

# NEW JERSEY



# REGISTER

## REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS\*, PAGE 487.

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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.*

### TABLE OF RULES IN THIS ISSUE

#### RULE PROPOSALS

<b>Interested persons comment deadline</b> .....	<b>340</b>
<b>COMMUNITY AFFAIRS</b>	
UCC: duties of construction officials .....	340(a)
UCC: private enforcing agencies and trainee positions .....	341(a)
Readopt rules on Rooming and Boarding Houses .....	341(b)
Readopt County Offices on Aging rules .....	342(a)
<b>EDUCATION</b>	
State facility pupil assignments: district of residence .....	344(a)
Special Education .....	345(a)
Library assistance: readopt Incentive Grant Program rules .....	346(a)
<b>ENVIRONMENTAL PROTECTION</b>	
Status of the osprey .....	350(a)
Permit to kill wild deer .....	350(b)
Oyster management .....	352(a)
Hazardous waste from non-specific sources; hazardous constituents .....	354(a)
Hazardous waste management: warfarin and zinc phosphide .....	356(a)
<b>HEALTH</b>	
Immunization of school children: mumps vaccine .....	358(a)
Narcotic treatment programs: registration fee .....	359(a)

#### HUMAN SERVICES

Community training and family-based respite care homes .....	359(b)
Pharmaceutical Assistance for Aged and Disabled .....	367(a)
PAM: Reimbursement by counties to State .....	369(a)
<b>INSURANCE</b>	
Reporting excess profits .....	370(a)
Approved real estate schools: requirements .....	376(a)
<b>LAW AND PUBLIC SAFETY</b>	
Police Training Commission: radar instructor certification .....	377(a)
Readopt rules on Motor Vehicle Titles .....	377(b)
Readopt Board of Dentistry general provisions .....	378(a)
Veterinary medicine: training certificate fee .....	383(a)
Bargaining or negotiating posted sales price: public hearings .....	383(b)
<b>TRANSPORTATION</b>	
Route 94 speed limits, Route 183 parking, Sussex County .....	384(a)
Outdoor advertising permit fees .....	385(a)
<b>HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION</b>	
Change in zoning designation .....	385(b)

(Continued on Back Cover)

# RULE PROPOSALS

Interested persons may submit, in writing, information or arguments concerning any of the following proposals until **March 21, 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.

## COMMUNITY AFFAIRS

(a)

### DIVISION OF HOUSING AND DEVELOPMENT

Proposals numbered PRN 1985-85, 91, and 92 are authorized by John P. Renna, Commissioner, Department of Community Affairs.

Address comments and inquiries to:

Michael L. Ticktin, Esq.  
Administrative Practice Officer  
Division of Housing and Development  
CN 804  
Trenton, New Jersey 08625

### Uniform Construction Code Duties of Construction Officials

#### Proposed Amendment: N.J.A.C. 5:23-4.5

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

Proposal Number: PRN 1985-91.

The agency proposal follows:

#### Summary

Since the mechanical subcode (N.J.A.C. 5:23-3.20), like the energy subcode (N.J.A.C. 5:23-3.18), is enforced by more than one subcode official, the construction official is required to coordinate its enforcement. The construction official is also required to respond within three days to requests for construction permit or certificate of occupancy information from the municipal search officer and to comply with any local procedures to provide this information to the municipal search officer.

The municipal search officer, who is usually the tax collector, is designated by the municipality to find information concerning tax or other municipal liens.

#### Social Impact

By providing necessary information concerning tax or other municipal liens, to the municipal search officer promptly, the construction official can prevent the loss of tax revenue that can result if a tax search omits notice of liability for pending added assessments.

Municipalities may benefit if they can avoid loss of added assessment revenue through the search officer's ability to give timely notice of pending assessments.

#### Economic Impact

The need for construction officials to generate additional notices may lead to added administrative and clerical workload in some cases.

In addition, the buyer and seller will need to decide how the added assessment will be paid.

## NEW JERSEY REGISTER

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

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**PROPOSALS**

**Interested Persons see Inside Front Cover**

**COMMUNITY AFFAIRS**

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

5:23-4.5 Municipal enforcing agencies—administration and enforcement

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

(f) Duties of construction officials:

1. The construction official shall enforce the regulations and:

i.-xvii. (No change.)

xviii. Coordinate the activities of the subcode officials in enforcement of the energy and mechanical subcodes [.]

xix. Reply within three business days to any request from the municipal search officer for information concerning construction permits or certificates of occupancy;

xx. Comply with any local procedures which may be established by the governing body to provide the municipal search officer with information concerning construction permits and certificates of occupancy.

2. (No change.)

(g)-(h) (No change.)

(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 1985-92.

The agency proposal follows:

**Summary**

The proposed amendment reestablishes the right of private enforcing agencies to establish trainee positions which had been inadvertently deleted in a prior amendment and provides that, with the approval of the municipal construction official, private agency trainees may function in a municipality in the same manner as would public agency trainees, with the same rights and subject to the same conditions.

**Social Impact**

The proposed amendment will increase job opportunities for code enforcement trainees while insuring control by a public official of their use by private enforcing agencies providing inspection services under contract to a municipality.

**Economic Impact**

There will be economic benefit both to the people who will be able to be hired as trainees and to the private enforcing agencies that contract with municipalities to perform subcode enforcement.

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. Public enforcing agencies may establish code enforcement trainee positions to employ persons who may be eligible to be licensed within five years.

**i. Private enforcing agencies may establish code enforcement trainee positions. With the approval of the construction official of a municipality, trainees who may be eligible to be licensed within five years shall be allowed to perform the same functions in that municipality, subject to the same conditions, as a trainee employed by a public enforcing agency would be permitted to perform, shall be registered by the construction official with the Department of Community Affairs as provided in 2 below and shall be deemed to be occupying municipal trainee positions for purposes of 11 below.**

2.-14. (No change.)

(b)

**Rooming and Boarding Houses**

**Proposed Readoption: N.J.A.C. 5:27**

Authority: N.J.S.A. 55:13B-4.

Proposal Number: PRN 1985-85.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 5:27 expires on July 1, 1985. The re-adoption of the rules becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of their re-adoption.

The agency proposal follows:

**Summary**

The Department of Community Affairs proposes to re-adopt the Regulations Governing Rooming and Boarding Houses (N.J.A.C. 5:27). The Department finds that these regulations, which implement the Rooming and Boarding House Act of 1979, (N.J.S.A. 55:13B-1 et seq.) continue to be necessary for the protection of the approximately 40,000 residents of approximately 2,600 rooming and boarding houses in the State.

The Department has carefully reviewed the regulations. Inasmuch as amendments (for example, in the areas of licensing fees at N.J.A.C. 5:27-1.6, and fire safety, at N.J.A.C. 5:27-5) have continually been made as the need for them has become clear over the course of the past 4½ years, the Department now finds that the regulations, in their present form, are necessary and should continue in effect, subject to such continuing future modification as may be warranted.

Unlike other housing and building codes, the rooming and boarding house regulations, in compliance with the statute, go beyond issues of building and fire safety and building maintenance and deal also with residents' rights, security and comfort, record maintenance by owners and operators, and the quality of personal and financial services. There is also a subchapter dealing with the responsibilities of the Department under the Boarding House Life Safety Improvement Act of 1981, N.J.S.A. 5:14J cite 52 et seq. which established a rental assistance fund used to pay off loans issued by the Housing and Mortgage Finance Agency to finance life safety improvements in boarding houses.

**Social Impact**

Failure to readopt N.J.A.C. 5:27 would deprive rooming and boarding house residents of the benefits of a program that has, to date, caused all violations to be abated in 1,049 facilities, participated in the issuance of life safety loans to 64 facilities, and closed 124 facilities found to be imminently hazardous and relocated their 1,414 residents. An additional 1,219 facilities are in the process of abating violations, a process that can only be required to continue as long as the regulations remain in effect.

**Economic Impact**

If the regulations were to expire, it is unclear what would happen to the 232 life safety loan applications now being processed by the Housing and Mortgage Finance Agency since the regulations governing rental assistance agreements and eligibility would no longer exist. If the maintenance regulations were to expire, owners preferring to save themselves the expense of making repairs and improvements required by the regulations would be free to do so.

As of December 16, 1984, the amount of loans committed was \$8,187,500. The amount of loans closed was \$5,356,600. The amount of loans disbursed was \$1,017,474. Costs to the State concerning the enforcement of the proposed readoption are subsumed in the present budget.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 5:27.

**(a)**

**DIVISION ON AGING**

**County Offices on Aging**

**Proposed Readoption with Amendments:  
N.J.A.C. 5:71**

Authorized By: Ann Zahora, Director, Division on Aging, Department of Community Affairs.  
Authority: N.J.S.A. 40:23-6.44.  
Proposal Number: PRN 1985-83.

Address comments and inquiries to:  
Ann Zahora, Director,  
Division on Aging  
Department of Community Affairs  
CN 807  
Trenton, New Jersey 08625-0807

The agency proposal follows:

**Summary**

In accordance with Executive Order No. 66(1978), N.J.A.C. 5:71 will expire on April 1, 1985. The Division on Aging proposes to readopt these rules with amendments. The current rules which define the administrative structure at the county level required for the allocation of Federal and State funds for the planning and for the provision of programs and services for older people. The Division which is the sole State agency responsible for the coordination of all State activities related to the purposes of the Older Americans Act, as amended, cooperates with Boards of Chosen Freeholders by

awarding grants of State and Federal funds for the planning of coordinated service delivery systems by county offices on aging and for their related administrative costs. These rules are proposed for readoption with changes to clarify the authority and responsibility of the State Division on Aging under N.J.S.A. 40:23-6.44 to promulgate rules and regulations regarding (1) the proper control and management of the activities of County Offices on Aging; (2) the certification of persons to hold positions as executive directors in such offices; and (3) the administration of grant funds available for the legislative purposes set forth in N.J.S.A. 40:23-6.38 et seq. and, consistent with these responsibilities, to also provide for the designation of such offices as area agencies on aging under the Older Americans Act Amendments of 1984 (P.L. 98-459). The proposed rules shall also, upon readoption with the changes noted, clarify the responsibilities of County Boards of Chosen Freeholders in the establishment and support of County Offices on Aging for the planning and coordination of programs and services for older persons. The proposed rules ensure the uniform and consistent distribution of funds and other resources to a central place in each county which shall be the County Office on Aging established by a Board of Chosen Freeholders following designation of that office as an area agency on aging by the Division on Aging.

**Social Impact**

The Division on Aging has been designated in accordance with Federal and State statutes as the agency primarily responsible for the comprehensive planning and coordination of programs and services for older persons on a Statewide basis. These programs include but are not limited to outreach, information and referral and other access services, meals programs, legal assistance and in-home services. The Division, in accordance with Federal and State statutory intent, requires that planning of programs and services for the elderly also take place at the county level so that there is an opportunity for older persons in every community to participate in the planning of programs and services to meet their needs. The establishment of County Offices on Aging and their designation as area agencies on aging assists the Division in overseeing the planning of comprehensive and coordinated service delivery systems, promotes the effective and efficient use of resources, especially those which are made available to counties through the Division, and avoids the kind of duplication and overlapping of activities which could diminish the full and positive social impact of programs and services upon older persons intended by legislation.

**Economic Impact**

In 1981 the Division on Aging was allocated \$20,653,300 in Federal funds for New Jersey from the Older Americans Act. The State appropriated \$901,544 to meet its federally mandated share of program costs and also appropriated \$420,000 through Public Law 1970 Chapter 248 to reimburse some of the administrative costs of county offices on aging. In 1985 Federal funds increased to \$21,633,751 and the mandated State share increased to \$1,208,000. State funds appropriated under Public Law 1970 Chapter 248 remain at \$420,000. The combination of State and Federal funds represents an overall five year increase of 6.1 percent. Allocations of funds to counties are made in accordance to a published formula.

The proposed rules will neither increase nor decrease the proportion of State and Federal funds available for allocation to each county through the Division on Aging.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 5:71.

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

## CHAPTER 71

### COUNTY OFFICES ON AGING

#### SUBCHAPTER 1. GENERAL PROVISIONS

5:71-1.1 (No change.)

5:71-1.2 Designation of grantees

(a) [Pursuant to the Comprehensive Services Amendments of 1978 (P.L. 95-478) to the Older Americans Act of 1965 as amended or as may be subsequently amended (hereinafter referred to as the Older Americans Act), the State Division on Aging, Department of Community Affairs (hereinafter referred to as the Division on Aging), has designated each county in the State as a planning and service area.] **The Division on Aging, in the Department of Community Affairs, pursuant to its authority under the Older Americans Act of 1965 as amended (P.L. 98-459), or as may be subsequently amended, has designated each county as a planning and service area and has designated within each such county an area agency on aging to prepare, develop and carry out an area plan on aging.**

(b) [Based on this designation, the Board of Chosen Freeholders (hereinafter referred to as Grantee) of the respective counties may, by resolution, establish a County Office on Aging. Upon such establishment, the Grantee shall:] **The designated area agency on aging will be a County Office on Aging established pursuant to N.J.S.A. 40:23-6.44 or other agency or organization which the Division on Aging deems able to perform the functions of an area agency on aging.**

(c) **When the County Office on Aging has been designated as the area agency on aging, the Board of Chosen Freeholders (hereinafter referred to as the grantee) shall:**

1.-2. (No change.)

3. Ensure that the County Office on Aging will have complete authority and responsibility to plan and develop all policy on programs for older persons under an approved area plan on aging. Such office may be an agency whose single purpose is to administer programs for older persons, or a multi-purpose agency with the authority and capacity to administer human services in the county. A multi-purpose agency must delegate all its authority and responsibility under the Older Americans Act to a single organizational unit within the agency [unless a waiver is requested from and approved by the Division on Aging].

5:71-1.3 Functions

(a) [The County Office on Aging shall have duties, responsibilities and functions which include but are not limited to:

1. Serve as the area agency on aging in the county as provided by the Older Americans Act to develop and submit to the Division on Aging an Area Plan on Aging in a format and for a time period specified by the State setting forth actions to be taken during the appropriate fiscal years(s).]

**The County Office on Aging as the designated area agency on aging will have duties, responsibilities and functions which include but are not limited to:**

**1. Prepare, develop and carry out an area plan on aging which has been submitted to and approved by the Division on Aging.**

2.-4. (No change.)

5. Act as the [legal extension of the Division on Aging, complying with] **central place in each county planning and service area responsible for the implementation of** all policies and procedures [as may be promulgated] **issued** by the Division [towards achieving] **to achieve** at a local level the goals which the Division addresses in its statewide efforts.

6.-7. (No change.)

5:71-1.4 Executive director

(a) The executive director of the County Office on Aging shall have responsibilities which include but are not limited to the following:

1.-6. (No change.)

**7. Develop and exercise methods of administration necessary for the proper administration of the Office on Aging, including effective and efficient procedures for planning and coordinating with Federal, State and local agencies with resources of benefit to older persons.**

(b) The executive director shall be a full-time qualified professional appointed by the respective grantee in compliance with applicable Federal, State and local regulations governing personnel administration **including the requirements of merit employment systems.** [and] **Selection will be made in** [with the] consultation [of] **with** the Division on Aging.

(c) (No change.)

5:71-1.5 (No change.)

5:71-1.6 (No change.)

#### SUBCHAPTER 2. STATE AID TO COUNTY OFFICES ON AGING

5:71-2.1 (No change.)

5:71-2.2 Cost sharing requirements

(a) The Division on Aging shall [participate and] pay to each County Office on Aging **which the Division has designated as the area agency on aging** one-half of the amount of the annual allowable costs of the Office, provided the State appropriates such funds. In no case, however, may the Division on Aging's grant to an office for a calendar year exceed \$20,000.

(b) (No change.)

5:71-2.3 Audit procedures

(a) All financial activities of the [project] **Office** are subject to a Division on Aging audit. Any exception which might result from a State audit shall be deducted and credited against the State aid that a grantee is to receive under [this act.] **P.L. 1970 c. 248, N.J.S.A. 40:23-6.44.**

(b) The County Office on Aging **which the Division has designated as the area agency on aging**, [through the board of chosen freeholders,] is required to provide the Division on Aging, **through the board of chosen freeholders**, with [a certified audit of all grantees] **supplemental schedules to a single agency audit pursuant to the requirements of the Single Audit Act of 1984 (P.L. 98-502)** for all funds received under [Title III of] the Older Americans Act, **as amended (P.L. 98-459), except when the board of chosen freeholders elects to secure a separate audit of the Office on Aging area plan grant.** [no later than April 15 following completion of the contract year.] **Such supplemental schedules or separate audits must be provided to the Division no later than April 15 following completion of the grant agreement year.**

5:71-2.4 (No change.)

# EDUCATION

## STATE BOARD OF EDUCATION

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

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

### (a)

#### **Business Services; State Aid District of Residence, Method of Determining and Address Submission**

#### **Proposed New Rules: N.J.A.C. 6:20-5.3 and 5.4**

Authority: N.J.S.A. 18A:4-15 and 18A:7B-12.  
Proposal Number: PRN 1985-102.

The agency proposal follows:

##### **Summary**

The new rules are being proposed upon the advice of the Attorney General. The rules establish an administrative procedure for determining the district of residence for children in State facilities or who have been placed by State agencies in group homes, private schools or out-of-state facilities and for address submission for school funding purposes. The proposed rules will permit the Division of Finance and the Departments of Correction and Human Services to attempt to resolve disputes which arise as a result of an assignment of a district of residence under the criteria established by the "State Facilities Education Act of 1979," N.J.S.A. 18A:7B-12. The rules also provide direction to the Departments of Correction and Human Services concerning the submission of addresses in specific situations.

##### **Social Impact**

The proposed new rule will benefit district boards of education by establishing an administrative mechanism for resolving, without a formal appeal, many of the disputes which arise as a result of State facility pupil assignments. This proposal will also benefit pupils whose services are delayed because there is a dispute concerning assignment of a district of residence. The proposal will also eliminate some of the problems which have arisen concerning addresses for purposes of State funding.

##### **Economic Impact**

The proposed new rules will have a positive economic impact on district boards of education since the new rules will reduce the costs associated with a formal appeal and eliminate

some problems which could result in a formal appeal. District Boards of Education which may have been forced in the past to litigate a dispute concerning an assignment of a district of residence may be spared the expense associated with litigation, since this proposal provides an informal mechanism which can be used to resolve disputes.

Full text of the proposal follows.

#### 6:20-5.3 [(Reserved)] **Method of determining the district of residence**

(a) The district of residence for school funding purposes shall be determined according to the following criteria:

1. The "present district of residence" of a child in a residential State facility defined in N.J.S.A. 18A:7A-3 and referred to in paragraph one of N.J.S.A. 18A:7B-12(b) shall mean the New Jersey district of residence of the child's parent(s) or guardian(s) as of the last school day of September of the pre-budget year.

2. The "present district of residence" of a child placed by a State agency in a group home, private school or out-of-State facility also referred to in paragraph one of N.J.S.A. 18A:7B-12(b) shall mean the New Jersey district of residence of the child's parent(s) or guardian(s) as of the date of the child's initial placement by the State agency. In subsequent school years spent in the educational placement made by a State agency, the child's "present district of residence" shall be determined in the same manner as for a child in a residential State facility as set forth in 1, above.

3. The "district of residence" referred to in paragraph two of N.J.S.A. 18A:7B-12(b) shall mean the New Jersey district of residence in which the child resided with his or her legal guardian immediately prior to his or her initial admission to a State facility or placement by a State agency.

(b) The Commissioner shall determine the "present district of residence" or "district of residence" referred to in N.J.S.A. 18A:7B-12(b) based upon the address submitted by the Department of Corrections or the Department of Human Services on forms prepared by the Department of Education.

(c) The Commissioner shall notify district boards of education of the determination of the district of residence.

(d) A district board of education contesting the Commissioner's determination of district of residence shall submit a written notification that a dispute exists to the Assistant Commissioner, Division of Finance, within 30 days of the receipt of a final notice that a child was determined to be a resident of the district for purposes of State funding. As part of this written notice, the following information shall be submitted:

1. A written statement detailing the effort of the district board of education to verify the determination of the Commissioner;

2. Written rationale for rejecting the determination of the Commissioner;

3. Any additional information the district board of education has obtained which might enable redetermination of the district of residence.

(e) The Division of Finance shall attempt to resolve the dispute administratively and shall notify the district whether a redetermination of district of residence will be made within 90 days of the receipt of the written notification that a dispute exists.

(f) A district board of education may initiate a formal proceeding before the Commissioner of Education to resolve

such a dispute if the Division of Finance is unable to resolve a dispute within the 90 day time limit, by filing a Petition of Appeal with the Commissioner of Education pursuant to the provisions of N.J.A.C. 6:24-1.1 et seq.

6:20-5.4 [(Reserved)] **Address submission for determining the district of residence**

(a) The address submitted to the Department of Education for determining the district of residence for school funding purposes for a child described below shall be the address defined below:

1. If the State has custody of the child or if a court or the State has appointed a third party as the custodian of the child, the present address of the parent(s) or guardian(s) with whom the child resided immediately prior to his or her initial admission to a State facility or placement by a State agency shall be submitted.

2. If the child's parents are divorced with joint guardianship, the present address of the individual parent with whom the child resided as of the date required by N.J.A.C. 6:20-5.3 (a)1 or 2 shall be submitted.

3. If the child never resided with his or her parent(s) or guardian(s), the address of the facility, group home, or private school shall be submitted.

4. If the child's sole parent or legal guardian resides in a State facility, the address of the State facility wherein the parent or guardian resides shall be submitted.

(a)

## STATE BOARD OF EDUCATION

### Special Education Identification, Individualized Education Program, General Requirements and Provision of Programs and Services for Nonpublic School Pupils and Programs Operated by Other Departments of New Jersey State Government

#### Proposed Amendments: N.J.A.C. 6:28-3.2, 3.6, 6.1, 6.3 and 8.3

Authority: N.J.S.A. 18A:4-15, 18A:7A-1 et seq., 18A:7B-1 et seq., 18A:7C-1 et seq., 18A:40-4, 18A:46-1 et seq., 18A:46A-1 et seq., 39:1-1, U.S. P.L. 93-112, Sec. 504 and 94-142.

Proposal Number: PRN 1985-100.

The agency proposal follows:

#### Summary

On June 6, 1984, N.J.A.C. 6:28 was adopted by the State Board of Education. As a result of the enactment of Chapter 120 (N.J.S.A. 18A:46-19.6 et seq.), Chapter 122 (N.J.S.A. 18A:46A-3 et seq.), and Chapter 123 (N.J.S.A. 18A:46-6 et seq.), Laws of 1984, and a review of New Jersey's Special Education regulations, for their compliance with Federal Special Education regulations at 34 CFR 300, required by the

United States Department of Education, six changes to the special education rules are proposed.

Two of these proposed changes are the result of amendments to Chapters 192 and 193, Laws of 1977 (N.J.S.A. 18A:46A-1 et seq., and N.J.S.A. 18A:46-19.1 et seq.), which provide for special education and other services to pupils enrolled in nonpublic schools. Chapters 120, 122, and 123, Laws of 1984 shift the responsibility for services to pupils in nonpublic schools, under Chapters 192 and 193, from the district in which a pupil resides to the district in which the nonpublic school is located. The proposed amendments to N.J.A.C. 6:28-6 reflect these changes in statute.

The remaining four proposed changes are the result of a review of N.J.A.C. 6:28 required by the U.S. Department of Education to assure that New Jersey's special education code is in compliance with the above Federal regulations. The proposed change to N.J.A.C. 6:28-3.2(a) clarifies the responsibilities of the New Jersey Department of Education to identify, locate and evaluate children below the age of three who may be educationally handicapped and who are not receiving special education and/or related services. The proposed change to N.J.A.C. 6:28-3.2(d) requires the chief school administrator to initiate a referral to the child study team for a pupil new to the district who is judged by the chief school administrator to be of potentially serious harm to him or herself or others and is placed on home instruction pending an evaluation and determination of eligibility. The proposed change to N.J.A.C. 6:28-3.6(e)5.ii(1) deletes a potentially ambiguous statement regarding least restrictive environment and substitutes the language used in Federal regulations. The proposed change to N.J.A.C. 6:28-8.3(a) assures due process on issues of educational placement for pupils confined to a residential facility operated by or under contract to a department of State government.

#### Social Impact

Chapters 120, 122, and 123, Laws of 1984, impact all boards of education. These laws designate the district within which a nonpublic school is located as the district responsible for the provision of special education and other services required under Chapters 192 and 193, Laws of 1977. Other boards of education will have no responsibility for the provision of these services. The proposed changes to N.J.A.C. 6:28-6 reflect this statutory change in responsibility.

The remaining four proposed changes required by the U.S. Department of Education will have a positive social impact because these changes clarify rules in New Jersey's special education code which the United States' Department of Education considered to be ambiguous. Although the changes do not directly affect children receiving special education and/or related services, they do assure that New Jersey's special education code is in compliance with Federal regulations.

#### Economic Impact

None of the proposed changes has a significant economic impact. Special education and other services provided under Chapters 192 and 193, Laws of 1977 are funded by the State in their entirety. Funds for the operation of these programs are provided to the districts responsible for the provision of programs. The level of funding remains unaffected; however, funding for services to pupils in nonpublic schools will shift from the district in which a pupil resides to the district in which the nonpublic school is located. There is no cost of enforcement to the State.

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

#### 6:28-3.2 Identification

(a) Each district board of education shall adopt written procedures for screening and identifying those pupils between the ages of three and 21 who reside within the local school district who may be educationally handicapped and who are not receiving special education and/or related services as required by this chapter. **Children below age three shall be identified, located and evaluated through programs operated by or through contracts with the Department of Education.**

(b) (No change.)

(c) (No change.)

(d) A pupil new to the local school district and identified, but not classified as educationally handicapped, by the school district from which the pupil came shall be placed in a regular public school program. If the chief school administrator, after consultation with the child study team, determines that such placement of the pupil may do serious harm to the pupil or to others, the pupil may be placed on home instruction for a period not to exceed 30 calendar days pending evaluation and determination of special education eligibility. **Simultaneously with such placement of a pupil on home instruction, the chief school administrator shall initiate referral to the child study team according to N.J.A.C. 6:28-3.3(b) through (h).**

#### 6:28-3.6 Individualized education program

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

(e) The basic plan of the individualized education program shall include, but not be limited to:

1.-4. (No change.)

5. A description of the pupil's educational program which includes:

i. (No change.)

ii. An explanation of why the type of program and placement is the least restrictive environment appropriate in light of the pupil's needs. Determination of a pupil's least restrictive environment shall also include the following:

(1) [When an appropriate program is not available in the school which the pupil would attend if not handicapped, the placement shall be in an appropriate educational setting as close to his or her home as possible.] **The placement shall be in an appropriate educational setting as close as possible to the pupil's home.**

(2) (No change.)

iii.-ix. (No change.)

(f)-(m) (No change.)

#### 6:28-6.1 General requirements

(a) Each district board of education shall provide pupil evaluation to determine eligibility for special education and/or related services, compensatory education, supplementary instruction, home instruction and instruction in English as a second language for pupils enrolled in nonpublic schools **located within the district.**

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

#### 6:28-6.3 Provision of programs and services

(a)-(h) (No change.)

(i) When the provision of programs and/or services under this subchapter requires transportation, **or the maintenance of vehicular classrooms,** the [district] board of education **of the district in which the nonpublic school is located** shall provide the transportation **and maintenance** and the cost shall be paid

from State aid received under this subchapter by the district board of education.

(j) (No change.)

#### 6:28-8.3 Procedural safeguards

(a) A due process hearing request may be made to the Department of Education for a pupil confined in a residential facility operated by or under contract to a department of State government on issues of classification or the components of an education program [but not] **or an educational placement.**

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

**(a)**

### State Library Assistance Programs Incentive Grant Program

#### Proposed Readoption with Amendments: N.J.A.C. 6:68-2

Authority: N.J.S.A. 18A:4-15 and 18A:74-6.

Proposal Number: PRN 1985-101.

The agency proposal follows:

#### Summary

Under the provisions of Executive Order No. 66, 1978, N.J.A.C. 6:68-2, Incentive Grant Program, will expire May 1, 1985, unless readopted.

The State Board of Education, pursuant to the authority of N.J.S.A. 18A:4-15 and N.J.S.A. 18A:74-6 proposes to re-adopt this subchapter with amendments.

All provisions of this subchapter were originally adopted in 1970 as required by N.J.S.A. 18A:74-6 after the enactment of the "State Library Aid Law" in 1967. The Incentive Grant Program, one of the categories of State Library Aid, provides annually, up to \$200,000 to public libraries.

Relatively minor changes are being proposed for all sections, except for sections 1, 2, 5 and 9, for the following reasons:

1. To correct technicalities of wording.
2. To eliminate unnecessary wording.
3. To make the rule more readable.

The change being proposed for section 2 is a significant one to allow the State Library to fund projects for more than one year.

A review of the proposed amendments follows:

#### N.J.A.C. 6:68-2.1 Definition

This section defines "expanded forms of service." There is no change in text.

#### N.J.A.C. 6:68-2.2 General Policy

This section defines the purpose of the program, to encourage the establishment of county library branches and to encourage individual and cooperative library projects. The proposed amendment provides the State Library with the capability of funding projects for more than one year.

N.J.A.C. 6:68-2.3 Program A; the establishment of county library branches

This section defines county library branches, states qualifications for application and sets priority order for applicants. Unnecessary language is being eliminated and a technical change is proposed.

**N.J.A.C. 6:68-2.4 Program A; Phase 1**

This section provides grants for master plans and lists requirements for the master plans. Wording has been added to make the rule more readable and a minor technical change has been proposed.

**N.J.A.C. 6:68-2.5 Program A; Phase 2**

This section provides for additional planning grants. There is no change in text.

**N.J.A.C. 6:68-2.6 Program A; Phase 3**

This section provides for grants to fund the first year of the operation of a county library branch and lists requirements for eligibility. Minor technical changes are being proposed in the text.

**N.J.A.C. 6:68-2.7 Program A; Phase 4**

Grants to fund the second year of the operation of a county library branch and requirements for eligibility are provided in this section. A minor technical change is proposed.

**N.J.A.C. 6:68-2.8 Program A; Phase 5**

This section provides for grants to fund the third year of a county library branch and lists requirements for eligibility. A minor technical change is being proposed.

**N.J.A.C. 6:68-2.9 Program B; Individual and Cooperative Library Projects**

This section provides for grants to individual libraries and groups of libraries. There is no change in text.

**N.J.A.C. 6:68-2.10 Eligibility**

Eligibility requirements for libraries are listed in this section. Minor technical changes are being proposed.

**N.J.A.C. 6:68-2.11 Project costs**

This section lists matching requirements and dollar amounts for individual and cooperative library projects. A minor technical change and the elimination of unnecessary wording are being proposed.

**N.J.A.C. 6:68-2.12 Grant application procedures**

Procedures and review of grant applications for individual and cooperative library projects are listed in this section. A minor change is being proposed to include all necessary staff in the application review process.

**N.J.A.C. 6:68-2.13 Priorities in award of grants**

This section lists priorities for the types of applicant projects and the authority for percentage of funds to each priority grouping. A minor technical change is proposed to eliminate incorrect language from the original text of the rule.

**N.J.A.C. 6:68-2.14 Criteria for approval**

This section lists criteria for approval of individual and cooperative library projects. A minor change is being proposed in paragraph 1 to identify by title the Statewide plan for library services. A minor change is being proposed in paragraph 9 to correct technicalities in wording.

**N.J.A.C. 6:68-2.15 Notification of applicants**

This section provides for notification of applicants for Incentive Grants. Minor changes are being proposed to require notification of recommendations of approval or rejection within a specified period of time.

**N.J.A.C. 6:68-2.16 Appeal procedures**

This section lists appeal procedures for rejected applicants. Minor changes are being proposed to make the section more readable and to conform to the provisions of the Administrative Procedure Act.

**N.J.A.C. 6:68-2.17 Reports and audits**

This section lists required reports and audits for Incentive Grants. A minor change is being proposed to make the rule more readable.

The Department of Education has submitted this proposal to the senior staff of the Department and to the Department's Administrative Code Review Committee which includes representatives from the following individuals and associations.

1. County Superintendent 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

It is necessary to retain these rules in order to give full force and effect to the existing statutes (N.J.S.A. 18A:74-6), which encourage the formation and development of larger units of library service. An average of 19 individual co-operative, and county branch library projects have been funded annually since the adoption of the rule. The program has been effective in eliciting local matching funds for these projects and will continue to do so if the rule is readopted.

If the rules were not readopted, the Department of Education could not implement the statutes successfully. Experience of utilizing the procedures set forth in the rules indicates that several changes are necessary to improve the process which results from the rules.

**Social Impact**

Since the adoption of the rule, over 200 individual and cooperative library projects have been funded. In addition, 18 county library branches have been aided in establishment. The rule has been particularly effective in aiding small public libraries to provide services which otherwise would not have been possible for their patrons.

Some examples of individual projects which have been funded are: introduction of computers for patron use, cable television production, establishment of job information centers, reading improvement programs and library service to the homebound.

Additionally, grants have been funded to aid groups of libraries to work cooperatively together in providing larger units of service. Cooperative projects in Bergen and Essex Counties have aided 80 libraries in reciprocal borrowing projects.

Readoption of the rule will allow public libraries whose budgets are effected by "cap" law, to initiate new projects or continue established projects for their patrons. The Department expects that there will be increased interest in projects that link individual libraries via computers as well as projects that speed up direct access by library users to resources of local libraries. It will also continue to foster the establishment of county library branches in areas where there is continuing population growth.

**Economic Impact**

From Fiscal Year 1981 through Fiscal Year 1985, a total of \$662,477 has been allocated for projects with an equal amount of dollars matched by municipalities. There will be no

additional costs to public libraries or to the State resulting from the proposed amendments, since they deal primarily with adjustments to an existing administrative process. The most significant proposed amendment allows the State library to fund projects for more than one year. Other amendments are proposed to include all necessary staff in the application review process and to require notification of recommendations of approval or rejection within a specified period of time. These procedures will not result in additional State costs.

Readoption of this subchapter will have a positive economic impact on public libraries, since it will continue to act as an incentive for matching funds for projects. The amendments will impact favorably on public libraries which will be eligible to receive project funding for more than one year.

Public libraries will be notified of application approval or rejection sooner than in prior years. This will allow them to plan more effectively for required matching funds in the succeeding year's budget.

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

#### 6:68-2.1 Definitions (No change.)

#### 6:68-2.2 General policy

There are two separate incentive grant categories: Program A, to encourage the establishment of county library branches, and Program B, to encourage individual and cooperative library service projects. In general, construction and remodeling projects are not eligible for funding under either program. A minimum of 50 percent of the total incentive grant funds available in any one year will be reserved for funding projects under Program B, provided sufficient approvable applications are submitted. [In general, projects will be funded for one year only.]

#### 6:68-2.3 Program A; the establishment of county library branches

(a) [Commencing with the 1974 grants, t]The State Library Aid Incentive Grant Program will offer special grants for projects leading to the establishment of and assisting in the initial financing of county library branches.

(b) For the purpose of this program, a county library branch is defined as an auxiliary outlet of the county library, funded primarily and administered totally by the county library commission, and meeting the following qualifications:

1. A county branch must be established as part of an overall master plan for county-wide library service.

2. It must be under the full-time supervision of a paid certified professional librarian.

3. It must have a population service base, generally, of not less than 10,000 nor more than [1/4] **one-quarter** of the entire population serviced by the county library system.

4. It must have a geographical base with access to all sections of its service area of not more than 20 minutes by automobile.

5. It must have a library building adequate to house the collection and provisions should be made for a separate meeting room and at least three readers' seats for every 1,000 population in the branch service area. The building may be owned by either a municipality or the county, or it may be rented.

6. It must meet the quantitative State Aid criteria for a public library serving the population of the branch service area.

(c) It is possible to enter the program at any one of the first three phases, provided requirements for earlier phases have already been met.

(d) All initial applications shall be ranked in terms of the counties' ability to pay with priority given to applicants demonstrating the least financial resources. The ratio of equalized valuation (as listed in the "Certification of Table of Equalized Valuations", promulgated annually on October 1st by the New Jersey Division of Taxation) of the year preceding the date of application to the population estimate (as promulgated by the New Jersey Department of Labor [and Industry] of the county for the year preceding the date of application shall be used as the criterion determining this financial ability. When applications for funds exceed the amount available, preference will be given to projects which have already been initiated under Incentive Grant Program A.

#### 6:68-2.4 Program A; Phase 1

(a) A planning grant of up to \$5,000 will be provided to a county library to fund the preparation of up-dating of a master plan outlining the future development and directions of the entire library program for that county.

(b) This plan must include a ten-year population projection, a study of traffic and use patterns including maximum driving time and mileage on major routes to any proposed county branch libraries from all parts of their proposed service areas, a study of existing library resources within the county and specific recommendations for the future establishment of full county branches and stations.

(c) Only one Phase 1 grant will be made to any individual county library.

(d) At the end of the funding year, the project may be terminated without further obligation or for county libraries presenting a master plan for countywide library service acceptable to the State [Library] **Librarian**, either Phase 2 or Phase 3 grants will be requested for the establishment of one or more county branches.

(e) A county library may apply for more than one grant, but a separate application must be submitted for each branch to be funded.

#### 6:68-2.5 Program A; Phase 2 (No change.)

#### 6:68-2.6 Program A; Phase 3

(a) In order to be eligible for a Phase 3 grant under Program A of the incentive grant program, the county library making the application must meet all State Library Aid criteria (N.J.A.C. 6:68-1[.1 et seq.]) applicable.

(b) This newly established branch must be established in accordance with the provisions of the county master plan and must, in addition, meet the six basic qualifications of a county branch enumerated in N.J.A.C. 6:68-2.3(b).

(c) An exception may be granted to the quantitative State Aid criteria (N.J.A.C. 6:68-1[.1 et seq.]) if it can be shown the criteria will be met by the end of the Phase 3 grant year.

(d) Exceptions may also be requested for paragraphs 3 and 4 of the branch library qualifications enumerated in N.J.A.C. 6:68-2.3(b) if the exception requested can be justified by the county master plan and is approved by the State [Library] **Librarian**.

(e) A county library having newly established and contracted for a branch meeting the above minimum criteria or having been granted by the State [Library] **Librarian** one or more exceptions to those criteria will be eligible in the first

year of the branch's operation for an incentive grant of 25 percent of the branch's operating budget, [up to a total of] **not to exceed \$25,000.**

#### 6:68-2.7 Program A; Phase 4

(a) During the second year of the operation of the newly established county branch library under Phase 4 of this program, the newly established branch must meet all of the quantitative State Aid criteria (N.J.A.C. 6:68-1.1 et seq.) as well as the general criteria for the establishment of a branch library.

(b) Where the branch to be funded meets these criteria, the county library will be eligible for an incentive grant of 20 percent of the amount of the branch library's operating budget up to a maximum grant of \$25,000.

#### 6:68-2.8 Program A; Phase 5

In the third and final year of operating the newly established county branch library under Phase 5 of the Incentive Grant Program A, the branch must continue to meet the criteria enumerated above and the county library will be eligible for an incentive grant of 15 percent of the amount of the branch's operating expenditures [up to a maximum of] **not to exceed \$25,000.**

#### 6:68-2.9 Program B; Individual and cooperative library projects

(No change.)

#### 6:68-2.10 Eligibility

(a) Each library must, at the time of application, meet in full the quantitative State Aid [regulations] **rules** for libraries serving its population (N.J.A.C. 6:68-1.1 et seq.).

(b) Cooperating libraries in a joint project must serve a total population of not less than 10,000.

(c) Cooperating libraries must serve, when possible, contiguous municipalities.

(d) Projects must represent services that could not reasonably be provided solely with local funds. Requested equipment or materials must represent items essential to the proposed project.

#### 6:68-2.11 Project costs

(a) An incentive grant must be matched by an expenditure from local funds equal to 50 percent of the total project costs. In-kind services (e.g.] **for example**, released staff time) are not eligible as matching funds.

(b) [The dollar amounts allowed for incentive grants are limited as follows:

1.] For **individual or** cooperative library projects, the minimum grant per library is \$500.00; the maximum grant per library is \$5,000.

[2. For individual library projects, the minimum grant is \$500.00; the maximum grant is \$5,000.]

#### 6:68-2.12 Grant application procedures

(a) Application forms for each of the two programs may be obtained from the Library Development Bureau of the New Jersey State Library, and must be sent to that office, postmarked no later than June 1, in the year preceding the fiscal year in which the grant will be awarded. The application must be signed by the President of the Library Board of Trustees or County Library Commission of each of the applicant libraries. It must be accompanied by a resolution passed by each Board of Trustees or County Library Commission at a duly authorized meeting, authorizing the submission of the application.

(b) Applications will be reviewed by the staff of [the Library Development Bureau of the Division of] the State Library[, Archives and History, Department of Education. Recommendations for approval will be forwarded to the State Librarian].

(c) Recommendations for approval will be forwarded by the State Librarian, to the Commissioner of Education and the State Board of Education.

#### 6:68-2.13 Priorities in award of grants

(a) Each approvable application shall first be assigned to one of two priority groupings.

(b) First priority grouping in award of grants shall be given to cooperative projects from groups of libraries. Second priority grouping shall be given to applications from individual libraries. [the percentage of libraries. Second priority grouping shall be given to applications from individual libraries.] The percentage of funds allocated to each priority grouping will be established each year by the State Librarian.

#### 6:68-2.14 Criteria for approval

(a) Applications will be evaluated on the basis of the following criteria:

1. Contribution of the project to [the statewide plan for library service in] "**A Developing State Plan for Library Services**," New Jersey State Library;

2. Adequacy of evidence of the interest, need or demand by the community for the proposed service;

3. Where applicable, documentation of community agency involvement in planning the project;

4. Adequacy and realism of budget and cost estimates;

5. Provision of adequate and appropriate space for the project;

6. Provision of adequate staff and staff training;

7. Proposed method of measurement and evaluation;

8. Provision for the dissemination of information regarding the proposed service;

9. In any grant year, when grant applications meeting the above criteria exceed funds available in Program B, consideration shall be given to **applicants demonstrating the least financial resources [of the applicant libraries] through the lowest ratio of equalized valuation to population (per capita wealth).**

#### 6:68-2.15 Notification of applicants

Applicants will be informed of **the State Librarian's recommendations** of approval or rejection [as soon as possible] **within 90 days of application deadline.**

#### 6:68-2.16 Appeal procedures

(a) Applicants whose project have been rejected will be given, upon request, opportunity [of] **for an informal fair hearing** before the State Librarian.

(b) In the event of an adverse decision after such informal hearing, applicants may request a formal hearing pursuant to N.J.S.A. 18A:6-9 et seq. **The hearing 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).**

#### 6:68-2.17 Reports and audits

Grant recipients will be required to submit an annual report of activities and expenditures for the project for each year of funding [and may be required to submit]. [a]An annual financial audit and a six-month **progress** report of the program [if requested] **may be required** by the State Librar[y]ian.

# ENVIRONMENTAL PROTECTION

The following proposals are authorized by Robert E. Hughey, Commissioner, Department of Environmental Protection.

## (a)

### DIVISION OF FISH, GAME AND WILDLIFE

#### List of Endangered Species and Defining Status of Indigenous Nongame Wildlife Species Osprey

#### Proposed Amendments: N.J.A.C. 7:25-4.13 and 7:25-4.17

Authority: N.J.S.A. 23:2A-4.  
Proposal Number: PRN 1985-93.  
DEP Docket No.: 001-85-01.

Address comments and inquiries to:  
JoAnn Frier-Murza, Program Manager  
Nongame and Endangered Species  
Division of Fish, Game and Wildlife  
CN 400  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

Due to consistently stable reproduction and increasing population, the department proposes to remove the osprey (*Pandion haliaetus*) from the State's list of endangered species appearing at N.J.A.C. 7:25-4.13. In conjunction with this delisting, the species is being upgraded from "endangered" to "threatened" on the status of indigenous nongame wildlife species listing appearing at N.J.A.C. 7:25-4.17.

During the past three years, the New Jersey osprey population has achieved nest reproduction rates well within the maintenance level of 0.95 to 1.3 chicks per nest per year. Henry & Wight, *An Endangered Osprey Population*, 86 Auk 188 (1969). In addition, osprey population Statewide has increased from approximately 50 pairs in 1973, to 97 pairs in 1982, to 98 pairs in 1983, and to 108 pairs in 1984. Consequently, the Nongame and Endangered Species Advisory Committee has advised the Commissioner to delete the osprey from the State list of endangered species, and the Commissioner has determined that this deletion is warranted in conformity with N.J.S.A. 23:2A-4(b).

#### Social and Environmental Impact

The upgrading of a species' status from endangered to threatened, when justified on the basis of wildlife investigations and other scientific data, enhances the credibility of subsequent departmental determinations to add to the list of endangered species. Further, the reporting of such proposed departmental listings and delistings enhances public awareness and concern for these vital natural resources as well as the

opportunity for public participation. It is anticipated that increased confidence in the department's nongame and endangered species program, and increased public participation therein, will help to maintain and enhance the diversity of living natural resources essential for a healthy, stable human environment.

#### Economic Impact

No economic impact is anticipated from this administrative action, as it consists of transferring the osprey from one species list to another.

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

7:25-4.13 List of endangered species

(a) (No change.)

(b) In accordance therewith, the following species are determined to be endangered:

1.-11. (No change.)

[12. Osprey, *Pandion haliaetus*]

[13.-35.] **12.-34.** (No change in text.)

7:25-4.17 Defining status of indigenous nongame wildlife species of New Jersey

(a) The following table defines the status of indigenous nongame wildlife species of New Jersey

...

Osprey, *Pandion haliaetus* (b) [E]T

...

## (b)

### Permit to Kill Wild Deer

#### Proposed New Rule: N.J.A.C. 7:25-23

Authority: N.J.S.A. 13:1B-3, 23:4-42, and 23:4-48.

DEP Docket No.: 003-85-01.

Proposal Number: PRN 1985-96.

Address comments and inquiries to:

Russell Cookingham, Director  
Division of Fish, Game and Wildlife  
CN 400  
Trenton, New Jersey 08625

Any inquiries about the proposed new rule can also be made by calling Director Cookingham at (609) 292-9410.

The agency proposal follows.

#### Summary

The proposed new rule provides for certain controls concerning the use of a special permit to be issued by the Director of the Division of Fish, Game and Wildlife to the owner or lessee of cultivated lands upon a confirmed showing of deer-caused damage to these lands. This special permit, known as the Permit to Kill Wild Deer, enables an individual to kill wild, white-tailed deer causing damage to cultivated land.

**Social Impact**

The permit conditions in the proposed rule serve to establish reasonable guidelines for the control of deer causing damage to cultivated lands. These guidelines provide a basis for the alleviation of deer-caused damage, in compliance with State law and local ordinances, while limiting unnecessary inconvenience to neighbors.

**Economic Impact**

The adoption of this proposal should effect a reduction of costs to landowners and lessees associated with the anticipated reduction of deer-caused damage to seeded cultivated grasses or planted crops. A minimal amount of administrative costs for issuing the permits will accrue to the State.

**Environmental Impact**

The only environmental impact anticipated as a result of adoption of the proposed rule is the loss of surplus deer reasonably believed to be causing damage to seeded cultivated grasses or planted crops, and the projected improvement to cultivated land.

Full text of the proposed new rule follows.

**SUBCHAPTER 23. PERMIT TO KILL WILD DEER**

**7:25-23.1 Scope**

This subchapter shall constitute the rules governing the killing of deer, reasonably believed to be causing damage to crops on lands under cultivation, which, absent these rules, would be proscribed by the State Game Code, N.J.A.C. 7:25-5. Provisions for this exception to the State Game Code appears therein at N.J.A.C. 7:25-5.31.

**7:25-23.2 Purpose**

These rules provide the owner or lessee of cultivated lands a permit to kill wild deer reasonably believed to be causing damage to seeded cultivated grasses or planted crops.

**7:25-23.3 Construction**

These rules shall be liberally construed to permit the Department and the division to effectuate the purpose of N.J.S.A. 23:4-42.

**7:25-23.4 Definitions**

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

“Agent” means the person designated on the permit as an authorized agent of the permittee and whose signature is affixed to the permit.

“Department” means the Department of Environmental Protection.

“Division” means the Division of Fish, Game and Wildlife.

“Lands under cultivation” means pasture fields seeded with cultivated grass or land on which planted crops are growing.

“Permit” means the Permit to Kill Wild Deer.

“Permittee” means the owner or lessee of lands under cultivation to whom a permit is issued by the division.

“State Game Code” means the regulations providing for the management of game birds, game animals, and fur-bearing animals promulgated by the Fish and Game Council pursuant to N.J.S.A. 13:1B-30 and appearing at N.J.A.C. 7:25-5.

**7:25-23.5 Permit required; authorized permittee; agents**

(a) No person shall hunt for, pursue, shoot at, take, kill, wound or attempt to take, kill or wound a deer of any description prohibited by the provisions of the State Game Code N.J.A.C. 7:25-5 or hunt for, pursue, shoot at, take, kill, wound or attempt to take, kill, or wound any wild deer at any time except during the period permitted by the State Game Code, or kill in any one year more than the number of deer permitted by the State Game Code unless having on their person a current, valid permit to kill wild deer issued by the division.

(b) No person shall be issued the permit unless he or she is the owner or lessee of any land, at least five acres of which constitutes lands under cultivation.

(c) No person shall be issued the permit unless and until he or she makes a reasonable showing to the division, confirmed by a field investigation performed by division personnel, of substantial deer-caused damage to seeded cultivated grasses or planted crops. Under exigent circumstances, the permit may be issued for one day only without prior confirmation of necessity by field investigation; provided that within seven days thereafter a field investigation shall be performed by division personnel. Should the division then determine that conditions failed to warrant the issuance of the permit, no permit shall subsequently be issued to the same person without a prior field investigation confirming the necessity therefor.

(d) No person, other than the permittee, shall have on their person the permit unless that person is designated on the permit as the agent of the permittee.

(e) No person convicted of a violation of any provision in N.J.S.A. 23:4-42 to -48 shall, within five years of conviction thereof, lawfully hunt for, pursue, shoot at, take, kill, wound or attempt to take, kill, or wound any wild deer pursuant to the permit.

1. A permittee or agent killing deer under the permit must possess a valid and proper New Jersey firearm hunting license or New Jersey firearm purchaser identification card.

**7:25-23.6 Permit conditions**

(a) The permittee and the agent shall adhere to the following conditions:

1. Conform with all Federal, State, and local statutes, rules, codes, and ordinances pertaining to the discharge of firearms;

2. Use only 10, 12, 16, or 20 gauge shotguns loaded with rifled slugs or 10 or 12 gauge buckshot to kill wild deer;

3. Firearms shall not be discharged from any vehicle;

4. Hunt or kill deer pursuant to the permit only on those lands of the permittee specified on the permit and only during those hours specified on the permit;

5. Display the permit to any person requesting visual inspection thereof;

6. Dead deer shall be reported to the appropriate district law enforcement office specified on the permit, within 12 hours of killing, by calling the telephone number specified on the permit;

7. Deer killed pursuant to the permit shall not be sold, bartered, or consumed for food by the permittee or the agent;

8. Deer killed pursuant to the permit may be donated by the permittee only as authorized by the division;

9. Dead deer disposal shall be the responsibility of the permittee and shall be effected in compliance with State and local statutes, rules, codes, and ordinances;

10. Dead deer shall be transported for disposal only as authorized by the division;

11. The permit shall expire as specified on the permit; and

12. Within two weeks of the expiration of the permit, the permittee shall file with the division a written report giving the date and sex of every deer killed under the permit.

7:25-23.7 Liability

The permittee shall assume all liability for any damage or injury caused while attempting to kill wild deer under the permit and shall keep, save, and hold the division, the department and the State of New Jersey harmless from loss from all claims, loss, liability, expense or damage in connection with the issuance of, and activities taken pursuant to, the permit.

7:25-23.8 Penalties

Pursuant to N.J.S.A. 23:4-48, any person violating any provision of this subchapter shall be liable to a penalty of not less than \$100.00 nor more than \$500.00 for the first offense and not less than \$300.00 nor more than \$1000.00 for the second and each subsequent offense.

(a)

BUREAU OF SHELLFISHERIES

Oyster Management

Proposed Repeal: 7:25A-1, -2, and -3  
Proposed New Rule: 7:25A-1

Authority: N.J.S.A. 50:1-5, 50:1-23, and 50:1-27.  
DEP Docket No. 004-85-01.  
Proposal Number: PRN 1985-95.

Address comments and inquiries to:  
Gale Critchlow, Chief  
Division of Fish, Game and Wildlife  
Bureau of Shellfisheries  
1566 Edgewood Avenue  
Trenton, N.J. 08618

The agency proposal follows:

Summary

The proposed new rule combines all existing oyster management regulations, with the exception of the Cultch Program (N.J.A.C. 7:25A-4), which are currently located in Subchapters 1, 2, and 3, into a single, unified Subchapter 1.

The proposed new rule allows all licensed vessels to lease in Section E of the Delaware Bay, whereas the current rule restricts leasing to vessels with licenses issued before 1980 (N.J.A.C. 7:25A-1.7). Moreover, the proposed new rule abolishes the \$1,000. initial year's leasing fee for Section E lots, which will be identical for that of other lots. The current rule requires the \$1,000. leasing fee in order to discourage speculation in Section E lots. The proposed new rule additionally codifies the traditional harvesting practices for seed oysters from State seed beds (N.J.A.C. 7:25A-1.9).

Social Impact

The proposed changes have been made after lengthy and detailed discussion with the Delaware Bay Section of the Shellfisheries Council and Oyster Planters and Packers Association Planning Committee. The license and lease restrictions that are part of this rule conform to the management plan as it has been revised over the past year.

Members of the oyster industry agree that the proposed changes will have little adverse affect on them and will benefit the oyster resource by creating the best possible conditions of growth and protection. Due to the proposed changes, enforcement of the rule by the State will be simplified.

Economic Impact

The new rule will not materially alter the economic effect of the Department's oyster management plan; however, the State will relinquish approximately \$25,000 in leasing fees. A beneficial financial effect on the industry should result from the abolition of the \$1,000 initial year's lease fee for "B" lots in Section E of Delaware Bay. State costs of enforcement will be subsumed in the budget.

Environmental Impact

The new rule allows for leasing practices designed to encourage prudent oyster culture practice, and removes certain restrictions to leasing shellfish grounds in Delaware Bay. It is anticipated that there will be a beneficial effect on the oyster resource as a result.

Full text of the repeal appears in the New Jersey Administrative Code at N.J.A.C. 7:25A-1, -2, and -3.

Full text of the proposed new rule follows.

SUBCHAPTER 1. OYSTER MANAGEMENT

7:25A-1.1 Scope

The following shall constitute the rules governing the issuance and renewal of oyster dredging licenses, the leasing of oyster ground in Section E in Delaware Bay, and the taking of seed oysters from the State's natural seed beds.

7:25A-1.2 Purpose

The purpose of this subchapter is to provide an orderly procedure for the licensing of oyster vessels, the leasing of oyster grounds in Section E in Delaware Bay, and the taking of seed oysters from the State's natural seed beds.

7:25A-1.3 Construction

These rules shall be liberally construed to permit the Department to effectuate the purposes of N.J.S.A. 50:1-5, 50:1-23, and 50:1-27.

7:25A-1.4 Definitions

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

"Bay season" means from May 1 to June 30, the season during which the natural seed beds are legally open for the taking of seed oysters.

"Department" means the Department of Environmental Protection.

"Division" means the Division of Fish, Game and Wildlife.

"Natural seed beds" means any of the natural beds or grounds in Delaware Bay or Delaware River above the southwest line, except that area known as Section "E".

“Section ‘E’ ” means all of the area within the boundaries described herein: Beginning at a point (X = 1820400) (Y = 146800) said point being Channel Buoy R “32” and corner #1 of said section and running thence N 28° -14’ -14.2” E 6612.18 feet to corner #2 (X = 1826233) (Y = 149914); thence S 56° -32’ -38.4” E 33401.27 feet to corner #3 being also corner #1 lot 530 section D leased oyster ground lot (X = 1854100) (Y = 131500) located on or near the southwest line; thence along the southwest line S 55° -16’ -29.1” W 19222.67 feet to old Crossledge Lighthouse foundation being corner #4 of the section (X = 1838301) (Y = 120550); thence N 16° -02’ -14.0” W 17740.41 feet to corner #5 being also BR “WR” buoy marking a wreck in the bay (X = 1833400) (Y = 137600); thence N 42° -42’ -33.7” W 3538.36 feet to a point in Delaware Bay being corner #6 of section E (X = 1831000) (Y = 140200); thence S 70° -17’ -31.3” W 7116.88 feet to corner #7 being a point on the east side of the Main Ship Channel in Delaware Bay (X = 1824300) (Y = 137800); thence N 23° -25’ -43.3” W 9818.67 feet to corner #1 the place of beginning.

“Seed oysters (seed)” means all oysters taken from the natural seed beds.

“Southwest line” means a line running directly from the mouth of Straight Creek to Crossledge Lighthouse in Delaware Bay.

7:25A-1.5 Licenses

No new oyster licenses authorized by N.J.S.A. 50:3-1 shall be issued except to those vessels validly licensed during the previous year.

7:25A-1.6 Substitution of vessels; license renewal

(a) Any person who owns a vessel validly licensed pursuant to N.J.S.A. 50:3-1 may substitute a new vessel for the previously licensed vessel, except that no substituted vessel shall have a greater gross tonnage than the previously licensed vessel.

(b) Two persons owning vessels validly licensed pursuant to N.J.S.A. 50:3-1 may exchange their vessels with the approval of the commissioner of Environmental Protection and the Delaware Bay Section of the Shellfisheries Council and be exempt from the tonnage limitation set forth in (a) above.

(c) A person transferring ownership of his licensed oyster vessel may do one of the following:

1. File a notarized Statement of Intent with the Department indicating that he has sold the vessel and wishes to replace it with another vessel within one year; or

2. File a notarized Statement of Intent with the Department indicating that he will waive all rights and conditions of that license, not apply for a replacement license, and transfer the right to a license with the vessel to its new owner who shall meet all statutory criteria for licensing.

(d) The new owner of a transferred vessel must have its license reissued in his own name. Application for reissue must include documentation as to ownership of the vessel and the current year’s license.

(e) A licensed vessel, lost, destroyed or disabled may be replaced within two years of December 31 of the year for which the lost, destroyed, or disabled vessel was licensed. The owner shall file a Statement of Intent with the Department, on or before December 31 of the year for which the lost, destroyed, or disabled vessel was licensed, that he will replace the vessel. The replacement vessel shall be licensed upon proof of loss and of replacement of the previously licensed vessel. No replacement vessel shall have a greater gross tonnage than the previously licensed vessel.

(f) Except as specified in (c)1 and (e) above, oyster dredge boat licenses must be renewed annually on or before December 31. Application for renewal must include proof of ownership of the vessel, and the previous year’s license. An applicant may be issued a license if he had a license in the preceding year.

(g) A license not renewed within the calendar year shall be retired together with the license holder’s Section E leases.

(h) License renewal is specifically conditioned on the continuing conformance of the licensee with all the requirements of this chapter.

(i) Nothing in this subchapter shall allow the issuance of two licenses for one.

7:25A-1.7 Leasing of Section E

The owner of an operable vessel which is licensed to dredge oysters pursuant to N.J.S.A. 50:3-1 may lease ground in Section E upon application and approval of the Delaware Bay Section of the Shellfisheries Council.

7:25A-1.8 Expiration and renewal of Section E lot leases

(a) Each Section E lot lease will expire at the end of the calendar year in which it was issued. Lease holders or their heirs and assigns will have the option to renew each year provided the leased lot to be renewed has been, in the judgment of the Delaware Bay Section of the Shellfisheries Council and the division, actively worked by the recorded lease holder, and an accurate report of the use to which the lot was put is first filed with the division on a form provided by the division.

(b) Nothing in this chapter shall be construed to affect the exclusive power of the Shellfisheries Council, subject to approval by the Commissioner of Environmental Protection, to lease shellfish ground as defined in N.J.S.A. 50:1-18.

7:25A-1.9 Oyster seed beds

(a) The division, with the advice of the Delaware Bay Section of the Shellfisheries Council and the Oyster Research Laboratory of Rutgers University, shall determine the season for the taking of seed oysters from the natural seed beds above the southwest line in Delaware Bay and shall determine which of the natural seed beds above the southwest line shall be opened. Reasonable notice will be given by the division to all oyster dredge boat license holders of the dates and of the beds to be opened. Oyster seed beds shall be closed as determined in accordance with (f) below. Daily harvest shall be from 7:00 A.M. to 3:30 P.M. Monday through Friday.

(b) Seed oysters (seed) may be taken for the purpose of planting or replanting at the times and in the manner prescribed on leased grounds:

1. Below the southwest line; or

2. In the Atlantic Coast Section only on days and at times designated by prior arrangement with the division; or

3. In Section E.

(c) Seed oysters shall be planted by spreading them loosely on the bottom, not in bags, baskets, or other containers. All oysters taken from the natural beds are considered to be seed oysters until planted in the manner prescribed in this section. Seed oysters shall not be marketed or sold for any other purpose.

(d) The Advisory Committee shall be appointed by the Commissioner and shall be composed of two members of the Delaware Bay Section of the Shellfisheries Council, two members of the Oyster Research Laboratory of Rutgers University, and the Director of the division or his designee.

(e) Physical tests of all areas opened pursuant to this subchapter shall be made near the end of each week by the Advisory Committee described in (d) above. These tests shall be the determining factor in the Advisory Committee's recommendation to close any or all beds opened by regulation.

(f) Based upon the data and tests referred to in (e) above and the recommendation of the Advisory Committee described in (d) above, the Delaware Bay Section of the Shellfisheries Council, with the approval of the Commissioner, may immediately close those beds as may be necessary for the preservation and improvement of the shellfish industry.

1. It shall be illegal to harvest seed oysters from any closed beds.

2. It shall be prima facie evidence of the violation of 1 above if any vessel is observed by Radar or LORAN or other reliable means to be on closed beds with dredge in water.

(g) The Bureau of Shellfisheries of the division shall publish coordinates of any boundary line or lines established by the Delaware Section of the Shellfisheries Council, and may, as practical, place marker buoys along such line or lines.

(h) Nothing in this section shall be construed to affect any existing regulations concerning areas condemned for the taking of shellfish by the State of New Jersey.

(i) The top and sides of licensed oyster vessels shall be marked with the license number, each number at least 18 inches in size, clearly legible and in good repair, and with no obstruction to view.

(j) No vessel shall take or possess seed oysters from the natural seed beds above the southwest line on the same day such vessel works or harvests on leased shellfish grounds.

(k) During Bay Season, harvesters must notify the Bivalve Shellfish Office to give notice of intent to work any leased grounds.

(l) If a vessel works any part of the day on the seed beds, all oysters in possession shall be deemed seed oysters and must be planted as required in (c) above.

(m) Any person who violates the provisions of this section shall be liable to a penalty of not less than \$100.00 or more than \$3,000 for the first offense and not less than \$200.00 or more than \$5,000 for any subsequent offense, as provided in N.J.S.A. 23:2B-14.

7:25A-1.10 Review

The division and the Delaware Bay Section of the Shellfisheries Council shall review this subchapter annually at a regularly scheduled meeting of the Council.

SUBCHAPTER 2. (RESERVED)

SUBCHAPTER 3. (RESERVED)

SUBCHAPTER 4. OYSTER CULTCH PROGRAM  
(No change.)

**DIVISION OF WASTE MANAGEMENT**

**(a)**

**Hazardous Waste Criteria, Identification,  
and Listing  
Hazardous Waste from Non-Specific  
Sources; Hazardous Constituents**

**Proposed Amendment: N.J.A.C. 7:26-8.13  
and -8.16**

**Authority: N.J.S.A. 13:1E-6 and 13:1D-9.  
DEP Docket No. 005-85-01.  
Proposal Number: PRN 1985-97.**

Address comments and inquiries to:

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

Copies of this notice, and the basis and background document referred to in the notice are available for public inspection and copying during normal business hours at the following locations:

Office of the Director  
Division of Waste Management  
N.J. Department of Environmental Protection  
32 East Hanover Street  
Trenton, N.J. 08625  
Telephone: (609) 292-1250

N.J. Department of Environmental Protection  
Southern Field Office  
R.D. #1 Route 70  
Vincentown, N.J. 08088  
Telephone: (609) 859-2958

N.J. Department of Environmental Protection  
Northern Field Office  
1259 Route 46  
Parsippany, N.J. 07054  
Telephone: (201) 648-3669

N.J. Department of Environmental Protection  
Central Field Office  
120 Route 156  
Yardville, N.J. 08620  
Telephone: (609) 292-9592

The agency proposal follows:

### Summary

Under the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., New Jersey has established a comprehensive program regulating the management and control of hazardous wastes. (N.J.A.C. 7:26-1,4,7-12 and N.J.A.C. 7:14A-4,6,11). Department rules concerning the identification and classification of hazardous waste are found in N.J.A.C. 7:26-8 (Hazardous Waste Criteria, Identification and Listing). A material is a hazardous waste if it is a solid waste (see Definition of Solid Waste, N.J.A.C. 7:26-1.6), and not excluded from regulation (see Exclusions, N.J.A.C. 7:26-8.2), provided that it meets one of the Department's criteria for classification as a hazardous waste (see N.J.A.C. 7:26-8). The Department is proposing amendments to two criteria in N.J.A.C. 7:26-8, to include the following additional specific solid wastes as hazardous wastes: wastes generated during the manufacture of chlorinated aliphatic hydrocarbons and the following hazardous constituents under certain conditions: allyl chloride and chloroprene.

A waste is a hazardous waste if it is generated by a specific process listed in N.J.A.C. 7:26-8.13 (Hazardous Waste from Non-Specific Sources). This list is a generic one; it does not identify industries, but rather processes. The Department is proposing to amend N.J.A.C. 7:26-8.13 to include a group of wastes of a generic category generated during the manufacture of chlorinated aliphatic hydrocarbons by free radical catalyzed processes, having a content ranging from one to five, carbon atoms with varying amounts and positions of chlorine substitution.

A waste may also be a hazardous waste if it contains a constituent listed at N.J.A.C. 7:26-8.16 (Hazardous Constituents) and, after consideration of factors listed at N.J.A.C. 7:26-8.6(a), the Department concludes that improper management of the waste might pose a hazard to human health or the environment. The Department is further proposing to amend N.J.A.C. 7:26-8.16 to add the following substances: 3-Chloropropene (allyl chloride) and 2-Chloro-1, 3-butadiene (chloroprene). These substances are the hazardous constituents generated during the manufacture of chlorinated aliphatic hydrocarbons, not already listed in N.J.A.C. 7:26-8.16. The residual wastes covered by this proposal include distillation residues, heavy ends, tars, and reactor clean-out wastes (wastes that accumulate in process equipment, as well as substances which have been used to clean the equipment).

The Federal Resource Conservation and Recovery Act of 1976 (RCRA 42 U.S.C. 6901 et seq.) provides for a process by which states may obtain authorization to take over the hazardous waste management program from the Federal government. States may obtain authorization in incremental steps as states adopt regulations which are at least as stringent as and consistent with the Federal program. On February 2, 1983, the Department received Phase I Interim Authorization from the Environmental Protection Agency which granted the State primary authority over certain aspects of the hazardous waste management program, including the listing of materials as hazardous waste.

The Department has applied to the United States Environmental Protection Agency for Final Authorization to administer the hazardous waste management program in lieu of the Federal program under RCRA. On November 28, 1984, the Agency issued tentative approval of the State's application for Final Authorization. (See 49 Fed. Reg. 46742.) The Department's application for Final Authorization contains, among other things, a regulatory checklist showing that State regula-

tions are equivalent to or more stringent than the Federal regulations adopted pursuant to RCRA. (See 16 N.J.R. 1103 for a general discussion.) The Department is proposing to amend N.J.A.C. 7:26-8.13 and -8.16 to include provisions identical to the Federal regulations, as explained below.

Under RCRA, the Environmental Protection Agency is required to publish criteria for listing hazardous wastes and a list of hazardous wastes. On August 22, 1979, the Agency published in the Federal Register its proposal to add 45 wastes (44 Fed. Reg. 49402) to the agency's proposed list of hazardous wastes (43 Fed. Reg. 58946, 58957-58959, December 18, 1978). On February 10, 1984, the Agency promulgated an "interim final rule" to list as hazardous "a group of wastes of a generic category generated during the manufacture of chlorinated aliphatic hydrocarbons by free radical catalyzed processes, having a carbon content ranging from one to five, with varying amounts and positions of chlorine substitution." (49 Fed. Reg. 5308). The agency stated in the Federal Register notice that the effect of its rule would be to subject these wastes to Federal hazardous waste management standards and permitting requirements. The proposed amendment is identical to the Federal interim rule (49 Fed. Reg. 5308).

The Environmental Protection Agency took the approach of listing these wastes by means of a generic process and not by individual processes. A summary of that Federal agency's justification is presented below. Copies of the Federal Register notices cited herein and the Background Document for the Federal action are available from the Department.

The production of chlorinated aliphatic hydrocarbons by the above processes also produces hazardous by-products, which become constituents in the wastestream. The free radical catalyzed reactions which produce these wastes are not totally specific in producing the desired chemical product. For any process designed to produce C<sub>1</sub> - C<sub>5</sub> chlorinated aliphatic hydrocarbons, a range of by-products having both higher and lower numbers of carbon atoms and varying chlorine substitutions will be formed. These by-products will be found in the above mentioned wastes.

The by-products include many carcinogenic and toxic chlorinated and non-chlorinated organic compounds. The toxicants typically found are persistent, mobile, and bioaccumulative. Included in the list of hazardous constituents found in these wastes are benzene, carbon tetrachloride, chloroform, and other known or suspected carcinogens. The Department agrees with the Environmental Protection Agency that these wastes are capable of posing a substantial threat to human health and the environment when improperly managed and should be listed as hazardous wastes.

As discussed above, the manufacture of chlorinated aliphatic hydrocarbons produces hazardous wastes. The Environmental Protection Agency lists the hazardous constituents of these wastes (40 C.F.R. 261, Appendix VIII). N.J.A.C. 7:26-8.16 lists all but two of the hazardous constituents of these wastes, ie. 3-Chloroprene (allyl chloride) and 2-Chloro-1, 3-butadiene (chloroprene). Based on this determination and the need to maintain equivalency with Federal law, the Department proposes these amendments.

### Social Impact

Adoption of this proposal would allow New Jersey to maintain equivalency with Federal regulations concerning the listing of hazardous wastes. This action would have a positive social impact. As stated above, equivalency with the Federal law is a requirement for states administering hazardous waste

programs in lieu of the Federal program. Failure to maintain equivalency can result in return of the hazardous waste program to the Environmental Protection Agency. Generators and disposers of hazardous waste would then be subject to both Federal and New Jersey regulations.

**Economic Impact**

The Department estimates that few firms in the State generate wastes covered by this proposal. Consequently, the proposal should have a minimal economic impact on the business community. Cost to the State of implementing the proposal are minimal. The United States Environmental Protection Agency has determined that over two-thirds of the wastes listed in this proposal are already being managed as hazardous wastes. This proposal would have relatively little impact on firms which are properly managing these wastes, however, firms currently managing these materials as non-hazardous wastes would incur additional expenses. These expenses would be smaller than the potential cost of landfill cleanup resulting from the continued mismanagement of those wastes. These companies might also incur much greater costs if Department inspections reveal site contamination due to such mismanagement.

**Environmental Impact**

The proposed amendments would have a minimal beneficial impact on the environment. The Environmental Protection Agency estimates that 75,000 metric tons of these wastes are produced nationally each year. Department public records show that production in New Jersey of materials which generate wastes covered by proposed amendments is minimal. Regulation of this material as a hazardous waste would require that proper manifesting and disposal procedures be followed. These procedures would help assure that the wastes are managed in an environmentally sound manner.

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

7:26-8.13 Hazardous Waste from Non-specific Sources

(a) Industry	EPA Hazardous Waste Number	Hazardous Waste	Hazard Code
Generic	...	...	...
	<b>F024</b>	<b>Wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor cleanout wastes from the production of chlorinated aliphatic hydrocarbons, having carbon content from one to five, utilizing free radical catalyzed processes. (This listing does not include light ends, spent filters and filter aids, spent desiccants, wastewater, wastewater treatment sludges, spent catalysts, and wastes listed in 7:26-8.14.)</b>	(T)

7:26-8.16 Hazardous constituents

(a) The hazardous constituents criteria for listing hazardous wastes (see N.J.A.C. 7:26-8.6) are listed below. Test methods approved by the Department shall be used in determining whether the waste in question contains a given hazardous constituent.

...  
**2-Chloro-1, 3-butadiene (chloroprene)**

...  
 3-Chloro-propene (allyl chloride)

...

**(a)**

**Hazardous Waste Criteria, Identification and Listing Wastestreams**

**Proposed Amendment: N.J.A.C. 7:26-8.15(e) and 8.15(f)**

Authority: N.J.S.A. 13:1E-1 et seq., specifically, 13:13-E-6.

DEP Docket No: 002-85-01.

Proposal Number: 1985-94.

Address comments and inquiries to:

Sonya E. Shashoua  
 Division of Waste Management  
 New Jersey Department of Environmental Protection  
 32 East Hanover Street  
 CN 028  
 Trenton, New Jersey 08625

The public docket for this proposed amendment is located at the same address and is available for viewing from 9:00 A.M. to 4:00 P.M. Monday through Friday, excluding holidays.

The agency proposal follows:

**Summary**

The Department of Environmental Protection is proposing revision of two wastestreams, warfarin and zinc phosphide, listed under N.J.A.C. 7:26-8.15(e) and the addition of these two wastestreams to the list found under N.J.A.C. 7:26-8.15(f). This action is being proposed to maintain the equivalency of the above designated lists with the lists maintained by the U.S. Environmental Protection Agency (the Agency) (40 CFR 261.33(e) and 33(f)).

The U.S. Environmental Protection Agency revised its listings regarding warfarin (3-(alpha-Acetylbenzyl)-4-hydroxycoumarin) and zinc phosphide by publication on May 10, 1984 in the Federal Register (49FR 19922) in response to petitions submitted by the National Pest Control Association (NPCA), Vienna, VA, Sterling Drug Company, New York, NY and the Ralston Purina Company, St. Louis, MO. The Department of Environmental Protection has reviewed the information available on the toxicity of warfarin and zinc phosphide and concurs with the decision of the U.S. Environmental Protection Agency. The chemicals in question are restricted pesticides in the State of New Jersey.

Warfarin (3-(alpha-Acetylbenzyl)-4-hydroxycoumarin) and zinc phosphide will continue to be listed under their respective codes P001 and P122 in N.J.A.C. 7:26-8.15(e). However, the listing will be revised to read "Warfarin, when

present at concentrations greater than 0.3 percent” and “Zinc phosphide, when present at concentrations greater than 10 percent”. The following wastestream descriptions in regard to warfarin and zinc phosphide will be added to N.J.A.C. 7:26-8.15(f): “Warfarin, when present at concentrations of 0.3 percent or less” and “Zinc phosphide, when present at concentrations of 10 percent or less”.

The proposed revisions are based on Department requirements in regard to the acute hazardous waste category (N.J.A.C. 7:26-8.15(e)). A waste must be included in the acute hazardous waste category if it has been shown to have an oral LD<sub>50</sub> (rabbit) toxicity value of less than 200 milligrams per kilogram or an inhalation LC<sub>50</sub> (rat) toxicity value of less than 2 milligrams per liter. These two tests are designed to measure toxicity levels (N.J.S.A. 7:26-8.8(a)2). If a waste has a lesser degree of toxicity than the preceding standards for acute hazardous waste, it might fit the classification of a toxic waste. This would be the case if scientific studies show the waste to be toxic, mutagenic, teratogenic or carcinogenic to humans, other mammals or aquatic animals, or to be phytotoxic.

Toxicity data presented for warfarin at a concentration of 0.3 percent or less and for zinc phosphide at a concentration of 10 percent or less indicate that these chemicals at these concentrations are not acutely hazardous waste; however these chemicals in diluted forms still present a sufficient threat to the environment that they should be regulated as toxic wastes. Warfarin (3-(alpha-Acetylbenzyl)-4-hydroxycoumarin) at concentrations greater than 0.3 percent and zinc phosphide at concentrations greater than 10 percent will continue to be handled as an acutely hazardous waste.

It is the Department's intention that the concentration for disposal purposes be determined on waste resulting from the intended use. A dilute solution falling within the toxic waste classification should be residual solution resulting from a normal dilution for application purposes. Any dilution or adulteration to reduce the concentration of warfarin or zinc phosphide in a waste product is a hazardous waste treatment which is subject to the permit process in accordance with the New Jersey hazardous waste regulations. If the undiluted purchased product is being discarded, it would probably have a concentration of warfarin or zinc phosphide falling within the classification of an acutely hazardous waste; therefore its disposal would also require a permit.

**Social Impact**

By proposing these changes in the listings of the pesticides warfarin (3-alpha-Acetylbenzyl)-4-hydroxycoumarin) and zinc phosphide, the Department is maintaining equivalency of regulations with EPA. Pesticide applicators licensed by the State of New Jersey will operate under disposal regulations consistent with those of EPA and neighboring states. This will avoid the confusion caused by differing regulations. The proposed amendment will have a beneficial impact on public health.

**Economic Impact**

The proposed revisions in hazardous waste listings will have a beneficial effect upon licensed pesticide applicators in the State of New Jersey. They will be allowed to dispose of residual diluted solutions of the pesticides of concern as toxic wastes rather than under the more stringent classification of acute hazardous waste. In the case of toxic waste, up to 100

kilograms per month is classified as non-hazardous and is exempt from treatment requirement. However, in the case of acute hazardous waste, only one kilogram per month will be classified as non-hazardous and therefore exempt from the expense of treatment. This will ease the financial burden of disposing of the residual diluted pesticide solutions under consideration.

**Environmental Impact**

No negative environmental effect is expected from the proposed revisions for the two listed pesticides. The residual diluted pesticide solutions will continue to be disposed of as hazardous wastes although in a lesser category. The diluted solutions in question will be classified as toxic waste, rather than as acute hazardous waste. The concentrated forms of these pesticides will continue to be classified as acute hazardous waste. A beneficial impact on the environment will be promoted due to the more effective disposal of these wastes.

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

7:26-8.15 Discarded commercial chemical products, off-specification species, containers, and spill residues thereof

The following materials are hazardous wastes if and when they are discarded or intended to be discarded:

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

(e) The following commercial chemical products or manufacturing chemical intermediates, referred to in (a) through (d) above, are identified as acute hazardous waste (H). These wastes and their corresponding EPA Hazardous Waste Numbers are:

Hazardous Waste No.	Substance
...	
P001	3-(alpha-Acetylbenzyl)-4-hydroxycoumarin and salts, <b>when present at concentrations greater than 0.3 percent</b>
...	
P001	Warfarin, <b>when present at concentrations greater than 0.3 percent</b>
...	
P122	zinc phosphide, <b>when present at concentrations greater than 10 percent</b>
...	(R.T.)

(f) The following commercial products or manufacturing chemical intermediates, referred to in (a), (b), and (d) above, are identified as toxic wastes (T) unless otherwise designated. These wastes and their corresponding EPA Hazardous Waste Numbers are:

HEALTH

PROPOSALS

Hazardous Waste No.	Substance
...	
U248	<b>3-(alpha-Acetylbenzyl)-4-hydroxycoumarin and salts, when present at concentrations of 0.3 percent or less</b>
...	
U248	<b>Warfarin, when present at concentrations of 0.3% or less</b>
...	
U249	<b>Zinc phosphide, when present at concentrations of 10% or less</b>
...	

taining mumps vaccine, live. This regulation allows children older than six years of age entering the school system to attend school without having to receive mumps vaccine. This created problems in some school districts in the form of mumps outbreaks, that proved to be socially and economically harmful to the community and the Department. The outbreaks were a financial drain to the general public and public health agencies, and caused considerable human suffering.

The proposed amendment would require all pupils, born on or after January 1, 1973, to have received mumps virus vaccine, live, or any vaccine combination containing mumps vaccine, live. This cohort of children was the first to be affected by the mumps regulation when it first went into effect in September, 1979 so they, and those younger, would already have received mumps vaccine, live. Children born January 1, 1973 and after, entering the New Jersey school system from other states that do not require mumps vaccination will be required to receive the mumps vaccine, live. The proposed amendment will not require new immunization for children who had been in the school system since 1979.

**Social Impact**

The amendment to N.J.A.C. 8:57-4.15 would ensure the continued high immunization levels for mumps needed to protect New Jersey school children from disease. Recent outbreaks of mumps in the school system demonstrated significant protection from disease among those who were immunized.

The primary means to assure high immunization levels among school children is the continued enforcement of the rules contained in N.J.A.C. 8:57-4. Failure to adopt the amendment to N.J.A.C. 8:57-4.15 would perpetuate a pool of susceptible children that will be the source of future outbreaks of disease.

**Economic Impact**

The economic impact of the amendment to N.J.A.C. 8:57-4.15 is considerable. The prevention of disease in the school system will be economically beneficial to the general public and public health agencies.

Outbreaks of mumps have generated large financial burdens due to costs of hospitalization, as well as lost parental time and work days. The State has had to expend large sums on mass immunization after outbreaks are reported. If the proposed amendment is not adopted, there will not be a high level of immunization in New Jersey school systems, and outbreaks of mumps will continue, with both the general public and public health agencies sustaining the resultant costs.

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

- [8:57-4.16] **8:57-4.15** Mumps vaccine
- (a) Every pupil, [six years of age or younger] **born on or after January 1, 1973**, shall have received mumps virus vaccine, live, or any vaccine combination containing mumps vaccine, live.
- (b) (No change.)

EDITOR'S NOTE: "Mumps vaccine" is erroneously codified at N.J.A.C. 8:57-4.16, which is assigned to rules concerning "Disease outbreak control". The January 21, 1985 update to Title 8 of the Administrative Code will correct these errors. See: 13 N.J.R. 738(a) for the current text.

HEALTH

(a)

PUBLIC HEALTH COUNCIL

Communicable Diseases  
Immunization of Pupils in Schools; Mumps Vaccine

Proposed Amendment: N.J.A.C. 8:57-4.15

Authorized By: Public Health Council, Evelyn Geddes, Chairperson.

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

Proposal Number: PRN 1985-105.

Address comments and inquiries to:  
 Ronald Altman, M.D.  
 Assistant Commissioner  
 Division of Epidemiology and Disease Control  
 New Jersey Department of Health  
 CN 360  
 Trenton, New Jersey 08625

A **public hearing** concerning this proposal will be held on Monday April 8, 1985 at 9:30 A.M. at the following location:  
 Department of Health  
 Health and Agriculture Building  
 Room 805—Conference Room  
 John Fitch Plaza  
 Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

N.J.A.C. 8:57-4.15, Mumps vaccine, requires every pupil, prior to school entry six years of age or younger, to receive mumps virus vaccine, live, or any vaccine combination con-

**(a)**

**DIVISION OF NARCOTIC AND DRUG ABUSE CONTROL**

**Controlled Dangerous Substances Narcotic Treatment Programs**

**Proposed Amendment: N.J.A.C. 8:65-11.2**

Authorized By: J. Richard Goldstein, M.D., State Commissioner of Health.

Authority: N.J.S.A. 24:21-9.

Proposal Number: PRN 1985-81.

Address comments and inquiries to:

Lucius 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 correct a section of the Administrative Code relevant to the fee for registration for a narcotic treatment program in New Jersey. The fee increase will not impact upon any client of a narcotic treatment program nor upon services provided to persons with a substance abuse dependency. The expanding cost of administering the drug treatment program, and the 1983 budgetary requirements necessitated a doubling of all fees. Each narcotic treatment program's registration fee will increase from \$10.00 to \$20.00.

**Social Impact**

The increase in fees will not have any social impact upon the user of services or the community in which these services may be provided. It might have a minimal impact upon the provider's registration procedure, because the registration fee will increase from \$10.00 to \$20.00.

**Economic Impact**

The increase will have a slight monetary impact upon the provider of narcotic treatment services but will not alter the type of services provided. Approximately 22 narcotic treatment programs will be subject to the increased registration fee. The expanding cost of administering the drug treatment program, and the 1983 budgetary requirements, necessitated a doubling of all fees.

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

8:65-11.2 Registration; fees

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

(d) For each registration or reregistration to engage in a narcotic treatment program, including a compounder, the applicant shall pay an annual fee of [\$10.00] **\$20.00** at the time of application for registration or for renewal of registration.

(e) (No change.)

**HUMAN SERVICES**

The following proposals are authorized by George J. Albanese, Commissioner, Department of Human Services.

**(b)**

**DIVISION OF MENTAL RETARDATION**

**Community Residences for the Developmentally Disabled Manual of Standards for Community Training and Family-Based Respite Care Homes**

**Proposed Repeal: N.J.A.C. 10:44B  
Proposed New Rule: N.J.A.C. 10:44B**

Authority: N.J.S.A. 30:11B-4.

Proposal Number: PRN 1985-99.

Address comments and inquiries to:

Administrative Practice Officer  
Division of Mental Retardation  
CN 700  
Trenton, NJ 08625

The agency proposal follows:

**Summary**

The State of New Jersey first authorized the inspection and regulation of community residences for the developmentally disabled in 1978 with the passage of N.J.S.A. 30:11B-1 et seq. Since that time, much relevant experience and research has been generated which indicated a need to conduct a major revision of the regulations for Community Training Homes (formerly known as Family Care and Skill Development Homes). The proposal which follows incorporates a great deal of material which had been used as interpretations of the original regulations. In addition to these interpretations, substantive aspects of several inter-agency agreements have been included, primarily regarding the setting of overall home capacities. Finally, an attempt has been made to update the regulations to conform more closely with current practice nationally as well as in selected other States with similar community programs.

Due to the above factors and pursuant to Executive Order 66(1978) establishing an expiration date of April 17, 1985, necessitating readoption, the current Manual of Standards is proposed for repeal and replacement by these revised rules.

**Social Impact**

The revised regulations will affect operators of small community residences for the developmentally disabled, the disabled clients themselves, and State Mental Retardation program officials. Operation of these facilities according to the revised regulations will result in physically safer homes and in improved accountability for providers. Such accountability will enable operators to communicate more effectively with both case managers and regulatory officials regarding the effectiveness of the training provided to developmentally disabled clients in their care, as well as other efforts to further the clients' habilitation. The increases in communication among the various segments of the service delivery system

fostered by the revisions will lead to greater overall coordination, benefitting the disabled target population through more immediate and focused efforts on their behalf.

Inasmuch as physical plant of these homes and general supervision and training of clients will be enhanced, community acceptance of these residences will improve.

#### **Economic Impact**

The overall economic impact of the proposed regulations is minimal. Only a few of the individual standards require the expenditure of any additional funds on the part of the provider, in total approximately \$3.00-\$4.00 per year. Improved recordkeeping and building maintenance as a result of compliance with the proposal may result in an actual net gain for providers by way of closer monitoring of actual expenses and decreased building operating costs.

The option of extending the licensure term to two years will utilize limited State resources more effectively, as well as reduce the ongoing regulatory burden to providers. It will also give proper recognition to those operators providing high quality client care.

The impact of increasing the license fee from \$2.00 to \$5.00 per annum is moderate. The increase helps defray State administrative costs through a justified user fee, and still represents the least expensive license available to individuals operating residential facilities.

**Full text** of the rule proposed for repeal appears in the New Jersey Administrative Code at N.J.A.C. 10:44B.

**Full text** of the proposed new rule follows.

### **CHAPTER 44B**

#### **MANUAL OF STANDARDS FOR COMMUNITY TRAINING HOMES AND FAMILY-BASED RESPITE CARE HOMES**

#### **SUBCHAPTER 1. GENERAL PROVISIONS**

##### **10:44B-1.1 Definitions**

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

“Abuse” is any act or omission of an act that willfully deprives a resident of his/her rights or which may cause or causes actual physical injury or emotional harm, and is not limited to physical injury. Examples of abuse are acts that cause pain, cuts, bruises, temporary loss of a body function, temporary or permanent disfigurement, death; striking with a closed or open hand; pushing to the ground or showing aggressively; twisting a limb; pulling hair; dousing with water; intentionally ignoring a resident; withholding food; forcing a client to eat obnoxious substances; or use of verbal or other communication to curse, vilify, degrade a client or threaten a client with physical injury. This list is by no means exhaustive.

“Autism” is a behaviorally-defined syndrome affecting both children and adults. The essential features are typically manifested prior to 5 years of age and include: disturbances of developmental rates and sequences; disturbances of responses to sensory stimuli; disturbances of speech, language-cognition, and non-verbal communication; and disturbances of the capacity to relate appropriately to people, events and objects.

“Boarder” shall mean any person residing in the home who is not a member of the family and who is not developmentally disabled.

“Capacity” shall mean the maximum number of individuals, including boarders, who may be accommodated in the home, other than family members, at any time under the terms of the home’s license.

“Case Manager” shall mean the authorized representative of any agency, who coordinates the provision of social services to boarders or clients residing in the home.

“Cerebral Palsy” shall mean a persisting qualitative motor disturbance appearing before the age of three, due to non-progressive damage of the brain.

“Chores” shall mean those duties which are normally performed by members of a household as a matter of routine.

“Client” shall mean a developmentally disabled person admitted to or eligible for admission to a community residence.

“Community residence for the developmentally disabled” shall mean any community residential facility housing up to 16 developmentally disabled persons which also provides food, shelter, personal guidance and/or training for developmentally disabled persons who require assistance, temporarily or permanently, in order to live independently in the community. Such residences shall not be considered health care facilities within the meaning of the “Health Care Facilities Planning Act”, P.L. 1971 c.136 (C.26:2H-1 et seq.) and shall include, but not be limited to, group homes, halfway houses, supervised apartment living arrangements, hostels, community training homes, and respite homes.

“Community training home” shall mean a family-based community residence in which room, board, laundry services, and personal guidance are provided. Depending on the needs of the client(s), operators of these homes may be expected to carry out specialized individual training programs under the direction of a case manager. Services shall be contracted for on the basis of Individualized Habilitation Plans and shall center on basic self-care and social skills, activities of daily living, and behavior shaping.

“Developmentally disabled” shall mean having a disability which originated before 18 years of age, which has continued or is expected to continue indefinitely, which constitutes a substantial handicap, and which is attributable to mental retardation, cerebral palsy, epilepsy, autism, or other conditions found by the Commissioner of Human Services to give rise to an extended need for similar services.

“Epilepsy” shall mean a chronic disease of the central nervous system characterized by convulsions and often unconsciousness.

“Exploitation” shall mean any unjust or improper use of another person for one’s profit or advantage.

“Immediate family” shall mean the licensee’s spouse, parents, step-parents, children, step-children, grandchildren, and grandparents.

“Individual Habilitation Plan” (IHP) is a plan written in terms of measurable goals and behaviorally stated objectives prescribing an integrated program of individually suited activities, experiences, or therapies necessary to achieve the optimal physical, intellectual, social or vocational functioning of which the individual is capable, and shall conform to the requirements of N.J.S.A. 30:6D-10 et seq.

“License” is the authorization issued by the Department of Human Services for a period of up to two years to a community residence providing services to developmentally disabled persons. A license can be denied, revoked, suspended, or can be placed on provisional status by the Department of Human Services for violations of minimum standards promulgated herein.

“Licensee” shall mean one or more adults, otherwise known as a providers, responsible for the overall operation of the home, and who are named on the license.

“Licensing agency” shall mean the Office of Licensing and Inspections, within the Department of Human Services, Division of Mental Retardation.

“Mental retardation” shall mean a state of significant sub-average intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

“Natural person” shall mean an individual human being, as opposed to a corporation (an “artificial” or “legal” person).

“Neglect” shall mean the failure of an individual to provide for or maintain the care and safety of clients under his or her supervision, including, but not limited to, failure to provide and maintain proper and sufficient food, clothing, health care, shelter, and/or adult supervision.

“Provisional license” is that authorization to operate issued to new homes or used to prompt corrective actions in existing homes. A provisional license shall be for less than 12 months.

“Respite care home” is a family-based community residence in which room, board, and personal guidance are provided on a temporary basis, not to exceed 30 days. Unless otherwise specified within the body of this chapter, all regulations herein apply to these facilities.

“Substantial non-compliance” exists when not meeting licensing requirements directly endangers the health, safety, or well-being of a client(s); when the unmet requirements exist in significant number; when the degree of the condition(s) is (are) severe; when one or more requirements have been left unmet with great frequency; and/or when the terms of the license have been violated.

“Variance” shall mean the permission granted to the licensee to meet the intent of a standard in an alternative manner.

“Waiver” shall mean the temporary suspension of a standard.

“Willful non-compliance” exists when the applicant or licensee has knowledge of conditions which are in violation of licensing rules and/or terms of the license, has been advised of the consequences of not achieving compliance and has not achieved compliance after being given an adequate opportunity to do so.

**10:44B-1.2 Application of license**

(a) All initial inquiries for a license to operate a Community Training or Respite Care home shall be made to the appropriate Regional Office of the Division of Mental Retardation.

<b>Regional Office:</b>	<b>Counties of Jurisdiction:</b>
Northern Regional Office	Sussex, Morris, Warren, Hunterdon, Somerset
Metropolitan Regional Office	Bergen, Passaic, Essex, Hudson, Union
Central Regional Office	Middlesex, Monmouth, Mercer, Ocean, Burlington
Southern Regional Office	Camden, Atlantic, Gloucester, Cumberland, Salem, Cape May

(b) All applicants shall complete an Initial Application and submit three personal/professional references and one medical reference.

(c) An initial interview and review of the applicant’s home (“Home Study”) shall be conducted.

(d) Applicants shall attend and successfully complete a training and orientation program conducted or otherwise approved by the Division of Mental Retardation.

**10:44B-1.3 Licenses and inspection**

(a) Upon receipt of the Initial Sponsor Application, personal and medical references, Home Study Report, and training evaluation, a licensure inspection shall be arranged by:

Office of Licensing and Inspections  
 Division of Mental Retardation  
 Capital Place One  
 222 South Warren Street CN 700  
 Trenton, New Jersey 08625

(b) A license shall be issued if the inspection provides reasonable assurance that the home will be operated in the manner required by the standards.

(c) The initial license shall be issued as a temporary permit to grant providers a six month period in which to demonstrate their ability to comply with minimum standards.

(d) The license shall be issued by the Department of Human Services only to natural persons and is not transferable to any other person or address. All licenses remain the property of the Department of Human Services and shall be returned upon termination.

(e) The license shall specify the maximum bed capacity of the home, including boarders and clients. Although individuals receiving services of another agency may reside in the home, there shall be a written agreement signed by the Regional Administrator of Community Services and the director of the placing agency serving the boarder.

(f) The license fee shall be set at five dollars per year.

(g) No licensee shall operate more than one Community Training or Respite Care Home.

(h) The residence shall be subject to inspection by the licensing agency at least annually, and as deemed necessary, without limitation or notice, to allow for inquiry into the facilities, records, equipment, sanitary conditions, accommodations, and management of the clients.

(i) The license shall be kept on the premises at all times and be available upon request.

(j) The Department of Human Services may revoke the license whenever the licensee shall be found to be violating any State or Federal law pertaining to community residences for the developmentally disabled, or whenever such residences shall fail to comply with the minimum standards established by the Department of Human Services.

(k) A licensee shall not deny access to a community residence to any individual or group with proper identification and statutory authority to protect the rights of, and advocate on behalf of, the individuals placed in the home. Such persons may include, but not be limited to, the case manager, guardian, or guardianship worker, and licensing personnel.

(l) Failure of an applicant or licensee to provide necessary information in connection with an inspection or investigation by representatives of the Division of Mental Retardation shall be considered grounds for denial, suspension, revocation, or refusal to renew a license.

## HUMAN SERVICES

## PROPOSALS

(m) Waivers of specific standards may be granted at the discretion of the Division of Mental Retardation, provided that:

1. Strict enforcement of the rule would result in unreasonable hardship on the facility.
2. The waiver is not simply for the convenience of the licensee or other non-clients.
3. The waiver is in accordance with the particular needs of clients.
  - i. The waiver does not adversely affect the health, safety, welfare, or rights of any client.
  - ii. Verification that the waiver is in accordance with client needs may be requested from the case manager by the licensing agency.
4. The waiver is requested in writing by the licensee complete with substantial detail justifying the request.

### 10:44B-1.4 Notification of municipal officials

In accord with the provisions of Department of Community Affairs Binding Interpretation #12, (June 4, 1981) each licensee shall file a copy of their license with the local construction official. If a community residence for the developmentally disabled should become unlicensed, the licensing agency shall issue a notice to that effect to the local construction official.

### 10:44B-1.5 Options on non-compliance with standard

(a) After each inspection, the licensee shall be provided with a copy of the inspection report. At the discretion of the licensing agency, it shall be the obligation of the provider to provide a plan of correction with 30 days of the issuance of the report. Unless a plan for earlier correction is required, all deficiencies shall be corrected by the time of the next inspection. Failure to make such corrections shall be considered grounds for action against the license.

(b) If the inspection report indicates substantial non-compliance and/or willful non-compliance with the regulations contained in this manual, or if any of the regulations not met represent a threat to the health, safety, or rights of the clients or boarders, licensure may be denied or revoked, following 30 day notice to the provider of such intent. Any subsequent application may be denied.

(c) In cases of non-compliance where licensure denial or revocation may be deemed by the Division of Mental Retardation to be too harsh an action, intermediate sanctions may be invoked following 30 day notice to the licensee of such intent. These include removal of clients from the residence, imposition of a moratorium or suspension of admissions into the home, reduction of capacity or licensure term, and/or reclassification of the residence.

(d) Licensees whose license has been suspended, revoked, or not renewed, or who have had intermediate sanctions invoked against them have the right to appeal the licensing agency's decision in accordance with N.J.A.C. 10:48.

## SUBCHAPTER 2. ADMINISTRATIVE POLICIES AND PRACTICES

### 10:44B-2.1 Licensee requirements

(a) The licensee shall have overall responsibility for the clients and boarders in the home.

1. Except as otherwise provided in the Rehabilitated Offenders Act, no license will be issued to any person who, at any time, has been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal con-

spiracy to defraud, crimes against the person or other like offense(s).

2. The licensee shall read, write, and understand English or otherwise demonstrate that he/she can sufficiently comply with the licensing requirements.

3. The licensee and members of the licensee's family participating in client care shall be of sound physical and emotional health.

i. Every two years, the licensee shall provide a statement from his/her physician to the effect that he/she is physically capable of performing his/her duties.

(b) Falsification of any information contained in the application or provided during any inspection shall be sufficient grounds for licensure denial, suspension, revocation, or non-renewal.

(c) Any applicant who receives or applies, subsequent to licensure, for public assistance shall document in writing to the licensing agency that he/she has notified the welfare agency or Board of Social Services of his/her intention to seek licensure as a Community Residence for the Developmentally Disabled as well as information on the allowable rates for reimbursement in the program.

(d) In instances where the licensee must be absent, a person 18 years of age or older shall be identified to assume the licensee's responsibility.

1. An alternate must be available in case of emergency.
2. Use of an alternate of six or more hours daily is prohibited.

3. The alternate must be familiar with the client(s), the licensee's home, and all emergency procedures.

4. The alternate shall meet the requirements of N.J.A.C. 10:44B-2.1(a).

5. The licensee shall provide the name, address, and telephone number of the alternate to representatives of both the placing agency and licensing agency.

i. Whenever the licensee changes the alternate, the placing and licensing agencies shall be notified in writing.

(e) Physical and verbal abuse, corporal punishment, physical discipline, use of aversive stimuli, neglect, and exploitation shall be prohibited.

1. Substantiation of such mistreatment of any client by the licensee shall be sufficient cause for immediate licensure revocation.

2. Clients shall not be directed or allowed to discipline other clients in the home.

3. All alleged and suspected mistreatment of clients shall be reported immediately to the responsible placing agency representative.

i. After normal working hours, the Regional Office of the Division of Mental Retardation can be reached at the appropriate hotline number.

ii. In the case of minors, allegations of abuse or neglect shall be reported to the local district office of the Division of Youth and Family Services or the Office of Child Abuse Control (800-792-8610) as well as the Division of Mental Retardation.

(f) The licensee shall immediately notify the responsible placing agency representative in the case of:

1. Death of a client or boarder;
2. Admission of the client or boarder to a hospital or treatment in an emergency room;
3. Emergency removal of a client or boarder;
4. A client or boarder missing for more than two hours, or a client's returning from a home or other visit two hours or more past scheduled time;

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**HUMAN SERVICES**

5. Injuries to a client or boarder involving sutures, fractures, lost teeth, etc;

6. Any fire requiring the services of a fire department;

7. The disruption of any vital utility, e.g., heat, water, electricity, etc.

(g) The licensee shall notify the placing agency within five days of:

1. Any disruption of day program;

2. The grossly negative impact of any client's visits to or with family or friends; or

3. An increase in the number of family members in the home.

(h) The use of mechanical restraints or isolation shall be prohibited.

(i) There shall be no charge for any services to the client beyond those contracted and actually provided.

(j) No licensee or his/her relative shall be the legal guardian or representative payee for any client residing in the licensee's home.

**10:44B-2.2 Placements and departures**

(a) There shall be no more than five persons in the home requiring care and assistance, including but not limited to: family members, children (natural, adopted, or foster), clients and boarders.

(b) The Division of Mental Retardation shall set the total bed capacity of the home, excluding family members.

(c) The licensee shall at no time exceed the licensed bed capacity of the home.

(d) Third floor occupancy by clients shall be prohibited.

(e) Clients who are mobile non-ambulatory (capable of independent bed-to-wheelchair transfer) or with ambulation difficulties shall be housed on ground floors exclusively.

(f) The licensee shall accept only clients for whom he/she can provide adequate care.

1. If a client, because of a changed physical or mental condition, is no longer suitable for the living arrangement, he/she shall not be maintained in the home after consultation between the licensee and the placing agency representative.

2. Clients requiring skilled nursing care shall not be maintained in the home.

(g) The licensee shall notify the Regional Office of any intention to voluntarily cease to operate a community residence.

**10:44B-2.3 Records**

(a) All records shall be maintained in the licensee's home. Maintenance of records in any other place, either permanently or temporarily, is prohibited.

(b) Client records shall be considered the property of the agency providing case management services, and shall be relinquished to that agency's representative if the client is discharged or transferred from the licensee's home, or if otherwise necessary to safeguard the records.

(c) Records shall be stored in such a manner as to properly provide access only to the client, the licensee, alternate, involved agency or other persons authorized by a court of competent jurisdiction.

(d) The licensee shall protect and maintain the confidentiality of all records.

1. The licensee shall not make copies or allow copies to be made of client records without explicit written permission of the involved agency representative.

(e) An individual client folder shall be maintained and be appropriately marked with his/her name.

(f) Individual client records shall include:

1. Full name of client;

2. Date of birth;

3. Date of placement into home;

4. Names and addresses of persons or agencies responsible for placement;

5. Name and address of all personal physicians and dentists;

6. Name, address and telephone numbers of legal guardian (or guardianship worker), next of kin, and other interested person(s);

7. A contract for each person placed or boarder which shall note at least the following:

i. Responsibilities of all parties;

ii. Rate of payment to the licensee;

iii. Effective dates of contract;

iv. Amount of client spending money/personal needs allowance;

v. Signature of all parties.

8. Background information to include:

i. Client abilities;

ii. Religious preference;

iii. Social Security number;

iv. Special dietary needs;

v. Behavioral characteristics;

vi. Additional handicaps or disabilities;

vii. Interests, hobbies;

viii. Medical history to include:

(1) Allergies;

(2) Seizure history;

(3) Present medication;

(4) Special medical problems;

(5) For children, an immunization record.

9. Monthly reports of client's social and behavioral progress or regression (Does not apply to Respite Care Homes);

i. Reports shall include, but not be limited to, client's progress on Individual Habilitation Plan goals.

ii. If the client is subject to seizures, the sponsor shall indicate all seizure activity in the monthly report (including date, time, duration, surrounding circumstances, and treatment given).

10. A copy of the current Individual Habilitation Plan (Does not apply to Respite Care Homes);

11. Annual physical examination;

12. A medication record, if the client receives prescribed medication;

13. Authorization for emergency medical treatment (for clients requiring a guardian);

14. Medical insurance information regarding payment for emergency services;

(g) If the client is not capable of managing his/her own funds, the licensee shall maintain a record of all expenditures of the client's personal funds. The record shall include:

1. The date client funds were disbursed;

2. Amount disbursed;

3. Purpose of each disbursement or expenditure;

4. All receipts related to disbursements or expenditures over \$10.00, which shall be saved by the licensee until the case manager signs off on the financial record.

(h) The licensee shall keep on file, at the home, the following administrative records:

1. A placement agreement with all social service agencies from which the licensee will accept clients;

2. A record of all admissions and departures, including names and dates, for a twelve-month period;

3. A current copy of this Manual of Standards;

4. A record of monthly fire/evacuation drills, as specified in N.J.A.C. 10:44B-6.2(f)1;
5. A copy of his/her current license.

SUBCHAPTER 3. CLIENT CARE

10:44B-3.1 Client rights and responsibilities

(a) Clients' civil, human and legal rights shall not be abridged solely on the basis of diagnosed mental retardation, nor without due process.

1. The exercise of clients' rights shall not be prohibited or be used as a cause for retribution against the client.

(b) The licensee may establish reasonable house rules.

1. These rules shall include provisions to ensure that clients exercise their rights in such a way as not to infringe upon the rights of or endanger others.

2. The licensee shall make certain that the private life of the client is respected at all times.

i. The licensee shall avoid any unreasonable schedule concerning the hours at which clients shall rise or retire.

ii. Clients shall be permitted to rest in their homes for such periods as may be consistent with personal needs.

iii. Complete privacy shall be afforded during visits.

3. Visiting is to be permitted during reasonable hours.

(c) Clients shall have the opportunity to associate with members of the opposite sex.

(d) Clients shall have the right to participate in social, religious, or community groups of their choice.

1. Licensees shall not impose their religious beliefs on clients under their care.

2. Licensees shall provide each client with adequate substitutes for foods which the client's religious beliefs forbid him/her to eat.

(e) Clients shall have an opportunity to register and vote.

(f) Clients shall have free use of all living areas within the home without infringing on the privacy of others.

(g) Clients shall have the right to use the community for recreation, education, shopping, and employment.

(h) Clients shall have access to a telephone for unmonitored incoming and outgoing calls.

(i) Clients shall have the right to open their own mail and packages without surveillance.

(j) Licensees shall not read clients' outgoing mail unless requested by the client.

(k) If the client requests, he/she shall receive assistance in reading and writing letters.

(l) Clients shall be allowed to handle their own money consistent with their ability as determined by the casemanager, licensee, and guardian (guardianship worker).

(m) Clients shall be permitted to exercise all those rights outlined in the pamphlet "Your Rights as a Developmentally Disabled Person", distributed by the Division of Mental Retardation.

10:44B-3.2 Personal health, hygiene, and grooming

(a) Clients shall be encouraged to exercise maximum independence in health, hygiene, and grooming practices.

(b) Within the home each client shall have the opportunity for personal care, with assistance if necessary, to include:

1. A daily bath or shower;
2. Oral hygiene twice daily;
3. Opportunity to shave;
4. Care of fingernails and toenails;
5. Grooming of hair.

(c) Individual toilet articles—soap, wash cloths, towels and toilet tissue—shall be available without additional expense to clients.

(d) Individual toothbrushes, hair brushes, combs, and razors shall be available for each client at their own expense.

(e) Female clients shall be assisted as necessary to attain maximum independence in caring for menstrual needs.

10:44B-3.3 Food

(a) The licensee shall ensure that a client is provided with three meals daily, either in the home itself or in the community.

(b) There shall not be more than a 14-hour span between the evening meal and breakfast.

(c) Snacks shall be available for clients who desire them, unless there is a documented medical or programmatic reason not to supply them.

(d) The daily diet for each client shall include foods from the four basic good groups:

1. Milk, cheese, and other daily products;
2. Bread, cereal, grains;
3. Vegetables, fruits;
4. Meats, fish, poultry, and eggs.

(e) Food shall be wholesome, stored in a manner to keep it clean and safe for human consumption, prepared in the form that meets the medical and dietary needs of the clients, and served family-style.

(f) Clients shall be consulted for preferences in determining menus.

(g) If a medically prescribed diet is required, the menu planning shall be appropriate to client needs, and be properly documented.

10:44B-3.4 Clothing

(a) Each client shall have the opportunity to select and purchase their own clothing as independently as possible.

1. Each client shall have adequate, clean, well-fitting and attractive clothing appropriate to age, gender, individual needs, community standards, and season.

2. The licensee shall assist the client in maintaining a good appearance, and using their personal money properly to make reasonable clothing purchases.

(b) The licensee shall provide laundry services without additional charge to the clients.

(c) Clients' undergarments shall be changed daily and outerwear changed at least three times a week.

SUBCHAPTER 4. HABILITATION

10:44B-4.1 Individualized Habilitation Plan

(a) There shall be a copy of the current Individualized Habilitation Plan developed in accordance with N.J.S.A. 30:6D-10 et seq. on file at the home for every developmentally disabled person receiving services from any agency, organization, or institution, and a copy of an Individual Education Plan for school age residents shall be available. (Does not apply to Respite Care Homes.)

(b) The licensee shall participate in the development of the Individualized Habilitation Plan. (Does not apply to Respite Care Homes.)

(c) Training received by a resident in the home shall be consistent with the Individual Habilitation Plan.

(d) If a client is being considered for discharge, the Individual Habilitation Plan shall specify the plan to be followed upon his/her discharge.

10:44B-4.2 Day programs

(a) No client shall be prohibited by the licensee from participating in an organized program of habilitation or rehabilitation.

1. Every client between the ages of 5 and 21 years shall receive an appropriate education in accordance with Federal and State laws.

2. All individuals over 21 years of age, who so desire, shall be provided with a program, unless a physician certifies in writing that such activity is medically inadvisable.

(b) The client shall be paid for productive work, except for assisting with normal chores within the home.

#### SUBCHAPTER 5. HEALTH SERVICES

##### 10:44B-5.1 General medical and health care

(a) A personal, primary physician shall be provided for each client.

(b) Each client shall have an annual medical examination.

1. No licensee shall accept into their home any client being placed directly from an institution who has not been certified by a physician to be contagion-free within 24 hours prior to placement, and who has not had a complete physical examination within 30 days prior to placement.

2. A copy of the annual examination shall be kept on file at the home.

(c) Each client, as appropriate, shall have at least an annual dental examination.

1. Documentation from the dentist of this examination shall be kept on file at the home.

(d) The licensee shall follow-up on all client health needs, including medical treatment, pharmaceutical, dental or other needed services.

(e) The licensee shall make arrangements for medical care to be available for emergencies.

(f) The licensee shall have a first aid kit to include:

1. Antiseptic;
2. Two-inch rolled gauze bandage;
3. 2" x 2" gauze pads;
4. Adhesive tape;
5. Scissors;
6. Adhesive bandage (e.g., band-aids).

##### 10:44B-5.2 Medication and drugs

(a) Clients receiving medication shall be evaluated for their ability to take their own medication. (Does not apply to Respite Care Homes.)

1. The determination of whether a particular client is capable of self-administering medication should be made and documented at the time the Individual Habilitation Plan is developed or revised.

i. Upon written certification that a client is capable of taking medication without assistance, no daily medication record is required; however, the licensee must record in the individual's file the date the medication was prescribed, name of medication, dosage, frequency and where the medication is stored.

(b) If a client is found capable of learning to take his/her own medication, training shall be provided.

1. Life-sustaining drugs, such as injectable insulin, may be self-administered if the client has documented training from licensed medical personnel.

i. If the client is unable to learn to self-administer the injectable medication, a licensee who has documented training from licensed medical personnel and is approved by the licensing agency may administer the medication.

(c) If the client is not responsible or capable enough to take his own medication, the licensee or his/her alternative shall give it to him to take exactly as prescribed, and assure that the medication is taken.

1. The licensee shall maintain a record of all medication taken where assistance is required. The medication record shall include:

- i. Signature of any persons administering medication followed by his/her initials;
- ii. Type of medication;
- iii. Dosage;
- iv. Date and time of administration;
- v. A record of each dosage administered identified by the initials of the person administering the medication.

(d) Medications shall only be used by the person for whom they are prescribed.

(e) The licensee shall ensure that an adequate supply of medication is maintained at all times.

(f) The licensee shall supervise the storage and accessibility of all medication.

1. Prescribed medication shall be kept separate from other household items.

i. No disinfectants, insecticides, bleaches, rubbing alcohol, or household poisons shall be stored with medications, food supplies, or utensils.

2. All medications shall be kept in their original containers and shall be properly identified.

(g) Medication errors and drug reactions shall be reported, at the time of the occurrence, to the client's physician and case manager.

(h) The licensee shall not change or discontinue any client's prescription without documented approval of the physician.

#### SUBCHAPTER 6. PHYSICAL PLANT AND SAFETY

##### 10:44B-6.1 General home requirements

(a) The licensee shall take such measures as may be reasonably necessary to protect the occupants from hazards to health and safety arising from the location or environment of the residence.

(b) Any one or two family dwelling shall be subject to the requirements of New Jersey Uniform Construction Code (Use Group Category R-3) and Department of Community Affairs Binding Interpretation #12 (June 4, 1981).

(c) In single family homes which have been subdivided into more than two (2) apartment units, the following shall apply:

1. If the licensee is renting, he/she shall obtain a copy of the Certificate of Occupancy.

2. If the licensee is the owner, the building shall comply with the Uniform Construction Code Use Group Category R-2 (Multi-family dwelling).

(d) Every home shall have heating facilities which are properly installed, maintained in good and safe working condition, and capable of maintaining all habitable rooms at a temperature of 65° Fahrenheit (18°C) when the outdoor temperature is 0° Fahrenheit (- 18°C).

1. Heat sources exceeding 110°F (43°C), which are accessible to clients, must be equipped with protective guards or insulated to prevent clients from coming into direct contact with the heat source.

(e) Hot and cold running potable water shall be available in adequate supply at all times.

(f) The licensee shall have an operable telephone.

1. Telephone numbers of the nearest hospital, fire department, ambulance service, and police department shall be posted by each phone.

(g) All stair treads and landings shall be equipped with non-slip surfaces.

(h) Stair treads shall be at least 9" deep and have risers no more than 8¼" high.

(i) All stairways and hallways shall be kept free and clear of obstructions at all times.

(j) Stairways shall be a minimum of 2' 8" wide from hand-rail to handrail or wall.

(k) From May through October, all openable windows and doors used for natural ventilation shall be provided with insect screening in good condition.

(l) Every porch, balcony, staircase, or place higher than 30 inches off the ground accessible to clients shall be provided with adequate railings. Such railings shall be no less than 30 inches nor more than 34 inches in height.

(m) All outside stairways consisting of four or more steps shall be provided with a secure handrail.

(n) Separate living and dining areas shall be provided which are large enough to provide seating for all occupants of the home at one time.

(o) Every home shall be provided with one flush type toilet, lavatory, and bathtub or shower for every 8 persons living in the home.

1. Every toilet, lavatory, bathtub, or shower shall be accessible without passing through any other sleeping unit and shall be available within one floor above or below the client's room, unless it is a "master-bedroom" type suite for the sole use of that bedroom's occupants.

2. Toilet paper shall be available at each toilet.

3. Non-slip surfaces shall be available for each shower or bath.

(p) The accumulation of garbage or waste shall be prevented. Garbage containers shall be non-corrosive and non-combustible, leak-proof, and provided with tight fitting covers.

(q) Floors, walls, ceilings, and other interior surfaces shall be kept clean and in good repair.

(r) The exterior of the premises shall be maintained free of hazards to the health, safety, and welfare of the clients.

(s) Outside walkways shall be kept clean of ice, snow, leaves, and other hazards.

(t) Exterminator services shall be arranged, and documentation retained, by the licensee when there is evidence of infestation.

(u) If the home is to house clients using wheelchairs, it shall incorporate barrier-free design appropriate to the individual; e.g., ramps; handrails in bathroom areas; and corridors, doorways, and rooms of adequate size to accommodate wheelchairs.

1. Design of the home shall be approved by the licensing agency prior to placement of such clients.

(v) Basements may be used for storage, laundry, heating, water supply equipment, and other utilities.

1. They may be used as activity rooms so long as they are dry, warm, and adequately lighted and have two independent means of egress.

(w) Kitchen facilities;

1. Storage space shall be clean and well ventilated.

i. Containers of food shall be covered and appropriately stored at least 12 inches above the floor on shelves or other clean surfaces.

2. Refrigeration and storage of food shall be provided at not more than 45° Fahrenheit (7°C). Freezer compartments shall operate at no more than 32°F (0°C).

3. All food and drink shall be safe for human consumption, clean, wholesome, and free of spoilage.

4. All food and drink shall be prepared and served in a sanitary manner.

5. All equipment and utensils used for eating, drinking, preparation and serving of food shall be kept clean and in good condition.

i. All equipment and utensils used for eating, drinking, preparation and serving of food shall be thoroughly washed after each use.

6. Floors, walls, and work surfaces of food preparation and food serving areas shall be kept clean and in good condition at all times.

#### 10:44B-6.2 Fire safety

(a) Independent battery-powered smoke detectors shall be installed on each floor, including the basement, and located in the following areas:

1. One unit on the hallway ceiling of any floor with sleeping areas.

2. One unit in the general living area of the home.

3. Additional units may be required in areas designated as high hazard or without adequate coverage.

(b) The licensee shall test the smoke detectors monthly.

(c) One 1A:10B:C rated fire extinguisher shall be maintained in the kitchen, stored in clear view, and readily accessible.

(d) The licensee shall demonstrate a knowledge of the use of the fire extinguisher.

(e) The licensee shall develop and have available for review a written diagram for fire evacuation.

(f) Fire drills shall be conducted once a month. Drills should be held at varying times of the day and night.

1. Records of these drills shall be maintained and shall include the date and time of drill, time required for evacuation, and names of persons involved.

2. Evacuation time shall be 2½ minutes or less.

3. A fire drill shall be conducted within 48 hours of any admission.

i. Respite Care providers shall conduct a fire drill within 24 hours of any admission.

4. Locations of the hypothetical fire shall vary.

(g) Combustible materials shall not be stored within 3 feet of the furnace or hot water heater.

(h) Portable area or space heaters shall be prohibited.

(i) The licensee shall establish smoking rules on the basis of fire safety, and provide ash trays in all areas where smoking is permitted.

(j) Woodburning stoves shall be permitted only if proof of inspection by the local building official is provided.

1. An A-rated fire extinguisher shall be available in the same room as the woodburning stove.

2. Protective screening shall be provided as necessary.

(k) Combustible materials shall be stored in non-combustible containers.

(l) The accumulation of combustible material in attics, basements, or other parts of the home is prohibited.

(m) There shall be two ground level doors for egress.

#### 10:44B-6.3 Client rooms

(a) Every client room shall be provided with at least one window facing directly outdoors.

(b) Clients' bedrooms shall not be a means of access to any other room.

(c) Client occupancy shall be limited to floors on or above grade level. However, under certain conditions, basement occupancy may be permitted.

1. Such occupancy shall be allowed if:
  - i. More than half the height of the room is above grade level;
  - ii. The basement is provided with two or more independent means of egress, at least one of which leads directly outside; and
  - iii. There are no other conditions which hinder the health, safety, or welfare of the client.
- (d) There shall be a limit of 3 clients to a bedroom.
- (e) Bedrooms used by clients shall contain the following minimum areas per person:
  1. 70 square feet for occupancy by one person;
  2. 130 square feet for occupancy by two people;
  3. 190 square feet for occupancy by three people.
- (f) At least one half of the floor area of every client room shall have a ceiling height of 7½ feet. The floor area of that part of any room where the ceiling is less than 5 feet shall not be considered in determining allowable floor space.
- (g) Every client room shall be provided with sufficient electrical outlets and lamps or light fixtures.
  1. No temporary wiring shall be used except U.L.-listed extension cords, which do not run under rugs, through walls, or through doorways.
- (h) Each client shall be provided:
  1. A separate bed of proper size and height for his/her convenience. High hospital beds shall not be used except for physically handicapped persons requiring them.
  - i. The bed may not be of the fold-up or convertible type. Roll-aways, cots, hide-a-beds, trundle beds, double deck beds, and day beds shall be prohibited.
  2. A clean, comfortable mattress of fire resistant material not less than four inches thick.
  3. A bed spring in good repair.
  4. A pillow, of non-allergenic material if necessary.
  5. Drawers or a closet for the storage of personal possessions.
  6. Sufficient light for reading or hobbies.
  7. Adequate sheets and blankets.
  8. A mirror.
- (i) Bed linen shall be changed a minimum of once a week.

**(a)****DIVISION OF MEDICAL ASSISTANCE  
AND HEALTH SERVICES****Pharmaceutical Assistance for the Aged and  
Disabled (PAAD) Eligibility Procedures****Proposed Amendments: N.J.A.C. 10:69A-1.2,  
2.1, 5.3, 5.6, 6.1, 6.4, 6.6, 6.10 and 6.11**

Authority: N.J.S.A. 30:4D-21, 22, 23, 24.

Proposal Number: PRN 1985-84.

Address comments and inquiries to:

Henry W. Hardy, Esq.  
Administrative Practice Officer  
Division of Medical Assistance  
and Health Services  
CN 712  
Trenton, NJ 08625

The agency proposal follows:

**Summary**

This proposal amends certain sections of the Pharmaceutical Assistance to the Aged and Disabled (PAAD) Eligibility Manual. These amendments are basically concerned with procedural requirements. They do not alter the statutory standard for income levels, which is an annual income of less than \$12,000 for a single individual, or less than \$15,000 for a married couple. Those persons who qualify, or attempt to qualify, under the disability provision of the law must be receiving disability benefits pursuant to Title II of the Federal Social Security Act. All PAAD beneficiaries must be residents of New Jersey (N.J.S.A. 30:4D-21).

This proposal describes the method of redetermining eligibility for PAAD. Those beneficiaries whose annual income is less than \$9,000 (single persons) or \$12,000 (married persons) are required to complete a renewal application every two years, because experience has shown that generally their income levels do not rapidly increase above the statutory levels cited previously (\$12,000 for single persons; \$15,000 for married persons). Instead, these beneficiaries receive an eligibility card with a letter asking them to notify the PAAD program if their income exceeds the administrative limits (\$9,000 and \$12,000), in which case they would be asked to submit a complete renewal application. Those beneficiaries whose income already exceeds the administrative limits (\$9,000 and \$12,000) will be asked to submit a complete renewal application, which must be submitted prior to the renewal date in order for PAAD benefits to continue without interruption. If the renewal application is not submitted timely, then the effective date is delayed until the application is processed by PAAD.

The proposal also indicates that persons who wish to qualify as disabled must present some documentation establishing receipt of Social Security disability benefits. The following documents would be considered acceptable: an award certificate dated within the last six months, or an SSA-2458 form, or Third Party Query Form indicating disability.

There is also a provision for the release of information or files to county welfare agencies for the purpose of determining eligibility for Medicaid benefits or for subsequent verification of Medicaid eligibility. Persons whose prescription drug costs can be covered by Medicaid (Title XIX) would not be eligible for PAAD.

The proposal also adds two additional citations under the section entitled "Legal Authority," and adds a definition of "reasonable cost," which reflects the current reimbursement formula to pharmaceutical providers.

**Social Impact**

The rule impacts on all aged and disabled residents in New Jersey who are applying for, or currently receive PAAD benefits. This particular proposal describes in more detail the process for renewing eligibility and the documentation required for establishing disability.

Within the Division of Medical Assistance and Health Services, the Bureau of PAAD is responsible for administration of the PAAD program. This proposal does not require any additional administrative procedures for establishing and/or renewing eligibility for PAAD beneficiaries.

The county welfare agencies and/or county boards of social services may obtain information from PAAD files to assist in making Medicaid eligibility determinations.

**Economic Impact**

There is no additional economic impact on the Division because existing administrative staff and procedures can be

utilized to implement the requirements of this proposal.

PAAD beneficiaries are required to pay a \$2.00 co-payment for each prescription as required by law (N.J.S.A. 30:4D-22).

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

#### 10:69A-1.2 Legal authority

(a) The New Jersey Program of Pharmaceutical Assistance to the Aged and Disabled (PAAD) was established by Chapter 194, Laws of 1975, as amended by:

[1. Chapter 312, Laws of 1975, effective August 21, 1975;]

**1. Chapter 194, Laws of 1975, effective August 21, 1975. Amended by Chapter 312, laws of 1975, effective February 19, 1976;**

2. Chapter 268, Laws of 1977, effective January 1, 1978; and

3. Chapter 171, Laws of 1978, effective December 22, 1978; and

4. Chapter 27, Laws of 1979, effective March 1, 1979[.]; and

**5. Chapter 499, Laws of 1981, effective March 1, 1982.**

(b) These Statutes supplement the New Jersey Medical Assistance and Health Services Act (P.L. 1968, c.413).

#### 10:69A-2.1 Definitions

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

...

"Calendar year" means a year beginning January 1 and ending on December 31. It is the base period utilized to determine annual income and PAAD eligibility.

"Current year" means the calendar year [is] in which a person applies or reapplies for PAAD.

"Expiration date" means the date when a beneficiary's PAAD eligibility ends.

"Legend Drug" means any **approved** drug product which by Federal Law cannot be dispensed without a prescription and bears the statement on the Label: "Caution: Federal law prohibits dispensing without a prescription".

...

"Reasonable cost" means the maximum allowable cost of prescription drugs plus a dispensing fee as determined by the Commissioner of the Department of Human Services.

"Resident" means "one legally domiciled within the State (of N.J.) for a period of 30 days immediately preceding the date of application for inclusion in the PAAD Program. Mere seasonal or temporary residence within the State, of whatever duration, does not constitute domicile." (See N.J.A.C. 10:69A-6.4 for residence requirements.)

"Tenants Lifeline Assistance Program" means a utility assistance program that offers a benefit in the form of a check issued to tenants whose utilities are included in their rent and do not have a separate utility bill.

#### 10:69A-5.3 Eligibility effective date

(a) The PAAD eligibility effective date for an initial PAAD applicant, who meets all of the PAAD eligibility criteria, is the date when processing of a valid and complete eligibility application is completed by the PAAD Bureau.

[(b) The PAAD eligibility of a reapplicant, who meets all of the PAAD eligibility criteria, will continue uninterrupted, if he/she submits a complete and valid renewal application 45 days prior to his/her eligibility expiration date. If the renewal application is not submitted prior to the expiration date, the eligibility effective date will be the date when processing of a

valid and complete renewal application is completed by the PAAD Bureau.]

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

**1. Those eligible for the biennial process will be mailed an eligibility card for the second year automatically.**

**2. Those beneficiaries required to renew annually must submit a valid renewal application 45 days prior to their renewal date in order for PAAD benefits to continue uninterrupted. If the renewal application is not submitted prior to the renewal date, the eligibility effective date will be the date when processing of a valid and complete renewal application is completed by the PAAD Bureau.**

#### 10:69A-5.6 Responsibilities in the application process

(a) (No change.)

(b) The Bureau of Pharmaceutical Assistance to the Aged and Disabled has responsibility in the application process to:

1.-4. (No change.)

5. Automatically mail reapplication forms approximately [90 days] **four months** prior to the eligibility expiration date;

6. (No change.)

(c) The applicant has the responsibility to:

1. Complete the PAAD eligibility application/renewal application form(s) legibly and accurately:

i.-v. (No change.)

2.-5. (No change.)

**6. Complete his/her renewal application in person if selected as part of a sample group by PAAD. PAAD eligibility will not be renewed if the beneficiary refuses an in-person eligibility review.**

(d) The beneficiary has the responsibility to:

1. (No change.)

2. Return eligibility card to the Bureau of Pharmaceutical Assistance to the Aged and Disabled whenever becoming ineligible due to one of the following:

i.-iii. (No change.)

**iv. He/she was determined eligible based on his/her disability and he/she stops receiving Social Security Disability benefits.**

**3. Repay the State of New Jersey, upon request, for the cost of benefits incorrectly paid on his/her behalf.**

#### 10:69A-6.1 Age

(a) To be eligible for PAAD, the applicant must be 65 years of age or older[.] **or must be under 65 and over 18 years of age and receive Social Security Title II disability benefits.** The applicant must be able to document his or her age upon request by the Division of Medical Assistance and Health Services. The Division will require that the applicant submit a photocopy of his or her birth certificate or other acceptable proof of age[.] **if over 65 years of age.**

(b) The following are acceptable proofs of age:

1. Primary proof: The applicant is required to submit a photocopy of one of the following documents:

i.-iv. (No change.)

v. Railroad retirement[.];

**vi. Third Party Query Form (can be obtained from local Social Security Office.)**

2. (No change.)

(c) If under age 65, the following are acceptable proofs of disability.

1. A copy of a Social Security award certificate issued in the last six months.

2. An SSA-2458 Form or Third Party Query Form indicating disability.

10:69A-6.4 Residence

(a) The statute provides that "any . . . resident of this State . . . shall be eligible for PAAD. "Resident" means one legally domiciled within the State for a period of 30 days immediately preceding the date of application for inclusion in the program. Mere seasonal or temporary residence within the State, of whatever duration, does not constitute domicile. Absence from this State for a period of 12 months [in] is prima facie evidence of abandonment of domicile. The burden of establishing legal domicile [with] within the State is upon the applicant."

1.-5. (No change.)

10:69A-6.6 PAAD eligibility application and renewal application forms

(a) (No change.)

(b) The only acceptable form to be utilized in determining the beneficiary's continuation of eligibility will be the PAAD eligibility renewal application form (AP-12). This form is automatically mailed to the beneficiary approximately [90 days] four months prior to the eligibility expiration date.

10:69A-6.10 Eligibility period

[(a) PAAD eligibility is established annually when a valid application/renewal application is processed and will remain in effect for one year unless there is cause for termination of eligibility.

(b) Renewal application forms will be automatically mailed to each beneficiary approximately 90 days prior to expiration of his/her eligibility and must be returned to the PAAD Bureau by the beneficiary at least 45 days prior to expiration of his/her eligibility to assure continuous coverage.]

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

**(b) Approximately four months prior to his/her expiration date, PAAD will notify the beneficiary if he/she is eligible for biennial eligibility or if he/she must complete a renewal form. Renewal applications must be returned to the PAAD Bureau by the beneficiary at least 45 days prior to the renewal date to ensure continuous coverage.**

10:69A-6.11 Confidentiality and disclosure of information

(a) (No change.)

(b) (No change.)

(c) The prohibition of (a) above against unauthorized disclosure shall not be construed to prevent:

1.-6. (No change.)

**7. The release of information or files to County Welfare Agencies for the purpose of determining eligibility for Medicaid benefits or for subsequent verification of Medicaid eligibility.**

(a)

**DIVISION OF PUBLIC WELFARE**

**Public Assistance Manual  
Reimbursement by Counties to State for  
Administrative Expenses of Tax Setoffs  
and Other Collections**

**Proposed Amendment: N.J.A.C. 10:81-11.9**

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

Authority: N.J.S.A. 44:7-6 and 44:10-3.

Proposal Number: PRN 1985-98.

Address comments and inquiries to:

Audrey Harris, Director  
Division of Public Welfare  
CN 716  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

Since the inception of the Child Support Enforcement Program under Title IV-D of the Social Security Act, the Federal government has paid incentives to State IV-D agencies for child support collections for persons receiving Aid to Families with Dependent Children (AFDC) grants. Incentives were 15 percent of total collections but in 1983 were reduced to 12 percent. In New Jersey, these incentives went to the county welfare agencies which administered AFDC and the IV-D program. However, in 1981, the State undertook a setoff program to satisfy AFDC child support arrearages by State and Federal tax refunds and rebates. The counties supplied the names and needed information on the obligor for the State to administer the setoffs. To offset the administrative costs, the State divided the Federal incentives on the setoff collections on a 50/50 basis. In *Shapiro v. Albanese* 194 N.J. Super 418, the Superior Court of New Jersey decided that this division of collections was not legal under State and Federal regulations and that all incentives should be paid to the counties. In line with this decision, the State is passing all incentives on to the county but is asking that in turn the counties reimburse the State for any expenses actually incurred by the State in the collection of the money upon which the incentives are based.

**Social Impact**

When the court ruling on incentives was made, tax offsets were limited to child support cases involving AFDC clients. Therefore, who received what portion of incentives has no social impact; however, under new Federal law, tax setoffs have been extended to non-AFDC child support cases for whom the collection of arrearages can be tremendously important, undoubtedly, keeping some obligees off public assistance rolls.

**Economic Impact**

If the proposed regulation is not adopted, the State will have to assume full administrative costs of over \$700,000

annually to continue to administer the Tax Offset Program or turn the administration over to a diverse county-administered system. The continuation of State administration means substantially larger collections to offset AFDC costs and for families dependent upon child support enforcement.

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

10:81-11.9 Responsibilities of the CWA/CSP Unit

(a) (See proposal at 17 N.J.R. 165) (January 21, 1985)

(b)-(g) (No change.)

(h) Collection of delinquent child support payments through offset of Federal income tax: Federal income tax refunds shall be offset when court ordered child support payments owed to county welfare agencies are delinquent.

1. (No change.)

2. CWA responsibilities: CWA/CSP Unit shall be responsible for submitting cases to the IRS Offset process where child support or a judgment has been ordered payable directly to the CWA by a court of competent jurisdiction via Form CSP-152 Tax Refund Offset Data Form. The CPDs will be responsible for submittal of those public assistance cases under their supervision which meet the eligibility requirements.

i.-iii. (No change.)

**iv. Payment for submittal and collection costs: County welfare agencies shall pay the State IV-D agency for all direct costs incurred in submittals and collections for the Federal Tax Offset Program. Such payments are retroactive to the date of Offset Program implementation. Since the Division of Public Welfare prepays these fees, payment from the County Welfare Agency will be in the form of reimbursement to the Division of Public Welfare.**

3.-9. (No change.)

(i) Collection of delinquent child support payments through the New Jersey State Income Tax/Homestead Rebate (SOIL) Project: Delinquent child support payments owed to the county welfare agency may be offset through the New Jersey State Income Tax/Homestead Rebate (SOIL) Project.

1.-9. (No change.)

**10. County welfare agencies shall pay all direct costs incurred in submittals and collections under the State Income Tax Refund/Homestead Rebate Program. Such payments are retroactive to the date of Rebate Program implementation. Since the Division of Public Welfare prepays such fees, payments from County Welfare Agencies will be in the form of reimbursement to the Division of Public Welfare.**

**(j) Payment of costs for unemployment garnishments: County welfare agencies shall pay all direct costs incurred in submittals and collections under the State Unemployment Garnishment Agreement with the New Jersey Department of Labor. Such payments are retroactive to the date of garnishment program implementation. Since the Division of Public Welfare prepays such fees, payments from the County Welfare Agencies will be in the form of reimbursement to the Division of Public Welfare.**

**(k) Payment of costs for lottery intercept: County welfare agencies shall pay all direct costs incurred in submittals and collections under the State Lottery Intercept Agreement with the New Jersey Department of Treasury. Such payments are retroactive to the date of program implementation. Since the Division of Public Welfare prepays such fees, payment from the County Welfare Agencies will be in the form of reimbursement to the Division of Public Welfare.**

[ (j) ] (l) (No change in text.)

## INSURANCE

The following proposals are authorized by Jasper J. Jackson, Acting Commissioner, Department of Insurance.

Address comments and inquiries to:

Jasper J. Jackson  
Acting Commissioner  
Department of Insurance  
CN 325  
Trenton, NJ 08625

**(a)**

### DIVISION OF ACTUARIAL SERVICES

#### Automobile Insurance Reporting Financial Disclosure and Excess Profits Reports

#### Proposed New Rule: N.J.A.C. 11:3-20

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e); 17:29A-5.2 through 17:29A-5.5.

Proposal Number: PRN 1985-103.

The agency proposal follows:

The proposed new subchapter, N.J.A.C. 11:3-20, implements the reporting requirements of N.J.S.A. 17:29A-5.2 and 17:29A-5.3. Insurers transacting private passenger automobile insurance business in New Jersey are required to submit financial disclosure statements and reports for the determination of excess profits. Four possible reports are described: an Actuarial Results Report, a Financial Disclosure Report, a Market Share Report and an Excess Profits Report.

Proposed N.J.A.C. 11:3-20.1, 20.2 and 20.3 set forth the purpose, scope and definitions for the subchapter.

N.J.S.A. 17:29A-5.2 requires insurers transacting private passenger automobile insurance business in New Jersey to file certain financial information annually. Proposed N.J.A.C. 11:3-20.4 sets forth the reporting requirements pursuant to the statute.

Proposed N.J.A.C. 11:3-20.4(a) instructs all insurers, subject to the exception in subsection (c), to file an Actuarial Results Report. An Actuarial Results Report, the form and content of which is set forth at N.J.A.C. 11:3-20.5, requires information to be filed for the three most recent calendar-accident years.

Proposed N.J.A.C. 11:3-20.4(b) requires that, if there is an actuarial gain for the three calendar-accident years combined, a Financial Disclosure Report must be filed. A Financial Disclosure Report, as prescribed by proposed N.J.A.C. 11:3-20.6, contains financial information for the three most recent calendar years.

Proposed N.J.A.C. 11:3-20.4(c) exempts insurers from the reporting requirements of subsections (a) and (b) if the insurer does not write at least 0.5 percent of the New Jersey private passenger automobile market. Such insurers are required to file a Market Share Report, as described at proposed N.J.A.C. 11:3-20.7.

N.J.S.A. 17:29A-5.3 requires private passenger automobile insurers that have experienced an actuarial gain to file a report on excess profits each year. N.J.A.C. 11:3-20.8 sets forth the reporting requirements for excess profits.

Proposed N.J.A.C. 11:3-20.9 requires insurers reporting excess profits to file a non-discriminatory plan for refunding or crediting the excess profits to policyholders within 30 days of submission of the Excess Profits Report. This plan must be approved by the Commissioner.

#### Social Impact

The public will benefit from the proposed rule because insurers will be held accountable for any excess profits earned, pursuant to the refund or credit provisions of N.J.S.A. 17:29A-5.4.

The Department will benefit because financial disclosure and excess profit information will be submitted in an orderly manner and on forms prescribed by the Department.

Insurers will benefit from the rule to the extent that the reporting requirements of N.J.S.A. 17:29A-5.2 through 29A-5.3 will be clearly set forth.

#### Economic Impact

The Department will meet some costs in reviewing submissions and in calculating excess profits. All such costs will be absorbed in the general budget.

Insurers will bear the cost of preparing the documents which must be submitted, but since similar information is required for other financial reports compiled by the insurers, costs will not be great.

The proposed rule will facilitate application of the refund or credit provisions of N.J.S.A. 17:29A-5.4; insureds will thus benefit financially from a finding of excess profits.

Full text of the proposed new rule follows.

### SUBCHAPTER 20. REPORTING OF EXCESS PROFITS

#### 11:3-20.1 Purpose

This subchapter sets forth the financial disclosure and excess profit reporting requirements for all private passenger automobile insurers, pursuant to N.J.S.A. 17:29A-5.2 and 17:29A-5.3.

#### 11:3-20.2 Scope

The provisions of this subchapter apply to all insurers transacting private passenger automobile insurance business in this State.

#### 11:3-20.3 Definitions

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

“Annual statement” means the report prescribed by the National Association of Insurance Commissioners (NAIC) and annually filed with the Insurance Department by insurers licensed to do business in New Jersey.

“Accident year losses” means the incurred losses and number of claims resulting from accidents that occurred during the period January 1 to December 31.

“Calendar year losses” means the losses paid during the 12-month period, the loss reserves on December 31, the end of the 12-month period, less the loss reserves on January 1, the beginning of the 12-month period.

“Calendar-accident year data” means the premiums for the calendar year and the losses for the accident year.

“Calendar year” means the year beginning January 1 and ending December 31.

“Commissioner” means the Commissioner of the New Jersey Department of Insurance.

“Direct earned premiums” mean the pro rata portion of the premium in force applicable to the expired period of the

policy term arising from policies issued by the insurer collecting the premium and acting as the primary insurance carrier.

“Direct written premiums” means all premiums (less return premiums) as recorded by the insurer arising from policies issued by the insurer collecting the premium and acting as the primary insurance carrier.

“Insurance Expense Exhibits (IEE)” means the detailed analysis of expenses by line of insurance prescribed by the National Association of Insurance Commissioners (NAIC).

“Insurer” means any person or persons, corporation, association, partnership or company transacting private passenger automobile insurance business in the State of New Jersey. As applicable in this subchapter, the term shall include affiliated insurers.

“Line of business” means the three lines on page 14 of the Annual Statement on which private passenger automobile insurance is reported, 19.1 private passenger automobile no-fault, 19.2 private passenger automobile other liability, and 21.1 private passenger automobile physical damage.

“Private passenger automobile insurance” means business as reported in the (NAIC) Annual Statement, page 14, lines 19.1 private passenger no-fault, 19.2 private passenger other liability and 21.1 private passenger physical damage for automobiles as defined in N.J.S.A. 39:6A-2.

#### 11:3-20.4 General reporting requirements

(a) Every private passenger automobile insurer, except as provided at (c) below, shall file with the Commissioner an Actuarial Results Report on or before July 1 of each year. The contents of a Actuarial Results Report are set forth in N.J.A.C. 11:3-20.5. The required form is a part of this rule at Appendix A.

(b) Each insurer required to file an Actuarial Results Report shall also file a Financial Disclosure Report if there is an actuarial gain for all coverages combined for the three years combined. Financial Disclosure Reports shall be filed with the Commissioner no later than April 15 of the year following the submission of the Actuarial Results Report. The contents of the Financial Disclosure Report are set forth in N.J.A.C. 11:3-20.6. The required form is a part of this rule at Appendix B.

(c) Any insurer that does not write at least 0.5 percent of the New Jersey private passenger automobile market, based on direct premiums written, shall not be required to file any report required by this section, other than a Market Share Report. The content of a Market Share Report and the method of calculating market share percentage are set forth in N.J.A.C. 11:3-20.7. The required form is a part of this rule at Appendix C.

(d) Each insurer required to file an Actuarial Results Report shall also file an Excess Profits Report if there is an actuarial gain for all coverages combined for the three years combined. Excess Profits Reports shall be filed with the Commissioner on or before July 1 of each year. The contents of the Excess Profits Report and method of calculating excess profits are set forth in N.J.A.C. 11:3-20.8. The required form is a part of this rule at Appendix D.

#### 11:3-20.5 Actuarial Results Report

(a) Each Actuarial Results Report shall contain financial information to be reported for all direct private passenger automobile business reported in the Annual Statement on page 14, lines 19.1, 19.2 and 21.1, transacted in this State on a calendar-accident year basis.

(b) Each Actuarial Results Report shall contain separate financial information for each of the previous three calendar-

accident years with loss evaluations as of March 31 of the reporting year. All prior year reports submitted are to be updated, so that ultimately each calendar-accident year will be reported at three separate reporting periods.

(c) A separate Actuarial Results Report form is required to be submitted for each type of coverage specified, and one form must be submitted for all coverages combined. If an insurer writes any of the specified coverages on a combined basis and the data are inseparable, the financial information required shall be shown under the most appropriate coverage and the explanation footnoted on the form. The liability coverages are to be on a total limits basis. Collision and comprehensive shall include all deductibles, including policies without deductibles. Personal injury protection coverage shall include additional personal injury protection coverage and include all deductibles and options. The types of coverage are:

1. Bodily injury liability;
2. Property damage liability;
3. Uninsured motorist and underinsured motorist;
4. Personal injury protection;
5. Comprehensive (including named peril policies); and
6. Collision.

(d) Financial information required to be reported shall include:

1. Direct premiums earned;
2. Policyholder dividends incurred;
3. Expenses for acquisition and general expenses;
4. Expenses for agents' commissions, taxes, licenses, and fees;
5. Profit and contingency as utilized in the insurer's automobile rate filings for the applicable years;
6. Losses paid;
7. Losses unpaid stated at the final settlement value;
8. Loss adjustment expenses paid;
9. Loss adjustment expenses unpaid stated at the final value; and
10. Actuarial gain or loss.

(e) Expense information reported shall conform to the kinds of expense on page 1 of the Insurance Expense Exhibit. Insurers shall provide a statement describing the allocation method of items specified at N.J.A.C. 11:3-20.5(d)(3), (4), (8) and (9).

(f) Insurers shall use Form FA, appended to this subchapter, to report financial information required by this section.

#### 11:3-20.6 Financial Disclosure Report

(a) An insurer shall file calendar year information as specified in this section in a Financial Disclosure Report when the total on Form FA for all coverages for the three years combined (line 13) displays an actuarial gain.

(b) Each report shall contain three calendar years of information for the years reported on the Actuarial Results Report.

(c) Calendar year information shall be on direct private passenger automobile insurance business transacted in New Jersey.

(d) Calendar year information shall be reported separately for each item listed below:

1. Direct premium written;
2. Direct premium earned;
3. Loss reserves for all known claims for beginning and end of the year;
4. Reserves for losses incurred but not reported for the beginning and the end of the year;
5. Incurred allocated loss adjustment expenses;

6. Incurred unallocated loss adjustment expenses;
7. Direct losses paid;
8. Underwriting income or loss;
9. Commissions and brokerage fees;
10. Taxes, licenses, and fees;
11. Other acquisitions costs;
12. General expenses;
13. Policyholder dividends; and

14. Net investment gain or loss and other income gain or loss allocated pro rata by earned premium to New Jersey business utilizing the investment allocation formula contained in the NAIC Profitability Report by line by state.

(e) A separate Financial Disclosure Report shall be filed by annual statement line of insurance for private passenger automobile no-fault, private passenger automobile liability, and private passenger automobile physical damage. A summary report for all private passenger automobile lines written by the insurer must be filed.

(f) Other information requirements are:

1. Items under N.J.A.C. 11:3-20.6(c) (1), (2), and (7) shall agree with the amounts reported on the insurer's Annual Statement, page 14.

2. Items under N.J.A.C. 11:3-20.6(c)(5), (6), (9), (10), (11), (12) and (14) shall be allocated on the same basis as on the insurer's Insurance Expense Exhibit. Insurers shall provide a statement describing the allocation method of each item included in this provision.

(g) Insurers shall use Form FB, appended to this subchapter, to report financial information required by this section.

#### 11:3-20.7 Market Share Report

(a) Market share percentage shall be calculated by dividing the insurer's most recent calendar year direct written premiums reported in the Annual Statement, page 14, lines 19.1, 19.2 and 21.1, by the total direct written premiums for all insurers in this State for the same Annual Statement lines.

(b) An insurer which writes fewer than three lines of insurance (for example, physical damage on line 21.1) shall provide a Market Share Report on the basis of the direct written premium for the insurance line(s) divided by the total direct written premium for all insurers in New Jersey for the specific line(s). Where this market share exceeds 0.5 percent the insurer shall file the report required under N.J.A.C. 11:3-20.4.

(c) Every group of affiliated insurers which includes more than one fire and casualty insurer shall file reports under N.J.A.C. 11:3-20.4 where the market share of the affiliated insurers in aggregate exceeds 0.5 percent.

(d) Insurers required to submit Market Share Reports shall file such reports with the Commissioner no later than July 1 of the year following the end of the calendar year.

(e) Insurers shall use Form FC, appended to this subchapter, to report market share information.

#### 11:3-20.8 Excess Profits Report

(a) Excess Profits Reports shall contain separate financial information for each of the previous three calendar-accident years.

(b) Insurers shall report excess profits for all private passenger automobiles by lines of insurance. The personal injury protection coverage and additional personal injury protection coverage shall be reported as private passenger automobile no-fault. Bodily injury liability, property damage liability, uninsured motorist, and underinsured motorist coverage shall be combined and reported as private passenger automobile liability. Collision and comprehensive coverages shall be com-

bined and reported as private passenger automobile physical damage.

1. The actuarial gain or loss shall agree with the sum of the types of coverage gains and/or losses reported on Form FA line 14.

(c) Insurers shall file an excess profits form that displays totals for all private passenger automobile lines combined.

(d) Insurers shall use form FD, appended to this subchapter, to report excess profits.

11:3-20.9 Refund or renewal credits of excess profits

(a) This section shall apply to those insurers whose actuarial gain for the three years reported exceeds five percent of direct premiums earned, as indicated in the Excess Profits Report.

(b) Insurers shall file a non-discriminatory plan to refund or credit to policyholders the excess profits within 30 days after the submission of the Excess Profit Report for approval by the Commission.

11:3-20.10 Effective date

(a) The first Actuarial Results Reports or the Market Share Reports shall be filed no later than July 1, 1985. Reports shall be required for calendar-accident years 1983, 1982 and 1981, and/or calendar year 1984 only if a Market Share Report is required.

(b) The first Financial Disclosure Results Reports shall be filed no later than April 15, 1986. Reports shall be required for calendar years 1983, 1982 and 1981.

(c) The first Market Share Report shall be filed no later than July 1, 1985. Reports will be required for calendar years 1983 and 1984.

(d) The first Excess Profits Reports shall be filed no later than July 1, 1986. Reports will be required for calendar-accident years 1985, 1984 and 1983.

(e) Insurers with excess profits must file a proposed method for distributing the excess profits to policyholders by August 1.

APPENDIX A  
NEW JERSEY DEPARTMENT OF INSURANCE  
FORM FA  
PRIVATE PASSENGER AUTOMOBILE  
ACTUARIAL RESULTS REPORT

Company Name/Group Name \_\_\_\_\_

Company/Group N.A.I.C. Code Number \_\_\_\_\_

Calendar-Accident Years 19\_\_\_\_ valued as of March 31, 19\_\_\_\_  
19\_\_\_\_  
19\_\_\_\_

Line of Coverage \_\_\_\_\_B.I. \_\_\_\_\_P.I.P.  
\_\_\_\_\_P.D. \_\_\_\_\_UM—UNM  
\_\_\_\_\_COMP. \_\_\_\_\_COLL.  
\_\_\_\_\_ALL COVERAGES

Coverage \_\_\_\_\_ Enter Whole Dollar Amounts  
Calendar-Accident Year Valued  
as of March 31

	19____	19____	19____	Combined
1. Direct Premiums Written—Calendar Year	_____	_____	_____	_____
2. Direct Premiums Earned—Calendar Year	_____	_____	_____	_____
3. Direct Paid Losses	_____	_____	_____	_____
4. Direct Losses Unpaid	_____	_____	_____	_____
5. Paid Loss Adjustment Expenses	_____	_____	_____	_____
6. Unpaid Loss Adjustment Expenses	_____	_____	_____	_____
7. Total (Lines 5 and 6)	_____	_____	_____	_____
8. Agents' Commissions and taxes, licenses, fees	_____	_____	_____	_____
9. Other Acquisition Costs and General Expenses	_____	_____	_____	_____
10. Total (lines 8 & 9)	_____	_____	_____	_____
11. Policyholders' Dividends Incurred	_____	_____	_____	_____
12. Allowances for Profit and Contingencies*	_____	_____	_____	_____
13. Losses and Expenses (3) + (4) + (7) + (10) + (11) + (12)	_____	_____	_____	_____
14. Actuarial Gain or Loss (2)-(13)	_____	_____	_____	_____

NOTES: \* Allowance for profit and contingencies shall be determined by applying the factors utilized in the insurer's automobile rate filings to the appropriate earned premiums in line 2.

APPENDIX B  
 NEW JERSEY DEPARTMENT OF INSURANCE  
 FORM FB  
 PRIVATE PASSENGER AUTOMOBILE  
 FINANCIAL DISCLOSURE REPORT  
 CALENDAR YEAR \_\_\_\_\_

Company Name/Group Name \_\_\_\_\_

Company/Group N.A.I.C. Code Number \_\_\_\_\_

<u>Line</u>	<u>Direct Business</u>	<u>Enter Whole Dollar Amounts Calendar Year 19__</u>
1.	Direct Premiums Written	_____
2.	Direct Premiums Earned	_____
3.	Direct Losses Paid	_____
	<u>Loss Reserves for All Known Claims</u>	
4.	At the Beginning of the Year	_____
5.	At the End of the Year	_____
6.	Change in Loss Reserves	_____
	<u>Reserves for Losses Incurred but Not Reported</u>	
7.	At the Beginning of the Year	_____
8.	At the End of the Year	_____
9.	Change in Reserves for IBNR	_____
	<u>Loss Adjustment Expenses Incurred</u>	
10.	Allocated	_____
11.	Unallocated	_____
12.	Total	_____
	<u>Underwriting Expenses</u>	
13.	Commissions and Brokerage Fees	_____
14.	Other Acquisition Costs	_____
15.	General Expenses	_____
16.	Taxes, Licenses and Fees	_____
17.	Total	_____
18.	Policyholders' Dividends	_____
19.	Underwriting Income or Loss*	_____
20.	Net Investment Gain or Loss and other Income Gain or Loss**	_____

NOTES: \* Equal to the difference of Line (2) and the sum of Lines (3), (6), (9), (12) and (17).

\*\* Allocated pro rata by earned premium to New Jersey business, utilizing the investment income allocation formula contained in the N.A.I.C.'s Profitability Report by line by state.

APPENDIX C  
 NEW JERSEY DEPARTMENT OF INSURANCE  
 FORM FC  
 PRIVATE PASSENGER AUTOMOBILE  
 MARKET SHARE REPORT

Company Name/Group Name \_\_\_\_\_  
 Company/Group N.A.I.C. Code Number \_\_\_\_\_  
 Calendar Year 19\_\_\_\_

Enter Whole  
Dollar Amounts  
Calendar Year 19\_\_\_\_

<u>Line</u>	<u>Direct Business*</u>	<u>Enter Whole</u> <u>Dollar Amounts</u> <u>Calendar Year 19____</u>
1.	Current Direct Written Premium by Insurer	_____
2.	Current Direct Written Premium All Insurers	_____
	Percentage of the New Jersey private passenger automobile market [line (1) ÷ line (2)] 100	_____

NOTES: \* Based on lines of business (Annual Statement page 14 lines 19.1, 19.2 and 21.1 as applicable).

APPENDIX D  
 NEW JERSEY DEPARTMENT OF INSURANCE  
 FORM FD  
 PRIVATE PASSENGER AUTOMOBILE  
 EXCESS PROFITS REPORTING FORM

Private Passenger Automobile  
 Line of Insurance \* \_\_\_\_\_

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Combined</u>
	19__	19__	19__	_____
1. Direct Premiums Earned*	_____	_____	_____	_____
2. Actuarial gain	_____	_____	_____	_____
3. Five Percent of line 1	_____	_____	_____	_____
4. Excess Profit	_____	_____	_____	_____

\* Refers to the three private passenger lines reported on page 14 of the Annual Statement.

Notes for companies that file Form FA

- \* Must agree with the sum of direct premiums earned by type of coverage.
- \*\* Must agree with the sum of actuarial gains and/or loss by type of coverage on Form FA, line 13.
- \*\*\* Line 2 minus line 3, a positive number is an excess profit.

**(a)****REAL ESTATE COMMISSION****Approved Real Estate Schools; Requirements  
Proposed Amendment: N.J.A.C. 11:5-1.28**

Authority: N.J.S.A. 45:15-10.1 and 45:15-42.

Proposal Number: PRN 1985-104.

The agency proposal follows:

**Summary**

The proposed amendments are designed to reduce maximum teaching load from 60 students to 35 students per instructor; to delete correspondence schools from the program and require schools to maintain meaningful student records as well as bone-fide offices.

**Social Impact**

The reduction of student-to-teacher (instructor) ratio from 60 students to 35 students will result in more meaningful communications which will be of direct benefit to the student. The elimination of correspondence schools will have no negative impact as there are 72 schools currently approved by the Commission with approximately 240 approved locations throughout New Jersey. Also, in the past five and one-half years there have been no requests for correspondence course approval from handicapped persons, as their specific needs have been served by existing approved schools. Assistance to the handicapped has been provided through tapes, copies of classnotes and occasionally tutoring when requested. The current and former students will benefit from the bona-fide office provision as it will afford them the opportunity to secure information regarding former or current matters with a minimum of delay.

**Economic Impact**

The students would have an immediate direct benefit from the lower teacher-to-pupil ratio which would result in more individualized instruction. Existing competition indicates there will be no increase in tuition cost. Current and past practices show no change in tuition cost with increase in class size. Rather tuition cost is based on minimum class size.

**Full text** of proposal follows (additions indicated in bold-face **thus**; deletions indicated in brackets [thus]).

11:5-1.28 Approved schools; requirements

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

(j) The maximum teaching load per teacher or instructor shall not exceed the ratio of one teacher or instructor to [sixty] **thirty-five** students per class. Each course of instruction herein provided shall be provided under the supervision of an instructor qualified as provided for herein who shall be present in the classroom at all sessions. Additional instructors or guest speakers may be utilized for instruction with respect to given subjects provided that not more than twenty-five percent [(25%)] of the prescribed respective instruction is done by persons other than the instructor in whom overall responsibility is vested.

(k) (No change.)

(l) Every school [except any correspondence school] approved by the Commissions shall [have] **maintain a bone-fide office open to the public during normal business hours for the purpose of assisting former and current students, and maintain facilities meeting the following standards:**

1-3. (No change.)

(m)-(n) (No change.)

(o) [Correspondence courses meeting the requirements as to subjects, and times allocated to those subjects, prescribed in Section 27 of this Subchapter may be taken by any person who by reason of hardship cannot attend a school for classroom instruction, but any school offering such courses must, to the extent applicable, meet all other standards prescribed by these regulations.

(p) A "hardship case" is hereby defined as describing any individual:

1. Who does not have either a home or business address within a radius of thirty miles of an approved school with classroom instruction or who cannot attend a school by reason of permanent disability;

2. Who resides or has a business address within a radius of thirty miles of an approved school, but such school is not conducting the particular course of curriculum required by that person.

NOTE: Any person desiring to complete the required educational courses by means of correspondence school shall make a request in writing to the Commission, setting forth the basis of the alleged hardship. The Commission may, in appropriate cases, require such request to be supported by sworn statements of doctors or other persons having knowledge of the facts.] **Any person who has a permanent disability or physical handicap which precludes that person from attending regular scheduled classes at an approved school may request Commission approval to receive special instruction through an approved school provided this request is supported by sworn statements of doctors or other persons having knowledge of the facts and provided an approved school is willing to undertake such an agreement.**

**1. This regulation shall not apply to applicants who wish to qualify for licensure under N.J.S.A. 45:15-11 License Granted to Certain Disabled War Veterans unless prior approval is secured from State Department of Education and Career Preparation—Office of Veteran Education and Training.**

[(q)](p) Provisions regarding records of students include the following:

1. Each school shall permanently establish and maintain for each student, a complete, accurate and detailed report, which shall include: the total number of hours of instruction undertaken; completed areas of study in real estate subjects prescribed by these regulations; [and] students attendance;[.] **instructor(s) name and the name of guest speaker, if any. All schools shall keep permanent type records of all students for not less than three years after student matriculation.**

2.-4. (No change.)

[(r)-(w)] (q)-(v) (No change in text.)

# LAW AND PUBLIC SAFETY

## (a)

### DIVISION OF CRIMINAL JUSTICE

#### Instructor Certification

#### Proposed Amendment: N.J.A.C. 13:1-4.6

Authorized By: Police Training Commission, Leo A. Cullo, Executive Secretary.

Authority: N.J.S.A. 52:17B-71h.

Proposal Number: PRN 1985-90.

Address comments and inquiries to:

Leo A. Cullo, Executive Secretary  
New Jersey Police Training Commission  
Richard J. Hughes Justice Complex  
CN 085  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The proposed rule establishes standards for certification for radar instructors who teach either basic or in-service radar operation courses at commission-approved training courses.

#### Social Impact

The social impact of this amendment will be favorable for the public and the law enforcement community. It will establish uniform standards for certification as a radar instructor. This will insure to the public that such instructors possess competency in their field to instruct other law enforcement personnel.

#### Economic Impact

There will not be any economic impact as a result of the adoption of this rule. It imposes no payment of fees to the Commission and will not cause any additional costs to the public or the law enforcement community.

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

#### SUBCHAPTER 4. INSTRUCTOR CERTIFICATION

13:1-4.6 [Additional certification] **Certification** requirements for [firearms] instructors **of specialized subjects**

**(a) Applicants who seek certification to instruct in specialized subjects must possess the basic qualifications set forth in N.J.A.C. 13:1-4.1 through 13:1-4.4 and, further, must comply with the following requirements:**

[In addition to the requirements set forth in N.J.A.C. 13:1-4.1, 13:1-4.2, 13:1-4.3 and 13:1-4.4 an] **1. An individual seeking certification to serve as a firearms instructor must [meet additional qualifications. The individual must] successfully complete a commission-recognized firearms instructor course. Under the immediate supervision of a school's Range Master, the individual must successfully [demonstrate that he or she can]:**

[1.] **i.** Identify the principal parts of the weapons used in the training program;

[2.] **ii.** Demonstrate familiarity with the proper and safe handling of weapons;

[3.] **iii.** Demonstrate familiarity with the established range safety rules; and

[4.] **iv.** Score no less than 90 in the commission-required firearms course.

[(b)] **2.** In order to be eligible for recertification, instructors used for firearms training must successfully perform [(a) 1 through 4] **(a)1i through iv** above annually under the immediate supervision of a Range Master.

**3. An individual seeking certification as a radar instructor must meet the following requirements:**

**i. Prior completion of a Course for Radar Operators, which shall have included a minimum of eight hours of training consisting of four hours of classroom instruction and four hours of supervised practice training;**

**ii. Two years of experience as a radar operator, with a minimum of 80 hours of hands-on experience;**

**4. Successful completion of a commission-recognized Course for Radar Instructors.**

## (b)

### DIVISION OF MOTOR VEHICLES

#### Licensing Service Titles

#### Proposed Readoption: N.J.A.C. 13:21-4.1 through 13:21-4.4

#### Proposed Repeal: N.J.A.C. 13:21-4.6

Authorized By: Clifford W. Snedeker, Director, Division of Motor Vehicles

Authority: N.J.S.A. 39:10-4.

Proposal Number: PRN 1985-88.

Address comments and inquiries to:

Clifford W. Snedeker, Director  
Division of Motor Vehicles  
25 So. Montgomery Street  
Trenton, New Jersey 08666

The agency proposal follows:

#### Summary

The Division of Motor Vehicles proposes to readopt the provisions of N.J.A.C. 13:21-4.1 through 13:21-4.6 concerning titles. These rules were initially filed and became effective prior to September 1, 1969. These rules were subsequently amended on March 18, 1980 and October 18, 1982 and will expire on March 17, 1985. The rules are now to be readopted in accordance with Executive Order 66(1978).

The rules implement those provisions of the "Motor Vehicle Certificate of Ownership Law" (N.J.S.A. 39:10-1 et seq.) pertaining to certificates of origin and certificates of ownership. N.J.A.C. 13:21-4.1(a) provides that a certificate of origin for a new motor vehicle delivered in New Jersey shall conform to the design and specifications of the model form for "Manufacturers' Certificate of Origin" prepared by the American Association of Motor Vehicle Administrators. N.J.A.C. 13:21-4.1(b) requires a manufacturer to designate the year model of the vehicle on the certificate of origin. N.J.A.C. 13:21-4.1(c) prohibits the alteration or removal of the year model designation from a certificate of origin; this subsection also prohibits the designating of a year model

other than the original year model designation on a replacement certificate of origin.

N.J.A.C. 13:21-4.2 provides for the modification of the model year designation by use of the form specified in N.J.A.C. 13:21-4.3. N.J.A.C. 13:21-4.4 requires the owner of a motor vehicle constructed, assembled or modified by someone other than a manufacturer to apply for a certificate of ownership. The application form includes a certification of roadworthiness, a certification that all items of equipment which are required by statute to be approved have, in fact, been approved, and a certification that the vehicle construction meets industry standards and the State inspection requirements. This section also provides that the owner shall submit a description of the vehicle, construction specifications and photographs of each side of the vehicle and of the dashboard. The owner must also specify a location where the motor vehicle may be examined by Division of Motor Vehicle employees.

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

#### Social Impact

The rules proposed for readoption promote the public interest in matters relating to the issuance of titles to motor vehicles. The regulation of motor vehicle titles assists in preventing the sale, purchase, possession or use of stolen motor vehicles, or motor vehicles with fraudulent titles, in this State.

#### Economic Impact

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

**Full text** of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 13:21-4.

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

13:21-4.6 [Inapplicability of "title only" to nonresidents]  
(Reserved)

[A nonresident shall not qualify for issuance of "title only".]

(a)

## BOARD OF DENTISTRY

### General Provisions

#### Proposed Readoption as New Rules: N.J.A.C. 13:30-8.1 to -8.13

Authorized By: New Jersey State Board of Dentistry,  
Benjamin Rubin, D.D.S., President.

Authority: N.J.S.A. 45:6-1 et seq., specifically 45:6-19.4.

Proposal Number: PRN 1985-87.

Address comments and inquiries to:

Robert J. Siconolfi

Executive Secretary

New Jersey State Board of Dentistry

1100 Raymond Boulevard, Room 321

Newark, New Jersey 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 to insure their continued usefulness and necessity. The proposed readoption of Subchapter 8 of the Board of Dentistry rules is made in accordance with N.J.A.C. 1:30-4.3 to maintain the effectiveness of the regulations originally adopted in 1979. The rules currently found in the New Jersey Administrative Code expired on April 16, 1984. The rules are, therefore, being proposed as new rules. Furthermore, after careful review in accordance with Executive Order No. 66, the Board has determined that certain sections of the current Subchapter 8 warrant amendment and a new rule, N.J.A.C. 13:30-8.13, is proposed for adoption pursuant to N.J.S.A. 45:6-19.1 et seq. Thus, the Subchapter is proposed for readoption as new rules with various amendments to the expired text as proposed and summarized below. Unless otherwise noted, the proposed readoption is unchanged from the rule as it currently expires.

N.J.A.C. 13:30-8.1 would be amended to reflect the collection of fees on a biennial, as opposed to annual, basis. The base fee already charged licensees would not be increased. Certain new fees to cover the expenses of the registration of dental hygienists and dental assistants pursuant to N.J.S.A. 45:6-55 and -57 are proposed.

N.J.A.C. 13:30-8.2, proposed for readoption, delineates various functions of dental hygienists deemed by the Board to be within normal legal duties under the direction or control of a licensed dentist.

N.J.A.C. 13:30-8.3, proposed for readoption, governs the use and training for the use of general anesthesia by dentists.

The Board is proposing to amend N.J.A.C. 13:30-8.4, announcement of practice in a special area of dentistry, to require licensees to include the name(s) and permit number(s) of the Board licensee(s) rendering dental services in special areas in all advertisements and public representations.

N.J.A.C. 13:30-8.5, proposed for readoption, explains the process implemented by the Board for the review of complaints against licensees for alleged neglect, malpractice or excessive pricing in the practice of dentistry.

The Board is proposing to amend N.J.A.C. 13:30-8.6, concerning professional advertising, to clarify existing regulatory standards and expand the definition of impermissible advertising practices to include any means or format that is not dignified; the indirect or direct solicitation of prospective patients, while permitting the offering of services to bona fide representatives of prospective patients; and the offering of or advertising of free services, while recognizing the right of a licensee to render professional services without a fee.

N.J.A.C. 13:30-8.7, proposed for readoption, requires candidates for licensure by the Board to successfully complete an examination which tests the candidate's knowledge of the rules and statutes pertaining to the practice of dentistry in New Jersey.

N.J.A.C. 13:30-8.8, proposed for readoption, governs the maintenance of patient records, including their minimum contents, length of time required for maintenance, and their appropriate release.

N.J.A.C. 13:30-8.9, proposed for readoption, requires any licensee to report to the Board any treatment-related incident resulting in the death or hospitalization of a patient.

N.J.A.C. 13:30-8.10, proposed for readoption, requires the display of the names of all licensees responsible for the administration of a dental care facility, as well as those of any licensees associated with such facility. The rule also requires all licensees associated with the facility to wear an identifying badge indicating his or her name and professional status.

N.J.A.C. 13:30-8.11, proposed for readoption, requires any licensee utilizing intravenous sedation to employ sufficient auxiliary personnel to monitor administration of this procedure and to certify compliance with this provision, upon request, to the Board.

N.J.A.C. 13:30-8.12, concerning dental insurance forms, is to be amended to require licensees who intend to waive any further payments by patients enrolled in any dental prepayment contract plans with co-payment features to so notify the provider by entering specified language on the face of the attending dentist's statement.

N.J.A.C. 13:30-8.13, concerning removable prosthesis identification, is a new rule. Pursuant to N.J.S.A. 45:6-19.1 et seq., the Board of Dentistry must adopt rules and regulations and provide standards to carry out the provisions of the act requiring the making of upper and lower dentures and removable dental prostheses at the time of fabrication or rebasing. This provision sets forth acceptable forms of patient identification to be marked on dentures or dental prostheses while leaving the exact location of the markings and the methods used to place them to the discretion of the dentist.

#### Social Impact

The Board's experience with the rules proposed for readoption is that they have had a positive social impact through the regulation of the practice of dentistry. The rules contained in

Subchapter 8 are diverse, but have generally shown to be a workable means of governing the profession.

The fee schedule rule affects all licensees of the Board and is designed merely to defray the administrative costs incurred by the Board in carrying out its regulatory activities. Were this rule not readopted, the ability of the Board to carry out its statutory mandate would be unquestionably hampered.

The proposed readoption concerning additional dental hygiene functions, an adjunct to N.J.S.A. 13:30-2.10, has had a positive social impact in recognizing the growing level of expertise in the dental hygiene field while recognizing the continued ultimate responsibility of the dentist for patient care.

The provisions concerning the use of general anesthesia and intravenous sedation are necessary to clearly establish the importance of adequate training and personnel in the use of anesthesia in the dentists's office. To the extent that the rules reflect the Board's serious concern for the maintenance of the highest professional standards in this complex area of practice, the rules have had a positive social impact.

The proposed amendment to N.J.S.A. 13:30-8.4, requiring licensees to include the name(s) and permit number(s) of the Board licensee(s) rendering dental treatment in special areas in all advertisements and public representations, will aid the consumer in choosing a dentist who truly specializes in or limits his or her practice to the area of dentistry needed by the consumers. This is necessary given the number of general practitioners who advertise that they render dental treatment in such areas. Requiring those licensees who are bona fide specialists recognized by the Board to include their specialty permit number in all advertisements and public representations will clearly enable the consumer to differentiate between Board-recognized specialists and general practitioners.

N.J.A.C. 13:30-8.5, describing complaint review procedures of the Board, provides a readily accessible source of information for both the consumer and licensee to learn how the Board carries out this aspect of its statutory duties. As with any method by which the internal functioning of an administrative agency is disclosed and explained to the public the proposed readoption has had and will continue to have a positive social impact.

The proposed amendment to N.J.S.A. 13:30-8.6, with its greater specificity in the standards which will govern and define advertising conduct, will provide licensees with a framework in which to more clearly and accurately advertise their services to the public. It will be of benefit to the consumer by improving the quality of information available about a practicing dentist's services and expertise to better enable the consumer to make an informed choice from among those offering dental services.

The rule requiring candidates for licensure by the Board to pass an examination testing knowledge of New Jersey rules and statutes has had a positive social impact in insuring that those who wish to practice in the State are familiar with State standards of practice as well as the rules of the Board regulating the field.

The patient records rule has had a positive social impact in putting practitioners on notice as to the minimum acceptable entries in patient records and length of time such records must be kept. The requirement that patient records must be released to the patient or his or her legal representative upon request has had a positive impact in assuring that dental treatment can be continued by a subsequent practitioner without substantial difficulty.

The requirement that practitioners report to the Board any treatment-related hospitalizations or deaths of patients is especially important to the Board's investigative functions and is necessary for the Board's determination of whether immediate action should be taken in such cases to protect the public health and welfare.

As with any rule requiring disclosure of information to the public, the Board's rule requiring that licensee's display their names at the dental facility where they practice as well as wear a badge identifying his or her name and professional status has had a positive social impact in assuring that the patient may know from whom he or she is receiving dental treatment. With the growth in specialization and the expansion of the profession, there may be an increased risk of diminution of the patient/practitioner relationship. The rule proposed for readoption is intended to provide the patient with some knowledge of the individual from whom he or she is receiving services.

The proposed amendment to N.J.A.C. 13:30-8.12, requiring licensees who intend to waive further payments by patients enrolled in dental pre-payment contract plans with co-payment features to so notify the provider by entering specified language on the face of the attending dentist's statement, will reduce the number of incidents of fraud in that providers will be able to determine the ultimate fee the dentist truly intends to charge the patient and adjust the amount of benefits payable accordingly.

The proposed new rule requiring that all upper and lower dentures and removable dental prostheses be marked with identifying data at the time of fabrication or rebasing will not only enhance the ability to return lost dentures to patients such as those in nursing homes and hospitals, but will also be an invaluable aid in forensic dentistry.

**Economic Impact**

The experience of the Board with those rules proposed for readoption is that they have had no adverse impact on the public and, to the extent that certain costs for practitioners may have risen, they are counterbalanced by increased professional standards and improved patient care.

The amendments to the fee schedule will have a favorable economic impact on the public since the fees generated by the Board constitute the primary financial support for the licensure process and the regulation of the professional conduct of its licensees. The fees as established will merely defray those costs associated with the administration of the Board's statutory duties.

The proposed amendments to N.J.A.C. 13:30-8.4 and 8.6, announcement of practice in a special area of dentistry and professional advertising, respectively, should have no economic impact other than that which might be associated with better informed decision-making in choosing dentists and dental services.

The proposed amendment to N.J.A.C. 13:30-8.12, dental insurance forms, should result in reduced costs of dental care. Initially, it is probable that more dentists may be inclined to waive co-payment by their patients in order to become more competitive. Moreover, the notification requirement will enable the dental pre-payment contract plan providers to become more actuarially sound and will reduce the possibility of frequent and/or excessive rate increases in the future traditionally caused by high reimbursements based on providers' reliance that a specific portion of the dentist's overall fee will be paid by the patient. The net result of the amendment will be lower long term costs for insurance and costs of dental care for the consumer.

The proposed new rule requiring the marking of all upper and lower dentures and dental prostheses at the time of fabrication, rebasing or repair should result in small to moderate increases in costs for initial fabrication, rebasing and repair. However, when balanced against the cost of replacement when dentures and prostheses are lost or stolen in nursing homes, hospitals and mental and other institutions, these increases become relatively small. In any event, those patients who do not wish to incur the increased expense have the statutory right to object to the marking.

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

**SUBCHAPTER 8. GENERAL PROVISIONS**

**13:30-8.1 Fee schedules**

(a) The [Annual] **Biennial** Registration fees charged by the Board of Dentistry shall be the following:

- 1. Dentists:
  - i. Active registration..... [\$25.00] **\$50.00**
  - ii. Inactive registration ..... [ \$5.00] **\$10.00**
  - iii. Branch office ..... [ \$5.00] **\$10.00**
- 2. Dental Hygienists:
  - i. Active registration..... [ \$5.00] **\$10.00**
  - ii. Inactive registration ..... \$5.00**
  - iii. Branch office ..... \$5.00**
- 3. **Dental Assistants:**
  - i. Active registration..... \$10.00**
  - ii. Inactive registration ..... \$5.00**

(b) Except for the fee herein established, other fees prescribed by statute shall continue to be assessed by the Board in the lawful amount.

**13:30-8.2 Additional dental hygiene functions**  
(No change in text from Code.)

**13:30-8.3 Use of general anesthesia**

(a)-(b) (No change in text from Code.)

(c) General provisions concerning use of general anesthesia are as follows:

1. No dentist shall employ or use general anesthesia on an outpatient basis for dental patients after November 1, 1977, unless such dentist possesses a permit or authorization issued by the State Board of Dentistry. [Applications must be received at the Board office by August 1, 1977, to assure processing of application by November 1, 1977.] The dentist holding such permit shall be subject to review, and such permit shall be renewed biennially.

2. In order to receive such a permit the dentist shall apply on an official application form and submit certified proof that he or she:

i. Has completed a minimum of three years postdoctoral training in oral surgery, or a minimum one-year training course in anesthesiology; or

(1) Is a diplomate in oral surgery or is Board-eligible in oral surgery; or

(2) Is a fellow [or] of the American Dental Society of Anesthesiology, or is a member of the American Society of Oral Surgeons and/or is a member of the New Jersey Society of Oral Surgeons; or

(3) Has administered general anesthesia on a regular routine basis in his every day practice during the three-year period next preceding the effective date of this original rule (effective November 19, 1976) and thereafter successfully completes not less than 300 credit points of refresher courses in general anesthesia as prescribed by the Board and presented

by an accepted program in a suitable institution prior to November 1, 1979; and

ii. Employs sufficient personnel (as deemed by the Board) to assist in monitoring the patient under general anesthesia; [who are] such personnel shall be certified by the permit holder as being trained in and capable of monitoring vital signs, and of assisting in emergency procedures; and

iii. Possesses basic equipment and supplies to deal with emergency situations, which equipment and supplies shall be readily accessible and in good order. This shall consist of no less than the list that shall be supplied by the Board.

3. Each and every anesthesia facility shall be inspected and approved by the State Board of Dentistry or its designee, only once every six years.

(d)-(h) (No change in text from Code.)

13:30-8.4 Announcement of practice in a special area of dentistry

(a)-(i) (No change in text from Code.)

**(j) All advertisements and public representations of a licensee granted a permit of announcement of limited practice or specialization in a special area of dentistry shall contain the licensee's name and permit number.**

**(k) A licensee advertising or publicly representing that his or her practice specializes in or is limited to one or more area(s) of dental practice listed in (b) above shall list the name and permit number of the Board licensee(s) rendering dental services in said special area(s) in all advertisements and public representations.**

[(j)] **(l) Noncompliance with these rules for announcement of limitation of practice may subject the licensee to suspension or revocation of his or her license to practice dentistry.**

[(k)] **(m) Applications may be obtained by writing to the Office of the Board of Dentistry, [150 East State Street, Trenton, New Jersey 08608] 1100 Raymond Boulevard, Newark, New Jersey 07102.**

13:30-8.5 Complaint review procedures  
(No change in text from Code.)

13:30-8.6 Professional advertising

(a) Definitions:

1. The term "advertisement" shall refer to the attempt directly or indirectly by publication, dissemination, solicitation, endorsement or circulation or in any other way to attract directly or indirectly any person to enter into an express or implied agreement to accept dental services or treatment related thereto.

2. The term "routine professional service" shall refer to a service which the advertising licensee, professional association or institution providing dental care routinely performs.

3. The term "print media" shall refer to newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, flyers and other similar documents or comparable publications, the content of which is disseminated by means of the printed word.

**4. The term "electronic media" shall include radio and television, but shall not include communications made by sound equipment from a motor vehicle.**

[4.] **5. The term "range of fees" shall refer to an expressly stated upper and lower limit on the fee charged for a professional service.**

(b) A licensed dentist who is actively engaged in the practice of dentistry in the State of New Jersey may provide information to the public by advertising [which is not false,

fraudulent, misleading or deceptive through the use of the] in print or electronic media **in a dignified manner.**

(c) A licensee who engages in the use of advertising which contains the following shall be deemed to be engaged in professional misconduct:

**1. Any statement, claim or format which is false, fraudulent, misleading or deceptive.**

[1.] **2. Claims that the service performed or the materials used are professionally superior to that which is ordinarily performed or used.**

[2.] **3. Promotion of a professional service which the licensee knows or should know is beyond the licensee's ability to perform.**

[3.] **4. Techniques of communication which appear to intimidate, exert undue pressure or undue influence over a prospective patient.**

[4.] **5. The use of any personal testimonial attesting to the quality or competence of a service of treatment offered by a licensee.**

[5.] **6. The communication of personally identifiable facts, data, or information about a patient without first obtaining written consent.**

[6.] **7. Offers to give, receive or accept a fee or other consideration to or from a third party for the referral of a patient.**

[7.] **8. The use of any misrepresentation.**

[8.] **The knowing suppression, omission or concealment of any material fact or law.]**

[9.] **Any format which directly or indirectly obscures a material fact.]**

**9. The suppression, omission or concealment of any material fact under circumstances which a Board licensee knows or should know that the omission is improper or prohibits a prospective patient from making a full and informed judgment, on the basis of the information set forth in the advertisement.**

**10. Any print, language or format which directly or indirectly obscures a material fact.**

[10.] **11. Any format which appears to be essentially non-informational in nature and used primarily to gain attention.**

**12. Any statement offering gratuitous services or the substantial equivalent thereof, provided, however, nothing herein contained shall be deemed to prohibit the rendering by a Board licensee of professional services for which no fee is charged.**

(d) The Board may require a licensee to substantiate the truthfulness of any assertion or representation set forth in an advertisement. Failure of a licensee to provide factual substantiation to support a representation or assertion shall be deemed professional misconduct.

**(e) A Board licensee shall not engage either directly or indirectly or through the use of any agent, employee or representative in in-person solicitation with a prospective patient or consumer. This subsection shall not prohibit the offering of services by a Board licensee to any bona fide representative of prospective patients including, but not limited to employers, labor union representatives, or insurance carriers.**

[(e)] **(f) Advertising making reference to setting forth a fee shall be limited to that which contains a fixed or a stated range of fees for a specifically described routine professional service.**

1. A licensee who advertises shall disclose all the relevant variables and considerations which are ordinarily included in such a service so that the fees will not be misunderstood. In

the absence of such a disclosure, the stated fees shall be presumed to include everything ordinarily required for such a service. No additional charges shall be made for an advertised service unless the advertisement includes the following disclaimer: "Additional charges may be incurred for related services which may be required in individual cases". The disclaimer cannot be used for treatment where related services are ordinarily required.

[(f)] (g) Offers of discounts or fee reductions shall indicate the fixed or stated range of fees against which said discount is to be made.

[(g)] Advertising which contains the name, address or telephone number of a professional service facility shall also include the names of all licensees who are officers, principals or partners of said facility.]

**(h) All licensee advertisements and public representations shall contain the name and address or telephone number of the licensee, professional service corporation or trade name under which the practice is conducted and shall also set forth the names of all licensees who are principals, partners, or officers in the professional service facility identified in the advertisement and/or public representation.**

[(h)] (i) A licensee shall be presumed to have approved and shall be personally responsible for the form and contents of an advertisement which contains the licensee's name, office address, or telephone number. A licensee who employs or allows another to employ for his benefit an intermediary source or other agent in the course of advertising shall be personally responsible for the form and contents of said advertisement.

[(i)] (j) The effective period during which a fee or discount shall remain in effect shall be set forth on the face of the advertisement. In the absence of such disclosure and solely for the purposes of enforcement, the effective period shall be deemed to [last a reasonable length of time] **be 30 days from the date of the advertisement's initial publication.**

[(j)] (k) A video or audio tape of every advertisement communicated by electronic media shall be retained by the licensee and made available for review upon request by the Board or its designee.

[(k)] (l) A licensee shall be required to keep a copy of all advertisements for a period of three years. All advertisements in the licensee's possession shall indicate the accurate date and place of publication.

13:30-8.7 Jurisprudence examination for licensure  
(No change in text from Code.)

13:30-8.8 Patient records  
(No change in text from Code.)

13:30-8.9 Reporting of incidents or deaths  
(No change in text from Code.)

13:30-8.10 Display of names; identifying badges  
(No change in text from Code.)

13:30-8.11 Intravenous sedation  
Every licensee who utilizes intravenous sedation on a regular basis shall employ sufficient auxiliary personnel to monitor the administration of this procedure and shall certify to the Board upon request that said personnel is **or are** capable of assisting in and trained for the procedure.

13:30-8.12 Dental insurance forms; professional misconduct  
(a)-(b) (No change in text from Code.)

(c) A licensee who renders dental services or procedures to a patient enrolled in any dental prepayment contract plan with co-payment features and intends to waive any further payment by the patient shall, when submitting any claim form or bill to the third party payor, complete the claim form or bill as follows:

1. Enter on the attending dentist's statement a fee in the amount he actually intends to collect for the procedure billed for upon the assumption that the recipient will treat the procedure as a covered dental expense; or

2. Type, print or stamp on the face of the statement, or on a label affixed thereto, in legible characters at least ten points in height, the following words:

**I/WE WAIVE COPAYMENTS, IT IS MY/OUR INTENTION EITHER TO (Check One)  
( ) BILL THE PATIENT \$ AFTER RECEIPT FROM YOU OF \$  
( ) WAIVE ANY FURTHER PAYMENT FROM THE PATIENT AFTER RECEIPT FROM YOU OF \$**

13:30-8.13 Removable prosthesis identification

(a) Definitions:

1. The term "prosthesis" shall refer to an artificial substitute for a missing part of the oral cavity, such as a tooth, used for functional and/or cosmetic reasons.

2. The term "rebasing" means the act of replacing the base material of a denture without changing the occlusal relationship of the teeth.

(b) Ever complete maxillary and mandibular denture and removable partial denture prosthesis constructed by a Board licensee or fabricated pursuant to his work order shall be marked in an appropriate area with the name and social security number of the patient for whom the prosthesis is prepared unless the patient objects thereto. In the event the patient, after being so informed, objects to the marking of the prosthesis, the licensee shall place such objection on the patient's permanent dental record.

(c) The marking of a dental prosthesis shall be accomplished during processing and shall be permanent, legible and cosmetically acceptable. The exact location of the markings and the methods used to place them shall be determined by the licensee.

(d) If, in the licensee's professional judgment, marking of the prosthesis with the patient's complete name and social security number is not practicable, identification shall be provided as follows:

1. The social security number may be omitted if the patient's complete name is marked; or

2. The initials of the patient may be marked alone if the marking of the patient's full name is impracticable; or

3. The identification marks may be omitted in their entirety if none of the forms of identification specified in 1 and 2 above are practicable or clinically safe.

(e) Any complete or partial removable dental prosthesis in existence prior to the effective date of this regulation, which has not been marked in accordance with (b) above, shall be so marked at the time of any subsequent rebasing or repair.

(f) A reasonable fee may be charged for the marking of the complete or partial removable dental prosthesis.

(a)

**BOARD OF VETERINARY MEDICAL EXAMINERS**

**Fee Schedule**

**Proposed Amendment: N.J.A.C. 13:44-4.1**

Authorized By: Board of Veterinary Medical Examiners, David Eisenberg, D.V.M., President.

Authority: N.J.S.A. 45:1-3.2.

Proposal Number: PRN 1985-89.

Address comments and inquiries to:

Maurice W. McQuade, Executive Secretary  
Board of Veterinary Medical Examiners  
1100 Raymond Boulevard, Room 513  
Newark, New Jersey 07102

**Summary**

The Veterinary Medical Practice Act was amended, effective March 11, 1983, to permit New Jersey veterinarians to employ veterinarians who are not yet licensed but who are qualified under the provisions of the American Veterinary Medical Association's Educational Commission for the Foreign Veterinary Graduate or who are qualified under any other training program approved by the Board, provided a training certificate is obtained from the board for that purpose. Applications for such certificates must be processed by Board personnel and the Board has found that a \$50.00 fee for the issuance of the certificate will defray the expenses incurred in issuing the certificates. In compliance with N.J.S.A. 45:1-3.2 the Board therefore proposes that a new \$50.00 fee be established for such certificates.

In addition, the Board has determined that to meet its estimated expenses in other areas an increase in the non-active biennial registration fee is necessary. In 1983 the active registration fee was raised from \$30.00 to \$120.00, and the non-active fee from \$20.00 to \$50.00. The resultant wide disparity in the fees for the two kinds of registrations was found not to be justified since the processing of non-active registrations involves the same amount of clerical time. The Board therefore proposes, in order to comply with the mandate of N.J.S.A. 45:1-3.2 that the charges established pursuant to that section defray all proper expenses incurred by the Board, that the non-active registration fee be raised to \$100.00.

**Social Impact**

The proposed new fee and the increased non-active registration fee will benefit the Board in that sufficient funds will be raised to cover its expenses. Non-active licensees, that is, those who wish to maintain a New Jersey veterinary license but are not actively practicing in the State will still have the privilege of doing so at a fee less than the active fee, but the fee paid will more realistically reflect the Board's actual expenses.

**Economic Impact**

The proposed amendment will impose higher costs on graduates of non-approved schools who must complete the ECFVG training program to qualify for licensure in New

Jersey and on those out-of-state veterinarians who wish to maintain a New Jersey license but these costs are necessary if the Board is to raise sufficient revenue to meet its expenses. It is anticipated that there will be no economic impact on consumers.

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

13:44-4.1 General provisions

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

1.-8. (No change.)

9. Non-active registration fee (biennial) . . . [50.00] **100.00**

10.-12. (No change.)

**13. Training certificate . . . 50.00**

(b)

**DIVISION OF CONSUMER AFFAIRS**

**Administrative Rules**

**Bargaining or Negotiating Posted Sales Price**

**Notice for Pre-proposal for a Rule**

**Public Hearings**

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

Authority: N.J.S.A. 56:8-2, 56:8-2.5 and 56:8-4.

The purpose of the pre-proposal hearings is to aid in the formulation of a rule to define the limits of the practice of bargaining or negotiating off the posted sales price of an item, in the context of the provisions of N.J.S.A. 56:8-2.5 which requires that the total selling price of an item be affixed thereto or displayed at a point where the item is offered for sale.

Address comments and inquiries to:

James J. Barry, Jr., Director  
Division of Consumer Affairs  
1100 Raymond Boulevard  
Newark, New Jersey 07102

Public hearings on the subject will be held in Newark and in Trenton:

Newark: March 12, 1985 at 10:00 A.M.  
Essex County College  
Auditorium  
303 University Avenue  
Newark, New Jersey

Trenton: March 19, 1985 at 10:00 A.M.  
New Jersey State Library  
First Floor Conference Room  
185 State Street  
Trenton, New Jersey

# TRANSPORTATION

The following proposals are authorized by John P. Sheridan, Jr., Commissioner, Department of Transportation.

## (a)

### TRANSPORTATION OPERATIONS

#### Restricted Parking and Stopping Route 183 in Sussex County

**Proposed Amendment: N.J.A.C.  
16:28A-1.96**

#### Speed Limits Route 94 in Lafayette, Sparta and Hardyston Township

**Proposed Amendment: N.J.A.C. 16:28-1.79**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98, 39:4-138.1 and 39:4-139.

Proposal Number: PRN 1985-82.

Address comments and inquiries to:

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

The agency proposal follows:

#### Summary

The proposed amendments will establish "no parking" zones along Route 183 in Stanhope Borough, Sussex County and maximum speed limits along Route 94 in Lafayette, Sparta and Hardyston Townships, Sussex County for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon requests from the local officials, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no parking" zones along Route 183 and maximum speed limits along Route 94 were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.96 and 16:28-1.79 in compliance with the requests from the local officials and the traffic investigations.

#### Social Impact

The proposed amendments will establish "no parking" zones along Route 183 in Stanhope Borough; Sussex County and maximum speed limits along Route 94 in Lafayette, Sparta and Hardyston Townships, Sussex 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 workforce 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 proposals follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

16:28A-1.96 Route 183

(a) The certain parts of State highway Route 183 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 the Borough of Stanhope, Sussex County:

i. Along the easterly (northbound) side:

(1) (No change.)

(2) **From Musconetcong Avenue to U.S. Route 206.**

ii. **Along the westerly (southbound) side:**

(1) **From U.S. Route 206 to the southerly intersection of Main Street.**

(b) (No change.)

16:28-1.79 Route 94

(a) The rate of speed designated for the certain part of State highway [r]Route [number] 94 described in this section shall be [and hereby is] established and adopted as the maximum legal rate of speed thereat:

1. For both directions of traffic:

i.-xii. (No change.)

xiii. [45 miles per hour from the intersection of Route 15 and Route 94 (Ross Corner-Hamburg Road,) to County Road number 40, at North Church; thence]

**In Sussex County:**

(1) **Lafayette Township: 45 miles per hour between the northernmost intersection of Route 15 and the Sparta Township corporate line. (Mileposts 28.17 to 28.82)**

(2) **Sparta Township:**

(A) **45 miles per hour between the Lafayette Township corporate line and 1100 feet south of Old Prospect School Road. (Mileposts 28.82 to 31.06)**

(B) **40 miles per hour between 1100 feet south of Old Prospect School Road and the Hardyston Township corporate line. (Mileposts 31.06 to 31.36)**

(3) **Hardyston Township:**

(A) **40 miles per hour between the Sparta Township corporate line and 450 feet north of the Sparta Township corporate line. (Mileposts 31.36 to 31.4)**

(B) **45 miles per hour between 450 feet north of the Sparta Township corporate line and North Church Road (Co. Rd. 631). (Mileposts 31.4 to 33.07)**

xiv.-xxi. (No change.)

(a)

**CONSTRUCTION AND MAINTENANCE UNIT**

**Outdoor Advertising Tax Act**

**Permit Fees**

**Proposed Amendment: N.J.A.C. 16:41A-6.1**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 52:14B-1.1 et seq; and 54:40-50 et seq., Chapter 191 Laws of 1959, specifically 54:40-56.

Proposal Number: PRN 1985-80.

The agency proposal follows:

**Summary**

The proposed amendment will provide an updated fee schedule to bring the regulations into conformity with the fees presently being charged for space used for outdoor advertising along the State's highway system. The fees were changed sometime ago, however the Administrative Code was never updated to reflect current practice.

**Social Impact**

The proposed amendment will provide a single source wherein the appropriate fees are established. Additionally, it precludes the publication of information which is not in conformity with present practice. Advertisers have been operating under the fee schedule being proposed.

**Economic Impact**

The Department will incur direct and indirect costs for its work force in the processing of permits. Advertisers presently operating under the new fee schedule will feel no significant impact. However, small businesses during their start-up phase may experience added expenses as the cost of doing business.

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

16:41A-6.1 Basis of permit fees

The fee<sup>1</sup> for each permit or conditional permit is based upon the size of the space, (that is the advertising surface) to be used for outdoor advertising, and is as follows:

Area in Square Feet		Annual Fee Rate*	Semi-Annual Fee Rate**
Over	Not more than		
—	50	\$ 2.00	\$ 1.00
50	100	[ 3.00] <b>4.00</b>	[ 1.50] <b>2.00</b>
100	[250] <b>150</b>	[ 4.00] <b>6.00</b>	[ 2.00] <b>3.00</b>
<b>150</b>	<b>200</b>	<b>8.00</b>	<b>4.00</b>
<b>200</b>	<b>250</b>	<b>10.00</b>	<b>5.00</b>
<b>250</b>	[500] <b>300</b>	[ 8.00] <b>12.00</b>	[ 4.00] <b>6.00</b>
<b>300</b>	<b>350</b>	<b>15.00</b>	<b>7.50</b>
<b>350</b>	<b>400</b>	<b>20.00</b>	<b>10.00</b>
<b>400</b>	<b>450</b>	<b>25.00</b>	<b>12.50</b>
<b>450</b>	<b>500</b>	<b>30.00</b>	<b>15.00</b>
<b>500</b>	[800] <b>550</b>	[10.00] <b>35.00</b>	[ 5.00] <b>17.50</b>
<b>550</b>	<b>600</b>	<b>40.00</b>	<b>20.00</b>
<b>600</b>	<b>650</b>	<b>45.00</b>	<b>22.50</b>

Area in Square Feet		Annual Fee Rate*	Semi-Annual Fee Rate**
Over	Not more than		
650	700	50.00	25.00
700	750	60.00	30.00
750	800	70.00	35.00
800	[—] <b>850</b>	[30.00] <b>80.00</b>	[15.00] <b>40.00</b>
<b>850</b>	<b>900</b>	<b>90.00</b>	<b>45.00</b>
<b>900</b>	<b>950</b>	<b>100.00</b>	<b>50.00</b>
<b>950</b>	<b>1000</b>	<b>110.00</b>	<b>55.00</b>
<b>1000</b>	—	<b>125.00</b>	<b>62.50</b>

\* Annual Fee: For permit issued between April 1 and September 30.

\*\* Semi-Annual Fee: For permit issued between October 1 and March 31.

Double-Faced, Back to Back or V-Type Signs: Twice the permit fee.

<sup>1</sup> Based upon surface area of sign. [For double-faced sign, twice the amount of the fee.] For maximum size limitation, see N.J.A.C. 16:41A-3.2(a)10.

Statutory Reference  
N.J.S.A. 54:40-56.

**OTHER AGENCIES**

(b)

**HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION**

**District Zoning Regulations Official Zoning Map**

**Proposed Amendment: N.J.A.C. 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 1985-86.

A public hearing concerning this rule will be held on March 7, 1985 at or after 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 77, Lot 2 and Block 78, Lot 1-A and I-A, in Secaucus, New Jersey from Waterfront Recreation to Research Distribution Park. The site is approximately 8 acres.

**Social Impact**

The Waterfront Recreation Zone change in Secaucus is proposed for property located off Meadowlands Parkway, south of the Route 3 eastbound bridge. The property is presently utilized by an oil tank/storage facility which is inconsistent with present and planned zoning and incompatible with present and planned uses of the property and its vicinity. The proposed change will permit the replacement of the existing nonconforming tank facility with an office type use similar to existing offices and other uses located in nearby zones to the east and to the south. The Research Distribution park designation is also the same as the designation given to other property located east of Meadowlands Parkway and south of the property in question.

**Economic Impact**

The proposed amendment will permit a substantial redevelopment of the subject property with uses similar to nearby lands. The proposed amendment and the resultant elimination of the existing nonconforming use will also promote continued growth in adjacent zones consistent with the Commission's overall Master Plan.

Full text of the proposal follows.

**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 changes follows:

The zoning designation of Block 77, Lot 2 and Block 78, Lots 1-A and I-R in Secaucus from Waterfront Recreation to Research Distribution Park. The subject property consists of approximately 8 acres.

# RULE ADOPTIONS

## CIVIL SERVICE

### (a)

#### Examination Scoring

#### Readoption with Amendments: N.J.A.C. 4:1-9

#### Adopted Repeal: N.J.A.C. 4:2-9, 4:3-9

Proposed: November 5, 1984 at 16 N.J.R. 2873(a).  
 Adopted: January 23, 1985 by the Civil Service Commission, Eugene J. McCaffrey, Sr., President.  
 Filed: January 28, 1985 as R.1985 d.63, **without change.**

Authority: N.J.S.A. 11:1-7a, 11:5-1a, 11:9-1, 11:9-3, 11:9-8, 11:9-9, 11:13-1, 11:21-3, 11:21-9, 11:22-34, 11:22-37.

Effective Date: February 19, 1985 for amendments and repeals; January 28, 1985 for readoption.

Expiration Date pursuant to Executive Order No. 66(1978): January 28, 1990.

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

Robert W. Pursell, on behalf of the Communications Workers of America, submitted an objection to the time limit and procedures set forth in N.J.A.C. 4:1-9.1, which specifies the procedures for the review and appeal of examination questions and answers. He stated that the time period for review had been decreased, that the appeal period should have been increased to twenty days and that a candidate should be allowed to copy the questions and review his or her examination papers at this review. He also submitted an objection to the lack of specific scoring scales in N.J.A.C. 4:1-9.3 for the rating of education and experience examinations and in N.J.A.C. 4:1-9.5 for computing credit for seniority and performance ratings and stated that examinations should be based on a scale of 100.

The period for the review of questions and answers has not been reduced and has actually been increased in certain cases. Since examination review does not take place on weekends or holidays, the change from seven calendar to five working days ensures that applicants have at least five separate days to review the examination. Without the change, there would be occasions when in seven calendar days a candidate would get less days for review due to a holiday. The Division of Examinations does not allow applicants to copy examination questions because such a procedure would require elimination of a question from the item bank after only one use. This procedure would be too costly in time and money. Moreover, there is no need for an applicant to see his answers and the test key at the same time since the purpose of this initial review period is to determine whether the question and answers are correct to establish a final score key. A review of the scoring of an individual's examination is not the purpose of this initial review. Moreover, the time period must be limited to ensure the final score key is quickly developed for test results to be

determined and disseminated. A twenty day period for this type of review is not feasible and would considerably delay the test results.

The current rule is misleading as to rating scale. The proposed rule better identifies that passing and failing scores are arrived at through statistical methodology and not a general 100 point rating system. Promotional examinations utilize a fixed scale for computing credit for seniority and performance ratings, which is included in the promotional procedures manual available through this Department. The general guidelines used to score an education and experience examination are given to a candidate with his or her results and the specific guidelines for a candidate's particular examination are available when he or she reviews his or her examination.

Full text of the adoption follows.

#### SUBCHAPTER 9. EXAMINATION SCORING

##### 4:1-9.1 Review of questions and answers (scoring key)

(a) Applicants shall be permitted to review the questions and answers (scoring key) for a period of five business days beginning on the second business day after the written examination has been held. The Department of Civil Service shall permit applicants to review a copy of the examination questions and answers (scoring key) for all written examinations where the answers are not in essay form. Essays and all non-written examinations may be reviewed as specified in N.J.A.C. 4:1-9.8.

(b) During review of the scoring key, applicants shall not be permitted to see their own examination papers or to copy any of the examination questions or answers. Applicants shall be permitted to make such notes as the Department of Civil Service determines may be necessary in order for an applicant to file an appeal based on his or her objections to the scoring key.

##### 4:1-9.2 Appeals against questions and answers (scoring key)

(a) Within the five business day review period specified in N.J.A.C. 4:1-9.1, the applicant may file a written appeal against the scoring key. All appeals must be received by the Department of Civil Service by the close of the review period.

(b) The Director of the Division of Examinations shall review all questions and answers under appeal and correct any errors. In case of an ambiguity in any question, the Director has the discretion to eliminate the question or give credit for the question.

(c) The corrected scoring key shall be the official scoring key used in rating all the applicants' examination papers. No appeal concerning the correctness of the scoring key shall be accepted after the review period, except an appeal on the grounds of fraud or an error in the application of the scoring key in rating an applicant's examination paper.

##### 4:1-9.3 Rating examinations

(a) Ratings may be based on arithmetic percentages or may be computed by other statistical methods based on the use of scoring formulas and/or conversion tables.

When an examination consists of more than one part, each part may be rated independently.

(b) An applicant who fails to meet the minimum standards prescribed for any part of an examination shall be declared ineligible to participate in the balance of the examination.

**CIVIL SERVICE****ADOPTIONS**

(c) No applicant shall pass an examination if he or she fails to attain a passing score in the examination as a whole or fails to meet the minimum standards prescribed for any part of the examination.

(d) When education and experience are to be rated as part of an examination, education and experience which exceeds the minimum announced requirements shall be evaluated and graded on the basis of scales approved by the Department of Civil Service.

**4:1-9.4 Reserved****4:1-9.5 Credits for seniority and record of service**

(a) Promotional examinations may include an evaluation of records of seniority and performance ratings. The evaluation shall be based on the applicant's employment records as of the last day for filing applications for the examination.

(b) Performance ratings shall not be used as a factor in promotions when the supervisor who completes a performance rating for a subordinate competes in the same promotional examination as the subordinate.

**4:1-9.6 Breaking tie scores obtained in Civil Service examinations**

(a) The factors utilized to determine ranking on an eligible list whenever two or more eligibles have the same final score on an open competitive examination are listed below in the order that they are evaluated:

1. Score attained on the written test;
2. Score attained on the performance test;
3. Score attained on the oral test; and
4. Time and date that application is stamped as received by the Department of Civil Service.

(b) The factors utilized to determine ranking on an eligible list whenever two or more eligibles have the same final score on a promotional examination are listed below in the order that they are evaluated:

1. Score attained on the written test;
2. Score attained on the performance test;
3. Score attained on the oral test;
4. Seniority score;
5. In State service, performance ratings;
6. Score for segments of written, performance and oral tests in that order; and
7. Score for education and for experience acquired in addition to that previously credited in (b)4 above.

(c) In particular circumstances, the President of the Civil Service Commission may designate an alternative method to break tie scores.

(d) Whenever two or more eligibles have the same final score in promotional examinations for police and firefighter titles, residents shall be ranked ahead of non-residents. If two or more eligibles who are residents have the same final score, their ranking shall be determined according to (b) above. (See N.J.S.A. 40A:14-9.4 and 40A:14-122.4.)

**4:1-9.7 Notification of examination results**

After an examination or any part of an examination has been completed and scored, candidates will be notified of their examination results.

**4:1-9.8 Review of examination papers by candidates and appeals against results**

(a) For a period of 20 calendar days immediately following the date of notice, the Department of Civil Service shall permit candidates to review their examination papers and the official scoring key.

(b) A candidate shall be permitted only one review of a particular examination in the 20-day period.

(c) No candidate shall be permitted to copy any questions or answers.

(d) During the 20-day review period, candidates may file a written appeal of their examination results with the Department of Civil Service. See N.J.A.C. 4:1-8.21, 4:1-8.22 and 4:1-8.23 for specific appeal procedures. However, no appeal may be made against the written questions and answers which could have been made during the scoring key review period. See N.J.A.C. 4:1-9.1 and 4:1-9.2.

**4:1-9.9 Reserved****4:1-9.10 Correction of errors**

(a) The Director, Division of Examinations, may correct an error at any time during the life of an eligible list.

(b) The Civil Service Commission shall determine whether such correction shall affect any prior appointments or certifications.

(c) Corrections of errors may result in a change in ranking. See N.J.A.C. 4:1-12.12.

**4:1-8.24 Preservation of examination records**

(a) The following examination records shall be retained by the Department of Civil Service until the expiration of the eligible list:

1. A copy of the public announcement;
2. A description of each examination or measure of fitness employed in the examination and the standards used in rating them, the date each examination was held, the weight assigned to an examination, and the minimum scores required, if any;
3. The resulting eligible list and a list of applicants who failed;
4. All applications;
5. Applicants' examination papers and, if feasible, other examination materials, recordings or transcriptions made in oral tests and appraisal record sheets made by examiners in rating applicants in any examinations or parts of examinations; and
6. Other records or information as may be pertinent.

**4:1-8.25 Inspection of examination records**

All examination records listed in 4:1-8.24(a) 1, 2 and 3 shall be open to public inspection. All other records may be held open to such limited inspection and examination by such persons and under such circumstances as the President may determine to be in the best public interest.

**4:1-12.12 Additions to eligible lists**

(a) Additions may be made to the eligible lists when:

1. A make-up examination has been given and the applicant attains a passing score;
2. Administrative errors by the Department of Civil Service are corrected;
3. Changes are necessary due to the actions of a third party; an appointing authority fails to notify promotional eligibles, the Veterans Administration makes an error in submitting a document, a college makes an error on an official document; or
4. An error is corrected by the Director, Division of Examinations, at any time during the life of an eligible list.

**4:2-9.1 (Reserved)****4:3-9.1 (Reserved)**

(a)

**Performance Evaluation and Employee Training****Readoption with Amendments: N.J.A.C. 4:1-20; 4:2-20****Adopted New Rules: N.J.A.C. 4:2-20.1, 20.2, 20.3, 20.4, 20.5****Adopted Repeal: N.J.A.C. 4:1-20.2 through 20.6, 20.8; 4:2-20.1 through 20.5, 20.7; 4:3-20**

Proposed: November 5, 1984 at 16 N.J.R. 2877(a).  
 Adopted: January 23, 1985 by the Civil Service Commission, Eugene J. McCaffrey, Sr., President.  
 Filed: January 28, 1985 as R.1985 d.61, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 11:1-7a, 11:5-1a.

Effective Date: February 19, 1985 for amendments, new rules, repeals; January 28, 1985 for readoption.  
 Expiration Date pursuant to Executive Order No. 66(1978): January 28, 1990.

**Summary of Comments and Agency Responses:**

Robert W. Pursell of the Communications Workers of America (CWA) stated that employees' appeal rights would be abolished under the proposed rules. He opined that employees should have the right to appeal any adverse action, including a rating of "marginally satisfactory." He questioned the discretion given to the President of the Civil Service Commission to grant exceptions to the prescribed Performance Appraisal Review (PAR) system in N.J.A.C. 4:2-20.1. He also expressed concern that management was obligated only to "consult" with employees rather than to "mutually formulate" performance and improvement goals and work standards. Further, he sought clarification of the use of performance ratings as a factor in promotions in proposed N.J.A.C. 4:2-20.3(b). He also requested clarification of what effect performance ratings had in determining the order of layoffs as stated in N.J.A.C. 4:2-20.3(c). In addition, he incorporated objections raised by other CWA local unions, based on PAR field studies and discussion, that a five tiered rating system is inappropriate. With regard to proposed N.J.A.C. 4:2-20.5, he petitioned that a labor union representative be allowed a seat on the State Employee Development and Training Council to provide input for improved training programs in State government.

Proposed N.J.A.C. 4:2-20.2 does provide for standards developed by the employee and supervisor. Should there be a disagreement concerning such standards, the employee may appeal through the established grievance procedures.

When an employee receives the lowest PAR rating, he or she will be denied an anniversary date increment. Such an adverse action is appealable; however, appeals of other PAR ratings are not provided because they are not considered adverse actions unless they form the basis of disciplinary action.

Further, the use of performance ratings as a factor in promotions and in determining the order of layoff is provided by statute. See N.J.S.A. 11:13-1. The effect of ratings in the layoff situation is further addressed in N.J.A.C. 4:2-16.2. Moreover, the administrative policy regarding the use of performance ratings pursuant to N.J.S.A. 11:13-1 has been uniformly applied.

Proposed N.J.A.C. 4:2-20.1, Performance Assessment Review, provides for a multi-level rating scale. It was determined that the three level system did not provide adequate differentiation for a good performance appraisal. In addition, the Department of Civil Service had experimental programs at several agencies to develop a more appropriate program.

The State Employee Development and Training Council is an advisory body made up of representatives of State departments. Its role is to provide input on training matters in the various agencies and its membership consists of training professionals. It is not intended that unions or other groups be part of this organization which has a specialized and limited function.

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

4:1-20.1 Performance evaluation and employee training

(a) In State service, employee evaluation and training programs shall be established and administered through the Department of Civil Service. See N.J.A.C. 4:2-20.

(b) In local service, employee evaluation and training programs may be established and administered by the jurisdiction.

4:1-20.2 through 4:1-20.6 (Reserved)

[4:1-20.7] **4:2-6.4** Career development

(a) The President of the Civil Service Commission shall authorize, with the approval of the Commission:

1. Programs including trainee programs designed to attract and utilize persons with minimal qualifications but potential for development, in order to provide career development opportunities among returning veterans, handicapped persons and members of disadvantaged groups;

2. Programs to achieve the most effective use of scarce professional administrative and technical manpower.

4:1-20.8 (Reserved)

[4:1-20.9] **4:2-20.6** Tuition aid program

(a) The tuition aid program provides tuition assistance or reimbursement to employees who attend accredited educational institutions primarily on their own time subject to the limitations of this rule and the availability of funds. The intent of the program is to fulfill the needs of the agency sponsoring the aid and State government as a whole. Each agency shall determine its needs and disburse available funds to employees engaged in an appropriate course of study.

(b) An appointing authority shall prepare a tuition aid plan at the beginning of each fiscal year with consideration given to affirmative action responsibilities. The plan shall include criteria for:

1. Employee eligibility which is limited to full-time, permanent employees in the classified and unclassified services with exceptions granted on a case by case basis by the appointing authority. Agencies may establish additional criteria for determining eligibility.

2. Internal application procedure;

## CIVIL SERVICE

## ADOPTIONS

3. Maximum amount of aid available per person not to exceed \$500.00 or the cost of six credits, whichever is greater, per semester or educational program;

4. Acceptable academic grades for reimbursement;

5. Eligible costs; and

6. A procedure to notify employees of approval or disapproval.

(c) Payment or reimbursement will be made only after evidence of satisfactory completion of the course as defined by the appointing authority's plan and evidence of tuition payment to the educational institution is submitted to the agency's fiscal office.

(d) At the start of each fiscal year, agencies shall submit blanket Staff Training Requests which meet the above criteria. Any requests outside the criteria shall be submitted on a separate Staff Training Request within the time frame specified on the request form. The Department of Civil Service in conjunction with the Department of Treasury may grant exceptions.

(e) A tuition aid plan shall be submitted for approval to the Department of Civil Service at least one month prior to implementation. The approved plan must be posted in conspicuous locations in the agency and shall include the name, telephone number and location of the individual responsible for administering the program.

(f) The appointing authority's training officer, or the individual responsible for training, shall develop and implement an equitable tuition aid plan and shall review the program each year to insure that it is consistent with current agency goals. The training officer shall consult with the affirmative action officer on all program matters concerning affirmative action responsibilities and data. Revisions to the plan must be submitted for approval to the Department of Civil Service at least one month prior to implementation.

(g) The appointing authority shall submit a semiannual report to the Department of Civil Service by February 1 and August 1 of each year. The report shall include the following information:

1. Names and titles of all employees receiving tuition aid. The names of employees who are exceptions to the employee eligibility limitations shall be noted along with the reasons for the exceptions;

2. Amount of aid for each employee per semester or education program;

3. Semester enrolled, course name, credits, grade received; and

4. Affirmative action data.

(h) The appointing authority is subject to audit by the Department of Civil Service to ensure compliance with the provisions of this rule, the agency's tuition aid program, and any other statutes or rules which affect the program. If at any time an agency does not comply with the above provisions, Civil Service reserves the right to suspend an agency's tuition aid program until the irregularities are resolved.

### 4:2-20.1 Performance Assessment Review: General

(a) The Department of Civil Service shall prescribe a Performance Assessment Review (PAR) program to ensure that the performance of each employee is reviewed, assessed and recorded under uniform procedures. The PAR shall use a multi-level rating scale and standardized form as designated by the Department of Civil Service.

(b) The appointing authority shall retain records of the employee's PAR with his or her personnel records. In addition, the appointing authority shall prepare and retain an overall summary of all employee final ratings.

(c) The President of the Civil Service Commission may grant exceptions to the prescribed PAR program.

### 4:2-20.2 Performance Assessment Review: Procedure

(a) The employee's supervisor shall consult with the employee to establish a Performance Assessment Review (PAR). The supervisor and employee shall develop performance standards and job objectives against which the employee's performance can be reviewed, measured, assessed and rated. The employee shall be provided with a copy of the performance standards and job objectives.

(b) The PAR evaluation period shall be based on a one-year cycle. The supervisor and employee shall confer at least once every six months to discuss the employee's progress during the evaluation period. Assessments shall be made, ratings assigned and improvement goals set at the mid-term and final conferences. However, where the employee's performance is less than standard, the supervisor and the employee shall confer at least once every three months.

(c) In cases where there are changes in supervisors or job assignments during the evaluation period, the employee's performance shall be rated by all of the immediate supervisors for that period. The final rating shall be a proration of all these ratings.

(d) The supervisor and the employee shall confer regarding the ratings and the employee shall receive a copy of the ratings after the conference.

(e) An employee shall be provided with the opportunity to inspect the records which show his or her PAR ratings.

(f) Disagreements concerning ratings which deprive an employee of an increment or concerning standards shall be resolved through the grievance procedures. See N.J.A.C. 4:2-23.2. The Department of Civil Service may also designate a representative to participate in an informal conference to aid in the resolution of PAR disputes.

1. An employee is not precluded from challenging the basis of a rating if the rating is an issue in a disciplinary action.

(g) The names and titles of employees who have received ratings which deprive an employee of an increment shall be referred to the Employee Advisory Service. See N.J.A.C. 4:2-20.7.

(h) The PAR program shall be monitored and audited by the Department of Civil Service.

### 4:2-20.3 Performance Assessment Review: Use

(a) As provided in the State compensation plan and salary procedures, an employee shall receive an anniversary date increment unless his or her final rating was the lowest PAR rating. An employee who receives the lowest PAR rating shall be denied an anniversary date increment.

1. The Department of Civil Service may consider requests from appointing authorities to grant increments prospectively to employees who had been denied increments due to his or her PAR rating, but have subsequently improved to a level which warrants the granting of an increment.

(b) Performance ratings may be used as a factor in promotions. See N.J.A.C. 4:1-9.5.

(c) Performance ratings shall be used to determine the order of layoff for permanent employees. See N.J.A.C. 4:2-16.2(c).

### 4:2-20.4 Training responsibilities

(a) The Department of Civil Service shall initiate and conduct employee development and training programs and encourage and assist appointing authorities in conducting such programs.

(b) The President of the Civil Service Commission shall recommend standards for determining training needs and criteria for a continuous review and evaluation of training programs and for employee selection and eligibility for those programs. The President may approve programs which meet such standards.

(c) Departments shall:

1. Obtain approval from the Department of Civil Service for any training program which involves the direct expenditure of funds.

2. Submit a summary of training activities on a prescribed form to the Director, Division of Management Training and Employee Services, by September 15 following the close of the fiscal year in which such activities took place.

3. Develop and maintain a written record of the education, training, and upward mobility programs in which each employee takes part, and record such information in the individual's personnel file at least annually.

4. Complete a department-wide or agency survey to determine training needs at least annually.

5. Through written questionnaires, oral interviews, testing, or other appropriate means, complete an evaluation of all programs of education and training in which employees take part.

6. Develop a plan for career development to provide education and training designed to meet assessed needs and to prepare employees for advancement to higher level positions.

4:2-20.5 State Employee Development and Training Council

(a) A State Employee Development and Training Council (Council) is established by the Department of Civil Service to act as an advisory group on matters regarding the training and development of employees.

(b) The Council shall consist of representatives of each executive department and executive commission and may include representatives of the judicial and legislative branches and its legislative commissions.

(c) The Council shall elect officers from its membership and designate an employee of the Department of Civil Service to act as its executive secretary.

(d) Each department head shall designate a representative and alternates to the Council who must be professional or management level employees with a knowledge of employee development and training. However, in case of a vote, each department shall have only one vote.

[4:2-20.6] **4:2-6.8** Program for the utilization of trainee titles  
(No change in text.)

[4:2-20.8, 4:3-20.1] **4:2-6.\*[8]\*\*9\*** Administration of the Work Incentive/On-The-Job Training Program

(a) The Work Incentive/On-The-Job Training (WIN/OJT) Program authorizes funds for the immediate employment in the public service of WIN participants. The prime objective of developing OJT positions for WIN participants is to ultimately provide permanent employment in unsubsidized jobs in the public sector and to fill the unmet service needs of government. Appointing authorities operating under this program are directly responsible for complying with the "assurance" incorporated in the WIN/OJT grants.

(b) Appointing authorities, operating under the provisions of Title II, Civil Service Statute Annotated, are authorized to fill WIN/OJT positions, in accordance with this section. The Civil Service Commission in cooperation with the New Jersey

Department of Labor and Industry has established the following alternatives for the appointment of WIN/OJT employees:

1. Approval is granted for the appointment of WIN/OJT employees to temporary positions for a 12-month period.

2. Individuals may be appointed to WIN/OJT positions as regular appointees under normal certification procedures at the request of the appointing authority with the consent of the appointee.

(c) Employment terms and conditions of employment:

1. Individuals receiving temporary appointments to WIN/OJT positions will obtain all of the Civil Service terms and conditions accorded to temporary employees.

2. Individuals receiving appointments to WIN/OJT positions under (b)2 above have the same terms and conditions as employees who are appointed to regular positions.

[4:2-20.10, 4:3-20.3] **4:1-20.2** Employee Interchange Act

(a) Any New Jersey governmental unit is authorized to participate, as either a sending agency or a receiving agency, in a program of employee interchange with any other Federal, State or local government unit pursuant to N.J.S.A. 52:14-6.10 et. seq.

1. The sending agency, the receiving agency; and the participating employee shall submit the prescribed form for employee interchange to the President of the New Jersey Civil Service Commission for review;

2. The period of assignment shall not be less than two months nor for more than 12 months; except that the President of the Civil Service Commission may provide for an assignment of less than two months to accommodate emergency situations, e.g., a call for fire wardens to help control a fire in a neighboring state. An emergency situation does not apply to a non-crisis situation, of less than two months

3. An employee shall not receive assignments for more than 12 months during any 36 month period;

4. The participating employee shall remain in the employ of the sending agency for a period of not less than one year after the termination of the period of interchange.

(b) The sending agency or the receiving agency may terminate an employee interchange program without reason provided 30 days written notice is given to the other agency, the participating employee, and the Department of Civil Service.

(c) No employee shall be assigned as a participating employee or continue in such assignment without his or her consent. If the employee agrees to participate, he or she shall be assigned to a receiving agency but continue as an employee of the sending agency, except for purposes of supervision which shall be determined by agreement between the sending and receiving agencies. During this period of assignment all rights and benefits shall be continued including but not limited to: salary, seniority, promotion, reemployment, retirement and pension.

(d) A participating employee shall receive his salary from the sending agency. No compensation shall be received from the receiving agency except as may be reimbursed for the necessary per diem and mileage expenses.

(e) The sending agency may pay the employee's expense for relocation as a result of assignment provided that the assignment is for a period of eight months or longer.

(f) The Division of Management Training and Employee Services Department of Civil Service, is responsible for administering these regulations.

[4:2-20.11] **4:2-20.7** Employee Advisory Service

(a) The Employee Advisory Service (EAS) is established by the Department of Civil Service to assist State employees in

achieving and maintaining the highest level of job performance of which they are capable.

(b) The EAS, a unit in the Division of Management Training and Employee Services, Department of Civil Service, is comprised of professional counselors who evaluate employees and arrange for the referral of employees, or members of an employee's household, for counseling or other professional services if:

1. An employee has been denied an anniversary date increment due to his or her performance rating.
2. The employee is experiencing personal problems which are manifested on the job; or
3. A member or members of an employee's household has personal problems which adversely affect the employee's job performance.

(c) Appointing authorities should refer employees to the EAS when an employee's job performance causes concern, rather than relying on a report of job performance. State employee associations and unions may refer employees to the EAS if the employee agrees to the referral.

(d) Information concerning an employee who on his own initiative contacts the EAS, whether stated, written or known in the EAS files or referral files, shall be confidential unless the employee authorizes release of such material.

(e) No confidential information concerning an employee referred by his or her supervisor or appointing authority shall be released except as authorized by the employee. The following information will be considered non-confidential and may be released to the employer:

1. Whether the individual has been accepted for a program;
2. Whether the program is expected to be beneficial;
3. Whether or not appointments were kept;
4. The dates and times of future appointments with the Employee Advisory Service or community resources;
5. The amount of time needed to complete the program.

(f) To release confidential information, a release form must be signed by the client and his or her treatment agency or counselor.

The client may state an expiration date on the release form after which confidentiality is restored.

A client who signs a confidentiality release form is allowing full disclosure of information. There is no provision for partial disclosure.

(g) The employer is to refer an employee to the EAS for evaluation as soon as problems are manifested which may affect job performance.

(h) The names and titles of employees who have received the lowest PAR rating will be referred to the Director, Division of Management Training and Employee Services (Director).

(i) An employee whose job performance is cause for concern may be referred by the line supervisor to the personnel officer in his or her department and in turn to the Employee Advisory Service.

(j) If the EAS counselor determines that the client's situation is not within the scope of the EAS, the counselor may refer the employee to the Director who will interview the client. If the client is a State employee, the Director may contact the employee's personnel officer to try to work out a solution to the employee's problem.

(k) When an employee who is referred to the EAS does not accept the referral to a community resource or when an employee who has been referred to the EAS does not keep referral appointments, the counselor will inform the referring department.

(l) An employee who is referred to the EAS by his or her appointing authority will be scheduled for appointments through his or her personnel officer or any individual authorized to be responsible for agency personnel functions. Should the EAS need to interview the supervisor concerning an employee's work performance, the personnel officer or authorized person will arrange for the supervisor to report to the EAS.

1. Employees who are referred by their supervisor or appointing authority to the EAS will be excused from work assignments for up to two visits. Arrangements beyond the two excused visits are to be worked out between the employee and employer with or without participation by the EAS.

(m) The EAS will maintain follow-up on all clients to determine their progress. If the client does not follow the course of action recommended by the EAS, or no further follow-up services can be performed, the client shall no longer remain in active-client status. Active-client status is when an employee or a member of his or her household is currently being counselled or is scheduled for counseling. If an employee is no longer in active-client status, the appointing authority shall determine the course of action to be taken concerning the employee. Before seeking removal of an employee who is in active-client status, the appointing authority shall consult with the Director, Division of Management Training and Employee Services.

(n) The employee must assume the financial responsibility for use of community referral agencies whose fees are not covered by the State.

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(a)

### **Performance Evaluation and Employee Training Certified Public Manager Program**

#### **Adopted New Rules: N.J.A.C. 4:1-20.2 and 4:2-20.7**

Proposed: November 19, 1984 at 16 N.J.R. 3072(a).

Adopted: January 23, 1985 by the Civil Service Commission, Eugene J. McCaffrey, Sr., President.

Filed: January 28, 1985 as R.1985 d.62, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 11:1-7a, 11:5-1a, 11:6-2e.

Effective Date: February 19, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): January 28, 1990.

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

Mr. Pursell objected to allowing private business to participate in the State CPM Program, citing the possibility that a private employee may take the slot of a public employee. He also did not agree with the provision that the President of the Civil Service Commission will appoint, among other people, a member of private industry to the CPM policy advisory board. Rather, he considered that a union representative would have more of an interest in the CPM program. Finally,

he advocated that jobs be restructured in State government to maximize employee productivity, instead of instituting the CPM program.

N.J.A.C. 4:1-20.2(b) provides that private industry and local governmental representatives may participate in the State CPM program on, "a limited basis as determined by the President of the Civil Service Commission." The general intention of such rule is to allow training for local government employees in Civil Service jurisdictions and in limited circumstances individuals from private industry in order to further communication and cooperation between State government, local jurisdictions and private industry. Such non-State employees may participate if there are available slots unfilled by State employees. This is not intended to detract from the main and overall purpose of training for State managers. Further, the management training program would benefit from input from successful models in private industry and a representative from industry would benefit and not hinder the program's effectiveness and development. It is also noted that representation from private industry on the policy board is mandated by Executive Order No. 28, which established the CPM Program.

The issue of job restructuring is separate from the CPM Program which this Department is mandated to develop pursuant to the Executive Order. A formalized management training program will maximize the effectiveness of government and its employees. The program's propose is to provide practical hands-on training for those levels of employees, supervisors and managers, whose actions impact on the delivery of services and consequently provide the knowledge and skills necessary to assure a smoothly operating government. Better trained supervisors and managers will better serve the State and all employees through proper and fair supervision.

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

#### 4:1-20.2 Certified Public Manager Program (CPM)

(a) In State service, the Department of Civil Service shall develop, implement and administer a comprehensive training and development program for supervisors and managers to be known as the Certified Public Manager Program (CPM).

(b) Local governments and private industry may participate in the State Certified Public Manager Program (CPM) on a limited basis as determined by the President of the Civil Service Commission.

#### 4:2-20.7 Certified Public Manager Program (CPM)

(a) The Department of Civil Service shall implement a Certified Public Manager Program (CPM) for supervisors and managers consisting of progressive levels of instruction to be administered by the **\*[Division of Personnel Services and Employee Development,]\* **Division of Management Training and Employee Services,**\*** Department of Civil Service. See N.J.A.C. 4:1-20.2.

(b) The instructional portion of CPM shall be jointly conducted by the **\*[Division of Personnel Services and Employee Development]\* **Division of Management Training and Employee Services\***** and Rutgers, The State University.

1. The program content for supervisors will include, but not be limited to, management duties and responsibilities, controls, policies and procedures, human and interpersonal relations, communications, equal employment opportunity and affirmative action responsibilities, work simplification and evaluation, and employee relations.

2. The program content for managers will include, but not be limited to, the effects of social changes on public organizations, forecasting and strategic planning, managing organizational liability, production enhancement, management by objectives, and ethics for the public manager.

(c) The Certified Public Manager Program (CPM) will be provided overall policy direction by a Board. The President of the Civil Service Commission shall select members of the Board from State government, the academic community, and private industry.

(d) The President of the Civil Service Commission shall determine the criteria for program participation for each department of the State.

(e) Each department's share of the program cost will be provided by an annual transfer of existing departmental appropriations to a special account in the Department of Civil Service. For that part of the program which is limited to managers only, the departmental share will be 75 percent and the individual manager's share will be 25 percent.

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## (a)

### Leaves of Absence Administrative Leave

#### Notice of Correction: N.J.A.C. 4:2-17.10

Errors appear in the June 4, 1984 issue of the New Jersey Register at N.J.R. 1345 concerning administrative leave, N.J.A.C. 4:2-17.10. Also, errors appear in the New Jersey Administrative Code at N.J.A.C. 4:2-17.10. The regulation should have appeared as follows:

#### 4:2-17.10 Administrative leave

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

(d) Administrative leave that is not used during the calendar year shall be forfeited. An employee who leaves State service shall **not** be required to reimburse the State for days already used.

(e) (No change in text.)

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# COMMUNITY AFFAIRS

(a)

## DIVISION OF HOUSING AND DEVELOPMENT

### Uniform Fire Code; Fire Code Enforcement; High Level Alarms

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

Proposed: December 17, 1984 at 16 N.J.R. 3339(b).

Adopted: January 25, 1985 by John P. Renna, Commissioner, Department of Community Affairs.

Filed: January 28, 1985 as R.1985 d.66, **with substantive and technical changes** not requiring additional public notice and comments (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 52:27D-192 et seq., specifically 52:27D-198 and 52:27D-219.

Effective Date: February 19, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): February 1, 1990.

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

As would be expected with regulations implementing major legislation affecting large numbers of people, like the Uniform Fire Safety Act, (N.J.S.A. 52:27D-192 et seq.), the Department received a large volume of comments, both in writing and at a well-attended public hearing, held on January 9, 1985. All comments were carefully considered by the Department and the Fire Safety Commission.

Comments from fire service representatives were generally supportive. Recommendations for some technical changes were submitted, some of which were incorporated as amendments in this adoption. Certain recommended amendments to the Fire Prevention Code were not included because the Department believes they should be open to comment before being adopted, but they will be included in a subsequent proposal.

Many of those who commented expressed a need for additional time to make substantive comments. The Department and the Commission believe that interested members of the public have had many opportunities to make their positions known in the hearings and meetings that preceded the enactment of the Uniform Fire Safety Act and during the many public Fire Safety Commission meetings that have taken place in the month since the Act became law, that the requirements of the Administrative Procedure Act have been complied with and that further delay in implementation is not warranted. Nevertheless, the Department and Commission will continue to welcome comments, will give them full consideration and will propose amendments to these rules to incorporate comments that the Department and Commission consider to have merit.

Complaints were received about allegedly excessive annual registration and permit fees (although there was one comment that they were too low) and about placement of some uses and activities in the wrong use or permit categories. The Department and Commission reevaluated the fees and concluded

that they were reasonably related to the amount of inspection activity required, except that, in the case of multiple life hazard uses at one location under common ownership, a reduction of 50 percent should be allowed on all annual fees after the first. However, permit fees, which are entirely local, were changed to be variable, depending upon local costs. Dry cleaning establishments which do not use flammable solvents were placed in a lower life hazard use categories than those that do use such solvents. Uses incidental or auxiliary to farm operations were excluded from life hazard use registration and type 4 permit requirements. Otherwise, the Department and Commission found that the life hazard use and permit categories were appropriate.

Some comments concerned confusion created by inclusion of reference to the not yet proposed N.J.A.C. 5:18-4. The Department and Commission agreed to delete all such reference until such time as that subchapter is proposed. (N.J.A.C. 5:18-1.1, 1.6).

Other clarifications added in response to comments include language extending recognition of preemption of control of hazardous materials by Federal agencies other than the Department of Transportation (such as the Nuclear Regulatory Commission), reference to the applicability of the State Uniform Construction Code, N.J.A.C. 5:23-1 et seq., to alteration and renovation of existing buildings, (N.J.A.C. 5:18-1.4), classification as a life hazard use of processes involving certain amounts of loose combustible fibers and shredded waste paper (N.J.A.C. 5:18-2.4).

With regard to fire code enforcement, a comment was received indicating that the definition of "fire department" at N.J.A.C. 5:18A-1.4, was ambiguous in that it could be construed as making either a fire district or a company acting under it the "fire department". The definition was changed to make it clear that, in such a case, the "fire department" would be the fire district.

One comment was received containing alternate language for the paragraphs setting forth the jurisdiction of local and county enforcing agencies. This alternate language was included in the adoption. (N.J.A.C. 5:18A-2.2).

In response to comments expressing concern about undue interference with municipal procedures and prerogatives, the Department and Commission clarified the manner in which a fire department is to make known its wishes concerning local enforcement and specified that a request concerning local enforcement must be made by June 18, 1985 to be binding on the municipality. (N.J.A.C. 5:18A-2.3). The concern was expressed that fire department heads in paid departments would be dictating to mayors and governing bodies, but it is the belief of the Department and Commission that such disruption of the lines of authority is not going to happen because municipal employees, by reason of other laws, cannot force the actions of their superiors. The impact of the provisions allowing fire department choice in the matter of establishment of a local agency will be felt in places where the firefighters are not paid employees of the municipality. (N.J.A.C. 5:18A-2.3).

In response to a comment from the Office of Administrative Law, the right to a hearing is established for persons aggrieved by Bureau decisions matters such as suspensions of local enforcement agencies. (N.J.A.C. 5:18A-2.11).

Some fire service representatives expressed concern that the fire official would be held liable if things required to be done under N.J.A.C. 5:18A-3.3(a) were not done despite the fire official's good faith efforts. The subsection was amended to make it clear that the fire official is to endeavor to do these things.

With regard to high level alarms, it was pointed out that the statute provides for regulations to be effective after 90 days. The regulations were changed accordingly (see N.J.A.C. 5:18B-1.4). Language was also added to make it clear that the alarm system is supported to warn of any non-performance of the system. (N.J.A.C. 5:18B-3.2).

**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 18 UNIFORM FIRE CODE

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 5:18-1.1 Title: division 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 4 as this subchapter]\* **\*(Reserved)\*****

#### 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 prescribed 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 **\*or other Federal agency having jurisdiction\***.

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 **\*and property as\*** specifically provided herein. When any provision of this Code is found to be in conflict with any 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.]\* **\*(Reserved)\*****

(e) The planning, design and construction of new buildings and structures<sup>\*</sup>, **or the planning, design and alteration or renovation of existing 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 **\*or to\* buildings <sup>\*</sup>and structures\*** 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 **\*or other facilities\*** 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 **\*the\*** 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]\* \*building subcode of the New Jersey Uniform Construction Code\*** and defined as such in subchapter 2 of this chapter. “Life hazard use” shall also mean and include high rise structures 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 \***, **or use, or a portion thereof\***.

“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.

**\*“Uniform Construction Code” or “Construction Code” means the New Jersey Uniform Construction Code (N.J.A.C. 5:23-1 et seq.).\***

“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 occurring, 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]\* \*Operative\* 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 **\*in each municipality upon adoption of an ordinance creating a local enforcement agency, but in no case later than August 18, 1985\***. **\*[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, 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.]\* \*(Reserved).\***

#### 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.

\*i.\* The Bureau shall publish quarterly a roster of enforcing agencies which shall \*[determine]\* \*list\* 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 marshal 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 marshal 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 marshal 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.

#### 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 \*, **other than those that are incidental or auxiliary to the agricultural use of a farm property,\*** 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 **\*and shall be registered pursuant to N.J.A.C. 5:18-2.8\*.**

(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.

**\*9. Buildings used for dry cleaning purposes in which only non-flammable cleaning solvents are used.\***

(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 **\*loose\*** 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]\* \*shredded\*** 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, **\*or\*** other similarly combustible material;

iii. **\*More than 25 pounds of\* \* [C]\*\*c\*ellulose nitrate motion picture films or cellulose nitrate (pyroxylin) plastics \* [in quantities which exceed 25 pounds]\*;**

iv. More than 100 cubic feet of **\*loose\*** 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 **\*in which flammable cleaning solvents are\*** 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 \*, reduce vision, present barriers, or otherwise impede the free flow of traffic,\*** 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 than 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 life hazard use is operated on a seasonal basis, the number of required annual inspections shall not be reduced. Inspection of type C and type D life hazard uses which are in operation for only a portion of the year shall be conducted immediately prior to opening and closing and twice during operation of the use.\***

**\*(b)\*\*(c)\*** 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 pursuant 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 be 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 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.

**\*1.\*** 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\*, or when the storage or activity is incidental or auxiliary to the agricultural use of a farm property\*.

**\*[1.]\*2.\*** Type 1 permit:

- i. Bonfires;
- ii. The use of a torch or flame-producing device to remove paint from \*, or seal membrane roofs on,\* 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 **\*approved for welding by the fire official and is\*** 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.]\*3.\*** 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.]\*4.\*** Type 3 permit:

i. Industrial processing ovens or furnaces operating at approximately atmospheric pressures and temperatures not exceeding 1400 degrees Fahrenheit 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.]\*5.\*** 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, food-stuffs, 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.]\*\*6.\*** 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 in 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) Except as otherwise specified for storage or manufacturing operations in N.J.A.C. 5:18-26(d), where more than one life hazard use exists under one ownership at a given location, the highest life hazard use shall be registered at full fee and subsequent life hazard uses at one-half the scheduled fee.**

**1. Each life hazard use that is separately owned, shall be registered at full fee.\***

**\*[(b)]\*\*(c)\*** 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.

**\*(d) A municipality having a local enforcing agency may establish, by ordinance, a different permit fee schedule not in excess of fees in Schedule (b) above based on the actual cost anticipated or incurred for the enforcement of this Code.\***

#### 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.

(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 procedurally 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.

**\*(c) A copy of any notice or order served upon the owner of a State-leased or owned property shall be sent to the Director of Property and Facilities Management, Department of Treasury.\***

#### 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 notice 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:]\* \*It shall be a violation of this Code for any person to:\***

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;

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 omission 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 vacated, 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 terminated, 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

**\*(a)\*** 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.

**\*(b)\*** 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.

**\*(c) All monies collected pursuant to this section shall be paid to the municipality and appropriated to the fire department to defray the certified costs.\***

#### 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]\* \*designed\* 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:

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 **\*other than a door opening directly to the outside at grade level\***.

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.

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".

## ADOPTIONS

## COMMUNITY AFFAIRS

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.

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.
  - 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 thereof.
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 \*or volunteer\* \*[fire department]\* \*fire-fighting force, body or agency establish by ordinance as a division of municipal government,\* or one or more volunteer fire companies \*[which have been contracted with]\* \*that have contracted with a municipality\* to provide fire protection \*[to a municipality or a fire district]\*. \*A fire district shall be treated as a fire department for all purposes herein, but no fire fighting force, body or agency within the territorial jurisdiction of a fire district shall in any case be deemed to be a fire department.\*

"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 \*or any portion thereof\*.

## 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 **\*which is not inconsistent with the Act or N.J.A.C. 5:18, 5:18A or 5:18B\*.**

## 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]\* **\*A local enforcing agency, where established, shall be responsible for enforcement of the Code within its jurisdictional area for:**

i. **All privately-owned property subject to the Code;**

ii. **All property owned by any municipality or local authority;**

iii. **All property owned by any county or any county or regional authority, this responsibility being concurrent with that of the county enforcing agency; and**

iv. **All property leased by the State of New Jersey or any of its boards, commissions, agencies or authorities.\***

v. 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 en-

forcing 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.]\*

**\*County enforcing agencies, where established, shall be responsible for enforcement of the Code for:**

i. **All privately-owned property subject to the Code within a jurisdictional area for which it has been designated as the local enforcing agency;**

ii. **All privately-owned property leased wholly or in part by the county or a county or regional authority, this responsibility being concurrent with that of the local enforcing agency having jurisdiction in the area;**

iii. **All property owned by the county or by any county or regional authority, this responsibility being concurrent with that of the local enforcing agency having jurisdiction in the area; and**

iv. **All property leased by the State of New Jersey or any of its boards, commissions, agencies or authorities within the jurisdictional area for which it has been designated as the local enforcing agency.\***

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

i. **\*In life hazard uses or, whenever conditions that constitute an imminent hazard are found to exist and\*** **\*[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 marshal, 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.

**\*8. If the fire department has not made any request to the governing body concerning establishment of a local enforcing agency by June 18, 1985, the governing body shall be free to make any designation consistent with the Act without the consent of the fire department. Any request or consent of the fire department shall be given in writing and shall be signed by the chief executive officer of the fire department.\***

(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.

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 marshal.

(b) Only a county fire marshal 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 marshal 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 (N.J.A.C. 5:18, 5:18A, and 5:18B) in those areas where a local enforcing agency has not been established *\*[for a local governing body has not elected to inspect]\** *\*for the inspection of\** life hazard uses and *\*that responsibility\** has not *\*been\** delegated *\*[that responsibility]\** to a county fire marshal.

(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.

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 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 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.

#### \*5:18A-2.11 Right of appeal

**Any person or agency aggrieved by a notice, order, action or decision of the Bureau pursuant to this subchapter shall be entitled to a hearing before the Office of Administrative Law pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1-1 et seq., provided that a request for a hearing is submitted to the Division of Housing and Development within 15 days' of the person or agency's receipt of the notice or order complained of.\***

### 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 dis-

tricts, 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 **\*endeavor to\***:

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 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 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.

#### 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 aggrieved 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 assure 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 curriculum. 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 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. Liquefied petroleum gases and liquefied 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.).

#### 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]\* **\*90 days after\*** 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 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 adjudicated 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 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; **\*or\***

**\*vi. Any other non-performance of the 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.

#### 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)

**DIVISION OF HOUSING AND DEVELOPMENT**

**Uniform Construction Code Products Violating the Code**

**Adopted Amendments: N.J.A.C. 5:23-3.8A**

Proposed: November 19, 1984 at 16 N.J.R. 3074(a).  
 Adopted: January 14, 1985 by John P. Renna, Commissioner, Department of Community Affairs.  
 Filed: January 18, 1985 as R.1985 d.38, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Effective Date: February 19, 1985.  
 Expiration Date pursuant to Executive Order No. 66(1978): April 1, 1988.

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

The New Jersey LP-Gas Association presented testimony demonstrating that propane unvented heaters are not, per se, in violation of the State Uniform Construction Code since they are covered by reference standard NFPA No. 54 and may be installed and operated in compliance with other Code requirements. However, heaters do exist and are on the market which have gas cylinders with the heater itself and are not certified by any recognized American testing laboratory. It is these heaters that violate the Code and ought therefore to be banned.

Upon review of this testimony, the technical staff of the Department indicated its concurrence. Consequently, N.J.S.A. 5:23-3.8A(d)4.i. has been amended to specify that it is the uncertified heaters only that are not to be sold.

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

**5:23-3.8A Products violating the Code**

(a) The Department shall, after public hearing and in accordance with the Administrative Procedure Act (P.L. 1968, c.410, as amended), establish and distribute to all enforcing agencies a list of items, devices and materials the regular and intended use of which would violate any provision of the State Uniform Construction Code. A list of such items is set forth in (d) below.

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

(d) The Commissioner has determined that the following materials and supplies are not in conformance with the State Uniform Construction Code:

1. Building materials and supplies:
  - i. Wood paneling being used as an interior finish not in conformance with section 1404.2 of the building subcode. This section specifies that finish shall be classified in accordance with ASTM E84;
  - ii. Carpeting used as an interior floor finish material not in conformance with section 1404.3 of the building subcode.

This section specifies that interior floor finish shall be classified in accordance with ASTM E648;

2. Electrical materials/supplies:
  - i. As stated in the National Electrical Code (sections 90-6, 110-2, 110-3, and 100), only products listed, labeled, approved, and identified are acceptable. Approval is to be based on tests and listings of testing laboratories such as Underwriters Laboratories Inc. (UL), or Factory **\*[Material]\* \*Mutual\*** (FM), etc.
  3. Plumbing materials/supplies:
    - i. All purpose solvent cement;
    - ii. Clear PB piping;
    - iii. Flexible traps and tailpieces;
    - iv. Sheet and tubular cooper and brass trap and tailpiece fittings less than B & S 17 gauge (.045 in.);
  4. Miscellaneous materials and supplies:
    - i. **\*[Propane]\* \*Portable\*** unvented **\*natural gas, liquified petroleum gas and kerosene\*** heaters **\*when offered for sale for use in buildings for human occupancy\***, unless **\*[offered for sale for use in buildings not for human occupancy]\* \*they are tested, listed, labeled and certified by a nationally recognized testing laboratory such as the American Gas Association Laboratories (AGA), Underwriters Laboratories, Inc. (UL) or Factory Mutual (FM)\*;**
      - ii. Urea formaldehyde foam insulation, unless offered for sale for use elsewhere than in buildings.

(b)

**DIVISION OF HOUSING AND DEVELOPMENT**

**Rooming and Boarding Houses Fire Safety**

**Adopted Amendment: N.J.A.C. 5:27-5.1**

Proposed: December 3, 1984 at 16 N.J.R. 3242(a).  
 Adopted: January 14, 1985 by John P. Renna, Commissioner, Department of Community Affairs.  
 Filed: January 18, 1985 as R.1985 d.39, **without change.**

Authority: N.J.S.A. 55:13B-4.

Effective Date: February 19, 1985.  
 Expiration Date pursuant to Executive Order No. 66(1978): July 1, 1985.

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

**Full text** of the adoption follows.

**5:27-5.1 Egress requirements**

- (a)-(b) (No change.)  
 (c) Means of egress:
1. (No change.)
  2. All fire escapes shall be constructed of steel and shall conform to the following minimum requirements:
    - i.-iv. (No change.)

v. Doors located next to the path of a fire escape shall be protected with three-quarter hour fire rated opening protectives. Windows located next to the path of the fire escape shall be protected with fire-rated wire glass.

- 3. (No change.)
- (d) (No change.)

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## EDUCATION

### (a)

#### STATE BOARD OF EDUCATION

#### Teacher Preparation and Certification Types of Certificates; Emergency

#### Adopted Amendment: N.J.A.C. 6:11-4.3

Proposed: November 19, 1984 at 16 N.J.R. 3075(a).  
 Adopted: January 2, 1985 by State Board of Education, Saul Cooperman, Secretary.  
 Filed: January 24, 1985 as R.1985 d.49, **without change.**

Authority: N.J.S.A. 18A:4-15 and 18A:6-38.

Effective Date: February 19, 1985.  
 Expiration Date pursuant to Executive Order No. 66(1978): October 1, 1988.

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

Comment:  
 The Department received one letter from Salem County. The writer expressed strong support for the amendment, but raised the following question:  
 Does the phrase "certain technical fields" encompass vocational education teachers?

Response:  
 The phrase "certain technical fields" does encompass vocational teacher education. Therefore, this group does remain exempt from the new regulations.

**Full text** of the adoption follows.

- 6:11-4.3 Emergency certificate
- (a) An emergency certificate is a substandard one-year certificate issued only in the fields of educational services, teacher of the handicapped, teacher of the blind and partially sighted, teacher of the deaf and hard of hearing, bilingual education, English as a Second Language and certain technical fields (see N.J.A.C. 6:11-8.3).
  - (b) An emergency certificate is issued only on application of a public school district, submitted after August 1, in which the district board of education declares its inability due to unforeseen shortages or other extenuating circumstances to locate a suitable certificated teacher.

### (b)

#### Approved Public Elementary School Summer Sessions

#### Readoption with Amendments: N.J.A.C. 6:26-3

Proposed: October 15, 1984 at 16 N.J.R. 2715(a).  
 Adopted: January 2, 1985 by the State Board of Education, Saul Cooperman, Secretary.  
 Filed: January 24, 1985 as R.1985 d.47, **with changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 18A:4-10, 18A:4-15, 18A:6-38 and 18A:38-4.

Effective Date for Readoption: January 24, 1985.  
 Effective Date for Amendments: February 19, 1985.  
 Expiration Date pursuant to Executive Order No. 66(1978): January 24, 1990.

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

- One letter with comments was received from a resident of the Summit School District. The commenter suggested:
1. Conflict between summer courses offered without change (N.J.A.C. 6:26-3.1(b)) and the enrichment courses for which there is a reasonable tuition charged. (N.J.A.C. 6:26-3.1(d)). These two sections seem to be in conflict.
  2. Problem with definition of enrichment as unrelated to the school curriculum, or avocational in nature (N.J.A.C. 6:26-3.1(d)). What is avocational to one student may not be to another.
  3. Addition of the word "successful" to definition of credit for remedial courses, in N.J.A.C. 6:26-3.1(c)1.
  4. Addition of the word "successful" to N.J.A.C. 6:26-3.4 describing the evaluation of completed course work.

- Response:
1. This is not a change in the rule, and is current practice of the county superintendents of schools. The practice has the additional authority of the Commissioner's decision. See in the matter of the appeals of the Boards of Education of the Black Horse Pike Regional School District and the Sterling Regional School District, Camden County, 173 S.L.D. 130, affirmed, State Board of Education, 1973 S.L.D. 138, in which it was decided that tuition could not be charged for summer session courses which were a part of the regular school curriculum.
  2. This is not a change in policy, but a clarification of the current practice of the county superintendents of schools.
  3. The Department agrees and the addition was adopted, in N.J.A.C. 6:26-3.1(c)1.
  4. The current wording on the evaluation of course work in N.J.A.C. 6:26-3.4 adequately covers this. It is an unnecessary addition.

**Full text** of the readoption follows (additions to proposal shown in boldface with asterisks \*thus\*).

- 6:26-3.1 Operation
- (a) The rules for the approval of full-time public elementary schools shall apply to all public elementary school summer sessions.

(b) No public school summer session may be operated or approved unless it is operated by a district board of education without charge to pupils domiciled within the district.

(c) Remedial, advancement and enrichment courses may be offered to meet pupil needs.

1. As used in this subchapter, a remedial course is any course or subject which is a review of a course or subject previously taken. Credits or placement may be awarded on **\*successful\*** completion of the course.

2. As used in this subchapter, an advanced course is any course or subject not previously taken in an approved school program. Additional credits or advanced placement may be awarded on successful completion of the course.

3. As used in this subchapter, an enrichment course is any course or subject of avocational nature for which no credits are to be awarded.

(d) Reasonable tuition may be charged for enrichment courses which are determined by the county superintendent of schools to be unrelated to the curriculum of the regular school program.

(e) Application for approval shall be reviewed and approved annually by the county superintendent of schools.

#### 6:26-3.2 Staffing

(a) A member of the district's administrative, supervisory or teaching staff who is certified to supervise instruction shall be assigned the responsibilities of administration and supervision of the summer session.

(b) Teachers in summer sessions shall possess valid certificates for each teaching assignment. Curriculum enrichment may involve resource persons serving for specific period of time under the supervision of a certified administrator, supervisor or teacher.

#### 6:26-3.3 Admission of pupils

(a) The assignment of pupils in summer session for remedial courses shall be based on the recommendation by the principals of the schools which the pupils regularly attend, naming the subjects and the purposes for such assignments.

(b) The equivalent of one year's work in a subject in enrichment or advanced work shall be regarded as a maximum. In remedial work, two subjects shall be regarded as a maximum.

#### 6:26-3.4 Grade placement

An evaluation and a description of work completed shall be included in the pupil's cumulative record and the principal of the sending school will determine the grade placement of the pupil.

## (a)

### Approved Secondary School Summer Sessions

#### Readopted with Amendments: N.J.A.C. 6:27-3

Proposed: October 15, 1984 at 16 N.J.R. 2717(a).

Adopted: January 2, 1985 by State Board of Education, Saul Cooperman, Secretary.

Filed: January 24, 1985 as R.1985 d.48, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A 18A:4-15, 18A:4-23 through 18A:4-25, 18A:6-38, 18A:38-4, 18A:45-1.

Effective Date for Readoption: January 24, 1985.

Effective Date for Amendments: February 19, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): January 24, 1990.

#### Summary of Public Comments and Agency Responses and Reason for Making Change:

##### Comment:

One letter with comments was received from a resident of the Summit School District. The commenter suggested:

1. Conflict between summer courses offered without charge (N.J.A.C. 6:27-3.1(a)), and the enrichment courses for which there is a reasonable tuition charged (N.J.A.C. 6:27-3.1(c)). These two sections seem to be in conflict.

2. Problem with definition of enrichment as unrelated to the school curriculum, or avocational in nature (N.J.A.C. 6:27-3.1(c)). What is avocational to one student may not be to another.

3. Addition of the word "successful" to definition of credit for remedial courses (N.J.A.C. 6:27-3.1(b)1).

4. Concern that a district might use someone in the alternative route to teacher certification for instruction in summer sessions instead of a certified teacher.

##### Response:

1. This is not a change in the rule, and is current practice of the county superintendent of schools. The practice has the additional authority of the Commissioner's decision. In the matter of the appeals of the Boards of Education of the Black Horse Pike Regional School District and the Sterling Regional School District, Camden County, 173 S.L.D. 130, affirmed, State Board of Education, 1973 S.L.D. 138, in which it was decided that tuition could not be charged for summer session courses which were a part of the regular school curriculum.

2. This is not a change in policy, but a clarification of current practice of the county superintendents of schools.

3. The Department agrees and the addition was adopted, in (N.J.A.C. 6:27-3.1(b)(1)).

4. This is adequately covered in the section on staffing (N.J.A.C. 6:27-3.2). Teachers must possess a valid certificate for subjects taught.

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

#### 6:27-3.1 Operation

(a) The rules for the approval of full-time secondary schools shall apply to all secondary summer sessions. No secondary school summer session may be operated or approved unless it:

1. Is operated by a district board of education without charge to pupils domiciled within the district; or

2. Is operated as an integral part of the program of an approved private secondary school.

(b) Remedial, advancement and enrichment courses may be offered to meet pupil needs.

**\*1. As used in this subchapter, a remedial course is any course or subject which is a review of a course or subject previously taken. Credits or placement may be awarded on successful completion of the course.**

**2. As used in this subchapter, an advanced course is any course or subject not previously taken in an approved school program. Additional credits or advanced placement may be awarded on successful completion of the course.**

**3. As used in this subchapter, an enrichment course is any course or subject of avocational nature for which no credits are to be awarded.\***

(c) Reasonable tuition may be charged for enrichment courses which carry no credit and are determined by the county superintendent of schools to be unrelated to the curriculum of the regular school program.

**\*[1. As used in this subchapter, a remedial course is any course or subject which is a review of a course or subject previously taken. Credits or placement may be awarded on completion of the course.**

**2. As used in this subchapter, an advanced course is any course or subject not previously taken in an approved school program. Additional credits or advanced placement may be awarded on successful completion of the course.**

**3. As used in this subchapter, an enrichment course is any course or subject of avocational nature for which no credits are to be awarded.]\***

(d) Application for approval shall be reviewed and approved annually by the county superintendent of schools.

#### 6:27-3.2 Staffing

(a) In each public school, a member of the administrative, supervisory or teaching staff who is certified to supervise instruction shall be assigned the responsibilities of administration and supervision of the summer session.

(b) Teachers in summer sessions conducted by the district boards of education shall possess valid certificates for subjects taught. Curriculum enrichment may involve resource persons serving for specific periods of time under the supervision of a certified administrator, supervisor or teacher.

(c) Administrators, supervisors and teachers in the summer session of private schools shall be members of the regular staff of that school or some other approved secondary school, or possess valid certificate for each assignment. Curriculum

enrichment may involve resource persons serving for specific periods of time under the supervision of an administrator, supervisor or teacher.

#### 6:27-3.3 Admission of pupils

(a) The assignment of pupils in summer session for remedial courses shall be based on the permission from the principal of the school which the pupil regularly attends, naming the subjects which the pupil may take and the purpose for which each subject is taken.

(b) The equivalent of one year's work in a subject (one unit) in enrichment or advance work shall be regarded as a maximum.

#### 6:27-3.4 Credit

(a) Rules concerning advanced work include the following:

1. To receive advanced credit for a subject not previously taken in high school, the pupil shall receive class instruction in summer session equivalent to an amount not less than the minimum customarily required in high school; namely, 3,600 minutes class instruction for two and one-half high school credits (one-half unit) or 7,200 minutes for five high school credits (one unit). The time calculation shall not include time for passing of classes or for regularly scheduled recess periods. Class instruction shall be supplemented by regular home or study-hall assignments as required in regular high school organization.

(b) Rules concerning transfer of credits include the following:

1. Credit for work taken in an approved secondary school summer session shall be transferable in the same manner as work taken in any approved secondary school. Credits from unapproved secondary school summer sessions shall not be transferable.

(c) Rules concerning remedial subjects include the following:

1. In subjects which are given for review or for other purposes not including advanced credit, a subject meriting a full year's credit (one unit) shall be organized to provide at least 3,600 minutes of classroom instruction in addition to home or study-hall assignments. One semester course (one-half unit) shall provide a proportionate amount of classroom instruction.

2. Instruction in English, mathematics, social studies, science or foreign language may be given at different instructional levels concurrently in the same class, if the class size does not exceed 10 pupils. Specific exceptions regarding class size may be granted for educational programs utilizing individualized instruction for all pupils in the class. Such individualized instruction programs shall not exceed 20 pupils per class.

(d) Rules concerning separation of advanced and remedial classes include:

1. If pupils in advanced work and in remedial work are instructed in the same class, instruction shall be limited to one instructional level in one subject, such as algebra I, English III, Spanish I or music instruction.

(e) Rules concerning records and transcripts include:

1. The amount of time which a pupil has spent in receiving class instruction shall become part of his or her permanent record and shall be included whenever the record is transferred to another secondary school.

**(a)****Bilingual Education****Readopted with Amendments: N.J.A.C. 6:31**

Proposed: October 15, 1984 at 16 N.J.R. 2721(a).

Adopted: January 2, 1985 by the State Board of Education, Saul Cooperman, Secretary.

Filed: January 24, 1985 as R.1985 d.46, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 18A:4-15, 18A:35-15 to 35-26, 18A:7A-1 et seq.

Effective Date for Readoption: January 24, 1985.

Effective Date for Amendments: February 19, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): January 24, 1990.

**Summary of Public Comments and Agency Responses and Reasons for Making Changes:**

There were five letters of comment received by the Department concerning the proposed amendments for bilingual education. In addition, there were seven speakers at the public hearings concerning the proposed amendments.

The comments received were generally favorable. Nevertheless, there was one major concern raised by commenters.

Several commenters expressed support for the change in definition of "English as a second language programs" (N.J.A.C. 6:31-1.1). They felt that the inclusion of the word "developmental" clarifies for local school districts that these instructional services are basic services, rather than supplemental.

Two commenters expressed the opinion that the Department should not prescribe procedures for identifying eligible program participants, (N.J.A.C. 6:31-1.2) calling these procedures too restrictive and a matter for district discretion. The Department, however, does not find the procedures restrictive or cumbersome. Furthermore, the Bilingual Education Act requires that the Department establish procedures for the identification of eligible pupils.

One commenter objected to the provision of bilingual education programs whenever there are 20 or more pupils of limited English speaking ability identified within the school district. (N.J.A.C. 6:31-1.3(a)). The provision of such programs is required by law in N.J.S.A. 18A:35-18.

Although two commenters objected to the requirements for formal curriculum development in the areas of English as a second language and bilingual education, the majority of commenters overwhelmingly supported this requirement. This was seen as a positive change which would ensure that all pupils would receive quality program instruction.

Commenters also strongly supported the requirement of providing services to meet the special needs of limited English speaking ability pupils; (N.J.A.C. 6:31-1.3(f); 1.4(c)) nevertheless, concern was expressed related to the funding of such services. Some commenters requested that an additional provision be added, allowing for dual state categorical funding of pupils. The Department recognizes that this is a matter for review. The Department also maintains that it would be inappropriate to include any language in the administrative code regarding funding of program services, since neither the Bilingual

Education Act nor the administrative code on bilingual education generate funds for such programs. State categorical funding is generated by the Public School Education Act of 1975 (N.J.S.A. 18A:7A). The Department has established a committee to thoroughly review and study policy on categorical funding, before making any changes in this area.

Several other commenters expressed support for language calling for the provision of adequate courses and opportunities to meet graduation requirements (N.J.A.C. 6:31-1.4(a)1). In addition, support was also expressed in favor of the development of an instructional plan by districts with one or more, but less than 10 pupils, of limited English speaking ability (N.J.A.C. 6:31-1.4(a)). Although one commenter felt such plans should be submitted to the Department for review, the Department felt that, consistent with monitoring practices, these plans need not be submitted annually, but rather requested at the time district curricula and programs are reviewed.

Two commenters expressed the opinion that bilingual and English as a second language services should also be extended to native English speaking children. These services are permissible under the law, but are open to district discretion.

The requirement for annual plans was objected to by one commenter as requiring too much work for program administrators. Inasmuch as the required plan is only two pages in length, the Department does not find this to be an inordinate administrative responsibility.

Several comments were received related to the certification requirements for teachers working in programs. (N.J.A.C. 6:31-1.5(a). The amendment merely requires that teachers working in bilingual or English as a second language classes be "appropriately" certified. Any change in requirements or their administration must be addressed under the chapter of administrative code related to teacher certification. (N.J.A.C. 6:11-8).

Comments received related to exit criteria were in opposition one to the other. (6:31-1.10) In one case, a comment called for more specific criteria to be established statewide, while another expressed the opinion the criteria were too restrictive. A third commenter expressed support of the criteria. The Department felt that these criteria are sufficiently specific, without being unduly restrictive.

One commenter objected to the requirement that bilingual and English as a Second Language Program (ESL) classrooms be approved by the county superintendent of schools (N.J.A.C. 6:31-1.11). Nevertheless, the Department found this requirement to be consistent with other chapters of New Jersey Administrative Code. Furthermore, the Department maintains that classroom facilities should be subject to Department review and approval for the safeguarding of the pupils enrolled in the public schools of the State.

Several comments supported the new provision requiring that districts inform parents of their right of review and appeal related to pupil placement. (N.J.A.C. 6:31-1.12(a)). Two commenters objected to this, calling it a requirement that would be burdensome for district administrators. One also felt that the timelines for notification to parents of their child's participation in a program were too short, and recommended they be extended from 10 to 30 working days after enrollment. The Department, however, continues to maintain that parents should be aware of their rights and that a timeline of 10 working days is not unduly short.

Several commenters expressed general support for the proposed amendments, but one added that for the amendments to be administered well, there should be more bilingual educa-

tion staff at the Department. Another commenter made a general appeal for more local district autonomy.

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

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 6:31-1.1 Definitions

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

“Act” means Chapter 197, P.L. 1974 (N.J.S.A. 18A:35-15 to 26).

“Bilingual education program” means a full-time program of instruction in all those courses or subjects which a child is required by law or rule to receive, given in the native language of the children of limited English speaking ability enrolled in the program and also in English; in the aural comprehension, speaking, reading, and writing of the native language of the children of limited English speaking ability enrolled in the program and in the aural comprehension, speaking, reading and writing of English; and in the history and culture of the country, territory or geographic area which is the native land of the parents of children of limited English speaking ability enrolled in the program and in the history and culture of the United States.

“Children of limited English speaking ability” means pupils whose native language is other than English and who have sufficient difficulty speaking, reading, writing or understanding the English language to deny the pupil the opportunity to learn successfully in the classrooms where the language of instruction is English. This term means the same as limited English proficiency, the term used in \*[federal]\* **\*Federal\*** guidelines.

“Dominant language” with respect to the pupil means the language most relied upon for communication as determined by a test of language dominance or other screening process in accordance with guidelines prescribed by the Department of Education.

“Educational needs” means the particular educational requirements of pupils of limited English speaking ability, the fulfillment of which will provide them with equal educational opportunities.

“English as a second language (ESL) program” means a developmental second language program which teaches English vocabulary and structures using second language teaching techniques, and incorporates the cultural aspects of the pupils’ experiences in their ESL instruction.

“Exit criteria” means those criteria that must be considered before a pupil may be terminated or exited from a bilingual program. These criteria include, but are not limited to, the English language proficiency test score and documentation of the pupil’s academic work in English.

“Native language” means the language first acquired by the pupil; the language most often spoken by the pupil; or the language most often spoken in the pupil’s home, regardless of the language spoken by the pupil.

##### 6:31-1.2 Identification of eligible participants

(a) Whenever a pupil enrolls in the district, that district shall ascertain the pupil’s native language. Each district shall maintain a census indicating all pupils identified whose native language is other than English.

(b) The district shall determine the English language proficiency of all pupils whose native language is other than En-

glish by means of an initial screening process and the administration of an English language proficiency test, in accordance with guidelines prescribed by the Department of Education.

##### 6:31-1.3 Bilingual education program

(a) When, at the beginning of any school year, there are within the schools of the district, 20 or more pupils of limited English speaking ability in any one language classification, the district board of education shall establish for each such classification, a program in bilingual education for all pupils therein; providing also, that a district board of education may establish a program in bilingual education for any language classification with less than 20 pupils.

(b) A program of bilingual education may make provisions for the voluntary enrollment on a regular basis, of pupils whose dominant language is English, in order that they may acquire an understanding of the language and the cultural heritage of the pupils of limited English speaking ability for whom the particular program of bilingual education is designed, provided that no bilingual class contains a majority of pupils whose native language is English.

(c) The district shall assess all pupils enrolled in the bilingual program to determine their dominant language, which shall be used initially as their primary language of instruction.

(d) The bilingual program curriculum shall include the full range of required courses and activities offered on the same basis and under the same rules that apply to all pupils within the school district. In subjects and activities in which verbalization is not essential to understanding, including but not limited to art, music and physical education, pupils of limited English speaking ability shall participate fully with English speaking pupils in the regular class of activities provided. There shall be a formal bilingual program curriculum which addresses the use of two languages within the curriculum.

(e) At the secondary level, sufficient courses and other relevant opportunities shall be offered to enable the pupil to fulfill all credits and other requirements for graduation. When sufficient numbers of pupils are not available to form a bilingual class of a subject area, plans must be developed in consultation with the Department of Education to meet the needs of the pupils.

(f) Bilingual programs and services designed to meet the special needs of pupils of limited English speaking ability including, but not limited to, compensatory education, special education and vocational education services, shall be provided by districts in accordance with N.J.S.A. 18A:7A-4.

##### 6:31-1.4 Programs for English proficiency

(a) Whenever there are one or more, but \*[less]\* **\*fewer\*** than 10, pupils of limited English speaking ability enrolled within the schools of the district, the district board of education shall provide services designed to improve the English language proficiency of those pupils pursuant to N.J.S.A. 18A:7A-4. The school district shall develop a special instructional plan which has as its goal the development of English language proficiency.

1. At the secondary level, sufficient courses and relevant opportunities shall be offered to enable the pupils to fulfill all credits and other requirements for graduation.

(b) When there are 10 or more pupils identified as being of limited English speaking ability, regardless or whether they speak the same native language enrolled in a district, those pupils shall be taught by a certified ESL teacher in an ESL program.

(c) ESL curriculum and services shall be developed to address the basic instructional needs of pupils of limited English

speaking ability. ESL programs and services designed to meet the special needs of pupils of limited English speaking ability, including but not limited to, compensatory education, special education and vocational training for these pupils, shall be provided in accordance with N.J.S.A. 18A:7A-4.

#### 6:31-1.5 Approval procedures

(a) Each school district providing a bilingual or ESL program shall submit an annual plan for a program of bilingual or ESL education to the Department of Education for approval.

(b) Plans submitted by districts for approval shall include information on the following:

1. Identification of pupils;
2. Program description;
3. School information;
4. Evaluation design;
5. Evaluation data.

(c) Districts shall submit annually the Report of the Limited English Proficient Students, as part of the Fall Survey.

(d) Districts shall also submit annually their bilingual and ESL program budget, as part of the Annual Improvement Budget.

#### 6:31-1.6 Supportive services

(a) Pupils enrolled in bilingual and ESL education programs shall have full access to educational services available to other pupils in the school district.

(b) School districts should use full or part-time bilingual personnel to provide supportive services (such as counseling) to pupils to limited English speaking ability.

#### 6:31-1.7 Administration and supervision

(a) School districts should ensure the adequate administration and supervision of bilingual and ESL education programs.

(b) Personnel selected for administrative and/or supervisory positions shall provide evidence to the chief school administrator of specialized training and/or experience in bilingual or ESL education.

#### 6:31-1.8 Inservice training

(a) Districts shall develop a plan for inservice training in the area of bilingual and ESL education for bilingual, ESL and other program staff based on their needs.

(b) The Professional Improvement Plan of the Annual Report (N.J.S.A. 18A:7A-11(e)) shall include the needs of bilingual and ESL teachers to be addressed through inservice training.

#### 6:31-1.9 Certification

(a) All teachers of bilingual classes shall hold a valid New Jersey teacher's certificate for the appropriate grade level and/or content area and an endorsement in bilingual education pursuant to N.J.S.A. 18A:6-34 et seq. and N.J.S.A. 18A:35-15 to 26.

(b) All teachers of ESL classes shall hold a valid New Jersey teacher's certificate in English as a second language pursuant to N.J.S.A. 18A:6-34 et seq. and N.J.S.A. 18A:35-15 to 26.

#### 6:31-1.10 Bilingual and ESL program participation

(a) All school age pupils of limited English speaking ability shall be enrolled in the bilingual or ESL education program established by the school district, as prescribed in N.J.A.C. 6:31-1.3(a) and 6:31-1.4(b).

(b) Pupils enrolled in the bilingual or ESL education program shall be placed in a regular program when they have met exit criteria established by the district in accordance with guidelines established by the Department of Education. These criteria shall include a review process that will insure the readiness of the individual pupil to function successfully in the regular program.

#### 6:31-1.11 Location

All bilingual programs shall be conducted within classrooms approved by the county superintendent of schools within the regular school buildings of the district.

#### 6:31-1.12 Notification

(a) No later than 10 working days after the enrollment of any pupil in a bilingual or ESL education program, the district shall notify, by mail, the parents or legal guardian that the pupil has been enrolled in a bilingual or ESL education program. The notice shall contain a simple, non-technical description of the purposes, method and content of the program in which the pupil is enrolled. The notice shall also inform parents of their right to review and discuss with district administrators the procedures and pertinent data used to identify their child as having limited English speaking ability. The notice shall also advise parents of the appeal process to be followed pursuant to N.J.S.A. 18A:6-9, if they wish to challenge the identification of their child. During the pendency of any such appeal before the commissioner, the child shall remain enrolled in the program. The notice shall be in English and in the language in which the parents possess a primary speaking ability.

(b) School districts shall send progress reports to parents of pupils enrolled in bilingual or ESL education programs in the same manner and frequency as progress reports are sent to parents of other pupils enrolled in the school district.

(c) Progress reports shall be written in English and in the native language of the parents of pupils enrolled in the bilingual program. The progress reports for pupils enrolled in an ESL program shall be written in English and in the native language of the parents unless it can be demonstrated that this requirement would place an unreasonable burden on the local school district.

#### 6:31-1.13 Joint programs

A school district may join with any other school district or districts, according to procedures prescribed by the Commissioner of Education with the approval of the county superintendent, to provide programs in bilingual or ESL education.

#### 6:31-1.14 Parental involvement

(a) Each district shall provide for the maximum practicable involvement of parents of pupils of limited English speaking ability in the development and the review of program objectives; and dissemination of information to and from the local school districts and communities served by the bilingual or ESL education program.

(b) Each school district implementing a bilingual education program shall establish a parent advisory committee on bilingual education on which the majority will be parents of pupils of limited English speaking ability.

(c) The parent advisory committee shall be convened a minimum of four times per school year.

#### 6:31-1.15 Bureau of Bilingual Education

(a) There shall be established in the State Department of Education a Bureau of Bilingual Education.

(b) The Bureau of Bilingual Education shall be charged with the following:

1. Administration of the provisions of this chapter;
2. Providing technical assistance to school districts in the implementation of their bilingual and ESL programs.
3. Coordination and monitoring in conjunction with the county \*[office]\* \*offices\* of education of local, State and Federal programs designed to meet the educational needs of pupils of limited English speaking ability.

6:31-1.16 State advisory committee on bilingual education

(a) The State Board of Education and the State Board of Higher Education shall jointly establish a State advisory committee on bilingual education. The Commissioner of Education and the Chancellor of Higher Education shall appoint the members of the committee.

(b) The committee shall advise the Department of Education and the Department of Higher Education in the formulation of policies and procedures relating to the act.

(c) The committee shall be composed of at least 15, but not more than 25 members, one of whom shall be elected chairperson. The membership shall include the following representation:

1. A minimum of two but not more than four parents of pupils of limited English speaking ability\*.[.]\* \*;\*
2. A minimum of three but not more than four persons from institutions of higher education experienced in the training of teachers of bilingual and ESL education;
3. A minimum of four but not more than six teachers experienced in bilingual and ESL teaching techniques;
4. A minimum of one but not more than three persons serving on a district board of education implementing a bilingual or ESL education program;
5. A minimum of two but not more than four school administrators of bilingual or ESL education programs;
6. A minimum of two but not more than four laymen knowledgeable in the field of bilingual and ESL education.

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## (a)

### State Library

#### Library Network Services

#### Adopted New Rules: N.J.A.C. 6:70

Proposed: November 19, 1984 at 16 N.J.R. 3076(a).

Adopted: January 2, 1985 by the State Board of Education, Saul Cooperman, Secretary.

Filed: January 28, 1985 as R.1985 d.53, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 18A:4-15 and 18A:73-35a et seq., specifically 18A:73-35.

Effective Date: February 19, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): January 25, 1990.

**Summary of Public Comments and Agency Responses and Reason for Making Changes:**

The Department received two letters on the proposed new rules with the following suggestions:

1. There should not be a distinction between librarians and the general public in defining representation.

2. Only public schools should be considered members for a school district. Embracing private and public schools in this designation could soon erode private (parochial too,) independence and infringe on church-state separation and distinctions.

3. The Executive Board of a regional co-operative library system would be a key operating unit—but it is far removed from the local user or the appointing agents in between. The registered voters in the region should elect the Executive Board of the co-operative, much in the same way as the County Board of Freeholders is elected.

4. The Executive Board should be allowed three terms. The term allowed by the proposed new rule may be too short a span for any one individual to be effective considering the technical nature of the emerging library and the complexity of power which may develop.

5. Withdrawal from the cooperative within one year may be difficult to accomplish. How easily can this really be done as detailed in N.J.A.C. 6:70-1.12?

6. School administrators should be eligible for appointment as voting members from a school district. With a school librarian designated as the official substitute in case the chief school administrator were unable to attend meetings.

The Department responded in the following way:

1. A distinction is made to insure that the needs of the users are met by providing for lay representation in the decision-making process (N.J.A.C. 6:70-1.8(a)3).

2. The New Jersey Department of Education has a responsibility for the education of all children within the State. Public libraries are mandated by law to serve all people in their municipalities, and the multi-type network established under the Library Network Law (N.J.S.A. 18A:73-35(a)), specifically serves all "State residents". The proposed new rule provides a convenient way to identify and address the needs of non-public school pupils (N.J.A.C. 6:70-1.6(c)).

3. Since the regional library co-operative is a voluntary organization of existing agencies to improve and expand library services, the members of the co-operative have the responsibility of electing officers (N.J.A.C. 6:70-1.8). Registered voters can influence local library services and programs through budget support, referendum options, etc.

4. The term of office for Executive Board members is a standard method of guaranteeing that the Board does not become self-perpetuating.

5. There is nothing in the proposed new rule which would prohibit a library or library-related agency from exploring withdrawal for any length of time. The April 1 to June 30 of the ensuing year are dated when formal action must take place (N.J.A.C. 6:70-1.12). In addition, in the case of appeals and hearing process, no deadlines have been set (N.J.A.C. 6:70-1.19).

6. There is no reason that a chief school administrator cannot be appointed the voting member from the local school district if approved by the local Board of Education. The local Board of Education may choose to appoint an administrator or library media specialist. The Department agreed with the intent of the suggestion; therefore, a phrase was added making the voting representative subject to the approval of the chief school administrator (N.J.A.C. 6:70-1.6(b)).

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

#### 6:70-1.1 Scope and purpose

The rules set forth in this chapter provide for the establishment of regions designed to promote the cooperative use of services and materials of all types of libraries in the region, pursuant to the provisions of Chapter 486, Laws of 1983 (N.J.S.A. 18A:73-35a et seq.), known as the Library Network Law.

#### 6:70-1.2 Definitions

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

“Academic library” means a library within a publicly or privately supported institution of higher education.

“Area library” means a library with which the State contracts for specialized services pursuant to N.J.S.A. 18A:74-2 and 18A:74-4.

“Institutional library” means a library within an adult or juvenile residential facility or day training center, other than a public school, administered and substantially funded by State, county or municipal funds to carry out health, welfare, educational and correctional programs.

“Lay representative” means a New Jersey resident who is not a librarian or school media specialist and is not in the employ of any New Jersey library or library-related agency defined in this chapter. Members of library boards of trustees shall be considered lay representatives.

“Library materials” means print and nonprint items.

“Library region” means a multi-county area designated by the State Librarian as the geographic area to be served by a regional library cooperative.

“Library-related agency” means a county audio-visual aids commission established under N.J.S.A. 18A:51; educational information and resource center established under N.J.S.A. 18A:6-95; regional curriculum services unit; or any other non-profit organization meeting the criteria for membership in the regional library cooperative in accordance with N.J.A.C. 6:701.5(b).

“Local library cooperative” means a group of academic libraries, institutional libraries, public libraries, school libraries, special libraries and library-related agencies, or any combination thereof, which is organized as a nonprofit corporation pursuant to N.J.S.A. 15A:1-1 et seq. to provide cooperative or reciprocal library services.

“Multitype library network” means a group of libraries of more than one type (for example, academic, institutional, public, school and special) and library-related agencies whose cooperative activities are specified in a plan approved by the State Librarian.

“Public library” means a municipal, county, association, or joint library, which receives public funding.

“Regional contract library” means a library, library-related agency, local library cooperative, or commercial vendor with which the regional library cooperative contracts for the purpose of providing regional library services.

“Regional library cooperative” means a nonprofit corporation pursuant to N.J.S.A. 15A:1-1 et seq. composed of libraries and library-related agencies which agrees to receive funds for the provision of library services on behalf of the residents of a library region as specified in the five-year plan for library network development approved by the State Librarian.

“School district” means an operating school district as listed in the current New Jersey State Department of Education directory. For the purposes of this program, every school (public and nonpublic) located within a district so listed shall be considered a member of the district.

“School library” means a library/media center within any publicly or privately supported elementary or secondary school, or in any post-secondary vocational or technical school.

“Special library” means a library/information center of a business, a professional, scientific, or trade association, a government, hospital or other for-profit or nonprofit institution or organization which provides that organization with information, library materials, and technical bibliographic and research services.

“State contract library” means a library, library-related agency, or commercial vendor with which the State contracts for the purpose of providing library services.

#### 6:70-1.3 Designation of library regions

(a) The State Librarian, with the approval of the State Board of Education, shall designate no more than seven library regions within the State. No county shall be divided among two or more regions. The regions shall be established on the basis of, but not limited to, the following considerations:

1. Population;
2. Population density;
3. Number and types of libraries and library-related agencies;
4. Information resources;
5. Marketing and transportation patterns;
6. Contiguity of municipalities.

(b) The State Librarian shall review the designated library regions at least every five years and make revisions if appropriate.

(c) After the first review by the State Librarian, which will occur at least every five years or sooner, members of a regional library cooperative located within the same county may request that the county be transferred to a different region when a majority of those members vote for such a transfer.

(d) If a request for a transfer from one region to another has been denied, the appeals and hearing process may be followed (see N.J.A.C. 6:70-1.19).

#### 6:70-1.4 Regional library cooperative; formation

(a) Upon approval by the State Librarian of the plan for service and the plan and budget for the first year of operation of the regional library cooperative, the State Librarian shall establish the regional library cooperative.

(b) Each duly designated regional library cooperative shall be eligible for a grant not to exceed \$50,000 to fund the first year of operation of the regional library cooperative, in accordance with a plan and budget submitted to, and approved by, the State Librarian.

(c) Applicants whose request to be designated as a regional library cooperative has been denied may proceed with the appeals and hearing process described in N.J.A.C. 6:70-1.19.

#### 6:70-1.5 Regional library cooperative; organization and membership

(a) The regional library cooperative shall constitute a council of members and shall be incorporated as a nonprofit corporation pursuant to N.J.S.A. 15A:1-1 et seq. It shall organize, adopt bylaws within six months, and elect an executive board from its membership.

(b) To be eligible as a member of a regional library cooperative, a library or library-related agency shall have explicit service objectives, a fixed location and regular hours of service, an organized collection of information and materials accessible for use by its designated clientele, and qualified and responsible staff. Its organizational structure shall be identifiable with a legal basis for operation and an established funding pattern. It shall be willing and able to contribute to the appropriate services and programs as determined by the regional library cooperative, and mutually agreed upon.

(c) Each campus library of an academic institution is eligible to be a member of the regional library cooperative.

(d) Each library of a multi-location business is eligible to be a member of the regional library cooperative.

(e) The board of governance or the appropriate administrative authority for each eligible academic library, institutional library, public library, school library, special library and library-related agency that wishes to become a member of the regional library cooperative shall take official action as specified by the State Librarian to join the regional library cooperative.

#### 6:70-1.6 Voting

(a) Each academic library, institutional library, public library, special library, and each library-related agency which is a member of a regional library cooperative shall have one vote.

(b) The public school libraries located within each operating public school district which are members of a regional library cooperative shall be considered a single entity and shall elect one voting representative from among themselves, whose appointment shall be subject to the approval of the **\*chief school administrator and the\*** district board of education.

(c) The private and parochial school libraries located within each operating public school district which are members of a regional library cooperative shall be considered a single entity and shall elect one voting representative from among themselves.

#### 6:70-1.7 Duties

(a) The duties of the voting members of the regional library cooperative shall include, but not be limited to, the following:

1. Review and adopt bylaws;
2. Elect members of the executive board;
3. Approve the five-year plan and its annual updates;
4. Approve the annual budget.

#### 6:70-1.8 Executive board; organization and duties

(a) The executive board shall be composed of a minimum of nine and a maximum of 15 members to include at least:

1. Five members elected by the regional library cooperative from its voting representatives: one each from an academic library, an institutional library, a public library, a school library and a special library;
2. Two members at large elected by the regional library cooperative from its voting representatives;
3. Two lay representatives appointed by the State Librarian, each of whom must reside within the designated area of the regional library cooperative;
4. Additional members, up to a maximum of six, who may be elected in accordance with bylaws adopted by the regional library cooperative.

(b) The executive board shall be governed by the bylaws adopted by the regional library cooperative.

(c) The duties of the executive board shall be to:

1. Hire a regional library coordinator and any necessary additional staff, fix their compensation and establish terms and conditions of employment;

2. Develop the five-year plan and submit it to the regional library cooperative for approval;

3. Develop the annual operating program and budget and submit them to the regional library cooperative for approval;

4. Contract with libraries, library-related agencies, commercial vendors, individuals, or any other designated regional library cooperative as may be necessary to implement the five-year plan for the regional library cooperative;

5. Receive and disburse all income;

6. Submit a written report to the regional library cooperative at least on a quarterly basis;

7. Submit the five-year plan, the annual update, and the annual budget to the State Librarian for review and approval;

8. Submit to the State Librarian an annual report, including a program evaluation and financial audit, and any additional reports as the State Librarian may require.

#### 6:70-1.9 Executive board; term of office

(a) Members of the first executive board shall be elected for staggered terms of one, two and three years, with terms to be apportioned among the total members. Thereafter, each member of the executive board shall be elected for a term of three years.

(b) No member of the executive board shall serve for more than two consecutive terms. Upon serving two consecutive terms, a member of the executive board may serve again only after an interim of at least two years,

(c) Vacancies shall be filled for the unexpired term only. Vacancies occurring among the representatives of the regional library cooperative shall be filled by the regional library cooperative. Vacancies occurring among representatives appointed by the State Librarian shall be filled by the State Librarian.

#### 6:70-1.10 Regional library coordinator; appointment and duties

(a) The regional library coordinator hired by the executive board of the regional library cooperative shall be eligible for certification as a professional librarian or educational media specialist by the State Department of Education.

(b) The duties of the regional library coordinator shall include, but not be limited to, the following:

1. Coordinate the activities, programs and services of the regional library cooperative;
2. Supervise the staff of the regional library cooperative;
3. Assist in developing the five-year plan for executive board review and regional library cooperative approval;
4. Assist in developing the annual program and budget for review by the executive board and approval of the regional library cooperative;
5. Negotiate all contracts for executive board approval;
6. Attend meetings of the executive board and of the regional library cooperative.

#### 6:70-1.11 Regional library cooperative; responsibilities and services

(a) Within one year following incorporation as a regional library cooperative and receipt of an establishment grant, each regional library cooperative shall submit for approval by the State Librarian a five-year plan for regional library cooperative development and an annual program and operating budget in support of the plan.

**ADOPTIONS****EDUCATION**

(b) The goals, objectives, programs, and activities specified in the five-year plan for regional library cooperative development shall provide that:

1. All contract services meet applicable Federal and State rules;
2. The terms and conditions of all service contracts with regional contract libraries, other libraries, other regional library cooperatives, library-related agencies, commercial vendors of library services, and individuals, be part of and made consistent with the goals, objectives, programs and activities of the plan;
3. All contract services be provided to member libraries, library-related agencies and residents of the library region in accordance with the plan;
4. For the first year of the operation of a regional library cooperative, area libraries located within the region shall be offered regional contracts for regional library services;
5. In general, each regional library cooperative shall contract with at least two different types of libraries to provide regional library service.

(c) In order to provide to every resident of New Jersey full and equal access to the collective library resources of the State, the State Library shall assure that the following services are provided in each region:

1. Reference services to supplement those provided by each local library, including interlibrary reference and referral services to residents of the library region;
2. Interlibrary loan services on behalf of residents of the library region;
3. Delivery services for library materials;
4. Citation and location services for library materials.

(d) Each regional library cooperative shall include the services listed in (c) above in its five-year plan and underwrite them in its annual operating budget. The State Library may contract with libraries, library-related agencies, or commercial vendors to provide any or all of these services on a Statewide basis. The regional library cooperatives may contract with libraries, library-related agencies or commercial vendors to provide any or all of these services on a regional basis.

(e) A regional library cooperative may also provide, but not be limited to, the following services:

1. Consultant services;
2. Cooperative and/or coordinated acquisition of library materials and/or subject specialization programs;
3. Reciprocal borrowing between and among member libraries;
4. Staff development and in-service training programs;
5. Centralized ordering, cataloging, and/or processing of library materials;
6. Cooperative storage of library materials and last copy protection programs;
7. Access to computerized literature citation and information data basis;
8. Preservation of library materials programs;
9. Public relations services.

(f) The five-year plan for regional library cooperative development shall be reviewed and evaluated on an annual basis and amended as appropriate to reflect any change in policy approved by the regional library cooperative, and to provide for an annual program and operating budget. Any amended five-year plan for regional library cooperative development and the annual program and budget shall be submitted to the State Librarian for review and approval 90 days prior to the expiration date of the last approved plan.

6:70-1.12 Withdrawal from regional library cooperative

Any participating member may withdraw from a regional library cooperative when the appropriate administrative body determines by resolution or other recorded act to withdraw. Notification of intent to withdraw shall be submitted by the administrative body to the executive board of the regional library cooperative, with a copy to the State Librarian. The notice shall be filed on or before April 1 of any year, and withdrawal shall take place on or before June 30 of the ensuing year. Upon discontinuing membership, the member relinquishes its rights to any funds, supplies, materials, equipment or property held by or belonging to the regional library cooperative. Upon receipt of such notification and the satisfaction of all obligations by the withdrawing member, the executive board of the regional library cooperative shall officially note the withdrawal and shall file notice of this action with the State Library.

6:70-1.13 Dissolution of regional library cooperative

(a) The regional library cooperative may submit an application for dissolution to the State Librarian when:

1. The membership receives a resolution for dissolution from the executive board; or
2. A petition to dissolve is signed by 40 percent of the members of the regional library cooperative; and
3. The governing bodies of a majority of the members approve the dissolution.

(b) The application shall include a plan providing for the payment of all outstanding debts and describing how the obligations of the regional library cooperative will be liquidated.

(c) Upon receipt of the application, the State Librarian shall:

1. Determine if the area of service can be allocated to other adjoining regional library cooperatives;
2. Determine whether the assets and liabilities of the regional library cooperative can be assumed and absorbed by adjoining regional library cooperatives;
3. Take into consideration any other factors which relate to the operation and function of the regional library cooperative.

(d) If the State Librarian determines that the regional library cooperative must be liquidated and approves the plan for dissolution, the dissolution shall take effect when all the legal and fiscal obligations of the regional library cooperative have been satisfied.

6:70-1.14 Local library cooperatives

Any group of academic, institutional, public, school, or special libraries or library-related agencies, or any combination thereof, may organize as a nonprofit organization pursuant to the New Jersey Nonprofit Corporation Act, N.J.S.A. 15A:1-1 et seq., and apply for designation to the appropriate regional library cooperative as a local library cooperative for the provision of cooperative or reciprocal library services among themselves on behalf of their collective library patrons. The local library cooperative may include members from more than one regional library cooperative.

6:70-1.15 Statewide library services

(a) In order to provide to every resident of New Jersey full and equal access to the collective library resources of the State, the State Library shall assure that the services listed in N.J.A.C. 6:70-1.11(c) are provided. The State Library may contract with libraries, library-related agencies, or commer-

**EDUCATION****ADOPTIONS**

cial vendors to provide any or all of these services on a Statewide basis.

(b) Other services, as listed in N.J.A.C. 6:70-1.11(e) also may be provided Statewide.

#### 6:70-1.16 Library network review board

(a) A library network review board shall be appointed to advise the State Librarian with respect to:

1. The structure for provision of the following services:
  - i. Reference services to supplement those provided by each local library;
  - ii. Interlibrary loan;
  - iii. Delivery;
  - iv. Citation and location services.
2. The designation of State contract libraries and the terms and conditions of any Statewide service contracts;
3. Necessary or desirable inter-regional programs or services;
4. Proposed standards for interlibrary services, including personnel qualifications;
5. Possible inter-regional reimbursement formulas for reciprocal borrowing and other cooperative programs;
6. Types of interaction and linkage of the New Jersey Library Network with interstate and national library networks.

(b) Members of library network review board shall be established as follows:

1. Each regional library cooperative shall elect two members from its voting representatives;
2. The State Librarian shall appoint five members including library users.

(c) Initially, one elected member from each regional library cooperative, and two members appointed by the State Librarian shall serve for a term of one year; one elected member from each regional library cooperative and three members appointed by the State Librarian shall serve for a term of two years. Thereafter, each member of the library network review board shall serve for a term of two years. No member of the library network review board shall serve for more than two consecutive terms. Upon serving two consecutive terms, a member may serve again only after an interim of at least two years. Vacancies shall be filled for the unexpired term only. Vacancies occurring among the members of the regional library cooperatives shall be filled by the regional library cooperative in which the vacancies occurred. Vacancies occurring among the members appointed by the State Librarian shall be filled by the State Librarian.

#### 6:70-1.17 Allocation of Statewide library services funds

Each year the State Librarian shall identify the services to be provided on a Statewide basis and expend the amount allocated for this purpose.

#### 6:70-1.18 Allocation of regional library services funds

(a) Each year the State Librarian shall determine the amount required to provide a base grant to each regional library cooperative according to the following formula:

1. Forty percent of the amount allocated shall be distributed equally among the regional library cooperatives;

2. Fifty percent of the amount allocated shall be distributed among the regional library cooperatives based on the population of the region as shown by the latest Federal census effective in New Jersey; provided that upon application by a municipality or county to the Commissioner of Education, any special census of population taken by the United States Census Bureau subsequent to its latest effective census shall determine such number of inhabitants;

3. Ten percent of the amount allocated shall be distributed among the regional library cooperatives based on the number of square miles within the region.

(b) Each year the State Librarian shall determine the amount required to provide a program grant to each regional library cooperative in accordance with requirements established by the State Librarian. However, no program grants shall be awarded unless each regional library cooperative has received a base grant.

(c) For the calendar year subsequent to the effective date of the establishment of a regional library cooperative, area libraries within a designated region which have agreed to serve as regional contract libraries shall receive by contract an amount of money not less than the amount they received as an area library in the year prior to the establishment of the regional library cooperative. Thereafter, the regional library cooperative may contract with such former area libraries to provide regional services. An area library choosing not to contract for services as a regional contract library shall receive for the calendar year subsequent to the effective date of the establishment of the regional library cooperative up to 75 percent of the area money it received in the year prior to the establishment of the regional library cooperative to provide area library services.

(d) No less than 40 percent of the funds made available for the regional library cooperative shall be allocated in the annual operating budget of a regional library cooperative, and expended as necessary, to reimburse regional contract libraries for services to residents of the library region.

#### 6:70-1.19 Appeals and hearing process

Appeals arising from any action of the State Librarian in administering the rules of this chapter may be requested, and an opportunity given for an informal fair hearing before the State Librarian. In the event of an adverse decision after such an informal hearing, appellants may request a formal hearing pursuant to N.J.S.A. 18A:6-9, 18A:6-24, and 18A:6-27. 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).

# ENVIRONMENTAL PROTECTION

(a)

## DIVISION OF WATER RESOURCES BUREAU OF SHELLFISH CONTROL

### Shellfish-Growing Water Classification

#### Adopted Amendments: N.J.A.C. 7:12-1.3 and 7:12-2

Proposed: November 19, 1984 at 16 N.J.R. 3112(a); notice of correction to proposal published on December 17, 1984 at 16 N.J.R. 3379(a).

Adopted: January 25, 1985, by Robert E. Hughey, Commissioner, Department of Environmental Protection.

Filed: January 28, 1985, as R.1985 d.64, **with technical and substantive changes** not requiring additional public notice and comment (see: N.J.A.C. 1:30-3.5).

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

Effective Date: February 19, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): June 6, 1988.

DEP Docket No.: 064-84-10.

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

**No comments were received.** However, as a result of internal agency review, several minor changes have been made to the rules in order to clarify their intent, eliminate redundancy, or to correct printing errors.

**Full text** of adoption follows (additions to proposal as corrected indicated in boldface with asterisks **\*thus\***; deletions from proposal as corrected indicated in brackets with asterisks **\*[thus]\***).

#### 7:12-1.3 Growing water condemnations

(a) (No change.)

1. General:

i.-ii. (No change.)

iii. Designated areas utilized in conjunction with one of the Special Permit programs which may be leased from the State and which may contain shellfish harvested from the Condemned, Seasonal Special Restricted\*,\* or Special Restricted area. **\*These lots are under the relay regulations, N.J.A.C. 7:12-2.7, and may be harvested only upon notification by the Bureau of Shellfish Control, Division of Water Resources. Non-leased lots within these designated areas are not available to harvest of shellfish at any time.\***

2.-26. (No change.)

27. Pleasantville-Northfield-Linden-Margate-Ventnor-Longport area (Portions are designated as Special Restricted and Seasonal. See: N.J.A.C. 7:12-1.4.)

i.-v. (No change.)

vi. Lakes Bay (a portion is designated as Seasonal: See: N.J.A.C. 7:12-1.4): All of Lakes Bay north of a line from the Pleasantville Yacht Club and following the channel markers F1 G "15", F1 G "13", F1 G "11", F1 R "8" to F1 G "7",

then bearing approximately 061 degrees T across the northernmost tip of a small unnamed island to Great Island.

28.-39. (No change.)

#### 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, 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 Department of Environmental Protection). Forms may be obtained from the New Jersey Department of Environmental Protection, Division of Water Resources, Bureau of Shellfish Control, 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 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.

## ENVIRONMENTAL PROTECTION

## ADOPTIONS

(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 program (WR-009).

9. Hard clam possession and/or processing plant 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\*, **in writing,\*** 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 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 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 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. Clams shall have been originally acquired from the harvester holding a duly issued Permit No. 4 and/or Permit No. 9.

4. (No change.)

5. Harvesting from the specified Special Restricted and Seasonal Special Restricted waters may be permitted Monday through Sunday of each week and the hours limited as conditions of the harvester's permit.

6. Areas such as walk-in boxes, truck bodies, etc., which are used for storage of shellfish harvested from Special Restricted and Seasonal Special Restricted Areas, shall not be used for storage of other food products if such food products are to be utilized for human consumption.

7. (No change.)

8. (No change.)

9. (No change.)

10. Said damaged clams from Special Restricted and Seasonal Special Restricted waters shall not be used or sold as food for human consumption.

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.

## 7:12-2.5 (No change.)

## 7:12-2.6 Soft clam depuration harvester Program

(a) The purpose of Permit No. 4 ("Soft Clam Depuration Harvester Permit") is to allow soft clams to be harvested from Special Restricted and Seasonal Special Restricted waters and ultimately marketed after processing through a State permitted and certified depuration/controlled purification facility.

(b) Permit No. 4 shall be valid only under the following specific requirements or conditions. Violation may subject the holder to prosecution under N.J.S.A. 58:24-1 et seq., (P.L. 1979, Chapter 321, Section 3).

1. (No change.)

2. Sections of harvest are limited to specified Special Restricted and Seasonal Special Restricted waters. Included with every permit are charts of the harvest sites showing specific sections within the estuaries that may be harvested on any particular day. The depuration/controlled purification plant owner or manager shall orally notify, on a day to day basis, the designated enforcement unit(s) as to section(s) and hours they intend to work under the provision of this permit. All harvesters transferring clams to the same depuration/controlled purification are required to work in the same section as the associated mother craft or buy-boat at any given time.

3.-5. (No change.)

6. Harvesting from the specified sections shall be subject to all State laws and regulations applicable to the harvester of oyster, clams or mussels from Approved waters.

7. Harvesting from the specified sections may be permitted Monday through Sunday of each week between the hours of sunrise and sunset, as listed in Trenton.

8.-14. (No change.)

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

16. This permit shows on its face specific conditions that are deemed necessary for the proper operation of the soft clam depuration 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. All permittees are also required to comply with all other

**ADOPTIONS****ENVIRONMENTAL PROTECTION**

applicable statutes and regulations. Included with every permit are charts of the harvest sites showing specific sections within the estuaries that may be harvested on a particular day as determined by the designated enforcement unit(s).

**7:12-2.7 Relay program**

(a) (No change.)

(b) Permits 5a and 5b 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. These rules must be read together with the shellfisheries regulations which appear at N.J.A.C. 7:25-15.1.

1. (No change.)

2. Sections of harvest are limited to those delineated on the chart attached to each permit or amended charts sent to current mailing address of permittee on record at the Leeds Point office. These areas specified for harvest may consist of Special Restricted, Seasonal Special Restricted or Condemned waters as classified by this department.

3. (No change.)

4. The harvester must possess a valid NEW JERSEY COMMERCIAL SHELLFISH HARVESTING LICENSE issued by the New Jersey Division of Fish, Game and Wildlife.

5. (No change.)

6. The relay of hard clams from the waters designated for relay purposes shall be permitted as established by N.J.A.C. 7:25-15.1. Hard clams shall be planted on the specified leased plots in Approved waters as scheduled by the department. The shellfish shall be removed from the bags at time of planting.

7. (No change.)

8. This permit shall apply only to the waters specified on an attached chart provided with each permit and further specified on a schedule determined by the department to manage the resource and protect the public health, safety and welfare.

9. All hard clams taken from the designated relay waters shall be relayed to the special relay leased plots on a schedule set by this department and shall remain upon said leased plots until written permission for harvest has been granted by the Bureau of Shellfish Control. Relayed hard clams are required to remain for a minimum of 30 days in the special relay leased plots. The minimum 30-day purging period will begin on a schedule established by the department. Additionally, the water temperature of the Approved waters during the minimum 30-day purging period shall be at or above 13 degrees centigrade (55 degrees Fahrenheit) as determined by the Bureau of Shellfish Control. Reharvesting of the relayed shellfish will be regulated by the Department of Environmental Protection's Division of Water Resources, Bureau of Shellfish Control. Reharvesting of shellfish from the special relay leased plots may commence only after receipt of written permission from this office.

10.-14. (No change.)

15. Shellfish taken from the designated relay section shall be bagged by the participant, three-quarter bushel to the bag, in bags available to the participant from the department. These bags will be provided, at cost, to the participant through the Leeds Point office of this Bureau. No unmarked bags will be allowed in the harvesters' or buyers' vehicles or boat except during reharvest. Each bag shall have a tag attached, marked with the harvester's and/or buyer's name and permit number. Shellfish not in compliance with the bagging requirements will be seized and returned to Condemned waters by the designated enforcement unit. Participants will place the shellfish in vehicles provided by them and approved by the department. The vehicles will be sealed by the depart-

ment, or New Jersey State employee designated by the department, at the harvest landing site and opened by the department at the off-loading site. Each participant shall inform the designated enforcement unit(s) of the route he will routinely follow from the harvest area to the planting area.

16.-20. (No change.)

21. This permit shows on its face specific conditions that are deemed necessary for the proper operation of the shellfish relay 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. All permittees are also required to comply with all other applicable statutes and regulations. Included with every permit are charts of the harvest sites showing specific sections within the estuaries that may be harvested on a particular day as determined by the \*[designated enforcement unit(s)]\* **department**.\*

\*[i. Penalty: Any participant violating the regulations or the terms of the special relay permit issued by the Division of Water Resources, may be subject to prosecution under the provisions of N.J.S.A. 58:24-3, proscribing the taking shellfish from Condemned Areas in violation of the permit, and may incur the penalty prescribed by the N.J.S.A. 58:24-9 described below.

ii. 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 of this title 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 offense and any such person convicted of a subsequent offense is guilty of a disorderly persons offense (N.J.S.A. 58:24-9). Additionally, N.J.S.A. 58:24-10 states that the vessel, vehicle and all equipment used to violate this law, regulation or permit may be subject to seizure and forfeiture.

22. 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 Relaying Permit of any participant who violates any condition of the permit or any of these regulations. Pursuant to the Administrative Procedure Act, such individual may apply to the Division of Water Resources for an administrative hearing regarding the decision to suspend such permit.

23. Conviction of a shellfish violation as provided in N.J.S.A. 58:24-1 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 of shellfish from the waters of this state.

24. 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.]\*

**7:12-2.8 Transfer program**

(a) The purpose of Permit No. 6 (Transfer Permit) is to allow for the harvest and transfer of shellfish from leased lots in waters classified other than Approved to other leased lots for culturing and/or purging of pollutants and ultimate marketing.

(b) Permit No. 6 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. (No change.)

2. This permit is limited to persons having leased shellfish lots and a valid New Jersey Commercial Shellfish Harvesting License issued by the New Jersey Division of Fish, Game and Wildlife. The applicant shall provide a chart delineating the leased grounds from which the shellfish are to be harvested and the leased grounds to which the shellfish are to be transferred. This chart shall be validated by the appropriate Bureau of Shellfisheries office at Nacote Creek or Bivalve.

3.-4. (No change.)

5. Lots being planted shall be staked, by the \*[lessee]\* \*lessee\*, and maintained in that condition during the effective period of the permit.

6. Shellfish transferred to leased lots in Approved or Seasonally Approved waters shall remain upon said transfer lots until written approval for reharvest has been granted by the department's Division of Water Resources, Bureau of Shellfish Control.

7. To facilitate compliance with paragraph 6 above, the permittee shall notify the Bureau of Shellfish Control by letter after the final transferring to a particular leased lot. The minimum 30-day purging period will not begin until the latter of both notice of final transferring is received and the water temperature of the Approved waters is maintained at or above 13 degrees centigrade (55 degrees Fahrenheit) as determined by the Bureau of Shellfish Control.

8. From the time the transfer permit is issued until written notification for reharvest is received by the permittee, the transfer lot(s) which appear on the permit shall be considered condemned for the harvest of shellfish. Transfer lots \*[not located in Condemned waters]\* \*located in water that may be approved during the purging period\* shall be marked at the corners with Condemned Area signs (supplied by the Bureau of Shellfish Control) during the condemned period.

9. The permittee shall notify the designated enforcement unit(s) 24 hours prior to each day's harvesting from lots in Condemned waters.

10. (No change.)

11. This permit shows on its face specific conditions that are deemed necessary for the proper operation of the shellfish transfer 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. All permittees are also required to comply with all other applicable statutes and regulations.

#### 7:12-2.9 Transplant Program

(a) The purpose of Permit No. 7 (Transplant Permit Seed Oysters) is to allow for the harvest and possession of seed oysters from waters classified other than Approved for transplanting to leased lots in Approved waters for purging of pollutants, growth and ultimate marketing after written release by the Bureau of Shellfish Control. The purging period will be for a minimum of 30 days at which the water temperature of the approved waters is maintained at or above 13 degrees centigrade (55 degrees Fahrenheit) as determined by the Bureau of Shellfish Control.

(b) Permit No. 7 shall be valid only under the following specific requirements of conditions. Violations may subject the holder to prosecution under N.J.S.A. 58:24-3.

1. (No change.)

2. This permit is limited to persons having a leased shellfish lot(s) in Approved waters and/or Seasonally Approved waters and a valid commercial shellfish harvesting license issued by the New Jersey Division of Fish, Game and Wildlife. The applicant shall provide a chart delineating the leased grounds for which the shellfish are to be transplanted. This chart shall

be validated by the appropriate Bureau of Shellfisheries Office at Nacote Creek or Bivalve.

3. (No change.)

4. The permittee shall verbally notify the designated enforcement unit(s) 24 hours prior to each day's harvesting from waters other than Approved.

5. The permittee shall have this permit in his possession while working in specified waters and while transporting seed oysters taken from specified waters.

6. Seed oysters transplanted to leased lots in Approved waters shall remain upon said lots until written approval for reharvest has been granted by the department's Division of Water Resources, Bureau of Shellfish Control.

7. To facilitate compliance with paragraph 6 above, the permittee shall notify the Bureau of Shellfish Control by letter after the final transplanting to a particular leased lot. The minimum 30 day purging period will not begin until the latter of both notice of final transplanting is received and the water temperature of the Approved waters is maintained at or above 13 degrees centigrade (55 degrees Fahrenheit) as determined by the Bureau of Shellfish Control.

8. Lots being planted will be staked, by the lessee, and maintained in that condition during the effective period of the special permit. Transplant lot(s) \*located in waters that may be approved during the purging period\* shall be marked at the corners with Condemned Area signs (supplied by the Bureau of Shellfish Control) during the condemned period.

9. (No change.)

10. This special permit shows on its face specific conditions that are deemed necessary for the proper operation of the shellfish transplant 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. All permittees are also required to comply with all other applicable statutes and regulations.

#### 7:12-2.10 Possession and/or plant program; bait store

(a) The purpose of Permit No. 8a ("Bait Store Permit") is to allow sea or surf clams, soft clams and hard clams that have been harvested from waters other than Approved to be sold, for bait purposes only, by a person other than the original harvester or depuration/controlled purification plant processor.

(b) Permit No. 8a 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. (No change.)

2. Permittees shall purchase sea or surf clams, soft clams and hard clams solely from State-permitted harvesters, other bait stores, or depuration/controlled purification facilities that have been authorized to harvest and/or sell shellfish harvested from waters other than Approved.

3. (No change.)

4. The yellow tags from holders of Permit Nos. 2a, 2b and/or 8a that state: "CLAMS HARVESTED FROM CONDEMNED WATERS FOR BAIT PURPOSES ONLY. NOT TO BE USED FOR HUMAN CONSUMPTION TAG NOT TO BE REMOVED FROM CONTAINER UNTIL CONTAINER IS EMPTY." Name, address, date of sale, and quantity of sale shall be printed on tag.

5.-6. (No change.)

7. Storage areas which are used for the storage of clams harvested from \*[,]\* waters other than Approved\*[,]\* shall not be used for the storage of other food products if the latter are to be utilized for human consumption.

8. Records of purchase of said clams, including: harvester's, other bait store's or depuration/controlled purification facility's name, date of purchase, quantity of purchase, and wholesale sales shall be maintained for a period of not less than 90 days and made available for inspection by any authorized agent of the State.

9. (No change.)

10. This permit shows on its face specific conditions that are deemed necessary for the proper operations of the bait store 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.

7:12-2.11 Possession and/or processing plant program; depuration plant

(a) The purpose of permit no. 8b ("Depuration Plant Permit To Purchase Soft Clams") is to allow a depuration/controlled purification facility to purchase soft clams harvested from Special Restricted and Seasonal Special Restricted waters for further processing. This permit also completes the control link between the initial or harvest phase of the depuration/controlled purification program and the next or processing phase, the latter which is regulated by the New Jersey Department of Health.

(b) Permit No. 8b shall be valid only under the following specific requirements of conditions. Violation may subject the holder to prosecution under N.J.S.A. 58:24-3.

1. (No change.)

2. Purchases are limited to shellfish harvested from specified sections. Included with every permit are charts of the harvest sites showing specific sections within the estuaries that may be harvested on any particular day. The depuration/controlled purification plant owner or manager shall orally notify, on a day-to-day basis, the designated enforcement unit(s) as to the section(s) and hours they intend to work under the provisions of this permit. All harvesters transferring clams to the same depuration/controlled purification plant are required to work in the same section as the associated mother craft or buy-boat at any given time.

3. This permit shall apply only to the waters delineated on a chart provided by the Bureau of Shellfish Control and further specified (for reasons of public health protection and resource management) as to the area of harvest, on a day-to-day basis by the designated enforcement unit(s).

4. (No change.)

5. The harvester from which said shellfish are purchased shall possess a valid commercial shellfish harvesting license issued by the New Jersey Division of Fish, Game and Wildlife and a valid Permit No. 4 issued by the Bureau of Shellfish Control of the Division of Water Resources.

6. (No change.)

7. Purchases of clams from the specified sections shall be subject to all State laws and regulations applicable to the purchases of oysters, clams or mussels from Approved waters.

8.-15. (No change.)

16. Harvesting from the specified sections may be permitted Monday through Sunday of each week between the hours of sunrise and sunset as listed in Trenton.

17. Violations of these conditions may subject the violator to prosecution under N.J.S.A. 58:24-1 et seq.

18. This permit shows on its face specific conditions that are deemed necessary for the proper operation of the soft clam depuration 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. All permittees are also required to comply with all other applicable statutes and regulations. Included with every permit are charts of the harvest sites showing specific sections within estuaries that may be harvested on a particular day as determined by the designated enforcement unit(s).

7:12-2.12 Possession and/or processing plant program; seed oysters

(a) The purpose of Permit No. 8c ("Possession Permit for Seed Oysters") is to allow the leasee of shellfish grounds to purchase seed oysters harvested in waters classified other than Approved for planting on his leased lots in Approved waters for purging of pollutants, growth and ultimate marketing after written release by the Bureau of Shellfish Control.

(b) Permit No. 8c 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. (No change.)

2. This permit is limited to persons having leased shellfish lots in Approved and/or Seasonally Approved waters. The applicant shall provide a chart delineating the leased grounds upon which the shellfish are to be planted. This chart shall be validated by the appropriate Bureau of Shellfisheries Office at Nacote Creek or Bivalve.

3. The harvester from which said \*[see]\* \*seed\* oysters are purchased shall possess a valid permit No. 7 issued by the Bureau of Shellfish Control.

4. (No change.)

5. Records of purchases including the harvester's name and permit number, date, quantity of purchase, harvest site and transplant lot numbers shall be maintained by the permittee for a period of not less than 90 days and shall be available for inspection by any authorized agent of the State.

6. Seed oysters transplanted to leased lots in Approved waters and/or Seasonally Approved waters shall remain upon said lots until written approval for reharvest has been granted by the Department's Division of Water Resources, Bureau of Shellfish Control.

7. To facilitate compliance with item 6 above, the permittee shall notify the Bureau of Shellfish Control by letter after the final planting on a particular leased lot. The minimum 30-day purging period will not begin until the latter of both notice of final planting is received and the water temperature of the Approved waters is maintained at or above 13 degrees centigrade (55 degrees Fahrenheit).

8. From the time the Possession Permit for Seed Oysters is issued until written notification for reharvest is received by their permittee, the transplant lot(s) which appear on the permit shall be considered condemned for the harvest of shellfish. Transplant lots **\*located in waters that may be approved during the purging period\*** shall be staked and marked at the corners with Condemned area\*[s]\* signs (supplied by the Bureau of Shellfish Control) during the Condemned period.

9. This permit shows on its face specific conditions that are deemed necessary for the proper operation of the shellfish transplant 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. All permittees are also required to comply with all other applicable statutes and regulations.

(a)

**DIVISION OF WATER RESOURCES****Emergency Water Supply Allocation Plan Rules****Water Emergency Surcharge Schedule****Adopted New Rules: N.J.A.C. 7:19A and 19B**

Proposed: February 21, 1984 at 16 N.J.R. 308(a) and 16 N.J.R. 314(a).

Adopted: January 25, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection.

Filed: January 28, 1985 as R.1985 d.67, **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. 58:1A-1 et seq., specifically 58:1A-4 and 5.

Effective Date: February 19, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): February 19, 1990.

DEP Docket No. 003-84-01 and 004-84-01.

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

The New Jersey Department of Environmental Protection (Department) held three public hearings concerning the Emergency Water Allocation Plan Rules (N.J.A.C. 7:19A) and the Water Emergency Surcharge Schedule Rules, (N.J.A.C. 7:19B) proposed pursuant to the Water Supply Management Act, P.L. 1981, c.262 and the Governor's Executive Order No. 5 (1982). In addition to the oral comments presented at the hearings, a number of written comments were received. These comments are summarized below, along with the Department's responses:

Comment: Purveyors and large water users should be represented on the Water Emergency Task Force (Task Force) (see N.J.A.C. 7:19A-4.2).

Response: The primary purpose of the Task Force is to coordinate interagency activities and responsibilities and to evaluate requests for hardship exemptions from application of the rules. As such, representation by purveyors is not appropriate. However, in response to these comments, the regulations have been amended to provide specifically for assistance to the Task Force from consultants, water purveyors and other advisors, if deemed to be needed (see N.J.A.C. 7:19A-4.2).

Comment: The Board of Public Utilities should be represented on the Task Force.

Response: The Department agrees and the rules have been changed to more specifically describe the composition of the Task Force, including representation by the Board of Public Utilities (see N.J.A.C. 7:19A-1.4).

Comment: A representative of the Governor's Office should be on the Task Force.

Response: It is felt that the Governor's Office has adequate input to the water emergency process, without formal representation on the Task Force. Further, the representatives of the agencies on the Task Force are answerable to the Governor, through the various cabinet officials.

Comment: Several commenters stated their concern that the users of water systems, which have been designed to provide adequate water during droughts and which have ongoing conservation programs, should not be penalized by having to supply deficient systems with supplemental water or by having additional conservation measures imposed upon them.

Response: The Department agrees that it is unfair for one purveyor to be expected to meet water demands of another purveyor which, due to poor management or planning, is unable to meet its customer's needs. The Department has proposed and will soon adopt the Water Supply Management Rules, N.J.A.C. 7:19-6, which are intended to cause deficient water purveyors to upgrade their systems and sources of water supply (see 16 N.J.R. 2399(a)). As these rules are implemented, it is hoped that the disparity will lessen among the various systems' capacities to respond to drought conditions. Further, N.J.A.C. 7:19A-8.2 establishes criteria for pricing water transfers among purveyors which will help to defray the costs to the providing purveyor.

Comment: Nurseries, landscaping businesses and golf courses should be allowed to use a sufficient amount of water to complete their economic functions. Also, since golf courses are classified by the Department as industrial water users, they should be explicitly excluded from the definition of "adjustable water uses" in 7:19A-1.4, as regards the elimination of watering of plant growth.

Response: The proposed rules contemplate that the use of water will be curtailed in response to the degree of severity of the drought. Flexibility exists to allow for exemptions to the degree warranted by the nature, severity and extent of the water emergency. Should the degree of the emergency justify, golf courses, nurseries and landscapers are properly among those whose use of water will be subject to adjustment.

Comment: Water uses deemed essential for generation of electricity should be excluded from restriction.

Response: The regulations provide for flexibility to set priorities for curtailment of water uses. Water used for electricity generation will most likely be among the last to be curtailed. It is possible that a drought emergency could be sufficiently severe to require some adjustment of electric utility water use. It is illogical to restrict the Commissioner's emergency powers in areas where reason dictates that such powers could be needed. Additionally, since generating companies can obtain electricity from a variety of sources, some curtailment of water use may be possible without loss of adequate power supply.

Comment: Restrictions on operations of non-water-recycling, air conditioning units should be considered during an emergency.

Response: If such usage becomes a critical problem, it can be addressed under the regulations, as proposed.

Comment: Provision should be made in the rules for coordination of water emergency action with the Delaware River Basin Commission (DRBC).

Response: The Department has submitted to the DRBC a drought contingency plan which provides for such coordination. Further, the proposed rules have been amended to formalize coordination with the DRBC, see N.J.A.C. 7:19A-5.1.

Comment: Any water use restrictions imposed during a water emergency which would result in curtailment of electric power generation should be coordinated with the Pennsylvania-New Jersey-Maryland electric power pool.

Response: Clearly, coordination with the power pool and many other organizations will be required in a water emergency. However, the Department has attempted to avoid individual mention of the myriad agencies and organizations in the public and private sector with which coordination will occur during an emergency.

Comment: There should be a "pre-emergency" or "drought-warning" phase before Phase I restrictions (see N.J.A.C. 7:19A-5.3) are to be applied.

Response: By definition, restrictions in these regulations go into effect upon a gubernatorial declaration of emergency. Where there is pre-emergency warning, the Department will consider public notice and the commencement of voluntary conservation. A reference has been added to the regulations providing that, prior to the declaration of a water emergency, the Department may call for action under its non-emergency powers (see N.J.A.C. 7:19-5.1).

Comment: Surcharges for excessive use of water should be applicable on a year-round basis.

Response: Ongoing water conservation is the subject of the Department's proposed Water Supply Management Rules, N.J.A.C. 7:19-6, and therefore, not the appropriate subject of these rules.

Comment: The regulations should explicitly exclude non-potable water use such as salt water use from any restrictions.

Response: Some water, which may ordinarily be considered non-potable as a result of low levels of salinity or for other reasons, may be subject to treatment and rendered potable during periods of extreme emergency. Withdrawal of saline or polluted water could also have effects upon fresh water and is therefore properly subject to control during an emergency. These regulations, as proposed, provide for substantial flexibility during advanced stages of an emergency. Exclusions such as those suggested would remove some of this flexibility. Virtually all water use is consumptive to some degree and therefore may properly be subject to some regulation during an emergency. The rules are changed to exclude salt water from restriction, the use or diversion of which has no effect on fresh water use or diversion, see N.J.A.C. 7:19A-5.1(f).

Comment: Where facilities have been provided by water users to satisfy needs in drought periods, these users' operations should not be subject to water use restrictions.

Response: New water supply facilities, once they are on line, reduce the likelihood of a water emergency having to be declared, since they reduce the likelihood that there will be a water shortage in a system or area. However, all water use is potentially impacted by one or another of the possible emergency situations that can be envisioned. The proposed rules allow sufficient flexibility to take user-supplied water sources into consideration when determining proper emergency response measures.

Comment: Emergency surcharges should not be imposed, because they will cause a loss of revenue to purveyors, due to decreased water use and increased costs of implementation responsibilities.

Response: Loss of revenue due to decreased water use is an unfortunate product of drought response. The Department knows of no water-rationing program where enforcement and administration is not carried out by purveyors. If loss of revenues necessarily results from drought-related conservation measures, water rates could be modified to take these losses into consideration. Also, under these regulations as proposed, purveyors' costs of enforcement of rationing may be reimbursed from the surcharge revenues.

Comment: Surcharge revenues should be retained by the purveyors.

Response: Since the surcharges are a conservation device and not associated with costs of water service, it is inappropriate for surcharge revenues to be directly retained by purveyors. Further, the proposed uses to which surcharge revenues are to be put parallel legislative declarations in the Drought Surcharge Fund Act, passed in response to the 1980-82 drought (P.L. 1981, c.540), as well as Executive Order No. 5 (1982), also responsive to that drought. As indicated above, enforcement costs may be reimbursed to purveyors from surcharge revenue.

Comment: Bulk water rates may not be appropriate in all cases of emergency water transfers, see 7:19A-8.2(c).

Response: This particular provision only recommends that normal bulk rates be given serious consideration. Rates will remain the subject of traditional negotiation.

Comment: The regulations reveal a bias toward reliance on ground water over surface water.

Response: The Department neither intends nor perceives any bias in the proposed rules toward one source of water versus another.

Comment: The surcharge rate of 1.33 times the normal rate for apartment dwellers (non-residential users) will provide a much weaker incentive to conserve than the fixed \$5.00 surcharge per 100 cubic feet for users in residences with individual meters, see N.J.A.C. 7:19B-1.5.

Response: The increase to 1.33 times the normal rate for non-residential users is paid for all water purchased, not just water over a certain quantity, as in the case of the residential user. The differential may not, therefore, be as great as this comment suggests. The problem of different levels of incentive to conserve results from numerous factors, the most important of which is that there are no individual meters in most apartment houses. This means that utilizing the metered residential surcharge rate for apartment dwellers would not provide the same conservation incentive for apartment dwellers as it does for water users in residences with individual meters. Also, attempting to create additional categories of users for purposes of the surcharge regulations would greatly complicate implementation of the program by purveyors, since many rental buildings have commercial establishments, offices and other non-residential users on the same meter as apartment dwellers. In such instances, it would be impossible to differentiate among these user types in the purveyors' billing of the surcharges.

Comment: The proposed rules should recognize prior efforts by users to conserve water through installation of water conservation devices and process changes.

Response: Recognition of prior efforts of water users to conserve can be made through the exemption procedures in N.J.A.C. 7:19A-9.

Comment: There should be a statewide emergency response plan which coordinates among the purveyors' individual emergency response plans. More detail as to what is required in the purveyor response plans should be included in the regulations.

Response: These regulations delineate the State's response to a water emergency and form the basis for the coordination of the purveyors' response plans. Further guidance for the purveyors on what constitutes an adequate response plan will be forthcoming from the Department.

Comment: The regulations should more clearly define "emergency interconnections" and who will pay for them.

Response: It is not feasible to foresee the different circumstances under which interconnections might be ordered constructed during an emergency. Without knowledge of the specific circumstances to be addressed by an emergency interconnection, further detail concerning project scope or responsibility is difficult to ascertain.

Comment: Surcharges are unfair to older couples with only two people in a dwelling.

Response: Many purveyors are able and willing to make allowances for senior citizens on fixed incomes. The Department recommends that senior citizens contact their purveyor to ascertain if such allowances are possible.

Comment: The Board of Public Utilities (BPU) should review and approve the surcharge rates before the surcharge regulations are adopted by the Department.

Response: The surcharge regulations are proposed at this time, along with the EWSAP regulations, to allow the BPU and other interested parties to advise the Department, regarding the proposed surcharge rates. The BPU has reviewed the proposed rules and their comments have been considered by the Department. With minor exception, the BPU approved of the Department's surcharge schedule. It is important to recognize that, since surcharges are not directly related to cost of service but rather to the discouragement of excessive water use, the traditional standards for BPU review of rates are less applicable.

The Department has made several nonsubstantive changes in the proposed rules to correct errors and improve clarity.

**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 19A

### EMERGENCY WATER SUPPLY ALLOCATION PLAN REGULATIONS

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 7:19\*A\*-1.1 Scope and authority

This chapter, adopted pursuant to the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., constitutes the rules governing the management of the waters of the State during water supply emergencies, and water quality emergencies severe enough to constitute a water supply emergency. This chapter partially implements the emergency provisions under the Act, however, it in no way limits the emergency powers now or hereafter vested in the Governor or the Commissioner.

##### 7:19\*A\*-1.2 Construction

(a) This chapter shall be liberally construed to permit the Department to discharge its statutory functions, and to effectuate the purposes of the Act.

(b) The Commissioner may amend, repeal or rescind this chapter from time to time to conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

##### 7:19\*A\*-1.3 Purpose

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

1. To impose water usage restrictions during a declared state of water emergency;
2. To create a priority system for the order in which restrictions shall be imposed upon the various categories of water uses;
3. To ensure an adequate supply and quality of water for citizens of the State during water supply and water quality emergencies;
4. To protect the public health, safety, and welfare in all or any part of the State in which a declared state of water emergency exists;
5. To establish a Water Emergency Task Force;
6. To establish a procedure whereby departmental orders issued during a declared state of water emergency may be appealed;
7. To establish a procedure for the selective curtailment of water to large industrial users;
8. To establish procedures for setting rates for transfers of water including those mandated by the Commissioner and a process to resolve conflicts regarding same; and
9. To establish application procedures for hardship exemption from the ban on adjustable water uses and the requirements of the water rationing plan.

##### 7:19A-1.4 Definitions

For the purposes of this chapter, the following definitions shall apply, unless the context clearly indicates a different meaning:

"Act" means the Water Supply Management Act," N.J.S.A. 58:1A-1 et seq.

"Adjustable water use ban" means the prohibition or restriction of various uses of water as defined in "Adjustable water uses."

"Adjustable water uses" means:

1. The watering of all plant growth\*,\* except commercially grown \*food\* crops;
2. The noncommercial washing of vehicles, except by businesses engaged exclusively in car washing or in those instances where a threat to public health may exist;
3. The washing of streets, driveways, sidewalks or paved areas;
4. The serving of water in restaurants, clubs or eating places unless specifically requested by the patron;
5. The use of water for flushing sewers by municipalities or any public or private entity except as deemed necessary and approved in the interest of public health or safety by municipal health officials;
6. The use of fire hydrants by fire companies for testing fire apparatus and for fire department drills except as deemed necessary in the interest of public safety and specifically approved by the municipal governing body and the purveyor;
7. The use of fire hydrants by municipal road departments, contractors and all others, except as necessary for fire fighting or protection purposes;
8. All outdoor recreational purposes;

9. Any other uses of potable water as may be designated by the Water Emergency Task Force as adjustable. Such designations shall be made by rule or order and shall be effective immediately upon adoption by the Commissioner and shall be published in the New Jersey Register as soon thereafter as possible;

10. Exemptions from the adjustable water uses as listed herein may be designated by the Water Emergency Task Force as provided for at N.J.A.C. 7:19A-9.1.

“Chairman” means the Chairman of the Water Emergency Task Force who shall be designated by the Commissioner.

“Commissioner” means the Commissioner of the New Jersey Department of Environmental Protection or his designated representative.

“Department” means the New Jersey Department of Environmental Protection.

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

“Emergency response plan” means the document submitted by each water purveyor to the Department outlining the actions it will take to assure water supply during a water emergency.

“Industrial users” means those non-residential users excluding multiple dwellings and health care facilities.

“Non-residential users” means all users of water except those in single family homes and multiple family homes with individual meters.

“Passing flow requirements” means the minimum volume of water required to be maintained at a selected point to promote water quality conditions after consideration of the needs of downstream users.

“Phase” means the particular level of water emergency severity.

“Residential users” means those users of water who are in single family homes and multiple family homes with individual meters.

“Water emergency” means a declaration by the Governor upon a finding by the Commissioner, that there exists or impends a water supply shortage and/or water quality emergency of a dimension which significantly impacts water supply and, thereby, endangers the public health, safety or welfare in all or any part of the State.

“Water Emergency \*[Rate]\* \*Surcharge\* Schedule” means the rate schedule for the retail costs of water supplies which shall be utilized by applicable water purveyors, as provided by rule, in the event of a declared emergency.

“Water Emergency Task Force” or “Task Force” means that State body consisting of inter-agency representatives whose purpose is to assist the Commissioner in the formulation of policy and render decisions during a water emergency.

\*[The following departments of State government shall be represented on the Task Force: Environmental Protection, Commerce and Economic Development, Education, Labor, Law and Public Safety, Community Affairs, Energy, Health, Agriculture and others as designated by the Commissioner.]\*

**\*The Task Force shall be composed of representatives of the following agencies: the Department of Environmental Protection, the Department of Commerce and Economic Development, the Department of Education, the Department of Labor, the Department of Law and Public Safety, the Department of Community Affairs, the Department of Energy, the Board of Public Utilities, the Department of Agriculture and other agencies as designated by the Commissioner.\***

“Water purveyor” means any public or private organization that distributes potable water to the public.

“Water supply system” means a physical infrastructure operated and maintained to deliver water on either a retail or wholesale basis to customers.

#### 7:19A-1.5 Severability

If any section, subsection, provision, clause, or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

### SUBCHAPTER 2. POWERS OF THE COMMISSIONER DURING A STATE OF WATER EMERGENCY

#### 7:19A-2.1 Scope

This subchapter establishes the restrictions and requirements that the Commissioner may impose on water purveyors and users during a water emergency, notwithstanding any State or local law or contractual agreement. The Commissioner may impose such additional restrictions and requirements during a water emergency he deems necessary to alleviate the water emergency.

#### 7:19A-2.2 Restrictions and requirements placed on water purveyors

(a) The restrictions and requirements placed by the Commissioner on water purveyors during a water emergency may include the following:

1. Reduction by a specified amount of the use of any water supply;
2. Utilization of an alternate water supply where possible;
3. Emergency interconnections between water supply systems;
4. Transfer of water from any public or private system;
5. Cessation of the use of any water supply;
6. Alteration of passing flow requirements;
7. Imposition of bans on adjustable water uses;
8. Other modifications or measures to insure an adequate water supply;
9. Reduction, reapportionment and/or redistribution of their particular water supply;
10. Cessation of the distribution of their particular water supply;
11. Distribution of a specified amount of water to certain users; and
12. Collection by water purveyors of rates pursuant to the water emergency rate schedule.

#### 7:19A-2.3 Requirements placed on departments and agencies within State government

After determination by the Commissioner and after notice to the appropriate State government body, agency, department, said body, agency, or department shall provide immediately, any information, assistance, resources and personnel as shall be necessary for the Commissioner to discharge his functions and responsibilities under the Act or this chapter.

### SUBCHAPTER 3. GENERAL POWERS OF THE DEPARTMENT

#### 7:18A-3.1 Scope

This subchapter establishes the requirements that the Commissioner shall impose on water purveyors and users, but not limited thereto, after the effective date of this chapter.

## 7:19A-3.2 Water purveyor emergency response plans and teams

(a) Water purveyors serving more than 50,000 residents, and other purveyors when requested by the Department shall develop and submit to the Department:

1. Emergency response plans within one year of the effective date of this chapter, which shall identify relevant backup supplies and interconnections to be utilized and outline interim water restrictions and other proposed conservation measures; and submit any other information the Department deems necessary to respond to unforeseen water emergencies and long-term relatively predictable water emergencies.

2. Revised and updated emergency response plans every two years.

(b) Water purveyor emergency response teams shall be comprised of managerial, technical, operations, and public information personnel to implement the emergency response plan. The members of the emergency response teams shall be listed in the emergency response plans.

(c) The water purveyor shall undertake the periodic evaluation of the effectiveness of the emergency response plan and shall incorporate the results of such evaluations into the plan revisions and updates.

## 7:19A-3.3 Interconnection tests

(a) Complete interconnection flow tests shall be taken by the water purveyor when specifically ordered by the Department during an emergency.

(b) Any purveyor wishing to be exempt from the requirements of this section on the basis of hardship, should petition the Department and demonstrate that same would result in extraordinary hardship to the water purveyor.

(c) Such tests shall be attended by representatives of both systems.

## 7:19A-3.4 Large user contingency plans

(a) Water users with a rate of use of 250,000 gallons per day or more shall submit contingency plans to their respective purveyors. Self-supplied users with a rate of use of 250,000 gallons per day or more shall submit contingency plans to the Department. Such large user contingency plans shall include but shall not be limited to the following:

1. A description of where water conservation can be achieved in their system and what alternative supplies are available to replace existing ones.

2. A description of the measures which such user would take in the event such user was required to cease operations on a partial or total basis, outlining the expected consequences to the public which might result from such a closure and the possible alternative sources of supply of any products produced by the user or services provided by the user.

## SUBCHAPTER 4. WATER EMERGENCY TASK FORCE

## 7:19A-4.1 Scope

(a) This subchapter establishes the purposes of the Water Emergency Task Force which is created to:

1. Review and render decisions regarding applications for hardship exemptions from the ban on adjustable water uses;

2. Hear appeals of water purveyors' decisions regarding applications for hardship exemptions from the requirements of the water rationing plans; and

3. Assist the Commissioner in the formulation of policy during a water emergency.

## 7:19A-4.2 Membership; meetings

(a) The Water Emergency Task Force shall consist of State agency representatives appointed thereto by their particular \*[Department]\* **\*agency heads\***. This Task Force shall be assisted by consultants **\***, **water purveyors and other advisors**,\* as necessary.

(b) Meetings of the Task Force shall be convened at the discretion of the Chairman who shall direct its activities.

## SUBCHAPTER 5. THE PRIORITY-BASED PHASE SYSTEM OF WATER RESTRICTIONS

## 7:19A-5.1 Scope

**\*(a)\*** This subchapter establishes the prioritized allocation of water supplies which will be implemented by the Department with the assistance of other State and local agencies once a water emergency is declared.

**\*(b)\*** This subchapter also defines the "phases" which denote the severity of the water emergency and upon which the prioritized allocation of water supplies and restrictions are based. Once a water emergency is declared by the Governor, the Commissioner shall immediately determine the severity of the water emergency and order the implementation of the activities specified in the appropriate phase or phases outlined below.

**\*(c) Reservoir levels, stream flow, water quality conditions, ground water levels, time of year and other relevant criteria will be considered in determining the phase and the proper point of transition from one phase to another, during an emergency.**

**(d) Prior to actual declaration of a water emergency by the Governor, the Department may call for action to be taken under its non-emergency powers in order to reduce the likelihood or impact of any impending emergency. Where such situations involve a lack of precipitation, the Department may identify the affected area or the State as a whole as being in a "Drought Warning" condition.**

**(e) Where the Delaware River Basin Commission, in accordance with its rules and procedures, declares a drought emergency based on the storage in New York City's Delaware Basin reservoirs, thereby impacting the New Jersey portion of the Delaware Basin, the Governor may also declare a water emergency in the New Jersey portion of the Basin. The Department shall coordinate with the DRBC the implementation of this chapter and the Water Emergency Surcharge Schedule, N.J.A.C. 7:19B.**

**(f) In the discretion of the Department, the restrictions in this Subchapter will not apply to use or diversion of salt water, except in situations where use or diversion of such water effects utilization of fresh water.\***

## 7:19A-5.2 Agricultural activities

Pursuant to the "Agriculture Retention and Development Act," P.L. 1983, c.3\*[3]\*\*2\* agricultural activities on land in a municipally\*- approved program shall be exempt from this subchapter unless the Governor declares that the public safety and welfare require otherwise.

## 7:19A-5.3 Phase I: Available water supply levels determined to be below normal

(a) Voluntary water conservation may be encouraged at this phase.

(b) A ban on adjustable water uses may be instituted at this phase.

(c) Variables affecting the application of a ban on adjustable water users *\*[are]\** **\*include but are not limited to the following\***:

1. Severity of the water emergency;
2. Time of year; or
3. Climatic conditions.

(d) Any person wishing to be exempt from the ban on adjustable water uses shall file an application for a hardship exemption in accordance with N.J.A.C. 7:19A-9.1.

(e) If the Phase I activities fail to achieve water demand management objectives, Phases II through IV shall be implemented in a manner that reflects the existing water supply conditions.

#### 7:19-5.4 Phase II: Severity; Substantial threat to the public health and welfare

(a) Non-residential users shall be subject to the water emergency rate schedule as provided by rule. (See N.J.A.C. 7:19B).

(b) Water rationing shall be instituted at a maximum daily rate of 50 gallons of water per person for residential users.

(c) Based on the limitations on water use imposed during Phase II or a subsequent phase of an emergency and the number of customers served by an affected water purveyor, each such purveyor shall be assigned a water use allocation target. The affected purveyors shall be required to make good faith efforts to remain within these targets. Such targets may be modified in subsequent phases of the emergency.

(d) Any person wishing to be exempt from the requirements of this section shall file an application for a hardship exemption in accordance with N.J.A.C. 7:19A-9.2.

#### 7:19A-5.5 Phase III: Further rationing required

This stage requires further rationing of water supplies to all sectors and the selective curtailment of industrial water users in accordance with N.J.A.C. 7:19A-6.

#### 7:19A-5.6 Phase IV: Disaster stage

(a) At the disaster stage, public health and safety cannot be guaranteed. Water quality is of major concern.

(b) Maintenance of health facilities shall be at emergency levels.

(c) Industrial use shall be further curtailed and selective closings shall occur. Interruptions in water service may be necessary.

### SUBCHAPTER 6. INDUSTRIAL CURTAILMENT STRATEGY

#### 7:19A-6.1 Scope

This subchapter establishes the components of the industrial curtailment strategy and the procedural steps to effectuate this strategy in phases III and IV.

#### 7:19A-6.2 Procedure for the selective curtailment during a water emergency situation

(a) The Department shall require the purveyors and self supplied water users to submit appropriate information during Phase I, in order to prepare for possible water curtailment.

(b) The date base shall be revised and updated to incorporate new data on consumption as appropriate.

(c) The Commissioner shall determine that supplies are at a level which justify initiating Phase III actions, including partial industrial curtailments.

(d) Industry wholly dependent upon public water supply, shall be closed (Phase IV) unless exempted by the Department.

#### 7:19A-6.3 Basis of selective curtailment

(a) Selective curtailment of large industrial users, as referred to in Phase III, shall be based upon:

1. Water consumption per work site;
2. Number of employees per work site;
3. Essential nature of the industry; and
4. Other pertinent data.

(b) After considering the essential nature of the industry and other pertinent data, the first priority for curtailment shall be those industries with high water use and a low number of employees per work site relative to water use.

#### 7:19A-6.4 Submission of water supply information

Industrial users shall submit to the Department, upon its request, all information relating to water consumption and employment required by N.J.A.C. 7:19A-6.2 and 6.3.

### SUBCHAPTER 7. PENALTIES

Any person who violates this chapter or any order issued pursuant thereto or to the Act shall be subject to the penalty provisions of the Act.

### SUBCHAPTER 8. EMERGENCY WATER TRANSFER PRICING

#### 7:19A-8.1 General pricing procedures

(a) Within 90 days after the effective date of this chapter, all water purveyors having physical interconnections with other water purveyors shall initiate negotiations with the interconnected purveyors regarding the prices to be charged for supplying of water through such interconnections ordered by the Commissioner during a water supply emergency.

1. Prices may be expressed either in terms of specific prices or of a formula.

(b) The water purveyors shall submit the record of negotiations, and the agreed upon prices if arrived at, to the Board of Public Utilities, if within its jurisdiction, or the Department, in all other cases, for approval and/or reconciliation of differences and approval in accordance with the following time schedule;

1. Within 12 months after the effective date of this chapter:

i. All water purveyors with interconnections 12 inches in diameter or greater between their systems;

ii. All water purveyors having interconnections of any size with water purveyors serving those seashore communities having shoreline contiguous with the Atlantic Ocean proper from Cape May to Highlands inclusive where the water supply serves 10,000 or more residents for two months or more per year.

2. Within 36 months after the effective date of this chapter:

i. All water purveyors with interconnections of 8 inches in diameter or greater where either system serves 10,000 or more residents; and

ii. All water purveyors interconnected with purveyors serving seashore communities having shoreline contiguous with the Atlantic Ocean proper from Cape May to Highlands inclusive, except those covered by (b)ii above.

3. Within five years after the effective date of this chapter all other water purveyors interconnected with another water purveyor.

## 7:19A-8.2 Criteria for pricing

(a) In the event an emergency transfer of water is ordered by the Commissioner, the price charged to the receiving system should be based upon fair compensation, reasonable rate relief and just and equitable terms as to not create a situation wherein the customers or owners of the supplying systems are subsidizing the transfer.

(b) Where an emergency transfer is ordered by the Commissioner which requires *[the curtailment]\* a reduction\** in the amount of water used by existing customers *\*of the supplying system in order to effectuate the transfer\**, the price charged to the receiving system should be set at a level which will insure the fair recovery of all costs incurred by the supplying system as a result of the *[curtailment]\* reduction\**.

(c) Where an emergency transfer requiring no *[curtailment]\* such reduction\** is mandated, the normal bulk water rates for existing regular customers of the supplier should receive serious considerations in determining the price of transferred water, except that this should not apply, for example, where such bulk rates are for off-peak water.

(d) Where such rates have not been established, rates may, in appropriate cases, be set so as to achieve revenue levels to cover the following requirements related to the facilities utilized to produce and transport water to the emergency purchaser:

1. Operation and maintenance;
2. Depreciation;
3. Taxes or payment in lieu thereof; and
4. Return (original plant investment minus depreciation times the rate of return) or debt service.

(e) Any foreseeable additional cost attributable to a mandated transfer shall be borne by the buyer of the water.

(f) Price schedules may specify that rate adjustments may be made later if actual costs fall short of or are greater than expected.

(g) If existing agreement on water transfer rates and other terms has been reached by the purveyors involved in such transfer and approved by the Department, the above criteria (a)-(f) shall not apply.

## 7:19A-8.3 Price resolution process

(a) Whenever during a water supply emergency a transfer of water has been made between one purveyor and one or more other purveyors, and the supplying water purveyor determines that additional cost recovery is required the following procedure shall be followed:

1. The supplying water purveyor, the receiving water purveyor and any other water purveyor whose facility was used to effectuate the transfer shall have 30 days from the date the supplying water purveyor gives notice that additional cost recovery is required to reach agreement as to the amount of additional charge.

(b) If the informal negotiation process is unsuccessful, any party may then file a written request for the initiation of formal proceedings to the Commissioner *\*and the Board of Public Utilities where appropriate\** within 60 days of the ending date for negotiation specified in (a) above. Said request shall include:

1. The added charge the party is proposing;
2. Substantiated arguments supporting the charge; and
3. Any other pertinent data including but not limited to the following:

i. The extent to which, if any, there would be curtailment of use by regular customers of the supplying system as a result of the sharing of the resources, and concomitant loss of revenue;

ii. The cost to the supplying system which would not be incurred except for the fact that the transfer must be made and any other costs which the party believes should be attributed to the transfer, including a detailed explanation of cost calculation;

iii. All wholesale and retail rates (with terms and conditions):

- (1) Charged by the supplying system to its customers;
- (2) Paid by the receiving system to its suppliers; and
- (3) Charged by the receiving system to its customers.

(c) The Commissioner or the Board of Public Utilities shall review the submitted requests, decide the fair compensation, and advise the parties.

(d) The actual transfer of water shall be accomplished in accordance with the order issued by the Department without regard to the time required for settlement of the added charge.

## SUBCHAPTER 9. HARDSHIP EXEMPTION PROCEDURES

## 7:19A-9.1 Application procedures for hardship exemption from the ban on adjustable water uses

(a) Any person wishing to be exempt wholly or partially from the ban on adjustable water uses may apply for a hardship exemption according to the following procedures:

1. The applicant shall submit his request along with full documentation supporting the request to the attention of the Water Emergency Task Force at the Division.

2. The applicant's submittal shall include a demonstration that extraordinary hardship and no reasonable alternative exists if the exemption is not granted.

3. After review of the application, the Task Force shall notify the applicant in writing of the results of its review and the reasons for its decision. Before making a decision, the Task Force may request the applicant to supply additional documentation. An exemption approval by the Task Force may be rescinded should public health, safety and welfare require further reduction in water use.

4. An exemption granted to an applicant for a specific property, purpose or person is not transferable to any other property, purpose or person without prior approval from the Task Force which may be obtained by submitting a request to the Task Force including full documentation.

7:19A-9.2 Application procedures for hardship exemption from the requirements of *[the]\* water rationing\* [plan]\**

(a) Any person wishing to be exempt from the requirements of *[the W]\*\*water [R]\*\*rationing [Plan]\** shall file an application for a hardship exemption with the appropriate water purveyor on a form obtained from the water purveyor according to the following procedures:

1. The applicant shall submit the request for exemption along with whatever documentation which would aid the water purveyor in making its decision.

2. The applicant's submittal shall include a demonstration that extraordinary hardship and no reasonable alternative exists if the exemption is not granted.

3. After review of the application, the water purveyor shall notify the applicant of the results of its review. Before making a decision, the water purveyor may request the applicant to supply additional documentation.

4. An exemption granted to an applicant for a specific property, purpose or person is not transferable to any other property, purpose or person without prior approval from the water purveyor.

## ADOPTIONS

## ENVIRONMENTAL PROTECTION

5. The denial by the water purveyor of an application for exemption entitles the applicant to appeal to the Water Emergency Task Force.

6. The water purveyor is required to notify the Task Force within seven days of all of its approvals. The Task Force may, at its discretion, review any approval granted and decide whether to uphold or deny said approval.

(b) An appeal to the Water Emergency Task Force shall contain the following documentation:

1. A copy of the original request for exemption with any documentation submitted to the water purveyor.

2. A copy of the exemption decision by the water purveyor.

(c) The Task Force shall review the request for appeal and all supporting documentation; and shall notify the applicant in writing of the results of its review and the reasons for its decision. Before making a decision, the Task Force may request the applicant to supply additional documentation.

### SUBCHAPTER 10. DEPARTMENT ORDERS

#### 7:19A-10.1 Requirements for departmental orders issued during a state of water emergency

(a) All departmental orders issued pursuant to this chapter shall be based upon fair compensation, reasonable rate relief, and just and equitable terms.

(b) Subsequent to the issuance of an order and compliance therewith, the basis upon which the order was issued will be determined after notice and hearing.

#### 7:19A-10.2 Appeal procedure

(a) The party to whom an order has been issued, and/or aggrieved by a decision of the Task Force, shall have a right to request a hearing thereon, if requested in writing within 20 days of receipt of the order.

(b) For 30 days following receipt of the request for a hearing, the Department shall attempt to settle the dispute by conducting such proceedings, meetings and conferences as deemed appropriate.

(c) If such efforts at settlement fail the Department shall file the request for a hearing with the Office of Administrative Law.

(d) The hearing shall be held in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(e) The decision by the Commissioner, based on the hearing record shall be the final administrative decision concerning an order.

## CHAPTER 19B

### WATER EMERGENCY SURCHARGE SCHEDULE RULES

#### \*SUBCHAPTER 1. ESTABLISHMENT OF WATER SURCHARGE SCHEDULE\*

##### 7:19B-1.1 Scope and authority

This chapter, adopted pursuant to the Water Supply Management Act, (Act) N.J.S.A. 58:1A-1 et seq., shall constitute the rules governing the establishment of a water surcharge schedule applicable during declared state of emergency as mandated by Executive Order No. 5, signed by Governor Thomas Kean on April 27, 1982.

##### 7:19B-1.2 Purpose

The purpose of this chapter is to establish a water surcharge schedule for the retail costs of water supplies during water

emergencies, declared by the Governor of the State of New Jersey. The schedule will be utilized by all applicable water purveyors in the event of such a declared emergency.

##### 7:19B-1.3 Definitions

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

“Applicable water purveyors” means all public-community water systems’ purveyors serving those areas in which Phase II of the water emergency has been initiated.

“Commissioner” means the Commissioner of the Department of Environmental Protection or his designated representative.

“Department” means the Department of Environmental Protection.

“Drought coordinator” means the individual designated by the Commissioner responsible for the supervision of the administration and enforcement of this chapter.

“Non-residential users” means all users of water except in single family homes and multiple family homes with individual meters supplied by applicable water purveyors.

“Normal water rates” means the prevailing retail rates which were charged by the applicable water purveyors and which were in effect immediately preceding the declaration of a water emergency.

“Phase I” means the first stage of a declared water emergency during which available water supply levels are determined to be below normal and bans on adjustable water uses may be instituted, as provided by regulation.

“Phase II” means the second stage of a declared water emergency during which a more substantial threat to the public health and welfare exists and a specified reduction in water use may be mandated.

“Residential users” means those users of water who are in single family homes and multiple dwelling units with individual meters for each dwelling unit and who are supplied by applicable water purveyors.

“Water emergency” means a declaration by the Governor, upon a finding by the Commissioner, that there exists or impends a water supply shortage and/or water quality emergency, which significantly impacts water supply and, thereby, endangers the public health, safety or welfare in all or any part of the State.

“Water emergency fund” means that repository of all sums collected by the applicable water purveyors pursuant to the water emergency surcharge schedule which are in excess of the amounts which would have been collected under normal water rates.

##### 7:19B-1.4 Applicability

This chapter shall be applied to all persons serviced by all applicable purveyors.

##### 7:19B-1.5 Establishment of the water emergency \*[rate]\* \*surcharge\* schedule

(a) Once a water emergency has been declared, as provided at N.J.S.A. 58:1A-4, and at the initiation of Phase II, the Drought Coordinator shall cause to be implemented the following water surcharge schedules established for the retail cost of water:

1. During Phase II of a water emergency the normal water rate shall be charged residential users for the first 50 gallons per capita used daily. Any water used above the prescribed amount in each billing period shall be charged the normal rate

plus a \$5.00 surcharge for each additional 100 cubic feet or portion thereof **\*(one cubic foot equals about 7.5 gallons)\***.

2. During Phase II of a water emergency, non-residential users of water shall be charged the normal water rate plus 0.33 times the normal rate as a surcharge **\*for all water purchased\***. This rate may be increased at the discretion of the Drought Coordinator should Phase II continue or should desired conservation levels not be met.

3. Water surcharge schedules set forth herein may be reviewed and adjusted, after notice and public hearing, in order to fulfill the objectives of the Act and Executive Order No. 5 (1982).

**\*4. Each purveyor shall give appropriate notice of the imposition of the surcharge schedule, as directed by the Department.\***

7:19B-1.6 Submission of the water emergency **\*[rate]\* \*surcharge\*** schedule; quarterly report

(a) Upon declaration of a water emergency, each applicable water purveyor shall submit a copy of its water surcharge schedule, determined pursuant to the method provided herein, to the Department of Environmental Protection.

(b) The purveyors shall also submit a quarterly report to the Department of Environmental Protection and the Department of Treasury and the Board of Public Utilities, where applicable, detailing the source, amount and other information required by these agencies concerning excess sums collected pursuant to the water surcharge schedule.

7:19B-1.7 Collection of the emergency water **\*[rates]\* \*surcharges\***; water emergency fund

(a) It shall be the responsibility of the applicable water purveyor to assess and collect all sums under the water surcharge schedule and to forward, on a quarterly basis, those sums in excess of the amount collected under normal water rates, to a collecting authority designated by the Department of Treasury for deposit into a cash management **\*[amount]\* \*account\*** to be known as the "Water Emergency Fund."

(b) Access to the monies in the Fund shall be limited to the State Treasurer and the Commissioner of the Department of Environmental Protection or their designees.

(c) Interest accrued on the monies in this fund shall be credited to the Fund.

(d) The Fund shall be disposed of as directed by the Drought Coordinator, in consultation with the Commissioner, only for the following purposes:

1. The promotion of water conservation, the purchase of water conservation devices for distribution to water users affected by the water supply emergency, and emergency projects;

2. Reimbursement, in whole or part, to water purveyors for reasonable expenses incurred in the administration and enforcement of the accelerated rate schedule; and

3. Reasonable administrative costs directly attributed to the water supply emergency incurred by the State in the discharge of duties and responsibilities under an Executive Order which declares a water supply emergency.

7:19B-1.8 Exemption from the water emergency **\*[rate]\* \*surcharge\*** schedule

**\*[Any person who has secured a hardship exemption under the Emergency Water Supply Allocation Plan Regulations (N.J.A.C. 7:19A-9) qualifies for an exemption from the Water Emergency Rate Schedule and is subject only to the appropriate normal water rate schedule.]\* \*Exemptions from water**

**rationing requirements in this chapter may be granted by the Department according to the procedures and standards in N.J.A.C. 7:19A-9.2.\***

(a)

## DIVISION OF WASTE MANAGEMENT DIVISION OF ENVIRONMENTAL QUALITY

### Disposal of Asbestos Waste

#### Adopted Amendments: N.J.A.C. 7:26-1.4, 2.6, 2.10, 2.13 and 3.5

Proposed: March 5, 1984 at 16 N.J.R. 440(a).

Adopted: January 22, 1985 by Robert E. Hughey, Commissioner, New Jersey Department of Environmental Protection.

Filed: January 28, 1985 as R.1985 d.65, **with technical and substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 13:1B-3, 13:1E-6 and 26:2C-1 et seq., specifically 26:2C-8.

Effective Date: February 19, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): February 21, 1989 for 7:26-1; December 6, 1987 for 7:26-2; June 9, 1985 for 7:26-3.

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

The New Jersey Department of Environmental Protection (the Department) held a public hearing on the proposed amendments on March 28, 1984 and written comments were accepted through April 20, 1984. The Department has reviewed the comments and the transcript of the hearing. The following is a summary of relevant comments and the Department's responses:

##### Comment:

N.J.A.C. 7:26-1.4: The definition of "non-friable asbestos-containing waste" is inconsistent with the definition of the same term used by the U.S. Environmental Protection Agency (U.S.E.P.A.).

##### Response:

The U.S.E.P.A. defines "friable" as opposed to "non-friable asbestos-containing waste". Since the proposed rules do not use the term "non-friable asbestos-containing waste", this definition has been deleted. In its place, the Department has added a definition of "friable asbestos material" and has added reference to friability in the proposed definition of "asbestos-containing waste". These changes make the Department's definitions consistent with those of the U.S.E.P.A.

##### Comment:

The methods required in the proposal to be used for land-filling of asbestos waste will not insure protection of the ground water.

## ADOPTIONS

## ENVIRONMENTAL PROTECTION

### Response:

The Department has no evidence that asbestos migrates more than a very short distance in the ground. The primary health threat of asbestos occurs when it is breathed, and it is this threat that these rules seek to minimize.

### Comment:

Landfill operators which accept asbestos waste should be required to place the waste in a separate area, identified in the deed of record for the landfill property, in order to better insure that the waste will not be exposed to the air either at the time of disposal or due to erosion or other disruption of the protective cover.

### Response:

The Department is considering this change for a future proposal.

### Comment:

The generator notification in N.J.A.C. 7:26-2.10 should include a description of the "nature" of the asbestos waste, in addition to other information required to be included in the notification.

### Response:

The Department agrees and N.J.A.C. 7:26-10(b)2 has been changed to require a description of the nature of the waste.

### Comment:

The Department should allow alternative packaging requirements for asbestos wastes for material which is such size as to preclude containerization, as proposed in 7:26-2.6(e)1i.

### Response:

The proposed rule does not limit the size of leak-tight container which may be used to contain asbestos waste. The suggested use of six mil. plastic bags is amenable to any size packaging, assuming a method of leak-proofing is undertaken to seal the bags. Therefore, the proposed rules do not inhibit packaging of large-size waste materials. Furthermore, the Department will not permit the use of any method of packaging which might allow release of asbestos waste to the ambient air. If wastes are in segments which are too large to be so managed, the segments will have to be cut or broken into smaller pieces.

### Comment:

Where an asbestos removal project involves daily shipments of wastes, the ten-day prior notification requirement in 7:26-2.10 is impractical.

### Response:

The proposed rule does not preclude notification to the Department for multiple shipments of waste, as long as the information set forth in the notification is accurate. The specific information required in the notification is vital to the Department's ability to track and monitor asbestos waste disposal. Any slight burden which this may cause to a waste generator is justified, in light of the health threat from asbestos mismanagement.

### Comment:

The Department should be allowed to waive the ten-day prior notification requirement in 7:26-2.10, where emergency circumstances require.

### Response:

The Department agrees, and the rule has been changed to allow emergency waiver of the ten-day prior notification requirement.

### Comment:

Where bagged asbestos waste is further containerized in drums or other packaging, such secondary containers must be free from uncontainerized waste.

### Response:

The Department believes that the proposed requirement for leak-proof containerization is sufficient to protect the public health.

### Comment:

A rule should be added, stating that asbestos transport vehicles must be registered by the Department.

### Response:

All waste transport vehicles are presently required to be registered by the Department, pursuant to 7:26-3.2. A further rule is unnecessary.

### Comment:

The daily record keeping requirement in 7:26-2.13(a)7 (7:26-2.13(a)6 in the proposal) is unnecessary, in light of the requirement for generator notice in 7:236-2.10.

### Response:

The Department desires to have evidence of the fact that the waste reached its destined disposal site, as well as documentation of its pending shipment. Both requirements are absolutely necessary to insure adequate tracking of asbestos waste disposal.

### Comment:

The transporters of asbestos waste should not be required to insure that asbestos waste does not leak from the containers that are being transported.

### Response:

The minute the transporter of asbestos waste removes the waste from a protected asbestos work area, he has absolute responsibility to prevent any human exposure to that waste. If he is unable to provide that assurance, he should not haul such wastes. Total isolation of asbestos is the only management standard acceptable to the Department.

### Comment:

Must landfills accept asbestos waste if they are registered to accept I.D. (Dry Industrial) 27 waste? (see 7:26-2.13.).

### Response:

In order for a landfill to accept asbestos waste, it must comply with the special handling requirements of these rules, including preparation of a separate, excavated area for asbestos disposal. Authorization to accept I.D. 27 waste does not, therefore alone allow asbestos waste acceptance.

### Comment:

Intermediate storage should be permitted to allow for the accumulation of full loads. The proposed rule prohibits this practice. (7:26-3.5(e)4.)

### Response:

Direct transport of asbestos waste from the point of generation to the disposal site is the only way that the Department can be confident that the chances of uncontrolled release of asbestos into the air have been minimized. Intermediate storage would occur at locations not prepared for asbestos control and would allow time for the asbestos wastes to lose the moisture applied at the site of generation. Direct transport from the site of generation to the site of disposal is essential.



**ADOPTIONS**

**HEALTH**

**7:26-2.13 Sanitary landfills, \*resource recovery facilities and transfer stations:\* records**

(a) Sanitary landfills shall maintain a daily record of wastes received. The record shall include:

1.-5. (No change.)

\*[6.]\*7.\* In addition to the information required in (a)1 through (a)\*[5]\*\*6\* above, sanitary landfills which accept asbestos and asbestos-containing waste shall:

i. Maintain a separate daily record of the asbestos and asbestos-containing waste received, which shall include:

(1) Date and time of delivery;

(2) Identification of the collector-hauler by name and by the \*[N.J.S.W.A.]\* \*New Jersey Department of Environmental Protection\* registration number assigned to the collector-hauler;

(3) Quantity in cubic yards of the waste;

(4) Name and address of the generator; and

(5) For rejected shipments, the reason for rejection and disposition of the shipment after rejection; and

ii. On the 15th day of every month, submit a copy of the daily record required by i above covering the asbestos disposal activity of the previous calendar month. The information shall be submitted to:

New Jersey Department of Environmental Protection  
 Division of Waste Management  
 Bureau of Registration and Permits Administration  
 32 East Hanover Street  
 Trenton, New Jersey 08625

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

(d) Waste identification and definition of solids include the following:

1. Solid wastes; waste ID number and definitions;

i.-v. (No change.)

vi. 27 Dry industrial waste: Waste materials resulting from manufacturing, industrial and research and development processes and operations, and which are not hazardous in accordance with the standards and procedures set forth at N.J.A.C. 7:26-8. Also included are nonhazardous oil spill cleanup waste, dry nonhazardous pesticides, dry nonhazardous chemical waste, and asbestos and asbestos-containing waste managed in accordance with 40 CFR 61 and N.J.A.C. 7:26-2.6.

(e)-(f) (No change.)

**7:26-3.5 Collector-hauler requirements (Specific)**

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

(e) Rules concerning collection/haulage of asbestos and asbestos-containing waste follow:

1. All vehicles used for the collection and/or haulage of asbestos and asbestos-containing waste shall be of such a design so as to prevent any spillage or leakage or emissions therefrom.

2. No collector/hauler shall transport asbestos and/or asbestos-containing waste unless such waste is properly packaged in accordance with 40 CFR 61.22 and N.J.A.C. 7:26-2.6(e). In no case shall loose asbestos or asbestos-containing waste be transported.

3. The asbestos or asbestos-containing waste shall be transported in a manner that prevents the rupture of the asbestos containers in loading, transport, and unloading operations.

4. Asbestos waste shall be transported directly to the disposal facility. No intermediate storage or transfer of such waste is permitted.

5. Transportation and disposal of asbestos-containing waste shall be conducted in accordance with waste flow requirements of N.J.A.C. 7:26-6.

6. There shall be no visible air emissions during loading, transporting, or unloading operations.

**HEALTH**

**(a)**

**ENVIRONMENTAL HEALTH SERVICES**

**Maximum Tolerance Standards for Ethylene Dibromide (EDB) Residues in Food Products Subject to Recall**

**Adopted Amendment: N.J.A.C. 8:21-2.40**

Proposed: November 5, 1984 at 16 N.J.R. 2897(a).

Adopted: January 21, 1985 by J. Richard Goldstein, M.D., State Commissioner of Health.

Filed: January 23, 1985 as R.1985 d.42, **without change.**

Authority: N.J.S.A. 24:2-1.

Effective Date: February 19, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): April 23, 1989.

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

**COMMENTS:**

The Department received comments submitted by Stephen Brown, Executive Vice President, Grocery Manufacturer's of America, incorporated (GMA). The major concerns and comments relate to their position that the existing tolerances of ethylene dibromide (EDB) in grain based food products recommended by the United States Environmental Protection Agency (EPA) which are higher than those established in this rule will fully protect the public health. They further stated that the more stringent standards being established by New Jersey 1)“ . . . will not enhance public health but will wreak economic havoc upon New Jersey consumers as well as the supply” and 2) “the industry will be put in the untenable

position of not being able to comply." The GMA especially emphasized that the industries may not be able to comply at this time with the tolerance of less than one part per billion of EDB in baby food products and 50 parts per billion tolerance for intermediate food products. Additionally, the GMA stated that compliance was unattainable because approximately two thirds of the nation's existing grain supply in storage has some level of EDB present. The GMA also indicated that, at the present time it's studies show that the average levels of EDB in ready-to-eat grain-based products contain less than two parts per billion of EDB and regardless of the levels established by the EPA and the state of New Jersey, the GMA believes that consumers will continue to receive food products containing similar levels.

The GMA opined that the Department's statement published in the rule proposal that "one percent or less of the grain-based products would be expected to exceed the proposed levels" is contradictory. The GMA said that if less than one percent of the grain-based products may exceed the proposed levels, then it would seem improbable that the public may be exposed to the high levels suggested by the Department.

#### RESPONSE:

The Commissioner of Health concurs with the GMA that the ultimate intent is to eliminate EDB from the food supply as soon as possible. The new tolerance levels represent an intermediate step being taken by the Department to ensure that the industry remain vigilant in their efforts to keep the levels of EDB at the lowest possible levels until the pre-1984 EDB treated grain supplies are exhausted. In effect the Department is saying "how close and how fast we come to eliminating the health risks from exposure to EDB treated grain-based products?"

The Commissioner originally set the higher tolerance levels based upon the EPA guidelines as an initial step to allow the industry time to establish mechanisms to reduce the EDB levels in grain-based products, with the ultimate goal of having EDB eliminated from the food supplies by 1986. The initial tolerances were established as an interim standard, with the intent to lower the tolerance gradually before complete elimination. Sampling results indicate that the industry is now capable of complying with the lower tolerance levels being established.

The levels which were originally recommended by EPA and then promulgated by New Jersey were based upon carcinogenicity while other states data took into consideration adverse reproductive effects as well. The lower tolerance levels established under this rule will place New Jersey on a par with New York State which has taken into consideration the adverse reproductive effects in setting their tolerances. The lower levels will insure a high level of health protection until we can be assured that EDB treated grain supplies have been exhausted.

The Commissioner does not believe nor has the GMA provided any compelling documentation which indicates that the food industry will find it impossible to comply with the lower tolerances. Data collected by the Department indicates that the industry is capable of complying. Also, several northeastern states have been operating for months with lower tolerances in place and they have advised the Department that the industry for the most part has been complying. The GMA has not provided documentation that the lower tolerance is causing economic havoc in New York State, which for many months has had the lower tolerance levels in place.

In response to the statement that the industry is not capable of meeting the standard set for baby foods, the Department's own sampling results and data from other states indicates that the industry is capable of meeting the less than one part per billion standard. The Department also believes that the stringent tolerance level for baby food is necessary because of the greater intake of food per pound of body weight by infants and thus the greater potential risk to this segment of the population. Also, the Department wishes to insure the maximum protection to children because this group may be biologically more susceptible to the effects of EDB and the prolonged life span may increase the likelihood of development of exposure related effects in later life.

Finally, the Commissioner does not believe that the statement "one percent or less of the grain-based products would be expected to exceed the proposed levels" is contradictory. The GMA indicated that if the statement is true, then it would be improbable that the public may be exposed to the "high" levels as suggested by the Department. The Department agrees with the GMA that if the industry can maintain the levels that the Department and the other states are currently finding, the public would be exposed to high levels of EDB. The Commissioner included this statement to demonstrate to the public that the industry is making a good faith effort to substantially reduce levels of EDB. The Department has reason to believe, based upon information obtained from the EPA that much of the grain that is moving in commerce today is from the 1984 crop which has not been treated with EDB. If the industry is not vigilant and relies heavily on pre-1984 grain, EDB levels would again rise and the public would then be exposed to higher levels of EDB. To ensure that the lower tolerance levels would be provided to consumers the Commissioner must insist that the industry will continue in it's efforts to keep levels of EDB as low as possible until the pre-1984 grain supplies are exhausted.

#### Full text of the adoption follows.

8:21-2.40 Maximum tolerance standards for ethylene dibromide (EDB) residues in food products subject to recall

(a) The Department of Health establishes maximum allowable levels of ethylene dibromide residues in the following types of food products:

1. For raw grain intended for human consumption such as wheat, corn, oats, etc., ethylene dibromide levels shall not exceed 300 parts per billion;

2. For intermediate level products such as flour, various mixes for preparing baked goods, soft cereals and other products that would normally require cooking before eating, ethylene dibromide levels shall not exceed 50 parts per billion;

3. For ready-to-eat products such as cold cereals, snack foods, bread, all baked goods, citrus fruits and vegetables, ethylene dibromide residues shall not exceed 10 parts per billion; and

4. Baby foods, that is, those foods intended for consumption by infants and toddlers as determined by product labels, use directions or marketing approach shall contain no detectable level (that is, less than 1 part per billion) of EDB.

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

# HUMAN SERVICES

## (a)

### DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

#### Manual for Hospital Services Admission and Billing Procedures

**Readoption: N.J.A.C. 10:52-2.1, 2.2, 2.5,  
2.6, 2.8, 2.9, 2.10, 2.12, 2.13**

**Adopted Amendments: N.J.A.C. 10:52-2.3,  
2.4, 2.7, 2.8A, 2.11**

Proposed: November 19, 1984 at 16 N.J.R. 3159(a).

Adopted: January 25, 1985 by George J. Albanese,  
Commissioner, Department of Human Services.

Filed: January 28, 1985 as R.1985 d.56, **with changes**  
not in violation of N.J.A.C. 1:30-3.5.

Authority: N.J.S.A. 30:4D-6a(1)(2), 7 and 7b.

Effective Date of Readoption: January 28, 1985.

Effective Date of Concurrent Amendments: February  
19, 1985.

Expiration Date pursuant to Executive Order No.  
66(1978): February 19, 1990.

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

**Summary of Changes Between Proposal and Adoption:**

There is one change being made on adoption. The reference to the PSRO (Professional Standards Review Organization) is being deleted from N.J.A.C. 10:52-2.7(a) and replaced with the PRO (Peer Review Organization). The Division of Medical Assistance and Health Services is now contracting with PROs for the purpose of conducting utilization review of hospital services. This provision is in accord with Section 1902(d) of the Social Security Act, which can also be cited as 42 U.S.C. 1396a.

**Full text** of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:52-2.

**Full text** of the adopted amendments appears below (additions upon adoption are indicated by asterisks and boldface **\*thus\***; deletions upon adoption are indicated by asterisks and brackets **\*[thus]\***).

10:52-2.3 General billing procedures for inpatient services

(a) Uniform Bill-Patient Summary Form (UB-PS) is used to bill for inpatient services in a participating hospital and for emergency inpatient services in a non-participating hospital.

(b) The hospital should not include charges for services of physicians, other practitioners, therapists or technicians who customarily bill patients directly and who are not directly or indirectly employed or contracted for by the hospital:

1. Reimbursement for covered services furnished by unlicensed physicians employed directly or indirectly by a hospital shall not be made unless said unlicensed physician is lawfully practicing medicine and/or surgery pursuant to a specific

statutory exemption under the laws of the State of New Jersey, and reimbursement in such instances is limited to reasonable costs which are made part of the facility's approved DRG (Diagnosis Related Group) rate. All other reimbursement for services rendered by unlicensed physicians is specifically prohibited.

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

10:52-2.4 Disposition of Uniform Bill Summary form  
(UB-PS)

(a) The Uniform Bill-Patient Summary Form should be handled in the following manner:

1. One copy (payor copy) must be forwarded to the hospital's contractor for processing.

2. One copy (hospital copy) is to be retained by the hospital.

3. The last copy (patient's copy) should be issued only if requested by the patient or on the patient's behalf. Whenever a request for a copy of the hospital statement is made on behalf of a Medicaid patient, the provider is requested to:

i. Complete the Medicaid Form (LD-13) and forward to:

Bureau of Administrative Control

CN-712

Trenton, N.J. 08625

ii. Release the requested hospital statement with a notation that the bill has been paid by the New Jersey Medicaid Program.

10:52-2.7 Inpatient certification and recertification

[(a)-(d)] (No change from proposal.)

(a) Providers are required to follow the procedures set forth in N.J.A.C. 10:52-1.4, entitled special provisions, to establish the medical necessity for admission or continued hospitalization. These procedures include, but are not limited to, certification by the \*[PSRO (Professional Standards Review Organization)]\* **\*PRO (Peer Review Organization)\*** and prior authorization, when appropriate.

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

10:52-2.8A Billing procedures for outpatient services:  
Dental

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

(e) All claims involving dental emergencies billed on a charge basis (example Hospital Emergency Room) must be forwarded by the hospital to the Chief, Bureau of Dental Services, Quakerbridge Plaza, Quakerbridge Road, CN-713, Trenton, New Jersey 08625 prior to submission to their current contractor for reimbursement. Such claims will not be reimbursable when the Dental Clinic of that hospital is open.

(f) (No change.)

10:52-2.11 Timely submission of hospital claims

(a) All claims for hospital services, whether inpatient or outpatient, must be submitted to the appropriate fiscal agent, either the Prudential Insurance Company or New Jersey Blue Cross, within the time periods specified in N.J.A.C. 10:49-1.12, entitled "Timely submission of claims and claim inquiries."

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

(b) All follow-up inquiries to claims that have been submitted to the appropriate fiscal agent must be made within the time period specified in N.J.A.C. 10:49-1.12.

(c) Claims and follow-up inquiries that are not submitted within the prescribed time frames will not be approved for payment.

(a)

**DIVISION OF MEDICAL ASSISTANCE  
AND HEALTH SERVICES**

**Physicians Services Manual, Independent  
Clinic Manual, and Manual for  
Psychological Services  
Progress Notes for Mental Health Providers**

**Adopted Amendments: N.J.A.C. 10:54-1.3,  
10:66-1.9, 10:67-1.6**

Proposed: September 4, 1984 at 16 N.J.R. 2333(a).

Adopted: January 25, 1985 by George J. Albanese,  
Commissioner, Department of Human Services.

Filed: January 25, 1985 as R.1985 d.52, **without  
change.**

Authority: N.J.S.A. 30:4D-6a(5), b(10), 7 and 7b,  
30:4D-12.

Effective Date: February 19, 1985.

Operative Date: March 1, 1985.

Expiration Date pursuant to Executive Order 66(1978):  
Physicians Services Manual (10:54-1), February 21,  
1989; Independent Clinic Manual (10:66-1), Decem-  
ber 15, 1988; Manual for Psychological Services  
(10:67-1), April 2, 1985.

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

There were two comments on this proposal. The New Jersey Association of Mental Health Agencies thought that the information in the medical records might be duplicated on the billing records. The Division's response is that while some of the information may be the same, medical records serve a different purpose than claim forms. Medical records should provide more extensive documentation of the service that was rendered; claim forms are a shorthand method of requesting payment from the Medicaid program.

St. Claire's Hospital in Denville also submitted a comment requesting that the Individualized Service Plan (ISP) serve as the primary indicator of the duration of treatment and only deviations from the ISP should be noted in the medical records. The Division's response is that the ISP serves as an ideal plan of treatment but does not indicate whether the plan of treatment was followed during a particular therapy session. Therefore, the medical records should accurately reflect the treatment that was rendered. Also, the hospital thought that the ISP's goals and objectives should be stated in the progress notes. The Division has no objection to providers including this information in the progress notes, but does not wish to make this provision mandatory.

**Full text of the adoption follows.**

**10:54-1.3 Record keeping**

(a) All physicians are to keep legible individual records as are necessary to fully disclose the kind and extent of services provided, as well as the medical necessity for those services. Minimum requirements for services performed in the office,

home, sheltered boarding home, long-term care facility and the hospital setting shall include a progress note in the clinical record for each visit, except where specified otherwise, which supports the procedure code or codes claimed. This information must be made available upon the request of the Division of Medical Assistance and Health Services' New Jersey Medicaid Program or its agents.

(b) Mental Health Services (excluding partial hospitalization and personal care) shall keep the following records:

1. For each patient contact made by a mental health therapist the following are required ingredients of a psychotherapy progress note:

- i. Date and duration of service (hour, half-hour etc.)
- ii. Signature of provider (if a member of a group).
- iii. Name of the modality used, that is, individual, group, family therapy, etc. (a psychiatrist should record current medication and dose; new or changed medications.)
- iv. Notations of progress, impediments, or treatment complications.
- vi. Other — this may include dates or information not included in above, but yet important to clinical picture and prognosis.

vii. One or more of the following components must be recorded to delineate the visit and establish its uniqueness. All of these components need not be included.

- (1) Symptoms and complaints;
- (2) Affect;
- (3) Behavior;
- (4) Focus topics;
- (5) Significant incidents or historical events.

**10:66-1.9 Record keeping**

(a) Clinics are to keep legible individual records as are necessary to fully disclose the kind and extent of services provided, as well as the medical necessity for those services. Minimum requirements for services performed by the clinic shall include a progress note in the clinical record for each visit, except where specified otherwise, which supports the procedure code or codes claimed. This information must be available upon the request of the New Jersey Medicaid program or its agents.

(b) Mental Health Services (Excluding Partial Hospitalization and Personal Care)

1. For each patient contact made by a mental health therapist the following are required ingredients of a psychotherapy progress note:

- i. Date and duration of service (hour, half-hour, etc).
- ii. Signature of provider (if a member of a group).
- iii. Name of the modality used — individual group, family therapy, etc. (Psychiatrist should record current medication and dose; new or changed medications.)
- iv. Notations of progress, impediments, or treatment complications.

vi. Other — this may include dates or information not included in above, but yet important to clinical picture and prognosis.

vii. One or more of the following components must be recorded to delineate the visit and establish its uniqueness. All of these components need not be included.

- (1) Symptoms and complaints;
- (2) Affect;
- (3) Behavior;
- (4) Focus topics;
- (5) Significant incidents or historical events.

SUBCHAPTER 2. BILLING PROCEDURES

(No change in text.)

10:67-1.6 General policy; record keeping

(a) Psychologists shall keep individual records as may be necessary to disclose fully the kind and extent of services provided and to make such information available as the Division or its agent may request.

(b) For the initial examination, the record shall show the following as minimum:

1. Date of service rendered;
2. Chief complaint(s);
3. Pertinent historical, social, emotional and additional data;
4. Reports of evaluation procedures undertaken or ordered;
5. Diagnosis;
6. Intended course of procedure and tentative prognosis.

(c) For subsequent progress notes made for each patient contact made by a psychologist, in other than a Partial Hospitalization or Personal Care Program, the following are required ingredients of a psychotherapy progress note:

1. Date and duration of service (hour, half-hour, etc).
2. Signature of provider (if a member of a group).
3. Name of the modality used — individual, group, family therapy, etc.
4. Notations of progress, impediments, or treatment complications.
5. Other — this may include dates or information not included in above, but yet important to clinical picture and prognosis.
6. One or more of the following components must be recorded to delineate the visit and establish its uniqueness. All of these components need not be included.
  - i. Symptoms and complaints;
  - ii. Affect;
  - iii. Behavior;
  - iv. Focus topics;
  - v. Significant incidents or historical events.

(a)

**COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED**

**Commodities and Services Council  
State Use Law for Rehabilitation Facilities**

**Adopted New Rule: N.J.A.C. 10:99**

Proposed: September 4, 1984 at 6 N.J.R. 2338(a).

Adopted: January 25, 1985 by George J. Albanese, Commissioner, Department of Human Services.

Filed: January 28, 1985 as R.1985 d.55, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 30:6-23 et seq., specifically 30:6-32.

Effective Date: February 19, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): February 19, 1990.

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

Comment received from the Office of Administrative Law (O.A.L.) expressing concern about N.J.A.C. 10:99-4.5, Violations, which as a result of meetings and negotiations has been changed by deleting the section as proposed and adding new sections 10:99-4.5 and 4.6 addressing "Suspension of Contract" and "Revocation of Approval of Non-Profit Agency", respectively. Upon reviewing the proposal, OAL expressed concern that the decision to suspend a contract may constitute a contested case issue. Additionally, OAL believed that the decision to revoke or suspend a facility's certificate of authorization to participate in this program may also be a contested case matter. These concerns were raised in the September 18, 1984 meeting of the Commodities and Services Council (council), and at a September 28, 1984 meeting which was attended by representatives of the Department of Human Services, the Commission for the Blind and Visually Impaired, the New Jersey Association of Rehabilitative Facilities and Office of Administrative Law. At the September 28, 1984 meeting, it was indicated that N.J.A.C. 10:99-4.5, concerning violations of contract terms and the appeals process, required clarity, especially in terms of the nature of the hearing and the responsibility of the Council as a hearing authority.

After subsequent negotiations, and approval by the Council, the new language at N.J.A.C. 10:99-4.5 and 4.6 was added, and the proposed language at N.J.A.C. 10:99-4.5 was deleted.

The adopted language allows for a more lenient submission of evidence concerning suspension of contract by the Central Nonprofit Agency (CNA), and deletes language concerning temporary suspension pending a hearing (N.J.C.A. 10:99-4.5). Furthermore, if the CNA recommends denial of approved status, or revocation or the suspension of such status, the matter shall be referred to the Council, and if the matter is not resolved, it shall be referred for a hearing pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. (N.J.A.C. 10:49-4.6).

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

CHAPTER 99

STATE USE LAW FOR REHABILITATION FACILITIES  
SUBCHAPTER 1. DEFINITIONS

10:99-1.1 Definitions

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

"Blind person" means a person whose vision in his better eye with proper correction does not exceed 20/200 or who has a field defect in his better eye with proper correction which contracts the peripheral field so that the diameter of the visual field subtends an angle no greater than 20 degrees.

"Central Nonprofit Agency" means an agency organized under the laws of New Jersey, operated in the interest of the blind, or other severely handicapped, the net income of which does not inure in whole, or in part, to the benefit of any shareholder or individual, and designated by the Commissioner to facilitate the distribution (by direct allocation, or other means) of orders of the State for commodities and services on the procurement list among qualified rehabilitation facilities for the blind, or qualified rehabilitation facilities.

ties for other severely handicapped, and to assist the Council in administering these regulations.

“Commissioner” means the Commissioner of the Department of Human Services.

“Commodities and Services Council” means the Commodities and Services Council for blind and other severely handicapped persons as constituted in Section 3 of Chapter 488, 1981 Laws of New Jersey.

“Fiscal year” means the twelve-month period beginning on July 1, of each year.

“Ordering office” means any activity in an entity of the State that places orders for the procurement of any commodity or service on the procurement list.

“Other severely handicapped” means persons (other than blind persons) who are so severely incapacitated by any physical or mental disability, that they cannot engage in normal competitive employment because of such disability. Some specific categories of severely handicapped persons as defined above include but are not limited to those disabled by the following:

1. Spinal cord injury;
2. Hearing impaired;
3. Muscular dystrophy (adults);
4. Multiple sclerosis;
5. Developmental disabilities or other neurological disorders;
6. Severe orthopedic handicaps;
7. Multiple disabilities;
8. Severe personality or behavioral disorders, including psychosis and neurosis;
9. Severe pulmonary disease;
10. Severe cardiac disorders.

“Rehabilitation facility” means a rehabilitation facility approved by the Division of Vocational Rehabilitation Services or the Commission for the Blind and Visually Impaired and which is engaged in the production of commodities or the provision of services in connection with which not less than 75 percent of the total hours of direct labor is performed by blind or other severely handicapped persons excluding any hours of supervision, administration, inspection or shipping.

“State agency” means any agency of State government, including quasi-State agency entities.

## SUBCHAPTER 2. COMMODITIES AND SERVICES COUNCIL FOR THE BLIND AND OTHER SEVERELY HANDICAPPED PERSONS

### 10:99-2.1 Establishment

There is established in the Department for Human Services, the Commodities and Services for blind and other severely handicapped persons.

### 10:99-2.2 Membership

(a) The Council shall consist of the Director of the Division of Vocational Rehabilitation Services; the Director of the Division of Purchase and Property; the Chief of the Bureau of State Use Industries; President of the New Jersey Business and Industry Association; the President of the New Jersey AFL-CIO; the Executive Director of the Commission for the Blind and Visually Impaired; the President of the New Jersey Association of Rehabilitation Facilities; or their designees; three citizens as at-large members, at least one of whom shall be a blind person, and one of whom shall represent the general public. The at-large members shall be appointed by the Governor, with the advice and consent of the Senate, for

terms of three years, except that of the first at-large members appointed, one shall be appointed for a term of three years, one for a term of two years, and one for a term of one year.

(b) The members of the Council shall organize annually by the selection of one of their members to serve as chairman. Members shall serve without compensation but shall be reimbursed for all necessary expenses incurred in the performance of their duties.

### 10:99-2.3 Duties of the Council

(a) The Council develops, in conjunction with the Division of Purchase and Property in the Department of the Treasury, a list of commodities and services which shall be set aside for purchase from approved rehabilitation facilities and establishes a fair market price for those commodities and services.

(b) The Council recommends to the Commissioner an agency for designation as the Central Nonprofit Agency for the purposes of this program.

(c) The Council encourages the purchase of commodities and services of blind and other severely handicapped persons by political subdivisions of the State.

(d) The Council establishes allowable fees for the Central Nonprofit Agency services to participating rehabilitation facilities.

(e) The Council addresses, as deemed appropriate, grievances presented by participating rehabilitation facilities regarding action by the Central Nonprofit Agency.

(f) The Council monitors the activities of the Central Nonprofit Agency both in terms of its relations with participating rehabilitation facilities and with State Use customer agencies, and, in cases of documented non-compliance on the part of the Central Nonprofit Agency, recommends appropriate corrective action or rescinding of the Central Nonprofit Agency status.

### 10:99-2.4 Procurement list

(a) The Council shall issue to each ordering office a procurement list which will include commodities and services which shall be procured from the designated Central Nonprofit Agency or its approved rehabilitation facilities.

1. For commodities, the procurement list includes the item description, specifications, identification, price and other pertinent information.

2. For services, the procurement list identifies the type of service to be provided, the area(s) and/or agency(s) to be serviced, prices, and other relevant information.

### 10:99-2.5 Fair market price

The Council is responsible for establishing fair market prices, including changes thereto, for commodities or services on the procurement list and shall consider recommendations from the procuring agencies and the Central Nonprofit Agency concerned. Recommendations for fair market prices or changes thereto shall be submitted by the rehabilitation facility to the Central Nonprofit Agency representing the rehabilitation facility. The Central Nonprofit Agency shall analyze the data and submit a recommended fair market price to the Council along with detailed justification necessary to support the recommended price. Pricing guidelines shall be established by the Council.

### 10:99-2.6 Annual report

The Council shall prepare and submit to the Commissioner an annual report on the activities conducted under N.J.S.A. 20:6-23 et seq. (hereinafter the Act) and results within 60 days following the close of the fiscal year.

## ADOPTIONS

## HUMAN SERVICES

### SUBCHAPTER 3. CENTRAL NONPROFIT AGENCY

#### 10:99-3.1 Designation

A Central Nonprofit Agency shall be designated by the Commissioner to represent the rehabilitation facilities for the blind and rehabilitation facilities for other severely handicapped.

#### 10:99-3.2 Duties and responsibilities

(a) The Central Nonprofit Agency shall:

1. Represent rehabilitation facilities in dealings with the Council under the Act.
2. Evaluate the qualifications and capabilities and provide the Council with the pertinent data concerning these rehabilitation facilities, their status as qualified nonprofit agencies, their manufacturing and/or service capabilities, and other information required by the Council.
3. Recommend to the Council, with appropriate justification, including recommended prices, suitable commodities or services for procurement from its qualified rehabilitation facilities.
4. Distribute within the policy guidelines of the Council (by direct allocation, or any other means) orders from State purchasing activities among its qualified rehabilitation facilities.
5. Maintain the necessary records and data on its qualified facilities to enable it to allocate orders equitably.
6. Monitor participating rehabilitation facilities to insure contract compliance in production of a commodity or performance of a service.
7. Monitor and inspect the activities of participating facilities to insure compliance with N.J.S.A. 30:6-23 et seq. and this chapter.
8. As market conditions change, recommend price changes, with appropriate justification, for assigned commodities or services on the procurement list.
9. Enter, as required, into contracts with State procuring activities for the furnishing of commodities or the provision of services provided by the rehabilitation facilities.
10. Submit to the Council a comprehensive annual report for each fiscal year concerning the operations of participating rehabilitation facilities under N.J.S.A. 30:6-23 et seq., including significant accomplishments and developments, and such other details as the Central Nonprofit Agency considers appropriate or the Council may request. This report will be submitted within six weeks following the close of the fiscal year.
11. Provide an appeal process to address disputes or grievances which may occur between the participating rehabilitation facilities and the Central Nonprofit Agency.

#### 10:99-3.3 Assignment of commodity or service

(a) The facility first proposing a commodity or service through the Central Nonprofit Agency for addition to the procurement list shall have priority on its assignment unless the Bureau of State Use Industries exercises its priority.

(b) Within 30 days after notification by the Council, or 60 days upon approval by the Council, after the Central Nonprofit Agency has proposed a commodity or service for addition to the procurement list, the Bureau of State Use Industries shall notify the Council of their intention to exercise their priority on the proposed commodity or service.

(c) The Council shall assign commodities or services to approved rehabilitation facilities based on (a) and (b) above.

(d) The facility proposing a commodity or service shall complete action to place it on the procurement list within nine months after assignment. If, within nine months, the rehabili-

tation facility has not completed action, the Council may reassign the commodity or service to another facility capable of producing the commodity or performing the service, provided that the facility is prepared to take prompt action to submit a proposal to place the commodity or service on the procurement list. Priority on reassignment will be determined by the order in which the facilities proposed the commodity or service for addition to the procurement list, the first proponent having the highest priority.

#### 10:99-3.4 Distribution of orders

The Central Nonprofit Agency shall distribute orders from the State only to facilities which the Council has approved to produce the specific commodity or to perform the particular service. When the Council has approved two or more facilities to produce a specific commodity, or perform a particular service, the Central Nonprofit Agency shall distribute orders among those facilities in a fair and equitable manner.

#### 10:99-3.5 Fees

The fees that the Central Nonprofit Agency charges rehabilitation facilities for coordinating and assisting in their participation under the Act, shall not exceed the rates approved by the Council.

### SUBCHAPTER 4. REHABILITATION FACILITIES

#### 10:99-4.1 Procedures for qualifications

(a) A rehabilitation facility shall submit to the Council, through the Central Nonprofit Agency, the following documents, transmitted by a letter signed by an officer of the corporation:

1. A legible copy of the articles of incorporation showing the date of filing and the signature of an appropriate State official.

2. A copy of the by-laws certified by an officer of the corporation.

3. A copy of the Internal Revenue Service certificate indicating that the corporation has been accepted as a nonprofit agency for taxation purposes.

4. Evidence that the facility meets the criteria for determining nonprofit status under the applicable provisions of New Jersey Statutes, and is registered and in good standing as a charitable organization with the Secretary of State, under the provisions of New Jersey Statutes.

5. A copy of current certificate(s) issued by United States Department of Labor authorizing wage payments under section 14(c) of the Fair Labor Standards Act.

(b) After the review and approval of submitted documentation the Council shall review the documents submitted, and if they are approved by the council the facility will be notified through the Central Nonprofit Agency of the facility's eligibility to participate under the Act.

(c) At the time the Central Nonprofit Agency recommends to the Council the addition of a commodity or service to the procurement list, it shall submit a signed copy of the appropriate initial certification for the facility concerned. This requirement does not apply when a facility is already authorized to produce a commodity or provide a service under the Act.

(d) To maintain its qualifications under the Act, each facility authorized to produce a commodity or provide a service under the Act shall complete an annual certification and submit a signed copy to the Council through the Central Nonprofit Agency within six weeks following the close of the fiscal year.

## 10:99-4.2 Responsibilities

(a) Each facility participating under the Act shall:

1. Furnish commodities or services in strict accordance with the allocation and State orders.

2. Make appropriate records available for inspection by the Central nonprofit agency at any reasonable time.

3. Maintain records of direct labor hours performed in the facility by each worker.

4. Submit the appropriate annual certification to the Council through its Central Nonprofit Agency within six weeks following the close of the fiscal year.

5. Comply with applicable occupational health and safety standards prescribed by the United States Secretary of Labor.

6. Maintain a file on each blind and other severely handicapped individual which includes reports of pre-admission evaluation, and annual re-evaluations of the individual's capability for normal competitive employment, prepared by a person or persons qualified by training and experience to evaluate the work potential, interest, aptitudes and abilities of handicapped persons.

## 10:99-4.3 Purchase of raw materials

Facilities shall seek broad competition in the purchase of raw materials and components used in the commodities and services provided by the State under the Act. Facilities shall consult with the Council before entering into multi-year contracts for raw materials or components used in the commodities and services provided the State under the Act.

## 10:99-4.4 Production of commodities

In the production of commodities under the Act, a facility shall make an appreciable contribution to the reforming of raw materials or the assembly of components or a combination thereof.

## 10:99-4.5 \*[Violations

Any alleged violations of these regulations by a facility shall be investigated by the Central Nonprofit Agency which shall notify the facility concerned and afford it an opportunity to submit a statement of facts and evidence. The Central Nonprofit Agency shall report its findings to the Council, together with its recommendation, including a recommendation regarding whether allocations to the facilities concerned should be suspended for a period of time. In reviewing a case, the Council may request the submission of additional evidence or may hold a hearing on the matter. Pending a decision by the Council, the Central Nonprofit Agency may be directed by the Council to temporarily suspend allocations to the facility.]\*

**\*Suspension of Contract**

(a) **A contract with a facility may be suspended by the Central Non-Profit Agency for non-compliance with the terms of the contract, such as failure to meet State specifications, quality assurance standards, or quantity and delivery requirements. Prior to any contact suspension, the facility shall be informed of the problem and shall be given a reasonable period to correct the non-compliance.**

(b) **If a contract with a facility has been suspended under this provision, the facility may subsequently present evidence to the Central Non-Profit Agency that it is capable of meeting the terms of the contract. The Central Non-Profit Agency must document the readiness or capability of the facility to resume production according to the terms of the specific contract prior to resumption of the contract.\***

**10:99-4.6 \*Revocation of Approval of Non-Profit Facility**

**If the Central Non-Profit Agency recommends the denial of approved status to a facility, or the revocation or suspension of such status, for failure to comply with these regulations or for other good cause, the matter shall be referred to the Council. The Council shall attempt to resolve the matter. If satisfactory resolution of the matter is not accomplished, the matter shall be referred for a hearing pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. and the Uniform Administrative Procedure Rules of Practice, N.J.A.C. 1:1-1 et seq.\***

## SUBCHAPTER 5. PROCUREMENT REQUIREMENTS AND PROCEDURES

## 10:99-5.1 Ordering offices

Ordering offices shall obtain commodities and services on the procurement list from the Central Nonprofit Agency.

## 10:99-5.2 Allocation and orders

(a) Allocation is the action to be taken by a Central Nonprofit Agency to designate the facilities that will produce definite quantities of commodities or perform specific services upon receipt of an order.

(b) For commodities, purchase orders shall contain name, commodity number, latest specification, quantity, unit price, and place and time of delivery.

(c) For services, purchase orders shall contain type and location of service required, latest specification, work to be performed, estimated volume, and time for completion.

(d) Ordering offices shall issue purchase orders with sufficient time for the Central Nonprofit Agency to reply, for the order(s) to be placed, and for the facility to produce the commodity or provide the service. (See (i) below.)

(e) When a commodity on the procurement list also appears on the schedule of products supplied by the Bureau of State Use Industries, the ordering office shall obtain clearance from the Bureau of State Use Industries prior to placing an order with the Central Nonprofit Agency.

(f) The Central Nonprofit Agency shall make allocations to the appropriate facilities upon receipt of an order from the ordering office.

(g) The Central Nonprofit Agency shall promptly acknowledge purchase orders. When a purchase order provides a delivery schedule which cannot be met, the Central Nonprofit Agency shall request a revision, which the ordering office should grant, if feasible, or the Central Nonprofit Agency shall issue a purchase exception authorizing procurement from commercial sources.

(h) The procurement list shall state for commodities or services lead time for purchase of material, production or preparation and delivery or completion.

(i) The Central Nonprofit Agency shall keep the ordering office informed of any changes in the lead time experienced by its facilities in order to keep to a minimum requests for extensions once an order is placed by the ordering office. Where, due to unusual conditions, an order does not provide sufficient lead time, the Central Nonprofit Agency may request an extension of the delivery or completion date which should be granted, if feasible. If extension of delivery or completion date is not feasible, the ordering office shall first notify the Central Nonprofit Agency, and request the Central Nonprofit Agency to reallocate or to issue a purchase exception authorizing procurement from commercial sources.

## ADOPTIONS

## HUMAN SERVICES

### 10:99-5.3 Certification of exceptions

(a) The Central Nonprofit Agency shall certify to an ordering office to permit procurement from commercial sources in accordance with provisions of New Jersey Statutes, or other applicable local ordinances, commodities or services on the procurement list when both of the following conditions are met:

1. The facility cannot furnish a commodity or service within the period specified, and;

2. The commodity or service is available from commercial sources in the quantities and at an earlier time than it is available from the facility.

(b) The Central Nonprofit Agency may similarly issue a certification of exception as in (a) above when the quantity involved is not sufficient for economical production or provision by the facilities.

(c) When the conditions in (a) or (b) above are met, the Central Nonprofit Agency shall provide such certification promptly and shall specify the quantities and delivery period covered by the certification, and shall notify the Council of its action.

(d) Certification of exception should be provided in written form except that verbal certifications can be accepted when circumstances warrant such action.

### 10:99-5.4 Prices

(a) The prices included in the procurement list are fair market prices established by the Council.

(b) Prices for commodities include delivery costs (FOB destination), and include packaging, packing and marking as shown on the procurement list.

(c) Price changes for commodities and services shall apply to all orders placed on or after the effective date of the change.

### 10:99-5.5 Shipping and packing

(a) Commodities shall be shipped freight prepaid (FOB destination). Delivery is accomplished when a shipment is received and accepted by the purchasing agency. Time of delivery is the date the shipment is received.

(b) Standard pack information is stated in item descriptions. In ascending order, standard pack is given in multiples of the unit of issue contained within the inner wrap(s) and the outer shipping container pack.

(c) Shipping weights, where available or applicable, are included in the procurement list. The weight indicated applies to the last quantity shown in the information on standard pack.

### 10:99-5.6 Payments

Payments for products or services of rehabilitation facilities shall be made within 30 days after receipt of shipment and a correct invoice or voucher whichever is later, unless altered by specific contract provision or applicable state law.

### 10:99-5.7 Adjustment and cancellation of orders

When the Central Nonprofit Agency or a facility fails to comply with the terms of a State order, the ordering office

shall make every effort to negotiate adjustments before taking action to cancel the order. When a State order is cancelled for failure to comply with its terms, the Central Nonprofit Agency shall be notified, and if practicable, requested to reallocate the order. The Central Nonprofit Agency shall notify the Council of any cancellation of an order and the reason therefore.

### 10:99-5.8 Correspondence and inquiries

Routine correspondence or inquiries concerning deliveries of commodities being shipped from or performance of service by rehabilitation facilities shall be with the Central Nonprofit Agency.

### 10:99-5.9 Quality of merchandise and services produced or provided by facilities

(a) Commodities furnished under State specification by rehabilitation facilities shall be manufactured in strict compliance with such specifications. Where no specifications exist, commodities produced shall be of the highest quality and equal to similar items available on the commercial market. Commodities shall be inspected utilizing nationally recognized test methods and procedures for sampling and inspection.

(b) Services provided by rehabilitation facilities shall be performed in accordance with State specifications and standards. Where no State specification or standard exists, the services shall be performed in accordance with good commercial practices.

### 10:99-5.10 Quality complaints

When the quality of a commodity or service received from rehabilitation facilities is not considered satisfactory by the using activity, the activity shall address complaints to the Central Nonprofit Agency. The Central Nonprofit Agency shall take necessary action to remedy the problem and shall advise the Council accordingly.

### 10:99-5.11 Specification changes

(a) Specifications cited in the procurement list may undergo a series of changes, indicated by revision dates, to keep current with industry changes and agency needs. Since it is not feasible to show the latest revision current on the publication date, only the basic specification is referenced in the procurement list. Procurement agencies shall notify the Central Nonprofit Agency of the latest applicable specification.

(b) When a State department or agency is changing the design or construction of a commodity on the procurement list that involves the assignment of a new commodity number, the Council and the Central Nonprofit Agency shall be notified of the contemplated change prior to its effective date, and be permitted to incorporate such change in its listed products.

# INSURANCE

## (a)

### DIVISION OF LICENSING

#### Administration

#### **Insurance Licensing of Financial Institutions and their Parent Companies, Subsidiaries, Affiliates, Service Corporations or Member Banks**

#### **Adopted Repeal: N.J.A.C. 11:1-10**

Proposed: November 5, 1984 at 16 N.J.R. 2919(a).  
Adopted: January 28, 1985 by Jasper J. Jackson, Acting Commissioner, Department of Insurance.  
Filed: January 28, 1985 as R.1985 d.69, **without change.**

Authority: N.J.S.A. 17:1-8.1.

Effective Date: February 19, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): None.

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

The Department of Insurance received one comment on the proposed repeal of the regulation prohibiting lending institutions or their affiliates from becoming licensed to sell insurance (N.J.A.C. 11:1-10).

The commentator understands that the statute requiring the regulation has been declared unconstitutional, but feels that an immediate repeal would give the banks freedom to control the insurance field. The commentator mentions that the Departments of Banking and Insurance are currently involved in a study of the issue of banking and insurance sales, and believes that the repeal should wait until this study is completed.

The statutory authority under which N.J.A.C. 11:1-10 was promulgated is no longer valid, thus the regulation cannot be enforced. A repeal of an unenforceable regulation would not give the Banking Department any more control over the insurance field than it has at present, and it would bring Title 11 of the Administrative Code into compliance with the law. Therefore, the Department favors an immediate repeal of the regulation.

**Full text** of the adopted repeal appears in the New Jersey Administrative Code at N.J.A.C. 11:1-10.

## (b)

### DIVISION OF ADMINISTRATION

#### Insurance Group

#### **Casualty Insurers; Personal Lines Insurance**

#### **Adopted Repeal: N.J.A.C. 11:2-10.1**

Proposed: November 5, 1984 at 16 N.J.R. 2920(a).  
Adopted: January 28, 1985 by Jasper J. Jackson, Acting Commissioner, Department of Insurance.  
Filed: January 28, 1985 as R.1985 d.71, **without change.**

Authority: N.J.S.A. 17:1-8.1.

Effective Date: February 19, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): None.

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

**Full text** of the adopted repeal appears in the New Jersey Administrative Code at N.J.A.C. 11:2-10.1.

## (c)

### DIVISION OF ADMINISTRATION

#### Automobile Insurance

#### **Moped Insurance**

#### **Adopted Amendments: N.J.A.C. 11:3-11.1**

Proposed: December 3, 1984; 16 N.J.R. 3285(a).  
Adopted: January 25, 1985 by Jasper J. Jackson, Acting Commissioner, Department of Insurance.  
Filed: January 28, 1985 as R.1985 d.72, **without change.**

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:28-1.3, 39:4-14.3(e).

Effective: February 19, 1985.

Operative: April 22, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): February 19, 1990.

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

Full text of the adoption follows.

**11:3-11.1 Required coverages for mopeds**

(a) No policy insuring against loss resulting from liability imposed by law for bodily injury, death and property damage sustained by any person arising out of the ownership, operation or use of a motorized bicycle as defined in N.J.S.A. 39:1-1, as amended, shall be issued in the State to the owner (or parent or guardian of an owner under 18 years of age) of any motorized bicycle principally garaged or operated in this State unless it includes coverage for the owner and operator in the following minimum amounts or limits.

**1. Bodily injury;**

i. An amount or limit of \$15,000, exclusive of interest and costs, on account of injury to, or death of, one person, in any one accident; and

ii. An amount or limit, subject to such limit for any one person so injured or killed, of \$30,000, exclusive of interest and costs, on account of injury to or death of more than one person, in any one accident.

**2. Property damage:** An amount or limit of \$5,000 in the aggregate for damage to property of others resulting from one accident.

(b) Every liability insurance policy as described in (a) above, issued or renewed on or after the operative date of this subsection, shall provide personal injury protection coverage benefits, in accordance with N.J.S.A. 39:6A-4, to pedestrians who sustain bodily injury in this State caused by the named insured's motorized bicycle or caused by being struck by or from the motorized bicycle.

1. Every rating organization and insurer making its own rates for policies covering motorized bicycles shall submit to the Commissioner of Insurance filings of rules, rates and forms within 30 days of the effective date of this subsection.

(c) Every business entity or individual owner who rents motorized bicycles shall maintain liability insurance coverage pursuant to P.L. 1977, chapter 267, in the minimum amounts or limits set forth in subsection (a) of this section.

(d) Any such coverages as described in subsections (a), [and] (b) and (c) above shall describe the make and model, piston displacement, and serial number (VIN) of each motorized bicycle insured. This information shall also constitute the description of vehicle required on insurance identification cards, and N.J.A.C. 11:3-5.1 through 6.4 shall apply to moped coverage except where the language is clearly inappropriate.

(e) The policy period for the coverages described in subsection (a) of this section shall commence at 12:01 A.M. of the effective date shown in the policy declaration page, unless expressly set forth in the policy or in a binder or other contracts for temporary insurance.

(f) Any insurer authorized to write motor vehicle coverage may write moped coverage.

**(a)**

**DIVISION OF ACTUARIAL SERVICES,  
LIFE AND HEALTH**

**Minimum Standards  
Required Disclosure Provisions**

**Adopted Amendment: N.J.A.C. 11:4-16.8**

Proposed: November 5, 1984, 16 N.J.R. 2944(a).  
Adopted: January 28, 1985 by Jasper J. Jackson, Acting Commissioner, Department of Insurance.

Filed: January 28, 1985, as R.1985 d.68, with **substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5)

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

Effective Date: February 19, 1985.

Operative Date: June 19, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): April 21, 1985.

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

The Department of Insurance received five comments on the proposed amendment concerning minimum standards and required disclosure provisions (N.J.A.C. 11:4-16.8), which is designed to bring New Jersey into compliance with Federal requirements regarding Medicare supplement policies and contracts (42 U.S.C. 1395 ss).

All of the commentators had opinions on subsection (a)14; specifically the sentence that requires the insurer to obtain acknowledgement of receipt of the shopper's guide.

The comments believe that the requirement is impractical for direct response sales, since the insurers have no control over the insureds, and there is no agent present to obtain an acknowledgement. The acknowledgement is now sent with the policy, and a request to return it to the insurer could be included, but since the policy would already be in effect, there would be little incentive for the insureds to return the acknowledgement.

Four commentators found the proposed amendment to be inconsistent with proposed new rule 11:4-23.8.6, which specifically excludes direct response insurers from having to obtain an acknowledgement of receipt of the shopper's guide from the insureds. They all urge the Department to conform the language in the amendment to that found in the rule. The fifth commentator noted that the requirement would be reasonable if applied to agency sales.

Finally, one commentator observed that if the amendment is adopted as is, it will be necessary to clarify the responsibilities and liabilities of the direct response insurer with regard to obtaining an acknowledgement.

Response: The Department did not intend (a)14 to apply to direct response insurers, and will change the language in the proposed amendment to conform with that found in the new rule 11:4-23.8(a)6, which exempts direct response insurers from having to obtain an acknowledgement of receipt of the shopper's guide.

Comments were also received on the changes in outline of coverage (N.J.A.C. 11:4-16.8(1)). One commentor said it was unnecessary to list what is not covered by a policy, since taken to extremes a policy would have to list everything that it was not. The commentor felt that it could be accomplished, but would require a separate policy to be printed for New Jersey alone, which would not be cost-efficient.

Response: 11:4-16.8(1)4, which requires an outline of coverage to list what is not covered in a policy, is necessary for two reasons. First, a law known as the Baucus Amendment (PL 95-265 section 1882 June 9, 1980) which regulates the sale of Medicare Supplement policies, mandates such a requirement. Second, the requirement is a practical one, in that it provides two chances to make a senior citizen policyholder aware of the full range of coverage provided by specifically listing what is and is not covered.

Finally, another commentor suggested that N.J.A.C. 11:4-16.8 be amended to adopt the entire NAIC Medicare Supplement outline of coverage so that both the amendment and the rule are totally consistent.

Response: N.J.A.C. 11:4-16.8 was written to bring New Jersey standards into conformance with Federal standards, not with the NAIC model. For the most part, 16.8 does conform to the NAIC model. The outline in 16.8 for Medicare supplement coverage is also consistent with the outlines required in N.J.A.C. 11:4-16.6(j) for other types of individual health coverage.

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

11:4-16.8 Required disclosure provisions

(a) General rules include the following:

1.-13. (No change)

14. A shopper's guide to health insurance for senior citizens authorized by the Commissioner shall be furnished to each Medicare eligible person in connection with purchase of a health insurance policy other than a short-term nonrenewable policy. Delivery of the shopper's guide shall be made at the time of application except in the case of direct response solicitations where the shopper's guide shall be delivered with the policy. Acknowledgement of receipt of the shopper's guide shall be obtained by **\*[the insurer.]\*** **\*all insurers other than direct response insurers or service corporations.\***

(b)-(k) (No change).

(l) An outline of coverage regarding Medicare supplement coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of N.J.A.C. 11:4-16.6(j). The items included in the outline of coverage must appear in the sequence set forth as follows:

(COMPANY NAME AND ADDRESS)  
(POLICY NUMBER WHEN AVAILABLE)  
MEDICARE SUPPLEMENT COVERAGE  
OUTLINE OF COVERAGE

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

4. (Statement that the policy (certificate) does or does not cover the following:)

i. Private duty nursing;

ii. Skilled nursing home care costs (beyond what is covered by Medicare);

iii. Custodial nursing home care costs;

iv. Intermediate nursing home care costs;

v. Home health care above number of visits covered by Medicare;

vi. Physician charges (above Medicare's reasonable charge);

vii. Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay);

viii. Care received outside of USA:

ix. Dental care or dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, examinations for or the cost of eyeglasses or hearing aids.

5. (A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in 4 above.)

6. (A description of policy provisions respecting renewability or continuation of coverage, including any reservation of right to change premiums.)

FOR ADDITIONAL INFORMATION ABOUT POLICY BENEFITS OR CLAIMS, TELEPHONE (COLLECT) (TOLL FREE) (LOCAL NUMBER)

(m)-(o) (No change).

(a)

## DIVISION OF ACTUARIAL SERVICES, LIFE AND HEALTH

### Actuarial Services

### Medicare Supplement Policies and Contracts

#### Adopted New Rule: N.J.A.C. 11:4-23

Proposed: November 5, 1984; 16 N.J.R. 2945(a).

Adopted: January 28, 1985 by Jasper J. Jackson, Acting Commissioner, Department of Insurance.

Filed: January 28, 1985 as R.1985 d.70, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

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

Effective Date: February 19, 1985.

Operative Date: June 19, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): February 19, 1990.

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

The Department of Insurance received four public comments and one internal comment on the proposed rule concerning Medicare supplement policies and contracts (N.J.A.C. 11:4-23).

Three comments were received concerning the outline of coverage requirements in 11:4-23.8.

Comment: One commentor read the proposed rule to require two separate outlines of coverage: one under subsection (b)1, based on N.J.A.C. 11:4-16.8(1), and a second under subsection (b)3, which lists a specific format to be followed when the coverage applied for is different from the coverage issued. The cost of printing two required outlines would be doubled. The commentor believes that only one outline should be required, and that the form be based on the NAIC model.

Response: The Department did not intend to require two separate outlines of coverage. Section (b)3 has been amended to read:

3. The outline of coverage provided to applicants pursuant to (b)1 above shall be in the form prescribed below:

By substituting (b)1 for (b)2 in the above section, it resolves the commentor's concerns about two outlines. The outline stated in (b)3 of the new rule is the one to be used. The outlines required for (b)1 and (b)2 are the same, except (b)2 requires that a notice to the applicant be included on the top of the outline.

Comment: Another commentor states that the provision in 11:4-23.8(b)3.5(v), which requires a policy to state whether or not it covers a certain amount of home health care visits, is unnecessary since recent Medicare amendments provide for unlimited home health care visits.

Response: The Department agrees that the provision in this subsection is unnecessary, and it has been deleted.

Comment: Another commentor made three observations concerning various aspects of the outline of coverage requirement.

First, the commentor recommends that the buyer's guide be provided to the employer rather than the individual when a group plan is involved, since it is the employer who will decide whether or not to purchase the policy.

Response: An employer group is not required to furnish a buyer's guide to each individual pursuant to N.J.A.C. 11:4-23.8, since an employer group is not included in the definition of "Medicare supplement policy" as an entity that has to comply with the requirement.

Secondly, the commentor suggests that the "Notice to Applicants Regarding Replacement on Accident and Sickness Coverage" be required only when individual contracts, not group contracts, are being replaced.

Response: Employer groups are not subject to this regulation for the reasons stated above. Also, the "Notice to Applicants" is required by the NAIC model. The regulation does not apply to individual contracts, and the notice should be given to certificate holders who will police the group contract holder.

Concerning 11:4-23.8(a)2, the commentor believes that insurers should be required to notify policyholders of benefit changes, but should not be required to obtain policyholders' signatures accepting the changes. In the opinion of the writer, requiring signed acceptances would create underwriting risks and administrative difficulties which would make offering such policies unattractive to insurers.

Response: The provision in N.J.A.C. 11:4-23.8(a)2 is required by the Baucus Amendment which regulates the sale of Medicare Supplement policies (P.L. 95265 section 1882 June 9, 1980) and must be included in the regulation. The rationale underlying the provision is that the senior citizen market is unique, and signed acceptance is the only way to assure that

the holder is aware of the change in coverage. Furthermore, the requirement is applicable only when coverage is reduced or eliminated, and when premiums are increased as a result of added benefits. If benefits are added and premiums are not increased, or if the increase in coverage is required by law, the requirement is not applicable.

Comment: One public comment was received on N.J.A.C. 11:4-23.7(a)(2). The commentor states that the Federal standard for a minimum loss ratio for individual policies is 60 percent, and the ratio required by the rule is 65 percent. The commentor believes that the vast majority of insurers would be unable to continue business profitably if the ratio were to be raised to 65 percent.

Response: The 65 percent loss ratio has been applicable since 1980 and regardless of the Federal recommendation the Department has decided that there should be no loss ratio reduction. The Federal recommendation is a minimum standard, and the Department feels that a 65 percent loss ratio is appropriate for the over 65 coverage. Also, a 65 percent loss ratio is consistent with N.J.A.C. 11:4-18.5.

Comment: The internal comment received addressed N.J.A.C. 11:4-23.6(b); specifically, the fact that coverage of expenses in a skilled nursing facility is not required as a minimum benefit for group members, but is required in N.J.A.C. 11:4-16.6(h) for individual policies.

Response: The Department believes that this coverage was not intended to be put in group policies. The coverage is available for individuals who desire to have it.

**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 23. MEDICARE SUPPLEMENT POLICIES AND CONTRACTS

### 11:4-23.1 Purpose

This subchapter provides for the reasonable standardization of coverage and simplification of terms and benefits of Medicare Supplement policies, contracts and certificates issued on a group basis; to facilitate public understanding and comparison of such policies and contracts; to eliminate provisions contained in such policies which may be misleading or confusing in connection with their purchase or with the settlement of claims; and to provide for full disclosure in the sale of health insurance and service corporation coverages to persons eligible for Medicare by reason of age.

### 11:4-23.2 Applicability and scope

(a) Except as otherwise specifically provided, this subchapter shall apply to:

1. All group Medicare Supplement policies and individual and group subscriber Medicare Supplement contracts delivered or issued for delivery in this State on or after the effective date;

2. All certificates issued under group Medicare Supplement policies or subscriber contracts, which policies or contracts have been delivered or issued for delivery in this State.

(b) This subchapter shall not apply to:

1. Individual health insurance policies delivered or issued for delivery in this State;

2. Individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when such group or individual policy or

contract includes provisions which are inconsistent with the requirements of this regulation; or

3. Medicare Supplement policies or subscriber contracts issued to employees or members as additions to franchise plans in existence on the effective date of this regulation.

#### 11:4-23.3 Definitions

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

“Applicant” means:

1. In the case of a group Medicare Supplement policy, the proposed certificate holder;

2. In the case of an individual Medicare Supplement subscriber contract, the person who seeks to contract for hospital or medical service benefits;

3. In the case of a group Medicare Supplement subscriber contract, the person eligible for service benefit coverage.

“Certificate” means:

1. Any certificate issued under a group Medicare Supplement policy, which policy has been delivered or issued for delivery in this State;

2. Any certificate issued under an individual or group Medicare Supplement contract, which contract has been delivered or issued for delivery in this State.

“Medicare Supplement policy” means:

1. A group accident and sickness insurance policy which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare by reason of age. The term does not include:

i. A policy of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations; or

ii. A policy of any professional, trade or occupational association for its members or former retired members, or combination thereof, if the association:

(1) Is composed of individuals who are actively engaged in the same profession, trade or occupation;

(2) Has been maintained in good faith for purposes other than obtaining insurance; and

(3) Has been in existence for at least 2 years prior to the date of its initial offering of the policy or plan to its members.

iii. Individual policies issued pursuant to a conversion privilege under a policy of group or individual insurance when the group policy includes provisions which are inconsistent with the requirements of this subchapter; or

2. A group or individual subscriber contract which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare by reason of age. The term does not include:

i. A contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees or combination thereof or for members or former members, or combination thereof, of the labor organizations; or

ii. A contract of any professional, trade or occupational association for its members or former or retired members, or combination thereof, if the association:

(1) Is composed of individuals all of whom are actively engaged in the same profession, trade or occupation;

(2) Has been maintained in good faith for purposes other than obtaining hospital or medical service benefits;

(3) Has been in existence for at least 2 years prior to the date of its initial offering of the contract or plan to its members.

iii. Individual contracts issued pursuant to a conversion privilege under a contract of group or individual service benefits when the group or individual contract includes provisions which are inconsistent with the requirements of this subchapter.

#### 11:4-23.4 Policy definitions and terms

(a) No group insurance policy or individual or group subscriber contract may be advertised, solicited, or issued for delivery in this State as a Medicare Supplement policy unless such policy or subscriber contract contains definitions or terms which conform to the requirements of this section.

1. “Accident,” “accidental injury,” or “accidental means” shall be defined to employ “result” language and shall not include words which establish an accidental means test or use words such as “external, violent, visible wounds” or similar words of description or characterization.

i. The definition of injury shall not be more restrictive than an accidental bodily injury sustained by the covered person which is the direct cause of the loss, independent of disease, bodily infirmity or any other cause, and which occurs while insurance or service corporation coverage is in force.

ii. Such definition may provide that injuries shall not include injuries for which benefits are provided under any workers’ compensation, employer’s liability or similar law, mandatory motor vehicle no-fault plan, unless prohibited by law, or injuries occurring while the covered person is engaged in any activity pertaining to any trade, business, employment, or occupation for wage or profit.

2. “Benefit period” or “Medicare benefit period” shall not be defined more restrictively than as defined in the Medicare program.

3. “Convalescent nursing home,” “extended care facility,” or “skilled nursing facility” shall be defined in relation to its status, facilities and available services.

i. A definition of such home or facility shall not be more restrictive than one requiring that it:

(1) Be operated pursuant to law;

(2) Be approved for payment of Medicare benefits or be qualified receive such approval, if so requested;

(3) Be primarily engaged in providing, in addition to room and board accommodations, skilled nursing care under the supervision of a duly licensed physician;

(4) Provide 24-hour nursing service by or under the supervision of a registered graduate professional nurse (R.N.); and

(5) Maintain a daily medical record of each patient.

ii. The definition of such home or facility may provide that such term shall not be inclusive of:

(1) Any home facility, or part thereof used primarily for rest;

(2) A home or facility for the aged or for the care of drug addicts or alcoholics; or

(3) A home or facility primarily used for the care and treatment of mental diseases or disorders, or custodial or educational care.

4. “Hospital” may be defined in relation to its status, facilities, and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals.

i. The definition of the term “hospital” shall not be more restrictive than one requiring that the hospital:

(1) Be an institution operated pursuant to law;

(2) Be primarily and continuously engaged in providing or operating, either on its premises or in facilities available to the hospital on a prearranged basis and under the supervision of a staff of duly licensed physicians, medical, diagnostic, and major surgical facilities for the medical care and treatment of sick or injured persons on an inpatient basis for which a charge is made; and

(3) Provide 24-hour nursing service by or under the supervision of registered graduate professional nurses (R.N.'s).

ii. The definition of the term "hospital" may state that such term shall not be inclusive of:

(1) Convalescent homes, convalescent, rest, or nursing facilities;

(2) Facilities primarily affording custodial, educational, or rehabilitative care;

(3) Facilities for the aged, drug addicts, or alcoholics; or

(4) Any military or veterans' hospital or soldiers' home or any hospital contracted for or operated by any national government or agency thereof for the treatment of members or ex-members of the armed forces, except for services rendered on an emergency basis where a legal liability exists for charges made to the individual for such services.

5. "Medicare" shall be defined in the policy or subscriber contract. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Laws 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

6. "Medicare eligible expenses" shall mean health care expenses of the kinds covered by Medicare, to the extent recognized as reasonable by Medicare. Payment of benefits by insurers or hospital or medical service corporations for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity as are applicable to Medicare claims.

7. "Mental or nervous disorders" shall not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder of any kind.

8. "Nurse" may be defined so that the description of nurse is restricted to a type of nurse, such as registered graduate professional nurse (R.N.), a licensed practical nurse (L.P.N.), or a licensed vocational nurse (L.V.N.). If the words "nurse," "trained nurse," or "registered nurse" are used without specific instruction, then the use of such terms requires the insurer or hospital or medical service corporation to recognize the services of any individual who qualified under such terminology in accordance with the applicable statutes or administrative rules of the Board of Nursing or any other registry board of the State.

9. "Physician" may be defined by including words such as "duly qualified physician" or "duly licensed physician." The use of such terms requires an insurer or hospital or medical service corporation to recognize and to accept, to the extent of its obligation under the policy or contract, all providers of medical care and treatment when such services are within the scope of the provider's licensed authority and are provided pursuant to applicable laws.

10. "Preexisting condition" shall not be defined more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

11. "Sickness" shall not be defined more restrictively than a sickness or disease which causes loss commencing while the insurance or coverage is in force and which is not excluded under a preexisting condition limitation. The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability, or similar law.

#### 11:4-23.5 Prohibited provisions

(a) No Medicare Supplement policy may be advertised, solicited, or issued for delivery in this State if such policy limits or excludes coverage by type of illness, accident, treatment, or medical condition, except as follows:

1. Foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain, or symptomatic complaints of the feet;

2. Mental or emotional disorders, alcoholism and drug addiction;

3. Illness, treatment, or medical condition arising out of:

i. War or act of war (whether declared or undeclared), participation in a riot or insurrection, service in the armed forces or units auxiliary thereto;

ii. Suicide (while sane or insane), attempted suicide, or intentionally self-inflicted injury;

iii. Aviation, other than as a fare paying passenger on a regularly scheduled airline;

4. Cosmetic surgery, except that "cosmetic surgery" shall not include reconstructive surgery when such surgery is incidental to or follows surgery resulting from trauma, infection, or other diseases of the involved part;

5. Care in connection with the detection and correction by manual or mechanical means of structural imbalance, distortion, or subluxation in the human body for purposes of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment, or subluxation in the vertebral column;

6. Treatment provided in a governmental hospital, benefits provided under Medicare or other governmental program (except Medicaid), any State or Federal workers' compensation, employer's liability or occupational disease law, or any mandatory motor vehicle no-fault law, services rendered by employees of hospitals, laboratories, or other institutions, services performed by a member of the covered person's immediate family, and services for which no charge is normally made in the absence of insurance or service benefits;

7. Dental care or treatment;

8. Eyeglasses, hearing aids, and examination for the prescription or fitting thereof;

9. Rest cures, custodial care, transportation, and routine physical examinations;

10. Territorial limitations.

(b) Medicare Supplement policies may not contain limitations or exclusions of the type enumerated in (a) 1, 5, 9, or 10 above that are more restrictive than those of Medicare.

(c) No Medicare Supplement policy may provide benefits which duplicate the benefits available to a covered person under Part A or Part B of Medicare.

(d) No Medicare Supplement policy may use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

#### 11:4-23.6 Minimum benefit standards

(a) No group insurance policy or individual or group subscriber contract may be advertised, solicited, or issued for delivery in this State as a Medicare Supplement policy which

does not meet the minimum standards contained in this section. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

(b) The following general standards apply to Medicare Supplement policies and are in addition to all other requirements of this regulation:

1. A Medicare Supplement policy may not deny a claim for losses incurred as a result of a preexisting condition after six months from the effective date of coverage;

2. A Medicare Supplement policy may not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents;

3. A Medicare Supplement policy shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amounts and copayment percentage factors. Premiums or subscription charges may be modified to correspond with such changes;

4. A Medicare Supplement policy shall not:

i. Provide for termination of coverage of an eligible spouse because of the termination of coverage of the insured, or subscriber, other than for nonpayment of premium; or

ii. Provide for termination of a covered person's coverage by the insurer or hospital or medical service corporation solely on the grounds of age or deterioration of health.

5. Termination of a Medicare Supplement policy shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the covered person limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

(c) The minimum benefit standards prescribed for Medicare Supplement policies are:

1. Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through 90th day in any Medicare benefit period;

2. Coverage of Part A Medicare eligible expenses incurred as daily hospital charges to the extent not covered by Medicare during use of Medicare's lifetime hospital inpatient reserve days;

3. Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90 percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

4. Coverage of Part B Medicare eligible expenses to the extent not covered by Medicare, subject to a maximum calendar year out-of-pocket deductible of \$200.00 of such expenses and to a maximum calendar year benefit of at least \$5,000.

#### 11:4-23.7 Loss ratio standards

(a) Medicare Supplement policies shall be expected to return to policyholders in the form of aggregate benefits under the policy, as estimated for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience and earned premiums for such period and in accordance with accepted actuarial principles and practices:

1. At least 75 percent of the aggregate amount of premiums or subscription charges collected in the case of group policies.

2. At least 65 percent of the aggregate amount of premiums or subscription charges collected in the case of individual policies.

(b) Medicare Supplement policies issued as a result of solicitations of individuals through the mail or mass media adver-

tising, including both print and broadcast advertising, shall be treated as individual policies under (a) above.

#### 11:4-23.8 Required disclosure provisions

(a) General rules concerning required disclosure provisions include the following:

1. Medicare Supplement policies shall include a renewal, continuation, or nonrenewal provision. The language or specifications of such provision must be consistent with the type of policy to be issued. Such provision shall be appropriately captioned and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed. Such provision shall appear on the first page of individual policies and certificates.

2. Except for riders or endorsements by which the insurer or hospital or medical service corporation effectuates a request made in writing by the insured or subscriber or exercises a specifically reserved right under a Medicare Supplement policy, all riders or endorsements added after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage shall require signed acceptance by the insured or subscriber. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium or subscription charge during the policy term must be agreed to in writing signed by the insured or subscriber, except if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth clearly.

3. A Medicare Supplement policy which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.

4. If a Medicare Supplement policy contains any limitations with respect to preexisting conditions, such limitations must appear as a separate paragraph in the policy and be labeled as "Preexisting Condition Limitations," "Preexisting Condition Exclusions," or words of similar import.

5. Medicare Supplement policies or certificates, other than those issued pursuant to direct response solicitation, shall have a notice prominently printed on the first page or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within 10 days of its delivery and to have the premium or subscription charge refunded if, after examination of the policy or certificate, the insured person or subscriber is not satisfied for any reason. Medicare Supplement policies or certificates issued pursuant to a direct response solicitation to persons eligible for Medicare by reason of age shall have a notice prominently printed on the first page or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within 30 days of its delivery and to have the premium or subscriber charge refunded if after examination the insured person or subscriber is not satisfied for any reason.

6. Insurers and hospital or medical service corporations issuing policies, certificates or subscriber contracts which provide hospital or medical expense coverage on an expense incurred, indemnity, or service benefit basis, other than incidentally, to a person(s) eligible for Medicare by reason of age shall provide for delivery to all applicants a Medicare Supple-

ment "buyer's guide" in the form authorized by the Commissioner. The "buyer's guide" shall be delivered whether or not such policies, certificates, or subscriber contracts are advertised, solicited, or issued as Medicare Supplement policies. Except in the case of direct response insurers or service corporations, delivery of the "buyer's guide" shall be made to the applicant at the time of application, and acknowledgement of receipt of the "buyer's guide" shall be obtained by the insurer or service corporation. Direct response insurers or service corporations shall deliver the "buyer's guide" to the applicant upon request but not later than at the time the policy or certificate is delivered.

7. Except as otherwise provided in (c) below, the terms "Medicare Supplement," "Medigap," and words of similar import shall not be used unless the policy or contract is issued in compliance with N.J.A.C. 11:4-23.6.

(b) Outline of Coverage requirements for Medicare Supplement policies include:

1. Insurers or service corporations issuing Medicare Supplement policies for delivery in this State shall provide an outline of coverage to all applicants at the time application is made. Except for direct response policies, acknowledgement of receipt of such outline shall be obtained from the applicant.

2. If an outline of coverage is provided at the time of application and the Medicare Supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate actually issued must accompany such policy or certificate when it is delivered and contain the following statement, in no less than 12-point type, immediately above the company name: "NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

3. The outline of coverage provided to applicants pursuant to (b)\*[2]\* \*1\* above shall be in the form prescribed below:

(COMPANY NAME)  
**OUTLINE OF MEDICARE  
 SUPPLEMENT COVERAGE**

1. Read Your Policy (Certificate) Carefully—This outline of coverage provides a very brief description of the important features of your Policy (Certificate). This is not the insurance (subscriber) contract and only the actual policy (contract) provisions will control. The policy (certificate) itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY (CERTIFICATE) CAREFULLY!

2. Medicare Supplement Coverage—Policies (Certificates) of this category are designed to supplement Medicare by covering some hospital, medical, and surgical services which are partially covered by Medicare. Coverage is provided for hospital inpatient charges and some physician charges, subject to any deductibles and copayment provisions which may be in addition to those provided by Medicare and subject to other limitations which may be set forth in the policy (certificate). The policy (certificate) does not provide benefits for custodial care such as help in walking, getting in and out of bed, eating, dressing, bathing, and taking medicines. (Delete if such coverage is provided.)

3. (i) for Agents:

Neither (insert company's name) nor its agents are connected with Medicare.

(ii) Direct responses:

(insert company's name) is not connected with Medicare.

4. (A brief summary of the major benefit gaps in Medicare Parts A & B with a parallel description of supplemental benefits, including dollar amounts, provided by the Medicare Supplement coverage in the following order:)

SERVICE	BENEFIT	MEDICARE PAYS	THIS COVERAGE PAYS	YOU PAY
HOSPITALIZATION Semi-private room and board, general nursing and miscellaneous hospital services and supplies.	First 60 days	All but (\$356)		
	61st to 90th day	All but (\$89)		
	Includes meals, special care units, drugs, lab test, diagnostic x-rays, medical supplies, operating and recovery room, anesthesia and rehabilitation	91st to 150th day Beyond 150 days	All but (\$178) a day Nothing	
POST-HOSPITAL SKILLED NURSING CARE . . . In a facility approved by Medicare, you must have been in a hospital for at least three days.	First 20 days	100% of costs		
	Additional 80 days	All but (\$45) a day		
	Beyond 100 days	Nothing		
MEDICAL EXPENSES	Physician's services, inpatient and outpatient medical services and supplies at a hospital, physical and speech therapy and ambulance.	80% of reasonable charge (after (\$75) deductible)		

5. (Statement that the policy (certificate) does or does not cover the following:)

- (i) Private duty nursing,
- (ii) Skilled nursing home care costs (beyond what is covered by Medicare),
- (iii) Custodial nursing home care costs,
- (iv) Intermediate nursing home care costs,
- \*[(v)]\* Home health care above number of visits covered by Medicare,]\*
- \*[(vi)]\* \*(v)\* Physician charges (above Medicare's reasonable charge),
- \*[(vii)]\* \*(vi)\* Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay),
- \*[(viii)]\* \*(vii)\* Care received outside of U.S.A.,
- \*[(ix)]\* \*(viii)\* Dental care or dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, examinations for or the cost of eyeglasses or hearing aids.

6. (A description of any policy (certificate) provisions which exclude, eliminate, resist, reduce, limit, delay, or in any other manner operate to qualify payments of the benefits described in N.J.A.C. 11:4-23.8(6) above. Also include conspicuous statements:

- (i) That the chart summarizing Medicare benefits only briefly describes such benefits;
- (ii) That the Health Care Financing Administration or its Medicare publications should be consulted for further details and limitations.)

7. (A description of policy (certificate) provisions respecting renewability or continuation of coverage, including any reservation of rights to change premium (subscription charge).)

8. The amount of premium (subscription charge) for the policy (certificate).

(c) Any group health insurance policy or individual or group subscriber contract, other than a Medicare Supplement policy, issued for delivery in this State to persons eligible for Medicare by reason of age shall notify insureds under the policy or subscriber contract that the policy or subscriber

**INSURANCE**

**ADOPTIONS**

contract is not a Medicare Supplement policy. Such notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy or subscriber contract, or, if no outline of coverage is delivered, to the first page of the certificate or subscriber contract delivered to insureds. Such notice shall be in no less than 12-point type and shall contain the following language: "THIS IS NOT A MEDICARE SUPPLEMENT (POLICY OR CERTIFICATE). If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the company."

11:4-23.9 Requirements for replacement

(a) Application forms shall include a question designed to elicit information as to whether a Medicare Supplement policy is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant containing such a question may be used.

(b) Upon determining that a sale will involve replacement, an insurer or service corporation, or its agent, shall furnish to the applicant, prior to the issuance or delivery of the Medicare Supplement policy a notice regarding replacement of accident and sickness coverage. One copy of such notice shall be provided to the applicant, and an additional copy signed by the applicant shall be retained by the insurer or service corporation. A direct response insurer or service corporation shall deliver to the applicant at the time of the issuance of the policy (certificate) the notice regarding replacement of accident and sickness coverage. In no event, however, will such a notice be required in the replacement of "accident only" coverage.

(c) The notice required by (b) above for other than a direct response insurer or service corporation shall be the following:

**NOTICE TO APPLICANT REGARDING  
REPLACEMENT OF  
ACCIDENT AND SICKNESS COVERAGE**

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness coverage and replace it with coverage to be issued by (Company Name). Your new certificate provides ten (10) days within which you may decide without cost whether you desire to keep the coverage. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the protection available to you under the new policy.

(1) Health conditions which you may presently have (pre-existing conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy whereas a similar claim might have been payable under your present coverage.

(2) You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. That is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.

(3) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to answer truthfully and completely all questions on the application concerning your medical/health history. Failure to include all material medical information on an applica-

tion may provide a basis for the company to deny any future claims and to refund your premium (subscription charge) as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

The above "Notice of Applicant" was delivered to me on:

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Applicant's Signature)

(d) The notice required by above for a direct response insurer or service corporation shall be as follows:

**NOTICE OF APPLICANT REGARDING  
REPLACEMENT OF  
ACCIDENT AND SICKNESS COVERAGE**

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness coverage and replace it with the policy delivered herewith issued by (Company Name). Your new policy provides thirty (30) days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the protection available to you under the new policy.

(1) Health conditions which you may presently have (pre-existing conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(2) You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.

(3) (To be included only if the application is attached to the policy.) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (Company Name and Address) within ten (10) days if any information is not correct and complete, or if the past medical history has been left out of the application.

\_\_\_\_\_  
(Company Name)

(e) Item (1) of the notice set forth in N.J.A.C. 11:4-23.9(c) and (d) above may be omitted if preexisting conditions are covered under the new coverage.

11:4-23.10 Severability

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

# LAW AND PUBLIC SAFETY

## (a)

### BOARD OF OPTOMETRISTS

#### General Rules of Optometric Practice

#### Readoption as New Rules: N.J.A.C.

#### 13:38-2.1 through 2.7 and 13:38-2.10 through 2.12

Proposed: December 3, 1984 at 16 N.J.R. 3289(a).

Adopted: January 16, 1985 by New Jersey State Board of Optometrists, Kenneth B. Brehne, O.D., President.

Filed: January 28, 1985 as R.1985 d.60, **without change.**

Authority: N.J.S.A. 45:12-4 and 12-11.

Effective Date: February 19, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): February 19, 1990.

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

Full text of the adoption follows.

#### 13:38-2.1 Minimum examination; record of conditions

(a) (No change.)

1.-11. (No change.)

12. In addition to the above procedures, corneal examinations shall be performed by the doctor in the course of fitting contact lenses using a slit-lamp (biomicroscope), or such equipment with equivalent technological capabilities.

(b) Procedures (a) 3, 4, 5, and 12 above must be performed by the doctor. In procedure (a) 11 above, where any form of contact tonometry is used, the doctor must perform the procedure. The accuracy of the findings from the above-referenced procedures shall be the exclusive responsibility of the examining optometrist(s).

#### 13:38-2.2 Minimum equipment

(a) For the proper performance of the requirements of N.J.A.C. 13:38-2.1 (Minimum examination), the following equipment is mandatory in each office in this State where an optometrist is licensed to practice:

1. Ophthalmoscope;
2. Instrument for the objective measurement of the refractive status of the eye;
3. Instrument to measure the radius of the curvature of the cornea;
4. Instrument, including but not limited to, trial frame with test lenses and auxiliary prisms, for the measurement of the subjective refractive status of the eye;
5. (No change.)
6. Instrument or chart to measure distance and near visual acuity;
7. Pseudoisochromatic method for testing color vision;
8. Equipment to measure central and peripheral fields;
9. Accurate corneal or non-contact tonometer to determine intraocular pressure;

10. Biomicroscope (slit-lamp), or such equipment with equivalent technological capabilities.

#### 13:38-2.3 Records of examinations and prescriptions

(a) (No change.)

(b) All findings and pertinent facts concerning the patient, discovered and disclosed during the course of such examination, as well as the record of professional services rendered and the fees charged, shall be preserved by the optometrist for a period of not less than seven years from the date of the last entry.

(c) In a multi-doctor practice and/or corporation, for every professional service rendered, the name of the doctor or doctors rendering such service or services, shall be clearly indicated on the patient record.

(d) The name of the person dispensing eyeglasses or contact lenses to the consumer/patient, shall also be indicated on the patient record.

#### 13:38-2.4 Vision Screening

Nothing contained in this Chapter shall be construed to prohibit vision screening under the direction and supervision of an optometrist for the purpose of determining the advisability of a complete optometric examination.

#### 13:38-2.5 Free eye examinations or refractions

(No change.)

#### 13:38-2.6 Division of fees

(a) (No change.)

(b) No division of fees for services shall be made except with another optometrist, based upon a division of services.

#### 13:38-2.7 Vision service plans

(a) N.J.S.A. 45:12-19.1 shall not be construed to prohibit an optometrist from providing optometric services in conjunction with a vision service plan.

(b) A vision service plan shall be construed to mean a plan offered by an association or corporation whereby professional practitioners legally authorized to provide optometric care can offer their professional services upon a planned payment basis to members of groups desiring said services and to make available any and all other optometric functions and services on such planned payment basis.

#### 13:38-2.8 (Reserved)

#### 13:38-2.9 (Reserved)

#### 13:38-2.10 Minimum standards and tolerances

(a) (No change.)

1.-6. (No change.)

7. Prism power and location of specified optical center

Vertical + or - 0.25 prism for each lens or a total of 1/3 prism imbalance.

Horizontal + or - 0.25 prism for each lens or a total of 0.50 prism diopter imbalance; if prism exceeds .50 prism diopter, the optical centers must be within 2 mm. If prism is less than .50 prism diopter, the optical centers must be within 4mm.

8.-12. (No change.)

13. Frame selection and fit

Frame shall be selected for the requirements of the prescription and facial con-

tour. Bridge size should fit the nose within 2 mm of its width with flair, and temple length must fit within 5mm.

(b) In order to assure the proper fabrication of lenses and eyewear, the following information shall be recorded:

1. Eye size, bridge size, temple length, frame shape and style, patient pupillary distance, optical centers and, if applicable, bifocal type, segment height and base curve;

(c) Upon completion of the fabrication of such corrective lenses and prior to dispensing within the State of New Jersey, the lenses or finished eyeglasses shall be verified to assure the accuracy of the prescription, the sphere, cylinder, axis prism, base, add, patient pupillary distance, segment height, frame size, eye size, bridge size and temple length. In addition, the eyewear must be adjusted for fit and verified for compliance with the standards set forth in (a) above.

13:38-2.11 (Reserved.)

13:38-2.12 Preceptorship program

(a) (No change.)

1.-3. (No change.)

4. The school or college shall select the preceptors and shall submit those names to the New Jersey State Board of Optometrists. Such preceptor shall have been engaged in the practice of optometry in the State of New Jersey for at least five years. The Board shall issue a Certificate of Preceptorship which shall be valid no longer than one year from the date of issuance and which shall be displayed conspicuously on the office premises of the preceptor. It shall be the responsibility of the preceptor to inform his/her patients of the preceptee's status prior to the submission of the patient to the examination by the preceptee.

5.-8. (No change.)

**(a)**

**NEW JERSEY RACING COMMISSION**

**Thoroughbred Racing: Medication and Testing Procedures**

**Readoption With Amendments: N.J.A.C. 13:70-14A**

Proposed: November 19, 1984 at 16 N.J.R. 3180(a).

Adopted: January 16, 1985 by New Jersey Racing Commission, Harold G. Handel, Executive Director.

Filed: January 28, 1985 as R.1985 d.59, **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. 5:5-30.

Effective Date: February 19, 1985.

Operative Date: April 1, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): February 19, 1990.

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

Several written comments were received in relation to the proposed rules. Representatives of the New Jersey State Po-

lice felt that the rules should allow for pre-race searches of the barn area and provide for harsher penalties for a trainer's first pre-race positive test results. The Horsemen's Benevolent and Protective Association felt that searches should only be authorized for post-race positives, there should be split samples and specific penalties for offenses.

The aforementioned comments were considered by the Commission in its deliberation and the Commission concluded it would not be in the public interest to allow pre-race searches, split samples or specific penalties. The statistics showed a decrease in post-race positives with the pre-race program, and not post-race positives at the thoroughbred meeting. The thoroughbred pre-race positives were all for an analgesic which does not warrant the intrusion of a search. The statistics also showed that the penalties were serving their intended purpose, especially as a deterrent. The Commission feels each case should be viewed on its own merits and specific penalties would interfere with this process. As for split samples, there simply is not enough sample left over after testing to allow for a complete test by another laboratory.

**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 14A. MEDICATION AND TESTING PROCEDURES**

13:70-14A.1 Intent of medication rules

It shall be the intent of **\*[the]\* *these rules* \*** **\*[contained in this subchapter]\*** to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and the racing participants through the prohibition and/or control of all drugs and/or substances foreign to the natural horse. No horse participating in a race shall carry in its body any drug and/or substance which is foreign to the natural horse, **\*[except as otherwise provided for in the rules and regulations of the Commission, irrespective of when administered or injected]\* *excepting external rubs and innocuous compounds as herein defined and as otherwise provided for in these rules and regulations irrespective of when administered or injected.*\***

13:70-14A.2 Testing

(a) Any horse entered to start at any licensed race meeting may be subjected to a pre-race and/or post-race blood, and/or urine test, at the direction of the State Veterinarian, and/or State Steward, in the manner prescribed by the New Jersey Racing Commission. The costs so incurred shall be borne by the track association. The cost to the track association for testing each sample shall be established by the New Jersey Racing Commission.

(b) Every owner, or his authorized agent, or trainer or any horse entered to race at any licensed racetrack shall immediately submit the said horse to any veterinarian designated by the Commission, for examination and/or testing whenever so requested by the Commission, Stewards, State Veterinarians, or Associate State Veterinarians.

13:70-14A.3 Pre-race testing program

(a) All horses entered to start in any race where parimutuel wagering is conducted shall be subject to a pre-race blood and/or urine test.

(b) Such horses shall be tested in their respective barn area on the grounds of the permitholder on the day of the race at such time as designated by the Commission and shall be under

the care of a duly licensed attendant designated by the trainer of the horse.

(c) A licensed veterinarian approved by the Commission shall be the only person allowed to draw blood for testing. A quantity of 20 cubic centimeters or such amount as the veterinarian may designate shall be extracted from each horse for testing purposes.

(d) Should the forensic analysis of such sample be classified as suspicious for any drug, or substance foreign to the natural horse **\*except as expressly permitted by these rules and regulations,\*** the horse shall be scratched.

(e) Should the forensic analysis of such sample be classified as positive for any drug, or substance foreign to the natural horse, the horse shall be scratched and placed on the Steward's list for seven days.

(f) The entry of a horse shall constitute permission for a veterinarian appointed by the New Jersey Racing Commission to obtain biological samples, and consent to the scratching of the horse from the race in the event such test is positive or suspicious.

(g) A trainer shall receive a warning for the first time a horse in his charge shall show a positive pre-race test. If the same horse shall again be positive on a pre-race test, then the trainer may be fined, suspended or both.

#### 13:70-14A.4 Post-race testing program

(a) No drug shall be administered or applied, internally or externally, to any horse that is to be sampled after a race until the blood and/or urine samples have been obtained unless permission from the State Veterinarian is obtained.

(b) Every horse to be tested shall be taken to a detention barn, to be supplied by the association in accordance with specifications set forth by the Commission. All blood samples shall be taken by a State Veterinarian while urine samples shall be secured by the State Veterinarian or a chemical inspector of the Commission at the direction of the State Veterinarian.

(c) During the taking of any blood and/or urine sample by the veterinarian representing the Commission, from the horse entered to race, the owner, trainer or their designated representative shall be present and witness the procedure. The sample so taken shall be immediately sealed and tagged on the form provided by the Commission and the evidence of such sealing shall be indicated by the signature of such owner, trainer or representative. It shall be the obligation of the owner, trainer or representative to cooperate fully with the State Veterinarian in obtaining any samples which may be required and to attend and witness the taking and securing of such sample.

#### 13:70-14A.5 Procedure following positive chemical analysis

(a) On receiving written notice from the official chemist that a **\*post-race\*** specimen has been found "positive" for any drug or substance foreign to the natural horse, the stewards shall proceed as follows:

1. They shall notify the State Police and authorize a search of the premises occupied by the stable involved.

2. They shall, as quickly as possible, notify the owner and trainer of the horse involved.

3. They shall, with the assistance of the State Police, conduct a thorough investigation, interviewing the trainer, assistant trainer and any other persons who may have pertinent knowledge of the circumstances involved.

4. During the progress of such investigation, the stable involved shall be permitted to race; save that the particular

horse (or horses) involved shall not be entered or start until allowed to do so by the Stewards.

#### 13:70-14A.6 Trainers

(a) A trainer shall be the absolute insurer of and is responsible for the condition of a horse within his care and custody.

(b) A trainer shall not enter or start a horse that has in its body any drug or substance foreign to the natural horse except as otherwise provided for in these rules and regulations.

(c) A trainer has the duty to be familiar with the medication rules of this Commission and with any drug or substances foreign to the natural horse administered to said horse at his direction or while in his care and custody.

(d) The trainer, owner, veterinarian, groom or other person charged with the custody, care and responsibility of a horse are all obligated to protect and guard the horse against administration of any drug or substance foreign to the natural horse **\*except as otherwise provided for in these rules and regulations\*** by any unauthorized individual, **\*and the administration of any unauthorized drug or substance foreign to the natural horse by any person.\***

#### 13:70-14A.7 Penalties

(a) Should the stewards determine that any person or persons have violated any section of this subchapter, they may punish the offending party consistent with the penalties provided for in these rules and regulations.

(b) In addition *\*[to (a) above]\** **\*thereto\***, the Stewards *\*[shall]\** **\*may\*** penalize the owner of any horse, or any entry of which said horse is a part, that has started in any race with any drug or substance foreign in its body by disqualification and denial of any part of the purse with redistribution of purse moneys as in the case of a disqualification.

(c) Any individual suspended or disciplined in any fashion for a second or subsequent violation of N.J.A.C. 13:70-14A.6 (a), (b), (d) or any comparable rule of any other racing commission or turf governing body may be deemed a repetitive offender. **\*A second or subsequent violation of 13:70-14A.6 may constitute grounds for further disciplinary action by the Commission.\*** *\*[and may constitute grounds for further disciplinary action by the Commission.]\**

(d) Horses owned wholly or in part by persons suspended for violation of N.J.A.C. 13:70-14A.6 (a), (b) or (d) are ineligible to start during the *\*[pendency]\** **\*period\*** of such suspension, unless sold to a bona fide purchaser. Horses trained by a person suspended for such a violation, wherein the trainer does not have an ownership interest, are automatically eligible to start when placed in the hands of a licensed trainer approved by the Stewards.

(See N.J.A.C. 13:70-13A for rules concerning Appeals.)

#### 13:70-14A.8 Possession of drugs or drug instruments

(a) No person aside from licensed veterinarians shall have in his possession anywhere within the grounds of any association conducting a race meeting, **\*or the confines of a race-track enclosure,\*** any drugs not possessed in accordance with the laws of the State of New Jersey, nor any contraband drug or unauthorized prescription legend drugs, nor any hypodermic syringes or needles, or any other instrument which may be used for injection, unless the injectable device is possessed for self-administration, and further provided that the individual possessing such device promptly notify the State Steward:

1. That he is in possession of such device; and,
2. Of the chemical substance to be administered.

13:70-14A.9 Administering medication to respiratory bleed-  
ers

(a) The stewards may permit the administration of medica-  
tion to control respiratory bleeding in animals that:

1. At any time have been charted to have bled in the "Daily  
Racing Form"; or

2. At any time have received a comprehensive cardiopul-  
monary examination at an approved equine hospital or school  
of veterinary medicine and as a result thereof, are certified as  
bleeders and therefore are in need of medication in order to  
race; or

3. Are observed in New Jersey to bleed during the running  
or driving of a workout or race at a duly licensed New Jersey  
racetrack, or in the detention barn following such workout or  
race by the State or Associate State Veterinarian and have  
been placed on a veterinarian's list for at least 14 days; or

4. Have been certified as respiratory bleeders in racing  
jurisdictions wherein such certification is pursuant to criteria  
substantially similar to this section. The Executive Director of  
the Commission shall make annual report to the Commission  
of those jurisdictions in compliance herewith, which compli-  
ance shall be certified by the Commission.

(b) All horses that are placed on the veterinarian's list shall  
be required to be brought to the detention barn no later than  
five hours prior to race time and shall remain in said detention  
barn until race time. During the said five hour period the  
horse shall be under the care and custody of a groom or  
caretaker appointed by the trainer. Any diuretic medication  
that is intended to control respiratory bleeding shall be admin-  
istered by a licensed practicing veterinarian in said detention  
barn under the direct supervision of the State Veterinarian or  
an Associate State Veterinarian, five hours prior to race time.  
Said practicing veterinarian shall make daily reports of all  
such treatments.

(c) Post-race urine and blood samples may be taken by or  
under the supervision of the State Veterinarian from all horses  
treated with diuretic medication to control respiratory bleed-  
ing pursuant to the requirements set forth above.

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

(a)

**NEW JERSEY RACING COMMISSION**

**Thoroughbred Rules:  
Breathalyzer Test; Urine Test**

**Adopted New Rules: N.J.A.C. 13:70-14A.10  
and 14A.11 (proposed as 13:70-14A.13 and  
14A.15)**

Proposed: June 18, 1984 at 16 N.J.R. 1457(a).

Adopted: January 14, 1985 by New Jersey Racing Com-  
mission, Harold G. Handel, Executive Director.

Filed: January 28, 1985 as R.1985 d.57, **without  
change.**

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

Effective Date: February 19, 1985.

Operative Date: April 1, 1985.

Expiration Date pursuant to Executive Order No.  
66(1978): February 19, 1990.

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

**Full text of the adoption follows.**

13:70-14A.10 Breathalyzer test

Officials, jockeys, trainers and grooms shall, when directed  
by the State Steward, submit to a breathalyzer test and if the  
results thereof show a reading of more than .05 percent of  
alcohol in the blood, such person shall not be permitted to  
continue his duties. The stewards may fine or suspend any  
participant who records a blood alcohol reading of .05 per-  
cent or more. Any participant who records a reading above  
the prescribed level on more than one occasion shall be sub-  
ject to expulsion, or such penalty as the stewards may deem  
appropriate.

13:70-14A.11 Urine test

(a) No jockey shall use any Controlled Dangerous Sub-  
stance as defined in the "New Jersey Controlled Dangerous  
Substance Act", N.J.S.A. 24:21-1, et seq. or any prescription  
legend drug, unless such substance was obtained directly, or  
pursuant to a valid prescription or order from a licensed

physician, while acting in the course of his professional practice. It shall be the responsibility of the jockey to give prior notice to the State Steward that he is using a Controlled Dangerous Substance or prescription legend drug pursuant to a valid prescription or order from a licensed practitioner.

(b) Every jockey for any race at any licensed racetrack may be subjected to a post-race urine test, or other non-invasive fluid test at the direction of the State Steward in a manner prescribed by the New Jersey Racing Commission. Any jockey who fails to submit to a urine test when requested to do so by the State Steward shall be liable to the penalties provided in N.J.A.C. 13:70-31.

(c) Any jockey who is requested to submit to a post-race urine test shall provide the urine sample, without undue delay, to a Chemical Inspector of the Commission. The sample so taken shall be immediately sealed and tagged on the form provided by the Commission and the evidence of such sealing shall be indicated by the signature of the tested jockey. The portion of the form which is provided to the laboratory for analysis shall not identify the individual jockey by name. It shall be the obligation of the jockey to cooperate fully with the Chemical Inspector in obtaining any sample which may be required and to witness the securing of such sample.

(d) A "positive" Controlled Dangerous Substance or prescription drug result shall be reported, in writing, to the Executive Director or his designee. On receiving written notice from the official chemist that a specimen has been found "positive" for controlled dangerous substance, or prescription legend drug, the Executive Director or his designee shall proceed as follows:

1. He shall, as quickly as possible, notify the jockey involved, in writing;

2. For a jockey's first violation, he shall issue a written reprimand and warning and notify the jockey that he will be subject to mandatory drug testing and that any further violation shall result in the sanctions described in paragraphs (3) and (4) below;

3. For a jockey's second violation, he shall require the jockey to enroll in a Supervisory Treatment Program approved by the New Jersey Racing Commission upon such reasonable terms and conditions as he may require. The jockey shall be permitted to participate unless his continued participation shall be deemed, by the Executive Director of his designee, to be detrimental to the best interests of racing. It shall be the jockey's responsibility to provide the Commission with written notice of his enrollment, weekly status reports, and written notice that he has successfully completed the program and has been discharged. If a jockey fails to comply with these requirements, he shall be liable to the penalties provided in N.J.A.C. 13:70-31.

4. For a jockey's third or subsequent violation, he shall be liable to the penalties provided in Subchapter 31 and may only enroll into a Supervisory Treatment Program in lieu of said penalties, with the approval of the New Jersey Racing Commission.

(e) The results of any urine test shall be treated as confidential, except for their use with respect to a ruling issued pursuant to this rule, or any administrative or judicial hearing with regard to such a ruling. Access to the reports of any "positive" results shall be limited to the Commissioners of the New Jersey Racing Commission, the Executive Director and/or his designee and the subject jockey, except in the instance of a contested matter.

(a)

## NEW JERSEY RACING COMMISSION

### Harness Rules: Medication and Testing Procedures

#### Adopted New Rules: N.J.A.C. 13:71-23

Proposed: November 19, 1984 at 16 N.J.R. 3182(a).

Adopted: January 16, 1985 by New Jersey Racing Commission, Harold G. Handel, Executive Director.

Filed: January 28, 1985 as R.1985 d.58, **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. 5:5-30.

Effective Date: February 19, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): February 19, 1990.

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

Several written comments were received in relation to the proposed rules. Representatives of the New Jersey State Police felt that the rules should allow for pre-race searches of the barn area and provide for harsher penalties for a trainer's first pre-race positive test results. The Horsemen's Benevolent and Protective Association felt that searches should only be authorized for post-race positives, and that there should be split samples and specific penalties for offenses.

The aforementioned comments were considered by the Commission in its deliberation and the Commission concluded it would not be in the public interest to allow pre-race searches, split samples or specific penalties. The statistics showed a decrease in post-race positives with the pre-race program, and no post-race positives at the thoroughbred meeting. The thoroughbred pre-race positives were all for an analgesic which does not warrant the intrusion of a search. The statistics also showed that the penalties were serving their intended purpose, especially as a deterrent. The Commission feels each case should be viewed on its own merits and specific penalties would interfere with this process. As for split samples, there simply is not enough sample left over after testing to allow for a complete test by another laboratory.

**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 23. MEDICATION AND TESTING PROCEDURES

##### 13:71-23.1 Intent of medication rules

It shall be the intent of **\*[the]\* *these*** rules **\*[contained in this subchapter]\*** to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and the racing participants through the prohibition and/or control of all drugs and/or substances foreign to the natural horse. No horse participating in a race shall carry in its body any drug and/or substance which is foreign to the natural horse **\*[except as otherwise provided for in the rules and regulations of the Commission, irrespective of when administered or injected]\* *excepting external rubs and innocuous compounds as herein defined and as otherwise provided***

for in these rules and regulations, irrespective of when administered or injected.\*

#### 13:71-23.2 Testing

(a) Any horse entered to start at any licensed race meeting may be subjected to a pre-race and/or post-race blood, and/or urine test, at the direction of the State Veterinarian \*, **the Judges\*** and/or State Steward, in the manner prescribed by the New Jersey Racing Commission. The costs so incurred shall be borne by the track association. The cost to the track association for testing each sample shall be established by the New Jersey Racing Commission.

(b) Every owner, or his authorized agent, or trainer of any horse entered to race at any licensed racetrack shall immediately submit the said horse to any veterinarian designated by the Commission, for examination and/or testing whenever so requested by the Commission, Stewards, Judges, State Veterinarians, or Associate State Veterinarian.

#### 13:71-23.3 Pre-race blood testing program

(a) All horses entered to start in any race where pari-mutuel wagering is conducted shall be subject to a pre-race blood and/or urine test.

(b) Such horses shall be in the paddock at least two hours prior to post-time under the custody and care of a duly licensed attendant designated by the trainer of the horse.

(c) A licensed veterinarian approved by the Commission shall be the only person allowed to draw the blood for testing. A quantity of 20 cubic centimeters or such amount as the veterinarian may designate shall be extracted from each horse for testing purposes.

(d) Should the forensic analysis of such sample be classified as suspicious for any drug or substance foreign to the natural horse, **\*except as expressly permitted by these rules and regulations,\*** the horse shall be scratched.

(e) Should the forensic analysis of such sample be classified as positive for any drug or substance foreign to the natural horse, the horse shall be scratched and placed on the judge's list for seven days.

(f) The entry of a horse shall constitute permission for a veterinarian appointed by the New Jersey Racing Commission to obtain biological samples, and consent to the scratching of the horse from the race in the event such test is positive or suspicious.

(g) A trainer shall receive a warning for the first time a horse in his charge shall show a positive pre-race test. If the same horse shall again be positive on a pre-race test, then the trainer may be fined, suspended or both.

#### 13:71-23.4 Post-race testing program

(a) No drug shall be administered or applied, internally or externally, to any horse that is to be sampled after a race until the blood and/or urine samples have been obtained unless permission from the State Veterinarian is obtained.

(b) Every horse to be tested shall be taken to a detention barn, to be supplied by the association in accordance with specifications set forth by the Commission. All blood samples shall be taken by a State Veterinarian while urine samples shall be secured by the State Veterinarian or a chemical inspector of the Commission at the direction of the State Veterinarian.

(c) During the taking of any blood and/or urine sample by the veterinarian representing the Commission, from the horse entered to race, the owner, trainer, or their designated representative shall be present and witness the procedure. The sample so taken shall be immediately sealed and tagged on the

form provided by the Commission and the evidence of such sealing shall be indicated by the signature of such owner, trainer or representative. It shall be the obligation of the owner, trainer or representative to cooperate fully with the State Veterinarian in obtaining any samples which may be required and to attend and witness the taking and **\*[occurring]\* \*securing\*** of such sample.

#### 13:71-23.5 Procedure following positive chemical analysis

(a) On receiving written notice from the official chemist that a specimen has been found "positive" for any drug or substance foreign to the natural horse, the steward shall proceed as follows:

1. **\*[They]\* \*He or she\*** shall notify the State Police and authorize a search of the premises occupied by the stable involved.

2. **\*[They]\* \*He or she\*** shall, as quickly as possible, notify the owner and trainer of the horse involved.

3. **\*[They]\* \*He or she\*** shall, with the assistance of the State Police, conduct a thorough investigation, interviewing the trainer, assistant trainer and any other persons who may have pertinent knowledge of the circumstances involved.

4. During the progress of such investigation, the stable involved shall be permitted to race; save that the particular horse (or horses) involved shall not be entered or start until allowed to do so by the **\*[stewards]\* judges\***. **\*In no event shall such a prohibition extend beyond seven days unless the stable has failed to provide all due cooperation to the Judges in the course of such investigation.\***

#### 13:71-23.6 Trainers

(a) A trainer shall be the absolute insurer of and is responsible for the condition of a horse within his care and custody.

(b) A trainer shall not enter or start a horse that has in its body any drug or substance foreign to the natural horse except as otherwise provided for in these rules and regulations.

(c) A trainer has the duty to be familiar with the medication rules of this Commission and with any drug or substances foreign to the natural horse administered to said horse at his direction or while in his care and custody.

(d) The trainer, owner, veterinarian, groom or other person charged with the custody, care and responsibility of a horse are all obligated to protect and guard the horse against administration of any drug or substances foreign to the natural horse **\*[by any unauthorized individual]\* \***, **except as otherwise provided for in these rules and regulations by any unauthorized individual, and the administration of any unauthorized drug or substance foreign to the natural horse by any person.\***

#### 13:71-23.7 Penalties

(a) Should the judges determine that any person or persons have violated any section of this subchapter, they may punish the offending party consistent with the penalties provided for in these rules and regulations.

(b) In addition **\*[to (a) above]\* \*thereto\***, the judges **\*[shall]\* \*may\*** penalize the owner of any horse, or any entry of which said horse is a part, that has started in any race with any drug or substance foreign **\*to the natural horse\*** in its body by disqualification and denial of any part of the purse with redistribution of purse moneys as in the case of a disqualification.

(c) Any individual suspended or disciplined in any fashion for a second or subsequent violation of N.J.A.C. 13:71-23.6 (a), (b), (d) or any comparable rule of any other racing commission or turf governing body may be deemed a repetitive

offender \*[and may constitute grounds for further disciplinary action by the Commission]\* **\*A second or subsequent violation of 13:71-23.6 may constitute grounds for further disciplinary action by the Commission\*.**

(d) Horses owner wholly or in part by persons suspended for violation of N.J.A.C. 13:71-23.6 (a), (b) or (d) are ineligible to start during the \*[pendency]\* **\*period\*** of such suspension, unless sold to a bona fide purchaser. Horses trained by a person suspended for such a violation, wherein the trainer does not have an ownership interest, are automatically eligible to start when placed in the hands of a licensed trainer approved by the judges.

(See N.J.A.C. 13:71-3 for rules concerning Appeals.)

13:71-23.8 Administering medication to respiratory bleeders

(a) The judges may permit the administration of medication to control respiratory bleeding in animals that:

1. At any time have received a comprehensive cardiopulmonary examination at an approved equine hospital or school of veterinary medicine and as a result thereof are certified as bleeders and therefore are in need of medication in order to race; or

2. Are observed in New Jersey to bleed during the running or driving or a workout or race at a duly licensed New Jersey racetrack, or in the detention barn following such workout or race by the State or Associate State Veterinarian and have been placed on a veterinarian's list for at least 14 days; or

3. Have been certified as respiratory bleeders in racing jurisdictions wherein such certification is pursuant to criteria substantially similar to this section. The Executive Director of the Commission shall make annual report to the Commission of those jurisdictions in compliance herewith, which compliance shall be certified by the Commission.

(b) All horses that are placed on the veterinarian's list shall be required to be brought to the detention barn no later than five hours prior to race time and shall remain in said detention barn until race time. During the said five-hour period the horse shall be under the care and custody of a groom or caretaker appointed by the trainer. Any diuretic medication that is intended to control respiratory bleeding shall be administered by a licensed practicing veterinarian in said detention barn under the direct supervision of the State Veterinarian or an Associate State Veterinarian five hours prior to race time. Said practicing veterinarian shall make daily reports of all such treatments.

(c) Post-race urine and blood samples may be taken by or under the supervision of the State Veterinarian from all horses treated with diuretic medication to control respiratory bleeding pursuant to the requirements set forth above.

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

13:71-23.9 Possession of drugs or drug instruments

(a) No person aside from licensed veterinarians shall have in his possession anywhere within the grounds of any association conducting a race meeting **\*or the confines of a racetrack enclosure\***, any drugs not possessed in accordance with the laws of the State of New Jersey, nor any contraband drugs or unauthorized **\*prescription\*** legend drugs, nor any hypodermic syringes or needles or any other instrument which may be used for injection, unless the injectable device is possessed for self-administration, and further provided that the individual possessing such device promptly notify the State Steward:

1. That he is in possession of such device; and
2. Of the chemical substance to be administered.

13:71-23.10 Illegal devices

No electrical, mechanical or other appliance or device other than the ordinary whip shall be applied to a horse at any place on the grounds of any licensed racetrack. Any person so offending shall be suspended by the judges and referred to the Commission for license revocation. Possession of any such device anywhere on the grounds of a licensed racetrack may be punished by fine and/or suspension.

13:71-23.11 Narcotics conviction; denial of license

Any person who has been convicted of possession or use of narcotics by any court in the land shall be denied a license or ruled off or both as the Commission may decide.

13:71-23.12 Cooperation with other agencies; violations of law

Every association, all officials and employees thereof, and all persons licensed in any capacity by the Commission shall give every possible cooperation aid and assistance to any department, bureau, division, officer, agent or inspector, or any other person connected with the United State Government or with the State of New Jersey, who may be investigating or prosecuting any matter involving a violation of any law, or any rules or regulations of the Commission.

13:71-23.13 State Police; responsibilities

The enforcement of N.J.S.A. 5:5-71 and other criminal laws of the State of New Jersey shall be the responsibility of the State Police. Investigation pursuant to the enforcement of N.J.S.A. 5:5-71 or other criminal laws of the State shall take precedence over any action taken by the association or the Racing Commission concerning an incident arising from an alleged violation of the provisions of this subchapter. Every association and Racing Commission official and employee shall render full cooperation, aid and assistance in any investigation undertaken for a reasonably apparent violation of N.J.S.A. 5:5-71 or other criminal statutes of the State. Further, every association and Racing Commission official and employee, on becoming aware of a reasonably apparent violation of N.J.S.A. 5:5-71 or other criminal laws of the State of New Jersey, shall communicate in writing the circumstances of such immediately to the New Jersey Racing Commission and the State Police who shall evaluate same and take whatever further action is deemed necessary.

# TRANSPORTATION

## (a)

### TRANSPORTATION OPERATIONS

#### Restricted Parking and Stopping Routes U.S. 40 in Salem County; 161 in Passaic County and 140 in Salem County

**Adopted Amendments: N.J.A.C.  
16:28A-1.28 and 1.85**  
**Adopted New Rule: N.J.A.C. 16:28A-1.103**

Proposed: December 3, 1984 at 16 N.J.R. 3296(a).  
Adopted: January 7, 1985 by Jarrett R. Hunt, Assistant  
Chief Engineer, Traffic and Local Road Design.  
Filed: January 16, 1985 as R.1985 d.35, **without  
change.**

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

Effective Date: February 19, 1985.  
Expiration Date pursuant to Executive Order No.  
66(1978): November 7, 1988.

**Summary of Public Comment and Agency Responses:**  
**No comments received.**

**Full text** of the adoption follows.

16:28A-1.28 Route U.S. 40  
(a) The certain parts of State highway Route U.S. 40 described in this section are designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-5. (No change.)  
6. No stopping or standing in Carneys Point Township, Salem County:

i. Along both sides:  
(1) For the entire length within the corporate limits of Carneys Point Township including all ramps and connections which are under the jurisdiction of the Commissioner of Transportation.

16:28A-1.85 Route 161  
(a) The certain parts of State highway Route 161 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 Clifton City, Passaic County:  
i.-ii. (No change.)  
iii. Along the easterly side:  
(1) Clifton Avenue-Beginning at the northerly curb line of Allwood Road to a point 420 feet northerly therefrom.

16:28A-1.103 Route 140  
(a) The certain parts of State highway Route 140 described in this section shall be designated and established as "no parking" zone 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 Carneys Point Township, Salem County:  
i. Along both sides:  
(1) For the entire length within the corporate limits of Carneys Point Township including all ramps and connections which are under the jurisdiction of the Commissioner of Transportation.

## (b)

### TRANSPORTATION OPERATIONS

#### Restricted Parking and Stopping Routes U.S. 46 in Warren County; 47 in Cape May County and 48 in Salem County

**Adopted Amendments: N.J.A.C.  
16:28A-1.32 and 1.33**  
**Adopted New Rule: N.J.A.C. 16:28A-1.102**

Proposed: December 3, 1984 at 16 N.J.R. 3297(a).  
Adopted: January 4, 1985 by Jarrett R. Hunt, Assistant  
Chief Engineer, Traffic and Local Road Design.  
Filed: January 16, 1985 as R.1985 d.33, **without  
change.**

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

Effective Date: February 19, 1985.  
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-1.32 Route U.S. 46  
(a) The certain parts of State highway Route U.S. 46 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.-12. (No change.)  
13. No stopping or standing in Hackettstown Town, Warren County:

i. (No change.)  
ii. Along the eastbound side:  
(1)-(3) (No change.)  
(4) Beginning at the westerly curb line of Grand Avenue and extending 75 feet westerly therefrom.

14.-15. (No change.)  
(b) (No change.)

16:28A-1.33 Route 47  
(a) The certain parts of State highway Route 47 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 Middle Township, Warren County:  
i. Along both sides:

**ADOPTIONS**

**TREASURY-GENERAL**

- (1) Between Fulling Mill Road and Paula Lane.
  - ii. Along the northbound side:
    - (1) From the center line of Route U.S. 9 to a point 430 feet north of the center line of New York Avenue.
    - iii. Along the southbound side:
      - (1) From the northerly curb line of Indian Trail (County Road 585 Spur), Green Creek to a point 275 feet north therefrom.
      - (2) From the center line of Route U.S. 9 to a point 430 feet north of the center line of New York Avenue.
- 2.-10. (No change.)
  - (b) (No change.)

16:28A-1.102 Route 48

- (a) The certain parts of State highway Route 48 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 Carneys Point Township, Salem County:
    - i. Along both sides:
      - (1) For the entire length within the corporate limits of Carneys Point Township including all ramps and connections which are under the jurisdiction of the Commissioner of Transportation.

**(a)**

**DIVISION OF PUBLIC TRANSPORTATION**

**Zone of Rate Freedom**

**Adopted Amendment: N.J.A.C. 16:53D**

Proposed: December 3, 1984 at 16 N.J.R. 3298(a).  
 Adopted: January 4, 1985 by James A. Crawford, Assistant Commissioner, Transportation Services and Planning.  
 Filed: January 16, 1985 as R.1985 d.34, **without change.**  
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 48:2-20 through 2-25.  
 Effective Date: February 19, 1985.  
 Expiration Date pursuant to Executive Order No. 66(1978): May 7, 1989.  
**Summary of Public Comment and Agency Responses:**  
**No comments received.**  
**Full text of the adoption follows.**

- 16:53D-1.1 General provisions
  - (a) (No change.)
    - (1) (No change.)
    - (2) The following chart sets forth the percentage maximum for decrease to particular rates, fares or charges and the resultant amount as upgraded to the nearest \$.05:

PRESENT FARE	% OF DECREASE	DECREASE UPGRADED TO NEAREST \$.05
\$ .30	20%	\$.10
\$.55-.75	20%	\$.15
\$.80-upward	20%	\$.20+

**TREASURY-GENERAL**

**(b)**

**DIVISION OF PENSIONS**

**Consolidated Police and Firemen's Pension Fund**

**Readoption: N.J.A.C. 17:6**

Proposed: November 5, 1984 at 16 N.J.R. 2997 (b).  
 Adopted: January 9, 1985 by the Consolidated Police and Firemen's Pension Fund Commission, Anthony Ferrazza, Secretary.  
 Filed: January 17, 1985 as R.1985 d.37, **without change.**  
 Authority: N.J.S.A. 43:16-7.  
 Effective Date: February 19, 1985.  
 Expiration Date pursuant to Executive Order 66(1978): February 19, 1989.  
**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. 17:6.**

**(a)****DIVISION OF PENSIONS****Consolidated Police and Firemen's Pension Fund Election of Commission Members****Adopted Amendments: N.J.A.C. 17:6-1.4**

Proposed: November 5, 1984 at 16 N.J.R. 2999 (a).  
 Adopted: January 9, 1985 by the Consolidated Police and Firemen's Pension Fund Commission, Anthony Ferrazza, Secretary.  
 Filed: January 17, 1985 as R.1985 d.36, **without change.**

Authority: N.J.S.A. 43:16-7.

Effective Date: February 19, 1985.

Expiration Date pursuant to Executive Order 66(1978):  
 February 19, 1989.

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

**Full text** of the adoption follows.

17:6-1.4 Election of members; Commission

(a) (No change.)

(b) Requirements for the election notice and petition shall include:

1.-2. (No change.)

3. The election notice will also indicate that at least 20 eligible or retired members must sign the petition in order for a candidate's name to be placed on the ballot.

4.-8. (No change.)

(c)-(j) (No change.)

**TREASURY-TAXATION****(b)****DIVISION OF TAXATION****Corporation Business Tax Definition of a Regular Place of Business; Allocation****Adopted Amendment: N.J.A.C. 18:7-7.1 and 7.2**

Proposed: November 5, 1984 at 16 N.J.R. 2999(b).  
 Adopted: January 25, 1985 by John R. Baldwin, Director, Division of Taxation.  
 Filed: January 28, 1985 as R.1985 d.54, **with changes.**

Authority: N.J.S.A. 54:10A-8 and 54:10A-27.

Effective Date: February 19, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): March 19, 1989.

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

1. The first comment received desired more deviation from the proposed amendment of N.J.A.C. 18:7-7.2 and the practice and policy of the Division of Taxation than the Courts addressed, although the comments admitted that the proposed rule "basically captures all of the factors which have been developed in the related case law on the subject."

After full consideration was given, the Division decided to maintain paragraph (a)2, except that the word "publicly" was deleted:

"The regular place of business should be identifiable as belonging to the taxpayer . . . ."

The Division advised the writer that the proposed amendment did not operate "too harshly on New Jersey taxpayers" because N.J.A.C. 18:7-8.3 provides for the adjustment of the 100 percent allocating taxpayer which does not fit within the parameters of N.J.A.C. 18:7-7.2, relief when that taxpayer is taxed in another state on the same income New Jersey is taxing under the Corporation Business Tax Act.

Finally, the Division changed N.J.A.C. 18:7-7.2(a)4.iii, which the writer said was too hard, relating to a job site, field office or other facility, to reflect that a taxpayer may in fact qualify as a regular place of business if it meets certain requirements in the rule as amended.

The writer was alerted that the Hoeganaes case held that there could be a place of business outside New Jersey that is not a "regular place of business."

2. The second comment received indicated that the Division did not clarify the definition of regular place of business, and desired deviation beyond the proposed amendment of N.J.A.C. 18:7-7.2, and the practice and policy of the Division of Taxation and decided court case law.

The Division replied that the proposed amendments are intended to capture the basic factors developed in the case law and to give them precise meaning. The letter objected to the term "insignificant duties." That term has been deleted and the language revised. The objection to the language in N.J.A.C. 18:7-7.2(a) as highly subjective and without guidance was answered by referring the writer to N.J.A.C. 18:7-8.3 which provides relief when the taxpayer is taxed in another state on the same income New Jersey imposes a tax on, if the taxpayer cannot meet the requirements of N.J.A.C. 18:7-7.2. N.J.A.C. 18:7-8.3 was officially adopted without change on January 7, 1985, no comments having been timely filed. The writer was alerted that the Hoeganaes case held that there could be a place of business outside New Jersey that is not a "regular place of business."

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

18:7-7.1 General instructions regarding allocation of net worth and net income

(a) No corporation, foreign or domestic (other than a corporation entitled and electing to report as an investment company, regulated investment company or real estate investment trust) is entitled to allocate any part of its entire net worth or entire net income outside New Jersey unless during the period covered by the return it maintained a regular place of business outside the State.

(b) (No change.)

(c) The mere ownership of assets outside New Jersey does not constitute a basis for allocating less than 100 percent of the taxpayer's entire net worth or entire net income to New Jersey.

**\*(d) Where the taxpayer does not maintain a regular place of business outside New Jersey and its allocation factor is 100 percent and the taxpayer in fact pays a tax based on or measured by income to another state, see N.J.A.C. 18:7-8.3 which provides for the eligibility and method in computing a reduction in the tax for such taxpayer.\***

18:7-7.2 Regular place of business; definition

(a) A regular place of business is any bona fide office (other than a statutory office), factory, warehouse, or other space of the taxpayer which is regularly maintained, occupied and used by the taxpayer in carrying on its business and in which one or more regular employees are in attendance. The following will assist in the determination of what is a regular place of business.

1. Bona fide office: **\*[The maintenance of a limited space outside New Jersey in which the employee in attendance performs insignificant duties related to the business of the taxpayer does not constitute a regular place of business.]\* \*An office in which an employee in attendance performs significant duties related to the business of the taxpayer. A token office, space of the taxpayer or any place where an employee does not actually perform significant duties constituting part of taxpayer's business does not constitute a regular place of business.\***

2. Space of the taxpayer: The taxpayer must be directly responsible for the expenses incurred in maintaining the regular place of business and must either own or rent the facility in its own name and not through a related person or entity. The regular place of business should be **\*[publicly]\*** identifiable as belonging to the taxpayer by, for example, reflecting the taxpayer's name on the exterior and interior of the building and being listed in the taxpayer's name in a telephone book.

3. Regularly maintained, occupied and used by the taxpayer in carrying on its business: The taxpayer must regularly maintain, occupy and use the premises by employing one or more regular employees who are in attendance during normal working hours. Premises are not regularly maintained, occupied and used in the event employees are in attendance only on a part time basis and, in their absence, telephone messages are received by an answering service or recording device.

4. Regular employee: A regular employee must be under the control and direction of the taxpayer in transacting the taxpayer's business and/or performing work on behalf of the taxpayer. The officers of the taxpayer are generally deemed to be regular employees of the taxpayer while independent contractors and members of the taxpayer's board of directors are not regular employees of the taxpayer. The method or procedure by which a taxpayer reports the **\*[income]\* \*compensation\*** paid to an individual (such as a W-2 form) shall not be conclusive as to whether the individual is a regular employee (See N.J.A.C. 18:7-8.14.):

i. The facilities of a public warehouse located outside New Jersey and utilized to store property of the taxpayer prior to shipment to customers shall not constitute a regular place of business of the taxpayer where the warehouse is not the space of the taxpayer.

ii. The facilities of an independent contractor located outside of New Jersey and used to store, convert, process, finish and/or improve the goods of the taxpayer prior to shipment to customers shall not constitute a regular place of business of the taxpayer.

iii. A job site, field office or other facility**\*[**, which is only maintained, occupied and used on a temporary and limited basis, shall not constitute a regular place of business.]\*

**\*which is not regularly maintained, occupied and used in taxpayer's business or where administrative duties, such as performing payroll functions, telephoning, recordkeeping, banking, accounting, the hiring and firing of employees and similar functions are not performed, is not a regular place of business.\***

iv. The location of inventories outside of New Jersey in the possession of employees in their homes, or in trucks, or in coin-operated machines do not represent space regularly maintained, occupied and used by the taxpayer in carrying on its business.

v. In the event the taxpayer's business is conducted by an independent agent or independent contractor, the place of business of the independent agent or independent contractor shall not be considered a regular place of business of the taxpayer. In addition, any employee of such independent agent or independent contractor shall not be considered a regular employee of the taxpayer.

(b) (No change.)

(c) The mere fact that a taxpayer is subject to an income or franchise tax in other jurisdiction shall not be determinative as to whether the taxpayer maintains a regular place of business outside of New Jersey where taxable status in that jurisdiction is based on criteria other than a regular place of business.

**(a)**

**DIVISION OF TAXATION**

**Corporation Business Tax  
Allocation Factor; Receipts Fraction**

**Adopted Amendments: N.J.A.C. 18:7-8.7,  
8.8, 8.9, 8.10, 8.12**

Proposed: December 17, 1984 at 16 N.J.R. 3420(b).

Adopted: January 23, 1985 by John R. Baldwin, Director, Division of Taxation.

Filed: January 23, 1985 as R.1985 d.43, **without change.**

Authority: N.J.S.A. 54:10A-27.

Effective Date: February 19, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): March 19, 1989.

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

**Full text** of the adoption follows.

18:7-8.7 Business allocation factor; determination of receipts fraction

(a) (No change.)

(b) The receipts of the taxpayer are to be computed on the cash, accrual or other 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 included 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 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.
- 3.-5. renumbered as 2.-4. (No change in text.)
5. All other business receipts earned in New Jersey See example in N.J.A.C. 18:7-8.7(c).

18:7-8.9 Receipts from sales of capital assets; when includible

(a) 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			<u>\$300</u>	

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.

$$\begin{array}{l} \text{Amount of N.J. Gains } \$400 = 80\% \times \$300 \text{ (net gain)} = \$240 \\ \text{Total Gains } \underline{\$500} \end{array}$$

The amount of \$240 is to be included in the numerator of the receipts fraction.

Example 2:

At the time of sale, Property #1 and #3 were located outside New Jersey, whereas Property #2 was located within New Jersey.

$$\begin{array}{l} \text{Amount of N.J. Gains } \underline{-0-} = 0\% \times \$300 \text{ (net gain)} = -0- \\ \text{Total Gains } \underline{\$500} \end{array}$$

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.

$$\begin{array}{l} \text{Amount of N.J. Gains } \$500 = 100\% \times \$300 \text{ (net gain)} = \$300 \\ \text{Total Gains } \underline{\$500} \end{array}$$

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 or selling of securities for trading purposes, these assets are not deemed to be capital assets and the gross receipts from the sales thereof are included in the same manner as other includible 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.)

**ADOPTIONS**

**TREASURY-TAXATION**

(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
<b>Total</b>	<u>\$ 750,000</u>
Revenue miles in New Jersey	100,000
Total revenue miles	500,000
Consignments to points in New Jersey	450,000
<b>Total freight revenues</b>	<u>\$1,000,000</u>
$\$1,000,000 \times \frac{225,000}{750,000} \times \frac{100,000}{500,000}$	= \$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  $\frac{\$ 375,000}{1,000,000}$  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 see N.J.A.C. 18:7-8.7(c)2, Example.

(c) (No change.)

(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)**

**DIVISION OF TAXATION**

**Sales and Use Tax**

**Exempt Organizations; Occasional Sale of Food and Drink and Otherwise Taxable Property and Services**

**Adopted Amendment: N.J.A.C. 18:24-9.11**

Proposed: December 3, 1984 at 16 N.J.R. 3298(b).  
Adopted: January 23, 1985 by John R. Baldwin, Director, Division of Taxation.  
Filed: January 23, 1985 as R.1985 d.44, **without change.**

Authority: N.J.S.A. 54:32B-24.

Effective Date: February 19, 1985.

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.**

18:24-9.11 Organizations carrying on trade or business

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

(d) Where an exempt organization conducts a trade or business in substantial competition with privately operated nonexempt business entities, such organization shall, in the conduct of trade or business, pay and collect sales and use taxes in the same manner required of the privately operated nonexempt business entity.

1. An exempt organization is considered to be engaged in a trade or business in substantial competition with privately operated nonexempt business entities to the extent sales are either made from a shop or store operated by such organization or by or through a nonexempt business entity on behalf of or under agreement with such organization. Sales made by an exempt organization through agreement with a nonexempt business entity for the provision of property or services, payment to be made by the exempt organization to the nonexempt business entity from the sale receipts or after deduction of a sales commission, are subject to sales tax unless the conditions set forth in paragraph 2 below are satisfied. For the purposes of this paragraph, property or services is defined by reference to subsections (a), (b), (c), (d) and (e) of section 3 of the Sales and Use Tax Act (N.J.S.A. 54:32B-3).

2. An exempt organization is not considered to be engaged in a trade or business in substantial competition with privately operated nonexempt business entities to the extent sales are made by such organizations through fund raising events or activities which are of short duration, and are only held on an occasional basis during a calendar year; provided, however, that all such events or activities do not aggregate more than 30 days in a calendar year.

i. This paragraph does not apply to sales made by an exempt organization which are directly related to the purposes for which it was organized.

**OTHER AGENCIES**

**(b)**

**CASINO CONTROL COMMISSION**

**Form of Application**

**Vendor Registration Form**

**Adopted Amendment: N.J.A.C. 19:41-7.14**

Proposed: December 3, 1984 at 16 N.J.R. 3302(a).  
Adopted: January 23, 1985 by New Jersey Casino Control Commission, Walter N. Read, Chairman.  
Filed: January 25, 1985 as R.1985 d.50 **without change.**

Authority: N.J.S.A. 5:12-63(c) and 5:12-70(a).

Effective Date: February 19, 1985.

Operative Date: May 1, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): May 17, 1988.

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

**Copies of the amended Vendor Registration Form can be obtained from the Casino Control Commission, Princeton Pike Office Park, Building No. 5, CN 208, Trenton, New Jersey 08625.**

**(c)**

**CASINO CONTROL COMMISSION**

**Accounting and Internal Controls**

**General Provisions**

**Adopted Amendments: N.J.A.C. 19:45-1.1, 1.25.**

Proposed: December 3, 1984, at 16 N.J.R. 3302(b).  
Adopted: January 22, 1985 by New Jersey Casino Control Commission, Walter N. Read, Chairman.  
Filed: January 23, 1985, as R.1985 d.41, **without change.**

Authority: N.J.S.A. 5:12-63(c), 5:12-69(a), 5:12-7-0(g) and 5:12-101.

Effective Date: February 19, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): April 7, 1988.

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

Counsel on behalf of Resorts International Hotel, Inc., filed the only comment to the proposed amendments. The commentator had three main concerns. First, it was suggested that a different identification procedure be followed when the patron presenting a cash equivalent made payable to the patron is an individual with either a credit application or a front

**ADOPTIONS****OTHER AGENCIES**

money card on file with the casino. Resorts would distinguish these patrons from individuals presenting cash equivalents who are unknown to the casino. The Commission determined that, at this time, it is unnecessary to distinguish between patrons for purposes of the identification procedures in the proposed regulation. The second suggestion made in the comment letter was to include within the definition of cash equivalents "official checks" and "teller checks" as instruments which would be accepted as cash equivalents. Since these instruments are alternative names for instruments already appearing on the list, the Commission has determined it to be unnecessary for these items to be part of the regulation. The final comment recommended that the definition of cash equivalent be expanded to include checks drawn on other licensed New Jersey casinos. The Commission has held in the past that such expansion of the term "cash equivalent" is beyond the regulatory authority of the Commission and an amendment to N.J.S.A. 5:12-101 would be necessary in order to permit casino checks to be accepted as cash equivalents.

**Full text** of the adoption follows.

## 19:45-1.1 Definitions

...  
 "Cash equivalents" means:

1. Certified checks, cashiers checks, treasurers checks, recognized travelers checks or recognized money orders, any of which are made payable to the casino licensee, "bearer" or "cash";

2. Certified checks, cashiers checks, treasurers checks or recognized money orders, any of which are made payable to the presenting patron and endorsed in blank, provided, however, that no such instrument shall be accepted as a cash equivalent if the instrument was originally made payable to any person other than the presenting patron; and

3. Recognized credit cards presented pursuant to N.J.A.C. 19:45-1.25(f).

...

## 19:45-1.25 Procedure for exchange of checks submitted by gaming patrons

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

(e) Cash equivalents, as defined in N.J.A.C. 19:45-1.1, shall only be accepted at the cashiers' cage by general cashiers. Prior to acceptance of any cash equivalent from a patron, the general cashier shall determine the validity of such cash equivalent by performing the necessary verification for each type of cash equivalent and such other procedures as may be required by the issuer of such cash equivalent. Prior to the acceptance of a cash equivalent made payable to the presenting patron, the general cashier shall examine that patron's identification credentials to ensure the patron's identity and shall maintain documentation supporting that examination.

(f)-(m) (No change.)

(a)

**CASINO CONTROL COMMISSION**

**Accounting and Internal Controls  
 Retention and Destruction of Books,  
 Records and Documents**

**Adopted Amendments: N.J.A.C. 19:45-1.2  
 and 1.5**

**Adopted New Rule: N.J.A.C. 19:45-1.8**

Proposed: December 3, 1984 at 16 N.J.R. 3303(a).

Adopted: January 23, 1985 by New Jersey Casino Control Commission, Walter N. Read, Chairman.

Filed: January 25, 1985 as R.1985 d.51 **without change**.

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(l) and 96(e).

Effective Date: February 19, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): April 7, 1988.

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

**Full text** of the adoption follows.

## 19:45-1.2 Accounting records

(a) (No change.)

(b) General accounting records shall be maintained on a double entry system of accounting with transactions recorded on the accrual basis. Detailed, supporting, subsidiary records sufficient to meet the requirements of (c) below shall also be maintained in accordance with the requirements of this chapter.

1. (No change.)

(c) (No change.)

## 19:45-1.5 Forms, records and documents

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

(c) Unless otherwise specified in this chapter or exempted by the Commission, all forms, records, documents, and stored data required to be prepared, maintained, and controlled by this chapter shall:

1. Be in a form prescribed or authorized by the Commission; and

2. Have the name of the establishment and the title of the form, record, document, and stored data imprinted or pre-printed thereon or therein.

(d) (No change.)

## 19:45-1.8 Retention, storage and destruction of books, records and documents

(a) Except as otherwise provided in this section, all original books, records and documents pertaining to the casino licensee's operations and approved hotel shall be:

1. Prepared and maintained in a complete, accurate and legible form;

2. Retained on the site of the approved hotel building for a period of at least seven years;

3. Held immediately available for inspection by agents of the Commission and Division during all hours of operation; and

4. Organized and indexed in such a manner so as to provide immediate accessibility to agents of the Commission and Division.

(b) For the purposes of this section, "books, records and documents" shall be defined as any book, record or document pertaining to, prepared in or generated by the operation of a casino or an approved hotel including, but not limited to, all forms, reports, accounting records, ledgers, subsidiary records, computer generated data, internal audit records, correspondence and personnel records.

(c) A casino licensee may petition the Commission at any time for approval to generate or store original books, records and documents at a secure facility off the site of the approved hotel building. Such petition shall include:

1. A list and detailed description of all original books, records and documents which the casino licensee wishes to generate or store at the off-site facility;
2. A detailed description of the proposed off-site facility, including security and fire safety systems, or a recitation of the prior approval of the facility by the Commission;
3. A description of the internal control procedures necessary for the control or safe transport of the original books, records and documents to be generated or stored at the off-site facility;
4. A description of the system by which the original books, records and documents will be organized and indexed so as to provide ready access to agents of the Commission and Division; and
5. The procedures pursuant to which Commission and Division agents will be able to gain access to the original books, records and documents retained at the off-site facility.

(d) The Commission may prohibit the transfer of any original book, record or document from the approved hotel building or an approved off-site facility to any other approved location unless the particular book, record or document has first been copied and stored on microfilm, microfiche or other suitable media in accordance with the provisions of (e) below.

(e) All original books, records and documents may be copied and stored on a microfilm, microfiche or other suitable media system approved by the Commission. A microfilm, microfiche or other media system shall be approved if it contains the following elements to the satisfaction of the Commission:

1. A system that provides for the processing, preservation and maintenance of books, records and documents in a form which makes them readily available for review and copying on the site of the approved hotel building or other site approved by the Commission;
2. A system of inspection and quality control which ensures that microfilm, microfiche or other media when dis-

played on a reader (viewer) or reproduced on paper exhibit a high degree of legibility and readability;

3. A reader-printer available for use by the Commission or Division on the site of the approved hotel building or other site approved by the Commission which permits the ready location, reading and reproduction of any book, record or document being stored on microfilm, microfiche or other media; and

4. A detailed index of all microfilmed, microfiche or other stored data maintained and arranged in such a manner as to permit the immediate location of any particular book, record or document.

(f) No original book, record or document may be destroyed by a casino licensee without the prior approval of the Commission. The Commission may prohibit the destruction of any original book, record or document unless the particular book, record or document has first been copied and stored on microfilm, microfiche or other suitable media in accordance with the provision of (e) above. No original book, record or document necessary or useful to the audit or certification of a casino licensee's gross revenue may be destroyed unless and until it has been copied and stored on microfilm, microfiche or other suitable media for a period of at least two years. Any petition for approval to destroy books, records or documents pursuant to this section shall include:

1. A list and detailed description of each original book, record, and document which the casino licensee wishes to destroy;
2. A certification as to whether or not each of these books, records or documents has been copied and stored on microfilm, microfiche or other suitable media; and
3. A statement explaining why each of these books, records or documents need not be retained.

(g) Nothing herein shall be construed as relieving a casino licensee from meeting any obligation to prepare or maintain any book, record or document required by any other Federal, state or local governmental body, authority or agency.

# EMERGENCY ADOPTION

## HEALTH

### (a)

#### PUBLIC HEALTH COUNCIL

#### Immunization of Pupils in Schools Emergency Powers for the Commissioner of Health

#### Adopted Emergency Amendments and Concurrent Proposal: N.J.A.C. 8:57-4.16

Emergency Amendment Adopted: January 21, 1985 by  
Public Health Council, Evelyn Geddes, Chairperson.  
Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)):  
January 21, 1985.

Emergency Amendment Filed: January 22, 1985, as  
R.1985 d.40.

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

Emergency Amendment Effective Date: January 22,  
1985.

Emergency Amendment Expiration Date: March 25,  
1985.

A **public hearing** concerning the concurrent proposal will be  
held at the following time and location:

February 25, 1985, 9:30 A.M.  
Room 603  
Health/Agriculture Building, John Fitch Plaza  
Trenton, NJ 08625

Address comments and inquiries to:  
Ronald Altman, M.D.  
Assistant Commissioner  
Epidemiology and Disease Control  
CN 360  
Trenton, NJ 08625

The amendments were adopted on an emergency basis and  
became effective upon acceptance for filing by the Office of  
Administrative Law (see N.J.S.A. 52:14B-4(c) as imple-  
mented by N.J.A.C. 1:30-4.4). Concurrently, the provisions  
of this emergency amendment are being proposed for readop-  
tion in compliance with the normal rulemaking requirements  
of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et  
seq. The readopted amendments become effective upon ac-  
ceptance for filing by the Office of Administrative Law (see  
N.J.A.C. 1:30-4.(d)).

The concurrent proposal is known as PRN 1985-40.

The agency emergency adoption and concurrent proposal  
follows:

#### Summary

The Public Health Council, pursuant to the authority and  
N.J.S.A. 26:1A-7 adopted an emergency amendment to  
N.J.A.C. 8:57-4.16, Emergency Powers of the State Commis-  
sioner of Health and proposes a concurrent proposal so that  
upon the 60-day expiration, the continuation of the rule will  
be in place.

There is an immediate need to amend N.J.A.C. 8:57-4.16  
concerning the emergency powers of the State Commissioner  
of Health in the event of public health immunization emer-  
gencies.

The rules concerning Immunization of Pupils in Schools,  
N.J.A.C. 8:57-4.1 et seq. adopted on September 1, 1975,  
subsequently amended in 1978 and 1982 and readopted in  
1983, give the State Department of Health the power to set  
immunization requirements and place them in the State Sani-  
tary Code under Chapter 14.

The regulations set forth in N.J.A.C. 8:57-4.1 et seq. apply  
to all pupils attending any public or private school in New  
Jersey, including child care centers, nursery schools and kin-  
dergardens, except that the regulations shall not apply to  
pupils under one year of age. Children under one year of age  
are not included in the regulations because several of the  
required immunizations should not be given under one year of  
age.

The immunization requirements in N.J.A.C. 8:57-4.1 apply  
to the seven vaccine preventable diseases of measles, rubella,  
mumps, poliomyelitis, diphtheria, pertussis and tetanus.

The principal or other person in charge of a school, shall  
not knowingly admit or retain a pupil who has not met the  
immunization requirements, except where specific exemptions  
are provided. However, there are no provisions to exempt a  
child from the immunization requirements should a vaccine  
shortage alter the required schedule, such as is occurring with  
Diphtheria and Tetanus Toxoids and Pertussis vaccine (DTP).

This amendment to N.J.A.C. 8:57-4.16 gives the State  
Commissioner of Health the power to temporarily modify the  
requirements of other sections of N.J.A.C. 8:57-4.1 et seq. in  
case of public health immunization emergencies.

#### Social Impact

Adoption of these amendments will impact on many pupils  
under age seven attending public and private schools in New  
Jersey, including nursery schools, day care centers and other  
child care facilities. The amendment alleviates the potential  
problem of some children scheduled to enter New Jersey  
schools in the 1985-86 school year being denied admission if  
they do not meet the Diphtheria and Tetanus Toxoids and  
Pertussis vaccine (DTP) requirements as stated in N.J.A.C.  
8:57-4.10, because of the temporary nationwide DTP short-  
age. In addition, it would alleviate potential problems with  
other regulations in N.J.A.C. 8:57-4 should additional na-  
tional vaccine shortages or other public health vaccine emer-  
gencies occur which alter scheduled immunizations.

#### Economic Impact

In the long-term, there should be no additional economic  
impact of N.J.A.C. 8:57-4.16 because although the Commis-  
sioner would reduce the number of required scheduled immu-  
nizations, either singly or in combination, on a temporary  
basis, he would later restore the requirements when the vac-  
cine availability emergency was over, and steps taken to recall  
all children who missed scheduled doses for remedial immuni-  
zation.

**Full text** of the emergency adoption and concurrent pro-  
posals follows (additions indicated in boldface **thus**; deletions  
indicated in brackets [thus]).

8:57-4.16 [Disease Outbreak Control] **Emergency powers of the State Commissioner of Health**

(a) In the event the State Commissioner of Health determines either that an outbreak or threatened outbreak of disease exists **or other public health immunization emergency**, the Commissioner may issue **either** additional immunization requirements to control the outbreak or threat of an outbreak **or modify immunization requirements to meet the emergency**.

(b) (No change.)

(c) These requirements or amendments to the requirements shall remain in effect until such time the State Commissioner of Health determines that an outbreak or a threatened outbreak no longer exists **or the emergency is declared over, or for three months after the declaration of the emergency, whichever one comes first. The State Commissioner of Health may redeclare a state of emergency if the emergency has not ended.**

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# MISCELLANEOUS NOTICES

## ENVIRONMENTAL PROTECTION

(a)

### CLEAN AIR COUNCIL

#### Air Pollution Control

#### Public Notice

Take notice that pursuant to the "Air Pollution Control Act of 1954, as amended," N.J.S.A. 26:2C-1 et seq., the Clean Air Council will hold a public hearing and workshop as follows:

Wednesday, March 27, 1985  
9:00 A.M.—end of discussion  
Lewis Herrman Labor Education Center  
Auditorium  
Cook College Campus of Rutgers University  
Ryders Lane  
New Brunswick, New Jersey

The purpose of the hearing/workshop will be to receive public comments on the topic:

#### FIFTEEN YEARS OF AIR POLLUTION CONTROL IN NEW JERSEY: UNANSWERED QUESTIONS

In somewhat of a departure from recent years' public hearings, the Council has decided that the format of this year's meeting will be that of a workshop. This format complements the general theme of this year's hearing, that is, how successful has the State of New Jersey and its citizens been at attaining a goal of clear air and how might we attain that goal more efficiently.

Invited speakers from Federal, State and local regulatory agencies, citizens' groups, commerce and industry will be scheduled. The public is invited to participate in the workshop discussion or to provide a formal presentation. In addition, members will be available to listen and respond to citizens' comments after the workshop, which we anticipate will end in the late afternoon.

To aid you in preparing for the workshop, the Clean Air Council has prepared the following questions for discussion:

What is the air pollution control program in New Jersey?

How successful is the Department of Environmental Protection in reaching the goal of "attaining and maintaining ambient air quality in New Jersey?"

What areas of air pollution control have been addressed to the satisfaction of our citizens? How can these problems best be addressed?

How can the Department of Environmental Protection, the Clean Air Council, local and regional environmental agencies and citizens' groups be more effective and responsive in working to improve air pollution control?

There is a host of environmental regulations with which industry, commerce and private citizens must comply. The environmental factors covered by these regulations are usually interrelated and interdependent. Can these factors be consolidated for improved efficiency? Can the costs paid by New Jersey's consumers for environmental improvements be quantified?

Would the usefulness of the air pollution control program be enhanced by making data on ambient air pollutant levels available to interested parties? If yes, in what format and how frequently should the data be supplied?

For further information and registration, contact:

New Jersey Clean Air Council  
C/O Mrs. Helen Benedetti  
State of New Jersey  
Department of Environmental Protection  
CN027 Trenton, New Jersey 08625  
Telephone: (609) 292-6704

(b)

### NOISE CONTROL COUNCIL

#### Helicopter Noise

#### Public Notice

Take notice that pursuant to the "Noise Control Act of 1971," N.J.S.A. 13:1G-1 et seq., the Noise Control Council will hold a public hearing as follows:

Tuesday, March 19, 1985  
9:00 A.M.—end of discussion  
Lewis Herrman Labor Education Center  
Auditorium  
Cook College Campus of Rutgers University  
Ryders Lane  
New Brunswick, New Jersey

The purpose of the hearing will be to receive public comments on the subject of noise related to heliports. Invited speakers include representative from the Federal Aviation Administration, the New Jersey Department of Transportation, and the Port Authority of New York and New Jersey.

For further information and registration, contact:

Office of Noise Control  
State of New Jersey  
Department of Environmental Protection  
65 Prospect Street  
Trenton, NJ 08618  
Telephone: (609) 292-7695 or (609) 984-4161

## HUMAN SERVICES

(c)

### DIVISION OF PUBLIC WELFARE

#### General Assistance Rate in Residential Health Care Facilities

N.J.A.C. 10:85-3.3(f), 4., i

#### Public Notice

In compliance with N.J.A.C. 10:85-3.3(f), 4., i, the Department of Human Services announces that the rate to be paid

**TREASURY-GENERAL**

**MISCELLANEOUS NOTICES**

for General Assistance recipients in Residential Health Care Facilities has been increased from \$464.05 to \$475.05 monthly. This change is effective January 1, 1985 and is the same in both the amount and effective date as the change in the rate for the same service paid to recipients under the Federal program of Supplemental Security Income.

**TREASURY-GENERAL**

**(a)**

**DIVISION OF BUILDING AND CONSTRUCTION**

**Architect-Engineer Selection Notice of Assignments**

The following assignments have been made:

DBC No.	PROJECT	A/E	CCE
E147	Asbestos Removal Various Buildings Marie M. Katzenbach School for the Deaf W. Trenton, NJ	Rossnagel & Assoc., Inc.	\$ 19,000.00
M548	Demolition of Buildings North Princeton Developmental Center Skillman, NJ	Richard M. Horowitz AIA	\$128,000.00
M598	Repair Roof, Parapets & Flashing Medical Services Building Greystone Park Psychiatric Hospital Greystone Park, NJ	Hoagland Assoc., P.A.	\$145,000.00
S187	Renovation of Building #13 Radio Electronic Shop N.J. State Police Headquarters W. Trenton, NJ	Matthew L. Rue, AIA	\$ 69,000.00
S188	Statewide Site Evaluations (For Prototypical Inspection Stations) Division of Motor Vehicles	Armstrong, Jordan & Pease	\$ 25,000.00 services
H763	Painting—Thompson Library; New Dance Studio floor—D'Angola Gym Keane College of N.J. Union, N.J.	Leslie M. Dennis & Son	\$ 53,000.00
M602	Waterproof Wall, Install Foundation Drainage & Sump Pump Division of Youth & Family Services Group Home 98 Oak Creek Rd. East Windsor, NJ	Milstein, Yezzit, Sapp	\$ 25,000.00

C275	Feasibility Study Close Custody Facility Trenton State Prison Trenton, NJ	CUH2A	\$ 35,468.00 services
C012	HVAC Testing & Balancing Dish/Pot Washing Area Food Service Building Youth Correctional Institution Annandale, NJ	Eugene G. Freda, Inc.	\$ 1,000.00 services
H743	Oil Spill Prevention/Control Montclair State College Upper Montclair, NJ	Louis Berger Assoc., Inc.	\$ 85,000.00
A483	Electrical/HVAC Public Service/Computer Installation State House Complex Trenton, NJ	Short & Ford Architects	\$ 2,440.00
M608	Sludge Drying Beds Johnstone, Marlboro, Ancora, Arthur Brisbane, Glen Gardener, Greystone Department of Human Services	Van Cleef Engineering Assoc.	\$ 60,000.00
M611	Bathroom Facility Improvements Maple Hall Ancora Psychiatric Hospital Ancora, NJ	Lammy & Georgio, AIA	\$ 32,000.00
H757	Reassignment: New TV/Radio Studios Bozarth Campus School Glassboro State College Glassboro, NJ	Harry A. Di Fazio R.A., P.A.	\$ 40,000.00
P441	Contract 2, Construction Phase-D & R Canal Dredging Duck Pond Run to Kingston Lock	PRC Harris, Inc.	\$442,653.00 services
C278	Investigation of HVAC Problems Administration & South Compound Cell Blocks Trenton State Prison Trenton, NJ	Wagner Associates	\$ 5,000.00 services
P451	Survey—Removal of Debris Liberty State Park Jersey City, NJ	Keller & Kirkpatrick, P.A.	\$ 3,400.00 services
Competitive Proposals			
	Keller & Kirkpatrick, P.A.	\$ 3,400.00	
	Bernard Berson & Assoc., Inc.	\$ 5,787.00	
	John Zanetakas Assoc., Inc.	(No Proposal Submitted)	
P448	Phase 2 Study Verification Union Lake Dam Millville, NJ	PRC Harris, Inc.	\$ 57,500.00 Services
Competitive Proposals			
	PRC Harris, Inc.	\$ 57,500.00 Lump Sum	
	Ebasco Services, Inc.	\$ 78,900.00 Lump Sum	
	Woodward—Clyde Consultants	\$ 88,000.00 Lump Sum	

# 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 December 3, 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.

## 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
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	17 N.J.R. 1 and 140	January 7, 1985
16 N.J.R. 1635 and 1832	July 2, 1984	17 N.J.R. 141 and 236	January 21, 1985
16 N.J.R. 1833 and 2026	July 16, 1984	17 N.J.R. 237 and 338	February 4, 1985
16 N.J.R. 2027 and 2184	August 6, 1984	17 N.J.R. 339 and	February 19, 1985

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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### ADMINISTRATIVE LAW—TITLE 1

1:1, 1:2	Readopt General Hearing and Summary Proceedings rules	17 N.J.R. 2(a)	
1:2-2	Civil Service cases: readopt conference hearings	16 N.J.R. 3338(a)	
1:2-3	Motor Vehicle cases: readopt hearings on the papers	16 N.J.R. 3339(a)	
1:10	Public welfare hearings	16 N.J.R. 3068(a)	
1:10-17.1	Division of Public Welfare cases	16 N.J.R. 945(a)	
1:11-1.1, 15.1	Insurance filing cases	16 N.J.R. 2866(a)	

(TRANSMITTAL 10, dated December 17, 1984)

### AGRICULTURE—TITLE 2

2:24-1.1, 1.2	Bee diseases: acarine mite quarantine	Emergency	R.1984 d.592	17 N.J.R. 118(a)
2:32-2	Sire Stakes Program	17 N.J.R. 3(a)		
2:52-2.1, 3.1	Notice of intent to change milk supplier	16 N.J.R. 3071(a)		
2:53-4.1	Notice of intent to change milk supplier	16 N.J.R. 3071(a)		
2:76-3.12	Farmland preservation: deed restrictions	16 N.J.R. 2867(a)	R.1984 d.596	17 N.J.R. 63(a)
2:76-4.11	Municipally-approved farmland preservation	16 N.J.R. 2869(a)	R.1984 d.597	17 N.J.R. 64(a)
2:76-6.15	Acquisition of development easements	16 N.J.R. 2871(a)	R.1984 d.595	17 N.J.R. 65(a)
2:90-3	Water conservation project cost sharing	17 N.J.R. 7(a)		

(TRANSMITTAL 27, dated December 17, 1984)

### BANKING—TITLE 3

3:1-9.2-9.5	Home mortgage disclosure	16 N.J.R. 2872(a)		
3:2-1	Readopt rules on Advertising by Financial Institutions	17 N.J.R. 238(a)		
3:30-2.1	Savings associations and Federal reserve requirements	17 N.J.R. 142(a)		

(TRANSMITTAL 25, dated December 17, 1984)

### CIVIL SERVICE—TITLE 4

4:1-1.1-1.10	Purpose and application of rules	16 N.J.R. 1132(a)	R.1984 d.603	17 N.J.R. 66(a)
4:1-2.1	Words and phrases defined	16 N.J.R. 2187(a)	R.1984 d.604	17 N.J.R. 67(a)
4:1-9	Readopt Examination Scoring	16 N.J.R. 2873(a)	R.1985 d.63	17 N.J.R. 387(a)
4:1-12.15	Appointment of eligible certified	17 N.J.R. 10(a)		
4:1-14.6	Interim appointments and return to permanent titles	16 N.J.R. 1134(a)	R.1984 d.605	17 N.J.R. 69(a)

<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R. CITATION)</b>
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)	R.1985 d.61	17 N.J.R. 389(a)
4:1-20.2	Certified Public Manager Program	16 N.J.R. 3072(a)	R.1985 d.62	17 N.J.R. 392(a)
4:2-9	Readopt Examination Scoring	16 N.J.R. 2873(a)	R.1985 d.63	17 N.J.R. 393(a)
4:2-14.1	Interim appointments and return to permanent titles	16 N.J.R. 1134(a)	R.1984 d.605	17 N.J.R. 69(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)	R.1985 d.61	17 N.J.R. 389(a)
4:2-20.7	Certified Public Manager Program	16 N.J.R. 3072(a)	R.1985 d.62	17 N.J.R. 389(a)
4:3-9	Readopt Examination Scoring	16 N.J.R. 2873(a)	R.1985 d.63	17 N.J.R. 387(a)
4:3-14.2	Interim appointments and return to permanent titles	16 N.J.R. 1134(a)	R.1984 d.605	17 N.J.R. 69(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)	R.1985 d.61	17 N.J.R. 389(a)

**(TRANSMITTAL 21, dated October 15, 1984)**

**COMMUNITY AFFAIRS—TITLE 5**

5:18, 18A, 18B	Uniform Fire Code; Fire Code Enforcement; High Level Alarms	16 N.J.R. 3339(b)	R.1985 d.66	17 N.J.R. 394(a)
5:22	Readopt tax exemption rules for improvements to residential dwellings	16 N.J.R. 2191(b)	R.1984 d.590	17 N.J.R. 71(a)
5:23-2.4, 2.6, 2.17A	UCC: rooming and boarding houses	16 N.J.R. 3073(b)	R.1985 d.16	17 N.J.R. 275(a)
5:23-3.8A	UCC: products in violation	16 N.J.R. 3074(a)	R.1985 d.38	17 N.J.R. 421(a)
5:23-3.14, 3.20	Building and mechanical subcodes	17 N.J.R. 239(a)		
5:23-5.4	UCC: trainee suspension, fire protection trainees	16 N.J.R. 3372(a)		
5:27-1.5	UCC: rooming and boarding houses	16 N.J.R. 3073(b)	R.1985 d.16	17 N.J.R. 275(a)
5:27-5.1	Fire safety in rooming and boarding houses	16 N.J.R. 3242(a)	R.1985 d.39	17 N.J.R. 421(b)
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)	R.1984 d.601	17 N.J.R. 72(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)		

**(TRANSMITTAL 25, dated December 17, 1984)**

**EDUCATION—TITLE 6**

6:3-1.2	Board of school estimate	17 N.J.R. 143(a)		
6:8-6.2	Evaluation and certification of school districts	17 N.J.R. 143(b)		
6:11-4.3	Emergency certification	16 N.J.R. 3075(a)	R.1985 d.49	17 N.J.R. 422(a)
6:20-3	Readopt rules on Tuition Public Schools	17 N.J.R. 144(a)		
6:20-3.1	Tuition public schools: determining rates	Emergency	R.1984 d.589	17 N.J.R. 119(a)
6:20-6	Readopt rules on Purchase and Loan of Textbooks	17 N.J.R. 148(a)		
6:20-8	Readopt rules on Public School Contracts	16 N.J.R. 3372(b)		
6:26-3	Readopt rules on Elementary School Summer Sessions	16 N.J.R. 2715(a)	R.1985 d.47	17 N.J.R. 422(a)
6:27-3	Readopt rules on Secondary School Summer Sessions	16 N.J.R. 2717(a)	R.1985 d.48	17 N.J.R. 423(a)
6:29-7.1	Readopt Family Life Education Programs	16 N.J.R. 3377(a)		
6:30-2.5	Adult high school graduation requirements	16 N.J.R. 2719(a)	R.1984 d.614	17 N.J.R. 188(a)
6:31	Readopt Bilingual Education rules	16 N.J.R. 2721(a)	R.1985 d.46	17 N.J.R. 425(a)
6:70	Library network services	16 N.J.R. 3076(a)	R.1985 d.53	17 N.J.R. 428(a)

**(TRANSMITTAL 26, dated December 17, 1984)**

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>ENVIRONMENTAL PROTECTION—TITLE 7</b>				
7:1C-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)		
7:11-2.3, 2.5, 2.8-2.12	Delaware and Raritan Canal water supply system	17 N.J.R. 11(a)		
7:12	Shellfish-growing water classification	16 N.J.R. 3112(a)	R.1985 d.64	17 N.J.R. 433(a)
7:12-2.1, 2.2, 2, 3, 2.4	Correction: Shellfish-growing water classification	16 N.J.R. 3379(a)	R.1985 d.64	17 N.J.R. 433(a)
7:13-1.4, 4.7, 5.2, 5.4	Flood hazard area control	16 N.J.R. 2193(a)	R.1985 d.24	17 N.J.R. 275(b)
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)17	Redelineation of Delaware River in Harmony Township, Warren County	17 N.J.R. 151(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(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)		
7:14A-1.8	Fee schedule for NJPDES permits and applicants	17 N.J.R. 13(a)		
7:19-5	Small water company takeover	16 N.J.R. 3380(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)	R.1985 d.67	17 N.J.R. 438(a)
7:19B	Emergency Water Surcharge Schedule	16 N.J.R. 314(a)	R.1985 d.67	17 N.J.R. 438(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)		
7:25-7.10, 7.11	Taking of oysters and mussels	16 N.J.R. 3385(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 marine waters	16 N.J.R. 2478(a)	R.1984 d.609	17 N.J.R. 79(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)	R.1985 d.65	17 N.J.R. 446(a)
7:26-9.10, 9.11, App. A.	Hazardous waste facilities: closure letters of credit	17 N.J.R. 241(a)		
7:26-10.5	Tank storage containment requirements	17 N.J.R. 152(a)		
7:26-14	Resource Recovery grants and loans	16 N.J.R. 3385(b)		
7:26-14	Resource recovery grants and loans: extension of comment period	17 N.J.R. 242(a)		
7:27	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	R.1985 d.1	17 N.J.R. 188(b)
7:27-14.3	Diesel-powered motor vehicles: idle standard	16 N.J.R. 2887		
7:27-15	Gas-fueled motor vehicles: air pollution control	16 N.J.R. 2889	R.1985 d.2	17 N.J.R. 190(a)
7:27-15.6	Gas-fueled motor vehicle: idle standard	16 N.J.R. 2889		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:27-18.1, 18.2, 18.3, 18.4, 18.7	Air pollution control: emission offset rules	16 N.J.R. 1679(a)	R.1985 d.25	17 N.J.R. 277(a)
7:27B-4	Air Test Method 4 for motor vehicles	16 N.J.R. 2894	R.1985 d.3	17 N.J.R. 194(a)
7:28-24	Readopt Nuclear Medicine Technology rules	17 N.J.R. 22(a)		
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)		
7:30	Pesticide Control Code	17 N.J.R. 242(b)		
7:36	Green Acres Program	16 N.J.R. 2405(b)		

(TRANSMITTAL 26, dated December 17, 1984)

**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)	R.1985 d.42	17 N.J.R. 449(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)		
8:31-26.3, 26.4	Health care facilities: employee physicals; child abuse	16 N.J.R. 3249(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)	R.1984 d.599	17 N.J.R. 80(a)
8:31B-2	1985 uniform bill-patient summary	16 N.J.R. 2728(a)	R.1984 d.610	17 N.J.R. 80(b)
8:31B-2, 3, 4	Hospital Rate Setting rules: temporary waiver of expiration	16 N.J.R. 2733(a)		
8:31B-3.19	RIM methodology for nursing cost allocation: implementation date	16 N.J.R. 2848(b)		
8:31B-3.23	Correction: Hospital reimbursement	16 N.J.R. 2733(b)		
8:31B-3.23, 3.24, 3.43, 3.75	Hospital rate setting; outpatient dialysis reimbursement hospital-based physician costs	16 N.J.R. 669(a)		
8:31B-3.26, App. II	Hospital reimbursement: economic factor	17 N.J.R. 153(a)		
8:31B-3.45	Hospital rate setting	16 N.J.R. 2733(c)	R.1984 d.598	17 N.J.R. 83(a)
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)		
8:33A-2	Surgical facilities: planning and need review	17 N.J.R. 154(a)		
8:33E-2	Cardiac surgical centers	16 N.J.R. 3120(a)	R.1985 d.28	17 N.J.R. 281(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)	R.1985 d.29	17 N.J.R. 284(a)
8:39-2.1	All health care facilities: certificate of need approval letter	16 N.J.R. 3125(a)	R.1985 d.26	17 N.J.R. 285(a)
8:35	Repeal (see 8:43B-8)	16 N.J.R. 188(a)	R.1985 d.30	17 N.J.R. 285(c)
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)	R.1985 d.26	17 N.J.R. 285(a)
8:42A-2.1	Certificate of need approval letter	16 N.J.R. 3125(a)	R.1985 d.26	17 N.J.R. 285(a)
8:42B-2.1	Certificate of need approval letter	16 N.J.R. 3125(a)	R.1985 d.26	17 N.J.R. 285(a)
8:43-1.5	Certificate of need approval letter	16 N.J.R. 3125(a)	R.1985 d.26	17 N.J.R. 285(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)	R.1985 d.26	17 N.J.R. 285(a)
8:43B-1	Licensure of hospital facilities	16 N.J.R. 3275(a)		
8:43B-6	Hospital facilities: readopt Medical Staff rules	16 N.J.R. 3152(a)	R.1985 d.27	17 N.J.R. 285(b)
8:43B-8	Hospital licensure: obstetric and newborn services	16 N.J.R. 188(a)	R.1985 d.30	17 N.J.R. 285(c)
8:43F	Medical day care facilities: readopt licensure standards	16 N.J.R. 3277(a)		
8:45	Clinical laboratory services	17 N.J.R. 268(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:57-4.16	Emergency Powers of Commissioner Emergency	R.1985 d.40	17 N.J.R.	17 N.J.R. 483(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)	R.1984 d.626	17 N.J.R. 196(a)
8:65-7	Prescription requirements for controlled dangerous substances	16 N.J.R. 2327(a)	R.1984 d.607	17 N.J.R. 83(b)
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)		
8:65-10.4	Controlled dangerous substances: additions to Schedule IV	16 N.J.R. 3390(a)		
8:65-10.8	Controlled dangerous substances: exempt chemicals	16 N.J.R. 3280(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)	R.1984 d.613	17 N.J.R. 200(a)
8:71	Generic drug list additions (see 16 N.J.R. 2672(b))	16 N.J.R. 1436(a)	R.1984 d.612	17 N.J.R. 200(b)
8:71	Generic drug list additions	16 N.J.R. 2483(a)	R.1984 d.615	17 N.J.R. 201(a)
8:71	Additions to generic drug list	17 N.J.R. 158(a)		

(TRANSMITTAL 23, dated December 17, 1984)

#### 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)		
9:2-12.2	Teacher education: curriculum	17 N.J.R. 22(b)		
9:6	State College: policies and standards	16 N.J.R. 2209(a)		
9:6-1.2, 3.1, 3.4, 3.5, 3.6, 3.11, 4.4, 4.7, 5.2, 5.13	State Colleges: policies and standards	17 N.J.R. 160(a)		
9:7-3.1	Tuition Aid Grant Award Tables	17 N.J.R. 23(a)		
9:7-4.2	Garden State Scholars: award amounts	16 N.J.R. 3281(a)		
9:7-5.1, 5.4, 5.10	Public Tuition Benefits Program	17 N.J.R. 24(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)		
9:14	Readopt Independent College and University Assistance rules	17 N.J.R. 25(a)		

(TRANSMITTAL 24, dated December 17, 1984)

#### 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)		
10:49-1.7	Administration Manual: utilization of insurance benefits	16 N.J.R. 1933(a)	R.1985 d.7	17 N.J.R. 309(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)		

<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R. CITATION)</b>
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)	R.1985 d.56	17 N.J.R. 451(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)	R.1985 d.52	17 N.J.R. 452(a)
10:54-3	Preproposal: radioimmunoassay laboratory fees	16 N.J.R. 677(a)		
10:55-1	Prosthetic and orthotic services	17 N.J.R. 26(a)		
10:55-1.5, 1.8, 3.1	Shoes and shoe appliances: provider reimbursement	17 N.J.R. 162(a)		
10:56-1.11	Dental Services: utilization of insurance benefits	16 N.J.R. 1933(a)	R.1985 d.7	17 N.J.R. 309(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	Readopt Home Care Services Manual	17 N.J.R. 28(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)
10:66-1.1, 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)	R.1985 d.52	17 N.J.R. 452(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)	R.1985 d.52	17 N.J.R. 452(a)
10:69A-6.9	PAAD: authorization to release prescription information	16 N.J.R. 2050(a)	R.1984 d.617	17 N.J.R. 201(b)
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	17 N.J.R. 163(a)		
10:81-8.22	PAM: eligibility for medical assistance	16 N.J.R. 2740(a)	R.1984 d.618	17 N.J.R. 202(a)
10:81-11.1, 11.4, 11.12	PAM: continuing IV-D services for families that lose AFDC	17 N.J.R. 164(a)		
10:81-11.7, 11.9	PAM: child support and health benefits	17 N.J.R. 165(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)		
10:85-3.1	GAM: household size	17 N.J.R. 37(a)		
10:85-3.2, 10.6	GAM: willingness to work and penalty period	16 N.J.R. 2741(a)		
10:85-3.3	GAM: monthly assistance payment for residential health care	16 N.J.R. 2742(a)		
10:85-3.3, 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)	R.1984 d.593	17 N.J.R. 90(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)		

<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R. CITATION)</b>
10:87-1.14	Food Stamps: release of case file information	17 N.J.R. 166(a)		
10:87-2.16, 2.17, 8.2	Food Stamps: quality control case review	17 N.J.R. 167(a)		
10:87-2.19, 3.17-3.20	Food Stamp Program: work registration and voluntary quit	Emergency	R.1985 d.4	17 N.J.R. 215(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)
10:89-1.1, 2.2, 2.3, 3.1-3.6, 4.1, 5.3	Home Energy Assistance	16 N.J.R. 3217(a)	R.1985 d.5	17 N.J.R. 310(a)
10:94-3.16	Medicaid district offices	17 N.J.R. 38(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)
10:94-5.6	Medicaid Only: health insurance premiums	17 N.J.R. 39(a)		
10:99	Commodities and Services Council: Rehabilitation Facilities	16 N.J.R. 2338(a)	R.1985 d.55	17 N.J.R. 453(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)
10:123-3.2	Residential health care: personal needs allowance	17 N.J.R. 39(b)		

(TRANSMITTAL 23, dated November 19, 1984)

**CORRECTIONS—TITLE 10A**

10A:31	Adult county correctional facilities	16 N.J.R. 3284(a)	R.1985 d.17	17 N.J.R. 312(a)
10A:32	County juvenile detention centers	17 N.J.R. 40(a)		
10A:71	State Parole Board rules	16 N.J.R. 3391(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)	R.1985 d.69	17 N.J.R. 458(a)
11:1-16	Request for rate decrease	16 N.J.R. 3169(a)		
11:1-18	Approval of business names	17 N.J.R. 41(a)		
11:1-19	Uniform registration of branch offices	17 N.J.R. 42(a)		
11:2-10.1	Repeal Personal Lines Insurance rule	16 N.J.R. 2920(a)	R.1985 d.71	17 N.J.R. 458(b)
11:2-19	Approval of insurance schools and company training programs	16 N.J.R. 2920(b)		
11:2-20	License renewal: continuing education requirement	16 N.J.R. 2922(a)		
11:2-21	Property and casualty coverage: underwriting guidelines	16 N.J.R. 2924(a)		
11:2-23	Advertisement of life insurance and annuities	16 N.J.R. 2926(a)		
11:3-7	Automobile Reparation Reform Act rules: 90-day waiver of expiration	16 N.J.R. 2414(a)		
11:3-7	Automobile Reparation Reform Act rules	16 N.J.R. 3417(a)		
11:3-7	Readopt Automobile Reparation Reform Act rules	17 N.J.R. 43(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)	R.1985 d.72	17 N.J.R. 458(c)
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)		
11:4-8	Charitable annuities	16 N.J.R. 3172(a)		
11:4-9	Annuity and deposit fund disclosure	16 N.J.R. 2939(a)		
11:4-16.8	Medicare Supplement Coverage: disclosure standards	16 N.J.R. 2944(a)	R.1985 d.68	17 N.J.R. 459(a)
11:4-20	Insuring of handicapped	17 N.J.R. 168(a)		
11:4-23	Medicare Supplement Policies and Contracts	16 N.J.R. 2945(a)	R.1985 d.70	17 N.J.R. 460(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)		

<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R. CITATION)</b>
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)		
11:10-2	Employees' dental benefit plans	17 N.J.R. 45(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)		
11:15-2.15	Payment of joint fund assessments by local governments	Emergency	R.1984 d.616	17 N.J.R. 218(a)
11:16	Provider verification of services	17 N.J.R. 47(a)		
<b>(TRANSMITTAL 24, dated December 17, 1984)</b>				
<b>LABOR—TITLE 12</b>				
12:15-1.1	Unemployment Compensation: contributions, records and reports	16 N.J.R. 2488(b)		
12:16	Contributions, records, reports	16 N.J.R. 2488(b)		
12:19	Contributions, records, reports	16 N.J.R. 2488(b)		
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)
<b>(TRANSMITTAL 18, dated November 19, 1984)</b>				
<b>COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A</b>				
12A	Departmental rules; small business set-aside contracts	16 N.J.R. 1955(a)	R.1984 d.421	16 N.J.R. 2683(a)
<b>LAW AND PUBLIC SAFETY—TITLE 13</b>				
13:2-17	ABC: readopt rules on Appeals	16 N.J.R. 2954(a)	R.1984 d.608	17 N.J.R. 91(a)
13:2-19	ABC: readopt rules on Disciplinary Proceedings	16 N.J.R. 2957(a)	R.1984 d.606	17 N.J.R. 92(a)
13:2-23.16, -24, -35	ABC proposal: industry marketing and sales practices	16 N.J.R. 3292(a)		
13:2-31	ABC: readopt rules on Seizure Hearings	16 N.J.R. 2959(a)	R.1984 d.602	17 N.J.R. 92(b)
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)		
13:20-26.5, 26.12, 26.16	State inspection of certain trucks and truck tractors	17 N.J.R. 270(a)		
13:20-28	New car inspection	16 N.J.R. 2500(a)	R.1984 d.622	17 N.J.R. 203(a)
13:20-32.14	Reinspection centers: mechanic certification	16 N.J.R. 3175(a)	R.1984 d.619	17 N.J.R. 204(a)
13:20-33.1, 33.50	Licensed reinspection centers	16 N.J.R. 3288(a)	R.1985 d.20	17 N.J.R. 313(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)	R.1985 d.23	17 N.J.R. 313(b)
13:21-1.3, 1.4, 1.5	Driver's licenses and social security numbers	16 N.J.R. 2746(a)		
13:21-15.6	Auto dealers: acceptance of altered title documents	17 N.J.R. 169(a)		
13:22	Motor vehicle race tracks	16 N.J.R. 2503(a)	R.1984 d.591	17 N.J.R. 93(a)
13:25-3.15, 3.16, 3.17	Motorized bicycle operator license	17 N.J.R. 48(a)		
13:27-3.13	Certification of landscape architects: fee schedule	16 N.J.R. 3176(b)	R.1985 d.22	17 N.J.R. 313(c)
13:27-8	Certified landscape architects	17 N.J.R. 169(b)		
13:28-1	Readopt Beauty Culture Industry rules	17 N.J.R. 49(a)		
13:28-2	Readopt rules on Beauty Culture Schools	17 N.J.R. 172(a)		
13:29-3	Accountancy: readopt rules of professional conduct	16 N.J.R. 3418(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)		

<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R. CITATION)</b>
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)	R.1984 d.600	17 N.J.R. 102(a)
13:35-6.14	Therapeutic treatment by unlicensed Medical aides	16 N.J.R. 2065(a)		
13:36-1.6	Mortuary Board fees and charges	17 N.J.R. 50(a)		
13:37-1.8	Schools of professional nursing	17 N.J.R. 51(a)		
13:37-2-6	Nursing licensure	16 N.J.R. 3179(a)		
13:38-2	Readopt rules of optometric practice	16 N.J.R. 3289(a)	R.1985 d.60	17 N.J.R. 467(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)		
13:46	Boxing rules	16 N.J.R. 2241(a)	R.1984 d.611	17 N.J.R. 103(a)
13:46	Boxing Rules	16 N.J.R. 2962(a)		
13:46-4.20, 5.26, -23	Boxing and wrestling standards of conduct	17 N.J.R. 55(a)		
13:46-8.19, 10.7	Scoring of boxing contest; announcement of decision	16 N.J.R. 1956(a)	R.1985 d.21	17 N.J.R. 314(a)
13:46-18.15	Scheduling of boxing programs	16 N.J.R. 1030(a)	R.1985 d.19	17 N.J.R. 314(b)
13:70-2	Thoroughbred rules: readopt Definitions	16 N.J.R. 2976(a)	R.1984 d.621	17 N.J.R. 204(b)
13:70-3.46	Thoroughbred rules: horsemen's bookkeeper account	17 N.J.R. 173(a)		
13:70-6.53	Thoroughbred rules: qualification as New Jersey bred	17 N.J.R. 271(a)		
13:70-12	Thoroughbred Racing: readopt Claiming rules	17 N.J.R. 57(a)		
13:70-14A	Thoroughbred racing: medication and testing procedures	16 N.J.R. 3180(a)	R.1985 d.59	17 N.J.R. 468(a)
13:70-14A.10, 14A.11,	Thoroughbred rules: breathalyzer tests for jockeys and track personnel; urine tests	16 N.J.R. 1457(a)	R.1985 d.57	17 N.J.R. 470(a)
13:71-4	Harness rules: readopt Definitions	16 N.J.R. 2976(a)	R.1984 d.621	17 N.J.R. 204(b)
13:71-7.7	Harness racing applications	17 N.J.R. 57(b)		
13:71-14	Harness Racing: readopt Claiming rules	17 N.J.R. 57(a)		
13:71-19.4	Harness Racing: safety helmets	16 N.J.R. 2977(a)	R.1984 d.620	17 N.J.R. 204(c)
13:71-23	Harness Racing: medication and testing procedures	16 N.J.R. 3182(a)	R.1985 d.58	17 N.J.R. 471(a)

**(TRANSMITTAL 26, dated November 19, 1984)**

**PUBLIC UTILITIES—TITLE 14**

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	17 N.J.R. 174(a)		
14:3-10.9	Petitions by solid waste collectors	16 N.J.R. 3292(b)		
14:9-6	Small water company takeover	16 N.J.R. 3419(a)		
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)**

**ENERGY—TITLE 14A**

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**

**(TRANSMITTAL 14, dated January 3, 1984)**

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>PUBLIC ADVOCATE—TITLE 15A</b>				
<b>(TRANSMITTAL 1, dated March 20, 1978)</b>				
<b>TRANSPORTATION—TITLE 16</b>				
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)
16:28-1.25, 1.72	Speed rates for Route 23 in Wayne and U.S.206 in Somerset County	17 N.J.R. 176(a)		
16:28-1.47	Speed rate on River Drive in Passaic	16 N.J.R. 3185(a)	R.1985 d.13	17 N.J.R. 315(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)	R.1985 d.11	17 N.J.R. 316(a)
16:28A-1.7, 1.46	Bus stops on U.S.9 in Ocean County and U.S.130 in Salem County	17 N.J.R. 177(a)		
16:28A-1.18, 1.31	Parking on Route 27 in Linden and Route 45 in West Deptford	17 N.J.R. 58(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	Trolley stops on Route 35, Ocean County	16 N.J.R. 2691(a)	R.1984 d.588	17 N.J.R. 114(a)
16:28A-1.27, 1.37	Parking on Route 38 in Mt. Laurel and Route 70 in Pennsauken	16 N.J.R. 3188(a)	R.1985 d.10	17 N.J.R. 318(a)
16:28A-1.28, 1.85, 1.103	Parking on Routes 40, 161, and 140	16 N.J.R. 3296(a)	R.1985 d.35	17 N.J.R. 474(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	Parking on US 46 in Bergen County	16 N.J.R. 3419(b)		
16:28A-1.32, 1.33, 1.102	Parking on Routes 46, 47, and 48	16 N.J.R. 3297(a)	R.1985 d.33	17 N.J.R. 474(b)
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)	R.1985 d.12	17 N.J.R. 318(b)
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)
16:29-1.4, 1.46, 1.47, 1.48	No passing zones: Routes 31, 324, 15, and 159	17 N.J.R. 59(a)		
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)	R.1985 d.9	17 N.J.R. 318(c)
16:30-2.8	Stop intersection, Rote 23 in Wayne	16 N.J.R. 3420(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)
16:32-2	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)	R.1985 d.6	17 N.J.R. 319(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)		
16:53A	Readopt Bus Operating Assistance Program rules	17 N.J.R. 272(a)		
16:53D	Zone of rate freedom	16 N.J.R. 3298(a)	R.1985 d.34	17 N.J.R. 475(b)
16:62	Air safety and hazardous zoning	16 N.J.R. 860(b)		
16:62	Public hearing: air safety and hazardous zoning	17 N.J.R. 59(b)		
16:77	Use of occupancy of NJ TRANSIT-owned property	16 N.J.R. 2415(b)	R.1984 d.625	17 N.J.R. 205(a)

**(TRANSMITTAL 23, dated November 19, 1984)**

**TREASURY-GENERAL—TITLE 17**

17:1-1.10	Pensions: minimum adjustments for reconciliation of members' accounts	16 N.J.R. 3192(a)	R.1985 d.8	17 N.J.R. 320(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)

<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R. CITATION)</b>
17:3-2.3	Teachers' pension and annuity: full-time employment	17 N.J.R. 60(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)	R.1985 d.37	17 N.J.R. 475(b)
17:6-1.4	Police and firemen's pension: election of Commission members	16 N.J.R. 2999(a)	R.1985 d.36	17 N.J.R. 476(a)
17:9-2.3	State Health Benefits Program: annual enrollment period	16 N.J.R. 2422(a)	R.1985 d.18	17 N.J.R. 320(b)
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)		
17:16-27	Investment Council: certificates of desposit	17 N.J.R. 60(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)	R.1984 d.586	17 N.J.R. 115(a)
17:20-5	Revocation or suspension of Lottery agent's license	17 N.J.R. 272(b)		
17:20-6.1	Distribution of lottery tickets	16 N.J.R. 2758(b)	R.1984 d.585	17 N.J.R. 115(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)		
18:7-7.1, 7.2	Corporation Tax: "regular place of business"; allocation	16 N.J.R. 2999(b)	R.1985 d.54	17 N.J.R. 476(b)
18:7-8.3	Corporation Tax: discretionary adjustment of 100% allocation factor	16 N.J.R. 3002(a)	R.1984 d.594	17 N.J.R. 115(c)
18:7-8.7-8.10, 8.12	Corporation business tax revisions	16 N.J.R. 3420(b)	R.1985 d.43	17 N.J.R. 477(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)
18:22-1.5	Public utility corporations: accounting methods	16 N.J.R. 3423(a)		
18:24-9.11	Sales by exempt organizations	16 N.J.R. 3298(b)	R.1985 d.44	17 N.J.R. 480(a)
18:24-12	Sale of food and drink	17 N.J.R. 178(a)		
18:24-31.4	Certified vendors within urban enterprise zones	16 N.J.R. 3193(a)	R.1985 d.31	17 N.J.R. 320(c)
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)	R.1985 d.32	17 N.J.R. 321(a)

**(TRANSMITTAL 23, dated November 19, 1984)**

**TITLE 19 SUBTITLES A-L—OTHER AGENCIES (Except Casino Control Commission)**

19:4-4.33, 4.35, 4.36, 4.39, 4.40, 4.42, 6.28	Hackensack Meadowlands waterfront recreation zone	16 N.J.R. 3423(b)		
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)	R.1985 d.14	17 N.J.R. 321(b)
19:8-3.1	Bus tolls	16 N.J.R. 3300(a)	R.1985 d.15	17 N.J.R. 321(c)
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)
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)
19:25-15	Correction: expiration of rules on public financing of gubernatorial campaigns	17 N.J.R. 211(a)		
19:61-5.5	State government positions with casino responsibility	16 N.J.R. 517(a)		

**(TRANSMITTAL 23, dated October 15, 1984)**

<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R. CITATION)</b>
<b>TITLE 19 SUBTITLE K-CASINO CONTROL COMMISSION</b>				
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)	R.1985 d.50	17 N.J.R. 480(b)
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)	R.1985 d.41	17 N.J.R. 480(c)
19:45-1.1, 1.35, 1.46	Redemption of bus coupons	16 N.J.R. 2075(b)	R.1984 d.623	17 N.J.R. 211(b)
19:45-1.2, 1.5 1.8	Recordkeeping	16 N.J.R. 3303(a)	R.1985 d.51	17 N.J.R. 481(a)
19:45-1.11,1.19 1.25, 1.26, 1.29	Accounting and internal controls: patron credit; tips	16 N.J.R. 2076(a)	R.1984 d.624	17 N.J.R. 212(a)
19:45-1.24	Patrons' cash deposits	16 N.J.R. 1710(a)		
19:45-1.27	Patron credit	17 N.J.R. 181(a)		
19:45-1.37	Issuance and use of tokens for slot machines	17 N.J.R. 184(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)		
19:46-1.26, 1.27, 1.33	Issuance and use of tokens for slot machines	17 N.J.R. 184(a)		
19:47-2.4, 3.4, 4.3	Opening of the table for gaming	17 N.J.R. 61(a)		
19:47-8.2	Baccarat: minimum wager	16 N.J.R. 3425(a)		

**(TRANSMITTAL 10, dated October 15, 1984)**

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## NOTES



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## CONTENTS

(Continued from Front Cover)

### RULE ADOPTIONS

<b>CIVIL SERVICE</b>	
Readopted Examination Scoring .....	387(a)
Readopted Performance Evaluation and Employee Training .....	389(a)
Certified Public Manager Program .....	392(a)
Correction: Administrative leave .....	393(a)
<b>COMMUNITY AFFAIRS</b>	
Uniform Fire Code; Fire Code Enforcement; High Level Alarms .....	394(a)
UCC: products in violation .....	421(a)
Fire safety in rooming and boarding houses .....	421(b)
<b>EDUCATION</b>	
Emergency certification .....	422(a)
Readopted rules on Elementary School Summer Sessions .....	422(b)
Readopted rules on Secondary School Summer Sessions .....	423(a)
Readopted Bilingual Education rules .....	425(a)
Library network services .....	428(a)
<b>ENVIRONMENTAL PROTECTION</b>	
Shellfish-growing water classification .....	433(a)
Emergency water supply allocation plan and surcharge schedule rules .....	438(a)
Disposal of asbestos waste .....	446(a)
<b>HEALTH</b>	
Baby foods and ethylene dibromide level .....	449(a)
<b>HUMAN SERVICES</b>	
Hospital Services: readopted Admission and Billing Procedures .....	451(a)
Progress notes for mental health providers .....	452(a)
Commodities and Services Council: Rehabilitation Facilities .....	453(a)
<b>INSURANCE</b>	
Repealed rules on Licensing of Financial Institutions, Subsidiaries and Affiliates .....	458(a)
Repealed Personal Lines Insurance rule .....	458(b)
Moped insurance .....	458(c)
Medicare Supplement Coverage: disclosure provisions .....	459(a)
Medicare Supplement Policies and Contracts .....	460(a)
<b>LAW AND PUBLIC SAFETY</b>	
Readopted rules of optometric practice .....	467(a)
Thoroughbred racing: medication and testing procedures .....	468(a)
Thoroughbred rules: breathalyzer and urine tests .....	470(a)
Harness racing: medication and testing procedures .....	471(a)

<b>TRANSPORTATION</b>	
Parking on Routes 40, 161, 140 .....	474(a)
Parking on Routes 46, 47, 48 .....	474(b)
Zone of rate freedom .....	475(a)
<b>TREASURY-GENERAL</b>	
Readopted: Consolidated Police and Firemen's Pension Fund rules .....	475(b)
Police and firemen's pension: election of Commission members .....	476(a)
<b>TREASURY-TAXATION</b>	
Corporation Tax: "regular place of business"; allocation .....	476(b)
Corporation business tax revisions .....	477(a)
Sales by exempt organizations .....	480(a)
<b>OTHER AGENCIES</b>	
<b>CASINO CONTROL COMMISSION</b>	
Vendor Registration Form .....	480(b)
Cash equivalents .....	480(c)
Recordkeeping .....	481(a)

### EMERGENCY ADOPTION

<b>HEALTH</b>	
Emergency powers of Commissioner .....	483(a)

### MISCELLANEOUS NOTICES

<b>ENVIRONMENTAL PROTECTION</b>	
Air pollution control in New Jersey: public hearing .....	485(a)
Heliport noise: public hearing .....	485(b)
<b>HUMAN SERVICES</b>	
General Assistance rate in residential health care facilities .....	485(c)
<b>TREASURY-GENERAL</b>	
Architect-engineer selection .....	486(a)

### INDEX OF PROPOSED AND ADOPTED RULES .....

#### Filing Deadlines

<b>March 18 issue:</b>	
Proposals .....	<b>February 19</b>
Adoptions .....	<b>February 25</b>
<b>April 1 issue:</b>	
Proposals .....	<b>March 4</b>
Adoptions .....	<b>March 11</b>
<b>April 15 issue:</b>	
Proposals .....	<b>March 18</b>
Adoptions .....	<b>March 25</b>
<b>May 6 issue:</b>	
Proposals .....	<b>April 8</b>
Adoptions .....	<b>April 15</b>