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## REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS\*, PAGE 1494.

**VOLUME 18 NUMBER 14**  
July 21, 1986 Indexed 18 N.J.R. 1433-1504  
(Includes rules filed through June 30, 1986)

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See the Register Index for Subsequent Rulemaking Activity.  
NEXT UPDATE WILL BE DATED JUNE 16, 1986.

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# RULE PROPOSALS

Interested persons may submit, in writing, information or arguments concerning any of the following proposals until **August 20, 1986**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-4.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice.

## BANKING

### (a)

#### DIVISION OF BANKING

#### Bank Holding Company Reporting

#### Proposed New Rule: N.J.A.C. 3:13-1

Authorized By: Mary Little Parell, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:9A-379 (P.L. 1986, c.6).

Proposal Number: PRN 1986-282.

Submit comments by August 20, 1986 to:

Roger F. Wagner, Deputy Commissioner  
Department of Banking  
Division of Banking  
CN 040  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

With the passage of Senate Bill No. 1468, the Legislature dealt with the right of New Jersey to determine the structure of banking within its borders. The Bill was signed into law by Governor Kean on March 28, 1986 as Chapter 6, P.L. 1986 (N.J.S.A. 17:9A-373 et seq.). The Act is commonly known and cited as the "New Jersey Banking Oversight and Change of Control Act."

The Act addresses two important public concerns as New Jersey moves towards consideration of some form of interstate banking. Those concerns are the lack of proper reporting and examination authority over individuals and companies owning banks located in New Jersey and the lack of effective oversight of acquisitions resulting in a change of control of state chartered banks.

The Act applies to all companies or individuals who control banks located in New Jersey and requires the filing of reports with the Commissioner of Banking. The Act also provides the Commissioner of Banking with examination authority over such companies or individuals as well as authority to disapprove the acquisition of a State chartered bank by a company under guidelines provided in the legislation.

The Act permits the Commissioner to promulgate rules and regulations necessary to carry out the purpose of this Act. Toward this end, the Commissioner is proposing N.J.A.C. 3:13-1 to require the registration

of companies owning banking institutions located in New Jersey to determine which institutions are covered by the Act. The rules are intended to gather the minimum necessary information for the Department to determine which bank holding companies are operating within New Jersey, and related information necessary to make a determination as to which provisions of the Act apply to each individual company.

#### Social Impact

With the adoption of these rules, the Department will be able to determine which bank holding companies are operating in New Jersey, which provisions of the Act these companies must follow and what direction bank holding companies are taking within the State. With this knowledge, the Department will be able to adequately oversee and assure an orderly progression toward interstate banking.

#### Economic Impact

The registration requirements of these rules will have little economic impact upon either the companies affected or the banking public. The Department expects to incur nominal administrative cost for the establishment and maintenance of registration information.

Full text of the proposed new rule follows:

#### CHAPTER 13 BANK HOLDING COMPANIES

#### SUBCHAPTER 1. BANK HOLDING COMPANY REGISTRATION

##### 3:13-1.1 Scope and Purpose

This subchapter requires the initial and annual registration of all persons or companies controlling banking institutions located in New Jersey. The subchapter will enable the Commissioner to determine which provisions of the "New Jersey Banking Oversight and Change of Control Act" (N.J.S.A. 17:9A-373) apply to the reporting person or company.

##### 3:13-1.2 Definitions

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

"Bank" shall have the same definition as provided in section 1 of P.L. 1948, c.67 (N.J.S.A. 17:9A-1).

"Banking institution" means a bank or a national banking association having its principal office in this State.

"Bank holding company" means a company which controls a banking institution.

"Commissioner" means the Commissioner of Banking of New Jersey.

## 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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The New Jersey Register (ISSN 0300-6069) is published the first and third Monday of each month by OAL Publications of the Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Telephone: (609) 588-6601. Subscriptions, payable in advance, are one year, \$75 (\$150 by First Class Mail back issues when available, \$8 each. Make checks payable to OAL Publications.

POSTMASTER: Send address changes to: New Jersey Register, CN 301, Trenton, New Jersey 08625. Second Class Postage paid in Trenton, New Jersey and additional mailing offices.

*The NEW JERSEY ADMINISTRATIVE CODE is published on a continuing basis by OAL Publications of the Office of Administrative Law. Subscription rates for this 34-volume, regularly updated set of State administrative rules are available on request. The Code is sold either in the full set or in one of three volumes depending on the Department coverage desired.*

## ENVIRONMENTAL PROTECTION

(a)

### DIVISION OF WATER RESOURCES

#### Surface Water Quality Standards

#### Delaware River Basin

#### Proposed Amendment: N.J.A.C. 7:9-4.14

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-1 et seq., N.J.S.A. 58:10A-1 et seq., and N.J.S.A. 58:11A-1 et seq.

Proposal Number: PRN 1986-281.

DEP Docket No. 030-86-06.

A public hearing concerning this proposal will be held on:

August 5, 1986 at 5:00 P.M. until the close of testimony.  
Cherry Hill Township Municipal Building, Room 208  
820 Mercer Street  
Cherry Hill, New Jersey 08002

Submit comments by August 20, 1986 to:

Shing-Fu Hsueh, Ph.D., P.E., Chief  
Bureau of Systems Analysis and Wasteload Allocation  
Division of Water Resources  
Department of Environmental Protection  
CN 029  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The Department is proposing an amendment of the Surface Water Quality Standards to temporarily suspend the Surface Water Quality Criteria for bacterial quality contained in N.J.A.C. 7:9-4.14(c) and (d) as they relate to the Mainstem Delaware River Zones 2, 3, 4 and tidal tributaries (from their mouth to a distance of one-half mile upstream) entering this portion of the Mainstem Delaware River. This action will allow the Department to gather data on the quality of the Delaware River and Bay needed to determine if the Surface Water Quality Standards, which currently require year-round disinfection of municipal wastewater discharges, should be changed to allow increases in bacterial levels during periods of the year in which primary contact recreation does not occur.

The Delaware River Basin Commission held a public hearing in September 1983 on a proposal to change its disinfection requirements from year-round to seasonal. After consideration of the comments and testimony received on the proposal, the Delaware River Basin Commission concluded that additional data was needed. A study, coordinated by the Delaware River Basin Commission with the participation of the New Jersey Department of Environmental Resources, will be undertaken if this proposal is adopted. This study, as far as the suspension of disinfection, collection of water quality data, and analysis of that data, is an approved study pursuant to N.J.A.C. 7:9-5.4(b)1.ii.

During the first year of the study the following municipal NJPDES dischargers will not be required to disinfect from October 1, 1987 to April 30, 1988:

Trenton	NJ0020923
Fieldsboro	NJ0031310
Florence	NJ0023701
Burlington Township	NJ0021709
Beverly	NJ0027481
Delran	NJ0023507
Riverton	NJ0021610
Cinnaminson	NJ0024007
Palmyra	NJ0024449
Pennsauken	NJ0025348
Gloucester Co. U.A.	NJ0024686
Logan Township MUA	NJ0027545

Additionally, the Camden County MUA—Delaware No. 1 facility will not be required to disinfect from January 1, 1988 (anticipated date of operation) and April 30, 1988.

Water quality data will be collected during the periods of suspended disinfection (October 1, 1987 to April 30, 1988) and disinfection (October 1, 1988 to April 30, 1989) in the Delaware River and upper Delaware Bay. Data for these periods will be compared to each other and to

“Company” means any corporation, partnership, business trust, association, or similar organization, or any other trust, unless by its terms it must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, but shall not include any corporation the majority of the shares of which are owned by the United States or by any state.

“Control” of a banking institution means:

1. Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting securities of the banking institution directly or indirectly, or acting through one or more persons or companies. For purposes of this subchapter, a person or company is deemed to control voting securities or assets owned, controlled, or held directly or indirectly:

- i. As joint tenant, tenant in common, tenant by entirety or as community property; or
- ii. By any subsidiary of the person or company; or
- iii. In a fiduciary capacity, including by pension and profit-sharing trust, for the benefit of the shareholders, members, employees, or individuals serving in similar capacities, of the person or company or of any of its subsidiaries; or
- iv. In a fiduciary capacity for the benefit of the person or company or any of its subsidiaries; or
- v. By a spouse, child, parent or sibling.

2. Control in any manner over the election of a majority of the directors, trustees, general partners or individuals exercising similar functions of the banking institution; or

3. The power to exercise, directly or indirectly, a controlling influence over the management or policies of the banking institution as determined by the commissioner after notice and opportunity for hearing.

“Subsidiary” means a person or company that is controlled by another person or company.

#### 3:13-1.3 Registration

(a) Any person or company which controls a banking institution shall register with the Department of Banking within 30 days from the effective date of this subchapter.

(b) Any person or company not registered with the Department of Banking and which subsequently acquires control of a banking institution after the effective date of this subchapter shall register with the Department of Banking within 30 days of such acquisition.

(c) Registration shall be on forms prescribed by the Commissioner of Banking and shall require submission of the following information:

1. Name of the person or bank holding company;
2. Mailing address of the person or bank holding company;
3. Location of the bank holding company's principal office;
4. Registered agent of the bank holding company;
5. Chief executive officer of the bank holding company;
6. Name and address of any person or company, which controls the bank holding company;
7. List of banking institution subsidiaries;
8. List of subsidiary bank holding companies.

#### 3:13-1.4 Annual registration

(a) Any company which controls a banking institution shall annually file a “Bank Holding Company Registration Form” with the Department. The information required shall be as of December 31 of each year and the form shall be filed by January 31 of following year.

(b) Any person who controls a banking institution shall annually file a “Bank Holding Company Registration Form for Individuals” with the Department. The information required shall be as of December 31 of each year and the form shall be filed by January 31 of the following year.

#### 3:13-1.5 Notification of change

(a) Any registered bank holding company which acquires control of a banking institution or divests itself of a controlled banking institution shall notify the Commissioner within 30 days after the consummation of the transaction.

(b) Any registered person which acquires control of a banking institution or divests himself of a controlled banking institution shall notify the Commissioner within 30 days after the consummation of the transaction.

data from other years and periods of years to determine the impact of seasonal disinfection on water quality and to develop bacterial criteria for periods of seasonal disinfection, if adopted. The Delaware River Basin Commission has evaluated existing bacterial water quality data and has stated that the data indicates that the existing water uses will be protected.

**Social Impact**

The proposed amendment should have minimal adverse social impacts. Existing uses of the Delaware River are being retained and temporary suspension of bacterial limits will occur when water related recreational activities are nonexistent or minimal. Finally, to the extent that this proposal has an adverse social impact, such impact will last only seven months and is necessary for purposes of making the aforementioned study.

**Economic Impact**

The proposed amendment will have a positive economic impact for the dischargers that are allowed to discontinue disinfection for part of the year. This will result from a one-time decrease in annual disinfection costs. Additionally, if the study shows that seasonal disinfection on the Mainstem Delaware River is practicable, long term savings on disinfection costs are possible.

**Environmental Impact**

The proposal to temporarily suspend the bacterial criteria will result in increased bacterial levels during a portion of the year. Based on examination of the available, but limited, data the Delaware River Basin Commission has concluded that all existing water uses will be protected. The effects of this impact will run only for the seven months covered by this proposal.

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

7:19-4.14 Surface water quality criteria

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

(c) Surface Water Quality Criteria for FW2, SE and SC Waters:

1. Bacterial Quality

(counts/100 ml)

i. (No change.)

ii. Fecal Coliforms:

(1)-(5) (No change.)

**(6) The criteria in (2), (3) and (4) above do not apply on tidal tributaries to the Mainstem Delaware River Zones 2, 3 and 4, from their mouth to one-half mile upstream, inclusive, during the period October 1, 1987 to April 30, 1988, unless reinstated earlier by the Commissioner due to elevated bacterial levels which may impair or interfere with existing water uses, or due to cancellation or postponement of the Delaware River Basin Commission's Seasonal Disinfection Study.**

2.-15. (No change.)

(d) Surface Water Quality Criteria for the Mainstream Delaware River and Delaware Bay—Zones 1C through 6:

1.-2. (No change.)

3. Bacterial Quality

i. (No change.)

ii. Fecal Coliforms:

(1)-(4) (No change.)

**(5) The criteria in (2) and (3) above do not apply during the period from October 1, 1987 to April 30, 1988, unless reinstated earlier by the Commissioner due to elevations in bacterial levels which may impair or interfere with existing water uses, or due to cancellation or postponement of the Delaware River Basin Commission's Seasonal Discharge Study.**

4.-15. (No change.)

**HEALTH**

**(a)**

**THE COMMISSIONER**

**Certificate of Need: Megavoltage Radiation Oncology Services**

**Proposed Readoption with Amendments: N.J.A.C. 8:33I**

Authorized By: J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-5 and 26:2H-9.

Proposal Number: PRN 1986-277.

Submit comments by August 20, 1986 to:

John A. Calabria, Chief

New Jersey Department of Health

Health Systems Review

Room 604, CN 360

Trenton, New Jersey 08625.

The agency proposal follow:

**Summary**

Radiation oncology involves the use of ionizing radiation in the treatment of neoplastic disease. The basis for such treatment is the apparent difference in responsiveness to radiation by cancerous and non-cancerous cells. (Cancer cells are more susceptible, for the most part, to the damaging effects of such radiation.) Application of this radiation can be directed at either curative or palliative intent.

Not all forms of cancer, however, are effectively treated by radiation. In many cases surgery or chemotherapy are deemed more appropriate. Each of these three cancer treatments can be employed either individually or collectively depending on the type and extent of the disease and the intent of the treatment.

Only a relatively small portion of the general population requires radiotherapy treatment at any one time. This, combined with the fact that radiotherapy treatment departments require multi-disciplinary involvement and elaborate equipment, space, technical personnel and specialized support facilities in order to provide optimal care, make radiotherapy an appropriate subject for regionalization. All of these facilities must be carefully planned on a regional basis to ensure that all patients receive the maximum opportunity for cure or palliation of their cancer. Such planning is not only proper but necessary if quality care is to be provided without unnecessary duplication of costly installations.

Historically in New Jersey, the development of megavoltage radiotherapy services has not been adequately sensitive to the regional nature of this type of service. As a result, there are a considerable number of hospital megavoltage programs and units that are either in operation, are approved for operation, or are approved for additional units at existing programs.

Current trends in radiation oncology treatment often require the use of several different beam energies in an effort to achieve optimal irradiation dosage to the target region while minimizing potentially harmful

dosage to neighboring healthy tissue. The depth and characteristics of penetration of the radiation beam, in tissue, depend on its energy and type.

In view of these trends and wherever justifiable in terms of appropriate program utilization and compliance with all other standards and criteria established in this subchapter, the Department will be guided by an overall commitment to the promotion of multiple multi-equipment sites statewide. Such a commitment will encourage megavoltage treatment settings that are capable of providing oncologic patients with a greater range of clinical opportunities and would offer a more cost-effective alternative to a further proliferation of single unit megavoltage programs.

In its encouragement of multiple unit megavoltage programs, when justified by the program's utilization, case-mix and "track record", the Department proposes that such multi-equipment sites include at least one intermediate or medium/high range megavoltage unit as defined in this subchapter.

Similarly, single unit megavoltage programs unable to satisfy the utilization, case-mix and "track record" criteria contained in this subchapter over a thirty-six month period will result in a recommendation to deny reimbursement for the service by the Department to the Hospital Rate-Setting Commission and/or the loss of licensure for the service.

Given the more than ample supply of existing programs and given the fact that many of the existing programs are not meeting the minimum requirements for efficient operation outlined in this subchapter, it is the position of the Department and its Statewide Health Coordinating Council (SHCC) that there is no need for any additional programs in the State and that future certificates of need for new megavoltage programs shall be recommended for denial. Any further proliferation of new programs will aggravate the capacity of existing programs to operate efficiently and will result in raising the cost of delivering the service to the health consuming public.

Only those applicants that are operating at acceptable utilization levels and are meeting each of the other standards and criteria delineated within this subchapter will be granted certificate of need approval for additional or replacement megavoltage equipment.

The current text of N.J.A.C. 8:33I, Standards and Criteria for the Planning and Certification of Need for Megavoltage Radiation Oncology Units in Health Care Facilities, is due to expire on November 2, 1986, in accordance with Executive Order No. 66(1978). This proposed re-adoption with amendments is being presented at this time in order to maintain the effective use of the current regulation and to establish a new expiration date under the provisions of Executive Order No. 66.

The Standards and Criteria for the Planning and Certification of Need for Megavoltage Radiation Oncology Units in Health Care Facilities were originally adopted by the Health Care Administration Board on October 6, 1977, as R.1977 d.399. The regulation was subsequently amended in 1981 and 1984 in order to respond to technological change and patient need. The entire rule has been reviewed by the Commissioner's Ad Hoc Technical Advisory Committee and the Statewide Health Coordinating Council (SHCC).

The proposed amendments are not substantive, and are designed to clarify existing Department policy with regard to the consistent treatment of single and multiple unit megavoltage radiation oncology programs. The rule continues to prohibit the establishment of new megavoltage programs and encourages the development of multiple multi-equipment megavoltage sites wherever justified on the basis of the standards and criteria contained in this subchapter. Such multi-unit sites would be capable of providing a greater range of clinical opportunities for oncologic patients in a cost-effective manner. This approach offers opportunities for both improved quality of care and cost-effective delivery of care not realizable through the further proliferation of single unit megavoltage programs.

The Department is therefore retaining this megavoltage radiation oncology policy in its proposed re-adoption and offering the following non-substantive amendments for clarification purposes:

1. Adding the word "or" at N.J.A.C. 8:33I-1.2(b)1. to indicate that minimum actual utilization for a second unit shall be either in terms of numbers of patients (500) or numbers of patient visits (9,000). This corrects a printing omission following the previous initial publication (August 20, 1984 at 16 N.J.R. 2205(a)) which contained the word "or", and the final adoption of the rule (November 5, 1984 at 16 N.J.R. 3027) which inadvertently omitted the word.

2. The actual effective date for the previous amendments (November 5, 1984) to this rule is being inserted at N.J.A.C. 8:33I-1.2(a) to clarify the starting date for possible future reimbursement or licensing penalties for underutilization.

3. A similar section as that found at N.J.A.C. 8:33I-1.2(a) is being added at N.J.A.C. 8:33I-1.2(b)5 and 6 to reiterate the Department's intention to treat all underutilized megavoltage radiation oncology services equitably, regardless of the number of megavoltage units in a program.

4. The Foreword has been deleted from the rule and has been placed in the Summary. Statewide megavoltage inventory and utilization figures have been noted in The Social and Economic Impact statements.

#### Social Impact

N.J.S.A. 26:2H-1 (as amended) recognizes as "public policy of the State that hospitals and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health. In order to provide for the protection and promotion of the health of inhabitants of the State, promote the financial solvency of hospitals and similar health care facilities and contain the rising cost of health care services, the State Department of Health . . . shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and health care services, and health facility cost containment programs . . ."

The New Jersey State Health Plan recognizes the underutilization of inpatient beds, specialty services, and expensive equipment as an important factor contributing to the rapidly escalating costs of health care. Regionalization of specialty services and equipment, such as the delivery of megavoltage oncology services, is viewed as an important mechanism for promoting health by improving the capabilities of services and quality of care offered, by improving the security of hospitals offering these expensive services, and by containing the rising costs of health care services.

An analysis of existing megavoltage oncology programs operating throughout the State suggests that a significant number of these programs are operating below their respective capacities. This underutilization continues to exist despite the trend in recent years of increasing numbers of patients being treated with megavoltage radiation equipment in the State. According to the Department of Health's most recent analysis, existing megavoltage therapy equipment operated at approximately 66 percent of treatment capacity in 1985.

#### Economic Impact

There are currently 32 hospital-based megavoltage programs in the State operating a total of 47 megavoltage units. Three additional megavoltage units have been approved in existing programs together with an additional three units that have been approved for placement in two new megavoltage programs that are expected to be operational in the near future. Also included in the State's megavoltage equipment inventory are a total of 12 megavoltage units located in private physician offices. Capital costs associated with the purchase of the hospital-based equipment (53 units) amounts to approximately \$37 million. Recurring operational costs for hospital based megavoltage equipment is estimated at approximately \$20 million annually (at current prices). These figures do not reflect the capital and operating costs associated with the 12 privately owned megavoltage units in the State. Two of these private units will be eliminated when the two new hospital-based megavoltage programs become activated.

The proposed amendments will have little effect on existing megavoltage programs, since they will continue to be approved for the replacement or addition of megavoltage units where they comply with the proposed standards and criteria contained in this subchapter. However, megavoltage programs that consistently fail to achieve minimum utilization requirements may be denied reimbursement for the service by the Department to the Hospital Rate-Setting Commission and/or lose licensure for the service.

The proposed re-adoption provides guidance to decision-makers in the Certificate of Need process and assures that there are available, well-utilized, quality services for oncologic patients requiring megavoltage radiation oncology treatment. During 1985, a total of 15,963 patients received megavoltage therapy during the course of 295,298 patient visits at New Jersey's 32 hospital-based megavoltage radiation oncology programs.

In the absence of these rules the Department can expect the proliferation of single unit megavoltage programs that can only serve to reduce the overall cost effectiveness of the state's existing megavoltage resources. The unrestricted addition of these new programs would inhibit the achievement of a greater range of clinical opportunities for oncologic patients made available through the advancement of multiple multi-unit programs statewide.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:33I.

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

CHAPTER 33I  
CERTIFICATE OF NEED: MEGAVOLTAGE  
RADIATION ONCOLOGY UNITS

SUBCHAPTER 1. STANDARDS AND CRITERIA FOR THE  
PLANNING AND CERTIFICATION OF NEED  
FOR MEGAVOLTAGE RADIATION  
ONCOLOGY UNITS IN HEALTH CARE  
FACILITIES

FOREWORD

[Radiation oncology involves the use of ionizing radiation in the treatment of neoplastic disease. The basis for such treatment is the apparent difference in responsiveness to radiation by cancerous and non-cancerous cells. (Cancer cells are more susceptible, for the most part, to the damaging effects of such radiation). Application of this radiation can be directed at either curative or palliative intent. Not all forms of cancer, however, are effectively treated by radiation. In many cases surgery or chemotherapy are deemed more appropriate. Each of these three cancer treatments can be employed either individually or collectively depending on the type and extent of the disease and the intent of the treatment.

Only a relatively small portion of the general population requires radiotherapy treatment at any one time. This, combined with the fact that radiotherapy treatment departments require multi-disciplinary involvement and elaborate equipment, space, technical personnel and specialized support facilities in order to provide optimal care, make radiotherapy an appropriate subject for regionalization. All of these facilities must be carefully planned on a regional basis to ensure that all patients receive the maximum opportunity for cure or palliation of their cancer. Such planning is not only proper but necessary if quality care is to be provided without unnecessary duplication of costly installations.

Historically in New Jersey, the development of megavoltage radiotherapy services has not been adequately sensitive to the regional nature of this type of service. As a result, there are a considerable number of hospital megavoltage programs and units that are either in operation 31 programs with 44 units, are approved for operation three programs with four units, or are approved for additional units at existing programs four units. A total of 34 hospital programs with 52 units are either operational or are approved for operation to date. Added to this megavoltage inventory are an additional 11 megavoltage programs in private offices operating a total of 12 units.

Current trends in radiation oncology treatment often require the use of several different beam energies in an effort to achieve optimal irradiation dosage to the target region while minimizing potentially harmful dosage to neighboring healthy tissue. The depth and characteristics of penetration of the radiation beam, in tissue, depend on its energy and type.

In view of these trends and wherever justifiable in terms of appropriate program utilization and compliance with all other standards and criteria established in this subchapter, the Department will be guided by an overall commitment to the promotion of multiple multi-equipment sites statewide. Such a commitment will encourage megavoltage treatment settings that are capable of providing oncologic patients with a greater range of clinical opportunities and would offer a more cost-effective alternative to a further proliferation of single unit megavoltage programs.

In its encouragement of multiple unit megavoltage programs, when justified by the program's utilization, case-mix and "track record", the Department proposed that such multi-equipment sites include at least one intermediate or medium/high range megavoltage unit as defined in this subchapter.

Similarly, single unit megavoltage programs unable to satisfy the utilization, case-mix and "track record" criteria contained in this subchapter over a thirty-six month period will result in a recommendation to deny reimbursement for the service by the Department to the Hospital Rate-Setting commission and/or the loss of licensure for the service.

Given the more than ample supply of existing programs and given the fact that many of the existing programs are not meeting the minimum requirements for efficient operation outlined in this subchapter, it is the position of the Department and its Statewide Health Coordinating Council (SHCC) that there is no need for any additional programs in the State and that future certificates of need for new megavoltage programs shall be recommended for denial. Any further proliferation of new programs

will aggravate the capacity of existing programs to operate efficiently and will result in raising the cost of delivering the service to the health consuming public.

Only those applicants that are operating at acceptable utilization levels and are meeting each of the other standards and criteria delineated within this subchapter will be granted certificate of need approval for additional or replacement megavoltage equipment.]

8:33I-1.1 Definitions

For purposes of this subchapter, the following definitions shall apply: "Megavoltage unit" refers to an individual piece of radiotherapy equipment (generating beam energies in excess of 1,000 kilovolts).

"Megavoltage program" refers to an entire therapy department or facility which may house single or multiple megavoltage units.

Energy levels of megavoltage units shall be defined as follows:

1. Low energy—4 to 6 MV X-ray energy (exclusive of electron energy capability and inclusive of cobalt 60 units with [skin to source] source to skin distance [of] equal to or greater than 80 cm);
2. Medium/high energy—greater than 6 MV X-ray or MeV electron energy to 20 MV X-ray or MeV electron energy;
3. Higher energy—energies in excess of 20 MV.

8:33I-1.2 Utilization of megavoltage units and programs

(a) Single unit megavoltage programs shall be subject to the following:

1. Minimum annual utilization for megavoltage unit replacement in single unit megavoltage programs is 300 total patients or 6,200 patient visits. Consideration of minimum utilization standard compliance will take into account the output of Cobalt 60 devices and the age of the equipment.

2. Failure to achieve an average minimum utilization as defined in (a)1. above during any 36 consecutive months following [the effective date of this subchapter] **November 5, 1984** may result in a recommendation for denial of reimbursement for the service by the Department to the Hospital Rate-Setting Commission and/or the loss of licensure for the service.

i. Megavoltage units with medium/high energy capability or some combination thereof (commonly referred to as dual energy units) will be approved for single unit megavoltage programs where they have documented compliance with minimum utilization requirements as defined in 1. above and can justify the equipment in terms of clinical effectiveness and cost efficiency.

(b) Multiple unit megavoltage programs shall be subject to the following:

1. Applicants for a second megavoltage unit at an existing megavoltage program must meet a minimum acceptable annual utilization level (on its existing unit) of 9,000 actual patient visits or 500 actual patients and project the achievement of 10,500 patient visits and 600 patients within two years of installation of the second megavoltage unit.

2.-4. (No change.)

5. Failure to achieve projected minimum utilization as defined in (b)1. above within two years of installation of the additional megavoltage equipment, may result in a recommendation for denial of reimbursement for the service by the Department to the Hospital Rate-Setting Commission and/or the loss of licensure for the service.

6. Multiple unit programs failing to achieve an average minimum utilization as defined in (b)1. or 4. above, whichever is applicable, during any 36 consecutive months following November 5, 1984 may result in a recommendation for denial of reimbursement for the service by the Department to the Hospital Rate-Setting Commission and/or the loss of licensure for the service.

8:33I-1.3 New megavoltage programs

No applications for new megavoltage programs will be accepted for processing by the Department pending annual review of these rules by the Ad Hoc Technical Advisory Committee (see N.J.A.C. 8:33I-1.5(a)10).

**In the event of a megavoltage program closure, a statewide needs assessment will be undertaken by the Department to consider a one time only processing of applications for new megavoltage services.**

**HIGHER EDUCATION****(a)****BOARD OF HIGHER EDUCATION****Community Colleges****Policies and Procedures****Proposed Readoption: N.J.A.C. 9:4-1.8, 3.2 and 3.9; 5.2, 5.3, 5.4, 5.5, 5.7 and 5.11; 6.2, 6.3, 6.4 and 6.5; 8.1, 8.2, 8.3 and 8.4****Proposed Readoption with Amendments: N.J.A.C. 9:4-1.1, 1.2, 1.3, 1.5, 1.6, 1.7, 1.9 and 1.12; 3.1, 3.5, 3.6, 3.10, 3.11, 3.12, 3.13, 3.14, 3.15 and 3.16; 5.1, 5.6, 5.8, 5.9 and 5.10; 6.1 and 6.6; 7.1, 7.2, 7.3 and 7.4****Proposed Repeal: N.J.A.C. 9:4-1.10, 1.11 and 1.13; 9:4-2; 9:4-3.3, 3.4 and 3.8; 9:4-4****Proposed New Rules: N.J.A.C. 9:4-1.4, 1.14 and 1.15**

Authorized By: Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.

Authority: N.J.S.A. 18A:64A-7.

Proposal Number: PRN 1986-275.

Submit comments by August 20, 1986 to:

Grey J. Dimenna, Esq.  
Administrative Practice Officer  
Department of Higher Education  
225 West State Street  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The Board of Education is statutorily charged with establishing rules and regulations governing the establishment and operation of community colleges in New Jersey. Pursuant to the provisions of Executive Order No. 66(1978), the chapter of the administrative code governing the community college sector will expire on November 2, 1986. The Department has reviewed these rules and found them to be necessary, reasonable, and proper for the purpose for which they were promulgated, with modifications in some areas. In readopting the community college regulations, the Board of Higher Education has made certain changes as more fully set forth below.

The proposal repeals N.J.A.C. 9:4-1.10, Students and student services, N.J.A.C. 9:4-1.11, Library; learning resources, N.J.A.C. 9:4-1.13, Official Publications, N.J.A.C. 9:4-4, Uniform Manual of Accounts for State-Supported County Colleges. The regulations in N.J.A.C. 9:4-2 were partially deleted as unnecessary and/or outdated and otherwise incorporated within various sections of N.J.A.C. 9:4-1, Regulations for New Jersey Community Colleges. N.J.A.C. 9:4-4 was deleted to eliminate conflict and redundancy with the provisions of N.J.A.C. 9:4-3, Auditing and Accounting Standards for County Colleges. The other individual sections within the chapter which were deleted contained unnecessary or outdated material.

In addition, the proposal sets forth amendments to several sections which seek to clarify or refine particular policies and also partially delete unnecessary materials. Lastly, three new sections have been proposed in the areas of admissions and special academic sessions.

The rules proposed for re adoption establish requirements for admissions, degree standards, academic personnel policies, accounting procedures, reduction in force policies, tenure and multi-year contract rules and county college contracts.

**Social Impact**

The proposal will permit the Board and Department of Higher Education to assure the educational and administrative quality of the community college system in New Jersey. The proposed changes heretofore mentioned do not serve to decrease current standards for the sector, but serve to clarify and improve them.

Specifically, the proposal would have the following impact on the following areas:

**Admissions**

The proposal sets forth particular requirements for regional program admissions, to ensure that out-of-county residents will be able to attend such programs; and for special sessions, to delineate tuition charges and attendance of students at such sessions. The proposal also clarifies admissions through the chargeback system by indicating eligible coursework and allowing an entire program of study to be taken at a single institution.

**Facilities**

The proposal expands the authority of the college board of trustees by providing that rehabilitation/renovation projects of existing facilities which do not exceed \$100,000, and which are not financed in whole or in part by State funds, proceed upon the arrival of the college board of trustees.

**Auditing and Accounting Standards**

The proposal deletes several sections which are outdated or unnecessary and provides for compliance with the standards set forth in College and University Business Administration (1982).

**Reduction in Force Policies**

The proposal clarifies language regarding reemployment of employees by including all professional personnel. Also, rehiring procedures for equally qualified personnel and salary levels upon rehiring are clarified. Lastly, the proposal sets a time limit for annual contract professional employees to be on a rehiring list until the expiration of each affected individual's annual contract.

**Economic Impact**

The proposed rules represent, for the most part, qualitative standards which do not involve additional costs to the institution or agency. The proposal does not eliminate several reporting requirements by the county community colleges to the Department of Higher Education, which will result in an undeterminable savings to the colleges.

**Full text** of the proposed re adoption appears in the New Jersey Administrative Code at N.J.A.C. 9:4.

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

**SUBCHAPTER 1. REGULATIONS FOR NEW JERSEY COMMUNITY COLLEGES****9:4-1.1 Authorizations**

(a) The establishment and operation of community colleges in New Jersey is authorized principally by chapter 64A (titled "County Colleges") of the Education Law of New Jersey, as revised [July 27, 1972] N.J.S.A. 18A:64A-1 through [29], chargeback] **78** and other relevant statutes of the Education Law of New Jersey (Title 18A).

(b) (No change.)

(c) [These standards are established under the principal authorization of chapter 64A (titled "County Colleges") of the Education Law of New Jersey, as revised July 27, 1972 (N.J.S.A. 18A:64-1 through 29), chargeback and other relevant statutes of the Education Law of New Jersey (Title 18A). These standards will be reviewed and revised by the Chancellor of Higher Education from time to time as may become necessary.] **The community colleges shall also be governed by the provisions of N.J.A.C. 9:1-1 et seq., Licensing and Degree Approval Standards. In the event of a conflict between the provisions of this chapter and the provisions of N.J.A.C. 9:1-1 et seq., the regulations under this chapter shall govern.**

[(d) The regulations and standards herein shall apply equally to institutions under contract to a county coordinating agency established pursuant to N.J.S.A. 18A:64B (titled "Junior Colleges") except for the following regulations: N.J.A.C. 9:4-1.3(c), 9:4-1.3(d), 9:4-1.9(h), 9:4-1.9(i) and 9:4-1.9(j), or any other regulation or standard hereafter determined to be inappropriate to such institutions.]

**9:4-1.2 Establishment**

(a) An application to establish a community college shall be filed with the Chancellor of Higher Education. [Supporting information shall describe the proposed college, including:

1.-8. (No change.)

9. Any other information the Chancellor of Higher Education may from time to time require.] **The application shall contain such information as the Chancellor may require.**

(b) Authorization to open a community college shall constitute licensure for a period of two years. No later than the third semester of operation each community college shall be visited by the Chancellor of Higher Education or his designated representatives for the purposes of

granting initial state licensure. Renewal of licensure shall be for a period not to exceed three years [except that accreditation by the Middle States Association of Colleges and Secondary Schools and adherence to all pertinent laws, regulations and standards shall fulfill continuing licensure requirements]. **With respect to institutions accredited by the Middle States Association of Colleges and Secondary Schools, the Board of Higher Education will ordinarily accept such accreditation as sufficient for the continuance of licensure and approval, provided that the institution shall submit to the Chancellor within 30 days of its receipt of the letter of the Middle States Association informing the institution of its accreditation status and provided that the representatives of the Chancellor working with the Middle States team participate fully in accreditation visits, excluding voting privileges with respect to recommendations related to accreditation status. The Chancellor may proceed separately with respect to an institution and recommend to the Board with respect to continuation of institutional license. The Board of Higher Education may direct the Chancellor at any time to proceed with respect to any particular institution as though that institution were not accredited by the Middle States Association.**

(c) A branch campus shall be defined as a physical facility removed from the main campus which offers full-time programs and other courses of the main campus or which offers programs leading to degrees or diplomas or certificates without the substantial use of the classroom facilities of the main campus.

(d) A community college may establish branch campuses in order to make community college programs more readily available to the community served by a college, if such branch is provided for in the college master plan approved by the Board of Higher Education or if approved subsequently by the Board of Higher Education.

(e) An extension center shall be defined as a physical facility, utilized on a part-time basis, removed from the main campus which offers a limited number of courses applicable to a degree, certificate or diploma.

(f) Each community college shall request and receive prior approval of the Chancellor of Higher Education before establishing extension centers in off-campus facilities.]

#### 9:4-1.3 Organization and administration

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

(c) The board of trustees shall meet and reorganize annually [on the first Monday in] **during the month of November and shall schedule at least nine additional meetings a year. The board may meet, at the call of its chairman, or of any [two] four board members, at any other time that the business of the board may require.**

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

(f) The board of trustees of each community college shall file with the Chancellor of Higher Education, and incorporate in the official college catalog, a statement of philosophy outlining the purposes and objectives of the community college and setting forth programs consistent with the definition and legal functions of the community college. Among the purposes and objectives shall be the following:

1.-3. (No change.)

**4. To provide supplementary education and training for those in the work force who seek to upgrade their capabilities or to develop new skills.**

**5. To provide general education to facilitate the development of the broadly educated person, one who is able to think effectively, communicate thoughts, make relevant judgments and distinguish among values.**

**6. To provide opportunities for entering or continuing higher education for those with scholastic deficiencies who show promise of success.**

**7. To provide counseling, guidance and academic advisement to assist students in self-appraisal and self-determination of goals and objectives.**

(g) [The president shall be appointed by the board of trustees and shall be the chief executive officer of the community college. The board of trustees shall hold the president accountable for the effective implementation of board policy.] **The board of trustees should maintain a plan for action in the case of disruption of its normal activities.**

(h) [The president shall be responsible to the board of trustees and shall direct all activities of the community college in accordance with pertinent laws, by-laws, regulations, standards and policies concerning the operation of the community college.] **Candidates for president to be considered by the board should have appropriate academic credentials, previous administrative experience and an understanding of, and a commitment to the philosophy and mission of a community college. Previous teaching experience, as well as administrative experience at the community college level, is highly desirable.**

(i) [The president of a community college shall, subject to policies of the board of trustees of the community college, establish such rules as may be necessary for the operation of the community college, subject to

the provisions of laws, of these regulations and of the standards of the Chancellor of Higher Education.] **The president shall assure the relevance of the college programs and services to the service boundary area and conformance to Statewide regional areas of specialization.**

(j) Each community college shall file annually with the Chancellor of Higher Education an administrative organization chart, which shall show the lines of authority and the relationship of academic, student personnel, business and administrative services within the community college.]

#### 9:1-1.4 Regional program admissions

**Admissions criteria for a particular program of study which has been designated by the Board of Higher Education as a regional program shall not consider an applicant's county of residence nor shall a community college limit the number of out-of-county residents it allows into a regional program which is sponsors.**

#### 9:4-1.5 Chargeback

[(b) Eligibility rules include:]

[1.] (a) (No change in text.)

[2.] (b) A student residing in a county which sponsors a community or county-assisted college and who desires to attend an out-of-county college of the aforementioned type, pursuant to criteria of [the aforesaid law] **N.J.S.A. 18A:64A-23**, shall first receive certification of eligibility for chargeback assistance from the aforementioned home-county college. This certification will be executed upon a standard Department of Higher Education form.

(c) Upon acceptance by an out-of-county community or county-assisted college, the student shall present evidence of such acceptance with the certification of eligibility from the home-county college to the chief fiscal officer of his county of residence and request certification of residence [pursuant to N.J.S.A. 18A:64A-23 or N.J.S.A. 18A:64B-4 and the regulations herein promulgated].

[(a)] (d) The issuance of a certificate[s] of residence [pursuant to N.J.S.A. 18A:64A-23 and N.J.S.A. 18A:64B-4] by the home county's chief fiscal officer signifies the county's agreement to pay its share of the operating expenses of the receiving community or county-assisted college[s], as provided in the aforementioned law[s], and by criteria and procedures [hereinafter specified] **provided for within this section.**

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

(f) **A student attending an out-of-county community or county-assisted college on a chargeback basis because his local county or county-assisted college does not offer a particular program of study shall be permitted to register for and attend, on a chargeback basis, all course work necessary to satisfy the requirements of such a program of study. This requirement shall apply whether or not any portion of that course work is offered at the student's local county or county-assisted college.**

(g) **Students required to enroll in remedial reading as part of a comprehensive remedial effort must take that full sequence of remediation in the home country. After the successful completion of such remediation, students will be eligible to take the intended courses of study on a chargeback basis at the out-of-county institution.**

(h) **Students who require remediation other than reading may take such remediation as part of the program of study at the out-of-county institution on a chargeback basis.**

(i) **A student shall be eligible to attend an out-of-county community or county-assisted college on a chargeback basis if the student's local county or county-assisted college cannot admit the student into a particular course or program of study desired by the student due to lack of available space in the course or program of study which continues or will continue over one year from the initial date of attempted admission.**

[(e)] (j) The college accepting such out-of-county students shall charge the sending counties [, pursuant to N.J.S.A. 18A:64A-23.] according to a system of differential chargeback rates as determined by the Board of Higher Education, calculating the amount to be charged in the following manner:

1. The total number of the current year's estimated resident credit-hour and equivalent credit-hour enrollments and divide by 30 to [equal] **obtain the full-time equivalent student enrollments (resident FTE's).**

i. Equivalent credit hours for State fundable non-credit course offerings shall be calculated by dividing total **non-credit course** contact hours by 15.

ii. Resident credit-hour and equivalent credit-hour enrollments are defined as all county resident enrollments which are **eligible for State [fundable and/or not self-supporting] funding pursuant to N.J.A.C. 9:4-3.10 and 9:4-3.12.**

2. Divide the sum of all resident FTE's from [(e)] above] (j)1 **of this section** into the current county operating appropriation to determine the base chargeback rate.

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3. Multiply the sending county's eligible credit-hour and equivalent credit-hour enrollments for each **differential funding** group by their respective differential ratios, and total. Divide the **total** by 30 to determine the sending county's eligible weighted FTE's.

4. (No change.)

5. The receiving college shall adjust the charge to sending counties when audited actual credit-hour and equivalent credit-hour enrollments become available from the annual enrollment audit. The calculations in (e)1-4 above (i)1 to 4 above shall be made utilizing the audited actual credit-hour and equivalent credit-hour enrollments divided by 30 to equal FTE's and adjusted county operating appropriation, if applicable. The difference between this adjusted chargeback amount and the previous State Fiscal Year's chargeback amount to each sending county shall be added to or subtracted from the following year's initial chargeback billing to said sending counties, and be so identified upon that bill.

[(f)](k) (No change in text.)

[(g)](l) The receiving college may expend the \$1.00 per credit hour collected for minor capital purposes as part of its chargeback billing subject to the following limitations:

1. Expenditures must be for capital items as defined in Chapter 5 of College and University Business Administration [(1974)] (1982) and revisions thereof.

2. (No change.)

#### 9:4-1.6 Educational programs

(a) (No change.)

(b) The regular academic year shall fall within a ten-month period and shall include [no less than 32] a **minimum of 30 weeks** of regularly scheduled student-faculty instructional activity. At colleges using formal final examination periods of up to two weeks, such examination periods may be in lieu of instructional periods., **exclusive of final examination periods.** Holidays and summer sessions are to be excluded.

(c) An associate degree program shall be a course of study which requires not less than 60 nor more than 66 semester hours, or the equivalent, except when required for licensure or accreditation by a recognized agency or when required for transfer of full junior status, where applicable. In addition, exceptions may be made above the maximum when requested by the institution and approved by the curriculum coordinating committee. Each program shall provide for the following:

1. (No change.)

2. [Prescription of e]Electives which offer opportunities for enriched general education, preprofessional education and/or competence in an appropriate occupational field.

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

(f) The curriculum of a community college shall be consistent with the statement of philosophy adopted by the board of trustees of the community college and shall be in accordance with regulations and standards set by the [Chancellor] **Board** of Higher Education.

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

(i) **Rules concerning the awarding of degree credit for non-traditional experience include the following:**

1. **Board of trustees should be encouraged to adopt institutional policies to award credit for successful completion of advanced placement courses taken in high school, for successful completion of college-level examinations, or for successful performance on locally devised tests designed for this purpose. Such policies should be described in the official college catalog.**

2. **Any policy to award degree credit in a specific educational program should be consistent with institution-wide policies.**

3. **Community colleges should not normally accept credits from an institution not recognized as a full member or candidate status of a regional accrediting association, except that credit may be given for successful passage of advanced placement tests or review by an appropriate individual or committee for courses taken at non-credit institutions or work experience.**

4. **Upon adoption, any such policy should be filed with the Chancellor of Higher Education.**

(i) **Advisory committees, as appropriate, should be established for each program area proposed or offered, to assist in its development and evaluation.**

#### 9:4-1.7 Curriculum coordinating committee

(a) A curriculum coordinating committee shall be appointed by the [c] Council of [c]County [c]Colleges, with the composition of the committee and the number of members and terms of office of the members to be determined by the council. The Chancellor of Higher Education shall designate a representative to the committee, who may participate in all meetings but have no vote.

(b) (No change.)

(c) The curriculum coordinating committee shall establish its own by-laws subject to the approval of the [c]Council of [c]County [C]Colleges and appoint its own officers.

(d)-(f) (No change.)

#### 9:4-1.8 Evaluation

(No change.)

#### 9:4-1.9 Personnel

[(a)] Each community college shall file with the Chancellor of Higher Education its written personnel policies governing professional and non-professional personnel.]

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

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

[(d)] The community college shall establish and publish, where appropriate, a specific procedure for the processing of grievances and file it with the Chancellor of Higher Education initially and each time it is revised.

(e) Each community college shall maintain a program for orientation of new faculty and a continuing program of in-service training.]

[(f)](c) Each community college shall [file with the Chancellor of Higher Education] **establish** a policy statement regarding performance evaluations for all employees, and shall make such statement available to all employees.

[(g)] Each community college shall file with the Chancellor of Higher Education a compensation policy for professional and nonprofessional employees.

(h) All full-time faculty members of the community colleges are eligible to participate in the alternate benefit program, except for persons temporarily in the United States under an F or J visa and members of the Teachers' Pension and Annuity Fund or the Public Employees Retirement System who were employed by the community colleges on October 1, 1968, and who did not elect to transfer to the alternate benefit program before March 1, 1969. Full-time faculty members are defined as employees under full-time contract possessing the faculty rank of professor, associate professor, assistant professor, instructor or assistant instructor.

(i) The Teachers' Insurance and Annuity Association and the College Retirement Equity Fund are the exclusive agencies for providing retirement annuity contracts for the alternate benefit program of the community college.

(j) The community colleges are authorized to enter into agreement with full-time faculty members, who participate in the alternate benefit program for voluntary salary reductions to a maximum of ten percent of the employee's base salary, to purchase from the Teacher's Insurance and Annuity Association annuities which are tax deferrable under Section 403(b) of the Federal Internal Revenue Code, as amended.

(k) The community college shall publish in the appropriate places its policy and the details of its leave and benefit programs, and file it with the Chancellor of Higher Education initially and each time the policy is revised.

(l) Each community college shall file with the Chancellor of Higher Education a policy statement regarding employee health services, and shall make such statement for all employees.]

(d) **Employment of faculty should include the following considerations:**

1. **Faculty members shall have earned Master's degrees or the equivalent in the subject or the fields to be taught. Relevant training and experience may be substituted for earned degrees.**

2. **So far as practicable, instruction should be given by faculty members who are employed full-time. The full-time faculty may be supplemented by equally competent part-time teachers serving under the supervision of full-time professional staff.**

3. **Professional personnel responsible for supervision should be employed on a full-time basis.**

(e) **Adequate secretarial and clerical staff should be available for faculty as well as sufficient laboratory and technical assistants to make laboratory and large-group instruction meaningful and efficient,**

(f) **Each college should publish its policies and criteria for promotion and dismissal.**

(g) **A compensation policy should establish salary ranges which should not exceed those established by the Board of Higher Education for the State colleges.**

(h) **The normal teaching load should not be less than the load in effect at the State colleges.**

(i) **The total institutional student-teaching faculty ratio should normally not exceed 25 students to one instructor on a full-time basis, excepting cases where self-instructional or differentiated staffing approaches are used, nor should it be below 15 to one. In computing the ratio of students to teachers**

for the institution, the total number of full-time equated students should be divided by the total number of full-time equated teaching faculty members.

(j) The community college should devise means to evaluate the effectiveness of the instructional processes utilized in terms of student learning outcomes.

(k) The community college should establish specific standards and job designations for such chairmen and define their relationship to the faculty and administration, if such positions are provided for in the community college's pattern of organization.

#### 9:4-1.10 [Students and student services] (Reserved)

[(a) Each community college shall adopt policies governing admissions and attendance at the community colleges consistent with State regulations established by the Board of Higher Education.

(b) Admissions criteria for a particular program that has been designated by the Board of Higher Education as a regional program shall not incorporate county of residence.

(c) Each community college shall provide a guidance and counseling program which shall be available to all students.

(d) Each community college shall file with the Chancellor of Higher Education a policy statement regarding student health services, and shall make such services available to all students.

(e) Each community college shall print in its catalog or in such other student information handbooks as are pertinent a clear statement of student rights and responsibilities and appeal procedures.]

#### 9:4-1.11 [Library; learning resources] (Reserved)

[Each community college shall provide for an adequate library or learning resources center organized and equipped to complement the educational programs of the community colleges, in accordance with standards established by the Chancellor of Higher Education.]

#### 9:4-1.12 Physical facilities

(a) Each community college shall prepare for approval by the Board of Higher Education a long-range building plan, based on educational specifications incorporating the institution's objectives and philosophy, to include plans for physical plant and site analyses and financial projections with cost estimates for each phase of development planned for a [ten] five-year period. Such plan shall be submitted to the Board of Higher Education not later than the second year of operation of a community college and shall be subject to review by the Board of Higher Education every three years.

(b) Each community college shall prepare for physical facilities in accordance with N.J.A.C. 9:3-1 et seq., the Facilities Planning Standards and Approval Procedures for New Jersey Public Colleges and Universities.

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

(f) A community college board of trustees contemplating the construction, remodeling, or rehabilitation of a building(s), or the acquisition of a building(s) or land for community college purposes shall submit an application for approval of the proposed construction, remodeling, rehabilitation of the building or acquisition to the [Chancellor] Board of Higher Education **except as provided in (g) below**. Such application shall set forth the need for the construction, remodeling, or rehabilitation of the building(s), or for the acquisition of the building(s) or land, the purpose for which it is to be used and an estimate of the cost of land to be acquired, site development, construction architect's fees, equipment and other items necessary for the completion of the facility as set forth in the Facilities Planning Standards and Approval Procedures for New Jersey Public Colleges and Universities.

(g) [Physical facilities at all community colleges shall meet all applicable space, cost, fire safety, building, sanitation, heating, lighting, ventilation and other such standards of the State of New Jersey and the Chancellor of Higher Education.] **Any construction project that involves the renovation, rehabilitation, or alteration of existing facilities, the total project cost of which does not exceed \$100,000, and which is not financed in whole or in part by State funds may proceed with the approval of the college board of trustees.**

[(h) Bidding procedures and the awarding of contracts for construction of physical facilities at community colleges shall be in accordance with State law.]

#### 9:4-1.13 [Official publications] (Reserved)

[Updated catalogs shall be printed at intervals not to exceed two calendar years, in quantities sufficient to supply interested persons. Five copies of each official catalog shall be deposited with the Chancellor of Higher Education.]

#### 9:4-1.14 Admission requirements

The requirements for admission to the community college and, where applicable, to individual programs as determined by the board of trustees should be appropriate in terms of the purpose of the institution and objectives of its educational programs. The requirements should be clearly defined, published and promulgated so that all applicants may know of the policies and standards of the institution.

#### 9:4-1.15 Special sessions

(a) A special session shall be any session, other than the traditional fall and spring semesters, including summer and/or mini-sessions.

(b) No student shall be required to take course work during a special session to complete a curriculum of program of study within the prescribed period of time for completion of such a curriculum or program of study.

(c) Tuition fees charged to students enrolled in special sessions shall not exceed the maximum per credit hour tuition charges established annually by the Board of Higher Education; however, such tuition amounts shall not be included in determining compliance with the maximum annual tuition ceiling established by the Board of Higher Education.

### SUBCHAPTER 2. [STANDARDS FOR NEW JERSEY COMMUNITY COLLEGES] (RESERVED)

(See New Jersey Administrative Code for text of proposed repeal.)

### SUBCHAPTER 3. AUDITING AND ACCOUNTING STANDARDS FOR COUNTY COLLEGES

#### 9:4-3.1 Accounting finances

(a) The accounting system and reports of a county college shall be maintained in accordance with Chapter 5 of College and University Business Administration [(1974)] (1982) published by the National Association of College and University Business [Offices] Officers, One Dupont Circle, Washington, D.C. 20036 and any subsequent revisions thereof except where otherwise specifically required by these regulations. **Each college shall adopt a system of accounts consistent with the standards and guidelines of the American Institute of Certified Public Accountants.** Costs borne by the State and county on behalf of the college shall not be reflected on the financial statements and related reports of the college.

(b)-(e) (No change.)

(f) Any student who has been a New Jersey resident for one year or more and who moves intrastate from one county to another shall be charged no more than the prevailing in-county tuition rate by the community college located in the county to which he has moved.]

#### 9:4-3.2 Submission of budgets

(No change.)

#### 9:4-3.3 [System of accounts] (Reserved)

[Each college shall adopt a system of accounts consistent with the standards and guidelines of the American Institute of Certified Public Accountants.]

#### 9:4-3.4 [Determination and categorization of assets to be capitalized] (Reserved)

[(a) The value of an article as well as its estimated useful life, should be considered in determining whether it should be capitalized.

(b) It is suggested that items of furniture, equipment, fixtures and audio visual hardware having an estimated useful life of three or more years and a cost of \$100.00 or more be capitalized and included in the inventory of capital assets. Included in the cost of the item will be installation and other costs that give the asset utility.

(c) For furniture, fixtures, equipment, and audio visual hardware, items having an estimated useful life of three years, a cost of \$100.00 or more must be included in the category, except for library books which may have a unit cost under \$25.00.

(d) The initial acquisition of library books, documents, and audio visual software, exclusive of binding or cataloging charges, may be capitalized. Replacement of library books or audio visual software subsequent to the initial acquisition period are not to be classified as capital expenditures, but are to be included in the budget for current operations.]

#### 9:4-3.5 Interfund expenditures, transfers and balances

**(a) Each community college board of trustees shall develop a written policy governing interfund expenditures and transfers.**

[(a)](b) [There shall be no] **All expenditures or transfers by one fund for the benefit of another fund [without the approval of the board of trustees] shall be in accordance with the above board of trustee policy.**

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

## 9:4-3.6 Consolidated reports

The financial statements of any development fund, foundation or other organization that is affiliated or associated with, or controlled by, the college shall be combined with the financial statements of the college or presented separately. [Upon consolidation, the financial statements of the separate organization are to be reflected in the applicable fund groups of the college. Donor restricted gifts expendable for current operations held by a separate foundation shall be included in the current restricted funds group, endowment funds in the endowment and funds functioning as endowment group, and unexpended plant funds in the plant funds group as endowment group. Changes in the balances of these funds shall also be reflected in the appropriate statements of changes in funds balances.] The financial activities of auxiliary enterprises managed and administered by a separate organization shall be included in the auxiliary enterprises section of the college's statement of current income and expenditures.

## 9:4-3.7 (Reserved)

## 9:4-3.8 [Annual report of program costs] (Reserved)

[Each county college shall submit an annual report of program costs prepared in accordance with the National Center of Higher Education Management Systems, Resource Requirement Prediction Model 1.6, pursuant to a deadline established by the Department of Higher Education.]

## 9:4-3.9 Appropriated resources

(No change.)

## 9:4-3.10 State support

(a) When direct costs of instruction for courses, credit or non-credit, are properly classified as current unrestricted expenditures [as defined in College and University Business Administration (1982) and revisions thereof (see N.J.A.C. 9:4-3.1),] these costs are considered to be directly incurred by the college and the related credit and equivalent credit hours are eligible to be counted in determining State support, except as restricted by other policies and regulations.

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

## 9:4-3.11 Calculation of full-time equivalent enrollments (FTE's)

(a) Annual full-time equivalent student enrollments (FTE's) for [full-time, part-time and summer] all session students shall be calculated by dividing total annual credit-hour and equivalent credit-hour enrollments by 30.

(b) (No change.)

## 9:4-3.12 Noncredit courses

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

i. The county college shall maintain [permanent] documentation in accordance with state requirements for audit purposes including, but not limited to, student registration, student attendance, and course descriptions for noncredit courses eligible for state funding.

(j)-(l) (No change.)

## 9:4-3.13 Residency

(a) A student's residency status shall be determined pursuant to N.J.A.C. 9:5-1.1 et seq.

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

[(b)] Out-of-county residents means students maintaining a permanent domicile in the State of New Jersey for a period of six months or more, as evidenced by a certificate of residence, but in a county other than the county or counties sponsoring the college.

(c) Out-of State residents means students maintaining a permanent domicile in a state other than New Jersey and students who have maintained a permanent domicile within the State of New Jersey for a period of less than six months.]

(c) Any New Jersey resident student who moves intrastate from one county to another shall be charged no more than the prevailing in-county tuition rate by the county college located in the county to which the student has moved.

## 9:4-3.14 Enrollment data

(a) Enrollment data shall be accumulated and maintained by each college in a format and according to such differential categories as promulgated by the Department of Higher Education. Tenth-day enrollments shall be used for calculating enrollments during the academic year [and fifth-day enrollments during summer sessions]. **The tenth-day enrollment shall be considered the tenth day of classes, excluding weekends and holidays. For summer and other sessions, a prorated point in time shall be used, based on the duration of the session.**

(b) (No change.)

## 9:4-3.15 Audit rules

(a) In preparing the audited schedule of credit-hour enrollments and equivalent credit hours by differential category as required by this section, the audit firm must adhere to the following:

1.-10. (No change.)

[11. The auditor shall obtain from the college and submit with the year end audit report a certificate which states that in planning for the offering of developmental courses, the college has formally assessed the needs of its service area and the offerings of other public institutions.]

[12.] **11.** The auditor shall additionally certify that he or she has reviewed [N.J.A.C. 9:4-3.10-9:4-3.15] and [has] completed the enrollment audit in accordance with the rules and guidelines as outlined **pursuant to this subchapter.**

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

## 9:4-3.16 Educational and general expenditure base defined

(a) Educational and general expenditures are defined as all institutional current unrestricted fund expenditures and mandatory transfers as are defined in College and University Business Administration (1982) and revisions thereof [(see N.J.A.C. 9:4-3.1)] **pursuant to this subchapter.**

(b) Adjusted educational and general expenditures for the purposes of determining annual county college sector State funding requests shall be defined as total educational and general expenditures adjusted as outlined below:

1. (No change.)

2. Educational and general expenditures decreased by the following:

i. (No change.)

ii. Direct expenditures for [P]public [S]service activities [as defined in College and University Business Administration (1982) and revisions thereof (see N.J.A.C. 9:4-3.1)].

iii.-iv. (No change.)

(c) (No change.)

## SUBCHAPTER 4. [UNIFORM MANUAL OF ACCOUNTS FOR STATE-SUPPORTED COUNTY COLLEGES] (RESERVED)

(See New Jersey Administrative Code for text of proposed repeal.)

## SUBCHAPTER 5. COUNTY COLLEGE[S] REDUCTION IN FORCE [RULES] POLICIES

## 9:4-5.1 Scope and purpose

These policies govern the procedures to be used by the county colleges when it becomes necessary to reduce the number of [tenured faculty or multi-year contract] **professional** employees of a college due to a fiscal crisis, a natural diminution in the number of students in a program or at the institution or a reduction of programs. The policies address the rights of employees at the county colleges of New Jersey under such circumstances. These regulations shall not apply to those persons laid off pursuant to non-renewal of contracts or early termination provisions.

## 9:4-5.2 Declaration of need for a reduction in force

(No change.)

## 9:4-5.3 Plans and recommendations

(No change.)

## 9:4-5.4 Consultation with college community

(No change.)

## 9:4-5.5 Affirmative action

(No change.)

## 9:4-5.6 Review of recommendations

(a) (No change.)

(b) If such recommendations as noted in (a) above include the layoff of employees, the board shall be guided by the following [principals] **principles:**

1.-8. (No change.)

## 9:4-5.7 Notice requirement; time period

(No change.)

## 9:4-5.8 Reemployment lists; generally

(a) With respect to reemployment rights of [tenured faculty and multi-year contract] **professional** employees, the college president shall establish separate reemployment lists for academic and administrative positions, including the names and qualifications of all [tenured or multi-year contract] **professional** employees on layoff status.

(b) (No change.)

(c) The college president shall not fill a vacancy in an administrative position in any layoff unit in which a layoff has occurred without first making a written offer of employment to the person on the administrative

reemployment list whom the president in his administrative judgment confirmed by the Board of Trustees, believes is most qualified for the position.

(d) In the event that two or more persons on an academic reemployment list [have accepted an offer of reemployment] are equally qualified for a single faculty position, the college shall give reemployment preference in reverse of the order in which they were laid off: i.e. last laid off, first rehired. Where the president deems two or more persons on the administrative reemployment list to be equally qualified for an administrative position, the person with the longest employment within the layoff unit in which the vacancy exists shall be preferred.

(e) A person offered reemployment shall have two weeks from receipt to respond to an offer, which shall be sent by certified mail, return receipt requested, after which the offer shall be deemed to have expired and the person to have waived any rights to reemployment under these regulations. Persons on a reemployment list shall have the obligation to keep the college office designated by the president informed of current addresses.

(f) (No change.)

#### 9:4-5.9 Reemployment lists; time period

(a) Faculty who are tenured on the date of [lay-off] layoff shall remain on the reemployment lists for a period of five years from the date of layoff.

(b) Employees serving under a multi-year contract on the date of layoff shall remain on the reemployment lists for the duration of the multi-year contract.

(c) Employees serving under an annual contract shall remain on the reemployment list until the end of the annual contract pursuant to which they were employed on the date of layoff.

(d) Notwithstanding the provisions of this subsection, a person who is offered and declines reemployment pursuant to N.J.A.C. 9:4-5.8(b) shall be removed from the reemployment list and waive all rights to reemployment.

#### 9:4-5.10 Reappointment of laidoff employees

Any employee on layoff status who is reemployed after layoff shall be reappointed with a rank and salary equivalent to his or her rank [and salary when laid off] and paid the salary earned when laid off, or the then current minimum of the salary range for the rank, whichever is greater.

#### 9:4-5.11 Other colleges

(No change.)

#### 9:4-5.12 Preparation of a ten-year plan

[(a) Each college Board of Trustees shall prepare a tenure plan for its institution indicating the steps it plans to take to achieve a future balance of faculty in which no more than a reasonable proportion are ultimately tenured.

(b) The purpose of limiting the proportion of tenured faculty on each campus is to retain flexibility to enable the institution to respond to changing educational needs in the future.

(c) The plan established by each Board shall include the proportion of tenured faculty projected each year during the ten-year period.

(d) The college trustees shall report their plan to the Board of Higher Education and shall inform the Board each year of the progress being made in achieving their goals.]

(a) Each college Board of Trustees shall prepare an academic plan for its institution indicating the steps it plans to take to achieve a future balance of faculty in which no more than a reasonable proportion are ultimately tenured.

1. The academic plan established by each institutional trustee board shall include the proportion of tenured faculty projected each year during the plan's life.

(b) The college trustees shall report their plan to the Chancellor of Higher Education and shall inform the Chancellor each year of the progress being made in achieving their goals.

**NOTE: The Board of Higher Education believes that by limiting the proportion of tenured faculty, the institution maintains the flexibility to respond to changing educational needs of future generations of students.**

#### 9:4-6.2 Establishment of internal policies

(No change.)

#### 9:4-6.3 Reappointment

(No change.)

#### 9:4-6.4 Performance during probationary period

(No change.)

#### 9:4-6.5 Positive evidence of excellence

(No change.)

#### 9:4-6.6 Evaluation procedures

(a) Each community college board of trustees should establish a procedure which the college will employ to regularly evaluate the performance [to] of tenured faculty members.

(b) (No change.)

(c) These evaluations, which should include student [imput] input, should comprehend such factors as continued teaching competence, professional preparation and attainments which are directly related to teaching or administrative assignments, contributions to campus life beyond formal, assigned instructional activity and significant research, scholarly or community activity.

### SUBCHAPTER 7. [GUIDELINES FOR COUNTY COMMUNITY COLLEGES UNDER CHAPTER 163 OF LAWS OF 1973] PROFESSIONAL EMPLOYEE POLICIES

#### [9:4-7.4] 9:4-7.1 Definitions

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

...  
 "Professional person" or "professional staff member" means individuals [(other than classified State Civil Service employees)] serving in positions which at minimum require the individual to hold a bachelors degree or its equivalent.  
 ...

#### [9:4-7.1] 9:4-7.2 Academic rank for nonteaching personnel

(a) (No change in text.)

(b) Eligibility for concurrent academic rank for nonteaching professional persons in the county colleges shall be limited to professional librarians who meet qualifications for rank[: to], professional staff members engaged in student counseling related to [the] an academic program who meet all qualifications for rank[:], and to other professional persons [whose academic qualifications for rank, previous teaching and/or research experience, and possible assignment to future teaching responsibilities in an academic department\* justified the granting of concurrent academic rank.] as set forth in (h) below. Any nonteaching professional person granted concurrent academic rank prior to the effective date of this section shall retain such academic rank while employed by the college.

[\*In these regulations, the term "department" shall mean either an academic department of instruction as traditionally defined, or the smallest academic subunit such as "school" or "division" if the college is not organized on a departmental basis.]

(c) Eligibility for concurrent academic rank for nonteaching professional persons in the community colleges may be determined by each college board of trustees, but may include only those categories of persons identified in [subsection (b) of this section.] (b) above.

[(d) Each community college which gives concurrent rank to librarians shall establish a special unit for tenure purposes which shall be called "the division of library services," "the learning resource center" or some similar designation which most adequately reflects the organizational structure of the institution. The chief administrative officer of that unit shall be appointed by the president of the college and approved by the board of trustees.

(e) The board of trustees of each community college which gives concurrent rank to counsellors related to the academic program shall establish a special unit for tenure purposes which shall be called "the student counselling unit" or some similar designation which most adequately reflects the organizational structure of the institution. The chief administrative officer of that unit shall be appointed by the president of the college and approved by the board of trustees.]

Recodify (f)-(j) as (d)-(h) (No change in text.)

[(k)] (i) Except for the president of the community college[\*], no person with concurrent academic rank may receive an administrative appointment for a term of more than one year, although yearly reappointments may be made without limit.

[\*Such appointments are governed by relevant statutes.]

(l) Those members of the professional staff who are not eligible for concurrent academic rank under the provisions of these regulations, but who were serving with concurrent academic rank as of October 1, 1973, shall continue to hold such rank and be eligible for consideration for reappointment and for tenure under applicable statutes.]

#### [9:4-7.2] 9:4-7.3 Contracts for professional staff (non faculty)

(a) [Members of the professional staff not holding faculty rank may be appointed by a board of trustees for one-year terms, provided, how-

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ver, that after employment in a college for five consecutive years, such employees may be offered contracts of no more than five years in length. During the period of such contracts, such employee shall be subject to dismissal only in the manner prescribed by subarticle B of article 2 of chapter 6 of Title 18A of the New Jersey Statutes, and must be notified by the president not later than one year prior to the expiration of such contracts of the renewal or nonrenewal of the contract.] **Professional staff employees not holding faculty rank may be appointed by a board of trustees for one year terms for five consecutive academic years. For the purposes of this section, the academic year shall be defined as July 1 to June 30. Eligible professional staff employees whose initial agreement is after July 1, but prior to October 1, shall be given a term from the date of appointment to June 30 of the following year, and this appointment shall be considered as one full academic year of service for the purpose of this regulation. Eligible professional staff employees whose initial appointment is after October 1 shall be given an appointment until June 30 of the following year, but this appointment shall not be considered as a full academic year of service for the purpose of this section. Professional staff serving under such initial one year contracts shall be notified of reappointment or non-reappointment to a succeeding one year contract by March 15 of each academic year.**

(b) [Members of the professional staff, other than those holding academic rank, and members of the teaching staff, shall be eligible for multiyear contracts under the provisions of A-328.] **A professional staff employee shall be eligible for, but not entitled to, reappointment to a multi-year term of two to five years, as well as reappointment to a one year term, after such employee's fifth consecutive full academic year of service. The college shall notify the professional staff employee by December 15 of the fifth consecutive contract year of the determination to reappoint or non-reappoint and in the instance of reappointment of the duration of said reappointment. During the period of any multi-term contract after five consecutive years of service, employees shall be subject to dismissal only in the manner prescribed by N.J.S.A. 18A:6-18.**

(c) [Each eligible member of the professional staff may be considered for appointment for one-year terms concurrent with the academic year for five consecutive academic years. For the purposes of this regulation, the academic year shall be defined as July 1 to June 30. Eligible professional staff members whose initial appointment is after July 1 but prior to October 1 may be given a term from the date of appointment to June 30 of the following year, and this appointment shall be considered as one full academic year of service for the purpose of this regulation. Eligible professional staff members whose initial appointment is after October 1 shall be given an appointment until June 30 of the following year, but this appointment shall not be considered as a full academic year of service for the purpose of this regulation.] **Subsequent to the fifth consecutive contract year professional staff employees who are appointed to one year contracts after five consecutive years of service shall be notified of reappointment or non-reappointment to a succeeding contract by March 15 of each academic year.**

(d) [A professional staff member shall be eligible for, but not entitled to, reappointment to a multi-year term of two to five years as well as reappointment to a one-year term, in or after such member's fifth full academic year of service.

1. Eligible professional staff members are entitled to reappointment unless notified of their non-reappointment by the president not later than December 15 of the last academic year of their current contract. Such members entitled to reappointment shall be notified by the president not later than March 15 of the last academic year of their current contract of the duration of their reappointment. Failure to so notify a member entitled to reappointment shall entitle such member to reappointment for a one-year term.

2. An eligible professional staff member who has served longer than five full academic years and whose contract, whether for a one-year term or a multi-year term, is due to expire at the end of an academic year may, in accordance with the provisions of this section, be reappointed to a one-year term or to a multi-year term of from two to five full academic years, or not reappointed, regardless of the duration of his or her current contract.

3. The length of the term of an eligible professional staff member's reappointment under this section shall be determined solely by the college subsequent to analysis of the quality of the staff member's past performance, and long range administrative and professional staffing needs of the college.] **Professional staff employees who are appointed to multi-year contracts shall be notified of appointment or non-reappointment to a**

**succeeding contract one year prior to the expiration of such contracts. Failure to so notify an employee shall entitle such employee to reappointment for a one-year term.**

(e) **A professional staff employee who has served longer than five consecutive academic years and whose contract, whether for a one-year term or a multi-year term, is due to expire at the end of the academic year may in accordance with the provisions of this section be reappointed to a one-year term, a multi-year term, or not reappointed, regardless of the duration of his or her current contract.**

[(e)] (f) (No change in text.)

[(f)] (g) The board of each college which offers multi-year contracts shall establish a formal procedure for considering and approving the offering of multi-year contracts and for determining whether the length of such contracts shall be two, four or five years. This procedure should encompass a thorough review of all personnel records including the reports of regular, systematic and formal evaluations conducted during the employment of the individual, as suggested in N.J.A.C. 9:4-7.3(e).

[(g)] This section shall take effect October 1, 1974.]

[9:4-7.3] **9:4-7.4 Career development**

(a) [Under guidelines established by the State Board of Higher Education, it shall be the responsibility of t]The board of trustees and the president of each State and community college, in conjunction with their faculty, [to] shall establish a formal procedure for the career development of all members of the professional staff including, but not limited to, a systematic and regular evaluation for the purpose of identifying any deficiencies, extending assistance for their correction and improving instruction.

(b) Members of the teaching staff and other professional employees serving for one-year appointments should be formally evaluated at least once each academic year. [Members of the teaching staff with tenure, and other p]Professional employees with multi-year contracts should be formally evaluated at least once each five years,

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

[(f)] The president and board of trustees of each college, in conjunction with their faculties, shall establish a formal program for the career development of members of the teaching staff and other members of the professional staff.]

[(g)] (f) (No change in text.)

#### SUBCHAPTER 8. RULES GOVERNING THE COUNTY COLLEGE CONTRACTS LAW

(No change.)

## INSURANCE

(a)

### DIVISION OF ADMINISTRATION

#### Cancellation and Nonrenewal of Commercial Insurance Policies

#### Prohibition of Certain Cancellation and Nonrenewal Activities

#### Proposed Amendments: N.J.A.C. 11:1-20.1, 20.2 and 20.3

#### N.J.A.C. 11:1-22.1

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:22-6.14a1, 2 and 3, 17:29C-1 et seq., 17:29A-1 et seq., 17:29AA-1 et seq. and 17:29B-4.

Proposal Number: PRN 1986-286.

Submit comments by August 20, 1986 to:

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

The agency proposal follows:

**Summary**

On March 3, 1986, the Department of Insurance proposed the repeal of N.J.A.C. 11:1-20 concerning the cancellation and nonrenewal of property and casualty/liability insurance policies and the promulgation of two new rules cited as N.J.A.C. 11:1-20 and 22 concerning the cancellation and nonrenewal of commercial insurance policies (See 18 N.J.R. 457(b)). On June 16, 1986, the Department adopted the proposal with technical and substantive modifications not requiring additional public notice and comment, and the adoption was published in the July 7, 1986 issue of the New Jersey Register.

The Department is now proposing to amend N.J.A.C. 11:1-20 and 22 in order to respond to certain suggestions made by parties commenting on the March 3 proposal, as well as on earlier versions of the rule, and to permit interested parties to submit additional comment and documentation for the Department's consideration. In addition, the proposed amendments are designed to address certain interpretive questions which have come to the Department's attention since the original promulgation of N.J.A.C. 11:1-20 and to check possible abuses.

N.J.A.C. 11:1-20.1 and 22.1, the scope sections of the regulations, are being amended to clarify the status of binders under the rules. A commenter on the concurrent proposal of the emergency adoption of N.J.A.C. 11:1-20 initially questioned the applicability of the rule to binders, noting that the subchapter referred only to policies. It was then the Department's position that because binders are generally issued for periods of less than 60 days, they would not be subject to the rule. The Department further indicated that if abuses occur, corrective action would be taken.

Since that time it has come to the Department's attention that some insurers are issuing successive binders, sometimes providing coverage in this manner for several months. It was not the Department's intent to permit avoidance of the requirements of the regulation in this manner.

Nonetheless, some insurers have maintained that a period in excess of 60 days is necessary to afford sufficient time to underwrite new risks. The Department acknowledges these representations; however, these commenters have not submitted credible documentation in support of this view. This amendment to N.J.A.C. 11:1-22.1, therefore, is proposed in an attempt to address the concerns voiced by insurers and to provide an opportunity for submission of supporting data which will enable the Department to properly evaluate the merits of their position.

Proposed N.J.A.C. 11:1-20.1(b) and 22.1(b) provide that the subchapters will not apply to any binder or contract for temporary insurance issued in conformance with certain standards. Specifically, an oral binder may be effective for no more than 10 days, a written binder for fire insurance may be effective for no more than 60 days and a written binder for other types of coverage subject to the rules may be effective for no more than 90 days. The proposal provides that any extension of coverage beyond these specified periods will be deemed the issuance of a policy subject to the requirements of the rules.

N.J.A.C. 11:1-20.2(c) is being amended to permit an insurer to furnish an estimated premium quotation on renewal business, if it is unable to provide notice of the actual premium charge at least 30 days in advance of the renewal date. Standards applicable to the issuance of estimated premium quotations and any subsequent variance between the actual and estimated premium charge are also included.

Insurers have contended that they are sometimes unable to complete their underwriting review and determine the premium charge in advance of the renewal date. Once again, however, documentation supporting the need for additional time to prepare the renewal quotation has not been furnished to the Department. The amendment is being proposed to elicit further public comment and documentation concerning this issue.

Finally, commenters on the March 3 proposal complained that N.J.A.C. 11:1-20.4, concerning policy provisions relating to cancellation, should also apply to nonrenewals. The absence of adverse loss experience as a standard for nonrenewal to be set forth in the policy was also criticized. The Department's proposed amendments to the section address both concerns.

**Social Impact**

The proposed amendments to N.J.A.C. 11:1-20 and 22 provide insurers with greater flexibility with respect to the underwriting of new risks and the issuance of estimated premium quotations on renewal business.

The proposal also protects insureds from possible abuses resulting from the issuance of long-term or successive binders by requiring that coverage bound for periods in excess of those set forth in the rule be subject to the same cancellation and nonrenewal standards which are applicable to policies. The constraints imposed on the issuance of estimated premium

quotations at renewal ensure that this practice will not work to the detriment of the insured. Finally, a requirement that policies set forth grounds for nonrenewal as well as cancellation will assist insureds in avoiding those situations which may lead to nonrenewal of the policy.

**Economic Impact**

An insurer which has utilized either long-term or successive binders as a means of providing coverage may experience certain increased costs as a result of meeting the termination requirements for policies which are set forth in these rules.

The proposed amendment permitting an insurer to issue an estimated premium quotation upon renewal provides the insurer with additional time to develop information needed to properly underwrite the risk. At the same time, the standards applicable to variances between the estimated and actual premium charge ensure that the policyholder will not suffer as a consequence of such differences.

Finally, by providing the policyholder with prior notice of the insurer's standards for nonrenewal, terminations of important insurance coverages may be avoided.

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

**SUBCHAPTER 20. CANCELLATION AND NONRENEWAL OF COMMERCIAL INSURANCE POLICIES****11:1-20.1 Scope**

(a) (No change.)

(b) **For the purposes of this subchapter, the term policy shall not include a binder or other contract for temporary insurance made on any new business written provided the binder or contract conforms to the requirements of this subsection. Notwithstanding the provisions of N.J.S.A. 17:36-5.6, if the insurer issues a binder or contract for a period which shall exceed the time periods set forth herein or, by whatever means, extends coverage beyond such time periods, such action shall be deemed the issuance of a policy and shall be subject to the requirements of this subchapter. A binder or other contract for temporary insurance shall:**

1. **If oral, be made for a period which shall not exceed 10 days;**

2. **With respect to fire insurance, be made in writing for a period which shall not exceed 60 days; and**

3. **With respect to other lines or classes of insurance subject to this subchapter, be made in writing for a period which shall not exceed 90 days.**

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

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

**11:1-20.2 Nonrenewal and cancellation notice requirements**

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

(c) **With respect to payment of the renewal premium, notice of the amount of the renewal premium and any change in contract terms shall be given to the insured not more than 120 days nor less than 30 days prior to the due date of the premium and shall clearly state the effect of nonpayment of the premium by the due date.**

1. **If an insurer is unable to give notice of the amount of the renewal premium charge as required by (c) above, it may in lieu thereof furnish an estimate of the premium provided;**

i. **The insurer gives notice to the insured of the actual premium within a reasonable period thereafter, not to exceed 60 days, and gives the insured not less than 30 days prior notice of the due date of any resulting premium charge;**

ii. **Where the actual premium is less than the estimated premium, the amount billed to the insured shall reflect the actual premium charge adjusted to the inception date of the policy;**

iii. **Where the actual premium exceeds the estimated premium, the amount billed to the insured shall reflect application of the actual premium charge only to the unexpired portion of the policy; and**

iv. **Where the actual premium exceeds the estimated premium, the insured shall be entitled to cancel coverage and the earned premium shall be calculated by the insurer on a pro rata basis in accordance with the estimated premium charge.**

(d)-(k) (No change.)

**11:1-20.3 Policy provisions relating to cancellation and nonrenewal**

(a) **All commercial insurance policy forms issued or renewed on or after August 21, 1986 must contain provisions that clearly state the grounds upon which the insurer will cancel or nonrenew coverage and that generally describe the types of conditions or circumstances under which the insurer will initiate cancellation or nonrenewal. Such grounds shall include, but need not be limited to the following:**

1.-7. (No change.)

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8. Material increase in exposure arising out of changes in statutory or case law subsequent to the issuance of the insurance contract; [and]  
9. Loss of or reduction in available insurance capacity[.]; and  
10. With respect to nonrenewals only, adverse loss experience.

AGENCY NOTE: The Department intends to make the amendment to this section operative 45 days after the effective date.

(b) (No change.)

**SUBCHAPTER 22. PROHIBITION OF CERTAIN CANCELLATION AND NONRENEWAL ACTIVITY**

11:1-22.1 Scope

(a) (No change.)

(b) For the purposes of this subchapter, the term policy shall not include a binder or other contract for temporary insurance made on any new business written provided the binder or contract conforms to the requirements of this subsection. Notwithstanding the provisions of N.J.S.A. 17:36-5.16, if the insurer issues a binder or contract for a period which shall exceed the time periods set forth herein or, by whatever means, extends coverage beyond such time periods, such action shall be deemed the issuance of a policy and shall be subject to the requirements of this subchapter. A binder or other contract for temporary insurance shall:

1. If oral, be made for a period which shall not exceed 10 days;
2. With respect to fire insurance, be made in writing for a period which shall not exceed 60 days; and
3. With respect to other lines or classes of insurance subject to this subchapter, be made in writing for a period which shall not exceed 90 days.

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

## LABOR

### (a)

#### UNEMPLOYMENT COMPENSATION AND TEMPORARY DISABILITY

##### Disclosure of Information

##### Proposed Amendments: N.J.A.C. 12:17-7.1 and 7.2

Authorized By: George M. Krause, Acting Commissioner, Department of Labor.

Authority: N.J.S.A. 43:21-1 et seq. (L.1984, c.24), specifically 43:21-11.

Proposal Number: PRN 1986-273.

Submit comments by August 20, 1986 to:  
Arthur J. O'Neal, Jr., Director  
Division of Planning and Research, Rm 1010  
New Jersey Department of Labor  
CN-056  
Trenton, N.J. 08625

The agency proposal follows:

##### Summary

N.J.A.C. 12:17-7 outlines the rules governing the disclosure of information obtained from workers, employers and others in the course of administering the New Jersey Unemployment Compensation and Temporary Disability Benefits Law. The proposed amendments clarify the rules pertaining to the disclosure of certain information obtained from covered employers by explicitly stating that the Commissioner or his representative may authorize public disclosure of the names, geographical location and standard industrial classification (SIC) of employers, but that such release shall not include employment, wages, taxes or any other data identifiable to individual employers or employees. Existing rules governing the disclosure of information to other government agencies have been condensed but not substantively changed.

##### Social Impact

The proposed amendments clear up ambiguities in the rules governing disclosure of information and explicitly defines what is permissible for the New Jersey Department of Labor to include in any listings of covered employers prepared for dissemination to the general public. By preparing periodic listings limited to the names, addresses and industrial classification of covered employers, the Department will be able to respond to requests from the public that have heretofore been denied.

##### Economic Impact

The proposed amendments will have a negligible economic impact. Any costs associated with the release of such information will be recovered from users through charges for any listings produced.

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

##### 12:17-7.1 Administration of [public employment service program] New Jersey Unemployment Compensation and Temporary Disability Benefits Law

No disclosure of information obtained at any time from workers, employers or other persons or groups in the course of administering the [state public employment service program] New Jersey Unemployment Compensation and Temporary Disability Benefits Law shall be made directly or indirectly, except as authorized by the Commissioner or his representative in accordance with this subchapter.

##### 12:17-7.2 Authorized disclosure of information

(a) Disclosure of any [such] information in the course of administering the New Jersey Unemployment Compensation and Temporary Disability Benefits Law [is] may be authorized in the following cases for the following purposes:

1.-2. (No change.)

[3. To any officer or employee of any agency of the Federal government or of a state or territorial government, or of a foreign government with which reciprocal arrangements have been made, lawfully charged with the administration of an unemployment compensation or readjustment allowance law, but only for purposes reasonably necessary for the proper administration of such law;

4. To any officer or employee of any agency of the Federal government or a state or territorial government, lawfully charged with the administration of a law providing for old-age assistance, or other public assistance, work relief, pension, retirement, or other benefit payments, but only for purposes reasonably necessary for the proper administration of such law;

5. To applicants, employers, and the public, general information concerning employment opportunities, employment levels and the trends, and labor supply and demand, provided such release or publication does not include information identifiable to individual applicants, employers or employing establishments;

6. To individuals, organizations, and agencies or for purposes other than as specified in this Section if such disclosure will not impede the operation of, and is not inconsistent with the purpose of, the public employment service program, and is authorized in writing in individual cases by the Director.]

3. To claimants, employers, and the public, disclosure of the names, geographic location and standard industrial classification (SIC) of employers. Such release shall not include employment, wages, taxes or any other data identifiable to individual employers or employees;

4. To officers or employees of any agency of the federal government or any state, territorial or local government (or officers or employees of a foreign government agency with which reciprocal arrangements have been made and which is lawfully charged with the administration of an unemployment compensation or readjustment allowance law) if such disclosures will not impede the operation of, and are not inconsistent with the purposes of the New Jersey Unemployment Compensation and Temporary Disability Benefits Law.

## LAW AND PUBLIC SAFETY

(a)

### BOARD OF NURSING

#### Delegation of Selected Nursing Tasks

#### Proposed Amendment: N.J.A.C. 13:37-6.2

Authorized By: New Jersey State Board of Nursing, Sylvia C. Edge, R.N., M.A., President.

Authority: N.J.S.A. 45:11-23, 11-24 and 1-21.

Proposal Number: PRN 1986-279.

Submit comments by August 20, 1986 to:  
Sister Teresa L. Harris, Executive Secretary  
Board of Nursing  
1100 Raymond Boulevard, Room 319  
Newark, New Jersey 07102

The agency proposal follows:

#### Summary

The proposed new rule concerning the delegation of selected nursing tasks was published at 18 N.J.R. 1176(a) on June 2, 1986. Due to a printing error, the essential word "not" was omitted from the second sentence of subsection (b). The omission of this word altered the true intent of the proposal because it appeared to prevent registered nurses from delegating nursing tasks to persons who were adequately prepared by verifiable training and education. Clearly the intent of the proposal is to prevent registered nurses from delegating nursing tasks to persons who are *not* adequately prepared by verifiable training and education. The subsection is being republished in order to provide all interested persons with proper notice and opportunity to comment. Since republication of this subsection is due wholly to a printing error, the summary remains unchanged from that which was published at 18 N.J.R. 1176(a).

#### Social Impact

Since the republication of this subsection is due wholly to an error in printing, the social impact remains unchanged from that which was published at 18 N.J.R. 1176(a).

#### Economic Impact

Since the republication of this subsection is due wholly to an error in printing, the economic impact remains unchanged from that which was published at 18 N.J.R. 1176(a).

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

13:37-6.2 Delegation of selected nursing tasks

(a) (No change.)

(b) In delegating selected nursing tasks to licensed practical nurses or ancillary nursing personnel, the registered professional nurse shall be responsible for exercising that degree of judgment and knowledge reasonably expected to assure that a proper delegation has been made. A registered professional nurse may not delegate the performance of a nursing task to persons who have **not** been adequately prepared by verifiable training and education. No task may be delegated which is within the scope of nursing practice and requires:

1. The substantial knowledge and skill derived from completion of a nursing education program, and the specialized skill, judgment and knowledge of a registered nurse;

2. An understanding of nursing principles necessary to recognize and manage complications which may result in harm to the health and safety of the patient.

(c)-(f) (No change.)

## NEW JERSEY RACING COMMISSION

The following proposals are authorized by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.

Submit comments by August 20, 1986 to:  
Bruce H. Garland, Executive Director  
New Jersey Racing Commission  
CN-088 Justice Complex  
Trenton, New Jersey 08625

(b)

### Thoroughbred Racing

#### Track Entrance: Coggins Test Requirement for Horses, Ponies or Equine Mascot

#### Proposed Amendment: N.J.A.C. 13:70-3.47

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

Proposal Number: PRN 1986-284.

The agency proposal follows:

#### Summary

The proposed amendments to N.J.A.C. 13:70-3.47 are to ensure that horses entering the grounds of track associations have had a negative Coggins test. A Coggins test is used to determine the presence of infectious equine anemia. This proposal amends a not yet adopted prior proposal found at 18 N.J.R. 401(a), by requiring a negative Coggins test before entering the grounds, although provision has been made to segregate and test horses who arrive without evidence of a negative test. The amendments also holds the trainer responsible for allowing a horse to race without evidence of a negative Coggins test and/or vaccination for encephalitis.

#### Social Impact

The social impact will be positive. The amendments provide greater assurance that horses will be tested for infectious equine anemia. There is no other direct social impact upon the public.

#### Economic Impact

The economic impact is minimal, if there is any at all. There are no increased costs to the state, the participants or the public.

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

13:70-3.47 Track entrance; Coggins test requirements for horses, ponies or equine mascot

(a)-(b) (No change in text of proposal at 18 N.J.R. 401(a).)

[(c) No horse shall be stabled on the grounds of any track association absent presentation of evidence of vaccination for equine encephalitis within the preceding year.]

[(d)] (e) In the case of any pony or equine mascot, evidence of a negative Coggins test, [as well as evidence of vaccination for equine encephalitis,] together with a photograph of the animal, must be filed with the racing secretary.

[(e)] (d) (No change in text of proposal at 18 N.J.R. 401(a).)

(e) **This rule does not affect eligibility to race or claims. However, the trainer of a horse which races in violation of this rule without evidence of a negative Coggins test and/or a vaccination for equine encephalitis, is subject to penalties provided for in these rules.**

(c)

### Harness Racing

#### Track Entrance: Coggins Test Requirement for Horses, Ponies or Equine Mascot

#### Proposed Amendment: N.J.A.C. 13:71-6.24

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

Proposal Number: PRN 1986-283.

The agency proposal follows:

#### Summary

The proposed amendments to N.J.A.C. 13:71-6.24 are to ensure that horses entering the grounds of track associations have had a negative

Coggins test. A Coggins test is used to determine the presence of infectious equine anemia. This proposal amends a not yet adopted prior proposal found at 18 N.J.R. 402(b), by requiring a negative Coggins test before entering the grounds, although provision has been made to segregate and test horses who arrive without evidence of a negative test. The amendments also holds the trainer responsible for allowing a horse to race without evidence of a negative Coggins test and/or vaccination for equine encephalitis.

**Social Impact**

The social impact will be positive. The amendments provide greater assurance that horses will be tested for infectious equine anemia. There is no other direct social impact upon the public.

**Economic Impact**

The economic impact is minimal, if there is any at all. There are no increased costs to the state, the participants or the public.

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

- 13:71-6.24 Track entrance; Coggins test requirement for horses, ponies or equine mascot
- (a)-(b) (No change in text of proposal at 18 N.J.R. 402(b).)
- [(c) No horse shall be stabled on the grounds of any track association absent presentation of evidence of vaccination for equine encephalitis within the preceding year.]
- [(d)] (c) In the case of any pony or equine mascot, evidence of a negative Coggins test, [as well as evidence of vaccination for equine encephalitis,] together with a photograph of the animal, must be filed with the racing secretary.
- [(e)] (d) (No change in text of proposal at 18 N.J.R. 402(b).)
- (e) **This rule does not affect eligibility to race or claims. However, the trainer of a horse which races in violation of this rule without evidence of a negative Coggins test and/or a vaccination for equine encephalitis, is subject to penalties provided for in these rules.**

**TRANSPORTATION**

**TRANSPORTATION OPERATIONS**

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

Submit comments by August 20, 1986 to:  
Charles L. Meyers  
Administrative Practice Officer  
Department of Transportation  
1035 Parkway Avenue  
CN 600  
Trenton, New Jersey 08625

**(a)**

**No Passing Zones**  
**Routes U.S. 9W in Bergen County, U.S. 202 in Somerset and Morris Counties, and Route 77 in Salem and Gloucester Counties**  
**Proposed Amendment: N.J.A.C. 16:29-1.56**  
**Proposed New Rules: N.J.A.C. 16:29-1.58 and 1.59**  
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-201.1.  
Proposal Number: PRN 1986-287.  
The agency proposal follows:

**Summary**

The proposed amendment and new rules will establish "no passing" zones along Routes U.S. 9W in Tenafly and Alpine Boroughs, Bergen County; U.S. 202 in Bedminster and Bernards Townships and the Boroughs of Far Hills and Bernardsville, Somerset County; Harding and Morris Townships, Town of Morristown, and Morris Plains Borough, Morris County and 77 in Alloway and Upper Pittsgrove Townships, Salem County and Elk, South Harrison and Harrison Township, Gloucester 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 investiga-

tions. The investigations proved that the establishment of "no passing" zones along Routes U.S. 9W in Bergen County; U.S. 202 in Somerset and Morris Counties and 77 in Salem and Gloucester Counties were warranted.

The Department therefore proposes to amend N.J.A.C. 16:29-1.56 and add new rules N.J.A.C. 16:29-1.58 and 1.59 based upon the requests from local officials and the traffic investigations.

**Social Impact**

The proposed amendment and new rules will establish "no passing" zones along Routes U.S. 9W in Tenafly and Alpine Boroughs, Bergen County; U.S. 202 in Bedminster and Bernards Townships and the Boroughs of Far Hills and Bernardsville, Somerset County; Harding and Morris Townships, Town of Morristown and Morris Plains Borough, Morris County and 77 in Alloway and Upper Pittsgrove Townships, Salem County and Elk, South Harrison and Harrison Townships, Gloucester County for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate markings will be erected to advise the motoring public.

**Economic Impact**

The Department and local officials will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no passing" zones. Motorists who violate the rules will be assessed the appropriate fine.

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

- 16:29-1.56 Route 77
- (a) The certain following parts of State Highway Route 77 shall be designated and established as "No Passing" zones:
1. (No change.)
  2. **Within the Townships of Alloway and Upper Pittsgrove, Salem County and described in drawing number HNPZ-099 dated March 25, 1986.**
  3. **Within the Townships of Elk, South Harrison and Harrison, Gloucester County and described in drawing number HNPZ-100 dated March 25, 1986.**
- 16:29-1.58 Route U.S. 9W
- (a) The certain following parts of State highway Route U.S. 9W shall be designated and established as "No Passing" zones:
1. **Within the Boroughs of Tenafly and Alpine, Bergen County and described in drawing number HNPZ-096 dated February 26, 1986.**
- 16:29-1.59 Route U.S. 202
- (a) The certain following parts of State highway Route U.S. 202 shall be designated and established as "No Passing" zones:
1. **Within the Townships of Bedminster and Bernards; the Boroughs of Far Hills and Bernardsville, Somerset County and described in drawing number HNPZ-097 dated March 4, 1986.**
  2. **Within the Townships of Harding and Morris; the Town of Morristown and Morris Plains Borough, Morris County and described in drawing number HNPZ-098 dated March 4, 1986.**

**(b)**

**No Passing Zones**  
**Route 54 in Atlantic County**  
**Proposed New Rule: N.J.A.C. 16:29-1.60**  
Authority: N.J.S.A. 27:1A-5, 17:1A-6, 39:4-201.1.  
Proposal Number: PRN 1986-258.  
The agency proposal follows:

**Summary**

The proposed new rule will establish "no passing" zones along Route 54 in the Boroughs of Buena and Folsom, Buena Vista Township and the Town of Hammonton, Atlantic County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.  
Based upon a request from the local officials, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of "no passing" zones along Route 54 were warranted.  
The Department therefore proposes new rule N.J.A.C. 16:29-1.60 based upon the request from local officials and the traffic investigation.

**Social Impact**

The proposed new rule will establish "no passing" zones along Route 54 in the Boroughs of Buena and Folsom, Buena Vista Township and the Town of Hammonton, Atlantic 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 mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no passing" zones signs. Motorists who violate the rules will be assessed by appropriate fine.

Full text of the proposed new rule follows.

16:26-1.60 Route 54

(a) The following certain parts of State highway Route 54 shall be designated and established as "No Passing" zones:

1. That part within the Boroughs of Buena and Folsom, Buena Vista Township and the Town of Hammonton, Atlantic County and described in drawing number HNPZ-101 dated March 25, 1986.

**(a)**

**No Passing Zones**

**Route 17 in Bergen County, 24 in Morris County, 45 in Salem County and 48 in Salem County**

**Proposed New Rules: N.J.A.C. 16:29-1.61, 1.62, 1.63, 1.64**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-201.1.

Proposal Number: PRN 1986-288.

The agency proposal follows:

**Summary**

The proposed new rules will establish "No Passing" zones along Routes 17 in the Borough of North Arlington and the Township of Lyndhurst, Bergen County; 24 in the Town of Morristown, and the Township of Morris and the Boroughs of Madison and Chatham, Morris County; 45 in the City of Salem, the Townships of Mannington and Pilesgrove and the Borough of Woodstown, Salem County and 48 in Carney's Point Township and Penns Grove Borough, Salem County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of 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 Passing" zones along Routes 17, 24, 45 and 48 were warranted.

The Department therefore proposes new rules N.J.A.C. 16:29-1.61, 1.62, 1.63 and 1.64 based upon the requests from local officials and the traffic investigations.

**Social Impact**

The proposed new rules will establish "No Passing" zones along Routes 17 in the Borough of North Arlington and Lyndhurst Township, Bergen County; 24 in the Town of Morristown, Morris Township and the Boroughs of Madison and Chatham, Morris County; 45 in the City of Salem, the Townships of Mannington and Pilesgrove and Woodstown Borough, Salem County and 48 in Carney's Point Township and Penns Grove Borough, Salem County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate markings will be erected to advise the motoring public.

**Economic Impact**

The Department and local officials will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no passing" zones. Motorists who violate the rules will be assessed the appropriate fine.

Full text of the proposed new rules follows.

16:29-1.61 Route 17

(a) The following certain parts of State highway Route 17 shall be designated as "No Passing" zones:

1. That part within the Borough of North Arlington and the Township of Lyndhurst, Bergen County and described in drawing number HNPZ-102 dated April 1, 1986.

16:29-1.62 Route 24

(a) The following certain parts of State highway Route 24 shall be designated as "No Passing" zones:

1. That part within the Town of Morristown, Morris Township and the Boroughs of Madison and Chatham, Morris County and described in drawing number HNPZ-103 dated April 1, 1986.

16:29-1.63 Route 45

(a) The following certain parts of State highway Route 45 shall be designated as "No Passing" zones:

1. That part within the City of Salem, Townships of Mannington and Pilesgrove and the Borough of Woodstown, Salem County and described in drawing number HNPZ-104 dated April 1, 1986.

16:29-1.64 Route 48

(a) The following certain parts of State highway Route 48 shall be designated as "No Passing" zones:

1. That part within Carney's Point Township and Penns Grove Borough, Salem County and described in drawing number HNPZ-105 dated May 1, 1986.

**TREASURY-GENERAL**

**DIVISION OF PENSIONS**

For proposals numbered PRN 1986-278 and 280, submit comments by August 20, 1986 to:

Peter J. Gorman, Esq.  
Administrative Practice Officer  
Division of Pensions  
20 West Front Street  
CN 295  
Trenton, New Jersey 08625

**(b)**

**Public Employees' Retirement System  
Purchase of Temporary Service Credit  
Proposed New Rule: N.J.A.C. 17:1-4.35**

Authorized By: Douglas R. Forrester, Director, Division of Pensions.

Authority: N.J.S.A. 52:18A-96 et seq.

Proposal Number: PRN 1986-278.

The agency proposal follows:

**Summary**

The proposed new rule will permit those members of the Public Employees' Retirement System who are eligible to purchase temporary service credit under the provisions of Chapter 226, Laws of 1985, to submit a written request to make such purchase within one year of the date that such member's initial pension contributions to the PERS are certified to begin. The provisions of Chapter 226, Laws of 1985, indicate that such agreement to purchase must be made within one year of the effective date of Chapter 226. Chapter 226, Laws of 1985, was approved on July 2, 1985, but was retroactively effective back to April 9, 1985. Due to some confusion as to the interpretation of the provisions of Chapters 121 and 226 (which amended Chapter 121), Laws of 1985, and due to a backlog caused by more than 10,000 applications made to the Division of Pensions regarding those two laws, many individuals who initially became eligible to enroll in the PERS under the provisions of Chapter 121, Laws of 1985, have only recently had or have yet to have their initial contributions to the PERS certified to begin. Since only active, contributing members of the PERS can purchase service credit and since it is the Division of Pensions' interpretation that the legislative intent behind the provisions of Chapter 226, Laws of 1985, was to permit all members who were being initially enrolled in the PERS under the provisions of Chapter 121, Laws of 1985, the opportunity to purchase their eligible temporary service credit, this new rule is proposed to extend that opportunity to those enrollees whose certification to begin their PERS contributions have not been processed within a full year from the effective date of Chapter 226, Laws of 1985. The proposed rule is comparable to the current rules in effect for other types of temporary service credit purchases in that one year from the date of the certification of contributions is the deadline for members to request such purchases. Additionally, under the provisions of Chapter 226, Laws of 1985, the member is liable for the entire cost of such purchases.

**Social Impact**

The proposed new rule may affect current and future employees who may qualify for PERS enrollment under the provisions of Chapter 121, Laws of 1985, and who also may qualify to purchase certain temporary service credit under the provisions of Chapter 226, Laws of 1985.

**Economic Impact**

The proposed new rule will not have significant adverse economic impact against the PERS, since the employee qualifying for the temporary service credit purchase under Chapter 226 is required to pay the entire cost of such purchase without the public employer being liable for any part of such cost.

Full text of the proposed new rule follows:

17:1-4.35 Purchases pursuant to Chapter 226, Laws of 1985

In order to be eligible to purchase temporary service credit under the provisions of Chapter 226, Laws of 1985, a member of the Public Employees' Retirement System shall submit a written request to purchase the temporary service credit within one year from the date that his or her initial pension contributions to the Public Employees' Retirement System are certified to begin. Such purchase must be authorized by the member before the expiration date indicated on the purchase quotation letter issued by the Division of Pensions.

**(a)**

**PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

**Retirement: Applications**

**Proposed Amendment: N.J.A.C. 17:2-6.1**

Authorized By: Board of Trustees, Public Employees' Retirement System, Janice Nelson, Acting Secretary.

Authority: N.J.S.A. 43:15A-17.

Proposal Number: PRN 1986-280.

The agency proposal follows:

**Summary**

The proposed amendment eliminates the requirement that retirement applications be filed with the Division of Pensions at least one month before the requested date of retirement. Under the current rules, the retirement date is advanced by one month if the member does not file the retirement application by the time limit. An application would still have to be filed before a retirement could become effective but it would not have to be filed 30 days in advance.

**Social Impact**

The proposed amendment will affect future retirees from the retirement system who will not be required to file retirement applications one month in advance of their requested retirement dates. The experience of the Division of Pensions indicates that most members do file their retirement applications more than one month before their requested retirement dates. Thus, in practice, a relatively small number of members will be affected.

**Economic Impact**

The proposed amendment will not have any significant cost impact on the retirement system. It will permit some members to receive retirement benefits a month earlier than under the current rule. However, it will eliminate an administrative burden of notifying members who did not file timely that their retirement dates were being advanced. The amendment will also eliminate the necessity for members to appeal to the board of trustees for relief from the advance filing requirement in hardship situations.

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

17:2-6.1 Applications

(a) Applications for retirement must be made on forms prescribed by the system. Such forms must be completed in all respects and filed with the system [at least one month] before the requested date of retirement.

[(b) In the event a member does not file an application for one month prior to the requested date of retirement, the member's retirement date shall be advanced to the first day of the following month.]

[(c) (b) In the event a member files an incomplete application, the deficiency shall be brought to his or her attention and he or she will be required to file a completed application with the system to enable acceptance for processing.

[(d) The minimum one-month advance filing shall not apply to cases involving disability; however, the application must be filed with the system before the effective date desired.]

[(e) (c) Before an application for retirement may be accepted for processing, it must be supported by a certificate from the employer setting forth the employment termination date, the salaries reported for contributions in the member's final years of employment and proof of age, if none is already in the member's record.

[(f) (d) In addition to the foregoing requirement, an application for disability retirement must be supported by a report of the member's personal or attending physician and a statement from the employer regarding the member's incapacity for further duty.

**DIVISION OF PENSIONS**

Proposals numbered PRN 1986-274 and 276 are authorized by Gaius Mount, Acting Secretary, State Health Benefits Commission.

Submit comments by August 20, 1986 to:

Gaius B. Mount, Acting Secretary  
State Health Benefits Commission  
Division of Pensions  
20 West Front Street  
CN 295  
Trenton, New Jersey 08625

**(b)**

**State Health Benefits Program  
Definition of Retired Employee**

**Proposed Amendment: N.J.A.C. 17:9-6.1**

Authority: N.J.S.A. 52:14-17.27 et seq.

Proposal Number: PRN 1986-276.

The agency proposal follows:

**Summary**

The purpose of the proposed amendment is to continue the eligibility of a retired member of a State-administered retirement system when the former employer ceases existence subsequent to the member's retirement and no successor agency is created for such disbanded employer. Currently, a retired member of an employer which is subsequently disbanded without leaving a successor agency is treated as if the employer terminated its participation in the State Health Benefits Program. Thus, retired members of such disbanded employers are not currently permitted to continue their retired State Health Benefits Program coverage upon the dissolution of the employer. The proposed amendment is intended to alleviate that resultant situation.

**Social Impact**

The proposed amendment may affect future retirants of State-administered retirement systems whose former employers are disbanded subsequent to their retirement and leave no successor agency after their dissolution. The amendment will permit the continuation of a retirants eligibility in the Health Benefits Program.

**Economic Impact**

The proposed amendment will not have any significant adverse effects upon the State Health Benefits Program since very few members should be involved in such situations and, in all probability, such members are paying the full cost of such coverage. The individual retired members who may be affected by this proposal will not experience any significant adverse economic impact since they will continue to pay approximately the same cost as they previously did for such coverage when the employer was still in existence.

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

17:9-6.1 Retired employee defined

(a) "Retired employee" shall be defined as a covered employee, who immediately following the cessation of employment, applies for and receives a periodic retirement allowance for life or duration of disability to which he or she is entitled by reason of age, years of service or disability

provided such allowance is being paid by a State or locally administered retirement system or plan by which he or she was covered immediately prior to his or her retirement. **This "retired employee" status, once established, will continue in effect even though the employer is subsequently disbanded and no successor agency is created upon the dissolution of such employer.** An employee who continued his or her coverage while on an official leave of absence for illness without pay but whose coverage was terminated when his or her leave exceeded the period established by the statute for the continuation of coverage during such leave, will be permitted to elect to continue Health Benefits coverage into retirement provided such leave was in effect immediately preceding the date of his or her retirement.

(b) The definition of "retired employee" shall include the spouse of the employee, provided he or she was covered as a dependent under the Health Benefits Program immediately preceding the retirement or the death of the active or retired employee, and further provided that he or she was the employee's beneficiary [and immediately applies for and receives a life annuity available to him or her at the employee's death, paid by a State or locally administered retirement system or plan].

(c)-(g) (No change.)

**(a)**

**State Health Benefits Program  
Coverage for Beneficiary, Dependent or Survivor  
Proposed Amendments: N.J.A.C. 17:9-6.6**

Authority: N.J.S.A. 52:14-17.27 et seq.  
Proposal Number: PRN 1986-274.

The agency proposal follows:

**Summary**

The proposed amendment would permit an eligible dependent (which includes the surviving spouse and eligible children), who is not receiving any monthly retirement benefit from a State-administered retirement system upon the death of the retired member to continue the State Health Benefits Program in effect at the time of the retired member's death. The Division of Pensions will bill such dependent at the group rate then in

effect for such coverage on a quarterly calendar basis. Previously, if a retired member selected the maximum option at retirement, his or her State Health Benefits Program coverage would terminate upon his or her death and the dependents of such deceased member could not continue such coverage.

**Social Impact**

The proposed amendment will affect future eligible dependents of deceased, retired members of the State-administered retirement systems who are not receiving any monthly benefits from a State-administered retirement system. Such eligible dependents will be permitted to continue coverage in the Health Benefits Program upon the death of the retired member.

**Economic Impact**

There will be no significant, adverse economic effects if the proposed amendment is adopted since the eligible dependents will be billed for such coverage and thus will be paying for the bulk of any increase in cost resulting from this liberalization of the rule.

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

17:9-6.6 Beneficiary, **dependent** or survivor

(a) An eligible beneficiary or survivor will have their coverage discontinued upon the death of the retirant but will be given the opportunity to continue coverage on a prospective basis only, once they have filed proper applications for pensions. Coverage may be made retroactive for as much as six months provided the necessary charges are paid. Any request for retroactive coverage in excess of six months shall be submitted to the secretary.

(b) **An eligible dependent, who is not the recipient of any monthly retirement benefit from a State-administered retirement system upon the death of the retired member, will be offered the opportunity to continue participation in the State Health Benefits Program subsequent to the death of the retired member. The coverage will be no greater than the coverage that was in effect at the time of the retired member's death and will be limited to only those dependents covered at the time of the member's death. The Division of Pensions will bill the appropriate dependent at the group rate then in effect for such coverage on a quarterly calendar basis.**

# RULE ADOPTIONS

## BANKING

### (a)

#### DIVISION OF CONSUMER COMPLAINTS, LEGAL AND ECONOMIC RESEARCH

#### Modification of Commissioner's Order and/or Rehearing

#### Adopted New Rules: N.J.A.C. 3:1-2.24

Proposed: October 21, 1985 at 17 N.J.R. 2487(a).

Adopted: June 25, 1986 by Mary Little Parell, Commissioner, Department of Banking.

Filed: June 27, 1986 as R.1986 d.293, 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.

Effective Date: July 21, 1986.

Expiration Date: January 5, 1991.

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

**COMMENT:** A commenter suggested that notice requirements should be amended to reflect "New Jersey Council of Savings Institutions" rather than "Savings Banks' Association of New Jersey" which is no longer the association's name.

**RESPONSE:** The department adopted the change requested.

**COMMENT:** A commenter suggested that 1) The applicant be defined as a Savings Bank; and 2) No standards are set out under which the Commissioner could relax the regulations.

**RESPONSE:** The department responded that 1) The identity of the applicant is clearly defined by requirements of the subsection; and 2) Omitting standards for the Commissioner permits the use of discretion. Therefore, neither of these suggestions were adopted.

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

#### 3:1-2.24 Modification of Order and/or rehearing

(a) When an applicant seeks relief from or modification of an existing Order which restricts stock transfers entered pursuant to authority granted to the Commissioner the applicant shall submit the following:

1. A fee in the amount of \$500.00;

2. An original certification of a copy of a resolution of three-quarters of the duly constituted Board of Directors of the regulated institution approving the request for relief or modification;

3. A memorandum setting forth the grounds for the proposed modification or relief, and outlining the changes in circumstances or new information creating the need for relief.

(b) The Department shall notify the applicant of receipt of a complete application within 10 days, and shall publish notice of the proposed modification in the weekly associations' bulletins of the New Jersey Bankers Association, \*[the Savings Banks' Association of New Jersey,]\* \*the New Jersey Council of Savings Institutions,\* and the New Jersey Savings League. In its notification to the applicant, the Department will advise whether the application on its face appears to require a hearing. If a hearing is deemed necessary, the notice will also indicate the hearing date, location, time, and the procedures to be followed. Upon receipt of such notice from the Department, the applicant shall then mail notice to all shareholders of the affected institution and provide proof of mailing. Said notice shall include: the applicant's name; a brief statement of the nature of the application; if a hearing has been set, its date, time, and location; and the procedure for shareholders to file objections.

(c) The Commissioner reserves the right at any stage in the approval process to order that a hearing shall be conducted. Such order will be transmitted to the applicant and to all objectors and will inform them of the hearing date, time, location, and the procedures to be followed.

(d) The following standards shall be used to determine if relief from the existing Order shall be granted:

1. Would the proposed change contravene the plan which was the subject of existing order;

2. Would the proposed change have a negative effect on the subject institution, either through disruption of activities, turnover of key personnel, loss of public confidence, or otherwise;

3. Would the proposed change have a chilling effect on other similarly situated institutions;

4. Would the proposed change be fair and equitable to all shareholders;

5. Would the proposed change represent a change in the focus of the regulated institution's activities and create public harm;

6. Would the changes in circumstances render continued compliance with the existing Order burdensome \*[in]\* \*and\* inequitable; and

7. Such other issues as the parties may deem necessary for a fair and equitable determination by the Commissioner based on all the relevant facts.

(e) In any instance where the Commissioner or his or her designee shall determine that the foregoing requirements or procedures of this section be unwarranted, inapplicable, unreasonable, unnecessary or not required, he or she may relax or dispense with any or all of the requirements and procedures established herein.

## DEPARTMENT OF BANKING

### (b)

#### DIVISION OF BANKING, CONSUMER CREDIT BUREAU

#### Small Loan Regulations

#### Readoption: N.J.A.C. 3:17

Proposed: May 19, 1986 at 18 N.J.R. 1021(a).

Adopted: June 18, 1986 by Mary Little Parell, Commissioner, Department of Banking.

Filed: June 18, 1986 as R.1986 d.277, without change.

Authority: N.J.S.A. 17:10-23.

Effective Date: June 18, 1986.

Expiration Date: June 18, 1991.

#### 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. 3:17.

## COMMUNITY AFFAIRS

### (c)

#### DIVISION OF HOUSING AND DEVELOPMENT

#### Homelessness Prevention Program

#### Eligibility and Priorities

#### Adopted Amendments: N.J.A.C. 5:12-2.4 and 2.5.

Proposed: December 16, 1985 at 17 N.J.R. 2939(a).

Adopted: June 27, 1986 by Leonard S. Coleman, Jr.,

Commissioner, Department of Community Affairs.

Filed: June 27, 1986 as R.1986 d.296, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27C-24 and 52:27D-280.

Effective Date: July 21, 1986.

Expiration Date: January 1, 1990.

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

One comment received by the Department questioned the Department's right to set priorities. However, N.J.S.A. 52:27D-282 specifically authorizes the Department to establish priorities of eligibility among the

various categories of people needing temporary rental or other housing assistance. A number of comments received referred to the shelter needs of low-income, or indigent clients, often handicapped or disabled who are in danger of losing their housing without continuing rental assistance. While acknowledging this larger problem, the Department's response can only be that this Program was intended by the legislature to provide temporary assistance (see N.J.S.A. 52:27C-24f. and 52:27D-282). This understanding is supported by a written comment from Assemblyman David Schwartz, the sponsor of the legislation. He states (in part) "The legislative intent behind the Prevention of Homelessness Act was to assist people and households who have experienced temporary circumstances that put them in danger of losing their home. . . . The (Act) never was intended to replace the long term rental assistance program . . . Rather this legislation aims to assist people who, in the foreseeable future, will have solved their immediate financial difficulties." The amount appropriated by the Legislature clearly reflects this limited goal.

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

## 5:12-2.4 Period of assistance

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

(c) \*[No]\* \*A\* household shall be eligible for assistance under the Homelessness Prevention Program more than once \*only if the problem causing the situation is not chronic or repetitive in nature\*.

## 5:12-2.5 Priorities

(a) Priorities for assistance among otherwise qualified applicants in the same applicant pool shall be assigned in the following order:

1. Households with a person who is disabled or handicapped.
2. Households with a person who is over 62 years of age;
3. Households victimized by domestic violence (A referral from the Division of Youth and Family Services, emergency shelter agency, county welfare agency, or other social agency will be required.);
4. Households with children which have broken up or face imminent breakup due to homelessness (A recommendation from the Division of Youth and Family Services, emergency shelter agency, county welfare agency or other social agency will be required.);
5. Single parent households;
6. Other households with children;
7. All other households.

## (a)

## DIVISION OF HOUSING AND DEVELOPMENT

## Petitions for Rules

## Readoption: N.J.A.C. 5:29

Proposed: May 5, 1986 at 18 N.J.R. 871(a).

Adopted: June 13, 1986 by Leonard S. Coleman, Jr.,  
Commissioner, Department of Community Affairs.Filed: June 18, 1986 as R.1986 d.274, **without change.**

Authority: N.J.S.A. 52:14B-4(f) and 52:27D-3(e).

Effective Date: June 18, 1986.

Expiration Date: June 18, 1991.

## Summary of Public Comments and Agency Responses:

**No comments received.**

Full text of the readoption follows.

## CHAPTER 29

DIVISION OF HOUSING AND DEVELOPMENT  
ADMINISTRATIVE RULES

## SUBCHAPTER 1. PETITIONS FOR RULES

## 5:29-1.1 Scope

This subchapter shall apply to all petitions made by interested persons for the promulgation, amendment or repeal of any rule by the Division of Housing and Development, or by any of its component bureaus, pursuant to N.J.S.A. 52:14B-4(f).

## 5:29-1.2 Form of petition

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

(c) Any document submitted to the Division of Housing and Development or to any of its component bureaus which is not in substantial compliance with (a) and (b) above shall not be deemed to be a petition for a rule requiring further action pursuant to N.J.S.A. 52:14B-4(f).

## 5:29-1.3 Procedure for petitions

(a) Petitions for the promulgation, amendment or repeal of a rule by the Division of Housing and Development or any of its component bureaus shall be addressed to the office of the Director, Division of Housing and Development, CN 804, Trenton, New Jersey 08625.

(b)-(e) (No change.)

NEW JERSEY HOUSING AND MORTGAGE FINANCE  
AGENCY

## (b)

## Certification and Recertification of Income

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

Proposed: March 17, 1986 at 18 N.J.R. 523(a).

Adopted: June 30, 1986 by New Jersey Housing and Mortgage  
Finance Agency, James L. Logue, Executive Director.Filed: June 30, 1986 as R.1986 d.303, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 55:14K-5g and 55:14K-8b.

Effective Date: July 21, 1986.

Expiration Date: May 20, 1990.

## Summary of Public Comments and Agency Responses:

The Agency received comments from one individual. Those comments and the Agency response are summarized as follows:

1. **5:80-2.2**—The comment expressed concern that the rule applied only to tenants and not to housing sponsors, their agents or Agency staff. The Agency's response is that the rule is intended to apply to all these individuals. This section was revised to clarify this intent.

2. **5:80-20.3**—The comment expressed concern that the documentation for certification is overly broad, leaves too much discretion to housing sponsors and results in an invasion of tenants privacy. The Agency's response is that it has a valid interest and a legislative mandate to certify the income of tenants residing at Agency finance projects. As a State agency committed to serving public housing needs, particularly for low and moderate income families, this mandate requires the Agency to obtain independent verification of income from sources such as Federal Income tax returns, employer certifications and check stubs. The Agency needs flexibility to require verification of any source of income to fulfill its legislative mandate and assure that tenants residing at Agency projects meet income and eligibility requirements established by law. While it is true that sponsors will determine which documentation is needed from tenants at their project, tenants are not subject to the whims of sponsors. Sponsors may only require that documentation which is permitted by Agency rules. It should be emphasized that the Agency recognizes the interests and welfare of tenants. This rule strikes a balance which enables the Agency to fulfill its obligation to verify tenant income and, at the same time, does not overly intrude upon a tenant's right to privacy. The confidentiality section adequately protects a tenant's privacy by requiring that information or documentation provided by tenants not be accessible or disclosed to anyone except authorized representative of the sponsor, Agency or HUD. Additionally, the Agency has made one revision in the adopted version, which clarifies that the Agency or sponsor may only obtain additional information from IRS needed to verify income. Based on the foregoing, the Agency believes that no further changes are necessary.

**5:80-20.4(c)**—The comment expressed concern that the rule should specify reasonable allowances. The Agency has amended this section to specify the amount of the allowance which the Agency will permit.

**5:80-20.5(d)**—The comment expressed concern that tenants would not receive any notice on how a subsidy adjustment or surcharge is calculated. The Agency response is that tenants receive information in the notice to recertify regarding potential adjustments in subsidy or imposition of surcharges if tenants are over income limits. The Agency has also

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amended this section to require sponsors to provide tenants with an explanation if requested by tenants. Accordingly, the Agency believes that no further changes are necessary.

**5:80-20.6**—The comment expressed the opinion that a hearing or arbitration should be granted to tenants regarding disputes on failure to recertify. The Agency has added two provisions in the adopted version which give tenants a chance to resolve such disputes. Housing sponsors will be required to provide tenants with a written acknowledgment of the documents submitted, if requested by tenants, and must give tenants 30 days notice prior to implementing a surcharge. In addition, the rule already requires Sponsors to receive Agency approval prior to imposing a surcharge. The Agency believes that these safeguards should adequately protect the tenant and that a hearing or arbitration is unnecessary.

The comment to this section also inquired about the ability to have surcharges, paid to the municipality, returned if tenants cure their failure to recertify. The Agency has included a provision in the adopted version which makes it clear that neither the Agency or sponsor is responsible for the return of surcharges paid to the municipality for failure to recertify.

**5:80-20.7(b), 20.8(a) and 20.9(b)**—The comment expressed concern that for pre-January 17, 1984 projects, the \$45,000 maximum income limit (by reference to N.J.A.C. 5:80-8.2) applies only to admission and that the 6 or 7 times annual rental income limitation applies only to surcharges. The Agency response is that the \$45,000 income limitation and the 6 or 7 times annual rental income limitation, whichever is less, apply both to admission and to surcharges. Accordingly, no changes are necessary.

**5:80-20.10**—The comment expressed the opinion that there should be some form of penalty for persons who violate the confidentiality requirement. The comment to this section also inquired about when material submitted would no longer be needed and why tenants were limited to requesting return of the material at the time of submission. The Agency response is that the tenants have private rights of action against anyone who is responsible for invasion of their privacy. In addition, sponsors are subject to actions by the Agency under N.J.A.C. 5:80-2 for violation of any Agency rules. The Agency also believes that the provisions for return of material, if requested at the time of submission, are reasonable and help ensure the privacy of tenants. Accordingly, no changes are necessary.

#### Summary of Additional Changes Between Proposal and Adoption

**5:80-20.3(a)2**—This was revised to clarify that the Agency or sponsor would only contact IRS for additional information needed to verify income. It was also revised to replace "family annual income" with the defined term "gross aggregate family income".

**5:80-20.3(b) and 20.4(a)**—This was revised to clarify that the rule applies to those applying for admission to housing projects as well as those already residing in them.

**5:80-20.5(g)**—This section was added to require sponsors to acknowledge receipt of documents submitted by tenants, if requested by tenants.

**5:80-20.8(b)**—This section was revised to clarify that sponsors must give tenants 30 days notice prior to imposing surcharges for failure to recertify.

**5:80-20.9(b)**—This section was revised to clarify that income must exceed the limit for six months after expiration of the lease in order for tenants to be evicted.

**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 20. CERTIFICATION AND RECERTIFICATION OF INCOME

##### 5:80-20.1 Authority

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

##### 5:80-20.2 General applicability

(a) Regulations within this subchapter shall apply to all **\*[families occupying a unit within a]** housing projects **\*financed by a loan from the Agency\***.

(b) In addition to (a) above, **\*[any family occupying]\* \*if\*** a unit within a housing project **\*[which]\*** is assisted by subsidies provided by the United States Department of Housing and Urban Development, (HUD) such as Section 8 (Housing Assistance Payments) and Section 236 (Interest Reduction Payments) of the National Housing Act of 1937, or **\*[which]\*** is financed pursuant to Section 103(b)(4) of the Internal Revenue Code, or **\*[which]\*** is financed by a loan from the Agency which is insured or guaranteed by the United States or any agency thereof, **\*[may be required to comply with]\* \*then any\*** additional Federal regulations, if applicable, regarding certification and recertification of income **\*shall also apply to the unit\***. In such cases, the Housing Sponsor shall notify families that they are residing in housing projects which are subject to such Federal regulation. In the event there are any inconsistencies between the regulations in this subchapter and said Federal regulations, the Federal regulations shall prevail.

(c) References to any statutes, State or Federal, within this subchapter include any amendments which have been or may be made to such statutes.

##### 5:80-20.3 Documentation

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

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

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

##### 5:80-20.4 Calculation of income

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

(b) For all other families, gross aggregate family income shall be calculated by the total annual income of all family members, from whatever source derived, including but not limited to pension, annuity, retirement and social security benefits. However, the calculation for gross aggregate family income shall not include such income as the Agency determines may be excluded. Such excludable income shall include but is not limited to the following:

1. Income from a dependent minor under 18 years of age, who is not the head of household or spouse of the head of household;
2. Lump-sum additions to family assets such as inheritances, capital gains, insurance payments included under health, accident, hazard or worker's compensation policies, and settlements for personal or property losses;
3. For income from dependents who are secondary wage earners but who are not included within (b)1 above, **\*[an allowance for]\*** such wages up to a maximum of \$3,000.

(c) The calculation of gross aggregate family income with regard to (b) above, **\*[may include reasonable allowances for dependents and medical expenses in such amounts as the Agency may determine.]\* \*shall include an allowance of \$480.00 for each dependent minor under 18 years of age who is not the head of household or spouse of the head of household.\***

##### 5:80-20.5 Recertification periods and procedures

- (a) Family income shall be recertified on an annual basis for:
  1. Families occupying a unit which is assisted by HUD subsidies, such as Section 8 and 236.
  2. Families occupying a unit within a housing project financed under Section 103(b)(4) of the Internal Revenue Code where such unit is restricted to families of low and moderate income as defined in Section 103(B)(12)(c).

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

(c) Housing sponsors shall notify each family in writing, not more than 100 days and not less than 91 days prior to expiration of a family's lease, that they must recertify family income. Such notification shall include but is not necessarily limited to:

1. A statement that families must recertify within 30 days of the notice;
2. A list of the documentation required for recertification;
3. A statement that families who fail to recertify income are subject to provisions set forth in N.J.A.C. 5:80-20.6, such statement including a description of such provisions.
4. A statement that after recertification, families whose income is in excess of the Federal or Agency maximum income limit may be subject to provisions set forth in N.J.A.C. 5:80-20.7, such statement including a description of such provisions.

(d) After recertification, Housing Sponsors shall calculate a family's gross aggregate family income. If there will be an adjustment in HUD subsidy or imposition of a surcharge as provided by N.J.A.C. 5:80-20.7, sponsors shall provide families with notice at least 30 days prior to the expiration of the lease. **\*If requested by families, Sponsors shall provide an explanation of how they calculated the family's income and arrived at the adjustment of subsidy or imposition of a surcharge.\*** Housing sponsors must submit all family recertification calculations and supporting documents to the Agency at least 30 days prior to the expiration of a family's lease.

(e) The Agency shall review the recertification calculations and supporting documents and notify the Housing Sponsor of its approval or any adjustments to the calculations within 30 days of receipt. If the review results in an adjustment which will decrease or further decrease a family's HUD subsidy or impose or increase a surcharge, Housing Sponsors shall provide the family with an additional 30 days notice prior to implementing such adjustment.

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

**\*(g) Housing sponsors shall provide a written acknowledgment indicating the documents submitted, if requested at the time of submission.\***

5:80-20.6 Failure to recertify

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

1. For families occupying a unit which is assisted by HUD subsidies, such as Section 8 and 236, such subsidies shall be terminated as needed to comply with applicable Federal regulations.
2. For all other families, they shall be subject to imposition of surcharges pursuant to N.J.A.C. 5:80-20.8, and may also be subject to eviction pursuant to N.J.A.C. 5:80-20.9.

(b) Families subject to the provisions in (a) above, upon satisfactory completion of recertification, may have subsidies restored, provided said subsidies are available, or may, with Agency approval, have surcharges removed. Surcharges paid to the Agency for failure to recertify, as required by N.J.A.C. 5:80-20.8(d) may be returned, with Agency approval, if satisfactory completion of recertification is made within six months of the notice to recertify. **\*Neither the Agency or the Sponsor is responsible for return of surcharges paid to the municipality.\***

5:80-20.7 Adjustments in tenancy

(a) For families occupying a unit assisted by HUD subsidies such as Section 8 and 236, upon recertification, families whose income is in excess of the maximum income limit under applicable federal regulations are subject to adjustment or termination of HUD subsidies as needed to comply with applicable Federal regulations.

(b) For all other families, upon recertification, those whose income is in excess of the maximum income limit under N.J.A.C. 5:80-8.2 may be subject to surcharges pursuant to N.J.A.C. 5:80-20.8, and may also be subject to eviction pursuant to N.J.A.C. 5:80-20.9.

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

5:80-20.8 Surcharges

(a) Upon recertification, if the gross aggregate family income exceeds the maximum income limit pursuant to N.J.A.C. 5:80-8.2 by 25 percent or less, the family shall continue to occupy the unit without the imposition of any surcharges. If the gross aggregate family income exceeds the maximum income limit by more than 25 percent, the family may continue

to occupy the unit, subject to payment of a surcharge as outlined in (c) below. Such surcharges may only be imposed with approval of the Agency. When imposing surcharges, housing sponsors shall give families notice that they may be subject to eviction if their income continues to exceed the maximum income limit for six months from the expiration of the family's lease.

(b) Families subject to surcharges for failing to complete the recertification process (see N.J.A.C. 5:80-20.6) shall be surcharged at the maximum rate outlined in (c) below and may also be subject to eviction in accordance with N.J.A.C. 5:80-20.9. **\*Sponsors shall provide families with notice at least 30 days prior to the expiration of the lease that a surcharge will be imposed for failure to recertify.\*** Such surcharges or eviction actions require Agency approval.

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

Percentage that Gross Aggregate Income exceeds the Maximum Income Limit	Surcharge on Unit Rent
Up to and including 125%	None
In excess of 125% up to and including 130%	5%
In excess of 130% up to and including 135%	10%
In excess of 135% up to and including 140%	15%
In excess of 140% up to and including 145%	20%
In excess of 145% up to and including 150%	25%
In excess of 150%	30%

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

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

5:80-20.9 Eviction

(a) Families who fail to recertify income following notification pursuant to N.J.A.C. 5:80-20.5 may, with Agency approval, be evicted by the housing sponsor if such failure continues for at least six months from expiration of lease.

(b) Upon recertification, families whose gross aggregate family income exceeds the maximum income limit pursuant to N.J.A.C. 5:80-8.2 by more than 25 percent and continues to do so for at least six months **\*after expiration of the lease\*** may, with Agency approval, be evicted by the housing sponsor.

(c) Prior to eviction under this section, Housing Sponsors must provide families with written notice at the end of the six month period indicating that eviction procedures will begin unless they recertify within 10 days of the notice and show that family income has decreased below the maximum income limit. Families who fail to recertify within the 10 days or upon recertification are in excess of the maximum income limit may be evicted by following the provisions of N.J.S.A. 2A:18-61.1 et seq.

5:80-20.10 Confidentiality

Housing Sponsors shall maintain files on the certification and recertification of family income at the project. Such files are to be kept as confidential and shall not be accessible to nor shall information contained therein be disclosed to any person except authorized representatives of the Housing Sponsor, Agency, HUD. Housing Sponsors shall require identification from each person claiming authority to review such confidential files and maintain a list of individuals who have been provided access to same. If a Housing Sponsor is not satisfied that a person requesting review has proper authority, review shall be denied and the matter referred to the Agency for final determination. Any copies of family files sent to the Agency pursuant to the certification or recertification process shall be maintained in the same confidential manner. If requested by a family at the time of submission, submitted material shall be returned to a family, when it is no longer needed.

NEW JERSEY REGISTER, MONDAY, JULY 21, 1986

**EDUCATION****(a)****STATE BOARD OF EDUCATION****Teacher Preparation and Certification  
State Board of Examiners; Duties****Adopted Amendment: N.J.A.C. 6:11-2.2**

Proposed: April 7, 1986 at 18 N.J.R. 595(a).

Adopted: June 16, 1986 by State Board of Education, Saul Cooperman, Secretary.

Filed: June 19, 1986 as R.1986 d.279, with technical changes not requiring additional public notice and comment (See N.J.A.C. 1:30-4.5).

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:6-7, 18A:6-34, 18A:6-38 and 18A:26-10.

Effective Date: July 21, 1986.

Expiration Date: December 12, 1990.

**Summary of Public Comments and Agency Responses:****No comments received.****Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*).**6:11-2.2 Duties**

The Board shall grant appropriate certificates to teach or to administer, direct, or supervise the teaching, instruction or educational guidance of pupils in public schools operated by \*district\* boards of education, and such other certificates as it shall be authorized to issue by law, based upon certified scholastic records, documented experience or upon examinations, and may revoke or suspend such certificates. It is the responsibility and authority of the State Board of Education upon recommendation of the Commissioner of Education to establish rules and regulations governing the issuance, revocation and suspension of certificates, including rules governing types of certificates, authorizations and certification requirements. All actions of the State Board of Examiners shall be taken in accord with rules prescribed by the State Board of Education.

**(b)****STATE BOARD OF EDUCATION****School Facility Planning Services  
Application of the Uniform Construction Code  
Substandard School Facilities****Adopted New Rules: N.J.A.C. 6:22-1.6****Adopted Amendments: N.J.A.C. 6:22-1.7, 2.4 and 3.1**

Proposed: March 17, 1986 at 18 N.J.R. 526(a).

Adopted: June 16, 1986 by State Board of Education, Saul Cooperman, Secretary.

Filed: June 19, 1986 as R.1986 d.281, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:4-16, 18A:18A:18, 18A:20-36, 18A:33-1 and 52:27D-130.

Effective Date: July 21, 1986.

Expiration Date: September 3, 1990.

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

Written comments were received from 13 organizations. All were supportive of the intent to assure safe and healthy facilities for New Jersey students. Concerns were expressed, however, on specific requirements of the code as follows:

1. One respondent disagreed that trailers should meet the construction requirements of BOCA use group E.
2. Five respondents disagreed with the square footage requirements because of the size of existing units.
3. Five respondents expressed disagreement with the required ceiling heights, again because of the condition of existing units.

4. One respondent felt that stabilized and not fixed furniture and equipment would suffice.

5. Two respondents expressed disagreement with the requirement for mechanical ventilation and exhaust.

6. One respondent recommended that the width of trailers be set at eight feet, instead of 10 feet, in order to facilitate easier movement on New Jersey roads.

7. Three respondents disagreed with the 30-day limit to correct code deficiencies for existing units.

8. One respondent expressed disagreement with the requirement of locating trailers up to 20 feet from a window wall of a school building.

9. One respondent disagreed with the required restricted length of an electrical power cable.

10. Two respondents recommended a reduction in the required square footage for chalkboards and tackboards.

Responses of the Department of Education to the above comments were as follows:

1. After prolonged discussion with the Department of Community Affairs, it was agreed that trailers should meet the construction requirements of use group B instead of use group E.

2. Regarding the square footage requirements, the standard was not changed for instructional spaces. It was, however, explained that offices of 100-120 square feet are acceptable for one-to-one clinical services such as speech and hearing therapy.

3. The department agreed. Ceiling heights were amended for trailers to: (1) 150 square feet—seven feet; (2) 151 to 300 square feet—seven feet, six inches; (3) above 300 square feet—at least eight feet.

4. The department agreed, and the standard for furniture in vans was amended to only require stabilization while in transit.

5. No change was made to the requirement for mechanical ventilation and exhaust, because it is a specific requirement of the New Jersey Uniform Construction Code and has been required for instructional spaces since 1915.

6. The department agreed, and the width requirement for trailers was amended to eight feet for trailers of up to 300 square feet and 10 feet for trailers of more than 300 square feet.

7. The department responded by establishing two separate timelines that apply to units placed in service prior to and subsequent to the code adoption. The 30-day limit for the correction of deficiencies was retained for units approved after the adoption of the proposed code; however, owners of units in use prior to the adoption will not be given three years to upgrade or abandon them. This is the same requirement as for all other substandard facilities in New Jersey.

8. The department disagreed for safety reasons. The standard of 20 feet between a pre-manufactured unit and the window wall of a building was not changed. The 20-foot distance is an existing requirement of N.J.A.C. 6:22 and is intended to ensure that fire apparatus will be able to reach the building in the event of fire. The Department believes that any lessening requirement could not give such an assurance.

9. The department disagreed. The standard for the length of an electrical power cable was not amended, because it is an established requirement of the National Electrical Code.

10. The department agreed, and the square footage requirement for chalkboards was amended to be appropriate to the instructional program.

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

**6:22-1.6 Planning standards for educational adequacy**

(a) When planning for the educational adequacy of the various instructional spaces, district boards of education\*[,]\* and any consultant employed by them\*[,]\* shall apply the standards contained in the publications in the Educational Facility Series of the Bureau of Facility Planning Services in the Department of Education, including but not limited to the following:

1. "Educational Specifications";
2. "Greenhouses for Schools";
3. "Instructional Media Center";
4. "School Capacity";
5. "School Sites: Selection, Development and Utilization"; and
6. "Science".

(b) The publications in (a)1. through 6. above are available from the Office of Central Services, New Jersey Department of Education, 225 West State Street, CN 500, Trenton, New Jersey 08625.

**6:22-1.7 Appeals and hearing process**

(No change in text.)

SUBCHAPTER 2. APPLICATION OF THE UNIFORM  
CONSTRUCTION CODE

## 6:22-2.4 Educational facility planning standards

(a) The educational facility planning standards delineated below shall, in conjunction with the Uniform Construction Code, form the requirements for the design and construction of public schools.

1.-17. (No change.)

18. There shall be at least one general toilet room for each sex, containing at least two of each respective fixture, on each floor occupied by pupils\*[,]\* or all instructional rooms shall have individual toilet rooms. Where classrooms, shops or physical education rooms are provided with self-contained individual facilities (water closet, lavatory, and drinking fountains), the pupil capacity of these rooms shall not be counted in computing the number of fixtures required in the general pupil toilet rooms.

19.-32. (No change.)

33. Pre-manufactured educational units, vans and/or other mobile units:

i. Pre-manufactured units shall be reviewed and approved by the Bureau of Facility Planning Services and shall:

(1) Have a seal affixed by the manufacturer which indicates that it meets the educational construction standards for BOCA use group **\*[E]\*\*B\*** in accordance with N.J.A.C. 5:23-4.25;

(2) Contain square footage appropriate to its use as specified in the School Capacity bulletin of the Bureau of Facility Planning Services, Department of Education;

(3) Meet code requirements for educational buildings as specified in the U.C.C. and in N.J.A.C. 6:22-2.3 and 6:22-2.4;

(4) Have two means of clear and unblocked egress, if the unit is a trailer in excess of 20 feet in length, which are remote from each other; otherwise it shall have a single means of egress;

(5) Sturdy steps provided with a handrail, except if the unit is to be used by a physically handicapped person it shall be barrier free;

(6) Have electric heat which provides a temperature of 68 degrees to 72 degrees Fahrenheit in the most extreme cold weather;

**\*[(7) Have a ceiling no lower than eight feet, except that if it is 150 square feet or less it may have a ceiling no lower than seven feet;]\***

**\*[(7) Have a ceiling height as follows: vans or other mobile units—seven feet; trailers of 150 square feet—no less than seven feet; trailers of 151 to 300 square feet—no less than seven feet, six inches; trailers in excess of 300 square feet—no less than eight feet;]\***

(8) Be furnished with provisions for the storage of students' clothing;

(9) Have a chalkboard and display board appropriate to the instructional program;

(10) Have floor covering of either carpet **\*[(]\***which meets flame spread requirements as per the U.C.C.**\*[)]\* or asbestos-free vinyl tile;**

(11) Have interior ceiling and wall materials which are certified free of non-toxic materials; **\*and\***

(12) Be situated on an approved site\*[: and,]\* **\*.\***

(13) A maximum of 30 days shall be permitted to correct the code deficiencies listed in (1) through (12) above which are found during an evaluation of any pre-manufactured unit placed in service **\*[prior to] \*after\*** the enactment of these regulations\*[,]\* or of a subsequent future inspection of a unit approved according to these regulations. Staff of the Bureau of Facility Planning Services or county offices of education may order a unit immediately abandoned if, as a result of an evaluation, it is concluded that a clear and present danger exists for students and staff. A clear and present danger shall be defined as deficiencies involving code requirements relating to construction materials, fire safety or exiting. Failure or inability to correct code deficiencies shall be cause to permanently abandon a pre-manufactured unit.

**\*[ii. Trailers (a pre-manufactured unit) being used as an emergency replacement for regular classroom facilities may be utilized for a maximum of two school years. Trailers required for the delivery of basic skills services under the federal Education Consolidation Improvement Act, Chapter I, N.J.S.A. 192 and N.J.S.A. 193 may be used as long as they meet the standards of this section and are evaluated and approved annually by the county superintendents of schools.]\***

**\*ii. Pre-manufactured units in service prior to the enactment of these regulations will be evaluated by the Bureau of Facility Planning Services. If such evaluation indicates that a unit cannot meet the provisions of this section and/or the requirements of the BOCA code as summarized in specifications of the Department of Education for trailers, it shall be abandoned. If the evaluation indicates that code deficiencies can be corrected, districts will be permitted up to three years in which to correct the deficiencies. If the deficiencies are not corrected, the unit shall be abandoned.\***

**cies. If the deficiencies are not corrected, the unit shall be abandoned.\***

**\*iii. A pre-manufactured trailer unit being utilized as an emergency, temporary replacement for a regular classroom facility may be utilized for a maximum of two school years. As a pre-condition to the approval for the use of a trailer, a school district must have a plan approved by the county superintendents of schools for the provision of permanent facilities, including an implementation schedule. A trailer to be used for the delivery of basic skills services to nonpublic school students under the federal Education Consolidation Improvement Act, Chapter 1, Chapter 192 and 193 L. 1977 may be used as long as it meets the standards of this section and is evaluated and approved annually by the county superintendent of schools.\***

**\*[iii.]\* **\*iv.\*** A self-propelled van and/or other mobile unit used for instruction shall:**

(1) Have mechanical ventilation and exhaust which provides 10 cfm air change per occupant per hour;

(2) Have interior ceiling and wall materials that are certified non-toxic and non-combustible;

(3) Contain a minimum of 100 square feet;

(4) Have electric heat which provides a temperature 68 degrees to 72 degrees Fahrenheit in the most extreme cold weather;

(5) Provide at least 50 foot candles of uniformly distributed artificial illumination;

(6) Have a ceiling height no lower than seven feet;

(7) Have two means of clear and unblocked egress which are remote from each other; if the exit is not at grade level, sturdy steps with a handrail shall be provided, except if the unit is to be used by a physically handicapped person it shall be barrier free;

(8) Be provided with door hardware which is lever-operated and which is fully operable from the interior and exterior at all times;

(9) Be provided with a single station smoke detection unit which has an annunciator that can clearly be heard within the unit;

(10) Be furnished with an electric hook-up cable which is copper, a maximum of 28 feet in length and contain a 220 volt four-prong receptacle which is plugged into an approved twist-type outlet;

(11) Be furnished with a 2A-10BC fire extinguisher which is maintained in operating order at all times;

(12) Be furnished with electrical fixtures which meet the National Electrical Code, Section 551;

(13) Have electrical wire of a minimum size to meet the National Electrical Code;

(14) Have floor covering of either carpet **\*[(]\***which meets flame spread requirements of the U.C.C.**\*[)]\* or asbestos-free vinyl tile;**

(15) Be furnished with **\*[fixed, stabilized]\*** furniture and equipment **\*which is stabilized while in transit\*;**

(16) Pass an annual inspection by the New Jersey Division of Motor Vehicles;

(17) Be evaluated and approved annually by the county superintendents of schools; **\*and\***

(18) Be furnished with wheel chocks to assure that the unit will not move in any direction when parked.

(19) A maximum of 30 days shall be permitted to correct the code deficiencies listed in (1) through (18) above which are found during an evaluation of any van and/or other mobile unit placed in service **\*[prior to] \*after\*** the enactment of these regulations\*[,]\* or of a subsequent future inspection of a van and/or other mobile unit approved according to these regulations. Staff of the Bureau of Facility Planning Services or county offices of education may order a van and/or other mobile unit immediately abandoned if, as a result of an evaluation, it is concluded that a clear and present danger exists for students and staff. A clear and present danger shall be defined as deficiencies involving code requirements relating to construction materials, fire safety and exiting. Failure or inability to correct code deficiencies shall be cause to order a permanent abandonment of a van and/or other mobile unit.

**\*v. Pre-manufactured units in service prior to the enactment of these regulations will be evaluated by the Bureau of Facility Planning Services. If such evaluation indicates that a unit cannot meet the provisions of this section and/or the requirements of the BOCA code as summarized in specifications of the Department of Education for vans or other mobile units it shall be abandoned. If the evaluation indicates that code deficiencies can be corrected, districts will be permitted up to three years in which to correct the deficiencies. If the deficiencies are not corrected the unit shall be abandoned.\***

**\*vi. A self-propelled van or other pre-manufactured mobile unit being utilized as an emergency, temporary replacement for a regular classroom facility may be utilized for a maximum of two school years. As a pre-condition to the approval for the use of a van/other mobile unit, a school**

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district must have a plan approved by the county superintendent of schools for the provision of permanent facilities, including an implementation schedule. A van/other mobile unit to be used for the delivery of basic skills services to non-public school students under the federal Education Consolidation Improvement Act, Chapter 1, Chapter 192 and 193 L. 1977 may be used as long as it meets the standards of this section.\*

## SUBCHAPTER 3. SUBSTANDARD SCHOOL FACILITIES

6:22-3.1 Emergency provisions for accommodation of school pupils in substandard school facilities

(a) Substandard facilities shall be defined as:

1. All on-site facilities which have never received:

i. Approval of the State Board of Education as having met the requirements of this subchapter and the rules under N.J.A.C. 6:22 in effect at the time the facilities were constructed, or

ii. Approval of the local municipal construction official\*[,] and sub-code officials\*[,] as having met the State Uniform Construction Code which was in effect at the time the facilities were constructed or altered;

2. All off-site facilities being provided by district boards of education for use by public school pupils;

3. All substandard educational facilities shall be initially approved by the county superintendent of schools in which the district board of education is situated, such approval to be given for a maximum period of two years except as prescribed in (b) above. No substandard educational facility, however, shall be approved for more than two consecutive years unless it is inspected by the Bureau of Facility Planning Services in the Division of Finance, Department of Education to \*insure\* \*ensure\* that:

(b) Off-site facilities, as specified in (a)2. above, may be continued in use pursuant to annual evaluation and approval by the county superintendent of schools as having met the provisions of this subchapter and the receipt of a variance from the Division of Finance, Bureau of Facility Planning Services.

(c) Privately\*[-]\*owned facilities, as specified in (a)3. above, in use on or before September 1, \*[1985]\* \*1987\*, may be continued in use pursuant to annual evaluation and approval by the county superintendent of schools as having met the provisions of this subchapter.

(d) All substandard educational facilities shall be initially approved by the county superintendent of schools in which the district board of education is situated, such approval to be given for a maximum period of two years except as prescribed in (b) above. No substandard educational facility, however, shall be approved for more than two consecutive years unless it is inspected by the Bureau of Facility Planning Services in the Division of Finance, Department of Education to \*insure\* \*ensure\* that:

1. The facilities meet health, safety and educational adequacy standards for temporary, substandard facilities, as specified in the \*[\*]\*School Capacity\*[\*]\* bulletin\*[,] \*;\* \*;

2. The utilization of the facilities is temporary\*[,] \*;\* \*;

3. A plan has been developed by the district board of education\*[,] and approved by the county superintendent of schools\*[,] to upgrade the facilities to standard, fully\*[-]\*approved conditions.

(e) The Bureau of Facility Planning Services and the county superintendents of schools, when considering educational adequacy, shall apply the minimum standards of square feet per space and per pupil as contained in this subchapter and in the \*[\*]\*School Capacity\*[\*]\* bulletin. In cases where a district board of education feels it must have relief from the minimum square feet requirements, such relief shall be determined upon application to the county superintendent of schools. The county superintendent shall make recommendations to the assistant commissioners of the Divisions of Finance and of County and Regional Services who may grant relief upon consideration of educational, health and safety standards.

(f) County superintendents of schools will annually monitor the plan of district boards of education to upgrade facilities to State approved temporary substandard and/or fully approved, standard status.

(g) District boards of education must provide funds in the next immediate annual budget to correct deficiencies about which they are notified by the Bureau of Facility Planning Services on or before October 1 annually. Failure to budget for the correction of deficiencies\*[,] and to implement the corrections by the next September 1 date following the October 1 notice, except as specified in (h) below, shall result in the facility being abandoned.

(h) If a district board of education cannot afford to correct all identified deficiencies in one budget year because of the total costs associated with large numbers of substandard facilities, the district board's long-range facility plan must include a sub-plan for the correction of the deficiencies. The sub-plan must be updated annually and identify funding sources such as an annual budget or a capital improvement authorization. Inclusion of a sub-plan to correct deficiencies in substandard facilities does not relieve a district board of education from implementing the

corrections in the shortest time possible.

(i) In making a determination upon any application for the use of emergency substandard facilities, the following factors shall be taken into account\*[,]\*\*:\*

1.-2. (No change.)

(a)

### State Library Assistance Programs Audio-Visual Public Library Services Adopted New Rule: N.J.A.C. 6:68-5

Proposed: April 7, 1986 at 18 N.J.R. 595(b).

Adopted: June 16, 1986 by State Board of Education, Saul Cooperman, Secretary.

Filed: June 19, 1986 as R.1986 d.278, with technical changes not requiring additional public notice and comment (See N.J.A.C. 1:30-4.5).

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:74-3.3.

Effective Date: July 21, 1986.

Expiration Date: April 12, 1990.

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

One letter with comments was received. Basically, the suggestion was to narrow the definition of "audio-visual" to exclude micro forms and on-line data bases. The agency did not, however, make any change based upon the suggestion, because the rules need to accommodate potential as well as currently popular audio-visual formats.

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

## SUBCHAPTER 5. AUDIO-VISUAL PUBLIC LIBRARY SERVICES

6:68-5.1 Scope and purpose

The rules in this subchapter provide for the development and expansion of audio-visual public library services to the residents of New Jersey, pursuant to the provisions of the Library Development Aid Law, (Chapter 297, Laws of 1985), N.J.S.A. 18A:74-3.3.

6:68-5.2 Definitions

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

"Audio-visual" means communications resources which rely on a device for transmission, reproduction, or enlargement to be effectively utilized or understood. Also included are art works and objects.

"Audio-visual public library services" means provision of access to audio-visual resources to clientele of a public library.

"Public library" means a municipal, county, association\*[,] or joint library which receives public funding.

6:68-5.3 Eligibility

Any library or organization providing audio-visual public library services is eligible to participate in this program.

6:68-5.4 Grant application procedures

(a) Application forms for the program may be obtained from the Library Development Bureau of the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.

(b) Applications must conform to the requirements for completion and the deadline dates as specified by the State Librarian in the annual program announcement.

6:68-5.5 Categories in award of grants

(a) Each approvable application shall be assigned to one of the three categories as follows:

1. Regional audio-visual public library services;
2. Statewide audio-visual public library services;
3. Local audio-visual public library services.

(b) The priority of category and the percentage of funds allocated to each category shall be established each year by the State Librarian.

6:68-5.6 Criteria for approval

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

1. Contribution of the proposed service to the published document, "A Developing State Plan for Library Services", New Jersey State Library, January, 1980;

2. Contribution of the proposed service to the "Regional Library Co-

operative Plan for Service”;

3. Impact of the service on the population to be served;
4. Evidence of interest, need or demand for the proposed service;
5. Clearly defined goals and objectives for the service;
6. Proposed method of measurement and evaluation;
7. Adequacy and realism of budget and cost estimates;
8. Provision of adequate staff and staff training;
9. Provision for the dissemination of information regarding the proposed service;

10. Documentation to the effect that proposed services could not be provided solely with local funds.

6:68-5.7 Reports and audits

Grant recipients shall be required to submit reports and financial audits as specified by the State Librarian in the grant announcement.

6:68-5.8 Appeal procedures

(a) Applicants whose projects have been rejected shall be given, upon written request, an opportunity 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).

(a)

**State Library Assistance Programs  
Institutional Library Services**

**Adopted New Rule: N.J.A.C. 6:68-6**

Proposed: April 7, 1986 at 18 N.J.R. 597(a).

Adopted: June 16, 1986 by State Board of Education, Saul Cooperman, Secretary.

Filed: June 19, 1986 as R.1986 d.280, with technical changes not requiring additional public notice and comment (See N.J.A.C. 1:30-4.5).

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:73-3.4.

Effective Date: July 21, 1986.

Expiration Date: April 12, 1990.

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

One letter with comments was received. The letter suggested that:

1. Alternative delivery methods should be reduced for resident and group homes housing few people.
2. Staff requirements should be reduced for facilities housing mentally retarded individuals.

The agency responded with the following:

1. There is no point of controversy on this comment. Persons in such group homes can usually use local public library facilities. Definitions (6:68-6.2) specifically exclude residents of boarding homes.
2. The mental capacity of the institution residents changes but does not reduce the need for qualified staff.

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 6. INSTITUTIONAL LIBRARY SERVICES**

6:68-6.1 Scope and purpose

(a) The rules in this subchapter provide for the development of library services in State, county and municipal institutions, pursuant to the provisions of the Library Development Aid Law, (Chapter 297, Laws of 1985), N.J.S.A. 18A:74-3.4.

(b) Three separate institutional grant categories have been developed. Program I provides institutional library incentive grants to assist institutional libraries in meeting minimum standards. Program II provides basic grants to institutional libraries which meet minimum standards. Program III provides developmental grants to expand programs of library services.

6:68-6.2 Definitions

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

“Associate librarian” means a person who holds an \*[Associate Educational Media Specialist Certificate]\* \*associate educational media specialist certificate\* in accordance with N.J.A.C. 6:11-12.22.

“Basic grants” means funds made available to institutions which meet minimum standards.

“Client groups” means mentally disabled, mentally retarded, and physically handicapped persons; \*also\* adults and juveniles in correctional and related programs. Excluded are residents of general hospitals, nursing homes and boarding homes.

“Developmental grants” means funds made available to institutions already meeting minimum standards to develop expanded programs of library services.

“Expanded programs of library services” means new services, changes in\*[,]\* or expansion of services already offered.

“Institution” means an adult or juvenile health, \*[mehtal]\* \*mental\* health, mental retardation, veterans, residential, correctional\*[,]\* and other similar facility or day training center, other than a public school, which is operated by or under contract to the State or to county or municipal governments.

“Institutional library incentive grants” means funds made available to institutions to bring library services up to the minimum standards.

“Institutional library” means any library, within an institution, directly serving the institutional client group.

“Librarian” means a professional librarian, an educational media specialist\*[,]\* or an associate educational media specialist.

“Library clerk” means a person employed in a library who performs clerical or support functions.

“Library services” means all activities rendered by the library to its users.

“Part-time employee” means an employee whose regular hours of duty are less than the normal work week for that class or agency in accordance with Civil Service Regulations N.J.A.C. 4:1-2.1.

“Professional librarian” means a person who holds a \*[Professional Librarian’s Certificate]\* \*professional librarian’s certificate\* or an \*[Educational Media Specialist Certificate]\* \*educational media specialist certificate\* in accordance with N.J.A.C. 6:11-12.7 and 6:11-12.21.

6:68-6.3 Program I: Institutional library incentive grants

(a) Program I will provide funds to assist institutions in bringing their library services to minimum standards. These standards are:

1. Staff shall be assigned by the institution in accordance with the chart set forth below\*[,]\*\*:\*

Average Annual Resident Population	Minimum Number of Paid Staff
Less than 100	One staff member part-time.
100 to 300	Associate librarian full-time. One library clerk, part-time.
301 to 999	One librarian full-time. Two library clerks, one of whom must be full-time.
1,000 or more	One librarian full-time. Three library clerks, two of whom must be full-time.

2. Materials to meet the informational, educational and recreational needs of the population shall be provided as follows:

- i. A minimum of five titles per resident. Titles can include print and non-print materials.
- ii. Audio-visual materials and equipment in sufficient quantity to serve the needs of the users.

3. Access shall be provided to client groups as follows:

- i. A library with only part-time staff shall provide library services at least 20 hours per week.
- ii. A library with full-time staff shall provide library services at least 30 hours per week.

4. Facilities and furnishings will be adequate to support the library and its services and will be determined in accordance with guidelines established by the State Librarian.

6:68-6.4 Program II: Basic \*[Grants]\* \*grants\*

(a) Program II will provide funds to institutional libraries which meet minimum standards in order to qualify for Program II grants.

(b) Institutions which meet minimum standards and maintain a level of library expenditures for library services equal to the level in the preceding calendar year will be eligible, annually, for a grant of \$1,000 per institution and \$7.50 per capita.

6:68-6.5 Program III: Developmental grants

Program III will provide funds to institutions to develop expanded programs of library services. These services may be provided through cooperation with other institutions or with other libraries.

**6:68-6.6 Grant application procedures**

(a) Application forms for these programs may be obtained from the Library Development Bureau of the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.

(b) Applications must conform to the requirements for completion and the deadline dates as specified by the State Librarian in the annual program announcement.

**6:68-6.7 Priorities in award of grants**

(a) Each approvable application shall be assigned to one of the following three programs:

- i. Incentive grants;
- ii. Basic grants;
- iii. Developmental grants.

(b) The percentage of funds allocated in each program shall be established each year by the State Librarian.

**6:68-6.8 Criteria for approval**

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

1. Establishment of a Library Advisory Committee which will assist in the development of a plan for library services. Membership on the committee will include the institutional library staff, representatives of the administration and departments of the institution, resident population\*[,] and the community;

2. Impact of the service on the population to be served;
3. Evidence of interest, need or demand for the proposed service;
4. Clearly defined goals and objectives for the service;
5. Proposed method of measurement and evaluation;
6. Adequacy and realism of budget and cost estimates.

**6:68-6.9 Application of funds to library services**

Funds received pursuant to these rules shall not be applied to any purpose other than institutional library services.

**6:68-6.10 Reports and audits**

(a) On or before March 1 in each year, each institutional library receiving State aid according to this subchapter shall annually make and transmit a report to the State Librarian of such information, based upon the records and statistics of the preceding calendar year, as the State Librarian shall require.

(b) Grant recipients shall be required to submit reports and financial audits as specified by the State Librarian in the grant announcement.

**6:68-6.11 Appeal process**

(a) Applicants whose projects have been rejected shall be given, upon written request, an opportunity 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\*[\*]\*.\*

**(a)****STATE BOARD OF EDUCATION****Federal Library Assistance Programs  
Library Services to the Disadvantaged****Adopted Amendment: N.J.A.C. 6:69-2.1****Adopted Repeal: N.J.A.C. 6:69-2.2 through 2.12**

Proposed: April 7, 1986 at 18 N.J.R. 599(a).

Adopted: June 16, 1986 by State Board of Education, Saul Cooperman, Secretary.

Filed: June 19, 1986 as R.1986 d.282, **without change**.

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:73-40 and Public Law 98-480.

Effective Date: July 21, 1986.

Expiration Date: June 4, 1991.

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

One letter with comments was received. The letter suggested that the rules not include age as a disadvantaged category.

The agency responded that some people are actually disadvantaged by their age, and, as such, should be eligible for aid. No change was made

to the rule.

**Full text of the adoption follows.**

**SUBCHAPTER 2. LIBRARY SERVICES TO THE  
DISADVANTAGED****6:69-2.1 Authorization and procedure**

(a) To encourage public libraries to respond to the needs of that portion of its citizenry alienated from society and its institutions because of severe economic deprivations, cultural, social and minority group isolation and lack of awareness of the library potential for continuing education, the New Jersey State Library may establish a grant program for Library Services to the Disadvantaged.

(b) This program, made possible by the use of Library Services and Construction Act funds, is designed to help libraries initiate innovative and creative "outreach" programs which hopefully, will encourage full use of public library services by citizens heretofore reticent to use libraries.

(c) This program shall be administered in accordance with the regulations of the United States Department of Education which implement the Library Services and Construction Act (P.L. 98-480, 20 U.S.C. 351 to 358). A copy of these regulations may be obtained by contacting the Department of Education, New Jersey State Library, Library Development Bureau, 185 West State Street, Trenton, New Jersey 08625.

**Full text of the adopted repeal appears in the New Jersey Administrative Code at N.J.A.C. 6:69-2.2 through 2.12.**

**ENVIRONMENTAL PROTECTION****(b)****DIVISION OF COASTAL RESOURCES****Boat Regulation Commission****Boating Regulations****Adopted Amendments: N.J.A.C. 7:6-1.4, 1.12, 1.14  
and 1.15**

Proposed: May 5, 1986 at 18 N.J.R. 876(a).

Adopted: June 30, 1986 by Richard T. Dewling, Commissioner, Department of Environmental Protection.

Filed: June 30, 1986 as R.1986 d.304, **with portions of the proposal not adopted.**

Authority: N.J.S.A. 13:1D-1 et seq., 12:6-1(e), 12:7-34. et seq., specifically 12:7-34.40.

Effective Date: July 21, 1986.

Expiration Date: December 19, 1988.

DEP Docket No. 013-86-03.

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

The comment period for this proposal ended on June 4, 1986. During that time no comments were received.

NOTE: Pursuant to the New Jersey Boat Act of 1962 (N.J.S.A. 12:7-34.36, specifically at 12:7-34.40), rules and regulations concerning the boat numbering system become effective immediately upon promulgation. On May 5, 1986, the Department and the New Jersey Boat Regulation Commission also proposed to amend N.J.A.C. 7:6-1.42 (Diving and swimming) to change the designated areas within which skin diving is permitted in the Barnegat Inlet channel and to require modifications to the diver's marker flag. In accordance with the provisions of the New Jersey Boat Act (at N.J.S.A. 12:7-34.50) such regulations may not become effective during the period between May 1 and September 30 of any year unless the Boat Regulation Commission finds a need for the adoption of emergency rules pursuant to the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.). The amendment to N.J.A.C. 7:6-1.42 has, therefore, not been adopted. The Boat Regulation Commission has found such a need for the rule and the proposed amendments to N.J.A.C. 7:6-1.42 will be adopted on an emergency basis pursuant N.J.S.A. 52:14B-4(c) and proposed concurrently for comment.

**Full text of the adoption follows.**

**7:6-1.4 Display of numbers on vessels**

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

(c) This section does not apply to the following:

1. A vessel for which a valid temporary certificate has been issued to

its owner by the issuing authority in the state in which the vessel is principally used.

2. A vessel documented in accordance with Part 67 of Title 46, Code of Federal Regulations.

7:6-1.12 Certificate of number; validity

(a) In addition to any other provisions, a certificate of number is invalid after the date upon which:

Renumber 2.-4. as 1.-3. (No change in text.)

(b) (No change.)

7:6-1.14 Removal of numbers; removal of validation sticker

(a) The person whose name appears on a certificate of number as the owner of a vessel shall remove the number and validation sticker from the vessel when:

Renumber 2.-3. as 1.-2. (No change in text.)

(b) (No change in text.)

(c) (No change in text.)

(d) When a vessel is documented under Part 67 of Title 46, Code of Federal Regulations, the owner shall:

1. Remove the number and validation sticker from each side of the bow or the forward half of the vessel; and

2. Conform to the provisions of N.J.A.C. 7:6-1.15, Display of validation sticker and fee for duplicate, where the vessel is subject to the provisions of N.J.S.A. 12:7-34.44a, Documented Vessels under 500 Gross Tons based in this State.

7:6-1.15 Display of validation sticker and fee for duplicate

(a) Every vessel on the waters of this State required to be numbered shall display validation stickers to indicate the year of expiration of its registration. The validation stickers shall be displayed on each side of the vessel, three inches behind the State registration number assigned to the vessel, except for documented vessels.

(b) Those vessels documented under Part 67 of Title 46, Code of Federal Regulations and required to register with this State pursuant to N.J.S.A. 12:7-34.44a shall display a validation sticker on each side of the vessel in an area adjacent to the main steering station affixed to a vertical surface plainly visible at all times from both the port and starboard sides.

(c) (No change.)

(a)

**DIVISION OF WASTE MANAGEMENT**

**Closure and Post-Closure Care of Sanitary Landfills**

**Adopted Amendment: N.J.A.C. 7:26-2.9**

Proposed: May 19, 1986 at 18 N.J.R. 1036(a).

Adopted: June 30, 1986 by Richard T. Dewling, Commissioner,  
Department of Environmental Protection.

Filed: June 30, 1986 as R.1986 d.305, with technical changes not requiring additional notice and comment (See: N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1E-6, 13:1E-9 and 13:1E-114.

Effective Date: July 21, 1986.

Expiration Date: November 4, 1990.

DEP Docket No. 018-86-04.

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

Notice of the proposed rule change was published on May 19, 1986 in the New Jersey Register at 18 N.J.R. 1036(a). The notice also advised that copies of the Standard Escrow Agreement were filed for public inspection at the Office of Special Funds Administration, New Jersey Department of Environmental Protection and at the Office of Administrative Law, Quakerbridge Plaza in Trenton, New Jersey. In addition, notice of this proposed rule change was issued by the Office of Special Funds Administration by direct mailing to all affected sanitary landfill owners or operators. Both notices invited written comments to be submitted on or before June 18, 1986.

Several comments were received in two written submissions during the comment period.

COMMENT: Paragraph 13 of the Standard Escrow Agreement as required by this proposal contains an indemnification clause in favor of the escrow agent which the Department has no statutory authority to impose on landfill owners or operators. This clause is therefore an inappropriate modification of the escrow agent's fiduciary responsibilities to the depositor and should be deleted from the standard escrow agreement.

RESPONSE: The Department agrees with the comment above and will therefore make paragraph 13 an optional clause to be retained or deleted at the discretion of the escrow agent and depositor. The Department's standard escrow agreement will therefore expressly note the optional nature of paragraph 13 at its margin.

COMMENT: The standard escrow agreement should provide for the payment of taxes on interest earned by the account. The account and not the depositor should pay these taxes.

RESPONSE: The Department is not the appropriate body to express any opinion regarding the tax status of the closure escrow accounts. The Department knows of no formal opinion issued by the United States Internal Revenue Service concerning the tax status of these accounts. In the event that the interest credited to these accounts is in fact taxable, the Department believes that the depositor should pay it. This determination is based upon the fact that the funds are set aside to ultimately pay for the financial obligation of the landfill owner to properly close and provide post-closure care of the landfill. The depositor is therefore the ultimate beneficiary of the account. This situation would not necessarily occur in instances where the funds in a depositor's escrow account prove to exceed the costs of such closure and post-closure care (a circumstance which appears both remote and improbable at this juncture) and the surplus is paid by the depositor into the Sanitary Landfill Facility Contingency Fund pursuant to N.J.S.A. 13:1E-110.

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

7:26-2.9 Closure and post-closure care of sanitary landfills

(a) (No change.)

(b) The following words and terms, when used in this section shall have the following meanings. Where words and terms are used which are not defined herein, the definitions of those words and terms will be the same as the definitions found in the department rules, N.J.A.C. 7:26-1.4;

... "Escrow account" means an interest-bearing account with an accredited financial institution as escrow agent, wherein funds shall be deposited by the owner or operator of every sanitary landfill pursuant to N.J.S.A. 13:1E-100 et seq., and this section. This account shall be based upon the standard escrow agreement provided by the department for execution by and between the escrow agent and the owner or operator of the sanitary landfill. There shall be only one escrow account for each sanitary landfill, unless otherwise authorized by the department.

"Liquidity" shall mean the availability of funds for drawdowns consistent with a landfill's approved closure plan, or, if there is no approved closure plan, consistent with the department's closure strategy for the landfill facility.

... (c)-(f) (No change.)

(g) Pursuant to N.J.S.A. 13:1E-100, et seq., the requirements for the escrow account are as follows:

1.-7. (No change.)

8. Every escrow account established pursuant to this section shall be based upon and governed by the standard escrow agreement provided for such purpose by the department. Any revision to an escrow agreement shall first be approved by the department and filed by the department with the accredited financial institution as escrow agent. A copy of the standard escrow agreement provided by the department may be obtained from the Office of Special Funds Administration, Department of Environmental Protection, CN 402, \*[88]\* \*428\* East State Street, Trenton, N.J. 08625.

9.-21. (No change.)

## HEALTH

### DRUG UTILIZATION REVIEW COUNCIL

#### (a)

#### Interchangeable Drug Products

##### Adopted Amendment: N.J.A.C. 8:71

Proposed: December 2, 1985 at 17 N.J.R. 2842(a).

Adopted: June 10, 1986 by the Drug Utilization Review Council,  
Robert Kowalski, Acting Chairman.

Filed: June 23, 1986 as R.1986 d.275, with portions of the proposal  
not adopted and portions not adopted but still pending.

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: July 21, 1986.

Expiration Date: April 2, 1989.

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

No comments received.

The following products and their respective manufacturers were  
adopted:

Carbamazepine tabs 200 mg	PharmBasic
Methyldopa tabs 250, 500 mg	Cord
Propranolol tabs 10, 20, 40 mg	Barr

The following products were not adopted but are still pending:

Procainamide tabs slow-release 250, 750 mg	Danbury
Tolbutamide tabs 500 mg	Purepac
Hydralazine/Hydrochlorothiazide caps 25/25, 50/50	Superpharm
Isosorbide dinitrate oral tabs 5, 10, 20 mg	Superpharm
Indomethacin caps 25, 50 mg	Superpharm
Spironolactone tabs 25 mg/hydrochlorothiazide 25 mg	Superpharm
Chlorpheniramine maleate 8 mg/pseudoephedrine HCl 120 mg caps, slow-release	Graham
Procainamide HCl tabs, slow-release, 500 mg	Copley
Temazepam caps 15, 30 mg	PharmBasic
Spironolactone tabs 25 mg	P-D
Spironolactone 25 mg/hydrochlorothiazide 25 mg tabs	P-D
Diazepam tabs 2, 5, 10 mg	Par
Methyldopa 250/hydrochlorothiazide 25 mg tabs	Cord
Methyldopa 500/hydrochlorothiazide 50 mg tabs	Cord
Methyldopa 500/hydrochlorothiazide 30 mg tabs	Cord
Ibuprofen tabs 400, 600 mg	Danbury
Ergoloid mesylates oral tablet 1 mg	Superpharm
Ergoloid mesylates SL tabs 0.5, 1.0 mg	Superpharm
Diazepam tabs 2, 5, 10 mg	Superpharm
Metoclopramide tabs 10 mg	Chelsea
Disopyramide caps 100, 150 mg	Chelsea
Diazepam tabs 2, 5, 10 mg	Barr
Disopyramide phosphate caps 100, 150 mg	Barr
Flurazepam caps 15, 30 mg	Barr
Nalidixic acid tabs 250, 500, 1000 mg	Barr
Oxytriphyllyne tabs 100, 200 mg	Barr
Propranolol tabs 60, 80 mg	Barr
Tolazamide tabs 100, 250, 500 mg	Barr

#### (b)

#### Interchangeable Drug Products

##### Adopted Amendment: N.J.A.C. 8:71

Proposed: March 17, 1986 at 18 N.J.R. 537(a).

Adopted: June 10, 1986, by the Drug Utilization Review Council,  
Robert Kowalski, Acting Chairman.

Filed: June 23, 1986 as R.1986 d.276, with portions of the  
proposed not adopted and portions not adopted but still  
pending.

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: July 21, 1986.

Expiration Date: April 2, 1989.

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

No comments received.

The following products and their respective manufacturers were  
adopted:

Allopurinol tabs 100 mg, 300 mg	Barr
(Note: The proposal erroneously listed 10 mg instead of the correct 100 mg strength. No 10 mg strength exists. The 100 mg strength was adopted.)	
Doxepin caps 25, 50, 100 mg	Chelsea
(Special note: The Doxepin capsules 100 mg were withdrawn from consideration by the manufacturer.)	
Flurazepam HCl caps 15 mg, 30 mg	Mylan
Furosemide tabs 20 mg	Barr
Ibuprofen tabs 400, 600 mg	Superpharm
Lorazepam tabs 0.5 mg, 1.0 mg, 2.0 mg	Amer. Ther.
Temazepam caps 15, 30 mg	Quantum
Tolazamide tabs 250 mg	Mylan
Valproic acid caps 250 mg	Chase

The following products and their respective manufacturers were not  
adopted:

Chlorothiazide tabs 250 mg	West-Ward
Indomethacin caps 50 mg	Watson
Prednisone tabs 5, 20 mg	PFI
Spironolactone/HCTZ 25 mg/25 mg	Purepac/Kali

The following products were not adopted but are still pending:

Aminophylline oral soln 105 mg/5 ml	Roxane
Aminophylline tabs 100 mg, 200 mg	Roxane
Carisoprodol 200/Aspirin 325 mg tabs	Bolar
Chlorzoxazone 250 mg/Acetaminophen 300 mg	Amer. Ther.
Clofibrate capsules, 500 mg	Chase
Clonidine HCl tabs 0.1, 0.2, 0.3 mg	Par
Ergoloid mesylates oral tabs 1 mg	Barr
Flurazepam HCl caps 15, 30 mg	West-Ward
Flurazepam HCl caps, 15 mg, 30 mg	Pharm. Basics
Hydrochlorothiazide tabs 25 mg, 50 mg	PFI
Isosorbide dinitrate oral tabs 20 mg	West-Ward
Lithium carbonate caps and tabs, 300 mg	Roxane
Methylocthiazide tabs 2.5, 5 mg	Par
Methyldopa tabs 125, 250, 500 mg	Par
Methyldopa tabs 250, 500 mg	Superpharm
Methyldopa/HCTZ 250/150, 250/250 mg	Par
Methyldopa/HCTZ 250/25, 500/30, 500/50 mg	Par
Metoclopramide tabs 10 mg	Par
Oxazepam caps 10, 15, 30 mg	Chelsea
SMZ/TMP Susp. 200 mg+40 mg/5ml	Chelsea
Sulfasalazine tabs 500 mg	Naska
Tolazamide tabs 250, 500 mg	Superpharm
Trazodone HCl tabs 50, 100 mg	Pharm. Basics
Trazodone tabs 50 mg, 100 mg	Chelsea
Verapamil tabs 80 mg, 120 mg	Chelsea

## HUMAN SERVICES

### DIVISION OF PUBLIC WELFARE

#### (c)

#### Public Assistance Manual

#### Transportation for Clients to Fair Hearing

##### Adopted Amendment: N.J.A.C. 10:81-6.3.

Proposed: May 5, 1986 at 18 N.J.R. 927(b).

Adopted: June 30, 1986 by Geoffrey S. Perselay, Acting  
Commissioner, Department of Human Services.

Filed: June 30, 1986 as R.1986 d.300, without change.

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

Effective Date: July 21, 1986.

Operative Date: August 1, 1986.

Expiration Date: October 15, 1989.

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

No comments received.

Full text of the adoption follows.

- 10:81-6.3 Responsibilities of the CWA in processing hearing requests  
 (a) To assure orderly and expeditious processing of complaints and hearing requests, each CWA will designate a liaison between the county and State Division whose duties shall include but not be limited to:  
 1.-4. (No change.)  
 5. Contacting the applicant/recipient or his or her legal or authorized representative not less than two days prior to a hearing to confirm attendance, and arranging for transportation by agency staff and vehicles or otherwise at agency expense when no other reasonable means of transportation is available;  
 6.-8. (No change.)  
 (b) (No change.)

(a)

**General Assistance Manual  
Assistance Allowance Standards  
Adopted Amendment: N.J.A.C. 10:85-3.3**

Proposed: May 5, 1986 at 18 N.J.R. 928(b).  
Adopted: June 30, 1986 by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.  
Filed: June 30, 1986 as R.1986 d.299, **without change**.  
Authority: N.J.S.A. 44:8-111(d).  
Effective Date: July 21, 1986.  
Operative Date: August 1, 1986.  
Expiration Date: January 30, 1990.

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

Full text of the adoption follows.

- 10:85-3.3 Financial eligibility  
 (a)-(e) (No change.)  
 (f) Assistance allowance standards are as follows.  
 1. (No change.)  
 2. Allowance schedules: Schedules I and II at N.J.A.C. 10:85-4.1 have been established under the authority in N.J.S.A. Title 44 and give the standards, in monthly amounts, to be used as a basis for granting assistance.  
 i. The eligible unit is defined at N.J.A.C. 10:85-3.1(b)1.  
 ii. The household size is defined at N.J.A.C. 10:85-3.1(b)2.  
 iii.-vi. (No change.)  
 viii. The payment granted for any period shall be determined from the applicable monthly allowance standard less any countable income (see N.J.A.C. 10:85-4.2).  
 3.-5. (No change.)  
 (g) (No change.)

(b)

**Food Stamp Program  
Increased Income Deductions and Resource Limits  
Adopted Amendments: N.J.A.C. 10:87-4.13, 4.19,  
5.10, and 12.1**

Proposed: May 19, 1986 at 18 N.J.R. 1108(a).  
Adopted: June 30, 1986 by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.  
Filed: June 30, 1986 as R.1986 d.301, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).  
Authority: N.J.S.A. 30:4B-2, the Food Security Act of 1985 (P.L. 99-198), and 51 FR 11009 and 11086.  
Effective Date: June 30, 1986.  
Expiration Date: March 1, 1989.

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

**Summary of Changes Subsequent to Proposal:**

The revisions to N.J.A.C. 10:87-4.19 which was not included in the original proposal are included in this adoption so that the information in the example conforms with the new resource limits adopted at N.J.A.C. 10:87-4.13.

Full text of the adoption follows (additions to proposal indicated in bold face with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***).

10:87-4.13 Resource eligibility standards  
(a) The following resource eligibility standards apply to all applicant households.

- Resource maximum of \$3,000: Participation in the program shall be denied or terminated if the total value of the household's nonexcluded resources exceeds \$3,000 and the household includes an individual who is at least 60 years of age.
- Resource maximum of \$2,000: Participation in the program shall be denied or terminated if the total value of the household's nonexcluded resources exceeds \$2,000 and the household does not meet the criteria of (a)1 above.

10:87-4.19 Period of disqualification  
The length of disqualification period shall be based on the amount by which nonexempt transferred resources, when added to other countable resources, exceed the allowable limits. For example, if a one-person **\*nonelderly\*** household with **\*[1,250]\* \*\$1,750\*** in a bank account transferred ownership of a car worth \$5,000, \$250 of that transfer would be considered in determining the period of ineligibility because the first \$4,500 of the car's value is excluded and an additional \$250 of that transferred asset can be applied towards the **\*[1,500]\* \*\$2,000\*** resource limit. The following chart will be used to determine the period of disqualification.

Amount in Excess of the Resource Limit	Period of Household Disqualification
\$ 0.01-\$ 249.99	1 month
250- 999.99	3 months
1,000- 2,999.99	6 months
3,000- 4,999.99	9 months
5,000 and over	12 months

10:87-5.10 Income deductions  
(a) Deductions from income will be allowed only for the following expenses of the household:

- (No change.)
- Work allowance deduction: An amount equal to 20 percent of earned income as defined in N.J.A.C. 10:87-5.4, after application of income exclusions in N.J.A.C. 10:87-5.8 and 5.9, shall be deducted.
- 4. (No change.)
- Shelter cost deduction: Monthly shelter costs in excess of 50 percent of the household's income after the deduction in (a)1, 2, 3 and 4 above have been allowed, shall be deducted. However, in no event shall the shelter deduction exceed the amount in N.J.A.C. 10:87-12.1 (Table I) unless the household contains a member who is elderly or disabled as defined in N.J.A.C. 10:87-2.38. These households shall receive an excess shelter deduction for the monthly cost that exceeds 50 percent of the household's monthly income after all other applicable deductions. Households receiving Title II disability payments for dependents of a disabled individual are not eligible for the unlimited excess shelter deduction unless the disabled individual is a member of the household.  
 i.-iv. (No change.)

10:87-12.1 Income deduction table

Standard Deduction	\$ 98.00
Shelter Deduction	\$147.00
Dependent Care Deduction (elderly/disabled)	\$147.00
Dependent Care Deduction (nonelderly/nondisabled)	\$160.00
Uniform Telephone Allowance	\$ 12.40
Standard Utility Allowance	\$111.00
Heating Utility Allowance	\$186.00

**CORRECTIONS****(a)****THE COMMISSIONER****Inmate Discipline****Adopted New Rules: N.J.A.C. 10A:4**

Proposed: January 6, 1986 at 18 N.J.R. 27(a).

Adopted: June 18, 1986 by William H. Fauver, Commissioner,  
Department of Corrections.Filed: June 19, 1986 as R.1986 d.283, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: July 21, 1986.

Expiration Date: July 21, 1991.

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

The Department of Corrections received numerous written comments and at a regularly scheduled public hearing held by the Department on April 8, 1986, ten verbal comments on the proposed rules. Those presenting oral comments included the Public Advocate; the Executive Director of ACLU; the Chairman of Morris County Correctional Facility's Disciplinary Review Board; a representative of the New Jersey Association on Corrections; an attorney for the Correctional Officer's Union; an Assistant Superintendent from Trenton State Prison; a prison chaplain; a former Deputy Attorney General; and a law student. Written comments were presented by the Public Advocate; the New Jersey Association on Corrections; a Parole Board representative; a Harvard law student; a Harvard law lecturer; a former Deputy Attorney General; two Disciplinary Hearing Officers; New Jersey Prison Superintendents; and 30 inmates. The Public Advocate and several others who gave oral testimony presented major issues which overlapped and were essentially similar in content. These issues and suggestions for modifications to the rules follow.

1. All hearings should be either video taped or sound-recorded.
2. Amount of commutation term which can be forfeited should be reduced from 365 days maximum to a lower figure.
3. Dry cells should not be used as punishment, or for any purpose.
4. Prohibited Act \*.306 Conduct which disrupts should be clarified or deleted.
5. A system of presumptive sentencing should be implemented.
6. The investigator's role should be clarified and restricted.
7. Live testimony should be permitted in all cases, and confrontation/cross-examination increased.
8. Several infractions require more serious treatment and should be asterisk offenses. These are Prohibited Acts .051 engaging in sexual acts with others; .053 indecent exposure; .103 wearing a disguise or mask; .211 possessing any staff member's clothing and/or equipment; .401 participating in an unauthorized meeting or gathering; .502 interfering with the taking of count; and .652 tattooing or self mutilation.
9. A lower threshold should be created for referral of cases to the Office of Administrative Law (O.A.L.) for de novo hearings.
10. A restriction on use of informant information should be imposed.
11. Creation of a separate infraction Prohibited Act number and code for hostage taking.
12. Increasing the burden of proof from "substantial evidence" to "preponderance of evidence."
13. Lower the burden of proof necessary to be presented by an inmate who is seeking a stay of sanctions imposed by the Disciplinary/Hearing Officer or Adjustment Committee.
14. Rewrite the rules for Skillman Training School to include due process procedures similar to those used in other correctional facilities.
15. Allow a formal appeal from "On-the-Spot" discipline.
16. Revise the heading for N.J.A.C. 10A:4-9 from "Due Process" to "Disciplinary Procedures."
17. Give inmates placed in pre-hearing detention a written statement of reasons for such placement.
18. Clarify the fact that prison inmates housed in youth facilities are subject to loss of commutation time.
19. Increase amount of time imposed for extra duty and room confinement.

20. Use a disciplinary cell for temporary psychiatric observation.

21. Allow appeals to a level higher than Superintendent.

Several oral commenters praised the rules in their present form as being essentially sound and fair. They pointed out that much of the criticism is directed at application of existing rules rather than substance. These commenters urged adoption without change.

**WRITTEN COMMENTS:** Written comments, including those received from inmates, contained suggested modifications in addition to those summarized above.

1. Return to "Adjustment Committee" method in place of single Disciplinary Hearing Officer.
2. Exclude security officers from Disciplinary Hearings.
3. Increase time limits for investigation, time for preparing defense, time to appeal.
4. Add the words "proper ventilation" to N.J.A.C. 10A:4-3.1.
5. Limit Superintendent's authority to impose sanctions.
6. Require polygraph tests when serious issues of credibility exist.
7. Require investigators to interview all witnesses.
8. Expand use of counsel substitutes.

Several commenters expressed their belief that the rules are fair as presently written, but need better enforcement. As with the oral comments, the criticism was centered on implementation rather than content.

A comment record of written responses is on file and is available for inspection at the Department of Corrections. A transcript of the hearing is available from Richard A. Merlino & Associates, 7 Montague Avenue, Trenton, New Jersey 08628.

**RESPONSE:** The Department of Corrections has carefully reviewed and considered all testimony both oral and written. Several of the suggestions are directed at corrective language to clarify existing procedures. The Department accepts these suggestions and will make the following revisions:

1. Add the words "proper ventilation" to paragraph four of N.J.A.C. 10A:4-3.1 since it is believed that these words were omitted by typographical error.
  2. Designate "hostage taking" as a separately identifiable offense—\*.007. This clarifies the conduct which previously was vague because it involved assault in some cases, mere threats in others. The taking of a hostage is an illegal act which should be prohibited in clear language.
  3. Revise the subject heading for N.J.A.C. 10A:4-9 from "Due Process" to "Disciplinary Procedures."
  4. Allow automatic right to use of counsel substitutes when requested by an inmate charged with an asterisk offense.
  5. Requirements for use of confidential informant information will be spelled out; as required by recent federal case law, N.J.A.C. 10A:4-9.15(b) will provide that in any case in which a Disciplinary Hearing Officer or Adjustment Committee's decision of guilt is based on evidence which includes confidential informant information, the adjudication shall contain:
    - a. A concise summary of the facts on which the Disciplinary Hearing Officer or Adjustment Committee concluded that the informant was credible or his or her information reliable; and
    - b. The informant's statement (either in writing or as reported) in language that is factual rather than a conclusion, and based on the informant's personal knowledge of the matters contained in such statement. The Disciplinary Hearing Officer or Adjustment Committee is not permitted to disclose the identity of the informant.
  6. In N.J.A.C. 10A:4-1.4, add Form 254-I DISCIPLINE RECORD CARD. This Form is currently in use and is utilized by the Disciplinary Hearing Officers to review the inmate's prior disciplinary record and sanctions imposed, to aid him or her in the determination of an appropriate sanction(s).
  7. The schedule of sanctions which may be imposed on inmates housed in the Youth Complex, N.J.A.C. 10A:4-5.2 must include loss of commutation time, which is applicable to prison inmates housed in these facilities. This procedure has always been in force as was spelled out in the Youth Complex Discipline Handbooks given to all inmates on admission. Inmates serving indeterminate sentences are not subject to this sanction.
  8. Under N.J.A.C. 10A:4-1.3 the definition of "Youth Complex" means inmates between 15 and 26, instead of 30, due to a statutory revision of that term.
- In addition to the specific modifications set forth above, there are a number of minor changes in wording or grammatical corrections which do not affect the procedures being described. These are set forth in the text in boldface type.

Other than those modifications set forth above, changes suggested in the foregoing summary of public comments have not been adopted for use at this time. The prison superintendents, the P.B.A. Union Counsel and the Disciplinary Hearing Officers who commented did not agree that major changes need be made. These commenters urged adoption of the rules without major modifications. The Department of Corrections concurs with those commenters who urged adoption of the rules substantially as proposed. Both the U.S. and N.J. Supreme Courts have issued detailed guidelines for the conduct of prison discipline. The Department of Corrections' present rules follow the courts' mandates strictly. The rules have been reviewed and approved by the courts in a number of litigated cases and appeals brought by inmates. A few suggestions, while meritorious in intent, are not feasible at this time. These include video taping hearings; allowing live testimony in every case; and referring more cases for rehearing before the Office of Administrative Law (O.A.L.). The Department plans to study the feasibility of sound-recording selected hearings for possible implementation at a later date. However, it is not known to what extent such a procedure can be adopted for system-wide use. The Department lacks statutory authority to refer additional cases for (O.A.L.) hearings. The Administrative Procedure Act presently permits Office of Administrative Law (O.A.L.) hearings in only those cases in which 365 days commutation time is forfeited. A change in this procedure would require legislative amendment.

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

## CHAPTER 4 INMATE DISCIPLINE

### SUBCHAPTER 1. INTRODUCTION

#### 10A:4-1.1 Purpose

(a) The purpose of this subchapter is to:

1. Establish policies to assure that inmate discipline and control are consistent with the correctional objectives of the Department and the facility;
2. Establish a comprehensive code of offenses and set of permissible punishments in order that prescribed behavior may be known by both inmates and staff;
3. Establish administrative due process safeguards in the disciplinary process as required by the United States Supreme Court in *Wolff v. MdDonnell*, 418 U.S. 539 (1974) and the New Jersey Supreme Court in *Avant v. Clifford*, 67 N.J. 496 (1975);
4. Enforce rules and impose appropriate sanctions for infractions;
5. Stimulate application of disciplinary procedures which encourage future voluntary acceptance of certain behavior limitations that are necessarily being imposed upon the inmate;
6. Build and maintain morale among inmates and between staff and inmates by providing impartial and fair procedures throughout the disciplinary process.

#### 10A:4-1.2 Scope

(a) Subchapter 2 through subchapter 12 shall be applicable to the Division of Adult Institutions, the Training School for Juveniles at Jamesburg and the Juvenile Medium Security Unit unless otherwise indicated.

(b) Subchapter 13 shall be applicable to the Training School for Boys at Skillman.

#### 10A:4-1.3 Definitions

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

"Asterisk offense" shall mean a prohibited act preceded by a number and an asterisk.

"Adjustment Committee" shall mean the committee within a facility that is authorized to hear and adjudicate inmate violations of prohibited acts.

"Administrative Segregation" shall mean removal of an inmate from the general population to a long term close custody unit because of one or more disciplinary infractions or other administrative considerations.

"Close custody unit" shall mean an area within a facility designated for assigning inmates who are removed from the general population for disciplinary or administrative reasons.

"Commissioner" shall mean the Commissioner of the New Jersey Department of Corrections.

"Custody status" shall mean the degree of supervision that is required

for an inmate to enter or leave **\*[an institution]\* \*a correctional facility\***.

"Department" shall mean the New Jersey Department of Corrections.

"Disciplinary Detention" shall mean removal of an inmate from the general population to a short term close custody unit because of a disciplinary infraction(s).

"Disciplinary Hearing Officer" shall mean a Department staff member designated to hear and adjudicate inmate violations of prohibited acts.

"Disciplinary report" shall mean a form on which a violation of **\*a\*** prohibited act is recorded along with other pertinent information.

"Disciplinary Sanction" shall mean a prescribed penalty that is imposed for violation of a prohibited act.

"Extra duty" shall mean a task(s) other than those related to his/her work or program assignment(s) to which an inmate has been assigned as a result of a violation of a minor prohibited act.

"Institutional Classification Committee" **\*(I.C.C.)\*** shall mean the body within a correctional facility that is responsible for monitoring an inmate's progress and assigning him/her to appropriate programs or activities.

"Inter-Institutional Classification Committee" **\*(I.I.C.C.)\*** shall mean the body, composed of representatives from different correctional facilities, that is responsible for determining the correctional facility to which an inmate is assigned and approving requests for transfer from one correctional facility to another.

"Major violations" shall mean the violation of a prohibited act that is preceded by an asterisk.

"Minor violations" shall mean the violation of a prohibited act that is not preceded by an asterisk.

"On-the-Spot Correction" shall mean the immediate imposition of a sanction upon an inmate for the violation of a minor prohibited act.

"Prehearing detention" shall mean removal of an inmate from the general population pending an investigation and a hearing into an alleged violation of a prohibited act.

"Prison Complex" shall mean state correctional facilities designated to house inmates serving prison sentences.

"Prohibited acts" shall mean conduct in violation of rules and regulations, which will result in imposition of sanctions.

"Superintendent" shall mean the chief executive officer of any State correctional facility in the Department of Corrections.

"Special Classification Committee (S.C.C.)" shall mean the body composed of **\*[different individuals]\* \*representatives\*** from the Prison Complex, Youth Complex and Division of Juvenile Services which consider the transfer of inmates between complexes.

"Vroom Readjustment Unit" shall mean an Administrative Segregation and Protective Custody Unit for **\*male\*** inmates located in the Vroom Building, on the grounds of Trenton Psychiatric Hospital.

"Youth Complex" shall mean state correctional facilities designated to house inmates between the ages of 15 and **\*[30]\* \*26\*** years, who have not previously been sentenced to a state prison in this **\*[state]\* \*State\*** or in any other state.

#### 10A:4-1.4 Forms

(a) The following forms related to Inmate Discipline are printed by the Bureau of State Use Industries and each facility shall purchase a supply of these forms by contacting the Bureau.

1. 253-I On-The-Spot Disciplinary Report/Adjudication;

**\*2. 254-I Discipline Record Card;\***

**\*[2.]\* \*3.\* 259 Disciplinary Report;**

**\*[3.]\* \*4.\* 259A Adjudication of Disciplinary Report.**

(b) The following forms related to Inmate Discipline shall be reproduced by each facility from originals that are available by contacting the Standards Development Unit.

1. 251-I Chronic Violator Notice—Vroom Readjustment Unit and Clinton Correctional Institution for Women;

2. **\*251-II\*** Chronic Violator Adjudication Notice;

3. **\*253-I\*** On-The-Spot Disciplinary Report/Adjudication;

4. 255-I Authorization for Prehearing Detention;

5. 256-I Appeal of Disciplinary Decision;

6. 256-II Disposition of Disciplinary Appeal;

7. 257-I Appeal to Office of Administrative Law.

### SUBCHAPTER 2. PUBLICATION OF RULES

#### 10A:4-2.1 Notification of inmates about rules and regulations

(a) At the time of arrival at a correctional facility, each inmate shall be advised in writing of his/her rights and responsibilities, the acts and activities which are prohibited, the rules which must be followed and the disciplinary process within the facility. This information shall be provided in a booklet as part of the admission-orientation program. (See N.J.A.C.

10A:7, INMATE HANDBOOKS.) Each inmate shall be required to sign a form acknowledging receipt of the Handbook on Discipline. A refusal by the inmate to sign shall be noted on the form by the issuing staff member.

(b) All changes in rules shall be posted in housing units and other areas of the facility and incorporated into the next revision of the Handbook on Discipline.

(c) When a facility has a large number of inmates in the population who speak a foreign language, the rules shall be printed and presented

verbally in the foreign language.

10A:4-2.2 Review of inmate rules

The Superintendent of the facility shall be responsible for maintaining an ongoing rule review process to ensure that the rules are current and appropriate.

10A:4-2.3 Promulgation of rules

The rules of a facility shall be published and promulgated only upon the approval of the Superintendent \*[of each correctional facility]\*.

SUBCHAPTER 3. INMATE RIGHTS AND RESPONSIBILITIES

10A:4-3.1 Notification of inmates of their rights and responsibilities

The following rights and responsibilities are found in the inmate handbook which is provided to each inmate as a part of the admission-orientation program of each facility.

Rights

You have the right to be treated respectfully, impartially and fairly by all personnel.

You have the right to be informed of the rules, procedures and schedules concerning the operation of the facility.

You have the right to freedom of religious affiliation and voluntary religious worship within the facility.

You have the right to health care which includes nutritious meals, proper bedding and clothing, a laundry schedule for cleanliness of same, an opportunity to shower regularly, sufficient warmth \*, **proper ventilation,\*** \*[and]\* fresh air, a regular exercise period, toilet articles and medical and dental treatment.

You have the right to correspond and visit with family members, friends and other persons where there is no threat to security or order in keeping with the rules and schedules of the facility.

You have the right to unrestricted and confidential access to the courts by correspondence.

You have the right to legal counsel from an attorney of your choice by interviews and correspondence. You have the right to receive help when it is available through a legal assistance program.

You have the right to participate in the use of law library reference materials to assist you in resolving legal problems.

You have the right to a wide range of reading material for educational purposes and for your own enjoyment.

You have the right to participate in counseling, education, vocational training, and employment as far as resources are available and in keeping with your interests, needs and abilities.

Responsibilities

You have the responsibility to treat others, both employees and inmates, in the same manner.

You have the responsibility to know and abide by them.

You have the responsibility to recognize and respect the rights of others in this regard.

It is your responsibility not to waste food, to follow the laundry and shower schedules, to maintain neat and clean living quarters, and to seek medical and dental care as you may need it.

It is your responsibility to conduct yourself properly during visits, to refuse to accept or pass contraband, and to comply with Department rules and State or federal laws through your correspondence.

You have the responsibility to present honestly and fairly your petitions, questions and problems to the court.

It is your responsibility to use the services of an attorney honestly and fairly.

It is your responsibility to use these resources in keeping with the procedures and schedule prescribed and to respect the rights of other inmates in the use of this material.

It is your responsibility to seek and utilize such material for your personal benefit, without depriving others of their right to use same.

You have the responsibility to take advantage of activities which may help you live a successful and law abiding life within the facility and in the community. You will be expected to abide by the regulations governing the use of such activities.

SUBCHAPTER 4. INMATE PROHIBITED ACTS

10A:4-4.1 Prohibited acts

(a) An inmate who commits one or more of the following numbered prohibited acts shall be subject to disciplinary action and a sanction that is imposed by a Disciplinary Hearing Officer or Adjustment Committee. Prohibited Acts preceded by an asterisk are considered the most serious and result in the most severe sanctions (See N.J.A.C. 10A:5, SCHEDULE OF SANCTIONS).

- \*.001 killing
- \*.002 assaulting any person
- \*.003 assaulting any person with a weapon
- \*.004 fighting with another person
- \*.005 threatening another with bodily harm or with any offense against his person or his property
- \*.006 extortion, blackmail, protection: demanding or receiving favors, money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing.
- \*\*007 hostage taking\***
  - .051 engaging in sexual acts with others
  - .052 making sexual proposals or threats to another
  - .053 indecent exposure
- \*.101 escape
- \*.102 attempting or planning escape
- .103 wearing a disguise or mask
- \*.151 setting a fire

- .152 destroying, altering, or damaging government property, or the property of another person
- \*.153 stealing (theft)
- .154 tampering with or blocking any locking device
- \*.155 adulteration of any food or drink
- \*.201 possession or introduction of an explosive, incendiary device or any ammunition
- \*.202 possession or introduction of a gun, firearm, weapon, sharpened instrument, knife or unauthorized tool
- \*.203 possession or introduction of any narcotic paraphernalia, drugs or intoxicants not prescribed for the individual by the medical or dental staff
- \*.204 use of any narcotic paraphernalia, drugs or intoxicants not prescribed for the individual by the medical or dental staff
- \*.205 misuse of authorized medication
- .206 possession of money or currency (\$50 or less) unless specifically authorized
- \*.207 possession of money or currency (in excess of \$500) unless specifically authorized
- .208 possession of property belonging to another person
- .209 loaning of property or anything of value
- .210 possession of anything not authorized for retention or receipt by an inmate or not issued to him through regular correctional facility channels
- .211 possessing any staff member's clothing and/or equipment
- .212 possessing unauthorized clothing

- .213 mutilating or altering clothing issued by the government
- \*.214 possession of unauthorized keys or other security equipment
- \*.251 rioting
- \*.252 encouraging others to riot
- \*.253 engaging in, or encouraging, a group demonstration
- .254 refusing to work, or to accept a program assignment
- \*.255 encouraging others to refuse to work or to participate in work stoppage
- .256 refusing to obey an order of any staff member
- .257 violating a condition of any community release program
- \*.258 refusing to submit to urine analysis
- .301 unexcused absence from work or any assignment; being late for work
- .302 malingering, feigning an illness
- .303 failing to perform work as instructed by a staff member
- .304 using abusive or obscene language to a staff member
- .305 lying, providing a false statement to a staff member
- .306 conduct which disrupts or interferes with the security or orderly running of the correctional facility
- .351 counterfeiting, forging or unauthorized reproduction or use of any document not enumerated in prohibited act .352
- \*.352 counterfeiting, forging or unauthorized reproduction or use of any classification document, court document, psychiatric, psychological or medical report, money or any other official document
- .401 participating in an unauthorized meeting or gathering
- .402 being in an unauthorized area
- .451 failure to follow safety or sanitation regulations
- .452 using any equipment or machinery which is not specifically authorized
- .453 using any equipment or machinery contrary to instructions or posted safety standards
- .501 failing to stand count
- .502 interfering with the taking of count
- \*.551 making or possessing intoxicants or alcoholic beverages
- \*.552 being intoxicated
- .553 smoking where prohibited
- .601 gambling
- .602 preparing or conducting a gambling pool
- .603 possession of gambling paraphernalia
- .651 being unsanitary or untidy; failing to keep one's person and one's quarters in accordance with posted standards
- .652 tattooing or self mutilation
- .701 unauthorized use of mail or telephone
- .702 unauthorized contacts with the public
- .703 correspondence or conduct with a visitor in violation of regulations
- \*.704 perpetrating frauds, deceptions, confidence games, riots or escape plots
- .705 commencing or operating a business or group for profit or **\*commencing or operating\*** a nonprofit enterprise without the approval of the Superintendent
- .706 soliciting funds and/or noncash contributions from donors within or without the correctional facility except where permitted by the Superintendent
- .707 refusal to cooperate in following a prescribed course of treatment (that is, refusal to appear for or go to a scheduled exam—medical, dental, etc.)
- \*.708 refusal to submit to a search
- .709 failure to comply with a written rule or regulation of the correctional facility
- \*.751 giving or offering any official or staff member a bribe or anything of value
- .752 giving money or anything of value to, or accepting money or anything of value from, another inmate
- .753 purchasing anything on credit
- .754 giving money or anything of value to, or accepting money or anything of value from, a member of another inmate's family or another inmate's friend with an intent to circumvent any correctional facility or Departmental rule, regulation or policy or with an intent to further an illegal or improper purpose
- .802 attempting to commit any of the above acts, aiding another person to commit any of the above acts or making plans to commit any of the above acts shall be considered the

same as a commission of the act itself

- \*.803 attempting to commit any of the above acts preceded by an asterisk, aiding another person to commit any such act or making plans to commit such acts shall be considered the same as a commission of the act itself

(b) Only acts cited in (a) above preceded by an asterisk are considered to be of sufficient severity to warrant possible transfer to the Vroom Readjustment Unit. Transfer to the Vroom Readjustment Unit shall be effected only when specifically ordered by the Disciplinary Hearing Officer **\*or Adjustment Committee\*** and subsequently confirmed by the Inter-Institutional Classification Committee.

#### 10A:4-4.2 Reports to the prosecutor on prohibited acts

All prohibited acts which may constitute crimes of the first, second, third or fourth degree under the Criminal Code of the State of New Jersey (N.J.S.A. 2C:1-1 et seq.) shall be referred to the prosecutor of the county in which the correctional facility is located. (See N.J.A.C. 10A:21 REPORTING VIOLATIONS OF THE CRIMINAL STATUTES.)

#### SUBCHAPTER 5. SCHEDULE OF SANCTIONS FOR PROHIBITED ACTS

##### 10A:4-5.1 Schedule of sanctions for prohibited acts committed at the Prison Complex, Adult Diagnostic and Treatment Center (ADTC) and Correctional Institution for Women at Clinton (CIW)

(a) A finding of guilt for any offense preceded by an asterisk (\*) shall render the offender subject to one or more of the following sanctions:

1. Up to 15 days Disciplinary Detention;
2. Loss of one or more correctional facility privileges up to 30 days;
3. Administrative Segregation for a specified time not to exceed one year, subject to confirmation by the Institutional Classification Committee;
4. Loss of commutation time up to 365 days, subject to confirmation by the Superintendent;
5. Forfeiture;
6. Suspension of any one or more of the above sanctions at the discretion of the Disciplinary Hearing Officer or Adjustment Committee for 60 days;
7. Any sanction prescribed for On-The-Spot Correction (see N.J.A.C. 10A:4-7); and/or,
8. Confiscation.

(b) A finding of guilt in the case of all other offenses shall render the offender subject to one or more of the following sanctions:

1. Up to 15 days Disciplinary Detention;
2. Loss of one or more correctional facility privileges up to 30 days;
3. Up to 60 days loss of commutation time, subject to confirmation by the Superintendent;
4. Administrative Segregation for a specified time not to exceed 90 days subject to confirmation by the Institutional Classification Committee;
5. Forfeiture;
6. Suspension of any one or more of the above sanctions at the discretion of the Disciplinary Hearing Officer or Adjustment Committee or 60 days;
7. Any sanction prescribed for On-The-Spot Correction (see N.J.A.C. 10A:4-7); and/or,
8. Confiscation.

(c) In addition to the sanctions in (a) and (b) above, administrative action may be taken by the Institutional Classification Committee upon the recommendation of the Disciplinary Hearing Officer/Adjustment Committee or the Superintendent. Such administrative action shall include, but not be limited to, the following:

1. Recommending transfer to a more appropriate correctional facility. (This shall be subject to confirmation by the Inter-Institutional Classification Committee.);
2. Increasing custody status;
3. Changing work or housing assignments;
4. Assigning to a treatment program;
5. Assessing restitution for damage, alteration or destruction of State property or a violation of **\*[sanction]\* \*prohibited act\*** .707 which results in undue expenditure of State funds;
6. Recommending loss of privileges such as contact visits for up to one year; and/or,
7. For Trenton State Prison only: placing in a "DRY" cell during prehearing and lockup status.

##### 10A:4-5.2 Schedule of sanctions for prohibited acts committed at the Youth Complex

- (a) A finding of guilt for prohibited acts preceded by an asterisk (\*)

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\*[still]\* **\*shall\*** render the offender subject to one or more of the following sanctions:

1. Up to 15 days Disciplinary Detention;
2. Up to two weeks confinement to room or housing area;
3. Up to 30 days loss of one or more correctional facility privileges;
4. Up to two weeks extra duty;
5. Confiscation;
6. Administrative Segregation for a specific term not to exceed one year subject to confirmation by the Institutional Classification Committee (for transfer to prison complex, confirmation by Central Office Special Classification Committee is required); **\*[and/or,]\***

**\*7. Loss of commutation time up to 365 days, subject to confirmation by the Superintendent (Inmates serving indeterminate sentences are not subject to this sanction); and/or\***

**\*[7.]\* \*8.\*** Suspension of any one or more of the above sanctions at the discretion of the Disciplinary Hearing Officer or Adjustment Committee for 60 days.

(b) A finding of guilt in the case of all other offenses shall render the offender subject to one or more of the following sanctions:

1. Up to 15 days Disciplinary Detention;
2. Loss of one or more correctional facility privileges up to 30 days;
3. Administrative Segregation for a specified time not to exceed 90 days subject to confirmation by the Institutional Classification Committee (does not include transfer to prison complex);
4. Up to two weeks confinement to room or housing area;
5. Up to two weeks duty;
6. Confiscation;
7. Any sanction prescribed for On-The-Spot Correction (see N.J.A.C. 10A:4-7); and/or,

8. Suspension of one or more of the above sanctions at the discretion of the Disciplinary Hearing Officer or Adjustment Committee for 60 days.

(c) In addition to the sanctions in (a) and (b) above, administrative action may be taken by the Institutional Classification Committee upon the recommendation of the Disciplinary Hearing Officer/Adjustment Committee or the Superintendent. Such administrative action shall **\*include, but\*** not be limited to the following:

1. Changing work, time, housing or program;
2. Assessing restitution for damage, alteration or destruction of State property or a violation of prohibited act .707 which results in undue expenditure of State funds;
3. Recommending transfer to a more appropriate correctional facility (subject to confirmation by the Special Classification Committee or the Reception Classification Committee); and/or,
4. Increasing custody status.

10A:4-5.3 Schedule of sanctions for prohibited acts committed at the Training School for Juveniles at Jamesburg or the Juvenile Medium Security Unit

(a) A finding of guilt for prohibited acts preceded by an asterisk (\*) shall render the offender subject to one or more of the following sanctions:

1. Up to 15 days in Disciplinary Detention;
2. Loss of furlough privileges for up to two months;
3. Up to 14 hours extra duty to be done in one week;
4. Up to 14 hours extra duty to be done in one week;
5. Confiscation;
6. Any sanction prescribed for On-The-Spot Correction (see N.J.A.C. 10A:4-7); and/or,

7. Suspension of any one or more of the above sanctions at the discretion of the Disciplinary Hearing Officer or Adjustment Committee for 60 days.

(b) A finding of guilt in the case of all other offenses shall render the offender subject to one or more of the following sanctions:

1. Up to five days Disciplinary Detention;
2. Loss of furlough privileges up to two months;
3. Up to 14 hours extra duty to be done in one week;
4. Loss of one or more correctional facility privileges up to 30 days;
5. Confiscation;
6. Any sanction prescribed for On-The-Spot Correction (see N.J.A.C. 10A:4-7); and/or,

7. Suspension of any one or more of the above sanctions at the discretion of the Disciplinary Hearing Officer or Adjustment Committee **\*for 60 days\***.

(c) In addition to the sanctions in (a) and (b) above, administrative action may be taken by the Institutional Classification Committee upon the recommendation of the Disciplinary Hearing Officer/Adjustment Committee or the Superintendent. Such administrative action shall **\*in-**

**clude, but\*** not be limited to the following:

1. Changing work assignment, housing, program or time goal review;
2. Referring to the Special Classification Committee for placement in the Guidance Unit Residential Program;
3. Assessing restitution for damage, alteration or destruction of State property or a violation of prohibited act .707 which results in undue expenditure of State funds;
4. Increasing custody status; and/or,
5. **\*[Recommend]\* \*Recommending\*** transfer to a more appropriate correctional facility (subject to confirmation by the Classification Committee or the **\*[Inter-Institutional Committee—Juvenile]\* \*Juvenile Reception Classification Committee\***).

10A:4-5.4 Limitation on sanctions

**\*[(a)]\*** All disciplinary charges pending when the inmate begins his/her time in Disciplinary Detention must be adjudicated prior to the completion of his/her Disciplinary Detention time. No inmate may receive more than 15 days in Disciplinary Detention as a result of a single disciplinary charge.

1. If an inmate is found guilty of more than one disciplinary charge arising out of one incident, he/she may receive up to 15 days for each disciplinary charge provided that the total time to be served in Disciplinary Detention does not exceed 30 days.

2. If an inmate is found guilty of more than one disciplinary charge arising out of separate incidents and occurring before he/she begins serving time in Disciplinary Detention, he/she may receive up to 15 days for each disciplinary charge provided that the total time to be served in Disciplinary Detention does not exceed 30 days.

**\*[(b)]\* \*3.\*** If an inmate receives one or more disciplinary charges while serving in Disciplinary Detention, he/she may receive up to 15 additional days in Disciplinary Detention per charge provided that the total time in Disciplinary Detention does not exceed a total of 30 days.

#### SUBCHAPTER 6. CHRONIC VIOLATOR—VROOM READJUSTMENT UNIT AND FEMALE INMATES AT THE CORRECTIONAL INSTITUTION FOR WOMEN AT CLINTON

10A:4-6.1 Scope

The rules in this subchapter apply to all male inmates assigned to adult institutions and female inmates serving prison sentences assigned to the Correctional Institution for Women at Clinton.

10A:4-6.2 Criteria for designating a chronic violator

An inmate may be designated a chronic violator if, while currently serving the maximum time in lockup (30 days), he/she continues to exhibit seriously assaultive or destructive behavior such as to constitute a continuing danger to other persons, and where alternative disciplinary sanctions or housing assignments would be inappropriate or ineffective.

10A:4-6.3 Procedures for designation of a chronic violator

(a) Disciplinary charges lodged against an inmate during the time he/she is currently serving a 30 day term for other disciplinary violations shall be given directly to the Vroom Readjustment Unit (VRU) Director or the Superintendent of Clinton Correctional Institution for Women (CIW). A copy of each charge shall be given to the inmate within 48 hours unless there are exceptional circumstances.

(b) The VRU Director or CIW Superintendent shall be responsible for ordering that each charge be investigated. He/she shall review each charge and investigation to personally obtain all relevant information.

(c) If after review of all reports and personal interviews with reporting staff as is deemed necessary to clarify facts or circumstances, the VRU Director or CIW Superintendent concludes that the inmate would pose a serious threat to persons or to the security or orderly operation of the Unit or correctional facility if released from lockup, he/she shall schedule the case for a due process hearing before the Department's Disciplinary Hearing Officer.

(d) Prior to the hearing\*,\* the inmate shall be examined by a psychiatrist or psychologist to ascertain his/her mental condition, need for treatment or indication of need for transfer to a psychiatric facility (See N.J.A.C. **\*[10A:4-11, PSYCHIATRIC]\* \*10A:11 INMATE\* TRANSFERS**). The psychiatrist or psychologist shall visit the inmate at least once per month during his/her continued confinement to lockup status, and shall file a written report as to the inmate's mental condition and adjustment after each visit.

(e) The inmate shall receive at least 24 hours advance written notice that he/she is under consideration for designation as a chronic violator and that he/she may have the assistance of an inmate paralegal at the scheduled hearing (See N.J.A.C. 10A:4.9, **\*[DUE PROCESS]\* \*DIS-**

**CIPLINARY PROCEDURES\*** and Form 251-I). The notice shall include a copy of the disciplinary charges which form the basis for this action.

(f) At the discretion of the Disciplinary Hearing Officer, the hearing may be held in front of the inmate's cell, if his/her removal therefrom would constitute a danger to others or to the security and orderly operation of the Unit or correctional facility. The hearing shall be held in accord with N.J.A.C. 10A:4-9 and may be held before the expiration of his/her 30 day term.

(g) If after review of all reports and testimony, the Disciplinary Hearing Officer concludes that the inmate cannot safely be released from lockup at the expiration of his/her 30 day term, the inmate shall be designated a chronic violator. At VRU, the Disciplinary Hearing Officer's decision shall be referred to the Unit's Special Classification Committee for review and approval. In the case of Clinton Correctional Institute for Women, the Disciplinary Hearing Officer's decision shall be referred to the Institution Classification Committee for review and approval. The inmate shall remain in Disciplinary Detention, until, at a subsequent hearing, the Disciplinary Hearing Officer determines that the inmate has demonstrated that he/she will control his/her behavior and will refrain from repetitive acts of assault or destruction of property.

(h) A due process hearing shall be held every 15 days to review the inmate's conduct and adherence to correctional facility regulations. The Disciplinary Hearing Officer shall review all disciplinary reports and shall ascertain from the reports, investigations, psychiatric evaluation and testimony where deemed necessary, whether the inmate's conduct is sufficiently under control to permit his/her safe release from lockup status.

(i) During the inmate's confinement as a chronic offender, a social worker and the shift or unit supervisor shall visit him/her daily to monitor his/her needs and provide for programmatic involvement so far as is possible. The inmate shall be permitted to shower and participate in yard exercise as is consistent with correctional facility procedures, considering the safety of the person and the continued secure, orderly operation of the Unit or correctional facility.

#### 10A:4-6.4 Appeal **\*procedure\***

(a) At the time the inmate is adjudicated a chronic violator, he/she shall be notified of his/her right to appeal the decision of the Disciplinary Hearing Officer to the Assistant Commissioner for Adult Institutions, Department of Corrections. The appeal may be filed at any time during the inmate's continued confinement to lockup, except that appellate review shall not occur more than twice per month.

(b) Prior to rendering a decision on the appeal, the Assistant Commissioner shall confer with the VRU Director or CIW Superintendent concerning the inmate's conduct. Alternative means for control and treatment shall be explored and utilized, if available and feasible. The inmate shall be notified of the Assistant Commissioner's decision and the reasons therefor within five working days.

### SUBCHAPTER 7. ON-THE-SPOT CORRECTION

#### 10A:4-7.1 On-the-spot disciplinary report/adjudication

(a) When a violation of a prohibited act that is considered minor has occurred, the staff member witnessing the violation shall prepare Part I of the Form 253-I ON-THE-SPOT DISCIPLINARY REPORT/ADJUDICATION **\*[The disciplinary report shall be completed in triplicate]\* \*in triplicate\***.

1. One copy of the report shall be served upon the inmate; and,
2. Two copies shall be forwarded immediately to the shift supervisor.

#### 10A:4-7.2 Conference

(a) The shift supervisor shall **\*[afford the inmate the right to review]\* \*hold a conference within 24 hours of receipt of\*** the disciplinary report. The inmate shall also be afforded the right to appear at a conference with the shift supervisor **\*to review the disciplinary report and\*** to discuss the violation and argue that he/she should not be disciplined or **\*to\*** challenge the proposed sanction.

(b) An inmate may waive the right to attend his/her conference or he/she may forfeit that right if his/her behavior justifies removal from the conference. In either case, the reasons for the inmate's absence shall be documented on Form 253-I.

(c) The shift supervisor shall indicate on part 2 of Form 253-I ON-THE-SPOT DISCIPLINARY REPORT/ADJUDICATION whether the conference was held and enter **\*on the form\*** the other data pertaining to the results of the conference **\*[that is required by the form]\***.

(d) At the conclusion of the conference, the inmate shall receive a completed copy of Form 253-I ON-THE-SPOT DISCIPLINARY REPORT/ADJUDICATION. Should the inmate be found guilty, the remaining copy of Form 253-I shall be submitted for placement into the

inmate's classification folder. Not guilty determinations shall not be forwarded for inclusion into the inmate's classification folder.

#### 10A:4-7.3 Sanctions

(a) The following are authorized sanctions for ON-THE-SPOT CORRECTIONS:

1. Verbal reprimand;
2. Loss of recreation privileges for a period of no more than five days;
3. Up to four hours of extra work duty;
4. Up to four hours confinement to the tier, room or cell; and/or,
5. Loss of radio or television privileges for a period of no more than five days.

#### 10A:4-7.4 Imposition of sanction

If the shift supervisor concurs with the disciplinary report and proposed sanction, the proposed sanction shall be imposed within 24 hours of the conference. If no conference is requested, the sanction shall be imposed within 24 hours of the review by the shift supervisor.

#### 10A:4-7.5 Record of sanction

(a) **\*[The]\* \*Form 253-I\*** On-The-Spot Disciplinary Report/Adjudication **\*[Form]\*** shall be included in the inmate's classification folder only when an inmate has been found guilty of a minor disciplinary infraction. Information regarding a guilty infraction shall not be entered onto the progress notes or be included in the reports presented to the Parole Board.

(b) Should an inmate be found not guilty of a minor disciplinary infraction, Form 253-I shall be completed but shall not be incorporated into the inmate's classification folder. These records may be retained separately from the inmate's classification folder for accounting and statistical purposes only.

#### 10A:4-7.6 Increasing an on-the-spot **\*correction\*** infraction to a major violation

(a) Should the shift supervisor conclude that a more serious sanction may be appropriate, the infraction shall be handled as a major violation and be referred to the Disciplinary Hearing Officer or Adjustment Committee for a disciplinary hearing and disposition.

(b) When upgrading an infraction to a major violation, the report shall be filed on Form 259.DISCIPLINARY REPORT and contain all the required information. Copies of all relevant documents shall then be forwarded to the Disciplinary Hearing Officer or Adjustment Committee **\*[chairperson]\* \*Chairperson\*** with a statement of reasons for the referral and any recommendations.

### SUBCHAPTER 8. ADJUSTMENT COMMITTEE OR DISCIPLINARY HEARING OFFICER

#### 10A:4-8.1 Adjustment Committee or Disciplinary Hearing Officer

The disciplinary hearing within a correctional facility shall be conducted by either a Disciplinary Hearing Officer designated by the Commissioner or a Committee of three staff members designated by the Superintendent.

#### 10A:4-8.2 Designation of an Adjustment Committee

(a) The Superintendent shall have the authority to designate an Adjustment Committee only at those correctional facilities where the Commissioner has not designated a Disciplinary Hearing Officer to perform such function, or in extraordinary circumstances when a Disciplinary Hearing Officer is not available.

(b) The Superintendent may appoint persons to serve permanently, or may rotate members, or appoint one or more members to serve permanently and rotate other members.

(c) The Superintendent shall designate one of the Committee members to serve as chairperson. The chairperson shall be the presiding officer and he/she shall have the responsibility for the proper operation of the Committee.

#### 10A:4-8.3 Composition of the Adjustment Committee

(a) The Adjustment Committee, other than the Capital Sentence Unit, shall be composed of at least three persons which shall include:

1. A supervisory correctional officer of the rank of Captain or above (or a Lieutenant in case of a Captain's absence); or,
- \*[2.] \*2.\* A Head Juvenile Officer at the Training School for Juveniles at Jamesburg;\*
- \*[3.] \*2.\* A correctional facility supervisor from the medical, administrative, social work, educational or treatment staff; and \*[,]\*
- \*[4.] \*3.\* A civilian line staff member.

(b) The Adjustment Committee of the Capital Sentence Unit (C.S.U.) shall consist of three members of the Unit Management Team. They are:

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1. A Lieutenant in charge of the Unit;
2. A social worker; and
3. A psychologist.

(c) A staff member shall not sit as a member of the Adjustment Committee if it is hearing an incident that he/she has reported and/or investigated.

**\*(d) A staff member witnessing an incident under consideration should not sit as a member of the Adjustment Committee unless the incident has been so widely witnessed that virtually every staff member has witnessed it in whole or in part.\***

#### 10A:4-8.4 Authority of Disciplinary Hearing Officer or Adjustment Committee

(a) The Disciplinary Hearing Officer or Adjustment Committee shall have the authority to summon witnesses, take testimony, receive documentary evidence and shall have access to all correctional facility records which are relevant and necessary to the adjudication of any disciplinary case.

(b) The Disciplinary Hearing Officer or Adjustment Committee shall have the discretion to keep the hearing within reasonable limits and to refuse to permit the collection and presentation of evidence which is not necessary for an adequate understanding of the case. The Committee Chairperson or Disciplinary Hearing Officer shall exercise control over all presentations to prevent lack of relevancy, harassment, abuse or repetitiveness and to insure that the hearing does not develop into an adversary proceeding.

#### 10A:4-8.5 Decisions of the Adjustment Committee

Decisions of an Adjustment Committee at those correctional facilities utilizing such a Committee shall be by majority vote with each member having an equal vote and an equal right to participate in the fact-finding, discussions and deliberations of the Committee.

### SUBCHAPTER 9. **\*[DUE PROCESS]\* \*DISCIPLINARY PROCEDURES\***

#### 10A:4-9.1 Disciplinary report

(a) When a violation of a prohibited act as identified in N.J.A.C. 10A:4-4, INMATE PROHIBITED ACTS has occurred, the staff member who witnessed it or who has probable cause to believe that a prohibited act has occurred shall prepare Form 259, DISCIPLINARY REPORT and forward it to the appropriate correctional supervisor.

(b) The correctional supervisor may change the report to an On-The-Spot **\*[correctional]\* \*Correction\*** report or forward it to the Disciplinary Hearing Officer or Adjustment Committee for further disposition.

#### 10A:4-9.2 Notification of inmate

The disciplinary report shall be served upon the inmate within 48 hours after the violation unless there are exceptional circumstances. The report shall be delivered by the reporting staff member or the investigating officer. The report shall be signed by the person delivering it and the date and time of delivery shall be noted. The inmate shall have 24 hours to prepare his/her defense.

#### 10A:4-9.3 Notification of use of immunity

In all cases, the inmate shall be advised of his/her right to use immunity at any investigative interview and at the disciplinary hearing. This warning shall consist of a statement that any statements made in connection with the disciplinary hearing or any evidence derived directly or indirectly from those statements shall not be used in any subsequent criminal proceeding. The failure to give this warning by the investigating officer shall not be grounds for dismissing the disciplinary report. The Disciplinary Hearing Officer at his/her discretion may grant a postponement if it is determined that such failure has precluded the inmate from adequately preparing his/her defense at the hearing.

#### 10A:4-9.4 Effect of **\*[use]\* \*Use\*** immunity

(a) An inmate's failure to invoke use immunity and make a statement in his/her defense may be considered by the Disciplinary Hearing Officer or Adjustment Committee together with the other evidence in decision making.

(b) A finding of guilt at a disciplinary hearing, however, shall not be predicated solely upon an inmate's silence.

#### 10A:4-9.5 Investigation

(a) An investigation of the infraction shall be conducted by the correctional facility within 48 hours of the time the disciplinary report is served upon the inmate.

(b) The Superintendent shall appoint a coordinator of investigations who shall be an employee of supervisory level. The Superintendent may also appoint one or more investigating officers who shall ordinarily be

employees of supervisory level who have not been involved in the particular incident to be investigated.

(c) The coordinator shall be responsible for all investigations of disciplinary charges. He/she may assign individual investigations to an investigating officer who shall be responsible to the coordinator for completing his/her assignments.

(d) The investigator shall thoroughly investigate the incident. As part of this investigation, he/she shall verify that the inmate has received the written charge. He/she shall also read the charge to the inmate, inform him/her of his/her use immunity rights, take his/her plea, and ask if he/she wishes to make a statement concerning the incident or infraction. He/she shall take the inmate's statement concerning the incident. He/she may talk to witnesses and the reporting staff member and summarize their statements as may be necessary. Comments about the inmate's attitude may be included in the investigatory report.

(e) The investigator may include comments and conclusions on the inmate's prior record and behavior, his/her analysis of any conflicts between witnesses, and his/her conclusions of what in fact happened. The inmate shall not receive a copy of the investigation.

#### 10A:4-9.6 Requiring further investigation of charges

The Disciplinary Hearing Officer or the Chairperson of the Adjustment Committee may direct a further investigation in any case where he/she is of the opinion that the report is not properly made out or the facts and circumstances are not sufficient to set forth a basic understanding of the incident. The Disciplinary Hearing Officer or Chairperson shall append the supplementary information, in writing, to the original investigation report. The person who supplied the additional information shall sign that section of the report.

#### 10A:4-9.7 Review of postponed cases

Hearings which have been postponed for further investigation shall be reviewed by the Disciplinary Hearing Officer or Adjustment Committee within 48 hours of the postponement if the inmate is in Prehearing Detention or within seven days in all other cases to determine if a further postponement is warranted. Further postponements shall be granted only in exceptional circumstances.

#### 10A:4-9.8 Scheduling hearing

(a) Meetings with the Disciplinary Hearing Officer or the Adjustment Committee shall be convened at such times as are appropriate to carry out the work of the Disciplinary Hearing Officer or Adjustment Committee.

(b) The inmate shall be entitled to a hearing within seven days of the alleged violation, including weekends and holidays, unless such hearing is prevented by exceptional circumstances, unavoidable delays or reasonable postponements. Should the seventh day fall on a Saturday, Sunday or holiday, the last day for the hearing shall be the weekday immediately following the weekend or holiday.

(c) Inmates confined in Prehearing Detention shall receive a hearing within three days of their placement in Prehearing Detention, including weekends and holidays, unless there are exceptional circumstances, unavoidable delays or reasonable postponements. Should the third day fall on a Saturday, Sunday or holiday, the hearing shall be held on the weekday immediately following the weekend or holiday.

(d) Inmates confined in Prehearing Detention shall be given priority in scheduling their appearance before the Disciplinary Hearing Officer or Adjustment Committee.

(e) No delays in hearing a case shall be permitted for the purpose of punishment or discipline.

#### 10A:4-9.9 Failure to adhere to time limits

(a) The failure to adhere to any of the time limits prescribed by this subchapter shall not mandate the dismissal of a disciplinary charge. However, the Disciplinary Hearing Officer or Adjustment Committee may, in its discretion, dismiss a disciplinary charge because of a violation of time limits. Such discretion shall be guided by the following factors:

1. The length of the delay;
2. The reason for the delay;
3. Prejudices to the inmate in preparing his/her defense; and,
4. The seriousness of the alleged infraction.

#### 10A:4-9.10 Excluding the inmate from the hearing

(a) An inmate shall be permitted to be present throughout the hearing except during the necessary deliberations of the Disciplinary Hearing Officer or Adjustment Committee and except in instances where correctional facility security would be jeopardized by his/her presence.

(b) The reasons for excluding an inmate from the hearing must be well documented in the record.

## 10A:4-9.11 In absentia hearings

(a) A full in absentia hearing shall be conducted if the inmate refuses to appear at the hearing.

(b) The following procedural process shall apply at all hearings conducted in absentia which will enable the Disciplinary Hearing Officer or Adjustment Committee to ensure that the inmate has been given every opportunity to be present for his/her hearing.

1. The escorting officer shall report the inmate's refusal to appear to the Disciplinary Hearing Officer or Adjustment Committee.

2. The Disciplinary Hearing Officer or Adjustment Committee Chairperson shall make the following notation in the inmate's statement section of the "Adjudication of Disciplinary Charge" form:

"I voluntarily refuse to appear at this hearing. I understand that the hearing will be held in my absence."

3. An investigating officer shall return the form to the inmate and shall advise him/her that refusal to appear at the hearing may result in an incomplete understanding by the Disciplinary Hearing Officer or Adjustment Committee of the circumstances surrounding the charges lodged against him/her. If the inmate still refuses to appear at the hearing, he/she shall be requested to sign the "Adjudication" form immediately after the statement noted above in 2.

4. In the event the inmate refuses to sign his/her name and still refuses to appear, the form shall be returned to the Disciplinary Hearing Officer or Adjustment Committee Chairperson and the following entry shall be made in the inmate's statement section:

"Inmate refuses to sign \_\_\_\_\_"

Signature of Investigating Officer

5. The following statement shall be included in the inmate statement section of the Adjudication Form: "No statement taken as the inmate refused to appear at the hearing".

## 10A:4-9.12 Aid in presentation of inmate's case

**\*(a) When an inmate has been charged with an asterisk offense, he or she shall be afforded the right to request that he or she be represented by a counsel substitute.\***

**\*[(a)]\* \*(b)\*** When the Disciplinary Hearing Officer or Adjustment Committee determines that an inmate is illiterate or cannot adequately collect and present the evidence in his/her own behalf, the inmate may elect to receive the services of a counsel substitute or he/she may request that he/she be represented by a staff member.

**\*[1.]\* \*(c)\*** Where the inmate requests the services of a staff member, the Superintendent or his/her designee shall appoint a staff member to provide representation.

**\*[2.]\* \*(d)\*** The counsel substitute shall be permitted reasonable time to speak to the inmate and shall be given at least 24 hours to prepare the inmate's defense.

**\*[3.]\* \*(e)\*** If necessary, the inmate shall be allowed to present a defense through an interpreter.

## 10A:4-9.13 Opportunity to call witnesses and present evidence

(a) Inmates shall be allowed to call witnesses and present documentary evidence in their defense when permitting them to do so will not be unduly hazardous to correctional facility safety or **\*[correctional]\*** goals. The Adjustment Committee or Disciplinary Hearing Officer shall review the evidence offered as reasonably available and necessary for proper understanding of the circumstances surrounding the charge. The Disciplinary Hearing Officer or Adjustment Committee has the discretion to keep the hearing within reasonable limits and to refuse to call witnesses that may create a risk of reprisal. Repetitive witnesses need not be called. Unavailable witness may be asked to submit written statements. If the Disciplinary Hearing Officer or Adjustment Committee shall refuse to call one or more witnesses, the reasons for each such refusal shall be separately specified on the Adjudication Form.

(b) Witnesses requested by the inmate who are called may be questioned by members of the Adjustment Committee or the Disciplinary Hearing Officer and the inmate or his/her counsel substitute. Inmates or their representatives may request that certain questions be directed by the Adjustment Committee members or the Disciplinary Hearing Officer to any witnesses. The Disciplinary Hearing Officer or Adjustment Committee may take testimony in a manner or form which is determined to be necessary to protect correctional facility safety or goals. Such manner or form shall include, but shall not be limited to, the consideration of confidential reports.

## 10A:4-9.14 Confrontation and cross examination

(a) The opportunity for confrontation and cross examination, if requested, shall be provided to the inmate in such instances where the Adjustment Committee or Disciplinary Hearing Officer deems it neces-

sary for an adequate presentation of the evidence, particularly when serious issues of credibility are involved.

(b) The Disciplinary Hearing Officer or Adjustment Committee may refuse confrontation and cross examination when said would be unduly hazardous to correctional facility safety or goals.

## 10A:4-9.15 Evidence required

(a) A finding of guilt at a disciplinary hearing shall be based upon substantial evidence that the inmate has committed a prohibited act.

(b) Evidence relied upon in making a determination shall be specified on the Adjudication Form.

**\*1. In any case in which the Disciplinary Hearing Officer or Adjustment Committee's decision of guilt is based on evidence which includes confidential information, adjudication shall contain:**

**i. A concise summary of the facts on which the Disciplinary Hearing Officer or Adjustment Committee concluded that the informant was credible or his or her information reliable; and**

**ii. The informant's statement (either in writing or as reported) in language that is factual rather than a conclusion, and based on the informant's personal knowledge of the matters contained in such statement.**

**2. The Disciplinary Hearing Officer or Adjustment Committee is not permitted to disclose the identity of the informant.\***

## 10A:4-9.16 Alteration of charge during disciplinary hearing

(a) Whenever it becomes apparent at a disciplinary hearing that an incorrect prohibited act is cited in the disciplinary report but that the inmate may have committed another prohibited act, the Adjustment Committee or Disciplinary Hearing Officer shall modify the charge and give the inmate the option of a 24 hour postponement to prepare his/her defense against the new charge or adjudicate the new charge at that time.

(b) If, after reviewing the charge, the inmate's past disciplinary record and any special reports, the Disciplinary Hearing Officer or Adjustment Committee concludes that the infraction is of a minor nature suitable for handling as an On-The-Spot Correction, the charge may be referred back to the appropriate Shift Supervisor for handling under N.J.A.C. 10A:4-7, ON-THE-SPOT CORRECTION.

## 10A:4-9.17 Disciplinary sanctions

(a) The disciplinary action shall be individualized in keeping with such factors as the:

1. Offender's past history of correctional facility adjustment;
2. Setting and circumstances for the adverse behavior;
3. Involved inmate's accountability;
4. Underlying reasons for noncompliance with regulations; and
5. Correctional goals set for the inmate.

(b) The sanction shall be one or more of those enumerated in N.J.A.C. 10A:4-5, SCHEDULE OF SANCTIONS FOR PROHIBITED ACTS.

(c) Whenever an inmate damages or destroys plumbing fixtures, or floods his cell at Trenton State Prison, he may be placed in Prehearing Detention or Disciplinary Detention in a "DRY" cell to serve the sanction imposed.

## 10A:4-9.18 Confiscation of contraband items

All items determined to be contraband found in the inmate's possession shall be confiscated and disposed of in accordance with N.J.A.C. 10A:3, SECURITY AND CONTROL.

## 10A:4-9.19 Guidance and referrals

The Adjustment Committee or Disciplinary Hearing Officer shall give guidance to the inmate with respect to the reason for the rules and policies of the correctional facility. The elements of the inmate's behavior or attitude that are deemed to be unsatisfactory shall be pointed out.

## 10A:4-9.20 Emergency intra-complex transfer

(a) When it shall appear that an inmate has committed a disciplinary infraction which requires his/her immediate transfer to a Prehearing Detention of another correctional facility or unit within the complex or another correctional facility or unit within the complex, the notice and disciplinary hearing shall be granted after the transfer.

(b) The Disciplinary Hearing Officer or Adjustment Committee assigned to the correctional facility to which the inmate has been transferred shall conduct the hearing.

(c) The sending facility shall be responsible for preparing the disciplinary charges, conducting the investigation and delivering this material to the receiving facility.

(d) All due process safeguards shall be provided as soon after the transfer as practicable and shall be in compliance with this subchapter except that written statements of unavailable witnesses shall be liberally accepted instead of live testimony.

(e) Inmates who are transferred from one prison to another prison shall

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be entitled to a prompt review of the transfer by the Inter-Institutional Classification Committee. (See N.J.A.C. 10A:9, CLASSIFICATION PROCESS.)

(f) Inmates who are transferred from one youth correctional institution to another youth correctional institution shall be entitled to a prompt review of the transfer by the Youth Reception Classification Committee. (See N.J.A.C. 10A:9, CLASSIFICATION PROCESS.)

(g) Juvenile residents who are transferred from one juvenile facility to another shall be reviewed by the Juvenile Inter-Institution Classification Committee at its next scheduled meeting. (See N.J.A.C. \*10A:4-9,\* CLASSIFICATION PROCESS.)

(h) No transfer as described in this subchapter shall be effected unless the Superintendent and either the Assistant Commissioner or Deputy Director (or the Deputy Commissioner if both the Assistant Commissioner and the Deputy Director are unavailable) shall have determined that there are emergency conditions in the sending correctional facility justifying the transfer.

#### 10A:4-9.21 Emergency inter-complex transfer

(a) When it shall appear that an inmate from the Youth Correctional Institution Complex has committed a disciplinary infraction which requires his immediate transfer to the Prison Complex, the notice and disciplinary hearing shall be granted after the transfer.

(b) The disciplinary hearing shall be conducted by the Disciplinary Hearing Officer or Adjustment Committee assigned to the correctional facility to which the inmate has been transferred.

(c) The sending facility shall be responsible for preparing the disciplinary charges, for conducting the investigation and for delivering the material to the receiving facility.

(d) All due process safeguards shall be provided as soon after the transfer as practicable and shall be in compliance with this subchapter except that written statements of unavailable witnesses shall be liberally accepted instead of live testimony.

(e) Inmates who are transferred from the Youth Correctional Complex to the Prison Complex shall be entitled to a prompt review of the transfer. (See N.J.A.C. 10A:9, CLASSIFICATION PROCESS.)

(f) No transfer as described in this section shall be effected unless the Superintendent and either the Assistant Commissioner or Deputy Director (or the Deputy Commissioner if both the Assistant Commissioner and the Deputy Director are unavailable) shall have determined that there are emergency conditions in the sending correctional facility justifying the transfer.

(g) Transfers of juveniles from the Division of Juvenile Services to the Youth Correctional Institution Complex in the Division of Adult Institutions can only be effected by an approved variance signed by the Superintendent, Assistant Commissioner and Commissioner. (See N.J.A.C. 10A:1, ADMINISTRATION, ORGANIZATION AND MANAGEMENT.)

#### 10A:4-9.22 Transfer from satellite units

(a) When a minimum security inmate at a satellite unit commits a serious disciplinary infraction requiring transfer for reasons of security to the main correctional facility, he/she shall be provided with a disciplinary hearing at the main facility.

(b) The satellite unit shall be responsible for preparing the disciplinary charges.

(c) The investigation shall be conducted by either the main correctional facility or the satellite unit.

#### 10A:4-9.23 Disciplinary decision

(a) After the hearing has been completed, a written statement of the fact-findings shall be given to the inmate by the Disciplinary Hearing Officer or the the Adjustment Committee \*[chairperson]\* **\*Chairperson\***. This statement shall include evidence relied upon, the decision and the reason for the disciplinary action taken, unless doing so would jeopardize correctional facility security. The written statement shall also indicate the reason for refusing to call a witness or to disclose items of evidence whether it be for irrelevance, lack of necessity or the hazards presented in individual cases. When an inmate has been denied the opportunity for confrontation and cross-examination, the reason for such denial shall be entered in the record and made available to the inmate.

(b) A copy of the disciplinary decision shall be kept in the Disciplinary Hearing Officer's/Adjustment Committee's records and in the inmate's folder unless it has been decided that the inmate has been found not guilty of the charge(s), in which case\*,\* the records of the charge(s) shall be expunged from the inmate's folder.

#### 10A:4-9.24 Discipline record card (Form 254-1)

For the purpose of assisting the Disciplinary Hearing Officer or Adjustment Committee in determining the appropriate sanction to impose, each correctional facility shall have available at the hearing a Discipline Record Card (Form 254-1) for each inmate. This card shall accompany the inmate should he/she be transferred to another correctional facility.

#### 10A:4-9.25 Expungement

**\*a)\*** If an inmate shall be adjudicated not guilty on a disciplinary charge, the results of the hearing shall not be entered onto the inmate's progress sheet. In addition, all references to the disciplinary charges (including any entry onto the progress sheet, the disciplinary report, the investigation report and the adjudication sheet) shall be removed from the inmate's classification folder. Copies of the disciplinary report, investigation and adjudication sheet shall be maintained by the correctional facility and the Disciplinary Hearing Officer or Adjustment Committee in the event of judicial review and for statistical and accounting purposes only. These records shall be maintained separately from the inmate's classification folder.

(b) In the event that a finding of guilt is rescinded on appeal and no further disciplinary action is taken, the inmate's records shall be expunged in accordance with the above procedure. Copies of the appeal and the disposition on appeal shall be forwarded to the Disciplinary Hearing Officer or Adjustment Committee for their records.

(c) The provisions of this subchapter shall be applicable to disciplinary reports prepared on or after September 1, 1980.

#### 10A:4-9.26 Reopening a disciplinary hearing

(a) A finding of not guilty shall represent the final disposition of a disciplinary charge. Except when new information is discovered, an inmate may not be recharged with an offense for which he/she has been found not guilty.

(b) New information shall be defined to include only information which was not available at the time of the initial hearing and which could not reasonably have been ascertained in the course of the correctional facility's investigation.

(c) Information which was overlooked as the result of a careless or incomplete investigation shall not be considered new information within the meaning of this subchapter.

#### 10A:4-9.27 Records of disciplinary reports

(a) A result sheet shall be prepared and submitted to the Superintendent or his/her designee no less than weekly containing the following information:

1. The names of the inmates who received disciplinary actions;
2. Inmate numbers;
3. Housing location;
4. Nature of violations;
5. Staff members' names who wrote reports;
6. Disposition of charges; and,
7. Staff members' names who adjudicated the cases.

(b) The result sheet shall be kept on file for two years.

### SUBCHAPTER 10. DETENTION PROGRAM

#### 10A:4-10.1 Confinement in Prehearing Detention

(a) An inmate shall be confined in Prehearing Detention in those instances where it appears necessary to remove or isolate him/her from the general population until an investigation into his/her alleged misconduct can be completed and a disciplinary hearing can be held pursuant to N.J.A.C. 10A:4-9, \*[DUE PROCESS]\* **\*DISCIPLINARY PROCEDURES\***. Confinement in Prehearing Detention shall be deemed necessary only where it appears that, if the inmate remained in his/her existing housing unit, he/she would constitute a threat to other inmates, staff member, himself/herself or to the orderly operations of the correctional facility.

(b) Confinement in Prehearing Detention may consist of placement in the Detention Unit or confinement to his/her room or housing unit.

(c) The following factors shall be considered in determining whether retention of the inmate in his/her present housing unit would constitute a threat to other inmates, staff members, himself/herself or to the orderly operations of the correctional facility:

1. The inmate has been charged with an assault upon another person and, in the opinion of the correctional staff, there is a substantial possibility that he/she may assault another inmate or staff member;
2. The inmate has been charged with threatening another person and, in the opinion of the correctional staff, there is a substantial possibility that he/she will act on his/her threat;

3. The inmate has been charged with being under the influence of drugs or intoxicants and, in the opinion of the correctional staff, his/her behavioral controls appear to be impaired;

4. The inmate has been charged with inciting others to engage in an assault upon another person, causing serious destruction of property or participating in a group demonstration or work stoppage and, in the opinion of the correctional staff, there is a substantial possibility he/she will continue such incitement;

5. The inmate has been charged with arson or serious destruction of property and, in the opinion of the correctional staff, there is a substantial likelihood that he/she may engage in additional arson or destruction of property. (Whenever the destruction to property consists of flooding the cell or damaging plumbing fixtures, the inmate may be placed in Prehearing Detention in a "DRY" cell—Trenton State Prison only);

6. The inmate has received a disciplinary charge and, in the opinion of the correctional staff, there is a substantial possibility that he/she will attempt to harm, threaten or intimidate potential witnesses or that he/she will attempt to organize or encourage others to harm, threaten or intimidate potential witnesses;

7. The inmate has been charged with participating in an unauthorized gathering or group demonstration and he/she refuses to abandon his/her participation; and

8. The inmate has been charged with escape or attempted escape and evidence has been produced which indicates that the inmate presents a serious escape risk if permitted to remain in general population.

(d) If an inmate is confined in Prehearing Detention as a result of any of the factors in (c) above, such confinement must be authorized, in writing, by the shift supervisor. Form 255-I, Authorization for Prehearing Detention, shall be utilized for this purpose. A separate form must be completed for each inmate and, wherever possible, the form should be completed prior to placing the inmate in Prehearing Detention. When an emergency exists which precludes completion of the form prior to placement, the form must be completed immediately following placement. After all appropriate parties have signed the form, it should be placed in the inmate's folder. Additional copies of the completed form may be kept on file, for record keeping purposes, in areas designated by the Superintendent and the Director of Custody Operations.

(e) Each such confinement in Prehearing Detention shall be reviewed, and approved or disapproved, by either the Superintendent, Assistant Superintendent or Director of Custody within 24 hours of the placement. When none of these individuals are in the correctional facility during the 24 hour period, one of them shall be contacted by telephone to review the placement.

(f) Any time spent in Prehearing Detention shall be credited against any subsequent sentence imposed.

#### 10A:4-10.2 Placement in Disciplinary Detention

(a) Inmates shall be placed in Disciplinary Detention by the Adjustment Committee or Disciplinary Hearing Officer for a period not to exceed 15 days.

(b) If it shall be determined that the inmate has committed a new major violation during the period of Disciplinary Detention, this time may be extended. In response to the commission of this new infraction, the Adjustment Committee or Disciplinary Hearing Officer shall provide the inmate with a due process hearing pursuant to N.J.A.C. 10A:4-9, \*[DUE PROCESS]\* **\*DISCIPLINARY PROCEDURES\*** prior to extending the 15 day period of Disciplinary Detention. The period of Disciplinary Detention shall not extend beyond 30 days, except as provided in N.J.A.C. 10A:4-6, CHRONIC VIOLATOR—VROOM READJUSTMENT UNIT AND FEMALE INMATES AT THE CORRECTIONAL INSTITUTION FOR WOMEN AT CLINTON.

(c) In the event of further infractions in the Unit or correctional facility, the Adjustment Committee or Disciplinary Hearing Officer shall consider alternative programs for regulating the inmate's behavior within acceptable limits.

(d) The inmate shall be entitled to appear before the Adjustment Committee or Disciplinary Hearing Officer unless the inmate refuses to appear or his/her presence would pose a threat to the security of the correctional facility. Under no circumstances shall force be used to compel the attendance of the inmate at the hearing. A refusal to appear shall be entered upon the \*[adjudication sheet]\* **\*Adjudication of Disciplinary Charge form\*** by the Disciplinary Hearing Officer or Adjustment Committee Chairperson.

(e) The time an inmate spends in Disciplinary Detention shall be proportionate to the offense committed, taking into consideration the inmate's prior conduct, his/her specific program needs and other relevant factors.

#### 10A:4-10.3 Separate facilities

(a) Facilities utilized to separate inmates from the general population shall be physically separate so that materials allowed inmates in one section cannot be passed to inmates in Disciplinary Detention.

(b) An inmate may be confined to his/her room or housing unit to serve his/her Disciplinary Detention under appropriate circumstances (for example, overcrowding, riots, fires, etc.). All requirements of the Detention Program shall apply when the inmate serves his/her Disciplinary Detention separate from the general population or when his/her Disciplinary Detention is served in his/her room or housing area.

#### 10A:4-10.4 Ventilation, heating, lighting and sanitation in Detention Program

(a) Ventilation and reasonable temperature shall be maintained on a 24 hour basis. Light of sufficient intensity shall be maintained to allow visual observation of inmates at all times. When admitted, inmates shall not be placed in cells that lack cleanliness or have malfunctioning sanitary fixtures or lights. Daily inspections shall be made to insure the cells are kept secure, clean and sanitary.

(b) Toilets that are flush controlled from outside the cells shall be flushed as often as necessary to maintain good sanitary conditions.

(c) Inmates confined to "DRY" cells shall be permitted to shower at least once every three days. Drinking water shall be available upon request.

#### 10A:4-10.5 Visual observation

Inmates in Disciplinary Detention shall be observed regularly and frequently by custodial staff. There shall be no physical obstruction to visual observation of inmates at any time. Full or partial curtains shall not be permitted over the cell door.

#### 10A:4-10.6 Personal items

(a) All inmates shall be admitted to Disciplinary Detention dressed in normal correctional clothing after a thorough search for contraband except that:

1. No belts shall be permitted; and

2. Shoestrings may be removed or shoes may be replaced with cloth or paper slippers at the discretion of the Superintendent.

(b) Each inmate shall be provided with the following items for use in the cell to the same extent as such items are provided for inmates in the general population:

1. Clothing required for use in the cell;

2. Bedding and mattresses;

3. Personal hygiene supplies (including soap, deodorant, toothbrush and toothpaste or powder, towel and toilet paper);

4. Utensils and supplies for adequately cleaning the cell;

5. Eyeglasses;

6. Writing materials; and

7. Legal materials.

#### 10A:4-10.7 Withdrawal of personal items or special activities

(a) Whenever in the judgment of the supervisor of the Unit there shall be imminent danger that an inmate will destroy any item or will do injury to himself/herself, to another person or to property with any item, the supervisor may direct that the inmate be deprived of the item, if practicable. In such case, however, every effort shall be made to supply a substitute for the item or to permit the inmate to use the item under the supervision of an officer.

(b) Whenever an inmate shall be deprived of any usually authorized item or activity, a written report shall be immediately forwarded to the Superintendent or his/her designee, identifying the inmate, the item or activity of which he/she has been deprived and the reason thereof.

(c) Whenever the circumstances are such that all the inmate's clothing is removed, the Superintendent or his/her designee shall be contacted immediately for approval of this action. The written report outlined in N.J.A.C. 10A:4-10.7(b) shall be sent to the Superintendent or his/her designee.

(d) Arrangements shall be made for a physician or other appropriate staff to visit the inmate as soon as possible after the withdrawal of personal item(s) or activities.

(e) In all cases, the item or activity shall be restored to the inmate as soon as restoration appears to be consistent with safety.

(f) No inmate shall ever, under any circumstances, be deprived of any of these items or activities for the purposes of punishment or discipline.

#### 10A:4-10.8 Medical and psychiatric services

(a) Inmates in Disciplinary Detention shall receive a daily visit by a member of the medical staff which can be a nurse, paramedic, doctor or other authorized health care personnel.

(b) Medical and psychiatric emergencies shall be attended to immedi-

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ately. Requests for medical attention for inmates in nonemergency situations shall be responded to by the physician, or a medical person designated by him/her within 24 hours.

(c) Whenever it shall appear that an inmate is suffering from an emotional or psychiatric disturbance, arrangements shall be made for a psychiatric or psychological evaluation.

#### 10A:4-10.9 Emergency evacuation

Each correctional facility shall develop \*[an]\* **\*a written\*** evacuation plan in case of fire or other emergencies.

#### 10A:4-10.10 Visits by social work and correctional supervisory staff

(a) A member of the correctional facility social work staff shall visit the inmates in Disciplinary Detention daily to determine any emergencies or unusual needs of the inmates.

(b) Inmates shall receive at least daily visits from the senior correctional supervisor in charge of the Disciplinary Detention area.

#### 10A:4-10.11 Chaplain services

(a) Inmates confined in Disciplinary Detention shall not be denied pastoral services. The correctional facility chaplain or an outside religious leader approved by the chaplain and Superintendent to conduct religious activities shall visit this area in response to an inmate's written request to provide religious counseling or other pastoral services.

(b) The inmate handbook shall state that inmates in Close Custody Units may request a visit by the chaplain or other approved religious group leader.

#### 10A:4-10.12 Food

(a) Disciplinary Detention or Prehearing Detention inmates shall be served the normal correctional facility meals on the menu of the day or such special diet as shall be prescribed.

(b) Disposable utensils shall be used when necessary.

#### 10A:4-10.13 Correspondence, visits and telephone calls

(a) Inmates in Disciplinary Detention shall have the same correspondence opportunities that are available to inmates in the general population (see N.J.A.C. 10A:8, COMMUNICATION, MAIL AND VISITS).

(b) Inmates in Disciplinary Detention shall not be provided with visit or telephone opportunities while in Disciplinary Detention with the exception of legal telephone calls.

1. The Superintendent or his/her designee may authorize a special visit or telephone call for an inmate when there are compelling reasons to do so.

2. Every effort shall be made to notify expected social visitors of the restriction on ordinary visiting procedures prior to the next regularly scheduled visiting period. If ample time for correspondence shall exist, the burden of this notification shall be placed on the inmate.

#### 10A:4-10.14 Grooming, showering and shaving

Barbering and hair care services shall be provided in the Disciplinary Detention area, as needed. Each inmate shall be given the opportunity to shave and shower not less than two times a week, unless permitting these activities would present an undue security hazard. Correctional facilities capable of providing for more frequent shaving and showering shall do so not less than three times per week.

#### 10A:4-10.15 Reading material

Inmates in Disciplinary Detention shall be permitted to retain in their possession an amount of reading material that is consistent with the maintenance of security and the orderly operation of the Unit. Reading material not permitted in Disciplinary Detention is outlined in N.J.A.C. 10A:18, COMMUNICATION, MAIL AND UNITS.

#### 10A:4-10.16 Recreation

Where conditions permit, correctional facilities shall provide recreation outside the cells at least five hours per week.

#### 10A:4-10.17 Records in Disciplinary Detention

(a) The following information on inmates confined in Disciplinary Detention status shall be available in the Unit for the use of the custodial staff:

1. Inmate's name;
2. Number;
3. Housing location;
4. Unit;
5. Cell or room assignment;
6. Date admitted;
7. Disciplinary charge leading to Disciplinary Detention;
8. Expiration date of Disciplinary Detention; and
9. Special medical or psychiatric problems.

(b) Visits by medical, psychiatric, social work or correctional super-

visory staff and all unusual behavior shall be noted in the Unit log book together with the time and date.

#### 10A:4-10.18 Correctional facility procedures

(a) Each correctional facility shall develop written procedures and post orders consistent with this subchapter.

(b) The written procedures and post orders for the Detention Program shall be submitted to the Office of the Deputy Commissioner for review and approval on or before January 31 of each year.

### SUBCHAPTER 11. APPEALS OF DISCIPLINARY DECISIONS

#### 10A:4-11.1 Time limit to file an appeal

(a) The inmate shall be advised in writing by the Disciplinary Hearing Officer or Adjustment Committee of the opportunity to appeal to the Superintendent or his/her designee at the time he/she is provided with the disciplinary decision.

1. Inmates within the main **\*correctional\*** facilities of the Division of Adult Institutions shall have 48 hours from receipt of the disciplinary decision to make such appeal.

2. Inmates in the Training School at Jamesburg and the Juvenile Medium Security Unit shall have 72 hours in which to appeal.

3. Inmates in satellite units of the prison complex or youth complex shall have 48 hours to present the appeal form to a **\*[designated]\* \*designated\*** individual at the unit who shall deliver it to the Superintendent.

(b) In all cases, the Superintendent or his/her designee may, for good cause shown, accept appeals submitted after the prescribed deadline.

#### 10A:4-11.2 Processing appeal

(a) The inmate shall use the Appeal of Disciplinary Decision Form 256-1.

(b) Upon submission of the appeal, the person accepting the appeal form shall sign, date and note the time on the original and carbon copies in the inmate's presence. The carbon copy shall be given to the inmate.

(c) The appeal form shall be brought to the Superintendent's office during the same shift on which it is received from the inmate.

(d) All appeals shall be considered by the Superintendent of the correctional facility in which the charge was received.

(e) If the inmate has been transferred before the appeal is heard, the appeal form shall be delivered to the Superintendent of the correctional facility from which the charges were issued within 48 hours of its receipt from the inmate.

(f) Inmates unable to complete an appeal form may request assistance in preparing the form from a fellow inmate. Where the appeal has been completed by an inmate other than the inmate who received the charge, the name of the preparer should appear on the form.

#### 10A:4-11.3 Suspension of sanctions pending appeal

(a) Inmates who wish to have their sanctions suspended pending a decision on their appeal, must make a request to the Superintendent or his/her **\*[designate]\* \*designee\*** for this consideration. If this request is not made, then no action shall be taken to suspend any sanctions received in the disciplinary hearing.

(b) If requested, a disciplinary sanction shall not be suspended pending appeal unless the inmate establishes by clear and convincing evidence that his/her release from Disciplinary Detention will not jeopardize correctional facility security and order, that witnesses or victims will not be intimidated and that he/she will not engage in any action which could otherwise interfere with the administration of justice.

(c) In those cases where the Superintendent grants the inmate's request for release from Disciplinary Detention pending appeal, the release shall not preclude the correctional facility from denying outside privileges; e.g., furloughs for the inmate even though other disciplinary sanctions are suspended pending the outcome of the appeal.

#### 10A:4-11.4 Investigation of appeal

(a) The Superintendent or his/her designee shall order an independent investigation of the charge and proceedings of the hearing in those instances in which the inmate's appeal and information furnished after the initial disciplinary hearing appear to warrant such action.

(b) The Superintendent shall have the option to request a total or partial reinvestigation of the charge or proceedings of the hearing. The reinvestigation may be conducted by any person or unit **\*[designated]\* \*designated\*** by the Superintendent; provided, however, that the individual shall have had no contact with the issuance of the first investigation of the charge.

(c) The reinvestigation may include any of the components of the original investigation such as reinterviewing witnesses, inmates and officers, reevaluating reports and reexamining evidence.

(d) If on the basis of new evidence, the Superintendent finds serious

issues of credibility, he/she may also request a polygraph examination as part of the reinvestigation. Such requests shall be in accordance with N.J.A.C. 10A:3, SECURITY AND CONTROL.

(e) In reviewing an appeal the following factors shall be considered:

1. Compliance with the subchapters on inmate discipline which prescribe procedural safeguards;
2. Whether the decision of the Disciplinary Hearing Officer or Adjustment Committee was based upon substantial evidence;
3. Whether the sanction imposed was proportionate to the offense in view of the inmate's recent disciplinary history and present custody status; and/or,
4. Whether extenuating circumstances were considered.

#### 10A:4-11.5 Disposition of appeal

(a) At the conclusion of the Superintendent's review of an appeal, one of the following actions shall be taken:

1. The Superintendent or his/her designee shall rescind the decision of the Disciplinary Hearing Officer or Adjustment Committee if the review and/or investigation indicates that the evidence fails to demonstrate that any violation was committed, or he/she determines that there was such a failure to adhere to proper procedures at the initial hearing that the inmate had been irreparably prejudiced and would be unable to present a defense at a rehearing. No further disciplinary action shall be taken. The copies of the infraction and all notations concerning the infraction shall be promptly expunged from the inmate's records.

2. The Superintendent or his/her designee shall rescind the original decision and order a new hearing if the review and/or investigation indicates that procedural safeguards prescribed for inmate disciplinary hearings were not followed, or if new evidence not available at the original hearing is revealed. If a new hearing is ordered, there shall be no increase in the severity of the sanctions unless new evidence warrants such action.

3. The Superintendent or his/her designee shall downgrade the sanctions if the review and/or investigation indicates that the sanction is disproportionate to the offense in accordance with factors enumerated in N.J.A.C. 10A:4-9, \*[DUE PROCESS]\* **\*DISCIPLINARY PROCEDURES\***.

4. The Superintendent or his/her designee shall order a new hearing if the review and/or investigation indicates that the evidence does not support the findings of the Adjustment Committee or Disciplinary Hearing Officer but would support some form of disciplinary action for a lesser included offense than that with which the inmate was charged.

5. The Superintendent or his/her \*[designete]\* **\*designee,\*** in all other cases, shall uphold the decision of the Adjustment Committee or Disciplinary Hearing Officer and make no change in the penalty.

(b) In no event shall there be an increase in severity of sanctions issued by the Adjustment Committee or Disciplinary Hearing Officer solely as a result of the review of the appeal.

#### 10A:4-11.6 Policy regarding rehearings

(a) If a rehearing \*[if]\* **\*is\*** required, the inmate shall be accorded all procedural rights applicable to a disciplinary hearing.

(b) The hearing body may be the same as that which heard the original charge unless the composition of that body was the procedural defect requiring the rehearing or unless there is a substantial likelihood of prejudice.

1. In the absence of exceptional circumstances, a rehearing shall be scheduled no more than 14 days from the date of the original hearing.

2. When a disciplinary sanction has not been suspended pending the outcome of the appeal, a rehearing shall be scheduled within 24 hours of the Superintendent's decision to have the matter reheard, excluding weekends and holidays, in the absence of exceptional circumstances.

(c) Rehearings may be appealed and the Superintendent may exercise the same options as provided for in N.J.A.C. 10A:4-11.5.

#### 10A:4-11.7 Notification of inmate on appeal results

(a) In all cases, the inmate shall be notified in writing of the results of the review of his/her appeal and the reasons therefor.

1. If an inmate is being held in Disciplinary Detention which resulted from disciplinary action, the written decision on the appeal shall be given to the inmate within 72 hours of receipt of the appeal, excluding weekends and holidays.

2. In all other cases, or if the sanctions have been suspended, the Superintendent \*[of]\* **\*or\*** his/her designee shall respond in writing to the inmate within seven working days of receipt of the appeal. Form 245-II, Disposition of Disciplinary Appeal shall be used for this purpose.

(b) Copies of the decision shall also be distributed to the Adjustment Committee or the Disciplinary Hearing Officer and the inmate's file. Other copies may be distributed as determined to be necessary by the Superintendent.

(c) Only for reasons of significant importance may a Superintendent or his/her designee extend the time limit to act on an appeal. In such case, the inmate shall be notified in writing within the prescribed time period that action on his/her appeal has been extended. Where possible, the reason for the extension shall be explained in general terms to the inmate.

#### 10A:4-11.8 Expungement

Expungement of a disciplinary charge when an inmate has been found not guilty, shall be done in accordance with N.J.A.C. 10A:4-9, \*[DUE PROCESS]\* **\*DISCIPLINARY PROCEDURES\***.

#### 10A:4-11.9 Appeal to the Office of Administrative Law

In those cases in which an inmate has received a sanction of 365 days or more loss of commutation time arising out of a single incident, the inmate may request a de novo hearing by the Office of Administrative Law. Form 257-I shall be used for this purpose (see N.J.A.C. 10A:4-12, APPEAL TO OFFICE OF ADMINISTRATIVE LAW).

### SUBCHAPTER 12. APPEAL TO OFFICE OF ADMINISTRATIVE LAW (OAL)

#### 10A:4-12.1 Opportunity to appeal to OAL and time limit

(a) In those cases in which the decision of the Disciplinary Hearing Officer/Adjustment Committee to impose a sanction of 365 days or more loss of commutation time is affirmed by the Superintendent, the inmate shall be advised in writing by the Superintendent or his/her designee, at the time the result of the inmate's appeal is returned to him/her, of the opportunity to further appeal the decision to the Office of Administrative Law. A copy of Form 257-I shall be provided for this purpose.

(b) The inmate shall have 48 hours from receipt of the appeal decision to make such further appeal.

(c) In all cases, the Superintendent or his/her designee may, for good cause shown, accept appeals submitted after the prescribed deadline.

#### 10A:4-12.2 Processing appeal

(a) The inmate shall complete Form 257-I Appeal to Office of Administrative Law and submit it to a staff person. The person accepting the appeal form shall, in the presence of the inmate, sign, date and note the time on the original copy. A copy shall then be returned to the inmate.

(b) If the inmate has been transferred to another correctional facility before completing Form 257-I, the completed form shall be delivered to the Superintendent of the correctional facility from which the charges emanated within 48 hours of its receipt from the inmate.

(c) Inmates unable to complete an appeal form may request assistance in preparing the form from a fellow inmate. When the appeal has been completed by an inmate other than the inmate who received the disciplinary sanction, the name of the preparer should appear on the form.

#### 10A:4-12.3 Transmittal to Commissioner

(a) Within three working days after the Superintendent receives Form 257-I Appeal to Office of Administrative Law, he/she shall send it to the Commissioner or his/her designee together with legible copies of the following:

1. Disciplinary charge(s);
2. Investigation(s);
3. Adjudication(s);
4. Special reports, whether from custody staff, medical staff or others;
5. Authorization for Prehearing Detention, if any;
6. Polygraph result, if any;
7. Confidential reports, if any;
8. Inmate's appeal with exceptions, if any;
9. Any other relevant documentary evidence; and
10. Appeal decision.

(b) Physical evidence shall be maintained in the Office of Internal Affairs at Trenton State Prison, or at the correctional facility where the disciplinary infraction took place, until further notice to produce it at the OAL hearing, or at the request of the Commissioner or his/her designee.

#### 10A:4-12.4 Suspension or stay of sanctions pending appeal to OAL

(a) Inmates who wish to have their sanctions suspended or stayed pending a decision on their appeal, must make a request to the Commissioner or his/her designee for this consideration. If this request is not made, then no action shall be taken to suspend or stay any sanctions received in the disciplinary hearing.

(b) If requested, a disciplinary sanction shall not be suspended or stayed pending appeal unless the inmate establishes by clear and convincing evidence that:

1. A suspension or stay will not jeopardize correctional facility security and order;

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2. Witnesses or victims will not be intimidated; and,

3. He/she will not engage in any action which could otherwise interfere with the administration of justice.

(c) In those cases where the Commissioner grants the inmate's request for a suspension or stay pending appeal, the suspension or stay shall not preclude the correctional facility from denying outside privileges (for example, furloughs, etc.) for the inmate even though other disciplinary sanctions are suspended or stayed pending the outcome of the appeal.

(d) The decision of the Commissioner to grant or to deny a suspension or stay is a final agency action and may not be transmitted to the Office of Administrative Law as a contested case issue. The decision may be appealed to the Appellate Division of Superior Court pursuant to court rules.

#### 10A:4-12.5 Transmittal to \*[OAL]\* \*the Office of Administrative Law\*

(a) Within three working days after receipt of the inmate's Appeal to the Office of Administrative Law, the Commissioner shall send the appeal to the OAL, together with the following:

1. Disciplinary charge(s);
2. Adjudication(s);
3. Inmate's appeal with exceptions, if any;
4. Result of appeal to Superintendent;
5. Result of application for a stay; and\*[,]\*
6. Request for representation by the Attorney General.

#### 10A:4-12.6 Place for hearing

Office of Administrative Law hearings shall be held at the correctional facility in which the inmate is confined. A suitable room at each facility shall be provided, together with security as deemed necessary by the OAL Judge and Superintendent.

#### 10A:4-12.7 Conduct of hearing

The hearing shall be conducted by an OAL Judge assigned by the Office of Administrative Law, in accordance with procedures established and promulgated by the Office of Administrative Law in N.J.A.C. 1:10A-1.1 et seq.

#### 10A:4-12.8 Burden and standard of proof

The correctional facility shall have the burden of proving by a preponderance of evidence that the adjudication of guilt and the penalty are warranted by the facts and the law.

### SUBCHAPTER 13. RESIDENT DISCIPLINE PROGRAM FOR THE TRAINING SCHOOL FOR BOYS AT SKILLMAN

#### 10A:4-13.1 Scope

The rules in this subchapter apply to the residents of the Training School for Boys at Skillman.

#### 10A:4-13.2 Staff responsibilities

All staff members shall be responsible for enforcing correctional facility rules and regulations.

#### 10A:4-13.3 Orientation

All residents shall receive orientation by the cottage staff of Skillman to the Resident Discipline Program at Skillman within the first 10 days following their arrival at the correctional facility. This orientation program shall include information about the facility's rules and regulations as well as an explanation of the disciplinary process.

#### 10A:4-13.4 Handbook

Residents shall be provided with a handbook which includes a chapter on discipline which shall explain the resident's rights and responsibilities, the rules and regulations of the facility, a list of possible remedial measures and a basic description of the correctional facility's disciplinary procedures.

#### 10A:4-13.5 Responsibilities and prohibited acts

(a) The list of basic responsibilities and prohibited acts concerning resident conduct in (b) and (c) below shall be included in the handout for new residents and shall be reviewed with all residents during orientation.

(b) Each resident shall be expected to:

1. Maintain a positive attitude toward authority;
2. Show respect for other residents and staff and not use abusive or obscene language;
3. Avoid fighting or other aggressive acting out behavior;
4. Remain on grounds unless authorized for off grounds;
5. Keep himself clean;
6. Keep his bed and locker clean;
7. Remain under the supervision of a staff person except when authorized to engage in unsupervised activity;

8. Follow directions for going from one place to another as a group;

9. Have a pass whenever going to a permitted place by himself;

10. Make appropriate use of correctional facility property;

11. Respect the property of others;

12. Be honest;

13. Follow the instructions of staff members;

14. Learn and follow the routines of the cottage and classroom;

15. Learn and obey all rules of the campus and cottage; and

16. Keep only items which are permitted.

(c) No resident shall be permitted to:

1. Assault or fight with another person;

2. Threaten another person;

3. Use obscene language to a staff member;

4. Leave correctional facility grounds unless authorized by a staff member;

5. Destroy correctional facility property or the property of another person;

6. Lie;

7. Refuse to obey an order of a staff member;

8. Disobey a written rule or regulation of the correctional facility or unit;

9. Be in an unauthorized area;

10. Engage in sexual acts with others or make sexual proposals or threats to others;

11. Smoke;

12. Have or use drugs or medications not allowed;

13. Possess money unless permitted;

14. Have cigarettes, matches, gum, spray paint, tools and sharp instruments;

15. Interfere with the handling of situations involving staff and other residents; and

16. Possess anything not authorized.

#### 10A:4-13.5 Rules and regulations

(a) The correctional facility and each unit shall develop more specific rules and regulations as determined by the composition and programs at the particular units.

(b) Each unit shall acquaint each resident with the specific rules and regulations of the unit.

#### 10A:4-13.6 Disciplinary report form

(a) When a violation of a prohibited act has occurred, the staff member who witnessed it or has probable cause to believe that a prohibited act has occurred shall prepare a Skillman Incident Report form and forward it to his/her immediate supervisor. The incident report shall be made out in triplicate and contain the following information:

1. The resident's name;

2. Housing location;

3. Date;

4. Time;

5. Persons involved in the incident;

6. Description of the misconduct;

7. Location of the misconduct; and

8. Any immediate control or remedial action taken.

(b) The report writer shall make every effort to obtain reliable information on the circumstances under which the misconduct occurred.

(c) Staff members may provide additional information on an incident by submitting a supplemental report.

(d) In instances of major misconduct violation as described in N.J.A.C. 10A:4-13.13 which results in a referral to the \*[Inter-Institutional Classification Committee (I.I.C.C.)]\* \*Juvenile Reception Classification Committee (J.R.C.C.)\* for a disciplinary reason, a copy of the report shall be given to the resident within 24 hours of the referral.

#### 10A:4-13.7 Conference

(a) A conference shall be held with the resident by the Unit Director of the cottage or Supervisor of Education within one week of the writing of the disciplinary report.

(b) At the conference, the resident shall be given the opportunity to discuss the disciplinary report and receive appropriate counseling.

(c) Immediately following the conference, a copy of the report shall be forwarded to the Cottage Treatment Team together with the recommendations of the Director or Supervisor.

#### 10A:4-13.8 Referral to Cottage Treatment Team

(a) The Cottage Treatment Team shall consist of representatives from the academic area, social services, cottage life services and a chairperson \*[designated]\* \*designated\* by the Director of Professional Services.

(b) As part of the regular weekly meeting, the team shall process all

incident reports written for violations of prohibited acts and make a determination of an appropriate sanction. The sanction shall be one of those enumerated in N.J.A.C. 10A:4-13.11.

(c) The Cottage Treatment Team shall also review each ongoing sanction weekly and shall have the authority to suspend the balance of any sanction previously imposed based upon the resident's subsequent positive behavior and attitude.

#### 10A:4-13.9 Role of the Administrative Case Review Committee

(a) The Administrative Case Review Committee shall consist of the following:

1. Assistant Superintendent, as chairperson;
2. Director of Professional Services;
3. \*[Supervisor of Cottage Life]\* **\*Director of Custody Operations\***;
4. Social Work Supervisor;
5. Supervisor of Education;
6. Head Nurse; and
7. Psychologist.

(b) The Committee shall periodically review the total program of each resident including his disciplinary record.

(c) The Committee may reverse or modify any disciplinary decision of the Cottage Treatment Team. Nothing in this Subchapter shall require the Committee to review decisions of the Cottage Treatment Team in all cases.

#### 10A:4-13.10 Role of the Superintendent

(a) The Superintendent or his/her designee shall have the authority to reverse or modify any disciplinary decision of the Cottage Treatment Team or the Administrative Case Review Committee.

(b) Nothing in this subchapter shall require the Superintendent to review decisions of these bodies in all cases.

#### 10A:4-13.11 Range of sanctions

(a) A finding of guilt for violation of a prohibited act shall render the resident subject to one or more of the following sanctions:

1. Campus restriction, which consists of loss of privilege to participate in off grounds activities including home visits, weekly movie, swimming pool, gym and cottage based volunteer activities for no more than one month;
2. Loss of home visiting privilege for no more than two months;
3. Loss of off grounds privileges for no more than three weeks;
4. Loss of individual recreation privilege for no more than three weeks;
5. Up to four hours of extra work duty to be performed in one week at no more than one hour per day;
6. Restitution;
7. Forfeiture;
8. Counseling and/or reprimand;
9. Loss of a specified individual cottage unit program privilege; and/or,
10. Any combination of the above.

#### 10A:4-13.12 On-\*[the-spot correction]\* **\*The-Spot-Correction\*** (minor violations)

(a) In cases involving less serious disciplinary infractions, staff members may take immediate disciplinary action. This disciplinary actions is limited to the following:

1. Restriction from a specific unit recreational activity or program privilege for the day;
2. After school detention for one day;
3. Temporary separation from the group or activity;
4. Verbal reprimand; and
5. Counseling.

(b) In all such minor disciplinary cases, a copy of the disciplinary report shall be forwarded to the Cottage Treatment Team.

#### 10A:4-13.13 Major misconduct violations

(a) Serious or major misconduct shall be the violation of a prohibited act that threatens the security of the Training School or causes serious intentional injury to self or others.

(b) Should the Cottage Treatment Team, Administrative Case Review Committee or Superintendent find that a resident's misconduct warrants consideration for disciplinary measures beyond those which may be imposed at the Training School for Boys, Skillman, the Administrative Case Review Committee, with the concurrence of the Superintendent, may refer the case to the Juvenile \*[Inter-Institutional]\* **\*Reception\*** Classification Committee for transfer to the Training School for Juveniles at Jamesburg. (See N.J.A.C. 10A:9, CLASSIFICATION PROCESS)

(c) Copies of incident reports concerning major acts of misconduct shall always be forwarded to the Superintendent or his/her designee by the Cottage Life Office as soon as received.

(d) If an emergency situation occurs requiring immediate transfer of a resident to the Training School for Juveniles at Jamesburg, the procedures shall be followed as outlined in N.J.A.C. 10A:9, CLASSIFICATION PROCESS.

#### 10A:4-13.14 Remedial action

(a) To the extent possible, sanctions shall be directly related to the violation and, except for authorized immediate corrective actions, shall be imposed subsequent to the review of the incident report at the next scheduled meeting of the Cottage Treatment Team.

(b) Disciplinary measures which shall not be authorized under any circumstances include:

1. Corporal punishment;
2. Degrading action or language; and
3. Deprivation of meals, regular evening snacks, mail or eligible visits.

#### 10A:4-13.15 Segregation and detention units

There shall be no segregation or detention units as part of the Resident Discipline Program at Skillman.

#### 10A:4-13.16 Contraband items

Any items on the correctional facility list of contraband which is found in the resident's possession shall be confiscated and disposed of in accordance with N.J.A.C. 10A:3, SECURITY AND CONTROL.

## LABOR

### (a)

#### DIVISION OF UNEMPLOYMENT AND TEMPORARY DISABILITY INSURANCE

##### Registration for Work and Claims for Benefits

##### Adopted Amendment: N.J.A.C. 12:17-2.1

Proposed: April 21, 1986 at 18 N.J.R. 811(a).

Adopted: June 19, 1986 by George M. Krause, Acting Commissioner of Labor.

Filed: June 23, 1986 as R.1986 d.286, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 43:21-4, 43:21-6.

Effective Date: July 21, 1986.

Expiration Date: January 6, 1991.

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

**No comments received.** However, the Department has added a substantive amendment to clarify that situation in which an individual fails to report with good cause on the designated reporting day. The amendment provides that the individual must still report as soon as possible after the scheduled reporting date.

**Full text** of the adoption follows (additions to proposal indicated in bold face with asterisks **\*thus\***).

#### 12:17-2.1 Claims and registration for individuals generally

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

(c) The claimant shall report in person to the local unemployment insurance claims office on the date and time designated by a representative of the Division.

1. A claimant's failure to report to the local unemployment office without good cause on the date designated will result in the loss of unemployment benefit rights from the date the failure to report occurred, to such time as the claimant reports to the local unemployment insurance claims office.

2. A claimant's failure to report, or notify the local unemployment insurance claims office in writing of the reason for failing to report, within 14 days from the assigned reporting date will result in the loss of benefits for the compensable weeks currently being claimed, until the date the claimant actually reports.

**\*3. In the event a claimant has good cause for not reporting to the local unemployment insurance claims office on the date designated, the claimant must still report as soon as possible after the scheduled reporting date. Failure to report as soon as possible thereafter, without continuing good cause, will result in the loss of benefits for the period during which the claimant failed to report without good cause.\***

(d)-(h) (No change.)

NEW JERSEY REGISTER, MONDAY, JULY 21, 1986

**(a)****DIVISION OF VOCATIONAL REHABILITATION SERVICES****Vocational Rehabilitation Services Program Rules****Readoption: N.J.A.C. 12:51**

Proposed May 19, 1986 at 18 N.J.R. 1088(b).  
 Adopted: June 24, 1986 by New Jersey Division of Vocational Rehabilitation Services, George M. Krause, Acting Commissioner, Department of Labor.  
 Filed: June 30, 1986 as R.1986 d.298, **without change**.

Authority: N.J.S.A. 34:16-27.

Effective Date: June 30, 1986.

Expiration Date: June 30, 1991.

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

**Full text** of the adoption appears in the New Jersey Administrative Code at N.J.A.C. 12:51.

**(b)****DIVISION OF WORKPLACE STANDARDS****Safety and Health Standards for Public Employees Asbestos Standards for Public Employees****Adopted Amendments: N.J.A.C. 12:100-2.1 and 4.2****Adopted New Rules: N.J.A.C. 12:100-12****Recodification: N.J.A.C. 12:100-7 recodified as 12:100-17**

Proposed: April 21, 1986 at 18 N.J.R. 811(b).  
 Adopted: June 19, 1986 by George M. Krause, Acting Commissioner, Department of Labor.  
 Filed: June 23, 1986 as R.1986 d.285 **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. 34:6A-25 et seq., specifically 34:6A-30, 31 and 32.

Effective Date: July 21, 1986.

Expiration Date: November 5, 1989.

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

The New Jersey Department of Labor held a comment period open until May 21, 1986. The Department also solicited comments from a list of interested parties. These interested parties are listed below:

- New Jersey Association of Counties; Trenton, N.J.
- New Jersey Association of School Administrators; Trenton, N.J.
- New Jersey Business and Industry Association; Trenton, N.J.
- New Jersey Conference of Mayors; Trenton, N.J.
- New Jersey School Boards Association; Trenton, N.J.
- New Jersey Section, American Industrial Hygiene Association, c/o Carter-Wallace, Inc.; Cranbury, N.J.
- American Society of Safety Engineers; c/o New Jersey State Safety Council; Cranford, N.J.
- New Jersey State Chamber of Commerce; Trenton, N.J.
- New Jersey State League of Municipalities; Trenton, N.J.
- New Jersey State Safety Council; Cranford, N.J.

No negative comments were received from either the publication of this Notice in the New Jersey Register or from the interested parties. The Department of Labor, however, wishes to adopt additional minor amendments not originally proposed as listed below.

N.J.A.C. 12:100-2.1. There is a minor change in the definition of "CFR" to recognize the amendments made to the Federal regulations which are adopted by reference.

N.J.A.C. 12:100-7. Since additional rulemaking is contemplated under new subchapters, the Department has recodified Subchapter 7 to Subchapter 17 which covers the availability of standards and publications referred to in this chapter. The new Subchapter 17 has been amended

to include new standards referred to in Subchapter 12.

N.J.A.C. 12:100-7 through 11 have been reserved for additional rulemaking.

N.J.A.C. 12:100-12.2. There are minor editorial and typographical errors in the definitions of "CFR", "Small asbestos hazard abatement job", "DEP", "direct exposure", and "HEPA" that have been corrected. The definition of "direct exposure" has been revised to make it clearer that the term applies to anyone who is exposed to asbestos. The definition of "friable" has been amended.

N.J.A.C. 12:100-12.10(h)4. The words "to airborne asbestos" had to be added to make the meaning clearer.

N.J.A.C. 12:100-12.13(h) requires employers to make available to all employees who smoke a list of resources which provide information on smoking cessation programs. The Department revises the requirements so that the employer is furnished the information on smoking cessation by the Department of Health.

N.J.A.C. 12:100-13 through 16 have been reserved for future rule-making.

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

## 12:100-2.1 Definitions

...

"CFR" means Code of Federal Regulations in effect on the **\*[effective date of this chapter.]\* \*date this chapter was last amended.\***

## 12:100-4.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1910, General Industry Standards, are adopted as occupational safety and health standards for the protection of public employees engaged in general operation and shall include:

1.-17. (No change.)

18. Subpart Z—Toxic and Hazardous Substances.

i. The standards contained in Subpart Z of 29 CFR Part 1910 are adopted except that the following health standards are not adopted:

(1) 1910.1001, Asbestos

(2) 1910.1200, Hazard communication.

**\*[SUBCHAPTER 7. STANDARDS AND PUBLICATIONS REFERRED TO IN THIS CHAPTER**

## 12:100-7.1 Documents referred to by reference

(a) The full title and edition of each of the standards or publications referred to in this chapter are as follows:

1. 29 CFR Part 1910, General Industry Standards,

2. 29 CFR Part 1926, Construction Industry Standards,

3. 29 CFR Part 1928, Agriculture, and

4. N.J.S.A. 34:6A-25 et seq., New Jersey Public Employees Occupational Safety and Health Act.

## 12:100-7.2 Availability of documents for inspection

A copy of each of the standards and publications referred to in this chapter is on file and may be inspected at the following Office of the Division of Workplace Standards between the hours of 9:00 A.M. and 4:00 P.M. on normal working days:

New Jersey Department of Labor  
 Division of Workplace Standards  
 36 West State Street, Room 313  
 Trenton, New Jersey

## 12:100-7.3 Availability of documents from issuing organization

Copies of the standards and publications referred to in this chapter may be obtained from the organizations listed below. The abbreviations preceding these standards and publications have the following meaning, and are the organizations issuing the standards and publications listed in N.J.A.C. 12:100-7.1.

## CFR—Code of Federal Regulations

Copies available from:

Superintendent of Documents

Government Printing Office

Washington, D.C. 20402

## NJSA—New Jersey Statutes Annotated

Copies available from:

Division of Workplace Standards

New Jersey Department of Labor

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Trenton, New Jersey 08625-0054]\*

**\*SUBCHAPTERS 7 THROUGH 11 (RESERVED)\*****SUBCHAPTER 12. ASBESTOS****12:100-12.1 Scope of subchapter**

This subchapter shall apply to all employees and employers as defined in N.J.A.C. 12:100-12.2 who may be directly exposed to asbestos as that term is defined in N.J.A.C. 12:100-12.2.

**12:100-12.2 Definitions**

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

"Accessible" means asbestos-containing material that can be readily touched by hand or a reasonable extension of the hand, or hit by a thrown object, or touched by climbing on a chair.

"Action level" means direct exposure, without regard to the use of respirators, to an airborne concentration of asbestos of 0.05 f/cc averaged over a full-shift.

"ANSI" means the American National Standards Institute.

"Asbestos" means a general term used to describe a group of naturally occurring hydrated mineral silicates. The asbestiform varieties include chrysotile (serpentine), crocidolite (riebeckite); amosite (cummingtonite-grunerite); anthophyllite; tremolite; and actinolite.

"Asbestos-containing material" means any material which contains more than one percent asbestos by weight.

"Asbestos hazards abatement job" means the following:

1. "Large asbestos hazard abatement job" means the removal, enclosure or encapsulation within one year of 160 square feet or more of asbestos-containing material used on an equipment, wall, or ceiling area; or involves the removal or encapsulation, using a liquid material applied by a pressurized spray, within one year of 260 linear feet or more of asbestos-containing material on covered piping.

2. "Minor asbestos hazard abatement job" means corrective action using recommended work practices to minimize the likelihood of fiber release from small damaged areas of asbestos ceilings, pipe and boiler insulation which involves the removal, repair, encapsulation or enclosure of 25 square feet or less of asbestos-containing material used on an equipment, wall or ceiling area; or involves the removal or encapsulation, using a liquid material applied by a pressurized spray, of 10 linear feet or less of asbestos-containing material on covered piping as delineated in N.J.A.C. 5:23-8.4. The repair, enclosure and encapsulation by methods other than pressurized spray of any amount of asbestos-containing material used to cover piping, shall also be a minor asbestos hazard abatement job.

3. "Small asbestos hazard abatement job" means the removal, enclosure, or encapsulation within one year \*[or]\* \*of\* more than 25 and less than 160 square feet of asbestos-containing material used on an equipment, wall or ceiling area; or involves the removal or encapsulation, using a liquid material applied by a pressurized spray, within one year, of more than 10 and less than 260 linear feet of asbestos-containing material on covered piping.

"Asbestos safety technician" means a person certified by the New Jersey Department of Community Affairs, hired by the asbestos safety control monitor who continuously monitors and inspects the asbestos abatement work.

"CFR" means Code of Federal Regulations in effect on the \*[effective date of this subchapter.]\* \*date this chapter was last amended.\*

"Decontamination unit" means a serial arrangement of rooms or spaces for the purpose of separating the work site from the building environment upon entering the work site and for the cleaning of employees' and employers' equipment, and contained waste prior to returning to the clean environment.

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

"DEP" means the \*New Jersey\* Department of Environmental Protection.

"Direct exposure" means potential exposure to asbestos fibers to employees who perform large, small and minor abatement work, initial cleaning in an area containing damaged friable asbestos, and routine maintenance which may disturb asbestos or cause contact with damaged asbestos containing materials. Direct exposure also means potential exposure to asbestos fibers to employees who \*contact, work with,\* use, disturb, repack and handle asbestos or asbestos-containing materials.

"DOH" means the New Jersey Department of Health.

"Employer" means public employer and shall include any person acting directly on behalf of, or with the knowledge and ratification of:

1. The State, or any department, division, bureau, board, council,

agency or authority of the State, except any bistate agency; or

2. Any county, municipality, or any department, division, bureau, board, council, agency or authority of any county or municipality, or of any school district or special purposes district created pursuant to law, according to N.J.A.C. 12:100-2.1.

"Employee" means any public employee, any person holding a position by appointment or employment in the service of an "employer" as that term is used in the Act and shall include any individual whose work has ceased as a consequence of, or in connection with, any administrative or judicial action instituted under the Act; provided, however, that elected officials, members of boards and commissions and managerial executives as defined in the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. shall be excluded from the coverage of the Act, according to N.J.A.C. 12:100-2.1.

"Encapsulation" means treatment of asbestos-containing materials, generally ceilings, using a liquid to bond or seal the surface to minimize the potential for fiber release.

"Enclosure" means an impermeable barrier made of wood, metal, or other material and placed around asbestos-containing material.

"EPA" means the U.S. Environmental Protection Agency.

"f/cc" means fibers per cubic centimeter of air.

"Fibers" means fibers longer than five microns (um) with a length-to-width aspect ratio of 3:1 or greater.

\*["Friable" means any material applied to ceilings, walls, piping, duct work, etc., which when dry may be crumbled, pulverized, or reduced to a powder by moderate hand pressure.]\* \*"**Friable asbestos material**" means any material containing more than one percent asbestos by weight which when dry, may be crumbled, pulverized, or reduced to powder by hand pressure.\*

"HEPA" means a high efficiency particulate absolute \*[fiber]\* \*filter\* which is 99.97 percent efficient for 0.3 microns.

"High efficiency filter respirator" means a filter approved by NIOSH for dust, fumes and mists having a time-weighted average, that is, permissible exposure limit, less than 0.05 milligrams per cubic meter.

"Negative pressure" means air pressure lower than surrounding areas, generally caused by exhausting air from a sealed space or work area.

"NIOSH" means the National Institute for Occupational Safety and Health of the U.S. Department of Health and Human Services.

"OSHA" means the Occupational Safety and Health Administration of the U.S. Department of Labor.

"PCM" means phase contrast microscopy, commonly 450 magnification.

"PLM" means polarized light microscopy, commonly 100 magnification.

"Primarily seal/critical barrier" means two layers of six mil polyethylene sheeting that completely seals off the work area to prevent the distribution of fibers to the surrounding area, such as the opening between the top of a wall and the underside of ceiling construction, electrical outlets, non-removable lights, heating, ventilation and air conditioning systems, window, doorways, entranceways, ducts, grilles, grates, diffusers, wall clocks, speaker grilles, floor drains, sink drains, etc.

"Removal" means taking asbestos materials out of a building and disposing of such materials.

"Repair" means corrective action using recommended work practice to minimize the likelihood of fiber release from small damaged areas of asbestos ceilings, and pipe and boiler insulation. Repair may include but is not limited to: enclosure of pipe and boiler insulation, spot removal and replacement with non-asbestos material, and spot encapsulation of ceiling materials with minor damage.

"TWA" means time-weighted average concentration for an eight-hour work day.

"um" means microns, or micrometers.

"Wet cleaning" means the process of eliminating asbestos contamination from building surfaces and objects by using cloths, mops, or other cleaning utensils which have been dampened with amended water afterwards thoroughly decontaminated or disposed of as asbestos contaminated waste.

"Work area" means the area where asbestos related work or removal operations are performed which is defined and isolated to prevent the spread of asbestos dust, fiber or debris, and entry by unauthorized personnel.

**12:100-12.3 Permissible exposure levels**

(a) The eight-hour, time-weighted average airborne concentrations of asbestos fibers to which any employee may be exposed directly shall not exceed 0.1 fibers, longer than five micrometers, per cubic centimeter of air (0.1 f/cc) as determined by N.J.A.C. 12:100-12.10.

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(b) No employee shall be exposed directly at any time to airborne concentrations of asbestos fibers in excess of 0.5 fibers, longer than five micrometers per cubic centimeter of air (0.5 f/cc) based on a 30 minute sampling period as determined by N.J.A.C. 12:100-12.10.

(c) When an employee is directly exposed to asbestos, the control methods of N.J.A.C. 12:100-12.4, through N.J.A.C. 12:100-12 shall be utilized.

## 12:100-12.4 Engineering methods of compliance

(a) Engineering controls, such as, but not limited to, isolation, enclosure, local exhaust ventilation and dust collection, shall be used to meet compliance with the permissible exposure limits.

(b) Local exhaust systems and dust collection systems utilizing high efficiency particulate absolute filters shall be designed, constructed, installed, and maintained in accordance with ANSI Z9.2-1979, Design and Operation of Local Exhaust Systems.

(c) All hand-operated and power-operated tools which may produce or release airborne fibers, such as, but not limited to, saws, scorers, abrasive wheels, and drills, shall be provided with local exhaust systems.

\*(b)]\* \*(d)\* Wherever possible, non-asbestos containing materials shall be substituted for asbestos containing materials, such as, but limited to, non-asbestos cements, plasters, brake and clutch pads and linings, valve packing, lagging, rope, welding shields, gaskets, fireproof clothing and gloves.

## 12:100-12.5 General work practices for compliance

(a) Asbestos shall be handled, mixed, applied, removed, cut, scored, or otherwise worked in a wet state sufficient to prevent the emission of airborne fibers.

(b) All external surfaces in any place of employment shall be maintained free of asbestos fibers using wet cleaning methods or a HEPA vacuum or both. Under no circumstances shall any cleaning be done by dry sweeping, dusting, blowing off dust with compressed air or vacuuming with a non HEPA-equipped machine.

(c) In buildings where damaged, friable asbestos is being initially cleaned, the employer shall ensure that the following procedures are taken:

1. All carpets through the building shall be vacuumed with a High Efficiency Particulate Air (HEPA)-filtered vacuum cleaner and \*[clean]\* all non-carpeted floors **\*shall be cleaned\*** with wet mops. Vacuum cleaner bags shall be sprayed with water before removal and discarded pursuant to N.J.A.C. 12:100-12.12. Vacuum filters and mopheads shall also be discarded pursuant to N.J.A.C. 12:100-12.12.

2. In areas where the vacuum cleaner filter is changed, the area shall be isolated and personal protective equipment shall be worn by employees performing the task.

3. All curtains and books in areas where there is damaged, friable asbestos shall be vacuumed with a HEPA-vacuum. Vacuum bags and filters shall be discarded pursuant to N.J.A.C. 12:100-12.12. All shelves and other horizontal surfaces in areas where there is damaged, friable asbestos shall be wiped with damp cloths. A mist spray bottle shall be used to keep cloths damp. **\*[Clothes]\* \*Cloths\*** shall be discarded in sealed plastic bags.

(d) In areas where direct exposure to asbestos may result, the employer shall comply with the following practices.

1. The storage or consumption of food, beverages, smoking materials, tobacco products or other products for chewing shall be prohibited.

2. Where employees wear protective clothing and equipment, centralized clean change rooms shall be provided in accordance with 29 CFR 1910.141(e) for the number of such employees required to change clothes.

3. Where employees are required to wash, washing facilities shall be provided in accordance with 29 CFR 1910.141(d)(1) and (2)(ii) through (vii).

4. Where employees are required to shower, shower facilities shall be provided in accordance with 29 CFR 1910.141(d)(3).

5. If a lunchroom is provided it shall be located in an area complying with 29 CFR 1910.141(g)(2).

(e) New materials containing asbestos cement, mortar, coating, grout, plaster, or similar material containing asbestos shall not be removed from bags, cartons, or other containers in which they are shipped, without being either wetted, or enclosed, or ventilated so as to effectively prevent the release of airborne asbestos fibers.

(f) Areas of direct exposure to asbestos shall be isolated from the surrounding environment to prevent contamination of these areas and exposure of unprotected employees. The conditions present in each area shall be evaluated to develop a proper enclosure. Methods may include, but are not limited to, sealing with six mil thick polyethylene sheeting,

establishing negative pressure in the area, establishing continuous local exhaust ventilation so that air movement is always from ordinary work areas towards the asbestos operation, establishing boundaries and barricades, or performing work outside of normal school or work hours.

1. Entry shall be restricted to employees whose duties require them to be in the areas and who have been specifically assigned by the employer.

2. Any material, equipment, tools or other item to be taken or removed from such areas shall be first decontaminated by HEPA vacuuming or wet wiping.

3. Prior to commencing direct work with asbestos such areas shall be posted in accordance with N.J.A.C. 12:100-12.11.

## 12:100-12.6 Specific work practices for compliance: brakes: clutch plates and furnaces

(a) Employers shall ensure that employees performing work on brakes and clutch plates containing asbestos are trained in accordance with N.J.A.C. 12:100-12.13.

1. All work on brakes and clutch plates shall be done using an enclosed system which includes a HEPA vacuum attached to a box or cylinder which fits over the brake or clutch assembly.

2. The enclosed system shall have a two hand rubber glove system to assure isolation and allow drum removal inside the enclosure, and a negative pressure system that reduces exposure during filter change and attachments for clutch work.

3. Aerosol spray cleaners and brake assembly washing systems shall not be used.

4. Shop vacuums shall not be used for cleaning of asbestos dust.

5. Compressed air shall not be used outside an enclosed system for removing asbestos dust from brake or clutch assemblies.

(b) The employer shall determine whether interior cleaning of a boiler, incinerator or other furnace involves direct exposure to asbestos-containing materials.

1. Where cleaning does involve direct exposure to asbestos, all requirements of this subchapter shall be followed.

## 12:100-12.7 Asbestos abatement work

(a) The employer shall ensure that all asbestos abatement work, including minor asbestos hazard abatement jobs, small asbestos hazard abatement jobs, large asbestos hazard abatement jobs, encapsulation and enclosure, performed in areas normally occupied by public employees, be performed according to N.J.A.C. 5:23-8.4, 8.10, 8.11, 8.12, 8.13 and 8.14 of the Asbestos Hazard Abatement Subcode of the Uniform Construction Code.

(b) The employer shall obtain a license and the employee shall obtain a permit in accordance with N.J.A.C. 12:120, Asbestos Licenses and Permits, when more than 10 linear feet or more than 25 square feet of asbestos is stripped or removed.

## 12:100-12.8 Respiratory protective equipment

(a) Respiratory protection shall be worn by any employee who is directly exposed to asbestos without regard to airborne asbestos levels and without regard to the implementation of all engineering and work practice controls, except as provided in 1 below.

1. The Department of Health may grant exemptions to the respirator requirements of this section. To apply for an exemption, an employer shall provide representative personal monitoring data complying with N.J.A.C. 12:100-12.10 or descriptions of all engineering and work practice controls in use or both.

(b) Respirators shall be selected from among particular makes and models approved by the National Institute for Occupational Safety and Health under the provisions of 30 CFR Part 11 from one of the following five types:

1. Self-contained breathing apparatus, pressure-demand open circuit, with full facepiece;

2. Self-contained breathing apparatus, positive-pressure closed circuit, with full facepiece;

3. Pressure demand supplied air respirator, with half-mask or full facepiece, with or without escape provisions;

4. Type "C" continuous flow supplied air respirator, with any tight-fitting facepiece, with or without escape provisions; or

5. Powered air purifying respirator with a high efficiency particulate filter and a tight-fitting facepiece.

(c) Employees shall not be assigned to use a respirator unless it has been determined by a physician that the employees are physically able to perform the work and use the equipment. This evaluation shall be provided at no cost to the employee before first assignment to wear a respirator or periodically while use continues. The physician making the

determination shall follow the guidance in ANSI Z88.6—1984, Respiratory Protection—Respirator Use—Physical Qualifications for Personnel.

(d) If based on the medical determination, an employee is unable to wear any appropriate respirator, such employee may be rotated to another job or given the opportunity to transfer to a different position whose duties the employee is able to perform with the same employer, in the same geographical area and with the same seniority, status, and rate of pay he had just prior to such transfer.

(e) Employers utilizing respirators for protection against asbestos shall establish a respiratory protection program in accordance with 29 CFR 1910.134.

(f) Removal of respirators shall take place only after HEPA vacuuming of all garments, shoes and personal protective equipment. The respirator exterior shall be vacuumed, and washed or wet wiped before removal. The instructions and recommendations of the respirator manufacturer shall be followed concerning decontamination, removal, and filter replacement.

#### 12:100-12.9 Personal protective clothing

(a) In large, small and minor asbestos abatement work and in work involving direct exposure to asbestos, the employer shall ensure that each employee complies with the procedures of this section.

(b) Where showering facilities are available:

1. Employees shall be required to shower after asbestos work.

2. Employees shall wear any type of disposable or non-disposable clothing during asbestos work. Employees shall HEPA vacuum and remove all personal protective equipment and clothing before exiting the asbestos work area and either discard the disposable clothing as asbestos-contaminated waste or place the non-disposable clothing in plastic bags for laundering or decontamination by the employer.

3. Employees shall wear disposable shoe coverings during asbestos work. Employees shall HEPA vacuum and remove shoe coverings and HEPA vacuum shoes before exiting the asbestos work area. Employees shall discard coverings as asbestos-contaminated waste. Shoes may be retained in asbestos area for re-use or removed from the area after being HEPA vacuumed.

4. Employees shall shower after decontamination and removal of all personal protective equipment and clothing except the respirator. Employees shall not remove the respirator until they are in the shower and have thoroughly wetted their hair and body and washed the exterior of the respirator. Employees shall also wash other non-disposable personal protective equipment in the shower.

(c) Where showering facilities are not available:

1. Employees shall wear disposable clothing which is approved by the Department of Health and shown to be impenetrable to asbestos relative to other available fabrics. Employees shall wear disposable clothing either over non-disposable clothing or by itself. Disposable clothing shall cover the whole body and extremities and include gloves, head coverings, and coveralls. Coveralls shall be elastic, taped or otherwise rendered dust-tight at ankles, wrists and neck. Employers shall provide a variety of sizes adequate for employees.

2. Employees shall HEPA vacuum and remove all personal protective equipment and clothing before exiting the asbestos work area. Employees shall discard disposable clothing as asbestos-contaminated waste.

3. Employees shall wear and decontaminate shoe coverings and shoes in accordance with (b)3 above.

4. After exiting, employees shall vacuum, then wash or wet wipe the exterior of the respirator. Employees shall then remove the respirator and wash or wet wipe hands, face and neck.

(d) Personal protective clothing shall be breathable or heat-dissipating where employees work in a high temperature area.

(e) Personal protective clothing shall be fire-retardant where employees are exposed to open flames.

(f) Other protective equipment for eyes, face, head and extremities shall be provided when needed in accordance with 29 CFR 1910.132 and 1210.133.

(g) The laundering of asbestos contaminated clothing and decontamination of personal protective equipment shall be considered direct exposure to asbestos. The laundering of asbestos contaminated clothing shall be done so as to prevent the release of airborne asbestos fibers. Any employer who gives asbestos-contaminated clothing to another person for laundering shall inform such person of the requirement to effectively prevent the release of airborne asbestos fibers. Contaminated clothing shall be transported in sealed impermeable bags, or other closed, impermeable containers, and labeled in accordance with N.J.A.C. 12:100-12.11.

(h) During minor abatement work, maintenance work and other work where no decontamination area is immediately available and where employees must travel through non-asbestos areas between direct exposure to asbestos, the following modifications to (a) through (c) above are permitted:

1. Personal protective equipment shoes and clothing may be worn during such travel provided they are thoroughly HEPA vacuumed first;

2. Respirators shall be HEPA vacuumed, wet wiped or washed, filters capped and placed in a plastic bag before such travel; and

3. Shoe protection and decontamination shall be done in accordance with (b)3 above.

#### 12:100-12.10 Monitoring practices

(a) All sampling and analysis of airborne concentrations of asbestos fibers required by this section shall be made using NIOSH method 7400.

(b) An employee shall be considered exposed if the airborne concentration of asbestos fibers exceeds the permissible exposure limits even though the employee is using a respirator.

(c) The purpose of the required monitoring is to evaluate the effectiveness of engineering controls and work practices in reducing employee exposure below the limits of N.J.A.C. 12:100-12.3 and to trigger corrective action or modifications when necessary.

1. All samples required by this section shall be submitted to a laboratory participating successfully in the National Institute for Occupational Safety and Health Proficiency Analytical Test Program for asbestos. Such laboratory shall also be a State Certified Asbestos \*[Training]\* \*Testing\* Laboratory, when such a certification is implemented.

2. The laboratory shall provide the employer with the personal monitoring results for large asbestos abatement jobs within 24 hours of the collection of air samples.

3. The employer shall evaluate the monitoring results and implement the necessary corrective action or modifications within 48 hours of the receipt of personal air monitoring results.

(d) Personal monitoring consisting of a monitoring device on the employee's person, is required for the following situations:

1. During large asbestos hazard abatement jobs such monitoring shall be performed by the on-site Asbestos Safety Technician.

2. During direct exposure to asbestos arising from repetitive tasks where monitoring can appropriately evaluate the effectiveness of engineering controls and work practices in reducing employee exposure below the limits of N.J.A.C. 12:100-12.3 and to trigger corrective action or modifications when necessary. Repetitive tasks are ongoing routine tasks where monitoring results are representative of employee exposure. An example of such repetitive task is the performance of work on brakes and clutches containing asbestos.

(e) Monitoring is not required during one time non-repetitive or unique tasks where monitoring will not appropriately evaluate the effectiveness of engineering controls and work practices.

(f) Monitoring shall include full shift personal samples representative of the employee's regular exposure to asbestos and short term personal samples representative of the employee's peak exposures to asbestos.

(g) At least one employee in each job classification or with distinct job duties shall be monitored.

(h) Within six months of the effective date of this subchapter, employers shall monitor those employees where direct exposure to asbestos arises from repetitive tasks as described in (d)2. above.

1. Employees who perform large asbestos hazard abatement jobs shall be monitored as soon as actual removal, isolation or encapsulation work begins.

2. Monitoring for the initial determination may be limited to a representative sample of the exposed employees who the employer reasonably believes are exposed to the greatest airborne concentrations of asbestos.

3. Measurements of airborne asbestos made in the preceding 12 months may be used to satisfy the requirement to monitor under (h) above if the sampling and analytical methods used meet the requirements of this section.

4. Where an initial determination and initial monitoring conducted under (h) and (h)1. above reveals the possibility of any employee exposure at or above the action level, the employer shall conduct monitoring which is representative of the exposure of each employee who is exposed **\*to airborne asbestos\*** in the workplace.

1. Measurements of airborne asbestos made in the preceding 12 months may be used to satisfy this requirement if the sampling and analytical methods used meet the requirements of this section.

5. Where an initial determination and initial monitoring conducted under (h) and (h)1. above reveals that no employee is exposed to airborne

concentrations of asbestos at or above the action level, the employer shall make a written record of such determination. The record shall include the date of determination, location within the worksite, and the name and social security number of each employee monitored.

6. If the initial monitoring reveals employee exposure to be below the action level, the measurements need not be repeated except as provided in (i) below.

7. If the initial determination or subsequent monitoring reveals employee exposure to be at or above the action level but below the permissible exposure limit, the employer shall repeat monitoring in accordance with this section at least every six months. The employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least seven days apart, are below the action level at which time the employer may discontinue monitoring for that employee except as otherwise provided in (i) below.

8. If the initial monitoring reveals that employee exposure is above the permissible exposure limit the employer shall repeat monitoring quarterly. The employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least seven days apart, are below the permissible exposure levels but at or above the action level at which time the employer shall repeat monitoring for that employee at the frequency specified in (h)7. above, except as otherwise provided in (i) below.

(i) Whenever there has been a production, process, control or personnel change which may result in new or additional exposure to asbestos or whenever the employer has any other reason to suspect a change which may result in new or additional exposures to asbestos, the monitoring shall be repeated.

1. Employee asbestos exposures resulting from large asbestos hazard abatement jobs can be highly variable with changes in type of asbestos, percentage of asbestos in the material, binding material, amount of material abated, type and number of employees present and room size. Accordingly, repeated monitoring shall be done whenever there is a significant change in any one of these factors.

(j) Within five working days after the receipt of monitoring results, the employer shall notify each employee in writing of the results which represent the exposure of that particular employee.

1. Whenever the results indicate that the representative employee exposure, without regard to respirators, exceeds the permissible exposure limit, the employer shall include in the written notice a statement that the permissible exposure limit was exceeded and a description of the corrective action taken or to be taken to reduce exposure to or below the permissible exposure limit.

12:100-12.11 Caution signs and labels

(a) Caution signs shall be provided and displayed at each area where employees are directly exposed to asbestos. Signs shall be posted at such a distance from a location that an employee may read the signs and take necessary protective steps before entering the area marked by the signs. Signs shall be posted at all approaches to such areas.

(b) Warning signs shall conform to the 20 inch by 14 inch vertical format signs specified in 29 CFR 1910.145(d)(4). The sign shall display the following legend in the lower panel, with letter sizes and styles of a visibility at least equal to that specified in Table 12.11.

Table 12.11  
Caution Signs and Labels

Legend	Notation
Asbestos	1" Sans Serif, Gothic or Block.
Dust Hazard	3/4" Sans Serif, Gothic or Block.
Avoid Breathing Dust	1/4" Gothic.
Wear Assigned Protective Equipment	1/4" Gothic.
Do Not Remain In Area Unless Your Work Requires It.	1/4" Gothic.
Breathing Asbestos Dust Is Hazardous To Your Health.	14 Point Gothic.

(c) Spacing between lines shall be at least equal to the height of the upper of any two lines.

(d) Caution labels shall be affixed to all raw materials, mixtures, scrap, waste, debris, and other products containing asbestos fibers, or to their containers, in accordance with N.J.A.C. 12:100-12.12.

(e) The caution labels of (d) above shall be printed in letters of sufficient size and contrast to be readily visible and legible. The label shall state:

CAUTION

Contains Asbestos Fibers  
Avoid Creating Dust  
Breathing Asbestos Dust Causes  
Serious Bodily Harm

12:100-12.12 Storage and waste disposal

(a) All asbestos-containing materials which are not in use, other than those in place on ceilings, walls, pipes and boilers, shall be stored in such a way so as to prevent the release of airborne fibers. Storage may include, but is not limited to, impermeable containers of air-tight drums.

(b) Disposal of asbestos waste shall be conducted in accordance with N.J.A.C. 7:26, Solid Waste Regulations.

12:100-12.13 Employee information and training

(a) Each employer in a workplace in which there is a potential exposure to airborne asbestos at any level shall inform employees who are directly exposed and contractors whose employees may be directly exposed of the presence and location of asbestos-containing materials in the workplace and the health impact of the exposure to asbestos.

(b) The employer shall institute a training program for and ensure the participation of all employees who have direct exposure to asbestos. Training shall be specifically designed for asbestos workers, maintenance and custodial workers, mechanics or other job titles which may have direct exposure to asbestos.

(c) All training programs shall be conducted by a firm which is certified by the New Jersey Department of Health pursuant to N.J.A.C. 12:120-6 and 8:60-6. In order to become certified to conduct public employee training, such as maintenance and custodial training, the firm shall first be certified to conduct asbestos worker training in accordance with Subchapters 2 and 6 of N.J.A.C. 12:120 and 8:60, Asbestos Licenses and Permits. An application to conduct specialized training shall then be submitted to the Department of Health for approval. The training courses shall meet all the requirements of N.J.A.C. 12:120-6 and 8:60-6.

(d) The employer shall provide initial training within 180 days from the effective date of this subchapter.

(e) The training shall be repeated at least annually.

(f) Within 60 days of the date of employment, the employer shall provide training to any new employee who will be directly exposed to asbestos.

(g) The training shall include, but not be limited to, information on the following:

1. Health effects of asbestos exposure;
2. Limitations of medical screening;
3. Information on how to evaluate one's own historical and current exposure levels;
4. Synergistic effects between cigarette smoking and asbestos exposure, including the importance of smoking cessation;
5. Scope of State and Federal regulations;
6. Respiratory protection, including types of respirators, fit testing and care of respirators;
7. Other personal protection equipment including clothing; and
8. Specific work practices and use of all equipment pertinent to the job.

(h) The employer shall make available to all employees who smoke a list of resources which provide information on smoking cessation programs. **\*The list of resources shall be made available to the employer by the Commissioner of Health.\***

12:100-12.14 Medical monitoring

(a) Medical monitoring shall be required for all employees whose exposure to asbestos is equal to or greater than 0.2 fibers per cubic centimeter of air averaged over an eight hour day, two to three days per week, on a regular basis. This monitoring shall begin within one year of the determination of the exposure.

(b) Within one year of the effective date of this subchapter, medical monitoring shall be required for all employees with significant historical direct exposure to asbestos. Employers shall consult with the Department of Health and employee representatives in identifying current employees with significant historical direct exposure which is defined as a cumulative exposure of at least 10 fiber/cubic centimeter years of exposure calculated by multiplying average TWA exposure for a year by duration in years.

(c) Medical monitoring shall include: a comprehensive work history, physical examination with special emphasis on the lungs, a posterior-anterior chest x-ray and pulmonary function testing conducted by a NIOSH certified pulmonary function technician. The x-ray shall be interpreted by a NIOSH certified B reader.

(d) The work history, physical examination and pulmonary function test shall be repeated annually for employees who have been and are currently exposed to the exposure levels in (a) above.

(e) The posterior-anterior chest x-ray shall be repeated every five years, for the first 15 years of exposure as defined in (a) above, then every two years until 20 years of exposure. After 20 years of exposure, chest x-rays shall be taken annually.

(f) Employees identified with parenchymal asbestosis shall receive a medical evaluation and consultation to determine the advisability of their continued exposure to asbestos. If based on this medical determination, an employee is advised to discontinue work which involves direct exposure to asbestos, such employee shall be reassigned to another job or given the opportunity to be reassigned to a position whose duties the employee is able to perform with the same employer, in the same geographical area and with the same seniority, status, and rate of pay of the prior position.

12:100-12.15 Recordkeeping

Retention of and employee access to medical and monitoring data shall be in accordance with 29 CFR 1910.20.

**\*SUBCHAPTERS 13 through 16 (RESERVED)\***

**\*SUBCHAPTER 17. STANDARDS AND PUBLICATIONS  
REFERRED TO IN THIS CHAPTER**

**12:100-17.1 Documents referred to by reference**

(a) The full title and edition of each of the standards or publications referred to in this chapter are as follows:

1. ANSI Z9.2—1979, Design and Operation of Local Exhaust Systems
2. ANSI Z88.6—1984, Respiratory Protection—Respiratory Use—Physical Qualifications for Personnel,
3. Asbestos Policy Committee Report to the Governor, March, 1985,
4. 29 CFR Part 1910, General Industry Standards,
5. 29 CFR Part 1926, Construction Industry Standards,
6. 29 CFR Part 1926, Agriculture,
7. 30 CFR Part 11, Respirators,
8. NIOSH Method 7400, Microscopy Measurement of Asbestos Fiber, February 15, 1984,
9. N.J.A.C. 5:23, Uniform Construction Code,
10. N.J.A.C. 7:26, Solid Waste Regulations,
11. N.J.A.C. 12:120, Asbestos Licenses and Permits,
12. N.J.S.A. 34:6A-25 et seq., New Jersey Public Employees Occupational Safety and Health Act, and
13. N.J.S.A. 34:13A-1 et seq., Employer-Employee Relations Act.

**12:100-17.2 Availability of documents for inspection**

A copy of each of the standards and publications referred to in this chapter is on file and may be inspected at the following Office of the Division of Workplace Standards between the hours of 9:00 a.m. and 4:00 p.m. on normal working days:

New Jersey Department of Labor  
Division of Workplace Standards  
36 West State Street, Room 313  
Trenton, New Jersey

**12:100-17.3 Availability of documents from issuing organization**

Copies of the standards and publications referred to in this chapter may be obtained from the organizations listed below. The abbreviations preceding these standards and publications have the following meaning, and are the organizations issuing the standards and publications listed in N.J.A.C. 12:100-17.1.

ANSI	American National Standards Institute 1430 Broadway New York, New York 10018
CFR	Code of Federal Regulations Copies available from: Superintendent of Documents Government Printing Office Washington, D.C. 20402
NIOSH	National Institute of Occupational Safety and Health Division of Technical Services Cincinnati, Ohio 45226
NJAC	New Jersey Administrative Code Copies available from: Office of Public Employee Safety N.J. Department of Labor CN 386 Trenton, NJ 08625-0386

**NJSA** New Jersey Statutes Annotated  
Copies available from:  
Division of Workplace Standards  
New Jersey Department of Labor  
CN 054  
Trenton, NJ 08625-0054\*

## LAW AND PUBLIC SAFETY

(a)

**STATE ATHLETIC CONTROL BOARD**

**Rules to Safeguard Health of Boxers**

**Adopted Amendments: N.J.A.C. 13:46-12.1 and 12.6**

Proposed: April 7, 1986, at 18 N.J.R. 617(a).

Adopted: June 19, 1986, by State Athletic Control Board, Larry Hazzard, Commissioner.

Filed: June 30, 1986 as R.1986 d.302, without change.

Authority: N.J.S.A. 5:2A-7(c).

Effective Date: July 21, 1986.

Expiration Date: June 3, 1990.

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

**COMMENT:** The proposed changes are tailored for the safety and well-being of the boxers who compete in New Jersey.

**RESPONSE:** The major goal of the proposal is to ensure that boxers are physically fit for competition.

Full text of the adoption follows.

**13:46-12.1 Pre-licensure medical examinations**

(a) A boxer, as a condition to licensure or to the renewal of licensure by the State Athletic Control Board shall undergo a thorough medical examination by a physician or physicians appointed by the State Athletic Control Board, one of whom is certified in neurology or neurosurgery, to establish his physical and mental fitness for competition.

(b) (No change.)

(c) An examination shall be made no earlier than 30 days but no later than one day prior to licensure or the renewal thereof.

(d) (No change.)

(e) No applicant shall be granted a license unless the physician appointed by the State Athletic Control Board has certified his fitness to engage in a boxing contest.

**13:46-12.6 Medical examination of boxer after severe injury or actual knockout**

(a) Any boxer who has sustained any severe injury or actual knockout in a bout shall within 24 hours be thoroughly examined by a physician appointed by the State Athletic Control Board. Such examination shall include any or all of the procedures as provided in N.J.A.C. 13:46-12.1(b) as the examining physician may decide are necessary. In all cases, the examination shall include the administration of an electrocardiogram and electroencephalogram and the conduct of a thorough ophthalmological examination and a neurological examination.

(b) Any boxer who is knocked out in a boxing match shall be suspended from boxing for a 60-day period. Upon the physician's order, the Commissioner shall extend the suspension already imposed.

1. A boxer who is knocked out in a boxing match shall not be permitted to enter the ring again until a thorough medical examination of the type required by N.J.A.C. 13:46-12.1(b) has been performed by a physician appointed by the State Athletic Control Board and said physician has certified the boxer's fitness to engage in a boxing contest.

(c) Any boxer who is technically knocked out in a boxing match shall be suspended from boxing for a 30-day period. Upon the physician's order, the Commissioner shall extend the suspension already imposed.

1. The attending physician shall determine the nature and extent of any medical examinations which a boxer, who is technically knocked out in a boxing match, must undergo as a pre-condition to entering the ring again. Any medical examinations which are ordered must be performed by a physician appointed by the State Athletic Control Board. The boxer shall not be permitted to enter the ring again until the medical examinations ordered by the attending physician have been completed and a physician appointed by the State Athletic Control Board has certified the boxer's fitness to engage in a boxing contest.

NEW JERSEY REGISTER, MONDAY, JULY 21, 1986

**PUBLIC UTILITIES****(a)****OFFICE OF CABLE TELEVISION****Senior Citizen Cable TV Rates****Adopted New Rule: N.J.A.C. 14:18-7.11.**

Proposed: May 5, 1986 at 18 N.J.R. 931(a).

Adopted: June 20, 1986 by Bernard Morris, Director, Office of Cable Television.

Filed: June 27, 1986 as R.1986 d.294, **without change.**

Authority: L. 1985, c. 356.

Effective Date: July 21, 1986.

Expiration Date: July 29, 1990.

**Summary of Public Comments and Agency Responses:****No comments received.****Full text of the adoption follows.****14:18-7.11 Senior citizens' discounts**

(a) Prior to offering, altering, or discontinuing a senior citizen discount, a cable company shall specify the rates, terms, and conditions for the discount, and which services are included; and

1. Provide at least 30 days advance notice to each subscriber and municipality served; and,

2. Provide at least 45 days advance notice to the Office of Cable Television along with revised tariff sheets showing any such changes.

(b) New subscribers shall be informed in writing when a senior citizens discount program is available and the eligibility requirements for participation.

(c) Subscribers must establish eligibility by either:

1. Presenting a Pharmaceutical Assistance card and certifying that the subscriber is at least 62 years of age and that no more than one other person under the age of 62 resides in the same dwelling unit; or

2. Executing and notarizing a standard form of affidavit stating:

i. The subscriber's name and that he or she is at least 62 years of age;

ii. The subscriber's address and that he or she has been a permanent resident of this state for at least 30 days;

iii. That no more than one other person under the age of 62 resides in the same dwelling unit;

iv. That the subscriber is:

(1) Single with an income less than \$13,250 per year, including social security income benefits; or

(2) Married, with a combined income of less than \$16,250 per year including social security income benefits; or

(3) Such other limits as subsequently may be established for Pharmaceutical Assistance to the Aged and Disabled under N.J.S.A. 30:4D-21, as amended.

(d) Participation in a senior citizens discount plan shall not affect a subscriber's eligibility for other generally offered discounts and marketing promotions.

**ENERGY****(b)****DIVISION OF ENERGY PLANNING AND CONSERVATION****Energy Conservation Program Development and Public Utility Planning Evaluations****Adoption of Reproposal: N.J.A.C. 14A:20-1.9**

Reproposed: May 19, 1986 at 18 N.J.R. 1092(a).

Adopted: June 25, 1986 by Charles A. Richman, Acting Commissioner, Department of Energy.

Filed: June 27, 1986 as R.1986 d.295, **without change.**

Authority: N.J.S.A. 52:27F-11(g) and (q) and N.J.A.C. 1:30-4.2(d).

Effective Date: July 21, 1986.

Expiration Date: February 3, 1991.

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

The New Jersey Utilities Association filed comments on behalf of its member electric and gas public utilities. The position of the Association is that these regulations are the subject of an appeal. A stay of the enforcement of the regulations pending resolution of the appeal was granted by the Appellate Division on April 29, 1986. The Association avers that the effect of the appeal is to remove further rulemaking jurisdiction from the Department on these regulations.

The Department has referred these comments to the Attorney General for guidance. The Attorney General has advised the Department that the position set forth by the Association presents no impediment to adopting the repropoed section of the regulations. The agency response is to adopt the repropoed rule without changes.

**Full text of the adoption follows.****14A:20-1.9 Departmental decision and enforcement**

The department shall approve, approve with modifications, or reject each utility's energy conservation plans upon the completion of the report required by N.J.A.C. 14A:20-1.8(c). The department shall then transmit the utility conservation plan to the BPU for review consistent with the BPU's statutory authority. The BPU shall have 90 days to take action on the plan. No utility conservation plan may be implemented during this 90 day period. However, if within 90 days of receipt of the public utility conservation plan, the BPU does not take action then such plan shall be deemed approved by the BPU. The utility shall then implement the conservation plan immediately.

**TRANSPORTATION****TRANSPORTATION OPERATIONS****(c)****Speed Limits****Route 23 in Sussex County****Adopted Amendment: N.J.A.C. 16:28-1.25**

Proposed: May 19, 1986 at 18 N.J.R. 1092(b).

Adopted: June 19, 1986, John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design.

Filed: June 25, 1986, as R.1986 d.289, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.

Effective Date: July 21, 1986.

Expiration Date: November 7, 1988.

**Summary of Public Comments and Agency Responses:****No comments received.****Full text of the adoption follows.****16:28-1.25 Route 23**

(a) The rate of speed designated for the certain parts of State highway Route 23 described in this section shall be established and adopted as the maximum legal rate of speed thereat:

1. For both directions of traffic:

i.-v. (No change.)

vi. Zone six:

(1) 30 mph to the southerly end of the Passaic River Bridge (milepost 4.5); thence

(2) 40 mph between the southerly intersection of Glenwood Road (Co. Rd. 565) and 200 feet south of Grove Street (Milepost 285 to 39.6); thence

vii.-x. (No change.)

2.-4. (No change.)

**(a)**

**Restricted Parking and Stopping  
Routes U.S. 9 in Ocean County; 54 in Atlantic County  
and 161 in Passaic County**

**Adopted Amendments: N.J.A.C. 16:28A-1.7, 1.85  
Adopted New Rule: N.J.A.C. 16:28A-1.105**

Proposed: May 19, 1986 at 18 N.J.R. 1092(c).  
Adopted: June 19, 1986, John F. Dunn, Jr., Assistant Chief  
Engineer, Traffic and Local Road Design.  
Filed: June 25, 1986 as R.1986 d.290, **without change**.  
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139 and  
39:4-199.

Effective Date: July 16, 1986.  
Expiration Date: November 7, 1988.

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

**Full text of the adoption follows.**

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

(a) (No change.)

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

1.-41. (No change.)

42. Along the northbound (easterly) side in Tuckerton Borough, Ocean County:

i. Far side bus stop:

(1) Green Street: Beginning at the northerly curb line of Green Street and extending 105 feet northerly therefrom.

43. Along the southbound (westerly) side in Tuckerton Borough, Ocean County:

i. Near side bus stop:

(1) Green Street: Beginning at the northerly curb line of Green Street and extending 105 feet northerly therefrom.

**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. Along the northbound side:

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

(3) From a point 122 feet north of the northerly curb line of Kowal Street to a point 128 feet south of the southerly curb line of Kowal Street.

ii.-iii. (No change.)

**16:28A-1.105 Route 54**

(a) The certain parts of State highway Route 54 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 Buena Vista Township, Atlantic County:

i. Along both sides:

(1) For the entire length within the corporate limits of Buena Vista Township including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

**(b)**

**Restricted Parking and Stopping  
Routes 35, 71, and 35 and 71 in Monmouth County  
Adopted Amendments: N.J.A.C. 16:28A-1.25, 1.38  
and 1.75**

Proposed: May 19, 1986 at 18 N.J.R. 1093(a).  
Adopted: June 19, 1986, John F. Dunn, Jr., Assistant Chief  
Engineer, Traffic and Local Road Design.  
Filed: June 25, 1986 as R.1986 d.291, **without change**.  
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139.  
Effective Date: July 21, 1986.  
Expiration Date: November 7, 1988.

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

**Full text of the adoption follows.**

**16:28A-1.25 Route 35**

(a) The certain parts of State highway Route 35 described in this section are designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-21. (No change.)

22. No stopping or standing in Belmar Borough, Monmouth County:

i. Along both sides:

(1) For the entire length.

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

**16:28A-1.38 Route 71**

(a) The certain parts of State highway Route 71 described in this section are designated and established as "no parking" zones where stopping and standing are prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-4. (No change.)

5. No stopping or standing in Belmar Borough, Monmouth County:

i. Along both sides:

(1) For the entire length.

6.-10. (No change.)

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

**16:28A-1.75 Route 35-71**

(a) The certain parts of State highway Route 35-71 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 Belmar Borough, Monmouth County:

i. Along both sides:

(1) For the entire length including all ramps and connections.

**(c)**

**Restricted Parking and Stopping  
Route U.S. 130 in Camden County**

**Adopted Amendment: N.J.A.C. 16:28A-1.46**

Proposed: May 19, 1986 at 18 N.J.R. 1094(a).  
Filed: June 24, 1986 as R.1986 d.288, **without change**.  
Adopted: June 24, 1986, John F. Dunn, Jr., Assistant Chief  
Engineer, Traffic and Local Road Design.  
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-199.  
Effective Date: July 21, 1986.  
Expiration Date: November 7, 1988.

**Summary of Public Comments and Agency Response:**  
**No comments received.**

**Full text of the adoption follows.**

NEW JERSEY REGISTER, MONDAY, JULY 21, 1986

16:28A-1.46 Route U.S. 130

(a) (No change.)

(b) The certain parts of State highway Route U.S. 130 described in this section shall be established and designated as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect signs at the following established bus stops:

1.-3. (No change.)

4. Along the westerly (southbound) side in Pennsauken Township, Camden County:

i. Mid-block bus stop:

(1) Hilton Road—Between Hilton Road and John Tipton Boulevard beginning 200 feet south of the southerly curb line of Hilton Road and extending 135 feet southerly therefrom.

(c) (No change.)

## TREASURY-TAXATION

### DIVISION OF TAXATION

(a)

#### Corporation Business Tax Allocation Factor; Property Fraction Derived from Average Values, Additional Tax; Change in Federal Tax, Amounts of Interest

##### Adopted Amendments: N.J.A.C. 18:7-8.5 and 13.7

Proposed: April 7, 1986 at 18 N.J.R. 627(a).

Adopted: June 17, 1986 by John R. Baldwin, Director, Division of Taxation.

Filed: June 20, 1986 as R. 1986, d.284 with substantive changes not requiring additional public notice (see N.J.A.C. 1:30-4.3) and with portions of proposal not adopted.

Authority: N.J.S.A. 54:10A-27.

Effective Date: July 21, 1986.

Expiration Date: April 2, 1989.

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

One letter from a law office in Newark was submitted commenting and proposing modification of the property fraction in N.J.A.C. 18:7-8.5. The writer indicated that the Division did not have the authority to make the contemplated change. The Division responded that it had the authority to adopt rules to properly implement the Corporation Business Tax Act and that the Division had not exceeded that authority. The insistence by the writer that only property owned could be used in determining the property fraction and that leased, rented or used property could not be used was refuted by the fact that the term "owned" is not found in the statute and that the director could use his discretionary authority to revise the rule by following the procedures set forth in the Administrative Procedure Act which he had properly followed. The factors discussed in the *Metromedia* case, 97 N.J. 313 (1984) are present in the proposal and adoption of the property fraction. The Division noted that the regulatory language and statutory language are in accordance with modern commercial practice and conform to recommended state tax policy advanced by the tax study made by the Cahill Commission.

The Division received a comment from a professional society that was outside the comment period regarding everything contained in the proposal. The Division's response expressed a regret that it was not possible to grant an extension of the comment period in this case. The response also indicated that the Division will consider any comments or suggestions the professional society wished to submit relevant to a future proposal.

A law firm commented on the definition of financial business corporation and questioned whether it was still necessary to define "financial business corporation" by reference to competition with national banks. The Division responded that it had to follow the statutory directive which indicates, "Any corporate enterprise which is (1) in substantial competition with national banks and which . . ." The response indicated that the Division must administer the act by accepting its expressed statutory directive. The Division indicated that the necessary of and reference to "national banks" in the rule could only be removed by legislative action. The same writer made an observation regarding the 80 percent gross

income test which has been considered and the Division will make a substantial change which results in N.J.A.C. 18:7-1.16 not being adopted at this time. The writer was advised that a new proposed rule would be forthcoming in the near future.

One correspondent commented on N.J.A.C. 18:7-8.4 and the Division advised the writer that it was not possible to grant an extension of the comment period in this case. This rule will be adopted after consideration of all probabilities and possibilities, some of which have arisen internally. The writer was advised that the Division's concern is to ensure the equitable allocation of entire net income.

One correspondent from Washington, DC contacted a state senator who was given information by a member of the director's staff in which the senator was advised that the rules in question, N.J.A.C. 18:7-8.4 and 8.5 will be adopted after consideration of all public comments made within the 30 day period specified by the Administrative Procedure Act. The Washington, DC firm was advised that to the extent that these two sections of the code do not serve the end of equitable allocation of net income the Division will consider comments or suggestions relative to rule improvement in a future proposal. The firm was invited to submit a suggested proposal.

#### Summary of Changes

In N.J.A.C. 18:7-13.7 a phrase "interest to be charged" was added to the title. In 18:13.7(a) the last sentence was changed to replace "service of the notice" with "the date of the Division's assessment letter to the taxpayer." The reason for the change was that the date of the deficiency assessment letter was much easier to determine than the date of service of the notice upon the taxpayer.

In 18:7-8.5(c) the words "(leased, rented or used" were deleted from the first sentence and the words "including property on consignment (consignor)" were added to end the first sentence. In the second sentence of 8.5(c) the first word was deleted and an explanatory of how leased or rented property is valued was inserted. A sentence was added to cover property that is neither owned, leased or rented as to the method of determining the fair value to be used.

The definition of financial business corporation, proposed new rule N.J.A.C. 18:7-1.16 and the proposed amendment to entire net income; how computed, N.J.A.C. 18:7-5.2 are not adopted and will be repropoed in the near future. N.J.A.C. 18:7-8.4, Tangible personal property; definition and scope is not adopted at this time but will be adopted before the one year period to adopt a proposal lapses.

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

18:7-8.5 Business allocation factor; property fraction derived from average values

(a) (No change.)

1. (No change.)

(b) The term "taxpayer's real and tangible personal property" shall include property owned, leased, rented or used by the taxpayer during the period covered by the return and shall exclude property not yet in service or removed from service during that period. Property or equipment under construction (exclusive of inventory work in progress) is excluded from the property fraction until it is completed.

(c) The average values used in determining the property fraction of the allocation factor are normally based on book value with respect to property owned, \*[leased, rented or used.]\* **\*including property on consignment (consignor).\*** **\*[Property]\* \*Leased or rented property\*** is valued at eight times its annual rent, including any amounts (such as taxes) paid or accrued in addition to or in lieu of rent during the period covered by the return. Subrents do not reduce annual rents, but rather enter into the determination of the receipts fraction\*[s]\*. **\*Property that is used which is neither owned, leased or rented should be valued at book value but if the books do not disclose a fair value or disclose a minimal value then that property should be shown at fair value, which for this purpose would be market value, including, but not limited to, loaned property, bailments, etc. Property on consignment held by the consignee is considered property used.\*** Leasehold improvements are treated as owned by the taxpayer. The numerator and the denominator shall take into account depreciation disallowed at N.J.A.C. 18:7-5.2 where the taxpayer accounts for its property on a Federal income tax basis on its books.

(d) The overriding objective is a fair and reasonable apportionment of entire net income by weighing the allocation factor for the portion of the real and tangible personal property owned, leased, rented or used in this state.

Example 1: Taxpayer is the lessor of equipment. Consistent with generally accepted accounting principles it accounts for its capital leases as completed sales. Consistent with principles of tax accounting, it accounts for that same leasing as net rental income which is reported as entire net income.

That entire net income is apportioned by use of the allocation factor which must include the property fraction. That property fraction must reflect the percentage of the taxpayer's real and tangible personal property within New Jersey, including the leased property, despite the fact that the property no longer appears on the books of the corporation in order to effect a fair and reasonable apportionment of entire net income.

Example 2: Taxpayer is engaged in long term construction contracting. It has elected to recognize income for tax purposes on the completed contract method of accounting. It recognizes income on a contract in a tax year where its property was removed to other taxing jurisdictions to work on unrelated construction in progress.

That property fraction must reflect the average value of the taxpayer's real and tangible personal property inside the state and everywhere during the period of construction to fairly and reasonably apportion the entire net income reported for the period covered by the return.

18:7-13.7 Additional tax; change in Federal tax \*; interest to be charged\*

(a) If the taxpayer is notified by the Director that an additional tax is payable as a result of an amended Federal return or a change or correction in taxable income by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States or a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States, that additional tax together with interest thereon at the rate of three quarters of one percent per month or fraction thereof from the original due date of the New Jersey Corporation Business Tax Return for the accounting period involved to the date of payment, must be paid by the taxpayer within 15 days after \*[service of the notice]\* \*the date of the Division's assessment letter to the taxpayer\*.

## OTHER AGENCIES

### (a)

#### INTERSTATE SANITATION COMMISSION

##### Water Quality Regulations Classifications and Uses of Water

Adopted: June 4, 1986 by the Interstate Sanitation Commission

Filed: June 23, 1986 as R.1986 d.287.

Effective Date: June 4, 1986.

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

(Section 1 will remain the same.)

#### 2. Classifications of Waters

[2.01. There are two classes of waters within the Interstate Sanitation District: Class A (waters suitable for recreation, shellfish culture and development of fishlife), and Class B (waters not suitable primarily for recreation, shellfish culture and development of fishlife). Class B shall be divided into two subclasses to be known respectively as "B-1" and "B-2". In addition to the general requirements set forth in Section 1 of these regulations, requirements for each class, subclass, and effluent are as set forth below.]

**2.01. There are two classes of waters within the Interstate Sanitation District: Class A and Class B. Each class is divided into subclasses. The requirements of Section 1 of these regulations shall apply to all waters within the Interstate Sanitation District. In addition, each subclass of the waters shall meet the requirements and be available for the uses as provided for that subclass.**

[2.02. Streams and other waterbodies shall have a minimum dissolved oxygen content in accordance with their respective classifications as follows:

- A: 5 milligrams per liter
- B-1: 4 milligrams per liter
- B-2: 3 milligrams per liter]

**2.02. It is the underlying principle of these regulations that each class and subclass of waters within the Interstate Sanitation District is to be suitable for its best intended uses and that all waters are to be protected, maintained, and improved to the end that they will afford as satisfactory**

**conditions as possible for the maintenance and restoration of the natural eco-systems. It is also recognized that different classifications of waters are appropriate for different areas because of varying activities such as are associated with industry, commerce (including waterborne transportation), recreation, and aesthetic enjoyment. All waters should be aesthetic assets and should, at a minimum, be available for those recreational uses which do not bring the human body into direct contact with the water.**

[2.03. In addition to meeting the dissolved oxygen requirements set forth in Section 2.02 hereof, waters shall in all respects be suitable for their best intended uses as follows:

A: Suitable for primary contact recreation.

Also suitable in designated areas for shellfish harvesting.

B-1: Suitable for fishing and secondary contact recreation.

B-2: Suitable for passage of anadromous fish and for the maintenance of fishlife in a manner consistent with the criteria established in Sections 1.01 and 1.02 of these regulations.]

**2.03(a). Streams and other waterbodies shall have a minimum dissolved oxygen content in accordance with their respective classifications as follows:**

**A: Dissolved Oxygen: 5 milligrams per liter**

**B-1: Dissolved Oxygen: 4 milligrams per liter**

**B-2: Dissolved Oxygen: 3 milligrams per liter**

**2.03(b). In addition to meeting the requirements set forth in Section 2.03(a) hereof, waters shall in all respects be suitable for their best intended uses as follows:**

**A: Suitable for all forms of primary and secondary contact recreation and for fish propagation. In designated areas, they also shall be suitable for shellfish harvesting.**

**B-1: Suitable for fishing and secondary contact recreation. They shall be suitable for the growth and maintenance of fish life and other forms of marine life naturally occurring therein, but may not be suitable for fish propagation.**

**B-2: Suitable for passage of anadromous fish and for the maintenance of fish life in a manner consistent with the criteria established in Sections 1.01 and 1.02 of these regulations.**

(Section 2.04 will remain the same.)

(Section 2.05(a) and (b) will remain the same.)

2.05(c). Biochemical Oxygen Demand shall not exceed 30 mg/l on a 30 consecutive day average, 45 mg/l on a 7 consecutive day average, and 50 mg/l on a 6 consecutive hour average. Further, all sewage or other polluting matter discharged or permitted to flow into waters of the District shall first have been so treated as to effect a reduction in the oxygen demand of the effluent sufficient to maintain the dissolved oxygen content in the waters of the District and in the general vicinity of the point of discharge of the sewage or other polluting matter into those waters, at a depth of about five feet below the surface, of not less than the dissolved oxygen concentration set forth in Section [2.02] **2.03.**

(Sections 2.05(d) through 2.06 will remain the same.)

#### 3. Consistency with States

3.01(a). The following waters of the Interstate Sanitation District are hereby classified as Class A:

(1) the East River east of the Whitestone Bridge and extending out and including the Long Island Sound waters west of a line from the easterly side of New Haven Harbor at Morgan Point in Connecticut to the easterly side of Port Jefferson Harbor in New York;

(2) the Hudson River from the New York-New Jersey State line opposite Hastings-on-Hudson to the northerly line of Rockland County on the westerly side of the northerly line of Westchester County on the easterly side.

(3) The Hudson River from its confluence with the Harlem River to the New York-New Jersey State line opposite Hastings-on-Hudson.

[(3)] (4) the Raritan River east of the Victory Bridge and into Raritan Bay and to the lower end of the Arthur Kill on a line drawn from the southernmost point of Staten Island to the southernmost point of Perth Amboy;

[(4)] (5) Sandy Hook Bay;

[(5)] (6) the lower New York Bay northerly to a line drawn from the tip of Fort Wadsworth on Staten Island to the tip of Seagate in Brooklyn;

[(6)] (7) the Atlantic Ocean and the estuaries and tidal waters thereof west of the easterly side of Fire Island Inlet and continuing into lower New York Bay.

3.01(b) The following waters of the Interstate Sanitation District are hereby classified as Class B-1:

(1) the Hudson River south of a line from the [New York-New Jersey State line opposite Hastings-on-Hudson south and including the portion of the Harlem River to the Washington Bridge and] confluence with the Harlem River into the upper New York Harbor and the portion of the

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Lower Bay which is north of a line from Fort Wadsworth in Staten Island to the tip of Seagate in Brooklyn. For the purposes of these regulations, the upper New York Harbor terminates at the mouth of the Kill Van Kull (at a north-south line drawn from the northernmost point of State Island to the easternmost point at Constable Hook in Bayonne) and to the mouth of the East River (a true east-west line passing through the southernmost tip of Manhattan Island at the Battery and extending to the east shore of the East River in Brooklyn):

[(2) the waters of the upper East River north and east of a line between Hunts Point in the Bronx and Sanford Point in Queens and including those waters of the Whitestone Bridge;]

**(2) the waters of the East River north of a true east-west line passing through the southernmost tip of Manhattan Island to the Battery extending to the Whitestone Bridge (except that Newtown Creek shall remain B-2) and including the Harlem River to its confluence with the Hudson River;**

(3) the lower portion of the Arthur Kill north of a line from the southernmost part of Staten Island to the southernmost part of Perth Amboy and south of Outerbridge Crossing.

3.01(c). The following waters of the Interstate Sanitation District are hereby classified as Class B-2:

[(1)] The waters of the Arthur Kill north of Outerbridge Crossing and into and including the Newark Bay up to the mouths of the Passaic and Hackensack Rivers and into the Kill Van Kull west of a north-south line drawn from the northernmost point of Staten Island to the easternmost point at Constable Point in Bayonne[;].

[(2) the lower East River north of a true east-west line passing through the southernmost tip of Manhattan Island to the Battery extending to the east shore of the East River in Brooklyn up to west of a line drawn from Hunts Point, Bronx, to Sanford Point in Queens and into the Harlem River up to and including the waters south of the Washington Bridge.]

(Section 3.02 will remain the same.)

(Section 4 will remain the same.)

5. Variances

5.01. Any person or other entity discharging effluents is relieved of the requirements for such effluent contained in Section 2.05(c) and (d) if at all times of the year the waters into which the discharge enters meet the requirements of Section [2.02] 2.03 of these regulations.

The foregoing applies only if the discharger who is discharging biochemical oxygen demand or total suspended solids or both has a permit from the U.S. Environmental Protection Agency or the state pursuant to Section [4.02] 402 of the Federal Water Pollution Control Act Amendments of 1972 (33 USC 1342), which permit has requirements or limitations relating to discharge of biochemical oxygen demand, total suspended solids, or both, as the case may be, and the discharger is complying with those requirements or limitations.

(Section 5.02 will remain the same.)

(Section 6 will remain the same.)

# EMERGENCY ADOPTIONS

## HUMAN SERVICES

### (a)

#### DIVISION OF PUBLIC WELFARE

#### Food Stamp Program

#### Maximum Income Eligibility Limits

#### Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 10:87-5.4, 5.5, 12.3, 12.4, and 12.7

Emergency Amendment Adopted: May 20, 1986 by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c): May 29, 1986.  
Emergency Amendment Filed: June 30, 1986 as R.1986 d.297.

Authority: N.J.S.A. 30:4B-2, the Food Stamp Act of 1977, as amended (7 USC 2014), 7 CFR 273.9(a) and 51 FR 10764.

Emergency Amendment Effective Date: June 30, 1986.

Emergency Amendment Operative Date: July 1, 1986.

Emergency Amendment Expiration Date: August 29, 1986.

Concurrent Proposal Number: PRN 1986-293.

Submit comments by August 20, 1986 to:

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

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency amendment are being proposed for re-adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

The agency emergency adoption and concurrent proposal follows:

#### Summary

The Department of Human Services is mandated by the Food Stamp Act of 1977, as amended (7 USC 2014) and by Federal regulations at 7 CFR 273.9(a) to revise the maximum allowable net and gross income eligibility standards to reflect the annual Federal adjustment of income eligibility limits which take into account changes in the cost of living and the annual adjustment of the poverty guidelines issued by the United States Department of Health and Human Services. The "165 percent of poverty level" used when determining separate household status for elderly and disabled individuals is also revised. Since all three standards are based on the poverty income guidelines, they are being adjusted simultaneously. While the General Notice announcing the income levels has not yet been published in the Federal Register, the United States Department of Agriculture, Food and Nutrition Service, has instructed the State via letter received April 21, 1986 to implement the revised income eligibility levels transmitted with that letter, effective July 1, 1986.

In addition, the Department is also mandated by the Food Stamp Act of 1977 as amended and 51 FR 10764 to revise the budgeting procedure for income received under the General Assistance Employability Program (GAEP). Currently, such income is considered to be earned income and, therefore, receives a 20 percent earned income deduction. The change requires that GAEP income be considered as unearned income, hence no earned income deduction will be allowed. The aforementioned Federal rule provides that assistance payments from programs which require, as a condition of eligibility, the actual performance of work without compensation other than the assistance payments (such as GAEP income) themselves, must be considered unearned income.

#### Social Impact

The increase in the income eligibility standards will increase the number of households eligible to participate in the program and receive food stamp benefits. The changes to the eligibility standards will not increase food stamp benefit levels to any currently eligible household.

The change with regard to GAEP income will have a negligible social impact as most households affected by the subject change will not experience a decrease in food stamp benefits.

#### Economic Impact

The revised, increased income eligibility limits will expand the number of households eligible to receive food stamp benefits. These changes will bring additional Federal funds into the State for those households previously not eligible to participate in this Federally funded program. This change will not impact significantly on administrative functions of the Department or the county welfare agencies administering the program.

Although the rule regarding GAEP income will alter the budgeting procedure for households receiving GAEP income, it will not affect the food stamp allotment for the majority of those households. The General Assistance standard for an employable household of one is \$133.00. In computing a food stamp budget, \$106.00 is subtracted (\$8.00 energy disregard plus a \$98.00 standard deduction). If shelter costs are equal to or greater than \$41.00, the individual will receive the maximum coupon allotment. The fact that the 20 percent earned income deduction was not applied does not affect the food stamp allotment. In a household with other income, not considering GAEP as earned income could decrease food stamp benefits by \$8.00 per month.

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

#### 10:87-5.4 Earned income

(a) For the purposes of determining Net Food Stamp Income, earned income shall include:

1. Employee compensation: All wages and salaries received as compensation for services performed as an employee.

[i. General Assistance Employability Program (GAEP) payments: The General Assistance payments of individuals receiving such payments while performing actual work pursuant to GAEP requirements without compensation other than the assistance payment (see also N.J.A.C. 10:87-5.5(a)1.);]

2.-5. (No change.)

#### 10:87-5.5 Unearned income

(a) For the purposes of determining Net Food Stamp Income, unearned income shall include, but not be limited to:

1. Assistance payments: Assistance payment from [f]Federal or federally aided public assistance programs [e.g., SSI and AFDC.] **such as SSI, AFDC and** General Assistance payments [to the extent that such payments are not considered earned income pursuant to N.J.A.C. 10:87-5.4(a)1];

**i. All assistance payments from programs which require, as a condition of eligibility, the actual performance of work without compensation other than the assistance payments themselves, shall be considered unearned income.**

2.-10. (No change.)

#### 10:87-12.3 Maximum allowable net income standards

TABLE III

Maximum Allowable Net Income	
Household Size	Maximum Allowable Income
1	\$ [438] <b>447</b>
2	[588] <b>604</b>
3	[738] <b>760</b>
4	[888] <b>917</b>
5	[1038] <b>1074</b>
6	[1188] <b>1230</b>
7	[1338] <b>1387</b>
8	[1488] <b>1544</b>
9	[1638] <b>1701</b>
10	[1788] <b>1858</b>
Each Additional Member	[+150] <b>+157</b>

10:87-12.4 Maximum allowable gross income standards

**TABLE IV**  
Maximum Allowable Gross Income

Household Size	Maximum Allowable Income
1	\$ [569] <b>581</b>
2	[764] <b>785</b>
3	[959] <b>988</b>
4	[1154] <b>1192</b>
5	[1349] <b>1396</b>
6	[1544] <b>1599</b>
7	[1739] <b>1803</b>
8	[1934] <b>2007</b>
9	[2129] <b>2211</b>
10	[2324] <b>2415</b>
Each Additional Member	[+195] <b>+204</b>

10:87-12.7 165 percent of poverty level

(a) The following table is to be used when determining separate household status for elderly and disabled individuals in accordance with N.J.A.C. 10:87-2.2(a)4.

**TABLE VII**  
165% of Poverty Level

Household Size	Maximum Allowable Income
1	\$ [722] <b>737</b>
2	[970] <b>996</b>
3	[1217] <b>1254</b>
4	[1465] <b>1513</b>
5	[1712] <b>1771</b>
6	[1960] <b>2030</b>
7	[2207] <b>2288</b>
8	[2455] <b>2547</b>
9	[2703] <b>2806</b>
10	[2951] <b>3065</b>
Each Additional Member	[+248] <b>+259</b>

**TRANSPORTATION**

**(a)**

**THE COMMISSIONER**

**Restricted Parking and Stopping  
Route 47 in Cape May County**

**Adopted Emergency Amendment and Concurrent  
Proposal: N.J.A.C. 16:28A-1.33**

Emergency Amendment Adopted: June 18, 1986 by Hazel Frank Gluck, Commissioner, Department of Transportation.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): June 24, 1986.

Emergency Amendment Filed: June 26, 1986 as R.1986 d. 292.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139, 52:14B-4(c) and N.J.A.C. 1:30-4.5.

Emergency Amendment Effective Date: June 26, 1986.

Emergency Amendment Expiration Date: August 25, 1986.

Concurrent Proposal Number: PRN 1986-291.

Submit comments by August 20, 1986 to:

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

**Summary**

The Township officials of Dennis Township, Cape May County, under the provisions of N.J.S.A. 39:4-197.1, citing emergent conditions, established the need to restrict parking and stopping along Route 47 at Petersburg Road from Oak Lane in Dennis Township, Cape May County.

There presently exists along Route 47, (a two lane highway) hazardous conditions caused by tractor trailers and other vehicles parking on Route 47 at the intersection where a Wawa store is located. Drivers are leaving vehicles to patronize said store and this causes serious traffic problems by impeding the visibility of oncoming vehicles and others attempting to negotiate the curve at the intersection.

The Township officials envision an increase of traffic volume along Route 47 by July 1, 1986 and have requested the immediate installation of signs to preclude parking and stopping, that necessary enforcement may be undertaken, thus preventing possible accidents, injuries and possible deaths which will occur unless the present conditions are expeditiously handled.

The Department therefore adopts an emergency amendment to N.J.A.C. 16:28A-1.33 concerning "No Parking" zones along Route 47 in Dennis Township, Cape May County.

**Social Impact**

The emergency amendment and concurrent proposal will preclude the stopping and parking of vehicles along Route 47 in Dennis Township, Cape May County for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. This restriction does not apply to vehicles using the highway under legitimate emergency conditions or breakdowns. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The emergency amendment and concurrent proposal will preclude vehicles from stopping and parking along Route 47 in Dennis Township, Cape May County. There is accessible off-street parking at the Wawa store for the conduct of business. This will have no economic impact on the Wawa store or anyone conducting business.

The Department and local officials will experience direct or indirect costs for mileage, personnel and equipment. The Department will bear the costs for the installation of "no stopping and standing" signs. Motorists who violate the rules will be assessed the appropriate fines.

**Full text** of the emergency adoption and concurrent proposal follows (additions indicated in boldface **thus**):

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.-9. (No change.)

**10. No stopping or standing in Dennis Township, Cape May County.**

**i. Along both sides:**

**(1) From Oak Lane to a point 650 feet from Petersburg Road (Co. Rd. 610).**

(b) (No change.)

# MISCELLANEOUS NOTICES

## ENVIRONMENTAL PROTECTION

(b)

### DIVISION OF WATER RESOURCES

(a)

#### Surface Water Quality Standards Delaware River and Estuary

**Take notice** that the Department of Environmental Protection is proposing that the existing surface water classifications and uses for the Delaware River and Estuary from River Mile 117.81 to River Mile 54.5, including SE2 tributaries, be retained.

This proposed action is based on the *Use Attainability Analysis of the Delaware River Estuary*; October 1985; Delaware River Basin Commission. The Federal Clean Water Act, 33 USC 1215 et al. requires the State, at least once every three years, to review the State Surface Water Quality Standards and to make appropriate modifications to these standards. For all water bodies which do not have all the uses described in Section 101(a)(2) of the Federal Clean Water Act as designated uses, the Federal Water Quality Standards Regulations, 40 CFR 131, require a use attainability analysis to document that the missing uses cannot be attained. The Section 101(a)(2) uses have been generally referred to as fishable, swimmable. In fact, the Section 101(a)(2) uses provide for protection and propagation of fish, shellfish and wildlife and provides for recreation in and on the water.

New Jersey completed the last triennial review of its Surface Water Quality Standards in May 1985. These were subsequently amended, based on the results of a use attainability analysis of the waters of the New York Harbor Complex, in July 1985. The current action is the result of completion of a similar analysis that indicates that the existing designated uses are currently correct, but may be upgraded after 1988 upon completion of upgrading of some major water pollution control facilities.

A **public hearing** on this proposal will be held on:

August 13, 1986 at 5 P.M. until the close of testimony.  
Cherry Hill Township Municipal Building, Room 208  
820 Mercer Street  
Cherry Hill, NJ 08002

Submit comments by August 20, 1986 to:

Shing-Fu Hsueh, Ph.D., P.E., Chief  
Bureau of Systems Analysis and Wasteload Allocation  
Division of Water Resources  
Department of Environmental Protection  
CN 029  
Trenton, NJ 08625

The **Executive Summary** of the Use Attainability Analysis covering the waters involved in this proposal may be reviewed at the following libraries:

Camden County Library; Echelon Urban Complex;  
Voorhees, NJ  
Burlington County Library; Mt. Holly, NJ  
Glassboro State College; Glassboro, NJ  
NJ State Library; Trenton, NJ  
Trenton Public Library; Trenton, NJ

**Complete copies** of the Use Attainability Analysis may be examined at:

NJ State Library, Trenton, NJ  
Bureau of Systems Analysis and Wasteload Allocation  
Division of Water Resources  
25 Arctic Parkway  
Trenton, NJ 08638

#### Amendment to Upper Delaware Water Quality Management Plan

##### Public Notice

**Take notice** that an amendment to the Upper Delaware Water Quality Management (WQM) Plan has been submitted for approval. This amendment would permit the construction of a community septic system to serve the proposed Quail Hollow at Bloomsbury development. In addition, as part of this amendment, a Wastewater Management Plan will be adopted to provide a plan for addressing the wastewater management needs of the Borough. The Borough of Bloomsbury will be designated as the Wastewater Management Agency.

**This notice** is being given to inform the public that a plan amendment has been developed for the Upper Delaware WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Planning and Standards, 25 Arctic Parkway, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

**Interested persons** may submit written comments on the amendment to George Horzepa, Bureau of Planning and Standards, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any **interested persons** may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(c)

#### Amendment to Upper Raritan Water Quality Management Plan

##### Public Notice

**Take notice** that an amendment to the Upper Raritan Water Quality Management (WQM) Plan has been submitted for approval. This amendment would permit the construction of a new sewage treatment plant to serve the proposed Hills of Chester development, the Chester Area Senior Housing Project and a developed portion of the Borough. In addition, as part of this amendment, a Wastewater Management Plan will be adopted to provide a plan for addressing the wastewater management needs of the Borough. Chester Borough will be designated as the Wastewater Management Agency.

**This notice** is being given to inform the public that a plan amendment has been developed for the Upper Raritan WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Planning and Standards, 25 Arctic Parkway, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

**Interested persons** may submit written comments on the amendment to George Horzepa, Bureau of Planning and Standards, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any **interested persons** may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

**(a)**

**Amendment to Tri-County Water Quality Management Plan**

**Public Notice**

Take notice that on May 7, 1986 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan to expand the Burlington Township Central Avenue Sewage Treatment Plant's sewer service area to include Bromley Tract, Phase I, was adopted by the Department.

**(b)**

**Amendment to Tri-County Water Quality Management Plan**

**Public Notice**

Take notice that on May 20, 1986 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan to allow for an encroachment on wetlands as part of the Elmwood Village Development, was adopted by the Department.

**(c)**

**Amendment to Atlantic County Water Quality Management Plan**

**Public Notice**

Take notice that on May 7, 1986 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Atlantic County Water Quality Management Plan which will provide for a procedure for the revision of the Atlantic County Water Quality Management Plan as necessary to maintain the Plan as a technically sound and legally defensible document for the implementation of Water Quality Management objectives, was adopted by the Department.

**(d)**

**DIVISION OF SOLID WASTE MANAGEMENT  
Statewide Solid Waste Management Plan Update:  
1985-2000**

**Public Notice**

Take notice that on June 30, 1986, pursuant to the provisions of the New Jersey Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.) and the federal Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.) the Statewide Solid Waste Management Plan Update: 1985-2000 was adopted by the Department of Environmental Protection. Public notice of the proposed Plan Update was published in the July 15, 1985 New Jersey Register at 17 N.J.R. 1797(a). The draft Plan Update, the Addendum to the Plan Update, and the Summary of Responses to the comments received concerning the Plan Update have been filed with, and may be reviewed at:

Office of Administrative Law  
Quakerbridge Plaza, Building 9, CN 301  
Quakerbridge Road  
Trenton, New Jersey 08625

Copies may be obtained by calling or writing to:

Bureau of Solid Waste and Resource Recovery Planning  
Division of Solid Waste Management  
32 East Hanover Street  
Trenton, New Jersey 08625  
(609) 292-8242

**HUMAN SERVICES**

**(e)**

**DIVISION OF DEVELOPMENTAL DISABILITIES**

**Guardianship Services**

**Eligibility**

**Notice of Correction: N.J.A.C. 10:45-1.3**

Take Notice that errors appear in the New Jersey Administrative Code at N.J.A.C. 10:45-1.3 concerning eligibility. N.J.A.C. 10:45-1.3 should appear as follows:

10:45-1.3 Eligibility

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

(c) Eligibility for the adult client continues as long as the individual:

1. Is receiving functional services;
2. Remains mentally deficient and;
3. Has no legally appointed guardian of the person.

(d) Eligibility for a child continues as long as he or she:

1. Is receiving functional services;
2. Is under the age of 18 years, and;
3. Has no available legal guardian of the person. In any instance when a parent or legally appointed guardian, who had been previously inaccessible, again becomes available to exercise their role, guardianship services shall immediately and automatically cease.

(e) Prior to reaching the age of majority, a determination must be made regarding the issue of mental deficiency and the continuing need for guardianship services as an adult (N.J.S.A. 30:4-165.5; N.J.A.C. 10:43).

**LAW AND PUBLIC SAFETY**

**(f)**

**DIVISION OF MOTOR VEHICLES**

**Bulk Commodities Application**

**Public Notice**

Take notice that Glenn R. Paulsen, Director, Division of Motor Vehicles pursuant to the authority of N.J.S.A. 39:5E.11 hereby list the name and address of an applicant who has filed an application for a Contract Carrier Permit.

CONTRACT CARRIER (NON-GRANDFATHER)

Taratoni, Inc.  
707 Wayne Avenue  
Vineland, NJ 08360

Protest in writing and verified under oath may be presented by interested parties to the Director of Motor Vehicles within 20 days following the publication of an application.

**TREASURY-TAXATION**

**(g)**

**DIVISION OF TAXATION**

**Average Wholesale Price of Cigarettes**

**Cigarette Surtax Rate**

**Notice**

For the purpose of complying with the requirements of Chapter 40, P.L. 1982, Sec. 4 (N.J.S.A. 54:40A-8.2), John R. Baldwin, Director of the Division of Taxation, hereby gives notice that, based upon the best available current data, the average wholesale price of cigarettes in this State during the succeeding six months commencing July 1, 1986 is \$0.4857 for each 10 cigarettes or fraction thereof.

Therefore, the cigarette surtax due for such six months, pursuant to Sec. 302 P.L. 1948, c. 65 (C. 54:40A-8), as amended, shall remain at \$0.03 for each 10 cigarettes or fraction thereof.

# REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

## A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

**At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the June 2, 1986 issue.**

**If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers.** A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(d).

### Terms and abbreviations used in this Index:

**N.J.A.C. Citation.** The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

**Proposal Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

**Document Number.** The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1986 d.100 means the one hundredth rule adopted in 1986.

**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 certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

**N.J.R. Citation Locator.** An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

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**MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: MAY 19, 1986.**

**NEXT UPDATE WILL BE DATED JUNE 16, 1986.**

**Note:** If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

## N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
17 N.J.R. 1701 and 1818	July 15, 1985	18 N.J.R. 235 and 376	February 3, 1986
17 N.J.R. 1819 and 1954	August 5, 1985	18 N.J.R. 377 and 446	February 18, 1986
17 N.J.R. 1955 and 2070	August 19, 1985	18 N.J.R. 447 and 506	March 3, 1986
17 N.J.R. 2071 and 2170	September 3, 1985	18 N.J.R. 507 and 582	March 17, 1986
17 N.J.R. 2171 and 2318	September 16, 1985	18 N.J.R. 583 and 726	April 7, 1986
17 N.J.R. 2319 and 2484	October 7, 1985	18 N.J.R. 727 and 868	April 21, 1986
17 N.J.R. 2485 and 2584	October 21, 1985	18 N.J.R. 869 and 1018	May 5, 1986
17 N.J.R. 2585 and 2710	November 4, 1985	18 N.J.R. 1019 and 1122	May 19, 1986
17 N.J.R. 2711 and 2814	November 18, 1985	18 N.J.R. 1123 and 1222	June 2, 1986
17 N.J.R. 2815 and 2934	December 2, 1985	18 N.J.R. 1223 and 1326	June 16, 1986
17 N.J.R. 2935 and 3032	December 16, 1985	18 N.J.R. 1327 and 1432	July 7, 1986
18 N.J.R. 1 and 128	January 6, 1986	18 N.J.R. 1433 and 1504	July 21, 1986
18 N.J.R. 129 and 234	January 21, 1986		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
<b>ADMINISTRATIVE LAW—TITLE 1</b>				
1:1, 1:2-1:21	Pre-proposal: Administrative hearings	18 N.J.R. 728(a)		
1:1-3.8	Attorney disqualification from a case	18 N.J.R. 2(a)		
1:1-15.10	Prior transcribed testimony	18 N.J.R. 1020(a)		
1:6	Education budget hearings	18 N.J.R. 1020(b)		
1:6A-5.4	Special education hearings: stay of decision implementation	18 N.J.R. 584(a)	R.1986 d.195	18 N.J.R. 1192(a)
(TRANSMITTAL 21, dated May 19, 1986)				
<b>AGRICULTURE—TITLE 2</b>				
2:9-1.1, 1.2	Avian influenza and infected poultry flocks	18 N.J.R. 870(a)	R.1986 d.250	18 N.J.R. 1370(a)
2:22-3.1	Africanized honeybee control	18 N.J.R. 585(a)	R.1986 d.200	18 N.J.R. 1192(b)
2:24-1	Shipment of bees into State	18 N.J.R. 586(a)	R.1986 d.199	18 N.J.R. 1192(c)
2:69-1.11	Commercial values of fertilizers	18 N.J.R. 588(a)	R.1986 d.198	18 N.J.R. 1193(a)
2:71-2.2-2.7	“Jersey Fresh” Quality Grading Program	18 N.J.R. 588(b)	R.1986 d.201	18 N.J.R. 1196(a)
2:76-3.12	Farmland preservation programs: deed restrictions	18 N.J.R. 508(a)	R.1986 d.196	18 N.J.R. 1192(b)
2:76-4.11	Municipally-approved preservation programs: deed restrictions	18 N.J.R. 511(a)	R.1986 d.197	18 N.J.R. 1195(a)
2:76-6.2, 6.15	Sale of development easements: deed restrictions	18 N.J.R. 1328(a)		
2:76-6.15	Acquisition of development easements: deed restrictions	18 N.J.R. 513(a)		
2:90-1.5, 1.14	Soil conservation plan certifications; minor subdivisions	17 N.J.R. 2172(a)		
2:90-1.13	Soil conservation: extraction activity	17 N.J.R. 1957(a)		
(TRANSMITTAL 40, dated May 19, 1986)				
<b>BANKING—TITLE 3</b>				
3:1-2.24	Modification of Commissioner's Order restricting stock transfers	17 N.J.R. 2487(a)	R.1986 d.293	18 N.J.R. 1453(a)
3:11-11	Leeway investments	18 N.J.R. 132(a)	R.1986 d.245	18 N.J.R. 1370(b)
3:11-11.13	Leeway investments: confidentiality of approval process	18 N.J.R. 1224(a)		
3:17	Small loan rules	18 N.J.R. 1021(a)	R.1986 d.277	18 N.J.R. 1453(b)
3:38-5.2	Return of borrower's commitment fee	17 N.J.R. 2488(b)		
(TRANSMITTAL 33, dated April 21, 1986)				
<b>CIVIL SERVICE—TITLE 4</b>				
4:1-2.1, 5.2, 11.2, 16, 24	Separations, demotions, layoffs; review and appeals	18 N.J.R. 450(a)		
4:1-16, 24	Separations, layoffs, demotions	18 N.J.R. 450(a)	R.1986 d.206	18 N.J.R. 1260(a)
4:1-8.4	Promotional examinations	18 N.J.R. 591(a)		
4:1-15	Assignments and transfers	18 N.J.R. 592(a)		
4:2-15.1	Assignments and transfers	18 N.J.R. 592(a)		
4:2-16	Separations and demotions	18 N.J.R. 450(a)		
4:2-16	Separations, layoffs, demotions	18 N.J.R. 450(a)	R.1986 d.206	18 N.J.R. 1260(a)
4:3-16	Separations and demotions	18 N.J.R. 450(a)		
4:3-16	Separations, layoffs, demotions	18 N.J.R. 450(a)	R.1986 d.206	18 N.J.R. 1260(a)
(TRANSMITTAL 30, dated May 19, 1986)				

(CITE 18 N.J.R. 1496)

NEW JERSEY REGISTER, MONDAY, JULY 21, 1986

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
<b>COMMUNITY AFFAIRS—TITLE 5</b>				
5:11-2.1	Uniform Fire Code enforcement and relocation assistance	17 N.J.R. 2938(a)		
5:12-2.4, 2.5	Homelessness Prevention Program: eligibility and priorities	17 N.J.R. 2939(a)	R.1986 d.296	18 N.J.R. 1453(c)
5:18-1.1, 1.4, 1.5, 1.6, 2.3, 4	Uniform Fire Code, Fire Safety Code	17 N.J.R. 1161(a)	R.1986 d.214	18 N.J.R. 1260(b)
5:18-2.5, 2.7, 2.11, 2.14, 3.2, 4.1, 4.7, 4.9-4.13, 4.17, 4.18	Uniform Fire Code: Fire Safety Code	18 N.J.R. 1225(a)		
5:18A-2.3, 4.3, 4.4	Fire Code Enforcement	18 N.J.R. 1225(a)		
5:23-2.14, 4.18, 4.20	UCC: annual construction permits	17 N.J.R. 2490(a)	R.1986 d.213	18 N.J.R. 1266(a)
5:23-3.2	Subcode exceptions	18 N.J.R. 757(a)		
5:23-3.4, 3.14, 3.17, 3.20	Building, Fire Protection, and Mechanical Subcodes	18 N.J.R. 1235(a)		
5:23-5.5, 5.7	Construction subcode licensure: transferability of experience	18 N.J.R. 594(a)	R.1986 d.255	18 N.J.R. 1373(a)
5:23-7	Barrier Free Subcode: access for physically handicapped and aged	18 N.J.R. 757(a)		
5:25	New Home Warranty and Builders' Registration rules: waiver of sunset provision	18 N.J.R. 218(a)		
5:25	New Home Warranty and Builders' Registration rules: waiver of sunset provision	18 N.J.R. 490(a)		
5:29	Housing and Development: petitions for rules	18 N.J.R. 871(a)	R.1986 d.274	18 N.J.R. 1454(a)
5:30-17	Local public contracts: cooperative pricing and joint purchasing systems	18 N.J.R. 1022(a)		
5:80-8	Housing and Mortgage Finance Agency: housing project occupancy requirements	17 N.J.R. 1620(a)	R.1986 d.258	18 N.J.R. 1373(b)
5:80-20	HMFA housing projects: applicant and tenant income certification	17 N.J.R. 2321(b)		
5:80-20	HMFA housing projects: applicant and tenant income certification	18 N.J.R. 523(a)	R.1986 d.303	18 N.J.R. 1454(b)
5:91	Council on Affordable Housing: procedural rules	18 N.J.R. 821(a)	R.1986 d.221	18 N.J.R. 1267(a)
5:92	Council on Affordable Housing: substantive rules	18 N.J.R. 1124(b)		

(TRANSMITTAL 41, dated May 19, 1986)

**DEFENSE—TITLE 5A**

(TRANSMITTAL 1, dated May 20, 1985)

**EDUCATION—TITLE 6**

6:11-2.2	Duties of State Board of Examiners	18 N.J.R. 595(a)	R.1986 d.279	18 N.J.R. 1457(a)
6:20-4.4	Tuition for private schools for handicapped	18 N.J.R. 1237(a)		
6:20-5.5	State aid for asbestos removal and encapsulation	18 N.J.R. 392(b)	R.1986 d.204	18 N.J.R. 1198(a)
6:20-5.6	Minimum salaries and State aid	18 N.J.R. 393(a)	R.1986 d.205	18 N.J.R. 1199(a)
6:22-1.6, 1.7, 2.4, 3.1	School facility planning; substandard facilities	18 N.J.R. 526(a)	R.1986 d.281	18 N.J.R. 1457(b)
6:29-9	Policies and procedures concerning pupil use of drugs and alcohol	18 N.J.R. 1237(b)		
6:30	Adult and community education	18 N.J.R. 871(b)		
6:68-5	Audio-visual public library services	18 N.J.R. 595(b)	R.1986 d.278	18 N.J.R. 1459(a)
6:68-6	Institutional library services	18 N.J.R. 597(a)	R.1986 d.280	18 N.J.R. 1460(a)
6:69-2	Library services to the disadvantaged	18 N.J.R. 599(a)	R.1986 d.282	18 N.J.R. 1461(a)

(TRANSMITTAL 40, dated May 19, 1986)

**ENVIRONMENTAL PROTECTION—TITLE 7**

7:1-6	Disposal of solid waste	18 N.J.R. 883(a)		
7:1-7	Hazardous substance discharges: reports and notices	17 N.J.R. 1826(a)	R.1986 d.229	18 N.J.R. 1272(a)
7:2-11.22	Bear Swamp East natural area	18 N.J.R. 139(a)	R.1986 d.202	18 N.J.R. 1200(a)
7:2-11.22	Bear Swamp East natural area: public hearing	18 N.J.R. 532(a)		
7:6-1.4, 1.12, 1.14, 1.15, 1.42	Boating rules	18 N.J.R. 876(a)	R.1986 d.304	18 N.J.R. 1461(b)
7:6-1.37	Waiver of maximum tow line length for parasailing operation	_____	_____	18 N.J.R. 1412(c)
7:7-2.2	Wetlands maps in Ocean County	17 N.J.R. 1710(a)	R.1986 d.262	18 N.J.R. 1374(a)
7:7-2.2	Wetlands management in Atlantic County	18 N.J.R. 1026(a)		
7:7E	Coastal Resource and Development revisions: extension of comment period	17 N.J.R. 1797(b)		
7:7E	Coastal Resource and Development Policies: correction to Code and proposed revisions	17 N.J.R. 1797(c)		
7:11-3	Use of water from Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir Complex	18 N.J.R. 1330(a)		
7:12-1.2-1.6, 1.8, 2.1, 2.15	Shellfish-growing water classification	18 N.J.R. 784(a)	R.1986 d.234	18 N.J.R. 1275(a)
7:13-7.1	Floodway delineations along East Branch of Stony Brook, South Branch of Rockaway Creek, and Whale Pond Brook	18 N.J.R. 1239(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
7:13-7.1	Floodway delineations in Montgomery Township and Rocky Hill	18 N.J.R. 1334(a)		
7:13-7.1(c)29	Floodway delineations within Maurice River Basin	17 N.J.R. 2186(a)		
7:13-7.1(d)	Flood hazard delineations for Raritan River and Peters Brook	18 N.J.R. 600(a)		
7:14A-4.4, 4.7	Dioxin-containing waste	18 N.J.R. 879(a)		
7:14A-6.16	Disposal of solid waste	18 N.J.R. 883(a)		
7:18	Laboratory certification and standards of performance	18 N.J.R. 1239(b)		
7:19-3	Water allocation permit fees	18 N.J.R. 789(a)	R.1986 d.263	18 N.J.R. 1376(a)
7:22	Wastewater treatment facilities: construction grants and loans	18 N.J.R. 243(a)		
7:25-4.17	Status of indigenous nongame wildlife	18 N.J.R. 601(a)	R.1986 d.230	18 N.J.R. 1279(a)
7:25-5	1986-1987 Game Code	18 N.J.R. 1026(b)		
7:25-8.1	Repeal clam dredging rule	18 N.J.R. 396(a)	R.1986 d.232	18 N.J.R. 1279(b)
7:25-9	Minimum legal size for hard clams	18 N.J.R. 146(a)	R.1986 d.231	18 N.J.R. 1280(a)
7:25-10	Possession of captive game animals and birds	18 N.J.R. 533(a)	R.1986 d.233	18 N.J.R. 1280(b)
7:25-19	Atlantic Coast harvest season	17 N.J.R. 2494(a)	R.1986 d.273	18 N.J.R. 1378(a)
7:25A-1.9	Closure of oyster seed beds in Delaware Bay	_____	_____	18 N.J.R. 1411(b)
7:26-1.4, 2, 2A, 2B, 5, 12.11, 12.12	Disposal of solid waste	18 N.J.R. 883(a)		
7:26-1.4, 7.4, 9.1, 12.1, 12.8	Reuse of hazardous waste	17 N.J.R. 2716(a)		
7:26-1.4, 7.5, 7.7, 8.13	Waste oil	18 N.J.R. 878(a)		
7:26-2.6, 2.7	Disposal of asbestos waste	17 N.J.R. 2719(a)		
7:26-2.9	Closure and post-closure of sanitary landfills	18 N.J.R. 252(a)		
7:26-2.9	Closure and post-closure of sanitary landfills	18 N.J.R. 924(a)		
7:26-2.9	Closure and post-closure care of sanitary landfills: escrow agreements	18 N.J.R. 1036(a)	R.1986 d.305	18 N.J.R. 1462(a)
7:26-7.4, 8.3, 8.15, 9.2, 10.6, 10.8	Land disposal of hazardous waste: correction	_____	_____	18 N.J.R. 1379(a)
7:26-8.1, 8.2, 8.19, 9.3, 9.7, 12.2	Hazardous waste management	17 N.J.R. 2941(a)		
7:26-8.1, 8.2, 8.19, 9.3, 9.7, 12.2	Hazardous waste management: extension of comment period	18 N.J.R. 254(a)		
7:26-8.3, 8.4, 8.13, 8.15, 10.5-10.8, 11.1, 11.5, 11.6, 12.2	Dioxin-containing waste	18 N.J.R. 879(a)		
7:26-8.14, 8.15, 8.16	Hazardous waste criteria, identification and listing	18 N.J.R. 1037(a)		
7:26-8.16	Waste code numbers for hazardous constituents	18 N.J.R. 792(a)		
7:26-8.17	Hazardous waste delisting procedure	18 N.J.R. 1335(a)		
7:26-17	Scales at solid waste facilities	18 N.J.R. 1154(a)		
7:27-16	Air pollution by volatile organic substances	17 N.J.R. 1969(a)		
7:27B-3	Determination of volatile organic substances from source operations	17 N.J.R. 2194(a)		
7:28-14	Therapeutic radiation installations	18 N.J.R. 1157(a)		
7:28-42.1	Workplace exposure to radio frequency radiation	18 N.J.R. 1166(a)		
7:45	Delaware and Raritan Canal State Park: Review Zone rules	17 N.J.R. 1711(a)		
7:45-1, 2, 3	Delineation of Review Zone within Delaware and Raritan Canal State Park: reopening of comment period	18 N.J.R. 457(a)		

(TRANSMITTAL 42, dated May 19, 1986)

HEALTH—TITLE 8

3:21-5	Foods, drugs, cosmetics, devices: order to remove from sale and recall	18 N.J.R. 1361(b)		
3:22-1	Campgrounds sanitation	18 N.J.R. 1038(a)		
3:26	Recreational bathing	18 N.J.R. 1040(a)		
3:31-25.1	Mobile intensive care: administration of medications	18 N.J.R. 602(a)		
3:31-30.1	Health facilities construction: plan review fees	18 N.J.R. 795(a)		
3:31B-3.19	RIM methodology for nursing cost allocation: implementation date	17 N.J.R. 2464(a)		
3:31B-3.31	Hospital reimbursement: transfer of residency positions	18 N.J.R. 795(b)	R.1986 d.260	18 N.J.R. 1379(c)
3:31B-3.76-3.82	Hospital reimbursement: URO performance evaluation; post-billing denial of payments	18 N.J.R. 150(b)		
3:33-1.5	Home health care services: batching cycle change	_____	_____	18 N.J.R. 1414(a)
3:33B-1.3, 1.12	Extracorporeal shock wave lithotripsy services	18 N.J.R. 798(a)	R.1986 d.259	18 N.J.R. 1379(b)
3:33F-1.2	Continuous ambulatory peritoneal dialysis	18 N.J.R. 1241(a)		
3:34-1.31	Licensing of nursing home administrators	17 N.J.R. 2212(a)		
3:39-3.11	Availability of information at long-term care facilities	18 N.J.R. 1241(b)		
3:41-8	Mobile intensive care: administration of medications	18 N.J.R. 602(a)		
3:42A	Alcoholism treatment facilities	18 N.J.R. 796(a)	R.1986 d.257	18 N.J.R. 1380(a)
3:43E-1	Hospital Policy Manual	18 N.J.R. 825(a)		
3:43G	Hospital capital policy	18 N.J.R. 1242(a)		

(CITE 18 N.J.R. 1498)

NEW JERSEY REGISTER, MONDAY, JULY 21, 1986

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
8:44-2.10	Reportable occupational and environmental diseases and poisons	17 N.J.R. 1831(a)		
8:53	Implementation of Local Health Services Act	17 N.J.R. 2836(a)		
8:57-1.14	Reporting of AIDS and AID Related Complex	18 N.J.R. 1245(a)		
8:57-1.19, 1.20, -6	Cancer registry	17 N.J.R. 2836(b)	R.1986 d.227	18 N.J.R. 1283(a)
8:59-1.3, 1.5, 2.1, 3.13, 5.1, 5.5, 6.2, 7.1, 7.2, 8.1, 8.2, 8.5-8.12, 10.3	Worker and Community Right to Know Act	18 N.J.R. 1363(a)		
8:60-1.1, 4.2-4.8, 5.2, 5.4-5.7, 6.1, 6.3, 6.11	Asbestos licenses and permits	18 N.J.R. 156(a)		
8:65-10.1	Controlled dangerous substances: Parafluorofentanyl	18 N.J.R. 603(a)		
8:65-10.2	Removal of Nalmefene from Schedule II of controlled substances	18 N.J.R. 536(a)		
8:65-10.4	Controlled substances: Quazepam and Midazolam	18 N.J.R. 1166(b)		
8:65-11	Narcotic treatment programs	18 N.J.R. 924(b)		
8:71	Generic drug list additions (see 17 N.J.R. 2557(a), 2769(b), 18 N.J.R. 183(a), 418(a), 985(a))	17 N.J.R. 1733(a)	R.1986 d.251	18 N.J.R. 1380(b)
8:71	Generic drug list additions (see 18 N.J.R. 417(a), 984(b), 1102(b), 1382(a))	17 N.J.R. 2842(a)	R.1986 d.275	18 N.J.R. 1463(a)
8:71	Generic drug list additions: public hearing (see 18 N.J.R. 1381(a))	18 N.J.R. 537(a)	R.1986 d.276	18 N.J.R. 1463(b)
8:71	Generic drug list additions	18 N.J.R. 1167(a)		

(TRANSMITTAL 39, dated May 19, 1986)

**HIGHER EDUCATION—TITLE 9**

9:2-5	Management of computerized information	18 N.J.R. 799(a)		
9:7-2.2	Residency and student assistance	18 N.J.R. 801(a)		
9:7-2.3	Status of foreign nationals	18 N.J.R. 19(a)	R.1986 d.254	18 N.J.R. 1382(b)
9:7-2.9	Student assistance programs: award combinations	17 N.J.R. 2725(a)		
9:11-1.2	Educational Opportunity Fund: student residency	18 N.J.R. 925(a)		
9:11-1.5	EOF: undergraduate grants	18 N.J.R. 926(a)		
9:11-1.7	EOF: grant amounts	18 N.J.R. 926(b)		
9:12-1.5, 2.3	Educational Opportunity Fund Program	17 N.J.R. 2214(b)		
9:12-1.5, 2.3	Educational Opportunity Fund Program	18 N.J.R. 801(b)		

(TRANSMITTAL 31, dated April 21, 1986)

**HUMAN SERVICES—TITLE 10**

10:36-1	Patient supervision at State psychiatric hospitals	17 N.J.R. 2593(a)		
10:36-1	Patient supervision at State psychiatric hospitals: public hearing	18 N.J.R. 20(a)		
10:36-2	Clinical review procedures for special status psychiatric patients	17 N.J.R. 2951(a)		
10:38	Interim assistance procedures for discharged clients of State hospitals	18 N.J.R. 802(a)	R.1986 d.239	18 N.J.R. 1383(a)
10:42	Developmental Disabilities: Emergency Mechanical Restraint	17 N.J.R. 1832(a)		
10:49-1.1, 1.2, 1.4	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:49-1.27	Correction to Administrative Code			18 N.J.R. 1205(c)
10:50-1.5, 2.3	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:51-1.2, 1.14, 3.1	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:51-1.14, 5.16	Pharmaceutical services: ineligible prescription drugs	17 N.J.R. 2730(a)		
10:52-1.2, 1.3, 1.6, 1.8, 1.19	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:52-1.5, 1.17	Out-of-state inpatient hospital services	18 N.J.R. 538(a)		
10:53-1.2, 1.3, 1.5, 1.7, 1.15	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:54-1.2, 1.4, 1.7, 1.9, 1.10	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:54-4	Physician's Services: common procedure coding (HCPCS)	18 N.J.R. 927(a)		
10:55-2.2	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:56	Dental Services manual	18 N.J.R. 1337(a)		
10:56-1.12, 2.1	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:57-1.3, 1.7, 1.13, 2.3	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:59-2.3	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:61-1, 2	Independent laboratory services	18 N.J.R. 540(a)		
10:61-2.1, 2.5	Independent laboratory services	18 N.J.R. 540(a)	R.1986 d.219	18 N.J.R. 1293(a)
10:61-2.2	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:62-1, 2, 3	Vision Care Manual	18 N.J.R. 1246(a)		
10:62-1.4, 3.3	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:63-1.16, 2.1	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
10:63-1.22	Correction to Administrative Code			18 N.J.R. 1205(c)
10:63-3.2, 3.4, 3.5, 3.6, 3.8, 3.10-3.15, 3.18, 3.19	Long-term care facilities: CARE Guidelines	18 N.J.R. 257(a)		
10:65-1.2, 2.5	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:66-1.6	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:66-2, 3	Independent clinic services	18 N.J.R. 541(a)		
10:66-2.2, 2.3	Independent clinic services	18 N.J.R. 541(a)	R.1986 d.220	18 N.J.R. 1294(a)
10:66-3	Independent Clinic Services: common procedure coding (HCPCS)	18 N.J.R. 927(a)		
10:66-3	Independent clinic transportation services: HCPCS codes	18 N.J.R. 1053(a)		
10:66-3	Independent clinic transportation services: HCPCS codes	18 N.J.R. 1252(a)		
10:67-2.3	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:68	Chiropractic services and billing procedures	18 N.J.R. 1053(b)		
10:68-1.2	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:68-2	Chiropractor billing procedures	18 N.J.R. 810(a)		
10:69A-5.3	Renewal applications for PAAD beneficiaries	18 N.J.R. 1054(a)		
10:70	Medically Needy supplement	18 N.J.R. 831(a)	R.1986 d.237	18 N.J.R. 1294(b)
10:81-3.38	PAM: transfer of resources	18 N.J.R. 1168(a)		
10:81-3.40, 3.41	PAM: repayment agreements and child injury awards	18 N.J.R. 1055(a)		
10:81-6.3	PAM: transportation of client to fair hearing	18 N.J.R. 927(b)	R.1986 d.300	18 N.J.R. 1463(c)
10:81-7.21—7.29	PAM: funeral and burial payments	18 N.J.R. 1168(b)		
10:81-10.7	PAM: eligibility for refugee and entrant programs	17 N.J.R. 2227(a)		
10:81-11.3, 11.9	PAM: Social Security numbers; restriction of information	17 N.J.R. 2516(b)	R.1986 d.243	18 N.J.R. 1383(b)
10:82-1.8, 1.9, 2.14, 2.20, 3.1, 3.2, 4.4, 4.6, 4.15, 4.17, 5.3, 5.10	ASH: conformity with Federal regulations	18 N.J.R. 260(a)		
10:82-2.3, 2.4, 4.3	ASH: AFDC eligibility requirements	18 N.J.R. 928(a)		
10:82-4.2	ASH: income from tips	18 N.J.R. 1056(a)		
10:82-5.10	ASH: emergency assistance	17 N.J.R. 2336(a)	R.1986 d.203	18 N.J.R. 1200(b)
10:82-5.10	ASH: emergency assistance	17 N.J.R. 2337(a)		
10:85-3.3	GAM: assistance allowance standards	18 N.J.R. 928(b)	R.1986 d.299	18 N.J.R. 1464(a)
10:85-3.3	GAM: income from tips	18 N.J.R. 1056(b)		
10:85-4.6	GAM: emergency assistance	18 N.J.R. 1343(a)		
10:85-4.8	GAM: funeral and burial payments	18 N.J.R. 1170(a)		
10:85-6.4	GAM: fiscal and statistical reporting	18 N.J.R. 1056(c)		
10:85-8.4	GAM: information concerning PAAD	18 N.J.R. 1343(b)		
10:85-9.6	Reevaluation of LRRs: correction			18 N.J.R. 1414(b)
10:86	Repeal obsolete AFDC Work Incentive Program rules	17 N.J.R. 1838(b)		
10:87-4.13, 5.10, 12.1	Food Stamp Program: income deductions and resource limits	18 N.J.R. 1108(a)	R.1986 d.301	18 N.J.R. 1464(b)
10:87-5.4	Earned income: correction			18 N.J.R. 1414(b)
10:87-5.4, 5.5, 12.3, 12.4, 12.7	Food Stamp Program: maximum income limits	Emergency	R.1986 d.297	18 N.J.R. 1490(a)
10:90-2.2, 2.3, 2.4, 2.6, 3.3, 4.1—4.10, 5.1, 5.2, 5.6, 6.1, 6.2, 6.3	Monthly Reporting Policy Handbook	17 N.J.R. 1839(a)		
10:94-4.2, 4.3	Medicaid eligibility and nonliquid resources	18 N.J.R. 542(a)		
10:100-3.6, 3.7	Special Payments Handbook: funeral and burial payments	18 N.J.R. 1171(a)		
10:121-2	Adoption subsidy	18 N.J.R. 24(a)		
10:121A	Adoption agency standards	18 N.J.R. 1057(a)		

(TRANSMITTAL 40, dated May 19, 1986)

**CORRECTIONS—TITLE 10A**

10A:3	Security and control	18 N.J.R. 1057(b)		
10A:4	Inmate discipline	18 N.J.R. 27(a)	R.1986 d.283	18 N.J.R. 1465(a)
10A:5	Close custody units	18 N.J.R. 1067(a)		
10A:31-3.12, 3.15	Adult county facilities: medical screening of new inmates	17 N.J.R. 2343(a)	R.1986 d.241	18 N.J.R. 1384(a)
10A:31-3.12, 3.15	Medical screening of new inmates in county facilities: public hearing	17 N.J.R. 2955(b)		
10A:31-6	Work Release Program	18 N.J.R. 604(a)	R.1986 d.261	18 N.J.R. 1386(a)
10A:71-2.2, 3.3, 3.4, 3.22, 3.27, 3.28, 3.31, 4.2, 4.3	Parole Board process and procedure	18 N.J.R. 929(a)		

(TRANSMITTAL 11, dated May 19, 1986)

(CITE 18 N.J.R. 1500)

NEW JERSEY REGISTER, MONDAY, JULY 21, 1986

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
<b>INSURANCE—TITLE 11</b>				
11:1-20, 22	Cancellation and nonrenewal of property and casualty/liability policies	17 N.J.R. 2956(a)		
11:1-20, 22	Commercial policies: cancellation and nonrenewal	18 N.J.R. 457(b)	R.1986 d.272	18 N.J.R. 1388(a)
11:2-19.2	Continuing education	18 N.J.R. 44(a)		
11:2-20	License renewal: continuing education requirement	17 N.J.R. 2962(a)		
11:3-8	Nonrenewal of automobile policies	18 N.J.R. 1079(a)		
11:3-16	Pre-proposal: Private passenger automobile rate filings	18 N.J.R. 1083(a)		
11:3-17	Rating organizations: private passenger automobile filings	18 N.J.R. 1171(b)		
11:3-22	Automobile coverage option survey	18 N.J.R. 1344(b)		
11:4-2	Replacement of life insurance and annuities	17 N.J.R. 2344(a)		
11:4-15	Health insurance: benefits concerning treatment of alcoholism	18 N.J.R. 607(a)	R.1986 d.228	18 N.J.R. 1302(a)
11:4-16.6	Daily hospital room and board coverage	18 N.J.R. 608(a)		
11:4-20	Coverage of the handicapped	18 N.J.R. 44(b)		
11:4-21	Limited death benefit policies	18 N.J.R. 1085(a)		
11:5-1.3	Licensing of real estate brokers and salespeople	17 N.J.R. 2350(a)		
11:5-1.3	Licensing of real estate broker and broker-salesperson	18 N.J.R. 1088(a)		
11:5-1.15	Real estate advertising	17 N.J.R. 2351(a)		
11:17-1	Surplus lines insurance guaranty fund surcharge	18 N.J.R. 1173(a)		

(TRANSMITTAL 38, dated May 19, 1986)

<b>LABOR—TITLE 12</b>				
12:17-2.1	Reporting requirement for unemployment benefits claimant	18 N.J.R. 811(a)	R.1986 d.286	18 N.J.R. 1478(a)
12:20-4.8	Temporary appointment to Unemployment Compensation Board of Review	18 N.J.R. 544(b)		
12:51	Vocational rehabilitation services	18 N.J.R. 1088(b)	R.1986 d.298	18 N.J.R. 1479(a)
12:70	Field sanitation for seasonal farm workers	17 N.J.R. 1860(a)		
12:100-2.1, 4.2, 7, 12	Public employee exposure to asbestos	18 N.J.R. 811(b)	R.1986 d.285	18 N.J.R. 1479(b)
12:120-1.1, 4.2-4.8, 5.2, 5.4-5.7, 6.1, 6.3, 6.11	Asbestos licenses and permits	18 N.J.R. 156(a)	R.1986 d.149	18 N.J.R. 986(a)
12:195-1.3, 1.4, 1.7, 1.9, 1.12, 1.13, 1.14, 2.1, 3.1, 3.3, 3.9, 3.10, 3.14, 4.2, 4.6, 5.11, 6	Carnival-amusement rides	18 N.J.R. 609(a)	R.1986 d.222	18 N.J.R. 1303(a)
12:235-7.2	Correction	17 N.J.R. 2081(a)	R.1986 d.144	18 N.J.R. 1201(a)

(TRANSMITTAL 29, dated May 19, 1986)

<b>COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A</b>				
12A	Departmental rules; small business set-aside contracts	16 N.J.R. 1955(a)	R.1985 d.421	17 N.J.R. 2683(a)
12A:100-1	Commission on Science and Technology: Innovation Partnership Grant Program	18 N.J.R. 1175(a)		

<b>LAW AND PUBLIC SAFETY—TITLE 13</b>				
13:1-4.6	Police training: certification of firearms instructors	18 N.J.R. 397(a)	R.1986 d.235	18 N.J.R. 1305(a)
13:3-3.4, 3.8, 3.17, 7.9	Amusement games control	18 N.J.R. 613(a)	R.1986 d.218	18 N.J.R. 1306(a)
13:27	Rules of Board of Architects	17 N.J.R. 2851(b)		
13:30-8.4, 8.8	Announcement of specialty in dentistry; patient records	18 N.J.R. 816(a)	R.1986 d.269	18 N.J.R. 1394(a)
13:31-1.11	Fees for electrical contractor's license	18 N.J.R. 462(a)	R.1986 d.193	18 N.J.R. 1201(b)
13:35-4.2	Termination of pregnancy	18 N.J.R. 614(a)	R.1986 d.217	18 N.J.R. 1306(b)
13:37-6.2	Delegation of nursing tasks by RPNs	17 N.J.R. 2354(a)		
13:37-6.2	Delegation of selected nursing tasks	18 N.J.R. 1176(a)		
13:37-6.3	Nursing procedures: administration of renal dialysis treatment	18 N.J.R. 398(b)		
13:39A-1	Board of Physical Therapy: organization and administration	17 N.J.R. 2355(a)	R.1986 d.265	18 N.J.R. 1394(b)
13:39A-1.4	Licensure of physical therapists: fees and charges	18 N.J.R. 1177(a)		
13:39A-2	Authorized practice by physical therapists	17 N.J.R. 2356(a)	R.1986 d.266	18 N.J.R. 1395(a)
13:39A-2.2	Authorized practice by physical therapist	18 N.J.R. 1177(b)		
13:39A-3	Unlawful practices by physical therapists	17 N.J.R. 2358(a)	R.1986 d.267	18 N.J.R. 1397(a)
13:39A-3.2	Pre-proposal: fee splitting and kickbacks by physical therapists	17 N.J.R. 2360(a)		
13:39A-3.3	Physical therapy: unlawful practices	18 N.J.R. 1178(a)		
13:39A-4	Unlicensed practice of physical therapy	17 N.J.R. 2361(a)	R.1986 d.268	18 N.J.R. 1399(a)
13:39A-5	Physical therapy applicants: required credentials	17 N.J.R. 2362(a)	R.1986 d.270	18 N.J.R. 1399(b)
13:39A-5.2—5.4, 5.6—5.9	Physical therapy educational credentials and examination standards	18 N.J.R. 1179(a)		
13:39A-6	Temporary licensure of physical therapists	18 N.J.R. 1179(b)		
13:42-6	Reimbursement for psychological services: disclosure of patient information	18 N.J.R. 817(a)		

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