it is effective only as long as the course conforms to the application submitted and approved.

(e) Whenever a course or program has been approved by the Bureau the institution or organization offering the course may include the statement "This course is approved for credit toward a certification issued by the Department of Community Affairs pursuant to the Uniform Fire Safety Act" in any catalog, bulletin or informational circulars. Whenever such a statement is included, however, the catalog, bulletin or circular shall also contain a statement describing precisely the nature and extent of the approval.

(f) The Bureau may revoke its approval, after notice and the opportunity to be heard, whenever it ascertains that a course has lapsed or is no longer in conformity with the requirements of these regulations, and/or the terms of the Bureau's approval. Whenever approval has been revoked or a course has been withdrawn by an institution or organization a new application and approval shall be required before the course may again be offered as providing credit toward a certification.

(g) Any institution or organization may submit an application for approval for a course administered after January 1, 1978 so that certification applications may receive credit for it. Any such application shall be judged against the standards for programs established at N.J.A.C. 5:18A-4.8.

CHAPTER 18B
HIGH LEVEL ALARMS

SUBCHAPTER 1. GENERAL PROVISIONS

5:18B-1.1 Authority

The regulations contained in this chapter are promulgated by the Commissioner of the Department of Community Affairs pursuant to the authority given in the "High Level Alarm Act," PL 1984, c 31 (N.J.S.A. 52:27D-214, et seq.).

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5:18B-1.2 Intent and purpose

(a) It is the intent and purpose of these regulations:

1. To prevent the serious hazards presented by overfilling of flammable liquid storage tanks filled by pipeline;

2. To formulate such requirements to the extent practicable, in terms of performance objectives, so as to make adequate performance for the use intended as the test of acceptability;

3. To permit to the fullest extent feasible the use of modern technical methods, devices and improvements, consistent with the health, safety and welfare of terminal personnel, firefighters and the general public;

4. To insure adequate training of personnel involved in the transfer of flammable liquids by pipeline throughout the State;

5. To insure adequate reinspections and verification that the required safety equipment is in operable condition.

5:18B-1.3 Definitions

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

"Attended terminal" means a terminal where an individual knowledgeable in the above-ground liquid storage tank filling operation is physically in attendance and control during the entire delivery of a flammable liquid and has as his responsibility supervision of the storage tank filling operation.

"Commissioner" means the Commissioner of the Department of Community Affairs.

"Department" means the Department of Community Affairs.

"Fire official" means the responsible person in accordance with N.J.A.C.-5:18.

"Flammable liquid" means a liquid having a flash point below 100 degrees Fahrenheit and having a vapor pressure not exceeding 40 Psia at 100 degrees Fahrenheit.

"Owner" means a person who owns, purports to own, manages, rents, leases or exercises control over a terminal.

"Pipeline" means a pipeline used to convey a flammable liquid from:

1. A crude petroleum wellhead collection site to a refinery or terminal; or

2. A refinery to a terminal; or

3. A marine vessel to a terminal.

"Pipeline" does not mean gathering lines from the wellhead to a crude petroleum collection tank.

"Terminal" means a facility at which one or more above-ground liquid storage tanks for the containment of flammable liquids are located.

"Unattended terminal" means a terminal where an individual knowledgeable in the above-ground liquid storage tank filling operation is in attendance only during a portion of the time when a flammable liquid is being delivered, or has as his responsibility a function other than supervision of the storage tank filling operation. Any terminal other than an attended terminal shall be considered an unattended terminal.

5:18B-1.4 Effective date

(a) The provisions of these regulations shall take effect upon promulgation.

5:18B-1.5 Severability

If any provisions of these regulations or the application thereof to a person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the regulations which can be given effect, and to this end the provisions of the regulations are severable.

5:18B-1.6 Applicability

(a) These regulations shall apply to all new and existing terminals supplied by a pipeline.

(b) The provisions of these regulations shall apply uniformly throughout the State. A local governing body may not enact an ordinance more restrictive than these regulations.

SUBCHAPTER 2. ADMINISTRATION AND ENFORCEMENT

5:18B-2.1 Matters covered

(a) The provisions of these regulations shall cover the following areas:

1. The installation of a high level alarm system;

2. Maintenance and testing of high level alarm systems;

3. Acceptability of high level alarm systems;

4. Fire and emergency plans for all terminals covered by these regulations;

5. Formal written procedures to be followed by responsible personnel to prevent overfilling of tanks;

6. Enforcement procedures;

7. Testing procedures;

8. Record keeping procedures.

5:18B-2.2 Variations and exceptions

(a) No variations or exceptions from the requirements of these regulations may be made, except upon the following findings:

1. That strict compliance with any specific provision, if required, would result in practical difficulty to such owner;

2. That the exception, if granted, will provide for comparable alternative protection; and

3. That the exception, if granted, will not jeopardize the health, safety and welfare of plant personnel, firefighters, and the general population.

5:18B-2.3 Applications for variations

(a) An application for a variation pursuant to this Chapter shall be filed in writing with the Department and shall provide specifically:

1. A statement of the requirements of the regulations from which a variation is sought;

2. A statement of the manner by which strict compliance with said provisions would result in practical difficulties;

3. A statement of the nature and extent of such practical difficulties; and

4. A statement of the feasible alternatives to the requirements of the regulations which would adequately protect the health, safety and welfare of plant personnel, firefighters, and the general public.

5:18B-2.4 Review of variation applications

Within 20 business days next succeeding the receipt by the Department of the application, it shall be denied or granted by written order stating the reasons therefor. The application shall be deemed denied for purposes of appeal if no decision is forthcoming within such 20-day period. Records of all applications for variation, and actions taken thereon, shall be available for public inspection at the Department during normal business hours.

5:18B-2.5 Violations, notices and orders

(a) If upon inspection of a terminal the Department discovers a violation of these regulations that constitutes an imminent hazard to the health, safety and welfare of plant personnel, firefighters or the general public, the Department may issue and cause to be served on the owner of the terminal a written order directing that the terminal be vacated, closed or

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restrained from receiving pipeline shipments of flammable liquids to the site or affected tanks and/or that the violation be corrected within the period specified in the order. The order shall state the nature of the violation and the date and hour by which the terminal or affected tanks shall be vacated, closed, or restrained from receiving pipeline shipments of flammable liquids, and/or the violation corrected.

(b) The Department shall reinspect the terminal within 48 hours of receiving written notice from the owner of a terminal stating that a violation issued under N.J.A.C. 5:18B-2.5(a) has been terminated.

(c) If upon reinspection the Department determines that the violation has been terminated, it shall receive the order issued under (a) above and occupancy and/or operation may be resumed immediately.

(d) If the owner of a terminal denies that a violation justifying an order pursuant to (a) above exists, the owner may apply to the Department for a reconsideration hearing. The hearing shall be conducted, and a final decision issued, within 48 hours of the receipt of the request. Failure to issue a decision shall constitute denial of the owner's appeal.

5:18B-2.6 Compliance

(a) A person who violates or causes to be violated a provision of (d) below shall be liable to a penalty of not more than $5,000 for each violation.

(b) If a violation of (d) below is of a continuing nature, each day during which the violation remains unabated after the date fixed in an order or notice for the correction or termination of the continuing violation shall constitute an additional and separate violation, except while an appeal from the order is pending.

(c) If an owner has been given notice of the existence of a violation of the Act and fails to abate the violation, he shall be liable to an additional penalty in the amount of the actual cost to the municipality or fire district of suppressing any fire directly or indirectly resulting from the violation.

(d) No person shall:

1. Obstruct, hinder, delay or interfere by force or otherwise with the Department in the exercise of any power or the discharge of any function or duty under the provisions of these regulations;

2. Prepare, utter or render any false statement, report, document, plans or specification permitted or required under the provisions of these regulations;

3. Render ineffective or inoperative, or fail to properly maintain, any protective equipment or system installed, or intended to be installed, in or on a terminal or tank;

4. Refuse or fail to comply with a lawful ruling, action, order or notice of the Department; or

5. Violate, or cause to be violated, any of the provisions of these regulations.

(e) The following penalties may be assessed:

1. The Department may levy and collect penalties in the amounts set forth in this section.

2. If the administration penalty order has not been satisfied by the thirtieth day after its issuance, the penalty may be sued for, and recovered by and in the name of the Department in a civil action by a summary proceeding under the Penalty Enforcement Law (N.J.S. 2A:58-1 et seq.) in the Superior Court.

3. A person who fails to pay immediately a money judgement rendered against him pursuant to this subsection may be sentenced to imprisonment by the court for a period not exceeding six months, unless the judgement is sooner paid.

(f) A person shall be deemed to have violated or caused to have violated a provision of (d) above if an officer, agent or employee under his control and with his knowledge has violated or caused to be violated any provisions of (d) above.

(g) Upon request of the owner or bona fide purchaser of a terminal, the Department shall issue a certificate either:

1. Enumerating the violations indicated by its records to be unabated and the penalties indicated to be unpaid; or

2. Stating that its records indicate that no violations remain unabated and no penalties remain unpaid.

(h) A person who purchases a property without having obtained a certificate stating that there are no unabated violations of record and no unpaid penalties shall be liable for the payment of all unpaid penalties.

(i) Any existing terminal required by these regulations to be equipped with a high level alarm system shall submit plans and specifications in accordance with N.J.A.C. 5:18B-2.9 no later than three months following the effective date of these regulations.

(j) Any new terminal or tank constructed, or planned to be constructed in the State, shall comply with these regulations before the terminal or tank is occupied or put into operation.

5:18B-2.7 Service of notice

Service of notices and orders pursuant to these regulations shall be upon the owner or any person in control of the terminal. Service may be made by personal delivery or by leaving a copy at the dwelling, house or usual place of abode of such persons, with a competent member of his household of the age 14 years or older and residing therein, or by any other method or upon any other person approved pursuant to Rules 4:4-4 and 4:4-5 of the New Jersey Court Rules.

5:18B-2.8 Applicants' right of appeal; procedure

(a) Whenever the Department shall deny an application for an installation, fail to act upon an application for an installation, refuse to grant a variation, or to make any other decision pursuant or related to these regulations, including the assessment of any monetary penalties, an owner may appeal to the Division of Housing and Development, Department of Community Affairs. The case shall be adjucated before the Office of Administrative Law and the final decision shall be issued by the Commissioner. Such hearings shall be governed by the provisions of the Administrative Procedure Act, (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. as implemented by N.J.A.C. 1:1).

(b) The application for appeal shall be taken within 20 business days of the receipt of written notice of the denial or other decision of the Department.

(c) The application for appeal shall be in writing, filed with the Division of Housing and Development and briefly setting forth the appellant's position. Such application shall state the name and address of the appellant and the address of the terminal in question, and shall reference specific sections of the regulations and the extent and nature of the appellant's reliance on them. The appellant may append to his written application any data or information he may deem appropriate to his cause.

5:18B-2.9 Plans and specifications

(a) All owners of terminals required by PL 1984, c.31, (N.J.S.A. 52:27D-214 et seq.) to be equipped with a high level alarm system shall submit four copies of the plans and specifications for the proposed systems to the Department. The plans and specifications shall be accompanied by an application containing but not limited to the following information:

1. The name and address of the owner. Where the owner is not a resident of the State the owner shall designate a resident as agent for the purpose of service of any notices for orders

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which may be necessary. Such address shall not be limited to a post office box, but shall specify a physical location where such owner or agent may be found during normal business hours. Where the owner is a corporation or partnership, the application shall indicate the name and address of a person upon whom service may be made;

2. The street address of the terminal where the high level alarm system is to be installed;

3. A description of how the proposed installation will meet the requirements of N.J.A.C. 5:18B-3.2;

4. Formal written procedures that shall be followed by responsible personnel to prevent overfilling of tanks at attended terminals as required by N.J.A.C. 5:18B-3.4.

(b) In addition, the following information shall be required on any application when such information is available, but no later than the commencement of work:

1. Certification that a copy of the terminal's fire and emergency plan as required in N.J.A.C. 5:18B-3.4 has been filed with the local fire official.

(c) In addition, the owner shall file an application for a construction permit with the Department in accordance with N.J.A.C. 5:23-2.15 of the State Uniform Construction Code.

1. Under the provisions of the State Uniform Construction Code and PL, 1984 c.31 (N.J.S.A. 52:27D-214 et seq.) all plan review, construction permits and inspection responsibilities shall be reserved by the Department.

SUBCHAPTER 3. TECHNICAL REQUIREMENTS

5:18B-3.1 Matters covered

(a) This subchapter shall control matters relating to:

1. High level alarm systems at attended terminals and unattended terminals;

2. Prevention of overfilling;

3. Fire and emergency plan;

4. Existing systems;

5. Testing requirements.

5:18B-3.2 High level alarm systems

(a) Each terminal at which a tank filled by pipeline is located shall comply with the following requirements:

1. It shall be equipped with a high level alarm system;

2. The high level alarm system shall be set to activate at a predetermined level in each tank filled, directly or indirectly, by pipeline at the terminal to allow sufficient time for the flow of the flammable liquid to be shut down before the tank overfills. The level shall be determined by the maximum filling rate and the time required for terminal personnel to take appropriate action to stop the flow of the flammable liquid;

3. The high level alarm systems shall be maintained in accordance with the manufacturer's recommendation;

4. The high level alarm system shall be tested every three months by the owner of the terminal and a permanent record of the test shall be maintained. The test procedure and record shall include, but not be limited to, the following:

i. Control panel function;

ii. Back-up power supply;

iii. Sensor function;

iv. All audible and visual signals; and

v. Wiring.

5. Prior to the installation of a new system, the assembled components of the high level alarm system shall have met test requirements for their intended use established by a nationally recognized testing laboratory.

(b) In addition to the requirements specified in (a) above, each attended terminal at which a tank filled by pipeline is located shall comply with the following requirements:

1. The high level alarm system at the terminal shall provide an audible sound of sufficient decibels to alert personnel responsible for taking corrective action. The audible signal shall be a distinct signal readily distinguishable from all other signals at the terminal.

2. The high level alarm system at the terminal shall be equipped with an audible trouble alarm which has a distinctive sound not used for any other purpose and of sufficient decibels to that it is audible to all terminal personnel required to respond to its sounding. The audible trouble alarm shall sound upon the occurrence of any of the following:

i. A loss of the main electrical operating power in the terminal;

ii. An electrical break or ground fault in the alarm initiating circuit or the signalling device circuit;

iii. The derangement of the high level alarm system control equipment;

iv. The removal of initiating devices from the high level alarm system; or

v. The electrical derangement of the signalling devices of the high level alarm system.

(c) In addition to the requirements specified in (a) above, each unattended terminal at which a tank filled by pipeline is located shall comply with the following requirements:

1. The high level alarm system shall be capable of automatically shutting off or diverting the flow of the flammable liquid at the point of origin within the terminal or at the point of receipt into the aboveground liquid storage tank;

2. The high level alarm system shall be capable of automatically shutting off or diverting the flow of the flammable liquid at the point of origin within the terminal or at the point of receipt into the aboveground liquid storage tank in the event of a power failure in the high level alarm system.

5:18B-3.3 Prevention of overfilling

(a) Formal written procedures shall be followed by responsible personnel to prevent overfilling of tanks. These procedures shall describe the usage of the high level alarm system and the responsibilities, including tank gauging, of personnel who are trained in these procedures and are on duty throughout product receipt to promptly arrange for flow stoppage or diversion. These procedures shall be made available in sufficient copies to be readily accessible to terminal personnel trained in these procedures. In addition, these procedures shall include:

1. Validation of proper line-up and receipt of initial delivery to the tank designated to receive shipment at the expected rate,

2. Provisions for adequate supervision and monitoring of the performance of operating personnel;

3. Schedules for checkout and maintenance of high level instrumentation and related systems;

4. Training and qualification requirements of terminal personnel on duty who are responsible for overfill prevention.

5:18B-3.4 Fire and emergency plan

(a) The owner shall develop a fire and emergency plan for the terminal and file a copy with the fire department having jurisdiction over the terminal. This plan shall include, but not be limited to, the following items:

1. Products stored or processed at the terminal and their locations;

2. In-plant firefighting systems and/or equipment;

3. Method of contacting necessary terminal personnel in the event of a fire or emergency at the plant.

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5:18B-3.5 Existing systems

(a) Existing high level alarm systems installed prior to the effective date of these regulations will be deemed to meet the requirements of these regulations if they can be shown to meet the following:

1. N.J.A.C. 5:18B-3.2(a)2, Operation;
2. N.J.A.C. 5:18B-3.2(a)3, Maintenance;
3. N.J.A.C. 5:18B-3.2(a)4, Testing;
4. N.J.A.C. 5:18B-3.3, Prevention of overfilling;
5. N.J.A.C. 5:18B-3.4, Fire and Emergency Plan.

(b) The Department shall be notified of the existence of such a system by its owner, and an inspection shall be made by the Department to determine if the installation is in compliance with the applicable section of these regulations.

(a)

Uniform Construction Code
Licenses Required; Trainee Personnel

Proposed Amendment: N.J.A.C. 5:23-5.4

Authority: N.J.S.A. 52:27D-124.
Proposal Number: PRN 1984-707.

The agency proposal follows:

Summary

The proposed amendment contains those changes to amendments on this subject proposed July 2, 1984 at 16 N.J.R. 1643(a) that were considered necessary by the Department at the time of adoption but which could not be included in the notice of adoption, published November 5, 1984 at 16 N.J.R. 3007(a), because they were determined to be more restrictive than the original proposal and therefore subject to a new comment period.

The proposed amendments require a fire protection inspection trainee to have had a minimum of three years in the fire service or as an engineer or architect; provide that a licensed inspector supervise not more than one trainee; and advise that failure to properly supervise a trainee shall result in disciplinary action against the licensed supervisor.

Social Impact

The requirement of three years experience in the fire service or as an engineer or architect will limit the pool of qualified applicants for fire protection inspector trainee positions. However, the public should benefit from the fact that those who are eligible will be more likely to be well-qualified by virtue of their experience. Limitation of supervisors to one trainee each and establishment of the supervisor's responsibility for proper supervision will lessen the chance that authority to delegate certain routine work to trainees will be abused and will protect the integrity of the inspection process.

Economic Impact

Code enforcement will be more costly than it would be were it permissible to hire less qualified people as trainees or to have many trainees under a minimally-accountable supervisor.

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

5:23-5.4 Licenses required

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

(d) Rules concerning trainee personnel are:

1.-2. (No change.)

3. Persons meeting the following experience requirements shall be eligible to be employed as trainees:

i. Fire protection inspector trainee—a minimum of three years in the fire service or as an architect or engineer.

ii.-iv. (No change.)

4.-12. (No change.)

13. A qualified licensed inspector shall not supervise more than one trainee.

14. Failure of a licensed supervisor to properly supervise a registered trainee in accordance with the provisions of the regulations shall result in disciplinary action.

(e) (No change.)

EDUCATION

STATE BOARD OF EDUCATION

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

Address comments and inquiries to:

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

(b)

Business Services
Public School Contracts

Proposed Readoption with Amendments: N.J.A.C. 6:20-8.1-8.5
Proposed New Rules: N.J.A.C. 6:20-8.6 and 8.7

Authority: N.J.S.A. 18A:4-15, 18A:18A-5, 18A:18A-7, 18A:18A-37, 18A:18A-40, 18A:18A-42, 40A:11-11 and Chapter 281, Laws of 1983.
Proposal Number: PRN 1984-713.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 6:20-8 expires on February 1, 1985. The readoption of the existing

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rules becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of their readoption. The amendments to the existing rules become effective upon publication in the Register of a notice of their adoption.

The agency proposal follows:

Summary

Under the provisions of Executive Order No. 66, 1978 (which provides for the expiration of amended or new rules within five years), Subchapter 8. Public School Contracts of Chapter 20. Business Services, will expire February 1, 1985, unless readopted.

The State Board of Education, pursuant to the authority of N.J.S.A. 18A:4-15, 18A:18A-5, 18A:18A-7, 18A:18A-37, 18A:18A-40, 18A:18A-42, 40A:11-11 and Chapter 281, L.1983, proposes to readopt this subchapter with amendments.

A review of the existing rules and proposed amendments follows:

N.J.A.C. 6:20-8.1 Restricting the avoidance of competitive bidding for extraordinary, unspecifiable services is authorized by N.J.S.A. 18:18A-5 which permits the State Board of Education to establish rules limiting the exception to the requirement for public advertising for bids and bidding for extraordinary unspecifiable services. This exception to the competitive bidding requirement must be "construed narrowly in favor of open competitive bidding where possible." This rule is very similar to N.J.A.C. 5:30-14.2, the rule restricting the avoidance of competitive bidding for extraordinary, unspecifiable services pursuant to the "Local Public Contracts Law." Relatively minor changes are being proposed to correct technicalities of wording. In addition, the list of examples of services tentatively acceptable as extraordinary, unspecifiable services and the list of services generally unacceptable as extraordinary, unspecifiable services have been deleted.

N.J.A.C. 6:20-8.2 Certain leases of equipment and service agreements beyond the fiscal year is authorized by N.J.S.A. 18A:18A-42 which requires that contracts for the leasing or servicing of automobiles, machinery and equipment of every nature and kind for any term beyond the school fiscal year be entered into only subject to and in accordance with rules of the State Board of Education. This rule is very similar to N.J.A.C. 5:30-14.3, the rule regulating certain leases of equipment and service agreements beyond the fiscal year pursuant to the "Local Public Contracts Law." Relatively minor changes are being proposed to correct technicalities of wording.

N.J.A.C. 6:20-8.3 Change orders and open-end contracts is authorized by N.J.S.A. 18A:18A-40 which permits the State Board of Education to prescribe the manner in which contracts shall be made and executed. This rule is very similar to N.J.A.C. 5:30-14.4, the rule regulating change orders and open-end contracts pursuant to the "Local Public Contracts Law." Relatively minor changes are being proposed to correct technicalities of wording.

N.J.A.C. 6:20-8.4 Bonds is authorized by N.J.S.A. 18A:18A-40 which permits the State Board of Education subject to the requirements of law to prescribe the manner of executive and approval of all guarantee, indemnity, fidelity and other bonds. Relatively minor changes are being proposed to correct technicalities of wording.

N.J.A.C. 6:20-8.5 Contract or agreement due to an emergency situation is authorized by N.J.S.A. 18A:18A-7 which requires the State Board of Education to prescribe rules to implement the legal requirements for emergency purchases and contracts. Relatively minor changes are being proposed to correct technicalities of wording.

N.J.A.C. 6:20-8.6 Contracts for behind-the-wheel driver education is a proposed new rule required to implement Chapter 281, L.1983. This statute authorizes district boards of education to enter into contracts with private driver education schools for the purpose of providing behind-the-wheel driver education when the behind-the-wheel driver education to be provided is substantially equivalent to that provided by the district board of education and when such behind-the-wheel driver education is to be provided at less cost than current or other proposed programs. For purposes of this section, any driver education school approved by the Division of Motor Vehicles, shall be considered approved by the Commissioner of Education. The proposed new rule requires a district board of education to indicate that the private driver education school is providing behind-the-wheel driver education at less cost than current or other proposed programs and to obtain a copy of the private driver education school's current license or certificate of approval and maintain such copy on file with the contract.

N.J.A.C. 6:20-8.7 Cooperative pricing systems is a proposed new rule required by N.J.S.A. 40A:11-11 which permits district boards of education to establish a cooperative pricing system subject to prior approval of the Director of the Division of Local Government Services in the Department of Community Affairs.

These rules are necessary for the effective administration of the "Public School Contracts Law." If these rules are not readopted, the State Board of Education would be eliminating rules which strengthen the administration of district board of education purchasing and contracting practices. If N.J.A.C. 6:20-8.2 and 6:20-8.5 are not readopted, some other rule would have to be adopted since rules in these two instances are required by law. Experience has shown that all of these rules are necessary.

The Department of Education submitted this proposal to the Senior Staff of the Department and the Department's Administrative Code Review Committee which consists of representatives from the following individuals and associations for review and evaluation.

1. County Superintendents of Schools
2. New Jersey Association of School Administrators
3. New Jersey Association of School Business Officials
4. New Jersey Education Association
5. New Jersey Principals and Supervisors Association
6. New Jersey School Boards Association

Social Impact

The overall intent of these rules is to ensure that district boards of education can meet the various responsibilities under the "Public School Contracts Law" governing purchasing procedures and the other laws.

The "Public School Contracts Law" established the competitive bid requirements and the requirements for public advertising for district board of education purchasing and contracting. This law was enacted to insure that district board of education purchasing and contracting practices protect the public interest and provide for the proper expenditure of public funds. These rules also protect the public interest and insure that public funds are expended properly by defining an extraordinary unspecifiable service, establishing requirements for certain leases, change orders, open-end contracts, bonds and contracts due to an emergency situation.

These rules also allow for the effective implementation of the behind-the-wheel driver education requirements in Chap-

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ter 281, L.1983. This law permits district boards of education to enter into contracts with private driver education schools to provide behind-the-wheel driver education when the private driver education school is approved by the Commissioner of Education.

The rule on cooperative pricing systems insures that district boards of education are aware of the requirement to obtain prior approval from the Director of the Division of Local Government Services in the Department of Community Affairs. This approval promotes sound administrative practices and insures that public funds are expended properly.

These rules will assist district boards of education in meeting the requirements of law and promote sound administrative practices.

Economic Impact

Readoption of these rules will not impose any additional costs on district boards of education. The economic impact of these rules is measured in terms of the degree of protection which they provide for the proper expenditures of public funds. These rules have an overall positive fiscal impact on district boards of education since the rules provide for more effective purchasing and contract practices.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 6:20-8.

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

6:20-8.1 Restricting the avoidance of competitive bidding for extraordinary, unspecifiable services

(a) (No change.)

(b) Any purchase, contract or agreement of the character described in N.J.S.A. 18A:18A-4, may be made, negotiated or awarded by a district board of education by resolution at a public meeting without public advertising for bids and bidding if the subject matter thereof consists of extraordinary, [unspecified] **unspecifiable** services. This exception shall be construed narrowly in favor of open competitive bidding where possible and in each instance of such exception, the district board of education is required to state the supporting reasons for its action in the resolution awarding the contract. The use of such exception shall be further limited by the following conditions:

1.-2. (No change.)

3. Avoidance of bids where any precedent exists (in the school district or elsewhere) demonstrating the feasibility of bidding would be an unacceptable use of this provision. Services previously bid shall be subject to the presumption that such services may not be classified as an EUS, unless the **district** board of education can demonstrate the lack of feasibility of bidding such services;

4. If specifications can reasonably be written covering the services, then they must be bid, notwithstanding that the other criteria of the definition may be met. In cases which may appear too technical for local school officials to prepare detailed specifications, two criteria must be addressed and found to be not possible before it may be concluded that the services cannot reasonably be described by written specifications:

i. If the local school officials do not possess the technical skill to prepare specifications, they should engage consultant assistance to do so;

ii. If the services are of such a [technical or massive] nature as to make a description of all actions to be taken unfeasible, or if there are available various (optional or unknown) technical methodologies for achieving the desired end, then the specifications should be written in terms of required end-products and/or standards of performance rather than (or in concert with) descriptions of all technical steps to be taken;

5. Services rendered as EUS must generally be characterized as not being of a continuous ongoing nature. Services which are continued or regularly repetitive shall be subject to a presumption that specifications can be written to describe what has been done. Where this is not the case, the **district** board of education must specifically address this question;

6.-9. (No change.)

[(c) Below are examples of services tentatively acceptable as EUS, provided that all of the criteria in subsection (b) of this section are met:

1. Specification writing;

2. Maintenance of highly complex computer systems or other such equipment. This example is not intended to be a blanket exemption of all equipment maintenance, since most equipment can be maintained by any number of service organizations, and bidding would be required. Parts acquired under this exemption shall be limited to those installed by the service repairman and may not include the acquisition or parts or supplies inventories;

3. Certain management consultant studies;

4. Labor management consultants;

5. Professional landscape architects;

6. Electronic data processing (DEP) preliminary feasibility surveys only;

7. Expert financial advisors;

8. Public relations consultants;

9. Construction advisors (not the actual construction).

10. This list does not relieve a local board of education of its responsibility to comply with the various provisions of N.J.A.C. 6:20-8.1(b).]

[(d) Examples of services generally unacceptable as EUS are:

1. Facilities management contracts (for data processing or other operations);

2. EDP services, including design of systems, programming service bureau processing, rental of data processing equipment, purchasing of data processing equipment.

3. Construction management contracts (involving price guarantee, responsibility for entering into contracts for actual construction, or actual or contingent responsibility for conducting the construction, and so forth);

4. Electrical equipment maintenance;

5. Maintenance of typewriters, dictating machines and other common office equipment;

6. Tradesmen;

7. Heating specialists;

8. Quality analysis or testing of materials;

9. Maintenance of motor vehicle fleets;

10. Feeding programs;

11. Services, materials, equipment or other expenses which were previously exempted from bidding by law, which exemptions are no longer specifically allowed by law;

12. Emergencies (governed by N.J.S.A. 18A:18A-7).

13. The above is a partial list since other services may be unacceptable as EUS for failure to meet the criteria established by N.J.A.C. 6:20-8.1(b).]

6:20-8.2 Certain leases of equipment and service agreements beyond the fiscal year

(a) Leases (which term includes rental agreements) and service agreements for automobiles, motor vehicles, electronic

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communications equipment, machinery and equipment of every nature and kind may not be renewed or extended beyond five years. Rebidding after the five years should not require that the equipment be in the service of the **district** board of education.

(b) Such leases and service agreements may be written for any period of time not to exceed the five years, or for shorter periods with provision for renewal at the option of the **district** board of education provided that such renewal shall not cause the cumulative length to exceed five years. Such renewals may be authorized only by resolution of the **district** board of education.

(c) In addition to providing for the use of equipment during the period of the lease, the lease may provide for rental payments to be credited towards the purchase price for purpose of acquisition of the equipment if the **district** board of education, at its sole option, decides to buy the equipment, and said option was included in the original specifications and in the original contract. Leases may not, however, provide for the acquisition of ownership at the beginning of the lease term, with installment payments to be made thereafter.

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

(f) Any such changes made in accordance with subsection (e) of this section **shall** be made by an amendatory contract and the procedure followed shall be in compliance with the [regulations] **rules** regarding change orders.

6:20-8.3 Change orders and open-end contracts

(a) Definitions include the following:

1. A change order is a lawfully prepared and properly authorized document which directs and authorizes a contractor, consultant or other vendor performing work for or supplying materials and supplies to a **district** board of education pursuant to a contract to change the work, service or materials to be performed, rendered or furnished from that originally specified or estimated and to correspondingly change the payment due therefor;

2. Open-end contracts are contracts for which price bids were solicited on a unit basis because exact quantities needed were not known at the time bids were sought. Examples would include blacktopping and recreation supplies. Such contracts, when advertised and awarded, must include a maximum number of units that can be ordered for each item under the contract. Orders placed under such open-end contracts shall not be considered as change orders for purposes of this [regulation] **rule**, but shall be subject to the requirements specified in subsection (g) of this section.

(b) (No change.)

1.-3. (No change.)

4. Responsibility required by this [regulation] **rule** to be exercised specifically by the **district** board of education may not be delegated. In those instances in which authority is to be exercised by some school official, the authority, responsibility and required procedures should be clearly spelled out in advance, by resolution.

(c) (No change.)

1. (No change.)

2. If the change is not within the scope of activities of the original contract:

i. If the contract was awarded without competitive bidding being required by law or [regulation] **rule** (as in the case for professional services and certain authorized extraordinary, unspecifiable services per N.J.S.A. 18A:-5a(1) and (2)), any change beyond the original scope of activities may be made by amendatory contract;

ii. If the consulting contract was not a professional service and was required to be subject to competitive bidding, any change beyond the original scope of activity should be by new contract based on new bidding;

3.-4. (No change.)

(d) (No change.)

1.-4. (No change.)

5. Changes may be effectuated by the school official authorized to serve as contracting agent, subject to such controls or approval requirements as the **district** board of education may lawfully impose;

6. Change orders for materials, supplies and equipment items which are part of a contract which is primarily a construction contract shall be handled in accordance with the [regulations] **rules** governing construction contracts. Paving (blacktopping) contracts which were awarded on a unit price basis as an open-end contract shall be handled under the section dealing with open-end contracts. Contracts awarded for the paving, construction or reconstruction of specifically described sections shall be treated as construction contracts.

7. (No change.)

(e) (No change.)

1.-2. (No change.)

3. All change orders for construction, reconstruction, and major repair contracts must be submitted to the Bureau of Facility Planning Services for approval, except:

i. When an emergency condition requires immediate action, the school official designated by the **district** board of education to handle emergency purchases per N.J.S.A. 18A:18A-7 may authorize the necessary actions to be taken, but only to the extent necessary to meet the emergency.

ii. Minor field (site) modifications, to the extent normally permitted (method is at local option) may be authorized by the **district** board of education and appropriate school officials, provided that they do not affect the overall scope of work of the contract; however, if these change orders will result in an inability to complete the full contracted scope of services without increasing the contracted price, the Bureau of Facility Planning Services must approve in advance;

iii. If the awarded contract includes a sum for contingencies, said sum should be encumbered against the appropriation at the outset, and charges against that amount may be authorized by the **district** board of education, provided that the sum so included does not exceed 20 per cent of the overall contract;

4. In those instances where the Bureau of Facility Planning Services approval is necessary, the following procedures will govern:

i. The authorized school official of the **district** board of education shall file with the Bureau of Facility Planning Services two copies of the request for the change order, stating the facts involved and indicating that the proposed change order may be allowed under these [regulations] **rules**. If the request and justification are prepared by other than an official of the **district** board of education, it must be countersigned by the authorized school official;

ii. The Bureau of Facility Planning Services shall take such steps as it may find appropriate to assure that a change is necessary and that it will actually be carried out;

iii. The Bureau of Facility Planning Services shall be assured that adequate appropriations are available;

iv. If appropriate, the Bureau of Facility Planning Services shall authorize a written amendatory contract to be entered into covering the change(s) to be made. The exact form of this amendatory contract shall be at the discretion of the [local] **district** board of education;

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v. A copy of the change order authorization marked "Approved" will be sent to the **district** board of education for its information and files.

(f) Open-end contracts will be governed by the following:

1. The issuance of purchase orders pursuant to an open-end contract shall be considered to be the carrying out of the contract and not a change order. The following requirements shall apply:

i. Orders under open-end contracts may not be used for purposes such as changing the quality or character of items to be provided, nor to exceed the maximum number(s) of items or units provided for in the original specifications and contract. Such changes would constitute a change order;

ii. The contract may not be for a period longer than the one-year requirement of the Public School Contracts Law, unless specifically authorized by law;

iii. The certificate of availability of funds shall be executed each time an order is placed, covering the amount of the order, unless the **district** board of education wishes to commit and certify the full amount at the outset. The certificate must be executed before the **district** board of education incurs a contractual liability on its part;

iv. Orders may be placed by the school official authorized to serve as contracting agent subject to such controls or approval requirements as the **district** board of education may lawfully impose.

(g) The requirements contained in this section shall apply to all contracts, agreements, purchase orders, or other actions which are entered into, authorized, executed, reviewed or extended on or after the day on which such [regulation] **rule** is finally [adopted] **promulgated**.

(h) Every **district** board of education shall take all steps necessary so that all appropriate school officials and employees shall be aware of and comply with this [regulation] **rule**.

6:20-8.4 Bonds

(a) "Bid bond" means a written guarantee, in the form of a certificate, payable to the **district** board of education, that the bidder, if awarded the contract within such time as may be specified in the invitation to bid, but in no case more than 60 days, unless such bidder has agreed to a longer period, will enter into a contract and will furnish any prescribed performance bond or other security required as a guarantee or indemnification and in default thereof providing payment for the damages suffered by the **district** board of education as a result of the bidder's refusing to sign the contract.

(b) "Labor and material bond" means a written guarantee, in the form of a certificate, payable to the **district** board of education, that the bidder will promptly make payment to all claimants, for all labor and material used or reasonably required for use in the performance of the contract between the bidder and the **district** board of education and in default thereof providing for payment of all unpaid labor and material bills.

(c) "Performance bond" means a written guarantee, in the form of a certificate, payable to the **district** board of education, that the bidder will promptly and faithfully perform the contract between the bidder and the **district** board of education and in default thereof providing for completion of the contract or providing sufficient funds to pay the cost of completion of the contract.

(d) **District** boards of education may require in the notice to bidders or in the specifications that bidders guarantee that they will enter into a contract with the **district** board of education and will furnish any prescribed performance bond or other security required as a guarantee or indemnification. The guarantee may be given, at the option of the bidder, by certified check, cashier's check or bid bond. When the guarantee is given in the form of a bid bond, such bid bond shall:

1. Be given by a responsible surety or insurance company licensed to operate in New Jersey. **District** [B]boards of education are prohibited from requiring that bidders submit a bid bond from a particular surety or insurance company.

2. Shall be given by a responsible individual residing in New Jersey. The **district** board of education may reject such individual bid bond if it is not satisfied with the sufficiency of the individual surety offered; or

3. Shall be in the form of a certificate, identifying the bidder, whose acts are guaranteed, the name of the surety company, insurance company or individual surety and the **district** board of education in whose favor the bonds are given. The "penalty" or "penal sum" on performance bonds, labor and material bonds, and all other such bonds shall be expressed in words and figures as a specific number of dollars and not as a percentage of the bid. The "penalty" or "penal sum" [or] **on** performance and labor and material bonds shall be in the amount of 100 per cent of the contract price.

6:20-8.5 Contract or agreement due to an emergency situation

A copy of any contract or agreement for work or labor, materials, supplies or services made, negotiated or awarded by the secretary, business administrator, business manager or other such officer or employee of a **district** board of education pursuant to N.J.S.A. 18A:18A-7 and a copy of the written requisition for the performance of such work or labor, or the furnishing of materials, supplies or services shall be filed with the Bureau of Facility Planning Services and the office of the [C]county [S]superintendent of [S]schools within three days after the awarding of the contract or agreement.

6:20-8.6 Contracts for behind-the-wheel driver education

(a) Contracts with private driver education schools providing behind-the-wheel driver education may be made, negotiated or awarded by a district board of education, for any term not exceeding in the aggregate three years, by resolution at a public meeting without public advertising for bids. Such resolution shall indicate that the private driver education school will provide behind-the-wheel driver education that is substantially equivalent to that provided by the district board of education at less cost than current or other proposed programs.

(b) Contracts shall only be made, negotiated or awarded with approved private driver education schools. A driver education school holding a current license or certificate of approval issued by the Director of the Division of Motor Vehicles shall be considered as being approved by the Commissioner of Education for the purpose of providing behind-the-wheel driver education. A copy of such current license or certificate of approval shall be obtained by the district board of education from the private driver education school and maintained on file with the contract.

6:20-8.7 Cooperative pricing systems

District boards of education may by resolution establish a cooperative pricing system pursuant to N.J.S.A. 40A:11-11. No cooperative pricing system shall become effective without prior approval of the Director of the Division of Local Government Services in the Department of Community Affairs.

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(a)

Family Life Education Programs

Proposed Readoption with Amendments: N.J.A.C. 6:29-7.1

Authority: N.J.S.A. 18A:4-10, 18A:4-15, 18A:7A-1, 18A:33-1, 18A:35-4.6, 18A:35-5, 18A:35-6, 18A:35-7.

Proposal Number: PRN 1984-712.

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 6:29-7 expires on April 1, 1985. The readoption of the existing rules becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of their readoption. The amendments to the existing rules become effective upon publication in the Register of a notice of their adoption.

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66, 1978, the State Board of Education proposes to readopt N.J.A.C. 6:29-7.1 concerning implementation of family life education programs in school districts. The current rules will expire on April 1, 1985, unless readopted.

The State Board of Education, pursuant to authority of N.J.S.A. 18A:4-10, 18A:4-15, 18A:7A-1, 18A:33-1, 18A:35-4.6, 18A:35-5, 18A:35-6, and 18A:35-7, is proposing the readoption of this code.

Since the 1983-84 school year is the first year of full program implementation, the State Board of Education is proposing to readopt these rules with minor, technical amendments. No substantive amendments are included in this proposal.

In 1967, the State Board of Education adopted a policy recommending that all school districts offer courses to make pupils aware of the physical and emotional problems related to early sexual activity. The policy was suspended from July 1969 to July 1970, when the Commissioner of Education was mandated by a concurrent resolution of the Legislature to place a moratorium on the development of new programs in sex education. The moratorium was lifted following hearings conducted by a joint legislative committee.

In 1978, the New Jersey Superior Court was asked to hear a case concerning parents' rights to remove their child or children from a sex education program. The court concluded that the State Board of Education was in the process of adopting administrative code dealing with sex education and that a bill was pending (now C. 428, L. 1979) which would allow parents to remove their children from courses which they found morally or religiously objectionable. Therefore, the case was dismissed.

In January of 1979, the President of the State Board of Education appointed a five-member committee to examine and recommend improvements in existing State policy on teaching sex education in the public schools. Upon completion of its study, the committee submitted a report, in August 1979, which included a review of the existing policy; a summary of data relating to teenage sexual activity, pregnancy and the incidence of venereal disease; an examination of the lack of sex education courses; and recommendations for policy changes.

The Family Life Education Committee recommended that the State Board adopt rules requiring every district board of education to provide family life education programs as part of its curriculum. It also recommended that parents be allowed to remove their child from those parts of the courses which they found objectionable.

In the rules adopted in April 1980, the State Board suggested subject areas for inclusion in a comprehensive program, but left it up to the local districts to develop their own policies and curriculum. The rules further required community involvement and review of the programs.

Following the State Board's action, concerns and questions raised by the Senate Education Committee were incorporated into Senate Resolution 24. The New Jersey State Board of Education, in preparing a reply to the resolution, made some changes in the family life education rules. The changes deleted the listing of suggested topics that should be included in the program and the program was to be offered in the elementary and secondary grades, not on a specific K-12 continuum. The State Board approved the changes at its June 1980 meeting and adopted them in August 1980.

The family life education program is fully implemented in all school districts as of September, 1983. County office staff have indicated that districts have successfully implemented family life education programming by the 1983-84 school year, and that some districts have utilized exemplary implementation techniques.

The past effectiveness of the rules has been very positive. Current rules have allowed school districts to implement the program in a manner which reflects the values of the entire school community. This has reduced the concerns of the community about the specific content presented to pupils. The rules have positively responded to the needs of school age children who need to begin a lifelong understanding of family life, and the needs of parents who want cultural views of family life infused into the program.

Given the positive responses of both parents and the community to the program's ability to assist pupils to develop attitudes and practices which will strengthen and aid in the establishment of their own family life, the State Board of Education is proposing to readopt these rules.

The Department of Education, in its effort to initiate concerns and comments, submitted this proposal to the following individuals and associations for review and evaluation:

Senior Staff of the State Department of Education
County Superintendents of Schools
Regional Curriculum Services Unit Directors
N.J. Association of School Administrators
N.J. Association of School Business Officials
N.J. Education Association
N.J. Principals and Supervisors Association
N.J. School Boards Association
N.J. Network on Family Life Education
N.J. Congress of Parents and Teachers

As a result of this evaluation and review, the following amendments are proposed. A review of the rules and amendments follows:

N.J.A.C. 6:29-7.1(a): This subsection defines the family life education program and delineates the minimum subject areas to be included in the program. This subsection further discusses the rationale of the program which is to assist pupils in the establishment of attitudes and practices to help in the development of strong families of their own. There is no change in the text.

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N.J.A.C. 6:29-7.1(b): This subsection specifies that school districts develop curriculum in consultation with parents, pupils in grades 9 through 12, and the community. It indicates that the program, once implemented, shall be reviewed by parents and the community during subsequent revision.

The subsection further specifies that parents and guardians of pupils enrolled in the program shall annually receive an outline of the curriculum and a list of instructional materials for the grade in which the child is enrolled. The complete curriculum shall be available, at the school, for review. There is no change in the text.

N.J.A.C. 6:29-7.1(c): This subsection directs how the program will be implemented, and the manner that the curriculum will be taught, that is, at the appropriate stage of growth, development and maturity of the pupil. There is no change in the text.

N.J.A.C. 6:29-7.1(d): This subsection expands upon how the curriculum will be delivered to the pupils by permitting teachers from other disciplines to assist the designated teacher of family life education. Family life education covers a wide range of topics, some of which may be out of the subject expertise of the regular teacher. There is no change in the text.

N.J.A.C. 6:29-7.1(e): This subsection specifies the teaching certificates that teachers must hold to be eligible to teach family life education. Special education certification was added as number 10 to the list of teaching certificates so that special education pupils may receive instruction in family life education that is appropriate for their development and which meets their special needs.

N.J.A.C. 6:29-7.1(f): This subsection expands the family life staff to include resource persons who have indepth knowledge of specific content areas. These individuals include, but are not limited to, clergy, attorneys, parents, school psychologists and social workers and law enforcement personnel. There is no change in the text.

N.J.A.C. 6:29-7.1(g): This subsection requires that inservice education be provided by the school district for teachers of family life education. There is no change in the text.

N.J.A.C. 6:29-7.1(h): This subsection requires the Department of Education to provide technical assistance to school districts in the development of family life education programs. There is no change in the text.

N.J.A.C. 6:29-7.1(i): This subsection details the procedures for parents to excuse their children from any part of the family life education program. Also, the subsection provides that children who are excused from any portion of the course shall not be penalized as to credit or graduation.

Conflict with the parents' sincerely held religious or moral beliefs is specified as the reason justifying excusing pupils from portions of the program. There is no substantive change in the text; two technical corrections have been made.

N.J.A.C. 6:29-7.1(j): The current subsection (j) is being deleted. The new subsection indicates that all of the provisions of this section are subject to N.J.A.C. 6:8-4.2, the rules governing promotion and graduation policies and proficiencies. There is no change in the text.

Social Impact

The proposed amendments do not alter the basic intent of the existing rules. They are written to continue a pupil's opportunity in acquiring a broadly based education and to more fully prepare the pupil for entry into adult society.

District boards of education are responsible for determining at what grade level in the elementary curriculum the program will begin; developing curriculum; selecting the teachers to teach the program; deciding how to incorporate the program into the existing curricula; and selecting appropriate resource people to assist with the presentation of the program.

Readopting the rules will not have an impact upon the total curriculum delivery system, since family life education is one component of a larger educational program. The program does not have a more significant impact upon high school graduation requirements than any other topic included in a particular course of study.

The rules explicitly state that a local school district program must be developed through appropriate consultation and participation with parents, legal guardians and other interested persons. A local school district must demonstrate that parents and legal guardians have been involved in the process before the program is implemented. The parents and legal guardians of pupils enrolled in the districts must receive, annually, a curriculum outline and list of instructional materials for the grade level in which their child is enrolled, prior to the start of the program. A parent or legal guardian may also see a copy of the complete curriculum upon request. The rules, therefore, allow the broadest possible representation of the community in educational decision making.

The major thrust of the family life education program is to meet the needs of children growing up in our rapidly changing society. During the past 15 years, economic and social changes have deeply affected the family structure and home life of Americans. With the changing family structure, new informational needs have emerged. Pupils, therefore, need to learn processes for understanding and developing loving, caring relationships. The State Board of Education promulgated the rules governing this program because of its belief that education is the shared responsibility between the home, the church and the school.

Family life education was not designed to reduce the social problems that face children, even though research has demonstrated the positive impact of informing children about the aspects of family life. Family life education programs are designed to nurture personal behavior that leads to a healthy, productive life. Basic information about sexuality, consideration of others, personal responsibility, self-discipline and control, communication, love and caring and the infinite worth of each individual are ideas that children are taught in the program.

In summary, the social impact of the code has been positive and has created a partnership with parents and the community. If the code is not readopted, most districts, as indicated by a Department survey, would continue the educational program, but some districts have indicated that they would continue the educational program without parental involvement in the curriculum decision-making process.

Economic Impact

The economic conditions which affect these rules have not changed since the rules were adopted. There will be no significant cost to school districts in the State resulting from the proposed amendments, since they deal primarily with adjustments to the existing process. These rules facilitate the delivery of the program at the local level.

All of the proposed technical corrections to this subchapter will have no significant direct or indirect economic impact on either the State or local school districts. These clarifying

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amendments were made to ease the implementation of the program and continue to protect the policy making role of district boards of education and bring the existing rules into conformity with changes in other subchapters. Since local districts and the State are currently providing inservice training, in some instances including training of parents and the community, there is no additional economic impact associated with either the training or associated training materials. Curricular materials associated with the in-school portion of the program are an ongoing cost associated with a district's net current expense budget.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 6:29-7.

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

6:29-7.1 Family life education

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

(e) Teaching staff members holding one of the following certificates are authorized to teach in the district's family life education program:

1. Biology;
2. Comprehensive science;
3. Elementary;
4. Health education;
5. Health and physical education;
6. Home economics;
7. Nursery;
8. School nurse;
9. Teacher of psychology[.];
10. **Special Education.**

(f)-(h) (No change.)

(i) The [local] **district** board of education shall establish procedures whereby any pupil, whose parent or guardian presents to the school principal a signed statement that any part of the instruction in family life education is in conflict with his[/] **or** her conscience, or sincerely held moral or religious beliefs, shall be excused from that portion of the course where such instruction is being given and no penalties as to credit or graduation shall result therefrom[,] (N.J.S.A. 18A:35-4.6 et seq.).

[(j) Each district board of education shall adopt a policy by September, 1981, for the development of a family life education program in the local district. The implementation of the family life education program shall be completed by September, 1983.]

[(k)] **(j)** The subchapter is subject to all of the provisions of N.J.A.C. 6:8-4.2.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Shellfish-Growing Water Classification

Proposed Amendments: N.J.A.C. 7:12-2.1, 2.2, 2.3, and 2.4

Notice of Correction

Several typesetting errors appear in the Notice of Proposed Amendments published in the November 19, 1984 issue of the New Jersey Register at 16 N.J.R. 3112(a). Specifically, the text of 7:12-2.1, 2.2, 2.3 and 2.4 on pages 3112, 3113 and 3114 was incorrectly printed. The correct text is reprinted below, and the comment deadline is extended to **December 31, 1984** to allow interested persons time to submit information and inquiries (see 16 N.J.R. 3112(a) for the complete proposal).

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

SUBCHAPTER 2. SPECIAL PERMIT

7:12-2.1 General provisions

(a) (No change.)

(b) Said permits may be issued to persons making application for purposes of transplanting, relaying, [deletion] **depletion,** bait harvesting, depuration/controlled purification, research or other purposes approved by the department.

(c) Each application shall be accompanied by a fee in the amount of $25.00 (check or money order made payable to New Jersey [State] Department of Environmental Protection). Forms may be obtained from the New Jersey Department of Environmental Protection, Division of Water Resources, Bureau of Shellfish Control, [Richards Lane] **Stoney Hill Road,** Leeds Point, Absecon, New Jersey 08201, and New Jersey Marine Police stations located throughout the State. **Duplicate permits may be issued upon written request to the Bureau of Shellfish Control at the aforementioned address and if accompanied by a $10.00 check or money order payable to the New Jersey Department of Environmental Protection.**

(d) Said 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/or any other conditions deemed necessary by the department to protect the health, safety and welfare of the public.

(e) Conviction of a shellfish violation as provided in N.J.S.A. 58:24-1 et seq., **N.J.S.A. 24:2-1 et seq.**, and 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 harvesting, **possession, and/or processing** of shellfish from the waters of the State.

(f) Any participant violating the regulations or the terms of the special permits issued by the Division of Water Resources may be subject to prosecution under the provisions of N.J.S.A. 58:24-3 and may incur the penalties prescribed for the offenses specified by N.J.S.A. 58:24-9 and 58:24-10.

(g) Any person who shall gather any oysters, clams or other shellfish from a place which has been condemned by the department pursuant to N.J.S.A. 58:24-2 or who shall distribute, sell, offer or expose for sale or have in his possession any such shellfish so gathered unless he shall first have secured a permit in writing from the department to distribute, sell, offer or expose for sale or have in his possession any such shellfish so taken, is guilty of a petty disorderly persons offense and any subsequent offense is guilty of a disorderly persons offense (N.J.S.A. 58:24-9). Additionally, the vessel, vehicle and

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all equipment used to violate this law, regulation or permit may be subject to seizure or forfeiture (N.J.S.A. 58:24-10).

(h) Due to the necessity to closely monitor this program for the purpose of protecting public health, the Division of Water Resources shall immediately suspend the Special Permit of any participant who violates any condition of the permit or any of these regulations. Right to a post-suspension hearing shall be granted by the Division of Water Resources in accordance with the procedures established by 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. The hearing shall be held within 10 days of the participant's request for a hearing on an expedited basis, unless an adjournment is requested by the participant.

(i) Discrimination against any harvester on the basis of race, sex, creed, domicile, or any other non-work related factor shall be adequate cause for revocation of this permit.

7:12-2.2 Applications

(a) Applications for said permits shall be submitted on forms supplied by the Department as follows:

1.-7. (No change.)

8. Hard clam Depuration/Harvester [(pilot)] program (WR-009).

9. Hard clam possession and/or processing plant [(pilot)] program (WR-010).

(b) Applicants shall provide a copy of their valid commercial shellfish harvesters license with the application.

(c) It is the responsibility of the permittee to keep the Bureau of Shellfish Control informed of his current mailing address. A change of address from that submitted on the aforementioned application, as well as subsequent changes therefrom, must be reported to the Leeds Point office within one week of change.

7:12-2.3 Bait program; sea clams

(a) The purpose of Permit No. 2a ("Sea Clam Bait Permit") is to allow Sea or Surf Clams to be harvested from the Condemned [W]waters in the Atlantic Ocean within the State of New Jersey jurisdictional three mile limit and ultimately sold for bait purposes only (N.J.S.A. 58:24-3).

(b) Permit No. 2a shall be valid only under the following specific requirements or conditions. Violations may subject the holder to prosecution under N.J.S.A. 58:24-3.

1.-4. (No change.)

5. The permit does not supersede current laws, regulations and rules promulgated by other agencies of the State of New Jersey [. Included in this category is] **including, but not limited to, N.J.S.A. 50:2-6.1 et seq. and** N.J.A.C. 7:25.

6.-15. (No change.)

16. The harvester shall, **prior to harvesting,** verbally notify, on a day to day basis, the [applicable area New Jersey Marine Police Station] **designated enforcement unit(s)** as to the area and hours he intends to work under the provisions of this permit.

17. (No change.)

18. This permit shows on its face specific conditions that are deemed necessary for the proper operations of the Sea Clam Bait program. These permit conditions are hereby incorporated in this paragraph by reference, and violation(s) of said conditions shall be deemed violation(s) of these regulations. The permittee is also required to comply with all other applicable statutes and regulations.

7:12-2.4 Bait program; soft clams **and/or hard clams**

(a) The purpose of Permit No. 2b ("Soft Clam **and/or Hard Clam** Bait Permit") is to allow a depuration/controlled purification facility **holding Permit Nos. 8b and/or 10** to sell, for bait purposes only, unmarketable soft clams **and/or hard clams** that have been damaged during harvesting or depuration/controlled purification processing.

(b) Permit No. 2b shall be valid only under the following specific requirements or conditions. Violation may subject the holder to prosecution under N.J.S.A. 58:24-3.

1. Species limited under said permit to soft clams (Mya arenaria) **and hard clams (Mercenaria mercenaria).**

2. (No change.)

3. [Soft clams (Mya arenaria)] **Clams** shall have been originally acquired from the harvester holding a duly issued Permit No. 4 **and/or Permit No. 9.**

[4. The harvester shall possess a valid commercial shellfish harvesting license issued by the New Jersey Division of Fish, Game and Wildlife.]

[5.] **4.** (No change.)

[6.] **5.** Harvesting from the specified Special Restricted **and Seasonal Special Restricted** waters [shall] **may** be permitted Monday through Sunday of each week [between] **and** the hours **limited as conditions of the harvester's permit.** [of sunrise and sunset, as listed in Trenton.]

[7.] **6.** Areas such as walk-in boxes, truck bodies, etc., which are used for storage of shellfish harvested from [the Condemned] Special Restricted **and Seasonal Special Restricted** [area] **Areas,** shall not be used for storage of other food products if such food products are to be utilized for human consumption.

[8.] **7.** (No change.)

[9.] **8.** (No change.)

[10.] **9.** (No change.)

[11.] **10.** Said damaged [soft] clams from [Condemned] Special Restricted **and Seasonal Special Restricted** waters shall not be used or sold as food for human consumption.

[12.] **11.** (No change.)

12. This permit shows on its face specific conditions that are deemed necessary for the proper operations of the Soft Clam and Hard Clam Bait Programs. These permit conditions are hereby incorporated in this paragraph by reference, and violation(s) of said conditions shall be deemed violation(s) of these regulations. The permittee also required to comply with all other applicable statutes and regulations.

(a)

ENVIRONMENTAL PROTECTION BOARD OF PUBLIC UTILITIES

Small Water Company Takeover Act Regulations

Proposed New Rule: N.J.A.C. 7:19-5 (14:9-6)

Authorized By: Robert E. Hughey, Commissioner, Department of Environmental Protection, and Barbara A. Curran, President, Board of Public Utilities.

Authority: N.J.S.A. 58:11-59 et seq. and 58:12A-1 et seq.

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DEP Docket No: 006-84-02.
Proposal Number: PRN 1984-716.

Address comments and inquiries to:
Joseph N. Schmidt, Jr., Esq.
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The joint agency proposal follows:

Summary

The Department of Environmental Protection ("NJDEP") and Board of Public Utilities ("BPU") jointly proposed regulations to implement N.J.S.A. 58:11-59 et seq., commonly known as the "Small Water Company Takeover Act" ("Act"), in the March 19, 1984 New Jersey Register (see 16 N.J.R. 563(a)). However, significant comments concerning the March 19, 1984 proposal from other State agencies initiated a series of meetings between the NJDEP, BPU, Public Advocate, Attorney General's office and the Office of Administrative Law ("OAL"). This current proposal directly results from those inter-governmental meetings, NJDEP and BPU revised and streamlined the March 19, 1984 proposal to better implement the brief, yet complex, provision of the Act.

The Act developed as a legislative attempt to help solve the problem of small water companies in New Jersey. Numerous private small water companies remain too small to operate as self-sustaining entities. These financially overburdened small water companies cannot provide the necessary operation and maintenance to satisfy the requirements of Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., and the regulations promulgated thereto, N.J.A.C. 7:10-1 through 11. Small water companies are often approved by local municipalities as part of housing developments without sufficient consideration of future operation and management. Many small water companies are dilapidated and under capitalized with little hope that urgent rehabilitation needs will be undertaken. As a result of these conditions, the customers receive water of an inadequate quality, pressure and volume. NJDEP and BPU continue to regard the Act as a major enforcement tool to bring small water companies into compliance with statutory and regulatory requirements.

The Act defines a "small water company" as any company, purveyor or entity, other than a governmental agency, that provides water for human consumption and which regularly serves less than 1,000 customer connections (see: N.J.S.A. 58:11-59). The proposed new rules establish procedures by which a small water company that does not comply with appropriate statutory and regulatory standards concerning actual or imminent public health problems may be acquired or "taken over" by the most suitable public, or private entity pursuant to a joint order issued by NJDEP and BPU. Violations of statutory and regulatory standards not adversely affecting the quality, pressure or volume of water delivered as determined by the Department shall not be considered actual or imminent public health problems for the purpose of the proposal. For example, aesthetic water quality problems or minor design deficiencies shall not be considered actual or imminent public health problems.

NJDEP shall issue orders on a case-by-case basis to small water companies concerning the availability of water, the potability of water and the provision of water at adequate volume and pressure. NJDEP may initiate and invoke the provisions of the proposal and the Act if NJDEP concludes, following expiration of time for compliance or any requested evidentiary hearing, that the small water company has not complied with NJDEP's order. NJDEP and BPU shall jointly conduct a joint public hearing of as quasi-legislative, informational nature to provide a vehicle for public input into the problems of the non-complying small water company (see 7:19-5.8). A contested case hearing before the Commissioner of NJDEP, the BPU Commissioners or an Administrative law Judge shall determine through a fact-finding, adversarial hearing the expenditures necessary to make improvements required to insure compliance with the appropriate statutory or regulatory standards concerning actual or potential public health problems (see 7:19-5.7). Also to be considered at this contested case hearing shall be the issue of acquisition costs and the most suitable public or private entity to acquire the non-complying small water company. The contested case hearing affords all parties opportunity to respond, appear and present evidence and argument pursuant to the "New Jersey Uniform Administrative Procedures Rules of Practice", N.J.A.C. 1:1. These hearings will provide the record upon which NJDEP and BPU shall jointly determine and order the appropriate actions to be taken concerning the non-complying small water company by the most suitable public or private entity (see 7:19-5.10).

The joint order shall include an action by the Board ordering the immediate inclusion in the rates of the acquiring entity of the anticipated cost of necessary improvements or, if the determination of acquisition costs has been deferred, as soon as may be practicable. The BPU will also extend or transfer the franchise area of the acquiring public or private entity to the extent necessary to cover the service area of the acquired non-complying small water company. Acquisition costs shall be determined by agreement of the parties, and approved by the BPU (see: 7:19-5.11(f)), or if no agreement exists between the parties, compensation for the acquisition of the non-complying small water company shall be determined through the use of the eminent domain procedures pursuant to the "Eminent Domain Act of 1971", N.J.S.A. 20:3-1 (see: 7:19-5.12). Compliance with the joint takeover order is mandated by N.J.S.A. 58:11-62. Also the Act allows the BPU discretion to permit the acquiring public or private entity to charge and collect a differential rate from customers of the non-complying small water company for the use or service of the acquiring company's water supply system or facilities pursuant to N.J.S.A. 58:11-63 (see: 7:19-5.14).

Social Impact

A positive social impact will result from the takeover of non-complying small water companies pursuant to joint orders of the NJDEP and BPU by the most suitable public or private entity as set forth in the proposed new rules. The successful implementation of the procedures in the proposal will insure the availability of water, the potability of water and the provision of water at adequate volume and pressure to the customers of small water companys currently receiving water of inadequate quality, pressure and volume.

Economic Impact

Major economic impacts will result upon non-complying small water companies, private or public entities ordered to take over non-complying small water companies, and the water usage rate payers of both the non-complying small water companies and the acquiring entities. During the rate making process the negative economic impact and risks to the acquiring entity by virtue of the takeover of the non-complying small water company will be evaluated and considered to

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ensure financial viability of the acquiring entity. However, the public health and welfare benefits to the citizens of New Jersey currently receiving inferior and inadequate water service from small water companies favorably counter balances the economic impacts directly resulting from the Act's legislative mandate.

Environmental Impact

Major positive environmental impacts will result from the successful implementation of the proposal by assuring the availability of water, the potability of water and the provision of water at adequate pressure and volume to citizens of New Jersey currently receiving inferior and inadequate water service from non-complying small water companies.

Full text of the proposed new rules follows.

SUBCHAPTER 5. SMALL WATER COMPANY TAKEOVER ACT REGULATIONS

7:19-5.1(14:9-6.1) Purpose

This subchapter implements the provisions of N.J.S.A. 58:11-59 et seq., commonly known as the "Small Water Company Takeover Act". This subchapter establishes procedures by which a small water company that does not comply with appropriate statutory and regulatory standards concerning actual or imminent public health problems may be acquired or "takenover" by the most suitable public or private entity pursuant to a joint order issued by the New Jersey Department of Environmental Protection and the New Jersey Board of Public Utilities.

7:19-5.2(14:9-6.2) Definitions

Unless the context clearly indicates otherwise, the following terms, when used in this subchapter, shall have the following meanings:

"Act" means the "Small Water Company Takeover Act", N.J.S.A. 58:11-59 et seq.

"Actual or imminent public health problems" means any violations by a small water company of appropriate statutory and regulatory standards, including but not limited to the New Jersey Safe Drinking Water Regulations, N.J.A.C. 7:10-1 through 13, which adversely affects the quality, pressure or volume of water delivered as determined by the Department. Violations by a small water company of appropriate statutory and regulatory standards that do not adversely affect the quality, pressure or volume of water delivered as determined by the Department shall not be considered actual or imminent public health problems for the purposes of this subchapter, including, but not limited to, aesthetic water quality problems or minor design deficiencies.

"BPU" means the New Jersey Board of Public Utilities.

"Capable" means financially and operationally able to provide safe, adequate and proper water service for the customers of the small water company to be acquired currently or in the foreseeable future. BPU shall be consulted by the Department concerning any public or private water systems' financial status.

"Commissioner" means the Commissioner of Environmental Protection or his designated representative.

"Department" means the Department of Environmental Protection.

"Division" means the Division of Water Resources of the Department of Environmental Protection.

"Proximate" means and includes all public or private water companies, municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1 et seq., municipalities or any other suitable governmental entities wherein the small water company provides service regardless of their ability to reasonably physically interconnect with the small water company to be acquired.

"Public Advocate" means the Department of the Public Advocate.

"Small water company" means any company, purveyor or entity, other than a governmental agency, that provides water for human consumption and which regularly serves less than 1,000 customer connections.

7:19-5.3(14:9-6.3) Construction

(a) This subchapter shall be liberally construed to permit the Department and BPU to discharge their statutory functions.

(b) The Department and BPU may jointly amend, repeal or rescind this subchapter from time to time in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and any regulations promulgated pursuant thereto.

7:19-5.4(14:9-6.4) Applicability

This subchapter shall apply to all small water companies within the State of New Jersey.

7:19-5.5(14:9-6.5) Severability

If any section, subsection, provision, clause or portion of these regulations is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this subchapter shall not be affected thereby.

7:19-5.6(14:9-6.6) Scope

(a) Any small water company not in compliance with appropriate statutory and regulatory standards, including but not limited to the New Jersey Safe Drinking Water Regulations, N.J.A.C. 7:10-1 through 13, concerning actual or imminent public health problems as determined by the Department may be subject to the provisions of this subchapter.

(b) Violations by a small water company of appropriate statutory and regulatory standards not adversely affecting the quality, pressure or volume of water delivered as determined by the Department shall not be considered actual or imminent public health problems for the purposes of this subchapter.

7:19-5.7(14:9-6.7) Departmental action

(a) Prior to the implementation of procedures under the Act, the Department shall actively pursue appropriate and available enforcement options to bring a small water company into compliance with the appropriate statutory and regulatory standards concerning actual or imminent public health problems including but not limited to:

1. Issuance of directive letters;
2. Issuance of administrative orders;
3. Direct negotiation;
4. Appropriate legal proceedings; or
5. All other enforcement options deemed reasonable and appropriate by the Department consistent with its statutory mandate.

(b) A Departmental order issued on a case-by-case basis to a small water company concerning the availability of water, the potability of water and the provision of water at adequate volume and pressure may initiate the proceedings under the Act and this subchapter.

1. A Departmental order shall specify on a case-by-case basis a reasonable time period in which the small water company must comply with the appropriate statutory and regulatory standards concerning actual or imminent public health problems as determined by the Department and shall provide

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the public health problems as determined by the Department and shall provide the small water company with the opportunity for an evidentiary hearing pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F et seq. to determine whether there has been compliance with appropriate statutory and regulatory standards.

2. If administrative hearing procedures have been initiated by a small water company concerning any outstanding Departmental order, the Department shall move to join any new order issued with the ongoing administrative hearing procedures.

3. The Department may issue another order concerning any small water company if the outstanding Departmental order remains over one year old or administrative hearing procedures have commenced.

(c) Should the Department conclude, following the expiration of the times for compliance or following an evidentiary hearing if one has been requested, that the small water company has not complied with the Department's order, the Department may invoke and initiate the provisions as set forth in N.J.A.C. 7:19-5.8.

1. The Department shall provide BPU with immediate notice of the small water company's noncompliance and the decision to invoke and initiate the provisions as set forth in N.J.A.C. 7:19-5.8.

7:19-5.8(14:9-6.8) Joint public hearing

(a) Designated hearing officers from the Department and BPU or an Administrative Law Judge shall conduct a joint informational public hearing in the proximate area of the non-complying small water company, preferably in the evening, concerning the non-complying small water company after 30 days notice pursuant to (b) below.

(b) Notice of the time, place and subject matter of the joint public hearing shall be given at least 30 days prior to the scheduled hearing date by the Department and BPU as follows:

1. Publication of a display advertisement in a newspaper circulating within the proximate area of the small water company for a minimum of one day per week for two weeks prior to the scheduled date of the joint public hearing;

2. Issuance of press releases and utilization of other appropriate methods of notice;

3. Written notice by certified or registered mail sent to the following parties:

i. The non-complying small water company;

ii. The Public Advocate;

iii. Capable proximate public and private water companies; and

iv. Capable proximate municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1 et seq., municipalities and any other suitable governmental entities wherein the non-complying small water company provides water service.

(c) The joint public hearing shall be conducted to receive public comments regarding the possible options available to bring the non-complying small water company into compliance with the appropriate statutory and regulatory standards concerning actual or imminent public health problems. The acquisition of the non-complying small water company by the most suitable public or private entity shall be discussed. Information should be required from participants at the joint public hearing concerning any estimates of expenditures, including acquisition and improvement costs, that may be required to:

1. Assure the availability of water;

2. Assure the potability of water; and

3. Assure the provision of water at adequate volume and pressure.

(d) The Department shall make a technical presentation at the joint public hearing of the non-complying small water company's deficiencies, indicate necessary improvements and discuss, after consultation with BPU, possible options and preliminary improvement cost estimates. The Department's presentation shall be based on information reasonably available to the Department and be intended to focus attention for the purpose of the joint public hearing on the relevant issues concerning the non-complying small water company.

(e) The non-complying small water company shall be ordered to appear at the joint public hearing and provide all available information pertaining to the value of its water supply facilities and the cost of correcting deficiencies.

(f) Public comments shall be solicited at the joint public hearing and transcribed for the record at the expense of the non-complying small water company.

(g) The designated Department and BPU hearing officers, or an Administrative Law Judge shall require answers from any appropriate interested parties attending the joint public hearing, if possible, to all reasonable questions put forward at the joint public hearing.

(h) Cross-examination shall not be permitted by any interested parties at the joint public hearing.

(i) All participants at the joint public hearing shall be afforded the opportunity to testify under oath.

(j) Within 45 days after the joint public hearing held pursuant to this section, the designated Department and BPU hearing officers or an Administrative Law Judge shall review the record and prepare a joint report detailing no more than three options and their estimated costs, including the rationale for selection of each option in order of priority, for utilization by the Department and BPU in selecting an option.

(k) The joint report required by (j) above shall be mailed to all those noticed by certified or registered mail of the joint public hearing and shall be made available for public review. The Department and BPU shall undertake reasonable efforts to make copies of the joint report available to all other interested persons.

1. All interested persons shall be allowed to file comments concerning the report within 30 days of its issuance.

i. Failure to file any comments concerning the joint report by the small water company, capable proximate public or private water companies, municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1, municipalities or any other suitable governmental entities wherein the non-complying small water company provides service shall create a rebuttable presumption that no objections to the joint report exist.

2. If the joint report required by (j) above recommends acquisition as an option, the Department and BPU may forward a copy of the joint report to the Office of Administrative Law to provide notice that the Department and BPU may request the services of an administrative law judge on an expedited scheduling basis to conduct the contested case hearing required by N.J.A.C. 7:19-5.9.

7:19-5.9(14:9-6.9) Contested case

(a) A contested case hearing(s) shall be held before the Commissioner, the BPU Commissioner, or an Administrative Law Judge concerning the non-complying small water company to determine through a fact-finding adversarial hearing the expenditures that may be necessary to make improvements necessary to the non-complying small water company to insure compliance with the appropriate statutory and regulatory standards concerning actual or potential public health prob-

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lems. Also to be considered at this contested case hearing(s) shall be the issue of acquisition costs and the most suitable public or private entity to acquire the non-complying small water company.

(b) At the contested case hearing(s) opportunity shall be afforded the parties to respond, appear and present evidence and argument on all issues involved pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq., and the "New Jersey Uniform Administrative Procedure Rules of Practice", N.J.A.C. 1:1.

(c) The entire record addressed pursuant to this subchapter shall be considered by the Commissioner, BPU Commissioner or Administrative Law Judge in deciding the issues set forth in (a) above. All portions of this record considered admissable pursuant to the "New Jersey Uniform Administrative Procedure Rules of Practice", N.J.A.C. 1:1, shall be exhibits in the contested case hearing.

(d) In addition to any notice requirements required pursuant to (b) above, notice of time, place and subject matter of the contested case hearing shall be given by certified or registered mail to the following parties:

1. The non-complying small water company;
2. The Public Advocate;
3. Capable proximate public and private water companies; and
4. Capable proximate municipalities, municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1 et seq. and any other suitable governmental entities wherein the small water company provides water service.

(e) The contested case hearing(s) shall be transcribed for the record at the expense of the non-complying small water company.

7:19-5.10(14:9-6.10) Joint takeover order by the Department and BPU

(a) Upon receipt of the entire record of the joint public hearing and the contested case hearing(s), the Department and BPU shall jointly determine in a written order the appropriate actions to be taken on the basis of the entire record. If the acquisition option is not selected, then procedures under the Act terminate.

(b) If the Department and BPU have determined that the costs of improvements to and the acquisition of the non-complying small water company are necessary and reasonable, the Department and BPU shall jointly order the acquisition of the non-complying small water company by the most suitable entity.

1. The Department has responsibility for technical determinations and BPU has responsibility for the rate making function.

2. The Department will consult with BPU technical staff prior to making any technical determinations with regard to this joint order.

3. This order shall include an action by BPU subject to refund which provides for the immediate inclusion in the rates of the acquiring entity of the anticipated costs of necessary improvements, or, if the determination of acquisition costs has been deferred, as soon as possible thereafter as may be practicable and feasible consistent with N.J.A.C. 7:19-5.11. The order shall also include the approved tariffs.

(c) If anticipated improvement costs are customer provided, the improvements shall be considered contributions in all future rate cases. Separate records shall be maintained as to contributions occurring under this process.

(d) The BPU shall extend or transfer the franchise area of the acquiring public or private entity to the extent necessary to cover the service area of the non-complying small water company taken over pursuant to the Act and this subchapter.

(e) If this joint order results in an increase in the rates, this process shall be considered a proceeding initiated by the application of a utility for an increase in rates for the purposes of N.J.S.A. 52:27E-19.

(f) Any acquisition costs which are deemed necessary and reasonable, based on evidence from the contested case hearing(s), and agreed to by the small water company and the acquiring entity and approved by BPU, after consultation with DEP and the Public Advocate, may be included in the rates.

7:19-5.11(14:9-6.11) Acquisition costs

(a) If the parties have not agreed to acquisition costs, BPU's and DEP's designated representatives shall convene at least one meeting within 60 days of the issuance of the joint hearing report pursuant to N.J.A.C. 7:19-5.9(i) and again within 15 days after issuance of the joint order prepared pursuant to N.J.A.C. 7:19-5.10. Representatives of the Public Advocate, non-complying small water company and acquiring entity shall be notified of each meeting which will concern the possibility of mutual agreement on compensation for the acquisition and the other details pertaining to takeover of the non-complying small water company by the acquiring entity.

1. Meetings shall be continued if the Department and BPU determine in writing that a reasonable possibility of success for an agreement exists.

2. BPU and DEP representatives shall certify in writing to the Department and BPU the status of these meetings every three months.

(b) If no agreement between parties exist, compensation for the acquisition of the non-complying small water company shall be determined through the use of the eminent domain procedures pursuant to the "Eminent Domain Act of 1971", N.J.S.A. 20:3-1.

7:19-5.12(14:9-6.12) Compliance with joint order

(a) The acquiring entity which receives a joint order pursuant to N.J.A.C. 7:19-5.10 shall acquire the non-complying small water company and make necessary improvements to assure the availability of water, the potability of water and the provision of water at adequate volume and pressure as mandated by N.J.S.A. 58:11-62.

(b) The non-complying small water company shall immediately comply with the joint order and facilitate its sale to the acquiring entity as mandated by N.J.S.A. 58:11-62.

(c) The failure of any utility to comply with a joint order pursuant to N.J.A.C. 7:19-5.10 shall permit the BPU and the Department to proceed to enforce the joint order consistent with their statutory mandate.

7:19-5.13(14:9-6.13) Differential rate for customers of small water company for use of service of acquiring entity's system or facilities

If the joint order pursuant to N.J.A.C. 7:19-5.10 has been issued BPU may, in its discretion, allow the acquiring entity to charge and collect a differential rate from the customers of the non-complying small water company for the use or service of the acquiring entity's water supply system or facilities pursuant to N.J.S.A. 58:11-63.

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ENVIRONMENTAL PROTECTION

The following proposals are authorized by Robert E. Hughey, Commissioner, Department of Environmental Protection.

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Bureau of Shellfisheries
Taking of Oysters and Mussels

Proposed New Rules: 7:25-7.10 and 7.11

Authority: N.J.S.A. 50:1-5
DEP Docket No.: 071-84-11.
Proposal Number: PRN 1984-709.

Address comments and inquiries to:
Gale Critchlow, Chief
Division of Fish, Game and Wildlife
Bureau of Shellfisheries
CN 400
Trenton, N.J. 08625

The agency proposal follows:

Summary

N.J.A.C. 7:25-7.10, 7:25-7.11 and 7:25-7.13 expired on March 13, 1984 pursuant to Executive Order No. 66(1978). The provisions that were encompassed in 7:25-7.13, dealing with crab dredging in the Atlantic Coast section, have been adopted on an emergency basis and concurrently proposed. (See 16 N.J.R. 3216(a).) This proposal addresses only the provisions encompassed in 7:25-7.10 and 7:25-7.11. The proposed rules establish the oyster tonging license, fix the fee therefor, and prohibit the harvesting of mussels on Sundays. Adoption of the rules will reinstate the prior, expired rules which proved effective during their duration.

Social Impact

Under the proposed rules, which promote conservation, oysters and mussels have been harvested without severe depletion or other adverse incident over the years. The Department anticipates no adverse impact upon the general public.

Economic Impact

By promoting conservation, the proposed rules help prevent the depletion of the mussel and oyster population, thus encouraging the stability of these branches of the State's shell fishing industry. The fee for the oyster tonging license remains identical to that fixed by the prior, expired rule. No fee is charged for a recreational license issued to a resident who is 62 or more years old.

Environmental Impact

The proposed rules constitute a conservation measure which will help prevent the adverse environmental impact of excessive harvesting.

Full text of the proposal follows.

7:25-7.10 Taking of oysters

(a) No person shall catch, take or attempt to catch or take by tonging or by any hand-operated device any oysters in the waters of this State unless such person has in his or her possession a valid oyster license issued by the Bureau of Shellfisheries of the Division of Fish, Game and Wildlife.

1. The fee for an oyster license shall be $10.00 and it shall expire at the end of the calendar year in which it was issued, except that no fee shall be charged for a recreational license issued to a resident of this State who is 62 or more years old.

7:25-7.11 Mussels

(a) No person shall take mussels (Mytilus edulis) by any means whatsoever upon any of the lands lying under the tidal waters of this State before sunrise or after sunset or at any time on Sunday.

(b) "Person," as used in this section, shall include, but not be limited to, the captain or other person responsible for the operation of any vessel.

(b)

DIVISION OF WASTE MANAGEMENT

Resource Recovery Grants and Loans

Proposed Amendments: N.J.A.C. 7:26-14

Authority: N.J.S.A. 13:1D-1 et seq. and P.L. 1980, c.70.
DEP Docket No. 072-84-11.
Proposal Number: PRN 1984-710.

Address comments and inquiries to:
Barbara M. Greer
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 7:26-14 establishes the manner in which the Department of Environmental Protection (the Department) administers grants and loans to counties for the funding of resource recovery projects pursuant to the "Natural Resources Bond Act of 1980," P.L. 1980, c.70 (the Act). The Act authorized $50,000,000.00 for that purpose to be provided by appropriation from moneys generated by the sale of bonds.

When originally developed, in 1981, the rules were written primarily to address the granting of funds to counties. In order to provide funding to a greater number of projects over a period of time, the Department now intends to utilize most of the money provided under the Act to provide loans rather than grants. This proposal would amend the applicable sections of the rules to clarify the Department's intent. In addition, technical changes are proposed which will serve to update the rules, correct printing errors in the latest edition of the New Jersey Administrative Code, and bring the rules into conformance with current Department practice.

Social Impact

The proposed amendments will facilitate the lending of the moneys available for resource recovery projects and will thereby permit funding of more projects. The encouragement

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of resource recovery, including recycling, has been deemed by the Legislature as being in the public interest.

Economic Impact

By providing low or no interest loans to counties to undertake resource recovery projects, the solid waste disposal (tipping) fee charged to users of the resource recovery facility will be lowered. Relending loan repayments and any interest on loans will permit the moneys to be used to help finance more facilities than one-time-only grants.

Environmental Impact

By using the moneys generated by the Act for loans rather than grants, more resource recovery projects, which will replace environmentally unsound landfills, will be assisted. Therefore, a positive environmental impact is expected.

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

SUBCHAPTER 14. RESOURCE RECOVERY GRANTS **AND LOANS**

7:26-14.2 Construction

(a) This subchapter shall be construed so as to permit the Department [and its various agencies] to discharge its statutory functions and to effectuate the purposes of the law.

(b) (No change.)

7:26-14.3 Practice where these rules do not cover

The Commissioner of the Department of Environmental Protection [and the Director of the Division of Environmental Quality] shall exercise his or her discretion in respect to any matters not covered by this subchapter.

7:26-14.4 Purpose

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

1. (No change.)

2. To establish policies and procedures for the distribution of funds appropriated pursuant to the act for the purpose of making resource recovery [construction] grants or loans to [Solid Waste Management Districts] **county governing bodies** within the State **or the Hackensack Meadowlands Development Commission**.

3. (No change.)

7:26-14.6 Definitions

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

. . .

"Awardee" means any [solid waste management district] **county governing body of this State or the Hackensack Meadowlands Development Commission** or its designated **solid waste management** implementation agency which has been determined eligible to receive a grant or loan pursuant to the terms of this subchapter.

. . .

"Cost" means the cost of acquisition or construction of all or any part of [an approved and authorized] **a resource recovery** project and of all or any **part of** real or personal property, agreements and franchises deemed by the Department to be necessary or useful and convenient therefor or in connection therewith, including interest or discount on bonds, cost of issuance of bonds, cost of geological and hydrological services, administrative costs, engineering and inspection costs and legal expenses, costs of financial, professional and other estimates and advice, organization, operating and other expenses prior to and during such acquisition or construction, and all such other expenses as may be necessary or incident to the financing, acquisition, construction and completion of such project or part thereof and the placing of the same in operation, and also such provision for a reserve fund, or reserves for working capital, operating maintenance or replacement expenses and for payment or security of principal of or interest on bonds during or after such acquisition or construction [as the State Comptroller may determine].

. . .

"Implementation Agency" means the agency(ies) designated by the [Solid Waste Management District] **county governing body or the Hackensack Meadowlands Development Commission** to implement the approved District Solid Waste Management Plan.

"Preliminary funding" means such funding which may, at the discretion of the Department, be provided to the applicant, prior to its satisfaction of all grant **or loan** eligibility conditions to cover the cost of certain initial activities such as planning and design.

"Project" means any work relating to [the acquisition and/or construction of] resource recovery facilities.

. . .

"Resource recovery facilities" means, **for the purposes of this subchapter**, the [plants,] structures, machinery, equipment, real and personal property acquired, constructed or operated or to be acquired, constructed or operated in whole or in [party] **part** by or on behalf of a political subdivision or subdivisions of the State [or any agency thereof of] **or** the Hackensack Meadowlands Development Commission **or its designated implementation agency** and other personal property, and appurtenances necessary or useful and convenient for the collection, separation, removal and reuse of materials in the stream of wastes presently going to landfills, including those materials which are capable of recycling and direct delivery to manufacturers for use as raw materials as well as the conversion of waste for energy production.

. . .

7:26-14.7 Eligibility

(a) Each [Solid Waste Management District] **county government of this State and the Hackensack Meadowlands Development Commission** or its designated implementation agency is eligible to apply for funding pursuant to the Act.

(b) Eligible costs include the cost of acquisition or construction of all or any part of [an approved and authorized] **a** resource recovery [facility] **project** and of all or any **part of any** real or personal property, agreements, or franchises deemed by the Department to be necessary or useful and convenient, including interest or discount on bonds, cost of issuance of bonds, cost of geological and hydrological services, administrative costs, engineering and inspection costs and legal expenses, costs of financing, professional and other estimates and advice, organization, operating and other expenses prior to and during such acquisition or construction, and all other such expenses as may be necessary or incident to the financing, acquisition, construction, completion, and the placing of the project into operation.

(c) (No change.)

7:26-14.8 Application procedures

(a) (No change.)

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(b) Each application shall include the following information:

1. A full description of the project including but not limited to **the type of resource recovery facility,** project goals and objectives, budget, identification of consultants and contractors, if known, scheduling **of major project construction phases and related costs,** and proposed public participation activities.

2. Certification by the appropriate **Solid Waste Management** District that the project is in conformance with the Approved District Solid Waste Management Plan developed under the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.) as amended.

3. A written statement describing **the** project's readiness to proceed, including but not limited to status of waste stream evaluation, facility sizing, engineering design, site selection and design, marketing [committments] **commitments,** permits, environmental assessments, and provisions for emergency back-up and residue disposal.

4. (No change.)

5. A written statement describing the financial feasibility of the project including but not limited to a description of the manner in which the applicant will finance its share of the project, a written statement indicating the schedule and steps taken or intended to be taken to implement such financing and indicating the status of each step, and a written statement from an investment banking firm certifying that the proposal has been developed with such firm's assistance and that such firm is prepared to proceed with the marketing[, by the local agency,] of such bonds as may be necessary to finance the applicant's share of the project.

6. A written statement describing the applicant's need for grant **or loan** funding.

(c) (No change.)

[(d) Each application shall be submitted to the Department on or before July 31, of the year in which grant funding is requested.]

[(e)] **(d)** Each application shall be accompanied by a resolution of the [applicant] **county governing body or the Hackensack Meadowlands Development Commission** authorizing the filing of an application for a resource recovery [construction] grant or loan for funding.

[(f)] **(e)** All applications shall be sent to:

Chief
Bureau of Planning
[Solid Waste Administration]
Division of Waste Management
32 East Hanover Street
Trenton, New Jersey 08625

[(g)] **(f)** It is the responsibility of the applicant to ensure that the Department has received all necessary documentation [on or before the closing date] **in a timely manner.**

7:26-14.9 Evaluation of application

[(a) The Department will evaluate each application in relation to all applications submitted to it for the year in question.]

[(b)] **(a)** In determining which applicants will receive resource recovery funding, the amount of such funding, and whether it will be in the form of a grant or loan or a combination thereof, the Department will consider the following factors:

1. The degree to which each project conforms with the **Statewide** Solid Waste Management Plan.

2. The degree to which the applicant has indicated a commitment to proceed with the project and the degree of readiness of **the** project to proceed [with actual land acquisition and facility construction].

3. (No change.)

4. The degree to which funding is available to the applicant so that it is able to provide its share of resource recovery [construction] costs [pursuant to the Act] and able to maintain and operate the resource recovery facility upon completion.

5. (No change.)

7:26-14.10 Determination by the Department

(a) Upon completion of its evaluation of each application, the Department will take one of the following actions:

1. [Conditional approval] **Conditionally approve the project** for funding; **or**

2. [Disapproval] **Disapprove the project** without prejudice.

7:26-14.11 Approval by the Department

(a) The Department will send a Notice of Conditional Funding Award to those approved applicants and submit its recommendations regarding funding along with the basis for its recommendations to the Legislature within 90 days of [the application closing date] **providing the Notice.**

[(b) Each applicant receiving a Notice of Conditional Funding Award shall obtain and submit certified copies of all necessary Federal, State and local permits to the Department before any grant or loan payment other than preliminary funding will be made by the Department for construction activities. Failure to obtain and submit the requisite permits within one year of the date of issuance of the Notice of Conditional Funding may make the project ineligible for a grant for additional payment under the grant or loan award.]

[(c)] **(b)** The Department will award a grant or loan to those applicants sent a Notice of Conditional Funding Award upon appropriation of the [grant] funding by the Legislature.

7:26-14.12 Amount and terms of the grant or loan funding

(a) The amount and terms of the grant or loan other than preliminary funding shall be determined at the time of the grant **or loan.**

(b) The amount of the funding shall be based upon allowable project costs as defined in the Act and in this subchapter and upon cost and budget estimates made at the time of the application.

[(b) State funding shall be contingent upon the successful marketing of bonds by the applicant to cover the cost of its share of the project.]

7:26-14.13 State share **of grants**

The State share **of the total project cost** shall be set forth in the [funding] **grant** award document expressed both as a dollar amount and as a percentage of allowable project costs. This dollar amount shall represent the [funding] **grant** ceiling. The State share shall be no more than 33-⅓ percent nor less than 20 percent of the cost of the resource recovery project.

7:26-14.14 Grant **or loan** award document

(a) The Department will prepare and transmit four copies of the award document to the applicant. The applicant shall execute the award document and return it, **within 30 calendar days after its receipt,** with a resolution of its appropriate governing body authorizing the signing of the document, naming the person authorized to sign the document and committing the local unit to complete the project in accordance with the terms and conditions of the award document[, within 30 calendar days after receipt]. The Department may, in its discretion, extend the time for execution. The award docu-

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ment shall set forth the approved project scope, budget, approved project costs, and the approved commencement and completion dates for the project or major phases thereof.

(b) (No change.)

(c) After the Department has completed its processing of the award document, it will transmit a copy of the executed award document to the [grantee] **awardee**.

7:26-14.15 Effect of [grant] award

(a) (No change.)

(b) The award of the grant or loan shall not commit or obligate the Department to award any continuation grant **or loan** to cover cost overruns of the project. Cost overruns for any project or portion thereof shall be the sole responsibility of the awardee.

(c) (No change.)

7:26-14.16 Allowable project costs

(a) (No change.)

[(b) All project contracts shall be awarded in accordance with Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) and the rules and regulations adopted pursuant thereto (N.J.A.C. 5:30-14.1 et seq.).]

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

7:26-14.17 Unused **and repaid** funds

(a) When the actual total project cost is less than the amount allowed as total project cost in the **grant** award document, the grant [or loan] shall be reduced so that the State pays the same percentage of the actual project cost as it was scheduled to pay of the total estimated allowable project costs as described in the award document.

(b) The difference between the actual [total project cost and allowed total project cost] **amount paid pursuant to (a) above and the original grant award** shall be retained by the State and **deposited into a revolving equity grant or loan account which shall** be applied **solely** to **the funding of approved** [new] resource recovery projects pursuant to the [Natural Resources Bond] Act[, P.L. 1980, C.70] and this subchapter.

(c) Loan repayments and any interest on loans shall be deposited into the revolving equity grant or loan account. The department may relend all moneys deposited in the account to finance other approved resource recovery projects.

7:26-14.18 Fraud and other unlawful or corrupt practices

(a) The awardee shall administer grants **or loans**, acquire property pursuant to the award document, award contracts and subcontracts under those grants **or loans** free from bribery, graft, and other corrupt practices. The awardee bears the primary responsibility for the prevention, detection and cooperation in the prosecution of any such conduct. The State may also pursue administrative or other legally available remedies.

(b) The awardee shall pursue available judicial and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The awardee shall notify the Chief, Bureau of Planning of the Department's [Solid Waste Administration] **Division of Waste Management** immediately when such allegation or evidence comes to its attention, and shall periodically advise the Chief, Bureau of Planning of the status and ultimate disposition of any **related** matter.

7:26-14.19 Grant or loan conditions

(a) Notwithstanding the applicability of any other statutes and rules, the following shall apply to each grant or loan and shall become conditions precedent to each payment under an award document.

1.-4. (No change.)

5. **If the award is to finance construction costs, the** [The] awardee shall include in all its construction contracts for the project a requirement that the contractor post a performance bond or other performance guarantee in an amount equal to the full costs of the project. This performance bond or guarantee shall remain in effect until the Department's final inspection of the project and determination in writing that the project is satisfactorily completed.

6. (No change.)

7. (No change.)

8. The Department may impose such other conditions as may be necessary and appropriate to implement the laws of the State and effectuate the purpose and intent of the [Natural Resources Bond] Act.

7:26-14.20 Administration and performance of grant **or loan**

The awardee shall bear primary responsibility for the administration and success of the project including any subagreements made by the awardee for accomplishing grant **or loan** objectives. Although awardees are encouraged to seek the advice and opinion of the Department on problems that may arise, the giving of such advice shall not shift the responsibility for final decisions **from the awardee** to the Department.

7:26-14.22 State payment

The Department may release funds to the awardee upon satisfactory completion of the entire project or on an interim basis in accordance with the terms of the award document. In each case, 10 percent of the total payment [shall] **may** be withheld until the entire project has been completed to the extent that the facility is operating at three-quarters of its designed capacity or greater.

7:26-14.23 Assignment

The right **of an awardee** to receive payment from the State under a grant or loan may not be assigned, nor may payments due under a grant or loan be similarly encumbered.

7:26-14.25 Debarment

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

(c) Bid specifications **or requests for proposals** prepared by the awardee shall require [bidders] **vendors** to submit a sworn statement of the [bidder] **vendor**, or an officer or partner of the [bidder] **vendor**, indicating whether or not the [bidder] **vendor** is, at the time of the bid **or response to a request for proposals**, included on the State Treasurer's List of Debarred, Suspended and Disqualified Bidders as a result of action by a State agency other than the Department of Environmental Protection.

(d) Any person included on the Treasurer's List as a result of action by a State agency other than the Department, who is or may become a [bidder] **vendor** on any contract which is or will be funded by a grant or loan under this subchapter may present information to the Department why this section should not apply to such person. If the Commissioner determines that it is essential to the public interest and files a finding thereof with the Attorney General, the Commissioner may grant an exception from the application of this section with respect to a particular contract, in keeping with N.J.A.C. 7:1-5.9. In the alternative the Department may suspend or debar any such person, or take such other action as may be appropriate, pursuant to N.J.A.C. 7:1-5.1.

7:26-14.26 Project changes and grant **or loan** modifications

(a) (No change.)

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(b) The awardee shall promptly notify the Chief, Bureau of Planning within the [Solid Waste Administration] **Division of Waste Management** in writing (certified mail, return receipt requested) of events or proposed changes which may require a grant or loan modification including but not limited to:

1.-7. (No change.)

(c) If the Department decides a formal award document amendment is necessary, it shall notify the awardee and a formal award document amendment shall be prepared by the awardee in accordance with N.J.A.C. 7:26-[11]**14.**27.

7:26-14.27 Formal award document amendments

(a) The awardee shall prepare a formal award document amendment to change principal [provisins] **provisions** of [a grant] an award upon a [determinatin] **determination** by the Department that project changes substantially alter the cost or time of performance of the project or any major phase thereof.

(b) (No change.)

7:26-14.30 Noncompliance

(a) In additional to any other rights or remedies available to the Department pursuant to law, in the event of noncompliance with any award condition, requirement of this subchapter, or contract requirement or specification, the Department may take any of the following actions or combinations thereof:

1. (No change.)

2. Withhold grant **or loan** funds pursuant to N.J.A.C. 7:26-14.32;

3.-4. (No change.)

7:26-14.31 Notice of noncompliance

When the Department determines that the awardee is in noncompliance with any condition or requirement of the Act, or any provisions, term, condition or requirement of the [Grant] Award Document, or any other applicable State laws and regulations, it shall notify the awardee, its engineer, and/or the contractor of the noncompliance. The Department may require the awardee, its engineer, and/or contractor to take and complete corrective action within 10 working days of receipt of notice. If the awardee, its engineer, and/or contractor do not take corrective action or if it is not adequate, then the Department may issue a stop-work order **pursuant to N.J.A.C. 7:26-14.33** or withhold payment pursuant to N.J.A.C. 7:26-14.32 [without issuing a notice pursuant to this section].

7:26-14.32 Withholding of funds

The Department may withhold, upon written notice to the awardee, a grant or loan payment or any portion thereof when it determines that an awardee has failed to comply with any grant **or loan** condition, provision of this subchapter, or [grant] award document specification or requirement.

7:26-14.33 Stop-work orders

(a) The Department may order work to be stopped for good cause. Good cause shall include, but not be limited to, default by the awardee or noncompliance with the terms and conditions of the grant **or loan**. The Department shall limit use of a stop-work order to those situations where it is advisable to suspend work on the project or portion or phase of the project for important program or Department considerations.

(b) (No change.)

(c) Upon receipt of a stop work order, the awardee shall immediately comply with the terms thereof and take all reasonable steps to minimize the incurrence of costs allowable to the work covered by the order during the period of work stoppage. Within the suspension period or within any extension of that period to which the parties shall have agreed, the Department shall either:

1. Rescind the stop work order, in full or in part and **authorize resumption of work accordingly; or**

2. Terminate the work covered by such order[;].

[3. Authorize resumption of work.]

(d) If a stop-work order is cancelled or the period of the order or any extension thereof expires, the awardee shall promptly resume the previously suspended work. An equitable adjustment shall be made in the grant **or loan** period, the project, or both of these, and the award document shall be modified accordingly within **the** discretion of the Department.

7:26-14.34 Termination of grants or loans

(a) Termination **of grants or loans** by the Department **shall be conducted as follows**:

1. The Department may terminate a grant or loan in whole or in part for good cause subject to negotiation and payment of appropriate termination settlement costs. The term "good cause" shall include but not be limited to:

i.-ii. (No change.)

iii. A determination that the grant **or loan** was obtained by fraud.

2. The Department shall give written notice to the awardee (certified mail, return receipt requested) of intent to terminate a grant **or loan** in whole or in part at least 10 days prior to the intended date of termination.

3. (No change.)

(b) Project termination by the awardee **shall be subject to the following**:

1. The awardee shall not terminate the project work except with the consent of the Department. The awardee shall show good cause and give prompt written notice to the Department of any proposed complete or partial termination of the grant **or loan** project by the awardee. [The awardee shall make no new commitments without Department approval.]

2. If the Department determines there is good cause for the termination of all or part of the project, the Department may enter into a termination agreement or unilaterally terminate the grant or loan, effective with the date of cessation. The determination to terminate the grant or loan shall be solely within the discretion of the Department and if the Department determines not to terminate, the awardee shall remain bound by the terms and conditions of the award document.

3. If the Department determines that an awardee has ceased work on a project without good cause, the Department may unilaterally terminate the grant or loan pursuant to this section.

(c) Termination by mutual agreement shall be as follows:

1. The Department and awardee may enter into an agreement to terminate at any time pursuant to terms which are consistent with this Subchapter. The agreement shall establish the effective date of termination of the project and the grant or loan, basis for settlement of termination costs, and the amount and date of payment of any sums due either party.

(d) The effect of termination follows:

1. Upon termination, the awardee shall refund or credit to the State of New Jersey that portion of grant or loan funds paid to the awardee and allowable to the terminated project work. The awardee shall make no new commitments without Department approval.

2. The awardee shall reduce the amount of outstanding commitments insofar as possible and report to the Department the uncommitted balance of funds awarded under the grant **or loan**. The Department shall make the final determination of the allowability of termination costs.

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7:26-14.35 Administrative hearing

(a) (No change.)

(b) An awardee may request a hearing within 15 days of a decision by the Commissioner. Where required by law, **or at its discretion,** the Department shall grant a hearing based upon such request.

(c) (No change.)

HEALTH

(a)

CONTROL OF DANGEROUS SUBSTANCES

Addition to Schedule IV

Proposed Amendment: N.J.A.C. 8:65-10.4

Authorized By: J. Richard Goldstein, M.D., State Commissioner of Health.
Authority: N.J.S.A. 24:21-3.
Proposal Number: PRN 1984-711.

Address comments and inquiries to:
Lucius A. Bowser, R.P., M.P.H.
Chief
Drug Control Program
CN 362
Trenton, NJ 08625

The agency proposal follows:

Summary

The Department of Health proposes to amend the Control of Dangerous Substances Schedules through the addition of 21 substances which are not currently marketed in this country and which have no medical use, to Schedule IV on a temporary basis until permanent scheduling has been completed. This proposal is intended to bring the New Jersey Control of Dangerous Substances Schedules into conformity with the Federal Controlled of Substance Act and to maintain the United States obligations under the 1971 Convention on Psychotropic Substances and the notification to the Secretary-General of the United Nations and consultation with the Secretary of the U.S. Department of Health and Human Services.

The proposal to add these substances in Schedule IV were proposed in the Federal Register August 1, 1984, cited as 49 F.R. 149, page 30748. The adoption of this proposal was published in the Federal Register October 5, 1984, cited as 49 F.R. 195, page 39307.

The proposal would require anyone using these 21 substances in research or analytical purposes, to keep these substances in conformity with registration, security and record keeping requirements of Schedule IV substances. The basic class of those substances being considered for control pursuant to this proposal are benzodiazepines, many of which are being used and/or manufactured in foreign countries which are also signatories to the Convention of Psychotropic Drugs.

Social Impact

The proposal to amend Schedule IV of the Controlled Dangerous Substance Act to include 21 benzodiazepine products/substances that have no valid medical purpose in the United States on a temporary basis until an evaluation has been made of them would impact negatively on practitioners, pharmacies, manufacturers and distributors because the substances would not be in the commercial channels of distribution. It would impact slightly on researchers and/or analytical laboratories because they would have to include these substances in their present inventory and record keeping and security measures consistent with other Schedule IV substances. It would not have any impact on individual patients as they would not be able to have these dispensed, administered or prescribed to or for them.

If these products were to flow into the illicit channels in the United States or this State, penalties could be assessed for unlawful possession.

Economic Impact

As stated in the Social Impact statement, there will be a very slight economic impact on researchers and analytical laboratories if they chose to handle the substances enumerated in this proposal. The cost for the security, record keeping, inventory, and importation and/or exportation will only be slight since all of these measures are already established for those handling Schedule IV substances.

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

8:65-10.4 Controlled dangerous substances; schedule IV

(a) (No change.)

(b) The following is Schedule IV listing the controlled dangerous substances by generic, established as chemical name and the controlled dangerous code numbers.

1. (No change.)

2. Depressants: Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (listed by generic/established or chemical name with CDS code):

Alphazolam	**2862**
Barbital	2145
Bromazepam	**2748**
Camazepam	**2749**
Chloral betaine	2460
Chloral hydrate	2465
Chlordiazepoxide[2] (except Librax and Menrium)	2744
Clobazam	**2751**
Clonazepam[2]	2737
Clorazepate[2]	2768
Clotiazepam	**2752**
Cloxazolam	**2753**
Delorazepam	**2754**
Diazepam[2]	2765
Estazolam	**2756**
Ethchlorvynol	2540
Ethinamate	2545
Ethyl loflazepate	**2758**
Fludiazepam	**2759**
Flunitrazepam	**2763**
Flurazepam[2]	2767
Halazepam	2762
Haloxazolam	**2771**
Ketazolam	**2772**

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Loprazolam	**2773**
Lorazepam[5]	2885
Lormetazepam	**2774**
Mebutamate[2]	2800
Medazepam	**2836**
Meprobamate	2820
Methohexital	2264
Methylphenobarbital (mephobarbital)	2250
Nimetazepam	**2837**
Nordiazepam	**2838**
Oxazepam[2]	2835
Oxazolam	**2839**
Paraldehyde	2585
Petrichloral	2591
Phenobarbital	2285
Pimazepam	**2883**
Prazepam[3]	2764
Temazepam[3]	2925
Tetrazepam	**2886**
Triazolam	2887

3. Other substances: Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts (listed by generic/established or chemical name with CDS code):

[Alphazolam	2882]
Pentazocine	9709

4. (No change.)

CORRECTIONS

(a)

STATE PAROLE BOARD

Parole Board Rules

Proposed Readoption with Amendments: N.J.A.C. 10A:71-1, 2, 3, 4, 5, 6, 7, 8
Proposed New Rules: N.J.A.C. 10A:71-3.31, 3.32, 3.33, 3.34, 3.35, 3.36, 3.37, 3.38, 3.39, 3.40, 3.41, 3.42, 3.43, 3.44, 3.45, 3.46

Authorized By: Christopher Dietz, Chairman, New Jersey State Parole Board.

Authority: N.J.S.A. 30:4-123.48(d), 30:4-123.51(g), 30:4-123.54(d).

Proposal Number: PRN 1984-718.

Address comments and inquiries to:
Christopher Dietz
Chairman
New Jersey State Parole Board
P.O. Box 7387
Whittlesey Road
Trenton, New Jersey 08628

The agency proposal follows:

Summary

The State Parole Board is an autonomous agency housed, for logistical purposes only, within the Department of Corrections. The Board determines if, when and under what circumstances inmates subject to its jurisdiction may be released on parole or returned to an institution from parole following violation of parole terms or conditions. The Parole Act of 1979 (N.J.S.A. 30:4-123.45, et seq.) which became effective April 21, 1980, created a seven-member full-time Board. The Board is comprised of three panels to facilitate uniform decision making in adult, young adult and juvenile inmate cases. Since July, 1982 the Board has been legislatively mandated with the responsibility for parole jurisdiction in all cases of inmates committed to a county facility with terms in excess of sixty days.

The Parole Act of 1979 was enacted to serve as a companion measure to the New Jersey Code of Criminal Justice (N.J.S.A. 2C:1-1, et seq.). The Parole Act of 1979 established a new standard for release in the case of adult inmates. This standard stipulates that an adult inmate shall be released on parole at the time of parole eligibility unless the Board can demonstrate by a preponderance of the evidence developed during the hearing process that there is a substantial likelihood that the inmate will commit a crime under the laws of this State if released on parole. The release standard does not imply, nor does it result in the automatic release of inmates after a prescribed period of incarceration. Rather, the approach adheres to the tradition that parole in New Jersey is an earned privilege. The fundamental concern for the Board is the risk evaluation of each offender's propensity toward continuing criminal activity and not appellate review of the punitive aspects of sentence. An inmate's progress is regularly monitored throughout the period of incarceration, whereby documentation is developed to assist the Board in rendering an informed parole decision.

The Board is authorized by the Parole Act to promulgate reasonable rules and regulations, consistent with the Parole Act, as may be necessary for the proper discharge of its responsibilities. The Board's rules and regulations are specified in the New Jersey Administrative Code (N.J.S.A. 10A:71-1.1 et seq.). The first promulgation of such rules and regulations became effective August 7, 1980 and pursuant to Executive Order No. 66(1978) would expire on August 7, 1985. The board has reviewed its rules and regulations and proposes to readopt with amendments N.J.A.C. 10A:71-1 to 8.

As a result of the review process, the Board proposes various revisions to the present rules and proposes new rules to implement additional responsibilities. Numerous revisions are organizational, that is, clarification and restatements of existing rules and little change in substance has been made. The language related revisions and new rules will enable inmates, Department of Corrections personnel, the judiciary, interested components within the criminal justice process and the public to understand, interpret and apply the basic policies and procedures of the Board.

The significant substantive and procedural revisions and the new rules are as follows:

1. Proposed amendments to N.J.A.C. 10A:71-1.5 provide for the Chairman to designate a member of an adult Board panel to act in the stead of a disqualified adult Board member in order to establish a quorum or assign the case to a panel of Board members on adult inmates. If a Board panel member(s) on juvenile inmates is disqualified, the Chairman shall immediately request the Governor to appoint a qualified person.

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2. Proposed amendments to N.J.A.C. 10A:71-3.2 clarify parole eligibility for adult inmates, clarify the parole eligibility of an inmate committed under the N.J.S.A. 2C:47-1, "Sex Offender Act", and clarify the computation of parole eligibility upon an adult inmate being denied parole and being required to serve a future parole eligibility term.

3. Proposed amendments to N.J.A.C. 10A:71-3.3 reduce the presumptive eligibility date for Category F offenses; increase the presumptive eligibility dates for various offenses by reclassifying the offenses; revise language to be consistent with the Code of Criminal Justice; provide that a primary eligibility date for a young adult inmate sentenced for a fourth degree crime shall not be greater than nine months; and specify the category of young adult inmates affected by the amendments.

4. Proposed amendments to N.J.A.C. 10A:71-3.4 provide for notification to the inmate that his parole eligibility date may be increased as a result of the commission of an institutional infraction and provides the inmate the opportunity to submit mitigating circumstances for consideration; reclassify various institutional infractions; modify the increase for the infraction of killing from 24 to 60 months; provide for written notification to the inmate as to the decision to increase or not increase the parole eligibility date; and specify those inmates affected by the amendments.

5. Proposed amendments to N.J.A.C. 10A:71-3.5 modify the procedures under which the Board, with the court's consent, may reduce parole eligibility terms due to exceptional institutional progress by inmates.

6. Proposed amendments to N.J.A.C. 10A:71-3.7 identify additional items to be included by the chief executive officer of an institution in the preparole report and require, in the cases of the inmates sentenced under the "Sex Offender Act," the chief executive officer of the Adult Diagnostic and Treatment Center to include in the preparole report the comments, evaluation and recommendations of therapists, treatment staff and members of the Special Classification Review Board.

7. A proposed amendment to N.J.A.C. 10A:71-3.8 clarifies that no inmate may be released on parole unless public notice is provided on all terms being served.

8. A proposed amendment to N.J.A.C. 10A:71-3.10 provides that in the cases of inmates sentenced under the "Sex Offender Act," the absence of six months continuous acceptable therapeutic progress in the Adult Diagnostic and Treatment Center or documented acceptable therapeutic progress in a correctional facility may rebut, unless facts indicate to the contrary, the presumption of parole.

9. A proposed amendment to N.J.A.C. 10A:71-3.11 identifies the statement, evidence or testimony presented by a criminal justice agency, a victim or the nearest relative of a murder victim as a factor to be considered at a parole hearing.

10. A proposed amendment to N.J.A.C. 10A:71-3.16 provides that two members of a Board panel shall review the recommendations for parole by a hearing officer in cases of offenders serving terms for crimes of the first and second degree. Another proposed amendment establishes a procedure by which the chief executive officer of the institution or designee must certify an acceleration in the credit pattern or the maintaining of the credit pattern in the cases of inmates who have a parole release date based on a projected parole eligibility date.

11. A proposed amendment to N.J.A.C. 10A:71-3.18 establishes, in cases of inmates granted parole as result of a Board panel hearing, a procedure by which the chief executive officer of the institution or designee must certify an acceleration in the credit pattern or the maintaining of the credit pattern when the parole release date is based on a projected parole eligibility date.

12. Proposed amendments to N.J.A.C. 10A:71-3.19 clarify that a two-member Board panel establish a future parole eligibility date upon the denial of parole; establish a future parole eligibility term of 20 months for young adult inmates serving a term for an offense listed in Category C of N.J.A.C. 10A:71-3.3; establish a procedure by which a three-member Board panel may, by unanimous vote, establish a future parole eligibility date which differs from the presumptive range; establish a procedure by which the Board may establish a future parole eligibility date which differs from the presumptive range in cases when the three-member Board panel fails to reach a unanimous decision; establish an annual review hearing process in cases of inmates serving terms under N.J.S.A. Title 2A criminal statutes who have been denied parole and given a future parole eligibility date which differs from the presumptive range; and specify those inmates affected by the amendments.

13. Proposed amendments to N.J.A.C. 10A:71-3.20 provide for the establishment of parole release dates in the cases of juvenile inmates.

14. Proposed amendments to N.J.A.C. 10A:71-3.21 establish new presumptive parole release terms which are compatible with the new Code of Juvenile Justice.

15. Proposed amendments to N.J.A.C. 10A:71-3.26 identify additional items to be included in the preparole report prepared in the cases of juvenile inmates by the chief executive officer of the institution or designee.

16. Proposed amendments to N.J.A.C. 10A:71-3.28 clarify the review process to be conducted by an assigned juvenile Board panel member of the recommendations from a hearing officer or juvenile Board panel member; establish a procedure by which a decision by a juvenile Board panel member to reduce a parole release date or to authorize parole release is submitted to the sentencing court for approval, when required; and establish the action to be taken upon the sentencing court's approval or non-approval of the juvenile Board panel member's decision.

17. Proposed amendments to N.J.A.C. 10A:71-3.30 clarify the review process by the juvenile Board panel; establish a procedure by which a decision by the juvenile Board panel to reduce a parole release date or to authorize parole release is submitted to the sentencing court for approval, when required; and establish the action to be taken upon the sentencing court's approval or non-approval of the juvenile Board panel's decision.

18. The proposed new rules N.J.A.C. 10A:71-3.31 to 3.44 establish procedures for the parole processing of inmates sentenced to terms of incarceration in excess of 60 days in county jail facilities.

19. The proposed new rule N.J.A.C. 10A:71-3.45 specifies procedures for a victim-input process in which statements or testimony from victims injured as a result of a crime of the first or second degree or the nearest relative of a murder victim may be submitted to the appropriate Board panel or the Board for consideration.

20. The proposed new rule N.J.A.C. 10A:71-3.46 specifies procedures for an informational hearing process in which statements, evidence and testimony may be presented by the Attorney General, the appropriate county prosecutor, a criminal justice agency or any interested party to the appropriate Board panel or the Board for consideration.

21. Proposed amendments to N.J.A.C. 10A:71-4.2 include the rescission of a grant of parole in the administrative appeal

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process and specify criteria for the submission of an appeal to the Board.

22. A proposed amendment to N.J.A.C. 10A:71-6.1(b) clarifies that formal parole supervision expires upon the expiration of the maximum sentence(s).

23. Proposed amendments to N.J.A.C. 10A:71-6.4 modify the parole conditions and identify the performance of public service as a condition of parole in the cases of county inmates released on parole where appropriate.

24. Proposed amendments to N.J.A.C. 10A:71-6.5 specify those elements or factors the Board must identify for the sentencing court to determine the amount of restitution.

25. Proposed amendments to N.J.A.C. 10A:71-7.16 clarify that a two-member Board panel shall determine whether parole shall be revoked; establish a presumptive revocation term for young adult offenders revoked for non-criminal violations not otherwise specified; provide that upon the second or subsequent revocation of parole, an adult inmate revoked for commissions of a crime shall serve the balance of time remaining; establish a presumptive term to be imposed upon revocation of an adult inmate's parole for the commission of a crime; establish a presumptive term to be imposed upon revocation of a young adult inmate's parole for the commission of a crime; establish a schedule by which a parole eligibility date based on the presumptive term in a young adult inmate's case may be increased or decreased for aggravating and mitigating factors; establish a presumptive term to be imposed upon revocation of a juvenile inmate's parole for the commission of a crime or an offense which would constitute a crime if committed by an adult; establish a schedule by which a parole release date based on the presumptive term in a juvenile inmate's case may be increased or decreased for aggravating and mitigating factors; establish a procedure by which a three-member Board panel may, by unanimous vote, establish a future parole eligibility date which differs from the presumptive range; establish a procedure by which the Board may establish a future parole eligibility date which differs from the presumptive range in cases when the three-member Board panel fails to reach a unanimous decision; clarify that a county inmate whose parole has been revoked shall not be credited for any time served on parole and shall not be eligible for parole consideration on the balance of the sentence; and specify those inmates affected by the amendments.

26. Proposed amendments to N.J.A.C. 10A:71-7.17 clarify the criteria by which an inmate under the "Sex Offender Act" whose parole has been revoked must be evaluated by the staff at the Adult Diagnostic and Treatment Center and clarify when an inmate who has had his parole revoked and who remains confined under the "Sex Offender Act" will be considered for parole.

27. Proposed amendments to N.J.A.C. 10A:71-7.20 clarify that a Board panel may suspend or modify a condition requiring restitution imposed by the Board panel, request the court to reduce the amount of restitution or, upon revoking parole, impose a period of incarceration.

Social Impact

The proposal will affect the internal operations of the State Parole Board, the Department of Corrections, and county jail facilities. New procedures will provide a format for the receipt of statements, evidence and testimony from victims of crime, pursuant to statutory amendment, and criminal justice agencies. Certain young adult inmates may serve longer periods of incarceration prior to initial parole eligibility and certain inmates, as a result of committing certain institutional infractions, may serve increased periods of incarceration. New procedures established to compliment the new Code of Juvenile Justice will impact on the parole processing of juvenile inmates. Certain adult and young adult inmates who have violated parole will serve increased periods of incarceration and juvenile inmates who have violated parole for the commission of a crime will be affected by the establishment of a presumptive term schedule. New procedures established pursuant to statutory amendment will impact on the parole processing of county inmates serving terms of incarceration in excess of 60 days in county jail facilities.

Economic Impact

The economic impact of this proposal cannot be readily measured. However, it is anticipated that the proposal's primary economic impact will be incurred by the Department of Corrections, which will have to house certain inmates longer than under current practice. The economic impact may be ameliorated by various provisions, notably the refinement to exceptional progress evaluation process, the establishment of annual reviews for Title 2A adult offenders with extended future parole eligibility terms, and the establishment of parole release dates based on projected eligibility dates, which may serve to reduce the time served by certain inmates.

The proposal will also have an economic impact on the county correctional authorities. Necessary staff will have to be assigned and procedures will have to be implemented and refined to insure a more efficient parole review processing of county jail inmates. The economic impact will be substantially, if not totally, ameliorated by the more timely release of certain county inmates to parole supervision and thereby alleviate the costs incurred by county correctional authorities for unnecessary incarceration of certain county inmates for the balance of their sentence.

No other economic impact is anticipated since most of the amendments are merely revisions of the administrative procedures in which the State Parole Board currently processes inmate cases for consideration and revocation of parol.

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

SUBCHAPTER 1. BOARD ORGANIZATION

10A:71-1.1 Definitions

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

. . .

"County correctional facilities" shall mean [the Hudson County Penitentiary, the Mercer County Workhouse and the Middlesex County workhouse as well as] all **institutions operated by county authorities to which offenders are committed under sentence as adults and shall include all** [county workhouses, penitentiaries or correctional centers,] **jails and facilities** where [inmates sentenced to those facilities and who are under the parole jurisdiction of the New Jersey State Parole Board] **sentenced offenders** may, from time to time, be housed.

"County inmate" shall mean an inmate who is: (1) sentenced to serve a term of incarceration of 364 days or less or terms which, in the aggregate, do not exceed 364 days in a county jail facility; or (2) sentenced to serve a term of incarceration not to exceed 18 months or terms which in aggregate, do not exceed 18 months in a county penitentiary or a workhouse.

"County Penitentiary/Workhouse" shall mean a county correctional facility designated by the Board of Chosen Free-

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holders to house offenders sentenced to terms of imprisonment not exceeding 18 months.

. . .

"District Parole Supervisor" shall mean any District Parole Supervisor in the Bureau of Parole of the New Jersey Department of Corrections [and shall include the Chief of the Bureau of Interstate Services].

"Juvenile inmate" shall mean any person [under commitment] **committed** by a juvenile court **to a term of incarceration** pursuant to **N.J.S.A.** 2A:4-61(h) **or committed by the Family Court to a term of incarceration pursuant to N.J.S.A. 2A:4A-44d(1).**

"Parolee" shall mean any inmate who [has been released on parole by the New Jersey State Parole Board and] is subject to the parole jurisdiction of the Board **and who has been released on parole.**

. . .

10A:71-1.2 Board meetings

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

(j) If [a] **no** majority **decision** [of the Board is unable to reach a decision] **is reached**, no Board action shall result.

1.-2. (No change.)

10A:71-1.3 Parole **release** hearings and board panel [meetings] **hearings**

(a) The Chairperson [or a member of the appropriate Board panel designated by the Chairperson] shall establish the schedule of all parole **release** hearings and Board panel [meetings] **hearings**.

(b) The Chairperson [or the designated Board panel member] shall give reasonable notice of such hearings [and meetings] to the Board panel members.

(c) **In addition to appropriate Board personnel,** [P]parole **release** hearings and Board panel [meetings] **hearings** shall be open only to such persons as authorized by the Board panel with the consent of any inmate who may be present for a hearing on his or her case. **The inmate's consent shall be in writing and made a part of the Board's record on the inmate.**

(d) Except as provided in N.J.A.C. 10A:71-1.4, two members of the Board panel shall constitute a quorum of the panel.

(e) (No change.)

(f) When a Board panel hearing is conducted by two members, [of a 3 member Board panel,] such hearing shall be adjourned if a unanimous decision on the case cannot be reached.

1. In such instances, the third Board panel member shall review all records of the hearing, and the hearing shall be reconvened **within 90 days** prior to the Board panel's final decision on the case.

2. In such instances, if the third Board panel member is disqualified pursuant to N.J.A.C. 10A:71-1.5**(a) or (b)**, the case shall be [referred to the Board for decision] **considered by a Board member(s) designated pursuant to N.J.A.C. 10A:71-1.5(e) or (f).**

10A:71-1.5 Disqualification or incapacity of board members

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

(d) When by reason of incapacity [or disqualification] a quorum of the Board or Board panel is lost, the Chairperson shall immediately request that the Governor appoint a qualified person to act in the incapacitated [or disqualified] Board member's stead during the period of such incapacity [or disqualification].

(e) When by reason of disqualification of a member of a Board panel on adult inmates, a quorum of the Board panel is lost, the Chairperson shall immediately assign another member of one of the Board panels on adult inmates to act in the disqualified Board member's stead during the period of disqualification or, if circumstances merit, assign the case(s) to another panel of Board members on adult inmates.

(f) When by reason of disqualification a quorum of the juvenile board panel is lost, the Chairperson shall immediately request the Governor to appoint a qualified person to act in the stead of the disqualified Board member(s) during the period of disqualification.

10A:71-1.9 Published information

(a) (No change.)

(b) The Board [shall] **will** [prepare] **periodically review and update with appropriate amendments** [a report] **handbooks** for distribution to all inmates **subject to the jurisdiction of the Board** detailing parole policies and procedures and shall request the [Department] **chief executive officer of each State and county facility** to make such [report] **handbooks** available to all inmates **subject to the jurisdiction of the Board.**

SUBCHAPTER 2. GENERAL ADMINISTRATIVE PROVISIONS

10A:71-2.3 [Subpenas] **Subpoenas**

Any hearing officer or Board member may issue a [subpena] **subpoena** to compel the appearance of witnesses and the production of documentary evidence relevant to any proceedings before such hearing officer or Board member.

10A:71-2.4 Institutional infractions

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

(c) When the basis for the rescission hearing or the alteration of the parole eligibility date is an institutional infraction, the Board panel or hearing officer reviewing the case shall consider aggravating and mitigating circumstances [relating to the infraction] but shall not consider evidence relating to the inmate's guilt or innocence of the commission of the institutional infraction.

SUBCHAPTER 3. PAROLE RELEASE HEARINGS

10A:71-3.1 Definitions

[(a)] "Actual eligibility date" shall mean the date **that** an **adult** inmate is actually eligible for consideration for parole[,]. **Such date shall** [including] **be calculated, except as otherwise provided by statute, by the application of the following credits:** commutation credits [granted in advance,]; [actual] credit[s] for time served in a county jail **prior to the date of sentence**[,]; [actual] **earned** work[,] and [actual] **earned** minimum custody credits as of a specified date.

"Book eligibility date" shall mean the parole eligibility date established pursuant to N.J.S.A. 30:4-123.51 and N.J.S.A. 30:4-123.64. Such date shall be calculated by application of credit for time served in a county jail prior to the date of sentence, and except as otherwise provided for by statute, commutation credits.

[(b)] "Flat eligibility date" shall mean the parole eligibility date established on an individual term pursuant to **N.J.S.A.** 30:4-123.51 and **N.J.S.A.** 30:4-123.64 prior to aggregation for the purposes of the calculation of a single parole eligibility date. **Such date shall be calculated by the application of credit for time served in a county jail prior to the date of sentence.**

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

[(d)] "Projected eligibility date" shall mean [the] **that** date [an inmate is anticipated to be eligible for consideration for parole, including] **calculated by the application, except as otherwise provided by statute, of the following credits:** com-

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mutation credits [granted in advance, actual]; credit[s] for time served in a county jail **prior to the date of sentence; earned work and minimum custody credits as of a specific date** and projected work and minimum custody credits[,] based [upon current work and minimum custody status] **on a pattern of such credits established by the Department. Any change in the pattern shall be reported by the Department to the Board.**

[(e)] "Maximum date" shall, except as **otherwise** provided **by statute and** herein, mean the court ordered maximum date less commutation credits, [actual] credit[s] for time served in a county jail **prior to the date of sentence**, [actual] **earned** work and [actual] **earned** minimum custody credits as determined by the Department or the county correctional [facility] **authority**.

10A:71-3.2 Calculation of parole eligibility terms

(a) (No change.)

(b) Except as provided in N.J.A.C. 10A:71-3.3[(k)] **(i)**, this section shall not apply to juvenile or young adult inmates.

(c) [Flat] **The** parole eligibility terms [on individual sentences] **for adult inmates** [to the State prison or the Correctional Institution for Women] shall be determined by the following:

1. Where a life term, **with no mandatory-minimum term,** has been imposed, the [flat] parole eligibility term shall, except as provided in (c)3 below, be 25 years[.];

2. Where a specific term, **with no mandatory-minimum term,** has been imposed, the [flat] parole eligibility term shall, except as provided in (c)3 below, be [⅓] **one-third** of the specific term or 25 years, whichever is less[.];

3. Where a life term or a specific term with a judicial or statutory mandatory minimum term has been imposed, the [flat] parole eligibility term shall be the mandatory minimum term, provided that such minimum term is greater than otherwise required by subsection (c)1 or (c)2 above.

4. Where the inmate is serving time due to a revocation of parole, the [flat] parole eligibility term shall be the future parole eligibility term set by the appropriate Board panel upon revocation of parole pursuant to N.J.A.C. 10A:71-7.16.

5. Where the inmate has been required to serve an additional term due to institutional infractions, the [flat] parole eligibility term shall include any additional term of incarceration required to be served.

[6. Where a specific term to the Adult Diagnostic and Treatment Center has been imposed, the flat parole eligibility term, for the purposes of aggregation with any specific or life term, shall be set by the Board upon recommendation by the special classification review board pursuant to N.J.S.A. 2C:47-1, et seq.]

6. Where a specific term to the Adult Diagnostic and Treatment Center has been imposed, the inmate shall be eligible for parole consideration only upon recommendation by the Special Classification Review Board pursuant to N.J.S.A. 2C:47-5 except that in no case shall an inmate committed to the Adult Diagnostic and Treatment Center become eligible for parole prior to the expiration of any mandatory minimum term imposed.

7. Where the inmate has been denied parole and required to serve a future eligibility term pursuant to N.J.A.C. 10A:71-3.19, a new book eligibility date shall be established by adding the additional term to the current book eligibility date and by including, in the case of an adult inmate, commutation credits based on the additional term only. If an inmate's parole eligibility date has passed at the time of the initial parole release hearing, upon the inmate being denied parole and being required to serve an additional term pursuant to N.J.A.C. 10A:71-3.19, a new book date shall be established by adding the additional term to the date of the initial parole release hearing and by including, in the case of an adult inmate, commutation credits based on the additional term only and any work and minimum custody credits not applied in the computation of the previous parole eligibility date.

(d) When a consecutive [sentence] **term** is imposed, the [flat] parole eligibility term derived from the consecutive [sentence] **term**, less county jail credits [allowed on the consecutive sentence], shall be added to the [flat] parole eligibility term derived from the original [sentence] **term**, less county jail credits [allowed on the original sentence], to determine the aggregate parole eligibility term. Applicable credits pursuant to [(f)] **(g)**(2) and [(f)] **(g)**(3) below shall be deducted from the aggregate parole eligibility term **unless said term is determined pursuant to (c)(3) above.**

(e) When a concurrent [sentence] **terms(s)** is imposed, the parole eligibility term from the original [sentence] **term,** less county jail credits [allowed on the original sentence], shall be added to the date the original [sentence] **term** began to determine the flat eligibility date on the original [sentence] **term.** The parole eligibility term[(s)] on the concurrent [sentence] **term(s),** less county jail credits [allowed on the concurrent sentence], shall be added to the date the concurrent [sentence] **term(s)** began to determine the flat [parole] eligibility date on the concurrent sentence. The aggregate parole eligibility term shall be that period of time between:

1. The earlie[st]**r** of the two dates on which the [sentences] **terms** began, and

2. The late[st]**r** of the two flat parole eligibility dates. Applicable credits pursuant to [(f)] **(g)**(2) and [(f)] **(g)**(3) below shall be deducted from the aggregate parole eligibility term **unless said term is determined pursuant to (c)(3) above.**

(f) Where a specific term to the Adult Diagnostic and Treatment Center has been imposed, the parole eligibility term, for the purposes of aggregation with any specific or life term, shall be set by the adult Board panel upon its acceptance of the recommendation by the Special Classification Review Board pursuant to N.J.S.A. 2C:47-1, et seq.

[(f)] **(g)** Credits shall reduce parole eligibility terms as follows:

1. County jail credits pursuant to R.3:21-8 shall reduce any [flat] parole eligibility terms determined pursuant to (c) above.

2. (No change.)

3. When an aggregate parole eligibility term includes a [flat] parole eligibility term determined pursuant to (c)3, such aggregate term shall be reduced by credits pursuant to [(f)] **(g)**(2) provided, however, that such credits [shall be] accrued [and applied only after] **shall only be awarded subsequent to** the expiration of the [flat] eligibility term determined pursuant to [subsection] (c)3 above as calculated from the date such parole eligibility term began.

[(g)] **(h)** Parole eligibility terms shall be restricted as follows:

1. No inmate [sentenced to] **committed for** a specific term**(s)** of years at the State [p]**P**rison or the Correctional Institution for Women shall become primarily eligible for parole until service of a full nine months of [his or her] **the** aggregate [sentence] **term** less any county jail credits, provided, however, that when the specific terms of years to the State [p]**P**rison or the Correctional Institution for Women is less than 12 months this restriction shall not apply.

2. No aggregate[d] parole eligibility term resulting from the aggregation of specific terms, **which do not include a mandatory-minimum term(s),** shall exceed 25 years.

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3. No parole eligibility term resulting from **a** non-criminal violation(s) of parole conditions shall, after deductions for credits pursuant to [(f)] **(g)**2 above, exceed 12 months.

10A:71-3.3 Parole eligibility for young adult inmates

(a) Except as provided herein, an inmate sentenced to an indeterminate term of years as a young adult inmate shall be primarily eligible for parole consideration on a date established by a hearing officer or the young adult Board panel pursuant to the following schedule of presumptive primary eligibility dates:

PRESUMPTIVE PRIMARY ELIGIBILITY DATES
(MONTHS)
LENGTH OF INDETERMINATE TERM
(Years)

CRIME CATEGORY	0-4	5-9	10-14	15-19	20-24	25-29	30-Life
Category A		40	56	74	90	106	120
Category B	16	32	40	48	56	56	56
Category C	16	24	32	40	48		
Category D	14	16	24	32	40	40	40
Category E	12	12	16	19	19	19	19
Category F	[10]**8**	[10]**8**					
[Category G	8]						

Category A: Murder.

Category B: **Aggravated manslaughter,** [K]kidnapping **first degree,** aggravated sexual assault, [manslaughter, arson] **robbery first degree or any other first degree crime.**

Category C: **Manslaughter,** [Armed] robbery **second degree, aggravated assault second degree, sexual assault, or any other second degree crime.**

Category D: [Robbery, aggravated assault, any second degree crime not otherwise categorized] **Sale or distribution of controlled dangerous substance and possession of controlled dangerous substance with intent to distribute.**

Category E: [Sale or distribution of narcotics] **Burglary third degree, possession of weapon for unlawful purpose third degree, unlawful possession of a weapon third degree, terroristic threats, aggravated assault third degree, endangering the welfare of a child third degree, any other third degree crime or possession of a controlled dangerous substance.**

Category F: [Burglary, theft, terroristic threats, possession of stolen property, receiving stolen property, possession of a weapon, bribery, forgery, possession of narcotics, perjury, any third degree crime not otherwise categorized] **Death by auto, criminal sexual contact, forgery fourth degree, unlawful possession of weapon fourth degree, certain persons not to have weapons, criminal trespass, or any other fourth degree crime.**

[Category G: Escape, non-support, death by auto, any fourth degree crime not otherwise categorized.]

(b) The presumptive primary eligibility date established pursuant to (a) above may be reduced by up to [8] **ten** months if the young adult Board panel or the hearing officer establishing the date determines that one or more [of the following] mitigating factors **such as, but not limited to, the following** [is] **are** present:

1.-5. (No change.)

(c) The presumptive primary eligibility date established pursuant to above (a) may be increased by up to [8] **ten** months if the young adult Board panel or the hearing officer establishing the date determines that one or more of the following aggravating factors [is] **are** present:

1.-7. (No change.)

(d) If an inmate has received more than one [sentence] **term,** the longest [sentence] **term** imposed shall be used in determining the presumptive primary eligibility date or, if the [sentences] **terms** are of equal length, the crime which, in the opinion of the hearing officer or the young adult Board panel, represents the most serious crime shall be used in determining the presumptive primary eligibility date.

(e) The young adult Board panel may establish a primary eligibility date which differs from that required by the provisions of (a), (b) and (c) above, if the primary eligibility date which would be established pursuant to such subsections is clearly inappropriate in consideration of the circumstances of the crime and the characteristics and prior criminal record of the inmate.

1.-3. (No change.)

(f) Except as provided herein, any primary eligibility date for a young adult offender established pursuant to this section or N.J.A.C. 10A:71-7.16 may be reduced through program participation by the inmate.

1.-4. (No change.)

5. Notwithstanding the provisions of (f)1 through 4 above, no reduction of the primary eligibility date shall be made for the first six months of the inmate's primary eligibility term less jail credits.

(g) (No change.)

(h) Parole eligibility dates shall be restricted as follows:

[(h)] **1.** (No change in text.)

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

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

4. Under no circumstances shall a primary eligibility date for a young adult inmate sentenced for a fourth degree crime be established at greater than nine months.

[(k)]**(i)** If an adult inmate has received an indeterminate sentence and a State Prison sentence, the parole eligibility term derived from the indeterminate sentence shall be aggregated with the [flat] eligibility term on the State Prison sentence and credits pursuant to N.J.A.C. 10A:71-3.2 [(f)] **(g)**2 shall apply to the aggregate parole eligibility term.

(j) The provisions of (a), (b) and (c) above shall apply to young adult inmates whose offenses were committed prior to the effective date of the amendments and shall continue in effect for that purpose. The amendments to (a), (b) and (c) above shall apply to young adult inmates whose offenses were committed on or after the effective date of the amendments.

10A:71-3.4 Institutional infractions; adult inmates

(a) It shall be the responsibility of the chief executive officer, [upon] **within seven days of** resolution of any administrative appeal[s], to notify **in writing** the [appropriate Board panel within 30 days when] **senior Board representative at the institution that** an adult **inmate** has committed an institutional infraction listed in (c) below.

(b) **Except as otherwise provided in N.J.A.C. 10A:71-5,** [U]upon being advised **by the senior Board representative at the institution** that an adult inmate has committed an institutional infraction listed in (c) below, the appropriate Board panel **or designated hearing officer may** [shall] increase the inmate's eligibility date according to the schedule listed herein.

(c) The appropriate Board panel, designated hearing officer or senior Board representative at the institution shall, at least 14 days prior to the consideration of the adult inmate's case, notify the inmate in writing of the following:

1. The inmate's case and institutional records will be reviewed for the possibile increase in the inmate's parole eligibility date as a result of the commission of an institutional infraction(s);

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2. The inmate may submit in writing to the appropriate Board panel or designated hearing officer a statement pertaining to any mitigating circumstances.

[(c)]**(d)** Institutional infractions specified and defined by the Department shall be assigned to categories on the following basis:

1.-3. (No change.)

4. Infraction Category D shall consist of **.002, Assaulting any person;** .102, Attempting or planning escape (provided such attempt is from a minimum security location); **.151, Setting a fire;** .155, Adulteration of any food or drink; .203, Possession or Introduction of any narcotic paraphernalia, drugs, or intoxicants not prescribed for the individual by the medical or dental staff; .204, Use of any narcotic paraphernalia, drugs, or intoxicants not prescribed for the individual by the medical or dental staff; .207, Possession of money or currency (in excess of $50.00 unless specifically authorized); **.214, Possession of unauthorized keys or other security equipment;** .253, Engaging in, or encouraging, a group demonstration; .255, Encouraging others to refuse to work or to participate in work stoppage; **.552, Being intoxicated;** and .751, Giving or offering any official or staff member a bribe, or anything of value.

5. Infraction Category E shall consist of [.002, Assaulting any person;] **.005, Threatening another with bodily harm or with any offense against his person or his property;** .153, Stealing (theft); **.257, Violating a condition of any community release program; .258, Refusing to submit to urine analysis;** .352, Counterfeiting, forging or unauthorized reproduction or unauthorized use of any classification document, court document, psychiatric, psychological or medical report, money or any other official document; .704, Perpetrating frauds, deceptions, confidence games, riots or escape plots through the mail; and .708, Refusal to submit to a search.

6. Infraction Category F shall consist of .005, Threatening another with bodily harm or with any offense against his person or his property; .151, Setting a fire; .205, Misuse of authorized medication; **.306, Conduct which disrupts or interferes with the security or orderly running of the institution; and .601, Gambling.**

7. Infraction Category G shall consist of [.306, Conduct which disrupts or interferes with the security or orderly running of the institution; and .601, Gambling] **.803, Attempting to commit any of the above acts preceded by an asterisk, aiding another person to commit any such act, or making plans to commit such acts shall be considered the same as a commission of the act itself.**

[8. Infraction Category H shall consist of .803, Attempting to commit any of the above acts preceded by an asterisk, aiding another person to commit any such act, or making plans to commit such acts shall be considered the same as a commission of the act itself.]

[(d)]**(e)** Except as provided herein, an infraction in any category defined pursuant to [(c)]**(d)** above shall result in an increase in the inmate's eligibility date as follows:

1. Category A: [24] **60** months

2.-6. (No change.)

7. Category G: [No increase] **One half of the increase which would be required pursuant to this subsection if the inmate's action had resulted in the commission of the infraction which he or she attempted.**

[8. Category H-One half of the increase which would be required pursuant to this subsection if the inmate's action had resulted in the commission of the infraction which he or she attempted.]

(f) The appropriate Board panel or designated hearing officer shall notify the inmate in writing of a determination to increase or not increase the inmate's parole eligibility date.

1. If the inmate's parole eligibility date is to be increased, the notice shall include the time period by which the parole eligibility date is to be increased.

2. If the inmate's parole eligibility date is to be increased, the senior Board representative at the institution shall, within 90 days of the appropriate Board panel's or designated hearing officer's decision, notify the inmate in writing of the new parole eligibility date.

[(e)]**(g)** When, in the opinion of the **designated** hearing officer **or Board panel** reviewing an infraction [requiring Board panel action] pursuant to this section, [the severity of] the inmate's conduct and the characteristics of the inmate warrant **an** adjustment in the increase in the eligibility date required pursuant to [(d)]**(e)** above the eligibility date may be further increased **due to aggravating factors** or [, in the case of categories A through F and H,] **may be** decreased **due to mitigating factors** by up to the following time periods:

1.-4. (No change.)

5. Category E-[Three] **four** months

6. (No change.)

7. Category G-Three months, **provided no reductions of the previous eligibility date is made.**

[8. Category H-3 months, provided no reduction of the previous eligibility date is made.]

[(f)]**(h)** The appropriate Board panel, **upon the recommendation from the designated hearing officer,** may determine that no increase in the eligibility date shall result from an infraction, or **the Board panel** may establish an increase which differs from that required by the provisions of [(d)]**(e)** and [(e)]**(g)** if the increase which would be established pursuant to such subsections is clearly inappropriate in consideration of the severity of the inmate's conduct and the characteristics of the inmate.

1. If, in the opinion of the hearing officer establishing the increase in the eligibility date, the increase which would be established pursuant to [(d)]**(e)** and [(e)]**(g)** above is clearly inappropriate as provided herein, the hearing officer shall refer such case to the appropriate Board panel.

2. **Upon determining that the increase in eligibility pursuant to (e) and (g) above is inappropriate,** [T]the hearing officer shall, at least 14 days prior to the Board panel's consideration of the case, notify the inmate in writing that an increase in the eligibility date pursuant to [(d)]**(e)** and [(e)]**(g)** above has not been established and the reasons therefor.

3. The Board panel shall, upon disposition of the case, state in writing to the inmate and the Board the reasons for the establishment of any increase in the eligibility date which differs from the provisions of [(d)]**(e)** and [(e)]**(g)** above.

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

[(h)]**(j)** If an assigned hearing officer or the appropriate Board panel determines that an inmate has persistently violated institutional rules by committing infractions other than those listed in [(c)]**(d)** above, the inmate's eligibility date may be increased by no more than three months in any 12 month period by the hearing officer or Board panel.

[(i)]**(k)** If, by operation of this section, an inmate serving a sentence of three years or more [may] **will** serve the maximum sentence(s) prior to parole eligibility, the inmate's case shall be scheduled for a hearing before the appropriate Board panel at least nine months prior to the expiration of the maximum sentence(s) to determine whether [any increase in the primary eligibility date should be made pursuant to this section] **the**

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inmate shall serve his maximum sentence(s) or whether the inmate shall be released on parole status prior to the expiration of the maximum sentence(s).

(l) Except as otherwise provided for by statute, an inmate shall not be required to serve the maximum sentence(s) imposed without being considered for parole by the appropriate Board panel unless deemed administratively unfeasible.

[(j)]**(m)** Any increase in an inmate's eligibility date established pursuant to this section shall be reduced by any loss of commutation time imposed by the Department **which affects parole eligibility** due to the commission of the same institutional infraction.

[(k)]**(n)** (No change in text.)

(o) The provisions of (d), (e) and (g) above shall apply to inmates whose institutional infractions were committed prior to the effective date of the amendments and shall continue in effect for that purpose. The amendments to (d), (e) and (g) above shall apply to inmates whose institutional infractions were committed on or after the effective date of the amendments.

10A:71-3.5 Parole eligibility term reductions (exceptional progress)

(a) The [prison] **appropriate** Board panel will consider requests for exceptional progress eligibility term reductions from **adult** inmates if the following requirements are met:

1.-2. (No change.)

3. Unless otherwise authorized by the panel for good cause, the inmate has served at least two years in a State correctional facility, is within [2½] **two and one-half** years of parole eligibility, and has not received any institutional infractions within the last two years.

(b) Eligible inmates may apply for an exceptional progress eligibility reduction by submitting a written request to the [Board panel which must include documentation] **senior Board representative at the institution in which the inmate is incarcerated. The request shall include documentation** to support the inmate's [progress] **application.**

(c) **Upon certification from the senior Board representative that the inmate is eligible pursuant to (a)2 and 3 above, the senior Board representative shall forward the application to the appropriate Board panel.** Upon receipt of [an] **the** application, **the appropriate Board panel shall review the application and make one of the following determinations:**

1. [i]**If the Board panel determines that the** [evidence] **information provided in the application** indicates that the inmate may have achieved exceptional progress, the panel shall request the chief executive officer of the institution of incarceration to provide the panel with updated reports and recommendations concerning the inmate's conduct and progress.

2. If the Board panel determines that the information provided in the application does not indicate that the inmate may have achieved exceptional progress, the panel shall notify the inmate in writing of its determination.

(d) Upon receipt of the chief executive officer's report, a designated Board [staff member] **representative** [shall interview the inmate and compile a written report to the panel] **shall forward to the appropriate representative of the Department a copy of the chief executive officer's report and shall request the Department of Corrections to submit its recommendation and comments and the recommendation and comments of the appropriate Board of Trustees to the Board panel. The Department shall return the chief executive officer's report and any relevant documents on the inmate to the designated Board representative.**

(e) [The panel shall review the application and reports to determine whether the inmate has achieved exceptional progress as evidence by significant contributions to the institution, other inmates, and to society; initiative in developing institutional or community programs; and substantial alteration of those factors which lead to the inmate's incarceration] **Upon receipt of the chief executive officer's report, the designated Board representative shall interview the inmate.**

(f) [If the panel approves the application, the panel shall grant a specific parole eligibility term reduction or, in the case of an inmate who has not served the primary parole eligibility term established pursuant to N.J.A.C. 10A:71-3.2, recommend to the appropriate court that a specific parole eligibility term reduction be granted] **The designated Board representative upon completion of said interview shall review all relevant information and evaluate whether or not the inmate has made exceptional progress as evidenced by participation and progress in institutional or community educational, training or other programs and by a substantial alteration of those factors which led to the inmate's incarceration. The designated Board representative shall then prepare and submit a written report to the appropriate Board panel.**

(g) [Unless otherwise authorized by the panel for good cause, such reductions shall be between six months and two years] **The designated Board representative shall notify the appropriate prosecutor(s) of the inmate's application and shall request that the prosecutor submit comments on the application for inclusion into the Board representative's report.**

(h) [Upon final decision, the panel shall advise the inmate in writing of such decision] **The appropriate Board panel shall review the application, the recommendations, and the comments submitted and the prepared reports to determine whether the inmate has achieved exceptional progress. The Board panel shall consider the following factors in its determination: significant contributions to the institution, other inmates, or to society; participation and progress in institutional or community educational, training or other programs; initiative in developing institutional or community programs; and whether or not there has been a substantial alteration of those factors which led to the inmate's incarceration. If the Board panel approves the application, the panel shall grant a specific parole eligibility term reduction or, in the case of an inmate who has not served the primary parole eligibility term established pursuant to N.J.A.C. 10A:71-3.2, recommend to the appropriate court that a parole eligibility term reduction be granted.**

(i) Unless otherwise authorized by the Board for good cause, any reduction in an inmate's parole eligibility term shall not exceed two years.

(j) Upon final decision, the Board panel shall advise the inmate in writing of such decision.

[(i)] **(k)** The **Board** panel may [, after conducting a rescission hearing pursuant to N.J.A.C. 10A:71-5, rescind] **vacate** any reduction granted if the inmate fails to maintain acceptable conduct.

[(j)] **(l)** The young adult and juvenile Board panels [will] consider exceptional progress **of young adult and juvenile inmates respectively** [cases] at the time of reviews conducted pursuant to N.J.A.C. 10A:71-3.3(g), 3.23, **3.25** and 3.[28]**30**.

10A:71-3.7 Preparation of cases for parole hearings; adult inmates

(a) Five to seven months in advance of the [projected] **actual** eligibility date, the Board shall promulgate a list of

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those adult inmates who appear to be eligible for parole consideration.

(b) This list shall be distributed to the chief executive officer of the institution of incarceration, **the Chairman of the Board of Trustees for the institution of incarceration** and to the Bureau of Parole.

(c) The receipt of this eligibility list by the chief executive officer of the institution of incarceration and by the Bureau of Parole shall be notice to initiate the preparation of [up-to-date staff reports] **a pre-parole report pursuant to (e) below**.

(d) It shall be the responsibility of the chief executive officer to file a report concerning the inmate with the appropriate Board panel **and the Bureau of Parole** within 30 days of the receipt of the Board's list.

(e) Such report shall consist of the following information:

1.-7. (No change.)

8. The inmate's actual maximum date based on current credits and the inmate's projected maximum date based on the work and minimum custody credit pattern as established by the classification department.

9. In the case of an inmate serving a specific term or life term, the projected work and minimum custody credit pattern as established by the classification department.

(f) Upon the recommendation of the Special Classification Review Board pursuant to N.J.S.A. 2C:47-5 and the expiration of any mandatory minimum term, the chief executive officer of the Adult Diagnostic and Treatment Center shall file a report concerning the inmate with the adult Board panel. In addition to the information required pursuant to (e) above, the report shall include:

1. The treatment record of the inmate and the comments, evaluations and recommendations of the inmate's therapist(s);

2. The comments, evaluations and recommendations of treatment staff;

3. The comments of any member of the treatment staff who dissents in the determination to refer the inmate's case to the Special Classification Review Board for consideration;

4. The comments, evaluation and recommendations of the chief executive officer;

5. The comments, evaluation and recommendations of the members of the Special Classification Review Board;

6. A statement from the Special Classification Review Board as to the inmate's capability of making an acceptable social adjustment in the community;

7. The name, title and agency affiliation of the members of the Special Classification Review Board participating in the evaluation of the inmate's case for referral to the Board for parole consideration;

8. The comments of any member of the Special Classification Review Board who dissents in the determination to recommend the inmate's case to the Board for parole consideration.

10A:71-3.8 Public notice; adult inmates

(a) (No change in text.)

(b) In no case shall an inmate serving a life term, a fixed minimum and maximum term, a specific term or an indeterminate term be released on parole unless public notice pursuant to (a) above has been provided on these terms.

10A:71-3.9 Inmate statements; adult inmates

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

(c) Such statement shall be filed within 15 days of the date the inmate receives his or her copy of such report, unless the inmate requests and receives a postponement of the hearing process pursuant to N.J.A.C. 10A:71-3.[21]**48**.

10A:71-3.10 Purpose of parole hearing; adult inmates

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

(c) If an inmate [has separate] **is being considered for parole on** sentences to [the] **both the Corrections Complex and to the** Adult Diagnostic and Treatment Center [and to the State prison], [and the parole eligibility terms on such sentences have been aggregated pursuant to N.J.A.C. 10A:71-3.2,] the hearing officer or Board panel shall make [the] **independent** determinations required pursuant to **both** (a) and (b) above.

(d) In the cases of inmates committed to the Adult Diagnostic and Treatment Center pursuant to N.J.S.A. 2C:47-1, et seq., the absence of six months of continuous acceptable therapeutic progress in the Adult Diagnostic and Treatment Center, or the absence of documented acceptable therapeutic progress in a correctional facility other than the Adult Diagnostic and Treatment Center caused by either N.J.S.A. 2C:47-4(b) or the imposition of a consecutive term of incarceration in a correctional facility, may rebut, unless the facts of the inmate's case indicated to the contrary, the presumption for parole.

10A:71-3.11 Factors considered at parole hearings; adult inmates

(a) (No change.)

(b) The hearing officer, Board panel or Board shall consider the following factors and, in addition, may consider any other factors deemed relevant:

1.-20. (No change.)

21. Statements or evidence presented by the appropriate prosecutor's office, the Office of the Attorney General, or any other criminal justice agency.

22. Statement or testimony of any victim or the nearest relative(s) of a murder victim.

(c) Any detainers shall be [considered] **noted** by the hearing officer, Board panel or Board [but] **and** shall not be grounds for denial of parole.

10A:71-3.13 Parole hearing procedures; adult inmates

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

(g) The inmate shall have the right to request, **in writing, a** postponement of the hearing at any time, and the hearing officer or Board panel may grant such request [pursuant to N.J.A.C. 10A:71-3.21]. **However, such postponement shall not be deemed a waiver of the time limits contained in this subchapter unless authorized pursuant to N.J.A.C. 10A:71-3.48.**

(h)-(i) (No change.)

10A:71-3.14 Scheduling of initial parole hearing; adult inmates

(a) (No change.)

(b) Except as provided in N.J.A.C. 10A:71-3.[21] **48**, such hearings shall be conducted at least 60 days **or as soon as practicable** in advance of the inmate's [projected] **actual** parole eligibility date.

(c) The Chairperson, when practicable, shall notify the chief executive officer of the schedule of such hearings at least seven days prior to the hearings.

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

(f) It shall be the responsibility of the chief executive officer to notify the assigned hearing officer, in writing, of the reason for the failure of an inmate to appear at a scheduled parole hearing.

10A:71-3.16 Board member review; adult inmates

(a) When the hearing officer recommends that an inmate be released on parole, the Chairperson shall assign a member

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of the appropriate Board panel to review such recommendation. **In cases of offenders serving terms for crimes of the first and second degree, such recommendation shall be reviewed by two members of the appropriate Board panel.**

(b) If such Board member**(s)** concurs [in] **with** the [hearing officer's] recommendation **of the hearing officer**, the member**(s)** shall certify parole release as soon as practicable after the parole eligibility date by:

1. Establishing a [specific] parole release date [as soon after] **based upon** the inmate's [actual] **projected** parole eligibility date [as practicable]; [and] **or**

2. Establishing a specific parole release date; and

3. Establishing appropriate pre-release conditions; and

[2.] **4.** Establishing [any] **appropriate** special parole conditions pursuant to [subchapter 6] **N.J.A.C. 10A:71-6** and.

[3.] 5. Issuing a written decision within 21 days of [the] Board member['s] action[s].

(c) If a parole release date has been established based upon a projected parole eligibility date, the chief executive officer of the institution or designee shall:

1. Notify the senior Board representative at the institution immediately upon an acceleration in the credit pattern. If an acceleration in the credit pattern has occurred then:

i. The parole eligibility date shall be recalculated;

ii. A new parole release date shall be established; and

iii. The inmate shall be notified of the new parole release date.

2. Certify to the senior Board representative at the institution, within 72 hours prior to the date of release, that the inmate has maintained the credit pattern as established by the classification department. If the inmate has failed to earn the projected credits then:

i. The inmate's release on parole shall be deferred;

ii. The parole eligibility date shall be recalculated;

iii. A new parole release date shall be established unless good cause exists to suspend or rescind the parole release date pursuant to N.J.A.C. 10A:71-5; and

iv. The inmate shall be notified that release on parole has been deferred and that a new parole release date has been established.

[(c)] **(d)** If such Board member**(s)** does not concur [in] **with** the [hearing officer's] recommendation **of the hearing officer**, the member**(s)** shall refer the case to the appropriate Board panel for a hearing and issue a written decision to the inmate, the Department and the Board within seven days consisting of the reasons for the Board member's referral.

10A:71-3.17 Board panel hearing; scheduling for adult inmates

(a) (No change.)

(b) Except as provided in N.J.A.C. 10A:71-3.[21] **48**, such hearing shall be conducted at least 30 days **or as soon as practicable** in advance of the inmate's [projected] **actual** parole eligibility date.

(c) The Chairperson, when practicable, shall notify the chief executive officer of the schedule of such hearings at least seven days prior to the hearings.

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

(f) It shall be the responsibility of the chief executive officer or designee to notify the Board panel, in writing, of the reason for the failure of an inmate to appear at a scheduled parole hearing.

10A:71-3.18 Board panel hearing; notice of decision for adult inmates

(a) At the conclusion of the Board panel hearing, the Board panel shall take one of the following actions:

1. Certify parole release as soon as practicable after the parole eligibility date by:

i. Establishing a [specific] parole release date [as soon after] **based upon** the inmate's [actual] **projected** parole eligibility date [as practicable]; [and] **or**

ii. Establishing a specific parole release date; and

iii. Establishing appropriate pre-release conditions; and

[ii.] **iv.** Establishing [any] **appropriate** special parole conditions pursuant to [subchapter 6] **N.J.A.C. 10A:71-6.**

2.-4. (No change.)

(b) If a parole release date has been established based upon a projected eligibility date, the chief executive officer of the institution or designee shall:

1. Notify the senior Board representative at the institution immediately upon an acceleration in the credit pattern. If an acceleration in the credit pattern has occurred then:

i. The parole eligibility date shall be recalculated;

ii. A new parole release date shall be established; and

iii. The inmate shall be notified of the new parole release date.

2. Certify to the senior Board representative at the institution, within 72 hours prior to the date of release, that the inmate has maintained the credit pattern as established by the classification department. If the inmate has failed to earn the project credits then:

i. The inmate's release on parole shall be deferred;

ii. The parole eligibility date shall be recalculated;

iii. A new parole release date shall be established unless good cause exists or suspend or rescind the parole release date pursuant to N.J.A.C. 10A:71-5; and

iv. The inmate shall be notified that release on parole has been deferred and that a new parole release date has been established.

[(b)] **(c)** Within 21 days of the Board panel hearing, the Board panel shall issue a written Notice [of Decision] to the inmate, the Department and the Board.

[(c)] **(d)** Such Notice [of Decision] shall consist of the decision of the Board panel, and, if the Board panel's decision is to deny parole or defer decision, the Notice [of Decision] shall contain the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or the rules and regulations of the Department.

10A:71-3.19 Board panel action; schedule of future parole eligibility dates for adult inmates

(a) Upon determining to deny parole to a prison inmate, **a two member** [the prison] **adult** Board panel shall, based upon the following schedule, establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole.

1. Except as provided herein, a prison inmate serving a sentence for murder, **manslaughter,** [rape] **aggravated sexual assault** or kidnapping or serving any minimum-maximum or specific sentence in excess of 14 years for a crime not otherwise assigned pursuant to this section shall serve 27 additional months.

2. (No change.)

3. Except as provided herein, a prison inmate serving a sentence for [breaking and entering] **burglary**, narcotics law violations, theft, arson or [assault and battery] **aggravated**

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assault or serving any minimum-maximum or specific sentence of at least four but less than eight years for a crime not otherwise assigned pursuant to this section shall serve 20 additional months.

4. (No change.)

(b) Upon determining to deny parole to a young adult inmate, **a two-member** [the] young adult Board panel shall, based upon the following schedule, establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole.

1. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Categories A[,] **or** B[, or C] defined in N.J.A.C. 10A:71-3.3 shall serve 24 additional months.

2. Except as provided herein, a young adult inmate serving a term for an offense listed in Category C of N.J.A.C. 10A:71-3.3 shall serve 20 additional months.

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

[3.] **4.** Except as provided herein, a young adult inmate serving a sentence for a crime contained in Category E [or F] as defined in N.J.A.C. 10A:71-3.3 shall serve ten additional months.

[4.] **5.** Except as provided herein, a young adult inmate serving a sentence for a crime contained in category [G] **F** as defined in N.J.A.C. 10A:71-3.3 shall serve eight additional months.

(c) The future parole eligibility dates required pursuant to (a) and (b) above may be increased or decreased by up to nine months when, in the opinion of the Board panel, the severity of the crime for which the inmate was denied parole and the prior criminal record or other characteristics of the inmate warrant such adjustment.

(d) **A three-member Board panel** [The Board] may establish a future parole eligibility date which differs from that required by the provisions of (a) [,] **or** (b) and (c) above if the future parole eligibility date which would be established pursuant to such subsections is clearly inappropriate in consideration of the circumstances of the crime, the characteristics and prior criminal record of the inmate and the inmate's institutional behavior.

1. If, in the opinion of [the] **a two-member** Board panel denying parole, the future parole eligibility date which would be established pursuant to (a) [,] **or** (b) and (c) above is clearly inappropriate as provided herein, the **two-member** Board panel shall [refer such case to the Board] **adjourn the hearing for participation of the third Board panel member. In such instances, the third Board panel member shall review all records and the hearing shall be reconvened within 90 days for the purpose of establishing a future parole eligibility date.**

2. The **two-member** Board panel shall, [at least 14 days prior to the Board's determination of the future parole eligibility date, notify the inmate in writing] pursuant to N.J.A.C. 10A:71-3.18, **notify the inmate in writing that parole has been denied,** that a future parole eligibility date pursuant to (a) [and] **or** (b) **and (c)** above has not been established and the reasons therefor, **and that a three-member Board panel hearing will be scheduled for the purpose of establishing a future parole eligibility term which differs from the provisions of (a) or (b) and (c) above.**

3. The **three-member** Board **panel** shall, upon disposition of the case, state in writing to the inmate the reasons for the establishment of [any] **a** future eligibility date which differs from the provisions of (a) [and] **or** (b) **and (c) above.**

4. The decision of the three-member Board panel to establish a future parole eligibility date which differs from that required by the provisions of (a) or (b) and (c) above shall be by unanimous decision only. Failure to establish a future parole eligibility date pursuant to this subsection by unanimous decision shall result in the referral of the inmate's case to the Board for the establishment of a future parole eligibility date.

5. If the three-member Board panel fails to establish, by unanimous decision, a future parole eligibility date pursuant to this subsection, the three-member Board panel shall notify the inmate, in writing, that his case has been referred to the Board for the establishment of a future parole eligibility date.

6. The Board's establishment of a future parole eligibility date shall be based on the review of all records of the panel hearing(s). Upon disposition of the case, which shall not occur earlier than 14 days from the date of the panel referral to the Board, the Board shall state in writing to the inmate the reasons for the establishment of a future parole eligibility date which differs from the provisions of (a) or (b) and (c) above.

(e) If a three-member Board panel or the Board establishes, in the case of an inmate sentenced pursuant to N.J.S.A. 2A:113-4 for a term of life imprisonment, N.J.S.A. 2A:164-17 for a fixed minimum and maximum term or N.J.S.A. 2C:1-1(b), a future parole eligibility date which differs from that required by the provisions of (a) and (c) above, the inmate shall be scheduled for an annual review hearing. The first annual review hearing shall be scheduled 12 months from the month in which the decision to deny parole was rendered. Thereafter, annual review hearings shall be scheduled every 12 months until the inmate is within seven months of the actual parole eligibility date.

1. At the annual review hearing, which shall be conducted by a Board panel as designated by the Chairperson, the Board panel shall assess the inmate's progress in institutional or community educational, training or other programs, progress in substantially altering those factors which led to the inmate's incarceration, and progress which may indicate that the punitive aspects of the sentence have been satisfied in that the rehabilitative potential of the inmate may be achieved by a date earlier than the future parole eligibility date.

2. At the conclusion of the annual review hearing, the Board panel shall:

i. Accept and note documentary evidence of the progress that the inmate has achieved; and

ii. Determine whether the inmate's case shall be referred for a parole release hearing pursuant to this subchapter; or

iii. Determine whether the progress achieved by the inmate merits a reduction in the future parole eligibility date. If such determination is made, the Board panel shall recommend to the three-member Board panel or the Board, as appropriate, that a reduction in the future parole eligibility date by granted; or

iv. Defer a decision pending receipt of additional information; or

v. Continue the case until the next annual review.

3. The Board panel shall advise the inmate in writing of its determination.

4. If the Board panel determines that the inmate's case shall be referred for a parole release hearing pursuant this subchapter, the Board panel shall provide personal notice to each member of the three-member Board panel or the Board, as appropriate, of its determination.

5. If the Board panel recommends that a reduction be granted in the future parole eligibility term, the three-member Board panel or the Board, as appropriate, shall review the inmate's case and the Board panel's recommendation within 60 days of the Board panel's determination. The three-mem-

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ber Board panel or the board shall, within 14 days of reviewing the inmate's case, notify the inmate in writing whether the future parole eligibility date will be reduced and, if so, the specific time period by which the future parole eligibility date will be reduced.

6. The provisions of N.J.A.C. 10A:71-3.8 shall not apply to an annual review hearing conducted pursuant to this subsection.

[(e)] **(f)** (No change in text.)

[(f)] **(g)** (No change in text.)

(h) The provisions of (b) above shall apply to young adult inmates whose offenses were committed prior to the effective date of the amendment and shall continue in effect for that purpose. The amendments to (b) above shall be applicable to young adult inmates whose offenses were committed on or after the effective date of the amendment.

(i) The amendments to (d) above shall apply to the cases of adult inmates in which a decision to deny parole has been rendered on or after the effective date of the amendments.

10A:71-3.20 Notice of [tentative] parole release dates: juvenile inmates

(a) (No change.)

(b) Upon such notification and within [6 months] **90 days** of admission to a State correctional facility, each juvenile inmate shall be informed in writing of his or her [tentative] parole release date.

(c) Upon establishment of the [tentative] parole release date pursuant to N.J.A.C. 10A:71-3.21, the **juvenile** Board **panel** shall notify in writing the juvenile inmate's parent[s]**(s)** or guardian[s]**(s)**, the committing court, the prosecuting authority, [the Board of Trustees and the Department of the inmate's name] **and the chief executive officer of the institution or designee** [and the tentative] **of the** parole release date established. **The chief executive officer or designee may further distribute notice of the parole release date as deemed appropriate.**

10A:71-3.21 Establishment of [tentative] parole release dates: juvenile inmates

(a) Except as provided herein, [tentative] parole release dates shall be established by a hearing officer, a juvenile Board panel member or the juvenile Board panel pursuant to the following schedule of presumptive [tentative] parole release terms and ranges for [tentative] parole release terms.

Act of Delinquency	Presumptive Term (months)	Range (months)
[Murder, Manslaughter, Attempted Murder		24-120
Aggravated Sexual Assault	20	16-28
Arson	18	8-30
Aggravated Assault	18	14-28
Armed Robbery	16	12-24
Robbery	14	12-20
Sexual Assault, Possession of Firearm	14	10-20
Burglary, Sale or Distribution of Narcotics	10	8-14
Theft, Stolen Property, Unlawful Use of Motor Vehicle, Possession of Burglary Tools, Terroristic Threats, Possession of a Weapon	8	6-12
Malicious Damage, Resisting Arrest	6	4-8
Escape	4	2-6
Murder (N.J.S.A. 2C:11-3a (1) or (2)	**100**	**80-120**
Murder (N.J.S.A. 2C:11-3(a)(3)	**50**	**40-60**
Crime of First Degree (except Murder)	**20**	**16-24**
Crime of Second Degree, Sale or Distribution of Controlled Dangerous Substance, or Possession of Controlled Dangerous Substance with Intent to Distribute	**16**	**12-18**
Crime of Third Degree or Possession of Controlled Dangerous Substance	**10**	**8-12**
Crime of Fourth Degree	**5**	**4-6**
Disorderly Persons Offense	**2.5**	**2-3**

(b) If a juvenile inmate has been committed for several acts of delinquency, the act of delinquency which [, in the opinion of the hearing officer, juvenile Board panel member or juvenile Board panel,] represents the most serious act of delinquency shall be [used] **considered** in determining the [tentative] parole release date.

(c) The hearing officer, **the** juvenile Board panel member or **the** juvenile Board panel shall consider the following mitigating and aggravating factors in determining whether to alter the [tentative] parole release date from the presumptive term established pursuant to (a) above:

1.-2. (No change.)

(d) The juvenile Board panel may establish a [tentative] parole release date outside the range contained in the provisions of (a) above, if a [tentative] parole release date within the range is clearly inappropriate in view of the circumstances of the act of delinquency [and the characteristics and], **the** prior record of delinquency [of], **the characteristics of** the inmate **or the imposition of any extended term imposed pursuant to N.J.S.A. 2A:4A-44(d)(3) and (d)(4).**

1. If, in the opinion of the hearing officer or juvenile Board panel member establishing the [tentative] release date, a date within the range contained in the provisions of (a) above is clearly inappropriate in view of the circumstances of the act of delinquency [and the characteristics and], **the** prior record of delinquency [of], **the characteristics of** the inmate **or the imposition of any extended term imposed pursuant to N.J.S.A. 22A:4A-44(d)(3) and (d)(4)**, the hearing officer **or the juvenile Board panel member** shall refer such a case to the juvenile Board panel [; provided, however, that in any event any tentative parole release date in excess of 24 months may be established only by the juvenile Board panel].

2. The [juvenile board panel] **hearing officer**, juvenile Board panel member or the [hearing officer] **juvenile Board panel** shall, at least 14 days prior to the Board panel's determination of the [tentative] release date, notify the **juvenile** inmate in writing that a [tentative] parole release date pursuant to (a) above has not been established and the reasons therefor.

3. The juvenile Board panel shall, upon disposition of the case, state in writing to the **juvenile** inmate [and the Board], **the juvenile inmate's parent(s) or guardian(s), the committing court, the prosecuting authority, and the chief executive officer of the institution or designee,** the reasons for the establishment of any [tentative] parole release date which is outside the range contained in the provisions of (a) above.

(e) [Tentative parole release dates for juvenile inmates committed for acts of delinquency which would constitute murder, manslaughter, attempted murder or disorderly persons offenses if committed by an adult shall be established by the juvenile board panel] **Pursuant to R.3:21-8, credit for time served in a county detention facility prior to the date of**

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sentence shall reduce the parole release date established pursuant to this section.

(f) [Except as provided in (e) above, a tentative parole release date for any act of delinquency which is not listed in (a) above shall be established by a hearing officer, a juvenile Board panel member or the juvenile Board panel; provided, however, that any tentative parole release date in excess of 24 months may be established only by the juvenile Board panel] **In no case shall a juvenile inmate committed by the Family Court to a term of incarceration be released on parole without the consent of the sentencing court prior to the service of one-third of any term imposed for murder or a crime of the first, second or third degree, sale or distribution of controlled dangerous substance, possession of controlled dangerous substance with intent to distribute or possession of controlled dangerous substance, including any extended term imposed pursuant to N.J.S.A. 2A:4A-44(d)(3) and (d)(4) or one-fourth of any term imposed for any other crime.**

10A:71-3.22 Alteration of [tentative] parole release dates: juvenile inmates

(a) At the time of a [case] **quarterly** review, any previously established [tentative] parole release date may be altered pursuant to N.J.A.C. 10A:71-3.[26] **28** or 3.[28] **30**.

(b) If the juvenile inmate has participated satisfactorily in institutional programs or demonstrated good institutional adjustment, the [tentative] parole release date may be reduced.

1. If such inmate's level of institutional adjustment or program participation is above average, the reduction may be at the rate of 15 days for every month of the [tentative] parole release term.

2. If such inmate's level of institutional adjustment or program participation is average, the reduction may be at the rate of ten days for every month of the [tentative] parole release term.

3. If such inmate's level of institutional adjustment or program participation is below average, the reduction may be at the rate of five days for every month of the [tentative] parole release term.

4. (No change.)

[5.] **(c)** The juvenile board panel **or a juvenile Board panel member upon the recommendation by a hearing officer** may reduce a [tentative] parole release date outside of the schedule contained in the provisions of this subsection when [it] deem[s]**ed** appropriate in view of the **juvenile** inmate's participation in institutional programs or the **juvenile** inmate's institutional adjustment.

[(c)] **(d)** If [the] **a** juvenile inmate has committed serious **and**/or persistent institutional infractions or, **has** demonstrated poor institutional adjustment, the [tentative] parole release date may be [increased] **rescinded pursuant to N.J.A.C. 10A:71-5.6, 5.7 and 5.8.**

1. If the juvenile Board panel rescinds a parole release date, the written decision shall include a future parole release date.

2. A future parole release date shall not be established at a date which exceeds 12 months from the rescinded parole release date.

10A:71-3.23 Scheduling of [case] **quarterly** reviews-juvenile inmates

(a) Except as provided herein, each juvenile inmate shall be scheduled for a [case] **quarterly** review during the third month following the establishment of the [tentative] parole release date and during each third month thereafter; provided, however, that the juvenile Board panel may direct that a [case] **quarterly** review be conducted prior to a [case] **quarterly** review otherwise required pursuant to this section.

1. The Chairperson shall establish a schedule of [juvenile case] **quarterly** reviews to be conducted by a hearing officer or juvenile Board panel member assigned by the Chairperson.

2. The Chairperson, when practicable, shall notify the chief executive officer **of the institution** of the schedule of such [case] **quarterly** reviews at least seven days prior to the **date of the quarterly** [case] review.

3. It shall be the responsibility of the chief executive officer to immediately notify the Chairperson if any **juvenile** inmate schedule for a [case] **quarterly** review is transferred from the institution or is not expected to be available for any reason.

4. It shall be the responsibility of the chief executive officer **of the institution** to make arrangements to have any **juvenile** inmate scheduled for a [case] **quarterly** review brought to the review, unless such **juvenile** inmate is physically unable to appear or refuses to appear for the [case] **quarterly** review.

5. It shall be the responsibility of the chief executive officer of the institution or designee to notify the assigned hearing officer, the juvenile Board member or the juvenile Board panel, in writing, of the effort expended to produce the juvenile inmate and the reason(s) for the failure of the juvenile inmate to appear at a scheduled quarterly review.

10A:71-3.24 Factors considered at [case] **quarterly** reviews: juvenile inmates

(a) Parole decisions shall be based on the aggregate of all pertinent factors, including material supplied by the **juvenile** inmate and reports and material which may be submitted by any person or agencies which have knowledge of the **juvenile** inmate.

(b) The hearing officer, juvenile Board panel member, juvenile Board panel or Board shall consider the following factors and in addition may consider any other factors deemed relevant:

1.-20. (No change.)

21. Statements or evidence presented by the appropriate prosecutor's office, the Office of the Attorney General, or any other criminal justice agency.

22. Statement or testimony of any victim or the nearest relative(s) of a murder victim.

(c) Any detainers shall be [considered] **noted** by the hearing officer, juvenile Board panel member, juvenile Board panel or Board [but] **and** shall not be grounds for denial of parole.

10A:71-3.25 [Case] **quarterly** review procedures: juvenile inmates

(a) [Case] **Quarterly** reviews shall be conducted by a hearing officer, a juvenile Board panel member or the juvenile Board panel **as determined by the Chairperson** and shall include a personal interview [of] **with** the juvenile inmate.

(b) The purpose of the [case] **quarterly** review shall be to determine whether it appears that the juvenile inmate, [if] **when** released, will not cause injury to persons or substantial injury to property, **to determine whether the parole release date will be reduced pursuant to N.J.A.C. 10A:71-3.22(a), (b) or (c), or to determine whether the juvenile inmate's case shall be referred for a rescission hearing.**

(c) (No change.)

(d) Prior to the [initial case review] **evaluation segment of the quarterly review**, a designated Board representative, **the hearing officer, or the juvenile Board panel member(s)** shall discuss with and explain to the juvenile inmate all documents relevant to the juvenile inmate's case, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or the rules and regulations of the Department.

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10A:71-3.26 Preparation of progress reports: juvenile inmate

[10A:71-3.25(e)] **(a)** Prior to [the case] **a quarterly or annual** review, it shall be the responsibility of the chief executive officer **of the institution or designee** to **prepare and** file with the **hearing officer or** juvenile Board panel a report concerning the **juvenile** inmate. [Such report shall consist of the following information:]

(b) The report shall include the following:

1. The commitment order**(s)**, including any written reasons for the commitment;

2. The predisposition report**(s)**;

3. [Any additional court commitments or predisposition reports.] **An appraisal of the inmate's institutional housing, work, education and program participation;**

4. [A report on the conduct of the inmate during confinement including reports of the inmate's institutional housing, work, education and program participation.] **An investigative report by the Bureau of Parole on the inmate's parole plans;**

5. An up-to-date report on any outstanding detainer(s);

[5.] **6.** A complete report on the **juvenile** inmate's social, physical and mental condition, including any psychological or psychiatric reports **and any additional reports** requested by the **juvenile** Board **panel member(s) or hearing officer;**

[6. An investigation report by the Bureau of Parole on the inmate's parole plans.]

7. Any [other] **additional** information [reflecting] **pertaining** [on] **to** the likelihood that the juvenile inmate, if released, will cause injury to persons or substantial injury to property;

8. A comprehensive analysis of the problems which were operative in causing the offense(s);

9. The recommended program of training or intervention and the extent of the juvenile's participation or lack of participation in recommended programs;

10. Program success in enhancing the inmate's abilities, knowledge or skills for leading a law-abiding life;

11. An analysis of the relationship between the commission of a significant disciplinary infraction(s) and the achievement of institutional program objectives;

12. Any additional program objectives which should be achieved considering the characteristics of the juvenile inmate, the family environment and offenses committed.

(c) The reviewing juvenile Board panel member(s) shall submit such progress report and any other documents deemed relevant or necessary with the notification of reduction in the parole release date or certification of parole release to the sentencing court in those cases in which court approval is required. Additional information or documents shall be submitted to the sentencing court upon the request of the sentencing court.

10A:71-3.[26] **27** [Case] **Quarterly** review notice of decision-juvenile inmates

(a) At the conclusion of the [case] **quarterly** review, the hearing officer or juvenile Board panel member shall [immediately advise the juvenile inmate in writing of his or her recommendation.]:

1. Recommended to a member of the juvenile Board panel that the juvenile inmate be released on parole; or

2. Defer a recommendation pending receipt of additional information; or

3. Continue the case until the next quarterly review; or

4. Recommend an increase or decrease in the parole release date in accordance with N.J.A.C. 10A:71-3.22(a), (b) or (c); or

5. Refer the juvenile inmate's case for a rescission hearing; or

6. Refer the case to the juvenile Board panel.

(b) The hearing office or juvenile Board panel member, **at the conclusion of the quarterly review,** shall [recommend in writing any appropriate action to an assigned member of the juvenile Board panel] **immediately advise the juvenile inmate in writing of the determination and submit the written determination to the assigned member(s) of the juvenile Board panel.**

(c) [Upon review of the hearing officer's or juvenile Board panel member's recommendation, the assigned member of the juvenile Board panel shall:

1. Certify parole release by:

i. Establishing a specific parole release date within 90 days, and

ii. Establishing any special parole conditions pursuant to Subchapter 6; or

2. Defer decision pending the receipt of relevant information; or

3. Continue the case until the next case review; or

4. Refer the case to the Board for final decision.]

If the hearing officer or a juvenile Board panel defers a decision, the juvenile inmate and the assigned member(s) of the juvenile Board panel shall be advised in writing of the decision once it is rendered by the hearing officer or a juvenile Board panel member.

(d) [A written Notice of Decision shall be filed with the juvenile Board panel within 21 days and shall consist of the decision of the Board member and the reasons therefor, except information classified as confidential pursuant to section 2.1 or the rules and regulations of the Department. A copy of such notice shall be forwarded to the juvenile inmate, the juvenile's parents or guardians, the committing court and the Department] **If the hearing officer or a juvenile Board panel member recommends the juvenile inmate's release on parole, the juvenile inmate shall be advised of any special conditions recommended.**

10A:71-3.28 Board member review: juvenile inmates

(a) Upon review of the recommendation of the hearing officer or juvenile Board panel member, the assigned member of the juvenile Board panel shall render the following determination(s):

1. A certification of:

i. A new parole release date or the continuation of the current parole release date;

ii. Appropriate additional pre-release condition(s); and

iii. Appropriate special condition(s) pursuant to subchapter 6 when the parole release date is within 90 days.

2. Defer a decision pending the receipt of relevant information.

3. Certify a reduction in the parole release date pursuant to N.J.A.C. 10A:71-3.22(a), (b) or (c).

4. Refer the juvenile inmate's case for a rescission hearing.

5. Refer the case to the juvenile Board panel for a decision.

(b) A written report shall be filed with the juvenile Board panel within 21 days of the decision and shall consist of the determination of the juvenile Board panel member and the reasons therefor, except that information classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or the rules and regulations of the Department. A copy of such notice shall be forwarded to the juvenile inmate, the juvenile's parent(s) and guardian(s), the committing court, the prosecutor, and the chief executive officer of the institution or designee. The chief

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executive officer or designee may further distribute the report as deemed appropriate.

(c) If the assigned member of the juvenile Board panel certifies a reduction in the parole release date and/or certifies parole release on a specific date prior to the juvenile inmate serving one-third of the term imposed for the crime of murder or any crime of the first, second or third degree, sale or distribution of controlled dangerous substance, possession of controlled dangerous substance with intent to distribute or possession of controlled dangerous substance, including any extended term, or one-fourth of any term imposed for any other crime, the reduction in the parole release date or the juvenile inmate's release on parole on the specific date shall be subject to the approval of the sentencing court.

(d) In those cases in which court approval of a reduction in the parole release date and/or parole release of the juvenile inmate is required:

1. The assigned member of the juvenile Board panel shall notify the sentencing court of the determination certifying a reduction in the parole release date or certifying parole release in the juvenile inmate's case and the specific parole release date. The sentencing court shall be forwarded such progress report and any other document deemed relevant and shall be forwarded any additional information or documents upon request.

2. The sentencing court shall have 30 days from the date of the notice to advise the juvenile Board panel member whether the reduction in the parole release date or the parole release of the juvenile inmate on the specified date is approved.

3. If the sentencing court approves the reduction in the parole release date, the juvenile inmate shall be released on the reduced date upon parole release being certified pursuant to this section.

4. If the sentencing court does not approve the reduction in the parole release date, the parole release date shall not be reduced.

5. When the sentencing court fails to respond within the 30 day time period, the juvenile inmate shall be released on the reduced date upon parole release being certified pursuant to this section.

6. If the sentencing court approves the release on parole of the juvenile inmate, the juvenile inmate shall be released on the specified date.

7. If the sentencing court does not approve the parole release of the juvenile inmate on the specified date, the juvenile inmate shall be released on parole on the previously established and approved parole release date. The juvenile inmate shall also be scheduled for a quarterly review pursuant to N.J.A.C. 10A:71-3.23. The purpose of the quarterly review shall be to determine whether additional information has been developed which warrants the submission of the juvenile inmate's case to the sentencing court for reconsideration.

8. When the sentencing court fails to respond within the 30 day time period, the juvenile inmate shall be released on the certified parole release date.

9. The juvenile inmate shall be notified of the determination of the sentencing court. If parole on the specified date is not approved by the sentencing court, the juvenile inmate shall be notified accordingly and shall be advised of the date on which he can be released on parole status. The juvenile inmate shall also be notified when he will be scheduled for a quarterly review pursuant to N.J.A.C. 10A:71-3.23.

10A:71-3.[27] **29 In absentia** [case] **quarterly** previews: juvenile inmates

(a) [If] **When** a juvenile inmate is physically unable to appear at a **quarterly or** case review or if a juvenile inmate refuses to appear at a **quarterly or** case review, the hearing officer, juvenile Board panel member or juvenile Board panel, **upon the chief executive officer of the institution or designee providing in writing a reasonable explanation for the juvenile inmate's inability or refusal to appear,** may **either** consider the case in the **juvenile** inmate's absence **or conduct an in person review where the juvenile inmate is currently located.**

(b) (No change.)

10A:71-3.[28] **30** Juvenile Board panel case reviews

(a) Each juvenile inmate shall be scheduled for a **comprehensive** case review by the juvenile Board panel during the twelfth month following the establishment of the [tentative] parole release date and yearly thereafter instead of the [case] **quarterly** review otherwise required pursuant to N.J.A.C. 10A:71-3.23(a). A schedule of such case reviews shall be established in accordance with the provisions of N.J.A.C. 10A:71-3.23(a).

(b) The purpose of such case review shall be to **monitor the cumulative progress of the juvenile inmate, to** determine whether it appears that the juvenile inmate, [if] **when** released, will not cause injury to persons or substantial injury to property [and], to determine the reasons for the continued confinement of the juvenile inmate, **to determine whether the previously established parole release date will be reduced pursuant to N.J.A.C. 10A:71-3.22(a), (b) or (c) and to determine whether the juvenile inmate's case shall be referred for a rescission hearing.**

(c) At the conclusion of the case review, the juvenile Board panel shall **render the following determination(s):**

1. [Certify parole release by] **A certification of:**

i. [Establishing a specific parole release date within 90 days, and] **A new parole release date or the continuation of the current parole release date;**

ii. Appropriate additional pre-release condition(s); and

[ii.] **iii.** [Establishing any] **Appropriate** special parole condition(s) pursuant to N.J.A.C. 10A:71-6[; or] **when the parole release date is within 90 days.**

2. Defer decision pending receipt of relevant information; [or]

3. [Continue the case until the next case review; or] **Certify a reduction in the parole release date pursuant to N.J.A.C. 10A:71-3.22(a), (b) or (c);**

4. Refer the juvenile inmate's case for a rescission hearing.

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

(d) The juvenile Board panel shall file a report of such case review within 21 days with the Board, the Commissioner, [the institution,] the committing court, **the prosecutor, the chief executive officer of the institution or designee,** the juvenile **inmate** and the juvenile's parents or guardians. Such report shall consist of the decision of the panel and the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or the rules and regulations of the Department. **The chief executive officer or designee may further distribute the report as deemed appropriate.**

(e) If the juvenile Board panel certifies a reduction in the parole release date or certifies parole release on a specific date

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prior to the juvenile inmate serving one-third of the term imposed for the crime of murder or any crime of the first, second or third degree, sale or distribution of controlled dangerous substance, possession of controlled dangerous substance with intent to distribute or possession of controlled dangerous substance, including any extended term, or one-fourth of any term imposed for any other crime, the reduction in the parole release date or the juvenile inmate's release on parole on the specific date shall be subject to the approval of the sentencing court.

(f) In those cases in which court approval of a reduction in the parole release date and/or parole release of the juvenile inmate is required:

1. The juvenile Board panel shall notify the sentencing court of the determination certifying a reduction in the parole release date or certifying parole release in the juvenile inmate's case and the specific parole release date. The sentencing court shall be forwarded such progress report and other documents deemed relevant and shall be forwarded any additional information or documents upon request.

2. The sentencing court shall have 30 days from the date of the notice to advise the juvenile Board panel whether the reduction in the parole release date or the parole release of the juvenile inmate on the specified date is approved.

3. If the sentencing court approves the reduction in the parole release date, the juvenile inmate shall be released on the reduced date upon parole release as certified pursuant to N.J.A.C. 10A:71-3.28 or this section.

4. If the sentencing court does not approve the reduction in the parole release date, the parole release date shall not be reduced.

5. When the sentencing court fails to respond within the 30 day time period, the juvenile inmate shall be released on the reduced date upon parole release as certified pursuant to this section.

6. If the sentencing court approves the release on parole of the juvenile inmate, the juvenile inmate shall be released on the specified date.

7. If the sentencing court does not approve the parole of the juvenile inmate on the specified date, the juvenile inmate shall be released on parole on the previously established and approved parole release date. The juvenile inmate shall also be scheduled for a quarterly review pursuant to N.J.A.C. 10A:71-3.23. The purpose of the quarterly review shall be to determine whether additional information has been developed which warrants the submission of the juvenile inmate's case to the sentencing court for reconsideration.

8. When the sentencing court fails to respond within the 30 day time period, the juvenile inmate shall be released on parole on the certified parole release date.

9. The juvenile inmate shall be notified of the determination of the sentencing court. If parole on the specified date is not approved by the sentencing court, the juvenile inmate shall be notified accordingly and shall be advised of the date on which he can be released on parole status. The juvenile inmate shall also be notified when he will be scheduled for a case review pursuant to N.J.A.C. 10A:71-3.23.

10A:71-3.31 Calculation of parole eligibility: county inmates

(a) A county inmate committed for a specific term in a county jail, workhouse or penitentiary shall become primarily eligible for parole upon the service of any judicial or statutory mandatory minimum term or one-third of the sentence imposed where no judicial or statutory mandatory minimum term or 60 days of his aggregate term(s), whichever is greater.

(b) If the parole eligibility date is based on a judicial or statutory mandatory minimum term or 60 days of the aggregate term, the parole eligibility date shall include credit for time served in the county jail prior to the date of sentence.

(c) If the parole eligibility date is based on one-third of the sentence imposed, the parole eligibility date shall include commutation credits, credit for time served in the county jail prior to the date of sentence, and earned work and earned minimum custody credits.

(d) In no case shall a county inmate be eligible for parole prior to the service of 60 days of his aggregate sentence, less credit for time served prior to the date of sentence.

10A:71-3.32 Notice of parole eligibility: county inmates

(a) Whenever a county inmate's parole eligibility date is within six months of the date of sentence, the sentencing judge shall state such inmate's parole eligibility on the record. This action shall satisfy all public and inmate notice requirements.

(b) If a county inmate's parole eligibility date is greater than six months from the date of sentence, the chief executive officer of the county jail, workhouse or penitentiary or designee shall notify in writing the inmate of his primary eligibility date within 60 days of the commencement of the sentence.

1. Each county inmate shall be given the opportunity to acknowledge in writing the receipt of such notice.

10A:71-3.33 Preparation of cases for parole hearings: county inmates

(a) Forty-five days in advance of the parole eligibility date, the chief executive officer of the institution of incarceration or designee shall initiate the preparation of up-to-date staff reports.

(b) It shall be the responsibility of the chief executive officer or designee to file a report concerning the county inmate with the designated hearing officer or appropriate Board panel within 30 days in advance of the parole eligibility date.

(c) Such report shall consist of the following information:

1. The commitment order, including the sentencing court's written reasons for any sentence imposed, on all sentences being served;

2. The pre-sentence report, including a criminal case history record, on any offense of the fourth degree or greater;

3. The municipal court complaint(s) upon which the inmate's commitment is based;

4. A criminal case history record in the case of a commitment from a municipal court;

5. Division of Motor Vehicle case record (or Driver's Abstract) in the case of a commitment for any motor vehicle violation(s) or related offense(s);

6. Any statement or information submitted by the sentencing court, the prosecutor, the probation office or any other interested agency;

7. The status of any detainer(s);

8. A report on the inmate's institutional adjustment, conduct and program participation including housing, work, educational or vocational training;

9. A report on the inmate's parole plan, if available;

10. The recommendation or comments of the chief executive officer or designee at their discretion;

11. Any other information reflecting on the likelihood that the inmate will commit a crime if released on parole;

12. The inmate's credit earning pattern as established by the chief executive officer or designee.

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10A:71-3.34 Inmate statements: county inmates

(a) It shall be the responsibility of the chief executive officer of the institution or designee to provide each inmate with a copy of the report filed pursuant to N.J.A.C. 10A:71-3.33 at the time such report is filed with the designated hearing officer or Board panel, except such information classified as confidential by the Board pursuant to N.J.A.C. 10A:71-2.1 or by the chief executive officer of the institution.

(b) The inmate may file with designated hearing officer or the Board panel a written statement regarding such report and any other information such inmate wishes the hearing officer or Board panel to review.

10A:71-3.35 Purpose of parole hearing; county inmates

(a) The hearing officer or Board panel shall determine whether evidence supplied in reports or developed or produced at the hearing indicates by a preponderance of the evidence that there is a substantial likelihood that the inmate will commit a crime under the laws of this State if released on parole.

10A:71-3.36 Factors considered at parole hearings: county inmates

(a) Parole decisions shall be based on the aggregate of all pertinent factors including material supplied by the inmate and reports and material which may be submitted by persons or agencies which have knowledge of the inmate.

(b) The hearing officer, Board panel or Board shall consider those factors as specified in N.J.A.C. 10A:71-3.11 and any other factor(s) deemed relevant.

(c) Any detainer shall be noted by the hearing officer, Board panel or Board and shall not be grounds for denial of parole.

10A:71-3.37 In absentia hearings: county inmates

The provisions of N.J.A.C. 10A:71-3.12 shall be applicable in the cases of county inmates who are physically unable to appear at a hearing or if an inmate refuses to appear at a hearing.

10A:71-3.38 Parole hearing procedures: county inmates

(a) The parole hearing provisions of N.J.A.C. 10A:71-3.13, except subsection (c), shall be applicable in the cases of county inmates.

(b) All information not classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or by the chief executive officer of the institution shall be disclosed to the inmate.

10A:71-3.39 Scheduling of initial parole hearings: county inmates

(a) The Chairperson shall establish a schedule of parole hearings to be conducted by a hearing officer assigned or designated by the Chairperson.

(b) Except as provided by N.J.A.C. 10A:71-3.48, such hearings shall be conducted at least 21 days in advance of the inmate's parole eligibility date or as soon as administratively feasible.

(c) The Chairperson or designee, when practicable, shall notify the chief executive officer of the institution or designee of the schedule of such hearings at least seven days prior to the hearings.

(d) It shall be the responsibility of the chief executive officer of the institution or designee to immediately notify the Chairperson or designee if any inmate is not expected to be available for a hearing for any reason.

(e) It shall be the responsibility of the chief executive officer of the institution or designee to make arrangements to have any inmate scheduled for a parole hearing brought to the hearing, unless such inmate is physically unable to appear or refuses to appear for the hearing.

(f) It shall be the responsibility of the chief executive officer of the institution or designee to notify the assigned hearing officer in writing of the reason for the failure of an inmate to appear at a scheduled parole hearing.

10A:71-3.40 Initial hearing notice of decision: county inmates

(a) At the conclusion of the parole hearing, the hearing officer shall:

1. Recommend to a member of the appropriate Board that the inmate be released on parole; or

2. Refer the case to the appropriate Board panel for a hearing; or

3. Defer decision for up to 30 days in order to obtain relevant information.

(b) At the time of the hearing, the hearing officer shall issue a written case assessment to the inmate, the chief executive officer of the institution or designee, the Bureau of Parole and the appropriate Board panel.

(c) Such case assessment shall consist of the hearing officer's determination and the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or by the chief executive officer of the institution.

(d) If the hearing officer recommends that the inmate be released on parole, the hearing officer shall advise the inmate, at the time of the hearing or upon resolution of any deferred decision, of any special conditions recommended.

10A:71-3.41 Board member review: county inmates

(a) When the hearing officer recommends that an inmate be released on parole, the Chairperson shall assign a member of the appropriate Board panel to review such recommendation. In cases of offenders serving sentences for crimes of the first and second degree, such recommendation shall be reviewed by two members of the appropriate Board panel or one Board member of the appropriate panel and one senior hearing officer.

(b) If such Board member(s) concurs with the recommendation of the hearing officer, the member(s) shall certify parole release as soon as practicable after the parole eligibility date by:

1. Establishing a specific parole release date as soon after the inmate's actual parole eligibility date as practicable; and

2. Establishing appropriate pre-release conditions; and

3. Establishing appropriate special parole conditions pursuant to N.J.A.C. 10A:71-6; and

4. Issuing a written decision within seven days of the Board member action.

(c) If such Board member(s) does not concur with the recommendation of the hearing officer, the member(s) shall refer the case to the appropriate Board panel for a hearing and issue a written decision to the inmate, the chief executive officer and the Board within seven days of the decision consisting of the reasons for the Board member's referral.

10A:71-3.42 Board panel hearings: scheduling for county inmates

(a) Any case referred to a Board panel by a hearing officer pursuant to N.J.A.C. 10A:71-3.40 or by a Board member(s) pursuant to N.J.A.C. 10A:71-3.41 shall be scheduled by the Chairperson for a hearing by the appropriate Board panel.

(b) The Board panel may be composed of any two Board members or any one Board member and one senior hearing officer as necessary for the efficient functioning of the Board.

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(c) Except as provided in N.J.A.C. 10A:71-3.48, such hearing shall be conducted at least 14 days in advance of the inmate's parole eligibility date or as soon as administratively feasible.

(d) The Chairperson, when practicable, shall notify the chief executive officer of the institution of the schedule of such hearings at least seven days prior to hearings.

(e) It shall be the responsibility of the chief executive officer of the institution or designee to immediately notify the Chairperson or designee if any inmate scheduled for a hearing is not expected to be available for any reason.

(f) It shall be the responsibility of the chief executive officer of the institution or designee to make arrangements to have any inmate scheduled for a parole hearing brought to the hearing, unless such inmate is physically unable to appear or refuses to appear for the hearing.

(g) It shall be the responsibility of the chief executive officer of the institution or designee to notify the Board panel, in writing, of the reason for the failure of an inmate to appear at a scheduled parole hearing.

(h) At the request of the Chairperson, it shall be the responsibility of the chief executive officer of the institution or designee to transport any inmate to another county correctional facility designated by the Chairperson for a scheduled parole hearing. A request to a chief executive officer or designee to transport an inmate shall only be made to insure the efficient functioning of the Board panel and in no case shall a chief executive officer or designee be requested to transport more than two inmates to another county correctional facility.

10A:71-3.43 Board panel hearing: notice of decision for county inmates

(a) At the conclusion of the Board panel hearing, the Board panel shall take one of the following actions:

1. Certify parole release as soon as practicable after the parole eligibility date by:

i. Establishing a specific parole release date as soon after the inmate's actual parole eligibility date as practicable; and

ii. Establishing appropriate pre-release conditions; and

iii. Establishing appropriate special parole conditions pursuant to N.J.A.C. 10A:71-6.

2. Deny parole;

3. Defer decision pending receipt of relevant information:

i. No such deferral shall extend more than 30 days unless otherwise authorized by the Board.

ii. If such additional relevant information is of an adverse nature, then the parole hearing shall be reconvened as soon as possible after receipt of such information.

4. Refer to the Board for final decision.

(b) At the Board panel hearing or within 21 days of the Board panel hearing, the Board panel shall issue a written notice to the inmate, the chief executive officer of the institution, the Bureau of Parole and the Board.

(c) Such notice shall consist of the decision of the Board panel, and, if the Board panel's decision is to deny parole or defer decision, the notice shall contain the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or by the chief executive officer of the institution.

10A:71-3.44 Board panel action: denial of parole

Upon determining to deny parole to a county inmate, the Board panel shall either establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole or direct the inmate to serve the balance of the sentence.

10A:71-3.45 Victim input

(a) Any victim injured as a result of a crime of the first or second degree or the nearest relative of a murder victim shall be entitled to present a statement for the parole report, filed pursuant to N.J.A.C. 10A:71-3.7, to be considered during the parole hearing process or to testify to the Board concerning the victim's harm.

(b) At the time of sentencing, the prosecutor shall notify any victim injured as a result of a crime of the first or second degree or the nearest relative of a murder victim of the opportunity to present a statement for the parole report to be considered during the parole hearing process or to give testimony to the Board concerning the victim's harm.

(c) Each victim or nearest relative of a murder victim shall be responsible for notifying the Board of his or her intent to submit a statement, or to testify, and to provide and keep current an appropriate mailing address.

(d) The statement or testimony of the victim or nearest relative of a murder victim may include the following:

1. The continuing nature and extent of any physical, psychological or emotional harm or trauma suffered;

2. The extent of any loss of earnings or ability to work suffered by the victim; and

3. The continuing effect of the crime upon the victim's family.

(e) At the time public notice is given pursuant to N.J.A.C. 10A:71-3.8, the Board shall notify any victim or nearest relative of a murder victim who has previously contacted the Board of the opportunity to provide a statement for inclusion in the parole report or to present testimony at a parole hearing. The Board shall notify such person at the address of record.

(f) The victim or nearest relative of a murder victim shall notify the Board within 30 days from the date of the notice provided pursuant to (e) above of his or her intent to submit a statement or to testify at a parole hearing. This time period may be waived by the Board for good cause.

(g) Upon the victim or nearest relative of a murder victim submitting a written statement to the Board subsequent to notice being provided pursuant to (e) above, the statement shall be made a part of the Board's file on the inmate and the inmate's case shall be referred to a hearing officer designated to conduct parole release hearings pursuant to N.J.A.C. 10A:71-3.14.

(h) Upon the victim or nearest relative of a murder victim informing the Board subsequent to notice being provided pursuant to (e) above that such person intends to testify, the Chairperson shall assign the inmate's case to a senior hearing officer for the purpose of receiving such person's testimony.

(i) Except as provided in N.J.A.C. 10A:71-3.48, the assigned senior hearing officer shall conduct a hearing within 30 days from the date the Board received notification pursuant to (h) above of the intent to offer testimony.

(j) The hearing shall be conducted at a time and place and on a date determined by the Chairperson or designee. Notice of the time, place and date of the hearing shall be provided to the victim or nearest relative of a murder victim in writing and shall be mailed at least 10 days prior to the hearing date.

(k) The hearing shall be recorded by an electronic recording device.

(l) The senior hearing officer shall prepare a written report within 14 days of the hearing date. A copy of the report shall be forwarded to the person offering testimony. A copy of the report shall be made a part of the Board's file on the inmate.

(m) Upon the completion of the written report, the inmate's case shall be referred to a hearing officer designated to

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conduct parole release hearings pursuant to N.J.A.C. 10A:71-3.14.

(n) The hearing scheduled pursuant to this section shall be conducted, when possible, prior to a parole release hearing and prior to the appropriate Board member(s), Board panel or the Board rendering a decision pursuant to N.J.A.C. 10A:71-3.16 and 3.18. However, nothing herein shall be construed to preclude the Board from conducting a timely parole release hearing.

(o) If notice pursuant to (f) above is received subsequent to the conducting of an initial parole hearing but prior to a decision being rendered in the inmate's case, the appropriate Board member(s), Board panel or the Board shall not render a decision in the inmate's case until the hearing has been conducted and the written report prepared and made a part of the Board's file.

(p) If notice pursuant to (f) above is received subsequent to the rendering of a decision certifying parole release, the appropriate Board member(s), Board panel or the Board shall suspend the parole release date pursuant to N.J.A.C. 10A:71-5.1 pending the completion of the hearing and the submission of a report.

1. Within 14 days of submission of the report, the Board member(s), Board panel or Board shall:

i. Evaluate the information provided;

ii. Determine whether the decision shall be affirmed or modified;

iii. Determine whether a rescission hearing shall be conducted pursuant to N.J.A.C. 10A:71-5; and

iv. Notify the inmate and the Department in writing of its decision.

(q) Any and all statements or testimony of the victim or nearest relative of a murder victim submitted to the Board pertaining to the continuing nature and extent of any physical harm or psychological or emotional harm or trauma suffered by the victim, the extent of any loss of earnings or ability to work suffered by the victim and the continuing effect of the crime upon the victim's family shall not be deemed confidential and shall be released to the inmate unless the withholding of the statements or testimony is requested by the victim and the hearing officer determines that the release of the statements or testimony would endanger the safety of the person providing the statements or testifying. The Board on its own motion may for good cause identify all or part of the statements or testimony as confidential.

(r) The provisions of this section except for public notice required pursuant to N.J.A.C. 10A:71-3.8 shall be applicable to the cases of juvenile and county inmates.

(s) Nothing in this section shall preclude the Board from receiving statements or testimony from any victim injured as a result of a crime or the nearest relative of a victim.

(t) A victim or the nearest relative of a victim who has submitted a written statement for the parole report or testified at a hearing pursuant to this section shall be notified by the appropriate Board panel or the Board of the final decision rendered in the inmate's case.

10A:71-3.46 Informational hearing

(a) Upon public notice of an inmate's parole eligibility being issued pursuant to N.J.A.C. 10A:71-3.8, the Attorney General, the appropriate county prosecutor, any other criminal justice agency and any interested party whose information and comment may be relevant as to the necessity or desirability of an inmate's parole shall be permitted, upon their application and subject to the approval of the Chairperson or designee, to submit to the appropriate panel or the Board evidence, to give testimony, examine and cross-examine witnesses and present such other information on all matters directly relevant to the parole of an inmate.

(b) The application shall be submitted to the Chairperson or designee in writing and shall include a description of the nature and type of evidence or testimony to be presented. A list of potential witnesses and a statement as to the relevancy of their testimony to the issue of parole must be submitted to the Chairperson or designee as part of the application or prior to the date of the hearing scheduled pursuant to this section.

(c) Upon receipt of the application and upon approval by the Chairperson or designee, the Chairperson or designee shall assign the case to a hearing officer for the conducting of a hearing.

(d) A designated representative shall notify the inmate in writing that a hearing will be scheduled for the purpose of receiving information relevant to his parole release. The inmate shall be informed of the identity of the agency or interested party requesting the hearing.

(e) Except as provided in N.J.A.C. 10A:71-3.48, the assigned hearing officer shall conduct the hearing within 30 days from the date the Chairperson or designee approved the application submitted pursuant to (a) above.

(f) The hearing shall be conducted at a time and place and on a date determined by the Chairperson or designee. Primary consideration shall be given to the conducting of the hearing within the county most convenient for the majority of the parties concerned.

(g) A designated representative shall provide notification of the time, date and location of the hearing to all interested parties and the inmate. The notice shall be in writing and shall be mailed no later than 15 days prior to the date of the hearing.

(h) The hearing shall be informal and non-adversarial in nature. The hearing officer shall have the authority to exclude from participation in the hearing any person who attempts to use the hearing as a forum for public commentary or as a public contest or whose participation becomes more adversarial than informative in nature.

(i) Prior to any person offering testimony the hearing officer shall advise the person of the following:

1. That his testimony will be summarized in a written report;

2. That the person will receive a copy of that portion of the report summarizing his statement; and

3. That the inmate will receive a copy of the summarized statement unless the hearing officer determines that the release of the information would endanger the safety of the person.

4. The Board on its own motion may for good cause identify all or part of the testimony summarized in the written report as confidential.

(j) The admissibility of any statement, document or information shall not be governed by the statutory or judicial rules of evidence of this State. Any statement, document, or information relevant to the issue of the inmate's suitability for parole may be received as evidence. The hearing officer is authorized to exclude any statement, document or information not relevant to the issue of the inmate's suitability for parole.

(k) Upon the completion of the hearing, which shall be recorded by an electronic recording device, the hearing officer shall prepare a written report within 14 days of the hearing date. The report shall summarize the information, testimony and documentation admitted at the hearing. A copy of the complete summary report shall be forwarded to the agency or

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interested party originally requesting the conducting of a hearing and to the inmate and/or counsel. A copy of the summary of each of the witnesses' testimony shall be forwarded to each witness. A complete summary report shall be made a part of the appropriate Board panel's or Board's file on the inmate.

(l) The inmate and/or counsel shall have 30 days to prepare a written response to the hearing officer's summary report and to submit the response to the Board. In addition, upon request, the inmate shall be provided an opportunity to present relevant information to the hearing officer. The request shall be in compliance with (b) above.

(m) Upon receipt of the inmate's request to present relevant information, the hearing officer shall proceed in accordance with (f), (g), (h), (i), (j) and (k) above.

(n) The inmate and the agency or interested party originally requesting the conducting of a hearing shall have 14 days to prepare comments to the hearing officer's summary report and submit the comments to the Board.

(o) The inmate may be represented by an attorney or such other qualified representative as the inmate may designate at both the initial hearing segment, at which the inmate may not be present, and at any subsequent hearing segment at which the inmate submits information and/or testimony. If a subsequent hearing segment is conducted at the request of the inmate, the Attorney General, the prosecutor, a criminal justice agency or an interested party may appear, subject to the security regulations of the institution, and participate in the hearing.

(p) Upon completion of the hearing process, the inmate's case shall be referred to a hearing officer designated to conduct parole release hearings pursuant to N.J.A.C. 10A:71-3.14.

(q) The hearing scheduled pursuant to this section shall be conducted, when possible, prior to a parole release hearing and prior to the appropriate Board member(s), Board panel or the Board rendering a decision pursuant to N.J.A.C. 10A:71-3.16 and 3.18. However, nothing herein shall be construed to preclude the Board from conducting a timely parole release hearing.

(r) Upon receipt of an application and upon approval by the Chairperson or designee subsequent to the conducting of an initial parole hearing and prior to a decision being rendered in the inmate's case, the appropriate Board member(s), Board panel or the Board shall not render a decision in the inmate's case until a hearing(s) has been conducted and the written report(s) prepared and made a part of the Board's file.

(s) Upon receipt of an application and upon approval by the Chairperson subsequent to the rendering of a decision certifying parole release, the appropriate Board member(s), Board panel or the Board shall suspend the parole release date pursuant to N.J.A.C. 10A:71-5.1 pending the completion of the hearing(s) and the submission of a report(s).

1. Within 21 days of submission of the report(s), the Board member(s), Board panel or the Board shall:

i. Evaluate the information provided;

ii. Determine whether the decision shall be affirmed or modified;

iii. Determine whether a rescission hearing shall be conducted pursuant to N.J.A.C. 10A:71-5; and

iv. Notify the inmate and the Department in writing of its decision.

(t) The provisions of this section, except for public notice required pursuant to N.J.A.C. 10A:71-3.8, shall be applicable to the cases of juvenile and county inmates.

10A:71-3.[29]**47** Conditions for parole release

(a) Release on a parole release date certified by a Board member or members is conditioned upon:

1. The completion of a parole plan approved by the Board member or members certifying parole release and acceptable to the Bureau of Parole[, or the Bureau of Interstate Services]; and

2. Satisfactory completion of any specific pre-release conditions established by the Board member or members certifying parole release **pursuant to N.J.A.C. 3.16(b)2 or 3.18(a)1.ii.**; and

3. (No change.)

10A:71-3.[30]**48** Waiver of Time Limits

(No change in text.)

SUBCHAPTER 4. APPEALS

10A:71-4.2 Appeals by inmates

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

(d) Any rescission of parole release date by a Board panel shall be appealable to the Board provided one of the following criteria is met:

1. The hearing officer or Board panel failed to consider material facts or failed to document that preponderance of the evidence indicates a substantial likelihood that the inmate will commit a crime if released on parole;

2. The Board panel's decision is contrary to written Board policy or procedure;

3. A Board member participating in the deliberations or disposition of the case has a demonstrable personal interest in the case which affected the decision.

[(d)]**(e)** (No change in text.)

[(e)]**(f)** A Classification of offender status pursuant to N.J.S.A. 30:4-123.12 shall be appealable to the [prison] **adult** Board panel one of the following criteria is met:

1.-4. (No change.)

[(f)] **(g)** A classification of offender status pursuant to N.J.S.A. 30:4-123.51 and N.J.S.A. 30:4-123.12 shall be appealable to the Board provided a showing is made that the [prison] **adult** Board panel's classification is contrary to written Board policy or procedure.

[(g)]**(h)** (No change in text.)

10A:71-4.4 Review of hearing officer, board member or board panel decisions

(a) A Board panel may, upon its own motion for good cause, reconsider any decision to **grant,** deny or revoke parole.

(b) A Board member who participated as a hearing officer or Board panel member in a case may request that the Board review any decision of the Board panel on such case.

1. (No change.)

2. Such request shall be made by stating the reasons therefor in writing to the Chairperson [of the Board]. A copy of such request shall be forwarded to the inmate and the chief executive officer of the institution where the inmate is housed.

3. Such request shall be made within seven days **from the date of issuance** of the Board panel's decision.

4. The Chairperson [of the Board] shall schedule a meeting of the Board to consider such request within [21] **45** days [of the Board panel's decision] **from the date the request was received.**

5. The Chairperson shall advise the inmate and the chief executive officer of the institution where the inmate is housed in writing of the decision of the Board within [7] **14** days of the decision.

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(c) The Board may, upon the request of at least [three] **two** Board members for good cause, review the decision of any hearing officer, Board member or Board panel.

1. Such request shall be made by stating the reason therefor in writing to the Chairperson [of the Board]. A copy of such request shall be forwarded to the inmate and the chief executive officer of the institution of incarceration.

2. Such request shall be made within [seven] **14** days **from the date of issuance** of the decision being reviewed.

3. The Chairperson [of the Board] shall schedule a meeting of the Board to consider such request within [21] **45** days [of the decision being reviewed] **from the date the request was received**.

4. The Chairperson shall advise the inmate and the chief executive officer of the institution of incarceration in writing of the decision of the Board within [seven] **14** days of the decision.

(d) (No change.)

SUBCHAPTER 5. SUSPENDING OR RESCINDING A PAROLE RELEASE DATE

10A:71-5.1 Suspension of a parole release date

(a) **Any** [S]suspension **by the Chairperson or a designated representative** of a parole release date shall act to prohibit the release of the inmate by the Department on the original parole release date unless such suspension is subsequently vacated.

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

10A:71-5.2 Approval and acceptance of parole plan

(a) (No change.)

(b) If a parole plan has not been accepted by the appropriate supervisory agency, the inmate's parole release date shall be suspended by a designated representative of [such agency] **the Bureau of Parole** pending acceptance of a parole plan. **If such suspension exceeds 60 days from the parole release date, the Bureau of Parole shall advise the Board in writing as to the reasons for the failure to approve or accept a parole plan.**

(c) [If such suspension results in an inmate's incarceration for a period of 30 days after the original parole release date, the Chairperson shall immediately schedule a hearing before the appropriate Board to determine] **Upon the Board receiving notification from the Bureau of Parole of the failure to approve or accept a parole plan, the Board member or members certifying parole release shall review the inmate's case, evaluate** the reasons for the failure to approve or accept a parole plan, **and determine if further action is appropriate**.

10A:71-5.3 Alteration of parole eligibility

(a) If, by reason of an additional parole eligibility term which is aggregated pursuant to N.J.A.C. 10A:71-3.2, an inmate's parole eligibility date is altered [to a date which is later than the original parole release date], such parole release date shall be [permanently] suspended.

(b) If an inmate receives an additional sentence as a young adult offender, any parole release date shall be suspended pending consideration of whether a new primary parole eligibility date should be established pursuant to N.J.A.C. 10A:71-3.3 and 5.5. If a new primary parole eligibility date is established, the original parole release date shall be [permanently] suspended.

(c) If an inmate receives an additional sentence [and the flat parole eligibility term on such sentence is not aggregated pursuant to N.J.A.C. 10A:71-3.2] **pursuant to N.J.S.A. 2A:113-4, N.J.S.A. 2A:164-17, or N.J.S.A. 2C:1-1(b),** such inmate may request that the original parole release date be suspended.

1.-2. (No change.)

10A:71-5.6 Parole rescission hearing—scheduling

(a) (No change.)

(b) The purpose of the rescission hearing shall be to determine whether, due to circumstances of an institutional infraction committed by such inmate **and**/or due to circumstances of the inmate's case which were not previously considered, there is good cause for the Board panel to reconsider the prior determination certifying parole release.

(c) Upon the initiation of the rescission hearing process, the parole release date shall be suspended for a period of not more than 60 days, and within said time period, a rescission hearing shall be conducted unless the inmate requests a postponement of the rescission hearing.

(d) If the inmate requests a postponement of the rescission hearing, the postponement shall be granted by the hearing officer or Board panel. Such request shall be made in writing and shall be made a part of the inmate's case record.

10A:71-5.7 Parole rescission hearing—notice of hearing

[(a) Upon the initiation of the rescission hearing process, the parole release date shall be suspended for a period of not more than 60 days pending the issuance of a final decision by the Board panel.]

[(b)] **(a)** (No change in text.)

[(c)] **(b)** Such notification shall inform the inmate of the following rights to which he or she shall be entitled at the rescission hearing;

1.-5. (No change.)

6. The right to confront and cross-examine adverse witnesses upon request, unless the hearing officer determines that such witnesses would be subjected to risk [or] **of** harm.

7.-8. (No change.)

SUBCHAPTER 6. SUPERVISION

10A:71-6.1 Administration

(a) (No change.)

(b) Supervision shall continue until the expiration of the maximum sentence or sentences [and payment of any fine] subject, however, to earlier discharge from parole in accordance with the provisions of N.J.A.C. 10A:71-6.9.

10A:71-6.3 Certificate of parole

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

(c) Responsibility for the delivery of the certificates of parole shall rest with the Chief of the Bureau of Parole[, the Chief of the Bureau of Interstate Services] or a designated representative of the Board.

(d)-(g) (No change.)

10A:71-6.4 Conditions of parole

(a) The certificate of parole shall contain the following general conditions of parole:

1.-3. (No change.)

4. You are to notify your parole officer immediately after any arrest **and after accepting any pre-trial release including bail.**

5. You are to obtain approval of your parole officer:

[i. Before accepting any pre-trial release, including bail.]

[ii.] **i.** For any change in your residence or employment location.

[iii.] **ii.** Before leaving the state of your approved residence for longer than 24 hours, except as otherwise directed for good cause by the parole officer.

[iv. Before applying for a permit to carry a firearm, before, securing a hunting license, or before owning or possessing a firearm for any purpose.]

6. You are not to own or possess a firearm for any purpose.

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[6.] **7.** You are required to make payment to the Bureau of Parole of any fine or penalty **or restitution** imposed by the sentencing court.

(b) (No change.)

(c) In the case of a county inmate, the performance of public service for the remainder of the term of the sentence shall be a required condition of parole where appropriate. The Bureau of Parole shall document for the record the basis for a county inmate not performing public service.

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

[(d)] **(e)** Additional special conditions may be imposed by the District Parole Supervisor when, on the opinion of the District Parole Supervisor, such conditions would reduce the likelihood of recurrence of criminal or delinquent behavior. The parolee **and the Board** shall be given written notice [prior to and] upon the imposition of such additional conditions.

[(e)] **(f)** If a parolee owes a fine, penalty or restitution, the District Parole Supervisor shall, unless otherwise ordered by the Board or members certifying parole release or the sentencing court, be responsible for specifying a **reasonable** schedule for payment of such fine, penalty or restitution.

10A:71-6.5 Restitution

(a) (No change.)

(b) The Board shall identify for the sentencing court the elements or factors to be considered in computing the amount of restitution and specify to the court the manner in which the following factors are to be applied.

1. Limitation of restitution to actual loss or damage caused by the crime. Damage may be limited to medical expenses and related costs, funeral expenses, specific personal property losses, other losses if clearly provable, and lost wages for limited periods of time which do not involve assessments of life expectancy.

2. Restitution is to be made to the persons most directly affected by the parolee's criminal acts.

3. Restitution must be related to the parolee's ability to pay and should not exceed an amount which would jeopardize its rehabilitative purpose.

4. Restitution must be directly related to the losses occurring as a result of the criminal act and to the attitude of the offender.

[(b)] **(c)** Upon being notified by the sentencing court as to amount of restitution set, the Board shall notify the [District Parole Supervisor and] **inmate, or, if released on parole,** the parolee **and the District Parole Supervisor of the amount of restitution.**

10A:71-6.6 Modification of conditions

(a) (No change.)

(b) Except as provided in N.J.A.C. 10A:71-6.4[(d)] **(e)**, a parolee or the parolee's parole officer may apply to the appropriate Board panel at any time for modification of the conditions of parole.

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

10A:71-6.7 Adjustment hearings: State prison parolees

(a) (No change.)

(b) Such adjustment hearings shall be conducted by a hearing officer appointed by the Chief of the Bureau of Parole [or the Chief of the Bureau of Interstate Services].

1. (No change.)

2. Such appointment shall be made by that authority of the [Board and] Chairperson, and shall in no way limit or otherwise alter the authority of the [Board] **Chairperson** to designate or appoint a hearing officer for adjustment hearings in cases where the [Board] **Chairperson** deems such action appropriate.

(c)-(f) (No change.)

10A:71-6.8 Forfeiture of commutation time credits

(a) If the preliminary hearing officer pursuant to N.J.A.C. 10A:71-7.4 or the [prison] **adult** Board panel pursuant to N.J.A.C. 10A:71-7.12 determines that a State prison parolee has violated a condition of parole but that such violation is not serious or persistent or that revocation of parole is not desirable, the hearing officer or Board panel may order the forfeiture of up to 365 days of commutation time credits.

(b) Any such action by the preliminary hearing officer shall be appealable to the [prison] **adult** Board panel pursuant to the provisions of N.J.A.C. 10A:71-6.7(f).

10A:71-6.9 Discharge from parole

(a) The appropriate Board panel may grant any parolee a complete discharge from parole prior to the expiration of the maximum term for which he or she was sentenced, provided that;

1.-2. (No change.)

3. The parole has made full payment of any fine **or penalty** or restitution.

(b) The Board panel will consider requests for discharge after the following periods of parole supervision have been completed:

1. (No change.)

2. Except as provided above, in the case of juvenile parolees for [M]**m**urder and [M]**m**anslaughter and in the case of adult parolees serving sentences for [M]**m**urder, **manslaughter,** [K]**k**idnapping, [A]**a**ggravated [S]**s**exual [A]**a**ssault (including attempts] [;], [R]**r**obbery **first degree**[;], [A]**a**rson[;], [A]**a**ggravated [A]**a**ssault **second degree**[;], and **sale or** [D]**d**istribution or [S]**s**ale of [Narcotics;] **controlled dangerous substance and possession of controlled dangerous substance with intent to distribute,** after a period of two years provided the parolee is under advanced supervision status.

3.-5. (No change.)

(c) (No change.)

(d) When a parolee has completed two years of parole supervision and thereafter on an annual basis, the parole officer and the District Parole Supervisor shall review the case to determine whether good reason exists to require continued supervision.

1-3. (No change.)

(e) (No change.)

SUBCHAPTER 7. REVOCATION OF PAROLE

10A:71-7.2 Issuance of warrants

(a) (No change.)

(b) In accordance with the provisions of N.J.S.A. 30:4-123.62, the Chief of the Bureau of Parole[, the Chief of the Bureau of Interstate Services] and the District Parole Supervisors are hereby authorized to issue warrants on behalf of the Chairperson [of the Board].

(c) (No change.)

(d) If an emergency exists and if the individual(s) authorized to issue warrants pursuant to (b) and (c) above are not available, a parole officer may issue a warrant pending review by the individual(s) authorized to issue warrants pursuant to (b) and (c) above.

1. When a warrant is issued pursuant to (d) above, the individual(s) authorized to issue warrants pursuant to (b) or

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(c) above shall review **the basis for the issuance of** such warrant within 48 hours of the issuance of the warrant.

2. (No change.)

10A:71-7.3 Prosecutor's motion for accelerated revocation

(a) (No change.)

(b) If the prosecuting authority determines that the charges against the parolee are of a serious nature and the parolee otherwise poses a danger to public safety, the prosecuting authority may apply in writing to the Chairperson or his or her designated representative for the prompt initiation of revocation proceedings. Such application shall include:

1.-2. (No change.)

3. Appropriate discovery material which will **clearly** document[, by clear and convincing evidence,] that the parolee may have committed a new crime or an act of delinquency; and

4. (No change.)

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

(e) The prosecuting authority may appear at any preliminary and any revocation hearing initiated pursuant to this subsection in order to present evidence **and/or testimony in regard to** [of] the parolee's alleged violation of parole conditions.

(f)-(g) (No change.)

10A:71-7.6 Designation of preliminary hearing officers

(a) Preliminary hearings shall be conducted by a hearing officer appointed by the Chief of the Bureau of Parole [or the Chief of the Bureau of Interstate Services].

(b) (No change.)

(c) Such appointment shall be made by authority of [the Board and] the Chairperson, and shall in no way limit or otherwise alter the authority of the [Board] **Chairperson** to designate or appoint a hearing officer for preliminary hearings in cases where the [Board] **Chairperson** deems such action appropriate.

10A:71-7.7 Preliminary hearing; notice of hearing

(a) (No change.)

(b) Such notice shall be served upon the parolee by personal service or by regular mail to the institution where the parolee is housed **or to the address of record**.

(c) (No change.)

10A:71-7.9 Status of parolee pending parole revocation hearing

(a) (No change.)

(b) When the hearing officer determines that probable cause exists to believe that the parolee has seriously or persistently violated conditions of parole, it shall be the responsibility of the hearing officer to determine whether the parolee shall be **taken into custody pursuant to N.J.A.C. 10A:71-7.2,** continued in custody or released from custody pending the revocation hearing.

1. (No change.)

2. The parolee shall be **taken into custody or** continued in custody only where, in the opinion of the hearing officer, the parolee poses a danger to the public safety or where the parolee may not appear at the revocation hearing.

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

10A:71-7.10 Preliminary hearing; notice of decision

(a) At the conclusion of the preliminary hearing, it shall be the responsibility of the hearing officer to forward a Notice of Decision to the **parolee and the** parolee's attorney [or directly to the parolee where he or she appeared **pro se**], the Department and the appropriate Board panel within [14] **seven** days of the date of the preliminary hearing.

(b) (No change.)

(c) Such notice shall be served upon the parolee's attorney and the parolee by personal service or by regular mail to the institution where the parolee is housed **or to the address of record.**

(d) The parolee **and the parolee's attorney** may submit written exceptions or comments on the hearing summary. Such exceptions shall be forwarded to the appropriate Board panel within [14] **seven** days after the receipt of the hearing officer's report unless the parolee waives the right to submit exceptions.

10A:71-7.11 Board panel action pending revocation hearing

(a) The Board panel, [within 14 days of receipt] **upon review** of the preliminary hearing Notice of Decision, may modify or overrule the determinations of the preliminary hearing officer.

(b) If the Board panel modifies or overrules the determinations of the preliminary hearing officer, the panel shall take appropriate action on the parolee's case and shall notify the parolee, **the parolee's attorney,** and the hearing officer in writing as to its decision and the reasons therefor.

(c) (No change.)

10A:71-7.12 Parole revocation hearing

(a) (No change.)

(b) [The parole revocation hearing shall be conducted by a hearing officer who shall be a designated Board member or representative who did not conduct the preliminary hearing.] **A parole revocation hearing may be conducted when the parolee has been convicted of a disorderly persons offense committed while on parole.**

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

(e) The parole revocation hearing shall be conducted by a hearing officer who shall be a designated representative of the Board and who did not conduct the preliminary hearing.

10A:71-7.13 Revocation hearing; scheduling

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

(d) If the request for postponement by the hearing officer or by a parolee who is not in custody is due to unanticipated scheduling problems or other emergent circumstances, such [request] **postponement** shall be granted by the appropriate Board panel **and shall not exceed 60 days from the originally scheduled date of the revocation hearing.**

10A:71-7.14 Revocation hearing; notice of hearing

(a) (No change.)

(b) Such notice shall be served upon the parolee by personal service or by regular mail to the **institution where the parolee is housed or to the** parolee's [last known] address **of record.**

(c) Such notice shall inform the parolee of the **following: the** purpose of the hearing; the violation(s) of parole conditions alleged; the time, date, place and circumstances of the alleged violation(s); **the name(s) of any witness(es) scheduled to appear at the hearing;** and the following rights to which the parolee shall be entitled at the revocation hearing:

1.-4. (No change.)

5. The right to have the hearing officer issue a subpoena to compel the appearance of witness[(]es[)], provided that a prima facie showing is made that the prospective witnesses will provide material testimony relevant to the alleged violation(s) of parole.

6.-9. (No change.)

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10A:71-7.15 Record of the revocation hearing

(a) (No change.)

(b) The hearing officer shall prepare a written summary which shall summarize the revocation hearing and contain the hearing officer's opinion as to whether the alleged violation(s) [have] **has** been substantiated and the reason(s) therefor.

1. (No change.)

2. A copy of the hearing summary shall be forwarded to the parolee's attorney[,] or directly to the parolee where he or she has appeared pro se[,] in order that the parolee or his or her attorney may object to or comment on the hearing summary by submitting written exceptions to such summary. Such exceptions shall be forwarded to the appropriate Board panel within seven days after receipt of the hearing officer's hearing summary.

(c) The hearing officer may verbally advise the parolee at the time of the hearing of the hearing officer's opinion as to whether the alleged violation(s) [have] **has** been substantiated.

10A:71-7.16 Board panel action; schedule of future parole eligibility dates upon revocation of parole

(a) After consideration of the hearing officer's hearing summary and opinion and any written exceptions thereto, [the] **a two member** Board panel shall determine whether to revoke parole pursuant to N.J.A.C. 10A:71-7.12, and, if parole is revoked, the **two-member** Board panel shall, based upon the following schedule, establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole.

(b) Except as provided herein, upon revocation of parole, **an** [prison] **adult** inmate shall serve 12 months, a young adult inmate shall serve nine months, and a juvenile inmate shall serve six months, [if he or she has violated one of the following conditions of parole] **if the inmate has committed one of the following violations of parole**:

1. [Reporting] **Failure to report** to the parole officer, N.J.A.C. 10A:71-6.4(a)3, provided that such parolee is declared by the District Parole Supervisor to be missing from parole supervision.

2. [Approval of parole officer for firearm application or possession, N.J.A.C. 10A:71-6.4(a)5 (iv)] **Owning or possessing a firearm for any purpose, N.J.A.C. 10A:71-6.4(a)6.**

3. **Failure to comply with a**[A]ny special condition of parole imposed pursuant to N.J.A.C. 10A:71-6.4[(c)] **(d)** or 6.4[(d)] **(e)**.

[4. In the case of a juvenile inmate, obeying all laws and ordinances, section 6.4(a)(1), unless such violation is a criminal violation or a violation which, if committed by an adult, would constitute a disorderly persons or petty disorderly persons offense.]

(c) The future parole eligibility date required pursuant to (b) above may be increased or decreased by up to three months when, in the opinion of the **two-member** Board panel pursuant to [(i)] **(n)** and [(j)] **(o)** below, the circumstances of the parole violation and the characteristics and past record of the parolee warrant such [consideration] **adjustment**.

(d) Except as provided herein, upon revocation of parole, **an** [prison] **adult** inmate shall serve eight months [and], a young adult **inmate shall serve six months** [or] **and a** juvenile inmate shall serve four months, if [he or she] **the inmate** has violated, by non-criminal conduct, any parole condition not specified under (b), above.

(e) The future parole eligibility date required pursuant to (d) above may be increased or decreased by up to three months in the case of **an** [prison] **adult** inmate or by up to two months in the case of a young adult or juvenile inmate when, in the opinion of [the] **a two-member** Board panel pursuant to subsections [(i)] **(n)** and [(j)] **(o)**, below, the circumstances of the parole violation and the characteristics and past record of the parolee warrant such [consideration] **adjustment**.

(f) Except as provided herein, upon [the first] revocation of parole, **an** [prison] **adult** inmate revoked for commission of a crime while on parole shall serve [on half of the time remaining to be served on his or her sentence(s), and, upon the second or subsequent revocation of that parole, a prison inmate revoked for commission of a crime while on parole shall serve whatever time remains on the maximum sentence(s).]:

1. Except as provided in [(h)] **(g)** and [(k)] **(p)** below and N.J.A.C. 10A:71-3.2, no [prison] **adult** inmate revoked for commission of a fourth degree crime shall serve less than eight nor more than 12 months.

2. Except as provided in [(h)] **(g)** and [(k)] **(p)** below and N.J.A.C. 10A:71-3.2, no [prison] **adult** inmate revoked for commission of a third degree crime or for possession of a controlled dangerous substance shall serve less than 12 nor more than 16 months.

3. Except as provided in [(h)] **(g)** and [(k)] **(p)** below and N.J.A.C. 10A:71-3.2, no [prison] **adult** inmate revoked for commission of a second degree crime, [or] for **sale or** distribution of a controlled dangerous substance **or for possession of controlled dangerous substance with intent to distribute** shall serve less than 16 nor more than 28 months.

4. Except as provided in [(h)] **(g)** and [(k)] **(p)** below and N.J.A.C. 10A:71-3.2, no [prison] **adult** inmate revoked for commission of a first degree crime shall serve less than 28 nor more than 48 months[; provided, however, that when such crime is murder or kidnapping, no inmate shall serve less than four years, eight months nor more than eight years, 4 months].

5. Except as provided in (g) and (p) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for the commission of the crimes of murder and kidnapping shall serve less than four years, eight months nor more than eight years, four months.

6. Upon the second or subsequent revocation of parole, an adult inmate revoked for commission of a crime while on parole shall serve whatever time remains on the maximum sentence(s).

(g) Except as provided herein, upon a two-member adult Board panel determining that an adult inmate shall serve a future parole eligibility term upon revocation of parole, the two-member adult Board panel shall establish such terms as follows:

1. The two-member adult Board panel shall establish the following:

i. A term of ten months for the commission of a fourth degree crime;

ii. A term of 14 months for the commission of a third degree crime or for possession of controlled dangerous substance;

iii. A term of 22 months for the commission of a second degree crime, for the sale or distribution of controlled dangerous substance or for the possession of controlled dangerous substance with intent to distribute;

iv. A term of 38 months for the commission of a first degree crime;

v. A term of six years, six months for the commission of the crime of murder or kidnapping.

2. The term established may be increased or decreased within the limits provided by (f) above when, in the evaluation of the two member adult Board panel, the aggravating and

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mitigating factors as set forth in (n) and (o) below, the circumstances of the parole violation and the characteristics and past record of the parolee warrant such adjustment.

[(g)] **(h)** [Except as provided herein, a young adult inmate revoked for commission of a crime while on parole shall serve at least six months but no more than the inmate's original primary eligibility term prior to parole.] **Except as provided herein, upon a two member young adult Board panel determining that a young adult inmate shall serve a future eligibility term upon the revocation of parole, the two-member young adult Board panel shall establish the following:**

1. [Except as provided in (h) and (k) below, a young adult inmate revoked for the commission of a fourth degree crime shall serve six months.] **Except as provided in (i) and (p) below, a term of 8 months for the commission of a fourth degree crime.**

2. [Except as provided in subsections (h) and (k) and N.J.A.C. 10A:71-3.3, a young adult inmate revoked for the commission of a third degree crime or for possession of controlled dangerous substance shall serve six months plus one quarter of the difference between six months and the original primary eligibility term prior to parole.] **Except as provided in (i) and (p) below, a term of ten months for the commission of a third degree crime or possession of controlled dangerous substance.**

3. [Except as provided in subsections (h) and (k) and N.J.A.C. 10A:71-3.3, a young adult inmate revoked for the commission of a second degree crime or for distribution of a controlled dangerous substance shall serve six months plus one half of the difference between six months and the original primary eligibility term prior to parole.] **Except as provided in (i) and (p) below, a term of 16 months for the commission of a second degree crime, for the sale or distribution of controlled dangerous substance or for the possession of controlled dangerous substance with intent to distribute.**

4. [Except as provided in subsections (h) and (k) and N.J.A.C. 10A:71-3.3, a young adult inmate revoked for the commission of a first degree crime shall serve six months plus three quarters of the difference between six months and the original primary eligibility term prior to parole; provided, however, that when such crime is murder or kidnapping, such inmate shall serve a term which shall be equal to that which was originally to be served prior to parole.] **Except as provided in (i) and (p) below, a term of 24 months for the commission of a first degree crime.**

5. Except as provided in (i) and (p) below, a term of 30 months for the commission of the crimes of murder or kidnapping.

[(h)] **(i)** The future parole eligibility date required pursuant to [(f) and (g)] **(h)** above may be increased or decreased [by up to three months] when, in the opinion of the **two-member young adult** Bord panel pursuant to [(i)] **(n)** or [(j)] **(o)** below, the circumstances of the parole violation and the characteristics and past records of the parolee warrant such consideration. **The increase or decrease shall be no more than the following:**

1. Two months in the case of the commission of a fourth degree crime;

2. Four months in the case of the commission of a third degree crime or possession of controlled dangerous substance;

3. Six months in the case of the commission of a second degree crime, sale or distribution of controlled dangerous substance or possession of controlled dangerous substance with intent to distribute;

4. Eight months in the case of the commission of a first degree crime;

5. Ten months in the case of the commission of the crimes of murder or kidnapping.

(j) Except as provided herein, upon the juvenile Board panel determining that a juvenile inmate shall serve a future parole release term upon revocation of parole, the juvenile Board panel shall establish the following:

1. Except as provided in (k) and (p) below, a term of six months for the commission of a fourth degree crime or an offense which constitutes a crime of the fourth degree if committed by an adult;

2. Except as provided in (k) and (p) below, a term of eight months for the commission of a third degree crime, an offense which constitutes a crime of the third degree if committed by an adult or the offense of possession of controlled dangerous substance;

3. Except as provided in (k) and (p) below, a term of 12 months for the commission of a second degree crime, an offense which constitutes a crime of the second degree if committed by an adult, the offense of sale or distribution of controlled dangerous substance or the offense of possession of controlled dangerous substance with intent to distribute;

4. Except as provided in (k) and (p) below a term of 16 months for the commission of a first degree crime or an offense which constitutes a crime of the first degree if committed by an adult;

5. Except as provided in (k) and (p) below, a term of 20 months for the commission of the crime of murder or kidnapping or an offense which constitutes the crime of murder or kidnapping if committed by an adult.

(k) The future parole release term required pursuant to (j) above may be increased or decreased when in the opinion of the juvenile Board panel, pursuant to (n) or (o) below, the circumstances of the parole violation and the characteristics and past record of the parolee warrant such consideration. The increase or decrease shall be no more than the following:

1. Two months in the case of the commission of a fourth degree crime or an offense which constitutes a crime of the fourth degree if committed by an adult;

2. Four months in the case of the commission of a third degree crime, an offense which constitutes a crime of the third degree if committed by an adult or the offense of possession of controlled dangerous substance;

3. Six months in the case of the commission of a second degree crime, an offense which constitutes a crime of the second degree if committed by an adult, the offense of sale or distribution of controlled dangerous substance, or the offense of possession of controlled dangerous substance with intent to distribute;

4. Eight months in the case of the commission of a first degree crime or an offense which constitutes a crime of the first degree if committed by an adult;

5. Ten months in the case of the crime of murder or kidnapping or an offense which constitutes the crime of murder or kidnapping if committed by an adult.

(l) Except as provided herein, an inmate, upon the revocation of parole for the commission of crime while on parole, shall serve at least six months or that portion of the custodial term remaining whichever, is less.

(m) In no case shall a future parole eligibility date established pursuant to (b), (c), (d), (e), (f), (g), (h), (i) above or the future parole release date established pursuant to (j) and (k) above be greater than the balance of the custodial term remaining.

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[(i)] **(n)** [The] **A two-member** Board panel may decrease, **pursuant to (c), (e), (g)2 or (i) above,** the future parole eligibility date required pursuant to [(c)] **(b)**, [(e)] **(d), (f), (g)(1)** or (h) above, **or decrease pursuant to (k) above the future parole release date required pursuant to (j) above** [if any new sentence imposed is consecutive to the parole violation or] if the **two-member** Board panel determines that one or more of the following mitigating factors is present:

1.-7. (No change.)

[(j)] **(o)** [The] **A two-member** Board panel may increase, **pursuant to (c), (e), (g)2 or (i) above,** the future parole eligibility date required pursuant to [(c)] **(b), (d),** [(e)] **(f), (g)1,** or (h) above **or decreased pursuant to (k) above, the future parole release date required pursuant to (j) above,** if the **two member** Board panel determines that one or more of the following aggravating factors is present:

1.-7. (No change.)

[(k)] **(p)** [The] **A three-member** Board **panel** may establish a future parole eligibility date which differs from that otherwise required by the provisions of this section if the future parole eligibility date **or, in the case of a juvenile inmate, a future parole release date,** which would otherwise be established pursuant to this section is clearly inappropriate in consideration of the circumstances of the parole violation and the characteristics and prior criminal record of the parolee.

1. If, in the opinion of [the] **a two-member** Board panel revoking parole, the future parole eligibility date **or, in the case of a juvenile inmate, the future parole release date** which would otherwise be established pursuant to this section is clearly inappropriate as provided herein, the **two-member** Board panel shall refer such case [to the Board] **for a three-member Board panel review for the purpose of establishing a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date.**

(i) In such instances, the third Board panel member shall review the record.

2. The [appropriate] **two-member** Board panel shall, at least 14 days prior to the [Board's] **three-member Board panel's** determination [of the future parole eligibility date], notify the inmate **and the inmate's attorney,** in writing, pursuant to N.J.A.C. 10A:71-7.17 that a future parole eligibility date **or, in the case of a juvenile inmate, a future parole release date,** pursuant to this section has not been established and the reasons therefor **and that a three member Board panel review of the record will be scheduled.**

3. The **three member** Board **panel** shall, upon disposition of the case, state in writing to the inmate **and the inmate's attorney** the reasons for the establishment of [any] **a** future parole eligibility date **or, in the case of a juvenile inmate, a future parole release date** which differs from that otherwise required by the provisions of this section.

4. The decision of the three-member Board panel to establish a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, which differs from that required by the provisions of this section shall be by unanimous decision only. Failure to reach an unanimous decision shall result in the referral of the inmate's case to the Board for the establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date.

5. If the three-member Board panel fails to reach an unanimous decision, the three-member Board panel shall notify the inmate and the inmate's attorney, in writing, that his case has been referred to the Board for the establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date.

6. The Board's establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date shall be based on the review of the record. Upon disposition of the case, the Board shall state in writing to the inmate and the inmate's attorney the reasons for the establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, which differs from that otherwise required by the provisions of this section.

[(l)] **(q)** Any future parole eligibility [date] **term** determined pursuant to this section shall [, unless otherwise ordered by a court in imposing a sentence for a crime committed while on parole,] commence on the date the parolee was returned to custody as a parole violator, **unless otherwise determined as a result of a court imposing a sentence for a crime committed while on parole.**

(r) In the case of a county inmate who has been granted parole and whose parole has been revoked, the inmate shall not be credited for any time served on parole and shall not be eligible for parole consideration on the remainder of the original county sentence.

[(m)] **(s)** This section shall apply to all parolees whose parole is revoked by the Board or a Board panel after May 15, 1980, and shall apply to all inmates who have not yet begun to serve time on a parole violation. The [prison] **adult** [b]**B**oard panel may apply this section to any [prison] **adult** inmate currently serving a parole violation who requests such application.

(t) The prior provisions of (d), (f), (g) (redesignated as (h) above) and (h) (redesignated as (i) above) shall apply to inmates who have violated their parole prior to the effective date of the amendments and shall continue in effect for that purpose. The amendments to (d), (f), (g), (h) above (formerly (g)) and (i) above (formerly (h)) shall apply to inmates who have violated their parole on or after the effective date of the amendments.

(u) The amendments to (o) above shall apply to the cases of inmates in which a parole warrant has been executed on or after the effective date of the amendments.

10A:71-7.17 Revocation hearing; notice of decision

(a) Within 21 days of the revocation hearing, the appropriate Board panel shall issue a written Notice of Decision to the parolee **and the parolee's attorney**, the Department and the Board.

(b) (No change.)

10A:71-7.18 Adult diagnostic and treatment center examination for sex offenders

(a) If a parolee has been sentenced and paroled under provisions of the "Sex Offender Act," N.J.S.A. 2C:47-1, et seq., and if the [prison] adult Board panel has revoked parole, a request for a complete psychiatric examination, containing a copy of the hearing summary of the revocation hearing and the **adult** Board panel's Notice of Decision, shall be forwarded to the chief executive officer of the Adult Diagnostic and Treatment Center.

[(b) A copy of such request shall be forwarded to the parolee, and, when the parolee is presently in custody, to the chief executive officer of the institution of incarceration.]

[(c)] **(b)** The **adult** Board **panel**, in cooperation with the chief executive officer of the Adult Diagnostic and Treatment Center, shall schedule such examination and forward written notice of the date, time and place of such examination to the parolee and **the parolee's attorney and**, when the parolee is in custody, to the chief executive officer of the institution of incarceration.

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[(d)] **(c)** Such examination shall be for the purpose of determining whether the violation(s) of the parole conditions [indicate] **reflects** [the parolee suffers from continuing sexual aberrations or disorders] **emotional or behavioral problems as a sex offender** [which indicate that the parolee], **evidence that the parolee** is incapable of making an acceptable social adjustment in [society] **the community,** [or, conversely, the parolee's mental condition warrants] **and the necessity for** continued custodial supervision and **further specialized** treatment as a sex offender.

[(e)] **(d)** As soon as practicable upon completion of such examination, it shall be the responsibility of the chief executive officer of the Adult Diagnostic and Treatment Center to forward a written report of such examination to the [prison] **adult** Board panel.

[(f)] **(e)** (No change in text.)

[(g)] **(f)** The [prison] **adult** Board panel shall forward a copy of such report to the parolee's attorney, or directly to the parolee where he or she has appeared pro se, **provided said report is not classified as confidential by the rules and regulations of the Department,** in order that the parolee or his or her attorney may object or comment on the report by submitting written exceptions. Such exceptions shall be forwarded to the [prison] **adult** Board panel within a reasonable period of time after the receipt of the report.

[(h)] **(g)** If the Adult Diagnostic and Treatment Center staff determines that the following conditions exist, then the [prison] **adult** Board panel shall, if it concurs [in] **with** the report, vacate its revocation of parole and release the inmate on parole as soon as practicable:

1. **That** the parolee's conduct does not [indicate] **reflect** [that the parolee suffers from continuing sexual aberrations or disorders which indicate that the parolee is incapable of making an acceptable social adjustment in society] **emotional or behavioral problems as a sex offender;** [and]

2. That there is no evidence that the parolee is incapable of making an acceptable social adjustment in the community; and

[2.] **3. That the** parolee's [mental] condition does not warrant continued custodial supervision and **further specialized** treatment as a sex offender.

(h) If the Adult Diagnostic and Treatment Center staff determines that the following conditions exist, the adult Board panel shall affirm the revocation hearing:

1. That the parolee's conduct does reflect emotional or behavioral problems as a sex offender;

2. That there is evidence that the parolee is incapable of making an acceptable social adjustment in the community; and

3. That the parolee's condition does warrant continued custodial supervision and further specialized treatment as a sex offender.

(i) An inmate who has had his parole revoked and who remains confined under the provisions of the "Sex Offender Act" shall be considered for parole by the adult Board panel upon the recommendation by the Special Classification Review Board that the inmate is capable of making an acceptable social adjustment in the community.

10A:71-7.19 Withdrawal of parole warrants

(a) When a warrant for the arrest of a parolee is withdrawn, such warrant shall be immediately cancelled. Such cancellation shall not alter any forfeiture of time [credited] pursuant to **N.J.S.A.** 30:4-123.65.

(b) If the Board panel determines that a parole warrant was issued in error, upon withdrawal of such warrant the warrant shall be rescinded. Such rescission shall eliminate any forfeiture of time [credited] pursuant to **N.J.S.A.** 30:4-123.65.

10A:71-7.20 [Fine] **Revenue** cases

(a) (No change.)

(b) [If a Board panel has ordered that an inmate or parolee who has served the maximum term of his or her sentence remain incarcerated until a fine or penalty imposed by the sentencing court has been paid] **If a Board panel revokes parole pursuant to (a) above,** the Board panel shall determine the length of time to be served; however, the term shall not exceed one day for each $20.00 of the fine **or penalty or restitution,** nor 40 days if the fine or penalty **or restitution** was imposed upon a disorderly persons offense, nor 25 days if the fine or penalty **or restitution** was imposed for a petty disorderly persons offense nor one year **in any case,** whichever is the shorter period.

(c) In cases where a parolee has violated a condition of parole requiring payment of restitution and such condition was imposed pursuant to N.J.A.C. 10A:71-6.5, the Board panel may suspend the condition, modify the payment schedule or request the sentencing court to reduce the amount of restitution. If none of these alternatives is warranted, the Board panel, upon revoking parole, may impose a term of incarceration pursuant to (b) above.

SUBCHAPTER 8. CERTIFICATE OF GOOD CONDUCT

10A:71-8.1 Definition

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

(c) Issuance of a Certificate of Good Conduct pursuant to N.J.S.A. 2A:168A-1, et seq. precludes a licensing authority, as defined in N.J.S.A. 2A:168A-2, from disqualifying or discriminating against the applicant because of any conviction for a crime unless **N.J.S.A.** [2A:93-5] **2C:51-2** is applicable.

INSURANCE

(a)

DIVISION OF ADMINISTRATION

Automobile Insurance
Automobile Reparation Reform Act

90-Day Waiver of Executive Order No. 66(1978)

Authorized By: Governor Thomas H. Kean.

Take notice that the regulations of the Department of Insurance, N.J.A.C. 11:3-7.1 through 11:3-7.8, dealing with personal injury protection coverage, residual medical payments coverage and cancellation of automobile coverage for nonpayment of premium, were due to expire on November 15, 1984 pursuant to the sunset provision of Executive Order No. 66(1978) and a 90 day waiver was signed by Governor Thomas H. Kean on August 8, 1984. Although the Department of Insurance is in the process of readopting these regulations, the substantive changes necessary mean that they will expire before readoption can be accomplished. Governor

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Kean has been informed by the Department of Insurance that the readoption will be completed by February 13, 1985.

These regulations cover such important matters as additional personal injury protection coverage to be made available by insurers, rate filings and procedures for nonpayment of premium. In order that there be no regulatory hiatus between expiration and readoption, Governor Kean has found that good cause has been shown to grant the Department of Insurance's request that the current regulation remain in effect.

On November 15, 1984, Governor Kean, by the authority vested in him by Executive Order No. 66(1978), directed that the five-year sunset provision of Executive Order No. 66(1978) be waived for N.J.A.C. 11:3-7 for a period of 90 days, from November 15, 1984 to and including February 13, 1985.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS

Accountancy
Professional Misconduct

Proposed Readoption with Amendment: N.J.A.C. 13:29-3.1 through 3.16

Authorized By: Joseph Sorelle, C.P.A., President, State Board of Accountancy.
Authority: N.J.S.A. 45:2B-6(g); N.J.S.A. 45:1-21(e).
Proposal Number: PRN 1984-717.
Address comments and inquiries to:

John J. Meade, Executive Secretary
State Board of Accountancy
Room 507-A
1100 Raymond Boulevard
Newark, N.J. 07102

The agency proposal follows:

Summary

Executive Order No. 66(1978) provides that any agency rule adopted after May 15, 1978 shall expire no later than five years after its effective date or sooner if indicated in the regulation itself. The purpose of this sunset provision is to insure that the State's administrative agencies periodically review their rules and regulations in order to insure their continued usefulness and necessity. The proposed readoption of N.J.A.C. 13:29-3, which expires on January 14, 1985, is made in accordance with N.J.A.C. 1:30-4.3 in order to maintain the effectiveness of the regulations. The regulations are proposed for readoption with a minor amendment in the existing text, which was originally proposed and published at 14 N.J.R. 895, and finally adopted in October 1982 (see 14 N.J.R. 1309(b)). In 1982 the Board promulgated this rule in essentially the same form as it is currently published.

Within the meaning of N.J.S.A. 45:1-21(e), which gives the Board the authority to determine what constitutes professional misconduct, it established a definition of "professional misconduct as deemed by the Board" which closely mirrors the requirements of the American Institute of Certified Public Accountants (AICPA). It has been an effective, efficient and necessary instrument to enforce minimum competence and honesty in the profession. The rules have also been an adequate, reasonable and understandable method of advising licensees of their professional obligations under the Act. In the absence of a readoption of these rules the Board would be without a definition of professional misconduct and possibly without the power to sanction certain misconduct on the part of its licensees.

The rules cover such areas as independence of public accountants, integrity and objectivity, competence, forecasts, auditing standards, accounting principles, confidentiality, contingent fees, discreditable acts, advertising, solicitation, commissions, incompatible occupations, form of practice, firm names and recordkeeping.

Social Impact

The social impact of these rules has been favorable. They have promoted consistency in that the public has been assured that all licensees conform to standards of professional conduct and the licensees know what is expected of them as a professional. It is necessary to readopt these rules so that the beneficial effects of defining precisely what is meant by professional misconduct of a licensed accountant (C.P.A., R.M.A. and P.A.) is known.

Economic Impact

The readoption of these rules will pose no economic impact upon the public or the licensees because they do not impose any economic burden on any party. The rules impose standards of professional conduct and do not require the expenditure of funds. The Board will continue to incur administrative costs in regulating and enforcing the standards of professional conduct but such costs are not readily quantifiable.

Full text of the proposed readoption appears in the New Jersey Administrative Code at 13:29-3.

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

13:29-3.1 Independence

(a) A licensee or a firm of which he is a partner or a shareholder shall not express an opinion on financial statements of an enterprise in such a manner as to imply that he is acting as an independent Public Accountant with respect thereto unless he or his firm is independent with respect to such enterprise. Independence will be considered to be impaired if, for example:

1. During the period covered by the financial statements, during the period of the professional engagement, or at the time of expressing an opinion, the licensee or his firm:

i. Was [connected] **associated** with the enterprise as a promoter, underwriter or voting trustee, a director or officer or in any capacity equivalent to that of a member of management or of an employee; or

ii. (No change.)

2. (No change.)

13:29-3.2 through 3.16 (No change.)

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PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES ENVIRONMENTAL PROTECTION

Small Water Company Takeover Act Regulations

Proposed New Rule: N.J.A.C. 14:9-6 (7:19-5)

Authorized By: Barbara A. Curran, President, Board of Public Utilities and Robert E. Hughey, Commissioner, Department of Environmental Protection.
Authority: N.J.S.A. 58:11-59 et seq. and 58:12A-1 et seq.
DEP Docket No. 006-84-02.

OFFICE OF ADMINISTRATIVE LAW NOTE: The full text of this proposal appears under Environmental Protection in this Register.

TRANSPORTATION

TRANSPORTATION OPERATIONS

The following proposals are authorized by John P. Sheridan, Jr., Commissioner, Department of Transportation.
Address comments and inquiries to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

(b)

Restricted Parking and Stopping Route U.S. 46 in Bergen County

Proposed Amendment: N.J.A.C. 16:28A-1.32

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.
Proposal Number: PRN 1984-721.

The agency proposal follows:

Summary

The proposed amendment will establish "no parking" bus stop zones along Route U.S. 46 in Lodi Borough and Elmwood Park Borough, Bergen County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace, and the safe on/off loading of passengers at established bus stops.

Based upon request from the local officials the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of "no parking" bus stop zones was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.32 based upon the request from local officials and the traffic investigation.

Social Impact

The proposed amendment will establish "no parking" bus stops zones along Route U.S. 46 in Lodi Borough and Elmwood Park Borough, Bergen County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for its work force for mileage, personnel and equipment requirements. The local officials will bear the costs for the installation of signs. Motorists who violate the rules will be assessed the appropriate fine.

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

16:28A-1.32 Route U.S. 46
(a) (No change.)
(b) The certain parts of State highway Route U.S. 46 described in this section are designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:
1.-7. (No change.)
8. In Elmwood Park Borough, Bergen County.
i. Along the eastbound (southerly) side:
(1) Far side bus stop:
(A) Boulevard—Beginning at the easterly curb line of Boulevard, and extending 157 feet easterly therefrom.
9. In Lodi Borough, Bergen County:
i. Along the eastbound (southerly) side:
(1) Mid-block bus stop:
(A) Westminster Place—Beginning 102 feet east of the easterly curb line of Westminster Place, and extending 130 feet easterly therefrom.
(2) Near side bus stop:
(A) Christopher Street—Beginning at the westerly curb line of Christopher Street and extending 105 feet westerly therefrom.
ii. Along the westbound (northerly) side:
(1) Far side bus stop:
(A) Christopher Street—Beginning at the prolongation of the westerly curb line of Christopher Street and extending 175 westerly therefrom.
(B) Kimmig Street—Beginning at the westerly curb line of Kimmig Street and extending 100 feet westerly therefrom.

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(a)

Miscellaneous Traffic Rules Route 23 in Passaic County

Proposed Amendment: N.J.A.C. 16:30-2.8

Authority: N.J.S.A. 27:1A-5, 27A:1A-6, 39:4-140.
Proposal Number: PRN 1984-722.

The agency proposal follows:

Summary

The proposed amendment will establish a "STOP" intersection along Route 23 in Wayne Township, Passaic County for the safe and efficient flow of traffic, the enhancement of safety and the safety of the well-being of the populace.

Based upon request from the local officials the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of a "STOP" intersection was warranted.

The Department therefore proposes to amend N.J.A.C. 16:30-2.8 based upon the request from local officials and the traffic investigation.

Social Impact

The proposed amendment will establish a "STOP" intersection along Route 23 in Wayne Township, Passaic County for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for its work force for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of signs. Motorists who violate the rules will be assessed the appropriate fine.

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

16:30-2.8 Route 23 Southbound ramp and Newark Pompton Turnpike

(a) The certain parts of Route 23 situated in the Township of Wayne, County of Passaic and described in this section shall be designated a [Yield] **Stop** Intersection.

[1. Newark Pompton Turnpike and Route 23 southbound ramp: A Yield sign shall be installed on the Route 23 southbound ramp.

2. Route 23 and Newark Pompton Turnpike: A Yield sign shall be installed on the Newark Pompton Turnpike.]

i. Newark Pompton Turnpike and Route 23 southbound ramp: A STOP sign shall be installed on the Route 23 southbound ramp.

TREASURY-TAXATION

DIVISION OF TAXATION

The following proposals are authorized by John R. Baldwin, Director, Division of Taxation.

Address comments and inquiries to:
Jack Silverstein
Chief Tax Counselor
Division of Taxation
50 Barrack Street, CN 269
Trenton, NJ 08646

(b)

Corporation Business Tax Allocation Factor; Receipts Fraction

Proposed Amendments: N.J.A.C. 18:7-8.7, 8.8, 8.9, 8.10, 8.12

Authority: N.J.S.A. 54:10A-27.
Proposal Number: PRN 1984-706.

The agency proposal follows:

Summary

As a result of an opinion of the New Jersey Supreme Court in the Metromedia, Inc. case, decided July 23, 1984, the Division of Taxation is proposing a rule regarding the treatment of receipts received by radio and television stations. The Supreme Court reviewed the Division of Taxation's use of the "audience share" in calculating the receipts fraction of the allocation factor. The Supreme Court held that the audience share concept constituted a "rule" of the Division of Taxation within the meaning of the Administrative Procedure Act (APA). The failure to comply with the requirements of the APA made the corporation tax computation invalid. Since the Division considered adding a rule regarding the radio and television industry, the Division also decided to add additional rules which dealt with services performed partially within this State and partially outside this State, N.J.S.A. 54:10A-6(B)(4). This necessitated amendments to N.J.A.C. 18:7-8.7, 8.8, 8.9, 8.10 and 8.12. While putting into rule form the policies and practice of the Division in this endeavor, the Division decided it would be helpful to add examples to better explain these policies. In summary, the amended rules deal with the allocation factor in determining the receipts fraction where services performed within this State are involved. In addition, N.J.A.C. 18:7-8.9 was amended to reflect the deci-

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sions in the American Telephone and Telegraph Company case and the Shell Oil Company case, both decided this year. The holdings in AT&T and Shell dealt with receipts from the sale of capital assets, when includable in the allocation factor and the determination of the treatment of net gains from such sales. Consequently, the amended rules deal with the computation of the receipts fraction.

Social Impact

There is a social impact upon all industries or businesses where the services performed are both within and without the State of New Jersey. The Division's policy is to outline what it believes is the fair treatment in its administration of the Corporation Business Tax Act upon these businesses which affect the taxpayer, its customers and the public. The Division believes it is best at this time to enumerate its policy due to the litigation in the Metromedia, AT&T and Shell cases and as tax administrators incorporate the case law and implement the statute with rules as directed by the courts.

Economic Impact

The amended rules relating to the receipts fraction of the allocation factor should generate more revenue to the State and could have some pecuniary impact on the businesses so regulated. The public is hereby notified of this particular economic impact. The possible increased payment of New Jersey corporation business taxes paid by those taxpayers affected by the proposed rules will be a deduction against their Federal corporation income tax and therefore will not impose an unreasonable burden upon such taxpayers.

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

18:7-8.7 Business allocation factor; determination of receipts fraction

(a) (No change.)

(b) The receipts of the taxpayer [must be] **are to be** computed on the cash, accrual or other [basis] **method of accounting** used in computation of its net income for Federal **income** tax purposes. **However, the numerator and denominator of the receipts fraction must, in any event, relate to the entire net income recognized during the period covered by the return.**

Example 1:

Taxpayer is engaged in long-term construction contracting. It has elected to recognize income for tax purposes on the completed contract method of accounting whereby it recognizes the net income on its contracts in their entirety in the year of completion.

The composition of the receipts fraction must be determined in harmony with the entire net income to which it relates. The numerator and denominator of the receipts fraction must reflect the entire contract revenues on completed contracts recognized in entire net income during the period covered by the return.

Example 2:

Taxpayer recognizes income on a sale for tax purposes on the installment method. The numerator and denominator of the receipts fraction should include the same proportion of the sale as is prorated as recognized income to the year covered by the return.

(c) Entire net income shall be included or excluded as follows:

1. All income which is included in entire net income enters into the numerator and denominator of the receipts fraction.

2. Any income which is excluded from entire net income is also excluded from the numerator and denominator of the receipts fraction, except for banking corporations with international banking facilities as provided in P.L. 1983, c.422. See N.J.S.A. 54:10A-6.

Example:

Dividends recognized as income for purposes of determining Federal income tax but which are excluded from entire net income under Section 4(k)(1) of the law must also be excluded in computing the receipts fraction.

18:7-8.8 Scope of allocable receipts

(a) Receipts from the following are allocable to New Jersey:

1. Sales of tangible personal property [located within the State at the time of the receipt of or appropriation to the orders] where shipments are made to points in New Jersey[;]. **Delivery of goods to a purchaser in this State is a shipment made to a point in New Jersey regardless of the F.O.B. point or the fact that the goods may subsequently be resold and trans-shipped to a point outside this State.**

2. [Sales of tangible personal property located without the State at the time of receipt of or appropriation to the orders where shipments are made to points in New Jersey;]

3.-5. renumbered as 2.-4. (No change in text.)

[6.] **5.** All other business receipts earned in New Jersey **See example in N.J.A.C. 18:7-8.7(c).**

[7. Dividends received from subsidiaries, which are excludible from entire net income under Section 4(k)(1) of the Law and subsection (b) of Section 5.2 (Entire net income; how computed) of this Chapter must also be excluded in computing the receipts fraction.]

18:7-8.9 Receipts from sales of capital assets; when includible

(a) [Receipts] **The gross receipts** from sales of capital assets (property not held by the taxpayer for sale to customers in the regular course of business) either within or without New Jersey should not be included in either the numerator or denominator of the receipts fraction. **The net gains from such sales which are included in entire net income are the amounts which are properly to be included in the computation of the receipts fraction. For the purposes of the numerator in the computation of the receipts fraction, a net loss should not offset a net gain.**

ILLUSTRATION
FACTS

	Selling Price	Cost	Net Gain	Net Loss
Property #1	$1,000	$ 600	$400	
Property #2	2,000	2,200		$200
Property #3	3,000	2,900	100	
			$500	$200
			(200)	
Amount of gain appearing on Schedule A			$300	

The $300 net gain is includible in the denominator of the receipts fraction in all cases. The computation to arrive at the amount to be included in the numerator is given in the following examples:

Example 1:

At the time of sale, Property #1 was located within New Jersey whereas Property #2 and #3 were located outside New Jersey.

$$\text{Amount of N.J. Gains } \frac{\$400}{\$500} = 80\% \times \$300 \text{ (net gain)} = \$240$$

The amount of $240 is to be included in the numerator of the receipts fraction.

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Example 2:

At the time of sale, Property #1 and #3 were located outside New Jersey, whereas Property #2 was located within New Jersey.

$$\text{Amount of N.J. Gains} \quad \frac{\text{-0-}}{\text{Total Gains}} \quad \frac{}{\$500} = 0\% \times \$300 \text{ (net gain)} = \text{-0-}$$

There is nothing attributable to this transaction which will affect the numerator of the receipts fraction.

Example 3:

At the time of sale, Property #1 and #3 were located within New Jersey, whereas Property #2 was located outside New Jersey.

$$\text{Amount of N.J. Gains} \quad \frac{\$500}{\text{Total Gains}} \quad \frac{}{\$500} = 100\% \times \$300 \text{ (net gain)} = \$300$$

The entire amount of $300 is to be included in the numerator of the receipts fraction.

(b) Where the taxpayer's business is the buying and selling of real estate or the buying[, holding] or selling of securities for [investment purposes] **trading purposes**, these assets are not deemed to be capital assets and **the gross** receipts from the sales thereof [must be] **are** included in the same manner as other includible [sales] receipts.

18:7-8.10 Receipts; compensation for services

(a) Receipts from services performed within New Jersey are allocable to New Jersey.

1. All amounts received by the taxpayer in payment for such services are allocable, regardless of whether such services were performed by employees or agents of the taxpayer, by subcontractors, or by any other persons **and regardless of whether the receipt is accounted for as an item of income or a reduction in expense.**

2. (No change.)

(b) (No change.)

(c) Where a lump sum is received by the taxpayer in payment for services within and without New Jersey, the amount attributable to services **performed** within New Jersey is to be determined on the basis of the relative values of, or amounts of time spent in the performance of those services within and without New Jersey, or by some other reasonable method **which should reflect the trade or business practice and economic realities underlying the generation of the compensation for services.** Full details must be submitted with the taxpayer's return.

Example 1:

Taxpayer derives advertising revenues in the course of broadcasting television or radio programs. It sets its advertising rates based upon the listening audience it has succeeded in reaching. The appropriate method of assigning the portion of its advertising revenues attributable to services performed in New Jersey is based upon the proportion of its listening audience in New Jersey.

Example 2:

Taxpayer earns income from the sale of long distance telephone communications service. It bills the originators of long distance telephone calls directly for all calls placed by them. The appropriate method of allocating its long distance toll revenues attributable to services performed in New Jersey is based upon billings for calls originating in New Jersey.

1. Certain lump sum payments for services performed within and without New Jersey must be apportioned in the following manner in order to result in a fair and reasonable receipts fraction.

i. Securities and commodities brokers executing orders on an exchange are to allocate commissions derived from the execution of purchases or sales orders for the accounts of customers to New Jersey as follows:

(1) 80 percent of commissions on orders originating at any New Jersey place of business; plus

(2) 20 percent of commissions on orders executed on any exchange located in New Jersey.

ii. Transportation revenues of an airline are from services performed in New Jersey based on the ratio of departures from New Jersey to total departures. Departures may be weighted as to cost and value of aircraft by type where weighting would give a more fair and reasonable business allocation factor.

iii. Inland freight revenues must be segregated into two components. The numerator of the receipts fraction attributable to receipts from services performed within New Jersey is the sum of:

(1) A portion of such freight attributable to long distance hauling is calculated based upon the proportion of the taxpayer's costs of long distance hauling to the sum of the costs of long distance hauling, terminal operations and local pickup and delivery during the period covered by the return and included in the receipts fraction based upon the proportion of revenue miles in New Jersey to revenue miles everywhere; plus

(2) The balance of freight revenues are in the numerator of the receipts fraction based on the proportion of total revenues from goods consigned to points within New Jersey to total freight revenues.

(3) The computation of the receipts fraction must accompany the return.

Illustration

Local pickup and delivery costs and terminal operations costs	$ 525,000
Long distance hauling costs	225,000
Total	$ 750,000
Revenue miles in New Jersey	100,000
Total revenue miles	500,000
Consignments to points in New Jersey	450,000
Total freight revenues	$1,000,000

$$\$1{,}000{,}000 \times \frac{225{,}000}{750{,}000} \times \frac{100{,}000}{500{,}000} = \$60{,}000$$

$$\$1{,}000{,}000 \times \frac{525{,}000}{750{,}000} \times \frac{450{,}000}{1{,}000{,}000} = \$315{,}000$$

Receipts from services performed within New Jersey $375,000

Assuming no other receipts enter into the computation, the receipts fraction is $ 375,000 / 1,000,000 or .375000

(d) (No change.)

18:7-8.12 Other business receipts

(a) All **other** business receipts earned by the taxpayer within New Jersey are allocable to New Jersey. **Other business receipts include all items of income entering into the determination of entire net income during the year for which the business allocation factor is being computed and is not otherwise provided for in these rules.** Examples of such business receipts include, but are not limited to, interest income, dividends, governmental subsidies or proceeds from sales of scrap.

(b) For treatment of dividends [received from subsidiaries] see [subsection (g) of section 8.8 (Scope of allocable receipts) of this chapter] **N.J.A.C. 18:7-8.7(c)2, Example.**

(c) (No change.)

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(d) Receipts from the sale of real property situated in New Jersey are earned in New Jersey.

(e) Intangible income not apportioned by other provisions of these rules is included in the numerator of the receipts fraction where the taxable situs of the intangible is in this State. The taxable situs of an intangible is the commercial domicile of the owner or creditor unless the intangible has been integrated with a business carried on in another state. Notwithstanding that the commercial domicile is outside this State, the taxable situs is in New Jersey to the extent that the intangible has been integrated with a business carried on in this State.

Example:

Taxpayer has its domicile outside this State. It is in the business of lending money, some of which is loaned to New Jersey residents. Interest income recognized from such loans is income derived from sources within this State and, as such, is earned in New Jersey. That interest income is includable in the numerator of the receipts fraction.

(a)

Public Utility Corporations: Taxes Accounting Methods

Proposed New Rule: N.J.A.C. 18:22-1.5

Authority: N.J.S.A. 54:50-1.
Proposal Number: PRN 1984-705.

The agency proposal follows:

Summary

The proposed new rule provides that public utility taxpayers are to report taxable gross receipts for the purpose of the Public Utility Gross Receipts and Franchise Taxes using the same method of accounting as they use for Federal income tax purposes, whether cash or accrual.

Social Impact

The new rule affects public utility taxpayers to the extent any of them may report taxable gross receipts for the taxable year 1984 using a different accounting method than that used for Federal income tax purposes. Since these taxpayers already maintain their records under the method of accounting prescribed by the proposed new rule, no additional record-keeping or accounting system changes will result from its adoption for state purposes.

Economic Impact

The adoption of the same method of accounting as used by public utilities for Federal income tax purposes will accelerate the collection of utility taxes by approximately $50 million during the fiscal years 1985 and 1986.

Full text of the proposal follows.

18:22-1.5 Accounting methods

Every taxpayer subject to the provisions of this chapter is required to report gross receipts based on the method of accounting employed for Federal income tax purposes under the Internal Revenue Code of 1954.

OTHER AGENCIES

(b)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

District Zoning Regulations Waterfront Recreation Zone Official Zoning Map

Proposed Amendments: N.J.A.C. 19:4-4.33, 4.35, 4.36, 4.39, 4.40, 4.42, and 19:4-6.28

Authorized by: Hackensack Meadowlands Development Commission, Anthony Scardino, Jr., Executive Director.
Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i) and 19:4-6.27.
Proposal Number: PRN 1984-708.

A public hearing concerning this proposal will be held on January 9, 1985 at 9:30 A.M. at:

Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

Address comments and inquiries to:

Perry E. Frenzel, Chief Engineer
Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

The agency proposal follows:

Summary

The Official Zoning Map amendment consists of a change in the zoning designation of Block 169, Lot 1 in Ridgefield, New Jersey from Marshland Preservation to Light Industrial "B". The site is approximately 8 acres.

The proposed amendments to N.J.A.C. 19:4-4.33 through 19:4-4.42 for the Waterfront Recreation Zone establishes minimum marina development requirements for the zone and expands the list of permitted uses when constructed in conjunction with a marina. Certain bulk and design requirements are also modified to promote development.

Social Impact

The proposed Ridgefield zoning change will correct a technical error in the Official Zoning Map for the affected property. The land has long been improved and utilized for ancillary railroad activities. Natural marshland vegetation is non-existent at this location and the rezoning will permit further development of the property consistent with nearby uses and the Commission's overall Master Plan for the area.

The proposed Waterfront Recreation Zoning amendments will promote the establishment of water-oriented facilities along strategic riverfront properties that will encourage and foster the utilization of the Hackensack River and its tributaries as a recreation and developmental resource. Development encouraged by these changes will minimize public access to

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and use the River, which is a primary goal of the overall Master Plan.

Economic Impact

The proposed Ridgefield amendment will permit development of the subject property consistent and compatible with adjacent lands. The proposed Waterfront Recreation Zone amendments will also promote development by permitting a wider range of uses in affected zones. This will not only directly generate construction job and permanent new job opportunities, it will also generate tax revenues for the municipalities and counties as well. Also, the development of these zones will result in the establishment of a variety and mix of uses that will enhance the overall Master Plan for the District and which will diversify recreational and development opportunities in the zone, in nearby zones and in the District overall. This will increase the value of rezoned land and adjacent properties and will promote new development in areas that had previously experienced little economic growth.

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

19:4-4.33 Waterfront recreation zone; purpose

This zone is designated to accommodate **marinas in combination with other** water-oriented **commercial** and recreation facilities **which provide and encourage public access to and visibility of the Hackensack River or its tributaries. The Waterfront Recreation Zone is to be developed in such a way that views of the river are protected.**

19:4-4.35 Waterfront recreation zone; **required marina and other** permitted uses

(a) All special exceptions and those permitted uses listed herein shall include a marina meeting the following minimum requirements:

1. Every marina shall be open to the public. A fee is optional and shall provide for a minimum of one docking berth for each 20 feet of water frontage.

2. Every marina shall provide for public boat launching, public boat mooring, and public parking.

[(a)] **(b)** Permitted uses in the waterfront recreation zone include:

1. Marina for the docking, repair, sale, servicing, and/**or** storage of boats;

2. Other water recreation uses.

(c) When included with a marina meeting the minimum requirements set forth in (a) above, the following uses shall be permitted:

1. Restaurants;

2. Retail and specialty shops, and service uses, compatible with the purposes of this zone and which meet the needs of the users;

3. Outdoor recreational uses, such as archery, basketball, bike rental and tennis, which are compatible with the purposes of this zone and which meet the needs of its users;

4. Hotels.

19:4-4.36 Waterfront recreation zone; special exceptions

[Small retail shops and restaurants accessory to permitted uses are special exceptions within the waterfront recreation zone.]

(a) When included with a marina meeting the minimum requirements set forth in N.J.A.C. 19:4-4.35(a), the following uses shall be special exceptions:

1. Museums and cultural facilities;

2. Theaters;

3. Indoor recreational facilities.

19:4-4.37 Waterfront recreation zone; use limitations

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

[(c) Structures shall be so located as to not impair the view of the Hackensack River from adjoining or upland properties.]

(c) The development of the zone shall be designed so as to permit public access to the edge of the river.

19:4-4.39 Waterfront recreation zone; bulk regulations

(a) The bulk regulations in the waterfront recreation zone are:

1. (No change.)

2. The minimum open space is 40 percent. Open space in this district [shall] **may** include landscaped gravel and sand areas, tidally-affected marsh, **open water,** [and] boardwalks and walkways, **in addition to landscaping. Portions of the open space area may be used for boat storage during the winter.**

3. Yards:

i. Minimum front yard is 25 feet. [This requirement shall apply only to restaurants and marinas.]

ii. Minimum side or rear yard is 25 feet. **This setback requirement does not apply to side or rear yards adjacent to the Hackensack River.**

4. **Floor area ratio (F.A.R.): .75;** [Maximum structure height is one and one-half stories]

5. (No change.)

19:4-4.40 Waterfront recreation zone; buffer requirements

(a) (No change.)

[(b) Where any development borders the Hackensack River or any of its tributaries, there shall be a 50 foot wide strip of wetland necessary to insure proper drainage and edge effect at such border.]

19:4-4.42 Waterfront recreation zone; design of structures and other improvements

(a) (No change.)

(b) Uses shall be designed to focus on the river as a recreational and visual resource.

(c) Any structures built in this zone shall be designed and constructed to minimize visual obstruction to views of the Hackensack River from adjacent properties or roadways and from within the zone itself.

19:4-6.28 Official zoning map

The Hackensack Meadowlands District official zoning map dated November 8, 1972, is hereby made a part of these rules and regulations of the Hackensack Meadowlands Development Commission.

OFFICE OF ADMINISTRATIVE LAW NOTE: A map showing the proposed change in zoning designation was submitted as part of the Commission's notice of proposed rule. The proposed change follows:

The zoning designation of Block 169, Lot 1, in Ridgefield from Marshland Preservation to Light Industrial "B". The subject property consists of approximately 8 acres.

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(a)

CASINO CONTROL COMMISSION

Rules of the Games
Minimum and Maximum Wages

Proposed Amendment: N.J.A.C. 19:47-8.2

Authorized By: Casino Control Commission, Theron G. Schmidt, Executive Secretary.
Authority: N.J.S.A. 5:12-63(c), 5:12-69, 5:12-70(g)(1) and 5:12-101.
Proposal Number: PRN 1984-714.

Address comments and inquiries to:
Michael A. Santaniello
Deputy Director, Operations
Division of Financial Evaluation & Control
Casino Control Commission
3131 Princeton Pike
Building No. 5, CN-208
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 19:47-8.2 would eliminate the requirement for a casino licensee to provide at least one baccarat table with a minimum wager of $25.00 or less, thereby allowing casino licensees the discretion to choose minimums.

Social Impact

The present regulation, which requires at least one baccarat table to have a minimum of $25.00 was adopted when a total of three baccarat tables existed in Atlantic City. At that time it was necessary to guarantee baccarat players, though few in number, a low limit table. Currently, however, there are 26 baccarat tables available to satisfy the diverse demands of the public.

Traditionally, baccarat has attracted fewer patrons compared to the other table games and it is recognized that the casinos have been able to accommodate its patron demand. Therefore, given the increased number of baccarat tables vis-à-vis patron demand, it is anticipated that the social impact of this amendment will be minimal.

Economic Impact

It is difficult to assess the economic impact of this proposal. Since casinos do entertain marketing strategies geared to specific socioeconomic strata, this may provide management more flexibility in seeking out segments they wish to develop. Further, depending on the minimums selected by each casino licensee, the casino revenues may be affected as well as the cost of gaming to the players who seek to patronize tables with higher minimum wagers.

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

19:47-8.2 Minimum and maximum wagers
(a) (No change.)
(b) The spread between the minimum wager and the maximum wager at table games shall be as follows:
1.-4. (No change.)
5. Baccarat:
[i. There shall be at least one baccarat table where the minimum wager is not more than twenty-five dollars ($25);]
[ii.] **i.** (No change in text.)
(c) (No change.)

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RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

Uniform Administrative Procedure Rules of Practice
Non-Lawyer Representation in Contested Cases

Adopted Amendment: N.J.A.C. 1:1-3.12

Proposed: October 15, 1984 at 16 N.J.R. 2710(a).
Adopted: December 5, 1984 by Ronald I. Parker, Acting Director, Office of Administrative Law.
Filed: December 5, 1984 as R.1984 d.587, **without change**.

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

Effective Date: December 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): June 19, 1985.

Summary of Public Comments and Agency Responses.

During the comment period, the OAL received written comments from Legal Services of New Jersey, Inc. and the Department of the Public Advocate. Each comment was responded to individually.

Both commentors urged the OAL to reconsider deleting those provisions of the rule relating to non-lawyer representatives of parties who are unable to afford an attorney and unable to obtain legal services representation. The commentors suggested that the OAL not delay promulgating N.J.A.C. 1:1-3.12(a)7 but should, instead, begin experimenting with this provision in order to gain the empirical data and experience necessary to determine if this category of non-lawyer representation should be retained on a permanent basis.

In response, the OAL feels that implementation of the currently adopted rules and the resolution of various unforeseen problems which may arise prevents the OAL from undertaking any more than can be efficiently handled at the present time.

For example, implementation of the rule requires a new form of coordination between county counsel and welfare agencies and between the Attorney General's office and all State agencies. Further, the OAL must ensure that the representation standards and application procedures are appropriately and uniformly applied. In addition, the OAL has disclosed numerous instances of non-lawyer representation which might, if permitted to continue, violate R. 1:21-1(e) and N.J.A.C. 1:1-3.12. Until these new procedures and various problems are worked out, the OAL considers it best to defer experimentation with this category of non-lawyer representatives since the OAL has no knowledge of either the numbers involved, the need for such representation or the implementation and control problems which such representation might present.

Full text of the adoption follows.

1:1-3.12 Representation and assistance by non-lawyers; authorized situations, applications, notice of appearance, approval procedures, limitations, practice requirements

(a) In conformity with R.1:21-1(e) of the Rules Governing the Courts of the State of New Jersey, the following non-lawyers may apply for permission to represent or assist a party at a contested case hearing:

1.-6. (No change.)

(b) The non-lawyer applicants mentioned in (a) above may apply for permission to appear by supplying the following information and by complying with the following procedures:

1.-2. (No change.)

3. Written applications shall be made in the following cases. Such applications may be in letter form, and shall be signed by the non-lawyer applicant, filed with the Clerk of OAL no later than 10 calendar days prior to the scheduled hearing date and served on all parties.

i.-iii. (No change.)

4. (No change.)

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

(f) The presiding judge may revoke any non-lawyer's right to appear in a case if and when the judge determines that a material statement is incorrect in any Notice of Appearance or in any written or oral application by a non-lawyer.

1. (No change.)

(g)-(h) (No change.)

(b)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules of Practice
"Hearings on the Papers" and Motor Vehicle Cases

Readoption with Amendments: N.J.A.C. 1:2-3

Proposed: October 15, 1984 at 16 N.J.R. 2711(a).
Adopted: November 15, 1984 by Ronald I. Parker, Acting Director, Office of Administrative Law.
Filed: November 26, 1984 as R.1984 d.553, **without change**.

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

Effective Date: November 26, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): March 21, 1985.

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

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Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 1:2-3.

Full text of the amendment to the readoption follows.

1:2-3.11 Expiration date
The rules in this subchapter shall expire on March 21, 1985.

BANKING

(a)

DIVISION OF CONSUMER COMPLAINTS AND LEGAL AND ECONOMIC RESEARCH

Loss Deferral Accounting for Mutual Savings Banks

Adopted New Rule: N.J.A.C. 3:6-7.1
Adopted Repeal: N.J.A.C. 3:6-7.1 to 3:6-7.8

Proposed: October 15, 1984 at 16 N.J.R. 2712(a).
Adopted: November 28, 1984 by Mary Little Parell, Commissioner, Department of Banking.
Filed: November 29, 1984 as R.1984 d.577, **with technical and substantive changes** not requiring additional public notice or comment.

Authority: N.J.S.A. 17:1-8.1 and 17:9A-256(a).

Effective Date: December 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): December 17, 1989.

Summary of Public Comments and Agency Response:

One comment was received relative to the proposed repeal of N.J.A.C. 3:6-7.1 to 3:6-7.8 and the proposed adoption of N.J.A.C. 3:6-7.1 which was favorable.

Therefore the new rule and the repeal of the existing rule was adopted with technical changes not requiring additional public notice or comment.

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 7. LOSS DEFERRAL ACCOUNTING FOR MUTUAL SAVINGS BANKS

3:6-7.1 Procedure for election of loss deferral accounting

(a) An institution, by resolution of its board of directors or managers, may elect to defer and amortize all gains and losses (net of related income taxes computed in accordance with generally accepted accounting principles) on any sale or other disposition, occurring in the fiscal year that the action to defer and amortize is taken, of mortgage loans, redeemable ground-rent leases, mortgage-related securities, preferred stock that at the time of issuance provides for redemption on a fixed date in a fixed dollar amount or for redemption pursuant to a fixed schedule of periodic payments and has a remaining term to maturity of at least five years, and debt securities that do not qualify as liquid assets because of their maturities or that have remaining terms to maturity of at least five years. Using the same procedure, an institution may revoke any prior election(s) to amortize gains and losses on the disposition of such assets.

(b) An institution making this election shall amortize as follows:

1. Demonstrate an intent to use the sale proceeds so as to improve the institution's future profitability and/or reduce interest-rate risk;

2. Account for such gains and losses as follows:

i. Such gains and losses (net of related income taxes computed in accordance with generally accepted accounting principles) shall be carried in a separate account and shall be readily identifiable in the institution's statement of condition;

ii. Such gains or losses shall be amortized by the straight-line or level-yield methods over a period not to exceed the average of the remaining terms to maturity of the disposed mortgage loans or qualifying securities, or, in the case of redeemable ground-rent leases, a period not to exceed 40 years, with the yield calculated to reflect the length of the amortization period. Amortization periods for gains shall be established in the same manner as are amortization periods for losses deferred in the same fiscal year.

(c) The amortization of discounts and losses shall be matched as follows:

1. For purposes of this subsection (c) only:

i. The term "long-term, deep-discount security" means any loan, lease or security identified in (a) above that has a remaining term of maturity, at the time of purchase, of ten years or more, and is purchased at a price of less than 90 percent of its stated (par) value or principal balance.

ii. The term "matching loss" is an amount determined by multiplying (1) the net amount of loss deferred in accordance with an election made pursuant to (a) above during a period beginning six months prior to the purchase of a long-term, deep-discount security, and ending six months after the date of such purchase, by (2) a fraction (not to exceed one), the numerator of which is the total of amounts paid or other consideration given for long-term, deep-discount securities during the twelve-month period described in (a) above, and the denominator of which is the total proceeds (in cash or any other consideration) from dispositions during the same period for which the election under (a) above is in effect.

2. When long-term, deep-discount securities are purchased or otherwise acquired within six months preceding or subsequent to the disposition of a mortgage loan, mortgage-related security or debt security with respect to which an election to defer and amortize any loss or gain has been made pursuant to (a) above, the resulting discount shall be amortized over the same period and by the same method used to amortize any matching loss: Provided, that:

i. The method used for the loss is also an appropriate method by which to amortize a discount, and

ii. If the average of the remaining terms to maturity of the securities purchased is shorter than the period used to amortize the matching loss, then the average of the remaining terms to maturity of the securities purchased may be used as the amortization period for the discount.

3. If necessary to meet the requirements of (c)(2) above, an institution may change the method and period by which the matching loss is being amortized. When making such a change, the amount of the matching loss shall be that portion

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of the loss that remains to be amortized as of the date of the change.

(d) For the purposes of this section, "disposition" includes, but is not limited to:

1. Prepayment at a discount of an institution's mortgage loans by existing borrowers;

2. Sales of loans (including participation interests therein), leases and securities identified in (a) above; and

3. Exchanges of assets eligible for disposition under this section.

(e) The accounting treatment authorized by this section may be used only for mortgages and qualifying securities sold or otherwise disposed of during fiscal years ending on or after July 31, 1984. The board of directors of any institution that has a fiscal year ending prior to December 31, 1985 must make the election authorized by (a) above prior to January 1, *[1984]* ***1986***.

(f) It is intended that this rule parallel for state-chartered mutual savings and loan associations and mutual savings banks those regulations adopted by the Federal Home Loan Bank Board for federal savings and loan associations and savings banks so that any interpretation of these regulations shall refer to comments and interpretation of those federal regulations unless otherwise determined by the commissioner.

(a)

DIVISION OF CONSUMER COMPLAINTS AND LEGAL AND ECONOMIC RESEARCH

Loss Deferral Accounting for Mutual Savings and Loan Associations

Adopted New Rule: N.J.A.C. 3:28-5.1
Adopted Repeal: N.J.A.C. 3:28-5.1 to 3:28-5.8

Proposed: October 15, 1984 at 16 N.J.R. 2713(a).
Adopted: November 28, 1984 by Mary Little Parell, Commissioner, Department of Banking.
Filed: November 29, 1984 as R.1984 d.576, **with technical and substantive changes** not requiring additional public notice or comment.

Authority: N.J.S.A. 17:1-8.1 and 17:12B-197.

Effective: December 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): December 17, 1989.

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***; deletions from proposal shown in brackets with asterisks *[thus]*).

SUBCHAPTER 5. LOSS DEFERRAL ACCOUNTING FOR MUTUAL SAVINGS AND LOAN ASSOCIATIONS

3:28-5.1 Procedure for election of loss deferral accounting

(a) An institution, by resolution of its board of directors or managers, may elect to defer and amortize all gains and losses (net of related income taxes computed in accordance with generally accepted accounting principles) on any sale or other disposition, occurring in the fiscal year that the action to defer and amortize is taken, of mortgage loans, redeemable ground-rent leases, mortgage-related securities, preferred stock that at the time of issuance provides for redemption on a fixed date in a fixed dollar amount or for redemption pursuant to a fixed schedule of periodic payments and has a remaining term to maturity of at least five years, and debt securities that do not qualify as liquid assets because of their maturities or that have remaining terms to maturity of at least five years. Using the same procedure, an institution may revoke any prior election(s) to amortize gains and losses on the disposition of such assets.

(b) An institution making this election shall amortize as follows:

1. Demonstrate an intent to use the sale proceeds so as to improve the institution's future profitability and/or reduce interest-rate risk;

2. Account for such gains and losses as follows:

i. Such gains and losses (net of related income taxes computed in accordance with generally accepted accounting principles) shall be carried in a separate account and shall be readily identifiable in the institution's statement of condition;

ii. Such gains or losses shall be amortized by the straight-line or level-yield methods over a period not to exceed the average of the remaining terms to maturity of the disposed mortgage loans or qualifying securities, or, in the case of redeemable ground-rent leases, a period not to exceed 40 years, with the yield calculated to reflect the length of the amortization period. Amortization periods for gains shall be established in the same manner as are amortization periods for losses deferred in the same fiscal year.

(c) The amortization of discounts and losses shall be matched as follows:

1. For purposes of this subsection (c) only:

i. The term "long-term, deep-discount security" means any loan, lease or security identified in (a) above that has a remaining term of maturity, at the time of purchase, of ten years or more, and is purchased at a price of less than 90 percent of its stated (par) value or principal balance.

ii. The term "matching loss" is an amount determined by multiplying (1) the net amount of loss deferred in accordance with an election made pursuant to (a) above during a period beginning six months prior to the purchase of a long-term, deep-discount security, and ending six months after the date of such purchase, by (2) a fraction (not to exceed one), the numerator of which is the total of amounts paid or other consideration given for long-term, deep-discount securities during the twelve-month period described in (a) above, and the denominator of which is the total proceeds (in cash or any other consideration) from dispositions during the same period for which the election under (a) above is in effect.

2. When long-term, deep-discount securities are purchased or otherwise acquired within six months preceding or subsequent to the disposition of a mortgage loan, mortgage-related security or debt security with respect to which an election to defer and amortize any loss or gain has been made pursuant to (a) above, the resulting discount shall be amortized over the same period and by the same method used to amortize any matching loss: Provided, that:

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i. The method used for the loss is also an appropriate method by which to amortize a discount, and

ii. If the average of the remaining terms to maturity of the securities purchased is shorter than the period used to amortize the matching loss, then the average of the remaining terms to maturity of the securities purchased may be used as the amortization period for the discount.

3. If necessary to meet the requirements of (c) 2. above, an institution may change the method and period by which the matching loss is being amortized. When making such a change, the amount of the matching loss shall be that portion of the loss that remains to be amortized as of the date of the change.

(d) For the purposes of this section, "disposition" includes, but is not limited to:

1. Prepayment at a discount of an institution's mortgage loans by existing borrowers;

2. Sales of loans (including participation interests therein), leases and securities identified in (a) above; and

3. Exchanges of assets eligible for disposition under this section.

(e) The accounting treatment authorized by this section may be used only for mortgages and qualifying securities sold or otherwise disposed of during fiscal years ending on or after July 31, 1984. The board of directors of any institution that has a fiscal year ending prior to December 31, 1985 must make the election authorized by (a) above prior to January 1, *[1984]* ***1986***.

(f) It is intended that this rule parallel for state-chartered mutual savings and loan associations and mutual savings banks those regulations adopted by the Federal Home Loan Bank Board for federal savings and loan associations and savings banks so that any interpretation of these regulations shall refer to comments and interpretation of those federal regulations unless otherwise determined by the commissioner.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Business Services
State Aid

Readoption with Amendments: N.J.A.C. 6:20-5

Proposed: September 17, 1984, at 16 N.J.R. 2392(a).
Adopted: November 7, 1984, by State Board of Education, Saul Cooperman, Secretary.
Filed: November 15, 1984, as R.1984 d.546, **without change.**

Authority: N.J.S.A. 18A:4-15, 18A:17-45 and 18A:58-33.39.

Effective Date of Readoption: November 15, 1984.
Effective Date of Amendments: December 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): November 15, 1989.

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

Full text of the readoption with amendments follows.

SUBCHAPTER 5. STATE AID

6:20-5.1 Law enforcement officer

(a) Any district board of education intending to employ a public school law enforcement officer shall submit to the county superintendent of schools an application for approval to employ school law enforcement officers.

(b) The application shall set forth the reasons for the request, the name of the school or schools with enrollments for which officers are requested, the hours during which such protection is required, a job description, the salary range to be used, the qualifications or training required, and the number of officers to be assigned to each school.

(c) If the district board of education is requesting State aid, the following information shall be filed: the name or names of the law enforcement officer or officers, the school assignment or assignments and the wages or salaries paid.

(d) The county superintendent of schools shall review the application from the district board of education. If there is a need for such law enforcement officer or officers, the application shall be approved and forwarded to the Commissioner of Education.

(e) The Commissioner of Education will review the application. If the appointment of such law enforcement officer or officers is necessary, the commissioner shall authorize reimbursement within the limits of available appropriations.

(f) If the district board of education has requested State aid reimbursement, the Commissioner of Education shall, within the limits of the available appropriations for said purposes, make a determination of the amount of State aid reimbursement to which the district board of education shall be entitled. Such reimbursement shall not exceed 75 per cent of the cost.

(g) No district board of education shall be authorized to employ more than one public school law enforcement officer for every 500 pupils or fraction thereof enrolled in any school building, for duty at a given time.

(h) School law enforcement officers shall not be assigned any other duties while carrying out the responsibilities of a law enforcement officer. They shall not be permitted to carry any firearms.

(i) All appointments of law enforcement officers shall be made subject to the provisions of Title 11 of the N.J.S.A., where applicable.

6:20-5.2 Additional State school building aid

(a) District boards of education receiving entitlements in accordance with the provisions of N.J.S.A. 18A:58-33.22 et seq., shall establish a separate bank account to disburse moneys for projects approved. All proceeds of financing shall be deposited initially in the account established for this purpose. Monthly bank statements shall be submitted to the Division of Finance.

(b) If temporary financing is used for additional vocational facilities for the handicapped, State aid will be paid based upon a pro rata share of the debt service in accordance with N.J.S.A. 18A:58-33.24.

(c) District boards of education shall expend the district's portion of the cost of approved projects first, except for additional vocational facilities for the handicapped.

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(d) District boards of education shall use temporary financing, only as required in accordance with N.J.S.A. 18A:24-3, after a request to temporarily finance the funds has been submitted to and approved by the Commissioner of Education.

(e) Proceeds of bonds sold subject to the provisions of N.J.S.A. 18A:58-33.22 et seq., which are not immediately required, shall be invested and the earnings returned to the State on or before January 10 of each year. Investments shall be made in the State of New Jersey Cash Management Fund in accordance with N.J.S.A. 52:18A-90.4.

(f) District boards of education shall submit a report to the Division of Finance by July 10 of each year listing any additional temporary financing, bonds sold, investments, and interest earned from investments during the preceding six months.

(g) District boards of education shall submit a report to the Division of Finance on or before January 10 of each year showing a schedule by month of anticipated cash requirements for the following year and listing any additional temporary financing, bonds sold, investments, and interest earned from investments during the preceding six months. District boards of education shall refund interest earned from the investment of funds during the preceding year when such report is filed.

(h) District boards of education shall submit annual reports concerning construction progress until such time as the facilities are completed and occupied and shall comply with the requirements of the Department of Education concerning educational adequacy.

(i) District boards of education shall return all balances remaining after the completion of the approved project, if such project was funded exclusively with State funds. District boards of education shall return a pro rata share of all balances remaining after the completion of the approved project, if such project was funded with State and local funds.

6:20-5.3 (Reserved)

6:20-5.4 (Reserved)

(a)

STATE BOARD OF EDUCATION

Business Services

Qualification, Debarment, Suspension and Disqualification of Person(s) Concerning Contract Administration

Readoption with Amendments: N.J.A.C. 6:20-7

Proposed: September 17, 1984, at 16 N.J.R. 2394(a).
Adopted: November 7, 1984, by State Board of Education, Saul Cooperman, Secretary.
Filed: November 15, 1984, as R.1984 d.545, **without change**.

Authority: N.J.S.A. 18A:4-15, 18A-27, and Executive Order No. 34(1976).

Effective Date of Readoption: November 15, 1984.
Effective Date of Amendments: December 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): November 15, 1989.

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

Full text of the adoption follows.

SUBCHAPTER 7. QUALIFICATION, DEBARMENT, SUSPENSION AND DISQUALIFICATION OF PERSON(S) CONCERNING CONTRACT ADMINISTRATION

6:20-7.1 Definitions

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

"Debarment" means exclusion from contracting with district boards of education for public work and Department of Education contracting on the basis of a lack of responsibility evidenced by an offense, failure, or inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, failure, or inadequacy of performance.

"Department of Education contracting" means any arrangement giving rise to an obligation to supply any thing to or perform any service for the Department of Education, other than by virtue of State employment, or to supply any thing to or perform any service for a private person where the Department of Education provides substantial financial assistance and retains the right to approve or disapprove the nature or quality of the goods or service or the persons who may supply or perform the same.

"Disqualification" means a debarment or a suspension which denies or revokes or fails to renew a classification to bid or otherwise engage in contracting with district boards of education or which denies or revokes a qualification to bid or otherwise engage in contracting with the Department of Education pursuant to statute or rules.

"District board of education" means and includes the district board of education of any local school district, consolidated school district, regional school district, county vocational school district and any other board of education or other similar body other than the State Board of Education, established and operating under the provisions of Title 18A of the New Jersey Statutes and having authority to engage contractors for the performance of public works for the board.

"District board of education contracting" means any arrangement giving rise to an obligation to supply any thing to or perform any service for district boards of education, other than by virtue of contracts of employment, or to supply any thing to or perform any service for a private person where the district board of education provides substantial financial assistance and retains the right to approve or disapprove the nature or quality of the goods or service or the person who may supply or perform the same.

"Person" means any natural person, company, firm, association, corporation, or other entity.

"Qualification" is the procedure whereby all prospective bidders for public work with district boards of education are classified as to the character and amount of public work on which they shall be qualified to submit bids.

"Suspension" means exclusion from contracting with district boards of education for public work and from Depart-

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ment of Education contracting for a temporary period of time, pending the completion of an investigation or legal proceedings.

6:20-7.2 Qualification of bidders

Pursuant to N.J.S.A. 18A:18A-27, the authority to qualify bidders for district board of education contracting or Department of Education contracting is delegated to the Department of Treasury. Such action is to be governed by rules adopted by the Department of Treasury for this purpose.

6:20-7.3 Debarment, suspension and disqualification of person(s)

Debarment, suspension and disqualification of person(s) from district board of education contracting or Department of Education contracting is delegated to the Department of Treasury. Such action shall be taken in accordance with rules adopted by the Department of Treasury for such purpose.

ENVIRONMENTAL PROTECTION

(a)

OFFICE OF THE COMMISSIONER

Interim Safe Drinking Water Testing Schedule for Hazardous Contaminants by Public Community Water Systems

Adopted Amendment: N.J.A.C. 7:10-14.7

Proposed: September 17, 1984 at 16 N.J.R. 2396(a).
Adopted: November 27, 1984 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
Filed: November 30, 1984 as R.1984 d.582, **without change.**

Authority: New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., specifically 58:12A-4, and 58:2A-9, (P.L. 1977, c. 224), as amended by 1983, c. 443.

Effective Date: December 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): September 4, 1989.
DEP Docket No. 055-84-08.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection ("NJDEP") held a written comment period open until October 17, 1984 concerning the proposal of revisions to N.J.A.C. 7:10-14.7(b)1, 2 and 2i (see September 17, 1984 New Jersey Register at 16 N.J.R. 2396(a)). NJDEP adopted the majority of N.J.A.C. 7:10-14, except for N.J.A.C. 7:10-14.7(b)1, 2 and 2i, in the September 4, 1984 New Jersey Register at 16 N.J.R. 2362(a). N.J.A.C. 7:10-14.7(b)1, 2 and 2i as revised and adopted require uniform semi-annual periodic testing for all public community water systems with their own source of water.

Comment:

A small water company from northwest New Jersey serving 46 private homes submitted the only written comment on the proposed revisions. Although supporting the new testing requirements, the commentor felt that the cost of testing "represents a substantial amount of our annual income". The commentor felt that a case-by-case review should be made to determine if an exception from the frequency of testing requirements would be allowed in appropriate cases for small water companies.

Response:

N.J.A.C. 7:10-14.11, titled "Modification of Periodic Testing Frequency by Commissioner", already provides all public community water systems with a regulatory mechanism allowing for potential reductions of their testing frequency, after the initial testing required by N.J.A.C. 7:10-14.6, upon a case-by-case review of the Commissioner. Reductions requested by the commentor may already be granted by the Commissioner if a lesser frequency of testing would be necessary or sufficient to ensure the public health and safety.

Full text of the adoption follows.

7:10-14.7 Periodic testing requirements for 2(a) List

(a) (No change.)

(b) Public community water systems with their own source of water supply shall, after the initial testing required by N.J.A.C. 7:10-14.6, conduct at a minimum periodic tests of the water provided to customers by the system in order to determine the presence of hazardous contaminants on the 2(a) List as follows:

1. Two tests every year (by the end of June and the end of December of every year) for public community water systems serving less than 10,000 residents from a representative location in the distribution system, taking into account number of persons served, different sources of water and different treatment methods employed.

2. Two tests every year (by the end of June and the end of December of every year) for public community water systems serving over 10,001 residents consisting of one sample per water treatment plant serving the distribution system.

i. For the purpose of this subsection, the number of samples required to be taken by the water system shall be based on the number of treatment plants used by the water system, except that multiple treatment plants or wells using raw water from the same source of water or aquifer may, after written approval from the Department, be considered one treatment plant for determining the number of samples.

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

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(a)

DIVISION OF WASTE MANAGEMENT

Hazardous Waste Incinerators

Adopted Amendment: N.J.A.C. 7:26-10.7

Proposed: August 6, 1984 at 16 N.J.R. 2046(a).
Adopted: November 20, 1984 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
Filed: November 30, 1984 as R.1984 d.581, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 13:1E-6.

Effective Date: December 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): August 6, 1986.
DEP Docket No. 047-84-07.

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

The Department of Environmental Protection has made one nonsubstantive change in the adopted rule.

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

7:26-10.7 Hazardous waste incinerators
(a) (No change.)
1. After consideration of the waste analysis included with Part B of the permit application, the Department, when establishing permit conditions may exempt the applicant from all requirements of this section except (b) and (1) below if the following conditions are met:
i. If the Department finds that the waste to be burned is:
(1) Listed as a hazardous waste in N.J.A.C. 7:26-8.13, 8.14 or 8.15 solely because it is ignitible, corrosive or both; or
(2) Listed as a hazardous waste in N.J.A.C. 7:26-8.13, 8.14 or 8.15 solely because it is reactive for characteristics other than those listed in N.J.A.C. 7:26-8.11(a)4 and 5 and will not be burned when other hazardous wastes are present in the combustion zone; or
(3) A hazardous waste solely because it possesses the characteristics of ignitibility, corrosivity or both, as determined by the test for characteristics of hazardous wastes under *[40 CFR Part 261, Subpart C]* ***N.J.A.C. 7:26-8.9, 8.10, 8.11 and 8.12***; or
(4) A hazardous waste solely because it possesses any of the reactivity characteristics described by N.J.A.C. 7:26-8.11(a)1, 2, 3, 6, 7 and 8 and will not be burned when other hazardous waste are present in the combustion zone; and
ii. If the waste analysis shows that the waste contains none of the hazardous constituents listed in N.J.A.C. 7:26-8.16, which would reasonably be expected to be in the waste.
2. (No change.)
(b)-(m) (No change.)

HEALTH

(b)

CONSUMER HEALTH SERVICES

Animal Control Officers Certification Act Standards
Animal Control Officers Certification

Adopted New Rule: N.J.A.C. 8:23-5

Proposed: October 15, 1984 at 16 N.J.R. 2725(a).
Adopted: November 26, 1984 by J. Richard Goldstein, M.D., Commissioner, Department of Health.
Filed: November 29, 1984 as R.1984 d.575, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 4:19-15.1 et seq., specifically 4:19-15.16 (P.L. 1983, c. 525).

Effective Date: December 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): December 17, 1989.

Summary of Public Comments and Agency Responses:

Comments:
Two public comments were received suggesting grace periods of six months and one and one-half years following the hiring of an animal control officer to allow time for the individual to obtain training and certification.

Response:
The Department responded that N.J.S.A. 4:19-15.1 et seq. (Public Law 1983, c. 525), states that municipalities shall appoint a certified animal control officer by January 17, 1987. The law provides a three year experience grandfathering clause to obtain certification and three years for individuals who do not qualify through experience to obtain training and certification. The law does not provide a grace period to obtain certification for newly hired uncertified individuals after January 17, 1987. The regulation must reflect the law as it is written.

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

SUBCHAPTER 5. ANIMAL CONTROL OFFICER CERTIFICATION

8:23-5.1 Definitions
"Certified Animal Control Officer" means a person 18 years of age or older who has satisfactorily completed a course of study *[approved by the Commissioner of Health]* on the control of animals ***approved by the Commissioner of Health*** or who has been employed in the State of New Jersey in the capacity of, and with similar responsibilities to *,* those required of Certified Animal Control Officers pursuant

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to the provisions of N.J.S.A. 4:19-15.1 et seq., for a period of three years.

"Certification" means the process whereby an individual who has successfully completed an approved course of study and/or up to January 17, 1987, has been employed in the State of New Jersey in the capacity of *,* and with similar responsibilities to *,* those required of a Certified Animal Control Officer for a period of three years which is attested to by a written statement of the employer, shall be certified by the Commissioner of Health as meeting the training or *[experienced]* ***experience*** standards as prescribed and is authorized to perform the functions and duties of an Animal Control Officer.

8:23-5.2 Approved course of study

(a) An approved course of study will provide a minimum of 45 hours or the equivalent to three credit hours offered by an accredited New Jersey college or university which includes, but is not limited to, the following subject areas:

1. New Jersey Statutes, Rules and Regulations governing rabies and the control of dogs, wildlife control, wildlife protection, and enforcement;
2. Animal disease recognition and prevention;
3. First *[aide]* ***aid*** for injured animals;
4. Principles and procedures of capture and handling stray domestic animals and wildlife;
5. Cruelty documentation, evidence and courtroom procedures;
6. Shelter operations, adoption and humane euthanasia procedures.

8:23-5.3 Course approval

(a) An accredited New Jersey college or university may submit a course outline and description covering the subject areas mentioned in N.J.A.C. 8:23-5.2 to the Department of Health, Biological Services, Trenton, NJ 08625.

(b) Upon review and acceptance of the course outline and description, the Department will issue written approval to the college or university.

8:23-5.4 Certification

(a) An individual who successfully completes an approved course of study may make application to the State Department of Health, Biological Services Program, Trenton, New Jersey for certification.

(b) Individuals in New Jersey may also be certified by submitting to the Department of Health Biological Services a written statement from the employer attesting they have been employed in the State of New Jersey in the capacity of and with similar responsibility to those required of certified animal control officers for a period of three years.

8:23-5.5 Mandatory compliance

After January 17, 1987, municipalities must hire only Certified Animal Control Officers and the only method of certification will be through the satisfactory completion of an approved course of study. Municipalities shall meet this requirement by requiring contracting facilities to provide a Certified Animal Control Officer.

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Monitoring of Violence and Hazing on Campus

Adopted New Rule: N.J.A.C. 9:2-14

Proposed: July 16, 1984 at 16 N.J.R. 1930(a).
Adopted: November 7, 1984 by the Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.
Filed: November 15, 1984, as R.1984 d.548, **without change.**

Authority: N.J.S.A. 18A:62-5.

Effective Date: December 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): December 30, 1985.
Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

SUBCHAPTER 14. MONITORING OF VIOLENCE AND HAZING ON CAMPUS

9:2-14.1 Definitions

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

"Arson" means the crime committed when a person starts a fire or causes an explosion, whether on his own property or another's thereby purposely, knowingly or recklessly placing another person in danger of death or bodily injury.

"Assault" means the crime committed when a person:

1. Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another, with or without a deadly weapon; or
2. Negligently causes bodily injury to another with a deadly weapon; or
3. Attempts by physical menace to put another in fear of imminent serious bodily injury; or
4. Purposely or knowingly offers, gives or entices any person to take or accept any treat, candy, gift or food which is poisonous, deleterious or harmful to the health or welfare of such person; or
5. Purposely or recklessly tampers with tangible property or another so as to endanger another person.

"Bodily injury" means physical pain, illness or any impairment of physical conditions.

"Deadly weapon" means any firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used, is known to be capable or producing death or serious bodily injury or which in the manner it is fashioned would lead the victim reasonably to believe it to be capable of producing death or serious bodily injury.

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"Hazing" means the crime committed when a person, in connection with the initiation of applicants to or members of a student or fraternal organization, knowingly or recklessly organizes, promotes, facilitates or engages in any conduct, other than competitive athletic events, which places or may place another person in danger of bodily injury or serious bodily injury.

"Murder" means the crime committed when a person:

1. Purposely or knowingly causes death or serious bodily injury resulting in death; or

2. Acting either alone or with one or more other persons, is engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, sexual assault, arson, burglary, kidnapping or criminal escape, and in the course of such crime or of immediate flight therefrom, any person causes the death of a person other than one of the participants.

"Robbery" means the crime committed when a person in the course of committing a theft:

1. Inflicts bodily injury or uses force upon another; or

2. Threatens another with or purposely puts him in fear of immediate bodily injury.

"Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

"Sexual assault" means the crime committed when an actor commits an act of sexual penetration with another person if:

1. The actor uses physical force or coercion; or

2. The actor is armed with a weapon or any object fashioned in such a manner as to lead the victim to reasonably believe it to be a weapon and threatens by word or gesture to use the weapon or object; or

3. The victim is one whom the actor knows or should have known was physically helpless, mentally defective or mentally incapacitated.

9:2-14.2 Incident reporting

(a) Any employee of an institution of higher education observing or having direct knowledge from a participant or victim of an act of violence or hazing, as defined in N.J.A.C. 9:2-14.1, shall file an incident report describing the incident through the campus police or security department. At those institutions with no formal campus police or security department, the employee shall report the incident directly to the chief executive officer of the institution.

(b) Reporting of incidents of violence or hazing on campus shall be by form provided by the institution's campus police or security or where no such form is available, by the Department of Higher Education form entitled "Violent Incident Report".

(c) A copy of all incident reports of violence or hazing on campus which are filed with an institution's campus police or security department shall be forwarded to the chief executive officer of the institution.

(d) A copy of all incident reports of violence or hazing on campus received by an institution's chief executive officer and a report on the action taken regarding the incident shall be forwarded to the Department of Higher Education.

(e) All of the forms of identification, that is, names and social security numbers of the victim and the accused, shall be deleted from the incident reports submitted to the Department of Higher Education.

9:2-14.3 Annual reporting

No later than January 31st of each year, each institution of higher education in New Jersey shall submit to the Department of Higher Education an annual report for the time period covering the previous calendar year setting forth the number of incidences of violence and hazing, as defined in N.J.A.C. 9:2-14.1, which took place on its campus. The New Jersey Department of Higher Education survey form entitled "Survey of Violence on Campus" shall be used for the purpose of reporting the annual data.

9:2-14.4 Advisory committee

An advisory committee shall be appointed by the Chancellor to meet periodically with Department staff in order to review violent crime statistics and develop recommendations to alleviate the problems of violent crime and hazing.

EDITORS NOTE: Samples of the Violent Incident Report and Survey of Violence on Campus were submitted as part of this proposal. These forms may be inspected at the Office of Administrative Law, 88 East State Street, Trenton.

(a)

EDUCATIONAL OPPORTUNITY FUND BOARD

Financial Aid Guidelines
Undergraduate Grants; Grant Amount

Adopted Amendment: N.J.A.C. 9:11-1.7

Proposed: July 16, 1984 at 16 N.J.R. 1932(a).

Adopted: November 5, 1984 by the Educational Opportunity Fund Board, T. Edward Hollander, Chairman.

Filed: November 15, 1984, as R.1984 d.549, **without change.**

Authority: N.J.S.A. 18A:71-33 through 18A:71-36.

Effective Date: December 17, 1984.

Expiration Date pursuant to Executive Order No. 66(1978): January 17, 1989.

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

Full text of the adoption follows.

9:11-1.7 Grant amount

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

(c) The EOF Board of Directors shall annually review the state grant amounts of EOF students and make adjustments if necessary. The minimum and maximum awards for Graduate and Undergraduate EOF grants for each type of institution follows:

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Undergraduate	MINIMUM	MAXIMUM
2-year Public Colleges	$200	$ 450
4-Year Public Colleges		
Commuter	200	450
Residential	200	700
Rutgers, NJIT		
Commuter	200	450
Residential	200	700
Independent Colleges	200	1,400

Graduate	MINIMUM	MAXIMUM
4-Year Public Colleges	$200	$1,500
4-Year Independent Colleges	200	2,500
Rutgers, NJIT	200	2,500
CMDNJ/FDU Dental School	200	4,000

(d)-(f) (No change.)

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Pharmaceutical Services Manual Appendixes B, C, D, E

Adopted Amendments: N.J.A.C. 10:51-1, Appendixes B, C, D, E

Proposed: October 15, 1984 at 16 N.J.R. 2739(a).
Adopted: November 30, 1984 by George J. Albanese, Commissioner, Department of Human Services.
Filed: November 30, 1984 as R.1984 d.583, **without change**.

Authority: N.J.S.A. 30:4D-6b(6), 7 and 7b; 30:4D-22, 24.

Effective Date: December 16, 1984.
Operative Date: January 1, 1985.
Expiration Date pursuant to Executive Order 66(1978): November 2, 1985.

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

Copies of N.J.A.C. 10:51-1 Appendix B may be obtained from:

Henry W. Hardy, Esq.
Division of Medical Assistance and Health Services
Quakerbridge Plaza, Bldg. No. 7
Quakerbridge Road
CN 712
Trenton, NJ 08625

Full text of the changes to Appendixes C, D, and E follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

APPENDIX C

Syringe and Needles Units, Disposable

[Insulin, U40, U80, W/26G, ½" Needle]	[Each]	[0000293-5546-01]
[Insulin, U80, W/26G, ½" Needle]	[Each]	[0000293-5568-01]
[Regular, 2½cc W/any Size Needle]	[Each]	[0000293-5251-01]

Syringes Only Glass Reusable With Disposable Needles

[Insulin, 1cc U80, W/ 30 Disp Needles 26G, ½"]	[Each]	[0000293-5009-01]

APPENDIX D

Legend Devices

Debrisan Beads 25gm	[0000016-0024-05]	0000137-0024-05
Debrisan Beads 60gm	[0000016-0024-06]	0000137-0024-06
Debrisan Beads 120gm	[0000016-0024-12]	0000137-0024-12
Debrisan Beads 7 Unit Doses of 4gm	[0000016-0024-17]	0000137-0024-17
Debrisan Beads 14 Unit Doses of 4gm	[0000016-0024-27]	0000137-0024-27
Debrisan Paste 6 Unit Doses of 10gm	**GM**	**0000137-0024-10**
Inhal-Aid Drug Delivery System	**Each**	**0000369-4600-01**

APPENDIX E

[Protein Replacements Instructions for Use]

THE FOLLOWING PRODUCTS REQUIRE PRIOR AUTHORIZATION

Instructions for use:

The following products have been added to the Medicaid File for claim processing purposes.
[Protein replacements are eligible for reimbursement only when prior authorized.]
Contact the appropriate Medicaid District Office (MDO) for prior authorization.
When prior authorization has been obtained from the Medicaid District Office, complete the claim form MC-6. Report the quantity dispensed only as total number of cans, bottles, capsules, nursettes, etc., dispensed. DO NOT report grams or cc. Use only the NDC's or product codes listed for each product.

Compleat-B [Compleat-B R.T.U. 8oz]		**Compleat-B R.T.U. † 8oz Bottles**
Compleat-B R.T.U. † 8oz cans	**Each**	**0000212-0200-51**
Lactase Capsules 100	**Cap**	**0000091-3500-01**
Osmolite R.T.U. † 8oz cans	**Each**	**0000074-0709-08**
[Dextrose Pwdr-Baker 1 lb]	[Each]	[0010106-1919-01]
[Dextrose Pwdr-Humco 1 lb]	[Each]	[0000395-0725-01]
[Dextrose Pwdr-Purepac 1 lb]	[Each]	[0000228-1269-16]
[Sustacal Pudding 6.88 lb all flavors]	[Each]	[0000087-0415-42]
[Sustagen Powder 2.5lb]	[Each]	[0000087-0393-02]

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(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Pharmaceutical Services Manual
Fee Increase for Emergency Services and Impact Areas

Adopted Amendment: N.J.A.C. 10:51-1.17

Proposed: October 15, 1984 at 16 N.J.R. 2738(a).
Adopted: November 28, 1984 by George J. Albanese, Commissioner, Department of Human Services.
Filed: November 29, 1984 as R.1984 d.574, **without change.**

Authority: N.J.S.A. 30:4D-6b(6), 7 and 7b; 4D-20, 22, 24.

Effective Date: December 16, 1984.
Expiration Date pursuant to Executive Order 66(1978): November 2, 1985.

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

Full text of the adoption follows.

10:51-1.17 Legend drug dispensing fee

(a) The dispensing fee for legend drugs, dispensed by providers having Retail Permits to patients other than those in long-term facilities, shall be $3.155. Additional increments shall be given to pharmacy providers who provide the following:

1. Twenty-four hour emergency services: $0.11. The provider must have 24-hour per day, 365 days per year prescription service available and must have provided Medicaid recipients opportunities to utilize this service.

2. Patient consultation: $0.08. In addition to routinely monitoring patient profiles for drug interactions, contraindications, allergies, etc., the provider shall, where appropriate, discuss the course of drug therapy with the patient. This discussion shall include emphasis on compliance with the prescriber's orders; proper drug utilization; cautions about possible side affects; foods to avoid; proper drug storage conditions; and any other information that will prove beneficial to the patient while on drug therapy.

3. Impact area locations: $0.15. The provider must have a combined Medicaid and PAAD prescription volume equal to or greater than 50 percent of his total prescription volume.

i. Effective April 1, 1981, the long-term care prescription volume will be included for the determination of total prescription volume in determining entitlement to the impact allowance.

(b) In order to receive any or all of the above increments, the provider must certify annually to the Division on Form FD-70, that the service(s) as defined in (a) above, are being provided and/or that the provider is entitled to the impact increment as defined in (a) above.

1. Each claimed increment is subject to audit and retroactive recovery with appropriate penalties, if warranted, if the New Jersey Medicaid Program determines that the provider was not entitled to reimbursement for them.

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Long Term Care Services Manual
Final Audited Rate Calculation

Adopted New Rule: N.J.A.C. 10:63-1.23

Proposed: September 4, 1984 at 16 N.J.R. 2335(a).
Adopted: November 28, 1984 by George J. Albanese, Commissioner, Department of Human Services.
Filed: November 29, 1984 as R.1984 d.572, **with substantive changes** not requiring further public notice or comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 30:4D-6a(4)(a), b(14), 7 and 7b.

Effective Date: December 16, 1984.
Expiration Date pursuant to Executive Order 66(1978): March 21, 1989.

Summary of Public Comments and Agency Responses:

The Division received many comments on the proposal. The commentators included the New Jersey Association of Non-Profit Homes for the Aging, the New Jersey Association of Health Care Facilities, individual long term care facilities (LTCF), and financial consultants involved in the preparation of cost reports.

The commentators questioned the Division's policy that allows the Division to recover from an LTCF when the final audited rate calculation is lower than the original per diem rate, but does not allow additional reimbursement to an LTCF when the final audited rate calculation is higher than the original per diem rate. The Division's response is that the Cost Accounting and Rate Evaluation (CARE) system is a prospective payment system. The final rate is struck at the time of rate setting, and is based on a cost report which is prepared by the LTCF. The information entered on the cost report is based on financial data that is uniquely within the control of the LTCF. Therefore, the Division believes that it is the responsibility of the LTCF to correctly and accurately report the data. In addition, if the LTCF objects to the rate that is struck, they may invoke the appeals process contained in N.J.A.C. 10:63-3.20.

The purpose of the subsequent audit, which is required by federal regulations (42 CFR 447.253(d)), is to assure the facility has not received an overpayment in excess of the amount authorized under law.

It should be noted that the policy embodied in this regulation has been agreed to by the New Jersey Association of Health Care Facilities as a result of a consent agreement, entered on a stipulation of dismissal, in the case of New Jersey Association of Health Care Facilities, et al. v. George Albanese, Commissioner of Human Services, et al. (New Jersey Superior Court, Appellate Division, Docket No. A-5885-82T2).

Other commentators raised questions concerning the actual auditing practices and procedures. The Department has formed a task force to review the audit process to address these issues. It should be noted this rule was designed to address the general policy governing the final audited rate calculation; it was not intended to address specific issues or problems with the audit process.

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Summary of Changes Between Proposal and Adoption:

Language has been added in subsection (d) below which is based upon language contained in the consent order in the court case cited above. The additional text now indicates this rule applies to all current, pending or future audits for rate years beginning January 1, 1978. The rule is not intended to apply to audits that have already been finalized.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***).

10:63-1.23 Final audited rate calculation

(a) The Division of Medical Assistance and Health Services will calculate final per diem rates based on audit adjustment reports in accordance with the following general guidelines:

1. Allowance of audit adjustments which represent the reclassification of previously reported allowable cost and statistics;
2. Disallowance of audit adjustments which represent previously unreported costs; and
3. The final per diem rates determined based on 1 and 2 above cannot exceed the prospective rates previously paid.

(b) Settlement after final rate calculation will be for fraud and/or abuse collections or recoveries of payments when the final rate is lower than the original rate.

(c) The basis for establishing guidelines for the prospective per diem rates, and costs which may be reported, are the CARE (Cost Accounting and Rate Evaluation System) Guidelines which appear at N.J.A.C. 10:63-3.

(d) This section applies to all current, pending or future audits for rate years beginning January 1, 1978.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Long Term Care Services Manual Cost Study, Rate Review Guidelines and Reporting System for Long Term Care Facilities

Readoption: N.J.A.C. 10:63-3.3, 3.7, 3.11, 3.14 through 3.16 and 3.18 through 3.20 Readoption with Concurrent Amendments: N.J.A.C. 10:63-3.1, 3.2, 3.4 through 3.6, 3.8 through 3.10, 3.12, 3.13 and 3.17

Proposed: October 1, 1984 at 16 N.J.R. 2484(a).
Adopted: November 28, 1984 by George J. Albanese, Commissioner, Department of Human Services.
Filed: November 29, 1984 as R.1984 d.573, **without change.**

Authority: N.J.S.A. 30:4D-6a(4)(a), b(13)(14), 7 and 7b.

Effective Date of Readoption: November 29, 1984.
Effective Date of Concurrent Amendments: December 16, 1984.

Expiration Date pursuant to Executive Order 66(1978): November 29, 1989.

Summary of Public Comments and Agency Responses:

There was one comment submitted by James R. Hub, Vice President, McFaul and Lyons, Inc. Mr. Hub was concerned that a statement that appeared in the first paragraph of the summary statement might be misinterpreted. The statement concerned reasonableness limits for each rate component. The Division's response is to delete this sentence that reads "Reimbursement rates established by the Division represent the lower of actual costs or the reasonableness limits for each component."

There are no changes in the text of the rule associated with this adoption.

Full text of the adopted amendments to the readoption follows.

10:63-3.1 Timing

(a) Commencing with fiscal years ending with November 30, 1977, LTCFs' are to furnish required cost studies to the Department of Health, Health Economics Services within 90 days of the close of each fiscal year. For rate review purposes, the period for which these actual data are reported will constitute the "base period" for establishing prospective per diem reimbursement rates commencing six months after the end of the base period. These rates will not be subject to routine retroactive adjustments except for matters as specified in the Guidelines. At required by Federal Regulations at 42 CFR 447.304, prospectively determined payment rates will be redetermined at least annually.

(b) (No change.)

(c) Penalties will remain in force until such time that a cost report and other required documents, completed in accordance with "Care" guidelines, have been received. Penalties are not recoverable and are not allowable costs.

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

10:63-3.2 Rate components

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

1. Raw food costs;
2. General service expenses;
3. Property-operating costs;
4. Patient care expenses;
5. Property-capital costs (including return on investment).

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

10:63-3.4 Raw food costs

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

(c) For LTCF's above that limit actual raw food costs will be added to other general service expenses and subjected to a screen of the combined total. Accordingly, a credit may be entered if non-food general service costs are entered if non-food general service costs are below the reasonable limit where an excess raw food cost is indicated. Any such credit is limited to amount of raw food cost excess.

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10:63-3.5 General service expenses

(a) (No change.)

(b) The bases for screen development and reported costs subject to applicable screens, are as follows:

1. Food: As indicated in N.J.A.C. 10:63-3.4.

2. Administrator: Reasonable compensation of unrelated administrators as determined by the regression analysis formula utilized by the Division of Health Economics Services.

i. The regression will utilize as variables: fringed salaries of unrelated administrators and facility bed size. The constants resulting from the regression formula will then be used in the following formula to produce reasonableness limits for each long term care provider.

$$\left[x + \left(\frac{y}{\text{Median Days Per Bed}} \times \text{LTC Patient Days}\right)\right] \times 1.1. = \text{Limit}$$

x = Salary constant from regression
y = Per bed salary constant from regression
1.1 = 10 percent Uniqueness factor

Renumber i.-iii. as **ii.-iv.**

3. Assistant Administrator: Limited to 125 percent of median unrelated assistant administrator compensation.

i. This cost category will apply only to facilities which exceed 99 licensed long-term care beds.

4. Other general services/legal fees. This category will consist of the following cost elements:

i. Other Administrative;
ii. Dietary;
iii. Laundry and linen;
iv. Housekeeping;
v. Miscellaneous general services

5. Reasonableness limits for the other general services category will be established at 105 percent of median costs as reported by proprietary and voluntary facilities which had over 20 percent Medicaid patient days.

6. The level of reasonableness for legal fees will be established at 250 percent of median costs of proprietary and voluntary facilities which had over 20 percent Medicaid patient days or that per diem value which recognizes no greater than 80 percent of reporting proprietary and voluntary long term care facilities which had over 20 percent Medicaid days.

7. Reasonableness tests will exclude from rate calculations the greater of excess other general services or legal fee costs.

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:

	Reported costs	Excess
Case No. 1		
Other general services	$110,000	$10,000
Legal fees	$ 7,000	
Case No. 2		
Other general services	$ 98,000	
Legal fees	$ 7,000	$ 2,000
Case No. 3		
Other general services	$ 99,000	-0-
Legal fees	$ 4,500	

Historical, unscreened rates (after management, Administrator, Assistant Administrator adjustments) would reflect eliminations in the Legal fee area $2,000, and zero in the above example.

10:63-3.6 Property-operating expenses

(a) Property-operating expenses include property taxes and utilities.

1.-6. (No change.)

7. After making any adjustments per (a)6 above, taxes based upon land appraisals in excess of 140 percent of the median appraisal value of five acres, rural and two acres, urban of all LTCF's in the county will also be considered unreasonable. In the case of counties with fewer than five LTCF's neighboring counties may be combined in determining the median value to be used.

8. (No change.)

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

10:63-3.8 Routine patient care expenses

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

(c) Reasonableness limits for medical supplies and patient activities will be established at 150 percent of the median per diem cost of all proprietary and voluntary LTCF's which had over 20 percent Medicaid days in the base period.

(d) Reasonableness limits for patient care services other than nursing, medical supplies and patient activities will be established at 110 percent of the median per diem cost of all proprietary and voluntary LTCF's which had over 20 percent Medicaid days in the base period.

Recodify (d) as **(e)** (No change in text.)

10:63-3.9 Property-capital costs

(a) Included in this category are the following rate components:

1. Depreciation (except autos):
2. Maintenance and replacement of plant and equipment;
3. Rentals of building and equipment (except autos);
4. Interest on all indebtedness;
5. Amortization of leasehold improvement;
6. Return on equity (or fund balances in the care of nonpropriety homes);
7. Property insurance costs;
8. Fees and other expenses incurred in connection with the construction, purchase, alteration or leasing of land, buildings, and fixed equipment; and
9. Fees and other expenses incurred in the financing or refinancing of the LTCF itself or any of its assets.

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

10:63-3.10 Buildings

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

(e) The reasonable limits as described above will be combined to allow for square feet in excess of that established limit where value per square foot is less than that limit.

Recodify (e)-(o) as **(f)-(p)**.

10:63-3.12 Movable equipment

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

(c) Inasmuch as this allowance will be based upon the current replacement cost of new equipment, it will be deemed to provide for unusually large expenditures for maintaining old equipment (the departments consider it to be purely a management prerogative as to when to replace, rather than repair, old equipment). A provision for ongoing routine equipment maintenance and replacements will be included in the mainte-

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nance and replacements allowance as described in N.J.A.C. 10:63-3.13.

10:63-3.13 Maintenance and replacements

(a) An allowance for the maintenance of land, land improvements, buildings and equipment and for the replacement of equipment will be developed for each LTCF as follows:

1. Expenditures for this purpose in the base period by voluntary and proprietary LTCF's with over 20 percent Medicaid days in the base period will be adjusted to price levels at the midpoint of the base period through the inflation factor to reported costs for fiscal years ending prior to December.

2.-6. (No change.)

7. Base period expenditures in excess of this maximum allowance may be carried forward and applied in future years in which expenditures are below their respective maximum allowances.

i. (No change.)

10:63-3.17 Adjustments to base period data

(a) As described in previous sections of these guidelines, with the exception of capital items, rates will be based substantially upon reasonable actual base period costs. This section provides for adjustments to reasonable base period costs in establishing prospective rates.

1. Appropriate adjustments will be made to reasonable base period costs for the effect of changes between the base period and the prospective rate period in:

i. State or Federal standards of care;

ii. Definitions of "routine patient care services" reimbursable in Medicaid per diems;

iii. Limitations on total or per diem amounts of special patient care services reimbursable in Medicaid per diems.

2. LTCF's may also request that costs in addition to base period expenditures be included in the prospective rates owing to:

i. Actions mandated by governmental authorities and/or approved by same in the certificate of need process ("legal" charges):

ii. Desires to increase the quality of care above that attainable at base period cost levels ("management" changes).

3. With respect to requests for management changes, the departments will take the position that it is not a prerogative of a rate setting body to unilaterally make or amend social policies, especially with respect to the appropriateness of current allocations of State resources to the care of indigent LTCF patients. Accordingly, in the absence of other compelling reasons, management changes will be approved only in areas where quality has been found to be marginal by health facilities inspection and actual costs are commensurately low.

4. In the case of significant items, the department may exclude the effects of legal and management changes from rates until the change is effected, and if necessary, new appraisals made.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Pharmaceutical Assistance to the Aged and Disabled (PAAD)
Recovery of Benefits Correctly Made

Adopted Repeal and New Rule: N.J.A.C. 10:69A-7.1

Proposed: August 6, 1984 at 16 N.J.R. 2051(a).
Adopted: November 28, 1984 by George J. Albanese, Commissioner, Department of Human Services.
Filed: November 29, 1984 as R.1984 d.571, **without change.**

Authority: N.J.S.A. 30:4D-7.2a, 30:4D-20 and P.L. 1983, c.371.

Effective Date: December 16, 1984.
Expiration Date pursuant to Executive Order 66(1978): April 26, 1988.

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

Full text of the adoption follows.

10:69A-7.1 Recoveries for benefits correctly made

Pursuant to P.L. 1983, C. 371, no encumbrance or recovery of any kind shall be imposed or sought from the estate of a qualified applicant or an eligible person after his death because of assistance paid, or to be paid, on his behalf under the PAAD program, except for assistance incorrectly or illegally paid, or for third party liability recovery sought under the New Jersey Medical Assistance and Health Services Act (P.L. 1968, C. 413, codified as N.J.S.A. 30:4D-1 et seq.)

(b)

DIVISION OF PUBLIC WELFARE

Public Assistance Manual
AFDC Amendments Required by the Deficit Reduction Act of 1984

Readopted Amendments: N.J.A.C. 10:81-1.6, 3.8, 3.9, 3.12, 3.18, 3.35, 3.38, 4.10, 7.30, 7.32, 8.22 and 11.5
Adopted Repeal: N.J.A.C. 10:81-3.37

Proposed: October 15, 1984 at 16 N.J.R. 2833(a).
Adopted: November 28, 1984 by George J. Albanese, Commissioner, Department of Human Services.
Filed: November 28, 1984 as R.1984 d.569, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

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Authority: N.J.S.A. 44:7-6 and 44:10-3, the Deficit Reduction Act of 1984 (P.L. 98-369) and the Child Support Enforcement Amendments of 1984 (P.L. 98-378).

Effective Date: November 28, 1984.

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

Summary of Changes Subsequent to Proposal:

At N.J.A.C. 10:81-3.8 language has been added to further clarify which family members must be included in the AFDC eligible unit.

At N.J.A.C. 10:81-3.12 and 3.35 a revision has been made to comport with a similar change at N.J.A.C. 10:82-3.14 to avoid the potential confusion of having two definitions for the term "parent-minor".

At N.J.A.C. 10:81-8.22(b)3 due to a publication error, a spelling correction has been made for the word "extension". At (b)3i(3) a correction has been made to include the word "members", which was omitted in publication.

At N.J.A.C. 10:81-11.5 language has been deleted which would prohibit a parent who has been deleted from the eligible unit for noncooperation with the child support and paternity process from being the payee for the eligible unit. In accord with the rule change at N.J.A.C. 10:81-4.10, such parent may be the payee if the county agency is unable to locate another suitable payee.

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

10:81-1.6 Confidential nature of information

(a) Information about applicants or recipients will be used or disclosed only for purposes directly connected with the administration of public assistance and related services which cannot be offered without such information.

1. Such safeguards shall not apply to the furnishing of recipient address information to State and local law enforcement officers attempting to locate a fugitive felon in accordance with the provisions at N.J.A.C. 10:81-7.32.

10:81-3.8 Applicant in all segments

(a) The eligible unit shall be comprised of those family members who apply for and are eligible to receive public assistance. It shall include one or more eligible children unless such child is a recipient of SSI.

1. The eligible unit ***for AFDC-C or -F*** shall include any blood-related or adoptive brothers and sisters living in the same household and who are otherwise eligible for AFDC ***-C or -F***. This requirement does not apply to stepbrothers or stepsisters.

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

10:81-3.9 Applicant in AFDC-C and -F

(a) AFDC-C: The term applicant in AFDC-C refers to the parent(s) or parent-person(s) who makes an affirmative decision to apply for financial assistance or, when the applicant is incapacitated or alleged incompetent, someone acting responsibly for him or her (see N.J.A.C. 10:81-2.3(b)1) in order to maintain and provide for one or more dependent children of eligible age who are in his or her care and custody. It shall also include the stepparent when the natural or adoptive parent designates the stepparent as an individual whose presence in the home is essential to his or her well being and elects that such person shall be included (see N.J.A.C. 10:82-2.9).

1. When the applicant applying for AFDC-C based on continued absence of a natural or adoptive parent is himself or herself a natural or adoptive parent, he or she must apply for himself or herself and children of eligible age, unless such parent is an SSI recipient in which case he or she may apply for the eligible children only (see N.J.A.C. 10:81-3.8).

2. When the applicant in AFDC-C is a parent-person, he or she has the option of applying for himself or herself and the eligible children or only for the eligible children in his or her care and custody.

3.-5. (No change.)

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

10:81-3.12 Parent-minor in AFDC-C, -F and -N

(a) For purposes of this section the term parent-minor refers to a parent under age 18. (Special income deeming rules apply to a parent under the age of 19 residing in the same home as his or her parent(s) or guardian(s); see N.J.A.C. 10:82-3.14.) When application is made for AFDC-C by a parent who is under age 18 or for -F or -N where both parents are under age 18, the following action shall be taken in specific situations:

1. When a parent-minor who is maintaining or establishing a separate home for the child(ren), that is, in his or her own home or in the home of persons who would not qualify as parent-person, an application shall be accepted from such parent-minor. The parent-minor's parents shall be evaluated as legally responsible relatives (LRRs) for purposes of establishing capacity to support in accordance with the provisions of N.J.A.C. 10:82-3.10.

2. When a parent-minor and child(ren) are living in the home of one natural or adoptive parent of the parent-minor, or both natural or adoptive parents who are themselves eligible for AFDC-C or -F, or relatives who qualify as parent-persons of the parent-minor, there shall be a discussion with the parent-minor and the adult(s) as to whether it is desirable to have the parent-minor apply for assistance or whether the adult parent(s) should do so. The implications, options and consequences of each application shall be fully explored. The parent-minor shall make the decision. Deeming of income of parents and guardians of *[parent-minors]* ***AFDC-C and-F adolescent parents*** shall be in accordance with the provisions of N.J.A.C. 10:82-3.14.

3. When the parent-minor and child(ren) are living in the home of both natural or adoptive parents (of the parent-minor) and the parents are not eligible for AFDC-C, then the application must be accepted from the parent-minor. This rule is made because in this situation the parent-minor, although perhaps a "needy child", is not a child "deprived of parental support or care"; hence, the parents cannot apply for AFDC for such a parent-minor. Deeming of income of parents and guardians of *[parent-minors]* ***AFDC-C and -F adolescent parents*** shall be in accordance with the provisions of N.J.A.C. 10:82-3.14.

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

10:81-3.18 Employment and training requirements

(a) (No change.)

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

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1. (No change.)
2. Those who are exempt include:
i. (No change.)
ii. Persons who are:
(1)-(9) (No change.)
(10) Pregnancy: A woman who is in the sixth month or later of pregnancy.
3. (No change.)
(c)-(l) (No change.)

10:81-3.35 Legally responsible relatives (LRRs)
(a)-(g) (No change.)
(h) Parents and guardians of *[parent-minors]* ***adolescent parents***: When *[a parent-minor]* ***an individual*** (under the age of 19) ***who is himself or herself a parent*** lives in the same home as his or her own parent(s) or legal guardian(s), and the *[parent-minor]* ***adolescent parent*** applies for AFDC ***-C or -F***, the income of such parent(s) or legal guardian(s) shall be considered available to the eligible unit in accordance with the deeming provisions of N.J.A.C. 10:82-3.14.

10:81-3.37 (Reserved)

10:81-3.38 Liquidation of non-exempt real property, suits and claims and transfer of resources
(a) Responsibilities regarding liquidation as required by N.J.A.C. 10:82-3.6 are as follows.
1. CWA responsibilities: The county welfare agency shall:
i. At time of application or when existence of nonexempt real property becomes known to CWA, inform the parent(s) or other payee of assistance granted to the eligible unit of the obligations relative to the need for liquidation and repayment as applicable (see N.J.A.C. 10:81-3.40(c)).
ii. Develop with the parent(s) or other payee of assistance granted to the eligible unit a plan for liquidation.
iii. (No change.)
2. Responsibilities of the eligible unit: Members of the eligible unit shall identify all resources and shall:
i. Develop with the agency a plan for the liquidation of nonexempt real property and repayment as applicable (see N.J.A.C. 10:81-3.40(c)).
ii. (No change.)
(b) Penalties are as follows:
1.-2. (No change.)
3. When nonexempt real property, subject to liquidation, is disposed of at a price less than that authorized by N.J.A.C. 10:82-3.6, the difference between the amount received and the authorized price shall be treated as if it was lump sum income in accordance with N.J.A.C. 10:82-4.15. If the disposed resource was applicable to a child, only the child will be ineligible for the period appropriate for an eligible unit of one.
(c) (No change.)

10:81-4.10 Selection of a protective payee
(a)-(d) (No change.)
(e) The CWA is required to make protective payments when a parent(s) is disqualified from participation in the AFDC program due to refusal or failure to cooperate with ES/WIN; refusal to accept employment, voluntary cessation of employment, or failure to cooperate with CSP, unless the following applies:
1. If, after all reasonable efforts have been made, the CWA is unable to locate a suitable protective payee and prolonging the search may be detrimental to the well being of the children, the CWA is permitted to make payments to the disqualified parent(s) on behalf of the eligible children.

10:81-7.30 Federal policy for safeguarding information
(a) The Federal Social Security Act requires that a State must provide safeguards which restrict the use of disclosure of information concerning applicants and recipients to purposes directly connected with the administration of public assistance.
1. Such safeguards shall not apply to the furnishing of recipient address information to State and local law enforcement officers attempting to locate a fugitive felon in accordance with the provisions at N.J.A.C 10:81-7.32.

10:81-7.32 Release of information for purposes other than the administration of public assistance
(a)-(b) (No change.)
(c) Release of information regarding fugitive felons: For the purposes of this section a felon is defined as an individual convicted of a crime punishable by death or imprisonment in excess of one year. This includes crimes in New Jersey of the first, second, third and fourth degree.
1. The CWA may furnish a State or local law enforcement officer, upon his or her request, with the current address of any recipient under the following conditions:
i. The officer furnishes the CWA with such recipient's name and social security number; and
ii. Satisfactorily demonstrates that such recipient is a fugitive felon; and
iii. That location or apprehension of such felon is within the officer's official duties; and
iv. That the request is made in the proper exercise of those duties.

10:81-8.22 Persons eligible for medical assistance
(a) (No change.)
(b) Extension of Medicaid benefits: Extended Medicaid benefits shall be provided former AFDC families in accordance with the provisions of this subsection.
1. When an AFDC-C or -F family loses eligibility for money payment due to increased earnings from or increased hours of employment, Medicaid eligibility continues for a period of four months beginning with the month in which the family is no longer eligible for an AFDC money payment if the following exist:
i. Such family was eligible for at least three of the six months immediately preceding the month in which the family lost eligibility for an AFDC money payment; and
ii. So long as a member of the family remains employed.
iii. This extension also applies when increased earnings are due to new employment. New members added to the eligible unit during the four month extension period are not included under the extended coverage with the exception of a child born to the family during the four month extension period.
2. When an AFDC-C family loses eligibility for a money payment as a result (wholly or in part) of the collection of child or spousal support through the Child Support and Paternity process, Medicaid eligibility continues for a period of four calendar months beginning with the month in which such ineligibility begins.
i. In order to qualify for this extension of Medicaid benefits, the family must have received and been eligible to receive AFDC-C in at least three of the six months immediately preceding the month in which ineligibility for a money payment begins.
3. When an AFDC-C or -F family loses eligibility for AFDC-C or -F because of the four-month limitation on the one-third disregard of earned income or because of the 12-month limitation on the $30.00 disregard of earned income

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(see N.J.A.C. 10:82-2.8), Medicaid eligibility continues for a period of nine months beginning with the month in which the family is no longer eligible for an AFDC money payment. An additional six months' Medicaid *[extention]* ***extension*** shall be provided to families which would be eligible for AFDC if the $30.00 and one-third disregard of earned income still applied.

i. Families which lost eligibility for AFDC-C or -F between October 1, 1981 and October 1, 1984 because of four-month limitation on the $30.00 and one-third disregard of earned income are eligible for the nine month Medicaid extension and the additional six month extension from the date of application, provided such family meets the conditions below:

(1) Application for this Medicaid extension must be made by March 31, 1985.

(2) The family demonstrates to the satisfaction of the CWA that, had the $30.00 and one-third disregard of earned income not been time-limited, that it would have been continuously eligible for AFDC from the time they became ineligible for AFDC.

(3) The family must fully disclose information about any health insurance coverage that the family ***members*** may have.

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

10:81-11.5 Cooperation in establishing paternity and obtaining support

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

(h) Refusal to cooperate: If the CWA determines that no good cause exists for the client's refusal to cooperate, the client shall be notified of the determination and given an opportunity to cooperate, withdraw the application for assistance, or have the case closed. The client shall also be advised of his or her rights to a fair hearing to appeal this adverse decision in accordance with N.J.A.C. 10:81-7.1(c).

1. In the event of continued refusal to cooperate, the parent or parent-person will be denied eligibility without regard to other eligibility factors (see N.J.A.C. 10:82-2.4). Any aid for which the child is eligible shall then be provided in the form of protective payments (see N.J.A.C. 10:81-4.9). *[The noncooperating parent or parent-person may not be named as the protective payee.]* The appointment of a protective payee may be appealed in accordance with provisions of N.J.A.C. 10:81-4.14.

2.-3. (No change.)

(i)-(k) (No change.)

(a)

DIVISION OF PUBLIC WELFARE

Assistance Standards Handbook
AFDC Amendments Required by the Deficit Reduction Act of 1984

Readopted New Rule: N.J.A.C. 10:82-3.14, 4.17 and 5.12
Readopted Amendment: N.J.A.C. 10:82-1.2, 1.3, 2.3, 2.6, 2.8, 2.13, 2.19, 3.2, 3.6, 3.7, 3.13, 4.1, 4.4, 4.7 and 4.15
Readopted Repeal: N.J.A.C. 10:82-2.17, 3.3, 3.4 and 3.5

Proposed: October 15, 1984 at 16 N.J.R. 2837(a).
Adopted: November 28, 1984, by George J. Albanese, Commissioner, Department of Human Services.
Filed: November 28, 1984 as R.1984 d.568, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.50).

Authority: N.J.S.A. 44:7-6 and 44:10-3 and the Deficit Reduction Act of 1984 (P.L. 98-369).

Effective Date of Readoptions: November 28, 1984.
Effective Date of Changes upon Adoption: December 16, 1984.

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

Summary of Changes Subsequent to Proposal:

At N.J.A.C. 10:82-1.3(a)1 and 2 language has been added to further clarify which family members must be included in the AFDC eligible unit.

At N.J.A.C. 10:82-2.13(f) on line 4, column 3, under the -N segment of the "Maximum Income Level-Per Capita Table", the figure "401" should be changed to "410" to correct a publication error.

At N.J.A.C. 10:82-3.14 the term "parent-minor" contained in the proposal has been changed to "adolescent parent" to avoid confusion with N.J.A.C. 10:81-3.12 at which the term "parent-person" has a different definition. Further, language was added to specify that deeming of parental in-

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come does not apply in the -N segment. In (b)3 the word "parent" replaces "stepparent" which inadvertently appeared in the proposal.

At N.J.A.C. 10:82-4.4(c) a grammatical insertion and cross reference correction has been made.

At N.J.A.C. 10:82-4.15 has been revised to include consideration of other family expenditures due to other emergent circumstances beyond fire, flood, and other natural disasters in reducing a period of ineligibility caused by the receipt of lump sum income. Additionally, a cross reference has been corrected.

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

10:82-1.2 Schedules of allowances

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

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

1.-2. (No change.)

Schedule III
Maximum Income Levels

AFDC-C AFDC-F	Number in Eligible Unit	AFDC-N
$ 272	1	$181
540	2	361
712	3	475
820	4	546
927	5	618
1034	6	690
1141	7	760
1249	8	833
1356	9	905
1463	10	975
Add $107 each person	more than 10	Add $72 each person

10:82-1.3 Eligible unit; all segments

(a) The eligible unit shall be comprised of those family members who apply for and are eligible to receive public assistance. It shall include one or more eligible children unless such child is a recipient of SSI benefits.

1. The eligible unit ***for AFDC-C or -F*** shall include any blood-related or adoptive brothers and sisters living in the same household and who are otherwise eligible for AFDC ***-C or -F***. This requirement does not apply to stepbrothers and stepsisters ***or in circumstances in which assistance is sought for -N segment children only***.

2. A stepparent of the children for whom assistance is sought may be included in the eligible unit in accordance with the provisions of N.J.A.C. 10:82-1.9.

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

10:82-2.3 Noneligible persons in the housheold

(a) (No change.)

(b) When the natural or adoptive parent is not included in the eligible unit and has earned or unearned income of his or her own, such income, less the parent's per capita share of the allowance standard for the eligible unit with the parent included, shall be applied to the needs of the eligible children, except when such parent is an SSI recipient.

1. For earned income, the net amount to be considered available to the eligible unit shall be determined by deducting only the first $75.00 of such income and the actual expenses of child care or care for an incapacitated individual that does not exceed $160.00 ($110.00 for part-time employment) per child or individual.

10:82-2.6 Initial eligibility

(a) On all new applications, reapplications, or reopened applications, initial financial eligibility must be established before a determination of the amount of the monthly grant can be made. (For -N segment cases, see N.J.A.C. 10:82-2.11). For AFDC-C and -F cases, the earned income disregards (see N.J.A.C. 10:82-2.8) apply, except that the disregard of the first $30.00 of the remaining income plus one-third of the remainder does not apply. If total income equals or exceeds the public assistance allowance, the family is ineligible for assistance.

1. The earned income of a full-time student shall be disregarded in determining initial financial eligibility to the same extent as provided in N.J.A.C. 10:82-4.7(g). The income of a part-time student is not disregarded in determining initial eligibility.

10:82-2.8 Determination of calculated earned income: AFDC-C and -F procedures

(a) From the total gross earnings of each person in the AFDC-C and -F segments, deduct the cost of producing income if self-employed (see N.J.A.C. 10:82-4.3), and proceed as follows:

1. From gross earnings deduct the first $75.00 of such earnings for each employed individual in the eligible unit.

2.-3. (No change.)

4. For a period not exceeding eight months from the end of the four consecutive months of the $30.00 plus one-third of the remainder disregard, a deduction of the first $30.00 of the remaining income shall be applied.

i. Upon expiration of the eight-month period, this deduction shall not be applied again so long as the wage earner is a recipient of AFDC-C or -F benefits. This deduction will again be applied after the eight-month period only after the wage earner has not been a recipient of AFDC-C or -F benefits for a period of 12 consecutive months.

5. (No change in text.)

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10:82-2.13 Companion cases

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

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

Maximum Income Level-Per Capita Table
Number in -C or -F Segment

Total Eligible Unit	1	2	3	4	5	6	7	8	9
2	270								
3	237	475							
4	205	410	615						
5	185	371	556	742					
6	172	345	517	689	862				
7	163	326	489	652	815	978			
8	156	312	468	625	781	937	1093		
9	151	301	452	603	753	904	1055	1205	
10	146	293	439	585	732	878	1024	1170	1317

Number in -N Segment

Total Eligible Unit	1	2	3	4	5	6	7	8	9
2	181								
3	158	317							
4	137	273	401						
5	124	247	371	494					
6	115	230	345	460	575				
7	109	217	326	434	543	651			
8	104	208	312	417	521	625	729		
9	101	201	302	402	503	603	704	804	
10	98	195	293	390	488	585	683	780	878

10:82-2.17 (Reserved)

10:82-2.19 Overpayments and underpayments

(a) Upon discovery of an overpayment, the CWA shall take action as outlined in (a) of this section. The CWA shall seek recovery of all overpayments regardless of fault including overpayments caused by administrative action or inaction.

1.-2. (No change.)

3. In the circumstances of an overpayment to an eligible unit which is currently receiving assistance (including recipients whose overpayment occurred during a prior period of eligibility), the amount may be repaid by the eligible unit or the grant shall be reduced by an amount which is equal to 10 percent of the appropriate allowance standard for the family size. The AFDC grant shall be reduced by this amount until such time as the full amount of the overpayment is recovered. If the grant is reduced to zero because of recovery, the eligible unit will continue to be considered in receipt of AFDC benefits. If the amount payable because of recovery is less than $10.00, the AFDC check shall be issued in that lesser amount.

i. (No change.)

4.-6. See proposal at 16 N.J.R. 2055(a).

7.-9. (No change.)

10. The CWA may waive recovery of overpayments if the eligible unit is no longer receiving AFDC and the amount overpaid is less than $35.00. When the amount of the overpayment to an eligible unit no longer receiving AFDC is $35.00 or more, the CWA may waive the recovery of the overpayment, if after a reasonable effort to recover the overpayment, the CWA determines it is no longer cost-effective to continue recovery efforts. Recovery of overpayments due to fraud may not be waived regardless of the amount of overpayment.

i. Reasonable efforts to recover an overpayment include, at a minimum, written notification of the amount of and reason for the overpayment and that repayment is required.

ii. All circumstances concerning a waiver of recovery must be fully documented in the case record.

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

10:82-3.2 (No change.)

(a) (No change.)

(b) The exempt resources are as follows:

1.-10. See proposal at 16 N.J.R. 486(a).

11. Burial plots and funeral agreements: Burial plots (limited to one for each member of the eligible unit) and bona fide funeral agreements to the extent that the equity value of any agreement does not exceed $1,500 for each member of the eligible unit.

i. Burial plots are conventional gravesites, crypts, mausoleums, urns or other repositories which are customarily and traditionally used for the remains of deceased persons.

ii. Funeral agreements are contractual agreements to provide for the costs connected with burial, cremation, or other funeral arrangements.

10:82-3.3 (Reserved)

10:82-3.4 (Reserved)

10:82-3.5 (Reserved)

10:82-3.6 Liquidation of nonexempt real property

(a) If the eligible unit owns nonexempt real property, the equity value of which causes resource ineligibility, AFDC may be payable pending its liquidation.

(b) Liquidation of the real property shall be undertaken and completed promptly and in no event may it exceed a nine-month period. If the liquidation has not occurred within nine months, the case is ineligible until such time as equity value of resources are within allowable limits.

(c) In accordance with N.J.A.C. 10:81-3.40(c), the CWA shall require that an Agreement to Repay (Form PA-10D) be signed. Net proceeds from the sale of the real property shall be used to reimburse the CWA for assistance paid during the disposal period. The amount to be repaid shall be the amount of assistance granted or the amount by which the net proceeds (together with all other countable resources) exceed the resource limit, whichever is less. Any proceeds remaining following reimbursement to the CWA shall be considered a resource.

(d) AFDC payments during a period of ineligibility are contingent upon a good faith effort to liquidate the property. If a member of an eligible unit willfully fails or refuses, within a period of 30 days after being requested in writing, to consent to or to take any action necessary in connection with a plan for liquidation, the family is ineligible for assistance.

(e) If the family becomes ineligible for AFDC during the period of liquidation or if liquidation does not occur within the nine-month period, all assistance paid during the period are overpayments and must be recovered in accordance with N.J.A.C. 10:82-2.19.

(f) The county welfare agency shall:

1. Inform the member(s) of the eligible unit at the time of application or as promptly thereafter as possible that the nonexempt real property must be liquidated;

2. Develop with the member(s) of the eligible unit a plan for the liquidation of the real property; and,

3. Assist in carrying out the plan.

(g) Members of the eligible unit shall:

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1. Develop with the agency a plan for the liquidation of the real property;

2. Consent to and cooperate in carrying out the plan; and,

3. Offer the real property for sale at an asking price named by the eligible unit but not lower than the price set by an independent appraisal paid for by the CWA.

(h) Whenever the eligible unit presents evidence that such property cannot be sold, or that all efforts have failed to locate a buyer who is willing to buy the property at the appraisal price, the property must be reevaluated.

10:82-3.7 Suits and Claims

(a) Where a member of the eligible unit is, at time of application, or subsequently becomes, the owner of an interest in a suit or claim arising out of an accident, inheritance or legacy, insurance on the lives of relatives or others, statutory benefits or pensions, unfulfilled contracts or obligations, and so forth, such interests constitute personal property and are subject to the rules governing agreement to repay at N.J.A.C. 10:81-3.40, 3.41, and 3.46.

Renumber i.-iii. as 1.-3. (No change in text.)

10:82-3.13 Deeming of sponsor's income and resources to a sponsored alien

(a) The income and resources of an alien's sponsor shall be deemed to be unearned income and resources of an alien applying for AFDC for the first time after September 30, 1981 for a period of three years following the alien's entry into the United States. For purposes of this section, a sponsor is an individual, a public or private agency or organization who executed an affidavit of support or similar agreement on behalf of an alien (who is not the sponsor's dependent child or spouse) as a condition of the alien's entry into the United States. No income or resources shall be deemed from a sponsor who is (or whose spouse is) receiving AFDC or SSI.

1. (No change.)

2. Any alien subject to these deeming provisions who was sponsored by a public or private agency or organization shall be ineligible for public assistance for a period of three years following his or her entry into the United States unless the agency no longer exists or has been declared bankrupt by a court of appropriate jurisdiction.

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

(g) Any individual sponsor of an alien, and the alien, shall be jointly and severally, liable for any overpayment of AFDC made to the alien during the three years after the alien's entry into the United States that was caused by the sponsor's failure to provide correct information under the provisions of this section, except where the sponsor was without fault or where good cause existed.

1. (No change.)

10:82-3.14 Deeming income of parents and guardians of *[parent-minors]* ***adolescent parents***

(a) *[A parent-minor]* ***An adolescent parent*** is an individual under the age of 19 and who is himself or herself a parent of a dependent child.

(b) When a *[parent-minor]* ***adolescent parent*** lives in the same home as his or her own parent(s) or legal guardian(s), the income of such parent(s) or legal guardian(s) shall be considered available to the eligible unit in accordance with the following procedures. These rules do not apply if the parent(s) or guardian(s) receive(s) SSI or AFDC ***or if the adolescent parent is categorically eligible for the -N segment only***. For the purposes of this section, the term parent shall include legal guardian.

1. Reduce the gross earned income (and net income from self-employment) of each employed parent by $75.00 ($50.00 for part-time employment).

2. Add the result to the unearned income of the parent(s).

3. Further reduce the remaining income by the appropriate amount in Schedule I (N.J.A.C. 10:82-1.2) for the parent(s) and any other individuals residing in the household who are or could be claimed by the *[stepparent]* ***parent(s)*** as dependents for Federal personal income tax liability and who are not recipients of AFDC-C or -F.

4. The remaining income shall be further reduced by amounts paid by the parent(s) to individuals not living in the household who are or could be claimed by him or her as dependents for purposes of determining his or her Federal personal income tax liability.

5. Any income remaining shall be reduced by any amounts paid by the parent(s) as alimony or child support to individuals not living in the household.

6. All income remaining shall be counted as unearned income available to the eligible unit and shall be counted toward total income (N.J.A.C. 10:82-1.2(d)) and in the determination of grant amount.

(c) If the *[parent-minor]* ***adolescent parent*** does not live in the same home as his or her parents, the legally responsible relative provisions of N.J.A.C. 10:82-3.8 apply.

10:82-4.1 General provisions

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

(c) Earned income shall include the amount of Earned Income Credit payment which an individual receives.

1. If an individual applying for or receiving AFDC has on file with his or her employer an Earned Income Advance Payment Certificate (Form W-5) for the current tax year, and is in fact receiving the advance payments, the CWA shall include that amount as earned income of the individual in the month received.

2. (No change in text.)

3. (No change in text.)

10:82-4.4 Disregard of earned income in AFDC-C and -F segments

(a) The CWA shall disregard from the earned income of each employed individual, the first $75.00 of such earnings.

(b) (No change.)

(c) The CWA shall disregard from the total earned income not already disregarded, the first $30.00 and one-third ***of*** the remainder for each employed individual.

1. (No change.)

2. Any month for which the individual loses the $30.00 and one-third disregard because of a provision of *[(d)]* ***(e)*** below shall be considered as one of the four consecutive months.

(d) For a period not exceeding eight months from the end of the four consecutive months of the $30.00 plus one-third of the remainder disregard, a deduction of the first $30.00 of the remaining income shall be applied.

1. Upon expiration of the eight-month period this deduction shall not be applied again so long as the wage earner is a recipient of AFDC-C or -F benefits. This deduction will again be applied after the eight-month period only after the wage earner has not been a recipient of AFDC-C or -F benefits for a period of 12 consecutive months.

(e) (No change in text.)

10:82-4.7 Earned income of a child who is a full or part-time student

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

(f) The exemption of earned income of part-time students under this section does not apply in determining maximum income eligibility in N.J.A.C. 10:82-1.2.

(g) The earned income of a full-time student shall be disregarded in the determination of maximum income eligibility (N.J.A.C. 10:82-1.2) for a total of six months in any one calendar year.

10:82-4.15 Irregular or nonrecurring lump sum income

(a) When a recipient receives nonrecurring income (e.g., retroactive RSDI payments, income tax refunds), that income will be added together with all other income received that month by the eligible unit after application of the disregards in N.J.A.C. 10:82-2.8 and 2.12 and the exemption of income in N.J.A.C. 10:82-4.7. When this total exceeds the AFDC allowance standards in Tables I or II as appropriate, the family will be ineligible for AFDC for the number of full months derived by dividing this total income by the allowance standard applicable to the eligible unit. Any remaining income from this calculation is treated as if it is unearned income received in the first month following the period of ineligibility and is considered available for use at that time.

1.-4. (No change.)

5. Once established, the period of ineligibility may be reduced only in the circumstances below. It is the responsibility of the former eligible unit to provide all necessary information and documentation required to make a determination to shorten the period of ineligibility. The basis for a determination to shorten the period of ineligibility shall be thoroughly documented in the case record.

i. The period of ineligibility may be recalculated when AFDC allowance standards are increased. Upon request of a former AFDC eligible unit, the period of ineligibility will be reduced as follows:

(1) The number of months of ineligibility already elapsed shall be multiplied by the allowance standard used to compute the original period of ineligibility;

(2) The result shall be subtracted from the original lump sum amount; and

(3) The remaining amount shall be divided by the new AFDC allowance standard and the result will be the number of months of ineligibility remaining.

ii. The period of ineligibility may be recalculated if the income used to determine such period becomes unavailable to the eligible unit for reasons beyond the control of the unit members. Acceptable reasons are limited to those below:

(1) Loss or theft of the income: The former eligible unit shall thoroughly substantiate an allegation of loss or theft of part or all of the lump sum income and must provide the CWA with evidence that a police report of an incident of theft has been filed. Upon receipt of credible evidence of loss or theft of the income the CWA shall reduce the amount of the original lump sum by the amount of the loss or theft. Loss of the income, for the purposes of this section, shall include circumstances where a member of the former eligible unit has absconded with the funds.

(2) Fire, flood, *[or other]* natural disaster ***, or other emergent situation***: When the former eligible unit incurs and pays verifiable expenses due to an emergent situation, for which, had the family been eligible, emergency assistance would have been authorized under N.J.A.C. 10:82-5.10, those expenses shall reduce the amount of the original lump sum.

iii. The period of ineligibility may be reduced if the family incurs and pays medical expenses. In such cases the original income used to compute the period of ineligibility shall be offset by verified medical expenditures. For this purpose, allowable medical expenses are as follows:

(1) Medical and dental care: Medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner authorized by State law or other qualified health professional;

(2) Hospitalization: Hospitalization or outpatient treatment, nursing care, and nursing home care, including payments by the household for an individual who was an eligible unit member immediately prior to entering a hospital or nursing home, provided by a facility recognized by the State;

(3) Prescription drugs: Prescription drugs when prescribed by a licensed practitioner authorized under State law and other over-the-counter medication (including insulin) when approved by a licensed practitioner or other qualified health professional; in addition, costs of medical supplies, sick-room equipment (including rental) or other prescribed equipment;

(4) Health and hospital insurance: Health and hospitalization insurance policy premiums;

(5) Medicare premiums: Medicare premiums related to coverage under Title XVIII of the Social Security Act;

(6) Dentures, hearing aids, and prosthetics: Dentures, hearing aids, and prosthetics;

(7) Seeing eye or hearing dog: Securing and maintaining a seeing eye or hearing dog including the cost of dog food and veterinarian bills;

(8) Eye glasses: Eye glasses prescribed by a physician skilled in eye disease or by an optometrist;

(9) Transportation and lodging: Reasonable cost of transportation and lodging to obtain medical treatment or services; and

(10) Attendant care: Maintaining an attendant, homemaker, home health aide, housekeeper, or child care services, necessary because of age, infirmity, or illness.

(b) These regulations are not to be construed to limit any policy pertaining to reimbursement in any program, but must be applied in conjunction with any repayment agreement. (See also N.J.A.C. 10:82-3.7(a)*[4]*.)

10:82-4.17 Child support received by the eligible unit

The first $50.00 of any child support payments received on behalf of a dependent child or children by any family applying for or receiving AFDC shall be disregarded (including disregarded child support (DCS) payments paid the family through the child support (DCS) payments paid the family through the child support and paternity process). These monies are disregarded in determination of maximum income eligibility, initial eligibility, and the grant computation.

10:82-5.12 Disregarded child support (DCS) payments

For any month in which an eligible unit receives AFDC and a current child support collection has been received through the CSP process, the eligible unit is entitled to a disregarded child support (DCS) payment. The amount of DCS payment shall be the total amount of current child support collection received on behalf of the entire eligible unit, not to exceed $50.00. Current AFDC eligibility is not a prerequisite for DCS payments based on a previous month's collection.

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(a)

DIVISION OF PUBLIC WELFARE

General Assistance Manual
Notices and Hearings

Readoption: N.J.A.C. 10:85-7
Readoption with Amendments: N.J.A.C. 10:85-7.1, 7.2, 7.3, 7.4, 7.5 and 7.6

Proposed: August 20, 1984 at 16 N.J.R. 2221(a).
Adopted: November 29, 1984 by George J. Albanese, Commissioner, Department of Human Services.
Filed: November 30, 1984 as R.1984 d.578, **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. 44:8-111(d).

Effective Date: November 30, 1984 for readoption; December 17, 1984 for amendments.
Expiration Date pursuant to Executive Order No. 66(1978): November 30, 1989.

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

Summary of Changes Subsequent to Proposal:

N.J.A.C. 10:85-7.1(d)-(e)	Two publication errors have been corrected, changing the words "information" to "informing" and "applicant" to "application".
7.1(e)1, 7.2(c), and 7.3(b)1	In each of these sections, a phrase has been added for clarity and uniformity in specification of the 10-day time frame entitlement in requesting a local fair hearing.
7.3(b)2i	Has been revised to align with current hearing procedures.
7.4(a)	Language has been added to include reference to emergency fair hearings and fair hearing requests pertaining to inaction or delay by the MWD.
7.4(b)-(f)	In recognition of procedural changes in the fair hearing process, these subsections have been deleted and rewritten with updated language for the purpose of recognizing hearing responsibilities by the Office of Administrative Law (OAL) and the distinction between contested and non-contested matters.
7.5(a)1, 2 and 3	Have been revised for clarification purposes and correction of grammar.
(a)3i	Has been revised to align with current hearing procedures.
(a)3ii	Has been revised for clarification and correction of grammar.
7.6(a)	A topic title has been added preceding the paragraph.
(a)2	This paragraph has been expanded to include additional valid conditions under which an individual may request an emergency fair hearing at the local level.
7.6(b)	A topic title has been added preceding the paragraph. The word "local" has been added for clarification. Obsolete language has been deleted and a cross-reference added.
7.6(c)	A topic title has been added preceding the paragraph.
7.6(d)-(e)	Obsolete language has been deleted, a topic title inserted, and new language added for consistency with State emergency fair hearing procedures.

Language a N.J.A.C. 10:85-7.6(d)-(e) was added to bring these emergency hearing rules into alignment with those being proposed by the Office of Administrative Law (OAL) in the November 19, 1984, New Jersey Register (see 16 N.J.R. 3068(a)). The OAL proposal is entitled Rules of Special Applicability, Public Welfare Hearings and in large part the language is the same as that being adopted here at N.J.A.C. 10:85-7.6(d)-(e). The OAL has agreed to provide the Department of Human Services with any comments received on the OAL proposal. Should comments received on the OAL proposal result in changes to the proposal upon adoption, the Department of Human Services has mutually agreed to make the necessary changes to N.J.A.C. 10:85-7.6 to bring it in conformity with the OAL rule on Public Welfare Hearings.

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

10:85-7.1 General provisions

(a) Rights of applicant or recipient: An individual who applies for or receives General Assistance is entitled to a written notice of denial, reduction or termination of such assistance. Moreover, an applicant or recipient has a right, upon his or her request, to a local hearing and a State fair hearing, if appropriate, in accordance with the procedures established in this subchapter.

(b) Opportunity to apply: Any person who is in need and believes he or she is eligible for General Assistance shall be given the opportunity to make application in the municipality in which he or she is living at that time. Such opportunity shall be available during normal business hours and, on an emergency basis, at other times.

(c) Immediate assistance: When an applicant is in immediate need according to the provisions of N.J.A.C. 10:85-3.3(a), assistance shall be granted on the day of application (see N.J.A.C. 10:85-4.2(a)3 and 4). When, however, immediate need does not exist or there are, in the judgment of the municipal welfare director, persuasive and compelling reasons to conduct an investigation of the applicant's eligibility before any assistance is granted, a final decision on the application shall be made as soon as eligibility can be verified, but in no event later than 30 days from the date of application.

1. (No change.)

(d) Approval of application: If immediate assistance is not granted but eligibility is subsequently verified, a notice shall be sent to the applicant *[information]* ***informing*** him or her of the action taken (see also N.J.A.C. 10:85-7.2(b)2).

(e) Denial of assistance: When an application for assistance in denied, the applicant shall be so informed in writing by a notice mailed as soon as possible, but in no event later than 30 days from the date of *[applicant]* ***application***. Such notice shall include a statement of the applicant's right to appeal the decision. (See notice forms in Appendix A.)

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1. Right to appeal: Upon receipt of the notice of such denial, the applicant is entitled to a local fair hearing, provided such request is *[received]* ***made orally or in writing (postmarked)*** within 10 days from the mailing date of the notice. Following receipt of a written decision on the local hearing, he or she may further request a State fair hearing if dissatisfied with the local hearing decision (see N.J.A.C. 10:85-7.4(a)).

2. Delay in scheduling: When a local hearing has not been convened within the 15 days specified in N.J.A.C. 10:85-7.3(b)4, the applicant may request and be granted a State fair hearing. In such event, the request for a local hearing is considered cancelled but local efforts at reconciliation may and should continue to the maximum extent possible.

10:85-7.2 Notices to applicants or recipients

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

(c) Content of notices: Notices of denial, reduction or termination and time-limited notices shall state in clear, simple language the nature of the action, the effective date and the reason such action is being taken. (See notice forms in Appendix A.)

1. (No change from proposal.)

2. Right to appeal: The notice shall include an explanation of the client's right to request, ***orally or in writing (postmarked)*** within 10 days, a local hearing and his or her further right to a State fair hearing if a local fair hearing is not convened within 15 days of the date of the hearing request.

3. Statement in Spanish: Each notice shall include a statement in Spanish cautioning the individual that the information contained therein relates to his or her eligibility for assistance and, if he or she does not understand it, he or she should contact the MWD.

10:85-7.3 Local hearing

(a) Basis for hearings: An applicant or recipient may request a local hearing regarding any action on the part of the municipal welfare department concerning a denial, reduction or termination of assistance; designation of a temporary payee; the amount of assistance granted or timeliness of action on an application. A person or household may also request a local hearing when not afforded the right to apply for assistance or not provided with a formal response to an application for assistance.

(b) Request for local hearing: A request for a local hearing may be either oral or written. However, if the request is oral, it shall be the responsibility of the MWD staff to assist the individual in preparing the request in writing.

1. Time limitations on request for hearing: A local hearing shall be held when the request for such hearing is made ***orally or in writing (postmarked)*** within 10 days of the mailing date of the notice of adverse action. Requests based on denial of the right to apply are timely if made within 10 days of the contact with the MWD. Requests based on lack of a formal response to an application are timely if made within 10 days subsequent to the end of the 30 day processing period.

2. Continuation of assistance: When a local hearing is requested within 10 days of the mailing date of a notice of adverse action, assistance shall be continued unreduced until the hearing is held and the decision rendered by the hearing officer.

i. When a request for a State fair hearing has been made in accordance with N.J.A.C. 10:85-7.1(e)2, on account of delay in local scheduling, assistance shall be continued unreduced until the *[written decision of the]* ***scheduled*** State hearing *[is rendered]* unless the recipient agrees in writing to reduction or termination.

3. Selection of hearing officer: The hearing officer shall be the municipal director of welfare unless he or she has participated in the action or inaction which gave rise to the request for a hearing.

i. (No change.)

4. Scheduling of local hearing: The hearing shall be held with reasonable promptness, but in no event later than 15 days after the request is received, at a date and time convenient to the applicant or recipient (appellant) and the municipal welfare department. The MWD will, upon request, provide the appellant with transportation to the hearing and return.

i. Abandonment of hearing: A request for a hearing will be considered abandoned if neither the appellant nor his or her representative appears at the time and place established for the hearing, unless notice is received not later than the scheduled date of hearing that the appellant will be unable to attend for unavoidable cause, in which case the hearing shall be adjourned and rescheduled.

5. Accessibility of records: The appellant or his or her representative will be provided adequate opportunity, at a reasonable time before the date of the hearing as well as during the hearing, to examine the contents of his or her file and all documents and records to be used at the hearing.

6. Conduct of local hearing:

i. Participants: Participants in the local hearing will include, at a minimum, the appellant or his or her representative, the MWD staff member who made the decision, and hearing officer who will hear both sides of the issue and decide whether or not the action was correct.

(1) Generally, only those persons will be admitted to the hearing whose testimony and presence are necessary to a full and fair determination. The appellant may exercise a right to be assisted in his or her presentation by a relative, friend or other spokesman, or to be legally represented by a lawyer of his or her choosing. Observers may attend at the discretion of the hearing officer and with the appellant's consent;

ii. (No change.)

iii. Opportunity for statement: At the beginning of the hearing, the appellant will be given the opportunity to make a statement of the situation as he or she sees it. The hearing officer will state the point(s) at issue, subject to amendment or correction by the appellant or any of the other parties concerned. At the end of the hearing, the hearing officer will summarize the issue(s);

iv. Report and decision: Within 10 working days following the hearing, the hearing officer will prepare a brief written report. This report shall include a summary of facts presented at the hearing and the findings (decision) of the hearing officer; it will also state the regulation(s) upon which the decision is based. The final sentence on the report shall advise the appellant of the availability of a State fair hearing.

(1) (No change.)

7. (No change.)

10:85-7.4 State fair hearing

(a) ***Request for State fair hearing:*** Any client who wishes to appeal the decision resulting from a local hearing is entitled to request a State fair hearing within *[ten]* ***10*** days of the mailing date of the local hearing decision. Such request must be written and may be made to the municipal welfare department or directly to the Division of Public Welfare. ***State fair hearing requests pertaining to inaction or delay (see N.J.A.C. 10:85-7.1(e)2) by the MWD shall be processed as emergency***

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fair hearings in accordance with N.J.A.C. 10:85-7.6, providing the request is made within 15 days of the date of inaction by the MWD.*

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

*[(b) The BARA shall, to the maximum extent feasible, schedule the fair hearing within 21 days of the receipt of the request. The hearing will be held at a time and date convenient to the client and the agencies.

1. Notice of fair hearing: The BARA shall give all parties concerned at least seven days notice in writing of the time, date and place to appear for the hearing.

2. Contact by MWD: The MWD shall contact the appellant not less than two days prior to the hearing date to confirm the appellant's attendance.]*

(b) All hearing requests which involve a "contested" issue shall be transmitted to the Office of Administrative Law (OAL) for a hearing before an Administrative Law Judge (ALJ). Requests for hearings which do not involve a disputed matter and do not constitute a contested case, as defined by N.J.A.C. 1:1-1.5 and 1.6, may be subject to an administrative review by the Division of Public Welfare (DPW) in accordance with N.J.A.C. 10:6.2.

*[(c) Rules concerning withdrawal or abandonment of hearing are:

1. Disposition of hearing through withdrawal: The filing of a request for State fair hearing shall not of itself preclude continued effort to accomplish corrective action or interpretation by the State Division of Public Welfare and/or the MWD through informal adjustment procedures. The MWD may amend or reverse its decision at any time before the State fair hearing, or the client may have his or her dissatisfaction clarified through explanation or interpretation at any time before the hearing.

i. It shall be the policy to accomplish disposition of complaints through direct informal and personal relationship with the client wherever possible;

ii. If, as the result of satisfactory adjustment or for any other reason, the client desires that a hearing shall be discontinued or cancelled, his or her request to that effect shall be confirmed in writing.

2. Abandonment of hearing: See N.J.A.C. 10:85-7.3(b)4i regarding abandonment of a hearing request. This regulation applies equally to local or State fair hearings.

(d) Conduct of State fair hearing: A State fair hearing shall be conducted by a State fair hearing officer, following the same procedures as a local hearing see N.J.A.C. 10:85-7.3(b)5 and 6 regarding accessibility of records, participants, informal atmosphere and opportunity for client's statement).

(e) Rules concerning the report of hearing officer are:

1. Content of report: The hearing officer shall prepare a report summarizing who appeared and what transpired at the fair hearing. This summary shall include the issues, findings of fact, supporting regulations, and the hearing officer's conclusions, based exclusively on the evidence and on matters officially noticed;

2. Filing of report: The hearing officer's report shall be filed with the BARA and, on the same date, mailed to the client, the client's representative, if any, and the municipal welfare director.

i. If any of the parties at interest wish to take exception to the hearing officer's report, such exception must be submitted in writing to the BARA and to all parties concerned. To be considered, it must be received by the State Division of Public Welfare no later than ten working days after the mailing date of the hearing officer's report.

(f) Rules concerning final fair hearing decision are:

1. Decision by director: The final decision in a State fair hearing shall be rendered in writing by the Director of the Division of Public Welfare. Such decision shall be final and binding upon all parties concerned;

2. Prerogatives of final decision: The final decision shall adopt, reject or modify the findings and conclusion of the hearing officer. It shall give findings of fact and conclusions of law and shall contain a concise, explicit statement of the underlying facts supporting the findings.

i. The final decision may confirm, reverse or modify the local hearing decision;

3. Corrective action: In the event the final decision requires corrective action on the part of the municipal welfare department, such action shall be implemented within 15 days of the publication of the decision and shall be retroactive to the date upon which assistance was denied, reduced or terminated;

4. Final administrative action: Final administrative action on all State fair hearings shall be completed within 90 days of the date of the request for the State hearing.]*

***(c) Responsibilities of the Office of Administrative Law: The OAL shall schedule the contested case hearing and send any necessary notices to the parties. The hearing shall be conducted by an ALJ who shall issue an initial decision.**

1. Adjournments: Any adjournment of a scheduled OAL hearing requested by an applicant or recipient and granted by the OAL may not operate to extend the deadlines for a final decision and implementation of the final decision.

2. Disposition by withdrawal or abandonment: If an applicant/recipient or his or her representative fails to appear for a scheduled hearing without proper notice, a notice of abandonment shall be sent. The MWD may amend or reverse its decision at any time before or during the OAL hearing, or the hearing may be withdrawn at any time before or during the hearing upon satisfactory clarification or explanation of the matter at issue.

(d) Accessibility of records: The MWD shall provide the applicant or recipient and/or his or her authorized representative opportunity to review the case file documents and/or records to be used in the OAL hearing. Such materials shall be made available, upon request at a reasonable time before the scheduled hearing date as well as during the hearing.

(e) Representation at OAL hearings: An applicant or recipient may appear at a proceeding without legal representation, be represented by an attorney or be assisted in presenting his or her case by a relative, friend, or other spokesperson.

(f) Decision by Director, Division of Public Welfare: A final administrative hearing decision shall be rendered by the Director of the DPW. The applicant or recipient, his or her representative and the MWD shall be notified by mail of any decision or order.

1. Unless otherwise indicated, the decision by the Director of DPW shall be effective on the date of issuance.

2. When corrective action is required by the MWD, such action shall be implemented within five calendar days of the date the final decision is received in the MWD.

3. Final administrative action, including necessary action by the MWD to implement a final decision, shall be completed within 90 days of the request for the State hearing.*

10:85-7.5 Processing State hearing requests

(a) Responsibilities of municipal welfare department are:

1. Upon receipt of hearing request *[by the MWD: It]* ***it*** is the responsibility of the municipal welfare department to:

i.-iv. (No change.)

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2. Prior to ***a State level*** hearing: It is the responsibility of the MWD to:

i.-iv. (No change).

3. *[Follow decision: The MWD shall:]* ***Following a State level decision:***

*[i. Implement action as set forth in the final decision within 15 days of its official publication; and

ii. Promptly report such implementation to the Division of Public Welfare.]*

i. When corrective action is required by a final decision, the MWD shall complete such action within five calendar days of the date the final decision is received.

ii. The MWD shall promptly report such implementation action to the BARA.*

10:85-7.6 Emergency fair hearings

(a) ***Definition and criteria:*** An emergency fair hearing is one conducted by the MWD within accelerated time frames. It is in all other respects conducted in accordance with the provisions applicable to other fair hearings. It will be convened when and only when either or both of the following exists:

1. (No change.)

2. The DPW/BARA determines that there exists a threat to physical health and safety sufficiently compelling and imminent to require accelerated procedures ***or the request pertains to failure by the MWD to act on a timely request for a local hearing or inaction by the MWD on an application for assistance*.**

(b) ***Scheduling:*** The ***local*** hearing shall be scheduled by the MWD within two working days of the date of the initial request, oral or written. Notice of time, date, and place will be transmitted by telephone or in person. Upon a delay by the MWD beyond the two-day period or a delay in decision (subsection (c) of this section), the appellant may request a State emergency hearing *[which will be convened within three working days of the appellant's request for a State emergency hearing]* ***(see (e) below)*.**

(c)***Decision:*** The decision of the hearing officer may be announced at the close of the hearing or later but must be made known to the MWD and the appellant before 12 noon of the next working day. The hearing officer will file a written report and decision with DPW/BARA within two working days of the hearing, sending copies to the MWD and to the appellant.

(d) *State emergency hearing:* An appellant who wishes to appeal the decision in an emergency local fair hearing may do so within two working days of the date on which the appellant receives initial notice of the decision of the local hearing. *[A State hearing will be convened on the appealed decision within three working days. All parties will be notified by telephone or mailgram of time date, and place. An interim decision will be rendered and conveyed to the MWD by telephone by 12 noon of the next working day following the date of the hearing, specifying the type and amount of assistance to be provided immediately to forestall the effects of the emergency.]* ***An emergency State fair hearing may be requested when the MWD fails to process a final decision on an application within 30 days of the date of the application or when immediate assistance is denied and the applicant can demonstrate to DPW/BARA the existence of a threat to physical health and safety.****

(e) When it is determined that a request for a hearing should be scheduled as an emergency fair hearing:

1. BARA shall notify the OAL by telephone of the hearing request on the same business day as the request is received. The Clerk of the OAL shall prepare the OAL transmittal form based upon the telephone call.

2. The case shall be scheduled by the OAL for a hearing within three business days after the phone call is received.

3. Notice of the time, date and place of the hearing shall be transmitted by telephone to the BARA within one business day after the OAL is notified of the hearing request. BARA shall notify the MWD, the petitioning applicant/recipient or the petitioner's representative of the schedule hearing by telephone.

4. The ALJ shall file an Initial Decision by mailgram with the Director of the DPW and the parties no later than the business day following the date of the hearing.

5. The petitioning applicant/recipient, his or her representative or the MWD may, by telephone, make exception or objection to the Initial (mailgram) Decision, to the DPW no later than the first business day following the issuance of the Initial Decision.

6. The Director of the DPW shall issue a final decision no later than three business days following the date the Initial Decision is received which shall accept, reject or modify the Initial Decision. On the day the final decision is issued, the DPW shall notify the MWD, the OAL and the petitioner or the petitioner's representative by telephone of the final decision and any relief ordered shall be provided by the MWD on the day notice of the final decision is received.*

(a)

DIVISION OF PUBLIC WELFARE

Food Stamp Program
Revised Income Deductions, Utility Allowances, Uniform Telephone Allowance and Maximum Coupon Allotments

Readopted Amendment: N.J.A.C. 10:87-12.1 and 12.2

Proposed: October 15, 1984 at 16 N.J.R. 2844(a).

Adopted: November 28, 1984, by George J. Albanese, Commissioner, Department of Human Services.

Filed: November 28, 1984 as R.1984 d.567, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 30:4B-2, the Food Stamp Act of 1977 as amended; 7 CFR 273.9(d)(6), (7), and (8); 7 CFR 273.10(e)(4); and P.L. 98-473.

Effective Date of Amendment to N.J.A.C. 10:87-12.1: November 28, 1984.

Effective Date of Amendment to N.J.A.C. 10:87-12.2: November 1, 1984.

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

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Summary of Changes Subsequent to Proposal:

At N.J.A.C. 10:87-12.2, Table II, the maximum coupon allotment (MCA) figures have been changed to reflect a slight increase in benefits for most eligible households. This change, implemented at the direction of the United States Department of Agriculture, is based on a provision of the Federal Public Law 98-473, Making Continuing Appropriations for the Fiscal Year 1985, and for other Purposes (commonly referred to as the "Continuing Resolution"). The provision provides that, effective November 1, 1984, food stamp allotments will be based on 100 percent of the Thrifty Food Plan. Prior benefits were based on 99 percent of the Thrifty Food Plan. The increase allotments will represent an increase in Federal funds coming into the State.

NOTE: The new figures which appear in boldface with asterisks are effective retroactive to November 1, 1984. Note that the MCA figure for "each additional member" remains at $59.

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

10:87-12.1 Income deduction table

TABLE I

Income Deductions

Standard Deduction	$ 95.00
Dependent Care/Shelter Deduction	$134.00
Uniform Telephone Allowance	$ 9.89
Standard Utility Allowance	$114.00
Heating Utility Allowance	$191.00

10:87-12.2 Maximum coupon allotment table

TABLE II

Maximum Coupon Allotment (MCA)

Household Size	MCA
1	$*[78]* ***79***
2	*[143]* ***145***
3	*[206]* ***208***
4	*[261]* ***264***
5	*[310]* ***313***
6	*[373]* ***376***
7	*[412]* ***416***
8	*[471]* ***475***
9	*[530]* ***534***
10	*[589]* ***593***
Each Additional Member	**+59**

(a)

DIVISION OF PUBLIC WELFARE

Medicaid Only Program Eligibility Computation Amounts

Readopted Amendment: N.J.A.C. 10:94-5.4, 5.5, 5.6 and 5.7

Proposed: October 15, 1984 at 16 N.J.R. 2845(a).
Adopted: November 28, 1984, by George J. Albanese, Commissioner, Department of Human Services.
Filed: November 28, 1984 as R.1984 d.566, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 44:7-87; and Section 1902(a) of the Social Security Act.

Effective Date of the Readoption of Emergency Amendment: November 28, 1984.
Effective Date of Changes upon Adoption: January 1, 1985.

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

The amounts indicated in boldface with asterisks reflect changes in the Medicaid Only eligibility computation amounts resulting from the 3.5 percent Federal cost-of-living increase in the Supplemental Security Income (SSI) program payment levels effective January 1, 1985. Section 1902(a) of the Social Security Act requires that Medicaid Only eligibility criteria be determined by the same criteria as applies in the SSI program. These amendments will align certain dollar amounts used to determine program eligibility for the Medicaid Only program for the aged, blind, and disabled with those effective January 1, 1985 applicable to the SSI program. The Medicaid "Cap" for persons in Title XIX facilities is set at 300 percent of the Federal SSI benefit. The increase in standards and income computation amounts theoretically expands the population of potentially eligible persons. However, based on past experience, little increase in caseload because of these revisions 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 an increase in the number of persons who would actually receive medical assistance under this standard. Past experience with similar increases has demonstrated that there will be an insignificant economic impact on the public or State and county government caused by this change.

NOTE: The figures which appear in boldface with brackets and asterisks are effective October 1, 1984 through December 31, 1984. The new figures in boldface with asterisks will become effective January 1, 1985.

Full text of the changes between proposal and adoption follows (additions to proposal indicated by boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[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

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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:

$ *[124.67]*	***128.33***	for an individual
$ *[177.33]*	***182.67***	for a couple

i. (No change.)

13. (No change.)

(b) (No change.)

10:94-5.5 Deeming of income

(a)–(c) (No change.)

(d) A table for deeming computation amounts follows:

TABLE A
Deeming Computation Amounts

1. Living allowance for each ineligible child	$ *[158.00]* ***163.00***	
2. Remaining income amount	Head of Household $ *[157.00]* ***162.50***	Receiving Support and Maintenance $ *[104.67]* ***108.34***
3. Spouse to Spouse Deeming-Eligibility Levels		
a. Residential Health Care Facility	*[622.05]* ***638.05***	
b. Eligible individual living alone with ineligible spouse	*[654.36]* ***676.36***	
c. Living alone or with others	*[503.25]* ***519.25***	
d. Living in household of another	*[358.98]* ***369.65***	
4. Parental Allowance-Deeming to Child(ren)		
Remaining income is:	1 Parent	Parent & Spouse of Parent
a. Earned only	$ *[628.00]* ***650.00***	$ *[944.00]* ***976.00***
b. Unearned only	$ *[314.00]* ***325.00***	$ *[472.00]* ***488.00***
c. Both earned and unearned	$ *[314.00]* ***325.00***	$ *[472.00]* ***488.00***

10:94-5.6 Income eligibility standards

(a)–(b) (No change.)

(c) Non-institutional living arrangements:

1.–3. (No change.)

4. Living in household of another: If the individual/couple lives in a household with adults other than a spouse and the living arrangement has not already been determined in N.J.A.C. 10:94-5.6(c)1 through 5.6(c)3 above, the individual/couple may be considered to be living in the household of another (Table B, Figure *[V]* ***IV***). The specific criteria for categorization in this living arrangement is the receipt of both support and maintenance. That is, the individual/couple does not purchase either food or shelter separately in accordance with (c)4i below.

i.–ii. (No change.)

5. Table B follows:

TABLE B

Variations in Living Arrangements	Medicaid Eligibility Income Standards Individual	Couple
I. Residential Health Care Facility	$*[464.05]* ***475.05***	$*[909.36]* ***931.36***
II. Living Alone or with Others	*[345.25]* ***356.25***	*[497.36]* ***513.36***
III. Living Alone with Ineligible Spouse	*[497.36]* ***513.36***	
IV. Another Living in Household of	*[253.65]* ***260.98***	*[407.76]* ***418.43***
V. Title XIX Approved Facility: 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.	*[882.00]* ***975.00*†**	

† 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 *[$314.00]* ***$325.00*** for the sponsor, *[$471.00]* ***$487.50*** for the sponsor if living with his or her spouse, *[$628.00]* ***650.00*** for the sponsor if his or her spouse is a co-sponsor.

3. Subtract *[$157.00]* ***$162.50*** for any other dependent of the sponsor who is or could be claimed for Federal Income Tax purposes.

4. (No change.)

(f) (No change.)

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(a)

DIVISION OF PUBLIC WELFARE

Service Programs for Aged, Blind or Disabled

Supplemental Security Income Payment Levels

Readopted Amendment: N.J.A.C. 10:100, Appendix A

Proposed: October 15, 1984 at 16 N.J.R. 2846(a).
Adopted: November 28, 1984, by George J. Albanese, Commissioner, Department of Human Services.
Filed: November 28, 1984 as R.1984 d.565, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 44:7-87; Section 1618(a) of the Social Security Act.

Effective Date of Readopted Amendment: November 28, 1984.
Effective Date of Change upon Adoption: January 1, 1985.

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

Summary of Changes Subsequent to Proposal:

The amounts indicated in boldface with asterisks reflect changes in the payment levels for the Supplemental Security Income (SSI) program which include the 3.5 percent Federal cost-of-living increase effective January 1, 1985. Section 1618(a) of the Social Security Act requires the State to maintain supplemental payments in the SSI program at levels no lower than those in effect in December 1976. The Department, by maintaining the existing supplement levels, and thereby providing SSI recipients the full amount of the Federal cost-of-living increase, meets the requirements of that section of the Act. This increase will enable eligible low-income aged, blind, and disabled individuals to maintain a measure of parity with the increased cost of living. The increase in State expenditures over existing levels is estimated to be $93,000 through the end of State fiscal year 1985. Increased cost to county government is estimated at $31,000 for the same period. This change will not impact administratively on the Department or county governments as the SSI program is administered by the Social Security Administration.

NOTE: The figures which appear in boldface with brackets and asterisks are effective October 1, 1984 through December 31, 1984. The new figures in boldface with asterisks will become effective January 1, 1985.

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

10:100, Appendix A

The New Jersey Supplemental Security Income Payment Levels

Living Arrangement Categories	Payment Level *[10/1/84]* *1/1/85*
Eligible Couple	
Licensed Medical Facility (Hospital, Skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence	***[$50/472.00†]* *$50/488.00†***
Residential Health Care Facilities and certain residential facilities for children and adults	***[$909.36]* *$931.36***
Living Alone or with Others	***[$497.36]* *513.36***
Living in Household of Another, Receiving Support and Maintenance	***[$407.76]* *$418.83***
Eligible Individual	
Licensed Medical Facility (Hospital, Skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence of 16 or less	***[$25/314.00†]* *$25/325.00†***
Residential Health Care Facilities and certain residential facilities for children and adults	***[$464.05]* *$475.05***
Living Alone or with Others	***[$345.25]* *$356.25***
Living with Ineligible Spouse (No other individuals in household)	***[$497.36]* *$513.36***
Living in Household of Another, Receiving Support and Maintenance	***[$253.65]* *$260.98***

† 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.

INSURANCE
(b)

DIVISION OF ADMINISTRATION

Auto Body Repair Facilities

Notice of Correction: N.J.A.C. 11:14-1.3

An error appears in the November 5, 1984 issue of the New Jersey Register at 16 N.J.R. 3045(a). The definition of "Collision" was omitted from the adoption notice at N.J.A.C. 11:14-1.3 and should have appeared as follows:

11:14-1.3 Definitions

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

. . .

"Collision" means any damage caused to or by a motor vehicle directly in an accident or by any loss caused by missiles, falling objects, fire, theft, larceny, windstorm, hail, earthquake, explosion, riot or civil commotion, malicious mischief, vandalism, water, flood, lightning, external discharge or leakage of water, smoke or colliding with a bird, animal or stationary object.

. . .

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LABOR

(a)

DIVISION OF WORKPLACE STANDARDS

Boilers, Pressure Vessels and Refrigeration; and Licensing of Operating Engineers and Firemen

Adopted New Rule: N.J.A.C. 12:90
Adopted Repeal: N.J.A.C. 12:90

Proposed: May 21, 1984 at 16 N.J.R. 1172(a).
Adopted: November 27, 1984 by Charles Serraino, Commissioner of Labor.
Filed: November 27, 1984 as R.1984 d.557, **with changes** not requiring additional public notice and comment (See N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 34:1-40, 34:1-47, 34:7-18.

Effective Date: December 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): December 17, 1989.

Summary of Public Comment and Agency Responses:

The New Jersey Department of Labor held a public hearing on the proposed rules on July 12, 1984 at the Thomas A. Edison College at 101 West State Street, Trenton, New Jersey. The public comment period remained open through July 20, 1984. Eight persons testified at the public hearing, five of whom submitted written testimony. Written testimony is indicated by an asterisk.

Exxon Company, U.S.A.—William J. Neill, Jr.
Exxon Research and Engineering Corp.—Guido Karcher
Hartford Steam Boiler Inspection Insurance Co.—D.E. O'Brian
International Union of Operating Engineers Local 68—Stephen McGuire*
New Jersey Petroleum Council—Oliver Papps
New Jersey State Chamber of Commerce Advisory Committee on Boilers and Pressure Vessels—Frank Minsch*
Uniform Boiler and Pressure Vessel Laws Society—William J. Stuber*
Union Carbide Corporation—Christopher Otto*

An additional seven written comments were submitted by the following:

Allied Chemical Company—Charles Dancer
API Subcommittee on Pressure Vessel Tanks—G.G. Karcher
Merck & Company, Inc.—Mario Viscovich
National Board of Boiler and Pressure Vessel Inspectors—S.F. Harrison
New Jersey Chamber of Commerce—William E. Halsey
Public Service Electric and Gas Company—Robert L. Mitti
William E. Somers—Westfield

The following summarizes the comments received and provides the Department's responses to these comments. All comments are on file at the Offices of the State Department of Labor.

1. The comments of the New Jersey Chamber of Commerce were supported by the comments of Exxon Company, U.S.A., Exxon Research and Engineering Corp., New Jersey Petroleum Council and Merck and Company.

2. Comment: The New Jersey Chamber of Commerce requested a change in the definition of "Alteration". They said the definition was too general, and could be subject to misinterpretation.

Response: The Division agrees and has deleted the definition because the term is defined in the National Board Inspection Code.

3. Comment: The Chamber suggested the deletion of the word "all" in the definition of "Internal inspection". They said it was not necessary to remove all manhole plates, handhole plates or other inspection opening closures.

Response: The Division agrees to the deletion. The word "all" is not necessary.

4. Comment: Local 68 of the International Union of Operating Engineers wants the definition of "Boiler horsepower" revised to agree with the former text.

Response: The Division agrees. The second sentence was rewritten to overcome the objection.

5. Comment: In N.J.A.C. 12:90-2.1, it is no longer necessary to have definitions for "approved central system", "dissimilar", "flame failure device", or "manual reset device" since N.J.A.C. 12:90-4.12 has been deleted.

Response: The above definitions were deleted.

6. Comment: Two commentors on N.J.A.C. 12:90-3.6(b) want it understood that a low pressure boiler serving a heating plant must be registered through the National Board of Boiler and Pressure Vessel Inspectors to guarantee notification of all boilers shipped into the State by placing such a statement in the rules.

Response: This section is addressing the subject of exemption and has nothing to do with the subject of registration. In addition, the Division feels that the exemption is a statutory item, does not have to be addressed, and has deleted the section.

7. Comment: The Chamber of Commerce wants added at the end of N.J.A.C. 12:90-3.10(b) references to boilers and refrigeration systems.

Response: The Division revised the subsection to make the text conform to the former subsection (e).

8. Comment: Public Service at N.J.A.C. 12:90-3.10(c) wanted the shift supervisor or chief engineer to determine how long a licensed operator could be away from the equipment.

Response: The Division has revised 12:90-3.10(d) in response to the comment.

9. Comment: Commentors including Union Carbide, requested that the provision at N.J.A.C. 12:90-3.10(d), which requires that licensed persons give constant attention to high pressure boilers, be changed, so that constant attention is not required when certain safeguards are installed.

Response: To do what is suggested would reduce safety. Since conditions can change very rapidly at high pressure boilers, the licensed person must give constant attention to the boiler. Without changing the intent of this section, the Division has made editorial improvements.

10. Comment: Union Carbide stated that N.J.A.C. 12:90-3.10(e) concerning duties of licensed persons, was changed from the former text, and that the change is unnecessarily restrictive.

Response: There was no change in meaning from the former text.

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11. Comment: At N.J.A.C. 12:90-3.10(e), Local 68 of the Operating Engineers wants the phrase "The length of time during which they can properly be away from this equipment varies according to its nature and size and to load condition" added.

Response: The sense of this phrase was added.

12. Comment: At N.J.A.C. 12:90-3.11(a) the Chamber of Commerce suggests that the term "all persons" is too general.

Response: The Division agrees and has modified the term to read "each person".

13. Comment: The Hartford Steam Boiler Insurance Company at N.J.A.C. 12:90-4.1(b)2, 4, 6 and elsewhere in the rules, asked that where the term "hot water boiler" is used, that it be changed to read "hot water heating boiler" since this latter term is defined.

Response: The term as stated in the rules is dictated by N.J.S.A. 34:7-14 et seq. and has not been changed.

14. Comment: The National Board wants N.J.A.C. 12:90-4.1(b)3 deleted, because the exclusion will unnecessarily expose a large number of people to serious safety hazards.

Response: This cannot be done because the exception is contained in N.J.S.A. 34:7-14(a).

15. Comment: William E. Somers of Westfield suggests that N.J.A.C. 12:90-4.2(b)8 be deleted.

Response: The Division agrees because fiberglass reinforced plastic construction is not acceptable.

16. Comment: Commentors requested that at N.J.A.C. 12:90-4.2(c) the Division adopt the 1983 edition of the National Board Inspection Code in lieu of the 1981 edition and that American Petroleum Institute (API) 510-1983, Pressure Vessel Inspection Code be adopted.

Response: Because of the availability of the 1983 edition of the Inspection Code, the Division agrees, but believes API 510 should be deferred for discussion and consideration as a new issue at a later date due to the technical content of the documentation.

17. Comment: The Uniform Boiler and Pressure Vessel Laws Society requested that at N.J.A.C. 12:90-4.2(d) the Division adopt the American Society of Mechanical Engineers Controls and Safety Devices for Automatically Fired Boilers, ASME-CSD-1-1982.

Response: This cannot be done because many items in the ASME standard are outside the scope of our statute.

18. Comment: Again at N.J.A.C. 12:90-4.2(d) the Chamber objects to the term "each person".

Response: The Division disagrees. The term "each person" is appropriate because every person involved with boilers must comply with the standards.

19. Comment: The Chamber of Commerce commentor questioned the meaning of the second sentence of N.J.A.C. 12:90-4.2(e).

Response: The Division deleted the second sentence because it is unclear.

20. Comment: At N.J.A.C. 12:90-4.3 the Chamber suggests that these are unfired pressure vessel classifications.

Response: The Division agrees. These classifications are erroneously located here.

21. Comment: At N.J.A.C. 12:90-4.4 it was requested by the National Board that the Division add the requirement that high pressure boilers be registered with the National Board of Boilers and Pressure Vessel Inspectors to guarantee notification of all boilers shipped into the State.

Response: This is not necessary here, as the requirements are covered elsewhere in the rules, at N.J.A.C. 12:90-4.2(b), and National Board registration is optional to the owner of the vessel.

22. Comment: One commentor requested that N.J.A.C. 12:90-4.6 be reworded to make the requirement for relief device settings more comprehensive by deleting the word "primary" before the term "relief devices".

Response: The Division agrees. The word "primary" has been deleted and additional clarifying language added.

23. Comment: The National Boiler and Pressure Vessel Uniform Laws Society felt that another requirement should be added to N.J.A.C. 12:90-4.6 as follows: "Any repair or adjustment to relief devices shall be performed by an authorized repair firm".

Response: The current rule requires repairs under the Capital ASME Code and the comment suggests repairs under a different set of standards. Therefore, the Division believes that such a provision should be deferred, pending consideration of new technical provisions at a later date.

24. Comment: The National Board suggests, in order to cover situations and conditions not covered in the proposed rules, that where blowdown requirements are not in the rules it should be stated that blowdown provisions conform to National Board blowdown rules.

Response: The Division feels it has covered the issue by Figures 4.7(f)1 and 4.7(f)2.

25. Comment: The Chamber of Commerce suggested that in N.J.A.C. 12:90-4.8(a) welded repairs and alteration to boilers be permitted not only when they are in compliance with the original construction standards but also when they conform to the latest edition of the ASME Code.

Response: The Division has adopted by reference the 1983 edition of the ASME Code and each revision of the ASME Code will be reviewed to determine if it is acceptable to the Division and if so, will be incorporated by reference.

26. Comment: Public Service and the Chamber commented concerning N.J.A.C. 12:90-4.8(e) which requires that a record of welded repairs be filed with the Office of Boiler and Pressure Vessel Compliance. The commentor suggested that minor repairs of a routine nature should not come under this provision.

Response: The Division agrees that receiving a record of minor repairs of a routine nature would serve no purpose.

27. Comment: A commentor made several sound technical points about the inadequacy of N.J.A.C. 12:90-4.12.

Response: The Division deleted the section because of the many automatic control failures. The Division believes that in the interests of safety the Division cannot grant exemptions for operation of equipment with a licensed operator which is permitted under N.J.S.A. 34:7-1(6).

28. Comment: The Chamber stated that in N.J.A.C. 12:90-5.1(b) "any piping components" should be added to the list of unapplicable items in Subchapter 5 which deal with unfired pressure vessels.

Response: The Division added piping components to the list.

29. Comment: Commentors requested that the Division adopt the 1983 edition of the National Board Inspection Code in lieu of the 1981 edition at N.J.A.C. 12:90-5.2(c) and adopted also API 510, Pressure Vessel Code.

Response: Same response number 18 above.

30. Comment: At N.J.A.C. 12:90-5.2(d) the Chamber made the same comment as at N.J.A.C. 12:90-4.2(d) on "each person". They also pointed out that the scope of the requirements are on construction, repair and alteration.

Response: The Division does not want to change the term "each person" but did change the provision to reflect the correct scope issues.

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31. Comment: At N.J.A.C. 12:90-5.2(e) the Chamber made same comment as on N.J.A.C. 12:90-4.2(e).

Response: Same response in number 21 above.

32. Comment: The Chamber of Commerce requested a definition at N.J.A.C. 12:90-5.10(b) be included to show how the user-inspector is qualified.

Response: The National Board Standards which are incorporated by reference, and adopted provided the definition, and need not be reiterated here.

33. Comment: At N.J.A.C. 12:90-5.12(a) The Chamber and Public Service suggested that welded repairs and alteration to boilers be permitted not only when they are in compliance with the original construction standard, but also when they conform to the latest edition of the ASME Code.

Response: See response number 27 above.

34. Comment: At N.J.A.C. 12:90-5.12(c), the Chamber of Commerce and Public Service suggested that minor repairs of a routine nature should not come under this provision.

Response: The Department agrees that receiving a record of minor repairs of a routine nature should not come under this provision.

35. Comment: At N.J.A.C. 12:90-5.14(a) the Chamber states that the word "boiler" is a typographical error.

Response: The Division agrees and revised the rule.

36. Comment: the N.J.A.C. 12:90-6.2(b) the Chamber asks: "On what date will the 1984 edition of BOCA Basic National Mechanical Code become effective?"

Response: On the effective date of this rule.

37. Comment: At N.J.A.C. 12:90-6.2(c) the Chamber objects to the term "each person".

Response: See comment 20 above.

38. Comment: At N.J.A.C. 12:90-6.2(d) the Chamber questioned the meaning of the second sentence.

Response: The Division deleted the second sentence because it was unclear.

39. Comment: Local 38 of the Operating Engineers has requested changes on the issue of eligibility for a third grade refrigeration engineer's license at N.J.A.C. 12:90-7.8(e).

Response: The Division has made substantial editorial changes and accepted the comment.

40. Comment: The Chamber of Commerce has requested a definition of "special licenses" used at N.J.A.C. 12:90-7.15(f).

Response: Clarifying language was added in response to the comment.

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 90
BOILERS, PRESSURE VESSELS AND REFRIGERATION

SUBCHAPTER 1. GENERAL PROVISIONS

12:90-1.1 Title and citation

This chapter shall be known and may be cited as N.J.A.C. 12:90, Boilers, Pressure Vessels and Refrigeration.

12:90-1.2 Authority

These rules are promulgated pursuant to the authority of the Operating Engineers and Firemen Licensing Act, N.J.S.A. 34.7-1 et seq. and the Boiler, Pressure Vessel and Refrigeration Act, N.J.S.A. 34:7-14 et seq.

12:90-1.3 Purpose

(a) The purpose of this chapter is to provide reasonable standards for:

1. The protection of life and property in the use of boilers, pressure vessels and refrigeration systems; and

2. The licensing of engineers and firemen.

12:90-1.4 Scope

(a) This chapter shall apply to:

1. The design, construction, alteration, repair, operation, use and inspection of boilers, pressure vessels and refrigeration systems; and

2. The examination and licensing of operating engineers, firemen, and operators of long boom cranes.

12:90-1.5 Documents referred to by reference

The availability of standards and publications referred to in this chapter is explained in N.J.A.C. 12:90-8.

12:90-1.6 Validity

Should any section, paragraph, sentence or word of this chapter be declared for any reason to be invalid, such decision shall not affect the remaining portions of this chapter.

SUBCHAPTER 2. DEFINITIONS

12:90-2.1 Definitions

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

"Act", ("Inspection Act") means the Boiler, Pressure Vessel and Refrigeration Act, N.J.S.A. 34:7-14 et seq.

"Act", ("Licensing Act") means the Operating Engineers and Firemen Licensing Act, N.J.S.A. 34:7-1 et seq.

["Alteration" means change in original design.]

"ANSI" means American National Standards Institute.

"API-ASME" means the American Petroleum Institute—American Society of Mechanical Engineers.

"Approved" means acceptable to the Commissioner of Labor.

*["Approved central system" means:

1. A system remote from the boiler room that receives a signal transmitted to it by the failure of any of the automatic boiler controls, and

2. A system designed in accordance with N.J.A.C. 12:90-3.6.]*

"ASME" means the American Society of Mechanical Engineers.

"ASME Code" means the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers.

"Authorized inspection agency" means one of the following:

1. The State of New Jersey, or

2. An inspection agency authorized to write boiler and pressure vessel insurance and having inspectors that are authorized with a valid certificate of competency to inspect.

"Board" means the Board of Boiler and Pressure Vessel and Refrigeration Rules appointed under N.J.S.A. 34:1-38.1.

"Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for external use by the direct application of heat. The term "boiler" shall include fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves.

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1. "Low pressure boiler" means a boiler complying with N.J.A.C. 12:90-4.2(b)4.

2. "Heating boiler" means a steam or vapor boiler operating at a pressure not exceeding 15 psig, or a hot water boiler operating at a temperature not exceeding 250 degrees Fahrenheit.

3. "Hot water heating boiler" means a boiler in which no steam is generated, from which hot water is circulated for heating purposes and then returned to the boiler; and which operates at a pressure not exceeding 160 psig or a temperature of 250 degrees F or both at or near the boiler outlet.

4. "High temperature water boiler" means a water boiler operating at a pressure exceeding 160 psig or a temperature exceeding 250 degrees Fahrenheit.

5. "Power boiler" means a boiler in which steam or other vapor is generated at a pressure of more than 15 psig. Power boiler also means a high temperature, high pressure water boiler.

"Boiler horsepower" means the evaporation of 34.5 pounds of water from and at 212 degrees Fahrenheit or its equivalent*[. "One boiler horsepower" shall be deemed to mean]* ***and in the absence of reliable means of determination shall mean*** five square feet of boiler heating surface, or ten kilowatts input, or 40,000 Btu input.

"Btu" means a British thermal unit or the quantity of heat required to raise the temperature of one pound of water one degree Fahrenheit.

"Building of public assembly" means an assembly building, Use Group A, which is a place of assembly as defined by Section 302.0 of the BOCA Basic National Building Code-1984.

"Certificate of competency" means a certificate issued to a person who has passed the inspection examination prescribed by the Board.

"Certificate of inspection" means an inspection, the report of which is used by the chief boiler inspector as justification for issuing, withholding or revoking the certificate as provided for in N.J.S.A. 34:7-24.

"Chief engineer" means a properly licensed person supervising one or more of the licensed operators of boilers, power plants or refrigeration systems working in the same plant.

"Commissioner" means the Commissioner of Labor or his authorized agent.

["Dissimilar" means designed to accomplish the same result but by different methods.]

"Division of Workplace Standards" means the Division of Workplace Standards of the New Jersey Department of Labor, CN 054, Trenton, NJ 08625-0054.

"External inspection" means an inspection made when a boiler or pressure vessel is in operation.

["Flame failure device" means a device designed to cut off the fuel supply within prescribed time limits in the event of loss of ignition.]

"Insurance company inspector" means an employee of an insurer who is trained and specializing in the inspection of boiler or pressure vessels for safety reasons to represent the interests of the insurer.

"Internal inspection" means as complete an examination as can reasonably be made of the internal surfaces of a boiler or pressure vessel when *[all]* manhole plates, handhold plates, or other inspection opening closures are removed.

"Kilowatt" means a unit of electrical power equal to 1000 watts.

"License" means a certificate documenting acceptance of a person as competent to operate specified equipment.

"Long boom crane" means a hoisting machine with a boom of over 99 feet.

"Major repair" means a repair affecting the strength of a boiler or pressure vessel or other equipment.

["Manual reset device" means a control designed to prevent recycling of automatically fired burners until reset manually.]

"Mechanical Inspection Bureau" means the Office of Boiler and Pressure Vessel Compliance.

"National Board Commission" means the commission issued by the National Board of Boiler and Pressure Vessel Inspectors to a holder of a certificate of competency who desires to make shop or field inspections in accordance with the National Board for such commission.

"NBBPVI" means the National Board of Boiler and Pressure Vessel Inspectors.

"N.J.A.C." means the New Jersey Administrative Code.

"N.J.S.A." means the New Jersey Statutes Annotated.

"Office of Boiler and Pressure Vessel Compliance" means the Office of Boiler and Pressure Vessel Compliance of the Division of Workplace Standards, New Jersey Department of Labor, CN 392, Trenton, NJ 08625-0392.

"Owner or user" means any person, firm or corporation legally responsible for the safe operation of any boiler, pressure vessel, or refrigeration system.

"Pressure vessel" (See unfired pressure vessel).

"Psig" means pounds per square inch gauge.

"Refrigeration system" means a system that is a combination of interconnected refrigerant containing parts constituting one closed refrigerant circuit in which a refrigerant is circulated for the purpose of extracting heat.

"Secondhand boiler or pressure vessel" means a boiler or pressure vessel which has changed both location and ownership since the last certificate of inspection.

"Shall" means a mandatory requirement.

"Shift engineer" means a properly licensed person operating a boiler, power plant or refrigeration system.

"Shop inspection" means an inspection performed when the boiler or pressure vessel is being fabricated or undergoing major repair.

"State inspector" means an employee of the Office of Boiler and Pressure Vessel Compliance who is authorized to inspect boilers or pressure vessels or other equipment.

"Total capacity" means the sum of the horsepower at ratings of all boilers comprising the system based on the minimum safety valve relieving capacity as required by the ASME Code.

"Unfired pressure vessel" means a vessel in which the pressure is obtained from an external source, or by the application of heat from a direct or indirect source.

"Water heater" means a closed vessel in which water is heated by a fuel supply and water is withdrawn for use external to the system at pressures not exceeding 160 psig and includes controls necessary to prevent water temperatures from exceeding 210 F.

SUBCHAPTER 3. ADMINISTRATION

12:90-3.1 Scope of subchapter

This subchapter shall apply to the administrative functions required to be performed by the owner or user of any boiler, pressure vessel or refrigeration system within the scope of this chapter.

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12:90-3.2 Right of entry

For the purpose of examination or inspection of any boiler, pressure vessel, refrigeration system, power plant or other equipment, the commissioner may enter such premises at all reasonable hours in accordance with N.J.S.A. 34:1-15.

12:90-3.3 Equipment requiring a licensed operator

(a) No person shall operate the equipment listed below without the appropriate license as specified in N.J.A.C. 12:90-3.4 through 3.8.

1. Any steam boiler, steam generator, hot water boiler for service over 250 degrees Fahrenheit, or similar equipment potentially capable of generating steam having a safety valve or valves set higher than 15 pounds per square inch gauge and rated over six horsepower;

2. A steam or hot water heating plant with an indicated or rated capacity that exceeds either 499 square feet of heating surface *[of]* *, **or*** 100 boiler horsepower*,* or 1,000 kilowatts*,* or 4,000,000 Btu input regardless of pressure or temperature conditions*[, except as provided in N.J.A.C. 12:90-3.6]*;

3. Any steam turbine, steam engine or other steam driven prime mover, rated over six horsepower;

4. Any refrigerating system using a refrigerant which is either flammable or toxic and rated over six tons of refrigerating capacity;

5. Any hoisting machine with a boom exceeding 99 feet in length; or

6. Hot-oil generators or equipment using fluids other than water to produce steam indirectly.

12:90-3.4 Licenses for high pressure boilers

(a) This section shall apply to the grades of licenses required to operate a high pressure boiler.

(b) The chief engineer and shift engineer of a high pressure boiler shall hold at least the license designated in Table 3.4.

Table 3.4
Licenses for High Pressure Boilers

Boiler horsepower over	Boiler horsepower not over	Chief Engineer's License (1)	Shift Engineer's License
3,000 and over		1-A gold seal 1st class engineer	1-C blue seal 3rd class engineer
1,000	3,000	1-B red seal 2nd class engineer	1-C blue seal 3rd class engineer
500	1,000	1-C blue seal 3rd class engineer	black seal boiler operator in charge
100	500	black seal boiler operator in charge	black seal boiler operator in charge
6	100(2)	—	boiler operator special

Notes to Table

(1) When required by N.J.A.C. 12:90-3.9

(2) Applies only to fully automatic boilers over six but not over 100 boiler horsepower.

12:90-3.5 Licenses for low pressure boilers

(a) This section shall apply to the licenses required to operate a low pressure boiler.

(b) *[Except as provided in N.J.A.C. 12:90-3.6, no]* ***No*** unlicensed person shall operate a low pressure steam or hot water heating boiler in which the rated capacity exceeds 100 horsepower or 499 square feet heating surface or 4,000,000 Btu input or 1,000 kilowatts regardless of pressure or temperature conditions.

12:90-3.6 ***Reserved***

*[Exemption under N.J.S.A. 34:7-1(6)

(a) This section shall apply to the conditions necessary to obtain an exemption for a licensed operator in constant attendance of a low pressure boiler serving a heating plant in other than a building of public assembly.

(b) Boilers described in (a) above shall comply with Section IV, Heating Boilers of the ASME Code.

(c) Automatic safety control systems and safety devices shall comply with N.J.A.C. 12:90-4.13.]*

12:90-3.7 Licenses for power generating plants

(a) This section shall apply to the various grades of licenses required to operate the steam driven prime mover in power generating plants.

(b) The chief engineer, shift engineer and boiler operator of a power generating plant shall hold at least the license designated in Table 3.7.

Table 3.7
Licenses for Power Generating Plants

Power Generating Plant Prime Mover horsepower over	Power Generating Plant Prime Mover horsepower not over	Chief Engineer's License (1)	Shift Engineer's License	Boiler Operator's License
500 and over		1-A gold seal 1st class engineer	1-C blue seal 3rd class engineer	black seal boiler operator in charge
100	500	1-B red seal 2nd class engineer	1-C blue seal 3rd class engineer	black seal boiler operator in charge
6	100	1-C blue seal 3rd class engineer		black seal boiler operator in charge (2)

Notes to Table

(1) When required by N.J.A.C. 12:90-3.9.

(2) If needed.

12:90-3.8 Licenses for refrigeration systems

(a) This section shall apply to the various grades of licenses required to operate refrigeration systems using toxic or flammable refrigerants.

(b) The chief engineer or shift engineer of a refrigeration system shall hold at least the license designated in Table 3.8.

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Table 3.8
Licenses for Refrigeration Systems

Refrigeration Plant Capacity tons over	tons not over	Chief Engineer's License (1) (2)	Shift Engineer's License (2)
300 and over		2-A gold seal 1st class engineer	2-C blue seal 3rd class engineer
65	300	2-B red seal ***2nd class*** engineer	2-C blue seal ***3rd class*** engineer
[Not over 65] ***24**	**65***	2-C blue seal 3rd class engineer	2-C blue seal 3rd class engineer

Notes to Table
(1) When required by N.J.A.C. 12:90-3.9.
(2) When steam driven prime movers are employed as part of the refrigeration system, the engineer shall hold the appropriate steam and refrigeration engineer's license.
[(3) Fully automatic system.]

12:90-3.9 Chief engineer and scope of certain licenses

(a) When more than one licensed person is required to operate a boiler, refrigeration system, or power generating plant, whether or not the operators are employed on the same shift, the management of the plant shall designate a chief engineer.

(b) A chief engineer may be called a supervising engineer in some plants.

(c) The engineer designated as chief engineer shall be permitted to serve as chief engineer in one plant location only.

(d) The designated chief engineer may be a shift engineer holding a license of a grade required for a chief engineer.

(e) The chief engineer designated in (a) above shall hold the proper grade and classification of license as provided by N.J.A.C. 12:90-3.4 through 3.8.

(f) The Office of Boiler and Pressure Vessel Compliance may recognize an engineer holding a license one grade lower than that required to serve as acting chief engineer on a temporary basis provided:

1. Every reasonable effort has been made by the employer to obtain a properly licensed chief engineer;
2. The candidate has submitted an acceptable application for examination for the higher grade license; and
3. The employer has submitted a request in writing for the acting chief engineer status.

(g) A fireman holding a fireman in charge license may act as chief engineer of an installation of 500 boiler horsepower or less. He may assume charge of a shift, under the supervision of a properly licensed chief engineer, in installations not over 1,000 boiler horsepower. When the total capacity exceeds 1,000 boiler horsepower, he may act as fireman, under the direction of, and responsible to, a properly licensed engineer in charge of his shift.

(h) An engineer holding a C or third grade license of the proper classification may act as chief engineer of any plant where the total capacity of the equipment involved does not exceed 1,000 boiler horsepower, 100 engine horsepower or 65 tons refrigerating capacity. He may also act as operating engineer, under the supervision of a properly licensed chief engineer, in installations exceeding the above limits.

(i) An engineer holding a B or second grade license of the proper classification may act as chief engineer of any plant where the total capacity of the equipment involved does not exceed 3,000 boiler horsepower, 500 engine horsepower or 300 tons refrigerating capacity. He may also act as operating engineer, under the supervision of a properly licensed chief engineer, in installations exceeding the above limits.

(j) An engineer holding an A or first grade license of the proper classification may act as chief engineer in any plant.

12:90-3.10 Duties of licensed persons

(a) This section shall apply to the duties of persons licensed in accordance with this chapter.

(b) Licensed persons on watch shall give constant attention to *[the equipment entrusted to their care to the extent that they know at all times it is operating safety.]* ***high pressure boilers and refrigeration system.***

(c) Each licensed person shall determine how long he can stay away from his equipment and not jeopardize the safe operation of a low pressure boiler.

(d) The length of time during which a licensed person can properly be away from the equipment of (b) and (c) above varies according to its nature, size and load conditions.

[(d)] ***(e)*** The owner or management shall not require a licensed person to stay away from *[his]* ***the*** equipment to the detriment of the safe operation of the equipment*[.]* ***described in (b) and (c) above.***

*[(e) Licensed persons shall give constant attention to the following types of equipment requiring licenses:

1. High pressure boilers, and
2. Refrigeration systems.]*

12:90-3.11 Duties of others involved

(a) *[All persons]* ***Each person*** involved with equipment within the scope of this chapter including among others engineers, contractors, suppliers, owners, or operators shall:

1. Be conversant with this chapter; and
2. Have all required certificates and licenses posted in a conspicuous place and available for inspection at all times.

(b) Manufacturer's data reports, specifications, drawings and calculations when required for boilers and unfired pressure vessels manufactured or used within the jurisdiction of this State shall be filed with the Office of Boiler and Pressure Vessel Compliance.

(c) Users of boilers, pressure vessels, refrigeration systems and other equipment subject to the inspection and licensing acts, shall be guided by their authorized inspectors relative to the jurisdiction of the Office of Boiler and Pressure Vessel Compliance for purposes of registration, certification and licensing.

(d) No person shall contract for or purchase new or used boilers or unfired pressure vessels for use which do not comply with the applicable ASME Code. The applicable ASME Code shall be specified in such transactions.

(e) When writing the Office of Boiler and Pressure Vessel Compliance in reference to a boiler, unfired pressure vessel, refrigeration system or other equipment, the New Jersey State inspection registration number in the upper left corner of the registration certificate, the manufacturer's serial number, the ASME or National Board number and the name of the manufacturer shall be stated in the correspondence.

(f) When writing in reference to the ASME Code the edition, section, page and paragraph of the Code shall always be specified.

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SUBCHAPTER 4. BOILERS

12:90-4.1 Scope of subchapter

(a) This subchapter shall apply to the design, construction, inspection, installation, repair and alteration of steam or hot water boilers, except as provided in (b) below.

(b) This subchapter shall not apply to:

1. Steam boilers having adequate relief devices set to discharge at a pressure not greater than 15 psig when such boilers serve dwellings of less than six family units or other dwellings with accommodations for less than 25 persons;

2. Hot water boilers having relief devices set to discharge at a pressure not greater than 160 psig and hot water boilers limited to temperatures not exceeding 250 degrees Fahrenheit when such boilers serve dwellings of less than six family units or other dwellings with accommodations for less than 25 persons;

3. Any steam or hot water boiler having less than 10 square feet of surface;

4. Any steam or hot water boiler having a heat input of less than 10 kilowatts or less than 40,000 Btu per hour;

5. Any steam or hot water boiler under the jurisdiction and control of the United States Government when actively regulated by a Federal agency; and

6. Any steam or hot water boiler used solely for the propulsion of a motor vehicle regulated by the Motor Vehicle Act, Title 39 of the Revised Statutes.

12:90-4.2 Compliance with referenced standards

(a) Boilers shall be constructed, installed, maintained, altered, repaired and inspected in accordance with the standards referenced in (b) and (c) below.

(b) The applicable sections of the ASME Boiler and Pressure Vessel Code-1983 are adopted as safety standards under this subchapter and shall apply according to the provisions listed below.

1. Section I, Power Boilers;

2. Section II, Material Specifications;

3. Section III, Nuclear Power Plant Components;

4. Section IV, Heating Boilers;

5. Section VI, Recommended Rules for Care and Operation of Heating Boilers;

6. Section VII, Recommended Rules for Care of Power Boilers;

7. Section IX, Welding and Brazing Qualifications;

[8. Section X, Fiberglass-Reinforced Plastic Pressure Vessels]

[9.] ***8.*** Section XI, Rules for Inservice Inspection of Nuclear Power Plant Components—Division 1;

[10.] ***9.*** Case Interpretation and Addenda of each section listed above, except as provided in (g) below.

(c) The National Board Inspection Code-*[1981]* ***1983*** is adopted as the safety standard under this subchapter and shall apply according to the provisions thereof, except that*[:]* ***the following sections shall not apply:***

[1. R-301.2.2 shall not apply.]

1. The third paragraph of the purpose and scope, and

2. R-301.2.2.

(d) Each person engaged with boilers shall protect the public by complying with the standards prescribed in (b) and (c) above.

(e) Only *[technical]* standards relating to public safety ***(that is, substantive rules)*** are adopted by any incorporation by reference as prescribed in (b) and (c) above. *[Other standards relating to administration and reporting shall be achieved by communication with the appropriate officials of the Office of Boiler and Pressure Vessel Compliance.]*

(f) Where any conflict occurs between the standards prescribed in (b) and (c) above and these rules, these rules shall prevail.

(g) All Sections of the ASME Code referenced in (b) above shall become mandatory six months after approval by the ASME Council as do published addenda and Code Cases unless specific exception is taken by the Office of Boiler and Pressure Vessel Compliance administratively subject to confirmation by the Board.

12:90-4.3 Classification of boilers

*[(a) Boilers shall be classified as Class I, Class II, Class III or Class IV boilers.

(b) Specific boilers shall meet or exceed the minimum provisions of its class.

(c) Class I boilers shall comply with N.J.A.C. 12:90-5.4.

(d) Class II boilers shall comply with N.J.A.C. 12:90-5.5.

(e) Class III boilers shall comply with N.J.A.C. 12:90-5.6, 5.7, 5.8 or 5.9, as applicable.

(f) Class IV boilers shall comply with N.J.A.C. 12:90-5.10.]*

Boilers shall be classified as low pressure or high pressure boilers.

12:90-4.4 High pressure boilers

High pressure boilers shall comply with Section I, Power Boilers of the ASME Code.

12:90-4.5 Low pressure boilers

(a) Low pressure boilers shall comply with Section IV, Heating Boilers of the ASME Code.

(b) Existing low pressure boilers installed prior to the effective date of the standards referenced in (a) above may remain in use while the Office of Boiler and Pressure Vessel Compliance is in receipt of favorable and current inspection reports.

(c) Low pressure boilers as described in (b) above shall be converted before the next annual inspection to conform to the standards referenced in (a) above with regard to appliances, auxiliaries and safety devices.

(d) Each automatically fired hot water boiler falling within the terms of N.J.S.A. 34:7-14(a) shall have an automatic low-water fuel cutoff which has been designed for hot water boiler service except that such low water cutoff shall not be required for hot water supply boilers.

(e) When low pressure boilers are connected to a common header, the connections from each boiler having a manhole opening shall be fitted with two stop valves having adequate free-blow drains. The free-blow drains shall be located between the stop valves.

1. One of these stop valves shall be placed as near the boiler nozzle as practicable and the other valve placed where the interconnection joins the common header.

2. Where such protection has not been provided in existing installations or where such stop valves may be omitted optionally on hot water boilers where full open internal inspection is less frequently performed, no entry shall be made through the manway for any purpose until all system boilers have been depressurized and vented.

12:90-4.6 Relief device settings

All boilers shall have *[primary]* relief devices set to discharge at a pressure *[not in excess of the stamped maximum

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allowable working pressure.]* ***in accordance with the requirement contained in the applicable ASME Code.***

12:90-4.7 Steam boiler blowdown tanks and receivers

(a) This section shall apply to the construction and installation of steam boiler blowdown tanks and receivers.

(b) Pressure or unvented blowdown tanks:

1. A blowdown tank subject to possible maximum steam boiler pressure shall be constructed for the boiler pressure and stamped National Board, ASME, or New Jersey Standard.

2. A blowdown tank shall be used whenever the blowdown from any steam boiler is disposed in a sewerage or other interconnected system, and placed between the boiler and the sewer or such system.

(c) Atmospheric or vented blowdown tanks:

1. The outlet from the blowdown tank shall be not less than twice the area of the boiler blowdown pipe and made to extend internally to within six inches of the bottom of the tank.

2. A vent pipe, at least twice the diameter of the inlet, shall lead to the outside atmosphere. Vents shall be as direct as possible to the outside atmosphere and discharge at a point not less than seven feet above grade. No valve, water pocket, or other obstruction shall be in this line.

(d) Construction of blowdown tanks:

1. The minimum metal thickness of blowdown tanks, whether of the pressure or atmospheric type, shall be not less than five-sixteenths inch.

2. All blowdown tanks, whether of the closed or vented type, shall have approved openings for cleaning and inspection, and shall be capable of a maximum discharge at 150 degrees Fahrenheit at five psig.

3. The capacity of blowdown systems shall be sufficient to prevent discharges from exceeding 150 degrees Fahrenheit at five psig.

(e) Centrifugal type separators:

1. Centrifugal type separators shall be built and stamped in accordance with the ASME Code and may be used as provided in (e)2 through (e)4 below.

2. Separators may be used when a safe point of discharge is available and the pressure and temperature conditions at the point of discharge need not be considered.

3. Separators may be used as an auxiliary to a blowdown tank but may not be used in lieu of a conventional blowdown tank in those installations requiring a blowdown tank.

4. Separators may be used as provided in Figure 4.7(f)1 or Figure 4.7(f)2, an open blowoff system, or the rules for boiler blowoff equipment of the National Board. The inlet line shall extend to within six inches of the bottom of the open receiver.

(f) Drawings of acceptable blowdown tanks and equipment:

1. Shown below are acceptable blowdown tanks and equipment as Figures 4.7(f)1 and 4.7(f)2.

Figure 4.7(f)1
Vertical Blowdown Tank for High Pressure Boiler

Figure 4.7(f)2
Horizontal Blowdown Tanks for High Pressure Boilers

12:90-4.8 Welded repairs and alterations to boilers

(a) *[Welded repairs to boilers shall comply with the original construction standards and in accordance with National Board recommended rules for repairs.]* ***Welded repairs and alterations to boilers shall comply with:**

1. The original construction standard, or

2. The construction standard referenced in NJAC 12:90-4.2(b) provided that requirement is not less stringent than the original construction standard, and

3. The National Board Inspection Code—1983 edition.*

(b) Welded repairs to boilers shall be performed by a contractor possessing a valid and appropriate ASME Code symbol stamp or have National Board repair authorization or New Jersey repair authorization.

(c) The ASME Code validity of piping repairs shall be maintained to the boundaries defined in Section I, Power Boilers for high pressure boilers and to the required stop valve connection for low pressure heating boilers*[.]* ***except for minor repairs.*** *[See N.J.A.C. 12:90-3.5(d).]*

(d) All repairs to boilers or connected piping shall be approved by a New Jersey authorized inspector holding a National Board Commission employed by an insurance company or the State of New Jersey and performed under his guidance.

(e) A record of ***major*** welded repairs shall be filed with the Office of Boiler and Pressure Vessel Compliance.

(f) Alterations to boilers shall be performed by the appropriate Code symbol holder only.

(g) An alteration report and a copy of the original manufacturer's data report shall be filed with the National Board of Boiler and Pressure Vessel Inspectors or the Office of Boiler and Pressure Vessel Compliance if the boiler is not registered with the National Board.

12:90-4.9 Qualification of authorized repair firms

(a) This section shall apply to the procedures required to obtain approval as a New Jersey authorized repair firm.

(b) A letter of application shall be addressed to the Office of Boiler and Pressure Vessel Compliance by a responsible officer of the firm requesting repair authorization. The letter shall include evidence that an authorized inspection agency has agreed to provide inspection service as required.

(c) A review of the firm's facilities and quality control system shall be conducted jointly by an inspection specialist of the Office of Boiler and Pressure Vessel Compliance and a representative of the authorized inspection agency. The assigned shop inspector shall be present during the review.

(d) The Office of Boiler and Pressure Vessel Compliance shall authorize the repair firm and, in conjunction with the authorized inspection agency of record, monitor the firm's repair activities in accordance with established administrative policy.

(e) Administrative policy guidelines shall be made available to applicants, users, inspection agencies and other interested parties.

(f) Repairs performed by an authorized repair firm shall be deemed to preserve intact the validity of the original construction standard of the boiler upon which the work was performed while the boiler is in the State.

(g) Alterations or modifications altering the original design shall be performed by an appropriate qualified ASME symbol holder.

(h) Repair firms may add nozzles no larger than an unreinforced nozzle size.

(i) Nothing herein shall be intended to prohibit repair by an appropriate qualified ASME authorized shop or National Board repair firm or to require additional qualification of such shop under these rules.

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12:90-4.10 Inspection of boilers

(a) All steam or hot water boilers or similar equipment potentially capable of generating steam as described in (b) below shall be inspected and be subjected to a hydrostatic test, if necessary at least once each year at 12 month intervals. This inspection shall be a complete internal and external inspection as construction conditions will permit.

(b) Steam or hot water boilers subject to the inspection of (a) above shall include those listed in (b)1, (b)2 and (b)3 below, except as provided in (c) below:

1. Steam or hot water boilers having 10 or more square feet of heating surface;

2. Steam or hot water boilers having a heat input of 10 kilowatts or more; or

3. Steam or hot water boilers having a heat input of 40,000 Btu per hour or more.

(c) Steam or hot water boilers serving dwellings of less than six family units or other dwellings with accommodations for less than 25 persons need not comply with the annual internal and external inspection of (a) above.

(d) In addition to the annual internal and external inspection of (a) above, there may be an external inspection, if found necessary. This external inspection shall be made as near to the expiration of six months after the annual inspection date as practicable.

(e) Inspection shall be made more frequently if conditions warrant.

(f) The boiler to be inspected shall be open, clean, cool and ready for the inspector.

12:90-4.11 Ultrasonic testing

(a) The commissioner may accept ultrasonic test reports as a form of internal inspection for the purpose of compliance with N.J.S.A. 34:7-14 under certain specific instances upon receipt of application.

(b) Ultrasonic testing shall be considered under the following circumstances:

1. When it is operationally impractical to take the boiler out of service during the 12 month period;

2. If the user has a regularly scheduled fulltime "in service" inspection program;

3. Ultrasonic inspection, in lieu of the annual out-of-service and open internal and external inspection, shall be accepted only when it is made within a 12 month period following the internal and external inspection;

4. The insurer or the authorized inspection agency indicates acceptance of the ultrasonic testing; and

5. A history of the boiler including such items as operational characteristics, results of inspections, corrosion rates and ultrasonic procedures shall be required.

*[12:90-4.12 Equipment criteria for exemption under N.J.A.C. 12:90-3.6

(a) This section shall apply to equipment criteria required of low pressure boilers when serving a heating plant other than in a building of public assembly.

(b) The automatic safety control system shall consist of the following:

1. Dual, dissimilar, suitable primary (flame safeguard) fuel control devices, at least one with manual reset, installed independently of each other;

2. Dual, dissimilar, independently-connected, low-water fuel cut off devices, at least one with manual reset, and with a means of testing both;

3. An automatic water-feeding device for each boiler. Designs embodying a float and chamber shall be constructed so that the water inlet valve cannot feed water into the boiler through the float chamber and shall have a vertical drain pipe and blowoff valve not less than three-quarter inch pipe size;

4. Dual, independent steam pressure or in the case of hot water heating boilers, water temperature actuated combustion control. One such control shall have its high limit set above the normal range of the equipment operation but it shall operate before the steam pressure rises to the operational setting of the safety valve, but in no case above 15 psig, or in the case of hot water heating systems, before the pressure relief valve is actuated but in no case greater than 250 degrees Fahrenheit;

5. Hot water supply boilers provided with at least one officially rated pressure-temperature relief valve of the automatic-reseating type set to relieve at or below the maximum allowable working pressure of the boiler and a maximum temperature not greater than 250 degrees Fahrenheit;

6. Hot water heating systems with an independent circulating pump control separate from the water temperature actuated combustion control; and

7. Additional safety devices as deemed necessary by the Office of Boiler and Pressure Vessel Compliance.

(c) When the building is occupied, the safety components listed under (b) above shall be inspected operationally by the licensed operator in accordance with N.J.S.A. 34:7-1(6)b.

(d) Each time the licensed operator checks the boiler and controls he shall record such inspections in a log book that shall be maintained on the premises. The log book shall include such entries as the date, time, pressure, water level check, temperature, testing or checking the operation of the safety valves, flame failure devices, low-water fuel cutoffs and other control devices as recommended by the manufacturer or other recognized standards.

(e) The licensed operator shall be required to sign the log after such entries are made at each visit. Falsification of a log sheet shall be deemed cause for revocation of the operator's license.

(f) The operational inspection shall include the checking of the equipment during a complete cycle in which combustion of the main fuel occurs and continues through the normal range of operation, including the rise of pressure or temperature, at which time the burner shall be observed to cut off automatically.

(g) Low water cutoffs on steam boilers shall be tested not less than once a month by means of cutting off the feed water and allowing water level to drop by evaporation, to the proper operational level of the low water fuel cutoff. The operator shall be in attendance during this testing procedure. The low water fuel cutoff shall also be tested at least once a week by lowering the water level in the boiler by means of the bottom blowdown on the boiler. Low water cutoff on hot water heating boilers shall be tested at least bimonthly.

(h) Safety relief valves shall be tested at least once a month manually or shall be activated by raising the pressure to the set pressure.

(i) High limit controls shall be checked for proper operation at least once a month by raising the steam pressure, or increasing the boiler water temperature above the normal operating range, to the operating level of the high limit controls.

(j) Flame safeguards shall be tested at least monthly by upsetting normal combustion of the fuel by any one of several

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methods which should cause the control to shut off the fuel. These safety devices shall be checked for proper operation by other usual methods at least weekly.

(k) Automatic water feed regulators shall be checked for proper operation weekly. Low water cutoffs on feed water controls having a float chamber shall be checked for proper operation and reduce build-up of sediment deposits by opening their drains, at least weekly.

(l) Water columns and gauge glasses shall be drained at least daily.]*

12:90-*[4.13]* ***4.12*** Fee for shop inspection

(a) A fee of $12.00 shall be charged for each boiler inspected in the shop*[.]* ***of the manufacturer of the boiler.***

(b) The minimum fee shall be $80.00 for any shop inspection that is four hours or less.

(c) The minimum fee shall be $150.00 for any shop inspection exceeding four hours.

12:90-*[4.14]* ***4.13*** Fee for field inspection

(a) An insurance company making an annual field inspection shall pay a fee of $5.00 to the State, payable by and collected from the user by the inspector at the time of inspection for each boiler.

(b) The owner or user may request a field inspection by the State.

(c) The fee for a State field inspection for each annual internal-external inspection, which shall include a hydrostatic test if found necessary, shall be paid to the inspector as follows:

1. Ten and not over 60 square feet	$15.00
2. 60 and not over 1,000 square feet	20.00
3. 1,000 square feet and over	35.00

(d) In addition to the inspection fee charged for a State field inspection the travel expense of the inspector shall be paid at the time of inspection.

(e) In addition to the annual internal-external inspection, there may be an external inspection for which the owner or user shall pay to the State inspector a fee of $15.00, in addition to the travel expense, at the time of the field inspection.

12:90-*[4.15]* ***4.14*** Registration of boilers

(a) Boilers shall be registered with the Office of Boiler and Pressure Vessel Compliance.

(b) Every boiler approved for use in the State shall be assigned a registration number, which shall be located in the upper left-hand corner of the boiler certificate.

(c) This number shall be stamped directly on the boiler drum near the manufacturer's stamping in letters at least ¼ inch high.

(d) This number shall also be attached to the front of the boiler in such a manner as to be plainly visible.

(e) The State boiler inspection certificate shall be properly framed and posted in the boiler room, engine room, engineer's office, or plant office and be readily available for examination.

SUBCHAPTER 5. UNFIRED PRESSURE VESSELS

12:90-5.1 Scope of subchapter

(a) This subchapter shall apply to the design, construction, inspection, installation, repair and alteration of unfired pressure vessels, except as provided in (b) below.

(b) This subchapter shall not apply to:

1. Unfired pressure vessels having an internal or external operating pressure not exceeding 15 psig;

2. Unfired pressure vessels having an inside diameter not exceeding six inches;

3. Unfired pressure vessels used as a hot water supply tank heated by steam or any other indirect means when such unfired pressure vessels serve dwellings of less than six family units or other dwellings with accommodations for less than 25 persons when none of the following limitations on the unfired pressure vessel are exceeded:

i. A heat input of 200,000 Btu per hour;

ii. A water temperature of 200 degrees Fahrenheit;

iii. A nominal water capacity of 120 gallons.

4. Any unfired pressure vessel under the jurisdiction and control of the United States Government when actively regulated by a Federal agency;

5. Any unfired pressure vessel used solely for the propulsion of a motor vehicle regulated by the Motor Vehicle Act, Title 39 of the Revised Statutes; *[and]*

6. Any unfired pressure vessel with a nominal water capacity of 120 gallons or less containing water with air under pressure, the compression of which serves only as a cushion*[.]* ***and***

7. Piping components from the first threaded, welded or flanged fitting.

12:90-5.2 Compliance with referenced standards

(a) Unfired pressure vessels shall be constructed, installed, maintained, repaired and inspected in accordance with the standards referenced in (b) and (c) below.

(b) The applicable sections of the ASME Boiler and Pressure Vessel Code-1983 are adopted as safety standards under this subchapter and shall apply according to the provisions listed below.

1. Section II, Material Specifications;

2. Section III, Nuclear Power Plant Components;

3. Section VIII, Unfired Pressure Vessels;

4. Section IX, Welding and Brazing Qualifications;

5. Section X, Fiberglass-Reinforced Plastic Pressure Vessels;

6. Section XI, Rules for Inservice Inspection of Nuclear Power Plant Components Division 1;

7. All Case Interpretation and Addenda for each Section, except as provided in (g) below.

(c) The National Board Inspection Code-*[1981]* ***1983*** is adopted as a safety standard under this subchapter and shall apply according to the provisions thereof, except that*[:]* ***the following sections shall not apply:***

[1. R-301.2.2 shall not apply.]

1. The third paragraph of the purpose and scope, and

2. R-301.2.2.

(d) Each person engaged *[directly with the operation]* ***in the construction, repair or alteration*** of unfired pressure vessels shall protect the public by complying with the standards prescribed in (b) and (c) above.

(e) Only *[technical]* standards relating to public safety ***(that is, substantive rules)*** are adopted by any incorporation by reference as prescribed in (b) and (c) above. *[Other standards relating to administration and reporting shall be achieved by communication with the appropriate officials of the Office of Boiler and Pressure Vessel Compliance.]*

(f) Where any conflict occurs between the standards prescribed in (b) and (c) above and these rules, these rules shall prevail.

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(g) All Sections of the ASME Code referenced in (b) above become mandatory six months after approval by the ASME Council as do published addenda and Code Cases unless specific exception is taken by the Office of Boiler and Pressure Vessel Compliance administratively subject to confirmation by the Board.

12:90-5.3 Classification of unfired pressure vessels

(a) Unfired pressure vessels shall be classified as Class I, Class II, Class III, or Class IV unfired pressure vessels.

(b) Specific unfired pressure vessels shall meet or exceed the minimum provisions of its class.

12:90-5.4 Class I unfired pressure vessels

(a) Class I unfired pressure vessels shall conform in all respects to the pertinent sections of the ASME Code that are valid at the time of construction.

(b) All shop inspections of Class I unfired pressure vessels shall be conducted by qualified inspectors who shall satisfy the requirements of the ASME Code and shall be in possession of a valid National Board of Boiler and Pressure Vessel Inspector's Commission.

(c) All Class I unfired pressure vessels shall be stamped and identified as prescribed by the ASME Code.

(d) Class I unfired pressure vessels may be stamped and registered as designated by the National Board.

12:90-5.5 Class II unfired pressure vessels

Unfired pressure vessels designated as Class II unfired pressure vessels shall be existing unfired pressure vessels constructed prior to January 1, 1957 in accordance with the API-ASME joint code for unfired pressure vessels and registered with the State prior to January 1, 1957.

12:90-5.6 Class III unfired pressure vessels

(a) Unfired pressure vessels designed as Class III unfired pressure vessels shall fall into one of three groups identified as:

1. New Jersey Standard;
2. New Jersey Special; or
3. New Jersey Approved.

12:90-5.7 Class III unfired pressure vessels—New Jersey Standard

(a) This section shall apply to a procedure to obtain approval for a code vessel as a Class III unfired pressure vessel known as a New Jersey Standard.

(b) A New Jersey Standard unfired pressure vessel shall be;

1. Constructed in accordance with the ASME Code;
2. Inspected by a New Jersey authorized inspector; and
3. When approved, stamped New Jersey Standard.

12:90-5.8 Class III unfired pressure vessels—New Jersey Special

(a) This section shall apply to a procedure to obtain approval for a non-code vessel as a Class III unfired pressure vessel known as a New Jersey Special.

(b) To expedite handling of a request for non-code construction review, all material shall be gathered and submitted, in as complete a form as possible, by the user.

(c) When it is necessary to defer filing of some material, such omission shall be prominently noted in the letter of application.

(d) All written material shall be in the English language.

(e) All letters of application shall be accompanied by payment of $500.00 for each non-code design. Additional fees shall not be required for identical or essentially similar designs, submitted for a single project but shall be repetitive for each user-application of the design.

(f) Following final inspection and test, the manufacturer shall complete an appropriate manufacturers' data report form. This form shall be certified by the New Jersey authorized inspector who will identify his New Jersey certificate number.

(g) Reference to conformance to the ASME Code shall be deleted where such appears on the form. The completed form, in duplicate, together with a facsimile of the stamping shall be filed for registry.

(h) Compliance with (i) through (l) below shall be required to establish ASME code equivalency.

(i) Drawings, fully descriptive of the vessel, with special attention to clarity of weld details and nozzles and other openings, shall be submitted.

(j) Identification of materials within ranges of chemical and physical characteristics shall match with those listed in the appropriate section of the ASME Code.

(k) Should non-classified material impose an impediment to ASME Code stamping, the applicability of the material for the use intended shall be fully justified and the reasons for not using the ASME Code classified material set forth.

(l) Impediment to ASME Code compliance shall be noted.

(m) Full computations shall be provided using appropriate formulae as required by the pertinent applicable section of the ASME Code. Case interpretations, where used, shall be referenced. Where ASME Code formulae do not apply, the rationale of alternate methods of computation shall be clearly demonstrated.

(n) Evidence of appropriate welding procedures and operators' tests shall be supplied.

(o) All material shall be reviewed by a New Jersey registered professional engineer, who shall verify its equivalency to the basic requirements of the ASME Code. The "specifically assigned inspector" shall have a New Jersey certificate of competency and shall perform a shop inspection as required by the pertinent section of the ASME Code.

(p) The user's letter of application shall briefly outline the nature of the substance to be contained by the vessel, proposed pressure and temperature conditions and pressurizing medium.

(q) All of the foregoing material shall be forwarded to the Office of Boiler and Pressure Vessel Compliance by the user of the vessel with a letter requesting that New Jersey Special classification be assigned, if warranted.

(r) When approved, the unfired pressure vessel shall be stamped New Jersey Special.

12:90-5.9 Class III unfired pressure vessels—New Jersey Approved

(a) This section shall apply to a procedure to obtain approval for a non-code vessel as a Class III unfired pressure vessel known as New Jersey Approved.

(b) An unfired pressure vessel, to be eligible for classification as New Jersey approved, shall be a used vessel since provisions for new vessels are included under the Class I and New Jersey Special unfired pressure vessel classifications. The history of the used vessel shall accompany the initial request by the owner of the plant in which the vessel is in service or is intended to be placed in service.

(c) The application for a New Jersey Approved unfired pressure vessel shall comply with N.J.A.C. 12:90-5.8(b) through (g).

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(d) The New Jersey Approved unfired pressure vessel may require periodic reinspection.

(e) Compliance with (f) through (n) below shall be required to establish ASME Code equivalency.

(f) The maximum allowable working pressure of the New Jersey Approved unfired pressure vessel at a given temperature may be limited to a maximum of 80 percent of that to which the vessel can be subjected in accordance with the ASME Code.

(g) Drawings, fully descriptive of the unfired pressure vessel, with special attention to clarity of weld details and nozzles and other openings, shall be submitted.

(h) Identification of materials within ranges of chemical and physical characteristics shall match with those listed in the appropriate ASME Code section.

(i) Full computations shall be provided, using appropriate formulae as required, by the applicable code section. All computations shall be labeled and ASME Code reference given. Where ASME Code formulae do not apply, the rationale of alternate methods of computation shall be clearly demonstrated.

(j) Evidence of appropriate welding procedures and operator's tests shall be supplied. If such is unavailable from the manufacturer, verification of sound welding shall be made as required by the Office of Boiler and Pressure Vessel Compliance.

(k) All material shall be reviewed by a New Jersey registered professional engineer, who shall verify its equivalency to the basic requirements of the ASME Code.

(l) The user's letter of application shall briefly outline the nature of the substance to be contained by the unfired pressure vessel, proposed pressure and temperature conditions and heating, cooling or pressurizing medium.

(m) All of the foregoing material shall be forwarded to the Office of Boiler and Pressure Vessel Compliance by the user of the vessel with a letter requesting that New Jersey Approved classification be assigned, if warranted.

(n) When approved, the unfired pressure vessel shall be stamped New Jersey Approved.

12:90-5.10 Class IV unfired pressure vessels

(a) Pressure vessels designated as Class IV unfired pressure vessels shall be userinspected, where applicable, warranted and expressly approved.

(b) To qualify as such, a userinspector shall be continuously employed as a full-time inspector by the inspection division of a user maintaining an adequate unfired pressure vessel design and inspection section.

(c) A user-inspector shall be approved by and registered with the Office of Boiler and Pressure Vessel Compliance, which reserves the right to withdraw such approval at its discretion.

(d) The Office of Boiler and Pressure Vessel Compliance shall be furnished, upon request, such copies of design, material specification calculations and allied data as available or needed. The Office of Boiler and Pressure Vessel Compliance shall retain its prerogative of supervision over user-inspection, joint inspection and reinspection as it may deem necessary.

(e) When approved, Class IV unfired pressure vessels shall be constructed and stamped in accordance with the user-inspection provisions of the ASME Code.

12:90-5.11 Design criteria

(a) Machines having internal pressure containing parts incidental to the prime purpose of the machine may be exempt from the ASME Code, if the design criteria of the machine results in the strength of the pressure containment portion exceeding that which would be required if designed in accordance with the ASME Code.

(b) Impervious graphite materials may be used in the fabrication of heat exchangers under the New Jersey Special classification pending acceptance of this material under the ASME Code.

(c) Manufacturers desiring to fabricate vessels utilizing impervious graphite materials shall be required to substantiate the design of such vessels and the composition of the graphite material under the New Jersey Special classification.

12:90-5.12 Welded repairs and alterations to unfired pressure vessels

(a) *[Welded repairs to boilers shall comply with the original construction standards and in accordance with National Board recommended rules for repairs.]* ***Welded repairs and alterations to unfired pressure vessels shall comply with:**

1. The original construction standard, or

2. The construction standard referenced in NJAC 12:90-5.2(b) provided that requirement is not less stringent than the original construction standard, and

3. The National Board Inspection Code—1983 edition.*

(b) Welded repairs to unfired pressure vessels shall be performed by a contractor possessing a valid and appropriate ASME Code symbol stamp or have National Board repair authorization or New Jersey repair authorization.

(c) A record of ***major*** welded repairs shall be filed with the Office of Boiler and Pressure Vessel Compliance.

(d) Alterations to unfired pressure vessels shall be performed by the appropriate Code symbol holder only.

(e) An alteration report and a copy of the original manufacturer's data report shall be filed with the National Board of Boiler and Pressure Vessel Inspectors or the Office of Boiler and Pressure Vessel Compliance if the *[boiler]* ***unfired pressure vessel*** is not registered with the National Board.

12:90-5.13 Inspection of unfired pressure vessels

(a) Shop inspection of unfired pressure vessels shall be required, except as provided in (b) below.

(b) Unfired pressure vessels in which steam is not generated, and which do not exceed the following volume and pressure limits, may be exempted from shop inspections by qualified inspectors; provided, that they comply in all other respects with this subchapter:

1. Five cubic feet in volume and 250 psig design pressure;

2. One and one-half cubic feet in volume and 600 psig design pressure.

(c) Such vessels shall be of simple, single wall single chamber construction.

(d) Shell and tube heat exchangers, jacketed vessels and other type vessels which may be subject to differential pressures shall be shop inspected by an authorized inspector.

(e) Vessels exempted from ASME Code inspection by this section shall be stamped with the "UM" symbol, or as otherwise provided for construction other than Class I pressure vessel.

12:90-5.14 Fee for shop inspection

(a) A fee of $12.00 shall be charged for each *[boiler]* ***unfired pressure vessel*** inspected in the shop of the *[boiler]* manufacturer*[.]* ***of the unfired pressure vessel.***

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(b) The minimum fee shall be $80.00 for any shop inspection that is four hours or less.

(c) The minimum fee shall be $150.00 for any shop inspection exceeding four hours.

(d) The fee includes the actual travel expense of the inspector.

12:90-5.15 Registration of unfired pressure vessels and fees

(a) Unfired pressure vessels shall be registered with the Office of Boiler and Pressure Vessel Compliance.

(b) No original registration or registration fee shall be required for vessels stamped National Board, since registration is forwarded to the Office of Boiler and Pressure Vessel Compliance by the National Board.

(c) No original registration or registration fee shall be required for vessels inspected by State inspectors, since registration is made by the State inspector.

(d) In instances other than (a) and (b) above, the data reports of the manufacturer, in duplicate, with a registration fee of $2.00 for each unfired pressure vessel, shall be forwarded to the Office of Boiler and Pressure Vessel Compliance for registration.

1. When registered, one copy of the manufacturer's data report shall be returned to the user of the unfired pressure vessel.

2. If reports are not filed, the unfired pressure vessel shall be subject to inspection and State inspection fees.

SUBCHAPTER 6. REFRIGERATION SYSTEMS

12:90-6.1 Scope of subchapter

(a) This subchapter shall apply to the design, construction, inspection, installation, repair and alteration of refrigeration systems, except as provided in (b) below.

(b) This subchapter shall not apply to:

1. Systems using refrigerants of flammable or toxic nature of three tons or less of refrigerating capacity;

2. Systems using refrigerants of flammable or toxic nature requiring six driving horsepower or less;

3. Systems using refrigerants of nonflammable and nontoxic nature of 18 tons refrigerating capacity or less; and

4. Systems using refrigerants of nonflammable and nontoxic nature requiring 36 driving horsepower or less.

12:90-6.2 Compliance with referenced standards

(a) Refrigeration systems shall be constructed, installed, maintained, repaired and inspected in accordance with standards referenced in (b) below.

(b) The standards referenced in Article 13, Mechanical Refrigeration of the BOCA Basic National Mechanical Code-1984 are adopted as safety standards under this subchapter and shall apply according to the provisions thereof.

(c) Each person engaged directly with refrigeration systems shall protect the public by complying with the standards prescribed in (b) above.

(d) Only *[technical]* standards relating to public safety ***(i.e. substantive rules)*** are adopted by any incorporation by reference as prescribed in (b) above. *[Other standards relating to administration and reporting shall be achieved by communication with the appropriate officials of the Office of Boiler and Pressure Vessel Compliance.]*

(e) Where any conflict occurs between the standards prescribed in (b) above and these rules, these rules shall prevail.

12:90-6.3 Relief devices

(a) A relief device of proper size shall be installed on the compressor discharge line, located between the compressor outlet port and the discharge shut-off valve. This relief device may discharge into the suction side.

(b) A relief device shall also be installed to relieve from the vapor space of the liquid receiver, condenser, and other pressure vessel in the system.

(c) Relief devices shall discharge to the atmosphere at a safe point and through a diffuser, except as provided in (a) above and (d) below.

(d) Where discharge to the atmosphere is impracticable or hazardous to the immediate neighborhood, the relief device may discharge into a receptacle through which the refrigerant can be disposed of in a safe manner.

12:90-6.4 Inspection of refrigeration systems

(a) Refrigeration systems shall be inspected annually by an authorized State or insurance company inspector.

(b) It shall be the responsibility of the operator and the inspector to carefully check for indications of irregular, faulty or hazardous conditions.

(c) This inspection shall include the liquid receiver, condenser, all safety valves and their discharge points, gauges, controls and all other items which might be considered potentially critical.

(d) The inspector shall check the license of the operator and the State registration certificate and make note of these items in the inspection report.

12:90-6.5 Fee for field inspection

(a) An insurance company making an annual inspection of refrigerating systems shall pay a $7.50 fee to the State, payable by and collected from the user by the inspector at the time of field inspection for each system.

(b) The owner or user may request field inspection by the State.

(c) The fee for an annual field inspection by the State, based on the refrigeration capacity of the system, shall be paid to the State inspector as follows:

1. Over three and under 25 tons	$20.00
2. 25 tons and over, but less than 300 tons	35.00
3. 300 tons and over	45.00

(d) In addition to the field inspection fee, the travel expenses of the State inspector shall be paid at the time of inspection.

SUBCHAPTER 7. LICENSING OF OPERATING ENGINEERS AND FIREMEN

12:90-7.1 Scope of subchapter

This subchapter shall apply to the procedures required to obtain a license as an operating engineer or fireman.

12:90-7.2 Application for licenses

(a) The application shall be typewritten or neatly and legibly printed in ink.

(b) All applications shall be carefully completed and notarized.

(c) The statements of the applicant shall indicate the actual experience as specified in the eligibility provisions of NJAC 12:90-7.4 through 7.13. Only pertinent, applicable, lawful and full-time experience shall be listed. This experience shall

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have been completed within seven years of the filing of application.

(d) Incomplete or improper applications shall not be accepted.

(e) An application for a license shall be made on forms provided by the Office of Boiler and Pressure Vessel Compliance.

(f) The statements on the first or original application shall be endorsed by two engineers each holding a valid blue seal or higher New Jersey license, except as provided in (g) below. These endorsements shall verify the applicant's statement.

(g) Substitution for the signatures of the endorsers of (f) above may be the holder of:

1. A marine engineer's license with the holder's experience documented by trip discharges;
2. Another State or city license with the holder's experience documented with a letter from the employer identifying operational experience and equipment;
3. A United States service or Merchant Marine discharge establishing the required engineering experience; or
4. Written statements from two former employers or the present employer signed by responsible endorsers and showing required engineering experience.

(h) The endorsements of (f) above shall not be required for low pressure licenses or special licenses.

(i) No license shall be granted to a person less than 18 years of age.

(j) All correspondence relative to licenses or applications shall be addressed to the Office of Boiler and Pressure Vessel Compliance.

(k) The Office of Boiler and Pressure Vessel Compliance shall be notified of any change of residence. When writing, the license number shall be specified.

(l) The fee for examination for an original license shall be $15.00, and the fee for a raise of grade or additional classification shall be $10.00.

(m) The fee shall accompany the application.

(n) No annual renewal fee shall be charged for additional classifications on any license.

(o) The fee for application for a license shall be a check or money order made payable to the order of the Office of Boiler and Pressure Vessel Compliance.

(p) No liability shall be assumed by the Office of Boiler and Pressure Compliance for loss in the transmission of the fee.

12:90-7.3 Classification of licenses for operators

(a) The letters A, B and C shall be used to identify the grade of the license.

(b) "A" or gold seal shall designate a first-grade license; "B" or red seal, a second-grade license; and "C" or blue seal, a third-grade license.

(c) A black seal shall identify a boiler operator.

(d) The license stamped on its face, "in-charge" shall identify a boiler operator in charge.

(e) Boiler operator and firemen classifications shall be identical.

(f) The numbers listed in Table 7.3(f) shall be used to identify the equipment indicated.

Table 7.3(f)

Arabic Number	Equipment
1	steam stationary boiler and steam prime mover
2	refrigeration system
3	nuclear boiler and prime mover
7	hoisting machine and long boom crane
8	steam portable boiler and steam prime mover
9	steam locomotive crane

(g) Licenses for operators shall be classified as follows:

1. Special limited applications;
2. Low pressure boiler;
3. Operator in charge of low pressure boiler;
4. Operator in charge of high pressure boiler;
5. 1A, 1B, or 1C steam stationary boiler and steam prime mover;
6. 2A, 2B, or 2C refrigeration system;
7. 3A, 3B, or 3C nuclear boiler and prime mover;
8. 7C long boom crane;
9. 8A, 8B, or 8C steam portable boiler and steam prime mover; and
10. 9A or 9B steam locomotive crane.

12:90-7.4 Eligibility for boiler operator's license

To be eligible for a boiler operator's license, the applicant shall have had at least three months experience as a helper, apprentice or assistant to a licensed operator of equipment requiring such license.

12:90-7.5 Eligibility for low pressure boiler operator's license

(a) To be eligible for a low pressure boiler operator's examination, the applicant shall:

1. Be able to comply with N.J.A.C. 12:90-7.4, or
2. Have had intensive training for 30 full working days by a licensed operator and have written verification of such training from the instructor or the employer that the applicant was given such training.

(b) A licensed fireman may be eligible for examination for an "in-charge" license after three months actual service in the operation of boilers requiring such license.

12:90-7.6 Eligibility for high pressure boiler operator's license

(a) To be eligible for a high pressure boiler operator in charge examination, the applicant shall:

1. Be able to comply with N.J.A.C. 12:90-7.4, or
2. Have had at least six weeks experience in lieu of the normal three months experience, provided he is given intensive training during the period by the licensed operator and have written verification of such training from the chief engineer that applicant was given such training.

(b) If the applicant has had six months experience as a licensed low pressure fireman, the six week period referenced in (a) above may be reduced to 30 days.

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(c) For special license up to 100 horsepower, an applicant with 30 days experience may be eligible.

12:90-7.7 Eligibility for third grade steam engineer's license

(a) To be eligible for a third grade steam engineer's (1-C or 8-C) examination, the applicant shall have a fireman in-charge high pressure license and shall have had at least six months subsequent experience in the operation of equipment requiring supervision by a third grade engineer, or as an assistant in the operation of equipment requiring a third grade license for shift operation.

(b) Experience obtained outside the State of New Jersey may be considered if the applicant has served:

1. At least two years as a fireman, or

2. One year as an assistant to an engineer in the operation of equipment of comparable size as specified in (a) above.

12:90-7.8 Eligibility for third grade refrigeration engineer's license

*[(a) To be eligible for a third grade refrigeration engineer's (2-C) examination where the refrigerant used is of flammable or toxic nature, the applicant shall have had at least six months experience as an operator's assistant or three months' experience as an operator of such equipment.

(b) In lieu of the experience stated in (a) above, the applicant may be considered eligible after three months experience as an operator's assistant; provided he has been given intensive training for the period by the licensed operator, and the chief engineer verifies such training and experience by letter.

(c) In lieu of the intensive training as noted in (b) above, the applicant may be eligible if he has had at least six months experience as an operator of a nontoxic refrigeration system of at least 500 tons capacity in addition to the three months as assistant to the licensed operator of equipment using flammable or toxic refrigerant.]*

***(a) To be eligible for a third grade refrigeration engineer's (2-C) examination, the applicant shall have had at least:**

1. Six months experience as an assistant to an operator of a flammable or toxic refrigeration system; or

2. Three months experience as an operator of a flammable or toxic refrigeration system; or

3. Three months experience as an assistant to the operator of a flammable or toxic refrigeration system, provided the applicant has been given intensive training for the period by the licensed operator, and the chief engineer verifies such training and experience by letter; or

4. Six months experience as an operator of a nontoxic refrigeration system of at least 250 tons capacity and three months experience as an assistant to the licensed operator of flammable or toxic refrigeration system, or

5. Six months experience as an operator of a nontoxic refrigeration system of at least 250 tons capacity and satisfactory proof of completion of sufficient education in the operation of a flammable or toxic refrigeration system in an educational program approved by the Division of Vocational Education of the New Jersey Department of Education.*

12:90-7.9 Eligibility for nuclear engineer's license

To be eligible for nuclear engineer's (3-C) examination, the applicant shall hold certification from the United States Nuclear Regulatory Commission qualifying him to operate nuclear power equipment.

12:90-7.10 Eligibility for long boom crane operator's license

(a) To be eligible for a hoisting machine long boom crane operator's (7-C) examination, the applicant shall have had at least six months experience as an operator of cranes.

(b) At least three months of the experience of (a) above shall be documented as being on long boom cranes.

12:90-7.11 Eligibility for second grade engineer's license

To be eligible for a second grade engineer's examination, the applicant shall have a third grade license and shall have had at least one year's subsequent practical experience in the operation of equipment requiring supervision by a second grade or first grade engineer.

12:90-7.12 Eligibility for first grade engineer's license

(a) To be eligible for a first grade engineer's examination in any classification, the applicant shall have:

1. A second grade license and subsequently served one year as chief engineer in a plant requiring supervision by a second grade engineer; or

2. A second grade license, which he has held for two years, and two years subsequent practical experience as an operating engineer in a plant requiring supervision by a first grade engineer, or

3. Experience of an equivalent amount or grade under some other jurisdiction.

12:90-7.13 Other eligibility considerations

(a) An applicant for original license, change of classification or raise of grade may show in writing, as a substitute for a minor portion of the experience listed in N.J.A.C. 12:90-7.4 through 7.12, non-operating experience, such as servicing, maintenance, repair or installation of equipment; or satisfactory proof of completion of sufficient formal education or academic study embracing such equipment.

(b) When an applicant's engineering experience and training warrants, the Office of Boiler and Pressure Vessel Compliance may determine the classification and grade of license most suitable.

12:90-7.14 Examinations

(a) Examinations shall be held on the first Wednesday of each month at Trenton, and at various other times and places throughout the State when warranted.

(b) Applicants shall be notified when and where to appear for the examination.

(c) Failure to appear for the examination shall be considered sufficient cause to discard the application, unless a satisfactory explanation is given for the failure to appear.

(d) Failure to appear for the examination or to obtain a passing grade shall not entitle the applicant to a refund of any fee.

(e) Examinations for an engineer's license shall be conducted in a written form and shall consist of as many questions and be of such nature as the office of Boiler and Pressure Vessel Compliance shall consider appropriate for the license desired.

(f) Examinations for a fireman's license shall consist of such questions as the Office of Boiler and Pressure Vessel Compliance shall consider proper and shall pertain to the safe operation of steam and hot water boilers, appliances, auxiliaries and such other equipment covered by the licensing act.

(g) An applicant for up to and including a C grade license may, upon prior request, be examined through a reader or interpreter accompanying the applicant provided the reader or interpreter is acceptable to the Office of Boiler and Pressure Vessel Compliance.

(h) Questions used in an examination shall not be copied by any applicant or retained by the applicant after examination,

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or taken from the presence of the authorized agent of the Office of Boiler and Pressure Vessel Compliance during the examination. Violation of this subsection shall be sufficient cause to disqualify the applicant.

12:90-7.15 Granting of license

(a) A license shall be granted and designated Grade A when an average of 80 percent or more is attained on a Grade A examination.

(b) A license shall be granted and designated Grade B when an average of 70 percent or more is attained on a Grade B examination.

(c) A license shall be granted and designated Grade C when an average of 60 percent or more is attained on a Grade C examination.

(d) No license shall be granted on an average of less than 60 percent.

(e) A license issued after examination covering one or more classifications shall be valid in any plant where the class of engineering is within the scope of the license issued.

(f) Licenses merely bearing the impression of the seal of the Department of Labor shall be issued as special licenses and are limited to the operation of equipment specified on the face thereof. ***Special licenses may be issued to operators of nonconventional boilers, such as but not limited to, electric boilers, waste heat boilers, or high pressure boilers of six to 100 horsepower.*** These licenses may be transferred to similar equipment when approved following written request by the applicant or employer.

(g) Duplicate licenses for part-time employment may be issued at the discretion of the commissioner.

1. The fee for a duplicate license is $3.00 for one year.

2. A request by the licensee for a duplicate license shall be accompanied by a letter from the company desiring to employ the licensee.

3. The duplicate license shall specify the plant where it is to be used and may be transferred when approved following written request.

12:90-7.16 Re-examination

The applicant may not be re-examined for a period of at least three months, but may be allowed one re-examination, without additional charge, within six months of the original examination. If again unsuccessful, the applicant may request an additional examination, provided that the request is accompanied by a fee of $7.50.

12:90-7.17 Posting of license

(a) All licenses shall be framed and properly posted adjacent to the equipment involved, in the engineer's office or in the plant office, whichever is suitable.

(b) The license shall be available for examination.

(c) A penalty may be imposed for violation of this section.

12:90-7.18 Suspension or revocation of license

(a) Any license may be suspended or revoked for incompetence, negligence, intoxication, or drug abuse while on duty, or for any other valid reason establishing that the licensee is unfit to hold a license.

(b) Any license or identification card shall be surrendered and immediately revoked if, for any purpose, it is loaned, abandoned or allowed to pass from the personal control of the owner.

(c) All licenses shall expire unless renewed on or before the anniversary month of the original license. Changing of grade or addition of classification shall not change this anniversary date.

(d) A license shall be automatically cancelled on the date of its expiration. Any persons performing the duties of a licensee and holding an expired license shall be subject to the penalty provisions under N.J.S.A. 34:7-6, as is his supervisor and employer.

(e) Any person using fraudulent means to obtain a license shall be subject to prosecution. Any license acquired through such means shall be invalid.

12:90-7.19 Renewal of license

(a) When applying for the renewal of a license it shall be necessary to return only the signed identification card with a fee of $5.00 for a one year renewal or $10.00 for a three year renewal.

(b) A license may be renewed within 30 days prior to the date of its expiration.

(c) An application for a renewal of an expired license shall be approved provided:

1. A fee of $7.50 is enclosed for one year or $15.00 for a three year renewal;

2. The application is made within three years of the expiration date of the expired license; and

3. All penalties lawfully imposed on the applicant under N.J.S.A. 34:7-6 have been paid.

(d) Application for renewal of a license expired more than three years shall be treated as an original application. All records of the previous license may be destroyed.

(e) An altered, defaced or otherwise mutilated license shall be renewed only after review by the Office of Boiler and Pressure Vessel Compliance. Photostats, photographs or reproduction of a license shall have no status and shall not be recognized.

12:90-7.20 Employment of unlicensed person

(a) Employers shall immediately notify the Office of Boiler and Pressure Vessel Compliance, in writing, if for any reason of emergency it becomes necessary to employ an unlicensed person temporarily for a period not to exceed 15 days explaining fully the circumstances.

(b) The Office of Boiler and Pressure Vessel Compliance shall again be notified when a licensed person is employed, giving the name, address, and license classification, grade and number of such employee.

SUBCHAPTER 8. STANDARDS AND PUBLICATIONS REFERRED TO IN THIS CHAPTER

12:90-8.1 Documents referred to by reference

(a) The full title and edition of each of the standards and publications referred to in this chapter are as follows:

1. ASME—1983, Boiler and Pressure Vessel Code
Section I, Power Boilers
Section II, Material Specifications
Part A—Ferrous Materials
Part B—Nonferrous Materials
Part C—Welding Rods, Electrodes and Filler Metals
Section III, Nuclear Power Plant Components
Subsection NCA—General Requirements for Division 1 and Division 2
Division 1—Subsection NB—Class 1 Components
Division 1—Subsection NC—Class 2 Components
Division 1—Subsection ND—Class 3 Components
Division 1—Subsection NE—Class MC Components

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Division 1—Subsection NF—Component Supports
Division 1—Subsection NG—Core Support Structures
Division 1—Appendices
Division 2—Code for Concrete Reactor Vessels and Containments
Section IV, Heating Boilers
Section V, Nondestructive Examination
Section VI, Recommended Rules for Care and Operation of Heating Boilers
Section VII, Recommended Rules for Care of Power Boilers
Section VIII, Pressure Vessels
Division 1
Division 2—Alternative Rules
Section IX, Welding and Brazing Qualifications
Section X, Fiberglass-Reinforced Plastic Pressure Vessels
Section XI, Rules for Inservice Inspection of Nuclear Power Plant Components— Division 1
All Case Interpretations and Addenda
2. BOCA—1984, Basic National Mechanic Code
3. NBBPVI—1981, National Board Inspection Code.
4. N.J.S.A. 34:7-1 et seq., Operating Engineers and Firemen Licensing Act.
5. N.J.S.A. 34:7-14 et seq., Boiler, Pressure Vessel and Refrigeration Act.

12:90-8.2 Availability of documents for inspection
A copy of each of the standards and publications referred to in this chapter is on file and may be inspected at the following office of the Division of Workplace Standards between the hours of 9:00 A.M. and 4:00 P.M. on normal working days:

New Jersey Department of Labor
Division of Workplace Standards
36 West State Street
Trenton, New Jersey

12:90-8.3 Availability of documents from issuing organization
Copies of the standards and publications referred to in this chapter may be obtained from the organizations listed below. The abbreviations preceding these standards and publications have the following meaning, and are the organizations issuing the standards and publications listed in N.J.A.C. 12:90-8.1.

ASME—American Society of Mechanical Engineers
United Engineering Center
345 East 47th Street
New York, New York 10017

BOCA—Building Officials and Code Administrators International
4051 West Flossmoor Road
Country Club Hills, Illinois 60477

NBBPVI—National Board of Boiler and Pressure Vessel Inspectors
1055 Crupper Avenue
Columbus, Ohio 43229

N.J.S.A.—New Jersey Statutes Annotated
Copies available from:
Office of Boiler and Pressure Vessel Compliance
New Jersey Department of Labor
CN 392
Trenton, New Jersey 08625-0392

TRANSPORTATION

(a)

LOCAL AID

1984 New Jersey Transportation Trust Fund Authority Act
Federal Aid Urban System Substitution Program: County and Municipal Aid
Municipal Aid

Adopted New Rule: N.J.A.C. 16:20A and 16:20B

Proposed: September 17, 1984, at 16 N.J.R. 2456(a).
Adopted: November 7, 1984 by Jack Freidenrich, Assistant Commissioner for Engineering and Operations.
Filed: November 20, 1984 as R.1984 d.552, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-13.1 et seq., 27:7-47 and the "1984 New Jersey Transportation Trust Fund Authority Act".

Effective Date: December 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): December 17, 1989.

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

Full text of the adoption follows.

CHAPTER 20A

1984 NEW JERSEY TRANSPORTATION TRUST FUND AUTHORITY ACT FEDERAL AID URBAN SYSTEM SUBSTITUTION PROGRAM: COUNTY AND MUNICIPAL AID

SUBCHAPTER 1. GENERAL PROVISIONS

16:20A-1.1 Appropriation of funds
In order to expedite the construction of critically needed county/municipal transportation projects, a Federal Aid Urban System Substitution Program will be implemented on or before October 1, 1984. As a substitution for Federal Aid Urban System funds, 1984 New Jersey Transportation Trust Fund Authority Act funds are appropriated by the Legislature for the improvement of any public road or bridge under the jurisdiction of a county, regardless of location within that county, and any road or bridge located on the Federal Aid Urban System. Federal Aid Urban System Substitution funds may also be used for county and municipal public transportation projects and other transportation projects eligible for funding under the Federal Aid Urban System Program on September 30, 1984.

16:20A-1.2 Distribution of funds
Each county and Jersey City and Newark shall receive an annual State Aid allotment not less than the combined total of their 1984 apportionment of Federal Aid Urban System funds

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plus State match including their portion of non-attributable funds made available for Small Urban Areas. Each county and Jersey City and Newark must agree that Federal Aid Urban System Substitution funds are provided in lieu of any Federal aid from the Federal Aid Urban System Program. In any year in which insufficient funds have been appropriated to meet the minimum county allocations, or if no appropriation is provided, the Commissioner of Transportation shall determine on a prorated basis the amount of the deficiency for each county having a minimum allocation and allocate from funds available under the Federal Aid Urban System Program sufficient funds to meet the minimum allocations.

16:20A-1.3 Minimum allotment

The State Aid allotment to each county and Jersey City and Newark shall result in a minimum amount of $300,000 for transportation projects annually regardless of the combined total of their 1984 Federal Aid Urban System apportionment plus State match. Local governments in a Federal Aid Urban System loan situation will be required to repay their Federal Aid Urban System loan plus State match over a three-year period commencing on October 1, 1984. If their annual State Aid allotment minus their annual loan payback is less than $300,000, supplemental funds will be allotted to assure that a minimum of $300,000 is available annually for transportation improvements.

16:20A-1.4 Federal Aid Urban System backlog funds

Each jurisdiction will also retain any unexpended portions of its 1984 Federal Aid Urban System apportionment and accumulated Federal Aid Urban System backlog funds for use on active local transportation projects previously commenced with Federal Aid Urban System funds. The required match for these latter funds will be provided by the State.

16:20A-1.5 Transition: Federal Aid Urban System to State aid

(a) It is expected that counties and municipalities will expeditiously expend available Federal Aid Urban System funds for the completion of phases of project development commenced under the Federal Aid Urban System Program.

1. As an example, if preliminary engineering or right-of-way acquisition is in the process of being accomplished with Federal Aid Urban System funds, where possible, that phase shall be completed with available Federal Aid Urban System funds.

2. If sufficient Federal Aid Urban System funds are not available to support the cost of succeeding phases such as right-of-way acquisition and construction, these phases shall be completed in conformance with criteria developed for the Federal Aid Urban System Substitution Program (State Aid).

3. Each phase of work (engineering, right-of-way acquisition, construction, etc.) supported with Federal Aid Urban System funds will be subject to all Federal Highway Administration reviews and approvals, projects must be continued through the completion of construction in compliance with appropriate Federal and State laws, rules and regulations governing Federal Aid Urban System projects.

(b) In any instance where a project supported in any part with Federal Aid Urban System funds is either not continued through the completion of construction or not completed in accordance with Federal Highway Administration requirements, the Department of Transportation reserves the right to determine, in coordination with the Federal Highway Administration, the extent of Federal Highway Administration participation in the cost of the completed work. The Department of Transportation, at its discretion, may reduce the county's annual State Aid allotment by an amount equal to the cost of work determined to be non-participating by the Federal Highway Administration.

(c) Subject to the availability of State Capital funds, the Department may elect to refund any existing local preliminary engineering project for which Federal Aid Urban System funds have been authorized as of the effective date of this program but, due to insufficient Federal Aid Urban System backlog funds, succeeding phase of work must be performed with State Aid funds. At the discretion of the Department of Transportation, Federal funds withdrawn from such projects will be used:

1. For the payment of incurred but otherwise unbillable costs on Federal Aid Urban System projects which are in an authorized status as of the effective date of this program or;

2. In the event that there is an excess balance of such funds, they may be used for projects on the State System.

(d) It is expected that as soon as possible after June 30, 1984, the Transportation Improvement Program affecting each county will be modified in a way to expedite the use of Federal Aid Urban System backlog funds and reduce the number of Federal Aid Urban System projects. A priority will be assigned to funding those projects where a work phase (preliminary engineering, right-of-way or construction) can be completed prior to September 30, 1986. At the discretion of the Department of Transportation, the State Aid allotment to a jurisdiction with a backlog of Federal Aid Urban System funds on July 1, 1987, may be reduced with a backlog of Federal Aid Urban System funds on July 1, 1987, may be reduced by the backlog amount.

(e) After September 30, 1984, the Department of Transportation, at its discretion, may elect to make Federal Aid Urban System and State matching funds available to support projects of a regional or critical nature. After that date, all other new projects will be accomplished in conformance with criteria developed for the federal Aid Urban System Substitution Program (State Aid) and will not be eligible for Federal Aid Urban System funding.

SUBCHAPTER 2. FEDERAL AND URBAN SYSTEM SUBSTITUTION PROGRAM: STATE AID

16:20A-2.1 Eligible costs

(a) Except as stated below, State participation in project cost shall be limited to 100 percent of the cost of construction including construction supervision, inspection and material testing. The cost of design engineering and right-of-way acquisition shall be borne totally by the county or municipality.

1. State Aid participation in projects initiated by municipalities qualified by the Department of Community Affairs for Urban Aid funding under P.L. 1978, Chapter 14 as amended by P.L. 1983, Chapter 384 or for depressed rural centers aid may, at the discretion of the Department of Transportation, be increased up to 100 percent of total project cost including construction, engineering and right-of-way acquisition (see qualified municipalities listed in Appendices I and II).

2. For projects initiated by a county, State participation may also be increased up to 100 percent of project cost in special hardship cases justified by the county and concurred in by the Department of Transportation.

16:20A-2.2 Project approval

(a) Annually, prior to September 30, each county and Jersey City and Newark will be advised for budgetary purposes of the amount of Federal Aid Urban System Substitution

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funds they can anticipate for the following calendar year. The Transportation Improvement Program with a State aid element or, at the discretion of the county and Jersey City and Newark, a Capital Transportation Program shall be submitted for approval by the Department prior to February 1 of the next succeeding calendar year.

1. Capital Transportation Programs shall be completed on forms provided by the State. Each project shall be listed by name and location with a brief description as to how each project conforms with the county's overall Transportation Plan. Except in the case of Jersey City and Newark, conformity shall be with the Municipal Transportation Plan.

2. Each program shall cover a four-year period and list the phase (engineering, right-of-way, construction) of each project to be undertaken in a specific year. A cost estimate shall be provided for each phase of work. This cost estimate shall indicate the amount of anticipated State participation and the amount of local participation. The total cost of work in the first year of the program (in which State participation is requested) shall not exceed the county's annual share of Federal Aid Urban System Substitution funds. The State reserves the right to recoup State Aid funds that are not obligated by a State/County/Municipal Project Agreement within one year after the Department of Transportation approval of the County/Municipal Capital Transportation Program. Recouped amounts shall be placed in a discretionary fund for use on other eligible projects throughout the State.

3. Each county shall develop a four-year program (including both county and municipal projects) for approval by the Board of Chosen Freeholders and submission to the Department of Transportation for final approval. Newark and Jersey City shall also develop their own individual four-year program for approval by the Mayor and Council and submission to the Department of Transportation for final approval.

4. Each county and Newark and Jersey City shall make reasonable further progress in the attainment and maintenance of National Ambient Air Quality Standards consistent with the New Jersey State Implementation Plan. The Department of Transportation shall advise each county and affected municipality within each county of specific project approvals prior to April 1st.

5. Concurrently, each county/municipality will be required to execute State/County/Municipal Agreements for each project on forms provided by the State. Each agreement shall specify a date for the completion of the work. In the event work is not completed by that date, the State, at its discretion, may either grant a time extension or recoup the State funds. Funds that are recouped will be placed in a discretionary fund for use on other eligible projects throughout the State.

6. Escalations in a project's cost that exceed the approved amount in the State/County/Municipal Agreement may be reviewed by the county (when applicable, Newark or Jersey City) to determine eligibility for State participation. A request may be made for Department of Transportation approval to modify the Capital Transportation Program to permit State participation in the additional work. Otherwise, all cost escalations will be totally borne by the county or municipality.

16:20A-2.3 Discretionary funds

Annually, subject to funds appropriated by the Legislature, a Discretionary Fund shall be established to address emergency and regional needs throughout the entire State. Any municipality or county may make application to the Department of Transportation at any time. Projects need not be included in the Capital Transportation Program. Project approvals are at the discretion of the Commissioner of Transportation.

16:20A-2.4 Standards

(a) The proposed road and bridge improvements shall conform to the design criteria of the appropriate American Association of State Highway and Transportation Officials publications listed below. Any exceptions to these design criteria must be justified by the local engineer to be in the public interest.

1. Geometric Design Guide for Resurfacing, Restoration and Rehabilitation (R-R-R) of Streets;
2. A Policy on Geometric Design of Rural Highways;
3. A Policy on Arterial Highways in Urban Areas;
4. Geometric Design Guide for Local Roads and Streets;
5. Standard Specifications for Highway Bridges;
6. Guide for the Development of New Bicycle Facilities 1981.

(b) All workmanship and materials shall conform with the New Jersey State Department of Transportation Standard Specifications for Road and Bridge Construction.

(c) Standards for transportation projects other than roads and bridges shall be pre-approved by the Department of Transportation.

SUBCHAPTER 3. PLANS AND SPECIFICATIONS

16:20A-3.1 Local government responsibility

(a) The local government shall be responsible for engaging a professional engineer registered in the State of New Jersey to prepare construction plans and specifications and to provide construction engineering and inspection and material testing as required.

(b) The local government will provide such maps, reports, construction plans and specification and contract documents as may be required by the State.

SUBCHAPTER 4. CONTRACTS

16:20A-4.1 Award of contract

(a) The local government will advertise and award the contract, subject to approval of the State, in accordance with the provisions of Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.

(b) Within 10 days, or such longer period as the Local Aid District Office will approve, following the receipt of construction bids, the local government shall submit the following to the Local Aid District Office:

1. Two copies of the contract plans and specifications;
2. Two copies of the engineer's estimate of cost;
3. Two copies of the summary of construction bids; and
4. A resolution awarding the contract to the lowest responsible bidder, subject to the approval of the Department.

(c) When all information relative to the bidding has been approved by the State, the local government shall be advised of the approval of the award of the contract.

16:20A-4.2 Contract completion and payment

(a) The State will pay funds on a reimbursement basis after acceptance by the Local Government Unit and the State of the work completed. Progress payments may be made on a monthly basis when requested by the Local Government Unit when the total amount of reimbursement requested is not less than $5,000.

(b) When all the work has been completed satisfactorily, the local government will prepare and submit to the Local Aid District Office the following:

1. A statement of the work performed, certified by the municipal/county engineer, for acceptance and approval of the completed work;
2. A certification by the county/municipal auditor that the project's records have been examined and all expenditures are

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supported by valid documentation; and

3. A request for reimbursement by the State, on vouchers supplied by the State.

(c) After a final inspection of the completed work by the State and a determination has been made by audit that all documents are in proper order, action shall be taken to reimburse the county/municipality.

(d) The county/municipality shall maintain complete documentation of the project for a period of three years after receiving reimbursement by the State. An evaluation of the acceptability of the work by the Department and a determination of the extent of State participation in the cost thereof, will be based on an inspection of the completed project and a review of the documentation maintained by the county/municipality.

16:20A-4.3 Cost of engineering, inspection and construction supervision

(a) In the case of qualified municipalities and in hardship cases approved by the Department, the State may participate in the cost of engineering accomplished by either a consultant engaged by the county/municipality or by their full time engineering staff. Prior approval of the State's participation in the cost of engineering fees shall be obtained before any engineering services are performed.

(b) Local governments desiring State participation in the cost of engineering shall submit to the Department of Transportation a list of the scope of services to be performed by the Engineer. The State shall participate in accordance with the percentage range as outlined in the current policy and procedure of the Department concerning engineering fees.

(c) Payment for engineering fees shall be made on a reimbursement basis. Claims shall be presented on forms provided by the State.

(d) The State shall also participate in the cost of inspection and construction supervision including the necessary material testing. The State shall participate in accordance with the percentage range as outlined in the current policy and procedure of the Department concerning inspection and construction supervision fees.

16:20A-4.4 Cost of right-of-way acquisition

(a) In the case of qualified municipalities and in hardship cases approved by the Department, the State may participate on a reimbursement basis in the cost of lands and/or easement rights acquired for right-of-way.

(b) Cost is the actual purchase price amount paid for each parcel of land or easement rights acquired for the project as a result of a negotiated purchase agreement or, where negotiations have failed, the just compensation amount awarded by the courts for a particular parcel as a result of a subsequent condemnation action.

(c) Counties and municipalities requesting State participation in the cost of right-of-way acquisition shall in advance of any right-of-way acquisition activity for the project make application to the Local Aid District Office and provide right-of-way maps depicting the lands and/or easement rights necessary to be acquired for the project.

(d) County and municipal governments will be notified in writing upon the approval of their right-of-way project application and of the approval of the right-of-way maps prerequisite for State participation in the right-of-way acquisition costs of each particular approved project.

(e) County and municipal governments requesting State participation in the cost of acquiring right-of-way shall submit appraisals of property to be acquired on appraisal forms provided by the Department of Transportation and which have been prepared in accordance with Department of Transportation Manual standards and requirements.

(f) In advance of the institution for any property, the appraisals shall be submitted by the concerned county or municipality to the appropriate New Jersey Department of Transportation Right of Way Division District Office for review and a fair market value participation certification.

(g) Upon completion of the review and the registration of the fair market value, the local government will be notified in writing by the State of the registered cost participation amount established as a result of the appraisal review for each parcel on the project. Subject to the availability of funds, the registered cost participation amount will govern the State's reimbursement participation for a particular parcel except, in condemnation awards resulting from contested court adversary proceedings.

(h) Subject to the availability of funds, the State will participate in the actual amount of such court awards providing they are not substantially in excess of the approved parcel participation amount in which instances, the concerned county or municipality shall normally appeal the award.

(i) Right of way acquisition activities by counties and municipalities shall be conducted in accordance with all requirements and conditions set forth within the State of New Jersey Uniform Eminent Domain Law of 1971, N.J.S.A. 20:3-1 et seq.

(j) Where owner or tenant occupants of any property being acquired for the project will be displaced, the county or municipality shall provide a Relocation Plan and accomplish Relocation Assistance in accordance with the State Department of Community Affairs Relocation Assistance Act, N.J.S.A. 20:4-1 et seq., and with all published procedures, conditions and requirements of the State Department of Community Affairs pertaining to this statute.

(k) Reimbursement claims for lands and/or easements on approved projects and parcels shall be presented on invoice forms provided by the State accompanied by satisfactory evidence of legal ownership of the property by the county and/or municipality, as applicable. Other costs incurred incidental to the right-of-way acquisition shall not be reimbursable.

(l) Where properties have been acquired with State participation and are later declared by the county or municipality as excess to the project and are in turn sold, the participation amount shall be then returned to the State.

(m) These procedures are limited to direct State funded, State-aid projects and are not applicable to Federally funded State-aid projects.

Municipalities Qualified for
Depressed Rural Centers Aid

APPENDIX I

County	Municipality
Burlington	Beverly City
Burlington	Wrightstown Borough
Gloucester	Swedesboro Borough
Hunterdon	Frenchtown Borough
Hunterdon	Hampton Borough
Hunterdon	High Bridge Borough
Middlesex	Lambertville City
Monmouth	Jamesburg Borough
Monmouth	Shrewsbury Township
Morris	Netcong Borough
Morris	Victory Gardens Borough

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Ocean	Lakehurst Borough
Salem	Woodstown Borough
Somerset	South Bound Brook Borough
Sussex	Sussex Borough
Union	Winfield Township
Warren	Alpha Borough

Municipalities Qualified for
Urban Aid Funding

APPENDIX II

Asbury Park City	Millville City
Bayonne City	Montclair Township
Belleville Township	Neptune Township
Bloomfield Township	Newark City
Bridgeton City	New Brunswick City
Camden City	North Bergen Township
Carteret Borough	Old Bridge Township
East Orange City	Orange City
Elizabeth City	Passaic City
Englewood City	Paterson City
Garfield City	Pemberton Township
Gloucester Township	Pennsauken Township
Hamilton Township (Mercer)	Perth Amboy City
Hillside Township	Phillipsburg Town
Hoboken City	Plainfield City
Irvington Town	Rahway City
Jackson Township	Roselle Borough
Jersey City	Trenton City
Keansburg Borough	Union City
Kearny Town	Vineland City
Lakewood Township	Weehawken Township
Lindenwold Borough	West New York Town
Lodi Borough	Willingboro Township
Long Branch City	Winslow Township
	Woodbridge Township

CHAPTER 20B

1984 NEW JERSEY TRANSPORTATION TRUST FUND AUTHORITY ACT MUNICIPAL AID

SUBCHAPTER 1. GENERAL PROVISIONS

16:20B-1.1 Appropriation of funds

1984 New Jersey Transportation Trust Fund Authority Act funds are appropriated by the Legislature as the State's share of the cost for the improvement of public highways under municipal jurisdiction.

16:20B-1.2 Standards

(a) The proposed road and bridge improvement projects shall conform to the design criteria of the appropriate American Association of State Highway and Transportation Officials publications listed below:

1. Geometric Design Guide for Resurfacing, Restoration and Rehabilitation (R-R-R) of Streets;
2. A Policy on Geometric Design of Rural Highways;
3. A Policy on Arterial Highways in Urban Areas;
4. Geometric Design Guide for Local Roads and Streets;
5. Standard Specifications for Highway Bridges.

(b) Any exceptions to the above design criteria must be justified by the municipal engineer to be in the public interest.

(c) All workmanship and materials shall conform with the New Jersey State Department of Transportation Standard Specifications for Road and Bridge Construction.

16:20B-1.3 Applications and agreements

(a) Each municipality may submit fully executed applications and agreements for 1984 New Jersey Transportation Trust Fund Authority Act funds to the Local Aid District Office of the New Jersey Department of Transportation.

(b) Application and agreement forms are available to the municipalities at the district offices.

16:20B-1.4 Procedures

(a) The application and agreement provides for an engineering description of the existing road or bridge and the description of the proposed road improvement indicating the right-of-way width, paved and graded widths, shoulder widths, type and depth of proposed pavement and an estimate of the cost of the proposed work. The district offices shall make a field investigation of all projects for which applications have been received.

(b) Applications will be evaluated by a screening committee comprised of municipal engineers and staff of the New Jersey Department of Transportation appointed by the Commissioner of Transportation. Recommendations will be presented to the Commissioner of Transportation for consideration. In project approval, consideration will be given to the volume of traffic, safety considerations, growth potential, readiness to obligate funds and local taxing capacity.

(c) Upon approval of the project by the Commissioner of Transportation, the Department will enter into an agreement with the municipality to determine a firm progress and funding schedule for each project.

(d) State aid funds for municipal projects in each county will be allocated according to the formula set forth in the legislation appropriating said funds. For the purpose of said formula, population figures will be obtained from the New Jersey Department of Labor and municipal road mileage will be determined by the New Jersey Department of Transportation.

16:20B-1.5 Contracts

All work must be performed by the contract method unless otherwise approved by the State.

16:20B-1.6 Discretionary funds

Annually, subject to funds appropriated by the Legislature, a Discretionary Fund shall be established to address emergency and critical municipal transportation projects. Any municipality may make application to the Department of Transportation at any time. The rapid construction, reconstruction, or rehabilitation of these type projects will reduce undue hardships to the traveling public or correct unsafe conditions in a timely fashion. All rules, regulations and procedures included in this chapter shall apply except that due to the nature of the projects, applications will not be evaluated by a Municipal Engineers Screening Committee. Final project approvals will be at the discretion of the Commissioner of Transportation.

SUBCHAPTER 2. PLANS AND SPECIFICATIONS

16:20B-2.1 Municipal responsibility

(a) The municipality shall be responsible for engaging a professional engineer registered in the State of New Jersey to prepare construction plans and specifications and to provide construction engineering and inspection and material testing as required.

(b) The municipality will provide such maps, reports, construction plans and specifications and contract documents as may be required by the State.

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SUBCHAPTER 3. CONTRACTS

16:20B-3.1 Award of contract

(a) The municipality will advertise and award the contract, subject to the approval of the State, in accordance with the provisions of local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.

(b) Within 10 days, or such longer time as the Local Aid District Office will approve, following the receipt of construction bids, the municipality shall submit the following to the Local Aid District Office:

1. Two copies of the contract plans and specifications;
2. Two copies of the engineer's estimate of cost;
3. Two copies of the summary of construction bids;
4. A resolution awarding the contract to the lowest responsible bidder, subject to the approval of the Department.

(c) When all information relative to the bidding has been approved by the State, the municipality shall be advised of the approval of the award of contract.

16:20B-3.2 Contract completion and payment

(a) The State will pay funds on a reimbursement basis after acceptance by the municipality and the State of the work completed. Progress payments may be made on a monthly basis when requested by the municipality when the total amount of reimbursement requested is not less than $5,000. Vouchers submitted for project payments shall include a statement of the work performed certified by the municipal engineer.

(b) When all work has been completed satisfactorily, the municipality will prepare and submit to the Local Aid District Office the following:

1. A statement of the work performed, certified by the municipal engineer, for acceptance and approval of the completed work;
2. A certification by the municipal auditor that the project's records have been examined and all expenditures are supported by valid documentation;
3. A request for reimbursement by the State on vouchers to be supplied by the State.

(c) After a final inspection of the completed work by the State and a determination has been made by audit that all documents are in proper order, action shall be taken to reimburse the municipality.

(d) The municipality shall maintain complete documentation of the project for a period of three years after receiving reimbursement by the State. An evaluation of the acceptability of the work by the Department and a determination of the extent of State participation in the cost thereof will be based on an inspection of the completed project and a review of the documentation maintained by the municipality.

SUBCHAPTER 4. STATE PARTICIPATION IN COST

16:20B-4.1 General requirements

(a) State participation shall not exceed the lesser of either 100 percent of the cost of the completed construction work including construction supervision, inspection and material testing or the project appropriation. Except as hereinafter provided, the cost of design engineering and right-of-way acquisition shall be borne totally by the municipality.

(b) Subject to the availability of funds, State Aid participation in projects initiated by municipalities qualified by the Department of Community Affairs for Urban Aid funding under P.L. 1978, Chapter 14 as amended by P.L. 1983, Chapter 384 or for Depressed Rural Centers Aid may, at the discretion of the Department of Transportation, be increased up to 100 percent of total project cost including design engineering, right-of-way acquisition and construction (see qualified municipalities listed in Appendices I and II).

16:20B-4.2 Cost of engineering, inspection and construction supervision

(a) In the case of qualified municipalities, the State may participate in the cost of engineering accomplished by either a consultant engaged by the municipality or by their full time engineering staff. Prior approval of the State's participation in the cost of engineering fees shall be obtained before any engineering services are performed.

(b) Local governments desiring State participation in the cost of engineering shall submit to the Department of Transportation a list of the scope of services to be performed by the engineer. The State shall participate in accordance with the percentage range as outlined in the current policy and procedure of the Department concerning engineering fees.

(c) Payment for engineering fees shall be made on a reimbursement basis. Claims shall be presented on forms provided by the State.

(d) The State shall also participate in the cost of inspection and construction supervision including the necessary material testing. The State shall participate in accordance with the percentage range as outlined in the current policy and procedure of the Department concerning inspection and construction supervision fees.

16:20B-4.3 Cost of right-of-way acquisition

(a) In the case of qualified municipalities, the State may participate on a reimbursement basis in the cost of lands and/or easement rights acquired for right-of-way.

(b) Cost is the actual purchase price amount paid for each parcel of land or easement rights acquired for the project as a result of a negotiated purchase agreement or, where negotiations have failed, the just compensation amount awarded by the courts for a particular parcel as a result of a subsequent condemnation action.

(c) Municipalities requesting State participation in the cost of right-of-way acquisition shall in advance of any right-of-way acquisition activity for the project make application to the Local Aid District Office and provide right-of-way maps depicting the lands and/or easement rights necessary to be acquired for the project.

(d) Municipal governments will be notified in writing upon the approval of their right-of-way project application and of the approval of the right-of-way maps prerequisite for State participation in the right-of-way acquisition costs of each particular approved project.

(e) Municipal governments requesting State participation in the cost of acquiring right-of-way shall submit appraisals of property to be acquired on appraisal forms provided by the Department of Transportation and which have been prepared in accordance with Department of Transportation Manual standards and requirements.

(f) In advance of the institution of negotiations for any property, the appraisals shall be submitted by the concerned municipal government to the appropriate New Jersey Department of Transportation Right of Way Division District Office for review and a fair market value participation certification.

(g) Upon completion of the review and the registration of the fair market value, the local government will be notified in writing by the State of the registered cost participation amount established as a result of the appraisal review for each parcel on the project. Subject to the availability of funds, the registered cost participation amount will govern the State's

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reimbursement participation for a particular parcel except, in condemnation awards resulting from contested court adversary proceedings.

(h) Subject to the availability of funds, the State will participate in the actual amount of such court awards providing they are not substantially in excess of the approved parcel participation amount in which instances, the concerned municipal government shall normally appeal the award.

(i) Right-of-way acquisition activities by municipal governments shall be conducted in accordance with all requirements and conditions set forth within the State of New Jersey Uniform Eminent Domain Law of 1971, N.J.S.A. 20:30-1 etc.

(j) Where owner or tenant occupants of any property being acquired for the project will be displaced, the municipal government shall provide a Relocation Plan and accomplish Relocation Assistance in accordance with the State Department of Community Affairs Relocation Assistance Act, N.J.S.A. 20:4-1 et seq., and with all published procedures, conditions and requirements of the State Department of Community Affairs pertaining to this statute.

(k) Reimbursement claims for lands and/or easements on approved projects and parcels shall be presented on invoice forms provided by the State accompanied by satisfactory evidence of legal ownership of the property by the municipal government, as applicable. Other costs incurred incidental to the right-of-way acquisition shall not be reimbursable.

(l) Where properties have been acquired with State participation and are later declared by the municipal government as excess to the project and are in turn sold, the participation amount shall be then returned to the State.

(m) These procedures are limited to direct State funded, State-aid projects and are not applicable to Federally funded State-aid projects.

APPENDIX I

Municipalities Qualified for Depressed Rural Centers Aid

County	Municipality
Burlington	Beverly City
Burlington	Wrightstown Borough
Gloucester	Swedesboro Borough
Hunterdon	Frenchtown Borough
Hunterdon	Hampton Borough
Hunterdon	High Bridge Borough
Hunterdon	Lambertville City
Middlesex	Jamesburg Borough
Monmouth	Allentown Borough
Monmouth	Shrewsbury Township
Morris	Netcong Borough
Morris	Victory Gardens Borough
Ocean	Lakehurst Borough
Salem	Woodstown Borough
Somerset	South Bound Brook Borough
Sussex	Sussex Borough
Union	Winfield Township
Warren	Alpha Borough

APPENDIX II

Municipalities Qualified for Urban Aid Funding

Asbury Park City
Bayonne City
Belleville Township
Bloomfield Townsihp
Bridgeton City
Camden City
Carteret Borough
East Orange City
Elizabeth City
Englewood City
Garfield City
Gloucester Township
Hamilton Township (Mercer)
Hillside Township
Hoboken City
Irvington Town
Jackson Township
Jersey City
Keansburg Borough
Kearny Town
Lakewood Township
Lindenwold Borough
Lodi Borough
Long Branch City
Millville City
Montclair Township
Neptune Township
Newark City
New Brunswick City
North Bergen Township
Old Bridge Township
Orange City
Passaic City
Paterson City
Pemberton Township
Pennsauken Township
Perth Amboy City
Phillipsburg Town
Plainfield City
Rahway City
Roselle Borough
Trenton City
Union City
Vineland City
Weehawken Township
West New York Town
Willingboro Township
Winslow Township
Woodbridge Township

(a)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping Routes 28 in Middlesex and 36 in Union Beach

Adopted Amendments: N.J.A.C. 16:28A-1.19 and 1.26

Proposed: October 1, 1984 at 16 N.J.R. 2513(b).
Adopted: November 7, 1984, Jarrett R. Hunt, Assistant Chief, Engineer, Traffic and Local Road Design.
Filed: November 16, 1984 as R.1984 d.551, **without change**.

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

Effective Date: December 17, 1984.
Expiration Date pursuant to Executive Order 66(1978): November 7, 1988.

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

Full text of the adoption follows.

16:28A-1.19 Route 28

(a) (No change.)

(b) The certain parts of State highway Route 28 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 bus stops:

1. Along Bound Brook Road, westbound on the northerly side thereof in Middlesex Borough, Middlesex County:

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i. Near side bus stops:
(1) John F. Kennedy Drive: beginning at the easterly curb line of John F. Kennedy Drive and extending 105 feet easterly therefrom.
(2) Sheperd Avenue (105 feet).
(3) Greenbrook Road (105 feet).
(4) North Lincoln Avenue (105 feet).
ii. Far side bus stop:
(1) Grove Street (100 feet).
2. Along Bound Brook Road, eastbound on the southerly side thereof in Middlesex Borough, Middlesex County:
i. Near side bus stops:
(1) Mountain Avenue: beginning at the westerly curb line of Mountain Avenue and extending 105 feet westerly therefrom.
(2) Clay Avenue: beginning at the westerly curb line of Clay Avenue and extending 105 feet westerly therefrom.
(3) Garden Place: beginning at the prolongation of the westerly curb line of Garden Place extended and extending 105 feet westerly therefrom.
(4) Grove Street (105 feet).
(5) Smalley Avenue (105 feet).
ii. Far side bus stops:
(1) Raritan Avenue: beginning at the easterly curb line of Raritan Avenue and extending 100 feet easterly therefrom.
(2) Harris Avenue: beginning at the easterly curb line of Harris Avenue and extending 100 feet easterly therefrom.
(3) Marlborough Avenue (100 feet).
(4) Pond Avenue (100 feet).
(5) South Lincoln Avenue beginning at the easterly curb line of South Lincoln Avenue and extending 100 feet easterly therefrom.
iii. Mid-block bus stops:
(1) Orchard Road: beginning at a point 110 feet east of the easterly curb line of Orchard Road, extended, to a point 135 feet easterly therefrom.
3.-8. (No change.)
(c)-(d) (No change.)

16:28A-1.26 Route 36
(a) (No change.)
(b) The certain parts of State highway Route 36 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.-2. (No change.)
3. Along the eastbound (southerly) side in Middletown Township, Monmouth County:
i.-ii. (No change.)
iii. Mid-block bus stops:
(1)-(2) (No change.)
4. Along the westbound (northerly) side in Middletown Township, Monmouth County:
i.-iii. (No change.)
5. Along the westbound (northerly) side in Union Beach Borough, Monmouth County:
i. Near side bus stops:
(1) Rose Lane — beginning at the easterly curb line of Rose Lane and extending 105 feet easterly therefrom.
(2) Harris Avenue — beginning at the easterly curb line of Harris Avenue and extending 115 feet easterly therefrom.
(3) Union Avenue — beginning at the easterly curb line of Union Avenue and extending 105 feet easterly therefrom.
(4) Seagate Avenue — beginning at the easterly curb line of Seagate Avenue and extending 105 feet easterly therefrom.

(a)

Restricted Parking and Stopping Route 45 in Harrison Township

Adopted Amendment: N.J.A.C. 16:28A-1.31

Proposed: October 15, 1984, at 16 N.J.R. 2749(a).
Adopted: November 16, 1984 by Jarrett R. Hunt, Assistant Chief Engineer, Traffic and Local Road Design.
Filed: November 27, 1984 as R.1984 d.555, **without change.**

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

Effective Date: December 17, 1984.
Expiration Date pursuant to Executive Order 66(1978): November 7, 1988.

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

Full text of the adoption follows.

16:28A-1.31 Route 45
(a) The certain parts of State highway Route 45 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. No stopping or standing in Harrison Township, Gloucester County:
i. Along the northbound side:
(1) (No change.)
(2) From the easterly curb line of Route U.S. 322 to a point 310 feet easterly therefrom.
ii. Along the southbound side:
(1) From the northerly curb line of County Route 551 Spur to a point 175 feet north of the northerly curb line of County Route 551 Spur.
(2) From the easterly curb line (extended) of Route U.S. 322 to a point 370 feet southerly therefrom.
iii. (No change.)
2.-5. (No change.)
(b) (No change.)

(b)

Restricted Parking and Stopping Route 50 in Egg Harbor City

Adopted New Rule: N.J.A.C. 16:28A-1.100

Proposed: October 15, 1984, at 16 N.J.R. 2750(a).
Adopted: November 16, 1984, by Jarrett R. Hunt, Assistant Chief Engineer, Traffic & Local Road Design.
Filed: November 27, 1984 as R.1984 d.556, **without change.**

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

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Effective Date: December 17, 1984.
Expiration Date pursuant to Executive Order 66(1978): November 7, 1988.

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

Full text of the adoption follows.

16:28A-1.100 Route 50
(a) The certain parts of State Highway Route 50 described in this section shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.
1. No stopping or standing in Egg Harbor City, Atlantic County:
i. Along both sides for a distance of 95 feet south of the southerly curb line of Route U.S. 30.

(a)

Miscellaneous Traffic Rules
Weight Limits
Route 173 in Greenwich Township

Adopted New Rule: N.J.A.C. 16:30-6.3

Proposed: October 15, 1984 at 16 N.J.R. 2750(b).
Adopted: November 16, 1984 by Jarrett R. Hunt, Assistant Chief Engineer, Traffic and Local Road Design.
Filed: November 27, 1984 as R.1984 d.554, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 27:7-21.

Effective Date: December 17, 1984.
Expiration Date pursuant to Executive Order 66(1978): November 7, 1988.

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

Full text of the adoption follows.

16:30-6.3 Route 173
(a) For the improvement in maintenance and repair of Route N.J. 173 eastbound between U turn facility at the junction of Route U.S. 22—I-78 westbound and Voorhees Road, in the Township of Greenwich, Warren County, there is hereby established a weight limit of 10 tons gross weight for trucks except for the pick-up and delivery of materials.

TREASURY-GENERAL

(b)

DIVISION OF PENSIONS

Administration
Administration Expenses Proration

Adopted Amendment: N.J.A.C. 17:1-1.17

Proposed: September 17, 1984, at 16 N.J.R. 2420(a).
Adopted: November 20, 1984, by Douglas R. Forrester, Director, Division of Pensions.
Filed: November 27, 1984, as R.1984 d.559, **without change.**

Authority: N.J.S.A. 52:18A-96 et seq.

Effective Date: December 17, 1984.
Expiration Date pursuant to Executive Order 66(1978): May 15, 1988.

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

Full text of the adoption follows.

17:1-1.17 Administrative expenses; proration among systems
(a) Not later than 60 days after receipt of the expenditures by account the Chief of Administrative Services of the Division of Pensions will prepare a complete fiscal statement indicating the administrative expenses incurred by the Division within its State appropriation for the previous fiscal year, the year ending the prior June 30:
1.-6. (No change.)
(b)-(c) (No change.)

(c)

DIVISION OF PENSIONS

Social Security
Late Filing Penalties

Adopted Amendments: N.J.A.C. 17:1-8.12

Proposed: September 17, 1984, at 16 N.J.R. 2421(a).
Adopted: November 20, 1984, by Douglas R. Forrester, Director, Division of Pensions.
Filed: November 27, 1984 as R.1984 d.558, **without change.**

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Authority: N.J.S.A. 52:18A-96 et seq.

Effective Date: December 17, 1984.
Expiration Date pursuant to Executive Order 66(1978): May 15, 1988.
Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

17:1-8.12 Late filing penalties

(a) If proper transmittals and contributions are not received by the State Agency for Social Security by the due date, such employer will be liable for any penalties assessed by the Federal government.

(b) The participating employer will be sent a delinquency notice covering late or rejected items. Whenever participating employers are delinquent for a period of 90 days in forwarding the appropriate contributions, transmittals and/or reports, the Division of Pensions shall notify the State Treasurer and the Director of Budget and Accounting, who are authorized to deduct any amount due from any monies payable to the employer by a department or agency of the State. In this event, the State Agency will estimate the contributions due by using the information from the last available transmittal. The State Agency will assess interest and report penalty charges for non-compliance of the above in the following manner:

1. Interest charges will be based on the prime rate as of January 1 of each calendar year.

2. Penalty charges for non-filing of reports will be assessed a charge of $50.00 per day, not to exceed $1,000.00 per month.

(a)

DIVISION OF PENSIONS

Public Employees' Retirement System Administrative Rules

Readoption: N.J.A.C. 17:2

Proposed: October 1, 1984, at 16 N.J.R. 2515(b).
Readopted: November 21, 1984 by Regina Trauner, Acting Secretary, Public Employees' Retirement System.
Filed: November 27, 1984 as R.1984 d.562, **without change.**
Authority: N.J.S.A. 43:15A-17.

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. 17:2.

(b)

DIVISION OF PENSIONS

State Health Benefits Program Dependents; Ineligibility

Adopted Amendments: N.J.A.C. 17:9-2.8, 2.12, 3.4, 3.7

Proposed: September 17, 1984, at 16 N.J.R. 2422(b).
Adopted: November 20, 1984, by Gaius Mount, Acting Secretary, State Health Benefits Commission.
Filed: November 27, 1984 as R.1984 d.560, **without change.**

Authority: N.J.S.A. 52:14-17.31.

Effective Date: December 17, 1984.
Expiration Date pursuant to Executive Order 66(1978): May 16, 1984.

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

Full text of the adoption follows.

17:9-2.8 Effective date; ineligible employees and dependents

(a) An employee who, at the time of his or her coverage would otherwise become effective, is not actively at work on a full-time basis at his or her customary place of employment or other location to which his or her employment requires him or her to travel, shall not be covered until he or she is so actively at work. Such employee shall be eligible for coverage immediately upon his or her return to active full-time work.

(b) The major medical coverage for a dependent (except a newborn child), who, at the time of his or her coverage would otherwise become effective, is confined in a medical facility primarily for medical care or treatment on the date the major medical coverage would otherwise become effective with respect to that dependent, will be deferred until his or her final medical release from all such confinement.

(c) (No change.)

17:9-2.12 Major Medical; eligible charges at enrollment (local employees)

(a) For purposes of local coverage, all eligible charges incurred by an eligible employee or his or her covered dependents, from January 1 of a calendar year to the effective date of coverage for his or her participating employer, will be considered to satisfy the $100.00 deductible required under the Major Medical coverage. The above provision is contingent upon the eligible employee being actively at work on the effective date of coverage and his or her dependents not be deferred as stated under N.J.A.C. 17:9-2.8(b).

(b) (No change.)

17:9-3.4 Certification of dependency

An employee who elects to enroll an eligible dependent for any coverage shall report such dependent's relationship or status on the enrollment form and such listing of the dependent shall constitute the required certification that at the time of enrollment such dependent is wholly dependent upon the employee for support and maintenance.

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17:9-3.7 Major Medical; ineligible dependents

The Major Medical benefits coverage of any dependent (except a newborn child) who, at the time the coverage would become effective, is confined in a medical facility primarily for medical care or treatment on the date that the Major Medical coverage would otherwise become effective with respect to that dependent, the coverage for that dependent will be deferred until his or her final medical release from all such confinement. See N.J.A.C. 17:9-2.8.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Local Property Tax
Exemptions from Taxation

Adopted Amendments: N.J.A.C. 18:12-6A.1 and 6A.2

Proposed: September 17, 1984 at 16 N.J.R. 2424(a).
Adopted: November 15, 1984, by John R. Baldwin, Director, Division of Taxation.

Filed: November 16, 1984, as R.1984 d.550. **without change**
Authority: N.J.S.A. 54:4-3.79 and 54:4-3.121 et seq.

Effective Date: December 17, 1984.
Expiration Date: Pursuant to Executive Order 66 (1978): August 12, 1988.
Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

18:12-6A.1 Definitions

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

. . .

"Multiple Dwelling" means any building or structure of one or more stories, and any land appurtenant thereto, and any portion thereof, in which three or more units of dwelling space are occupied, or are intended to be occupied, by three or more persons who live independently of each other. This definition shall not include hotels, motels, motor hotels, guesthouses, properties subject to the Rooming and Boarding House Act of 1979, or any building section containing not more than two dwelling units held under a condominium or cooperative form of ownership, or by a mutual housing corporation, where all the dwelling units in the section are occupied by their owners, if a condominium, or by shareholders in the cooperative or mutual housing corporation, and where such building section has at least two exterior walls unattached to any adjoining building section and is attached to any adjoining building sections exclusively by fire walls having a two hour fire rating and/or by fire separation walls having a one and one-half hour rating, or any building of three stories or less, owned and controlled by a nonprofit corporation organized under any law of this state for the primary purpose of providing for its shareholders or members housing in a retirement community, as defined in the "Retirement Community Full Disclosure Act" (N.J.S.A. 45:22A-1 et seq.). "Multiple Dwelling" also means and includes any group of ten or more buildings on a single parcel of land or on contiguous parcels under common ownership, in each of which two units of dwelling space are occupied or intended to be occupied by two persons or households, living independently of each other, and any land appurtenant thereto, and any portion thereof.

18:12-6A.2 Areas in need of rehabilitation

(a) Standards for determining if any area is in need of rehabilitation are as follows:

1.-5. (No change.)

(b)

DIVISION OF TAXATION

Local Property Tax
County Boards of Taxation

Adopted Amendments: N.J.A.C. 18:12A-1.9, 1.12, 1.13

Proposed: October 15, 1984 at 16 N.J.R. 2760(a).
Adopted: November 29, 1984 by John R. Baldwin, Director, Division of Taxation.
Filed: November 30, 1984 as R.1984 d.580, **without change.**

Authority: N.J.S.A. 54:3-14.

Effective Date: December 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): August 12, 1988.

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

Full text of the adoption follows.

18:12A-1.9 Hearings

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

(f) When a case is set down for hearing, the assessor of the taxing district involved shall attend said hearing together with counsel for the taxing district, unless the board shall in individual cases decide otherwise.

(g)-(l) (No change.)

18:12A-1.12 Determination; judgments

(a) (No change.)

(b) In order to provide for a more orderly appeal procedure, county boards of taxation shall, effective immediately, institute the procedure herein described with respect to the issuance of judgments.

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1.-4. (No change.)
5. Size and reproduction.
i. The judgment shall be uniform size 8½ x 11 inches and be such that it is capable of reproduction on a copier machine.
ii. Judgments must contain the following statement:
"The action of the county board of taxation may be reviewed by filing a complaint with the Tax Court within 45 days of the service of the judgment of the county board of taxation."
Address:

Tax Court of New Jersey
Hughes Justice Complex
Trenton, New Jersey 08625
Mailing Address:
CN 972
Trenton, New Jersey 08625

6. (No change.)
(c) (No change.)

18:12A-1.13 Freeze Act
When an assessment is subject to the "freeze" provisions of N.J.S.A. 54:51A-8 or 54:3-26 . . .
(no change in remainder of rule)

(a)

DIVISION OF TAXATION

Gross Income Tax
Setoff of Individual Liability

Adopted Amendment: N.J.A.C. 18:35-2.12

Proposed: October 15, 1984 at 16 N.J.R. 2760(b).
Adopted: November 29, 1984 by John R. Baldwin, Director, Division of Taxation.
Filed: November 30, 1984 as R.1984 d.579, **without change.**

Authority: N.J.S.A. 54A:9-8.1 through 8.3 (P.L. 1981, c.239) and 54A:9-17(a).

Effective Date: December 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): August 12, 1988.

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

Full text of the adoption follows.

18:35-2.12 Disposition of proceeds collected, collection assistance fees
(a) (No change.)
(b) From the gross proceeds collected by the Division through setoff, the Division shall retain 10 percent. On and after January 1, 1985 the Division shall retain five percent of such proceeds. The amount shall be charged to the respective claimant agency as a collection assistance fee and may be subject to adjustment based upon experience.

OTHER AGENCIES

(b)

NEW JERSEY HIGHWAY AUTHORITY GARDEN STATE PARKWAY

Central Purchasing and Sale of Surplus Personal Property

Adopted Amendments: N.J.A.C. 19:8-5 and 19:8-6

Proposed: October 15, 1984 at 16 N.J.R. 2761(a).
Adopted: November 15, 1984 by George P. Zilocchi, Executive Director.
Filed: November 15, 1984 as R.1984 d.544, **without change.**

Authority: N.J.S.A. 27:12B-5(j) and (s), 27:12B-18, and 27:12B-24.

Effective Date: December 17, 1984.
Expiration Date pursuant to Executive Order 66(1978): June 1, 1988.

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

Full text of the adoption follows.

SUBCHAPTER 5. CENTRAL PURCHASING

19:8-5.3 Purchases involving $7,500 and over (excluding professional services)
(a) All purchases of personal property or services, where the aggregate cost, contract price or amount involved is $7,500 or over, as anticipated by the Director of Central Purchasing, shall be made only after public advertisement for competitive bids, unless the Authority specifically waives the requirement of public advertising as to a particular transaction.
(b)-(d) (No change.)
(e) In the event that amendment of any pertinent information supplied prospective bidders becomes necessary, notice of the change(s) shall be given to all prospective bidders at least three days prior to the opening of the bids. If such notice is given orally, it shall be timely confirmed in writing by the Director of Central Purchasing.
(f) (No change.)
(g) When the requisitioning unit specifies either the source or the brand name (or names) of personal property or services of a value of $7,500 or more to be acquired, the department or staff division head* of the requisitioning unit shall file with the Division of Central Purchasing a memorandum with a copy to the Comptroller, stating the basis and reasons for the particular selection. Such acquisition shall be made only upon the concurring recommendation of the Director of Central Purchasing and the approval of the Chairman, or his designee. Upon such concurrence and approval the source or brand name designation shall apply to all succeeding purchases until changed by appropriate action, or until a period of two years has elapsed from the memorandum date, whichever first occurs.

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*Whenever in these regulations the term "division head" is used, the same shall be understood to mean a division head who reports directly to the Executive Director.

(h) Awards involving acquisitions where the aggregate cost, contract price or amount involved is equal to or exceeds $25,000 shall be made only after written recommendation by the Director of Central Purchasing and approved by the Authority.

(i) Awards involving $7,500 or more, may be made to other than the lowest bidder for valid reason. Action of this nature shall be taken only on receipt by, and acceptable to, the Director of Central Purchasing a written recommendation from the head of the acquiring Department or Division, approved by the Chairman, or his designee, with copies directed to the General Attorney and the Comptroller.

19:8-5.4 Purchase under $7,500

(a) In the case of purchases where the aggregate cost, contract price or amount involved is equal to or exceeds, $2,500 but is less than $7,500, written bids shall be solicited by mail from all known interested vendors. Where only one vendor is available, such fact shall be indicated on the related purchase order. Bids shall be solicited on the proper quotation form before the time fixed for the public opening.

(b) Where the acquisition involves less than $2,500, bids may be solicited by telephone. Whenever feasible, at least three sources of supply shall be so contacted, and a record of all such telephone solicitations shall be maintained. Additionally, to the extent possible, written confirmation of all such bids shall be obtained.

(c) When the requisitioning unit specifies:

1. Initially the source or brand name (or names) of personal property of a value of from $2,500 to $7,500 to be acquired, the department or division head of the requisitioning unit shall file with the Division of Central Purchasing a memorandum, with a copy to the Comptroller, stating the basis and reasons for the particular selection. Such memorandum must bear the concurring recommendation of the Director of Central Purchasing and the approval of the Chairman, or his designee. Upon such concurrence and approval the source or brand name designation shall apply to all succeeding purchases until changed by appropriate action, or until a period of two years has elapsed from the memorandum date, whichever first occurs. The date of such memorandum shall be stated on the related purchase order, excluding vendor's copies. A memorandum shall not be required when attachments, parts, or supplies are requested for a unit of equipment which can be supplied by only one vendor.

2. The preferred source of services of a value of from $2,500 to $7,500 to be acquired, a memorandum as described in this Section, shall be required for the initial and succeeding purchases, if any.

(d) In the event that amendment of any pertinent information supplied prospective bidders becomes necessary, notice of the change(s) shall be given to all prospective bidders at least three days prior to the opening of the bids. If such notice is given orally, it shall be timely confirmed in writing by the Director of Central Purchasing.

(e) Awards involving $2,500 to $7,500 may be made to other than the lowest bidder for valid reason. Action of this nature shall be taken only on receipt by and acceptable to the Director of Central purchasing a written recommendation from the head of the acquiring Department or Division approved by the Chairman, or his designee, with copies directed to the General Attorney and the Comptroller.

19:8-5.5 Repeat purchases

In the case of personal property which is procured repeatedly, awards may be made at various times to the successful bidder (whose bid was secured in accordance with these regulations) at the same prices as those in the original award for a period of six months from the date of the bid opening, or until $7,500 of such personal property shall be acquired from such bidder, whichever event shall first occur. If the prices charged by the successful bidder differ from those in the original award, such acquisitions shall be in accordance with these regulations.

19:8-5.6 Emergency purchases

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

(c) Relative to any emergency purchase involving an expenditure of $2,500 or more, the department or division head of the acquiring unit shall direct to the Division of Central Purchasing a confirming memorandum certifying the existence and cause of the emergency and advancing the reasons the immediate acquisition was necessary, with a copy to the Comptroller. Such memorandum shall bear the approval of the Chairman, or his designee. If the expenditure is $7,500 or over, the purchase shall be submitted by the Director of Central Purchasing to the Commissioners for ratification at the next regularly scheduled Authority meeting.

(d) When an emergency purchase involves less than $2,500, but more than $1,000, the department or division head of the acquiring unit shall direct to the Division of Central Purchasing a confirming memorandum certifying the existence and cause of the emergency and advancing the reasons the immediate acquisition was necessary, with a copy to the Comptroller.

(e) (No change.)

19:8-5.7 Purchases on limited purchase orders

Purchases of materials, supplies or services of a value not exceeding $75.00 may be made on limited purchase orders directly by employees so authorized in writing by the Chairman, or his designee, under procedures promulgated by the Comptroller. The limited purchase order is to be used to expedite the procurement of required minor items, and shall not be used to evade or avoid other Sections of these regulations, or to procure equipment. Also, except in extraordinary circumstances, materials and supplies stocked at central stores shall not be procured on limited purchase orders. To assure that such minor items are obtained advantageously, the Director of Central Purchasing shall furnish such guidance with respect to sources of supply and possible quantity purchases of repeat items as is necessary.

19:8-5.8 Purchases pursuant to price agreements

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

(c) Price agreements involving estimated expenditures of $25,000 or over shall be approved by and executed in the manner specified by the Authority. In the absence of any specific direction by the Authority, the Chairman, or his designee, will execute all price agreements involving estimated expenditures of less than $25,000, except that the Director of Central Purchasing may execute all price agreements involving estimated expenditures of less than $7,500.

19:8-5.9 Receipt and opening of bids

(a) All bids solicited by advertising or by mail must be submitted in sealed envelopes on the appropriately signed quotation forms before the time fixed for the public opening.

(b)-(h) (No change.)

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(i) Simultaneously with the public reading of the bids, a member of the Division of Central Purchasing shall prepare a summary of all bids timely submitted on a bid summary form. The original bid summary form shall be signed by the preparer, and the bid opener. A photocopy of the original bid summary shall be given to the Internal Audit Division at the conclusion of the bid opening. The required final copies of the bid summary form shall be signed and certified to by the Director of Central Purchasing.

(j) (No change.)

(k) Any bids received after the bidding has been closed shall be rejected and processed by a member of the Division of Central Purchasing as follows:

1. Time and date stamp the late bid envelope and note the time and date of receipt on the original bid summary form;

2. Open and photocopy the contents of the late received bid and retain the photocopies in the pertinent bid file;

3. Return the late bid to the concerned bidder.

(l) A copy of the bid summary shall be forwarded to the requisitioning unit before award is made where the acquisition involves $7,500 or more, and a copy shall accompany the related purchase documents when forwarded for processing.

19:8-5.10 Tie bids

(a) In the event that bid prices submitted by two or more low responsible bidders are identical, the Director of Central Purchasing may award the contract at issue on a relative comparison of one or more of the following factors:

1. Delivery advantage, considering time; distance; convenience and facilities of the bidders;

2. If practical, provide for contract award by splitting the award, with the concurrence of the tie bidders;

3. If several items have already been awarded by actual low bids, the tie-bid items may be awarded in a manner that will grant equitable balance to the overall bid award;

4. The fact that one of the low responsible tie bidders is a New Jersey based vendor, where the others are not;

5. When none of the above distinguishable characteristics are available, or pertinent, the tie low bids shall be broken by either the toss of a coin or a drawing held in the presence of a member of the Internal Audit Division. If practical, the interested bidders may be invited to the Office of Central Purchasing to participate in the coin tossing or drawing. Such tie-breaking shall be noted on the bid summary.

19:8-5.11 Rejection of bids

(a) When in the best interests of the Authority, any or all bids relative to an acquisition may be rejected in the following manner:

1. Where the expenditure involved is $25,000 or more, the Authority on the written recommendation of the Director of Central Purchasing may reject bids.

2. Where the expenditure involved is $7,500 but less than $25,000, the Chairman may reject bids. In such case a memorandum acceptable to the Director of Central purchasing, shall be filed, authorizing the rejection and signed by the Chairman, or his designee.

3. Where the expenditure involved is less than $7,500, the Chairman, or his designee, may reject bids. In such case a memorandum acceptable to the Director of Central Purchasing shall be filed, authorizing the rejection and signed by the Chairman, or his designee.

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

19:8-5.12 Bid guarantees

(a) All bids submitted relative to acquisitions involving expenditures of $7,500 or more may be required to provide security amounting to not less than either ten per cent of the total bid price or any fixed amount which may be established by the Director of Central Purchasing. At the discretion of the Director of Central Purchasing, guarantees may be required for bids amounting to less than $7,500. The guarantee shall be submitted in the form of a certified check payable to the Authority, but cashier's checks, money orders, surety corporation bid bonds or other good and valuable security may also be accepted. Failure to submit a bid guarantee when required shall result in rejection of the bid.

(b) In the event any bidder fails to accept an award in accordance with his bid, the guarantee submitted shall be immediately forfeited.

(c) (No change.)

19:8-5.13 Terms and conditions applicable to submission of bids

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

(e) With respect to bids submitted, the Authority retains the right to reject any or all of them, to waive informalities and minor irregularities and to make awards at any time within 45 calendar days of the public opening. If an award is not made within 45 calendar days of a public opening, written extensions of time should be obtained from bidders whose bids remain under consideration.

(f)-(g) (No change.)

19:8-5.14 Bid errors

(a) If an error is discovered after bid opening but before the purchase of personal property or services is awarded, the vendor may request that his bid be withdrawn. The decision to permit withdrawal of bid shall be based on the following essential conditions:

1. Evidence of vendor good faith;

2. The mistake is of so great a consequence that to enforce the purchase of personal property or services as actually made would be unconscionable;

3. That the matter as to which the mistake was made relates to a material feature of the purchase of personal property or services;

4. That the mistake occurred notwithstanding the exercise of reasonable care by the party making the mistake;

5. The vendor can get relief by way of cancellation without serious prejudice to the Authority.

(b) If during the evaluation of bids received, an obvious error made by a potential low bidder has been found, the Director of Central Purchasing shall notify the vendor, in writing, of that fact. Copies of that letter will be sent to all other vendors. The vendor will have five days after receipt of that letter to request withdrawal of his bid, but in no instance shall there be a bid modification. If the vendor fails to request withdrawal of his bid within the time frames noted above, he will waive his right to have the bid withdrawn.

19:8-5.15 Purchase orders and contracts

(a) (No change.)

(b) In addition to the signatures required in subsection (a) above, all purchase orders involving expenditures of $2,500 or more must bear the approval signature of the Chairman, or his designee.

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(c) Except as otherwise authorized by the Authority, all contracts are to be executed by at least four of the seven Commissioners for contracts involving $25,000 or more, while those involving less than $25,000 will be executed by the Chairman, or his designee.

(d) Purchase orders may be revised, reduced, increased, cancelled or otherwise amended by purchase order supplements prepared by the Director of Central Purchasing. Purchase order supplements may be issued to reduce a purchase order to any extent, but may not increase a related purchase order more than $100.00.

19:8-5.16 Late deliveries and late performance of services

(No change.)

19:8-5.17 Purchases under New Jersey State contracts

When it is deemed advisable and in the best interest of the Authority, the Director of Central Purchasing may recommend that equipment, goods, materials and supplies be purchased directly, without advertising, from vendors who hold contracts with the State of New Jersey for the furnishing of such items to the State. In such event, the Director of Central Purchasing will submit a memorandum to the Chairman, or his designee, which shall set forth the details of the proposed acquisition and shall set forth the details of the proposed acquisition and shall state the reasons for proceeding under such State contract. No such acquisition shall be accomplished without the prior written approval of the Chairman, or his designee.

19:8-5.18 Public advertising threshold requirement

As provided in NJSA 27:12B-5.2, the public advertising requirement sum of $7,500 may be adjusted by the Governor. Upon such notification, the Director of Central Purchasing shall timely confirm such authorized change to the Authority. All sections of these regulations, effected by subsequent adjustments, shall be appropriately administered as though amended accordingly.

SUBCHAPTER 6. SALE OF SURPLUS PERSONAL PROPERTY

19:8-6.1 Purpose and objective

(a) The purpose of these regulations is to establish and prescribe uniform general rules and procedures for the sale of surplus personal property after it has formally been declared surplus and a determination has been made by the Director of Central Purchasing for its sale. No such sale shall be made unless accomplished in accordance with the regulations contained therein.

(b) (No change.)

19:8-6.2 Bids

(a) All sales of surplus personal property, where the aggregate anticipated proceeds are $7,500 or over, as determined by the Director of Central Purchasing, shall be made only after public advertisement for competitive bids, unless the Authority specifically provides by resolution that the requirement of public advertising be waived as to a particular transaction. Any such public advertisement for competitive bids shall be approved in advance by the Chairman, or his designee. The concurrence of the General Attorney shall also be required in writing. Where the anticipated aggregate proceeds are between $2,500 and $7,500, public advertising is not required and the Director of Central Purchasing may solicit sealed bids from known interested parties. Where the anticipated aggregate proceeds are less than $2,500, bids may be solicited by telephone in which event the successful bidder shall confirm same in writing. The Director of Central Purchasing's determination as to the anticipated proceeds from any sale of surplus personal property shall be given to the Chairman, or his designee, by memorandum with copies thereof to the General Attorney and the Comptroller.

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

(d) Employees may bid on surplus personal property being sold. Notices containing listings of adequately described items offered for sale shall be distributed to all department and division heads who shall circulate such notices to the employees under their supervision. Notices shall also be posted on all Authority bulletin boards.

(e) (No change.)

19:8-6.3 Invitation to bid and receipt and opening of bids

(a)-(h) (No change.)

(i) Simultaneously with the public reading of the bids, a member of the Division of Central Purchasing shall prepare a summary of all bids timely submitted on a bid summary form. A member of the Internal Audit Division shall also be present to witness the preparation. The original bid summary form shall be signed by the preparer, the bid opener and the witness who has verified the accuracy of the recorded read information. A photocopy of the original bid summary shall be given to the Internal Audit Division witness at the conclusion of the bid opening. The required final copies of the bid summary form shall be signed and certified to by the Director of Central Purchasing.

(j) (No change.)

(k) The sale of surplus personal property to the highest acceptable bidder shall not be confirmed without the prior written approval of the Chairman, or his designee. A photocopy of this approval shall be given to the General Audit Section of the Finance Department.

19:8-6.6 Bid deposits

(a) Gross bids amounting to $2,500 or more shall be accompanied by a bid deposit amounting to not less than ten per cent of the total bid price. However, at the discretion of the Director of Central Purchasing, deposits may be required for gross bids amounting to less than $2,500. When required, such deposit shall be submitted in the form of a certified check payable to the Authority; however, cashier's checks, money orders or cash may also be accepted. Failure to comply with this provision shall result in rejection of the bid unless specifically waived in writing by the Chairman, or his designee.

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

19:8-6.7 General terms and conditions

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

(e) Tie high bids shall be broken either by agreement of all tie bidders or by lot. Such tie-breaking shall be noted on the bid summary.

(f)-(g) (No change.)

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(a)

NEW JERSEY TURNPIKE AUTHORITY

Traffic Control on the New Jersey Turnpike Limitations on Use of Turnpike

Adopted Amendment: N.J.A.C. 19:9-1.9

Proposed: October 1, 1984 at 16 N.J.R. 2517(a).
Adopted: November 7, 1984 by New Jersey Turnpike Authority, William J. Flanagan, Executive Director.
Filed: November 15, 1984 as R.1984 d.547, **without change.**

Authority: N.J.S.A. 27:23-29.

Effective Date: December 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): November 7, 1989.

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

Full text of the adoption follows.

19:9-1.9 Limitations on use of turnpike
(a) Use of the New Jersey Turnpike and entry thereon by the following is prohibited:
1.-18. (No change.)
19. Vehicles not otherwise specified in this section in such condition as to create a probable hazard to other vehicles or to persons;
20.-26. (No change.)
(b) (No change.)

(b)

ELECTION LAW ENFORCEMENT COMMISSION

Public Financing of Campaigns; Primary and General Elections for the Office of Governor

Adopted Amendments: N.J.A.C. 19:25-15 and 19:25-16

Proposed: October 15, 1984 at 16 N.J.R. 2765(a).
Adopted: November 27, 1984 by Election Law Enforcement Commission, Frederick M. Herrmann, Executive Director.
Filed: November 27, 1984 as R.1984 d.561, **without change.**

Authority: N.J.S.A. 19:44A-38.

Effective Date: December 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): November 13, 1986 for 19:25-15; March 12, 1989 for 19:25-16.

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

Full text of the adoption follows.

SUBCHAPTER 15. PUBLIC FINANCING; GENERAL ELECTIONS FOR THE OFFICE OF GOVERNOR

19:25-15.1 Scope of subchapter
(No change.)

19:25-15.2 Definitions; generally
(No change.)

19:25-15.3 Definitions for this subchapter
The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.
"Candidate" means anyone who has filed a nominating petition, or has filed a form D-1 with the commission, or has solicited contributions or made or incurred expenditures on behalf of his or her candidacy, or has allowed others to solicit contributions or make or incur expenditures on behalf of his or her candidacy for election to the office of Governor of New Jersey in any general election for which the Legislature makes an appropriation for public funding.
. . .
"Contribution eligible for match" means contributions from one contributor to be matched from public funds on a two-for-one basis. No contribution which must be or is intended by the contributor or the recipient to be refunded or repaid at any time, no loan obtained pursuant to N.J.A.C. 19:44A-44, no amount of the candidate's own funds in the aggregate in excess of $800.00, no in-kind contribution and no other moneys received by the candidate, his or her campaign treasurer, or deputy campaign treasurer, except those contributions described in N.J.S.A. 19:44A-29(a) shall be deemed contributions eligible for match. Funds received by an individual who is "testing the waters" may be matched when the individual becomes a candidate if such contributions meet all the requirements of the regulations.
. . .
"Matching fund account" means the campaign bank account opened pursuant to N.J.S.A. 19:44A-32 by a campaign treasurer of a candidate, or deputy campaign treasurer, in which only contributions eligible for match may be deposited.
. . .
"Own funds" means funds to which the candidate is legally and beneficially entitled, but shall not include funds as to which the candidate is a trustee or funds given or otherwise transferred to the candidate by any person other than the spouse of the candidate for use in aid of his or her candidacy.
. . .
"Principal campaign committee" means the political committee designated by the candidate to receive contributions and make expenditures on behalf of his or her candidacy.
. . .

19:25-15.4 Appointment of treasurers and depositories
(a) Each candidate in a general election, whether or not publicly declared and whether or not intending to participate in public funding, must appoint a campaign treasurer and designate a depository bank account and must notify the commission pursuant to N.J.A.C. 19:25-5.2 (Appointment by candidates) of such appointment and designation no later than the tenth day after receipt of any contribution or incurring or making any expenditure, whichever comes first.
(b)-(c) (No change.)

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19:25-15.5 Designation of principal campaign committee; contribution limit

(a) On or before the first Monday following the date of the primary election for nomination for the office of Governor, each gubernatorial general election candidate, whether or not intending to participate in public funding, shall designate to the commission the name and mailing address of his or her principal campaign committee for the general election. A candidate may designate as his or her principal campaign committee a committee which has engaged in campaign activity prior to the designation date specified in this subsection.

(b) (No change.)

19:25-15.6 Contribution limits; applicability

(No change.)

19:25-15.7 Separately maintained primary and general bank accounts

(a) Any candidate may establish and designate to the commission a depository bank account, and/or a matching fund account pursuant to N.J.A.C. 19:25-15.17(b), for a gubernatorial general election and may deposit contributions in such respective accounts at any time after designation. Such general election bank accounts may be established prior to the date of the primary election for nomination for the office of Governor, and prior to the conclusion of any such candidate's primary election campaign. However, if a candidate establishes general election bank accounts prior to or on the date of the primary election for the office of Governor, and such candidate is also a candidate in such primary election, no moneys deposited in such candidate's general election accounts may be transferred or expended until the day following such primary election and may not be expended at any time for primary election expenses.

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

19:25-15.8 Return of contributions; certification

(a) (No change.)

(b) Any candidate who receives contributions as described in (a) above shall certify to the commission in a report to be filed within 30 days after the primary election for nomination to the office of Governor a typed or printed list of contributors showing each contributor's full name and full mailing address (number, street, city, state, zip code), the date of receipt of each contribution, the dollar amount of each contribution and the date and amount of each contribution returned by the candidate. In the event a candidate is unable to return any contribution, or part thereof, for any reason, such candidate shall certify in such report the reasons for inability to return such contribution. In no event shall any such unreturned contribution be withdrawn by the candidate from his or her general election depository bank account until the commission has approved of disposition of such unreturned contributions.

19:25-15.9 Candidates deemed non-participating; effect

(a) Any candidate who does not apply for public funding in a general election pursuant to N.J.A.C. 19:25-15.17 shall be deemed non-participating in public funding of that general election.

(b) Any candidate deemed non-participating pursuant to this section shall not receive public funds on behalf of his or her campaign for any contribution received during the period of time the candidate was deemed non-participating unless the candidate was in compliance with this subchapter including all of the limitations contained in N.J.A.C. 19:25-15.11 during the time the candidate was deemed non-participating and thereafter.

19:25-15.10 Non-participating candidates; generally

(a) (No change.)

(b) A non-participating candidate is subject to the $800.00 limit on guarantors of bank loans, except if the guarantor is the non-participating candidate himself or herself.

(c) (No change.)

19:25-15.11 Limitations on participating candidates

(a) Each candidate intending to participate in public funding, in addition to any other requirement imposed by the act (N.J.S.A. 19:44A-1 et seq.) or these regulations, is subject to the following limitations:

1. (No change.)

2. No candidate, or his or her campaign treasurer or deputy campaign treasurer, shall borrow an amount that at any one time exceeds $50,000 in the aggregate, and such loan must be repaid in full not later than 20 days prior to the general election for which the loan was made from moneys accepted or allocated pursuant to N.J.S.A. 19:44A-29. Certification of such repayment shall be made by the borrower to the commission in accordance with N.J.A.C. 19:25-15.29.

3.-4. (No change.)

19:25-15.12 Who may or may not contribute; generally

(a) No person or political committee, other than a candidate contributing his or her own funds to his or her campaign, shall make any contribution to any candidate, the candidate's campaign treasurer or deputy campaign treasurer, or to any other person or committee, in aid of the candidacy of or in behalf of a candidate, whether or not participating in public funding, for election to the office of Governor in a general election, in the aggregate in excess of $800.00. Any such contribution in excess of $800.00 must be promptly returned to the contributor, and evidence of repayment shall be submitted to the commission.

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

19:25-15.13 Corporate or labor organization communications

(No change.)

19:25-15.14 Contributions eligible for match; generally

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

(c) Every contribution eligible for match must be accompanied by a written statement which shall identify the individual making the contribution by full name and full mailing address (number, street, city, state, zip code), the name of the candidate, the amount and date of the contribution, and shall bear the signature of the contributor. The requirement of such written statement will be deemed to be satisfied in the case where a contribution is made by means of a check, money order or other negotiable instrument payable on demand and to the order of, or specially endorsed without qualification to, the candidate or to his campaign committee, if such check, money order or instrument contains all of the foregoing information.

19:25-15.15 Contributions eligible for match; checks and instruments, contributions by children

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

(d) Contributions by children under the age of 18 shall be attributed to the parent who is responsible for the contribution and not to the child unless:

1. The child is 14 years of age or older and a signed statement from the child and the child's parent or guardian is submitted to the commission that the decision to contribute was solely that of the child and the funds used to make the contribution were legally and beneficially controlled by the

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child and are not the proceeds of a gift made for the purpose of the contribution; or

2. The child is 11 years old or older and, in addition to the signed statements set forth in paragraph 1 above, evidence is submitted satisfactory to the commission that the child acted independently and with full knowledge of the contribution.

19:25-15.16 Limitation on contributions eligible for match

(No change.)

19:25-15.17 Matching of funds

(a) (No change.)

(b) The campaign treasurer or deputy campaign treasurer of the candidate shall open a matching fund account in a national or a State bank pursuant to N.J.S.A. 19:44A-32 in which only contributions eligible for match may be deposited. The campaign treasurer or deputy campaign treasurer of such candidate shall deposit in such matching fund account, funds to be matched in aid of the candidacy of or in behalf of such candidate. Such deposit shall be made within 10 days of receipt and shall include only moneys received in accordance with this subchapter and N.J.S.A. 19:44A-29 and N.J.S.A. 19:44A-11 and 12.

(c) A candidate seeking to become eligible to receive matching funds shall certify to the commission in a written statement signed by the candidate that he or she is a candidate for Governor in a general election and that he or she has received and deposited into his or her matching fund account contributions eligible for match of at least $50,000 from persons or political committees each of whose contributions in the aggregate do not exceed $800.00, and that at least $50,000 of such contributions have been expended. "Expended" for this purpose shall mean disbursed or irrevocably committed by a legally binding commitment for expenditure in the campaign and ultimately disbursed.

(d) The statement referred to in (c) above shall include an original and one photocopy of a typed or printed list of contributors showing each contributor's full name and full mailing address (number, street, city, state, zip code), the date of receipt of each contribution by the candidate and of the deposit into the matching fund account, the dollar amount of each contribution submitted for match, and the total amount of all contributions submitted for match. The list of contributors shall be segregated by deposit. The statement shall also include a typed or printed list of contributors of contributions not eligible or submitted for match and any other receipt (for example, in-kind contributions, contributions intended to be repaid, or interest on invested funds), showing each contributor's full name and full mailing address (number, street, city, state, zip code), the date of receipt of each such contribution by the candidate and the dollar amount of each such contribution. The statement shall also include an original and one photocopy of a list of repayment by the candidate of any contribution, including any loan described under N.J.A.C. 19:25-15.29.

(e) The statement shall include a certification by the candidate and his or her campaign treasurer that:

1.-2. (No change.)

(f) The certification shall include two photocopies of the face of each check or other written instrument as described in N.J.A.C. 19:25-15.14 for each contribution which the candidate submits to receive matching funds. Where a check is endorsed by some person other than the principal campaign committee, the face and back must be photocopied. The photocopies shall be segregated by deposit, sorted in the order in which the contributors are listed pursuant to (d) above and accompanied by copies of the relevant receipted deposit slips.

(g) The initial certification shall include two photocopies of checks, receipted bills, contracts or the like, as proof of the expenditure of at least $50,000.

(h) (No change.)

19:25-15.18 Dates of submission

(a) Statements and certifications may be submitted to the commission by candidates on or before 12:00 noon of the first Monday following the date of the primary election in the year of a general election for the office of Governor of New Jersey, and every other Monday thereafter through August 31, and every Monday thereafter up to and including the Monday immediately preceding the general election being funded.

(b) Statements and certifications may be submitted to the commission by candidates on or before 12:00 noon of the first Monday following the general election and every other Monday thereafter up to the first Monday following the fifth month after the general election. No statements and certifications for the general election shall be considered by the commission thereafter.

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

19:25-15.19 Matching of State committee contributions; submission dates

(a) (No change.)

(b) No submission or application for public funds pursuant to N.J.A.C. 19:25-15.18 will be considered by the commission unless accompanied by written certification in compliance with (a) above.

19:25-15.20 Special account for public funds

The commission shall maintain for each qualified candidate a separate segregated public fund account for deposit of public funds. All public funds received by the commission from the General Treasury of the State on behalf of a candidate shall be promptly deposited by the commission into such public fund account. No funds other than such public funds shall be deposited in such segregated public fund account, and all expenditures from such account shall be separately identified in reports filed with the commission.

19:25-15.21 Receipt of public funds; generally

(No change.)

19:25-15.22 Receipt of public funds limitation

(a) No public funds shall be deposited by the commission in the public fund account of any qualified candidate on or before the date of the primary election for nomination for the office of Governor of New Jersey immediately preceding the general election for the same office.

(b) (No change.)

19:25-15.23 Receipt of public funds; procedure

The commission shall certify to the Treasurer of New Jersey the amount to be disbursed to the commission for the public fund account of each candidate. The Treasurer shall then deliver such amount to the commission.

19:25-15.24 Use of public funds

(a) Public funds received on behalf of a qualified candidate from the fund for general election campaign expenses shall be deposited by the commission in the candidate's public fund account and the candidate's use of such funds shall be strictly limited to the following purposes:

1.-5. (No change.)

6. Payment of the cost of legal and accounting expenses incurred in complying with the public financing regulations of the commission and with the public financing provisions of the act.

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7. Payment of the cost of telephone deposits, and installation charges and monthly billings in excess of deposits. Within six months after the general election, a candidate shall return to the commission the amount of any public funds used to pay such telephone deposits which are later returned.

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

19:25-15.25 Use of transferred funds

(No change.)

19:25-15.26 Expenses not subject to expenditure limits

(a) The following expenditures by a qualified candidate shall not be subject to the expenditure limit described in N.J.A.C. 19:25-15.11(a)3;

1. (No change.)

2. Travel expenses of the candidate, as that term is defined in N.J.A.C. 19:25-15.27(a), or of any person other than the candidate if such traveling expenses are voluntarily paid by such person without any understanding or agreement with such candidate that they shall be, directly or indirectly, repaid to him or her by the candidate, shall not be deemed expenditures within the meaning of N.J.S.A. 19:44A-7.

3. (No change.)

19:25-15.27 Travel expenses

(a) (No change.)

(b) All of the expenditures, including those excluded from the expenditure limitation contained in N.J.S.A. 19:44A-7, must be disclosed in the preelection and post-election reports on behalf of the candidate.

1. Example 1: Candidate X, a candidate for the office of Governor in the general election who will receive public funding, travels to a city with five members of the candidate's staff in two automobiles for campaign purposes. The candidate's staff arranges for rooms at a hotel in that city. In the course of the stay, the candidate and staff hold numerous meetings and provide food and beverages for visitors in the course of the various meetings. Only the reasonable and necessary expenses of the use of automobiles and other means of transportation and the reasonable and necessary cost of meals and sleeping accommodations for the candidate and staff during the trip, are excludable for purposes of the expenditure limitation contained in N.J.S.A. 19:44A-7.

19:25-15.28 Independent expenditures

(a) Independent expenditures shall not be deemed to be expenditures within the meaning of N.J.S.A. 19:44A-7, but all such expenditures shall be subject to all of the reporting and disclosure requirements of the act. Each person or political committee making independent expenditures who is required to file election reports pursuant to N.J.A.C. 19:25-12.5 shall include in the reports required under the act a sworn statement on a form provided by the commission that such independent expenditure was not made with the cooperation or prior consent of, or in consultation with or at the request or suggestion of, the candidate or any person or committee acting on behalf of the candidate.

(b) (No change.)

19:25-15.29 Borrowing of funds; repayment

Any candidate, the candidate's campaign treasurer or deputy campaign treasurer may borrow funds from any national or State bank, provided that no person or political committee other than the candidate or the State committee may in any way endorse or guarantee such loan in the aggregate in excess of the $800.00 contribution limit. Except for a non-participating candidate guaranteeing a loan to his or her campaign, the amount so borrowed shall not at any one time in the aggregate exceed $50,000 and must be repaid in full by such candidate or his or her campaign treasurer or deputy campaign treasurer from moneys accepted or allocated pursuant to N.J.S.A. 19:44A-29 not later than 20 days prior to the general election. Certification of such repayment shall be made by the borrower to the commission not later than 15 days prior to the date of the general election. In the event of the failure of the borrower to repay timely the full amount of the loan or to certify properly such repayment to the commission, all payment of public funds to such candidate shall promptly cease and the commission shall take action as directed by the act to prohibit the expenditure by the candidate of moneys received from the fund and any other moneys received by him or her in aid of his or her candidacy in such general election.

19:25-15.30 Computation of value of goods and services

(a) Goods and services shall, for purposes of the reports required to be filed under the act and for purposes of the expenditure limitation contained in section 7 of the act (N.J.S.A. 19:44A-7) where applicable, be valued by the reasonable commercial value of such goods and services to the candidate, whether or not the cost or value of such goods or services to the contributor or other provider of those services is higher or lower than such reasonable commercial value.

1. Example 1: Candidate Y, a candidate for the office of Governor who has chosen to accept public funding, obtains the use of a helicopter for travel of the candidate for campaign purposes. By agreement with the owner of the helicopter, the campaign committee for the candidate will pay $500.00 per day, which represents the cost to the owner of the maintenance and operation of the helicopter. The reasonable commercial value of the use of the helicopter is $900.00 per day. In this example, the amount of $500.00 paid by the campaign committee of the candidate to the owner for use of the helicopter is not includable as an expenditure for purposes of the expenditure limitations contained in section 7 of the act (N.J.S.A. 19:44A-7). The difference between the $500.00 actually paid for use of the helicopter and the reasonable commercial value normally charged by the owner for the use of the helicopter, represents a contribution from the owner of the helicopter to the candidate in the amount of $400.00. The candidate could obtain the use of the helicopter under this arrangement from a lawful contributor for campaign purposes for not more than two days. If the candidate obtained the use of the helicopter for three days under this arrangement, the owner of the helicopter would have made an unlawful contribution to the candidacy of the candidate, since the aggregate of the contributions ($1,200) from that contributor in this instance would have exceeded $800.00.

2.-3. (No change.)

19:25-15.31 Establishment of State committee account; contribution limit

(No change.)

19:25-15.32 State committee expenditures; ineligible for match; expenditure limit

(No change.)

19:25-15.33 State committee treasurer

(No change.)

19:25-15.34 Notice by State committee to contributor

(No change.)

19:25-15.35 State committee statements

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

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(c) The statement of contributors described in (a) above shall include a photocopy of the face of each check or other written instrument as described in N.J.A.C. 19:25-15.14 for each contribution reported on the statement of contributors. Where a check is endorsed by some person other than the campaign treasurer or deputy campaign treasurer of the State committee, the face and back must be photocopied. The photocopies shall be segregated by deposit, sorted in the order in which the contributors are listed pursuant to N.J.A.C. 19:25-15.17(d) and accompanied by copies of the relevant receipted deposit slips.

19:25-15.36 Certification and delivery of statements

(a) The campaign treasurer or deputy campaign treasurer of a State committee that has established a State committee account in behalf of a candidate shall certify to the campaign treasurer or deputy campaign treasurer of such candidate, and to the commission, the correctness of the statements and photocopies prepared pursuant to N.J.A.C. 19:25-15.35.

(b) The statements and photocopies certified pursuant to (a) above shall be delivered by the campaign treasurer or deputy campaign treasurer of such State committee to the campaign treasurer or deputy campaign treasurer of the candidate on whose behalf the statements and photocopies have been prepared and to the commission no later than the Thursday preceding the dates of submission for matching fund applications of candidates set forth in N.J.A.C. 19:25-15.18.

(c) (No change.)

19:25-15.37 Transfer of deposits; certification

(a) (No change.)

(b) At the time of making a transfer pursuant to (a) above, the campaign treasurer or deputy campaign treasurer of the State committee shall certify in writing to the campaign treasurer or deputy campaign treasurer of the candidate in whose matching fund account a transfer is to be made, and certify to the commission, that the deposit includes only contributions eligible for match and does not include any contribution which must be or is intended by the contributor or recipient to be refunded or repaid at any time and that no contribution by any county or municipal committee is included.

19:25-15.38 County and municipal committee expenditures; reports

(a) (No change.)

(b) A candidate or his campaign treasurer or deputy campaign treasurer shall determine the exact amount that individual county committees or municipal committees may contribute in aid of the candidacy of or in behalf of such candidate, and shall file a report of such determination with the commission no later than the seventh day prior to the general election being funded.

19:25-15.39 County and municipal committee reports

Any county or municipal committee making any expenditure on behalf of any candidate for the office of Governor in a general election shall file quarterly reports pursuant to N.J.S.A. 19:44A-8 and shall provide written notice to the candidate pursuant to N.J.A.C. 19:25-10.4 (Expenditures on behalf of candidates).

19:25-15.40 County and municipal committees; prohibition on transfers

(No change.)

19:25-15.41 Maintenance of records; audit

(a) The campaign treasurer or deputy treasurer of each candidate and each State committee shall retain all written instruments, checks, bank statements and all other records of contributions and expenditures, including originals or photocopies of all documents and instruments submitted to the commission relating to the general election for a period of not less than four years after submission of the final report for the general election.

(b) Each candidate, campaign treasurer or deputy campaign treasurer, or State committee campaign treasurer or deputy campaign treasurer, shall furnish to the commission any books and records, including bank records for all accounts and supporting documentation for matching fund submissions as may be requested by the commission for purposes of an audit or other commission examination.

19:25-15.42 Disclosure of information

The statements and certifications submitted by a candidate in accordance with N.J.A.C. 19:25-15.17 shall not be public records and shall not be available for public inspection; provided, however the commission shall from time to time publish a listing which shall contain the information included in the statements and certifications for each contribution approved for match, except that it shall not include the name, address or amount of contribution of any contributor whose contributions in the aggregate are $100.00 or less unless the candidate authorizes such disclosure in writing.

19:25-15.43 Prepared statement on behalf of candidate

(a) Each candidate shall be entitled to have a statement in English and in Spanish submitted by the candidate to the commission, printed and mailed by each county clerk with the sample ballot to each registered voter in the county, together with a short explanation from the commission that such statements are provided pursuant to the act and these regulations to assist the voters in making a determination among the candidates for the office of Governor.

(b) Each candidate who wishes such a statement mailed on his or her behalf shall submit to the commission, on forms to be provided by the commission, his or her proposed statement in English and in Spanish which shall not exceed 500 words in length. The statement shall be submitted to the commission on or before the 80th day prior to the date on which the general election is to be held.

(c) On or before the 45th day prior to the date on which the general election is to be held, the commission shall supply each county clerk with the text of the statement received from each candidate for election to the office of Governor.

19:25-15.44 Post-election contribution; post-election payment of expenses

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

(c) Every payment of expenditures for general election obligations made by the candidate or State committee, or campaign treasurer or deputy campaign treasurer of a candidate or State committee after the date of the general election (except as otherwise specifically provided by the act or this subchapter, for example compliance costs) shall be deemed to be expenditures for such general election within the meaning of N.J.S.A. 19:44A-7.

(d) (No change.)

19:25-15.45 Funds or materials remaining from general election campaign

(No change.)

19:25-15.46 Repayment of public or other funds

All public moneys received by a qualified candidate remaining after the liquidation of all lawful obligations with commis-

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sion (for return to the Treasurer of the State of New Jersey) not later than six months after the date of such general election. All moneys other than public moneys, remaining available to any qualified candidate after the liquidation of all obligations, shall also be repaid to the commission (for return to the Treasurer of the State of New Jersey) not later than six months after the date of such general election; provided, however, that nothing herein contained shall require any candidate to pay to the State Treasurer, a total amount of moneys in excess of the total amount of public moneys received by such qualified candidate from the public fund.

19:25-15.47 Inaugural event contribution limit; reporting
(a)-(b) (No change.)
(c) Any person or committee sponsoring a gubernatorial inaugural fund raising event shall appoint a treasurer and designate a bank account no later than the 10th day after receiving any contribution or expending any money for the gubernatorial inaugural fund raising event, and shall file with the commission the name and mailing address of the appointed treasurer and the bank name, mailing address and number of the designated bank account no later than the tenth day after receiving any contribution or expending any money for the gubernatorial inaugural fund raising event.
(d) Any person or committee sponsoring a gubernatorial inaugural fund raising event shall make a full report to the commission of all contributions and expenditures with respect to the event within 45 days following the event in accordance with the provisions of the act, and the designated treasurer shall certify the correctness of such report and shall file reports and certify their correctness every 60 days thereafter until all obligations are liquidated and the account closed.

SUBCHAPTER 16. PUBLIC FINANCING OF PRIMARY ELECTION FOR GOVERNOR

19:25-16.1 Scope of subchapter
(No change.)

19:25-16.2 Definitions; generally
(No change.)

19:25-16.3 Definitions for this subchapter
The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.
"Candidate" means anyone who has filed a nominating petition, or has filed a form D-1 with the commission, or has solicited contributions or made or incurred expenditures on behalf of his or her candidacy, or has allowed others to solicit contributions or make or incur expenditures on behalf of his or her candidacy for nomination for election to the office of Governor of New Jersey in any primary election for which the Legislature makes an appropriation for public funding.
. . .
"Contribution eligible for match" means contributions from one contributor to be matched from public funds on a two-for-one basis. No contribution which must be or is intended by the contributor or the recipient to be refunded or repaid at any time, no loan obtained pursuant to section 15 of P.L. 1980, c.74 (N.J.S.A. 19:44A-44), no amount of the candidate's own funds in the aggregate in excess of $800.00, no in-kind contribution and no other moneys received by the candidate, his or her campaign treasurer, or deputy campaign treasurer, except those contributions described in subsection (a) of section 5 of P.L. 1980, c.74 (N.J.S.A. 19:44A-29(a), shall be deemed contributions eligible for match. Funds received by an individual who is testing the waters may be matched when the individual becomes a candidate, if such contributions meet all the requirements of the regulation.
. . .
"Matching fund account" means the campaign bank account opened pursuant to N.J.S.A. 19:44A-32 by a campaign treasurer of a candidate, or deputy campaign treasurer, in which only contributions eligible for match may be deposited.
. . .
"Own funds" means funds to which the candidate is legally and beneficially entitled, but shall not include funds as to which he or she is a trustee or funds given or otherwise transferred to the candidate by any person other than the spouse of the candidate for use in aid of his or her candidacy.
. . .

19:25-16.4 Designation of principal campaign committee
Upon becoming a candidate, each candidate, whether publicly declared or not, shall designate to the commission the name and address of his or her principal campaign committee for the primary election, the name and address of his or her campaign treasurer and the name, address and number of his depository bank account. As to certification of compliance with contribution limitations, see N.J.A.C. 19:25-16.12.

19:25-16.5 Appointment of treasurers and depositories
(a) Each candidate in a primary election, whether or not publicly declared and whether or not intending to participate in public funding, must appoint a campaign treasurer and designate a depository bank account and must notify the commission pursuant to N.J.A.C. 19:25-5.2 (Appointment by candidates) of such appointment and designation no later than the tenth day after receipt of any contribution or incurring or making any expenditure, whichever comes first.
(b)-(c) (No change.)

19:25-16.6 Contribution limits; applicability
(a)-(b) (No change.)
(c) Contributions by children under the age of 18 shall be attributed to the parent who is responsible for the contribution and not to the child unless:
1. The child is 14 years of age or older and a signed statement from the child and the child's parent or guardian is submitted to the commission that the decision to contribute was solely that of the child and the funds used to make the contribution were legally and beneficially controlled by the child and are not the proceeds of a gift made for the purpose of contribution; or
2. The child is 11 years old or older and, in addition to the signed statement set forth in paragraph 1 above, evidence is submitted satisfactory to the commission that the child acted independently and with full knowledge of the contribution.

19:25-16.7 Candidates deemed non-participating; effect
(a) (No change.)
(b) Any candidate deemed non-participating pursuant to this section shall not receive public funds on behalf of his or her campaign for any contribution received during the period of time he or she was deemed non-participating unless the candidate was in compliance with these regulations including all of the limitations contained in N.J.A.C. 19:25-16.9 (Limitations on participating candidates) during the time the candidate was deemed non-participating and thereafter.

19:25-16.8 Non-participating candidates; generally
(a) (No change.)

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(b) A non-participating candidate is subject to the $800.00 limit on guarantors of bank loans, except if the guarantor is the non-participating candidate himself or herself.

(c) (No change.)

19:25-16.9 Limitations on participating candidates

(a) Each candidate intending to participate in public funding, in addition to any other requirement imposed by the act (N.J.S.A. 19:44A-1 et seq.) or these regulations, is subject to the following limitations:

1. (No change.)

2. No candidate, or his or her campaign treasurer or deputy campaign treasurer, shall borrow an amount that at any one time exceeds $50,000 in the aggregate, and such loan must be repaid in full not later than 20 days prior to the primary election for which the loan was made from moneys accepted or allocated pursuant to section 5 of P.L. 1980, c.74 (N.J.S.A. 19:44A-29). Certification of such repayment shall be made by the borrower to the commission in accordance with N.J.A.C. 19:25-16:30 (Borrowing of funds, repayment).

3.-4. (No change.)

19:25-16.10 Who may or may not contribute; generally

(a) No person or political committee, other than a candidate contributing his or her own funds to his or her campaign, shall make any contribution to any candidate, the candidate's campaign treasurer or deputy campaign treasurer, or to any other person or committee, in aid of the candidacy of or in behalf of a candidate, whether or not participating in public funding, for nomination for election to the office of Governor in a primary election, in the aggregate in excess of $800.00. Any such contribution in excess of $800.00 must be promptly returned to the contributor, and evidence of the repayment shall be submitted to the commission.

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

19:25-16.11 Contributions eligible for match; generally

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

(c) Every contribution eligible for match must be accompanied by a written statement which shall identify the individual making the contribution by full name and full mailing address (number, street, city, state, zip code), the name of the candidate, and amount and date of the contribution, and shall bear the signature of the contributor. The requirement of such written statement will be deemed to be satisfied in the case where a contribution is made by means of a check, money order or other negotiable instrument payable on demand and to the order of, or specially endorsed without qualification to, the candidate or to his campaign committee, if such check, money order or instrument contains all of the foregoing information.

19:25-16.12 Contributions and loans prior to candidacy

(a) Each candidate, whether or not intending to participate in public funding, shall certify to the commission in writing within 10 days after the date of commencement of his or her candidacy that:

1. (No change.)

2. The candidate did have a "testing the waters" account. In that event, the candidate shall notify the commission whether the "testing the waters" account is to be designated as the matching fund account and whether contributions from the "testing the waters" account are to be deposited into the matching fund account.

3. No contribution in excess of $800.00 in the aggregate from a person or political committee had theretofore been received for pre-candidacy "testing the waters" activity; or contributions in excess of $800.00 in the aggregate have been received for that purpose, and the amount of each contribution in excess of $800.00 in the aggregate has been returned to the contributor. The certification shall include:

i. A list of all contributors who contributed more than $800.00 and the dates and amounts of all such contributions; and

ii. (No change.)

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

(e) Any candidate who contributed or expended for pre-candidacy "testing of waters" activity an amount in excess of $25,000 from his or her own funds shall reimburse his campaign account within 10 days after the date of commencement of the candidacy, such amount in excess of $25,000 so contributed and expended, and shall certify to the commission that such reimbursement has been made.

(f) Any candidate who borrowed an amount in the aggregate in excess of $50,000 shall repay within 10 days after the date of commencement of the candidacy such amount in excess of $50,000 so borrowed, and shall certify to the commission that such excess amount has been repaid.

19:25-16.13 Contributions eligible for match; checks and instruments

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

(c) In the case of a check drawn on a partnership account or on the account of an unincorporated association or business, the check will be deemed to be the contribution of the individual whose signature appears on the check unless specific identification as to the contribution by other partners or members is contained on the check or other accompanying written instrument and the check or other accompanying written instrument is signed by each partner or member who is a contributor.

19:25-16.14 Limitation on contributions eligible for match

(No change.)

19:25-16.15 Contributions; primary and general elections

(No change.)

19:25-16.16 Political party committee contributions prohibited

(No change.)

19:25-16.17 Funds or materials remaining from primary campaign

(a) (No change.)

(b) Materials such as campaign literature, buttons and office supplies and equipment remaining from the primary campaign of a candidate may not be transferred to the general election campaign of such candidate if nominated or to any other election campaign of such candidate or of any other candidate or political committee but may be purchased by the general election campaign for cost or other reasonable value.

19:25-16.18 Matching of funds

(a) Each candidate seeking to qualify for public funding shall so notify the commission in writing on or before January 1 immediately preceding the primary election being funded, except that a person who becomes a candidate after January 1 shall notify the commission on or before the 15th day after becoming a candidate.

(b) The campaign treasurer or deputy campaign treasurer of the candidate shall open a matching fund account in a national or a State bank pursuant to N.J.S.A. 19:44A-32 in which only contributions eligible for match may be deposited. The campaign treasurer or deputy campaign treasurer of such

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candidate shall deposit in such matching fund account, funds to be matched in aid of the candidacy of or in behalf of such candidate. Such deposit shall be made within 10 days of receipt and shall include only moneys received in accordance with this subchapter and section 5 of P.L. 1980, c.74 (N.J.S.A. 19:44A-29) and sections 11 and 12 of the act (N.J.S.A. 19:44A-11; 19:44A-12).

(c) A candidate seeking to become eligible to receive matching funds shall certify to the commission in a written statement signed by the candidate that he or she is a candidate for Governor in a primary election and that he or she has received and deposited into his or her matching fund account contributions eligible for match of at least $50,000 from persons or political committees each of whose contributions in the aggregate do not exceed $800.00, and at least $50,000 such contributions have been expended. "Expended" for this purpose shall mean disbursed or irrevocably committed by a legally binding commitment for expenditure in the campaign and ultimately disbursed.

(d) The statement referred to in (c) above shall include an original and one photocopy of a typed or printed list of contributors showing each contributor's full name and full mailing address (number, street, city, state, zip code), the date of receipt of each contribution by the candidate and of the deposit into the matching fund account, the dollar amount of each contribution submitted for match, and the total amount of all contributions submitted for match. The list of contributors shall be segregated by deposit. The statement shall also include a typed or printed list of contributors of contributions not eligible or submitted for match and any other receipt (for example, in-kind contributions, contributions intended to be repaid, or interest on invested funds), showing each contributor's full name and full mailing address (number, street, state, zip code), the date of receipt of each such contribution by the candidate and the dollar amount of each such contribution. The statement shall also include an original and one photocopy of a list of repayment by the candidate of any contribution, including any loan described under N.J.A.C. 19:25-16.29 (Borrowing of funds; repayment).

(e) The statement shall include a certification by the candidate and his or her campaign treasurer that:

1. (No change.)

2. The receipt by the candidate from the fund for primary election campaign expenses of an amount equal to twice the amount of lawful contributions deposited to be matched will not result in the candidate's exceeding the expenditure limitations of section 7 of the act (N.J.S.A. 19:44A-7).

(f) The certification shall include two photocopies of the face of each check or other written instrument as described in N.J.A.C. 19:25-16.11 (Contributions eligible for match; generally) for each contribution which the candidate submits to receive matching funds. Where a check is endorsed by some person other than the principal campaign committee, the face and back must be photocopied. The photocopies shall be segregated by deposit, sorted in the order in which the contributors are listed pursuant to d above and accompanied by copies of the relevant receipted deposit slips.

(g) The initial certification shall include two photocopies of checks, receipted bills, contracts or the like, as proof of the expenditure of at least $50,000.

(h) (No change.)

19:25-16.19 Dates of submission

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

(d) Nothing herein contained shall relieve any candidate or committee from the preelection or post-election reporting requirements contained in sections 8 or 16 of the act (N.J.S.A. 19:44A-8 or 19:44A-16).

19:25-16.20 Special account for public funds

The commission shall maintain for each qualified candidate a separate segregated public fund account for deposit of public funds. All public funds received by the commission from the General Treasury of the State shall be promptly deposited by the commission into such separate segregated public fund account. No funds other than such public funds shall be deposited in such separate segregated public fund account, and all expenditures from such account shall be separately identified in reports filed with the commission.

19:25-16.21 Receipt of public funds; generally

(No change.)

19:25-16.22 Receipt of public funds; limitation

(No change.)

19:25-16.23 Receipt of public funds; procedure

(No change.)

19:25-16.24 Disclosure of information

The statements and certifications submitted by a candidate in accordance with N.J.A.C. 19:25-16.18 (Matching of funds) shall not be public records and shall not be available for public inspection; provided, however, the commission shall from time to time publish a listing which shall contain the information included in the statements and certifications for each contribution approved for match, except that it shall not include the name, address or amount of contribution of any contributor whose contributions in the aggregate are $100.00 or less unless the candidate authorizes such disclosure in writing.

19:25-16.25 Use of public funds

(a) Public funds received on behalf of a qualified candidate from the fund for primary election campaign expenses shall be deposited by the commission in the candidate's public fund account and the candidate's use of such funds shall be strictly limited to the following purposes:

1.-5. (No change.)

6. Payment of the cost of legal and accounting expenses incurred in complying with the public financing regulations of the commission and with the public financing provisions of the act;

7. Payment of the cost of telephone deposits, and installation charges and monthly billings in excess of deposits. Within six months after the primary election, a candidate shall return to the commission the amount of any public funds used to pay telephone deposits where are later returned.

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

19:25-16.26 Use of transferred funds

Notwithstanding the provisions of N.J.A.C. 19:25-7.3, any transfer of funds from the primary campaign of the gubernatorial candidate to any other candidate, political committee, political party committee or political club will be considered to be an expenditure on behalf of the gubernatorial candidate under section 7 of the act (N.J.S.A. 19:44A-7). No such transferee shall make any contribution to or on behalf of the gubernatorial candidate prior to or subsequent to such transfer.

19:25-16.27 Expenses not subject to expenditure limits

(a) The following expenditures by a qualified candidate shall not be subject to the expenditure limit described in

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N.J.A.C. 19:25-16.9(a)(3) (Limitations on participating candidates):

1. (No change.)

2. Travel expenses of the candidate, as that term is defined in N.J.A.C. 19:25-16.28(a) (Travel expenses), or of any person other than the candidate if such traveling expenses are voluntarily paid by such person without any understanding or agreement with such candidate that they shall be, directly or indirectly, repaid to him or her by the candidate, shall not be deemed expenditures within the meaning of N.J.S.A. 19:44A-7.

3. (No change.)

19:25-16.28 Travel expenses

(a) (No change.)

(b) All of the expenditures, including those excluded from the expenditure limitation contained in section 7 of the act (N.J.S.A. 19:44A-7), must be disclosed in the preelection and post-election reports on behalf of the candidate.

1. Example 1: Candidate X, a candidate for the office of Governor in the primary election who will receive public funding, travels to a city with five members of the candidate's staff in two automobiles for campaign purposes. The candidate's staff arranges for rooms at a hotel in that city. In the course of the stay, the candidate and staff hold numerous meetings and provide food and beverages for visitors in the course of the various meetings. Only the reasonable and necessary expenses of the use of automobiles and other means of transportation and the reasonable and necessary cost of meals and sleeping accommodations for the candidate and staff during the trip, are excludable for purposes of the expenditure limitation contained in section 7 of the act (N.J.S.A. 19:44A-7).

19:25-16.29 Independent expenditures

(a) Independent expenditures shall not be deemed to be expenditures within the meaning of section 7 of the act (N.J.S.A. 19:44A-7), but all such expenditures shall be subject to all of the reporting and disclosure requirements of the act. Each person or political committee making independent expenditures who is required to file election reports pursuant to N.J.A.C. 19:25-12.5 shall include in the reports required under the act a sworn statement on a form provided by the commission that such independent expenditure was not made with the cooperation or prior consent of, or in consultation with or at the request or suggestion of, the candidate or any person or committee acting on behalf of the candidate.

(b) (No change.)

19:25-16.30 Borrowing of funds; repayment

Any candidate, his or her campaign treasurer or deputy campaign treasurer may borrow funds from any national or State bank, provided that no person or political committee other than the candidate may in any way endorse or guarantee such loan in the aggregate in excess of the $800.00 contribution limit. Except for a non-participating candidate guaranteeing a loan to his or her campaign, the amount so borrowed shall not at any one time in the aggregate exceed $50,000 and must be repaid in full by such candidate or his or her campaign treasurer or deputy campaign treasurer from moneys accepted or allocated pursuant to section 5 of P.L. 1980, c.74 (N.J.S.A. 19:44A-29) not later than 20 days prior to the primary election. Certification of such repayment shall be made by the borrower to the commission not later than 15 days prior to the date of primary election. In the event of the failure of the borrower to repay timely the full amount of the loan or to certify properly such repayment to the commission, all payment of public funds to such candidate shall promptly cease and the commission shall take action as directed by the act to prohibit the expenditure by the candidate of moneys received from the fund and any other moneys received by him or her in aid of his or her candidacy in such primary election.

19:25-16.31 Maintenance of records; audit

(a) The campaign treasurer or deputy campaign treasurer of each candidate shall retain all written instruments, checks, bank statements and all other records of contributions and expenditures, including originals or photocopies of all documents and instruments submitted to the commission relating to the primary for a period not less than four years after submission of the final report for the primary election.

(b) (No change.)

19:25-16.32 Post-election contributions; post-election payment of expenses

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

(c) Every payment of expenditures for primary election obligations made by the candidate, campaign treasurer or deputy campaign treasurer, after the date of the primary election (except as otherwise specifically provided by the act or these regulations, for example, compliance costs) shall be deemed to be expenditures for such primary election within the meaning of section 7 of the act (N.J.S.A. 19:44A-7).

(d) (No change.)

19:25-16.33 Repayment of public or other funds

All moneys received by a qualified candidate from the public fund for primary election campaign expenses remaining after the liquidation of all lawful obligations with the respect to that election shall be repaid to the commission (for return to the Treasurer of the State of New Jersey) not later than six months after the date of such primary election. All moneys, other than moneys received from the public fund, remaining available to any qualified candidate after the liquidation of all obligations, shall also be repaid to the commission (for return to the Treasurer of the State of New Jersey) not later than six months after the date of such primary election provided however, that nothing herein contained shall require any candidate to pay into the public fund a total amount of moneys in excess of the total amount of moneys received by such qualified candidate from the public fund.

19:25-16.34 Computation of value of goods and services

(a) Goods and services shall, for purposes of the reports required to be filed under the act and for purposes of the expenditure limitation contained in section 7 of the act (N.J.S.A. 19:44A-7) where applicable, be valued by the reasonable commercial value of such goods and services to the candidate, whether or not the cost or value of such goods or services to the contributor or other provider of those services is higher or lower than such reasonable commercial value.

1. Example 1: Candidate Y, a candidate for the office of Governor who has chosen to accept public funding, obtains the use of a helicopter for travel of the candidate for campaign purposes. By agreement with the owner of the helicopter, the campaign committee for the candidate will pay $500.00 per day, which represents the cost to the owner of the maintenance and operation of the helicopter. The reasonable commercial value of the use of the helicopter is $900.00 per day. In this example, the amount of $500.00 paid by the campaign committee of the candidate to the owner for use of the helicopter is not includable as an expenditure for purposes of the expenditure limitations contained in section 7 of the act

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(N.J.S.A. 19:44A-7). The difference between the $500.00 actually paid for use of the helicopter and the reasonable commercial value normally charged by the owner for the use of the helicopter, represents a contribution from the owner of the helicopter to the candidate in the amount of $400.00. The candidate could obtain the use of the helicopter under this arrangement from a lawful contributor for campaign purposes for not more than two days. If the candidate obtained the use of the helicopter for three days under this arrangement, the owner of the helicopter would have made an unlawful contribution to the candidacy of the candidate, since the aggregate of the contributions ($1,200) from that contributor in this instance would have exceeded $800.00

2. Example 2. Candidate Y in example 1, wishes to obtain the use of the helicopter from the owner for three days, and the campaign committee for the candidate pays to the owner the reasonable commercial value of $900.00 for each day, or a total of $2,700. The amount paid to the owner is not an expenditure within the expenditure limitation contained in section 7 of the act (N.J.S.A. 19:44A-7). On these facts the owner has made no contribution to the candidate.

3. In example 1 and example 2, the total amounts of expenditures, including expenditures not subject to the expenditure limitation of section 7 of the act (N.J.S.A. 19:44A-7), must be reported in the preelection and post-election report filed on behalf of the candidate.

19:25-16.35 Corporate or labor organization communications

Communications on any subject by a corporation to its stockholders and their families, or by a labor organization to its members and their families, and non-partisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families, or by a labor organization aimed at its members and their families, shall not be construed to be in aid of the candidacy of or in behalf of a candidate for election to the office of Governor in any primary election.

(a)

CASINO CONTROL COMMISSION

Gaming Schools

Adopted Amendments: N.J.A.C. 19:44-8.3, 9.4 and 15.4

Proposed: September 4, 1984 at 16 N.J.R. 2352(a).
Adopted: November 28, 1984 by New Jersey Casino Control Commission, Walter N. Read, Chairman.
Filed: November 28, 1984 as R.1984 d.563, **without change.**

Authority: N.J.S.A. 5:12-63(c), 69(a) and 70(i).

Effective Date: December 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): October 13, 1988.

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

Full text of the adoption follows.

19:44-8.3 Minimum hours

(a) (No change.)

1. (No change.)

2. For a student being trained to deal his second or subsequent game the following minimum hours of training and instruction shall be required:

i. For a student who has been trained to deal blackjack:

(1) 180 hours to prepare him to deal craps;

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

ii. For a student who has been trained to deal roulette:

(1) 180 hours to prepare him to deal craps;

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

iii. (No change.)

iv. For a student who has been trained to deal baccarat:

(1) 180 hours to prepare him to deal craps;

(2) 120 hours to prepare him to deal roulette;

(3) (No change.)

(b) (No change.)

19:44-9.4 Equipment

(a) Unless the Commission shall otherwise determine, all gaming equipment utilized by a gaming school shall conform to all requirements set forth in the regulations of the Commission governing gaming equipment utilized by casino licensees. Each gaming school shall keep an itemized list of its dealing shoes, gaming tables, slot machines, and roulette and big six wheels.

(b) (No change.)

19:44-15.4 Contents of bulletin

(a) (No change.)

1. (No change.)

2. Name of the school, names of the members of the governing body and names of officials and full-time instructors;

3.-9. (No change.)

10. A course or program summary for each approved course or program of instruction showing subjects or units in the course or program, type of work or skill to be learned and the total number of clock hours of the course or program;

11.-14. (No change.)

(b)

CASINO CONTROL COMMISSION

Gaming Equipment

Adopted Amendments: N.J.A.C. 19:46-1.5, 1.6, 1.25, 1.26

Proposed: January 3, 1984 at 16 N.J.R. 41(a).
Adopted: November 28, 1984 by New Jersey Casino Control Commission, Walter N. Read, Chairman.
Filed: November 28, 1984 as R.1984 d.564, **without change,** (with amendments to 19:46-1.33 not adopted but still pending).

Authority: N.J.S.A. 5:12-63(c); 5:12-70(i); 5:12-100.

Effective Date: December 17, 1984.
Expiration Date pursuant to Executive Order No. 66 (1978): May 4, 1988.

Summary of Public Comments and Agency Responses:

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One comment was received from the Division of Gaming Enforcement supporting the amendments saying that the changes will standardize existing procedures on the destruction of chips and plaques, as well as, institutionalize the use of tokens in slot machines.

CASINO CONTROL COMMISSION NOTE: Amendments to N.J.A.C. 19:46-1.33 were also part of the proposal notice that appeared in the January 3, 1984 Register at 16 N.J.R. 41(a). This adoption notice does not pertain to those amendments. The Casino Control Commission intends to address the amendments to N.J.A.C. 19:46-1.33 concerning the issuance and use of tokens for gaming in slot machines at a future date.

Full text of the adoption follows.

19:46-1.5 Nature and exchange of gaming chips, tokens and plaques

(a) All gaming in a casino shall be conducted with gaming chips or plaques, provided, however, that gaming tokens or coins shall be permitted for use in slot machines.

(b) Gaming chips, tokens or plaques shall be issued to a person only at the request of such person and shall not be given as change in any other but a gaming transaction, provided, however, that gaming tokens may be issued in accordance with N.J.A.C. 19:45-1.46.

(c) Gaming chips and plaques shall only be issued to casino patrons at the gaming tables and shall only be redeemed at the cashiers' cage provided, however, that gaming chips may be exchanged by a patron at the slot booths for coin or tokens to play the slot machines. Gaming tokens shall only be issued at a slot booth or cashiers' cage and by slot change people and shall only be redeemed at a coin redemption booth or cashiers' cage.

(d) Except as provided in (i) below and as otherwise may be specifically approved by the commission, gaming chips, tokens and plaques shall only be redeemed by a licensee from its patrons and shall not be knowingly redeemed from any non-patron source.

(e) Gaming chips, tokens and plaques shall be considered solely as evidence of a debt owed to their custodian by the casino licensee and shall be considered at no time the property of anyone other than the casino licensee issuing them.

(f) Each casino shall redeem promptly its own genuine gaming chips, tokens and plaques, by cash or by check dated the day of such redemption on an account of the casino licensee as requested by the patron, except when the gaming chips, tokens or plaques were obtained or being used unlawfully.

(g) Each casino shall have the right to demand the redemption of its gaming chips, tokens or plaques from any person in possession of them and such person shall redeem said chips, tokens or plaques upon presentation of an equivalent amount of cash by the casino.

(h) No casino licensee shall knowingly accept, exchange, use or redeem gaming chips, tokens or plaques issued by another casino licensee except that a casino licensee may redeem from its patrons foreign gaming chips, tokens or plaques upon the representation of a patron that such tokens had been received by the patron from payout chutes of slot machines on the premises or such chips, tokens or plaques had been purchased or received as payment in a gaming transaction from an employee of such licensee working on the premises.

(i) A casino licensee shall redeem promptly its own genuine gaming chips, tokens and plaques from other legally operated casinos upon the representation that such chips, tokens and plaques were received or accepted unknowingly, inadvertently or in error, were unavoidably received in slot machines through patron play or were redeemed from patrons. Each casino licensee shall submit to the commission for approval a system for the exchange of foreign gaming chips, tokens and plaques.

(j) Each casino licensee shall cause to be posted and remain posted in a prominent place on the front of the cashiers' cage a sign that reads as follows:

"By law, gaming chips or plaques issued by another casino may not be used, exchanged or redeemed in this casino."

(k) Each casino licensee shall cause to be posted and remain posted in a prominent place on all slot booths and coin redemption booths a sign that reads as follows:

"It is a violation of Federal law to use tokens issued by this casino outside these premises or to use tokens issued by another casino here."

19:46-1.6 Receipt of gaming chips, tokens or plaques from manufacturer or distributor; inventory, storage and destruction of chips, tokens and plaques

(a) When gaming chips, tokens or plaques are received from the manufacturer or distributor thereof, they shall be opened and checked by at least three people, one of whom shall be from the accounting or auditing department of the casino. Any deviation between the invoice accompanying the chips, tokens and plaques and the actual chips, tokens or plaques received or any defects found in such chips, tokens or plaques shall be reported promptly to the commission and division.

(b) (No change in text.)

(c) If any of the gaming chips or plaques received are to be held in reserve and not utilized for active gaming either at the gaming tables or in the cashiers' cage, they shall be stored in a separate locked compartment either in the vault or in the cashiers' cage and shall be recorded in the chip inventory ledger as reserve chips or plaques.

(d) Any gaming chips received that are part of the secondary set of chips of the casino shall be recorded in the chip inventory ledger as such and shall be stored in a locked compartment in the casino vault separate from the reserve chips.

(e) Whenever any gaming chips or plaques are taken from or returned to either the reserve chip or plaque inventory or the secondary set of chips, this shall be accomplished in the presence of at least two individuals and the denominations, number and amount of chips or plaques so taken or returned shall be recorded in the chip inventory ledger together with the date and signatures of the individuals carrying out this process.

(f) Each casino licensee shall, on a daily basis, compute and record the unredeemed liability for each denomination of chips and plaques, and shall cause to be made, at least on a monthly basis, an inventory of chips and plaques in circulation and in reserve and shall cause the result of such inventory to be recorded in the chip inventory ledger. The procedures to be utilized to compute the unredeemed liability and to inventory chips and plaques in circulation and reserve shall be submitted to the commission for approval. A physical inventory of chips and plaques in reserve shall only be required annually if the inventory procedures incorporate the sealing of the locked compartment.

(g) Prior to the destruction of gaming chips and plaques, the casino licensee shall notify the commission and the division, in writing, of the date and the location at which the destruction will be performed, the denomination, number and

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amount of value chips and plaques to be destroyed, the description and number of non-value chips to be destroyed and a detailed explanation of the method of destruction. Unless otherwise authorized by the commission, the destruction of gaming chips and plaques shall be carried out in the presence of at least four people, one of whom shall be from the accounting or auditing department of the casino and one of whom shall be an agent of the commission. The denomination, number and amount of value chips and plaques or, in the case of non-value chips, the description and number so destroyed shall be recorded in the chip inventory ledger together with the signatures of the individuals carrying out such destruction and the date on which said destruction took place.

(h) During non-gaming hours all chips and plaques in the possession of the casino shall be stored in the chip bank, in the casino vault, or in a locked compartment in the cashiers' cage except that chips or plaques may be locked in a transparent compartment on gaming tables provided that there is adequate security as approved by the commission.

(i) The casino licensee shall submit to the commission for approval procedures to record the receipt, inventory, storage and destruction of gaming tokens.

19:46-1.25 Slot machines; coin and token containers; keys

(a) Each slot machine located in a casino shall have the following coin or token containers:

1. A container, known as a payout reserve container, ("hopper") in which coins or tokens are retained by the slot machine to automatically pay jackpots; and

2. A container, known as a drop bucket, to collect coins or tokens that are retained by the slot machine and not used to make automatic payouts.

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

(e) Subsections (b) and (c) above may be ignored if the drop buckets described in (a)2 above meets the following requirements:

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

3. A slot opening through which coins, tokens and currency can be deposited into the drop bucket;

4. (No change in text.)

5. The key utilized to unlock the drop bucket from the slot machine or to unlock the compartment securing the drop bucket shall be maintained in a secure place and controlled by the security department; and

6. (No change in text.)

19:46-1.26 Slot machines; identification; signs; meters; other devices

(a) (No change in text.)

(b) Unless otherwise authorized by the commission, each slot machine in a casino shall be equipped with the following:

1. A mechanical, electrical or electronic device, to be known as an "in meter," that continuously and automatically counts the number of coins or tokens placed by patrons into the machine;

2. A mechanical, electrical or electronic device, to be known as a "drop-meter," that continuously and automatically counts the number of coins or tokens dropped into the machine's drop bucket;

3. A mechanical, electrical or electronic device, to be known as a "payout meter," that continuously and automatically counts the number of coins or tokens automatically paid by the machine;

4. A mechanical, electrical or electronic device, to be known as a "manual jackpot meter," that continuously and automatically records the number of coins or tokens to be paid manually;

5. A mechanical, electrical or electronic device, to be known as a "win meter," visible from the front of the machine that advises the player the number of coins or tokens that have been paid to him by the machine upon hitting a winning combination; and

6. (No change in text.)

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

(e) A casino licensee shall set each slot machine to payout at a minimum 83 percent of the amount of coins or tokens placed by patrons into the slot machine and shall maintain a record of each slot machine setting and theoretical payout percentage.

(f)-(g) (No change in text.)

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EMERGENCY ADOPTIONS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

PUBLIC HOUSING AND DEVELOPMENT AUTHORITY

Homelessness Prevention Program

Adopted Emergency New Rule and Concurrent Proposal: N.J.A.C. 5:12

Emergency New Rule Adopted: November 27, 1984 by John P. Renna, Commissioner, Department of Community Affairs.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): November 29, 1984.

Emergency New Rule Filed: November 29, 1984 as R.1984 d.570.

Authority: N.J.S.A. 52:27C-24 and L.1984, c. 180.

Emergency New Rule Effective Date: November 29, 1984.

Emergency New Rule Expiration Date: January 28, 1985.

Interested persons may submit, in writing, data, views or arguments relevant to the proposal on or before January 16, 1985. These submissions, and any inquiries about submissions and responses, should be addressed to:

Michael L. Ticktin, Esq.
Administrative Practice Officer
Division of Housing and Development
CN 804
Trenton, New Jersey 08625

This new rule was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see (N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency new rule is being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted amendment becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

This proposal is known as PRN 1984-723.

The agency emergency adoption and concurrent proposal follows:

Summary

These proposed rules are intended to implement the "Prevention of Homelessness Act (1984)", P.L. 1984, c. 180. This statute requires the Department of Community Affairs to establish a program to provide temporary assistance to people who are homeless or in imminent danger of becoming homeless due to eviction or foreclosure.

The program is to be administered by the Bureau of Housing Services. To be eligible, applicants must be homeless or facing homelessness for reasons beyond their control and must be New Jersey residents. Other sources of funds must be exhausted before an applicant can become eligible for the program.

Provision is made for fair distribution of funds among the various categories of those in need. Persons remain eligible only until they can be admitted into other housing subsidy programs, but not longer than six months absent extenuating circumstances. Money is required to be repaid when reasonably possible.

An order of priorities is established for persons in the same applicant pool. Highest priority is given to households with a person who is over 65 or disabled. The Housing Quality Standards of the U.S. Department of Housing and Urban Development (H.U.D.), are made applicable to units rented with funds from the program.

Social Impact

Emergency adoption of these regulations will enable the Bureau of Housing Services to begin accepting and processing applications and finding suitable housing for people, or keeping them in their present housing, during the cold months ahead. This assistance will clearly enhance the health, safety and welfare of the recipients of the assistance and help alleviate the serious social problem of homelessness in New Jersey.

Economic Impact

The Legislature has appropriated $1,650,000 for the implementation of the Prevention of Homelessness Act (1984). While some of this money will be used for interest subsidies for affordable housing and for administrative costs, most of it will be used for loans and grants under the Homelessness Prevention Program. Adoption of these regulations will allow this money to be spent for its intended purpose.

Full text of the emergency new rule and concurrent proposal follows.

CHAPTER 12. HOMELESSNESS PREVENTION PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

5:12-1.1 Title; purpose

(a) The regulations in this chapter shall be known and may be cited as the "Homeless Prevention Program Regulations".

(b) The purpose of these regulations is to implement the "Prevention of Homelessness Act (1984)" and, in so doing, to provide assistance to persons who are homeless, or face imminent loss of their homes by eviction or foreclosure, because they are without adequate funds for reasons beyond their control.

5:12-1.2 Administration

The Homelessness Prevention Program shall be administered by the Bureau of Housing Services of the Division of Housing and Development.

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SUBCHAPTER 2. PROGRAM ELIGIBILITY

5:12-2.1 Eligibility

(a) To be eligible for assistance under the Homelessness Prevention Program, a person or household must be either homeless or in imminent danger of losing their home as a result of eviction for non-payment of rent or mortgage foreclosure, and must be a resident or residents of New Jersey.

1. A person shall be deemed homeless if he involuntarily is without a place of residence for reasons beyond his control.

2. A person shall be deemed to be in imminent danger of losing his home if he is unable to make rental or mortgage payments for reasons beyond his control and he has been served with a summons and complaint for eviction or for mortgage foreclosure, as the case may be.

3. "Mortgage foreclosure" shall include, without limitation, foreclosure for taxes or other municipal liens. In the case of a tax or other municipal lien foreclosure, a person shall be deemed to be in imminent danger of losing his home if he has been served in any legal manner with notice of foreclosure.

(b) No person or household shall be eligible for assistance if their annualized current income (that is, 52 times current weekly income) exceeds 80 percent of current median income for residents of the county in which application is made.

(c) No person or household shall be eligible for assistance unless all other available financial resources have first been exhausted. Concealment or transfer of assets to become eligible for assistance shall result in immediate and permanent disqualification.

5:12-2.2 Distribution of funding

(a) Funds available to the Homelessness Prevention Program shall be so allocated that funding is available for those now homeless, for those facing homelessness as a result of eviction and for those facing homelessness as a result of foreclosure.

(b) Funds shall be so distributed so that applicants in all regions of the State have equal access to assistance.

5:12-2.3 Levels of assistance

(a) The Homelessness Prevention Program shall apply available funds so as to provide assistance to as many people in need of such assistance as possible. Assistance to any one person or household shall not exceed the minimum amount necessary to obtain habitable lodging or to avoid imminent eviction or foreclosure.

(b) Where there is any reasonable prospect of repayment, funds shall be advanced as a loan rather than as a grant, upon such terms as the Bureau of Housing Services shall consider reasonable and appropriate in light of prevailing interest rates and the applicant's present and future ability to repay.

1. Loans shall be evidenced by a note and, if the applicant owns real property, secured by a mortgage. The form and content of the note and mortgage shall be prescribed by the Bureau of Housing Services.

5:12-2.4 Period of assistance

(a) No person who has become eligible for permanent rental assistance under the section 8 program of the United States Housing Act of 1937, 42 U.S.C. § 1437(f) (24 C.F.R. § 882.101 et seq.) or for any subsidized housing which he can afford shall continue to receive assistance under the Homelessness Prevention Program once the permanent rental assistance or subsidized housing becomes available.

(b) No person shall continue to receive assistance under the Homelessness Prevention Program for more than six months, unless the Bureau of Housing Services finds there to be sufficient extenuating circumstances to justify an extension.

5:12-2.5 Priorities

(a) Priorities for assistance among otherwise qualified applicants in the same applicant pool shall be assigned in the following order:

1. Households with a person who is disabled or over 65 years of age;
2. Families in imminent danger of separation due to lack of adequate living accommodations;
3. Single parent households;
4. Individuals who are disabled or over 65;
5. Other households with children;
6. Other households or individuals.

SUBCHAPTER 3. HABITABILITY STANDARDS

5:12-3.1 Compliance with H.U.D. Housing Quality Standards

(a) Any rental housing unit, the rental for which is paid, in whole or in part, with rental assistance received under the Homelessness Prevention Program, shall be in compliance with the Housing Quality Standards of the United States Department of Housing and Urban Development.

(b) The Bureau of Housing Services may allow payment of rental assistance for a unit if the unit can be occupied without any imminent hazard to health or safety and the owner of the unit is proceeding in a reasonable manner to abate any violation of the H.U.D. Housing Quality Standards.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Homestead Rebate Act
Extension of Time to File Homestead Rebate Claim

Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 18:12-7.12

Emergency Amendment Adopted: November 29, 1984 by John R. Baldwin, Director, Division of Taxation.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): December 4, 1984.

Emergency Amendment Filed: December 4, 1984 as R.1984 d.584.

Authority: N.J.S.A. 54:4-3.80 and 54:50-1.

Emergency Amendment Effective Date: December 4, 1984.

Emergency Amendment Expiration Date: February 4, 1985.

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Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before January 16, 1985. These submissions, and any inquiries about submissions and responses, should be addressed to:

John R. Baldwin
Director
Division of Taxation
50 Barrack Street
CN 240
Trenton, NJ 08646

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency amendment are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

This proposal is known as PRN 1984-724.

The agency emergency adoption and concurrent proposal follows:

Summary

On November 29, 1984, John R. Baldwin, Director of the Division of Taxation in the Department of the Treasury, pursuant to the authority of N.J.S.A. 54:4-3.80 and 54:50-1 and the applicable provisions of the Administrative Procedure Act, and upon certification by the Governor of the State of New Jersey that an imminent peril exists (see N.J.S.A. 52:14B-4(c)), adopted an emergency amendment to N.J.A.C. 18:12-7.12 concerning an extension of time to file an Application for Homestead Rebate.

To respond to the imminent peril, a change in the rule is being made to insure that approximately 360,000 persons be given additional time to file an Application for Homestead Rebate. Without this adoption, a large number of persons would forfeit their right to a homestead rebate. This additional time is given to people who for some reason did not file their application prior to December 1, 1984.

Social Impact

This Emergency Rule will affect approximately 360,000 property owners who failed to file a timely application for homestead rebate.

Economic Impact

The economic impact upon the general treasury of the State of New Jersey will approximate 360,000 applications. The total amount of money involved is $70 million.

Full text of the emergency adoption and concurrent proposal follows (additions indicated in boldface **thus**).

18:12-7.12 Extension of filing date

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

(i) The time for property owners to file their applications for a homestead rebate payable in 1985 pursuant to P.L. 1976, c. 72, including applications by shareholders in cooperative associations and those residing in properties of certain mutual housing corporations, has been extended to March 1, 1985.

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MISCELLANEOUS NOTICES

CIVIL SERVICE

(a)

CIVIL SERVICE COMMISSION

Petition for Rulemaking
Separations and Demotions

N.J.A.C. 4:1-16

Petitioner: Communications Workers of America, Robert Pursell, CWA Representative.
Authority: N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6.

Take notice that on October 9, 1984, Mr. Robert Pursell, CWA Representative, filed a petition on behalf of the Communications Workers of America to adopt a new rule concerning layoff procedures as part of N.J.A.C. 4:1-16.1 et seq., Separations and Demotions. Petitioner requests that layoff rights determinations not be adjusted should certain elements of a reduction in force be delayed to accommodate collective negotiations programs. Further, during such periods of delay, employees serving their work test period will continue in that status and may be permanently appointed if otherwise eligible.

Department of Civil Service Response

The Department of Civil Service has responded to the petitioner that the CWA proposal appears to conform with Civil Service policies and procedures and the Department agrees that such situations should be properly codified. In considering this proposal, the Department notes that there may be other reasons for delaying the implementation of a scheduled layoff such as a review of alternate funding mechanisms. It therefore appears advantageous to all employees to broaden the proposal beyond contractual circumstances to accommodate additional situations. The Department will, therefore, have the proposal, as expanded, reviewed through its rules adoption processes.

(b)

CIVIL SERVICE COMMISSION

Petition for Rulemaking
Inclement Weather Emergency Policy (State)

N.J.A.C. 4:1-18.5

Petitioner: Communications Workers of America, Robert Pursell, CWA Representative.
Authority: N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6.

Take notice that on October 15, 1984, Mr. Robert Pursell, CWA Representative, filed a petition on behalf of the Communications Workers of America to amend Civil Service rule N.J.A.C. 4:1-18.5, Inclement Weather Emergency Policy (State). Petitioner requests that the Governor's authority to close the State Colleges in inclement weather circumstances be delegated to the respective College Presidents. The Governor would continue to retain this authority with respect to all other State functions.

Department of Civil Service Response

The Department of Civil Service has responded to the petitioner that the current rule in question sets forth procedural guidelines to assist State agencies in the effectuation of inclement weather actions. The reference to the Governor's authority to determine when inclement weather warrants the implementation of emergency procedures such as early release of employees is included in the rule for informational purposes only. Clearly the decision to institute emergency mechanisms rests with the Governor as Chief Executive and the Civil Service Commission does not have jurisdiction to alter this circumstance by rule.

It is also noted that decentralization of this authority to the State College Presidents would likely lead to requests from other State agencies for similar authorizations and the results could be chaotic with dissimilar treatment of employees. Generally, as inclement weather conditions develop, regional circumstances are constantly monitored by various State agencies throughout New Jersey and, with this readily available localized information in hand, decisions in this regard can be made on a regional, as well as a Statewide, basis. This also ensures uniform standards for fair application in making these decisions.

In view of the foregoing considerations, the CWA petition for amendment of N.J.A.C. 4:1-18.5 cannot be implemented.

(c)

COMMUNITY AFFAIRS

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Annual Policy Statement

The following is an Annual Policy Statement of the New Jersey Housing and Mortgage Finance Agency and is being presented following a Public Hearing held on December 5, 1984 in order to meet the Annual Report Requirement for Qualified Mortgage Bonds issued after December 31, 1984.

Since its creation in 1970 and through 1982, the New Jersey Mortgage Finance Agency, a predecessor of the New Jersey Housing & Mortgage Finance Agency, applied 100% of all mortgage revenue bond proceeds to the financing of homes within forty-one urban neighborhoods (Urban Target Areas) in the State. More than $400 million in Agency financing has significantly assisted urban revitalization and community development within the Urban Target Areas. Agency financing has enabled sixty-seven percent of the programs' Urban Tar-

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get Area homebuyers to obtain homeownership in the same municipality where they previously resided as renters, while encouraging the remaining thirty-three percent to seek Urban Target Area homeownership from outside the area. The Agency plans to continue allocating a minimum of 25% to 30% of mortgage revenue bond proceeds to the Urban Target Areas.

On January 17, 1984, the New Jersey Mortgage Finance Agency and the New Jersey Housing Finance Agency were merged into a single agency in order to create a strong, unified advocate for housing production, financing and improvement within the State of New Jersey.

The New Jersey Housing and Mortgage Finance Agency (the Agency) is authorized to issue tax-exempt bonds to finance the purchase and improvement of owner-occupied one-to-four unit residences, and to finance the construction and rehabilitation of multi-family rental housing projects. In operating both single and multi-family programs, the Agency administers federal housing subsidies and grants at the state level, renders technical and community development assistance, and conducts other activities which fulfill the Agency's legislative purposes. The Agency issues 100 percent of all mortgage revenue bonds in New Jersey.

The Agency's activities are governed by a seven-member Board of Directors, including three public members appointed by the Governor for one, two and three year terms.

1984 Policies with Respect to Mortgage Revenue Bond Financing

A primary purpose of the Agency is to provide affordable home financing to families who would otherwise forego homeownership and necessary home improvements without the availability of Agency funds. Specifically, Agency financing aims to assist first-time homebuyers underserved by market rate lenders; to stimulate the construction of new homes; to promote homeownership investment in Urban Target Areas; and to maintain the State's supply of housing stock through home improvement and energy conservation loans.

Serving Lower-Income Families Over Higher-Income Families

The Agency has already significantly redirected its program in response to the statement of Congressional intent to give priority to "lower-income families over higher-income families". Upon reauthorization of the Mortgage Revenue Bond Program in June 1984, the Agency analyzed several alternatives for structuring its homeownership financing programs.

As a first step, the Agency imposed maximum income limit requirements for homebuyers outside of Urban Target Areas in order to direct financing to modest-income families most adversely affected by high interest rates. For homebuyers purchasing outside of Urban Target Areas, maximum income limits of 130% of the statewide median were established for all but five (5) high-cost counties, where the limit was set at 145% of statewide median. The average income of homeowners under the non-Urban Target Area portion of the Agency's 1984 program dropped 10%, as compared to 1982 and 1983 programs, to $32,000, which was $4,000 below the average income of first time borrowers in non-Urban Target Areas under previous programs when only the US Treasury maximum purchase price limitations controlled the participation in the program. Based upon 10.65 percent interest rate financing, Agency statistics indicate that borrowers with a gross annual income of $30,000 could afford to purchase a $60,000 residence, the average purchase price of an Agency financed home, with a 5% downpayment.

In maintaining a long-standing commitment to promoting homeownership investment in Urban Target Areas, between 25% and 30% of the Agency's 1984 bond allocation has been reserved for loans to Urban Target Area homebuyers. In the first 1984 bond issue, designed primarily for existing housing, 30% was reserved for Urban Target Area buyers. One third of that amount was available without regard to income; the balance was linked to an Agency cash contribution of $3 million to create Reduced Interest Mortgage Loans with a beginning interest rate of 8.65%, graduating to a permanent rate of 10.65% in the sixth year. Half of the Reduced Interest Mortgage Loans was held for Urban Target Area buyers with incomes below $25,000; the balance was available for households with incomes below the maximums established statewide.

To stimulate the construction of additional housing stock throughout the State, the Agency also issued bonds in 1984 to finance new home purchases. Priority was given to developers constructing affordably-priced housing. In addition to maximum income limits established for non-Urban Target Area borrowers, the Agency set maximum purchase price limits for homes financed under the program at $96,000. Currently, US Treasury Safe Harbor Limits permit maximum purchase prices as high as $149,000 in several counties.

1985 Housing Policies

The Legislature of New Jersey is currently considering amendments to the Agency's enabling legislation which would significantly affect the allocation of its financing under the mortgage revenue bond program. Specifically, a priority would be given to households and housing eligible to receive assistance under programs developed in response to judicial decisions requiring all communities in New Jersey to promote the production of low and moderate income housing. The Agency's own deliberations with respect to priorities for housing assistance will proceed concurrently with the consideration of this legislation.

During the past three years, the Agency has allocated one-third of its bond sale allocation to the financing of newly constructed homes in order to stimulate the construction of additional housing stock. Encouraging the construction of affordably-priced housing for modest income homebuyers is a major concern of the Agency in distributing new construction financing. The New Jersey Legislature is in the process of considering legislation which would further focus future Agency new construction financing toward developments producing housing for low and moderate income buyers.

Additionally, the Agency's enabling act requires the reservation of 25% of funds for the State's Urban Cities for a specific period. Currently, Agency policy meets this requirement.

The Agency plans to continue its present policy of allocating mortgage revenue bond proceeds to lower income families over higher income families through the use of maximum income limit requirements, except where such restrictions would defeat other Agency purposes, e.g., assisting the handicapped and encouraging urban homeownership investment by all income groups.

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During the next year, the Agency will focus on re-evaluating and refining its current policies and methods of distribution to assure that Agency financing will serve low and moderate income families over higher income families. The Agency employs a community development staff to maintain outreach into the specific housing needs of the state's modest-income families in order to most effectively address housing finance criteria.

Any decision to initiate a Mortgage Credit Certificate Program in 1985 will be subject to Treasury's publication of regulations concerning this program and the ability of MCCs to assist lower-income families over higher income families in obtaining affordable homeownership.

Approved By:

Thomas H. Kean
Governor

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Hospital Reimbursement Diagnosis Related Group (DRG) System

Authority: N.J.S.A. 30:4D-6a(1)(2), 7, 7a, 7b.
Authorized By: George J. Albanese, Commissioner, Department of Human Services.

The purpose of this notice is to comply with the provisions of the federal regulations (42 CFR 447.205) requiring public notice for significant proposed changes in the methods and standards for setting payment rates for services.

The Division of Medical Assistance and Health Services has been reimbursing acute care general hospitals utilizing the Diagnosis Related Group (DRG) system. The existing waiver granted an exception to the N.J. Title (XIX) State Plan and was authorized pursuant to section 1115(a) of the Social Security Act. This waiver is due to expire on December 31, 1984. Based upon instructions from the Regional Office, Health Care Financing Administration, Department of Health and Human Services, a state plan amendment has been prepared and submitted incorporating the DRG system into New Jersey's Title XIX (Medicaid) State Plan.

The substantive content of this amendment is the waiver, prepared by the New Jersey Department of Health, that was submitted under Section 1886(c) of the Social Security Act. The purpose of this waiver is to extend Medicare reimbursement principles for the period January 1, 1985 through December 31, 1987 for hospital inpatient and outpatient services.

The Medicaid (Title XIX) Program intends to utilize the same principles of reimbursement as are being requested for Medicare.

The actual text of the regulations describing the DRG reimbursement system are promulgated by the New Jersey Department of Health at N.J.A.C. 8:31B et seq. These regulations provide the basis for hospital reimbursement. The New Jersey Department of Health recently proposed amendments to N.J.A.C. 8:31B-3 which appeared as a proposal in the September 4, 1984 issue of the New Jersey Register at 16 N.J.R. 2321(b). This proposal has been adopted as R.1984 d.531 and became effective November 19, 1984 but will not be operative until January 1, 1985.

It is estimated that continued use of the DRG system will result in an increase (due to inflation) in Title XIX expenditures of approximately 13 million dollars (federal-state share combined). Both inpatient and outpatient services are included in this figure.

A copy of this notice has been forwarded to the sixteen Medicaid District Offices. A copy of the proposed plan amendment is available for public review by contacting Henry W. Hardy, Esq., Administrative Practice Officer, at the following address:

Division of Medical Assistance
and Health Services
Quakerbridge Plaza
Quakerbridge Road
CN-712
Trenton, NJ 08625

Comments may be submitted to Mr. Hardy's attention and may also be reviewed at the above address. The deadline for submitting comments will be January 16, 1985.

INSURANCE

(b)

THE COMMISSIONER

Adjustment of $1500 Tort Threshold Option Amount

Public Notice

Take notice that Kenneth D. Merin, Commissioner of Insurance, pursuant to the authority of N.J.S.A. 39:6A-8(b), announces that the tort threshold option amount will be increased from $1500 to $1600. This change becomes effective January 1, 1985, to apply to any claim for noneconomic loss arising from any automobile accident occurring on or after January 1, 1985, for those insureds who have selected the tort option.

The adjustment is based on the 6.7 percent increase in the professional services component or medical care services costs reflected in the Consumer Price Index for all urban consumers, United States city average, from October 1983 to October 1984. This percent change is determined by the United States Bureau of Labor Statistics.

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LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Bulk Commodities Application

Public Notice

Take notice that Clifford W. Snedeker, Director, Division of Motor Vehicles pursuant to the authority of N.J.S.A. 39:5E.11, hereby lists the names and addresses of applicants who have filed an application for a common carrier's Certificate of Public Convenience and Necessity and/or a contract carrier permit to engage in the business of transporting bulk commodities in intrastate commerce.

CONTRACT CARRIER (NON-GRANDFATHER)

Ben Pilla Hauling Inc.
1774 North West Avenue
Vineland, NJ 08360

COMMON CARRIER (NON-GRANDFATHER)

Livingston Oil Service, Inc.
78 W. 18th Street
Weehawken, NJ 07087

Liquid Transporters, Inc.
1292 Fern Valley Road
Louisville, KY 40219

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 an application.

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REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

(The research supplement to the New Jersey Administrative Code)

The new Register Index of Rule Proposals and Adoptions combines the original Index of Proposed Rules and Index of Adopted Rules into a single listing published in every Register. In addition to simplifying research of State agency rulemaking, this important step refines the index in substance and form. *Rule adoptions promulgated in this issue already appear in the Index, and all adoptions in subsequent Registers will appear in the Index of the Register of promulgation.* Formerly, adoptions were not entered in the index listing until the month following adoption. This new feature will facilitate rule research by showing you at a glance all adopted rule changes in any rulemaking area since the most recent update to the Administrative Code.

Further improvements in the Index include the definition of key terms and abbreviations and the addition of an N.J.R. Citation Locator. The locator quickly leads you to the text of a proposal or adoption by converting an N.J.R. citation into the date of the Register in which the rule was published.

HOW THE INDEX WORKS

The Register Index of Rule Proposals and Adoptions is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule changes proposed in this issue will be entered in the Index of the next Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule 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 to a given rule, scan the citations above and below that rule to find any entries which might contain related rule adoptions, including the one you are researching.

At the bottom of the index listing for each Administrative Code Title is the date of the latest update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the November 5, 1984 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:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1984 d.300 means the three hundredth rule adopted in 1984.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A number and date verifying the currency of rules found in each Title of the New Jersey Administrative Code: rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

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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
15 N.J.R. 2085 and 2184	December 19, 1983	16 N.J.R. 1635 and 1832	July 2, 1984
16 N.J.R. 1 and 92	January 3, 1984	16 N.J.R. 1833 and 2026	July 16, 1984
16 N.J.R. 93 and 172	January 17, 1984	16 N.J.R. 2027 and 2184	August 6, 1984
16 N.J.R. 173 and 292	February 6, 1984	16 N.J.R. 2185 and 2318	August 20, 1984
16 N.J.R. 293 and 404	February 21, 1984	16 N.J.R. 2319 and 2390	September 4, 1984
16 N.J.R. 405 and 470	March 5, 1984	16 N.J.R. 2391 and 2474	September 17, 1984
16 N.J.R. 471 and 576	March 19, 1984	16 N.J.R. 2475 and 2708	October 1, 1984
16 N.J.R. 577 and 778	April 2, 1984	16 N.J.R. 2709 and 2864	October 15, 1984
16 N.J.R. 779 and 940	April 16, 1984	16 N.J.R. 2865 and 3066	November 5, 1984
16 N.J.R. 941 and 1130	May 7, 1984	16 N.J.R. 3067 and 3240	November 19, 1984
16 N.J.R. 1131 and 1294	May 21, 1984	16 N.J.R. 3241 and 3336	December 3, 1984
16 N.J.R. 1295 and 1406	June 4, 1984	16 N.J.R. 3337 and 3518	December 17, 1984
16 N.J.R. 1407 and 1634	June 18, 1984		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-3.12	Non-lawyer representation in contested cases	16 N.J.R. 2710(a)	R.1984 d.587	16 N.J.R. 3426(a)
1:1-3.12	Correction to adoption			16 N.J.R. 3306(a)
1:1-5.2	Notification of second jurisdictional claims	16 N.J.R. 2320(a)	R.1984 d.490	16 N.J.R. 3004(a)
1:10	Public welfare hearings	16 N.J.R. 3068(a)		
1:11-1.1, 15.1	Insurance filing cases	16 N.J.R. 2866(a)		
1:2-3	Motor Vehicle cases: readopt Hearings on the Papers	16 N.J.R. 2711(a)	R.1984 d.553	16 N.J.R. 3426(b)
1:10-17.1	Division of Public Welfare cases	16 N.J.R. 945(a)		
	(TRANSMITTAL 8, dated October 15, 1984)			
AGRICULTURE—TITLE 2				
2:5-4	Area quarantine for avian influenza (with Emergency Adoption)	15 N.J.R. 2176(a)		
2:52-2.1, 2.2, 3.1, 3.2	Changes in milk suppliers: notice requirements	16 N.J.R. 2028(a)	R.1984 d.488	16 N.J.R. 3004(b)
2:52-2.1, 3.1	Notice of intent to change milk supplier	16 N.J.R. 3071(a)		
2:52-6.1, 6.2, 6.3	Determining the cost of milk and milk products	16 N.J.R. 2030(a)	R.1984 d.487	16 N.J.R. 3005(a)
2:52-6.1	Correction to adoption			16 N.J.R. 3306(b)
2:53-3.2	Determining the cost of milk and milk products	16 N.J.R. 2030(a)	R.1984 d.487	16 N.J.R. 3005(a)
2:53-4.1	Notice of intent to change milk supplier	16 N.J.R. 3071(a)		
2:53-4.1, 4.2	Changes in milk suppliers: notice requirements	16 N.J.R. 2028(a)	R.1984 d.488	16 N.J.R. 3004(b)
2:76-3.12	Farmland preservation: deed restrictions	16 N.J.R. 2867(a)		
2:76-4.11	Municipally-approved farmland preservation	16 N.J.R. 2869(a)		
2:76-6.15	Acquisition of development easements	16 N.J.R. 2871(a)		
	(TRANSMITTAL 25, dated October 15, 1984)			
BANKING—TITLE 3				
3:1-9.2-9.5	Home mortgage disclosure	16 N.J.R. 2872(a)		
3:6-7.1-7.8	Loss deferral accounting for mutual savings banks	16 N.J.R. 2712(a)	R.1984 d.577	16 N.J.R. 3427(a)
3:28-5.1-5.8	Loss deferral accounting for mutual savings and loan associations	16 N.J.R. 2713(a)	R.1984 d.576	16 N.J.R. 3428(a)
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CIVIL SERVICE—TITLE 4				
4:1-1.1-1.10	Purpose and application of rules	16 N.J.R. 1132(a)		
4:1-2.1	Words and phrases defined	16 N.J.R. 2187(a)		
4:1-9	Readopt Examination Scoring	16 N.J.R. 2873(a)		
4:1-14.6	Interim appointments and return to permanent titles	16 N.J.R. 1134(a)		
4:1-14.7	Emergency appointments	16 N.J.R. 2191(a)		
4:1-18.3	Compensation for holidays	16 N.J.R. 1421(a)		
4:1-20	Readopt Performance Evaluation and Employee Training	16 N.J.R. 2877(a)		
4:1-20.2	Certified Public Manager Program	16 N.J.R. 3072(a)		
4:2-9	Readopt Examination Scoring	16 N.J.R. 2873(a)		
4:2-14.1	Interim appointments and return to permanent titles	16 N.J.R. 1134(a)		
4:2-18.1, 18.2, 18.3	Compensation for holidays	16 N.J.R. 1421(a)		
4:2-20	Readopt Performance Evaluation and Employee Training	16 N.J.R. 2877(a)		
4:2-20.7	Certified Public Manager Program	16 N.J.R. 3072(a)		
4:3-9	Readopt Examination Scoring	16 N.J.R. 2873(a)		
4:3-14.2	Interim appointments and return to permanent titles	16 N.J.R. 1134(a)		
4:3-15.1	Repeal rule concerning transfer of county caseworkers	16 N.J.R. 3073(a)		
4:3-20	Readopt Performance Evaluation and Employee Training	16 N.J.R. 2877(a)		
	(TRANSMITTAL 21, dated October 15, 1984)			
COMMUNITY AFFAIRS-TITLE 5				
5:12	Homelessness Prevention Program	Emergency	R.1984 d.570	16 N.J.R. 3497(a)
5:22	Readopt tax exemption rules for improvements to residential dwellings	16 N.J.R. 2191(b)		
5:23-2.4, 2.6, 2.17A	UCC: rooming and boarding houses	16 N.J.R. 3073(b)		
5:23-3.8A	UCC: products in violation	16 N.J.R. 3074(a)		
5:23-4.12	Uniform Construction Code: private enforcing agencies	16 N.J.R. 2321(a)	R.1984 d.523	16 N.J.R. 3197(a)
5:23-4.12, 4.22, 4.25	UCC: private enforcing agencies; premanufactured construction	16 N.J.R. 2031(a)	R.1984 d.481	16 N.J.R. 3006(a)
5:23-5.4	Uniform Construction Code: inspector trainees	16 N.J.R. 1643(a)	R.1984 d.494	16 N.J.R. 3007(a)
5:27-1.5	UCC: rooming and boarding houses	16 N.J.R. 3073(b)		
5:27-5.1	Fire safety in rooming and boarding houses	16 N.J.R. 3242(a)		
5:27-5.3	Fire safety in rooming and boarding houses	16 N.J.R. 299(a)		
5:31	Local Finance Board: local authorities	16 N.J.R. 1835(a)		
5:80-6	Housing and Mortgage Finance Agency projects: Tenant Selection Standards	16 N.J.R. 954(a)		
5:80-7	Housing and Mortgage Finance Agency: housing sponsor's role	16 N.J.R. 2178(a)		
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EDUCATION—TITLE 6				
6:11-4.3	Emergency certification	16 N.J.R. 3075(a)		
6:20-5	Business services: readopt State Aid rules	16 N.J.R. 2392(a)	R.1984 d.546	16 N.J.R. 3429(a)
6:20-7	Business services: readopt Contracting Qualification and Debarment rules	16 N.J.R. 2394(a)	R.1984 d.545	16 N.J.R. 3430(a)
6:22-1.8	School districts: long-range facilities plans	16 N.J.R. 1850(a)	R.1984 d.504	16 N.J.R. 3008(a)
6:26-3	Readopt rules on Elementary School Summer Sessions	16 N.J.R. 2715(a)		
6:27-3	Readopt rules on Secondary School Summer Sessions	16 N.J.R. 2717(a)		
6:30-2.5	Adult high school graduation requirements	16 N.J.R. 2719(a)		
6:31	Readopt Bilingual Education rules	16 N.J.R. 2721(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
6:39-1	Evaluation: readopt Statewide Assessment rules	16 N.J.R. 1852(a)	R.1984 d.505	16 N.J.R. 3009(a)
6:70	Library network services	16 N.J.R. 3076(a)		
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ENVIRONMENTAL PROTECTION—TITLE 7				
7:1C-1	90-day construction permits	16 N.J.R. 3243(a)		
7:7F-1, 3	Shore Protection Program; local government grants	16 N.J.R. 2881(a)		
7:9-4, 5	Surface water quality and treatment of wastewater discharges	16 N.J.R. 3080(a)		
7:10-14.7	Interim safe drinking water periodic testing requirements	16 N.J.R. 2396(a)	R.1984 d.582	16 N.J.R. 3431(a)
7:12	Shellfish-growing water classification	16 N.J.R. 3112(a)		
7:13-1.4, 4.7, 5.2, 5.4	Flood hazard area control	16 N.J.R. 2193(a)		
7:13-1.4, 4.7, 5.2, 5.4	Flood hazard area control: public hearing	16 N.J.R. 2476(a)		
7:13-1.11(c)27	Floodways along Pequest River in Sussex and Warren counties	16 N.J.R. 1306(a)		
7:13-1.11(d)49	Floodway delineations in Union County	16 N.J.R. 1146(a)		
7:13-1.11(d)51	Floodways along North Branch Raritan (Project U)	16 N.J.R. 1307(a)		
7:13-7.1(c)30	Floodway delineation along Paulins Kill	16 N.J.R. 2397(a)		
7:13-7.1	Paulins kill floodway delineation: public hearing	16 N.J.R. 2885(a)		
7:13-7.1(c)31	Project MR floodway delineations in Warren, Hunterdon, Sussex and Morris counties	16 N.J.R. 1863(a)	R.1984 d.542	16 N.J.R. 3307(a)
7:13-7.1(d)50	Floodway delineation along North Branch Foulerton's Brook	16 N.J.R. 2398(a)		
7:13-7.1(d)52	Supplemental Project I floodway delineations in the Passaic River Basin	16 N.J.R. 1865(b)		
7:19-5	Small water company takeover	16 N.J.R. 563(a)		
7:19-6	Water Supply Management Act Rules	16 N.J.R. 2399(a)		
7:19A	Emergency Water Supply Allocation Plan rules	16 N.J.R. 308(a)		
7:19B	Emergency Water Surcharge Schedule	16 N.J.R. 314(a)		
7:20	Dam Safety Standards	16 N.J.R. 790(a)		
7:25-2	Readopt rules on Use of Land and Water Areas under DEP control	16 N.J.R. 1309(a)		
7:25-4.19	Endangered and Nongame Species Advisory Committee	16 N.J.R. 2033(a)	R.1984 d.509	16 N.J.R. 3010(a)
7:25-6	1985-86 Fish Code	16 N.J.R. 2034(a)	R.1984 d.498	16 N.J.R. 3011(a)
7:25-7.13	Crab dredging in Atlantic Coast section	Emergency	R.1984 d.537	16 N.J.R. 3216(a)
7:25-12.1	Preservation of sea clams	16 N.J.R. 2885(b)		
7:25-16.1	Readopt freshwater fishing license lines	16 N.J.R. 2044(a)		
7:25-18.4	Spearfishing in Atlantic	16 N.J.R. 2478(a)		
7:25-22.2	Purse seine fishing of menhaden	16 N.J.R. 1668(a)		
7:26	Solid and hazardous waste collector-haulers: Disclosure Statement Forms	16 N.J.R. 1425(a)		
7:26-1.4, 2.6, 2.10, 2.13, 3.5	Disposal of asbestos waste	16 N.J.R. 440(a)		
7:26-10.7	Hazardous waste incinerators	16 N.J.R. 2046(a)	R.1984 d.581	16 N.J.R. 3432(a)
7:26-12.2	Hazardous waste rules: permit application	16 N.J.R. 2478(b)	R.1984 d.543	16 N.J.R. 3308(a)
7:26-16.3, 16.6, 16.13	Solid and hazardous waste industry licensing	16 N.J.R. 2480(a)	R.1984 d.541	16 N.J.R. 3310(a)
7:27	Air quality standards: State Implementation Plan for lead	16 N.J.R. 1669(a)		
7:27-8	Air pollution control: permits and Certificates	16 N.J.R. 1671(a)		
7:27-13.1, 13.2, 13.5–13.8	Ambient air quality standards	16 N.J.R. 1676(a)		
7:27-14	Diesel-powered motor vehicles: air pollution control	16 N.J.R. 2887		

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7:27-15	Gas-fueled motor vehicles: air pollution control	16 N.J.R. 2889		
7:27-18.1, 18.2, 18.3, 18.4, 18.7	Air pollution control: emission offset rules	16 N.J.R. 1679(a)		
7:27B-4	Air Test Method 4 for motor vehicles	16 N.J.R. 2894		
7:29-1.1-1.5	Noise control	16 N.J.R. 1682(a)		
7:29-1.1-1.5	Noise control: extension of comment period	16 N.J.R. 2405(a)		
7:36	Green Acres Program	16 N.J.R. 2405(b)		

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HEALTH—TITLE 8

8:20-1	Birth Defects Registry	16 N.J.R. 3118(a)		
8:21-2.40	Baby foods and ethylene dibromide level	16 N.J.R. 2897(a)		
8:21A	Good drug manufacturing practices	16 N.J.R. 3248(a)		
8:21A-2.55	Drug manufacturing: medical gas lot or control numbers	16 N.J.R. 1685(a)		
8:23-5	Animal control officer certification	16 N.J.R. 2725(a)	R.1984 d.575	16 N.J.R. 3432(a)
8:31-26.3, 26.4	Health care facilities: employee physicals; child abuse	16 N.J.R. 3249(a)		
8:31-30.1	Health care facilities: computing plan review fee	16 N.J.R. 2047(a)	R.1984 d.499	16 N.J.R. 3019(a)
8:31A	Readopt SHARE Guidelines	16 N.J.R. 2898(a)		
8:31A-7.3, 7.4	SHARE: 1985 Rate Review Guidelines	16 N.J.R. 2727(a)		
8:31B-2	1985 uniform bill-patient summary	16 N.J.R. 2728(a)		
8:31B-2, 3, 4	Hospital Rate Setting rules: temporary waiver of expiration	16 N.J.R. 2733(a)		
8:31B-3	Hospital reimbursement: procedure and methodology	16 N.J.R. 2321(b)	R.1984 d.531	16 N.J.R. 3197(b)
8:31B-3.19	RIM methodology for nursing cost allocation: implementation date	16 N.J.R. 2848(b)		
8:31B-3.23	Correction: Hospital reimbursement	16 N.J.R. 2733(b)		
8:31B-3.23, 3.24, 3.43, 3.75	Hospital rate setting; outpatient dialysis reimbursement hospital-based physician costs	16 N.J.R. 669(a)		
8:31B-3.45	Hospital rate setting	16 N.J.R. 2733(c)		
8:31B-4.6, 4.65	Hospital reimbursement: financial elements and reporting	16 N.J.R. 2326(a)	R.1984 d.500	16 N.J.R. 3019(b)
8:31B-5.2	Diagnosis Related Groups: outliers	16 N.J.R. 3119(a)		
8:33A-1.1	New and expanded surgical services: deferral of need applications	16 N.J.R. 2734(a)		
8:33E-2	Cardiac surgical centers	16 N.J.R. 3120(a)		
8:33E-2.1-2.5, 2.10, 2.12, 2.13	Cardiac surgical centers: need review	16 N.J.R. 2196(a)		
8:33F	Renal Disease Services: readopt Planning and Certification rules	16 N.J.R. 3124(a)		
8:39-2.1	All health care facilities: certificate of need approval letter	16 N.J.R. 3125(a)		
8:33H-2.1, 3.1-3.6	Long term care facilities and services: need review	16 N.J.R. 2200(a)	R.1984 d.501	16 N.J.R. 3020(a)
8:33I	Megavoltage oncology services: 1984 batching cycle deadline	_____	_____	16 N.J.R. 2310(b)
8:33I-1	Megavoltage radiation oncology services: need review	16 N.J.R. 2205(a)	R.1984 d.502	16 N.J.R. 3027(a)
8:35	Repeal (see 8:43B-8)	16 N.J.R. 188(a)		
8:40-1.1	Licensure of invalid coach and ambulance services	16 N.J.R. 3127(a)		
8:42-1	Home health agencies: readopt licensure standards	16 N.J.R. 3250(a)		
8:42-1.2	Certificate of need approval letter	16 N.J.R. 3125(a)		
8:42A-2.1	Certificate of need approval letter	16 N.J.R. 3125(a)		
8:42B-2.1	Certificate of need approval letter	16 N.J.R. 3125(a)		
8:43-1.5	Certificate of need approval letter	16 N.J.R. 3125(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:43A	Ambulatory Care Facilities: readopt standards for licensure	16 N.J.R. 2208(a)	R.1984 d.497	16 N.J.R. 3031(a)
8:43A	Licensure of ambulatory care facilities	16 N.J.R. 3254(a)		
8:43A-1.3	Certificate of need approval letter	16 N.J.R. 3125(a)		
8:43B-1	Licensure of hospital facilities	16 N.J.R. 3275(a)		
8:43B-1.7	Certificate of need approval letter	16 N.J.R. 3125(a)		
8:43B-6	Hospital facilities: readopt Medical Staff rules	16 N.J.R. 3152(a)		
8:43B-8	Hospital licensure: obstetric and newborn services	16 N.J.R. 188(a)		
8:43F	Medical day care facilities: readopt licensure standards	16 N.J.R. 3277(a)		
8:43F-2.1	Certificate of need approval letter	16 N.J.R. 3125(a)		
8:59-1.3, 4.1, 5.1, 5.5, 6.1, 6.2, 6.3, 7.2, 7.5, 8.5	Worker and Community Right to Know Act	16 N.J.R. 2735(a)		
8:65-2	Readopt Security Requirements over Controlled Dangerous Substances	16 N.J.R. 1311(a)	R.1984 d.529	16 N.J.R. 3203(a)
8:65-7	Prescription requirements for controlled dangerous substances	16 N.J.R. 2327(a)		
8:65-10.1	Controlled dangerous substances, Schedule I: Alfentanil	16 N.J.R. 2332(a)	R.1984 d.532	16 N.J.R. 3204(a)
8:65-10.1, 10.2	Controlled dangerous substances: rescheduling of Sufentanil	16 N.J.R. 2900(a)		
8:65-10.4	Controlled dangerous substances: add Triazolam to Schedule IV	16 N.J.R. 2901(a)		
8:65-10.8	Controlled dangerous substances: exempt chemicals	16 N.J.R. 3280(a)		
8:71	Generic drug list additions (see 16 N.J.R. 142(b), 1093(a)), 2672(a))	15 N.J.R. 1819(a)		
8:71	Additions to generic drug list (see 16 N.J.R. 1092(a), 1595(a), 1994(a)), 2673(a))	16 N.J.R. 202(a)		
8:71	Generic drug list additions (see 16 N.J.R. 2672(b))	16 N.J.R. 1436(a)		

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HIGHER EDUCATION—TITLE 9

9:2-1, 2, 3, 8, 9	Repeal (See 9:6)	16 N.J.R. 2209(a)		
9:2-4, 5, 6, 7, 12, 13	Readopt Administrative Policies for colleges and universities	16 N.J.R. 2216(a)		
9:2-11	Recodify as 9:7-7	16 N.J.R. 2218(a)		
9:2-14	Monitoring of violence and hazing on campus	16 N.J.R. 1930(a)	R.1984 d.548	16 N.J.R. 3433(a)
9:5-2	Tuition-free job training courses	16 N.J.R. 1931(a)	R.1984 d.536	16 N.J.R. 3205(a)
9:6	State College: policies and standards	16 N.J.R. 2209(a)		
9:7-3.1	Tuition Aid Grant Award Table, 1984-85	16 N.J.R. 2308(a)	R.1984 d.535	16 N.J.R. 3206(a)
9:7-4.2	Garden State Scholars: award amounts	16 N.J.R. 3281(a)		
9:7-7	Readopt Veteran's Tuition Credit Program	16 N.J.R. 2218(a)		
9:9-1.6	Student loan applications: prohibited fee	16 N.J.R. 3281(b)		
9:9-1.16	Defaulted student loans: interest liability	16 N.J.R. 1012(a)		
9:9-9.2	PLUS Program: direct loan prerequisites	16 N.J.R. 1012(b)		
9:11-1.7	Educational Opportunity Fund: undergraduate grants	16 N.J.R. 1932(a)	R.1984 d.549	16 N.J.R. 3434(a)

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HUMAN SERVICES—TITLE 10

10:44A-1.1-1.5, 2.2, 2,4, 3.1, 3.3, 4.3, 5.2, 9	Community residences for developmentally disabled: Supportive Living Programs	16 N.J.R. 1438(a)		
10:47	Private Licensed Facilities for Developmentally Disabled	16 N.J.R. 2902(a)		
10:49-1.1	Medicaid eligibility	16 N.J.R. 2219(a)		

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10:49-1.7	Administration Manual: utilization of insurance benefits	16 N.J.R. 1933(a)		
10:49-1.27	Long-term care facilities: completion of field audit	16 N.J.R. 2413(a)		
10:51-1, App.B, C, D, E	Pharmaceutical Services: appendix changes	16 N.J.R. 2739(a)	R.1984 d.583	16 N.J.R. 3435(a)
10:51-1.17	Pharmacy Manual: legend drug dispensing fee add-ons	16 N.J.R. 2738(a)	R.1984 d.574	16 N.J.R. 3436(a)
10:52-1.1, 1.20	Ambulatory surgical centers	16 N.J.R. 3153(a)		
10:52-1.2, 1.3	Covered and non-covered inpatient hospital services	16 N.J.R. 483(a)		
10:52-2	Hospital Services: readopt Admission and Billing Procedures	16 N.J.R. 3159(a)		
10:53-1.1, 1.16	Ambulatory surgical centers	16 N.J.R. 3153(a)		
10:53-1.2, 1.3	Covered and non-covered inpatient hospital services	16 N.J.R. 483(a)		
10:54-1.3	Progress notes for mental health providers	16 N.J.R. 2333(a)		
10:54-3	Preproposal: radioimmunoassay laboratory fees	16 N.J.R. 677(a)		
10:56-1.11	Dental Services: utilization of insurance benefits	16 N.J.R. 1933(a)		
10:59-1.2, 1.4, 1.9, 1.12	Medical Supplier Manual: recycling of durable medical equipment	16 N.J.R. 2048(a)		
10:60-3	Community Care Waiver Program for Elderly and Disabled	16 N.J.R. 3161(a)		
10:61-1.2	Medicaid participation by State, county and municipal labs	16 N.J.R. 3162(a)		
10:63-1.6	Changes in level of long-term care	16 N.J.R. 2049(a)		
10:63-1.22	Long-term care facilities: completion of field audit	16 N.J.R. 2413(a)		
10:63-1.23	Long-term care: final audited rate calculation	16 N.J.R. 2335(a)	R.1984 d.572	16 N.J.R. 3436(b)
10:63-3	Long-term care: readopt Cost and Rate Guideline rules	16 N.J.R. 2484(a)	R.1984 d.573	16 N.J.R. 3437(a)
10:65-2	Medical Day Care Manual: readopt Billing Procedures	16 N.J.R. 2336(a)	R.1984 d.508	16 N.J.R. 3031(b)
10:66-1.1, 1.2, 1.3,1.6, 1.7, 1.9	Ambulatory surgical centers	16 N.J.R. 3153(a)		
10:66-1.9	Progress notes for mental health providers	16 N.J.R. 2333(a)		
10:67-1, 2.6	Readopt Psychologist's Services Manual	16 N.J.R. 3163(a)		
10:67-1.6	Progress notes for mental health providers	16 N.J.R. 2333(a)		
10:69A-6.9	PAAD: authorization to release prescription information	16 N.J.R. 2050(a)		
10:69A-7.1	Pharmaceutical assistance: recovery of benefits correctly made	16 N.J.R. 2051(a)	R.1984 d.571	16 N.J.R. 3439(a)
10:81-1.6, -3, 4.10, 7.30, 7.32, 8.22	PAM: Federally-required AFDC revisions	16 N.J.R. 2833(a)	R.1984 d.569	16 N.J.R. 3439(b)
10:81-3.9, 3.17, 3.40	PAM: support rights; continued absence	16 N.J.R. 3282(a)		
10:81-3.34	PAM: Temporary absence of children from home	15 N.J.R. 2134(a)		
10:81-8.22	PAM: eligibility for medical assistance	16 N.J.R. 2740(a)		
10:82-1.2, 1.3, -2, -3, -4	ASH: Federally-required AFDC revisions	16 N.J.R. 2837(a)	R.1984 d.568	16 N.J.R. 3442(b)
10:82-2.19	ASH: recovery of overpayments	16 N.J.R. 2055(a)		
10:82-3.1–3.7	ASH: resource eligibility in AFDC	16 N.J.R. 486(a)		
10:82-4	ASH: readopt Income rules	16 N.J.R. 2336(b)	R.1984 d.528	16 N.J.R. 3206(b)
10:85-3.2, 4.6	GAM: nonresident eligibility; travel grants	16 N.J.R. 2219(b)	R.1984 d.506	16 N.J.R. 3031(c)
10:85-3.2, 10.6	GAM: willingness to work and penalty period	16 N.J.R. 2741(a)		
10:85-3.3	GAM: unearned income	16 N.J.R. 2056(a)	R.1984 d.507	16 N.J.R. 3032(a)
10:85-3.3	GAM: monthly assistance payment for residential health care	16 N.J.R. 2742(a)		

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10:85-3.3, 12	GAM: medical care eligibility; repeal income standards rules	16 N.J.R. 3165(a)		
10:85-5.3	GAM: outpatient facility services	16 N.J.R. 2488(a)		
10:85-7	GAM: readopt Notices and Hearings rules	16 N.J.R. 2221(a)	R.1984 d.578	16 N.J.R. 3447(a)
10:85-8	GAM: readopt Referral to Other Agency Programs	16 N.J.R. 3166(a)		
10:87-12.1, 12.2	Food Stamps: income deductions; coupon allotments	16 N.J.R. 2844(a)	R.1984 d.567	16 N.J.R. 3450(a)
10:89	Home Energy Assistance	Emergency	R.1984 d.538	16 N.J.R. 3217(a)
10:94-5.4–5.7	Medicaid Only: eligibility computation amounts	16 N.J.R. 2845(a)	R.1984 d.566	16 N.J.R. 3451(a)
10:99	Commodities and Services Council: Rehabilitation Facilities	16 N.J.R. 2338(a)		
10:100-App. A	Supplemental Security Income payment levels	16 N.J.R. 2846(a)	R.1984 d.565	16 N.J.R. 3453(a)
10:128	Residential Child Care rules	16 N.J.R. 10(b)		
10:129	Readopt rules on Child Abuse and Neglect Cases	16 N.J.R. 2224(a)	R.1984 d.489	16 N.J.R. 3033(a)

(TRANSMITTAL 22, dated October 15, 1984)

CORRECTIONS—TITLE 10A

10A:31	Adult county correctional facilities	16 N.J.R. 3284(a)		

(TRANSMITTAL 8, dated July 16, 1984)

INSURANCE—TITLE 11

11:1-2.5-2.8	Property-liability: rate counsel participation	16 N.J.R. 2918(a)		
11:1-10	Repeal rules on Licensing of Financial Institutions, Subsidiaries and Affiliates	16 N.J.R. 2919(a)		
11:1-15	Petitions for rulemaking	16 N.J.R. 2224(b)	R.1984 d.511	16 N.J.R. 3033(b)
11:1-16	Request for rate decrease	16 N.J.R. 3169(a)		
11:2-1.1	Required courses for licensees in property and casualty field	16 N.J.R. 1940(a)	R.1984 d.515	16 N.J.R. 3034(a)
11:2-1.3	Required courses for licensees in life and health field	16 N.J.R. 1943(a)	R.1984 d.477	16 N.J.R. 3036(a)
11:2-10.1	Repeal Personal Lines Insurance rule	16 N.J.R. 2920(a)		
11:2-18, Exh. B	Readable policies: Affidavit of Compliance	16 N.J.R. 1945(a)	R.1984 d.514	16 N.J.R. 3037(a)
11:2-19	Approval of insurance schools and company training programs	16 N.J.R. 2920(b)		
11:2-20	License renewal: continuing education requirement	16 N.J.R. 2922(a)		
11:2-21	Property and casualty coverage: underwriting guidelines	16 N.J.R. 2924(a)		
11:2-23	Advertisement of life insurance and annuities	16 N.J.R. 2926(a)		
11:3-7	Automobile Reparation Reform Act rules: 90-day waiver of expiration	16 N.J.R. 2414(a)		
11:3-7.8, 7.9	PIP premium on additional automobiles	16 N.J.R. 488(a)		
11:3-8	Nonrenewal of auto insurance policies	16 N.J.R. 2930(a)		
11:3-10	Auto physical damage claims	16 N.J.R. 3170(a)		
11:3-11.1	Moped insurance	16 N.J.R. 3285(a)		
11:3-14.3, 14.4, 14.5	Auto insurance: Personal Injury Protection (PIP) options	16 N.J.R. 1692(a)	R.1984 d.480	16 N.J.R. 3037(b)
11:3-15.6	Auto insurance: Buyer's Guide and Written Notice requirements for PIP deductibles	16 N.J.R. 1693(a)	R.1984 d.479	16 N.J.R. 3038(a)
11:3-16	Private passenger automobile rate filings	16 N.J.R. 2934(a)		
11:3-17	Automobile rate filings	16 N.J.R. 2936(a)		
11:3-18	Filing review procedures	16 N.J.R. 2937(a)		
11:3-21	Reduced PIP premium charges	16 N.J.R. 3286(a)		
11:4-6	Reserve standards for individual health insurance policies	16 N.J.R. 2225(a)	R.1984 d.512	16 N.J.R. 3039(a)
11:4-8	Charitable annuities	16 N.J.R. 3172(a)		
11:4-9	Annuity and deposit fund disclosure	16 N.J.R. 2939(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:4-16.8	Medicare Supplement Coverage: disclosure standards	16 N.J.R. 2944(a)		
11:4-22	Individual life insurance: Use of Gender Blended Mortality Tables	16 N.J.R. 1452(a)	R.1984 d.478	16 N.J.R. 3040(a)
11:4-22	Correction: Gender Blended Mortality Tables	16 N.J.R. 1946(a)	R.1984 d.478	16 N.J.R. 3040(a)
11:4-23	Medicare Supplement Policies and Contracts	16 N.J.R. 2945(a)		
11:4-25	Social security disability offset	16 N.J.R. 3287(a)		
11:5-1.19	Real estate branch offices	16 N.J.R. 2228(a)		
11:5-1.24	Closing or transfer of real estate brokerage	16 N.J.R. 2228(b)		
11:5-1.32	Residential rental referral agencies	16 N.J.R. 2952(a)		
11:10-1	Dental plan organizations	16 N.J.R. 2230(a)		
11:14-1.3, 2.1, 2.4, 3.1, 3.3, 4.1, 4.2	Auto body repair facilities	16 N.J.R. 2235(a)		
11:14-1.3	Correction: auto body repair facilities	16 N.J.R. 3453(b)		
11:15-2	Joint insurance funds for local government units	16 N.J.R. 1164(a)	R.1984 d.540	16 N.J.R. 3310(b)

(TRANSMITTAL 22, dated October 15, 1984)

LABOR—TITLE 12

12:15-1.1	Unemployment Compensation: contributions, records and reports	16 N.J.R. 2488(b)		
12:15-1.2	Unemployment benefit payments	16 N.J.R. 2237(a)	R.1984 d.516	16 N.J.R. 3046(a)
12:15-1.3	Unemployment Compensation and Disability: 1985 benefit rates	16 N.J.R. 2343(a)	R.1984 d.517	16 N.J.R. 3049(a)
12:15-1.4	Unemployment Compensation: 1985 taxable wage base	16 N.J.R. 2344(a)	R.1984 d.519	16 N.J.R. 3049(b)
12:15-1.4	Correction: 1985 Unemployment Compensation Taxable Wage Base	16 N.J.R. 2465(a)	R.1984 d.519	16 N.J.R. 3049(b)
12:15-1.4	Correction to adoption	_____	_____	16 N.J.R. 1320(a)
12:15-1.5	Unemployment Compensations: 1985 Contribution rates for governmental entities	16 N.J.R. 2344(b)	R.1984 d.518	16 N.J.R. 3050(a)
12:15-1.6	Base week for Unemployment Compensation and Disability	16 N.J.R. 2345(a)	R.1984 d.521	16 N.J.R. 3050(b)
12:15-1.7	Eligibility for Unemployment Compensation and Disability: alternate earnings test	16 N.J.R. 2345(b)	R.1984 d.520	16 N.J.R. 3050(c)
12:16	Contributions, records, reports	16 N.J.R. 2488(b)		
12:17-1.2-1.6, 3.1, 4.1, 4.2, 5.1, 11.2, 12	Unemployment benefit payments	16 N.J.R. 2237(a)	R.1984 d.516	16 N.J.R. 3046(a)
12:19	Contributions, records, reports	16 N.J.R. 2488(b)		
12:20-3.2	Unemployment benefit payments	16 N.J.R. 2237(a)	R.1984 d.516	16 N.J.R. 3046(a)
12:90	Boilers, pressure vessels and refrigeration systems: safe operation	16 N.J.R. 1172(a)	R.1984 d.557	16 N.J.R. 3454(a)
12:100	Safety and health standards for public employees	16 N.J.R. 2057(a)	R.1984 d.510	16 N.J.R. 3051(a)
12:235-1.5	1985 Workers' Compensation Benefit Rates	16 N.J.R. 2346(a)	R.1984 d.522	16 N.J.R. 3054(a)
12:235-1.5	Correction: 1985 Workers' Compensation Benefit Rates	16 N.J.R. 2465(b)	R.1984 d.522	16 N.J.R. 3054(a)

(TRANSMITTAL 17, dated October 15, 1984)

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

12A	Departmental rules; small business set-aside contracts	16 N.J.R. 1955(a)	R.1984 d.421	16 N.J.R. 2683(a)

LAW AND PUBLIC SAFETY—TITLE 13

13:2-17	ABC: readopt rules on Appeals	16 N.J.R. 2954(a)
13:2-19	ABC: readopt rules on Disciplinary Proceedings	16 N.J.R. 2957(a)
13:2-23.16, -24, -35	ABC proposal: industry marketing and sales practices	16 N.J.R. 3292(a)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:2-31	ABC: readopt rules on Seizure Hearings	16 N.J.R. 2959(a)		
13:13	Discrimination against handicapped persons	16 N.J.R. 838(a)		
13:18-6.1	DMV: notification of liability coverage termination	16 N.J.R. 3174(a)		
13:19-10	Point System and Driving During Suspension: 25-day waiver of expiration of rules	16 N.J.R. 502(a)		
13:20-12	Motor Vehicles: readopt Accident Prevention Clinic rules	16 N.J.R. 2347(a)	R.1984 d.492	16 N.J.R. 3054(b)
13:20-28	New car inspection	16 N.J.R. 2500(a)		
13:20-32.14	Reinspection centers: mechanic certification	16 N.J.R. 3175(a)		
13:20-33.1, 33.50	Licensed reinspection centers	16 N.J.R. 3288(a)		
13:20-34	Motor vehicle registration identifying marks	16 N.J.R. 2743(a)		
13:20-37	Motor vehicles with modified chassis height	16 N.J.R. 2501(a)		
13:20-38	Maximum length for auto transporters	16 N.J.R. 3176(a)		
13:21-1.3, 1.4, 1.5	Driver's licenses and social security numbers	16 N.J.R. 2746(a)		
13:22	Motor vehicle race tracks	16 N.J.R. 2503(a)		
13:24-2	Motor Vehicles: readopt Emergency Vehicle Equipment rules	16 N.J.R. 2347(b)	R.1984 d.491	16 N.J.R. 3054(c)
13:27-3.13	Certification of landscape architects: fee schedule	16 N.J.R. 3176(b)		
13:33-1.28, 1.41, 2.1, 2.2	Ophthalmic dispensers and technicians: minimum optical equipment	16 N.J.R. 2062(a)	R.1984 d.534	16 N.J.R. 3207(a)
13:33-1.38	Eyeglass standards and tolerances	16 N.J.R. 3288(b)		
13:33-4.1	Readopt Dispensing of Contact Lenses rule	16 N.J.R. 2513(a)		
13:35-2.4	Chiropractic licensure	16 N.J.R. 3177(a)		
13:35-2.13	Graduate physician pending licensure: privileges and conditions	16 N.J.R. 216(a)		
13:35-6.1	Medical practice identification	16 N.J.R. 3178(a)		
13:35-6.6	Requirement for issuing prescriptions	16 N.J.R. 2415(a)		
13:35-6.14	Therapeutic treatment by unlicensed Medical aides	16 N.J.R. 2065(a)		
13:35-7.1	Chiropractic practice: standards and scope	16 N.J.R. 686(a)	R.1984 d.533	16 N.J.R. 3208(a)
13:36-9	Funeral industry practices	16 N.J.R. 1315(a)	R.1984 d.525	16 N.J.R. 3210(a)
13:37-2–6	Nursing licensure	16 N.J.R. 3179(a)		
13:37-13.1, 13.2	Nurse anesthetist qualification	16 N.J.R. 2067(a)	R.1984 d.493	16 N.J.R. 3054(d)
13:38-2	Readopt rules of optometric practice	16 N.J.R. 3289(a)		
13:40-3.1	Engineers and land surveyors: prohibited acts	16 N.J.R. 1321(a)	R.1984 d.486	16 N.J.R. 3055(a)
13:40-8	Engineers and land surveyors: release of project records	16 N.J.R. 1027(a)		
13:40-9	Supervision of engineering and land surveying projects	16 N.J.R. 2067(b)		
13:45A-6	Readopt rules on deceptive practices in auto sales	16 N.J.R. 2349(a)	R.1984 d.526	16 N.J.R. 3214(a)
13:45A-7	Readopt rules on deceptive practices in auto repair and advertising	16 N.J.R. 2350(a)	R.1984 d.527	16 N.J.R. 3214(b)
13:46	Boxing rules	16 N.J.R. 2241(a)		
13:46	Boxing Rules	16 N.J.R. 2962(a)		
13:46-18.15	Scheduling of boxing programs	16 N.J.R. 1030(a)		
13:46-8.19, 10.7	Scoring of boxing contest; announcement of decision	16 N.J.R. 1956(a)		
13:47A-12	Limited registration for securities broker-dealers and agents	15 N.J.R. 2146(a)		
13:70-2	Thoroughbred rules: readopt Definitions	16 N.J.R. 2976(a)		
13:70-12.4	Claimed horse	16 N.J.R. 2348(a)	R.1984 d.524	16 N.J.R. 3215(a)
13:70-14A	Thoroughbred racing: medication and testing procedures	16 N.J.R. 3180(a)		
13:70-14A.13, 14A.15	Thoroughbred rules: breathalyzer tests for jockeys and track personnel; urine tests	16 N.J.R. 1457(a)		
13:71-4	Harness rules: readopt Definitions	16 N.J.R. 2976(a)		
13:71-19.4	Harness Racing: safety helmets	16 N.J.R. 2977(a)		
13:71-23	Harness Racing: medication and testing procedures	16 N.J.R. 3182(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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14:3-4.7	Adjustment of charges for inaccurate billings	16 N.J.R. 511(a)		
14:3-7.12, 7.13	Discontinuance of service for non-payment of combined utilities	16 N.J.R. 2747(a)		
14:3-8.1, 8.2	Suggested formulae for extension of utility service	16 N.J.R. 1460(a)		
14:3-10.9	Petitions by solid waste collectors	16 N.J.R. 3292(b)		
14:17-18.1-18.3	CATV: common tariff rules	16 N.J.R. 2978(a)		
14:18-14	Pre-proposal: landlord compensation for installation of cable TV	16 N.J.R. 2069(a)		
	(TRANSMITTAL 20, dated October 15, 1984)			
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14A:3-4.4	Energy Subcode: thermal efficiency standards	16 N.J.R. 2748(a)		
14A:20-1	Energy conservation planning and evaluation	16 N.J.R. 3293(a)		
	(TRANSMITTAL 14, dated October 15, 1984)			
STATE—TITLE 15				
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PUBLIC ADVOCATE—TITLE 15A				
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TRANSPORTATION—TITLE 16				
16:20A, 20B	1984 Trust Fund Authority Act: county and municipal aid Emergency	16 N.J.R. 2456(a)	R.1984 d.552	16 N.J.R. 3470(a)
16:28-1.47	Speed rate on River Drive in Passaic	16 N.J.R. 3185(a)		
16:28A-1.1, 1.7, 1.9, 1.18, 1.19, 1.44, 1.51	Parking on Routes US 1, 9, 17, 27, 28, 88 and 168	16 N.J.R. 3186(a)		
16:28A-1.19, 1.26	Parking on Routes 28 in Middlesex and 36 in Union Beach	16 N.J.R. 2513(b)	R.1984 d.551	16 N.J.R. 3476(a)
16:28A-1.25	Parking on Route 35 in Ocean Twp, Monmouth County	16 N.J.R. 2070(a)	R.1984 d.482	16 N.J.R. 3055(b)
16:28A-1.27, 1.37	Parking on Route 38 in Mt. Laurel and Route 70 in Pennsauken	16 N.J.R. 3188(a)		
16:28A-1.28, 1.85, 1.103	Parking on Routes 40, 161, and 140	16 N.J.R. 3296(a)		
16:28A-1.31	Parking on Route 45 in Harrison Township	16 N.J.R. 2749(a)	R.1984 d.555	16 N.J.R. 3477(a)
16:28A-1.32, 1.33, 1.102	Parking on Routes 46, 47, and 48	16 N.J.R. 3297(a)		
16:28A-1.93, 1.101	Parking on US 322 in Harrison Twp. and Route 109 in Lower Twp.	16 N.J.R. 3189(a)		
16:28A-1.100	Parking on Route 50 in Egg Harbor	16 N.J.R. 2750(a)	R.1984 d.556	16 N.J.R. 3477(b)
16:29-1.26, 1.39–1.45	Passing on Routes 38, 53, 71, 72, 88, 169, 173 and 182	16 N.J.R. 3189(b)		
16:30-2.9	Yield intersections along US 130, North Brunswick	16 N.J.R. 2070(b)	R.1984 d.483	16 N.J.R. 3056(a)
16:30-6.3	Weight limits on Route 173, Greenwich Twp	16 N.J.R. 2750(b)	R.1984 d.554	16 N.J.R. 3478(a)
16:31-1.22	Turns on US 130 in North Brunswick	16 N.J.R. 2071(a)	R.1984 d.484	16 N.J.R. 3056(b)
16:32-2	Trucks exempted from Federal bridge formula	16 N.J.R. 2072(a)		
16:41B	Newspaper dispensers on State highways	16 N.J.R. 225(a)		
16:41B	Public hearing: Newspaper dispensers on State highways	16 N.J.R. 1957(a)		
16:44-3.2	Distribution and sale of construction plans and specifications	16 N.J.R. 2515(a)		
16:44-5.1	Receipt of bids: requirements	16 N.J.R. 3191(a)		
16:49	Transportation of hazardous materials	16 N.J.R. 2979(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:53D	Zone of rate freedom	16 N.J.R. 3298(a)		
16:62	Air safety and hazardous zoning	16 N.J.R. 860(b)		
16:77	Use of occupancy of NJ TRANSIT-owned property	16 N.J.R. 2415(b)		
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TREASURY-GENERAL—TITLE 17				
17:1-1.10	Pensions: minimum adjustments for reconciliation of members' accounts	16 N.J.R. 3192(a)		
17:1-1.17	Administrative expenses prorated	16 N.J.R. 2420(a)	R.1984 d.559	16 N.J.R. 3478(b)
17:1-2.3	Alternate Benefit Program: salary reduction and deduction	16 N.J.R. 2350(b)		
17:1-8.12	Social Security late filing penalties	16 N.J.R. 2421(a)	R.1984 d.558	16 N.J.R. 3478(c)
17:2	Readopt Public Employees' Retirement System rules	16 N.J.R. 2515(b)	R.1984 d.562	16 N.J.R. 3479(a)
17:5-5.5	State Police Retirement: outstanding loans	16 N.J.R. 2997(a)		
17:6-1, 2, 3, 4	Readopt rules on Consolidated Police and Firemen's Pension Fund	16 N.J.R. 2997(b)		
17:6-1.4	Police and firemen's pension: election of Commission members	16 N.J.R. 2999(a)		
17:9-2.3	State Health Benefits Program: annual enrollment period	16 N.J.R. 2422(a)		
17:9-2.8, 2.12, 3.4, 3.7	State Health Benefits Program: coverage; dependents	16 N.J.R. 2422(b)	R.1984 d.560	16 N.J.R. 3479(b)
17:9-6.3	Health Benefits Program: retired employees' coverage	16 N.J.R. 3192(b)		
17:19-2	Construction contracts: prequalification of bidders	16 N.J.R. 2751(a)		
17:20-4.10	Transfer of lottery license	16 N.J.R. 2758(a)		
17:20-6.1	Distribution of lottery tickets	16 N.J.R. 2758(b)		
	(TRANSMITTAL 24, dated October 15, 1984)			
TREASURY-TAXATION—TITLE 18				
18:7-1.17, 11.15	Casino consolidated tax return	16 N.J.R. 2423(a)		
18:7-3.17, 4.17, 15.1–15.5	Corporation business tax and urban enterprise zones	16 N.J.R. 1325(a)	R.1984 d.496	16 N.J.R. 3057(a)
18:7-7.1, 7.2	Corporation Tax: "regular place of business"; allocation	16 N.J.R. 2999(b)		
18:7-8.3	Corporation Tax: discretionary adjustment of 100% allocation factor	16 N.J.R. 3002(a)		
18:12-6A.1, 6A.2	Local property tax exemptions	16 N.J.R. 2424(a)	R.1984 d.550	16 N.J.R. 3480(a)
18:12-7.12	Homestead rebate: extension of time to file	Emergency	R.1984 d.584	16 N.J.R. 3498(a)
18:12A-1.9, 1.12, 1.13	County boards of taxation	16 N.J.R. 2760(a)	R.1984 d.580	16 N.J.R. 3480(b)
18:24-9.11	Sales by exempt organizations	16 N.J.R. 3298(b)		
18:24-31.1–31.9	Sales tax and urban enterprise zones	16 N.J.R. 1332(a)	R.1984 d.495	16 N.J.R. 3059(a)
18:24-31.4	Certified vendors within urban enterprise zones	16 N.J.R. 3193(a)		
18:35-2.12	Setoff of individual liability: collection assistance fee	16 N.J.R. 2760(b)	R.1984 d.579	16 N.J.R. 3481(a)
18:36	Savings institution tax	16 N.J.R. 3194(a)		
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TITLE 19 SUBTITLES A-L-OTHER AGENCIES (Except Casino Control Commission)				
19:4-5.6, 5.6A, 6.28	Zoning changes	16 N.J.R. 2351(a)		
19:8-2.12	Emergency service charges	16 N.J.R. 3299(a)		
19:8-3.1	Bus tolls	16 N.J.R. 3300(a)		
19:8-5, 6	Purchase of commodities and services: bidding threshold	16 N.J.R. 2761(a)	R.1984 d.544	16 N.J.R. 3481(b)
19:9-1.9	Traffic control	16 N.J.R. 2517(a)	R.1984 d.547	16 N.J.R. 3485(a)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
19:25-15, 16	Public financing of gubernatorial campaigns	16 N.J.R. 2765(a)	R.1984 d.561	16 N.J.R. 3485(b)
19:61-5.5	State government positions with casino responsibility	16 N.J.R. 517(a)		
	(TRANSMITTAL 23, dated October 15, 1984)			
TITLE 19 SUBTITLE K-CASINO CONTROL COMMISSION				
19:41-2.8	Fire safety unit	16 N.J.R. 3195(a)		
19:41-7.14	Vendor registration form	16 N.J.R. 3302(a)		
19:44-8.3, 9.4, 15.4	Gaming schools	16 N.J.R. 2352(a)	R.1984 d.563	16 N.J.R. 3494(a)
19:45-1.1, 1.25	Cash equivalents	16 N.J.R. 3302(b)		
19:45-1.1, 1.35, 1.46	Redemption of bus coupons	16 N.J.R. 2075(b)		
19:45-1.2, 1.5 1.8	Recordkeeping	16 N.J.R. 3303(a)		
19:45-1.11,1.19 1.25-1.29	Accounting and internal controls: patron credit; tips	16 N.J.R. 2076(a)		
19:45-1.24	Patrons' cash deposits	16 N.J.R. 1710(a)		
19:46-1.5, 1.6, 1.25, 1.26	Use and handling of gaming tokens	16 N.J.R. 41(a)	R.1984 d.564	16 N.J.R. 3494(b)
19:46-1.20	Inspection of gaming equipment	16 N.J.R. 1467(a)		
19:46-1.33	Use and handling of tokens	16 N.J.R. 41(a)		
	(TRANSMITTAL 10, dated October 15, 1984)			

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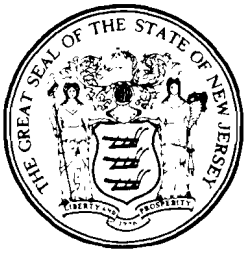

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