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## REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS\*, PAGE 1851.

VOLUME 18 NUMBER 17

September 8, 1986 Indexed 18 N.J.R. 1727-1862

(Includes rules filed through August 18, 1986)

**\*MOST RECENT UPDATE TO ADMINISTRATIVE CODE: JUNE 16, 1986.**

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE WILL BE DATED JULY 21, 1986.

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# RULE PROPOSALS

Interested persons may submit, in writing, information or arguments concerning any of the following proposals until **October 8, 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.

## ADMINISTRATIVE LAW

### (a)

#### OFFICE OF ADMINISTRATIVE LAW

#### Uniform Administrative Procedure Rules

#### Special Hearing Rules

#### Proposed Repeal: N.J.A.C. 1:1 and 1:2 through 1:21

#### Proposed New Rules: N.J.A.C. 1:1 and 1:6 through 1:21

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

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

Proposal Number: PRN 1986-360.

Interested persons may submit comments in writing by October 8, 1986 to:

Steven L. Lefelt, Deputy Director  
Office of Administrative Law  
CN 049  
Quakerbridge Plaza, Bldg. 9  
Quakerbridge Road  
Trenton, NJ 08625

The agency proposal follows:

#### Summary

On April 21, 1986 at 18 N.J.R. 728(a), the Office of Administrative Law pre-proposed a complete revision of the Uniform Administrative Procedure Rules. At that time, the OAL invited public comment in writing and also scheduled two public hearings, on May 17 in Atlantic City and on May 30 in Trenton. The agency hoped to receive input from as many sources as possible before finalizing the revision for proposal.

During the comment period, which was longer than the 30 days required by law, the OAL received written comments from the following:

Division of Gaming Enforcement  
Department of Insurance  
PSE&G  
Department of Human Services  
Dr. Marilyn R. Frankenthaler  
Joseph Rosa, Jr.

At the public hearing on May 17, two attorneys testified:

Samuel J. Halpern  
Steven Kern

At the public hearing on May 30, representatives of the following agencies testified and also submitted written comments:

Department of Civil Service  
Department of Labor  
Department of Education

The OAL replied to each person who submitted a written comment.

Before the revision was pre-proposed, it was reviewed within the OAL by judges and staff. In addition, the Attorney General's Office was given an opportunity to comment. Therefore, the OAL has taken into consideration a wide spectrum of comments and concerns while preparing this proposal.

The revision of the rules includes some significant changes in administrative practice. For that reason, in order to allow time for implementation, the OAL plans to proceed as follows: repeal the existing rules and adopt new rules, which would become operative several months after adoption.

The proposal which follows consists of the pre-proposed version of the rules with changes based on comments received since the pre-proposal was published. The statement below explains only the differences between the initial pre-proposal and this new proposal. For an explanation of how the following proposal differs from the existing rules, it is necessary to refer to the statement preceding the initial pre-proposal. See, 18 N.J.R. 728 to 731. (Cross-reference tables correlating the proposed new rules and the existing rules are provided as part of this proposal.) All provisions summarized in the pre-proposal and not discussed below as being changed in response to comments, remain in the proposal.

In addition to the Uniform Administrative Procedure Rules contained in N.J.A.C. 1:1, this proposal includes Special Hearing Rules contained in N.J.A.C. 1:6 through 1:21. Generally, the special rules have been revised only so that they conform to changes made in N.J.A.C. 1:1.

**PLEASE NOTE:** Pre-proposed Subchapter 19, Representation, is now Subchapter 5 in this proposal. The subchapter was relocated because one goal of the revision was to present the rules in an order that more closely followed the chronological sequence of administrative hearings. The OAL agreed with a commenter that the representation provisions belonged nearer the beginning of the rules. Because of this change, Subchapter 5 through Subchapter 18 of the pre-proposal have been renumbered in this proposal. The summary below refers to the new rule designations.

#### Subchapter 1

Several agencies objected to section 1:1-1, saying OAL does not have the authority to regulate pre-transmission activities or the conduct of hearings not heard by the OAL. However, N.J.S.A. 52:14F-5(e) requires the OAL to develop rules to "regulate the conduct of contested cases and the rendering of administrative adjudications." Some pre-trans-

## 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 to four volumes depending on the Department coverage desired.*

mission activities seem so closely tied to the conduct of the case that OAL believes those activities must also be regulated. As to hearings conducted by the agency head, the OAL was advised by the Attorney General in a March 19, 1986 letter that OAL has the authority to make rules governing these hearings as well. OAL believes its statute requires it to establish uniform rules for all contested cases and, therefore, is unable to change 1:1-1.

#### Subchapter 2

At the suggestion of commenters, the following changes are proposed:

1. "Filing" will be defined as "receipt" rather than "mailing or receipt."
2. The definition of "final decision" has been modified because it was noted that appellants of Department of Education final decisions must appeal administratively to the State Board of Education before appealing to the courts.
3. A definition of "pleadings" has been added.
4. A definition of "principal of a close corporation" has been added.
5. In the definition of "respondent," the reference to "petitioner" has been removed. A respondent may be responding to any request for relief or action.
6. There was some confusion among commenters about the definition of "settlement conference." A new definition of "settlement" encompasses all modes of settlement effort, including settlement conferences.

#### Subchapter 3

1. Pre-proposed sections 1:1-3.2(a) and (b) have been combined and a new (b) added. The new (b) was in the pre-proposal as 1:1-5.3(c) but, on the basis of comments received, it was decided that the procedure described in 1:1-5.3(c) more appropriately belonged in 1:1-3.2.
2. OAL received a comment to the effect that 1:1-3.2(c), which provides that the Director of the OAL is the agency head for purposes of review of some ALJ decisions, was an improper rule because it interfered with the decisional authority of agencies. The New Jersey Supreme Court recently issued an opinion that approved of this rule. In *Re Onorevole*, \_\_\_\_\_ N.J. \_\_\_\_\_ (1986). Holding also that ALJs may decide motions for attorney disqualification (as provided by the rule designated 1:1-5.3 in this proposal), the court said the proposed rule providing for review of these decisions by the Director of the OAL was within the OAL's authority.
3. Regarding 1:1-3.3, there was a suggestion that an agency should be able to recall a case at any time. The OAL will propose no change since it believes that the proposal adequately balances all the competing interests. However, another commenter asked for an explanation of when exactly the cut-off occurs; the pre-proposal used "before the evidentiary hearing begins." To make this as clear as possible, OAL will propose that the cut-off for recall be "before the first witness is sworn."

#### Subchapter 4

1. Several agencies objected to pre-proposed 1:1-4.1(b) on the grounds that OAL did not have the authority to require this pre-transmission notice and because it would be burdensome. OAL appreciates that specific requirements for this type of notice may be burdensome. Therefore, pre-proposed 1:1-4.1(b) has been eliminated. However, 1:1-4.1(a) now requires the agency to give a party who petitions for a determination whether a case is contested notice of its determination.
2. The wording of 1:1-4.2 has been revised because, as pre-proposed, one commenter had the impression that the OAL was assuming the authority to permit agencies to attempt settlement. This is not the case. In addition, the last sentence has been changed to clarify the difference between pre-transmission settlement efforts—which may be conducted by an ALJ at the request of an agency—and settlement efforts after transmission to the OAL. The latter is usually conducted by the same ALJ who is assigned to hear the case.

#### Subchapter 5

(Pre-proposed as Subchapter 19)

1. As explained above, this subchapter was relocated to reflect more accurately the sequence of administrative proceedings.
2. It was made clear in 1:1-5.1 that corporations must be represented by an attorney, except as provided. This conforms to the requirements of the New Jersey Court Rules.
3. Inadvertently, 1:1-5.2 did not include attorneys licensed in New Jersey but without offices in the State. The proposed rule has been revised to conform with Court Rule R. 1:21-1.

4. A definition of "principal of a close corporation" was added in Subchapter 2 to clarify which non-lawyers may represent a corporation pursuant to 1:1-5.4.

5. Rule 1:1-5.6, appearance without representation, was expanded so that corporations may use this process as well. The rule requires that corporations which wish to proceed on papers and/or by witnesses without any representation must obtain the judge's approval in advance of the hearing. The request to the judge must be made by the corporation's attorney or an authorized non-lawyer representative.

#### Subchapter 6

(Pre-proposed as Subchapter 5)

1. One agency said the OAL should not define requirements for first pleadings since pleadings are governed by the agencies. The purpose of the first pleading rule was to set forth the statutory and constitutional pleading requirements for contested cases. Upon further reflection, it was concluded that such generally understood requirements need not be repeated in a rule. Thus, the OAL has decided to delete the first pleading requirements from Subchapter 6. Now, 1:1-6.1 says only that pleading requirements are governed by the agency with subject matter jurisdiction over the case and that pleadings shall be served in accordance with 1:1-7.1. However, some information previously required in pleadings will now be required on the transmittal form. (See comments regarding 1:1-8.2.)
2. As noted earlier, confusion regarding the rule that was pre-proposed as 1:1-5.3(c) prompted OAL to move this provision to 1:1-3.2(b) in the proposal. The section actually concerns OAL jurisdiction more than amendment of pleadings, since the operative decision it requires is whether or not to return the case to the agency for reconsideration.

#### Subchapter 7

(Pre-proposed as Subchapter 6)

No substantive changes. New subchapter numbers were added. In addition, the subchapter was reorganized so that it would be more clear. Proof of service and filing, previously combined in one rule, are now separate rules, 1:1-7.2 and 7.3.

#### Subchapter 8

(Pre-proposed as Subchapter 7)

1. Two agencies objected that 1:1-8.1 places an improper restraint on their discretion to attempt settlement. The rule provides that parties may decide to continue settlement talks beyond 30 days; however, it also provides a way for parties to encourage transmission when an agency is not moving a case as expeditiously as would be preferred. OAL believes this is appropriate and has decided not to change the rule.
2. Regarding 1:1-8.2(a), it was commented that some provisions required too much information. OAL agrees that the wording of pre-proposed (a)6. should be changed to make clear that only an indication of settlement efforts is needed; (a)13. has been incorporated into (a)9. The requirements of 1:1-8.2(a)5. have been expanded to include information previously included in the first pleading rule. (See comments regarding Subchapter 6.) Agencies which provide the required information on a pleading will be able to refer to the pleading on the transmittal form.
- New 1:1-8.2(b) has been added, requiring pleadings to be attached to the transmittal form.
- One agency remarked that 1:1-8.2(c), as pre-proposed, was burdensome because it required all exchanged documents to be attached to the transmittal form. The intent of this provision was actually to avoid having documents that were never exchanged being affixed to the transmittal form. The proposed new rule now says the agency "may affix . . . only documents which have been exchanged . . ."

#### Subchapter 9

(Pre-proposed as Subchapter 8)

1. Regarding 9.1(g), one agency felt telephone hearings should be used only in emergencies because that format would not permit the judge to assess credibility. OAL has elected not to change the rule because the need to assess demeanor is one factor a judge will consider when deciding whether to hold a hearing by telephone.
2. The order to show cause provision, which had been contained in 1:1-9.1, is now a separate rule, 1:1-9.2.
3. Several agencies questioned pre-proposed 1:1-8.2, which introduced a fast-tracking procedure. OAL has assured them that the procedure cannot be used if the transmitting agency does not agree to comply with the 15-day decision deadline. Language has been added to make clear that the judge cannot find good cause for using the procedure until after the agency agrees to the decision deadline. However, in the interest of

clarity, OAL has reorganized pre-proposed 1:1-8.2 so that there are now two rules. The first, 1:1-9.3, would involve only special scheduling requests and comprises the pre-proposed 1:1-8.2(a). A new 1:1-9.4, consisting of pre-proposed 1:1-8.2(b) et seq., would describe the new fast-tracking method of proceeding. Such hearings would now be called "accelerated proceedings." Also, the pre-proposal unintentionally omitted a process for exceptions in these cases. A new 1:1-9.4(c)7. has been added, allowing for exceptions but not replies or cross-exceptions.

4. It was suggested that "untimely application" in 1:1-9.6(h) be defined. OAL believes this will have to be determined by the judge considering sanctions. Any guidelines would be too vague to be helpful.

Subchapter 10  
(Pre-proposed as Subchapter 9)

1. An attorney commented that depositions should be permitted as of right, rather than only on a showing of good cause. OAL has elected not to change the existing process because depositions as of right would in all probability increase both costs and delays.

2. One commenter pointed out that the reference to "telephone conference call or other compliance seeking action" was unclear in 1:1-10.5 as pre-proposed. That section has been rewritten to make clear that sanctions can be sought for failure to comply with any aspect of the discovery rules.

Subchapter 11  
(Pre-proposed as Subchapter 10)

1. In the pre-proposal, 1:1-11.1(a) would have permitted attorneys for parties to issue subpoenas in the name of the Clerk. That provision has been eliminated in the proposal. Because of the holding of *Hayes v. Gulli*, 175 N.J. Super 295 (Ch. Div. 1980), the OAL believes this change requires a statutory amendment. At this time, such an amendment has not been made.

2. It was suggested that a good cause requirement be added to 1:1-11.1(a) for subpoenas for books, papers, etc. in order to avoid having such subpoenas used to avoid compliance with discovery rules. OAL believes this is a trial management problem that will have to be handled by the judge on a case by case basis.

Subchapter 12  
(Pre-proposed as Subchapter 11)

At the suggestion of an OAL staff attorney, motions for summary decision have been added to the types of motions permitted prior to a conference hearing, pursuant to 1:1-12.1(d).

Subchapter 13  
(Pre-proposed as Subchapter 12)

Three agencies objected to pre-proposed 1:1-12.1(e), which required that someone with authority to settle the case be available during prehearing conferences. One agency said this was unworkable, since only the head of the agency was authorized to approve settlements. Another said its policy was not to settle certain types of cases so there would be no point in requiring availability of someone with authority to settle. These are valid concerns and OAL has deleted the provision.

Subchapter 14  
(Pre-proposed as Subchapter 13)

1. At the suggestion of an OAL staff attorney, a rule dealing with use of cameras and recording devices during hearings has been added as 1:1-14.1(d).

2. One commenter objected to 1:1-14.3(c), which permits a friend or relative to act as interpreter. The commenter said only qualified interpreters should be used, as proposed by a recent Supreme Court Task Force report on court interpreters. The OAL has decided not to change its proposed rule. Requiring certified interpreters in all cases would cause the parties burdensome expense. Also, at this time, the OAL does not have funding to pay for interpreters. The proposed rule requires the judge to assess the interpreter's ability; in appropriate cases, a certified interpreter will have to be obtained.

3. There was some opposition to 1:1-14.4, which does away with the abandonment process currently used by the OAL. Under the revised rule, OAL will not contact non-appearing parties, but rather the burden is on the party to contact the OAL. Several commenters said OAL should continue to contact non-appearing parties. OAL has monitored use of the abandonment process and found that, in the vast majority of cases, no one responded to the OAL abandonment notice. The process created delay and had little benefit. Therefore, the pre-proposed rule is proposed

without change. The OAL will prepare a special letter transmitting the initial decision to a non-appearing party. The letter will specify how the party can explain his or her non-appearance to the agency head.

4. Regarding 1:1-14.7, one agency suggested limiting post-hearing submissions because they delay the conclusion of cases. OAL will propose the rule without change, but will continue its policy of discouraging unnecessary post-hearing submissions.

In response to a comment, 1:1-14.7(f)4 has been amended to permit reference to any indexed and published compilation, not just N.J.A.R.

One ALJ remarked that 1:1-14.7(h) as pre-proposed was unclear as to who places a conference call and, therefore, who bears the cost of telephone hearings. The provision has been rewritten to make clear that OAL will place telephone hearing conference calls rather than the parties.

5. In response to a comment, 1:1-14.10(b) has been clarified so that if there is a written ruling, a copy must be provided when requesting interlocutory review. If there is only an oral ruling, a summary of the ruling is sufficient.

In addition, in 1:1-14.10(c), the term "calendar days" has been replaced by "days." The calendar days concept is not used at any other time in the U.A.P.R. It was decided to make this rule consistent with the general computation of time rule, 1:1-1.4, even though the new construction may in some cases add a few days to the time for responding to a request for interlocutory review.

6. In 1:1-14.11(a) and (c), language has been changed to, "Unless the requesting party is the State or a political subdivision thereof . . ." rather than "a State agency." This conforms to language in Court Rule R. 2:5-3.

Subchapter 15  
(Pre-proposed as Subchapter 14)

Regarding 1:1-15.8(e), which allows for testimony by telephone, one agency suggested that the rule require the parties to agree to telephone testimony 10 days in advance. OAL agrees in principle, but thinks 10 days is too long. The rule now requires agreement "before the hearing begins."

Subchapters 16 and 17  
(Pre-proposed as Subchapters 15 and 16)

No changes from the pre-proposal except new subchapter numbers.

Subchapter 18  
(Pre-proposed as Subchapter 17)

1. It was suggested that 1:1-18.1(e) allow 45 days for decisions in conference hearings. It is the OAL's policy to conclude conference hearings more quickly than plenary hearings. Therefore, the rule has not been changed.

2. The Department of Human Services opposed 1:1-18.2, which allows for oral initial decisions, on the basis that it would not be clear to parties that the decision is not final until reviewed by the transmitting agency head. The rule will not be changed, but a special hearing rule is being proposed for Human Services cases that will require written initial decisions at all times.

3. Two agencies said that the term "initial decision" should actually be "recommended decision." The OAL has always used "initial decision" and will continue to do so.

4. Prior to the pre-proposal, OAL received a letter from an attorney who said that some agencies were not promptly handling requests for stays of implementation, as permitted by New Jersey Court Rule R. 2:9-7. OAL has decided to propose a procedure as part of 1:1-18.6 which will require an agency to respond to a request for a stay within 10 days.

5. Several agencies objected to the provision in 1:1-18.7(b) as pre-proposed that would allow the judge to make findings and recommendations on the propriety of a remand. OAL has decided to delete that provision. In addition, at the suggestion of an agency, OAL has eliminated some language from 1:1-18.7(a), thus reducing the amount of information agencies must provide in an order of remand.

6. There were two comments about 1:1-18.8. One agency said OAL does not have the authority to dictate how extensions are to be requested. On the contrary, OAL believes this is part of its mandate to make rules for the conduct of contested cases and the rendering of adjudications. Another agency thought there should be a provision for parties to object to extensions of time for initial decisions. However, by statute, extensions may be agreed to by the agency head and the Director of the OAL, without any input from parties. N.J.S.A. 52:14B-10(c).

Subchapter 19  
(Pre-proposed as Subchapter 18)

1. One commenter objected to the requirement in 1:1-19.1 that settlements be approved and made public. This is a policy decision by OAL and the rule will not be changed.

2. After reconsidering 1:1-19.1(a)2, OAL has decided that attorneys but not non-lawyer representatives should be able to sign settlement agreements on behalf of parties. The language has been changed from "representatives" to "attorneys" in the proposal.

Subchapter 20

No changes from the pre-proposal.

Subchapter 21

One agency suggested that the uncontested case rules allow for exceptions; 1:1-21.6 has been revised to allow for exceptions, but no replies or cross-exceptions.

Special Hearing Rules

Except for Chapter 6A, Special Education Program, the Special Hearing Rules are organized so that they correspond to the same subchapter sequence as the Uniform Rules, N.J.A.C. 1:1. Therefore, because of changes in the Uniform Rules, several sections of the Special Hearing Rules have been renumbered and/or relocated. In addition, the following changes were made in this proposal.

1. Chapter 6, Education Budget Hearing Rules, has been added. These rules were adopted on July 17, 1986.

2. Throughout Chapter 6A, the term "business days" was replaced by "days." Under the general computation of time rule, 1:1-1.4, the same result is reached. Therefore, the use of "business days" is unnecessary.

3. In Chapter 10, Public Welfare Hearings, 1:10-18.3 was added because the Department of Human Services opposes the use of oral initial decisions in its cases. Also, the terms "workdays" and "business days" were replaced by "days", for the reasons explained above.

4. In Chapter 10A, a rule that permitted oral initial decisions in addition to written decisions was removed because that is now the general rule, as provided by 1:1-18.2.

5. In Chapter 20, a rule currently designated 1:20-5.3(d) was eliminated because the U.A.P.R. no longer requires a first pleading.

6. In Chapter 21, the term "workday" was replaced by "day", for the reasons explained above.

Miscellaneous

In addition to the changes detailed above, some editorial and other non-substantive changes have been made.

Social Impact

The revision of the Uniform Administrative Procedure Rules will have several beneficial results. Because the rules have been reorganized and clarified, they will be easier to understand. This should improve the quality of contested case hearings. Another benefit is that the rules provide for many different modes of settlement effort, thereby increasing the likelihood of settlement and decreasing the time and expense associated with hearings. Under the revision, agencies may attempt settlement or obtain the assistance of an ALJ prior to transmission in settlement efforts; after transmission, the OAL may schedule settlement conferences or the parties may agree to attempt mediation. Another benefit is that the rules will move cases more expeditiously. A new fast-tracking procedure has been added for cases where parties can agree to forego some elements of the usual hearing format. In addition, some new provisions will reduce delay. These include the elimination of abandonments, the establishment of further adjournment standards and a mode and time frame for raising discovery problems.

Economic Impact

The original uniform rules achieved significant economic savings. It is expected that the economic impact of the proposed revision will also be beneficial. By streamlining some procedures, encouraging settlement and reducing delays, the rules should result in even more savings for the State and for the parties.

Cross-Reference Table—(Old to New)  
Title 1, Chapter 1

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1:1-3.3(b)	1:1-14.11(a)
1:1-3.3(c)	1:1-14.11(b)
1:1-3.3(d)	1:1-14.11(c)
1:1-3.3(e)	1:1-14.11(d)
1:1-3.3(f)	1:1-14.11(e)
1:1-3.4(a)	1:1-15.7(a)
1:1-3.4(b)	1:1-15.7(b)
1:1-3.4(c)	1:1-15.7(c)
1:1-3.5(a)	1:1-14.4(a)
1:1-3.5(b)	1:1-14.4(c)
1:1-3.5(c)	Deleted
1:1-3.6	Deleted
1:1-3.7(a)	1:1-5.1
1:1-3.7(b)	1:1-5.2
1:1-3.8(a)	1:1-14.5(a)
1:1-3.8(b)	1:1-5.3;
	1:1-1.3(a)
1:1-3.8(c)	1:1-14.5(b)-(d)
1:1-3.9	1:1-14.6(a)-(p)
1:1-3.10(a)	1:1-14.3(a)
1:1-3.10(b)	1:1-14.3(b)
1:1-3.11	1:1-6.3
1:1-3.12(a)	1:1-5.4(a)
1:1-3.12(b)	1:1-5.4(b)
1:1-3.12(c)	1:1-5.4(b)
1:1-3.12(d)	Deleted
1:1-3.12(e)	1:1-5.5(a)
1:1-3.12(f)	1:1-5.5(b)
1:1-3.12(g)	1:1-5.5(c)
1:1-3.12(h)	1:1-5.5(e)
1:1-3.13	1:1-5.6
1:1-4.1	1:1-1.4
1:1-4.2	1:1-14.6(f)
1:1-5.1(a)	1:1-4.1(a)
1:1-5.1(b)	1:1-8.1(a)
1:1-5.1(c)	Deleted
1:1-5.2(a)	1:1-8.2(a)
1:1-5.2(b)	1:1-8.2(c)
1:1-5.2(c)	1:1-8.3(a)
1:1-5.2(d)	1:1-9.5(a)
1:1-5.2(e)	1:1-8.2(d)
1:1-5.3	Deleted
1:1-5.4(a)	1:1-4.2;
	1:1-8.1(b)

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Interested Persons see Inside Front Cover

PROPOSALS

1:1-5.4(b)	.....	1:1-8.1(b)	1:1-9.7(f)	.....	1:1-14.10(g)
1:1-5.4(c)	.....	1:1-8.1(b)	1:1-9.7(g)	.....	1:1-14.10(h)
1:1-5.4(d)	.....	1:1-4.2	1:1-9.7(h)	.....	1:1-14.10(i)
1:1-5.5(a)	.....	1:1-7.4(a)	1:1-9.7(i)	.....	1:1-14.10(j)
1:1-5.5(b)	.....	1:1-7.4(b)	1:1-10.1(a)	.....	1:1-9.1(d);
1:1-5.5(c)	.....	1:1-7.3(c)			1:1-13.1(b)
1:1-5.5(d)	.....	Deleted	1:1-10.1(a)1.	.....	1:1-13.1(d)
1:1-6.1(a)	.....	1:1-6.1(a)	1:1-10.1(a)2.	.....	1:1-13.1(b)
1:1-6.1(b)	.....	1:1-6.1(b)	1:1-10.1(b)	.....	1:1-13.1(c)
1:1-6.2	.....	Deleted	1:1-10.1(c)	.....	1:1-13.2(a)
1:1-6.3	.....	1:1-6.2(a)-(b)	1:1-10.1(d)	.....	1:1-13.2(b)
1:1-7.1(a)	.....	1:1-7.1(a)	1:1-11.1(a)	.....	1:1-10.1(a)
1:1-7.1(b)	.....	1:1-7.1(b)	1:1-11.1(b)	.....	1:1-10.1(d)
1:1-7.1(c)	.....	1:1-7.2(c)	1:1-11.1(c)	.....	1:1-10.1(e)
1:1-7.1(d)	.....	1:1-7.1(c)	1:1-11.1(d)	.....	1:1-10.1(b)
1:1-7.1(e)	.....	1:1-7.1(d)	1:1-11.1(e)	.....	1:1-10.2(a);
1:1-7.2(a)	.....	1:1-7.2(a)			1:1-10.4(b)
1:1-7.2(b)	.....	1:1-7.3(a)	1:1-11.2(a)	.....	1:1-10.2(a)
1:1-7.2(c)	.....	1:1-7.2(b)	1:1-11.2(a)4.	.....	1:1-10.2(c)
1:1-7.2(d)	.....	1:1-7.3(b)	1:1-11.2(b)	.....	1:1-10.1(c);
1:1-8.1(a)	.....	1:1-9.1(a)			1:1-10.4(d)
1:1-8.1(b)	.....	1:1-9.6(a)	1:1-11.3(a)	.....	1:1-10.1(c)
1:1-8.2(a)	.....	1:1-9.5(b)	1:1-11.3(b)	.....	1:1-10.2(c)
1:1-8.2(b)	.....	1:1-9.5(b)	1:1-11.4(a)	.....	1:1-10.3(a)
1:1-8.2(c)	.....	1:1-9.5(f)	1:1-11.4(b)	.....	1:1-10.2(d)
1:1-8.2(d)	.....	1:1-14.4(a)	1:1-11.4(c)	.....	1:1-10.3(b)
1:1-8.3(a)	.....	1:1-11.1(a)	1:1-11.5(a)	.....	1:1-10.4(a)
1:1-8.3(b)	.....	1:1-11.2(a)	1:1-11.5(b)	.....	1:1-10.4(b)
1:1-8.3(c)	.....	1:1-11.3	1:1-11.5(c)	.....	1:1-10.4(e)
1:1-8.4	.....	1:1-11.1(b);	1:1-11.5(d)	.....	1:1-1.3(b);
		1:1-11.3			1:1-14.6(f)
1:1-8.5(a)	.....	1:1-11.2(b)	1:1-11.5(e)	.....	1:1-10.4(b)
1:1-8.5(b)	.....	1:1-11.1(c)	1:1-11.5(f)	.....	1:1-10.4(c)
1:1-8.5(c)	.....	1:1-11.5	1:1-11.6(a)	.....	1:1-10.5
1:1-8.5(d)	.....	1:1-11.4	1:1-11.6(b)	.....	Deleted
1:1-9.1(a)	.....	1:1-12.1(a)	1:1-11.7	.....	Deleted
1:1-9.1(b)	.....	1:1-12.1(a)	1:1-12.1(a)	.....	1:1-16.1(a)
1:1-9.1(c)1.	.....	1:1-7.3(c);	1:1-12.1(b)	.....	1:1-16.1(b)
		1:1-12.1(b)	1:1-12.2(a)	.....	1:1-16.2(a)
1:1-9.1(c)2.	.....	1:1-14.1(a)	1:1-12.2(b)	.....	1:1-16.2(b)
1:1-9.1(c)3.	.....	1:1-12.1(b)	1:1-12.2(c)	.....	1:1-16.2(c)
1:1-9.1(d)	.....	Deleted	1:1-12.3(a)	.....	1:1-16.3(a)
1:1-9.1(e)	.....	1:1-12.1(c)	1:1-12.3(b)	.....	1:1-16.3(b)
1:1-9.2(a)	.....	1:1-12.2(a)	1:1-12.3(c)	.....	1:1-16.3(c)
1:1-9.2(b)	.....	1:1-12.2(b)	1:1-12.4	.....	1:1-16.4
1:1-9.2(c)	.....	1:1-12.2(c)	1:1-12.5	.....	1:1-16.5
1:1-9.2(d)	.....	1:1-12.2(d)	1:1-12.6(a)	.....	1:1-16.6(a)
1:1-9.2(e)	.....	1:1-12.2(e);	1:1-12.6(b)	.....	1:1-16.6(b)
		1:1-12.3(c)	1:1-12.6(c)	.....	1:1-16.6(c)
1:1-9.2(f)	.....	1:1-12.2(f)	1:1-13.1	.....	1:1-12.5(a)
1:1-9.2(g)	.....	1:1-1.3(b);	1:1-13.2(a)	.....	1:1-12.5(b)
		1:1-14.6(f)	1:1-13.2(b)	.....	1:1-12.5(c)
1:1-9.3(a)	.....	1:1-12.3(a)	1:1-13.2(c)	.....	Deleted
1:1-9.3(b)	.....	1:1-12.4(c)	1:1-13.3(a)	.....	1:1-12.5(d)
1:1-9.3(c)	.....	1:1-12.3(b)	1:1-13.3(b)	.....	1:1-12.5(e)
1:1-9.4(a)	.....	1:1-12.4(a)	1:1-13.3(c)	.....	1:1-12.5(f)
1:1-9.4(b)	.....	1:1-12.4(b)	1:1-13.4(a)	.....	1:1-12.5(b)
1:1-9.5(a)	.....	1:1-14.9(a)	1:1-13.4(b)	.....	Deleted
1:1-9.5(b)	.....	1:1-14.9(c)	1:1-14.1(a)	.....	1:1-17.1(a)
1:1-9.5(c)	.....	1:1-14.9(c)	1:1-14.1(b)	.....	1:1-17.1(b)
1:1-9.6(a)	.....	1:1-12.6(a)	1:1-14.1(c)	.....	1:1-17.1(c)
1:1-9.6(b)	.....	1:1-12.6(b)	1:1-14.1(d)	.....	1:1-17.1(d)
1:1-9.6(c)	.....	1:1-12.6(c)	1:1-14.2(a)	.....	1:1-17.2(a)
1:1-9.6(d)	.....	1:1-12.6(d)	1:1-14.2(b)	.....	1:1-17.2(b)
1:1-9.6(e)	.....	1:1-12.6(e)	1:1-14.2(c)	.....	1:1-17.2(c)
1:1-9.6(f)	.....	1:1-12.6(f)	1:1-14.2(d)	.....	1:1-17.2(d)
1:1-9.6(g)	.....	1:1-12.6(g)	1:1-14.3(a)	.....	1:1-17.3(a)
1:1-9.6(h)	.....	1:1-12.6(h)	1:1-14.4(a)	.....	1:1-17.4(a)
1:1-9.6(i)	.....	1:1-12.6(i)	1:1-14.4(b)	.....	1:1-17.4(b)
1:1-9.6(j)	.....	1:1-12.6(j)	1:1-14.5(a)	.....	1:1-17.5(a)
1:1-9.6(k)	.....	1:1-12.6(k)	1:1-14.6(a)	.....	1:1-17.6(a)
1:1-9.7(a)	.....	1:1-14.10(a)	1:1-14.6(b)	.....	1:1-17.6(b)
1:1-9.7(b)	.....	1:1-14.10(b)	1:1-14.6(c)	.....	1:1-17.6(c)
1:1-9.7(c)	.....	1:1-14.10(c)	1:1-14.6(d)	.....	1:1-17.6(d)
1:1-9.7(d)	.....	1:1-14.10(e)	1:1-14.7(a)	.....	1:1-17.7(a)
1:1-9.7(e)	.....	1:1-14.10(f)	1:1-14.7(b)	.....	1:1-17.7(b)

		Cross-Reference Table—(New to Old) Title 1, Chapter 1	
New Sections		Old Sections	
1:1-14.7(c)	1:1-17.7(c)	1:1-1.1(a)	1:1-1.1(a)
1:1-14.8(a)	1:1-17.8(a)	1:1-1.1(b)	1:1-1.1(a)
1:1-14.8(b)	1:1-17.8(b)	1:1-1.1(c)	1:1-1.1(a);
1:1-14.8(c)	1:1-17.8(c)	1:1-1.1(d)	1:1-6.1(a)
1:1-15.1	1:1-2.1	1:1-1.1(e)	1:1-1.1(b)
1:1-15.2(a)	1:1-15.1(c)	1:1-1.2	1:1-1.1(c)
1:1-15.2(b)	1:1-14.6(k);	1:1-1.3(a)	1:1-1.2
	1:1-14.7(c)-(d)	1:1-1.3(b)	1:1-1.3(a)
1:1-15.2(c)	1:1-15.1(d)		1:1-1.3(a);
1:1-15.2(d)	1:1-15.1(b)		1:1-9.2(g);
1:1-15.2(e)	1:1-15.8(a)		1:1-11.5(d)
1:1-15.2(f)	1:1-15.1(a)		1:1-1.3(b)
1:1-15.2(g)	1:1-15.1(e)		1:1-4.1
1:1-15.2(h)	1:1-15.8(a)5.		1:1-1.4;
1:1-15.3(a)	1:1-15.2(a)		1:1-1.5-1.7;
1:1-15.3(b)	1:1-15.2(b)		1:1-15.1;
1:1-15.4(a)	1:1-2.1		1:1-15.4(a);
1:1-15.4(b)	1:1-15.3		1:1-16.1;
1:1-15.5(a)	1:1-15.8(b)		1:2-2.2;
1:1-15.5(b)	1:1-15.1(a)		1:2-3.2(a)
1:1-15.5(c)	1:1-15.8(c)		1:1-2.1
1:1-15.6	1:1-15.4		1:1-2.2(a)-(b)
1:1-15.7(a)	1:1-15.9(a)		New
1:1-15.7(b)	1:1-15.9(b)		New
1:1-15.7(c)	1:1-15.9(c)		New
1:1-15.7(d)	1:1-15.9(d)		New
1:1-15.7(e)	1:1-15.9(e)		1:1-5.1(a)
1:1-15.8(a)	1:1-15.5(a)		1:1-1.9
1:1-15.8(b)	1:1-15.5(b)		1:1-1.8;
1:1-15.9	1:1-15.6		1:1-2.2(c);
1:1-16.1	1:1-2.1;		1:1-5.4(a),(d)
	1:1-14.7(g)		1:1-3.7(a)
1:1-16.2(a)	1:1-14.7(f)		1:1-3.7(b)
1:1-16.2(b)	1:1-14.7(f)		New
1:1-16.2(c)	1:1-14.7(f)		1:1-3.12(a)
1:1-16.3(a)	1:1-18.1(a),(d)		1:1-3.12(b)-(c)
1:1-16.3(b)	1:1-18.1(b)		1:1-3.12(e)
1:1-16.3(c)	1:1-18.2(c);		1:1-3.12(f)
	1:1-18.3(c)		1:1-3.12(g)
1:1-16.3(d)	1:1-18.1(c)		New
1:1-16.3(e)	1:1-18.1(g);		1:1-3.12(h)
	1:1-18.2(b)		New
1:1-16.4(a)	1:1-18.4(a)		1:1-3.13
1:1-16.4(b)	1:1-18.4(b)		New
1:1-16.4(c)	1:1-18.4(d)		1:1-6.1(a)
1:1-16.4(d)	1:1-18.5(a)		New
1:1-16.4(e)	1:1-18.5(b)		1:1-6.3
1:1-16.5(a)	1:1-18.6(a)		1:1-6.3
1:1-16.5(b)	1:1-18.6(b)		1:1-3.11
1:1-16.5(c)	1:1-18.7(a)-(b)		1:1-7.1(a)
1:1-16.5(d)	1:1-18.6(c)		1:1-7.1(b)
1:1-16.6(a)	1:1-18.8(a)		1:1-7.1(c)
1:1-16.6(b)	1:1-18.8(b)		1:1-7.1(d)
1:1-16.6(c)	1:1-18.8(c)-(f)		1:1-7.1(e)
1:1-16.6(d)	Deleted		1:1-7.2(a)
1:1-17.1(a)	1:1-19.1(a)		1:1-7.2(c)
1:1-17.1(b)	1:1-19.1(b)		1:1-7.1(c)
1:1-17.1(c)	1:1-19.1(c)		1:1-7.2(b)
1:1-17.1(d)	Deleted		1:1-7.2(c)
1:1-17.1(e)	Deleted		1:1-7.1(c)
1:1-17.1(f)	Deleted		1:1-7.2(b)
1:1-17.1(g)	Deleted		1:1-7.2(d)
1:1-17.2(a)	1:1-19.2(a)-(c)		1:1-7.2(c)
1:1-17.2(b)	1:1-19.2(d)		1:1-7.3(a)
1:1-17.2(c)	1:1-19.2(e)		1:1-7.3(b)
1:2-2.9(a)	1:1-18.2(a)		1:1-7.3(c)
1:2-2.9(b)	1:1-18.2(b)		1:1-7.4(a)
1:2-2.9(c)	1:1-18.2(c)		1:1-7.4(b)
			1:1-8.1(a)
			1:1-8.1(b)
			1:1-8.1(c)
			1:1-8.2(a)

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**ADMINISTRATIVE LAW**

Interested Persons see Inside Front Cover

**PROPOSALS**

1:1-8.2(b)	.....	New	1:1-12.5(b)	.....	1:1-13.2(a);
1:1-8.2(c)	.....	1:1-5.2(b)			1:1-13.4(a)
1:1-8.2(d)	.....	1:1-5.2(e)	1:1-12.5(c)	.....	1:1-13.2(b)
1:1-8.2(e)	.....	1:1-5.2(b)	1:1-12.5(d)	.....	1:1-13.3(a)
1:1-8.3(a)	.....	1:1-5.2(c)	1:1-12.5(e)	.....	1:1-13.3(b)
1:1-8.3(b)	.....	1:1-7.2(d)	1:1-12.5(f)	.....	1:1-13.3(c)
1:1-9.1(a)	.....	1:1-8.1(a)	1:1-12.6(a)	.....	1:1-9.6(a)
1:1-9.1(b)	.....	1:1-8.1(a)	1:1-12.6(b)	.....	1:1-9.6(b)
1:1-9.1(c)	.....	New	1:1-12.6(c)	.....	1:1-9.6(c)
1:1-9.1(d)	.....	1:1-10.1(a)	1:1-12.6(d)	.....	1:1-9.6(d)
1:1-9.1(e)	.....	1:2-3.1;	1:1-12.6(e)	.....	1:1-9.6(e)
		1:7-1.1	1:1-12.6(f)	.....	1:1-9.6(f)
1:1-9.1(f)	.....	1:2-2.1	1:1-12.6(g)	.....	1:1-9.6(g)
1:1-9.1(g)	.....	New	1:1-12.6(h)	.....	1:1-9.6(h)
1:1-9.2	.....	New	1:1-12.6(i)	.....	1:1-9.6(i)
1:1-9.3	.....	1:1-3.2(c);	1:1-12.6(j)	.....	1:1-9.6(j)
		1:2-2.3	1:1-12.6(k)	.....	1:1-9.6(k)
1:1-9.4	.....	New	1:1-12.7	.....	1:1-9.5(a)
1:1-9.5(a)	.....	1:1-5.2(d)			1:1-10.1(a)
1:1-9.5(b)	.....	1:1-8.2(a)-(b)	1:1-13.1(a)	.....	1:1-10.1(a);
1:1-9.5(c)	.....	1:1-8.2(b)	1:1-13.1(b)	.....	10.1(a)2.
1:1-9.5(d)	.....	New			1:1-10.1(b)
1:1-9.5(e)	.....	New	1:1-13.1(c)	.....	1:1-10.1(b)
1:1-9.5(f)	.....	1:1-8.2(c)	1:1-13.1(d)	.....	1:1-10.1(a)1.
1:1-9.6(a)	.....	1:1-8.1(b)	1:1-13.2(a)	.....	1:1-9.5(c);
1:1-9.6(b)	.....	1:1-8.1(a)			1:1-10.1(c)
1:1-9.6(c)-(h)	.....	New	1:1-13.2(b)	.....	1:1-10.1(d)
1:1-9.7(a)	.....	1:1-3.2(e)	1:1-13.2(c)	.....	New
1:1-9.7(b)	.....	New	1:1-14.1(a)	.....	1:1-3.1(a);
1:1-10.1(a)	.....	1:1-11.1(a)			1:1-3.3(a);
1:1-10.1(b)	.....	1:1-11.1(d)	1:1-14.1(b)	.....	1:1-9.1(c)2.
1:1-10.1(c)	.....	1:1-11.2(b);	1:1-14.1(c)	.....	1:1-3.1(b)
		1:1-11.3(a)	1:1-14.1(d)	.....	New
1:1-10.1(d)	.....	1:1-11.1(b)			New
1:1-10.1(e)	.....	1:1-11.1(c)	1:1-14.2(a)	.....	1:1-3.2(a)
1:1-10.2(a)	.....	1:1-11.2(a)	1:1-14.2(b)	.....	1:1-3.2(d)
1:1-10.2(b)	.....	New	1:1-14.3(a)	.....	1:1-3.10(a)
1:1-10.2(c)	.....	1:1-11.2(a)4.;	1:1-14.3(b)	.....	1:1-3.10(b)
		1:1-11.3(a)-(b)	1:1-14.3(c)	.....	New
1:1-10.2(d)	.....	1:1-11.4(b)	1:1-14.4(a)	.....	1:1-3.5(a);
1:1-10.3(a)	.....	1:1-11.4(a)			1:1-8.2(d)
1:1-10.3(b)	.....	1:1-11.4(c)	1:1-14.4(b)	.....	New
1:1-10.4(a)	.....	1:1-11.5(a)	1:1-14.4(c)	.....	1:1-3.5(b)
1:1-10.4(b)	.....	1:1-11.5(e)	1:1-14.5(a)	.....	1:1-3.8(a)
1:1-10.4(c)-(d)	.....	1:1-11.5(f)	1:1-14.5(b)	.....	1:1-3.8(c)
1:1-10.4(e)	.....	1:1-11.5(c)	1:1-14.5(c)	.....	1:1-3.8(c)
1:1-10.5	.....	1:1-11.6(a)-(b)	1:1-14.5(d)	.....	1:1-3.8(c)
1:1-10.6(a)-(d)	.....	1:2-2.6(a)-(d)	1:1-14.6(a)	.....	1:1-3.2(b);
1:1-10.6(e)	.....	New			1:1-3.9
1:1-11.1(a)	.....	1:1-8.3(a)	1:1-14.6(b)	.....	1:1-3.9
1:1-11.1(b)	.....	1:1-8.4	1:1-14.6(c)	.....	1:1-3.9
1:1-11.1(c)	.....	1:1-8.5(b)	1:1-14.6(d)	.....	1:1-3.9;
1:1-11.2(a)	.....	1:1-8.3(b)			1:2-2.4
1:1-11.2(b)	.....	1:1-8.5(a)	1:1-14.6(e)	.....	1:1-3.9
1:1-11.3	.....	1:1-8.3(c);	1:1-14.6(f)	.....	1:1-3.2(c);
		1:1-8.4			1:1-3.9;
1:1-11.4	.....	1:1-8.5(d)			1:1-4.2;
1:1-11.5	.....	1:1-8.5(c)			1:1-9.2(g);
1:1-12.1(a)	.....	1:1-9.1(a)	1:1-14.6(g)	.....	1:1-11.5(d)
1:1-12.1(b)	.....	1:1-9.1(c)			1:1-3.9
1:1-12.1(c)	.....	1:1-9.1(e)	1:1-14.6(h)	.....	1:1-3.9
1:1-12.1(d)	.....	1:2-2.5(a)	1:1-14.6(i)	.....	1:1-3.9;
1:1-12.2(a)	.....	1:1-9.2(a)			1:1-15.2(a)
1:1-12.2(b)	.....	1:1-9.2(b)	1:1-14.6(j)	.....	1:1-3.5(a)-(c);
1:1-12.2(c)	.....	1:1-9.2(c)			1:1-3.9
1:1-12.2(d)	.....	1:1-9.2(d)	1:1-14.6(k)	.....	1:1-3.9;
1:1-12.2(e)	.....	1:1-9.2(e)			1:1-15.2(b)
1:1-12.2(f)	.....	1:1-9.2(f)	1:1-14.6(l)	.....	1:1-3.9
1:1-12.2(g)	.....	1:1-9.2(a)	1:1-14.6(m)	.....	1:1-3.9
1:1-12.3(a)	.....	1:1-9.3(a)	1:1-14.6(n)	.....	1:1-3.9;
1:1-12.3(b)	.....	1:1-9.3(c)			1:1-8.3(a);
1:1-12.3(c)	.....	1:1-9.2(e)	1:1-14.6(o)	.....	1:1-8.4
1:1-12.4(a)	.....	1:1-9.4(a)	1:1-14.6(p)	.....	1:1-3.9
1:1-12.4(b)	.....	1:1-9.4(b)	1:1-14.7(a)-(e)	.....	1:1-3.9
1:1-12.4(c)	.....	1:1-9.3(b)	1:1-14.7(f)	.....	New
1:1-12.5(a)	.....	1:1-13.1			1:1-16.2(a)-(c);
					1:2-2.8(a)

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1:1-14.7(g)	.....	1:1-16.1	1:1-17.1(d)	.....	1:1-14.1(d)
1:1-14.7(h)	.....	New	1:1-17.2(a)	.....	1:1-14.2(a)
1:1-14.8(a)-(e)	.....	1:2-3	1:1-17.2(b)	.....	1:1-14.2(b)
1:1-14.9(a)	.....	1:1-9.5(a)	1:1-17.2(c)	.....	1:1-14.2(c)
1:1-14.9(b)	.....	1:1-9.7(a)	1:1-17.2(d)	.....	1:1-14.2(d)
1:1-14.9(c)	.....	1:1-9.5(a)-(c);	1:1-17.3(a)	.....	1:1-14.3(a)
		1:1-10.1(d)	1:1-17.4(a)	.....	1:1-14.4(a)
1:1-14.10(a)	.....	1:1-9.7(a)	1:1-17.4(b)	.....	1:1-14.4(b)
1:1-14.10(b)	.....	1:1-9.7(b)	1:1-17.5(a)	.....	1:1-14.5(a)
1:1-14.10(c)	.....	1:1-9.7(c)	1:1-17.6(a)	.....	1:1-14.6(a)
1:1-14.10(d)	.....	New	1:1-17.6(b)	.....	1:1-14.6(b)
1:1-14.10(e)	.....	1:1-9.7(d)	1:1-17.6(c)	.....	1:1-14.6(c)
1:1-14.10(f)	.....	1:1-9.7(e)	1:1-17.6(d)	.....	1:1-14.6(d)
1:1-14.10(g)	.....	1:1-9.7(f)	1:1-17.7(a)	.....	1:1-14.7(a)
1:1-14.10(h)	.....	1:1-9.7(g)	1:1-17.7(b)	.....	1:1-14.7(b)
1:1-14.10(i)	.....	1:1-9.7(h)	1:1-17.7(c)	.....	1:1-14.7(c)
1:1-14.10(j)	.....	1:1-9.7(i)	1:1-17.8(a)	.....	1:1-14.8(a)
1:1-14.10(k)	.....	New	1:1-17.8(b)	.....	1:1-14.8(b)
1:1-14.10(l)	.....	New	1:1-17.8(c)	.....	1:1-14.8(c)
1:1-14.11(a)	.....	1:1-3.3(b)	1:1-18.1(a)	.....	1:1-16.3(a)
1:1-14.11(b)	.....	1:1-3.3(c)	1:1-18.1(b)	.....	1:1-16.3(b)
1:1-14.11(c)	.....	1:1-3.3(d)	1:1-18.1(c)	.....	1:1-16.3(d)
1:1-14.11(d)	.....	1:1-3.3(e)	1:1-18.1(d)	.....	1:1-16.3(a)
1:1-14.11(e)	.....	1:1-3.3(f)	1:1-18.1(e)	.....	1:1-16.3(a)
1:1-14.12(a)-(d)	.....	New	1:1-18.1(f)	.....	New
1:1-14.13(a)-(c)	.....	New	1:1-18.1(g)	.....	1:1-16.3(e)
1:1-15.1(a)	.....	1:1-15.2(f);	1:1-18.1(h)	.....	New
		1:1-15.5(b)	1:1-18.2(a)	.....	1:1-16.3(a);
1:1-15.1(b)	.....	1:1-15.2(d)			1:2-2.9(a)
1:1-15.1(c)	.....	1:1-15.2(a)	1:1-18.2(b)	.....	1:1-16.3(e);
1:1-15.1(d)	.....	1:1-15.2(c)			1:2-2.9(b)
1:1-15.1(e)	.....	1:1-15.2(g)	1:1-18.2(c)	.....	1:1-16.3(c);
1:1-15.2(a)	.....	1:1-15.3(a)			1:2-2.9(c)
1:1-15.2(b)	.....	1:1-15.3(b)	1:1-18.3(a)	.....	1:1-16.3(a)
1:1-15.2(c)	.....	1:1-15.3(b)	1:1-18.3(b)	.....	1:1-16.3(e)
1:1-15.3	.....	1:1-15.4(b)	1:1-18.3(c)	.....	1:1-16.3(c)
1:1-15.4	.....	1:1-15.6	1:1-18.4(a)	.....	1:1-16.4(a)
1:1-15.5(a)	.....	1:1-15.8(a)	1:1-18.4(b)	.....	1:1-16.4(b)
1:1-15.5(b)	.....	1:1-15.8(b)	1:1-18.4(c)	.....	New
1:1-15.6	.....	1:1-15.9;	1:1-18.4(d)	.....	1:1-16.4(c)
		1:2-2.7	1:1-18.4(e)	.....	New
1:1-15.7(a)	.....	1:1-3.4(a)	1:1-18.5(a)	.....	1:1-16.4(d)
1:1-15.7(b)	.....	1:1-3.4(b)	1:1-18.5(b)	.....	1:1-16.4(e)
1:1-15.7(c)	.....	1:1-3.4(c)	1:1-18.5(c)	.....	New
1:1-15.8(a)	.....	1:1-15.2(e)	1:1-18.6(a)	.....	1:1-16.5(a)
1:1-15.8(a)5.	.....	1:1-15.2(h)	1:1-18.6(b)	.....	1:1-16.5(b)
1:1-15.8(b)	.....	1:1-15.5(a)	1:1-18.6(c)	.....	1:1-16.5(d)
1:1-15.8(c)	.....	1:1-15.5(c)	1:1-18.6(d)	.....	New
1:1-15.8(d)	.....	1:1-15.5(b)	1:1-18.7(a)	.....	1:1-16.5(c)
1:1-15.8(e)	.....	New	1:1-18.7(b)	.....	1:1-16.5(c)
1:1-15.8(f)	.....	New	1:1-18.8(a)	.....	1:1-16.6(a)
1:1-15.9(a)	.....	1:1-15.7(a)	1:1-18.8(b)	.....	1:1-16.6(b)
1:1-15.9(b)	.....	1:1-15.7(b)	1:1-18.8(c)-(g)	.....	New
1:1-15.9(c)	.....	1:1-15.7(c)	1:1-19.1(a)	.....	1:1-17.1(a)
1:1-15.9(d)	.....	1:1-15.7(d)	1:1-19.1(b)	.....	1:1-17.1(b)
1:1-15.9(e)	.....	1:1-15.7(e)	1:1-19.1(c)	.....	1:1-17.1(c)
1:1-15.9(f)	.....	New	1:1-19.2(a)	.....	1:1-17.2(a)
1:1-15.10	.....	New	1:1-19.2(b)	.....	1:1-17.2(a)
1:1-15.11	.....	New	1:1-19.2(c)	.....	1:1-17.2(a)
1:1-15.12(a)-(d)	.....	New	1:1-19.2(d)	.....	1:1-17.2(b)
1:1-16.1(a)	.....	1:1-12.1(a)	1:1-19.2(e)	.....	1:1-17.2(c)
1:1-16.1(b)	.....	1:1-12.1(b)	1:1-20.1(a)-(b)	.....	New
1:1-16.2(a)	.....	1:1-12.2(a)	1:1-20.2(a)-(c)	.....	New
1:1-16.2(b)	.....	1:1-12.2(b)	1:1-21.1(a)-(b)	.....	New
1:1-16.2(c)	.....	1:1-12.2(c)	1:1-21.2(a)-(c)	.....	New
1:1-16.3(a)	.....	1:1-12.3(a)	1:1-21.3	.....	New
1:1-16.3(b)	.....	1:1-12.3(b)	1:1-21.4(a)	.....	New
1:1-16.3(c)	.....	1:1-12.3(c)	1:1-21.5(a)-(c)	.....	New
1:1-16.4	.....	1:1-12.4	1:1-21.6	.....	New
1:1-16.5	.....	1:1-12.5	1:1-21.7	.....	New
1:1-16.6(a)	.....	1:1-12.6(a)			
1:1-16.6(b)	.....	1:1-12.6(b)			
1:1-16.6(c)	.....	1:1-12.6(c)			
1:1-17.1(a)	.....	1:1-14.1(a)			
1:1-17.1(b)	.....	1:1-14.1(b)			
1:1-17.1(c)	.....	1:1-14.1(c)			

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 1:1 and 1:2 through 1:21.

Full text of the proposed new rules follows.

CHAPTER 1  
UNIFORM ADMINISTRATIVE  
PROCEDURE RULESSUBCHAPTER 1. APPLICABILITY, SCOPE, CITATION OF  
RULES, CONSTRUCTION AND  
RELAXATION; COMPUTATION OF TIME

## 1:1-1.1 Applicability; scope; special hearing rules

(a) Subject to any superseding Federal or State law, this chapter shall govern the procedural aspects pertaining to transmission, the conduct of the hearing and the rendering of the initial and final decisions in all contested cases in the Executive Branch of the State Government. N.J.S.A. 52:14F-5. This chapter governs the procedure whether the contested case is before the Office of Administrative Law, an agency head or any other administrative agency. Subchapter 21 governs the conduct of certain uncontested cases handled by the Office of Administrative Law under N.J.S.A. 52:14F-5(o).

(b) In the event of conflict between this chapter and any other agency rule, except agency rules which incorporate statutory requirements, this chapter shall prevail. Procedural rules formerly adopted by the agencies, including those adopted prior to the creation of the Office of Administrative Law, shall continue to apply to the extent they are not inconsistent with this chapter, with statutory requirements or with constitutional standards.

(c) No agency other than the Office of Administrative Law may hereafter propose any rules to regulate the conduct of contested cases and the rendering of administrative adjudications. N.J.S.A. 52:14F5(e). Specific pleading and other pre-transmittal requirements may be regulated by the agencies provided they are consistent with this chapter.

(d) In addition to those rules that specifically govern a transmitting agency's responsibilities and the jurisdiction of the Office of Administrative Law, the following Uniform Administrative Procedure rules are not intended to apply to contested cases heard in agencies exempt under N.J.S.A. 52:14F-8:

1. N.J.A.C. 1:111.1(c) (Subpoena forms);
2. N.J.A.C. 1:112.6 (Emergency relief);
3. N.J.A.C. 1:114.10 (Interlocutory review);
4. N.J.A.C. 1:116.2(b) and (c) (Time of motion to intervene);
5. N.J.A.C. 1:1-18.8 (Extensions of time limits for decisions and exceptions); and
6. N.J.A.C. 1:121 (Uncontested cases).

(e) This chapter is subject to special hearing rules applicable to particular agencies. Such rules may be adopted by the Office of Administrative Law after consultation with a transmitting agency or at the request of a transmitting agency when the transmitted cases involve unique hearing requirements that are not addressed by this chapter. Where required by Federal law, special hearing rules may be promulgated by a transmitting agency with the concurrence of the Office of Administrative Law.

## 1:1-1.2 Citation of rules

This chapter shall be referred to as the "New Jersey Uniform Administrative Procedure Rules" and may be cited as, for example, N.J.A.C. 1:1-1.2.

## 1:1-1.3 Construction and relaxation

(a) This chapter shall be construed to achieve just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. In the absence of rule, a judge may proceed in accordance with the New Jersey Court Rules, provided the rules are compatible with these purposes. Court rules regarding third party practice and class action designations may not be applied.

(b) Except as stated in (c) below, procedural rules may be relaxed or disregarded if the judge determines that adherence would result in unfairness or injustice. The judge shall make such determinations and state the reasons for doing so on the record.

(c) The burden of proof shall not be relaxed. Statutory procedural requirements shall not be relaxed or disregarded except when permitted by the controlling Federal or State statutes.

## 1:1-1.4 Computation of time

In computing any period of time fixed by rule or judicial order, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or legal holiday. In computing a period of time of less than seven days, Saturday, Sunday and legal holidays shall be excluded.

## SUBCHAPTER 2. DEFINITIONS

## 1:1-2.1 Definitions

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

"Adjournment" means postponement of the hearing until another time.

"Administrative law judge" means a person appointed pursuant to N.J.S.A. 52:14F-4 or N.J.S.A. 52:14F-5(m) and assigned by the Director of the Office of Administrative Law to preside over contested cases and other proceedings.

"Administrative rule" means each agency statement of general applicability and continuing effect that implements or interprets law or policy, or describes the organization, procedure or practice requirements of any agency. The term includes the amendment or repeal of any rule, but does not include: (1) statements concerning the internal management or discipline of any agency; (2) intra-agency and inter-agency statements; and (3) agency decisions and findings in contested cases. N.J.S.A. 52:14B-2(e).

"Affidavit" means a written statement that is signed and sworn or affirmed to be true in the presence of a notary public or other person authorized to administer an oath or affirmation.

"Agency" includes each of the principal departments in the executive branch of the State government, and all boards, divisions, commissions, agencies, departments, councils, authorities, offices or officers within any such departments now existing or hereafter established and authorized by statute to make, adopt or promulgate rules or adjudicate contested cases, except the office of the Governor. N.J.S.A. 52:14B-2(a).

"Agency head" means the person or body authorized by law to render final decisions in contested cases.

"Appellant" means the party who is requesting a reversal or modification of a prior result.

"Burden of producing evidence" means the obligation of a party to introduce evidence when necessary to avoid the risk of a contrary decision or peremptory finding on a material issue of fact.

"Burden of proof" means the obligation of a party to meet the requirements of a rule of law that a fact be proved by a preponderance of the evidence or by clear and convincing evidence.

"Clerk" means the Clerk of the Office of Administrative Law or any such scheduling or docketing officer designated by the head of an agency to oversee the administration of contested cases.

"Complainant" means the party who requests action or relief by filing a complaint.

"Conclusion of hearing" means that time when the record for a case closes and after which no subsequently submitted information may be considered by the judge.

"Conference hearing" means a proceeding conducted before an administrative law judge, in which discovery, prehearing motions and post-hearing submissions are limited.

"Contested case" means an adversary proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing. N.J.S.A. 52:14B-2. The required hearing must be designed to result in an adjudication concerning the rights, duties, obligations, privileges, benefits or other legal relations of specific parties over which there exist disputed questions of fact, law or disposition relating to past, current or proposed activities or interests. Contested cases are not informational nor intended to provide a forum for the expression of public sentiment on proposed agency action or broad policy issues affecting entire industries or large, undefined classes of people.

"Discovery" means the process by which a party is permitted on demand or upon motion granted by a judge to view, inspect or receive a copy of documents, and gain other information necessary to prepare a case for hearing.

"Docket number" means the number given to a case by the Office of Administrative Law, which contains the abbreviation of the agency that sent the case to the Office of Administrative Law, a sequence number and the year. Sample:

HPW	8831	82
agency	sequence no.	year

"Evidence" is the means from which inferences may be drawn as a basis of proof in the conduct of contested cases, and includes testimony in the form of opinion and hearsay.

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"Filing" means receipt of an original or clear copy of a paper by the proper office or officer.

"Final decision" means a decision by an agency head that adopts, rejects or modifies an initial decision by an administrative law judge, or an initial decision by an administrative law judge that becomes a final decision by operation of N.J.S.A. 52:14B-10.

"Finding of fact" means the determination from proof or official notice of the existence of a fact.

"Hearing" means a proceeding conducted by a judge for the purpose of determining disputed issues of fact, law or disposition.

"Initial decision" means the administrative law judge's recommended findings of fact, conclusions of law and disposition, based upon the evidence and arguments presented during the course of the hearing and made a part of the record which is sent to the agency head for a final decision.

"Intervention" means the process by which a non-party may, by motion, obtain all rights and obligations of a party in a case.

"Judge" means an administrative law judge of the State of New Jersey or any other person authorized by law to preside over a hearing in a contested case unless the context clearly indicates otherwise. The term includes the agency head when presiding over a contested case under N.J.S.A. 52:14F-8(b).

"Jurisdiction" means the legal power to hear or decide a case.

"Material fact" means a fact legally consequential to a determination of an issue in the case.

"Mediation" means a proceeding conducted after transmission in which an administrative law judge other than the judge assigned to preside over the hearing attempts to settle or compromise a dispute between opposing parties.

"Motion" means an application to a judge for a ruling or order.

"Participation" means the process by which a non-party may, by motion, be permitted to take limited part in a proceeding.

"Party" means any person or entity directly involved in a case, including a petitioner, appellant, complainant, respondent, intervenor, or State agency proceeding in any such capacity.

"Petitioner" means the party who is requesting relief or action at the hearing.

"Pleadings" means written statements of the parties' respective claims and defenses. A pleading may be a petition, complaint, answer, order to show cause or any other form permitted by an agency's rules.

"Plenary hearing" means a complete and full proceeding conducted before a judge, providing the parties with discovery, the opportunity to present evidence, to give sworn testimony, to cross-examine witnesses and to make arguments.

"Prehearing conference" means a meeting that may be held in advance of the hearing between the judge, representatives of the parties and, sometimes, the parties to discuss and set out the issues to be decided in the case, how the case will be presented and any other special matters required by the judge to be discussed and resolved in advance of the hearing.

"Presumption" means a rebuttable assumption of fact resulting from a rule of law which requires such fact to be assumed from another fact or group of facts found or otherwise established in the contested case.

"Principal of a close corporation" means either a substantial shareholder of a corporation that is not publicly owned or an officer or executive employee who is actively involved in managing the business of such a corporation.

"Proceeding on the papers" means a summary proceeding conducted without any personal appearance or confrontation of the parties before the judge. The hearing is conducted through the submission of pleadings, affidavits, records or documents to the Office of Administrative Law for a decision by an administrative law judge.

"Proof" means all of the evidence before the judge relevant to a fact in issue which tends to prove the existence or nonexistence of such fact.

"Pro se" means a person who acts on his or her own behalf without an attorney or other qualified non-lawyer representative.

"Record" means all decisions and rulings of the judge and all of the testimony, documents and arguments presented before, during and after the hearing and accepted by the judge for consideration in the rendering of a decision.

"Relevant evidence" means evidence having any tendency in reason to prove any material fact.

"Respondent" means the party who answers or responds to a request for relief or action.

"Service" means the delivery (by mail or in person) of a paper to a party or any other person or entity to whom the papers are required to be delivered.

"Settlement" means an agreement between parties which resolves disputed matters and may end all or part of the case. Various methods may be utilized to help parties reach agreement, including: (1) pre-transmission settlement efforts by an agency; (2) pre-transmission settlement efforts by an administrative law judge at the request of an agency; (3) mediation by an administrative law judge; and (4) post-transmission settlement conferences by an administrative law judge.

"Subpoena" means an official paper that requires a person to appear at a hearing to testify and/or bring documents.

"Telephone hearing" means a proceeding conducted by telephone conference call.

"Uncontested case" means any hearing offered by an agency for reasons not requiring a contested case proceeding under the statutory definition of contested case.

"Withdrawal" means a decision by a party voluntarily relinquishing: (1) each request for action or relief, or (2) all defenses to a request for action or relief. It does not include settlements.

### SUBCHAPTER 3. COMMENCEMENT OF CONTESTED CASES; JURISDICTION OF THE OFFICE OF ADMINISTRATIVE LAW

#### 1:1-3.1 Commencement of contested cases in the State agencies

A contested case shall be commenced in the State agency with appropriate subject matter jurisdiction. A contested case may be commenced by the agency itself or by an individual or entity as provided in the rules and regulations of the agency.

#### 1:1-3.2 Jurisdiction of the Office of Administrative Law

(a) The Office of Administrative Law shall acquire jurisdiction over a matter only after it has been determined to be a contested case by an agency head and has been filed with the Office of Administrative Law or as otherwise authorized by law, except as provided by N.J.A.C. 1:1-17. The Office of Administrative Law shall not receive, hear or consider any pleadings, motion papers, or documents of any kind relating to any matter until it has acquired jurisdiction over that matter, except as provided by N.J.A.C. 1:1-17.

(b) When the Office of Administrative Law acquires jurisdiction over a matter that arises from a State agency's rejection of a party's application, and at the hearing the party offers proofs that were not previously considered by the agency, the judge may either allow the party to amend the application to add new contentions, claims or defenses or, if considerations of expediency and efficiency so require, the judge shall order the matter returned to the State agency. If the matter is returned to the agency and thereafter transmitted for hearing, the agency's response to any new contentions, claims or defenses shall be attached to the transmittal form required by N.J.A.C. 1:1-8.2.

(c) Matters involving the administration of the Office of Administrative Law as a State agency are subject to the authority of the Director. In the following matters as they relate to proceedings before the Office of Administrative Law, the Director is the agency head for purposes of review:

1. Disqualification of a particular judge due to interest or any other reason which would preclude a fair and unbiased hearing, pursuant to N.J.A.C. 1:1-14.12;

2. Appearances of non-lawyer representatives, pursuant to N.J.A.C. 1:1-5.4;

3. Imposition of conditions and limitations upon non-lawyer representatives, pursuant to N.J.A.C. 1:1-5.5;

4. Sanctions under N.J.A.C. 1:1-14.4 consisting of the assessment of costs or expenses; and

5. Disqualification of attorneys, pursuant to N.J.A.C. 1:1-5.3.

#### 1:1-3.3 Return of transmitted cases

(a) Upon notice to the parties, the Clerk and the judge, the transmitting agency may request that a previously transmitted case be returned. The notice shall state the reason for returning the case.

(b) If the request is made before the first witness is sworn, the Office of Administrative Law shall return the matter to the transmitting agency forthwith.

(c) If the request is made after the first witness is sworn, the matter shall continue at the Office of Administrative Law.

SUBCHAPTER 4. AGENCY RESPONSIBILITY BEFORE  
TRANSMISSION TO THE OFFICE OF  
ADMINISTRATIVE LAW

## 1:1-4.1 Determination of contested case

(a) After an agency proceeding has commenced, the agency head shall promptly determine whether the matter is a contested case. If any party petitions the agency head to decide whether the matter is contested, the agency shall make such a determination within 30 days from receipt of the petition and inform all parties of its determination.

(b) When a question arises whether a particular matter is a contested case, legal advice shall be obtained from the Attorney General's office.

1:1-4.2 Settlement by agencies prior to transmittal to the Office of  
Administrative Law

If an agency attempts settlement prior to transmitting the matter to the Office of Administrative Law, settlement efforts may be conducted in any manner the agency believes may be appropriate and productive. The agency may utilize its own personnel or may request in writing to the Director of the Office of Administrative Law the services of an administrative law judge. An administrative law judge who conducts pre-transmission settlement efforts at the request of an agency will not thereafter be assigned to hear the case if settlement efforts are unsuccessful and the case is transmitted.

## SUBCHAPTER 5. REPRESENTATION

## 1:1-5.1 Representation

A party may represent him or herself, be represented by an attorney authorized to practice law in this State, or, subject to N.J.A.C. 1:1-5.4 and 1:1-5.5, be represented or assisted by a non-lawyer permitted to make an appearance in a contested case by New Jersey Court Rule R 1:21-1(e) or be represented by a law graduate or student pursuant to R 1:21-3(b). Except as provided by N.J.A.C 1:1-5.4 and 1:1-5.6, a corporation must be represented by an attorney.

## 1:1-5.2 Out-of-state attorneys; admission procedures

(a) An attorney from any other jurisdiction, of good standing there, or an attorney admitted in this State, of good standing, who does not maintain in this State a bona fide office for the practice of law, may, at the discretion of the judge, be admitted pro hac vice for the one occasion to participate in the proceeding in the same manner as an attorney authorized to practice in this State pursuant to New Jersey Court Rule R 1:21-1 by complying with the following procedure:

1. Admission pro hac vice shall be by motion of an attorney authorized to practice in New Jersey. Forms are available from the Office of Administrative Law for this purpose.

2. Each motion seeking admission for the one occasion shall be served on all parties and have attached a supporting affidavit, signed by the attorney seeking admission, which shall state that payment has been made to the Client's Security Fund and Ethics Financial Committee. The affidavit shall state how he or she satisfies each of the conditions for admission, including good cause, set forth in R. 1:21-2(a). He or she shall also agree in the affidavit to comply with the dictates of R. 1:21-2(b).

3. An annual payment made to the Client's Security Fund and Ethics Financial Committee shall entitle the attorney to appear in subsequent matters during the payment year, provided the attorney otherwise qualifies for admission.

4. An order granting admission shall set forth the limitations upon admission established in R. 1:21-2(b).

5. A judge may, at any time during the proceeding and for good cause shown, revoke permission for the attorney to appear.

## 1:1-5.3 Conduct of lawyers

In any case where the issue of an attorney's ethical or professional conduct is raised, the judge before whom the issue has been presented shall consider the merits of the issue raised and make a ruling as to whether the attorney may appear or continue representation in the matter. The judge may disqualify an attorney from participating in a particular case when disqualification is required by the Rules of Professional Conduct or the New Jersey Conflict of Interest Law. If disciplinary action against the attorney is indicated, the matter shall be referred to the appropriate disciplinary body.

1:1-5.4 Representation by non-lawyers; authorized situations,  
applications, approval procedures

(a) In conformity with New Jersey Court Rule R. 1:21-1(e), the following non-lawyers may apply for permission to represent a party at a contested case hearing:

1. Persons whose appearance is required by Federal law;
2. State agency employees;

3. County or municipal welfare agency employees;
4. Legal service paralegals or assistants;
5. Close corporation principals; and
6. Union representatives in Civil Service cases.

(b) The non-lawyer applicants in (a) above may apply for permission to appear by supplying the following information and by complying with the following procedures:

1. Oral applications at the hearing may be made in Division of Public Welfare, Division of Medical Assistance and Health Services and Division of Youth and Family Services cases.

i. At the hearing, the non-lawyer applicant shall state that he or she is not a suspended or disbarred attorney and that he or she is not receiving a fee for the appearance.

ii. At the hearing, the judge shall determine that the non-lawyer applicant seeking to represent a recipient or applicant for services fulfills the appearance requirements of Federal law.

iii. At the hearing, the non-lawyer applicant seeking to represent a county or municipal welfare agency shall state that he or she is an agency staff person with knowledge of the matter in controversy, has been assigned to represent the agency in the case and that the county or municipal counsel is not providing representation in the particular matter. The non-lawyer applicant shall also state his or her position at the agency and the name, title, business address and telephone number of his or her supervisor.

iv. At the hearing, a non-lawyer applicant seeking to represent the Division of Public Welfare, the Division of Medical Assistance and Health Services or the Division of Youth and Family Services shall state how he or she satisfies the requirements for representation set forth in (b)2.i., below.

2. A written Notice of Appearance/Application on forms supplied by the Office of Administrative Law shall be required in cases where a non-lawyer employee seeks to represent a State agency; in Civil Service cases, where a union representative seeks to represent a State, county or local government employee; where a non-lawyer seeks to represent a party in a special education hearing; where a principal seeks to represent a close corporation, and where a non-lawyer from a legal services program seeks to represent an indigent. A non-lawyer from a legal services program seeking to represent a recipient or applicant for services in Division of Public Welfare, Division of Medical Assistance and Health Services and Division of Youth and Family Services cases may make oral application to represent the recipient or applicant by complying with the requirements of (b)1 above.

i. For non-lawyer employees seeking to represent a State agency, the Notice shall include a statement that the non-lawyer is an employee of the State agency he or she seeks to represent; his or her position at the agency; his or her supervisor at the agency; his or her supervisor's position, business address and telephone number; and an explanation of his or her special expertise or experience in the matter in controversy. The Notice shall also contain a statement, signed by a Deputy Attorney General for the State agency that the Attorney General will not provide representation for the agency in the case.

ii. For non-lawyers from legal services programs, the Notice shall include a statement that he or she is a paralegal or legal assistant; the name and address of the Legal Services Program of which he or she is a part; and the name, business address, telephone number and signed authorization of a Legal Services attorney who supervises the applicant.

iii. The non-lawyer union representative shall include in his or her Notice a statement that he or she is an authorized representative of a labor organization; that the labor organization is the duly authorized representative of the represented employee's collective bargaining unit; and the name, title, business address and telephone number of his or her supervisor.

iv. In special education hearings the non-lawyer applicant shall include in his or her Notice an explanation of how he or she satisfies the Federal and State requirements for non-lawyer representation.

v. In cases where a principal seeks to represent a close corporation, the non-lawyer applicant shall demonstrate in his or her Notice how he or she qualifies as a principal of a close corporation.

vi. Any non-lawyer applicant filing a Notice of Appearance/Application shall state in the Notice that he or she is not a disbarred or suspended attorney and is not receiving a fee for the appearance.

vii. The Notice of Appearance/Application must be signed by the non-lawyer applicant. Notices shall be filed with the Clerk and served on all parties no later than 10 days prior to the scheduled hearing date.

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viii. The Clerk may require the applicant to supply additional information or explanation of the items specified above as applicable, or may require the applicant to supply evidence of the statements contained in the Notice. If the Clerk does not otherwise notify the applicant within five days of receipt of the Notice, the non-lawyer's request to appear at the hearing shall be deemed approved. When the Clerk believes that a Notice presents a significant legal issue relating to representation rights, the Clerk will notify the parties that the presiding judge will determine the matter at or before the hearing.

## 1:1-5.5 Conduct of non-lawyer representatives; limitations on practice

(a) The presiding judge, unless precluded by Federal law, may determine at any time during the proceeding that a specific case is not appropriate for representation by a non-lawyer representative. The judge's determination may be based either on the lack of appropriate experience or expertise of the particular non-lawyer representative, or the complexity of the legal issues or other factors which make the particular case inappropriate for a non-lawyer representative. The judge shall implement a determination to preclude non-lawyer representation by informing the parties of the decision and the reasons therefor. With respect to a county, local or State agency or a close corporation, the judge may require the party to obtain legal representation. With respect to an individual, the judge may require the individual either to obtain a new non-lawyer, to represent himself or herself or to obtain legal representation.

(b) The presiding judge may revoke any non-lawyer's right to appear in a case if and when the judge determines that a material statement is incorrect in any Notice of Appearance/Application or in any oral application by a non-lawyer.

(c) Non-lawyer representatives shall be subject to the Uniform Administrative Procedure Rules, including the sanctions provided in N.J.A.C. 1:1-14.4. If the judge determines that an incorrect statement in an oral application or Notice of Appearance/Application was an intentional misstatement, or that the non-lawyer representative has unreasonably failed to comply with any order of a judge or with any requirement of this chapter, the judge may impose the sanctions provided under N.J.A.C. 1:11-4.4, which may include:

1. In the case of a State, county or local agency employee, reporting any inappropriate behavior to the agency for possible disciplinary action;

2. A determination by the presiding judge that the non-lawyer representative shall be excluded from a particular hearing; and,

3. A recommendation by the presiding judge to the agency head that a particular non-lawyer representative be permanently excluded from administrative hearings before that agency.

(d) A non-lawyer may not be precluded from providing representational services solely because the non-lawyer is also appearing as a witness in the matter.

(e) In general, a non-lawyer representative shall be permitted at the hearing to submit evidence, speak for the party, make oral arguments, and conduct direct examinations and cross-examinations of witnesses.

1. In the interest of a full, fair, orderly and speedy hearing, the judge may at any time condition, limit or delineate the type or extent of representation which may be rendered by a non-lawyer. Conditions or limits may include:

i. Requiring any examination and cross-examination by the non-lawyer to be conducted through the judge;

ii. Requiring questions from the non-lawyer to be presented to the judge prior to asking;

iii. Requiring the party to speak for him or herself; or

iv. Revoking the right of the non-lawyer to appear if the judge finds that the proceedings are being unreasonably disrupted or unduly delayed because of the non-lawyer's participation.

(f) In settlements, a non-lawyer may not sign a consent order or stipulation for a party.

## 1:1-5.6 Appearance without representation: State agencies or county or municipal welfare agencies; corporations

(a) In those cases where a State agency or a county or municipal welfare agency does not send a representative who has been approved under N.J.A.C. 1:1-5.4 to a hearing, but merely rests its case on papers and/or on witnesses presented to the judge:

1. The agency shall include in the transmittal form a statement which verifies the agency's intention to proceed without a representative qualified under N.J.A.C. 1:1-5.4 and lists the papers and/or witnesses upon which the agency intends to rely.

2. The judge shall, where appropriate, accept into the hearing record the agency's papers and/or the witnesses' testimony. In the interests of developing a full hearing record of the dispute, the judge may, where

appropriate, permit a witness who does not qualify as an agency representative, under N.J.A.C. 1:1-5.4, to ask questions through the judge, make statements in response to other witnesses' testimony, or to offer documents in his or her own name. However, the judge need not permit a witness who does not qualify as an agency representative under these rules to examine or cross-examine witnesses.

(b) In cases where a corporation is a party and will not be represented at the hearing by either a lawyer or a non-lawyer representative approved under N.J.A.C. 1:1-5.4, the judge may permit the corporation to proceed at the hearing on papers and/or on witnesses.

1. The corporation's lawyer or approved non-lawyer representative must obtain the judge's approval for the appearance without representation prior to the hearing. The judge shall consider whether the party's position can be adequately presented without representation and whether there will be any adverse impact on the hearing process.

2. A witness who appears on behalf of the corporation may testify and, in the interest of developing a full hearing record, may be permitted to ask questions through the judge, make statements in response to other testimony or to offer documents in his or her own name. However, the judge need not permit this witness to examine or cross-examine other witnesses.

## SUBCHAPTER 6. PLEADINGS

## 1:1-6.1 Pleading requirements

(a) Specific pleading requirements are governed by the agency with subject matter jurisdiction over the case. Except as otherwise provided by this subchapter, parties in contested cases should refer to the rules of the appropriate agency for guidance.

(b) Pleadings shall be filed as required by the rules of the agency with subject matter jurisdiction over the case.

(c) Pleadings shall be served in the manner permitted by N.J.A.C. 1:1-7.1(a) on all parties and on any other person required by the rules of the agency with subject matter jurisdiction over the case.

## 1:1-6.2 Amendment of pleadings

(a) Unless precluded by law or constitutional principle, pleadings may be freely amended when, in the judge's discretion, an amendment would be in the interest of efficiency, expediency and the avoidance of over-technical pleading requirements and would not create undue prejudice.

(b) A judge in granting pleading amendments may permit a brief continuance to allow an opposing party additional preparation time.

## 1:1-6.3 Public officers; death or separation from office

When any public officer who is a party to a contested case, whether or not mentioned by name in the pleadings, dies, resigns or for any reason ceases to hold office, his or her successor in office shall be deemed to have been substituted in his or her place. However, on motion, the judge may otherwise order or may specifically order the retention as a party of the predecessor in office.

## SUBCHAPTER 7. SERVICE AND FILING OF PAPERS: FORMAT

## 1:1-7.1 Service; when required; manner

(a) Service shall be made in person; or by certified mail, return receipt requested; or by ordinary mail; or in any manner which is designed to provide actual notice to the party or person being served.

(b) Any paper filed shall be served in the manner provided by (a) above upon all attorneys or other representatives and upon all parties appearing pro se, either before filing or promptly thereafter unless otherwise provided by order.

(c) Service by mail shall be complete upon mailing.

(d) The standards of personal service contained in R.4:4-4 of the New Jersey Court Rules shall apply to contested cases when personal service is required and this section is inapplicable.

## 1:1-7.2 Proof of publication and service

(a) Whenever these rules or the applicable rules of any agency provide for publication, mailing or posting of public notices in contested cases, proofs thereof shall be filed within 20 days after the publication, mailing or posting.

(b) Except for service by publication or as otherwise required by this chapter or by State or Federal statute, proof of service shall not be necessary unless a question of notice arises.

(c) Where necessary to prove service, proof may be made by an acknowledgment of service signed by the attorney, any other representative or party, or by an affidavit of the person making service, or by a certificate of service appended to the paper to be filed and signed by the attorney

or other representative for the party making service. Where appropriate, other competent proof that actual and timely notice existed of the contents of the paper may be considered as a substitute for service.

#### 1:1-7.3 Filing; copies

(a) A paper may be filed with either the Clerk or the judge assigned to the case. Evidence of filing shall be a notation showing the date, time and place of filing. When a paper is filed with a judge, the notation shall also identify the judge. A copy of such papers shall be forwarded by the filing party to the Clerk immediately.

(b) The Clerk or the judge, upon receiving papers for filing that do not conform to the requirements of these rules, may either return the papers with instructions for refileing or cure the defects and accept the papers for filing.

(c) All papers filed with the Office of Administrative Law shall be in duplicate. If the filer submits an additional copy of the paper to be filed with a self-addressed, stamped envelope, the Clerk will return the paper to the filer marked with the date of filing.

#### 1:1-7.4 Format of papers

(a) Every paper filed shall contain:

1. The Office of Administrative Law docket number of the proceeding or, if the case has not been transmitted, the agency docket number in the upper right hand portion;

2. The name, address and telephone number of the person who prepared the paper in the upper left hand portion; and

3. A caption setting forth the title of the proceeding and a brief designation describing the paper filed.

(b) All papers shall be on 8 1/2" x 11" stock of customary weight and quality insofar as is practicable.

### SUBCHAPTER 8. FILING AND TRANSMISSION OF CONTESTED CASES IN THE OFFICE OF ADMINISTRATIVE LAW

#### 1:1-8.1 Agency filing with the Office of Administrative Law: settlement efforts

(a) After the parties have complied with all pleading requirements, the agency shall within 30 days either file the case with the Clerk of the Office of Administrative Law in the manner provided by N.J.A.C. 1:1-8.2 or retain it under the provisions of N.J.S.A. 52:14F-8 and notify all parties of the decision to retain.

(b) During the 30-day period in (a) above, an agency may attempt settlement in accordance with N.J.A.C. 1:1-4.2. At the conclusion of the 30-day period, unless all parties agree to continue the settlement efforts, the matter shall be either filed with the Office of Administrative Law or further retained under the provisions of N.J.S.A. 52:14F-8. After the thirtieth day of an agency's settlement efforts, any party may request that the agency transmit the matter to the Office of Administrative Law, provided that the agency does not intend to retain the case under N.J.S.A. 52:14F-8.

(c) An agency shall file a contested case with the Office of Administrative Law immediately if the agency determines that settlement efforts would be inappropriate or unproductive.

#### 1:1-8.2 Transmission of contested cases to the Office of Administrative Law

(a) In every proceeding to be filed in the Office of Administrative Law, the agency shall complete a transmittal form, furnished by the Clerk of the Office of Administrative Law, containing the following information:

1. The name of the agency transmitting the case;

2. The name, address and telephone number of the agency's transmitting officer;

3. The name or title of the proceeding, including the designation petitioner/respondent or appellant/appellee when appropriate;

4. The agency docket or reference number;

5. A description of the nature of the case, including a statement of the legal authority and jurisdiction upon which the agency action is based or under which the hearing is to be held, a reference to particular statutes and rules involved as well as a brief summary of the matters of fact and law asserted. If this information is included in a pleading that is attached to the transmittal form pursuant to (b) below, the agency may refer to the pleading in order to satisfy this requirement;

6. An indication as to whether the agency has attempted settlement;

7. An estimate of the total time required for the hearing;

8. Whether a court stenographer is requested. If a stenographer is not requested, the Office of Administrative Law may provide at its expense either an audiotape recording or a court stenographer for the hearing. When a stenographer is requested by the transmitting agency for its own

purposes, the appearance fee shall be paid by the transmitting agency. When the transmitting agency notifies the Clerk that a court stenographer is required because a party so requests, the appearance fee shall be paid by that party. When any party to the case is entitled by law to recover the cost of a court stenographer from others, the requesting agency shall not be required to pay the appearance fee;

9. Anticipated special features or requirements, including the need for emergent relief, discovery, motions, prehearing conference or conference hearing and whether the case is a remand;

10. The names and addresses of all parties and their attorneys or other representatives;

11. A request for a barrier-free hearing location if it is known that a handicapped person will be present; and

12. The names of any other agencies claiming jurisdiction over either the entire or any portion of the factual dispute presented in the transmitted contested case.

(b) The agency shall attach all pleadings to the transmittal form.

(c) The agency may affix to the completed transmittal form only documents which have been exchanged between the parties prior to transmission of the case to the Office of Administrative Law. If the agency affixes to the transmittal form documents that have not been exchanged between the parties, the agency shall either serve these documents upon the parties or offer them to the parties and shall inform the Clerk of such action in the transmittal form.

(d) If an agency has transmitted a case to the Office of Administrative Law, any party or agency aware that another agency is claiming jurisdiction over any part of the transmitted case shall immediately notify the Office of Administrative Law, the other parties and affected agencies of the second jurisdictional claim.

(e) The completed transmittal form and any attachments shall be filed with the Clerk of the Office of Administrative Law.

#### 1:1-8.3 Receipt by Office of Administrative Law of transmitted contested case: filing; return of improperly transmitted cases

(a) Upon receipt of a properly transmitted contested case the Clerk shall mark the case as having been received and filed as of a particular date and time. Upon filing, the Clerk shall assign an Office of Administrative Law docket number to the contested case.

(b) The Clerk upon receiving a contested case that has not been transmitted in accordance with this subchapter may either return the case with instructions to the agency for retransmission or cure the transmission defects and accept the matter for filing.

### SUBCHAPTER 9. SCHEDULING; CLERK'S NOTICES; ADJOURNMENTS; INACTIVE LIST

#### 1:1-9.1 Scheduling of proceedings

(a) When a contested case is filed, the Clerk shall determine whether the matter should be scheduled for mediation, settlement conference, prehearing conference, proceeding on the papers, conference hearing, telephone hearing, plenary hearing or other proceeding.

(b) To schedule a proceeding, the Clerk may contact the parties to arrange a convenient date, time and place or may prepare and serve notice without first contacting the parties. Proceedings shall be scheduled for suitable locations, taking into consideration the convenience of the witnesses and the parties, as well as the nature of the case and proceedings.

(c) The Clerk may schedule a settlement conference whenever such a proceeding may be appropriate and productive. The Clerk may schedule mediation whenever all parties concur.

(d) A prehearing conference may be scheduled in any case, other than one requiring a conference hearing, whenever necessary to foster an efficient and expeditious proceeding and where:

1. The issues are unusually complex, numerous or novel; or

2. The case is expected to require two or more hearing days; or

3. Any party to the case requests a prehearing.

(e) A proceeding on the papers may be scheduled in accordance with N.J.A.C. 1:1-14.8 for:

1. Division of Motor Vehicle cases dealing with excessive points and surcharges, pursuant to N.J.A.C. 1:13;

2. Department of Environmental Protection cases involving emergency water supply allocation plan exemptions, pursuant to N.J.A.C. 1:7; and

3. Any other class of suitable cases which the Director of the Office of Administrative Law and the transmitting agency agree could be lawfully decided on the papers.

(f) A conference hearing may be scheduled for:

1. Civil Service cases dealing with layoffs, disciplinary actions and termination after probationary work period;

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2. Division of Public Welfare cases where an applicant or recipient disputes the proposed action on eligibility or benefits entitlement by a county welfare agency or a local decision or inaction by a municipal welfare department;

3. Food stamp intentional program violations cases;

4. Matters arising out of the Special Education Program of the Department of Education;

5. Any case when all parties agree and the judge so directs; and

6. Any other class of cases which the Director of the Office of Administrative Law and the transmitting agency agree would be suitable to be heard as conference hearings.

(g) A telephone hearing may be scheduled for any case when all parties agree and the judge so directs.

## 1:1-9.2 Cases commenced by order to show cause

When an agency head commences an action by order to show cause, the agency head may, prior to service and filing of the order to show cause, contact the Clerk, who will assign a judge and establish the time, place and date for a hearing on the matter. The agency shall insert in the pleading the information provided by the Clerk and promptly serve and file it in accordance with N.J.A.C. 1:1-7.

## 1:1-9.3 Priority scheduling

Priority in scheduling shall be given where requirements of law impose expedited time frames for disposition of a case. In all other cases, the transmitting agency or any party may make special scheduling requests to the Clerk.

## 1:1-9.4 Accelerated proceedings

(a) Upon written request to the Clerk, with copies to all parties, any party may apply for accelerated disposition of a case. The applicant must state the reasons for the request.

(b) If the transmitting agency is a party and the agency either requests accelerated proceedings or concurs in a request for acceleration, the agency will be deemed to have agreed to abide by the 15-day decision deadline in (c)8 below. If the transmitting agency is not a party, the party requesting acceleration must secure from the transmitting agency agreement to render its final decision within 15 days as provided in (c)8 below.

(c) If the transmitting agency agrees to the 15-day decision deadline and the judge assigned to the case then finds that there is good cause for accelerating the proceedings, the judge shall schedule an accelerated hearing date and the case shall proceed in the following manner:

1. Formal discovery shall not be permitted, although parties may voluntarily exchange information, provided it does not delay the accelerated disposition of the case.

2. No mediation, prehearing conference or settlement conference shall be scheduled or conducted unless directed by the presiding judge.

3. Except for extraordinary circumstances establishing good cause, no adjournments shall be granted.

4. Prehearing motions shall not be permitted unless requested by the presiding judge.

5. Post-hearing submissions shall not be accepted except for the purpose of expressing the terms of a settlement or when requested by the presiding judge.

6. Initial decisions shall be issued within 15 days after the hearing is concluded.

7. Exceptions to the initial decision must be filed with the agency no later than three days after receipt of the initial decision. No replies or cross-exceptions are permitted.

8. Final decisions shall be entered within 15 days after receipt of the initial decision.

## 1:1-9.5 Clerk's notices

(a) Upon acceptance of a contested case for filing, the Clerk shall notify the transmitting agency and all parties of the case's filing date and the Office of Administrative Law docket number. This notice shall include a description of the nature of the proceeding, a reference to the controlling hearing procedures, including discovery, and a reference to the right of persons to represent themselves or to be represented by any attorney or a qualified non-lawyer in certain situations. The Clerk may also include in this notice any information he or she deems instructive or helpful to the parties and may combine this notice with any other notice, including the notice of hearing.

(b) The Clerk shall provide all parties with timely notice of any mediation, settlement conference, prehearing conference, proceeding on the papers, conference hearing, telephone hearing, plenary hearing or other proceeding, except that in emergency relief proceedings pursuant to N.J.A.C. 1:1-12.6 the Clerk may require the moving party to provide appropriate notice. Each notice shall apprise the parties of the presiding

judge and the date, time and place of the proceeding. The Clerk may also include in any proceeding notice any information he or she deems instructive or helpful to the parties.

(c) Notice shall be by regular mail, except that when emergent needs so require and the law permits, notice of proceedings may be by telegram, mailgram or telephone. Telephone notice shall be confirmed promptly in writing.

(d) All Clerk's notices shall be written in plain language. See generally, N.J.S.A. 56:12-1 et seq.

(e) Each notice shall prominently display a telephone number where parties can obtain further assistance.

(f) All parties shall receive subsequent notices of all proceedings in any contested case. Subsequent notices shall apprise the parties of the date, time, place and nature of a proceeding and may be either written or effected by a statement made on the record.

## 1:1-9.6 Adjournments

(a) Applications for adjournments shall be made to the Clerk until such time as a party has appeared before the judge in person, by telephone or in writing for a motion, prehearing or hearing. Thereafter, applications for adjournments shall be made to the judge. Applications may be made in writing or by telephone; telephone applications for adjournments which are granted must be confirmed in writing by the party requesting the adjournment. All adjournments that are granted will be granted for the shortest period possible and to a definite date.

(b) Adjournments will be granted only in exceptional situations which could not have been reasonably foreseen or prevented.

(c) Adjournments will not be granted to complete discovery if parties have not timely complied with N.J.A.C. 1:1-10.4.

(d) The fact that a party obtains the consent to an adjournment of his or her adversary will not always result in the granting of the adjournment.

(e) An attorney with a conflicting engagement in a court shall call the Clerk or judge as soon as the conflict is discovered. Attorneys should not assume that such conflicts will always result in an adjournment.

(f) When the judge or the Clerk requests, a party obtaining an adjournment will be responsible for securing from his or her adversary consent to a new date.

(g) All parties to an adjournment will be responsible for giving prompt notice to their witnesses as to the adjournment and the new scheduled date. The Clerk shall confirm the new date with a subsequent notice mailed to the parties.

(h) When granting an adjournment after an untimely application, a judge may order any of the sanctions contained in N.J.A.C. 1:1-14.4(a)1.

## 1:1-9.7 Inactive list

(a) Where a party to a pending case is mentally or physically incapable of proceeding or is with other just excuse unable to proceed without substantial inconvenience or inordinate expense, that party or his or her representative may move to place the case on the inactive list. A judge, as a condition to placing a matter on the inactive list, shall consider the public interest in the matter and may impose conditions appropriate to the case.

1. Upon affidavit or other adequate proof, the judge may determine to place the case on the inactive list for as brief a period as possible not to exceed six months.

2. The Clerk shall maintain the inactive list and shall return the case to an active status after the specified period has expired unless, upon motion and further proof, the judge determines that the party is still with just excuse unable to proceed.

3. A judge may order a case to continue on the inactive list for successive brief periods, each not to exceed six months.

4. The Clerk shall notify all parties and the agency of any action taken under this section.

(b) Cases may not be placed on the inactive list to await an appellate court decision involving other parties unless the appellate decision is so imminent and directly relevant to the matter under dispute that some reasonable delay would be justified.

## SUBCHAPTER 10. DISCOVERY

## 1:1-10.1 Purpose and function; policy considerations: public documents not discoverable

(a) The purpose of discovery is to facilitate the disposition of cases by streamlining the hearing and enhancing the likelihood of settlement or withdrawal. These rules are designed to achieve this purpose by giving litigants access to facts which tend to support or undermine their position or that of their adversary.

(b) It is not ground for denial of a request for discovery that the information to be produced may be inadmissible in evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) In considering a discovery motion, the judge shall weigh the specific need for the information, the extent to which the information is within the control of the party and matters of expense, privilege, trade secret and oppressiveness. Except where so proceeding would be unduly prejudicial to the party seeking discovery, discovery shall be ordered on terms least burdensome to the party from whom discovery is sought.

(d) Public documents accessible under legislative authorization shall not be discoverable under this subchapter, except for good cause shown. A party shall exhaust administrative remedies to obtain public documents before seeking discovery under this subchapter.

(e) Discovery shall generally not be available against a State agency that is neither a party to the proceeding nor asserting a position in respect of the outcome but is solely providing the forum for the dispute's resolution.

#### 1:1-10.2 Discovery by notice or motion; depositions; physical and mental examinations

(a) Any party may notify another party to provide discovery by one or more of the following methods:

1. Written interrogatories;
2. Production of documents or things;
3. Permission to enter upon land or other property for inspection or other purposes; and
4. Requests for admissions.

(b) Any party may request an informal, nontranscribed meeting with witnesses for another party in order to facilitate the purposes of discovery as described in N.J.A.C. 1:1-10.1. The other party and his or her representative must be given notice and the opportunity to be present. Such meetings are voluntary and cannot be compelled. Failure to agree to such meetings will not be considered good cause for permitting depositions pursuant to (c) below.

(c) Depositions upon oral examination or written questions and physical and mental examinations are available only on motion for good cause. In deciding any such motion, the judge shall consider the policy governing discovery as stated in N.J.A.C. 1:1-10.1 and shall weigh the specific need for the deposition or examination; the extent to which the information sought cannot be obtained in other ways; the requested location and time for the deposition or examination; undue hardship; and matters of expense, privilege, trade secret or oppressiveness. An order granting a deposition or an examination shall specify a reasonable time during which the deposition or examination shall be concluded.

(d) A party taking a deposition or having an examination conducted who orders a transcript or a report shall promptly, without charge, furnish a copy of the transcript or report to the witness deposed or examined, if an adverse party, and, if not, to any adverse party. The copy so furnished shall be made available to all other parties for their inspection and copying.

#### 1:1-10.3 Costs of discovery

(a) The party seeking discovery shall pay for all reasonable expenses caused by the discovery request.

(b) Where a proponent of any notice or motion for discovery or a party taking a deposition is a State agency, and the party or person from whom such discovery or deposition is sought is entitled by law to recover in connection with such case the costs thereof from others, such State agency shall not be required to pay the cost of such discovery or deposition.

#### 1:1-10.4 Time for discovery; relief from discovery; motions to compel

(a) The parties in any contested case shall commence immediately to exchange information voluntarily, to seek access as provided by law to public documents and to exhaust other informal means of obtaining discoverable material.

(b) Parties shall immediately serve discovery requests and notices and make discovery motions.

(c) No later than 15 days from receipt of a notice requesting discovery, the receiving party shall provide the requested information, material or access or offer a schedule for reasonable compliance with the notice.

(d) A party who wishes to object to a discovery notice shall place a telephone conference call to the judge and the other parties within 10 days from receipt of the notice. A party who wishes to compel a response to a discovery notice shall place a telephone conference call to the judge and the other parties within 10 days of the notice due date. A party who wishes to object to a discovery response shall place a telephone conference call to the judge and the other parties within 10 days of receiving the

response. If a party fails without good reason to place a timely telephone call, the judge may deny that party's objection or decline to compel the discovery.

(e) The parties shall complete all discovery no later than five days before the first scheduled evidentiary hearing or by such date ordered by the judge at the prehearing conference.

#### 1:1-10.5 Sanctions

By motion of a party or on his or her own motion, a judge may impose sanctions pursuant to N.J.A.C. 1:1-14.4 for failure to comply with the requirements of this subchapter. Before imposing sanctions, the judge shall provide an opportunity to be heard.

#### 1:1-10.6 Discovery in conference hearings; no discovery in mediation

(a) If an agency or a county/local governmental entity is a party to a conference hearing and the subject of the case is the county/local entity's or agency's action, proposed action or refusal to act, a party shall be permitted to review the entity's or agency's relevant file or files on the matter. Copies of any document in the file or files shall be provided to the party upon the party's request and for a reasonable copying charge. See, N.J.S.A. 47:1A2. The agency or county/local entity may refuse to disclose any document subject to a bona fide claim of privilege.

(b) If the subject of a conference hearing is not a county/local entity's or agency's action, proposed action or refusal to act, each party shall provide each other party copies of any documents and a list with names, addresses and telephone numbers of any witnesses including experts which the party intends to introduce at the hearing. A summary of the testimony expected to be provided by each witness shall be included. These items shall be exchanged at least five days prior to the hearing, unless the judge determines that the information could not reasonably have been disclosed within that time.

(c) Any discovery other than that permitted in (a) and (b) above in conference hearings shall be by motion to the judge and for good cause shown.

(d) In no conference case shall the hearing date be adjourned to permit discovery.

(e) No discovery to prepare for mediation shall be permitted.

## SUBCHAPTER 11. SUBPOENAS

### 1:1-11.1 Subpoenas for attendance of witnesses; production of documentary evidence; issuance; contents

(a) Subpoenas may be issued by the Clerk or any judge to compel the attendance of a person to testify at a hearing or a deposition. The subpoena shall contain the title and docket number of the case, the name of the person to whom it has been issued, the time and place at which the person subpoenaed must appear, the name and telephone number of the party who has requested the subpoena and a statement that all inquiries concerning the subpoena should be directed to the requesting party. The subpoena shall command the person to whom it is directed to attend and give testimony or to produce books, papers, documents or other designated objects at the time and place specified therein and on any continued dates.

(b) A subpoena which requires production of books, papers, documents or other objects designated therein shall not be used as a discovery device in place of discovery procedures otherwise available under this chapter, nor as a means of avoiding discovery deadlines established by this chapter or by the judge in a particular case.

(c) Subpoena forms shall be available free of charge from the Office of Administrative Law.

### 1:1-11.2 Service; fees

(a) A subpoena shall be served by the requesting party by delivering a copy either in person or by certified mail return receipt requested to the person named in the subpoena, together with the appropriate fee, at a reasonable time in advance of the hearing.

(b) Witnesses required to attend shall be entitled to payment by the requesting party at a rate of \$2.00 per day of attendance if the witness is a resident of the county in which the hearing is held and an additional allowance of \$2.00 for every 30 miles of travel in going to the place of hearing from his or her residence and in returning if the witness is not a resident of the county in which the hearing is held.

### 1:1-11.3 Motions to quash

The judge on motion may quash or modify any subpoena for good cause shown. If compliance with a subpoena for the production of documentary evidence would be unreasonable or oppressive, the judge may condition denial of the motion upon the advancement by the requesting party of the reasonable cost of producing the objects subpoenaed. The judge may direct that the objects designated in the subpoena be

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produced before the judge at a time prior to the hearing or prior to the time when they are to be offered in evidence and may upon their production permit them or portions of them to be inspected by the parties and their attorneys.

## 1:1-11.4 Failure to obey subpoena

A party who refuses to obey a subpoena may be subject to sanctions under N.J.A.C. 1:1-14.4 or may suffer an inference that the documentary or physical evidence or testimony that the party fails to produce is unfavorable.

## 1:1-11.5 Enforcement

A party who has requested issuance of a subpoena may seek enforcement of the subpoena by bringing an action in the Superior Court pursuant to the New Jersey Court Rules.

## SUBCHAPTER 12. MOTIONS

## 1:1-12.1 When and how made; generally; limitation in conference hearings

(a) Where a party seeks an order of a judge, the party shall apply by motion.

1. A party shall make each motion in writing, unless it is made orally during a hearing or unless the judge otherwise permits it to be made orally.

2. No technical forms of motion are required. In a motion, a party shall state the grounds upon which the motion is made, the relief or order being sought and the date when the matter shall be submitted to the judge for disposition. A party shall submit a proposed form of order with each motion, unless the judge waives this requirement.

(b) A party shall file each motion with the Clerk, except for motions made during a hearing, other motions permitted by a judge to be made orally, and emergency motions. Upon filing, the Clerk shall transmit the motion to the judge assigned to the case. When a motion is filed in a case which has not yet been assigned to a judge, the Clerk shall immediately assign the case and shall transmit the motion to the judge along with the case file.

(c) In a motion for substantially the same relief as that previously denied, a party shall specifically identify the previous proceeding and its disposition.

(d) In conference hearings, other than motions for emergency relief, discovery, summary decision or conversion of the conference hearing into another form of proceeding, a party may not file a motion in advance of the scheduled hearing date.

## 1:1-12.2 Motions in writing; generally, no oral argument; time limits

(a) With the exception of emergency relief applications made pursuant to N.J.A.C. 1:1-12.6 and when a motion is expedited pursuant to (g) below, no action shall be taken on motions in writing until at least 20 days have expired from the date of service upon the opposing party.

(b) The moving papers shall establish a submission date at least 20 days from the date of service upon the opposing party, when the matter will be submitted to a judge for disposition. Proof of service shall be filed with the moving papers.

(c) The opposing parties shall file and serve responsive papers no later than 10 days after receiving the moving papers. Proof of service shall be filed with the responsive papers.

(d) The moving party may file and serve further papers responding to any matter raised by the opposing party and shall do so no later than five days after receiving the responsive papers.

(e) All motions in writing shall be submitted for disposition on the papers unless oral argument is directed by the judge.

(f) With the exception of motions for summary decision under N.J.A.C. 1:1-12.5 and motions concerning predominant interest in consolidated cases under N.J.A.C. 1:1-17.6, all motions shall be decided within 10 days after they are submitted for disposition.

(g) A party may request an expedited schedule for disposition of a motion by arranging a telephone conference between the judge and all parties. If the judge agrees to expedite, he or she must establish a schedule for responsive papers, submission and decision.

## 1:1-12.3 Procedure when oral argument is directed

(a) When oral argument is directed on a motion, the Clerk shall serve upon the parties a notice complying with the requirements of N.J.A.C. 1:1-9.5(f).

(b) Unless otherwise ordered for good cause shown, all motions for which oral argument has been directed shall be heard by telephone conference without any personal appearance of the parties upon such terms as shall be established by the judge, including provision for sound recording.

(c) A motion for which oral argument has been directed shall be considered submitted for disposition at the close of argument.

## 1:1-12.4 Affidavits; briefs and supporting statements; evidence on motions

(a) Motions and answering papers shall be accompanied by all necessary supporting affidavits and briefs or supporting statements. All motions and answering papers shall be supported by affidavits for facts relied upon which are not of record or which are not the subject of official notice. Such affidavits shall set forth only facts which are admissible in evidence under N.J.A.C. 1:1-15, and to which affiants are competent to testify. Properly verified copies of all papers or parts of papers referred to in such affidavits may be annexed thereto.

(b) In the discretion of the judge, a party or parties may be required to submit briefs or supporting statements pursuant to the schedule established in N.J.A.C. 1:1-12.2 or as ordered by the judge.

(c) The judge may hear the matter wholly or partly on affidavits or on depositions, and may direct any affiant to submit to cross-examination and may permit supplemental or clarifying testimony.

## 1:1-12.5 Motion for summary decision; when and how made; partial summary decision

(a) At any time after a case is determined to be contested, a party may move for summary decision upon all or any of the substantive issues therein.

(b) The motion for summary decision shall be served with briefs and with or without supporting affidavits. The decision sought may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law. When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding. If the adverse party does not so respond, a summary decision, if appropriate, shall be entered.

(c) Motions for summary decision shall be decided within 45 days from the date of submission. Any motion for summary decision not decided by an agency head which fully disposes of the case shall be treated as an initial decision under N.J.A.C. 1:1-18. Any partial summary decision shall be treated as required by (e) and (f) below.

(d) If, on motion under this section, a decision is not rendered upon all the substantive issues in the contested case and a hearing is necessary, the judge at the time of ruling on the motion, by examining the papers on file in the case as well as the motion papers, and by interrogating counsel, if necessary, shall, if practicable, ascertain what material facts exist without substantial controversy and shall thereupon enter an order specifying those facts and directing such further proceedings in the contested case as are appropriate. At the hearing in the contested case, the facts so specified shall be deemed established.

(e) A partial summary decision shall by its terms not be effective until a final agency decision has been rendered on the issue, either upon interlocutory review pursuant to N.J.A.C. 1:1-14.10 or at the end of the contested case, pursuant to N.J.A.C. 1:1-18.6. However, at the discretion of the judge, for the purpose of avoiding unnecessary litigation or expense by the parties, the order and decision may be submitted to the agency head for immediate review as an initial decision, pursuant to N.J.A.C. 1:1-18.3 through 18.6. Within 10 days after the initial decision is filed with the agency head, the Clerk shall certify a copy of pertinent portions of the record to the agency head.

(f) Review by the agency head of any partial summary decision shall not cause delay in scheduling hearing dates or result in a postponement of any scheduled hearing dates unless the judge assigned to the case orders that a postponement is necessary because of special requirements, possible prejudice, unproductive effort or other good cause.

## 1:1-12.6 Emergency relief

(a) Where authorized by law and where irreparable harm will result without an expedited decision granting or prohibiting some action or relief connected with a contested case, emergency relief pending a final decision on the whole contested case may be ordered upon the application of a party.

(b) Applications for emergency relief shall be made directly to the agency head and may not be made to the Office of Administrative Law.

(c) An agency head receiving an application for emergency relief may either hear the application or forward the matter to the Office of Administrative Law for hearing on the application for emergency relief. When forwarded to the Office of Administrative Law, the application shall proceed in accordance with (i) through (k) below. All applications for emergency relief shall be heard on an expedited basis.

(d) The moving party must serve notice of the request for emergency relief on all parties. Proof of service will be required if the adequacy of notice is challenged. Opposing parties shall be given ample opportunity under the circumstances to respond to an application for emergency relief.

(e) Where circumstances require some immediate action by the agency head to preserve the subject matter of the application pending the expedited hearing, or where a party applies for emergency relief under circumstances which do not permit an opposing party to be fully heard, the agency head may issue an order granting temporary relief. Temporary relief may continue until the agency head issues a decision on the application for emergency relief.

(f) When temporary relief is granted by an agency head under circumstances which do not permit an opposing party to be fully heard, temporary relief shall:

1. Be based upon specific facts shown by affidavit or oral testimony, that the moving party has made an adequate, good faith effort to provide notice to the opposing party, or that notice would defeat the purpose of the application for relief;

2. Include a finding that immediate and irreparable harm will probably result before adequate notice can be given;

3. Be based on the likelihood that the moving party will prevail when the application is fully argued by all parties;

4. Be as limited in scope and temporary as is possible to allow the opposing party to be given notice and to be fully heard on the application; and

5. Contain a provision for serving and notifying all parties and for scheduling a hearing before the agency head or for transmitting the application to Office of Administrative Law.

(g) Upon determining any application for emergency relief, the agency head shall forthwith issue and immediately serve upon the parties a written order on the application. If the application is related to a contested case that has been transmitted to Office of Administrative Law, the agency head shall also serve the Clerk of Office of Administrative Law with a copy of the order.

(h) Applications to an agency head for emergent relief in matters previously transmitted to the Office of Administrative Law shall not delay the scheduling or conduct of hearings, unless the presiding judge determines that a postponement is necessary due to special requirements of the case, because of probable prejudice or for other good cause.

(i) Upon determining an application for emergency relief, the judge forthwith shall issue to the parties, the agency head and the Clerk a written order on the application. The Clerk shall file with the agency head any papers in support of or opposition to the application which were not previously filed with the agency and a sound recording of the oral argument on the application, if any oral argument has occurred.

(j) The agency head's review of the judge's order shall be completed without undue delay but no later than 45 days from entry of the judge's order, except when, for good cause shown and upon notice to the parties, the time period is extended by the joint action of the Director of the Office of Administrative Law and the agency head. Where the agency head does not act on review of the judge's order within 45 days, the judge's order shall be deemed adopted.

(k) Review by an agency head of a judge's order for emergency relief shall not delay the scheduling or conduct of hearings in the Office of Administrative Law, unless the presiding judge determines that a postponement is necessary due to special requirements of the case, because of probable prejudice or for other good cause.

#### 1:1-12.7 Disposition of motions

Disposition of motions which completely conclude a case shall be by initial decision. Disposition of all other motions shall be by order.

### SUBCHAPTER 13. PREHEARING CONFERENCES AND PROCEDURES

#### 1:1-13.1 Prehearing conferences

(a) A prehearing conference shall be scheduled in accordance with the criteria established in N.J.A.C. 1:1-9.1(d).

(b) The prehearing notice shall advise the parties, their attorneys or other representatives that a prehearing conference will cover those matters listed in N.J.A.C. 1:1-13.2 and that discovery should have already been commenced. At the time of the prehearing conference, the participants shall be prepared to discuss one or more alternate dates when the parties and witnesses will be available for the evidentiary hearing. The judge may advise the parties that other special matters will be discussed at the prehearing conference.

(c) In exceptional circumstances, the judge may, upon no less than 10 days' notice, require the parties to file with the judge and serve upon all other parties no later than three days before the scheduled prehearing conference, prehearing memoranda stating their respective positions on any or all of the matters specified in N.J.A.C. 1:1-13.2 set forth in the same sequence and with corresponding numbers or on other special matters specifically designated.

(d) A prehearing conference shall be held by telephone conference call unless the judge otherwise directs.

#### 1:1-13.2 Prehearing order; amendment

(a) Within 10 days after the conclusion of the prehearing conference, the judge shall prepare a written order specifically setting out the matters listed in 1 through 14 below and shall cause the same to be served upon all parties.

1. The nature of the proceeding and the issue or issues to be resolved including special evidence problems;

2. The parties and their status, for example, petitioner, complainant, appellant, respondent, intervenor, etc. and their attorneys or other representatives of record. In the event that a particular member or associate of a firm is to try a case, or if outside trial counsel is to try the case, the name must be specifically set forth at the prehearing. No change in such designated trial counsel shall be made without leave of the judge if such change will interfere with the date for hearing. If the name of a specific trial counsel is not set forth, the judge and opposing parties shall have the right to expect any partner or associate to proceed with the trial on the date of hearing;

3. Any special legal requirements as to notice of hearing;

4. The schedule of hearing dates and the time and place of hearing;

5. Stipulations as to facts and issues;

6. Any partial settlement agreements and their terms and conditions;

7. Any amendments to the pleadings contemplated or granted;

8. Discovery matters remaining to be completed and the date when discovery shall be completed for each mode of discovery to be utilized;

9. Order of proofs;

10. A list of exhibits marked for identification;

11. A list of exhibits marked in evidence by consent;

12. Estimated number of fact and expert witnesses;

13. Any motions contemplated, pending and granted;

14. Other special matters determined at the conference.

(b) Any party may, upon written motion filed no later than five days after receiving the prehearing order, request that the order be amended to correct errors.

(c) The prehearing order may be amended by the judge to accommodate circumstances occurring after its entry date. Unless precluded by law, a prehearing order may also be amended by the judge to conform the order with the proofs.

### SUBCHAPTER 14. CONDUCT OF CASES

#### 1:1-14.1 Public hearings; records as public; sealing a record; media coverage

(a) All evidentiary hearings, proceedings on motions and other applications shall be conducted as public hearings unless otherwise provided by statute, rule or regulation, or on order of a judge for good cause shown. Prehearing conferences and informal discussions immediately preceding the hearing or during the hearing to facilitate the orderly and expeditious conduct of the case may, at the judge's discretion, be conducted in public or in closed session and may or may not be recorded. Mediations and settlement conferences shall be held in closed session but may be recorded. All other proceedings in the presence of a judge shall be recorded verbatim either by a stenographic reporter or by sound recording devices. All discussions off the record, no matter how brief, except settlement discussions and mediations, shall be summarized generally for the record. The record of all hearings shall be open to public inspection, but the judge may, for good cause shown, order the sealing of the record or any part thereof.

(b) In considering whether to close a hearing and/or seal a record, the judge shall consider the requirements of due process of law, other constitutional and statutory standards and matters of public policy. The judge shall consider the need to protect against unwarranted disclosure of sensitive financial information or trade secrets, to protect parties or witnesses from undue embarrassment or deprivations of privacy, or to promote or protect other equally important rights or interests.

(c) When sealing a record, the judge must specify the consequences of such an order to all material in the case file including any evidence, the stenographic notes or audiotapes and the initial decision. The treatment of testimony or exhibits shall be on such terms as are appropriate

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to balance public and private rights or interests and to preserve the record for purposes of review. The judge shall also indicate what safeguards shall be imposed upon the preparation and disclosure of any transcript of the proceedings.

(d) All public hearings may be filmed, photographed and recorded, subject to reasonable restrictions established by the judge to avoid disruption of the hearing process. The number of cameras and lights in the hearing room at any one time may be limited. Technical crews and equipment may be prohibited from moving except during recesses and after the proceedings are concluded for the day. To protect the attorney/client privilege, there shall be no recording of conferences between attorneys and their clients or between counsel and the judge at the bench.

## 1:1-14.2 Expedition

(a) Hearings and other proceedings shall proceed with all reasonable expedition and, to the greatest extent possible, shall be held at one place and shall continue, except for brief intervals of the sort normally involved in judicial proceedings, without suspension until concluded.

(b) The parties shall promptly advise the Clerk and the judge of any event which will probably delay the conduct of the case.

## 1:1-14.3 Interpreters; payment

(a) Any party at his or her own cost may obtain an interpreter.

(b) Taking into consideration the complexity of the issues and communications involved, the judge may require that an interpreter be taken from an official registry of interpreters or otherwise be assured that the proposed interpreter can adequately aid and enable the witness in conveying information to the judge.

(c) If all parties consent, the judge may accept as an interpreter a friend or relative of a party or witness, any employee of a State or local agency, or other person who can provide acceptable interpreter assistance.

## 1:1-14.4 Sanctions: Failure to appear: failure to comply with orders or requirements of this chapter

(a) If a party or representative fails to appear at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for 10 days before taking any action. If the judge does not receive an explanation for the nonappearance within 10 days, the judge shall dismiss the matter or grant the requested relief. The initial decision shall note that the dismissal or relief is ordered because the party failed to appear. If the non-appearing party submits an explanation in writing, a copy must be served on all other parties and the other parties shall be given an opportunity to respond.

1. If the judge receives an explanation, the judge shall reschedule the matter and may, at his or her discretion, order any of the following:

i. The payment by the delinquent representative or party of costs in such amount as the judge shall fix, to the State of New Jersey or the aggrieved person;

ii. The payment by the delinquent representative or party of reasonable expenses, including attorney's fees, to an aggrieved representative or party; or

iii. Such other case-related action as the judge deems appropriate.

2. If the judge concludes from the explanation received that the non-appearing party or representative is intentionally attempting to delay the proceeding, the judge may refuse to reschedule the matter and shall grant the requested relief or dismiss the claim.

(b) If the judge dismisses the matter or grants the requested relief, the party who failed to appear at the hearing may request a remand in an exception to the initial decision.

(c) For unreasonable failure to comply with any order of a judge or with any requirements of this chapter, the judge may:

1. Dismiss or grant the motion or application;

2. Suppress a defense or claim;

3. Exclude evidence;

4. Continue the proceeding and consider sanctions under (a)li or ii above; or

5. Take other appropriate case-related action.

## 1:1-14.5 Ex parte communications

(a) Except as specifically permitted by law or this chapter, a judge may not initiate or consider ex parte any evidence or communications concerning issues of fact or law in a pending or impending proceeding. Where ex parte communications are unavoidable, the judge shall advise all parties of the communications as soon as possible thereafter.

(b) The ex parte communications preclusion shall not encompass scheduling discussions or other practical administrative matters.

(c) Ex parte discussions relating to possible settlement may be conducted in the course of settlement conferences or mediations when all parties agree in advance.

(d) Where an agency or agency staff is a party to a contested case, the legal representative appearing and acting for the agency in the case may not engage in ex parte communications concerning that case with the transmitting agency head, except for purposes of conferring settlement authority on the representative or when necessary to the discharge of the agency head's broad regulatory responsibilities. In no event may the legal representative participate in making or preparing the final decision in the case.

## 1:1-14.6 Judge's powers in presiding over prehearing activities, conducting hearings, developing records and rendering initial decisions

(a) The judge may schedule any form of hearing or proceeding and establish appropriate location areas and instruct the Clerk to issue all appropriate notices.

(b) When required in individual cases, the judge may supersede any notice issued by the Clerk by informing the parties and the Clerk of this action.

(c) Depending on the needs of the case, the judge may schedule additional hearing dates, declare scheduled hearing dates unnecessary, or schedule any number of in-person conferences or telephone conferences.

(d) When required in individual cases, the judge at any time of the proceeding may convert any form of proceeding into another, whether more or less formal or whether in-person or by telephone.

(e) The judge may bifurcate hearings whenever there are multiple parties, issues or claims, and the nature of the case is such that a hearing of all issues in one proceeding may be complex and confusing, or whenever a substantial saving of time would result from conducting separate hearings or whenever bifurcation might eliminate the need for further hearings.

(f) The judge may establish special accelerated or decelerated schedules to meet the special needs of the parties or the particular case.

(g) The judge may administer any oaths or affirmations required or may direct a certified court reporter to perform this function.

(h) The judge may render any ruling or order necessary to decide any matter presented to him or her which is within the jurisdiction of the transmitting agency or the agency conducting the hearing.

(i) The judge shall control the presentation of the evidence and the development of the record and shall determine admissibility of all evidence produced. The judge may permit narrative testimony whenever appropriate.

(j) The judge may utilize his or her sanction powers to ensure the proper conduct of the parties and their representatives appearing in the matter.

(k) The judge may limit the presentation of oral or documentary evidence, the submission of rebuttal evidence and the conduct of cross-examination.

(l) The judge may determine that the party with the burden of proof shall not begin the presentation of evidence and may require another party to proceed first.

(m) The judge may make such rulings as are necessary to prevent argumentative, repetitive or irrelevant questioning and to expedite the cross-examination to an extent consistent with disclosure of all relevant testimony and information.

(n) The judge may compel production of relevant materials, files, records and documents and may issue subpoenas to compel the appearance of any witness when he or she believes that the witness or produced materials may assist in a full and true disclosure of the facts.

(o) The judge may require any party at any time to clarify confusion or gaps in the proofs. The judge may question any witness to further develop the record.

(p) The judge may take such other actions as are necessary for the proper, expeditious and fair conduct of the hearing or other proceeding, development of the record and rendering of a decision.

## 1:1-14.7 Conduct of conference hearings, plenary hearings and telephone hearings

(a) The judge shall commence conference and plenary hearings by stating the case title and the docket number, asking the representatives or parties present to state their names for the record and describing briefly the matter in dispute. The judge shall also, unless all parties are represented by counsel or otherwise familiar with the procedures, state the procedural rules for the hearing. The judge may also permit any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing to be entered into the record at this time.

(b) In conference and plenary hearings, the party with the burden of proof may make an opening statement. All other parties may make statements in a sequence determined by the judge.

(c) After opening statements in conference and plenary hearings, the party with the burden of proof shall begin the presentation of evidence unless the judge has determined otherwise. The other parties may present their evidence in a sequence determined by the judge.

(d) Cross-examination of witnesses in conference and plenary hearings shall be conducted in a sequence and in a manner determined by the judge to expedite the hearing while ensuring a fair hearing.

(e) When all parties and witnesses have been heard in conference and plenary hearings, opportunity shall be offered to present oral final argument, in a sequence determined by the judge.

(f) Unless permitted or requested by the judge, there shall be no proposed findings of fact, conclusions of law, briefs, forms of order or other dispositions permitted after the final argument in conference and plenary hearings. Whenever possible, proposed findings or other submissions should be offered at the hearing in lieu of or in conjunction with the final argument.

1. When proposed findings or other submissions are permitted or requested by the judge, the parties shall conform to a schedule that may not exceed 30 days after the last day of testimony or the final argument.

2. When the judge permits proposed findings or other submissions to be prepared with the aid of a transcript, the transcript must be ordered immediately. The 30-day submission time frame shall commence upon receipt of the transcript.

3. Any proposed findings of fact submitted by a party shall not be considered unless they are based on facts proved in the hearing.

4. Any reference in briefs or other such submissions to initial decisions shall include sufficient information to enable the judge to locate the initial decision. This shall include either the Office of Administrative Law docket number or a reference to New Jersey Administrative Reports or another published and indexed compilation.

(g) The hearing shall be concluded in conference and plenary cases after the final argument or, if a schedule has been established for subsequent submissions, when the time established for the filing of such items has expired, or when the last such item has been received by the judge, whichever is earlier.

(h) A telephone hearing may be designated by the Clerk or judge as a conference or plenary hearing. A telephone hearing, whether conference or plenary, is begun by the judge placing a conference call on a designated date and time to the parties in the case.

#### 1:1-14.8 Conduct of proceedings on the papers

(a) Upon transmittal of a case that may be conducted as a proceeding on the papers, the Clerk shall schedule a hearing and send a notice of hearing to the parties. The notice shall permit the party requesting the hearing to select a telephone hearing or a proceeding on the papers in lieu of the scheduled in-person hearing.

(b) Along with the notice of hearing, the Clerk shall transmit a certification, to be completed if the party requesting the hearing chooses to have a proceeding on the papers.

(c) A completed certification must be returned to the Clerk no later than 10 days before the scheduled hearing date. Statements, records and other documents which supplement the certification may also be submitted. Upon request and for good cause shown, the Clerk may grant additional time for submission of supplemental documents.

(d) At the conclusion of the time allotted in (c) above, the Clerk will assign the record for review and determination by a judge. The record consists of the certification and supplemental documents, as well as documents transmitted with the file by the transmitting agency.

(e) If no certification is received, the case will be heard as scheduled in (a) above. If the party requesting the hearing does not appear at the in-person hearing, the judge will decide the case on documents transmitted by the agency and contained in the file.

#### 1:1-14.9 Orders; preparation of orders

(a) Any resolution which does not completely conclude the case shall be by order. Orders may be rendered in writing or orally on the record by the judge.

(b) Unless such review is precluded by law, all judges' orders are reviewable by an agency head in accordance with N.J.A.C. 1:1-14.10 or when rendering a final decision under N.J.A.C. 1:1-18.6.

(c) Orders may be prepared by a party at the direction of a judge. When prepared by a party, the order shall be filed with the judge and served on all parties who may within five days after service object to the form of the order by writing to the judge with a copy to all parties. Upon objection to the form of the order, the judge, without oral argument or any further proceedings, may settle the form of the order either by preparing a new order or by modifying the proposed order. After signing the order, the judge shall cause the order to be served upon the parties.

#### 1:1-14.10 Interlocutory review

(a) Except for the special review procedures provided in N.J.A.C. 1:1-12.6 (emergency relief), and 1:1-12.5(e) (partial summary decision), an order or ruling may be reviewed interlocutorily by an agency head at the request of a party.

(b) Any request for interlocutory review shall be made to the agency head and copies served on all parties no later than five working days from the receipt of the written order or oral ruling, whichever is rendered first. An opposing party may, within three days of receipt of the request, submit an objection to the agency head. A copy must be served on the party who requested review. Any request for interlocutory review or objection to a request shall be in writing by memorandum, letter or motion and shall include a copy of any written order or ruling or a summary of any oral order or ruling sought to be reviewed. Copies of all documents submitted shall be filed with the judge and Clerk.

(c) Within 10 days of the request for interlocutory review, the agency head shall notify the parties and the Clerk whether the order or ruling will be reviewed. If the agency head does not so act within 10 days, the request for review shall be considered denied. Informal communication by telephone or in person to the parties or their representatives and to the Clerk within the 10 day period will satisfy this notice requirement, provided that a written communication or order promptly follows.

(d) A party opposed to the grant of interlocutory review may, within three days of receiving notice that review was granted, submit to the agency head in writing arguments in favor of the order or ruling being reviewed. A copy shall be served on the party who requested review.

(e) Where the agency head determines to conduct an interlocutory review, the agency head shall issue a decision, order or other disposition of the review at the earliest opportunity but no later than 20 days from receiving the request for review. Where the interests of justice require, the agency head shall conduct an interlocutory review on an expedited basis. Where the agency head does not issue an order within 20 days, the judge's ruling shall be considered conditionally affirmed. The time period for disposition may be extended for good cause for an additional 20 days if both the agency head and the Director of the Office of Administrative Law concur.

(f) Where the proceeding generating the request for interlocutory review has been sound recorded and the agency head requests the verbatim record, the Clerk shall furnish the original sound recording or a certified copy within one day of the request. The party requesting the interlocutory review shall provide the agency head with all other papers, materials, transcripts or parts of the record which pertain to the request for interlocutory review.

(g) Within five working days of the agency head's notice that an interlocutory review will be conducted, the judge, in his or her discretion, may provide the agency head and the parties with a written memorandum stating the basis for the order or ruling.

(h) The time limits established in this section, with the exception of (e) above, may be extended by the agency head where the need for a delay is caused by honest mistake, accident, or any cause compatible with due diligence.

(i) An agency head's determination to review interlocutorily an order or ruling shall not delay the scheduling or conduct of hearings, unless the presiding judge determines that a postponement is necessary due to special requirements of the case, because of probable prejudice, or for other good cause. Pending review by the agency head, a judge may conditionally proceed on an order or ruling in order to complete the evidential record in a case or to avoid disruption or delay in any ongoing or scheduled hearing.

(j) Any order or ruling reviewable interlocutorily is subject to review by the agency head after the judge renders the initial decision in the contested case, even if an application for interlocutory review:

1. Was not made;

2. Was made but the agency head declined to review the order or ruling; or

3. Was made and not considered by the agency head within the established time frame.

(k) In the following matters as they relate to proceedings before the Office of Administrative Law, the Director is the agency head for purposes of interlocutory review:

1. Disqualification of a particular judge due to interest or any other reason which would preclude a fair and unbiased hearing, pursuant to N.J.A.C. 1:1-14.12;

2. Appearances of non-lawyer representatives, pursuant to N.J.A.C. 1:1-5.4;

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3. Imposition of conditions and limitations upon non-lawyer representatives, pursuant to N.J.A.C. 1:1-5.5;

4. Sanctions under N.J.A.C. 1:1-14.4 consisting of the assessment of costs or expenses; and

5. Disqualification of attorneys, pursuant to N.J.A.C. 1:1-5.3.

(l) Any request for interlocutory review of those matters specified in (k) above should be addressed to the Director of the Office of Administrative Law with a copy to the agency head who transmitted the case to the Office of Administrative Law. Review shall proceed in accordance with (b) through (h) above.

## 1:1-14.11 Ordering a transcript; cost

(a) Any party, or any person with a legitimate need, may obtain a transcript of any proceeding which has been sound recorded by filing a request with the Clerk and by notifying all parties. Unless the requesting party is the State or a political subdivision thereof, the request shall be accompanied by a \$200.00 security deposit for each day or fraction thereof of the proceeding. The Clerk shall promptly arrange for the preparation of the transcript with a copy for the case file. Upon completion of the transcript, the Clerk shall bill the requesting party for the preparation of the transcript and the copy. Upon receipt of payment, the Clerk shall forward the original transcript to the requesting party and shall return the deposit.

(b) Any party may obtain an unofficial copy of a sound recorded proceeding by making a request to the Clerk accompanied by a blank standard cassette of appropriate length.

(c) Any party, or any person with a legitimate need, may request the appropriate stenographic firm to prepare a transcript of any stenographically recorded proceeding and shall provide notice of the request to the Clerk and to all other parties. Unless the requesting party is the State or a political subdivision thereof, the stenographic firm may require a reasonable deposit. The reporter shall promptly prepare the transcript in accordance with standards established by the State and shall file a copy with the Clerk at the time the original is delivered to the requesting party. The requesting party shall be charged for the copy filed with the Clerk at a rate not to exceed State contract rates.

(d) Any party or person entitled by Federal statute or regulation to copy and inspect the verbatim transcript may arrange with the Clerk to review any transcript filed under (a) or (c) above and shall also be permitted to hear and receive a copy of any sound recorded proceeding pursuant to (b) above. All applications to obtain a transcript of any proceeding at public expense for use on appeal shall be made to the Appellate Court pursuant to New Jersey Court Rule R. 2:5-3 or in case of Federal appeals pursuant to applicable Federal Court Rules.

(e) State agencies requesting official transcripts shall make provision for payment or shall pay the cost of production at rates established under the prevailing State contract rates; provided that where the Public Advocate's office is representing the public interest in a proceeding and another party to the proceedings is entitled by law to recover the costs thereof from others, such other party shall obtain, pay for and furnish to the Public Advocate upon request the official transcript.

## 1:1-14.12 Disqualification of judges

(a) A judge shall, on his or her own motion, withdraw from participation in any proceeding in which the judge's ability to provide a fair and impartial hearing might reasonably be questioned, including but not limited to instances where the judge:

1. Has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

2. Is by blood or marriage the second cousin of or is more closely related to any party to the proceeding or an officer, director or trustee of a party;

3. Is by blood or marriage the first cousin of or is more closely related to any attorney in the case. This proscription shall extend to partners, employers, employees or office associates of any such attorney;

4. Is by blood or marriage the second cousin of or is more closely related to a likely witness to the proceeding;

5. While in private practice served as attorney of record or counsel in the case or was associated with a lawyer who served during such association as attorney of record or counsel in the proceeding, or the judge or such lawyer has been a witness concerning the case;

6. Has served in government employment and in such capacity participated as counsel, advisor or material witness concerning the proceeding;

7. Is interested, individually or as a fiduciary, or whose spouse or minor child residing in the same household is interested in the outcome of the proceeding; or

8. When there is any other reason which might preclude a fair and unbiased hearing and decision, or which might reasonably lead the parties or their representatives to believe so.

(b) A judge shall, as soon as practicable after assignment to a particular case, withdraw from participation in a proceeding whenever the judge finds that any of the criteria in (a)1 through 8 above apply. A judge may not avoid disqualification by disclosing on the record the basis for disqualification and securing the consent of the parties.

(c) Any party may, by motion, apply to a judge for his or her disqualification. Such motion must be accompanied by a statement of the reasons for such application and shall be filed as soon as practicable after a party has reasonable cause to believe that grounds for disqualification exist. In no event shall the judge enter any order, resolve any procedural matters or render any other determination until the motion for disqualification has been decided.

(d) Any request for interlocutory review of an administrative law judge's order under this section shall be made pursuant to N.J.A.C. 1:1-14.10(k) and (l).

## 1:1-14.13 Proceedings in the event of death, disability, departure from State employment, disqualification or other incapacity of judge

(a) If, by reason of death, disability, departure from State employment, disqualification or other incapacity, a judge is unable to continue presiding over a pending hearing or issue an initial decision after the conclusion of the hearing, a conference will be scheduled to determine if the parties can settle the matter or, if not, can reach agreement upon as many matters as possible.

(b) In the event settlement is not reached, another judge shall be assigned to complete the hearing or issue the initial decision as if he or she had presided over the hearing from its commencement, provided:

1. The judge is able to familiarize himself or herself with the proceedings and all testimony taken by reviewing the transcript, exhibits marked in evidence and any other materials which are contained in the record; and

2. The judge determines that the hearing can be completed with or without recalling witnesses without prejudice to the parties.

(c) In the event the hearing cannot be continued for any of the reasons enumerated in (b) above, a new hearing shall be ordered by the judge.

## SUBCHAPTER 15. EVIDENCE RULES

## 1:1-15.1 General rules

(a) Only evidence which is admitted by the judge and included in the record shall be considered.

(b) Evidence rulings shall be made to promote fundamental principles of fairness and justice and to aid in the ascertainment of truth.

(c) Parties in contested cases shall not be bound by statutory or common law rules of evidence or any formally adopted in the New Jersey Court Rules except as specifically provided in these rules. All relevant evidence is admissible except as otherwise provided herein. A judge may, in his or her discretion, exclude any evidence if its probative value is substantially outweighed by the risk that its admission will either:

1. Necessitate undue consumption of time; or

2. Create substantial danger of undue prejudice or confusion.

(d) If the judge finds at the hearing that there is no bona fide dispute between the parties as to any unstipulated material fact, such fact may be proved by any relevant evidence, and exclusionary rules shall not apply, except for (c) above or a valid claim of privilege.

(e) When the rules in this subchapter state that the qualification of a person to be a witness, or the admissibility of evidence, or the existence of a privilege is subject to a condition, and the fulfillment of the condition is in issue, the judge shall hold a preliminary inquiry to determine the issue. The judge shall indicate which party has the burden of producing evidence and the burden of proof on such issue as implied by the rule under which the question arises. No evidence may be excluded in determining such issue except pursuant to the judge's discretion under (c) above or a valid claim of privilege. This provision shall not be construed to restrict or limit the right of a party to introduce evidence subsequently which is relevant to weight or credibility.

## 1:1-15.2 Official notice

(a) Official notice may be taken of judicially noticeable facts as explained in Rule 9 of the New Jersey Rules of Evidence.

(b) Official notice may be taken of generally recognized technical or scientific facts within the specialized knowledge of the agency or the judge.

(c) Parties must be notified of any material of which the judge intends to take official notice, including preliminary reports, staff memoranda or other noticeable data. The judge shall disclose the basis for taking official notice and give the parties a reasonable opportunity to contest the material so noticed.

#### 1:1-15.3 Presumptions

No evidence offered to rebut a presumption may be excluded except pursuant to the judge's discretion under N.J.A.C. 1:1-15.1(c) or a valid claim of privilege.

#### 1:1-15.4 Privileges

The rules of privilege recognized by law or contained in the following New Jersey Rules of Evidence shall apply in contested cases to the extent permitted by the context and similarity of circumstances: Rule 23 (Privilege of Accused); Rule 24 (Definition of Incrimination); Rule 25 (Self-incrimination); Rule 26 (Lawyer-Client Privilege); N.J.S.A. 45:14B-28 (Psychologist's Privilege); N.J.S.A. 2A:84-22.1 et seq. (Patient and Physician Privilege); N.J.S.A. 2A:84A-22.8 and N.J.S.A. 2A:84A-22.9 (Information and Data of Utilization Review Committees of Hospitals and Extended Care Facilities); N.J.S.A. 2A:84A-22.11 et seq. (Rape Counselor Privilege); Rule 27 (Newsperson's Privilege); Rule 28 (Marital Privilege-Confidential Communications); N.J.S.A. 45:8B-29 (Marriage Counselor Privilege); Rule 29 (Priest-Penitent Privilege); Rule 30 (Religious Belief); Rule 31 (Political Vote); Rule 32 (Trade Secret); Rule 34 (Official Information); Rule 36 (Identity of Informer); Rule 37 (Waiver of Privilege by Contract or Previous Disclosure; Limitations); Rule 38 (Admissibility of Disclosure Wrongfully Compelled); Rule 39 (Reference to Exercise of Privileges); and Rule 40 (Effect of Error in Overruling Claim of Privilege).

#### 1:1-15.5 Hearsay evidence; residuum rule

(a) Subject to the judge's discretion to exclude evidence under N.J.A.C. 1:1-15.1(c) or a valid claim of privilege, hearsay evidence shall be admissible in the trial of contested cases. Hearsay evidence which is admitted shall be accorded whatever weight the judge deems appropriate taking into account the nature, character and scope of the evidence, the circumstances of its creation and production, and, generally, its reliability.

(b) Notwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.

#### 1:1-15.6 Authentication and content of writings

Any writing offered into evidence which has been disclosed to each other party at least five days prior to the hearing shall be presumed authentic. At the hearing any party may raise questions of authenticity. Where a genuine question of authenticity is raised the judge may require some authentication of the questioned document. For these purposes the judge may accept a submission of proof, in the form of an affidavit, certified document or other similar proof, no later than 10 days after the date of the hearing.

#### 1:1-15.7 Exhibits

(a) The verbatim record of the proceedings shall include references to all exhibits and, as to each, the offering party, a brief description of the exhibit stated by the offering party or the judge, and the marking directed by the judge. The verbatim record shall also include a record of the exhibits retained by the judge at the end of the proceedings and of the disposition then made of the other exhibits.

(b) Parties should, whenever practicable, provide each party to the case with a copy of any exhibit offered into evidence. Large exhibits that cannot be placed within the judge's file may be either photographed, attached to the file, or described in the record and committed to the safekeeping of a party. All other admitted exhibits shall be retained in the judge's file until certified to the agency head pursuant to N.J.A.C. 1:1-18.1.

(c) The standard marking for exhibits shall be:

1. P = petitioner;
2. R = respondent;
3. A = appellant;
4. J = joint;
5. C = judge;
6. I = intervenor; or
7. Such other additional markings required for clarity as the judge may direct.

#### 1:1-15.8 Witnesses; requirements for testifying; testifying by telephone

(a) Except as otherwise provided by this subchapter, by statute or by rule establishing a privilege:

1. Every person is qualified to be a witness; and
2. No person has a privilege to refuse to be a witness; and

3. No person is disqualified to testify to any matter; and

4. No person has a privilege to refuse to disclose any matter or to produce any object or writing; and

5. No person has a privilege that another shall not be a witness or shall not disclose any matter or shall not produce any object or writing but the judge presiding at the hearing in a contested case may not testify as a witness.

(b) A person is disqualified to be a witness if the judge finds the proposed witness is incapable of expression concerning the matter so as to be understood by the judge directly or through interpretation by one who can understand the witness, or the proposed witness is manifestly incapable of understanding the duty of a witness to tell the truth. An interpreter is subject to all the provisions of these rules relating to witnesses.

(c) As a prerequisite for the testimony of a witness there must be evidence that the witness has personal knowledge of the matter, or has special experience, training or education, if such is required. Such evidence may be provided by the testimony of the witness. In exceptional circumstances, the judge may receive the testimony of a witness conditionally, subject to evidence of knowledge, experience, training or education being later supplied in the course of the proceedings. Personal knowledge may be obtained through hearsay.

(d) A witness may not testify without taking an oath or affirming to tell the truth under the penalty provided by law. No witness may be barred from testifying because of religion or lack of it.

(e) Testimony of a witness may be presented by telephone if, before the hearing begins, all parties agree and the judge finds there is good cause for permitting the witness to testify by telephone.

(f) Testimony of a witness may be given in narrative fashion rather than by question and answer format if the judge permits.

#### 1:1-15.9 Expert and other opinion testimony

(a) If a witness is not testifying as an expert, testimony of that witness in the form of opinions or inferences is limited to such opinions or inferences as the judge finds:

1. May be rationally based on the perception of the witness; and
2. Are helpful to a clear understanding of the witness' testimony or to the fact in issue.

(b) If a witness is testifying as an expert, testimony of that witness in the form of opinions or inferences is admissible if such testimony will assist the judge to understand the evidence or determine a fact in issue and the judge finds the opinions or inferences are:

1. Based on facts and data perceived by or made known to the witness at or before the hearing; and
2. Within the scope of the special knowledge, skill, experience or training possessed by the witness.

(c) Testimony in the form of opinion or inferences which is otherwise admissible is not objectionable because it embraces the ultimate issue or issues to be decided by the judge.

(d) A witness may be required, before testifying in terms of opinions or inference, to be first examined concerning the data upon which the opinion or inference is based.

(e) Questions calling for the opinion of an expert witness need not be hypothetical in form unless, in the discretion of the judge, such form is required.

(f) If facts and data are of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, those facts and data upon which an expert witness bases opinion testimony need not be admissible in evidence.

#### 1:1-15.10 Offers of settlement inadmissible

Offers of settlement, proposals of adjustment and proposed stipulations shall not constitute an admission and shall not be admissible.

#### 1:1-15.11 Stipulations

The parties may by stipulation agree upon the facts or any portion thereof involved in any controversy. Such a stipulation shall be regarded as evidence and shall preclude the parties from thereafter challenging the facts agreed upon.

#### 1:1-15.12 Prior transcribed testimony

(a) If there was a previous proceeding in the same matter which was electronically or stenographically recorded, a party may, unless otherwise precluded by law, offer the transcript of a witness in lieu of producing the witness at the hearing provided that the witness' testimony was taken under oath, all parties were present at the proceeding and were afforded a full opportunity to cross-examine the witness.

(b) A party who intends to offer a witness' transcribed testimony at the hearing must give all other parties and the judge at least five days notice of that intention.

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(c) Opposing parties may subpoena the witness to appear personally. Any party may produce additional witnesses and other relevant evidence at the hearing.

(d) When permissible by law, the entire controversy may be presented solely upon such transcribed testimony if all parties agree and the judge approves.

## SUBCHAPTER 16. INTERVENTION AND PARTICIPATION

## 1:1-16.1 Who may apply to intervene; status of intervenor

(a) Any person or entity not initially a party, who has a statutory right to intervene or who will be substantially, specifically and directly affected by the outcome of a contested case, may on motion, seek leave to intervene.

(b) Persons or entities permitted to intervene shall have all the rights and obligations of a party to the proceeding.

## 1:1-16.2 Time of motion

(a) A motion for leave to intervene may be filed at any time after a case is initiated.

(b) If made before a case has been filed with the Office of Administrative Law, a motion for leave to intervene shall be filed with the head of the agency having jurisdiction over the case. The agency head may rule upon the motion to intervene or may reserve decision for action by a judge after the case has been filed with the Office of Administrative Law.

(c) If made after a case has been filed with the Office of Administrative Law, a motion for leave to intervene shall be filed with the Clerk of the Office of Administrative Law.

## 1:1-16.3 Standards for intervention

(a) In ruling upon a motion to intervene, the judge shall take into consideration the nature and extent of the movant's interest in the outcome of the case, whether or not the movant's interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the case, the prospect of confusion or undue delay arising from the movant's inclusion, and other appropriate matters.

(b) In cases where one of the parties is a State agency authorized by law to represent the public interest in a case, no movant shall be denied intervention solely because the movant's interest may be represented in part by said State agency.

(c) Notwithstanding (a) above, persons statutorily permitted to intervene shall be granted intervention.

## 1:1-16.4 Notice of opportunity to intervene or participate

Where it appears to the judge that a full determination of a case may substantially, specifically and directly affect a person or entity who is not a party to the case, the judge, on motion of any party or on his or her own initiative, may order that the Clerk or any party notify the person or entity of the proceeding and of the opportunity to apply for intervention or participation pursuant to these rules.

## 1:1-16.5 Alternative treatment of motions to intervene

Every motion for leave to intervene shall be treated, in the alternative, as a motion for permission to participate.

## 1:1-16.6 Participation; standards for participation

(a) Any person or entity with a significant interest in the outcome of a case may move for permission to participate.

(b) A motion to participate may be made at such time and in such manner as is appropriate for a motion for leave to intervene pursuant to N.J.A.C. 1:1-16.2. In deciding whether to permit participation, the judge shall consider whether the participant's interest is likely to add constructively to the case without causing undue delay or confusion.

(c) The judge shall determine the nature and extent of participation in the individual case. Participation shall be limited to:

1. The right to argue orally; or
2. The right to file a statement or brief; or
3. The right to file exceptions to the initial decision with the agency head; or
4. All of the above.

## SUBCHAPTER 17. CONSOLIDATION OF TWO OR MORE CASES; MULTIPLE AGENCY JURISDICTION CLAIMS; DETERMINATIONS OF PREDOMINANT INTEREST

## 1:1-17.1 Motion to consolidate; when decided

(a) As soon as circumstances meriting such action are discovered, an agency head, any party or the judge may move to consolidate a case which has been transmitted to the Office of Administrative Law with any other

contested case involving common questions of fact or law between identical parties or between any party to the filed case and any other person, entity or agency.

(b) This rule shall apply to cases:

1. Already filed with the Office of Administrative Law;
2. Commenced in an agency but not yet filed with the Office of Administrative Law; and
3. Commenced in an agency and not required to be filed with the Office of Administrative Law under N.J.S.A. 52:14F-8.

(c) The judge assigned to the case first transmitted to the Office of Administrative Law shall hear and rule upon the motion to consolidate.

(d) All motions to consolidate, including those involving predominant interest allegations, must be disposed of by interlocutory order prior to commencing the evidentiary hearing.

## 1:1-17.2 Form of motion; submission date

(a) A motion to consolidate shall require the parties to show cause why the matters should not be consolidated.

(b) Motions to consolidate cases which commenced in separate agencies and all replies thereto shall include a predominant interest allegation and shall be supported by a brief and affidavits.

(c) All consolidation motions involving cases commenced in two or more agencies shall be scheduled by the Office of Administrative Law for oral argument under N.J.A.C. 1:1-12.3.

(d) Motions for consolidation involving cases transmitted or to be transmitted to the Office of Administrative Law from a single agency shall be handled in accordance with N.J.A.C. 1:1-12.2.

## 1:1-17.3 Standards for consolidation

(a) In ruling upon a motion to consolidate, the judge shall consider:

1. The identity of parties in each of the matters;
2. The nature of all the questions of fact and law respectively involved;
3. To the extent that common questions of fact and law are involved, the saving in time, expense, duplication and inconsistency which will be realized from hearing the matters together and whether such issues can be thoroughly, competently, and fully tried and adjudicated together with and as a constituent part of all other issues in the two cases;
4. To the extent that dissimilar questions of fact or law are present, the danger of confusion, delay or undue prejudice to any party;
5. The advisability generally of disposing of all aspects of the controversy in a single proceeding; and
6. Other matters appropriate to a prompt and fair resolution of the issues, including whether a case still pending in an agency is contested or is ripe to be declared contested.

## 1:1-17.4 Review of orders to consolidate cases from a single agency

(a) Except as provided in (b) below, orders granting or denying the consolidation of cases commenced before a single State agency shall be subject to N.J.A.C. 1:1-14.10.

(b) An order consolidating any matter commenced before a single agency but not transmitted to the Office of Administrative Law shall be forwarded to the agency head for review.

1. The agency head's review of the judge's order shall be completed no later than 45 days from the entry of the judge's order, except when, for good cause shown and upon notice to all parties, the time period is extended by the joint action of the Director of the Office of Administrative Law and the agency head. Where the agency head does not act on review of the judge's order within 45 days, the judge's order shall be deemed adopted.

## 1:1-17.5 Multiple agency jurisdiction claims; standards for determining predominant interest

(a) When a motion to consolidate pertains to contested cases filed with two or more State agencies which are asserting jurisdiction, the judge shall determine which agency, if any, has the predominant interest in the conduct and outcome of the matter. In determining this question, the following factors shall be weighed:

1. Whether more than one agency asserting jurisdiction over a common issue has jurisdiction over the issue, and if more than one agency has jurisdiction, whether the jurisdiction is mandatory for one of the agencies;
2. Whether the common issue before the two agencies is, for either agency, the sole, major or dominant issue in dispute and whether its determination would either serve to moot the remaining questions or to affect substantially their resolution;
3. Whether the allegations involve issues and interests which extend beyond the immediate parties and are of particular concern to one or the other agency;
4. Whether the claims, if ultimately vindicated, would require specialized or particularized remedial relief available in one agency but not the other;

5. Whether the common issue is clearly severable from the balance of the controversy and thus will permit non-duplicative factual and legal determinations by each agency.

1:1-17.6 Determination of motions involving consolidation of cases from multiple agencies; contents of order; exempt agency conduct

(a) In motions concerning multiple agencies, the judge shall initially determine the consolidation question. If consolidation is to be ordered, then a predominant interest determination must also be rendered in the consolidation order. If particular issues in the entire controversy are clearly severable, the judge's consolidation order shall specify which agency shall decide each such issue. Motions for consolidation involving predominant interest determinations must be decided within 45 days from the date of submission.

(b) If one agency is determined to have a predominant interest, that agency shall render the final decision on all issues within the scope of its predominant interest. The judge in the consolidation order shall specify the issues relating to the predominant issue and shall clearly identify the agency having the authority to issue a final decision on those issues.

(c) If there are requests for relief which may not be granted by the agency with the predominant interest, the judge shall in the consolidation order specify clearly which determinations by the agency with the predominant interest shall bind the agency subsequently considering any applications for relief.

(d) When an agency exempt under N.J.S.A. 52:14F-8(a) is determined to have a predominant interest in a contested case, the matter shall be heard by an administrative law judge unless the exempt agency decides, in its final order reviewing the judge's consolidation order to have the matter heard by its own personnel. If the exempt agency decides to have its own personnel hear the matter, but the hearer does not have jurisdiction over all issues within the scope of the agency's predominant interest, the hearer shall be designated a special administrative law judge as provided by N.J.S.A. 52:14F-6(b).

1:1-17.7 Review of orders involving consolidation of cases from multiple agencies

(a) All orders granting or denying consolidation of cases commenced before multiple agencies shall be forwarded by the Office of Administrative Law to the respective agency heads for their review.

(b) The agency head's review of the judge's order shall be completed no later than 45 days from the entry of the judge's order, except when, for good cause shown and upon notice to all parties, the time period is extended by the joint action of the Director of the Office of Administrative Law and the agency head. Where the agency head does not act on review of the judge's order within 45 days, the judge's order shall be deemed adopted.

(c) Agency heads considering a judge's consolidation order are encouraged to consult and coordinate with each other before issuing a final order.

1:1-17.8 Initial decision in cases involving a predominant interest; order of review; extension of time limits

(a) The judge in a consolidated case involving a predominant interest shall consider all the issues and arguments in the case and shall render a single initial decision in the form prescribed by N.J.A.C. 1:1-18, disposing of all the issues in controversy.

(b) The initial decision shall be filed first with the agency which has the predominant interest. After rendering its final decision, the agency with the predominant interest shall transmit the record, including the initial decision and its final decision, to the other agency which may subsequently render a final decision on any remaining issues and consider any specific remedies which may be within its statutory grant of authority.

(c) Upon transmitting the record, the agency with the predominant interest shall pursuant to N.J.A.C. 1:1-18.8 request an extension to permit the rendering of a final decision by the agency which does not have the predominant interest.

SUBCHAPTER 18. INITIAL DECISION; EXCEPTIONS; FINAL DECISION; REMAND; EXTENSIONS OF TIME LIMITS

1:1-18.1 Initial decision in contested cases

(a) When a case is not heard directly by an agency head, the judge shall issue an initial decision which shall be based exclusively on:

1. The testimony, documents and arguments accepted by the judge for consideration in rendering a decision;
2. Stipulations; and
3. Matters officially noticed.

(b) The initial decision shall be final in form and fully dispositive of all issues in the case.

(c) No substantive finding of fact or conclusion of law, nor any concluding order or other disposition shall be binding upon the agency head, unless otherwise provided by statute.

(d) In plenary hearings and proceedings on the papers, the initial decision shall be issued and received by the agency head as soon as practicable after the hearing is concluded, but in no event later than 45 days thereafter, unless an earlier time frame is mandated by Federal or State law.

(e) In conference hearings, the initial decision shall be issued and received by the agency head as soon as practicable after the last day of evidentiary hearing, but no later than 21 days thereafter, unless an earlier time frame is mandated by Federal or State law.

(f) In mediations successfully concluded by initial decision, the decision shall be issued and received by the agency head as soon as practicable after the mediation, but in no event later than 45 days thereafter.

(g) Within 10 days after the initial decision is filed with the agency head, the Clerk shall certify the entire record with original exhibits to the agency head.

(h) Upon filing of an initial decision with the transmitting agency, the Office of Administrative Law relinquishes jurisdiction over the case.

1:1-18.2 Oral initial decision

(a) The judge may render the initial decision orally on the record before the parties in any case where the judge determines that the circumstances appropriately permit an oral decision and the questions of fact or law are sufficiently non-complex.

(b) Within 15 working days of rendering an oral decision, the decision shall be transcribed, filed with the agency head and mailed to the parties with an indication of the date of receipt by the agency head.

(c) In an oral decision, the judge shall identify the case, the parties, and the issue or issues to be decided and shall analyze the facts as they relate to the applicable law, and make findings of fact, conclusions of law and an appropriate order or disposition of the case. The decision shall include the statement at N.J.A.C. 1:1-18.3(c)12, and the judge shall explain to the parties that the decision is being forwarded to the agency head for disposition pursuant to N.J.S.A. 52:14B-10, and that exceptions may be addressed to the agency head. The judge need not specifically include in the oral decision the other material required by N.J.A.C. 1:1-18.3(c) as long as it is otherwise contained in the record.

1:1-18.3 Written initial decision

(a) If an oral decision is not issued, the judge shall issue a written initial decision.

(b) The Clerk shall file the written initial decision with the agency head and shall promptly serve the written initial decision upon the parties with an indication of the date of receipt by the agency head.

(c) The written initial decision shall contain the following elements which may be combined and need not be separately discussed:

1. An appropriate caption;
2. The appearances of the parties and their representatives, if any;
3. A statement of the case;
4. A procedural history;
5. A statement of the issue(s);
6. A factual discussion;
7. Factual findings;
8. A legal discussion;
9. Conclusions of law;
10. A disposition;
11. A list of exhibits admitted into evidence; and
12. The following statement: "This recommended decision may be adopted, modified or rejected by (the head of the agency), who by law is empowered to make a final decision in this matter. However, if (the head of the agency) does not so act in 45 days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10."

1:1-18.4 Exceptions; replies

(a) Any party may file written exceptions within 10 days from the receipt of the judge's initial decision with the agency head and with the Clerk. A copy of the exceptions shall be served on all other parties.

(b) The exceptions shall:

1. Specify the findings of fact, conclusions of law or dispositions to which exception is taken;
2. Set out specific findings of fact, conclusions of law or dispositions proposed in lieu of or in addition to those reached by the judge;

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3. Set forth supporting reasons. Exceptions to factual findings shall describe the witnesses' testimony or documentary or other evidence relied upon. Exceptions to conclusions of law shall set forth the authorities relied upon.

(c) Evidence not presented at the hearing shall not be submitted as part of an exception, nor shall it be incorporated or referred to within exceptions.

(d) Within five days from receipt of exceptions, any party may file a reply with the agency head and with the Clerk, serving a copy thereof on all other parties. Such replies may include cross-exceptions or submissions in support of the initial decision.

(e) In all settlements, exceptions and cross-exceptions shall not be filed, unless permitted by the judge or agency head.

#### 1:1-18.5 Motions to reconsider and reopen

(a) Motions to reconsider an initial decision are not permitted.

(b) Motions to reopen a hearing after an initial decision has been filed must be addressed to the agency head.

(c) Motions to reopen the record before an initial decision is filed must be addressed to the judge and may be granted only for extraordinary circumstances.

#### 1:1-18.6 Final decision: stay of implementation

(a) Within 45 days after the receipt of the initial decision, or sooner if an earlier time frame is mandated by Federal or State law, the agency head may enter an order or a final decision adopting, rejecting or modifying the initial decision. Such an order or final decision shall be served upon the parties and the Clerk forthwith.

(b) An order or final decision rejecting or modifying the findings of fact in the initial decision shall be based upon substantial evidence in the record. Any order or final decision rejecting or modifying the initial decision shall specify in clear and sufficient detail the nature of the rejection or modification, the reasons for it, the specific evidence of record at hearing and interpretation of law upon which it is based and the precise changes in result or disposition caused by the rejection or modification.

(c) If an agency head does not reject or modify the initial decision within 45 days and unless the period is extended as provided by N.J.A.C. 1:1-18.8, the initial decision shall become a final decision.

(d) When a stay of the final decision is requested, the agency shall respond to the request within 10 days. Failure to timely respond shall be deemed a denial and the party requesting the stay may appeal the denial to the Appellate Division, pursuant to New Jersey Court Rule R. 2:9-7.

#### 1:1-18.7 Remand; procedure

(a) An agency head may enter an order remanding a contested case to the Office of Administrative Law for further action on issues or arguments not previously raised or incompletely considered. The order of remand shall specifically state the reason and necessity for the remand and the issues or arguments to be considered. The remand order shall be attached to a N.J.A.C. 1:1-8.2 transmittal form and returned to the Clerk of the Office of Administrative Law along with the case record.

(b) The judge shall hear the remanded matter and render an initial decision.

#### 1:1-18.8 Extensions of time limits

(a) Time limits for filing an initial decision, filing exceptions and replies and issuing a final decision may be extended for good cause.

(b) A request for extension of any time period must be submitted no later than the day on which that time period is to expire. This requirement may be waived only in case of emergency or other unforeseeable circumstances.

(c) Requests to extend the time limit for initial decisions shall be submitted to the Director of the Office of Administrative Law. If the Director approves the request, he or she shall forward a proposed order to the transmitting agency head and serve copies on all parties. If the agency head approves the request, he or she shall sign the proposed order and return it to the Director, who shall issue the order and cause it to be served on all parties.

(d) Requests to extend the time limit for exceptions and replies shall be submitted in writing with a proposed form of extension order to the transmitting agency head and served on all parties. If the agency head approves the request, he or she shall sign and issue the order and cause it to be served on all parties and the Director of the Office of Administrative Law.

(e) To extend the time limit for filing a final decision, the transmitting agency head shall forward a proposed order to the Director of the Office

of Administrative Law and serve copies on all parties. If the Director concurs in granting the extension, he or she shall sign and issue the order and cause it to be served on all parties.

(f) An order granting an extension must be issued no later than 10 days after the request for an extension is received.

(g) Any order granting an extension must establish a new time for filing the decision or exceptions and replies. Extensions for filing initial or final decisions may not exceed 45 days from the original decision due date. Additional extensions of not more than 45 days each may be granted only in case of extraordinary circumstances.

## SUBCHAPTER 19. SETTLEMENTS AND WITHDRAWALS

### 1:1-19.1 Settlements

(a) When the parties to a case wish to settle the matter, the judge shall require the parties to disclose the full settlement terms:

1. In writing, by consent order or stipulation signed by all parties or their attorneys; or

2. Verbally, by the parties or their representatives.

(b) If the judge determines from the written order/stipulation or from the parties' testimony under oath that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, and does not determine that it is inconsistent with the public interest, the judge shall issue an initial decision incorporating the full settlement terms and approving the settlement.

(c) On the judge's motion or on motion of a party, the judge may require evidence on the record to determine whether the settlement terms are consistent with the public interest.

### 1:1-19.2 Withdrawals

(a) Any party may withdraw a request for a hearing or a defense raised which shall be processed in accordance with (b) or (c) below. Parties shall not use the withdrawal process in those cases where the parties have agreed between themselves to settle the matter. All settlements shall be handled in accordance with N.J.A.C. 1:1-19.1. Withdrawals shall only be requested where a party voluntarily abandons a request for action or relief or a defense to a request for action or relief.

(b) Before commencement of testimony at the evidentiary hearing, a party may withdraw a request for a hearing or a defense raised by written request to the Clerk, with a copy to all parties, setting forth the reason for the withdrawal. Upon receipt of such request, the judge assigned to the case shall, except in those instances where he or she determines that the withdrawal should more properly be handled as a settlement under N.J.A.C. 1:1-19.1, enter an initial decision granting the withdrawal. The decision shall specify that the party requesting the withdrawal has relinquished the right to take action against the other party or parties or to defend against the action of the other party or parties and shall contain an appropriate disposition of the case.

(c) After commencement of testimony at the evidentiary hearing, a request for withdrawal shall be made by motion and shall set forth the reason for the withdrawal. Upon receipt of the motion, the judge shall determine whether to permit the withdrawal and may deny withdrawal by order or issue an initial decision approving the withdrawal.

(d) Upon entry of a decision approving a withdrawal, the Clerk shall return the matter to the agency.

(e) After a decision approving withdrawal has been entered, a party shall address to the agency head any motion to reopen a withdrawn case.

## SUBCHAPTER 20. MEDIATION BY THE OFFICE OF ADMINISTRATIVE LAW

### 1:1-20.1 Conduct of mediation

(a) Mediation shall be conducted in accordance with the following procedures:

1. All parties to the mediation shall make available for the mediation a person who has authority to bind the party to a mediated settlement.

2. The Office of Administrative Law shall supply the parties with a list containing not less than six administrative law judges as suggested mediators. Each party may strike two judges from the list and the Office of Administrative Law will not assign any judge who has been stricken from the list to conduct the mediation. The Office of Administrative Law shall notify the parties of the assigned mediator.

3. All parties must agree in writing to the following:

i. Not to use any information gained solely from the mediation in any subsequent proceeding;

ii. Not to subpoena the mediator for any subsequent proceeding;

iii. Not to disclose to any subsequently assigned judge the content of the mediation discussion;

- iv. To mediate in good faith; and
  - v. That any agreement of the parties derived from the mediation shall be binding on the parties and will have the effect of a contract in subsequent proceedings.
4. The mediator shall, within 10 days of assignment, schedule a mediation at a convenient time and location.
5. If any party fails to appear at the mediation, without explanation being provided for the nonappearance, the mediator shall return the matter to the Clerk for scheduling a hearing and, where appropriate, may consider sanctions under N.J.A.C. 1:1-14.4.
6. The mediator may at any time return the matter to the Clerk and request that a hearing be scheduled before another judge.
7. No particular form of mediation is required. The structure of the mediation shall be tailored to the needs of the particular dispute. Where helpful, parties may be permitted to present any documents, exhibits, testimony or other evidence which would aid in the attainment of a mediated settlement.
- (b) In no event shall mediation efforts continue beyond 30 days from the date of the first scheduled mediation unless this time limit is extended by agreement of all the parties.
- 1:1-20.2 Conclusion of mediation
- (a) If the transmitting agency is a party to the mediation, successful mediation shall be concluded by a settlement agreement.
- (b) If the transmitting agency is not a party, successful mediation shall be concluded by initial decision.
- (c) If mediation does not result in agreement, the matter shall be returned to the Clerk for scheduling appropriate subsequent proceedings.

## SUBCHAPTER 21. UNCONTESTED CASES IN THE OFFICE OF ADMINISTRATIVE LAW

- 1:1-21.1 Transmission to the Office of Administrative Law
- (a) Any agency head may request under N.J.S.A. 52:14F-5(o) the assignment of an administrative law judge to conduct an uncontested case, including rule making and investigatory hearings. Public or investigatory hearings conducted pursuant to a rulemaking shall proceed in accordance with N.J.S.A. 52:14B-4(g). The agency head may make such a request by letter and by completing the applicable portions of an N.J.A.C. 1:1-8.2 transmittal form.
- (b) The letter of request and transmittal form shall be filed with the Clerk of the Office of Administrative Law, together with any attachments, after all pleadings and notice requirements have been concluded.
- 1:1-21.2 Discovery
- (a) Unless other discovery arrangements are requested by the transmitting agency and agreed to by the Director of the Office of Administrative Law, discovery in uncontested cases shall consist of the following:
1. If an agency or a county/local governmental entity is a party to an uncontested case hearing, and the subject of the case is the county/local entity's or agency's action, proposed action or refusal to act, a party shall be permitted to review the entity's or agency's relevant file or files on the matter. Copies of any document in the file or files shall be provided to the party upon the party's request and for a reasonable copying charge. The agency or county/local entity may refuse to disclose any document subject to a bona fide claim of privilege.
  2. If the subject of an uncontested case hearing is not a county/local entity's or agency's action, proposed action or refusal to act, each party shall provide each other party copies of any documents and a list with names, addresses and telephone numbers of any witnesses including experts which the party intends to introduce at the hearing. A summary of the testimony expected to be provided by each witness shall be included. These items shall be exchanged at least five days prior to the hearing, unless the judge determines that the information could not reasonably have been disclosed within that time.
- (b) Any discovery other than that permitted in (a)1. and 2. above shall be by motion to the judge and for good cause shown.
- (c) The hearing date shall not be adjourned to permit discovery.

- 1:1-21.3 Representation
- In uncontested cases conducted by the Office of Administrative Law, representation shall not be regulated by N.J.A.C. 1:1-5.
- 1:1-21.4 Conduct of uncontested cases
- (a) Unless other arrangements are requested by the transmitting agency and agreed to by the Director of the Office of Administrative Law, uncontested cases shall proceed in the following manner:
1. Uncontested cases shall begin with the judge reading the case title and the docket number, asking the representatives or parties present to state their names for the record and stating briefly the matter in dispute.

The judge shall also, unless all parties are represented by counsel or otherwise familiar with the procedures, state the procedural rules for the hearing. The judge may also permit any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing to be entered into the record.

2. In a sequence determined by the judge, each party to the proceeding shall be permitted to make a presentation setting forth the factual and/or legal basis for its position. When the parties are disputing the facts, the judge shall administer an oath to any party who wishes to make a presentation. The judge may also permit the parties to ask questions, either at the conclusion of each presentation or at the conclusion of all presentations, in the manner and to the extent that he or she determines most suitable.
3. Subject to a bona fide claim of privilege, documents or other tangible items or the written statements of an individual may be entered into the record if they are helpful to an understanding of the situation.
4. No rules of evidence apply to these proceedings.
5. Proposed findings of fact, conclusions of law, briefs, forms of order or other dispositions may be submitted prior to the beginning of the hearing. Such documents may not be accepted thereafter, nor required of the parties at any time unless all parties agree to provide such submissions and the time for issuing the judge's report is not extended.
6. The proceeding shall be deemed concluded on the date the judge determines that no further presentations under 2. above shall be necessary.

- 1:1-21.5 Report
- (a) In uncontested cases, the judge shall issue a report to the transmitting agency head which shall deal with each issue presented. The report shall explain the subject matter of the proceeding and the position of each party, shall recommend a course of action and shall set forth the factual or legal basis for the recommendation.
- (b) The report may be rendered in writing or orally on the record at the hearing before the parties. If the report is rendered orally, it shall be transcribed and filed with the agency head and mailed to the parties.
- (c) The report shall be issued within 45 days after the hearing is concluded unless expedition is required.
- 1:1-21.6 Exceptions and cross-exceptions
- In uncontested cases exceptions may be filed but replies and cross-exceptions shall not be permitted.
- 1:1-21.7 Extensions
- Requests for an extension of any time limit associated with an uncontested case shall be taken to the transmitting agency head.

## CHAPTERS 2 THROUGH 5. (RESERVED)

### CHAPTER 6 DEPARTMENT OF EDUCATION BUDGET HEARINGS

#### SUBCHAPTER 1. APPLICABILITY

- 1:6-1.1 Applicability
- The rules in this chapter shall apply to any hearings concerning appeals by district boards of education of a governing body's decision to reduce a school budget, pursuant to N.J.S.A. 18A:6-9 and N.J.A.C. 6:24-7.1 et seq. Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

#### SUBCHAPTER 2 THROUGH SUBCHAPTER 7. (RESERVED)

#### SUBCHAPTER 8. TRANSMISSION OF CASES TO THE OFFICE OF ADMINISTRATIVE LAW

- 1:6-8.1 Transmission of cases; material to be submitted
- When a case is transmitted to the Office of Administrative Law, as provided by N.J.A.C. 6:24-7.7(b), the Commissioner of Education shall forward along with the transmittal form any material submitted by the district board of education or board of school estimate or any decisions by the Commissioner relating to any request for a cap waiver by the district board.

#### SUBCHAPTER 9. (RESERVED)

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## SUBCHAPTER 10. DISCOVERY

## 1:6-10.1 Discovery; exchange of documents

(a) Within 10 days of receipt of the notice of hearing, the governing body shall forward to the judge assigned to hear the case a copy of the information which was given to the district board of education when the reduction was made, including the following documents:

1. If changes were made to the operating budget, a copy of the line item budget detailing the specific reductions that were effectuated by the governing body; a copy of the statement of supporting reasons for each of these reductions; and a certification stating the date on which these documents were originally given to the district board of education;

2. If changes were made to the capital budget, a copy of the capital budget; a copy of the statement of supporting reasons for each change; and a certification stating the date on which such documents were originally given to the board of education.

(b) Within 20 days of receipt of the notice of hearing, the district board of education shall forward a copy to the governing body and two copies to the judge of each of the following:

1. A complete line item budget listing each item by code and line description, including actual expenditures for the previous school year, actual budgeted amount for the current school year, proposed budgeted amount for the next school year (as submitted to the voters), amount reduced by the governing body and revised budgeted amount for the next school year. This budget should be accompanied by written testimony, approved by the district board of education, as to why each of the amounts in dispute is necessary to provide a "thorough and efficient" system of education;

2. Staff, numbers of professional and nonprofessional, during the current school year and projected staff for the next school year, with reasons for increase or decrease;

3. Pupil enrollment by grade for the district as of June 30, preceding; September 30 preceding; and that projected for September of the next school year;

4. Salary schedules for all employees;

5. Number of schools and classrooms in each;

6. Costs for non-aided transportation for the previous school year and projected for the current school year and the next school year;

7. Tuition received or paid during the previous school year and anticipated for the current school year and the next school year;

8. Advertised budget for the next school year;

9. If a capital budget is in dispute, a substantiation for each proposed capital project.

(c) The governing body and the district board shall submit their statements of supporting reasons in the form of written testimony, verified by each and accompanied by a certified copy of each official document.

(d) All other discovery shall be on motion for good cause shown.

## SUBCHAPTER 11 THROUGH SUBCHAPTER 21. (RESERVED)

CHAPTER 6A  
SPECIAL EDUCATION PROGRAM

## SUBCHAPTER 1. APPLICABILITY

## 1:6A-1.1 Applicability

(a) The rules in this chapter shall apply to the notice and hearing of matters arising out of the Special Education Program of the Department of Education, pursuant to N.J.A.C. 6:28-1.1 et seq. Any aspect of notice and hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

(b) These rules are established in implementation of Federal law, at 20 U.S.C.A. 1514 et seq. and 34 CFR 300 et seq. These rules do not duplicate each provision of Federal law, but highlight some of the key Federal provisions which form the source or authority for these rules. Where appropriate, the Federal source or authority for a rule or Federal elaboration of a rule will be indicated in brackets following the rule. In any case where these rules could be construed as conflicting with Federal requirements, the Federal requirements shall apply.

(c) Since these rules are established in implementation of Federal law, they may not be relaxed except as specifically provided herein or pursuant to Federal law.

## SUBCHAPTER 2. COMMENCEMENT OF MATTER

## 1:6A-2.1 Commencement of matter by a board of education, public agency, parent or guardian: notice of action

(a) With respect to the referral, evaluation, classification or educational placement of a pupil, or to the provision of a free and appropriate education to a pupil under N.J.A.C. 6:28-1.1:

1. When a board of education or public agency proposes to act or to make any change with regard to a pupil, the board or agency shall send a written notice to the parent(s) or guardian of the pupil no later than 15 days after making such a determination, and in no event less than 15 days prior to the date for implementing the proposed action or change unless the parent(s) or guardian otherwise consents to the proposal.

2. When a board of education or public agency is requested by a parent or guardian to make any change with regard to a pupil, the board or agency shall send a written notice to the parent(s) or guardian of the pupil forthwith upon approving or denying the request, and in no event more than 30 days from the date of the request.

(b) Each notice shall be clearly and simply written and shall include:

1. A description of the action proposed or denied by the board of education or public agency, an explanation for the proposal or denial, a description of the other options considered and a rationale for the rejection of those options (34 CFR 300.505(a)(2));

2. A description of the procedures and factors used by the board of education or public agency in determining whether to propose or deny an action, including each test, record or report the board or agency used as a basis for the proposal or denial (34 CFR 300.504(a)(3) and (4));

3. A request for parental or guardian consent to any action proposed by the board of education, or public agency, as described in N.J.A.C. 6:28 (34 CFR 300.500 and 34 CFR 300.504); and

4. A copy and explanation of the procedures, described in this subchapter and in N.J.A.C. 6:28, 20 U.S.C.A. 1415 et seq. and 34 CFR 300 et seq., for appealing the board or public agency's proposal or denial, including a clear statement of:

i. The right to examine all relevant records with respect to the pupil;

ii. The right to a hearing at the Office of Administrative Law on the proposal or denial;

iii. The right, at the hearing, to be accompanied and advised by counsel or by individuals with special knowledge or training in the problems of handicapped children, or both.

(c) The notice shall be communicated in the native language of the parent(s) or guardian. If a written form of communication is clearly not feasible, another appropriate form of communication may be used.

(d) The board of education or public agency shall take appropriate steps to insure that the parent(s) or guardian receives and understands the notice, and shall maintain a record of all steps it has taken in this regard.

## 1:6A-2.2 Hearing request by parent, guardian, board of education or public agency

(a) A parent, guardian, board of education, or public agency may, in writing, request a hearing at any time after the board of education or public agency has sent a written notice of action or after 30 days have elapsed from the date of a parent's or guardian's request for change with regard to a pupil. A hearing request shall be addressed to the Department of Education with a copy to each other party in the dispute. The Department shall acknowledge receipt of the request and shall forthwith send each party a copy of the acknowledgement.

(b) When a board or public agency has failed to issue a notice of action pursuant to N.J.A.C. 1:6A-2.1(a)2., and a parent or guardian has requested a hearing, the board or public agency shall issue a notice of action no later than five days from receiving notice of the hearing request. In addition the board may be subject to appropriate sanctions under N.J.A.C. 1:1-14.4.

(c) A hearing request shall specify, as nearly as practical, the issues in dispute. A hearing request from a parent or guardian shall specify whether the dispute concerns the classification of the pupil, the placement of the pupil, the contents of the pupil's individualized education program, or such other issue as may be clearly specified, and the specific relief or action sought by the parent or guardian.

(d) Upon receiving the Department of Education's acknowledgement or notice of a hearing request, the parties shall immediately begin to exchange information, in preparation for a settlement conference. The board of education or public agency shall provide all relevant records and information to the parent or guardian. The parent or guardian shall provide relevant information requested by the board or agency. The exchange of information shall be completed pursuant to the time limits in N.J.A.C. 1:6A-3.3 (Time for discovery).

(e) In its acknowledgement, the Department of Education shall inform the parties of any free or low-cost legal and other relevant services available, including:

1. The Division of Advocacy for the Developmentally Disabled in the Department of the Public Advocate;
2. The New Jersey State Bar Association and county bar association lawyer referral services;
3. The Association of Trial Lawyers—New Jersey lawyer referral service; and
4. The Legal Aid and Legal Services offices in New Jersey (34 CFR 300.506(c)).

### SUBCHAPTER 3. EMERGENCY RELIEF, SETTLEMENT AND SCHEDULING OF HEARING

#### 1:6A-3.1 Emergency relief pending settlement or decision

(a) As part of a hearing request, or at any time after a hearing is requested, the affected parent(s), guardian, board or public agency may apply in writing for emergency relief pending a settlement or decision on the matter. An emergency relief application shall set forth the specific relief sought and the specific circumstances which the applicant contends justifies under (e) below the relief sought. Each application shall be supported by an affidavit prepared by an affiant with personal knowledge of the facts contained therein and, if an expert's opinion is included, the affidavit shall specify the expert's qualifications.

(b) Prior to the transmittal of the hearing request to the Office of Administrative Law, applications for emergency relief shall be addressed to the Department of Education, attention Division of Special Education, with a copy to the other party. The Department shall forward to the Office of Administrative Law by the end of the next business day all emergency relief applications that meet the procedural requirements in (a) above and which set forth on the face of the application and affidavits circumstances which would justify emergency relief under this section. Emergency relief applications which show no right to emergency relief or fail to comply with the procedural requirements shall be processed by the Department in accordance with N.J.A.C. 1:6A-3.2.

(c) After transmittal, applications for emergency relief must be made to the Office of Administrative Law, with a copy to the other party.

(d) The Office of Administrative Law shall schedule an emergency relief application hearing on the earliest date possible and shall notify all parties of this date. Except for extraordinary circumstances established by good cause no adjournments shall be granted but the opponent to an emergency relief application may be heard by telephone on the date of the emergency relief hearing. If emergency relief is granted without all parties being heard, provision shall be made in the order for the absent parties to move for dissolution or modification on two days' notice. Such an order, granted without all parties being heard, may also provide for a continuation of the order up to 10 days.

(e) At the emergency relief hearing, the judge may allow the affidavits to be supplemented by testimony and/or oral argument. The judge may order emergency relief if the judge determines from the proofs that:

1. The application has a reasonable probability of ultimately prevailing on the merits; and
2. Either serious physical harm will result to a student or students if the relief is not granted; or the student's education program will be terminated or interrupted; and
3. The relief requested is narrowly defined to prevent the specific harm from occurring and will not cause unreasonable expense and substantial inconvenience.

(f) Judges may decide emergency relief applications orally on the record and may direct the prevailing party to prepare an order embodying the decision. If so directed, the prevailing party shall promptly mail the order to the judge and shall mail copies to every other party in the case. Unless a party notifies the judge and the prevailing party of his or her specific objections to the order within five days after such service, the judge may sign the order.

(g) After granting or denying the requested emergency relief, the judge shall either return the parties to the Department of Education for a settlement conference under N.J.A.C. 1:6A-3.2 or schedule hearing dates if a settlement conference has already been conducted.

#### 1:6A-3.2 Settlement conference by the Department of Education

(a) Within seven days of receipt of any hearing request, the Department of Education shall conduct and all parties shall attend a settlement conference at a time and place convenient to the parent or guardian.

(b) The purpose of the settlement conference is to attempt to settle the dispute and to assist the parties in defining issues, identifying evidence, exchanging information, stipulating facts and listing possible witnesses

for a hearing in the event that settlement cannot be reached. The terms of any settlement or other agreement and the assent of the parties shall be contemporaneously recorded.

(c) If a settlement is reached, the terms shall be reduced to writing within three days, and signed by the parties and the representative of the Department of Education.

(d) If a settlement is not reached, the Department of Education shall prepare within three days a written document that specifies the issues in dispute, any stipulations, and witness lists for each party. This document shall be included with the transmittal of the matter to the Office of Administrative Law, and a copy of it and the transmittal form shall be sent to the parties. Any exhibits that both parties agree are admissible may be attached to the document.

(e) Where the hearing has been requested by a board of education or public agency, the parent or guardian may request and shall receive an adjournment of the settlement conference for up to 15 days, to be calculated from the originally scheduled conference date. For good cause, the Department of Education may otherwise adjourn a settlement conference or schedule another settlement conference. Any adjournment of the settlement conference or scheduling of another conference shall extend the deadline for decision on the matter, as established in N.J.A.C. 1:6A-5.1 (Deadline for decision), by an amount of time equal to the adjournment or rescheduling.

(f) The Department of Education shall include with the transmittal any unsettled jurisdictional matters, notice problems, or other preliminary motions from the parties.

#### 1:6A-3.3 Discovery

(a) All requests for information, records or other discovery shall be made before or at the settlement conference. All responses to these requests shall be completed no later than five days before the date of the hearing.

(b) Each party shall disclose to the other party any documentary evidence and summaries of testimony intended to be introduced at the hearing.

(c) Upon application of a party the judge shall exclude any evidence at hearing that has not been disclosed to that party at least five days before the hearing, unless the judge determines that the evidence could not reasonably have been disclosed within that time.

(d) Discovery shall to the greatest extent possible consist of the informal exchange of questions and answers and other information. Discovery may not include requests for formal interrogatories, formal admissions or depositions.

#### 1:6A-3.4 Scheduling of hearing by Office of Administrative Law

If the matter is not fully resolved at the settlement conference, as required in N.J.A.C. 1:6A-3.2, the representative of the Department at the conference shall, in the presence of the parties, telephone the Clerk of the Office of Administrative Law and the Clerk shall assign a peremptory hearing date. The hearing date shall, to the greatest extent possible, be convenient to all parties but shall be no later than 14 days from the date of the conference, unless a later date is agreed upon by all parties. If a later date is agreed upon, the deadline for decision, as established in N.J.A.C. 1:6A-5.1 (Deadline for decision), shall be extended by a time equal to the amount of delay. The Commissioner of Education shall, no later than three days after the settlement conference, transmit the matter to the Office of Administrative Law. Copies of all notices, requests, pleadings, filings, stipulations of issues and facts, and witness lists compiled at the settlement conference and a description of the positions of each party shall be included with the standard Office of Administrative Law transmittal form required by N.J.A.C. 1:1-8.2. In addition, the transmittal shall include the dates of all settlement conferences, including any which were adjourned.

#### 1:6A-3.5 Ongoing settlement efforts

(a) The scheduling of a hearing shall not preclude voluntary ongoing efforts by the parties to settle the matter before or at the hearing.

(b) Any administrative review by the Department or ongoing settlement efforts by the parties shall not delay, interfere with, or otherwise impede a request for a hearing or the progress thereof, nor be grounds for adjournment of a hearing, unless consented to by the party requesting the hearing. Any delay or adjournment by consent shall extend the deadline for decision, as established in N.J.A.C. 1:6A-5.1 (Deadline for decision), by an amount of time equal to the delay or adjournment.

NEW JERSEY REGISTER, MONDAY, SEPTEMBER 8, 1986

SUBCHAPTER 4. HEARING

1:6A-4.1 Procedures for hearing

(a) To the greatest extent possible, the hearing shall be conducted at a time and place convenient to the parent(s) or guardian.

(b) For good cause shown on the record, the judge may adjourn the hearing, and the deadline for decision, as established in N.J.A.C. 1:6A-5.1 (Deadline for decision), will be extended by an amount of time equal to the adjournment.

(c) A verbatim record shall be made of the hearing.

(d) Unless consented to by both parties, any findings and recommendations made as a result of an administrative review provided by rules of the Department of Education may not be introduced as evidence or made part of the record at hearing. However, any evidence developed or disclosed at the administrative review may be offered for inclusion into the hearing record.

(e) The judge's decision shall be based on the preponderance of the credible evidence, and the proposed action of the board of education or public agency shall not be accorded any presumption of correctness.

1:6A-4.2 Representation

(a) At a hearing, any party may be accompanied and advised by legal counsel or by individuals with special knowledge or training with respect to handicapped pupils and their educational needs, or both.

(b) A non-lawyer seeking to represent a party shall comply with the application process contained in N.J.A.C. 1:1-5.4 and shall be bound by the approval procedures, limitations and practice requirements contained in N.J.A.C. 1:1-5.5.

1:6A-4.3 Interpreters

Where necessary, the judge may require the Department of Education to provide an interpreter at the hearing or written translation of the hearing, or both, at no cost to the parent(s) or guardian.

1:6A-4.4 Independent educational evaluation

(a) For good cause and after giving the parties an opportunity to be heard, the judge may order an independent evaluation of the pupil. The evaluation shall be conducted in accordance with N.J.A.C. 6:28-1 by an appropriately certified or licensed professional examiner(s) who is not employed by and does not routinely provide evaluations for the board of education or public agency responsible for the education of the pupil to be evaluated. The independent evaluator shall be chosen from a list approved by the Department of Education either by agreement of the parties or, where such agreement cannot be reached, by the judge after consultation with the parties. The judge shall order the board of education or public agency to pay for the independent evaluation at no cost to the parent(s) or guardian. (34 CFR 300.503)

(b) Where an independent educational evaluation is ordered, the judge may adjourn the hearing, and the deadline for decision, as established in N.J.A.C. 1:6A-5.1 (Deadline for decision), will be extended by an amount of time equal to the adjournment.

SUBCHAPTER 5. DECISION AND APPEAL

1:6A-5.1 Deadline for decision

(a) The judge shall issue a written decision no later than 21 days from the close of the hearing record.

(b) Subject to any adjournments reasonably granted or other postponements agreed to by the parties and due to unusual circumstances stated on the record, the judge shall render this decision no later than 45 days from the date of the hearing request.

1:6A-5.2 Confidentiality

(a) In the written decision, the judge shall use initials rather than full names when referring to the child and the parent(s) or guardian, and may take other necessary and appropriate steps, in order to preserve their interest in privacy.

(b) Records of special education hearings shall be maintained in confidence by the Office of Administrative Law pursuant to Federal regulations, 34 CFR 300.500 et seq. The Decision Control section of the Office of Administrative Law, 185 Washington Street, Newark, NJ 07012, (201) 648-6006, shall maintain these records.

1:6A-5.3 Appeal, use of hearing record, obtaining copy of record, and contents of record

(a) Any party may appeal the decision of the judge either to the Superior Court of New Jersey, pursuant to the Rules Governing the Courts of the State of New Jersey, or to a district court of the United States, pursuant to 20 U.S.C.A. 1415(e)(3).

(b) A party intending to appeal the administrative law judge's decision or an authorized representative is permitted to use, or may request a certified copy of, any portion or all of the original record of the administrative proceeding, provided a copy remains on file at the Office of Administrative Law. The requesting party shall bear the cost of any necessary reproduction. Written requests for this material should be directed to Decision Control, Office of Administrative Law, 185 Washington Street, Newark, NJ 07102.

(c) The record shall consist of all documents transmitted by the Department of Education to the Office of Administrative Law; correspondence; any documents relating to motions; briefs; exhibits; transcripts; if any; the administrative law judge's decision; and any other material specifically incorporated into the record by the judge.

1:6A-5.4 Stay of implementation

(a) Unless the parties otherwise agree, the educational placement of the pupil shall not be changed prior to the issuance of the decision in the case, pursuant to 34 C.F.R. 300.513.

(b) Where a party appeals any portion of the decision not involving a change in the pupil's educational placement, and upon request by any party, the judge may stay implementation of the decision if he finds that immediate implementation would be likely to result in serious harm to the pupil or other pupils in the event that the decision is rejected or modified upon appeal.

1:6A-5.5 Motion to reopen hearing

(a) Any party may file with the presiding judge, and serve on each other party, a motion to reopen the hearing no later than 10 days following the issuance of the decision.

(b) The judge may reopen the hearing for reasons of:

1. Mistake, inadvertence, surprise or excusable neglect;
2. Newly discovered evidence which would probably alter the decision and which, by due diligence, could not have been discovered in time for the hearing; or
3. Fraud, misrepresentation or misconduct of another party.

CHAPTER 7

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
EMERGENCY WATER SUPPLY ALLOCATION PLAN CASES

SUBCHAPTER 1. APPLICABILITY

1:7-1.1 Applicability

(a) The rules in this chapter shall apply to hearings arising under N.J.A.C. 7:19A-1.1 et seq. concerning the denial of an application for a hardship exemption from water rationing or the ban on adjustable water uses. Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

SUBCHAPTER 2. DEFINITIONS

1:7-2.1 Definitions

"Applicant" means an individual or entity who is aggrieved by a decision of the Water Emergency Task Force, established by N.J.A.C. 7:19A-4.2.

SUBCHAPTER 3. (RESERVED)

SUBCHAPTER 4. AGENCY RESPONSIBILITY BEFORE  
TRANSMISSION TO THE OFFICE OF  
ADMINISTRATIVE LAW

1:7-4.1 Agency conference; failure to reach settlement

(a) In a case dealing with an application for a hardship exemption from water rationing or the ban on adjustable water uses, the Department of Environmental Protection (DEP) shall attempt to settle the dispute through appropriate conferences within 30 days of receiving a hearing request.

(b) If settlement is not reached, the parties shall use the conference to prepare issues and evidence for the hearing, and to determine any discovery needs.

(c) At or immediately after the conference, DEP shall supply the applicant with any materials requested pursuant to N.J.A.C. 1:7A-10.1 (Discovery).

(d) If settlement is not reached, DEP shall transmit the case to the Office of Administrative Law, including all documents upon which the Water Emergency Task Force based its decision to deny the hardship exemption.

SUBCHAPTER 5 THROUGH SUBCHAPTER 9. (RESERVED)

SUBCHAPTER 10. DISCOVERY

1:7-10.1 Discovery

(a) Discovery shall be limited to the records of DEP, including all documents relied upon by the Water Emergency Task Force with respect to the case.

(b) DEP shall supply the applicant with a copy of all discovery at or forthwith after the settlement conference.

SUBCHAPTER 11 THROUGH SUBCHAPTER 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:7-14.1 Proceeding on the papers

Water emergency cases may be conducted as proceedings on the papers, in accordance with N.J.A.C. 1:1-14.8.

1:7-14.2 Certification

The applicant may return a completed certification to the Clerk pursuant to N.J.A.C. 1:1-14.8. The certification shall explain why the exemption is necessary to avoid extraordinary hardship and why no reasonable alternative exists other than to grant the exemption.

1:7-14.3 In-person hearings; telephone hearings

If an in-person or telephone hearing is held, as provided by N.J.A.C. 1:1-14.8, such proceeding shall be conducted pursuant to the Uniform Administrative Procedure Rules at N.J.A.C. 1:1.

SUBCHAPTER 15 THROUGH SUBCHAPTER 21. (RESERVED)

CHAPTERS 8 AND 9 (RESERVED)

CHAPTER 10  
PUBLIC WELFARE HEARINGS,

SUBCHAPTER 1. APPLICABILITY

1:10-1.1 Applicability

The rules in this chapter shall apply to matters transmitted to the Office of Administrative Law by the Division of Public Welfare (DPW) wherein an applicant or recipient disputes the proposed action on eligibility or benefits entitlement by a county welfare agency (CWA) or a local decision or inaction by a municipal welfare department (MWD). These rules also apply to food stamp intentional program violations. Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

SUBCHAPTER 2 THROUGH SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 5. REPRESENTATION

1:10-5.1 Representation at hearing

(a) An applicant or recipient may appear at a proceeding without legal representation or may be represented by an attorney or by a relative, friend or other spokesperson pursuant to the procedures set forth in N.J.A.C. 1:1-5.4. 7 C.F.R. 273.15(c)(4); 45 C.F.R. 205.10(a)(3)(iii); 7 C.F.R. 273.15(d)(3)(ii)(D); 7 C.F.R. 273.15(p)(2).

SUBCHAPTERS 6 THROUGH 8. (RESERVED)

SUBCHAPTER 9. SCHEDULING; CLERK'S NOTICES;  
ADJOURNMENTS

1:10-9.1 Adjournments

(a) In cases involving food stamp benefits, upon timely application an applicant/recipient shall receive one adjournment of the scheduled hearing date for a period of no more than 30 days.

(b) In all other cases, upon timely application and for good cause shown, an applicant/recipient may receive one adjournment of the scheduled hearing date for a period of no more than 30 days.

(c) The total of all adjournments in a case shall not exceed 30 days, unless good cause is shown for a greater extension of time.

(d) In cases involving an alleged intentional program violation, the applicant/recipient must request the adjournment at least 10 days before the scheduled hearing date. 7 C.F.R. 273.16(e)(1)(iii).

1:10-9.2 Notice of hearing

(a) In cases involving AFDC or food stamp benefits, except for emergency hearings, the Clerk shall send written notice of the filing and hearing to each party at least 10 days before the scheduled hearing date.

1. The notice may be sent less than 10 days before the hearing date if the applicant or recipient so requests in order to expedite the hearing.

(b) In cases involving an alleged intentional program violation, written notice of the scheduled hearing shall be sent to the applicant/recipient at least 30 days prior to the hearing. 7 C.F.R. 273.16(e)(3).

1:10-9.3 Scheduling of hearing

(a) The hearing shall be held at a time, date and location convenient to the applicant or recipient.

(b) Upon presentation of acceptable information regarding an applicant's or recipient's illness or infirmity which would prevent his or her appearance at a hearing location, the hearing shall be scheduled at the applicant/recipient's residence.

SUBCHAPTER 10. DISCOVERY

1:10-10.1 Discovery

(a) The CWA or MWD shall provide the applicant or recipient or his or her authorized representative opportunity to review the entire case file and all documents and records to be used in the hearing. (7 C.F.R. 273.15(i)(1); 45 C.F.R. 205.10(a)(13)(i); 7 C.F.R. 273.16(e)(3)(c).)

(b) Any other discovery shall be by motion to the judge and for good cause shown. In no case shall the hearing date be adjourned to permit discovery under this subsection.

SUBCHAPTER 11. (RESERVED)

SUBCHAPTER 12. CONTINUED ELIGIBILITY; EMERGENCY  
FAIR HEARINGS

1:10-12.1 Eligibility for continued benefits in AFDC and food stamp cases

(a) If the recipient is entitled to and has elected to receive continued unreduced benefits, the judge shall determine at the conclusion of the hearing whether assistance should be continued unreduced pending a final decision. Benefits shall be continued unreduced if the judge determines that the issue is one of fact rather than law or policy (N.J.A.C. 10:81-6.9(a)), unless the recipient has waived the receipt of continued benefits or continued benefits are otherwise not required by State or Federal law.

(b) An adjournment of a hearing at the request of a recipient shall not prolong continuation of benefits at an unreduced level, unless the adjournment is due to: delay caused by the DPW, the Office of Administrative Law or the CWA; unavoidable causes such as illness on the part of the recipient or the failure of the CWA to provide assistance for transportation when such assistance is required by regulations. Adjournment at the request of the CWA or by the judge shall not affect continued benefits. (N.J.A.C. 10:81-6.9(b).)

(c) The judge shall inform the recipient and the CWA in writing either at the time of the hearing or on the first day following the hearing whether or not benefits will be continued unreduced pending a final decision. (N.J.A.C. 10:81-6.9(c).)

1:10-12.2 Emergency fair hearings in AFDC or General Assistance cases

(a) When DPW determines that a request for hearing should be scheduled as an emergency fair hearing:

1. DPW shall notify the Office of Administrative Law by telephone of the hearing request on the same day as the request is received. The Clerk of the Office of Administrative Law shall prepare the Office of Administrative Law transmittal form based upon the telephone call.

2. The case shall be scheduled by the Office of Administrative Law for a hearing within three days after the phone call is received.

3. Notice of the time, date and place of the hearing shall be transmitted by telephone to DPW within one day after the Office of Administrative Law is notified of the hearing request. DPW shall notify the CWA or MWD, the petitioning applicant/recipient or the petitioner's representative of the scheduled hearing by telephone.

4. The judge shall file an initial decision by mailgram with the Director of the DPW and the parties no later than the day following the date of the hearing.

5. The petitioning applicant/recipient, his or her representative or the CWA or MWD may, by telephone, make exception or objection to the initial decision, to the DPW no later than the first day following the issuance of the initial decision.

6. The Director of the DPW shall issue a final decision no later than three days following the date the initial decision is received which shall accept, reject or modify the initial decision. On the date the final decision is issued, the DPW shall notify the CWA or MWD, the Office of Administrative Law and the petitioner or the petitioner's representative by telephone of the final decision and any relief ordered shall be provided on the date notice of the decision is received.

#### SUBCHAPTER 13. (RESERVED)

#### SUBCHAPTER 14. CONDUCT OF CASES

##### 1:10-14.1 Attendance at hearing

(a) The applicant/recipient or a representative and the CWA or MWD and their representatives, if any, shall attend the hearing.

(b) The hearing may also be attended by other persons having an interest in the matter if permitted by the applicant or recipient.

(c) The judge may limit the number of persons in attendance at the hearing to comport with any hearing room space limitations.

(d) If neither the applicant/recipient nor a representative appears at a hearing concerning an alleged intentional program violation and timely adequate notice of the hearing was given to the applicant/recipient, the hearing shall be conducted ex parte. 7 C.F.R. 273.16(e); N.J.A.C. 10:87-11.4(l).

#### SUBCHAPTER 15 THROUGH SUBCHAPTER 17. (RESERVED)

#### SUBCHAPTER 18. DECISIONS

##### 1:10-18.1 Initial decision (other than emergency hearing matters)

(a) In cases involving AFDC benefits, an initial decision shall be issued within 21 days from the date of the hearing.

(b) In cases involving food stamp benefits, an initial decision shall be issued within 14 days from the date of the hearing.

(c) In cases involving food stamp intentional program violations, an initial decision shall be issued within 21 days from the date of the hearing.

(d) In cases involving General Assistance, an initial decision shall be issued within 21 days from the date of the hearing.

##### 1:10-18.2 Exceptions

If the parties wish to take exception to the initial decision, such exception must be submitted in written form to the Clerk of the Office of Administrative Law, the Director of the DPW and to all parties. The exceptions must be received by the DPW no later than five days after receipt of the initial decision. No replies or cross-exceptions shall be permitted.

##### 1:10-18.3 Written initial decisions

All initial decisions shall be issued in writing, pursuant to N.J.A.C. 1:1-18.3. Oral initial decisions are not permitted.

#### SUBCHAPTER 19. SETTLEMENTS

##### 1:10-19.1 Division of Public Welfare settlements

(a) The parties to a hearing may resolve a dispute, subsequent to transmittal of a matter to the Office of Administrative Law, by agreeing to settlement and withdrawal of the hearing request.

(b) Settlement prior to the scheduled hearing date shall not involve the administrative law judge. The DPW shall notify the Office of Administrative Law of any settlement and withdrawal so derived and the contested case shall be closed. The Office of Administrative Law shall immediately return the case file to DPW.

(c) If on the date of the scheduled hearing or at any time during the hearing the parties agree to settle the matter at issue, a "Stipulation of Settlement and Withdrawal" shall be executed by the parties. This document shall contain:

1. The reason for the hearing request;
2. The reason for settlement and terms of settlement; and
3. The effective date of eligibility and/or benefit entitlement resulting from settlement when appropriate.

(d) The execution of a Stipulation of Settlement and Withdrawal terminates the contested case. The Office of Administrative Law shall transmit the closed file to the Bureau of Administrative Review and Appeals (BARA), Division of Public Welfare within four days of the date of the scheduled hearing.

(e) A review of the settlement shall be completed and written notice shall be provided by BARA not later than three days after its receipt from the Office of Administrative Law. When approved, any terms or conditions of settlement shall be implemented within three days of the date notification of approval is received in the CWA or MWD. In the

event settlement action is disapproved, the matter will be returned to the Office of Administrative Law within three days as a new case. The specific reason for returning the matter and applicable citation of law and regulations shall be clearly stated on the transmittal form.

(f) When implementation by the CWA or MWD is required in a settlement, a written report shall be sent by the CWA or MWD to the BARA within 30 days of the date the action was approved. Such report shall include the calculation of benefits in all cases involving a retroactive payment or a recalculation of benefit entitlement.

#### SUBCHAPTER 20 THROUGH SUBCHAPTER 21. (RESERVED)

### CHAPTER 10A DEPARTMENT OF CORRECTIONS INMATE DISCIPLINE CASES

#### SUBCHAPTER 1. APPLICABILITY

##### 1:10A-1.1 Applicability

The rules in this chapter shall apply to Department of Corrections (Department) matters wherein an inmate of a State custodial, penal or correctional institution or program appeals from a sanction, arising from a single incident, which imposes the loss of 365 days or more of commutation time credits awarded pursuant to N.J.S.A. 30:4-140. Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedures Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

#### SUBCHAPTER 2. DEFINITIONS

##### 1:10A-2.1 Parties; representatives

(a) The parties to inmate discipline cases shall be the inmate who allegedly committed the offense for which a sanction is being sought and the superintendent of the institution where the alleged offense occurred.

(b) A representative of a party is a person who is authorized to represent a party by these special hearing rules.

#### SUBCHAPTER 3 THROUGH SUBCHAPTER 4. (RESERVED)

#### SUBCHAPTER 5. REPRESENTATION

##### 1:10A-5.1 Representation; entry of appearance

(a) The inmate may represent him or herself or may be represented by an attorney authorized to practice law in this State, including a Public Defender, or by a law student pursuant to R.1:21-3(c). The Superintendent may be represented pursuant to N.J.A.C. 1:1-5.4(a)2 or by a Deputy Attorney General or by a law assistant pursuant to R. 1:21-3(c).

(b) Any lawyer agreeing to represent a party shall promptly file an entry of appearance with the Clerk and notify the other party and the judge, if one has been assigned to the matter.

#### SUBCHAPTER 6 THROUGH SUBCHAPTER 7. (RESERVED)

#### SUBCHAPTER 8. FILING AND TRANSMISSION

##### 1:10A-8.1 Transmission of discipline cases by the Department of Corrections to the Office of Administrative Law

(a) The Department shall attach to a completed transmittal form, described in N.J.A.C. 1:1-8.2(a), a copy of the charge, the hearing officer's and superintendent's adjudications, the inmate's appeal to the superintendent containing exceptions to the hearing officer's adjudication and any documents relating to an application for a stay of administrative sanctions.

(b) In addition to the information required by N.J.A.C. 1:1-8.2(a), the Department shall ensure that the transmittal provides the names and addresses of the inmate's representative and the superintendent's representative, if known; and the current location of the inmate.

#### SUBCHAPTER 9. SCHEDULING; CLERK'S NOTICES

##### 1:10A-9.1 Scheduling of proceeding; notice

(a) After consulting with the representatives in the case and the Department, the Clerk shall send to all parties and to the Department, a Notice of Filing and Hearing, assigning a judge to the matter and setting the time, date and place of hearing. Whenever possible, the hearing date shall be scheduled approximately 60 days after the date of the Notice of Filing and Hearing.

(b) The hearing shall be scheduled at the institution in which the inmate is confined.

#### SUBCHAPTER 10. DISCOVERY

##### 1:10A-10.1 Exchange of evidence lists

(a) Within 25 days of receipt of the Notice of Filing and Hearing, each party shall serve on each other party an evidence list containing the following information:

1. The name of each proposed witness;
2. A summary of the witness' testimony;
3. An indication of whether the testimony will be live or will be presented through affidavits or other written documents;
4. A description and copy of each document to be offered into evidence at the hearing;
5. A description of all physical evidence to be offered; and
6. A statement indicating whether a confidentiality request has been or will be made pursuant to N.J.A.C. 1:10A-10.2.

(b) Within 10 days of receipt of a party's evidence list, another party may object to the admissibility of a proposed witness, to the form of a witness' testimony, to a proposed document or to any other matter contained within the list or which should have been supplied on the list. Each objection must specify in writing the reasons for the objection and be filed with the judge and served upon the other party. Replies to each objection may be made in writing within five days of receiving the objection. Each reply must be filed with the judge and served on each party. The judge shall determine all such objections within 10 days of the filing of the reply and no later than the day of the hearing.

##### 1:10A-10.2 Claims of confidentiality

(a) Where a party is asserting that it is necessary to maintain the confidentiality of the identity of a witness, contents of a document or physical evidence, a written claim of confidentiality must be forwarded to the judge within 25 days of receipt of the Notice of Filing and Hearing. This claim shall not be served on the other parties.

(b) The claim must contain the following:

1. A clear specification of the evidence for which the claim is asserted. If the claim relates to a document, the claimant shall attach a copy of the document in question to the claim;

2. Facts and argument demonstrating that divulgence of the identity of a witness or disclosure of documentary or physical evidence to the other party presents a bona fide risk of physical violence or significant harmful retaliation to that individual, to any other individual or to the security of the institution;

3. A statement as to whether or not the requesting party believes that the confidential information could be disclosed to the representative of the other party. If the requesting party believes that the information should not be disclosed to the representative, the party must explain why the representative cannot be present and participate without creating a substantial risk that the informant's identity will be revealed;

4. A summary of the confidential information in sufficient detail to permit the other party to rebut it, without disclosing the identity of the individual or materials. If the requesting party believes that there is a substantial risk that disclosure of the summary will disclose the identity of the individual or materials, the requesting party shall also include a request that the summary not be disclosed to the other party and an explanation of the risk.

(c) The judge shall decide in writing each confidentiality request within 10 days of receipt of the request.

(d) If the claim of confidentiality is denied, and a request for interlocutory review is not being made, the party who made the request shall immediately serve on each other party the information required in N.J.A.C. 1:10A-10.1(a) concerning the witness or item for which confidentiality was denied.

(e) If a claim of confidentiality is upheld, the order shall include:

1. A finding explaining why confidentiality is required;
2. A determination of whether the confidential information can be disclosed to the representative of the other party. In making such determination, the judge shall consider:
  - i. The seriousness of the potential risk involved; and
  - ii. Whether the hearing can be structured to minimize the possibility of disclosure of the confidential information to the other party.
3. If the confidential information cannot be disclosed to the representative of the other party, a determination of whether the confidential information can be summarized in sufficient detail to permit the other party to rebut it without disclosing the identity of the individual or materials. If so, the judge shall direct the applicant to provide the summary to the other party.

(f) The making of a request for interlocutory review of an order granting or denying of confidentiality claim shall automatically stay the effect of the judge's order pending the review.

##### 1:10A-10.3 Breach of confidentiality

(a) If the representative of a party who received confidential information pursuant to N.J.A.C. 1:10A-10.2(b)2 discloses any part of that confidential information to any individual, the judge may order one or more of the following:

1. Revocation of the individual's right to appear in any case before the Office of Administrative Law;
2. The filing of a complaint with the New Jersey Supreme Court or with an appropriate Ethics Committee for disciplinary action;
3. Such other action as the judge deems appropriate.

##### 1:10A-10.4 Additional discovery

(a) Within 10 days after receiving the Notice of Filing and Hearing, the institution shall provide the inmate with copies of any reports or other materials in the institution's possession, including exculpatory matter, concerning the charge.

(b) Within 10 days of receipt of the other party's witness list, a party may serve no more than 10 single part written interrogatories which shall not request information which has already been provided.

(c) Answers to interrogatories are due within 10 days after receiving the written interrogatories. As party who wishes to object to an interrogatory or who wishes to object to the answer to an interrogatory or to compel an answer to an interrogatory shall place a telephone conference call to the judge and the other parties for resolution of the matter. A party objecting to an interrogatory shall place the telephone call within five days of receipt of the interrogatory. A party objecting to a response or seeking to compel a response shall place the telephone call within five days of the due date for the response to the interrogatory. If a party fails without good reason to place a timely telephone call, the judge shall deny the party's objection or motion to compel.

(d) No other discovery shall be provided except on motion for good cause shown.

#### SUBCHAPTER 11. SUBPOENAS

##### 1:10A-11.1 Subpoenas

(a) Except on motion for good cause shown, no subpoenas shall be issued for any individual who is employed by or confined at any State institution. If such individual is listed on a properly served evidence list, pursuant to N.J.A.C. 1:10-10.1, as a witness who will present live testimony and the judge has not sustained an objection to the witness' testimony, the Department shall use its best efforts to ensure the presence of the witness at the time and place of hearing.

(b) No subpoena shall be issued for any other individual unless the individual is listed on a properly served evidence list, pursuant to N.J.A.C. 1:10A-10.1, as a witness who will present live testimony and the judge has not sustained an objection to the witness' testimony.

#### SUBCHAPTER 12. MOTIONS

##### 1:10A-12.1 Limitations on prehearing motions

Except for motions specifically permitted by this chapter and motions for emergent relief, a party may not file a motion in advance of the scheduled date of hearing.

#### SUBCHAPTER 13. PREHEARING CONFERENCES AND PROCEDURES

##### 1:10A-13.1 Prehearing conferences

Except for good cause shown, prehearing conferences shall not be scheduled in any proceeding conducted under this chapter.

#### SUBCHAPTER 14. CONDUCT OF CASES

##### 1:10A-14.1 De novo hearings

Hearings conducted pursuant to this chapter shall be de novo. The hearing shall not be "on the record" below, but shall be a plenary hearing at which evidence and testimony are presented.

##### 1:10A-14.2 Closed hearings

(a) Because of the security which must be provided each hearing participant, all evidentiary hearings or any other proceedings conducted at an institution pursuant to this chapter will be conducted in closed session.

(b) Applications by any member of the public seeking permission to attend any hearing shall be made to the Commissioner of the Department of Corrections and shall not be made to the judge.

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1:10A-14.3 Sealing the record

(a) The record of all hearings shall be open to public inspection, but the judge may, for good cause shown, order the sealing of that part of any record wherein confidential testimony or evidence was presented.

(b) When sealing a portion of the record, the judge must specify the consequences of such an order to all confidential material in the case file including any evidence, the tapes and the initial decision. The judge shall also include what safeguards shall be imposed upon the preparation and disclosure of any transcript of the proceeding.

(c) No duplicate copy of any sealed material shall be permitted.

(d) That part of any record that has been sealed shall be safeguarded by the judge and/or Clerk until the Clerk, after the initial decision, can deliver the sealed material to an authorized representative of the Department.

1:10A-14.4 Verbatim record of proceedings; sound recording; requesting transcript

(a) All proceedings shall be recorded verbatim by sound recording.

(b) In any case in which a claim of confidentiality has been upheld, prior to the issuance of an initial decision, all requests for transcripts shall be made to the judge. The judge shall determine whether the individual requesting the transcript may receive a transcript of all or any part of the tapes.

(c) Subsequent to the issuance of the initial decision and upon return of the case of the Department, all requests for transcripts must be directed to the Department.

1:10A-14.5 Failure to appear

(a) If the inmate refuses to appear at the hearing, the judge shall prepare an initial decision dismissing the appeal and affirming the sanction.

(b) If the institution is unable to proceed at the hearing, the judge shall prepare an initial decision dismissing the charges and penalty.

SUBCHAPTER 15. EVIDENCE

1:10A-15.1 Testimony of witnesses; confidentiality; non-contested facts

(a) Live testimony shall be presented by witnesses under oath.

(b) A party shall be permitted cross-examination of any witness testifying in person for whom a claim of confidentiality has not been upheld.

(c) Where a claim of confidentiality for a witness has been upheld, the testimony of that witness shall be taken in the presence of the judge, the party presenting the confidential witness, any necessary security personnel and, if permitted by the judge's order, the representative of the other party. No other party nor representatives of any other party, nor any person permitted by the Commissioner to attend under N.J.A.C. 1:10-14.2(b) may be present during this testimony.

1. The judge may schedule a time and date other than the scheduled hearing date for taking the testimony of a confidential witness and need not disclose this schedule to the other party or his or her representative.

2. If the confidential information presented at the hearing significantly varies from the summary presented, the judge shall determine how most appropriately to proceed in order to adequately safeguard the interests of the absent party.

(d) Where a claim of confidentiality for a document or physical evidence has been upheld, the party and/or representative of the party offering the evidence shall present the evidence to the judge in the presence of any necessary security personnel, and if permitted by the judge's order, the representative of the other party. No other persons may be present.

(e) Evidence to prove non-contested facts may be presented by affidavit or other writing and by written or oral stipulations.

(f) Any inmate testifying shall be accorded use immunity in subsequent criminal prosecutions to the extent that his or her statements shall not be used affirmatively against him or her. Such use immunity extends to evidence derived directly or indirectly from the prisoner's statement, but shall not prevent prosecution for perjury relating to the immunized statement.

SUBCHAPTER 16 THROUGH SUBCHAPTER 17. (RESERVED)

SUBCHAPTER 18. DECISION

1:10A-18.1 Findings based upon confidential informant

Each factual finding which is based upon confidential testimony shall be supported by evidence presented in the record from which it can reasonably be determined that the informant was credible or that the

information presented was reliable. In addition, the informant's statement must be factual, rather than conclusory and be sufficiently specific to establish that the informant spoke with personal knowledge.

1:10A-18.2 Delivering the record to the Department

Within 10 days after the initial decision is filed with the Department, the Clerk shall deliver along with the record to the Department the audio tapes of the hearing.

SUBCHAPTER 19 THROUGH SUBCHAPTER 21. (RESERVED)

CHAPTER 11  
INSURANCE FILING HEARINGS

SUBCHAPTER 1. APPLICABILITY

1:11-1.1 Applicability

The rules contained in this chapter shall apply to the notice and hearing of contested case matters involving the determination of a filing (as defined by N.J.A.C. 11:1-2.6) submitted by an insurer or a rating organization. Any aspect of notice or hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

SUBCHAPTER 2 THROUGH SUBCHAPTER 14. (RESERVED)

SUBCHAPTER 15. EVIDENCE

1:11-15.1 Evidence

(a) At least 10 days prior to the commencement of the hearing or 10 days prior to the date on which an expert witness is scheduled to testify, the parties shall exchange, and shall file with the judge, written testimony for each individual that the party intends to call as an expert witness. The written testimony shall include the name, address, title, credentials and area of expertise of the witness and the nature and substance of his or her testimony.

(b) At the same time that the written testimony is exchanged, the parties shall also exchange all supporting data, calculations, work sheets and similar materials used by the expert witness in developing the written testimony. This supporting data shall not be filed with the judge. If the data has been previously distributed to the parties, through discovery or otherwise, the data need not be exchanged at this time.

(c) All written testimony which meets the requirements of N.J.A.C. 1:1-15.1 et seq. shall be admissible. Parties may object to the admissibility of the written testimony at the evidentiary hearing. When the prefiled testimony of a witness is admitted into evidence, the witness shall be made available and subject to cross-examination.

(d) Upon application of a party, the judge may exclude, in whole or in part, the testimony of a witness for failure to comply with the requirements of this section.

SUBCHAPTER 16 THROUGH SUBCHAPTER 21. (RESERVED)

CHAPTER 12. (RESERVED)

CHAPTER 13  
DIVISION OF MOTOR VEHICLES  
EXCESSIVE POINTS AND SURCHARGE CASES

SUBCHAPTER 1. APPLICABILITY

1:13-1.1 Applicability

(a) The rules in this chapter shall apply to hearings arising from Division of Motor Vehicles (DMV) cases involving:

1. Disciplinary actions, other than license revocations, for accumulating excessive points, and

2. Proposed license suspensions for failure to pay a surcharge under the New Jersey Merit Rating Plan.

(b) Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

SUBCHAPTER 2 THROUGH SUBCHAPTER 3. (RESERVED)

SUBCHAPTER 4. AGENCY RESPONSIBILITY BEFORE  
TRANSMISSION TO THE OFFICE OF  
ADMINISTRATIVE LAW

1:13-4.1 Agency conference; failure to reach settlement

(a) In a case dealing with excessive points or a surcharge, DMV shall attempt to settle the dispute through a conference with the licensee. In surcharge cases, agency conferences are conducted pursuant to N.J.A.C. 13:19-12.3 through 12.9.

(b) If settlement is not reached, the parties shall use the conference to prepare the issues and evidence for the hearing, including:

1. Ascertaining whether the licensee disputes any facts recorded on the licensee's record abstract issued by DMV, and, if so, which facts and on what basis;

2. Ascertaining whether the licensee disputes the severity of the action proposed by DMV, and, if so, on what basis;

3. Ascertaining any discovery needs of the licensee; and

4. Ascertaining in excessive points cases whether the licensee is entitled to a time credit and, if so, the length thereof.

(c) At or forthwith after the conference, DMV shall supply the licensee with any material requested pursuant to N.J.A.C. 1:13-10.1 (Discovery), or any other appropriate documents.

(d) If settlement is not reached, DMV shall transmit the case to the Office of Administrative Law, including the documents set forth in N.J.A.C. 1:13-14.3(b) and (c).

SUBCHAPTER 5 THROUGH SUBCHAPTER 9. (RESERVED)

SUBCHAPTER 10. DISCOVERY

1:13-10.1 Discovery

(a) Discovery shall be limited to the records of DMV with respect to the case. The records shall include a certified copy of the licensee's driving record abstract, relevant notices and orders of suspension, and certified proof of relevant mailings to the licensee. In surcharge cases, when the licensee is contesting the validity of any conviction or administrative suspension entered on the surcharge bill, the records shall also include any documentary evidence in the possession of DMV which supports the contested entry.

(b) DMV shall supply the licensee with a copy of the records set forth in N.J.A.C. 1:13-10.1(a).

(c) The licensee may make any discovery request either as part of the licensee's request to DMV for a hearing or at any pretransmission conference conducted by DMV.

SUBCHAPTER 11 THROUGH SUBCHAPTER 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:13-14.1 Proceeding on the papers

DMV excessive points and surcharge cases may be conducted as proceedings on the papers, in accordance with N.J.A.C. 1:1-14.8.

1:13-14.2 Certification

(a) The licensee may return a completed certification to the Clerk pursuant to N.J.A.C. 1:1-14.8.

(b) In excessive points cases, the licensee shall indicate in the certification whether he or she disputes the facts recorded on the licensee's driving abstract issued by DMV or disputes the severity of the sanction proposed by DMV, or both, or wants to raise any other relevant issues.

(c) In surcharge cases, the licensee shall explain in the certification why the surcharge is not required or inaccurately calculated.

1:13-14.3 In-person hearings; telephone hearings

(a) If an in-person or telephone hearing is held, as provided by N.J.A.C. 1:1-14.8, such proceeding will be a summary hearing without any personal appearance by a DMV representative.

(b) In excessive points cases, DMV's case will be based on the licensee's driving record, the prehearing conference report, relevant notices and orders of suspension, certified proof of relevant mailings to the licensee, and any other documentary evidence or legal briefs necessary.

(c) In surcharge cases, DMV's case will be based on the documents in (b) above, and shall also include the surcharge bill and, if the licensee is contesting the validity of any conviction or administrative suspension entered on the surcharge bill, documentary evidence in the possession of DMV which supports the contested entry.

SUBCHAPTER 15 THROUGH SUBCHAPTER 21. (RESERVED)

CHAPTERS 14 THROUGH 19 (RESERVED)

CHAPTER 20  
HEARINGS BEFORE THE PUBLIC EMPLOYMENT  
RELATIONS APPEAL BOARD

SUBCHAPTER 1. APPLICABILITY

1:20-1.1 Applicability

The rules in this chapter shall apply to any hearing initiated before the Public Employment Relations Commission Appeal Board pursuant to P.L. 1979, c.477 (N.J.S.A. 34:13A-5.5 et seq.). Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

SUBCHAPTER 2. DEFINITIONS

1:20-2.1 Definitions

(a) "Appeal Board" means the Public Employment Relations Commission Appeal Board established by N.J.S.A. 34:13A-5.6 to consider complaints concerning the amount of fees paid by nonmembers who pay a representation fee in lieu of dues.

(b) "Demand and return system" means the procedure established and maintained pursuant to N.J.S.A. 34:13A-5.6 by a majority representative to provide a public employee who pays a representation fee in lieu of dues the right to demand and receive from the majority representative that portion of the fee returnable under the circumstances as described by N.J.S.A. 34:13A-5.5(c).

(c) "Employer" means, for purposes of these rules only, the public employer which is signatory to the agreement requiring payment by the petitioner nonmember of representation fee in lieu of dues.

(d) "Nonmember" means a public employee who is not a member of the majority representative which represents the employee's collective negotiations unit but who pays a representation fee in lieu of dues to the majority representative.

(e) "Petition" means the document described in N.J.A.C. 1:20-6 and which initiates a complaint before the Appeal Board about the amount of representation fee in lieu of dues.

(f) "Petitioner" means the nonmember who is filing a petition.

(g) "Representation fee" means the fee in lieu of dues defined in N.J.S.A. 34:13A-5.5, deducted from a nonmember's wages or salary and paid to the majority representative of the nonmember's unit.

(h) "Respondent" means the majority representative which represents the petitioner's collective negotiations unit and which receives petitioner's representation fee.

SUBCHAPTER 3. COMMENCEMENT OF PROCEEDING

1:20-3.1 Commencement of proceeding before the Appeal Board

A nonmember may initiate a proceeding before the Appeal Board to review the amount of a representation fee in lieu of dues by filing a petition with the Appeal Board pursuant to this chapter.

1:20-3.2 Who may commence a proceeding before the Appeal Board

A petition may be filed by any nonmember public employee who pays a representation fee in lieu of dues to a majority representative. Neither a public employer nor a majority representative may file a petition.

SUBCHAPTER 4 THROUGH SUBCHAPTER 5. (RESERVED)

SUBCHAPTER 6. PLEADINGS

1:20-6.1 Time for filing of petition; exhaustion of demand and return system

(a) At any time after the nonmember has exhausted, or has made a good faith attempt to exhaust, the demand and return system required to be maintained by the majority representative, the nonmember may file a petition with the Appeal Board.

(b) If during the administrative processing of the petition of appeal, it is determined that the majority representative's demand and return system has either not been utilized to resolve the dispute or that the demand and return proceeding has not been completed, the Appeal Board may take whatever action it deems appropriate, including but not limited to dismissing the petition of appeal, staying the proceedings before the Board pending the completion of the majority representative's demand and return system, or continue to process the petition.

(c) A nonmember of a majority representative who has a claim pending in the majority representative's demand and return system may intervene in a proceeding before the Appeal Board involving the same majority representative, collective negotiations agreement, public employer and the same period of time, notwithstanding that the nonmember has not yet exhausted the majority representative's demand and return system.

#### 1:20-6.2 Time for filing answer

No later than 20 days from the date of service of the petition upon the respondent by the petitioner, the respondent shall file with the Appeal Board and serve upon the petitioner an answer to the petition. For good cause, the Appeal Board may extend the time for answer. Failure to file and serve an answer on time may result in a default judgment against the respondent.

#### 1:20-6.3 Contents of petition

(a) A petition shall be in writing and signed by the nonmember(s) making the complaint. More than one nonmember in the same negotiations unit may sign a petition.

(b) A blank form for filing such a petition will be supplied upon request. Requests shall be addressed to: Public Employment Relations Commission Appeal Board, 429 East State Street, Trenton, NJ 08608.

(c) The petition shall contain the following:

1. The full name, address and telephone number of the nonmember filing the petition and, where applicable, the name, address and telephone number of any authorized representative;

2. The full name and address of the majority representative of the nonmember's collective negotiations unit;

3. The full name and address of the public employer of the nonmember filing the petition;

4. The amount of the representation fee in lieu of dues and, where known, the amount of the regular membership dues, initiation fees and assessments charged by the majority representative to its own members;

5. A statement of the grounds for the nonmember's belief that the representation fee in lieu of dues is excessive or improper, including a brief recitation of the facts, if any, which give rise to the belief that the fee is excessive. It shall be sufficient for the petitioner to state opposition either to all expenditures of a political or ideological nature only incidentally related to the terms and conditions of employment, or to expenditures applied toward the costs of any benefits available only to members of the majority representative, or to both; and

6. A statement as to whether the nonmember filing the petition has exhausted the majority representative's demand and return system and the result of that proceeding. If the result of that proceeding was in written form, a copy of the writing should be appended to the petition.

#### 1:20-6.4 Contents of answer

(a) An answer shall be in writing and signed by a representative of the respondent.

(b) An answer shall contain the following:

1. A statement of the amount of the regular membership dues, initiation fees and assessments charged by the majority representative to its own members in the petitioner's collective negotiations unit;

2. A statement of the representation fee in lieu of dues charged the petitioner;

3. A description of the disposition of the petitioner's demand and return system proceeding. A copy of any written decision or result of that proceeding shall be appended as an exhibit to the answer, unless it has been appended to the petition;

4. A clear and concise statement which specifically admits, denies or explains any factual allegations contained in the petition; and

5. Any affirmative defenses to the legal and factual allegations of the petition.

(c) Attached to the answer shall be:

1. A copy of the collective negotiations agreement or other written agreement with the public employer of the petitioner which provides for the payment of the representation fee in lieu of dues; and

2. A copy of the demand and return procedures established by the majority representative.

### SUBCHAPTER 7. SERVICE, FILING AND POSTING OF PETITION

#### 1:20-7.1 Filing of petition and copies

A petitioner shall file an original and four copies of the petition with the Appeal Board.

#### 1:20-7.2 Service of petition upon majority representative

Upon filing of a petition, the petitioner shall serve a copy of the petition and any attached documents upon the respondent named in the petition. The petitioner shall file a proof of service with the Appeal Board.

#### 1:20-7.3 Petition to public employer

Upon receipt of a petition, the Appeal Board shall forthwith provide a copy of the petition to the public employer, normally posted. The copies of the petition shall remain posted for a period of 30 days.

#### 1:20-7.4 Filing of answer and copies

(a) The respondent shall file an original and four copies of the answer with the Appeal Board.

(b) The respondent shall file two copies of the documents required by N.J.A.C. 1:20-6.4(c).

#### 1:20-7.5 Service of answer upon petition

Upon filing the answer, the respondent shall serve a copy of the answer and of the documents required by N.J.A.C. 1:20-6.4(c) upon the petitioner. The respondent shall file proof of service with the Appeal Board.

### SUBCHAPTER 8. TRANSMISSION OF CASES

#### 1:20-8.1 Transmission of cases to the Office of Administrative Law

In addition to the completed transmittal form, two copies of the petition and answer and other appropriate papers, the Appeal Board shall transmit to the Office of Administrative Law copies of the parties' proof of service of the petition and answer.

### SUBCHAPTER 9. NOTICES

#### 1:20-9.1 Notice of filing; employer posting

(a) In addition to the requirements of N.J.A.C. 1:1-9.4(a), a copy of the notice of filing shall be sent by the Office of Administrative Law to the public employer of the petitioner.

(b) The public employer shall post such notice at locations where notices to employees in the petitioner's collective negotiations unit are normally posted. The notice shall remain posted for a period of 30 days.

### SUBCHAPTER 10 THROUGH SUBCHAPTER 13. (RESERVED)

### SUBCHAPTER 14. CONDUCT OF CASES

#### 1:20-14.1 Nature of hearing

The hearing shall be a plenary de novo proceeding.

#### 1:20-14.2 Burden of proof

Pursuant to N.J.S.A. 34:13A-5.6, the burden of proof shall be on the majority representative.

### SUBCHAPTER 15. EVIDENCE

#### 1:20-15.1 Evidence of demand and return proceedings

The record, or any portion of it, developed at the demand and return system proceeding may be introduced as evidence by either party, subject to the general rules of evidence contained in N.J.A.C. 1:1-15.

### SUBCHAPTER 16 THROUGH SUBCHAPTER 17. (RESERVED)

### SUBCHAPTER 18. CONCLUSION OF HEARING

#### 1:20-18.1 Oral argument on exceptions

(a) As part of any written exceptions to an initial decision, a party may file a written request for oral argument on the exceptions before the Appeal Board. The written request shall be served, along with the exceptions, upon the other parties to the hearing.

(b) If the Appeal Board grants the request for oral argument, the Appeal Board shall give each party at least five days notice of the date of the argument.

(c) Only issues and evidence of record at the hearing may be considered at the oral argument. No new issues or evidence may be presented.

#### 1:20-18.2 Motion to reopen

A party to a proceeding before the Appeal Board may, because of extraordinary circumstances, move to reopen the matter after the Appeal Board decision has been rendered. The movant shall state with particularity the grounds claimed and, where applicable, shall specify the portion of the record relied upon. Any motion pursuant to this section shall be filed within 15 days after service of the Appeal Board decision. Copies shall be served on the parties of record, and a statement of service shall be filed with the motion papers. The filing and pendency of a motion for reconsideration shall not operate to stay the effectiveness of the Appeal Board decision unless otherwise ordered by the Appeal Board. A motion to reopen need not be filed to exhaust administrative remedies.

## SUBCHAPTER 19 THROUGH SUBCHAPTER 21. (RESERVED)

CHAPTER 21  
TRADE SECRET CLAIMS

## SUBCHAPTER 1. APPLICABILITY

## 1:21-1.1 Applicability

The rules in this chapter shall apply to any hearing concerning the validity of a trade secret claim under the New Jersey Worker and Community Right To Know Act, N.J.S.A 34:5A-1 et seq. and N.J.A.C. 7:1G-1 et seq. and N.J.A.C. 8:59-3 et seq. Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

## SUBCHAPTER 2 THROUGH SUBCHAPTER 7. (RESERVED)

## SUBCHAPTER 8. TRANSMISSION OF CASES TO THE OFFICE OF ADMINISTRATIVE LAW

## 1:21-8.1 Transmission of cases; the trade secret documentation or information

Whether the case is transmitted to the Office of Administrative Law, under N.J.A.C. 1:1-8.2, by the Department of Environmental Protection or the Department of Health, any information or documentation which reveals the trade secret shall not be transmitted with the case file.

## 1:21-8.2 Custody of the trade secret information or documentation: no copying

(a) Any information or documentation which reveals the trade secret shall remain throughout the hearing in the physical custody of DEP or DOH representatives.

(b) When needed, upon the judge's direction, the trade secret information or documentation shall be brought to the hearing by the responsible department representatives.

(c) The trade secret information or documentation shall not be placed in the Office of Administrative Law case file and may not be copied by any Office of Administrative Law personnel.

(d) The trade secret information shall not be communicated over telecommunication networks, including but not limited to: telephones, computers connected by modems, or electronic mail systems.

(e) The judge may, when necessary for the performance of his or her functions, disclose the trade secret information to his or her secretary.

## SUBCHAPTER 9. (RESERVED)

## SUBCHAPTER 10. DISCOVERY

## 1:21-10.1 Discovery in trade secret cases

(a) When necessary to prevent the trade secret from being disclosed without authorization, the judge may order:

1. That the requested discovery not be had;
2. That the discovery may be had only on specified terms and conditions, including a designation of the time or place;
3. That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
4. That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
5. That discovery be conducted with no one present except persons designated by the judge;
6. That a deposition after being sealed be opened only by order of the judge;
7. That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the judge; or
8. Any other device which reasonably balances the discovery goal of minimizing surprise at hearings with the need to protect the trade secret from an unauthorized disclosure.

## SUBCHAPTER 11. (RESERVED)

## SUBCHAPTER 12. MOTIONS

## 1:21-12.1 Written motions

Written motions shall be made directly to the judge without the necessity of filing with the Clerk.

## SUBCHAPTER 13. (RESERVED)

## SUBCHAPTER 14. CONDUCT OF TRADE SECRET CASE

## 1:21-14.1 Sound recordings; safeguarding the case file and sound recordings; preparation of transcripts

(a) Court reporters will not be provided for trade secret hearings. A verbatim record will be maintained by sound recording.

(b) When not in use, all audio tapes and case files together with all evidence and other related case materials, including any transcripts, shall be locked in an Office of Administrative Law filing cabinet in a locked room, whether or not particular tapes, case files, evidence or related materials include secret testimony or argument. Access to the file cabinet shall be limited to judges and their secretaries. Access to the locked room shall be restricted to a person or persons designated by the Director in writing. A record of access to the file cabinet shall be maintained by the designated persons.

(c) No duplicates or copies of any portion of an audio tape containing secret information shall be permitted.

(d) Upon the request of a person who is authorized by the judge to receive a transcript, the judge's secretary shall prepare a transcript of that portion of the hearing dealing with the secret information. A transcribing firm may be authorized to prepare a transcript of that portion of the hearing not dealing with the secret information.

## 1:21-14.2 Sealing the record

(a) On the last day of the evidentiary hearing, the parties shall be given the opportunity to address the record sealing requirements of the case. The record shall be sealed by order attached to the initial decision in every trade secret case.

(b) In rendering a sealing order, the judge shall consider the extent of restriction necessary to safeguard the trade secret and shall determine in each such order:

1. That the Office of Administrative Law shall not maintain a duplicate case file after the initial decision has been provided to the parties and agency head; and
2. That all documents transmitted to the Office of Administrative Law together with all evidence received at the hearing and all audio tapes or transcripts, if any, shall be returned to the transmitting agency with the initial decision; and
3. That all requests for transcripts prior to the initial decision shall be directed to the judge and that all requests for transcripts after the initial decision shall be directed to the transmitting agency; and
4. Whether any portions of the audio tapes of the proceeding may not be transcribed or whether other means of safeguarding the trade secret can be utilized when preparing a transcript; and
5. The names of persons who are authorized to request a transcript; and
6. Whether the entire initial decision, transcript, audio tapes, evidence and other related case materials or any part thereof must be marked "CONFIDENTIAL" and distributed by hand or certified mail in a plain envelope addressed only to a person authorized to receive the secret information; and
7. Whether the initial decision or any part thereof may be made available to the public in any agency's library.

## 1:21-14.3 Exceptions to the public hearing policy

When necessary to prevent the trade secret from being disclosed without authorization, the judge may make an exception to the public hearing requirements of N.J.A.C. 1:1-14.1 and he or she may close the hearing, or any part thereof, and exclude witnesses, or, if necessary, parties from portions of the hearing.

## SUBCHAPTER 15 THROUGH SUBCHAPTER 17. (RESERVED)

## SUBCHAPTER 18. INITIAL DECISIONS: RETURNING THE CASE TO THE TRANSMITTING AGENCY

## 1:21-18.1 Delivery of initial decisions, transcripts, audio tapes, evidence and other related case materials

(a) Unless the judge otherwise directs in the record sealing order (see N.J.A.C. 1:21-14.2), the parties to the case and the transmitting agency or their designated representatives will be telephoned and asked to pick up the initial decision at the judge's chambers at the Office of Administrative Law. The indicated date of receipt by the agency head, as required by N.J.S.A. 52:14B-10(c), shall be the second day after the Office of Administrative Law telephones the transmitting agency.

(b) Unless the judge otherwise directs in the record sealing order, the transmitting agency will be telephoned and asked to pick up at the Office

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of Administrative Law the transcript, if any, audio tapes, evidence and other related case materials on the same date it is requested to pick up the initial decision.

(c) After returning the case to the transmitting agency, the Office of Administrative Law may maintain in the Clerk's file only the transmittal form, the notices of filing and hearing and the order sealing the record.

SUBCHAPTER 19 THROUGH SUBCHAPTER 21. (RESERVED)

## BANKING

### (a)

#### DIVISION OF BANKING

#### Bank Holding Company: Reporting Requirements and Examination Charges

#### Proposed New Rule: N.J.A.C. 3:13-2 and 3:13-3

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

Authority: N.J.S.A. 17:9A-379; 17:9A-374; 17:9A-375; 17:9A-377.

Proposal Number: PRN 1986-361.

Submit comments by October 8, 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 granted the Commissioner of Banking authority to monitor the structure of bank holding companies operating in the State of New Jersey. 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."

One of the provisions in the Act, which will aid in the monitoring of bank holding companies, authorizes the Commissioner to request a bank holding company to submit copies of filings it makes with Federal bank regulatory authorities and the Securities and Exchange Commission. The Act further stipulates that any other person who controls a bank shall also be required to provide the Commissioner with information relative to the control. The Act allows the Commissioner to set the fee charges for filings within parameters set out in the Act. The Commissioner also has the right to examine any company which controls a bank and the legislation stipulates that the cost of the examination shall be assessed against and paid by the company in an amount established by rule of the Commissioner.

The proposed new rules, N.J.A.C. 3:13-2, schedules various filings which the Commissioner is requiring each bank holding company or person controlling a bank to submit to the Department of Banking. The appropriate filing fee, to defray Department costs in processing, screening and analyzing, is set out in the rule.

Additional proposed new rules, N.J.A.C. 3:13-3, establish the examination charge to be assessed against a company to defray the Department's cost of examination.

#### Social Impact

With the adoption of these rules, the Department will be able to monitor the activities that bank holding companies are pursuing within the State of New Jersey. The direction of banking is moving away from the individual institution and more and more is being assumed by bank holding companies. With the advent of interstate banking, this trend will accelerate. By reviewing the various filings and conducting or participating in bank holding company examinations, the Department will be able to oversee the activities of bank holding companies and, where appropriate, make recommendations for improved service to the citizens and businesses of this State.

#### Economic Impact

The filing and examination costs imposed upon bank holding companies and those persons that control banks in New Jersey will have nominal impact on the expenses of these parties. However, initiation of the monitoring devices included in the aforementioned legislation and the proposed rules, filing of financial reports with the Department of Banking and conducting on site examinations, will afford the Department of Banking the opportunity to continue its influence on the banking structure within the State of New Jersey. This participation in supervision of bank holding companies will allow the Department to influence the activities of these companies and assure the continued supply of the banking communities economic resources to New Jersey endeavors.

Full text of the proposed new rules follows.

#### CHAPTER 13 BANK HOLDING COMPANIES

#### SUBCHAPTER 2. BANK HOLDING COMPANY REPORTING

##### 3:13-2.1 Purpose and scope

This subchapter requires filing of financial reports by all persons or companies controlling banking institutions located in New Jersey. The subchapter will enable the Commissioner to monitor the activities of individuals and companies that control New Jersey banks. The first reports to be filed pursuant to the provisions of these rules shall be for the period ending December 31, 1986.

##### 3:13-2.2 Reporting for bank holding companies

(a) Each bank holding company which is required to file with the Federal Reserve System form FR Y-9C entitled "Consolidated Financial Statements for Bank Holding Companies with total consolidated assets of \$150,000,000 or more or with more than one subsidiary bank," shall concurrently file a copy of this report with the Commissioner of Banking. A filing fee of \$50.00 shall accompany the submitted report.

(b) Each bank holding company which is required to file with the Federal Reserve System form FR Y-9LP entitled "Parent Company Only Financial Statements for Bank Holding Companies with total consolidated assets of \$150,000,000 or more with more than one subsidiary bank" shall concurrently file a copy of this report with the Commissioner of Banking. A \$50.00 filing fee shall accompany the submitted report.

(c) Each bank holding company which is required to file with the Federal Reserve System form FR Y-9SP entitled "Parent Company Only Financial Statements for One Bank Holding Company with total consolidated assets of less than \$150,000,000" shall concurrently file a copy of this report with the Commissioner of Banking. A filing fee of \$50.00 shall accompany the submitted report.

(d) Each bank holding company which is required to file with the Federal Reserve System form FR Y-6 entitled "Annual Report of Bank Holding Companies" shall concurrently file a copy of this report with the Commissioner of Banking. The copy of FR Y-6 filed with the Commissioner of Banking shall include the required copy of the bank holding company's annual report to shareholders or the required copy of form 10K to the Securities and Exchange Commission. A filing fee of \$100.00 shall accompany the submitted report.

(e) Each bank holding company which is required to file with the Federal Reserve System form FR Y-6A entitled "Bank Holding Company Report Changes in Investments or Activities" shall concurrently file a copy of this report with the Commissioner of Banking. A filing fee of \$50.00 shall accompany the submitted report.

(f) Each bank holding company which is required to file with the Federal Reserve System form FR Y-11I entitled "Annual Report of Selected Financial Data for Non-Bank Subsidiaries of Bank Holding Companies" shall concurrently file a copy of this report with the Commissioner of Banking. A filing fee of \$50.00 shall accompany the submitted report.

(g) Each bank holding company which is required to file with the Federal Reserve System form FR Y-11Q entitled "Combined Financial Statement of Non-Bank Subsidiaries of Bank Holding Companies" shall concurrently file a copy of this report with the Commissioner of Banking. A filing fee of \$50.00 shall accompany the submitted report.

(h) Each bank holding company which is required to file with the Federal Reserve System form FR Y-11AS entitled "Annual Supplement to the Combined Financial Statements of Non-Bank Subsidiaries of Bank Holding Companies" shall concurrently file a copy of this report with the Commissioner of Banking. A filing fee of \$50.00 shall accompany the submitted report.

(i) Each bank holding company which is not required to file with the Federal Reserve System shall:

1. If the bank holding company is required to file a form 10K with the Securities and Exchange Commission, the bank holding company shall concurrently file a copy of this report with the Commissioner of Banking; or

2. If the bank holding company is not required to file a form 10K with the Securities and Exchange Commission, the bank holding company shall annually file with the Commissioner of Banking the following information on forms provided by the Department of Banking:

- i. Name and address of the company;
  - ii. Names and addresses of principal officers;
  - iii. Names and addresses of controlling shareholders of the company;
  - iv. A summary of material business activities and affiliations during the past five years;
  - v. A description of pending legal or administrative proceedings in which the company is a party;
  - vi. A statement of assets and liabilities of the company for each of the five preceding fiscal years, together with related statements of income and sources and applications of funds for each of those fiscal years; and
3. Submit a filing fee of \$100.00 with the filed report.

3:13-2.3 Reporting for persons other than bank holding companies

(a) Each person who controls a bank shall annually file with the Commissioner of Banking the following information on forms provided by the Department of Banking:

- 1. Name and address of the person;
- 2. A resume of material business activities and affiliations during the past five years;
- 3. A description of pending legal or administrative proceedings in which the person is a party and any criminal indictment or conviction of the individual issued by a state or federal court;
- 4. A statement of assets and liabilities of the person for each of the five preceding fiscal years, together with related statements of income and sources and applications of funds for each of those fiscal years;
- 5. A filing fee of \$100.00.

SUBCHAPTER 3. BANK HOLDING COMPANY EXAMINATIONS

3:13-3.1 Purpose and scope

This subchapter establishes the per diem examination charge to be assessed against and paid by a company to defray the Department of Banking examination costs relative to an examination of a company which controls a bank.

3:13-3.2 Per diem examination charge

The per diem examination charge for an examination of a company which controls a bank shall be \$200.00.

**CIVIL SERVICE**  
**(a)**

**CIVIL SERVICE COMMISSION**

**Workweek Programs**

**Proposed Amendments: N.J.A.C. 4:1-18.6, 18.7**

**Proposed Repeals: N.J.A.C. 4:1-18.1, 18.2, 18.3;**  
**N.J.A.C. 4:2-18.2, 18.3**

**Proposed Recodifications: N.J.A.C. 4:1-18.5, 18.6,**  
**18.7, 18.8; N.J.A.C. 4:2-18.4, 18.5, 18.6**

**Proposed New Rules: N.J.A.C. 4:1-18.1, 18.2, 18.3,**  
**18.4; N.J.A.C. 4:2-18.4**

Authorized By: Civil Service Commission, Peter J. Calderone,  
Assistant Commissioner, Department of Civil Service.  
Authority: N.J.S.A. 11:1-7a, 11:5-1 and 11:14-1.  
Proposal Number: PRN 1986-350.

A public hearing will be held on September 24, 1986 at 9:30 A.M. in the Civil Service Commission Room, 215 East State Street, Trenton, New Jersey. Please contact Ms. Dolores Carvill at 609-292-6568 if you plan to attend and to be included on the list of speakers.

Submit comments by October 8, 1986 to:

Peter J. Calderone  
Assistant Commissioner  
Department of Civil Service  
CN 312  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

N.J.A.C. 4:1-18.1, 18.2 and 18.3 are being repealed and their substance, written in clear and concise language, is incorporated in new rules N.J.A.C. 4:1-18.1 through 18.4. These new rules clearly indicate authority for establishing hours of work, overtime, holiday and special work hours programs in the State and local services. N.J.A.C. 4:1-18.6, 18.7, 18.8 and 18.5 are being moved to N.J.A.C. 4:2-18.1, 18.2, 18.3 and 18.5 respectively since the rules are applicable to the State services only. The amendment to N.J.A.C. 4:2-18.2, non-limited employees, reflects current practice and is intended to clarify for appointing authorities and employees that non-limited workers shall work at least a 35 hour workweek with intermittent requirements for a longer workweek as warranted to complete projects or assignments.

N.J.A.C. 4:2-18.2 and 18.3, addressing the application of holiday leave, are being repealed and only the substance, which is not currently addressed in the State Overtime Committee rules, N.J.A.C. 4:6, is incorporated into N.J.A.C. 4:2-18.4. The following changes are being made to the holiday rule: (1) the statutory granting of a holiday on Friday, if the holiday falls on a Saturday, and the designation of a Monday as a holiday, if the holiday falls on a Sunday, is incorporated for informational purposes and (2) temporary employees may receive prorated holiday leave credit.

**Social Impact**

The proposed new rules will benefit temporary employees in that they may be granted holiday pay on a prorated basis. Under the present rules, such employees would not receive holiday pay. It is felt that the present regulation unfairly penalizes these employees and it is hoped that this modification will have a positive impact on employee morale. The remainder of the amendments reflect current practice and, as such, have no additional social impact on the employee.

**Economic Impact**

The State will be liable for additional holiday pay as provided for in N.J.A.C. 4:2-18.4. However, the number of employees affected by this amendment is believed to be small, resulting in a negligible economic impact. The remainder of the amendments reflect current practice and, as such, generate no economic impact.

Full text of the proposed repeals, amendments, recodifications, and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

SUBCHAPTER 18. [HOURS OF WORK] WORKWEEK PROGRAMS

RECODIFICATION CHART

OLD CITATION	NEW CITATION
4:1-18.1	4:1-18.1
4:1-18.2	4:1-18.2
4:1-18.3	4:1-18.3
4:1-18.4	4:1-18.4
4:1-18.5	4:2-18.5
4:1-18.6	4:2-18.1
4:1-18.7	4:2-18.2
4:1-18.8	4:2-18.3
4:2-18.1	—
4:2-18.2	—
4:2-18.3	—
—	4:2-18.4
4:2-18.4	4:2-18.6
4:2-18.5	4:2-18.8
4:2-18.6	4:2-18.7

4:1-18.1 Hours of work

[(a) In State service, the Chief Examiner and Secretary, after consultation with appointing authorities, shall prepare, and after approval of the Commission, administer regulations to establish and maintain as far

as practicable uniform and equitable hours of work required of all employees in the classified service. The number of hours comprising an employee's work week shall be indicated in the compensation plan.

(b) In local service, the appointing authority shall establish regulations regarding hours of work or such hours shall be as otherwise provided by law.

(c) See also N.J.A.C. 4:2-18.1.]

(a) In State service, the President of the Civil Service Commission shall prepare and, after the approval of the Commission, administer regulations to establish and maintain the hours of work required for all titles in the executive branch. The number of hours comprising the normal workweek for each title shall be indicated in the State compensation plan. See N.J.A.C. 4:2-18.1, 18.2 and 18.3.

(b) In local service, an appointing authority may establish the hours of work required for each title utilized by the jurisdiction.

4:1-18.2 Overtime

[In order to meet the demands of work, State employees may be required to work in excess of the hours of work designated as the normal work week for their title shall be compensated as specified in N.J.A.C. 4:6.]

(a) In State service, in order to meet workload demands, employees may be required to work in excess of the normal hours of work designated for their title. Compensation for this additional time shall be as provided by the State Overtime Committee. See N.J.A.C. 4:6-1.1 et seq.

(b) In local service, an appointing authority may establish the circumstances and eligibility for and the rates of overtime compensation.

4:1-18.3 Holidays [(State service)]

[(a) Holidays as authorized by law or by Commission action with the approval of the Governor shall be allowed as days off with pay or if worked shall be compensated by cash or compensatory time off at a premium rate for all full-time employees in active employment except when otherwise required by regulation. (Reference should be made to regulations of the Joint Committee on Overtime.)

(b) When an authorized holiday falls on Sunday, the following Monday shall be observed as the holiday.

(c) See also N.J.A.C. 4:2-18.2 and 4:2-18.3.]

(a) In State service, the Civil Service Commission shall provide for the conditions whereby employees shall be considered eligible for regular compensation on holidays as authorized by law or Executive Order. See: N.J.A.C. 4:2-18.4.

1. The State Overtime Committee shall establish rules for compensating employees who either work or have a regularly scheduled day off on a holiday. See N.J.A.C. 4:6-6.1 et seq.

(b) In local service, an appointing authority may establish eligibility for regular compensation on holidays and any special compensation for those who either work or have a regularly scheduled day off on a holiday.

4:1-18.4 [(Reserved)] Special work hours program

(a) In State service, the Civil Service Commission may provide for special work hours programs, such as flexitime, alternative workweeks and inclement weather emergencies. See N.J.A.C. 4:2-18.5, 18.6, 18.7 and 18.8.

(b) In local service, an appointing authority may establish special work hours programs, such as flexitime, alternate workweeks and inclement weather emergencies.

[4:1-18.5] Inclement Weather Emergency Policy [(State)]

[(a) This section is applicable only to State service.]

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

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

[(d)] (c) Employees who are required to work to maintain essential services while others are excused pursuant to these emergency procedures shall be given priority for release for the next emergency, where practicable.

[4:1-18.6] 4:2-18.1 Fixed work week titles

(a) [In State service, titles] Titles which meet all of the following criteria shall be assigned a fixed work week of 35 or 40 hours:

1.-2. (No change.)

3. Employees [are under contact supervision and] normally work under direct supervision within a formal work program in a State office location or place of business. Field work without direct supervision is minimal; and

4. (No change.)

[4:1-18.7] 4:2-18.2 Non-limited (NL or NE) titles

(a) [State titles] Titles which do not meet all the criteria set forth in N.J.A.C. [4:1-18.6] 4:2-18.1 shall be assigned a non-limited (NL or NE) work week. Such employees shall work at least a 35 hour workweek

with intermittent requirements for a longer workweek as warranted to complete projects or assignments. See N.J.A.C. 4:6-1.1 et seq. regarding conditions for overtime compensation in these circumstances.

(b) Titles in the following categories shall be assigned a non-limited (NL or NE) work week without regard to the criteria set forth in N.J.A.C. [4:1-18.6] 4:2-18.1.

1. (No change.)

2. Titles, such as Trooper, encompassing sworn unclassified employees of the State police who are generally required to be available for the maintenance of law, order and security;

3. (No change.)

4. [Seasonal titles] Titles in which schedules of work vary considerably between a prime and a slack work season.

[4:1-18.8] 4:2-18.3 [NL4] N4 Titles

[In State service, titles] Titles with non-limited hours of work in which the duties require direct and continuous supervision of employees in titles assigned a 40 hour work week shall be assigned an [NL4] N4 work week.

4:2-18.1 [(Reserved)]

4:2-18.2 Holiday leave for employees on a part-time basis]

[(a) This section describes the extent to which part-time employees will be permitted holiday leave.

(b) "Part-time employee" means any employee who, by arrangement, regularly works a constant percentage of the regular and normal work week in a class or for an agency; and who is paid a percentage of an annual salary for the title in which such employee works or is paid at an hourly rate.

(c) Temporary, provisional, and permanent part-time employees who meet the definition as set forth in (b) above, and accordingly are in the classified service shall be granted holiday leave credit on a proportionate basis.

Percentage of Full Time Position	Holiday Leave Credits Prorated	
	8 Hours/Day Position (Hours/Month)	7 Hours/Day Position (Hours/Month)
20	1.60	1.40
25	2.00	1.75
30	2.40	2.10
40	3.20	2.80
50	4.00	3.50
60	4.80	4.20
70	5.60	4.90
75	6.00	5.25
80	6.40	5.60
90	7.20	6.30

To calculate holiday credits for the year, multiply the appropriate "Hours/Month" figure times number of holidays in the year. To round off tenths of a number the following guide should be used: .1 to .3 should be dropped, .4 to .6 should be .5, and .7 to .9 increase to the next whole number.]

4:2-18.3 [Holiday pay practice]

[(a) This section provides for conditions under which employees in the classified service shall receive pay credit for holidays.

(b) Procedure:

1. If an employee in the classified service is in pay status the working day immediately preceding a holiday, he/she shall receive pay credit for the holiday.

2. All temporary, provisional and permanent part-time employees in the State classified service who regularly work a constant percentage of the regular and normal work week in a class or for an agency, and who are paid a percentage of an annual salary for the title in which such employees work or are paid at an hourly rate, shall receive pay credit for the holiday on a proportionate basis provided their work schedule would have included work time on that holiday.

(c) Exceptions:

1. In those cases where an employee reverts to pay status from a leave without pay the working day immediately preceding the holiday, credit shall not be given except when the return is final.

2. When an employee retires or is otherwise separated from the state service on the working day immediately preceding the holiday, s/he shall not receive credit for that holiday; that is, if an employee's last day of pay status occurs on the working day immediately preceding the holiday, s/he cannot have his separation date designated on that holiday.

3. Casual or special services employees are not entitled to holiday pay credit.]

[4:2-18.4] **4:2-18.6** Flexitime programs  
(No change in text.)

**4:2-18.4** **Holiday pay**

(a) **Holidays as authorized by law or Executive Order shall be allowed as days off with regular pay for employees in the classified service.**

1. **Part time employees in the classified service who work a constant percentage of a full workweek shall receive holiday leave credit on a proportionate basis.**

2. **Temporary employees may receive holiday leave credit on a proportionate basis at the discretion of the appointing authority.**

(b) **When an authorized State holiday falls on a Saturday, the preceding Friday shall be observed as the holiday. When an authorized holiday falls on a Sunday, the following Monday shall be observed as the holiday.**

(c) **Employees who are in pay status on the day immediately before an authorized holiday shall receive pay for the holiday, except that:**

1. **If an employee is separated from State service and his or her last day in pay status is immediately before a holiday, the employee shall not be paid for the holiday.**

2. **A newly hired employee shall not be placed in initial pay status on a holiday. However, an employee leaving one State position to accept another State position without a break in service, may be placed in initial pay status in the new position on a holiday to avoid a break in service.**

[4:2-18.5] **4:2-18.8** Hours of operation  
(No change in text.)

[4:2-18.6] **4:2-18.7** Alternative workweek programs  
(No change in text.)

## (a)

### STATE EMPLOYEES' AWARDS COMMITTEE

#### State Employees' Awards Program Rules

#### Proposed Readoption with Amendments: N.J.A.C. 4:4

Authorized By: Civil Service Commission, Peter J. Calderone,

Assistant Commissioner, Department of Civil Service.

Authority: N.J.S.A. 11:2C-9 et seq.

Proposal Number: PRN 1985-359.

A **public hearing** concerning this proposal will be held on September 24, 1986, at 215 East State Street, Trenton, New Jersey at 10:00 A.M. (Please contact Dolores Carvill at 609-292-6568 if you plan to attend and be included on the list of speakers.)

Submit comments by October 8, 1986 to:

Peter J. Calderone  
Assistant Commissioner  
Department of Civil Service  
CN 312  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The New Jersey State Employees' Awards Committee proposes to readopt with amendments its rules regarding the State Awards Program which will expire on December 7, 1986 pursuant to Executive Order No. 66(1978). The Committee has reviewed the rules codified at N.J.A.C. 4:4-1 et seq.

The Program provides an opportunity for individual employees to receive extra compensation or other awards for suggestions to increase productivity, heroism, professional accomplishment, public service, years of service and retirement.

As part of the review process, revisions have been made to Chapter 4. The principle changes involve clarification and reorganization. One substantive change provides the inclusion of awards for public service at N.J.A.C. 4:4-4.1(c) to reflect outstanding acts of public service above and beyond the duties of an employee's position in servicing the public. The Committee also proposes existing N.J.A.C. 4:4-1 et seq. for re-adoption, as a technical procedure so as to assure regulatory continuity while allowing interested parties the appropriate time to comment and the Committee to deliberate on any changes.

Additional changes have been made at the following locations:

4:4-1.2(a): A category reflecting the new awards for public service has been added.

4:4-1.2(b): The Department of Commerce has been added to the list of State agencies.

4:4-3.4: This material has been deleted as it is now covered in 4:4-2.2.

4:4-4.3(a)12: This material has been deleted, as it is covered in 4:4-3.6(f).

4:4-4.4: This material has been deleted, as it is now covered by 4:4-3.4. The new material at 4:4-3.4 combines material formerly found at 4:4-4.4 and 4:4-4.5 and clarifies the process.

4:4-[4.8]3.6(c): Material has been added which affords the suggester an opportunity to participate in the adjudication process.

4:4-[4.9]3.8: This section has been amended to delineate specifically the amount of the award and increases the award substantially.

The material in Subchapters 7 and 8 have been combined into Subchapter 5.

#### Social Impact

Although the new award for public service will affect some additional employees, this recodification will have a negligible effect on existing practices. Nevertheless, it is intended that the continuance of these awards will enhance employee productivity and motivation.

#### Economic Impact

There will be a small cost incurred for the additional public service awards. Otherwise, the recodification will follow existing practices, thereby, not increasing costs materially.

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

### CHAPTER 4. [NEW JERSEY STATE EMPLOYEES' AWARDS COMMITTEE RULES] STATE EMPLOYEES' AWARDS PROGRAM

#### SUBCHAPTER 1. AUTHORITY AND PURPOSE

4:4-1.1 [Program established] **Authority**

(a) [In State service, the President of the Civil Service Commission shall nominate for appointment by the Governor members of the New Jersey State Employees' Awards Committee.]

**The New Jersey State Employees' Awards Committee consists of five persons who shall be State officers or employees and shall be established in the Department of Civil Service. The Committee shall determine awards for all State employees and adopt regulations. See N.J.S.A. 11:2C-1 et seq.**

(b) In local [government] service, the governing body may establish, by resolution, an Awards Program and provide for an advisory committee to assist in the administration of the program.

[(c) The programs shall be designed to promote efficiency and economy in governmental functions and to encourage and reward unusual and meritorious suggestions and accomplishments.

1. Programs may include awards for suggestions, heroism, service and other exceptional accomplishments;

2. Departmental committees may be established to assist in the administration of this program.]

4:4-1.2 **Purpose [and application]**

(a) The purpose of the Awards Program is to promote efficiency and economy in State government by rewarding individual employees for meritorious performance and suggestions which improve State government operations. To accomplish this purpose, the following awards are hereby established:

1.-3. (No change.)

#### 4. Awards for Public Service

[4.] 5. Awards for Service

[5.] 6. Retirement Recognition Awards

(b) [The authority for the Awards Program is N.J.S.A. 11:2C-1 et seq.]

[(c)] (b) The Awards Program [is established in the Department of Civil Service and] applies to [the] employees [and the improvement of the operations of the:] **in the following State agencies:**

1. Office of the Governor;

2. Department of Agriculture;

3. Department of Banking;

4. Department of Civil Service;

5. **Department of Commerce and Economic Development;**

[5] 6. Department of Community Affairs.

[6] 7. Department of Corrections;

[7] 8. Department of Defense;

[8] 9. Department of Education;

[9] 10. Department of Energy;

[10] 11. Department of Environmental Protection;

[11] 12. Department of Health;

[12] 13. Department of Higher Education;

[13] 14. Department of Human Services;

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- [14] 15. Department of Insurance;  
 [15] 16. The Judiciary;  
 [16] 17. Department of Labor [and Industry];  
 [17] 18. Department of Law and Public Safety;  
 [18] 19. Department of the Public Advocate;  
 [19] 20. Department of State;  
 [20] 21. Department of Transportation  
 [21] 22. Department of the Treasury;  
 [22] 23. Office of Legislative Services;  
 [23] 24. Public Broadcasting Authority.

## SUBCHAPTER 2. [(RESERVED)]

SUBCHAPTER [3] 2. ADMINISTRATION AND  
ORGANIZATION OF THE AWARDS  
PROGRAMS

## 4:4-[3]2.1 Administration

[The Awards Programs are administered by an employee committee known as the New Jersey State Employees Awards Committee (hereinafter "Committee").] Individual award committees (hereinafter "departmental committees") [are] **shall be established in each agency operating under the Awards Program** [department, office, commission, branch or authority listed previously] **and shall be overseen by the New Jersey State Employees' Awards Committee (hereinafter "Committee").** Divisional and institutional award sub-committees may be established within [departments] **agencies** to assist departmental committees in the administration of the Awards Program within the [department] **agencies** but the responsibility for the [departments'] **agencies'** activities will remain with the departmental committees.

## 4:4-[3]2.2 New Jersey State Employees' Awards Committee

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

(c) The Committee shall meet and organize as soon as practicable after the annual appointment of new members and select a Chairperson from among its members. The Committee shall hold a regular meeting at least once each month [during the year] and special meetings at the call of the Chairperson. All meetings will be open to the public and conducted in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6.

(d) The Committee is responsible for the formulation of **the Awards Program[s]** and for the supervision and direction of departmental level committees. It has the authority to adopt and promulgate rules and regulations for the conduct and operation of **the Awards Program** under the supervision and direction of the President. The Committee shall submit monthly reports to the President concerning operations of the Awards Program[s] which shall include data on the activity level, processing timeframes and the amount of benefits to the State resulting from [these programs] **the Program**. This data will also be furnished to each [department's] **agency's** chief executive officer. The Committee shall submit an annual report[,] to the Governor [through the department's chief executive officer] **through the President**.

(e)-(f) (No change.)

(g) The Secretary shall make the initial review of all proposed award recommendations from the departmental committees. When the recommendation from the department committee [are] **is** for disapproval, the secretary shall, from the evidence presented, determine if the disapproval should be upheld.

(h) (No change.)

[(i) It shall be the responsibility of the Committee to make changes in these regulations as may be required. Departmental committees are encouraged to make recommendations for changes which will improve the Programs.]

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

## 4:4-[3]2.3 Departmental awards committees

(a) Each [department, office, commission, branch or authority] **agency** operating under the Awards Program[s] shall establish an award committee, which shall include at least three members, and which shall be known as the "Awards Committee of the [department, office, commission, branch or authority]." **agency."**

(b) The[se] **departmental** committees shall be appointed by the chief executive officers of the [organization] **agencies** for a term of one year, effective each May 18; and the committees will assume responsibility for the conduct and operation of the Awards Program[s] within their [organization] **agencies**.

(c) Each [department's] **agency's** chief executive officer will appoint as departmental committee members[, program analysts or, in those departments which do not have analysts,] employees who are responsible for evaluation and analysis of the agency's programs.

(d) The chairperson of the departmental committee will be an individual who [reports directly] **has direct access** to the chief executive officer.

(e) The[se] **departmental** committees will meet at least monthly and operate under the supervision and direction of, and in accordance with the rules and regulations promulgated by, the Committee. They shall establish rules and regulations for the processing of awards within their [departments] **agencies** with the approval of the Committee.

(f) The[se] committees will be responsible for objectively and impartially investigating and evaluating each proposed award furnished to them by the Committee and returning a recommendation to the program staff of the Committee within [the program] **prescribed** timeframes. Documentation to support their conclusions should accompany their recommendation.

(g) The[se] committees shall be responsible for suitable ceremonies for the presentation of awards to their employees and shall use available means, as the Committee may propose, to promote employee participation in the Program[s].

(h) The committees will report their activities to the Committee through **their** chairpersons [of the respective organization]. Each [department's] **agency's** chief executive officer will ensure that a suitable committee is maintained. The chairperson of the departmental committee will act as liaison between the Committee and the departmental committee to ensure that proposed awards are evaluated expeditiously and implementation is effected.

## 4.4-3.4 [Nature of awards] (RESERVED)

[(a) In State service, the Employees' Awards Committee, with the approval of the President of the Commission, within available appropriations, may determine the nature and extent of the awards to be made based on rules and regulations adopted for the conduct and operation of the awards programs.]

(b) In local government service, the awards shall be granted, within the appropriations made by the governing body, based on the criteria established by the governing body and the advisory committee or committees.

(c) Awards may include cash, citations, certificates, medals or other appropriate insignia.]

## SUBCHAPTER [4] 3. AWARDS FOR SUGGESTIONS

## 4:4-[4]3.1 Suggestions Program

An award for a suggestion shall be made to any eligible employee whose constructive proposal has been implemented or ordered implemented by competent authority, in accordance with regulations established by the Committee and approved by the President.

## 4:4-[4]3.2 Definition of a suggestion

(a) A suggestion is a written proposal which will produce notable economy or improvement in an operation of State government or one which will improve service to the public, employee safety, public safety or employee welfare. It must be original, or propose a new application of an old idea. There must be a causal relationship between the suggestion and the implementation of the improvement. [(If an organization maintains that there is no causal relationship between the suggestion and implementation, it is incumbent on the organization involved in the evaluation to substantiate the absence of a relationship.)] A suggestion shall include:

1.-4. (No change.)

## 4:4-[4]3.3 Eligibility

(a) [Most employees are eligible to participate in the program and nearly all s] Suggestions which improve State government operations can be considered for an award except:

1. No award shall be made [to any employee] for [any] **a** suggestion which represents a part of [the] **an employee's** duties [of his or her position] and which [he or she] **the employee** has the authority to change or the responsibility [for] **to bring[ing the existing state or improvement]** to the attention of his or her supervisor.

2. No award [for any suggestion] shall be made [to any] **for a suggestion by an employee** whose primary duty is research and planning unless the suggestion concerns a matter which is clearly unrelated to the employee's assignment or primary duty.

3. No award shall be made to any member of the Committee[,] **or a** departmental committee, **the** Secretary, or the staff of the Awards Program. Under special circumstances, the Committee may authorize exceptions.

4. No award shall be made for a disapproved suggestion unless the idea [appears to be] **is implemented as a result of the suggestion** within

two years from the date of notice of disapproval and is subsequently approved by the Committee [which will certify that the employee's suggestion prompted its implementation].

5.-6. (No change.)

7. No award shall be made for [any] a suggestion[s] involving new structures, equipment, materials and procedures during the initial period of trial, experiment or development, the length of which is considered reasonable by the Committee.

8. No award shall be [paid] made [to an employee] for [any] a suggestion which simply involves instituting or raising fees or taxes levied by the State.

9. No award shall be [paid] made [to an employee] for [any] a suggestion to transfer programs or activities from one level of government to another unless the transfer of the program or activity effectuates a savings or improvement of services, in which case the award would be based only on the saving or value of the improvement in having one level of government, as opposed to another, perform the program or activity.

10. No award shall be [paid] made [to an employee] for [any] a suggestion to recoup owed funds from another agency or political subdivision of the State.

11. No award shall be [paid] made to anyone not employed at the time of submission in one of the State departments, offices, commissions, branches, or authorities [listed in these regulations] or for any idea or improvement [in an operation other than one performed or eligible to be performed by one of the listed participating agencies] **which these agencies are not authorized to perform.**

[12. To continue eligibility of a disapproved suggestion it shall be the responsibility of the suggester to resubmit the suggestion within two years of the date of notice of final disapproval.]

(b) Subsection (a) above does not necessarily represent an exclusive or complete list concerning eligible employees or eligible suggestions. [(For additional eligibility requirements see [4:4-4.9] **4:4-3.10.**)]

#### 4:4-4.4 [Procedure for submitting suggestions] (Reserved)

[(a) Option No. 1 suggestions require completion of a Suggestion Form CS-73 (or plain paper with same content) which is sent directly to the New Jersey State Employees' Awards Program for processing and evaluation. Within five days of receipt, the suggestion is acknowledged and, within 60 days of receipt, if when the departmental evaluation and recommendation is received and the Committee has acted upon it, the suggester is advised of the results.

(b) Option No. 2 suggestions involve ideas relating to the suggester's own area of work where the suggester elects to "stay with" the suggestion almost all the way through the process. As in Option No. 1. Suggestion Form is completed and is submitted to the New Jersey State Employees' Awards Program to ensure that the suggestion is recorded as the property of the suggester. The suggester then contacts the departmental awards committee chairperson for arrangements to work directly with departmental supervisors and the committee on development and refinement of the suggestion. Upon completion, the departmental committee makes its recommendation to the Committee for their determination. The suggester is advised of the results within 30 days of submission of the recommendation to the Committee.]

#### 4:4-3.4 Procedure for processing suggestions

(a) Suggestions may be submitted through one of two options at the discretion of the suggester:

1. Option 1 suggestions are suggestions sent to the Committee which refers them to the appropriate departmental committee. The departmental committee makes a determination and forwards it to the Committee which may adopt, reject or modify this determination.

2. Option 2 suggestions are suggestions sent to the Committee to ensure that the suggestion is recorded as the suggester's property. Thereafter, the suggester directly works with the suggester's supervisor and the departmental committee to develop and to refine the suggestion. The departmental committee then makes a determination and forwards it to the Secretary or the Committee which may adopt, reject or modify this determination. These suggestions are only applicable to a suggester's own work duties in his or her particular organization.

(b) The Committee and the departmental committees shall utilize the following procedures in processing suggestions:

1. For Option 1, the departmental committee shall make, within 45 days of receipt of the suggestion from the Committee, an evaluation and a recommendation to the Committee which, by majority vote, may accept, reject or modify it.

2. For Option 2, the departmental committee shall make arrangements with the suggester and appropriate supervisory personnel to develop and refine the suggestion. This departmental committee shall, within a reason-

able time, make an evaluation and recommendation to the Committee which, by majority vote, may accept, reject or modify it.

(c) The Committee shall notify the suggester of the disposition of the suggestion within 60 days of receipt of the departmental committee's recommendation, unless there is a need for a trial period to test the suggestion.

(d) If the Committee determines that it is necessary to use outside consultants in the development or evaluation of a suggestions, the costs may be offset against the benefits.

(e) Awards approved by the committee will be processed for payment by the Secretary of New Jersey State Employees Awards Committee.

(f) Suggestions which are disapproved by the departmental committee, may, for cause, be referred back for reconsideration and, in the event of an impasse, referred directly to the chief executive officer by the committee. If referred to the chief executive officer, the committee will include justification as to why the suggestion should be reconsidered.

#### 4:4-4.5 [Processing of suggestions] (Reserved)

\*(a) There are two distinct methods of processing a suggestion depending on the option chosen by the suggester (designated Option No. 1 or Option No. 2).

(b) Option No. 1 suggestions received by the Committee will be reviewed by the Secretary and acknowledged.

(c) These Option No. 1 suggestions which appear to have an incorrect scope of applicability as shown on the Suggestion Form will be corrected by the Secretary so that the proper agency(s) are shown which will benefit from the suggestion and the suggester is notified of the change. In these cases recommendations and evaluations will be sought from the departments included in the revised scope, after which the Committee will then decide on whether or not to adopt the suggestion and make an award. The award would be based on the value of the idea as affected by the number of departments covered, importance, ingenuity, and presentation.

(d) Copies of the Option No. 1 suggestion and attachments are then forwarded to the appropriate departmental committee(s) for an evaluation and recommendation.

(e) Following the investigation, the departmental committee shall meet and by majority vote, recommend approval or disapproval of a suggestion on the CS-75.

(f) Under ordinary circumstances, departmental committees will return suggestions with their recommendations and all supportive evidence and documentation, and for those which are approved, the chief executive officer's endorsement and implementation date as well as an eligibility certification form (if the suggester is from the department making the recommendation to approve the suggestion) within 45 days after receipt from the program staff. Upon receipt, the Secretary will ensure that approved suggestions are on the agenda of the next Committee meeting.

1. If the suggester is not an employee of the organization making the recommendation to approve the suggestion, a copy of the suggestion and a CS-82 Eligibility Certification Form will be submitted to the suggester's department for this determination.

(g) If the recommended award is for \$750.00 or more, the full report will be forwarded to the Director of the Division of Budget and Accounting for review and recommendation before final action by the Committee. If, however, the recommendation is not received within 20 calendar days from the Budget Bureau, the Committee will process the suggestion.

(h) Disapproved suggestions will be reviewed by the Secretary who, if the disapproval is upheld, will notify the suggester and advise him/her of the right to appeal.

(i) Suggesters will be notified whether or not their Option No. 1 suggestion is approved within 60 days of the submission date unless there are complications, such as a need for a trial period or unavoidable delays in implementation or evaluation. In these cases, however, the suggester upon request, will be given a periodic status report on the progress of the suggestion. Extensions of processing time to departmental committees will be granted by the Secretary only for valid reasons.

(j) Any Option No. 1 suggestion, for which an extension has not been granted, which is not processed within the stated timeframes by the departmental committee will be identified and a "delinquent notice" will be forwarded to the departmental committee chairperson. If this notice is ignored, the Secretary will refer this matter to the department's personnel officer with a request that the matter be resolved. If still unresolved, the President of the Civil Service Commission will refer this matter to the department's chief executive officer.

(k) The Committee shall review the departmental committee's report and recommendation, and decide by majority vote whether or not an award is merited and the amount of the award.

(l) Awards approved by the Committee will be processed for payment by the Secretary.

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(m) The Secretary is authorized to approve for the Committee all awards of \$100 or less (or the equivalent in time off).

(n) If it is determined by the Committee that it is necessary to use outside consultants in either the development or evaluation of a suggestion, the costs involved, if any, may be added to the implementation costs and the award reduced accordingly.

(o) Option No. 2 suggestions, which must ordinarily concern only the general area of work to which the suggester is regularly assigned, are those where the suggester elects to work directly with the departmental committee and supervisory staff of his/her agency. The suggestion is sent to the New Jersey State Employees' Awards Program to protect the employee's rights, and the employee then participates directly in the development and refinement of the suggestion. When completed, the departmental committee submits to the Committee their recommendation and evaluation, and in the cases where adoption of the suggestion is recommended, the endorsement of the chief executive officer and an eligibility certification. All other pertinent provision of the regulations apply equally to these suggestions.

(p) Suggestions which are disapproved by the department committee, may, for cause, be referred back for reconsideration and in the event of an impasse, referred directly to the chief executive officer by the Committee. If referred to the chief executive officer, the Committee will include justification as to why the suggestion should be reconsidered.]

4:4-[4.6]3.5 [Records maintained by the State Committee] **Maintenance of records**

(a) **The State Committee shall maintain the following records:**

[(a)] **1.** Official copies of the minutes of all meetings and all other official actions which shall be public information.

[(b)] **2.** Copies of all suggestions received, with supporting documents and recommendations from departmental committees.

[(c)] Records will be retained after final action in accordance with the Bureau of Archives Records Retention Schedule.]

[4:4-4.7 Records maintained by departmental committees]

(b) **The departmental committees shall maintain the following records:**

[(a)] **1.** Official copies of the minutes of all meetings and all other official actions which shall be public information.

[(b)] **2.** Copies of each suggestion referred by the Committee [and a copy of its report and with supportive documentation to the Committee] , with supporting documentation and the recommendation of the departmental committee.

[(c)] **3.** Records of all transactions and supportive documentation for Option No. 2 suggestions.

[(d)] (c) Records will be retained after final action by the Committee in accordance with the Bureau of Archives Records Retention Schedule.

4:4-[4.8]3.6 Appeals procedure

(a) In cases of disapproval, the suggester will be notified of his/her right to appeal the action in writing to the Secretary within 20 calendar days of the notice of disapproval.]

[(b)] (a) [Any] **A suggester may appeal a determination of the Secretary [concerning a suggestion which are objected to by the suggester, can be appealed in] by writing to the [Secretary] Committee within 20 calendar days from the notice of action and shall [contain] submit any new or expanded information to support [such an] the appeal.**

[(c)] (b) The Secretary will acknowledge the appeal and request the departmental committee involved to review its initial recommendation, considering the new information. The departmental committee will then furnish [the suggestion to the Committee along with their] its recommendation and all supportive data to the Committee. [The suggestion will be reviewed by the Committee, a determination made and the suggester will be notified of the subsequent findings.]

[(d)] (c) [In reviewing disapprovals, the Committee will notify suggesters of the time and place of the meeting and afford them an opportunity to [appeal] appear in person.] **The re-evaluation from the departmental committees will be reviewed by the Secretary. If the suggestion is not implemented and the disapproval is upheld, the suggester will be notified of the disapproval. If the suggestion is implemented and the original disapproval is reaffirmed, the suggestion will be placed on the agenda for the next regular meeting of the committee. The Committee will notify the suggester of the time and place of the meeting and afford him or her an opportunity to appear in person.**

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

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

[(g)] (f) **If a suggestion is disapproved, and within the two year period from notice of disapproval the suggestion appears to be implemented, [and] the suggester may appeal[s] the original determination and maintain**

**eligibility** [, eligibility will be maintained throughout the appeal procedure].

[(h)] Eligibility will likewise be maintained throughout the appeal process if an appeal is made to reopen a case within 20 calendar days after the suggester is notified of the final decision by the Committee on a previously appealed action.

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

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

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

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

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

4:4-[4.9]3.8 Evaluation of intangible benefits of a suggestion

(a) Where the value of a suggestion cannot be measured entirely or precisely in actual dollar savings, the following [guide] **factors** may be [used] **considered** to set a [full or complementary] dollar amount[. Cognizance will be taken of cost of implementation with relation to values derived, especially where there is little or no savings.]:

[EFFECTIVENESS OF SOLUTION OFFERED BY SUGGESTER]

**1. Effectiveness of solution offered by suggester;**

[complete solution to problem	\$18-\$25
solves problem in most cases	\$10-\$17
solves problem in some cases	\$ 2-\$ 9]

[SERIOUSNESS OF PRESENT PROBLEMS IN TERMS OF MONEY OR OTHER FACTORS]

**2. Seriousness of present problem in terms of money or other factors;**

[critical or very serious problem	\$18-\$25
significant problem	\$10-\$17
minor problem	\$ 2-\$ 9]

[EXTENT OF THE PROBLEM]

**3. Extent of problem;**

[affects all of the general public or at least several hundred employees	\$18-\$25
affects many employees or members of the general public	\$10-\$17
affects few individuals	\$ 2-\$ 9]

[PROBABILITY OF PROBLEM ACTUALLY HAPPENING]

**4. Probability of problem actually happening; and**

[is happening or will happen	\$12-\$15
good chance of happening	\$ 7-\$11
remote possibility of happening	\$ 2-\$ 6]

[INGENUITY OF THE SOLUTION]

**4. Ingenuity of the solution.**

[required extensive research and/or very complex solution	\$ 8-\$10
required some basic research and/or somewhat complex solution	\$ 5-\$ 7
simple and obvious solution	\$ 2-\$ 4]

(b) [Awards for suggestions with an intangible value may exceed the guide shown in (a) above in exceptional situations providing sufficient justification is supplied. (It is possible that an intangible award would be of such importance that it would warrant an award of up to the maximum award limit.)] **Awards of up to \$100.00 may generally be made for such suggestions. However, in exceptional situations, an award for a suggestion with an intangible value may exceed \$100.00 provided sufficient justification is supplied. (It is possible that an intangible award would be of such importance that it would warrant an award up to the maximum award limit.)**

4:4-[4.10]3.7 Awards

(a) The following regulations will apply to awards for those employees in salary range [A-]29 and below at the time of submission:

1. Awards for suggestions shall be in cash or additional paid vacation time off in lieu of [the] cash under certain circumstances.

2. Cash awards will be no less than \$25 nor more than \$10,000 for each approved suggestion.

3.-5. (No change.)

6. When a suggestion is adopted primarily upon the basis of improvements in such areas [of] as safety, health, welfare, morale, etc. or it is otherwise impossible to determine a dollar savings, the Committee, after consideration of the departmental committee's recommendations, shall determine the amount of the award commensurate with the benefits anticipated from the suggestion. The guide shown in 4:4-[4.9(a)]3.8 will be used by the Committee to determine the award for intangible sugges-

tions. In certain exceptional cases, the Committee may authorize an award which exceeds the guidelines. An award may be made, when justified, on the basis of both monetary savings and intangible benefits.

(b) The following regulations will apply to awards for those employees in salary range [A-]30 and above at the time of submission:

[1]2. For those suggestions involving first-year savings to the State of \$10,000 to \$100,000, the award will be \$500.

[2]3. For those suggestions involving first-year savings to the State of over \$100,000, the award will be \$1,000.

[(c)] 1. [For those employees at range A-30 and above at the time of submission, t]There will be no cash award for suggestions covering savings of less than \$10,000 for the first year of implementation. In those cases, the Committee may authorize some other form of recognition.

[(d)] (c) The following regulations apply to employees in all salary ranges:

1. A suggester shall receive the full amount of the award, after deductions for taxes, when the suggestion is implemented. Where implementation is not complete but specific steps have **been** taken, a token, partial or full award may be paid at the Committee's discretion. It shall be the responsibility of the departmental committee to inform the Secretary when a suggestion has been placed into operation. When there is a question regarding the date of implementation, the Committee shall make the final determination.

2. A cash or other award shall be in addition to the regular compensation of the recipient. The acceptance of such award shall constitute an agreement that the use of the suggestion by the State or [any other public jurisdiction with which New Jersey has a reciprocal relationship] **its subdivisions or independent authorities** shall not form the basis of a **further** claim of any [nature] **additional award** upon the State of New Jersey by the employee, **his or her** heirs, or assignees.

3. Persons who leave [the] State service after having submitted a suggestion are still eligible for an award. In case of death, the award will be paid to the next of kin or estate.

4. Departmental awards consisting of plaques may be presented to the department, office, commission, branch or authority with the best record of employee participation during the fiscal year for the:

i. Highest number of suggestions approved per [100] **one hundred** employees.

ii. (No change.)

5.-6. (No change.)

7. Departmental "Suggester of the Year" may be nominated by each department, office, commission, branch or authority [listed in these regulations]. The nomination of one individual from each participating agency will be made by the departmental committee with confirmation of the chief executive officer. The nomination must be approved by the Committee which will designate a uniform award and arrange for its procurement and presentation. Standards in selecting the nomination will be:

i. (No change.)

ii. [Importance or value of the suggestion(s) to the department] **The suggestions must be of importance or value to the department.**

iii. (No change.)

#### 4:4-[4.11]3.9 Procedure for making awards

(a) After approval by the Committee or Secretary, a check will be authorized by the State Treasurer and Budget Director to be drawn upon the funds appropriated to the Department of Civil Service for the payment of awards and prepared to the order of the suggester for the net amount of the award.

(b) (No change.)

(c) Awards involving "vacation options" will be arranged between the [employees'] **employee's** Personnel Officer and the Secretary on a case by case basis.

(d) (No change.)

### SUBCHAPTER [5]4. AWARDS FOR HEROISM, PROFESSIONAL ACCOMPLISHMENT AND PUBLIC SERVICE

#### 4:4-[5]4.1 Heroism, Professional Accomplishment and Public Services Awards Programs

(a) Awards for heroism may be made to an employee who performs an act of bravery or heroism which is above and beyond the duties or [responsibility] **responsibilities** of the [awardee's] **employee's** position and which reflects credit upon the State [service] **of New Jersey.**

##### [4:4-5.2] [Eligibility]

1. Any State employee, or group of State employees, [are] is eligible for this award whether or not the act was performed during [or after] working hours.

##### 4:4-5.3 [Procedure for processing]

[(a)] A nomination for an award of heroism may be initiated by an employee or by any resident of New Jersey. The nomination shall be submitted in writing to the Committee and shall include data substantiating the proposal. When the nomination is received by the Committee it will be reviewed by the Secretary and a letter of acknowledgement sent to the nominator. Copies of the nomination shall then be forwarded to the appropriate departmental committee(s) for investigation and recommendation.

(b) The departmental committee shall make a thorough investigation of the nomination. Following investigation, the departmental committee shall meet and, by majority vote, recommend approval or disapproval. If the recommendation is for disapproval, the original nomination shall be forwarded to the Secretary with an explanation of the reasons for disapproval, with supporting documents. If the recommendation is for approval, the original nomination with recommendations and supporting documents shall be forwarded to the department's chief executive officer for his/her information. The original nomination with recommendations and supporting documents shall then be forwarded to the Secretary for action by the Committee.

(c) The Committee shall consider the nomination and the departmental committee's recommendations and decide by majority vote whether or not an award should be made and the type of award. When an award is not authorized by the Committee, in writing, of the action of the Committee.]

##### [4:4-5.4] [Awards]

[(a)] Awards for heroism shall be letters of commendation, citations, certificates, plaques, medals, or such other awards as the Committee may from time to time determine.

(b) The Committee shall determine the type of awards in each case and shall be responsible for the design and procurement of the awards.

(c) Presentation ceremonies shall be arranged by the Secretary.]

### [SUBCHAPTER 6. AWARDS FOR PROFESSIONAL ACCOMPLISHMENT

#### [4:4-6.1 Program]

(b) Awards for professional accomplishment may be made to an employee in recognition of meritorious or distinguished accomplishments. The accomplishments need not fall entirely within the scope of normal duties but shall be in the nature of a major contribution in a specific field, vocation or profession, or a personal outstanding act **such** as conduct reflecting credit on the individual and the State service.

##### [4:4-6.2 Eligibility]

[(a)] 1. Any State employee, or group of State employees, [are] is eligible for this award if one or more of the following conditions are met:

[1.] i. [Through study and investigation] **An employee [have] has through study and investigation** initiated and successfully established new and outstanding methods, practices, plans or designs having fundamental values, [(S)]such as pioneering or research and development work in administration, engineering, law, medicine, natural resources or the social sciences[, etc.]];

[2.] ii. [Through unselfish devotion to duty, far and above normal requirements, have] **An employee has, through unselfish devotion to duty far and above normal requirements,** contributed significantly to the advancement of the State service on a professional or sub-professional level, [(S)]such as organization, employee relations, humanities or vocation[, etc.]];

[3.]iii. [Have] **An employee has** achieved honors from professional societies, institutions for learning or recognized groups for outstanding performance [encompassed in the fields of work of state departments] **in his or her field;**

[4.] iv. [Have] **An employee has** assisted and [who have] been intimately associated with the recipient of an award. Such award shall be a letter of commendation or a citation, presented at the time of the award for professional accomplishment.

(c) **Awards for public service may be made to an employee for an outstanding act of public service which is above and beyond the duties or responsibilities of the employee's position and which reflects credit on the State of New Jersey.**

1. **Any State employee, or group of State employees, is eligible for this award whether or not the act was performed during working hours.**

##### 4:4-[6.3]4.2 Procedure for processing

(a) A nomination for an award for [professional accomplishment] **heroism or public service** may be [initiated] **made** by an employee or by any resident of New Jersey **within one year from the day the act was performed. There is no time limitation on nomination for professional ac-**

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**accomplishment awards.** The nomination shall be submitted in writing to the Committee and shall include data substantiating the proposal. When the nomination is received by the Committee it will be reviewed by the Secretary and a letter of acknowledgement sent to the nominator. Copies of the nomination shall then be forwarded to the appropriate departmental committee(s) for investigation and recommendation.

(b) The departmental committee shall make a thorough investigation of the nomination. Following investigation, the departmental committee shall meet and, by majority vote, recommend approval or disapproval. If the recommendation is for disapproval, the original nomination shall be forwarded to the Secretary with an explanation of the reasons for disapproval, **along** with any supporting documents. If the recommendation is for approval, the original nomination with recommendations and supporting [documents] **documentation** shall be forwarded to the **department's** chief executive officer for [his/her information] **endorsement**. [Then] The original nomination with recommendations and supporting documents shall **then** be forwarded to the Secretary for action by the Committee.

(c) The Committee shall consider the nomination and the departmental committee's recommendations and decide, by majority vote, whether or not an award should be made and the type of award. [When an award is not authorized, it shall be the responsibility of t]The Secretary [to] shall advise the nominator, in writing, of the action of the Committee.

#### 4:4-[6.4]4.3 Awards

(a) Awards for **heroism, professional accomplishment and public service** [shall] **may** be letters of commendation, certificates, citations, plaques, medals or such other awards as the Committee [may] **shall** from time to time determine. **In certain cases of exceptional and unusual nature, the departmental committees may recommend that a non-monetary or monetary gift accompany the award. Non-monetary gifts may include, but are not limited to, granting "time off" vacation day(s), up to two days as prescribed in 4:4-3.7(a)3.**

(b) The Committee shall determine the type of awards in each case and shall be responsible for the design and procurement of the awards.

(c) Presentation ceremonies shall be arranged by the [departmental committees] **Secretary**.

### SUBCHAPTER [7]5. AWARDS FOR SERVICE AND RETIREMENT RECOGNITION

#### 4:4-[7]5.1 Service and Retirement Recognition Awards Program

(a) Awards for service shall be given to all employees **upon completion of each five years of employment**. [who have completed the required number of years of employment with the State of New Jersey.]

#### [4:4-7.2 Eligibility]

[(a)] **1.** Service shall include employment in the classified or unclassified service in either a regular, provisional or temporary capacity.

[(b)] **2.** In determining years of employment, the same basis will be used as is used for computing annual vacation leave (N.J.S.A. 11:14-1 and N.J.A.C. 4:1-17.[10]3).

**3.** Any dispute or question regarding eligible service shall be referred to the Committee for resolution.

**4. It shall be the responsibility of each agency to determine the employees who will be eligible for awards.**

#### [4:4-7.3 Procedure for processing]

(a) Review personnel records prior to fiscal year to determine employees who will be eligible in the coming fiscal year.

(b) By July 15, request of Secretary service awards cards and five year certificates.]

#### [4:4-7.4 Awards]

(a) Awards for service shall be letters of commendation, certificates, citations, plaques, medal or such other awards as the Committee may from time to time determine.

(b) The Committee shall determine the type of awards in each case and shall be responsible for the design and procurement of the awards.

(c) Awards will be made in five year service increments beginning at five years of service and ending with 50 years of service.

(d) Presentation ceremonies shall be the responsibility of the departmental committees and shall be conducted on a yearly basis.]

### [SUBCHAPTER 8. RETIREMENT RECOGNITION AWARDS]

#### [4:4-8.1 Program]

(b) Awards for retiring State employees shall be given at the time of retirement[, exclusive of vested retirement,] to all those who have retired with pension from the State regardless of the amount of service time. Only one Retirement Recognition Award will be presented to any employee.

#### [4:4-8.2 Eligibility]

[(a)] **1.** Service shall include employment in the classified or unclassified service. [in either a regular, provisional, or temporary capacity] Any dispute or question regarding [eligibility] **eligible service** shall be referred to the Committee for resolution.

[(b)] **2.** It shall be the responsibility of each [department] **agency** to determine the employees who will be eligible for awards.

#### 4:4-5.2 Procedure for processing

(a) **The departmental committees shall review personnel records prior to the fiscal year to determine employees who will be eligible for service and/or retirement recognition awards in the coming fiscal year.**

(b) **The departmental committees shall request from the Secretary the required amount of awards needed.**

#### 4:4-5.3 Awards

(a) **Service may consist of letters of commendation, certificates, citations, plaques, medals, gift items, or such other awards as the Committee shall from time to time determine. The Committee shall determine the type of awards in each case and shall be responsible for the design and procurement of the awards.**

(b) **Retirement recognition awards shall consist of a "Certificate of Appreciation" for service to the State and another award as the Committee shall from time to time determine. The Committee shall determine the type of awards in each case and shall be responsible for the design and procurement of the awards.**

(c) **Presentation ceremonies shall be the responsibility of the departmental committees and shall be conducted at least on a yearly basis.**

#### [4:4-8.3 Procedure for processing]

Distribute brochure illustrating moments to prespective retirees. Have them make selections and report to the Secretary as soon as possible.]

#### [4:4-8.4 Awards]

(a) Awards shall consist of a "Certificate of Appreciation" for service to the State.

(b) The "Certificate of Appreciation" signed by the Governor will be supplied by the Awards Program staff upon request from the department.

(c) The Retirement Recognition Awards will be of uniform design which are approved by the Committee.

(d) Departments will be responsible for any personalized markings desired on awards or certificates.

(e) The presentation of awards to eligible employees at suitable ceremonies shall be the responsibility of departmental committees. The presentations will be made by the chief executive officer or his/her representative.

(f) Place order directly with the contract vendor in accordance with contract terms regarding delivery dates.]

## EDUCATION

### (a)

### STATE BOARD OF EDUCATION

#### Special Education

#### Proposed Amendments: N.J.A.C. 6:28-3.4 and 3.5

Authorized By: Saul Cooperman, Commissioner of Education, Secretary, State Board of Education.

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

Proposal Number: PRN 1986-368.

Submit comments by October 8, 1986 to:

Patricia Joseph, Rule Analyst  
New Jersey Department of Education  
225 West State Street  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

On June 6, 1984, N.J.A.C. 6:28 was adopted by the State Board of Education. Four sections of the code, N.J.A.C. 6:28-2.2, 6:28-3.4, 6:28-3.5 and 6:28-8.1 et seq., were challenged by the Office of the Public Advocate. The Appellate Division of the Superior Court of New Jersey upheld N.J.A.C. 6:28-2.2, Surrogate parents, and N.J.A.C. 6:28-8.1 et seq., Programs Operated by other Departments of New Jersey State Government.

The court invalidated sections of N.J.A.C. 6:28-3.4, Comprehensive evaluation, and N.J.A.C. 6:28-3.5, Determination of eligibility. The amendments in this proposal reflect the changes required by the court.

Two proposed changes, N.J.A.C. 6:28-3.4(j)4 and the deletion of N.J.A.C. 6:28-3.5(d), specifically require a reevaluation prior to termination of special education services. These changes were required since the court held that the current wording which allowed termination "when sufficient written documentation is presented" is inconsistent with federal and state law.

The third proposed change, N.J.A.C. 6:28-3.5(d)8, revises the definition of preschool handicapped. The court held that the current definition was inappropriately narrow and may have excluded children who would be benefited by special education programs. The proposed definition is consistent with the statutory language of N.J.S.A. 18A:46-6 and the legislative intent.

#### Social Impact

The court-directed requirement that the Department of Education specifically require a reevaluation prior to termination of special education services should have an overall positive social impact. Historically, the Department of Education has held that such reevaluations were required and local districts have complied. As a result, local district procedures should not need to be revised; however, the rights of handicapped pupils to such a reevaluation will now be assured through the language of the proposed code.

The proposed change eliminating the requirement that a condition be serious prior to classification as "preschool handicapped" may result in some increase in the number of pupils so classified but will work to assure that all children who would be benefited by preschool special programs are served.

#### Economic Impact

The specific requirement that local districts conduct a reevaluation prior to the termination of special education services should have little or no economic impact. Historically, the Department of Education has held that such reevaluations were necessary; consequently, local districts have routinely done these reevaluations. Because of this practice, no new local procedures should be necessary or increased economic costs incurred.

The expanded definition of "preschool handicapped" will have some economic impact upon both the State and local district boards of education. As proposed, the expanded criteria will most likely allow for an increased number of eligible pupils to participate in preschool handicapped education programs. Costs of the expanded programming will be borne by the local districts with State support determined by a categorical cost factor. For the 1985-86 school year, the categorical cost factor for preschool handicapped programs is .23; however, that figure is adjusted annually to reflect actual costs on a statewide average basis.

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

#### 6:28-3.4 Comprehensive evaluation

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

(j) A reevaluation to determine the status of each educationally handicapped pupil shall be conducted at least every three years. Reevaluation shall be conducted sooner if conditions warrant.

1.-3. (No change.)

**4. Reevaluation shall be conducted prior to the termination of services.**

(k) (No change.)

#### 6:28-3.5 Determination of eligibility

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

[(d) The child study team, after parental notification, shall terminate a pupil's eligibility when sufficient written documentation is presented to indicate that the pupil no longer requires special education and/or related services.]

[(e)] (d) Classification of pupils determined to be eligible for special education and/or related services shall be based on the evaluations of the child study team, the school physician and such other specialists as noted and shall be according to the following definitions:

1.-7. (No change.)

8. "Preschool handicapped" means [a condition which seriously impair's a child's functioning and which has a high predictability of seriously impairing normal educational development.] **those children between the ages of three and five who have an identified handicapping condition and/or a measurable developmental impairment who require and would benefit from special education and related services.**

9.-11. (No change.)

## ENVIRONMENTAL PROTECTION

(a)

### DIVISION OF COASTAL RESOURCES

#### Rules Concerning CAFRA Facilities

#### Proposed Amendment: N.J.A.C. 7:7-2.1

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

Authority: N.J.S.A. 13:1D-1 et seq.; 13:19-1 et seq.

DEP Docket No. 034-86-08.

Proposal Number: PRN 1986-366.

Submit comments by October 8, 1986 to:

Michael P. Marotta

Office of Regulatory Services

N.J. Department of Environmental Protection

CN 402

Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

Cabanas, and other similar structures designed to provide human shelter, are being built in beachfront areas on sites that are among the most hazardous locations for any type of development because of their vulnerability to hurricanes and coastal storms. Traditional beachfront structures such as concession stands, changing areas and lifeguard stands post little risk to life because they are almost certain to be unoccupied during storms. The new type of cabana, however, is capable of accommodating a couch or bed and is equipped with plumbing and sanitary facilities. Even though those who are building these units to date indicate that they are not intended for permanent human habitation, they are capable of occupation for such a purpose and may be so occupied during storms. As a result, they give rise to a substantial risk of injury or death due to the effects of storms. In addition to the direct damage and injury caused by high intensity winds and coastal surges during such storms, the structures and their inhabitants would be subject to high risk of damage and injury from floating debris carried inland by storm surges. Additionally, these structures themselves could contribute to the danger to others, including emergency workers, by possibly adding to the material hurled about by the wind and surf during storms.

Permanent beachfront structures, such as cabanas, can also prevent State access for the repair of shore protection structures and can block public access to the beach.

The proposed amendments will, pursuant to the Coastal Area Facility Review Act (N.J.S.A. 13:19-1 et seq.), impose permit application requirements upon the construction of 25 or more cabanas and similar structures along the beachfront area. By so doing, such construction will be accomplished in accordance with the standards embodied in the Department's Rules on Coastal Resources and Development. Haphazard, unplanned beachfront development, which would compromise the safety of people and property, would be prevented.

#### Social Impact

The proposed amendment will result in a social benefit. It will help to minimize danger of injury, death and property damage by preventing or restricting the construction of habitable structures in beachfront areas that are extremely vulnerable to storms and hurricanes.

#### Economic Impact

The proposed amendment will help to minimize property damage and personal injury and will therefore, have a beneficial economic impact.

#### Environmental Impact

It is anticipated that the amendment will result in a positive environmental impact. In addition to providing protection from personal injury and property damage, properly planned beachfront development will help to prevent beachfront erosion and flooding.

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

#### 7:7-2.1 CAFRA

(a) (No change.)

(b) The Department interprets the statutory term "facility" in its broadest sense so as to provide adequate environmental safeguards for the construction of any facility in the coastal area. On the other hand,

the Department interprets the statutory intent as excluding relatively minor construction or reconstruction. To that end, the following [statutory] terms are interpreted as follows.

- 1.-3. (No change.)
4. "New housing developments or expansion of existing developments by the addition of 25 or more dwelling units or equivalent" means:
  - i.-vii. (No change.)
  - viii. **The construction of 25 or more contained units including but not limited to cabanas which are walled and roofed structures whose primary purpose is to provide shelter and which are affixed to the land and provide potable water and wastewater services or the addition of one or more such contained units to any facility for which construction had commenced subsequent to September 19, 1973 where such addition results in a total of 25 or more units.**
5. (No change.)

## (a)

### DIVISION OF SOLID WASTE MANAGEMENT BOARD OF PUBLIC UTILITIES

#### Interdistrict and Intradistrict Solid Waste Flow

#### Joint Proposed Amendment: N.J.A.C. 7:26-6.5

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection and Barbara A. Curran, President, Board of Public Utilities.

Authority: N.J.S.A. 13:1E-6, 13:1E-23 and 48:13A-1 et seq.  
DEP Docket No. 033-86-08.

Proposal Number: PRN 1986-362.

A **public hearing** concerning this proposal will be held on:

September 30, 1986 at 7:30 P.M.  
Bellmawr Borough Municipal Building  
21 East Browning Road  
Bellmawr, New Jersey 08031

Submit comments on or before October 8, 1986 to:

Michael S. Caro, Regulatory Officer  
Office of Regulatory Services  
Department of Environmental Protection  
CN 402  
Trenton, New Jersey 08625

The agency joint proposal follows:

#### Summary

The Department of Environmental Protection (DEP) and the Board of Public Utilities (BPU) are proposing to amend the Interdistrict and Intradistrict Solid Waste Flow Rules, N.J.A.C. 7:26-6.5, to reflect changes in the Camden County Solid Waste Management Plan adopted by the Camden County Board of Chosen Freeholders on October 24, 1985. This proposal will provide the public with an opportunity to comment on the redirected waste flow. Until public comment is received and reviewed, the DEP and BPU reserve judgment on the proposal.

Specifically, the DEP and BPU propose to amend the waste flow rules for solid waste generated within Camden County (Camden County produces approximately 1,109,975 cubic yards per year of types 10, 13, 23, 25 and 27 solid waste). This proposal provides for the reallocation of waste flows from the Camden County municipalities of Audubon Borough, Audubon Park Borough, Barrington Borough, Bellmawr Borough, Berlin Borough, Berlin Township, Brooklawn Borough, Camden City, Cherry Hill Township, Clementon Borough, Collingswood Borough, Gibbsboro Borough, Gloucester City, Gloucester Township, Haddonfield Borough, Haddon Heights Borough, Haddon Township, Hi-Nella Borough, Laurel Springs Borough, Lawnside Borough, Lindenwold Borough, Magnolia Borough, Merchantville Borough, Mt. Ephraim Borough, Oaklyn Borough, Pennsauken Township, Pine Hill Borough, Pine Valley Borough, Runnemede Borough, Somerdale Borough, Stratford Borough, Tavistock Borough, Voorhees Township and Woodlynne Borough. These municipalities were affected by an order issued by the Superior Court of New Jersey in the case of the Borough of Glassboro County Board of Chosen Freeholders, et al., No. L-070476-84 PW, which directed Camden County to begin utilizing an alternative disposal facility other than the Kinsley Landfill, which is located in Deptford Township, Gloucester County. Further, these orders required Camden County to commence utilization of this alternative to the Kinsley Landfill by January 1, 1986.

Pursuant to these orders, the Camden County Board of Chosen Freeholders, on April 11, 1985, adopted an amendment to their district solid waste management plan which designated the Winslow Township Sanitary Landfill located in Winslow Township, Camden County as the county's alternative disposal facility. However, due to unresolved issues concerning this site, the Superior Court ordered Camden County to develop a contingency plan and thereafter ordered Camden County to begin using a disposal facility other than the Kinsley Landfill by January 1, 1986. The Camden County Board of Chosen Freeholders selected the Forge, Inc. Transfer Station, located at Bleigh and Milnor Avenues in Philadelphia, Pennsylvania to serve as their alternative to the Kinsley Landfill and designated the Winslow Township Sanitary Landfill as the disposal facility for specific waste flows originating in Berlin Borough and Berlin Township. On October 24, 1985, the Camden County Board of Chosen Freeholders adopted an amendment to their plan which reflected a waste flow redirection to the above noted Forge, Inc. Transfer Station and Winslow Township Sanitary Landfill facilities. On November 25, 1985, the Commissioner of the Department of Environmental Protection certified this amendment with specific requirements included concerning Camden County's designation of the Winslow Township Sanitary Landfill.

#### Social Impact

As a result of this redirection, a negative impact during the initial phases of the redirection may occur due to increased haulage distances to the Forge, Inc. Transfer Station. This could result in a temporary decrease in the level of collection service to the effected communities. However, once collector/haulers adjust to the use of the Forge, Inc. Transfer Station, a positive impact will occur for the duration of the contract.

A positive impact will result because the Forge, Inc. Transfer Station has agreed to provide the residents of these effected communities with adequate disposal capacity for a period of 3.5 years while the issues concerning the county's selected landfill site in Winslow Township are resolved. Also, this action represents a positive action by Camden County to conform with the requirements set forth in the New Jersey Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.) and maintains compliance with the orders issued by the Superior Court of New Jersey on October 18, 1985.

#### Economic Impact

The proposed waste flow redirection will increase the disposal costs to for the affected communities since the projected tipping fee at the Forge, Inc. Transfer Station is \$65.00 per ton. This compares with the disposal cost of approximately \$43.71 per ton incurred by these communities at the Kinsley Landfill as calculated by Camden County in its October 24, 1985, plan amendment. It should be noted that Camden County projected a disposal cost of \$39.00 per ton excluding State-imposed taxes for the development of a county landfill at their designated site in Winslow Township. If a county landfill were developed at a site other than the Winslow Township location, then Camden County has estimated a tipping fee of \$60.00 per ton without the mandated State taxes.

Prior to the selection of Forge, Inc. Transfer Station as their alternative disposal site, Camden County conducted a comprehensive survey of disposal facilities located within the State as well as sites located in Maryland and Pennsylvania. The county, upon receipt of responses from their survey, concluded that the Forge, Inc. Transfer Station represented a suitable disposal facility for those Camden County communities affected by the litigation involving the Kinsley Landfill.

In order to reduce the amount of waste material requiring disposal at a projected tipping fee of \$65.00 per ton at the Forge, Inc. Transfer Station, Camden County has implemented a mandatory recycling program for all municipalities. The county is projecting a cost avoidance based on a 30 percent reduction of solid waste generated within Camden County. If this projection is realized, then the total volume of solid waste disposal by the effected communities would decrease, thus resulting in decreased disposal costs of these municipalities.

Based on past disposal costs incurred by the affected communities, the use of the Forge, Inc. Transfer Station will require the generators and collector/haulers of these municipalities to absorb increased disposal costs for a short-term period. While this proposed waste flow redirection represents an increase in tipping fees over those collected by the Kinsley Landfill, it is apparent that the development of a new county landfill or resource recovery facility will result in disposal costs similar to those charged by Forge, Inc. Transfer Station. In addition, the redirection

regulation does not preclude the use of other out-of-State disposal facilities, some of which may result in lower disposal costs than those charged by the Forge, Inc.

#### Environmental Impact

A positive environmental impact will result from the redirection of solid waste from the Kinsley Landfill to the Forge, Inc. Transfer Station. By removing a substantial portion of waste previously landfilled at the Kinsley Landfill, this facility will be able to continue an orderly phase-out of operations at the landfill and realize the final closure activities consistent with the November 13, 1984 order issued by the Superior Court of New Jersey. Also, the Forge, Inc. Transfer Station provides a disposal facility for a substantial portion of Camden County's waste, thereby avoiding an environmental crisis if no disposal facilities were available prior to the operation of planned in-county resource recovery facilities.

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

7:26-6.5 District waste flow planning requirements and disposal facility designations

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

(d) Waste flows within, into and out of the Camden County District:

[1. All waste types 10, 13, 23, 25, and 27 generated from within the Camden County municipalities of Audubon Park, Barrington, Bellmawr, Berlin Borough, Berlin Township, Clementon, Collingswood, Gibbsboro, Gloucester City, Gloucester Township, Haddon Heights, Hi-Nella, Laurel Springs, Lawnside, Magnolia, Mt. Ephraim, Oaklyn, Pine Hill, Pine Valley, Runnemeade, Somerdale, Stratford, and Woodlynne shall be disposed of at the Kinsley's Landfill, Inc., facility number 0802B, located in Deptford Township, Gloucester County, New Jersey.]

**1. All waste types 10, 13, 23, 25 and 27 generated from within the Camden County municipalities of Audubon Park, Barrington, Bellmawr, Brooklawn, Clementon, Collingswood, Gibbsboro, Gloucester Township, Haddon Heights, Hi-Nella, Laurel Springs, Lawnside, Magnolia, Mt. Ephraim, Oaklyn, Pine Hill, Pine Valley, Runnemeade, Somerdale, Stratford, and Woodlynne may be disposed of at the Forge, Inc. Transfer Station, located in the city of Philadelphia, Pennsylvania effective January 1, 1986.**

2. All waste types 10, 13, 23, 25, and 27 generated from within the Camden County municipalities of Chesilhurst, Waterford Township, and Winslow Township shall be disposed of at the Winslow Township Solid Waste Disposal Area, facility number 0436A, located in Winslow Township, Camden County, New Jersey.

**i. All waste types 10, 13, 23, 25 and 27 generated from within the Camden County municipalities of Berlin Borough and Berlin Township which is collected by the public works departments of these two municipalities shall be disposed of at the Winslow Township Solid Waste Disposal Area, facility number 0436A, located in Winslow Township, Camden County, New Jersey, effective January 1, 1986.**

**ii. Any waste types 10, 13, 23, 25 and 27 generated from within the Camden County municipalities of Berlin Borough and Berlin Township which is not collected by the respective public works departments of these municipalities may be disposed of at the Forge, Inc. Transfer Station, located in the city of Philadelphia, Pennsylvania, effective January 1, 1986.**

3. All waste types 10, 13, 23, and 27 generated from within the Camden County municipalities of Audubon Borough, Cherry Hill Township, Haddonfield Borough, Haddon Township, Lindenwold Borough, Merchantville Borough, Pennsauken Township, Tavistock Borough, and Voorhees Township shall be disposed of at the Pennsauken Township Sanitary Landfill, facility number 0427D, located in Pennsauken Township, Camden County, New Jersey.

[i. All waste type 25 generated from within the Camden County municipalities of Audubon Borough, Cherry Hill Township, Haddonfield Borough, Haddon Township, Lindenwold Borough, Merchantville Borough, Pennsauken Township, Tavistock Borough, and Voorhees Township shall be disposed of at the Kinsley's Landfill, Inc., facility number 0802B, Deptford Township, Gloucester County, New Jersey. This redirection is means to reflect the order of the Superior Court in Borough of Glassboro v. Gloucester County Board of Chosen Freeholders, No. L-070476-84 PW (N.J. Super., Law Division 1984) (order for preliminary injunction) and shall maintain November 1984 waste flow levels until such time as Kinsley's Landfill is closed. At such time, the solid waste shall be redirected to another solid waste facility.]

**i. All waste type 25 generated from within the Camden County municipalities of Audubon, Cherry Hill, Haddonfield, Haddon Township, Lindenwold, Merchantville, Pennsauken, Tavistock and Voorhees may be disposed of at the Forge, Inc. Transfer Station, located in the city of Philadelphia, Pennsylvania, effective January 1, 1986.**

[4. All waste types 10, 23, 25, and 27 generated from within the Camden County municipality of Camden City shall be disposed of at the Kinsley's Landfill, Inc., facility number 0802B, located in Deptford Township, Gloucester County, New Jersey. This redirection is meant to reflect the order of the Superior Court in Borough of Glassboro v. Gloucester County Board of Chosen Freeholders, No. L-070476-84 PW (N.J. Super., Law Division, 1984) order for preliminary injunction and shall maintain November 1984 waste flow levels until such time as Kinsley's Landfill is closed. At such time, the solid waste shall be redirected to another solid waste facility.]

**4. All waste types 10, 23, 25 and 27 generated from within the Camden County municipality of Camden City may be disposed of at the Forge, Inc., Transfer Station located in the city of Philadelphia, Pennsylvania, effective January 1, 1986.**

i. (No change.)

5. (No change.)

**6. While the Forge, Inc. Transfer Station has been designated by Camden County as the disposal facility for the affected communities, the designation does not preclude the use of other out-of-State disposal facilities when such disposal does not violate any law or regulation of the receiving state.**

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

(h) Waste flows within, into and out of the Gloucester County District:

1.-4. (No change.)

[5. All waste types 10, 13, 23, 25, and 27 generated from within the Camden County municipalities of Audubon Park, Barrington, Bellmawr, Berlin Boro, Berlin Township, Brooklawn Township, Clementon, Gibbsboro, Gloucester City, Gloucester Township, Haddon Heights, Hi-Nella, Laurel Springs, Lawnside, Magnolia, Mt. Ephraim, Oaklyn, Pine Hill, Pine Valley, Runnemeade, Somerdale, Stratford, and Woodlynne shall be disposed of at the Kinsley's Landfill, Inc., facility number 0802B, located in Deptford Township, Gloucester County, New Jersey as directed by Section D.2a and c of the approved Gloucester County District Solid Waste Management Plan and Section C.) of the approved Camden County District Solid Waste Management Plan.

i. All waste types 10, 23, 25, and 27 generated from within the Camden County municipality of Camden City shall be disposed of at the Kinsley's Landfill, Inc., facility number 0802B, located in Deptford Township, Gloucester County, New Jersey.

ii. All waste type 25 generated from within the Camden County municipalities of Audubon, Cherry Hill Township, Collingswood, Haddonfield, Haddon Township, Lindenwold, Merchantville Township, Pennsauken, Tavistock and Voorhees Township shall be disposed of at the Kinsley's Landfill, Inc., facility number 0802B, located in Deptford Township, Gloucester County, New Jersey.]

[6.] 5. (No change in text.)

[7.] 6. (No change in text.)

(i)-(v) (No change in text.)

## HEALTH

(a)

### NARCOTIC & DRUG ABUSE CONTROL

#### Controlled Dangerous Substances

#### Reschedule Dronabinol from Schedule I to II

#### Proposed Amendment: N.J.A.C. 8:65-10.1, 10.2

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

Authority: N.J.S.A. 24:21-3.

Proposal Number: PRN 1986-351.

Submit comments by October 8, 1986 to:

Lucius A. Bowser, RP, MPH  
Chief, Office of Drug Control  
CN 362  
Trenton, New Jersey 08625-0362  
(609-984-1308)

The agency proposal follows:

#### Summary

The proposed amendment to reschedule Dronabinol (a synthetic cannabinol in Sesame Oil encapsulated in soft gelatin capsules in a FDA approved product) from Schedule I to Schedule II of the New Jersey Controlled Dangerous Substances Act will allow this specific hallucinogenic substance recently approved by the United States Food and Drug

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Administration as a medical substance to be prescribed and administered for the nausea associated with cancer treatment. This specific form of tetrahydrocannabinol or THC has been tested and found to have some but limited effect on the nausea of cancer treatment therapy. This product to be marketed as MARINOL, by Unimed Inc., Bernardsville, New Jersey recently received approval for this sole use. Dronabinol is currently included in Schedule I as part of the category of Tetrahydrocannabinols. This amendment removes it from that category and adds it to Schedule II.

The rescheduling of Dronabinol in Sesame Oil in soft gelatin capsules in a FDA approved product would bring State controlled dangerous substances regulations into conformity with the Federal controlled substances regulations. Dronabinol in Sesame Oil in soft gelatin capsules in a FDA approved product became a Schedule II substance as a final rule on May 13, 1986 as published in the Federal Register cited as 51 F.R. 17476 and became effective May 13, 1986.

#### Social Impact

The proposed amendment to reschedule Dronabinol in Sesame Oil in soft gelatin capsules in a FDA approved product would have a slight social impact on the public in that a limited number of persons undergoing cancer treatment therapy often experiences bouts of nausea. Laboratory tests have shown that Dronabinol in Sesame Oil in soft gelatin capsules in a FDA approved product offers some relief. The amendment would have little if any impact on physicians because the prescribing and administering of a Schedule II substance having a valid medical purpose is already established. The amendment will have impact on retail pharmacies because the rescheduling of Dronabinol in Sesame Oil in soft gelatin capsules in a FDA approved product would be restricted to hospital pharmacies and thus retail pharmacies could not stock or dispense this substance.

The amendment would have a slight impact on families of cancer patients in that they would know that the patient might get some relief from the nausea associated with the patient's cancer treatment therapy. There would be an impact for those patients who would be eligible to receive Dronabinol in Sesame Oil in soft gelatin capsules in a FDA approved product in that their miseries might be allayed and their feelings and hopes may be improved.

#### Economic Impact

There would be little economic impact on physicians and pharmacies because the ordering, prescribing and dispensing/administering of Dronabinol in Sesame Oil in soft gelatin capsules in a FDA approved product as well as recordkeeping requirements are already in place as with other schedule II substances.

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

8:65-10.1 Controlled dangerous substances: schedule I

(a) (No change.)

(b) The following is Schedule I listing of the controlled dangerous substances by generic, established or chemical name and the controlled dangerous substance code number.

1.-2. (No change.)

3. Hallucinogenic substances: Unless specifically [expected] **excepted** or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purpose of this paragraph only, the term "isomer" includes the optical, positions and geometric isomers) listed by generic/established or chemical name with CDS code):

(No change in listing.)

4.-7. (No change.)

8:65-10.2 Controlled dangerous substances: schedule II

(a) (No change.)

(b) The following is schedule II listing the controlled dangerous substances by generic, established or chemical name and controlled dangerous substances code numbers.

1.-6. (No change.)

#### 7. Hallucinogenic substances:

i. **Dronabinol (synthetic) in sesame oil encapsulated in soft gelatin capsules in a U.S. Food & Drug Administration approved product . . . 7369**

ii. **Some other names for Dronabinol: (6aR-trans)-6a-7, 8, 10a-tetrahydro-6, 6,9-trimethyl-3-pentyl-6H-dibenzyl (b,d) pyran-1-01, or (-)-delta-9-(trans)-tetra-hydrocannabinol.**

(a)

## DRUG UTILIZATION REVIEW COUNCIL

### Interchangeable Drug Products

#### Proposed Amendments: N.J.A.C. 8:71

Authorized By: Drug Utilization Review Council, James Perhach, Ph.D., Chairman.

Authority: N.J.S.A. 24:6E-6(b).

Proposal Number: PRN 1986-352.

A **public hearing** concerning this proposal will be held on September 30, 1986, at 2:00 P.M. at:

Conference Room 103  
First Floor  
Department of Health  
Health-Agriculture Bldg.  
Trenton, N.J. 08625

Submit comments by October 8, 1986 to:

Thomas T. Culkin, PharmD, MPH  
Executive Director  
Drug Utilization Review Council  
New Jersey Department of Health  
Room 801, CN 360  
Trenton, N.J. 08625  
609-984-1304

The agency proposal follows:

#### Summary

The list of Interchangeable Drug Products is a generic formulary, or list of acceptable generic drugs which pharmacists must use in place of brand-name prescription medicines, passing on the resultant savings to consumers.

For example, the proposed triamterene/HCTZ capsules could then be used as a less expensive substitute for Dyazide, a branded prescription medicine. Similarly, the proposed cephalexin capsules could be substituted for the more costly branded product, Keflex.

The Drug Utilization Review Council is mandated by law to ascertain whether these proposed medications can be expected to perform as well as the branded products for which they are to be substituted. Without such assurance of "therapeutic equivalency", any savings would accrue at a risk to the consumer's health. After receiving full information on these proposed generic products, including negative comments from the manufacturers of the branded products, the advice of the Council's own technical experts, and data from the generics' manufacturers, the Council will decide whether any of these proposed generics will work just as well as their branded counterparts.

Every proposed manufacturer must attest that they meet all Federal and State standards, as well as having been inspected and found to be in compliance with the U.S. Food and Drug Administration's regulations.

#### Social Impact

The social impact of this proposal would primarily affect pharmacists, who would need to either place in stock, or be prepared to order, those products ultimately found acceptable.

Many of the proposed items are simply additional manufacturers for products already listed in the List of Interchangeable Drug Products. These proposed additions would expand the pharmacist's supply options.

Physicians and patients are not adversely affected by this proposal because the statute (N.J.S.A. 24:6E-6 et seq.) allows either the prescriber or the patient to disallow substitution, thus refusing the generic substitute and paying full price for the branded product.

#### Economic Impact

The proposed amendment will expand the opportunity for consumers to save money on prescriptions by accepting generic substitutes in place of branded prescriptions. The full extent of the saving to consumers cannot be estimated because pharmacies vary in their prices for both brands and generics.

Some of the economies occasioned by this proposal accrue to the State through the Medicaid, Pharmaceutical Assistance to the Aged and Disabled Program, and prescription plan for employees. This saving also cannot be totalled accurately.

Full text of the proposal follows:

Acetaminophen/codeine elix 120/12  
 Allopurinol tabs 100, 300 mg  
 Amiloride/HCTZ 5 mg/50 mg tabs  
 Aminophylline tabs 100, 200 mg  
 Amitriptyline tabs 10, 25, 50, 75, 100 mg  
 Amitriptyline/perphenazine 10/2, 25/2 tab  
 Amitriptyline/perphenazine 10/4, 25/4 tab  
 Amitriptyline/perphenazine 50/4 tabs  
 Bacitracin/polymyxin/neomycin ophth oint  
 Brompheniramine/pseudoephed/DM liquid  
 Carbamazepine tabs 200 mg  
 Cephadroxil caps 500 mg  
 Cephadroxil tabs 1 g  
 Cephalexin caps 250, 500 mg  
 Cephadrine caps 250, 500 mg  
 Chlorothiazide tabs 250 mg  
 Chlorothiazide tabs 500 mg  
 Chlorpheniramine 12/PPA 75 mg ER caps  
 Chlorthalidone tabs 25, 50 mg  
 Clofibrate caps 0.5 g  
 Clonidine HCl tabs 0.1, 0.2, 0.3 mg  
 Clonidine HCl tabs 0.1, 0.2, 0.3 mg  
 Clonidine HCl tabs 0.1, 0.2 mg  
 Clonidine tabs 0.1, 0.2, 0.3 mg  
 Clonidine tabs 0.1, 0.2, 0.3 mg  
 Clonidine tabs 0.1, 0.2, 0.3 mg  
 Cyproheptadine syrup 2 mg/5 ml  
 Dexamethasone elixir 0.5 mg/5 ml  
 Dipyrindamole tabs 25, 50, 75 mg  
 Disopyramide phos caps 100, 150 mg  
 Disopyramide phosphate caps 100, 150 mg  
 Doxepin caps 25, 50, 75 mg  
 Doxycycline hyclate caps 50, 100 mg  
 Doxycycline hyclate caps 50, 100 mg  
 Doxycycline hyclate tabs 100 mg  
 Doxycycline hyclate tabs 100 mg  
 Ergoloid mesylates oral tabs 1 mg  
 Erythromycin ethylsuccinate susp 400/5 ml  
 Erythromycin ethylsuccinate 200 mg/5 ml  
 Flurazepam caps 15, 30 mg  
 Flurazepam caps 15, 30 mg  
 Furosemide tabs 80 mg  
 Gentamicin oint & cream 0.1%  
 Gentamicin oint & cream 0.1%  
 Gentamicin sulfate 0.3% ophth. solution  
 Haloperidol oral solution 2 mg/ml  
 Haloperidol oral solution 2 mg/ml  
 Haloperidol oral solution 2 mg/ml  
 Haloperidol tabs 0.5, 1, 2, 5, 10 mg  
 Haloperidol tabs 0.5, 1, 2, 5, 10 mg  
 Haloperidol tabs 0.5, 1, 2, 5, 10 mg  
 Haloperidol tabs 0.5, 1, 2, 5, 10, 20 mg  
 Hydralazine HCl tabs 25, 50 mg  
 Hydralazine/HCTZ caps 25/25, 50/50  
 Hydrocodone/homatropine 5/1.5 mg/5 ml  
 Hydroxyzine HCl syrup 10 mg/5 ml  
 Hydroxyzine HCl syrup 10 mg/5 ml  
 Hydroxyzine HCl tabs 10, 25, 50 mg  
 Ibuprofen tabs 200, 300, 400, 600 mg  
 Ibuprofen tabs 200, 300, 400, 600 mg  
 Ibuprofen tabs 300 mg  
 Indomethacin caps 25, 50 mg  
 Indomethacin sustained rel caps 75 mg  
 Iodinated glycerol liquid 60 mg/5 ml  
 Iodinated glycerol/DM liquid  
 Iodinated glycerol/codeine 30mg+10mg/5ml  
 Iodinated glycerol/codeine 30mg+10mg/5ml  
 Isosorbide dinitrate tabs 20, 30 mg  
 Lidocaine HCl oral solution 2%, 4%  
 Lidocaine viscous liquid 2%  
 Lithium carbonate caps 300 mg  
 Lorazepam tabs 0.5, 1.0, 2.0 mg  
 Lorazepam tabs 0.5, 1.0, 2.0 mg  
 Meclofenamate caps 50, 100 mg  
 Methylclothiazide tabs 5 mg

Naska  
 Cord  
 Chelsea  
 West-Ward  
 Zenith  
 Chelsea  
 Chelsea  
 Chelsea  
 Pharmafair  
 My-K  
 Teva  
 Zenith  
 Zenith  
 Zenith  
 Zenith  
 West-Ward  
 West-Ward  
 Chelsea  
 Danbury  
 Chelsea  
 Amer. Ther.  
 Watson  
 Cord  
 Chelsea  
 Duramed  
 Zenith  
 Naska  
 Naska  
 Cord  
 Cord  
 Chelsea  
 Cord  
 Mutual  
 Parke-Davis  
 Mutual  
 Parke-Davis  
 Sandoz  
 Naska  
 Naska  
 Par  
 Zenith  
 Zenith  
 Altana/Foug.  
 Altana/PHDRM  
 Allergan  
 Barre-National  
 My-K  
 Searle  
 Searle  
 Zenith  
 Duramed  
 Mutual  
 Reid-Rowell  
 Naska  
 My-K  
 Naska  
 Mutual  
 Cord  
 Zenith  
 Chelsea  
 Cord  
 Zenith  
 My-K  
 My-K  
 My-K  
 Barre-National  
 Chelsea  
 My-K  
 Naska  
 Reid-Rowell  
 Watson  
 Zenith  
 Chelsea  
 Pharm. Basics

Methyldopa tabs 250, 500 mg  
 Methyldopa tabs 250, 500 mg  
 Methyldopa/HCTZ 250/15 tabs  
 Methyldopa/HCTZ 250/15, 250/25  
 Methyldopa/HCTZ 500/30 tabs  
 Methyldopa/HCTZ 500/30, 500/50 tabs  
 Methyldopa/HCTZ tabs 250/25, 500/50  
 Metoclopramide tabs 10 mg  
 Metoclopramide tabs 10 mg  
 Multivit. drops/fluoride 0.5 mg  
 Neomycin/polymyxin/HC otic susp  
 Nitroglycerin transdermal 5 mg, 15 mg  
 Oxazepam caps 10, 15, 30 mg  
 Perphenazine tabs 2, 4, 8, 16 mg  
 Perphenazine/amitrip 2/10, 2/25, 4/10, 4/25, 4/50  
 Perphenazine/amitrip 2/10, 2/25, 4/25, 4/10, 4/50  
 Potassium Iodide saturated solution  
 Potassium Cl mod rel 8 mEq and 10 mEq  
 Prednisolone tabs 5 mg  
 Prednisone tabs 5, 10, 20 mg  
 Prednisone tabs 5, 10, 20, 50 mg  
 Procainamide HCl ER tabs 250, 500, 750 mg  
 Procainamide caps 250, 375, 500 mg  
 Prochlorperazine maleate tabs 5, 10, 25 mg  
 Promethazine/dextromethorphan oral liq.  
 Promethazine VC syrup 6.25/5 per 5 ml  
 Promethazine VC/cod syrup 6.25/5/10/5 ml  
 Promethazine syrups 6.25mg/25mg/5ml  
 Promethazine/DM syrup 6.25/15 per 5 ml  
 Promethazine/codeine syrup 6.25/10/5 ml  
 Propoxyphene naps/APAP 50/325, 100/650  
 Propranolol HCl tabs 20, 40 mg  
 Propranolol HCl tabs 60 mg  
 Propranolol HCl tabs 60 mg  
 Propranolol HCl/HCTZ tabs 40/25, 80/25  
 Propranolol tabs 10, 20, 40, 60, 80 mg  
 Propranolol tabs 10, 20, 40, 80 mg  
 Propranolol tabs 60, 90 mg  
 Propranolol/HCTZ tabs 40/25  
 Propranolol/HCTZ tabs 40/25, 80/25  
 Spironolactone/HCTZ 25/25 tabs  
 Sulfamethoxazole/trimethoprim 400/80, 800/160  
 Temazepam caps 15, 30 mg  
 Theophylline elixir 80 mg/15 ml  
 Thioridazine 10, 15, 25, 50, 100, 150, 200 mg  
 Thioridazine HCl conc 30 mg, 100 mg/ml  
 Thioridazine HCl tabs 10, 15, 25, 50 mg  
 Thioridazine conc. 30 mg/ml, 100 mg/ml  
 Thioridazine susp 25 mg/5 ml, 100 mg/5 ml  
 Thioridazine tabs 150, 200 mg  
 Thiothixene caps 2, 5, 10 mg  
 Tolbutamide tabs 500 mg  
 Triamcinolone acetonide lotion 0.1%  
 Triamtereme/HCTZ caps 50/25  
 Triamterene/HCTZ tabs 75/50  
 Valproic acid caps 250 mg  
 Verapamil tabs 80, 120 mg  
 Verapamil tabs 80, 120 mg  
 Verapamil tabs 80, 120 mg

Danbury  
 Parke-Davis  
 Bolar  
 Zenith  
 Bolar  
 Zenith  
 Bolar  
 Zenith  
 Beecham  
 Chelsea  
 My-K  
 Carter-Glogau  
 Hercon  
 Zenith  
 Zenith  
 Par  
 Zenith  
 My-K  
 Upsher-Smith  
 PFI  
 Mutual  
 Chelsea  
 Cord  
 Cord  
 Duramed  
 My-K  
 Naska  
 Naska  
 Naska  
 Naska  
 Naska  
 Chelsea  
 Lemmon  
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 Schering  
 Chelsea  
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 Duramed  
 Danbury  
 Cord  
 Mylan  
 Naska  
 Sandoz  
 Roxane  
 Danbury  
 Sandoz  
 Sandoz  
 Cord  
 Chelsea  
 Danbury  
 Thames  
 Zenith  
 Zenith  
 Chelsea  
 BASF  
 Zenith  
 Watson

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**HIGHER EDUCATION****(a)****EDUCATIONAL OPPORTUNITY FUND BOARD****Administrative Policies and Procedures  
Student Residency****Proposed Amendment: N.J.A.C. 9:11-1.2**

Authorized By: T. Edward Hollander, Chairman, Educational Opportunity Fund Board.

Authority: N.J.S.A. 18A:71-33 through 18A:71-36.

Proposal Number: PRN 1986-357.

Submit comments by October 8, 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 Educational Opportunity Fund Board is statutorily charged with the establishment of policies and procedures governing the operation of the Educational Opportunity Fund Program which provides academic support services and financial aid to educationally and economically disadvantaged students. Such aid may be utilized by students attending both public and private institutions of higher education in New Jersey in pursuit of a collegiate degree.

This regulation was previously noticed for comment at 18 N.J.R. 925(a); however, it was not adopted because the regulation requires an amendment to conform it to language adopted by the Board of Higher Education in similar regulations.

The amended regulations allow dependent EOF students whose parent(s) or guardian(s) relocate to another state to retain their financial eligibility provided they continue to attend an institution of higher education in New Jersey and continue to reside in New Jersey during the course of each academic year.

The proposed amendment expands the rights of resident dependent students whose parents move out of state during their collegiate attendance by allowing such students to remain eligible for the program.

**Social Impact**

The effect of the regulation as amended by this proposal is not substantially different from that set forth in the original proposal at 18 N.J.R. 925(a). Under current regulations, a student's domicile is governed by that of his or her supporting parents or guardians. If the student is attending college within New Jersey and his or her parents are domiciled in New Jersey, then the student will pay resident tuition and be eligible for an Educational Opportunity Fund grant and support services. If the parents relocate to another state while the student is attending college, then the student is no longer considered a domiciliary of New Jersey and loses eligibility for continued aid under the Educational Opportunity Fund Program.

The proposed amendment allows a student in this situation to maintain his or her Educational Opportunity Fund Program eligibility. This will enable students to continue receiving an Educational Opportunity Fund grant and support services, thus allowing these students to complete their collegiate education at an institution of higher education in New Jersey. It will also encourage these individuals to continue to live and work in this state following graduation. The text of the rule has been changed to conform to that language utilized by the Board of Higher Education in its own regulations governing the same subject matter.

**Economic Impact**

The effect of the regulation as amended by this proposal is not substantially different from that set forth in the original proposal at 18 N.J.R. 925(a). The proposed amendment has a significant positive impact upon students falling within this area. Failure to enact this amendment would result in such students losing financial aid granted under the Educational Opportunity Fund Program during the course of their collegiate education. Such a financial hardship could result in these students having to leave college. The proposed amendment should help to prevent such occurrences.

The economic impact upon the Educational Opportunity Fund Program itself will be slight as the number of program participants within

this category each year is minimal. The text of the rule has been changed to conform to that language utilized by the Board of Higher Education in its own regulations governing the same subject matter.

Full text of the originally proposed amendment appears at 18 N.J.R. 925(a).

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

**9:11-1.2 Student Residency**

(a) (No change.)

(b) A dependent student as defined in [section 4 of this subchapter] N.J.A.C. 9:11-1.4 is presumed to be a legal resident of the state which his/her parent(s) or guardian(s) are residents. A dependent student whose parent(s) or guardian(s) are not legal residents of New Jersey is presumed to be in the state for the temporary purpose of obtaining an education. **Any dependent student, as defined in N.J.A.C. 9:11-1.4, who is domiciled in this state and who is enrolled as an EOF student in an institution of higher education in New Jersey, shall continue to be eligible for participation in the EOF Program despite his or her supporting parent(s) or guardian(s) change of domicile to another state, while such student continues to reside in New Jersey during the course of each academic year.**

**HUMAN SERVICES****(b)****COMMISSIONER****County Human Services Advisory Councils and the  
State Human Services Advisory Council****Proposed New Rules: N.J.A.C. 10:2**

Authorized By: Drew Altman, Ph.D., Commissioner,

Department of Human Services.

Authority: N.J.S.A. 30:1-12

Proposal Number: PRN 1986-355.

Submit comments by October 8, 1986 to:

Larry J. Lockhart  
Deputy Commissioner for Agencies  
Department of Human Services  
CN 700  
Trenton, NJ 08625

The agency proposal follows:

**Summary**

The proposed new rules provide the minimum membership, as well as procedural, planning and implementation requirements of the County Human Services Advisory Councils. This chapter also provides public information outlining the purpose, membership, and administration of the State Human Services Advisory Council. Since the inception of the Social Services Block Grant Program (SSBG), formerly known as Title XX, the Department of Human Services has undertaken a major initiative to transfer program planning for the purchase of services component of the program from the State to the local level. Additionally, the New Jersey Department of Human Services has sought to increase grassroots community input in statewide human services policy decisions. In order to achieve the goal of increased public input and participation in human service planning, the New Jersey Department of Human Services developed a human services advisory process. The designated vehicles for this process are the County Human Services Advisory Councils (CHSAC) and the State Human Services Advisory Council (SHSAC).

The New Jersey Department of Human Services has the authority for developing the guidelines and requirements expected from each County HSAC, and each are required to be certified and have a contract negotiated by the New Jersey Department of Human Services. In addition, the New Jersey Department of Human Services has the authority for developing the structure associated with the operations of the State Human Services Advisory Councils.

**Social Impact**

The proposed new rules outline and clarify the minimum standards applicable to the County Human Services Advisory Councils and the State Human Services Advisory Council. This outline and clarification is important since the guidelines have not, to date, been officially set forth as Department rules.

The rules will be a benefit to all Department applicants, recipients, and providers of service and will have a positive social impact on the planning and delivery of social services at the local and state level, in that these activities will more closely reflect the needs of the populations of the individual counties, and of the State.

#### Economic Impact

This chapter will have no negative economic impact on Department applicants, recipients or providers of service, nor on any members of the public at large. The rules will help to enhance the fiscal integrity of the New Jersey Department of Human Services purchase of service contract process and of statewide policy development by insuring, through the participation of knowledgeable community representatives, that minimum standards are met and that priority local and state human services are being delivered.

Full text of the proposed new rules follows:

### CHAPTER 2

#### COUNTY HUMAN SERVICES ADVISORY COUNCILS AND THE STATE HUMAN SERVICES ADVISORY COUNCIL

##### SUBCHAPTER 1. COUNTY HUMAN SERVICES ADVISORY COUNCILS

###### 10:2-1.1 Purpose and Scope

(a) County Human Services Advisory Councils are appointed by the government of each county to review county-level human service activities and to serve as the primary vehicle for local public input into New Jersey Department of Human Services' decision making.

(b) County Human Services Advisory Councils' activities include but are not limited to:

1. Review and comment on human service proposals;
2. Preparation of allocation plans;
3. Review of existing purchase of service contracts; and
4. Coordination and consolidation of the local human services delivery systems.

(c) County Human Services Advisory Councils shall be comprised of providers and consumers of human services and shall be generally reflective of the demographic characteristics of their respective county populations.

(d) The functioning of the Councils shall be evaluated annually for the period January 1 to December 31, by the Department Representative to assess the functioning of the Councils as it relates to the projects assigned by the Department of Human Services, and to ensure that they are a broad-based, representative body within their community, as required in N.J.A.C. 10:2-1.3.

###### 10:2-1.2 Definitions

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

"Consumer" means a person who is, or has been, a recipient of public or private human services; or, a recipient's family member (that is, a parent, guardian, or sibling); or a consumer advocate (that is, a concerned citizen, volunteer, or member of an advocacy group).

"Contracting process" means the written action by which the New Jersey Department of Human Services enters into a written agreement with the Human Services Advisory Councils to perform specific levels of service, planning objectives, and to receive funding as set forth by the Department.

"Department" means New Jersey Department of Human Services.

"Department representative" means the individual employed by the New Jersey Department of Human Services who is responsible for serving as the Department's policy representative to County government, providers, and consumer groups. This person is also responsible for the overall management of a coordinated County-based Human Services system, which consists of multiple private and public social service agencies and programs.

"Minority interest" means interested members of major minority groups such as the aged (over 60), females, blacks, or Hispanics.

"Target" populations means those populations currently under the purview of the New Jersey Department of Human Services, such as children, family and adult services, mental health, developmental disabilities, low income and/or public assistance recipients, veterans, blind and vision impaired, disabled elderly, and other disabled and underserved populations.

###### 10:2-1.3 Membership requirements

(a) County Human Services Advisory Councils shall contain the following membership for certification by the Department.

1. Public and Private: Provider Representation Councils shall be comprised of both public and private human service providers. Provider membership shall not exceed 49 percent of the total membership.

Representation shall include:

- i. County freeholder or county executive, or a designee;
- ii. The county welfare agency director or designee;
- iii. The county Division of Youth and Family Services District Office Manager, or another Division of Youth and Family Services designee;
- iv. The Department of Human Services Department Representative as an ex-officio, non-voting member; and
- v. State representatives, as indicated by the meeting agenda, of the Divisions of Youth and Family Services, Public Welfare, Medical Assistance and Health Services, Veterans Programs and Special Services, Mental Health and Hospitals, Developmental Disabilities, and the Commission for the Blind and Visually Impaired. Participation by these departmental employees shall be in an ex-officio, non-voting, capacity. The Department Representative shall be responsible for ensuring coordination and participation from these divisions when necessary.

2. Consumer Representation: Consumer participation shall be at least 25 percent of the total membership. Current or former recipients of service shall constitute one-half of consumer membership. Consumers shall represent a cross-section of the human services community, as described in 4 below.

3. Demographic Representation: The CHSAC shall reflect a county's demographic make-up in terms of age, ethnicity and sex, according to the latest census data. Minority interests must be proportionate to the minority composition of the county. Where other minorities represent a high proportion of the population counties shall recognize this in council composition.

4. Target Population Representation: County Human Services Advisory Councils shall be representative of target populations and service areas.

5. Non-Human Services representation, may include Employment, Elderly (Area Agency on Aging), Health (county and local health officer), Substance Abuse, Education Community Action Program, Legal Aid, and Vocational Rehabilitation.

6. Voluntary sector representation: May include private planning councils for example, United Way who are major donors or funders of local human services.

7. Major geographic sub-divisions (for example, cities) should be encouraged to participate in County Human Services Advisory Councils.

8. Juvenile Justice Representative should include a representative of the County Youth Services Commission as a voting member of the County Human Services Advisory Council.

9. Other Representation should include those representatives who the county believes would provide a valuable contribution to human services planning (for example, labor union, private business, foundation).

###### 10:2-1.4 Relationship to other county advisory groups

In its relation to other county advisory groups, the County Human Services Advisory Council shall be the principal human services advisory body. Other human services related planning or advisory groups may function as satellites or subcommittees, with a member of the existing group sitting on the County Human Services Advisory Council.

###### 10:2-1.5 Required subcommittees

(a) Each County Human Services Advisory Council shall establish a Comprehensive Emergency Assistance System (CEAS) Committee as a standing subcommittee. This standing subcommittee, which shall serve as the primary vehicle for insuring the delivery of emergency food and shelter within a county, shall:

1. Maintain and annually update a comprehensive county plan for homeless individuals and families;
2. Develop resource allocation plans for State of New Jersey appropriations of funds for homeless families and individuals; and
3. Maintain a core membership standard and include, at a minimum, but not be limited to: County Welfare Agency Director (as chairperson) or a designee of his/her choice; County Department of Human Services Representative; a Division of Youth and Family Services and Division of Mental Health and Hospitals Representative; a representative from the municipal welfare sector; public and private not-for-profit provider agencies serving the homeless population, and consumers of emergency food and shelter services; and/or consumer advocacy organizations. Other State Department representatives (that is, Departments of Community Affairs, Health and Labor), and private planning councils (that is, United Way) should be strongly encouraged to coordinate related services through participation on the CEAS Committee.

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## 10:2-1.6 Waiver requests

Membership requirements may be waived by the Department. Waiver requests shall be presented in writing from the County Human Services Advisory Council to the Department representative. Waiver requests which violate the policy goal of protection of vulnerable and disabled populations shall not be approved.

## 10:2-1.7 Minimum procedural requirements

(a) County Human Services Advisory Councils shall:

1. Have a clearly identified structure and operational procedures specified in by-laws, including an appeals process and conflict of interest policy. The appeals process should, at a minimum, be sent to each applicant agency responding to a CHSAC's Request for Proposal for Department of Human Services funding. The appeals committee should consist of membership that is separate from those who participated in the agency review and allocation process. Each CHSAC should have a written conflict of interest policy. At a minimum, this policy should preclude CHSAC members from voting or using their membership to influence council decision making on the funding or programs for which they are employed, serve as a board member or have a financial interest;

2. Be fully representative of their local human services community; and,

3. Maintain liaison with other related planning and/or advisory groups.

## 10:2-1.8 Minimum Planning Requirements

(a) County Human Services Advisory Councils shall:

1. Complete a needs assessment of their county, identifying the human service needs and resources available to meet those needs;

2. Develop programmatic and resource allocation objectives consistent with county needs and state policy;

3. Develop a recommended action plan to achieve goals and objectives;

4. Provide public review of the proposed plan;

5. Submit a recommended plan to county government and the Department of Human Services.

6. Utilize the comprehensive human services plan to coordinate major provider functions, and to facilitate an integrated county-wide social services delivery system. In addition, CHSACs should integrate related human service plans.

7. Update the comprehensive human services plan, and other related plans as required pursuant to guidelines provided by the New Jersey Department of Human Services. (Guidelines for Family Court Services Plan 1987-1990; Guidelines for the Comprehensive County Plan for the Homeless for Fiscal year 1987; Minimum Comprehensive Planning Guidelines for Counties/Standardized Planning Formats for Counties.)

8. Maintain a contract review process for all Purchase of Service contracts funded through the Human Services Advisory Council allocation recommendation process, to determined continued compliance with comprehensive human services plan priorities and assess qualitative aspects of the contracts. Recommendation shall be submitted to the area regional office of the contracting Division and, when appropriate, to county government and other funding sources.

9. Ensure ongoing compliance with Department rules regarding by-laws, representative council membership, minimum attendance requirements for members, selection of standing committees, and contract and reporting requirements.

10. Maintain an allocation process, which at a minimum, includes a request for proposals, a proposal review process, an appeals process, and conflict of interest policy. County Human Services Advisory Councils must prepare allocation plans based on Department and county priorities. The plans shall be communicated to the Department Representative.

## SUBCHAPTER 2. STATE HUMAN SERVICES ADVISORY COUNCIL

## 10:2-2.1 Purpose and scope

(a) The purpose of the State Human Services Advisory Council is to provide a forum for public leaders to have input into New Jersey Department of Human Services policy on statewide human services issues and to work with the New Jersey Department of Human Services toward the achievement of statewide human services goals.

(b) The State Human Services Advisory Council shall be organized to:

1. Respond and react to information received from the New Jersey Department of Human Services;

2. Communicate and share such information with the County Human Services Advisory Council and the human services community at large;

3. Share the community response with the Department and;

4. Identify statewide trends and priorities and share with the Department.

## 10:2-2.2 Membership requirements

(a) The State Human Services Advisory Council shall consist of:

1. Twenty at-large members who are recognized leaders in human services and who represent a wide and varied cross section of the human services community statewide;

2. The Chairpersons of the 21 County Human Services Advisory Councils or a representative officially designated by the Council Human Services Advisory Council to vote and attend regular meetings;

3. Eighteen non-state employees representatives designated by the Divisions of Public Welfare, Youth and Family Services, Developmental Disabilities, Mental Health and Hospitals, Medical Assistance and Health Services, Veterans Programs and Special Services, and the Commission for the Blind and Visually Impaired). The 18 representatives may be members of a Division Advisory Group.

4. Representatives from various State of New Jersey Departments and Committees who are non-voting members, including not limited to the Governor's Committee on Children's Services Planning and the Departments of Health, Education, Labor, Corrections, Community Affairs, and the Public Advocate.

## 10:2-2.3 Administration

(a) The Chairperson of the State Human Services Advisory Council shall be selected by the Commissioner of the Department and shall serve at the discretion of the Commissioner.

(b) The State Human Services Advisory Council shall meet at least quarterly throughout the year.

(c) The State Human Services Advisory Council shall be staffed by employees of the Department. Resources and assistance to the Council will be provided by the Department.

## 10:2-2.4 Standing Committees

(a) The Chairperson of the State Human Services Advisory Council and the Commissioner of the New Jersey Department of Human Services shall establish such standing committees and ad hoc committees as are required to carry out the goals of the Council. The chairperson and the commissioner shall determine size, membership and mandate of each committee.

(b) The State Human Services Advisory Council shall have, at a minimum, the following four standing committees:

1. Executive Committee: Composed of the Chairperson and the standing committee chairpersons, as well as the chairperson of any ad hoc committee or task force. This committee is responsible for setting the agenda of each full State Human Services Advisory Council meeting. Other responsibilities include but are not limited to the proposal of guidelines for the management of SHSAC and committee meetings, the review of recommendations for membership which are forwarded to the Commissioner of the Department of Human Services, and the provision of direction for the overall administration of the State Human Services Advisory Council.

2. Legislative and Policy Committee: Responsibilities include but are not limited to:

i. The development of a mechanism for channeling support of important human service legislation and policy; and

ii. The proposition of recommendations regarding future human service legislation and policy.

3. Operations Committee: Responsibilities include but are not limited to:

i. An ongoing review of the interrelationships of Department of Human Services' Divisions and other State of New Jersey Departments with the intent of channeling any problems, concerns or ideas for improvement to the Commissioner of the Department of Human Services; and

ii. Identification and communication of problems or issues relating to the implementation of Department of Human Services policy on local communities and/or clients.

4. Finance and Budget Committee: Responsibilities include but are not limited to:

i. The development of a mechanism for channeling support of important human services funding initiatives (that is, Department of Human Services fiscal year budget and/or supplemental appropriations); and

ii. The identification of issues surrounding the acquisition, allocation and implementation of funding and/or contracts, and the identification and possible recommendation of instruments which would ease statewide human services financial circumstances.

**(a)**

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

**Pharmaceutical Services Manual  
Appendices B, C**

**Proposed Amendment: N.J.A.C. 10:51-1,  
Appendices B, C**

Authorized By: Drew Altman, Ph.D., Commissioner,  
Department of Human Services.

Authority: N.J.S.A. 30:4D-6b(6), g(1)(2), 7, 7a, 7b, 7c: 30:4D-22,  
24.

Proposal Number: PRN 1986-366.

Submit comments by October 8, 1986 to:

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

The agency proposal follows:

**Summary**

The Division of Medical Assistance and Health Services (the Division) is updating and revising Appendices B and C of the Pharmaceutical Services Manual. Appendix B is the list of non-legend (over-the-counter) drugs for which Medicaid will reimburse pharmaceutical providers. Appendix C is a list of hypodermic syringes and/or needles for which Medicaid will reimburse pharmaceutical providers.

This updated listing contains technical changes such as changes in the NDC (National Drug Code) numbers.

There are additions to the list of non-legend drugs in Appendix B. A portion of the new listing concerns diabetic testing materials. Drugs and drug products which appear under the specific heading "diabetic testing materials" are covered by both the Medicaid and PAAD (Pharmaceutical Assistance to the Aged and Disabled) programs. The Division wants to be certain that both providers and patients are aware of those products which are considered diabetic testing materials and are reimbursable when dispensed to Medicaid and PAAD patients.

It should be noted that a recent amendment to the New Jersey Medical Assistance and Health Services Act (P.L.1985, c.55, approved February 21, 1985) authorized diabetic testing materials to be included in the PAAD program. Diabetic testing materials, as defined in the statute, means "blood glucose reagent strips which can be visually read, urine monitoring strips, tapes and tablets and blood letting devices and lancets, but shall not include electronically monitored devices."

Pharmaceutical providers should refer to the list of diabetic testing materials in Appendix B to ascertain those drugs and drug products covered by the Medicaid and PAAD programs. (However, it must be noted that the majority of pharmaceuticals listed in Appendix B are not covered by PAAD because they are non-legend, that is, over-the-counter, drugs. The act cited previously covers only legend, that is, prescription, drugs for PAAD beneficiaries. Reference is made to N.J.S.A. 30:4D-22a.)

**Social Impact**

The issuance of this updated list will insure that both Medicaid recipients and PAAD beneficiaries will be able to receive up-to-date pharmaceuticals, and that providers will be reimbursed for dispensing them.

In addition, the updated listing of diabetic testing materials will identify those items that are covered so that diabetics can obtain these items.

**Economic Impact**

There is no change in the Division's reimbursement procedures, so there should be virtually no economic impact on both Medicaid and PAAD programs.

Pharmaceutical providers will continue to be reimbursed in accordance with Medicaid policies, procedures, and fee schedules, so long as they use the updated listing.

There will be no cost to the Medicaid patient. PAAD beneficiaries will continue to pay a \$2.00 copayment as required by law (N.J.S.A. 30:4D-22).

Copies of the full text of N.J.A.C. 10:51-1, Appendix B, which is not reproduced below, may be obtained from or made available for review by contacting Henry W. Hardy, Esq., at the address listed above.

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

**SUMMARIZED LISTING OF DRUG ADDITIONS  
APPENDIX B**

General Non-Legend

PRODUCT	SIZE	R.U.	NDC
Anafat Syrup	120cc	CC	0000642-0091-04
Apatate Liquid	120cc	CC	0000482-0130-13
Betadine Douche	240cc	EACH	0000034-2320-80
Betadine Ointment	30gm	EACH	0000034-2340-10
Betadine Skin Cleanser	120cc	EACH	0000034-2350-40
Betadine Solution	240cc	EACH	0000034-2100-80
Betadine Solution	480cc	EACH	0000034-2100-88
Betadine Vag. Gel	90gm	EACH	0000034-2371-30
Citrucel Fiber Laxative	480gm	EACH	0000068-0418-16
Citrucel Fiber Laxative	900gm	EACH	0000068-0418-30
Delsym Liquid	90cc	CC	0000045-0288-03
Dermacort Lotion 0.5%	120cc	EACH	0000032-6006-74
Duolube Ointment	3.5gm	EACH	0000451-2020-38
Gastrolyte Packets	6	EACH	0000075-2900-06
Murocel Solution	15cc	EACH	0000451-3510-85
Muro Tears Solution	15cc	EACH	0000451-3515-85
Naldecon-DX Adult Liq.	120cc	CC	0000015-5668-40
Naldecon-DX Ped. Drops	30cc	EACH	0000015-5667-30
Naldecon-DX Child Syrup	120cc	CC	0000015-5663-40
Pediacare Drops	15cc	EACH	0000045-0286-15
Penntuss Susp.	480cc	CC	0000018-0818-67
Refresh Artificial Tears	30cc	EACH	0000023-0506-01
Salinex Nasal Drops	15cc	EACH	0000451-4500-85
Salinex Nasal Mist	50cc	EACH	0000451-4500-50
Temptra Chewable	30	TAB	0000087-0738-01
Ze Caps	60	CAP	0000642-0101-60

Diabetic Testing Material

PRODUCT	SIZE	R.U.	NDC
Autolet Combo Pac (USI)		EACH	0000999-3100-01
Autolet Kit (USI)		EACH	0000999-3000-01
Autolet Lancets (USI)	200	EACH	0000999-3300-01
Autolet Platforms Orange (USI)	200	EACH	0000999-3600-01
Autolet Platforms Yellow (USI)	200	EACH	0000999-3500-01
BiLi-Labstix SG Reagent Strips	100	EACH	0000193-2742-21
Glucostix Reagent Strips	50	EACH	0000193-2627-50
Glucostix Reagent Strips	100	EACH	0000193-2628-21
Multistix 10 SG Reagent Strips	100	EACH	0000193-2300-21
Multistix 9 SG Reagent Strips	100	EACH	0000193-2302-21
Multistix 9 Reagent Strips	100	EACH	0000193-2301-21
Multistix 8 Reagent Strips	100	EACH	0000193-2304-21
Multistix Reagent Strips	100	EACH	0000193-2820-21
N-Multistix Reagent Strips	100	EACH	0000193-2829-21
N-Multistix SG Reagent Strips	100	EACH	0000193-2740-21
N-Multistix-C Reagent Strips	100	EACH	0000193-2862-21
N-Uristix Reagent Strips	100	EACH	0000193-2854-21
Trendstrips Reagent Strips	25	EACH	0000503-2526-05
Trendstrips Reagent Strips	50	EACH	0000503-5026-05
Unilet Lancets (USI)	200	EACH	0000999-3400-01
Uristix 4 Reagent Strips	100	EACH	0000193-2307-21

**SUMMARIZED LISTING OF DRUG CHANGES  
APPENDIX B**

General Non-Legend Drugs

PRODUCT	FORMERLY	CHANGE
Balneol Lotion	[0000032-1960-74	0000032-1960-70
Bonine Tabs	0000663-2010-66	0000662-2010-66
Conar Expectorant	0000029-1747-34	0000029-1749-34
Conar Liquid Susp./Sugarless	0000029-1737-34	0000029-1739-34
Conar-A Tabs	0000029-1725-30	0000029-1729-30
Demazin Syrup	0000085-0936-01	0000085-0513-01
Demazin Tabs	0000085-0133-03	0000085-0751-04
Dimacol Capsules	0000031-1650-63	0000031-1652-63
Dimacol Liquid	0000031-1660-25	0000031-1662-25
Dulcolax Tabs	0000597-0012-01	0000597-0012-00
Fiogesic Tablets	0000078-0065-05	0000078-0225-05
Isopto Frin	0000065-0406-15	0000998-0406-15
Kolantyl Wafers	0000068-0387-96	0000068-0387-36
Liquifilm Tears	0011980-0031-15	0011980-0025-15
Liquifilm Tears	0011980-0031-30	0011980-0025-30

NEW JERSEY REGISTER, MONDAY, SEPTEMBER 8, 1986

Mol-Iron Tabs	0000085-0666-02	<b>0000085-0297-02</b>
Mol-Iron Tabs W/Vit C	0000085-0300-03	<b>0000085-0418-02</b>
Mycitracin Oint	0000009-0700-01	<b>0000009-0700-04</b>
Mycitracin Oint	0000009-0700-02	<b>0000009-0700-05</b>
Mylanta II Liq	0000038-0852-12	<b>0000038-0652-12</b>
Mylanta II Tabs	0000038-0851-60	<b>0000038-0651-60</b>
Neo-Calglucon	0000043-0516-16	<b>0000078-0056-33</b>
Neo-Synephrine .125%	0000024-1345-02	<b>0000024-1345-05</b>
Neo-Synephrine .25%	0000024-1347-01	<b>0000024-1347-05</b>
Neo-Synephrine .5%	0000024-1351-01	<b>0000024-1351-05</b>
Neo-Synephrine 1%	0000024-1355-01	<b>0000024-1355-05</b>
Theragran Tabs	0000003-0823-53	<b>0000003-0141-50</b>
Unicap Senior	0000009-0348-02	<b>0000009-3340-01</b>
Unicap Tabs	0000009-0299-03	<b>0000009-3342-01</b>
Unicap-M Tabs	0000009-0284-03	<b>0000009-3336-01</b>
Unicap-T Tabs	0000009-0149-02	<b>0000009-3338-01</b>
Ursinus Inlay Tabs	0000043-0037-51]	<b>0000043-0109-51</b>

**PRODUCT NAME CHANGE FORMERLY**

<b>Sudafed 12-Hour Caps</b>	[Sudafed S.A. Caps	
<b>0000081-0876-40</b>	0000081-0869-40]	
<b>Diabetic Testing Materials</b>		
Clintest Reagent Set Pkg	[0000193-2105-01	<b>0000193-2128-01</b>
Clintest Reagent Tabs 36*	0000193-2100-36	} <b>0000193-2127-36</b>
Clintest Reagent Tabs (2-Drop Method) 36*	0000193-2112-36	
Clintest Reagent Tabs 100*	0000193-2100-21	} <b>0000193-2126-21</b>
Clintest Reagent Tabs 100*	0000193-2121-21]	
Without Child Resistant Closure	0000193-2121-21]	

\*Products have been combined as a single package and bear the NDC indicated.

SUMMARIZED LISTING OF DRUG CHANGES  
APPENDIX C

PRODUCT	FORMERLY	CHANGE
Insulin, U100 Micro-fine 1/2cc Lodose	[0000293-8461-01]	<b>0000293-8465-01</b>

SUMMARIZED LISTING OF DRUG DELETIONS  
APPENDIX B

PRODUCT	SIZE	R.U.	NDC
[Cebefortis Tablets	100	TAB	0000009-0109-01
Conar-A Susp	480cc	CC	0000029-1717-34
Os-Calgescic	100	TAB	0000088-1656-47
Zymalixir	360cc	CC	0000009-0944-01
Zymasyrup	360cc	CC	0000009-0955-01]

(a)

**DIVISION OF PUBLIC WELFARE**

**General Assistance Manual  
Medically Needy Eligibility**

**Proposed Amendment: N.J.A.C. 10:85-3.3**

Authorized By: Drew Altman, Ph.D., Commissioner,  
Department of Human Services  
Authority: N.J.S.A. 30:4D, 44:8-109, and 44:8-111(d)  
Proposal Number: PRN 1986-354.

Submit comments by October 8, 1986 to:  
Audrey Harris Director  
Division of Public Welfare  
CN 716  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

With the passage of Assembly Bill Number 608, now chapter 371, Laws of 1985, the New Jersey Division of Medical Assistance and Health Services started the operation of the Medically Needy Program with eligibility being determined by the county welfare agencies (CWAs). Persons eligible under the new program are no longer includable, for payment of excess medical bills, in the group that is "... not otherwise provided for under the laws of this State ..." (see N.J.S.A. 44:8-109). Consequently, parts of the existing medically needy provisions of the

General Assistance (GA) Program are unnecessary or conflicting or both. However, the new program does not cover the entire population. It is necessary that GA retain responsibility for those not covered by the new Program and do so with neither gaps nor overlaps in coverage.

Because the new program covers all of those medically needy persons who are elderly, blind or disabled who had been covered by the special provisions of the GA Program, there is no longer need for provision for them under N.J.A.C. 10:85. All references to that group are deleted from the GA regulations. In addition, the new program will cover children and pregnant women. These elements are being provided for in GA by (1) a required referral to the CWA of all persons who are potentially eligible, and (2) a clear statement that those who are eligible for the new program are not eligible under the remaining GA Program.

**Social Impact**

While the proposed amendment will serve to make some people ineligible for certain medical payments under the GA Program, they are the people who will be newly eligible under the broader and more liberal program available by application to the CWA.

**Economic Impact**

The economic impact involved here will arise from the eligibility created under the new Medically Needy program. That has, of course, been reported in connection with that program. There will be little or no economic impact as a result of this particular amendment. The change becomes one of regulatory "housekeeping" in that it simply deletes regulations which will no longer apply to anyone. It reiterates the "program of last resort" principle, which is not new.

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

10:85-3.3 Financial eligibility

- (a)-(b) (No change.)
- (c) (See proposal at 18 N.J.R. 1056(b).)
- (d)-(e) (No change.)
- (f) (See proposal at 18 N.J.R. 928(b).)

(g) Medical care: Persons found eligible for General Assistance maintenance payments in accordance with the procedures and standards established in this subchapter (N.J.A.C. 10:85-3) are likewise eligible for medical care (see N.J.A.C. 10:85-5 regarding provision of medical care). In addition, certain other individuals and families are eligible for medical assistance from the MWD or for referral to the county welfare agency.

1. Medically needy: Individuals and families who are ineligible for public assistance (General Assistance, AFDC, Cuban/Haitian Entrant Program or Refugee Resettlement Program) [or for SSI payments] because their income exceeds the standards established for the applicable program may apply to the MWD on a monthly basis for assistance in paying excessive medical costs. The provisions of this subsection are not applicable to the payment of bills for inpatient hospitalization or for medical services rendered to an inpatient. **The MWD shall refer to the county welfare agency those persons who appear to be potentially eligible for the Medically Needy Program administered by that agency. Any person found eligible under the provisions of that program is not eligible for benefits under this subsection.**

- i. (No change.)
- ii. Income levels: For the purpose of determining excessive medical costs, the total available monthly income (see [(g)]iii below) of individuals, couples, or families with children is measured against the appropriate allowance standard. (See N.J.A.C. 10:85-3.1(b) regarding eligible unit concept.) [For elderly, blind, or disabled persons, the SSI standard applies.] For families with children, the AFDC (C and F) standard applies. (See N.J.A.C. 10:82-1.2 for current AFDC standard.) For all others, the General Assistance standard (Schedule I or II as appropriate) applies. When the AFDC [or SSI standards are increased] **standard is changed**, a Public Notice to that effect will be published in the New Jersey Register. Information about the current standard[s] may also be obtained by contacting the Division of Public Welfare.
- iii.-v. (No change.)
- 2.-4. (No change.)

## INSURANCE

### (a)

#### NEW JERSEY REAL ESTATE COMMISSION

#### Qualifications for Licensing; Broker and Broker-Salesperson

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

Authorized By: Daryl G. Bell, Secretary-Director, New Jersey Real Estate Commission.

Authority: N.J.S.A. 45:15-6.

Proposal Number: PRN 1986-346.

Submit comments by October 8, 1986 to:

Robert J. Mellilo  
Special Assistant to the Director  
New Jersey Real Estate Commission  
CN 325  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

On October 7, 1985, the Department of Insurance proposed amendments to N.J.A.C. 11:5-1.3 concerning qualifications for the licensing of brokers and broker-salespersons. (See 17 N.J.R. 2350(a).) This proposal required candidates for broker licenses to work "9:00 A.M. to 5:00 P.M. weekdays" to fulfill the full time employment component of their apprenticeship.

The existing language of N.J.A.C. 11:5-1.3 which simply makes reference to "full time" employment has been consistently construed to mean normal business hours of approximately 9:00 A.M. to 5:00 P.M. weekdays.

The requirement of full time employment during normal business hours is viewed as important for several reasons. First, a broker not only must obtain experience in selling or leasing property, which can be gathered at odd hours on evenings and weekends, but also a full knowledge of the real estate brokerage business, including substantial contact with other licensees as well as lawyers, banks, financial institutions, engineers and surveyors, title insurers and others involved in the sale of property. Such experience is more available when the applicant serves a substantial portion of his or her own apprenticeship during normal office hours. Also, a thorough apprenticeship requires a degree of commitment to learning: evening, weekend or vacation work as a salesperson is insufficient to immerse the applicant in all phases of the business necessary to serve the public properly as a broker. Finally, pursuant to N.J.A.C. 11:5-1.18, every resident broker must maintain an office which is open to the public during usual business hours. Since the responsibilities of a broker include overseeing the operation of the real estate office and ensuring that the office operates in full compliance with all applicable laws and rules, the full time employment requirement serves to ensure that broker license candidates will be familiar with these aspects of the brokerage business.

However, clarification of the term full time as used in N.J.A.C. 11:5-1.3 was deemed necessary because the Real Estate Commission had received and been required to disapprove the apprenticeship of broker candidates who maintained other full time employment during normal business hours. The October 7 proposal was intended to provide this clarification.

A May 19, 1986 proposal modified the October 7, 1985 proposal by permitting an applicant for a broker's license to meet the full time employment component of apprenticeship by demonstrating that he or she has worked from 9:00 A.M. to 5:00 P.M. during any five days in each week of the two-year apprenticeship period. (See 18 N.J.R. 1088(a).) This change recognized that many real estate salespersons, particularly those who work in resort areas, are actively engaged in real estate activities during weekend hours. Further the May 19, 1986 proposal attempted to clarify the term "full time" as requiring real estate activities to be the primary occupation of all broker license candidates.

Upon further consideration the Commission determined that the term "primary occupation" was itself too general and in need of further clarification. Consequently, this proposal was authorized for publication with a revision which specifies in explicit terms the Commission's intention that in order to fulfill the apprenticeship requirement, an applicant cannot have worked on a full time basis, which is defined as thirty-five or more hours per calendar week, in any other occupation.

#### Social Impact

The proposed amendment impacts upon the public served by licensed real estate broker and broker license candidates. The proposal will adversely affect those broker candidates who are not presently employed in a manner consistent with the revised apprenticeship requirements. However, since it clarifies the meaning of existing terminology, it is expected to benefit applicants by clearly informing them of the qualifications for licensure. Further, by permitting the employment requirement to be met through working full time during normal business hours on any five days of a given week the proposed amendment provides necessary flexibility. Finally, the proposed amendment protects the public by ensuring that applicants complete an appropriate apprenticeship period prior to obtaining a broker's license.

#### Economic Impact

The proposed amendment impacts upon the Division of the Real Estate Commission and broker license applicants. By providing clear notice of licensure requirements, prospective applicants who are not presently employed in a manner consistent with the rule's full time employment criteria will have an opportunity to modify their employment arrangements to achieve compliance. Those individuals who cannot fulfill the full time employment requirement, may avoid unnecessarily expending the time and effort needed to meet the other license qualifications. The proposal is expected to facilitate completion of the apprenticeship period for those individuals who engage in real estate activities during normal business hours on weekends. It has a positive economic impact on the Division of the Real Estate Commission in that it will serve to reduce applications which do not meet the requirements and which must be received and denied in accordance with procedural standards.

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

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

(a) The Commission defines the word "apprenticeship", as used in N.J.S.A. 45:15-9 to require a broker-salesperson relationship wherein an adequate knowledge of the methods, techniques and terminology of the business, as well as the pitfalls for the public and licensees alike, has been engendered by intimate, intensive and successful contact with diverse aspects of the real estate business under the guidance and direction of a licensed broker. In order to satisfy the above requirement, an applicant must have been so employed [full time during his apprenticeship as a salesperson.] **on a full time basis as a salesperson during the two year apprenticeship period. The said full time employment may be satisfied by a showing that the applicant has worked under the supervision of his or her broker during the hours of approximately 9:00 A.M. to 5:00 P.M. during any five of the seven days in each week of the two year apprenticeship, and that the applicant has not been employed on a full time basis in any other occupation during the apprenticeship period. For the purposes of this limitation upon an applicant's non-real estate employment, the term "full time basis" is construed by the Commission to mean thirty-five or more hours per calendar week.** In addition, the applicant and the broker under whom he or she serves his or her apprenticeship shall see to it that the apprenticeship includes practices and experiences in all aspects of the real estate business as set forth in N.J.S.A. 45:15-3.

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

### (b)

#### DIVISION OF ADMINISTRATION

#### Legal Services Insurance

#### Proposed Readoption: N.J.A.C. 11:12

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17:46C-4, 13 and 24.  
Proposal Number: PRN 1986-365.

Submit comments by October 8, 1986 to:

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

The agency proposal follows:

NEW JERSEY REGISTER, MONDAY, SEPTEMBER 8, 1986

**Summary**

P.L.1981 c.160 (N.J.S.A. 17:46C-1 et seq.) provides the authority to promulgate rules and regulations concerning legal services insurance. The law provides that it is in the best interests of the citizens of New Jersey to develop readily available affordable legal services. At the same time, however, it is necessary to regulate the providers of these services to protect the interests of the consumers.

The rule, N.J.A.C. 11:12, was originally adopted on November 2, 1981, and can be found at 13 N.J.R. 776(a). Generally, the existing rule outlines the procedures by which an insurer or other provider may become authorized to transact the business of legal insurance, requires the submission of periodic experience reports and annual reports, and states that licensed agents, brokers and solicitors may solicit, negotiate and/or effectuate legal insurance.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 11:12 expires on November 2, 1986. The Department has reviewed this rule and has determined it to be necessary, reasonable and proper for the purpose for which it was originally promulgated. Since the time of the adoption of this rule the Department has not experienced a great amount of activity with respect to insurers transacting the business of legal insurance because of adverse market conditions. Therefore, the rule, together with the statute, at this time, continues to provide a basic framework by which the Department may regulate the business of legal insurance.

However, the Department is exploring the need for more comprehensive regulation of the legal service insurance plans offered by both insurance companies and other providers. Concurrent with the proposed re-adoption of the existing regulation, the Department is pre-proposing in this issue of the Register a more comprehensive legal service rule (see 18 N.J.R. 1783(a)).

The pre-proposal expands on the existing rule by providing a definitions section, including a statement as to which types of plans are subject to regulation by the Insurance Department. In addition, the pre-proposal sets forth application requirements, licensing requirements, policy information, and rate requirements. By establishing a more comprehensive regulatory framework than the existing rule, the Department hopes to gain more structure for regulating the growing number of entities offering legal insurance.

**Social Impact**

The proposed re-adoption of N.J.A.C. 11:12 will allow the Department to continue to promote the beneficial business of legal services insurance as intended in the original promulgation of the rule. The proposed re-adoption will provide the Department with the regulatory structure to encourage the development of effective and economically sound methods for making legal services more readily available to citizens of New Jersey, while providing the necessary safeguards for protecting the public interest.

**Economic Impact**

The proposed re-adoption of N.J.A.C. 11:12 will continue to promote the business of legal services insurance in order to create a competitive market from which consumers will be able to select the most effective and economically beneficial services. In adhering to the reporting and filing requirements of the proposed re-adoption, insurers may incur a greater economic burden. The Department does not expect to experience an economic impact.

Full text of the proposed re-adoption appears in the New Jersey Administrative Code at N.J.A.C. 11:12.

**(a)****Legal Services Insurance****Rule Pre-Proposal: N.J.A.C. 11:12**

Pre-Proposal Number: PPR 1986-3

**Take Notice** that Kenneth D. Merin, Commissioner of the Department of Insurance, pursuant to his authority at N.J.S.A. 17:46C-4, 13 and 24 will receive preliminary comments with respect to the initiation of subsequent rulemaking proceedings covering legal services insurance.

On November 2, 1981, the current N.J.A.C. 11:12 subchapter 1 concerning Legal Services insurance became effective. Pursuant to the requirements and criteria of Executive Order 66(1978), this subchapter is due to expire on November 2, 1986. The Department is proposing to re-adopt the existing text of N.J.A.C. 11:12 in order to avoid any lapse that may arise due to the upcoming expiration of the current subchapter. Full text of the proposed re-adoption may be found in this issue of the Register at 18 N.J.R. 1782(b).

At the same time, however, the Department seeks to develop more comprehensive standards and requirements pertaining to the business of legal insurance. This pre-proposal represents a preliminary stage of rulemaking and the Department is interested in alternate suggestions as well as specific comments on this draft.

**Interested persons** may submit in writing, data, draft rules, views and arguments relevant to the pre-proposal on or before October 8, 1986.

These submissions, and any inquiries should be addressed to:

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

The pre-proposal is as follows:

**CHAPTER 12****SUBCHAPTER 1. LEGAL SERVICES INSURANCE****11:12-1.1 Purpose**

(a) The purpose of this subchapter is to:

1. Encourage the development of effective and economically feasible methods of providing available and affordable legal services to the citizens of New Jersey;
2. Minimize restrictions on new forms of legal services organizations, while concurrently protecting the interests of the public;
3. Place the risks of experimentation on the developers of the organizations rather than on the public;
4. Allow persons other than professional insurers to provide legal services, subject to reasonable regulations; and
5. Promote competition among various systems of financing legal services.

**11:12-1.2 Scope**

This subchapter applies to all persons who wish to transact the business of legal services insurance.

**11:12-1.3 Definitions**

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

"Agent" means an individual who represents a sponsor or insurer in the solicitation of legal services insurance.

"Certificate of Authority" means an authorization from the Commissioner that entitles the holder to transact the business of legal services.

"Commissioner" means the Commissioner of Insurance.

"Filed" means that a submission made to the Commissioner by a sponsor or agent meets the requirements specified by the Commissioner.

"Insurer" means a person authorized to transact the business of insurance under subtitle 3 of Title 17 of the Revised Statutes or subtitle 3 of Title 17B of the New Jersey Statutes.

"Legal services insurance" means a contractual obligation to provide specified payment for an interval of time. The payment may be made by the beneficiaries themselves or by third parties for the beneficiaries, in such a manner that the total cost incurred by assuming the obligation is to be spread directly or individually among a group of persons. Legal services insurance does not include:

1. Retainer contracts made with individual clients where the fees are based on estimates of the nature and amount of services that will be provided to the client, and retainer contracts made with a group of clients involved in the same or closely related legal matters, such as class action;

2. Plans providing only a limited amount of consultation and advice on simple matters either alone or in combination with referral services, or the promise of fee discounts for other matters;

3. Plans providing limited benefits on simple legal matters on an informal basis, with no legally binding promise, such as an employment or educational or similar relationship.

4. Legal insurance services provided by unions or employee associations to their members in matters relating to employment or occupation matters only. Legal services other than those relating to employment or occupation matters which constitute the business of legal insurance, are subject to the requirements of this subchapter.

5. Employee benefit plans regulated by the "Employee Retirement Income Security Act of 1974" (P.L. 93-406, 29 U.S.C. 1001 et seq.), provided that evidence of exemption satisfactory to the Department of Insurance is shown; or

6. Plans or legal insurance services provided by a legal aid office or public defender office, a military legal assistance office, a lawyer referral service operated, sponsored or approved by a bar association representative of the general bar of the geographical area in which the association

exists, or any other nonprofit organization that recommends, furnishes or pays for legal services to its members or beneficiaries in a manner incidental and reasonably related to a primary purpose of such organization to promote a public interest, including, without limitation, defense of human and civil rights, elimination of prejudice and discrimination as to race, religion, sex and national origin, lessening neighborhood tensions, preservation of scenic beauty, combatting or preventing pollution, preservation of natural resources, protection of consumer interest, promotion of cultural, historical or other educational activities, and prevention of cruelty to animals. Legal services other than those relating to the primary purpose of the organizations listed above which constitute the business of legal insurance, are subject to the requirements of this subchapter.

"License" means an authorization from the Commissioner that entitles an agent to solicit legal services insurance on behalf of a sponsor or insurer.

"Sponsor" means a person who obtains a certificate of authority in accordance with the provisions of section 5 of this subchapter, and includes professional insurers who are not authorized to transact the business of insurance under subtitle 3 of Title 17 of the Revised Statutes or subtitle 3 of Title 17B of the New Jersey Statutes.

#### 11:12-1.4 Application for certificate of authority

(a) An insurer may transact the business of legal services insurance without obtaining a certificate of authority, provided that the insurer includes in its powers the authority to transact the business of legal services insurance.

(b) This chapter is not applicable to a sponsor if less than five percent of the sponsor's insureds reside in this State, and the sponsor is regulated by the laws of another state in which a large number of insureds reside. The sponsor must still file an annual report with the Commissioner in accordance with N.J.A.C. 11:12-1.14.

(c) All other sponsors are to obtain a certificate of authority before transacting the business of legal services insurance in this State.

(d) To obtain a certificate of authority, a sponsor shall file an application with the Commissioner.

(e) The application is to consist of:

1. A copy of the basic organizational documents of the sponsor, such as the articles of incorporation;
2. A copy of the bylaws, rules or regulations that control the internal affairs of the sponsor;
3. A list of the names, addresses and positions of the officers and directors of the sponsor;
4. A biographical sketch of the officers and directors associated with the sponsor;
5. A copy of the existing or proposed employment contract between the sponsor and its employee;
6. Copies of agreements between the sponsor and:
  - i. Providers of administrative, marketing or management services concerning the provision of services to the insureds; and
  - ii. Legal services suppliers providing alternate coverage for the insureds in the event that the sponsor is unable to perform its obligation;
7. A general statement describing the legal insurance plan, including:
  - i. The geographical area in which the sponsor is to operate;
  - ii. The types of insurance to be written;
  - iii. A copy of the existing or proposed policy to be issued to individuals;
  - iv. A copy of the existing or proposed form of coverage for group members;
  - v. Statistical data demonstrating the expected income, expenses, deficits and source of funds for the first five years;
  - vi. The proposed marketing methods and copies of advertising materials; and
  - vii. The procedures available for filing a complaint.
8. A copy of the most recent financial statement of the sponsor, showing assets, liabilities and sources of financial support, as well as any other sources of funding.

9. A copy of the rating system and rates currently in effect, including actuarial or statistical justification.

10. A power of attorney executed by the sponsor, if not domiciled in this State, appointing the Commissioner, the Commissioner's successors in office and duly authorized deputies as the true and lawful attorney of the sponsor in and for this State upon whom all lawful process can be served in any legal action or proceeding against such sponsor on a cause of action arising in this State.

11. The amount of malpractice insurance for each attorney employed by the sponsor, and the insurance company issuing the policy.

12. For insurers not domiciled in this State, a certificate of good standing from the State in which the insurer is domiciled.

13. The amount of a surety bond or deposit of cash or securities to guarantee the performance of the obligations, such amount being determined according to the requirements in N.J.A.C. 11:12-1.9. The name of the company issuing the bond or the location of the deposit is also to be included.

14. Any other relevant information that the Commissioner may reasonably request.

15. A check or money order for \$250.00, payable to the General Treasury.

#### 11:12-1.5 Issuance of certificate of authority

(a) Within 60 days of receipt of an application, the Commissioner shall issue a certificate of authority if the Commissioner finds that:

1. The application requirements specified in N.J.A.C. 11:12-1.4 have been satisfactorily completed;
2. The officers and directors associated with the sponsor are trustworthy, competent and able to provide adequate and accessible legal services insurance;
3. The sponsor is financially secure; and
4. The sponsor's business plan is in the best interest of the potential insureds and the public.

#### 11:12-1.6 Renewal, nonrenewal, suspension and revocation of a certificate of authority or license

(a) If a certificate of authority or license is issued, the Commissioner may:

1. Renew the certificate of authority annually upon payment of a \$100.00 fee by the sponsor;
  2. Renew the license every two years upon payment of a \$25.00 fee by the agent;
  3. Refuse to renew the certificate of authority or license at the time of renewal; or
  4. Suspend or revoke the certificate of authority or license at any time.
- (b) The Commissioner shall refuse to renew, suspend or revoke a certificate of authority or license if the sponsor or agent has:
1. Willfully violated any provisions of the insurance laws of this State or of this subchapter;
  2. Intentionally withheld material information or made a material misstatement in applying for the certificate of authority or license by fraud or misrepresentation;
  3. Obtained or attempted to obtain a certificate of authority or license by fraud or misrepresentation;
  4. Committed fraudulent practices;
  5. Misappropriated or converted to his or her own use, or illegally withheld, monies belonging to insurers, policyholders or others received in the course of business;
  6. Been convicted of a felony;
  7. Changed the address of his or her place of business without notice to the Commissioner;
  8. Demonstrated unworthiness, lack of integrity, bad faith, dishonesty or incompetency to transact the business of legal insurance; or
  9. Violated trade practices as regulated in N.J.S.A. 17:29B-1 to 17:29B-14 and N.J.S.A. 17B:30-1 to 17B:30-22.

(c) An agent's license shall automatically terminate if the sponsor for whom the agent works has its certificate of authority terminated.

#### 11:12-1.7 Denial, notice of denial, nonrenewal, suspension or revocation of a certificate of authority or license

(a) The Commissioner shall deny a certificate of authority or license if the requirements for obtaining the certificate of authority or license are not fulfilled.

(b) The Commissioner shall notify:

1. A sponsor or agent of a denial within 60 days of the date of application or examination;
2. A sponsor or agent of nonrenewal 20 days prior to the date of renewal; and
3. A sponsor or agent of suspension or revocation 20 days prior to the effective date of suspension or revocation.

(c) A good faith effort must be made to deliver a notification to the last known address of the sponsor or agent.

(d) A notification shall inform the sponsor or agent that, within 20 days from the date of mailing, a hearing may be requested.

(e) If a certificate of authority or license has been suspended, the certificate of authority or license will automatically become effective at the end of the suspension period.

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## 11:12-1.8 Hearing

(a) If the sponsor or agent requests a hearing, the Commissioner or the Commissioner's appointee may:

1. Administer oaths;
2. Subpoena persons and documents and examine persons under oath.

(b) At the end of the hearing, the findings shall be:

1. In writing;
2. Filed in the Commissioner's office; and
3. Copies are sent by certified mail to the sponsor or agent.

## 11:12-1.9 Securities deposit or bond requirement

(a) A sponsor is to deposit cash or acceptable securities with the treasurer of this State according to the following schedule:

1. If the sponsor has not transacted any legal services insurance prior to January 1, 1982, the deposit shall be \$50,000.

2. If the sponsor has transacted legal services insurance prior to January 1, 1982 and has gross written premiums, membership fees or similar charges of:

i. \$300,000 or less, the deposit shall be the lesser of \$50,000 or 50 percent of the gross premiums in force;

ii. More than \$300,000 and less than \$750,000, the deposit shall be \$75,000; or

iii. \$750,000 or more the deposit shall be \$100,000.

(b) A surety bond for the required amount may be filed in lieu of the deposit. The Department of Insurance shall be named as a dual obligee.

(c) Deposits and bonds are to be used solely to assure the performance of obligations to insureds in the event of insolvency.

(d) The deposit or bond is to be returned to the sponsor if:

1. No more business is to be transacted in this State; and
2. The Commissioner is satisfied that all of the sponsor's obligations have been fulfilled.

(e) The Commissioner may increase the amount required for the deposit or bond in circumstances that warrant the increase, such as unstable financial conditions. Within 30 days of notification of the increase, the sponsor may request a hearing to be held by the Commissioner. The requirements are to be satisfied:

1. Within 30 days of the final decision if a hearing is held; or
2. Within 30 days of notification of the increase if no hearing is requested.

(f) If the increase is not satisfied, the sponsor may be fined a maximum of \$100.00 per day for each day of noncompliance.

(g) The Commissioner may reduce the amount required for the deposit or bond if the Commissioner finds that the reduction is justified by:

1. The terms and number of existing contracts with insureds;
2. Support by financially sound public or private organizations or agencies; or
3. Other reliable financial guarantees.

## 11:12-1.10 Capital, surplus and claim fund requirements

(a) A sponsor shall:

1. Have initial minimum capital of \$5,000;
2. Maintain a minimum balance of \$5,000 in its capital accounts;
3. Set aside a claim fund equal to the pro rata unearned portion of the premium paid for the policy; and
4. Maintain a surplus of \$10,000, after deduction of the claim fund and exclusive of capital.

(b) The amount required for the claim fund may be modified by the Commissioner if it is in the best interests of the insureds.

(c) The claim fund is to be used only for the payment of valid claims, security transfer costs and refunds of fees paid into the fund.

(d) If at any time the surplus amount is less than \$10,000 the sponsor shall be considered impaired and the impairment shall be reported to the Commissioner within 10 days. The certificate of authority shall be suspended until the level of surplus is recovered.

## 11:12-1.11 Types of legal services insurance

Legal services insurance may be written on an individual, group or blanket basis in accordance with the provisions of N.J.S.A. 17B:27-1 et seq.

## 11:12-1.12 Policies and certificates

(a) A legal services insurance policy or certificate form shall not be issued or amended until the Commissioner files the policy form or amendment.

(b) The policy and certificate forms shall:

1. Contain a detailed list and description of the legal services promised, the legal matters for which expenses are to be reimbursed and the amount or method of reimbursement;

2. Include the name of the sponsor and the principal place of business;

3. Include a statement describing the benefits, exclusions and limitations of benefits under the policy or certificate;

4. Outline the benefits available to the insured's family dependents;

5. State the terms and conditions upon which the policy or certificate can be cancelled;

6. State the amount of premiums, charges or dues to be charged and the method of payment;

7. Advise the insureds that a complaint system is available to facilitate the registering of complaints, and that they may complain directly to the New Jersey State Bar Association about an attorney's conduct;

8. Advise the insureds that they may retain any attorney authorized to practice in this State, at their own expense.

(c) Certificates may summarize the terms of the master policy, but shall contain a full statement of all benefits provided.

(d) Policies and certificates that pay for legal services provided by a limited number of attorneys who have entered into provider contracts with the sponsor shall provide for alternative benefits in the event that a participating attorney is not available to perform legal services for an insured. The alternative benefits may consist of providing an attorney for the insured, or paying the fee of an attorney selected by the insured.

(e) The Commissioner shall disapprove a policy or certificate form if the Commissioner finds that it:

1. Is unfair, unfairly discriminatory, misleading, obscure or encourages misrepresentation or misunderstanding of the contract, including cases where the form:

i. Provides coverage or benefits that are too restrictive to achieve the purpose for which the policy is designed;

ii. Fails to attain a reasonable degree of readability, simplicity and conciseness; or

iii. Is misleading, deceptive or obscure because of its physical aspects such as format, typography, style, color, material or organization.

2. Provides coverage or benefits or contains other provisions that would endanger the solvency of the insurer;

3. Provides coverage or benefits for legal services rendered in connection with defending criminal charges in which the victim of the crime, a member of his immediate family or any corporation or partnership in which the victim has a substantial interest contributed to the plan on behalf of the insured; or

4. Is contrary to law.

## 11:12-1.13 Premium rates

(a) Before using or applying any rate to legal services insurance, a sponsor shall file with the Commissioner a copy of the rating system upon which the rate is based, or by which the rates are fixed or determined. A sponsor shall charge and receive rates fixed in strict conformity with the rating system filed by the Commissioner. The Commissioner may permit a sponsor to submit for filing and use a rate for a three year period before filing or disapproving the rate so that appropriate expense and claims experience can be obtained through a statistical plan for use in determining the rate.

(b) The rates produced from the rating system shall:

1. Be established and justified in accordance with generally accepted insurance principles, such as the experience or judgment of the sponsor making the rate filing or actuarial computations;

2. Not be excessive, inadequate or unfairly discriminatory. Rates shall not be considered unfairly discriminatory because they are averaged broadly among persons insured under group or blanket policies; and

3. Be adequate to insure that all benefits contracted for will be supplied.

(c) The Commissioner shall disapprove the filing if the three requirements listed in (b) above are not fulfilled. In determining whether the sponsor has complied with the requirements, the Commissioner may require the sponsor to submit relevant information that is necessary to aid the Commissioner in the determination.

(d) In determining what constitutes unfair discrimination, the Commissioner may consider:

1. Past and prospective loss;

2. Country-wide expense experience;

3. Factors reasonably attributable to the class of risk; and

4. Generally accepted profit margins.

(e) The Commissioner may, by written order, suspend or modify the requirement for filing for any risk, group or class of risk for which rates cannot practically be filed before they are used.

(f) If the Commissioner disapproves a filing, the sponsor shall be notified in writing of the reasons why the filing was disapproved. The sponsor aggrieved by the disapproval may make a written request for a hearing, pursuant to N.J.A.C. 11:12-1.8.

(g) The Commissioner may, after notice and hearing, disapprove a rating system that has been previously approved, provided that the disapproval shall apply only to rating systems used on and after the date of the disapproval.

#### 11:12-1.14 Annual reports

(a) A sponsor shall file an annual report on or before March 1, containing the following information:

1. The name, organizational form and the principal place of business;
2. A list of insureds covered by the plan;
3. A statistical summary listing the number and types of claims paid and the average amount of each claim;
4. A financial statement of the sponsor's legal services business on December 31 of the previous year, including its:
  - i. Balance sheet; and
  - ii. Receipts and disbursements for the preceding year;

5. Any material changes in information submitted pursuant to N.J.A.C. 11:12-1.4 concerning the application for a certificate of authority; and

6. Other relevant information that may reasonably be requested by the Commissioner.

(b) The report shall be verified by at least two principal officers of the sponsor.

#### 11:12-1.15 Examination

(a) The Commissioner, in accordance with the procedures set forth in N.J.S.A. 17:23-4 et seq., shall make an examination of the affairs of sponsors who obtain a certificate of authority. The examinations shall be conducted as often as is necessary to protect the interests of the public.

(b) The expenses of the examinations may be charged to the insurer pursuant to the procedures found in Titles 17 of the Revised Statutes and 17B of the New Jersey Statutes.

#### 11:12-1.16 Investments

The funds generated through the business of transacting legal services insurance shall be invested in securities or other investments permitted for the investment of domestic insurers' assets, pursuant to the provisions of N.J.S.A. 17B:20-1 et seq.

#### 11:12-1.17 Advertising standards

(a) Forms of advertising or solicitation shall conform to the following standards:

1. The content shall be truthful and unambiguous, so that persons of average intelligence can comprehend the information; and
2. No material shall contain the name, address, telephone number or other identifying information about an attorney.

#### 11:12-1.18 Complaint system

(a) A sponsor shall establish a complaint system to provide reasonable procedures for insureds who wish to register complaints concerning legal services insurance.

(b) The sponsor shall keep, for three years, records of all complaints filed.

(c) No confidential attorney-client material shall be divulged without the written consent of the insured, a court order, or an order from the Commissioner.

(d) Complaints alleging attorney misconduct shall be reported to the disciplinary board of the Supreme Court of New Jersey.

#### 11:12-1.19 Segregated accounts

(a) Except for employee welfare benefit plans regulated by the "Employee Retirement Income Security Act of 1974: (P.L. 93-406, 29 U.S.C. 1001 et seq.), a sponsor who obtains a certificate of authority and who transacts the business of legal services insurance along with any other business shall maintain segregated accounts according to the following requirements:

1. The segregated account shall satisfy the financial requirements necessary for the issuance of a certificate of authority;

2. Except under paragraphs 6 and 7 below, the income and assets attributable to a segregated account shall be identifiable with the account but need not be kept physically separated. The income, gains and losses, whether or not realized, from assets attributable to a segregated account shall be credited or charged against the account without regard to other income, gains or losses of the sponsors;

3. Except under paragraph 4 below, the assets attributable to a segregated account shall not be chargeable with any liabilities arising out of any other business of the sponsor, nor shall any assets not attributable to the account be chargeable with any liabilities arising out of the segregated account;

4. The segregated account shall be deemed an insurer within the meaning of N.J.S.A. 17:30C-1 et seq. Claims remaining unpaid after liquidation

under N.J.S.A. 17:30C-1 et seq. shall be liens against the interests of shareholders, if any, in all of the sponsor's assets that are not liquidated;

5. Assets allocated to segregated accounts shall be the property of the sponsor, who shall not hold itself out to be a trustee of the assets;

6. A sponsor may allocate a portion or part of a particular asset to the segregated account;

7. A sponsor may by an identifiable act transfer assets to or from the segregated account if:

- i. The terms are fair and reasonable; and
- ii. The books, accounts and records of each party having an interest in the account are so maintained as to clearly and accurately disclose the precise nature and details of the transaction.

#### 11:12-1.20 Management contract

(a) A sponsor who obtains a certificate of authority shall not enter into any management contract unless the contract is first filed with the Commissioner.

(b) The Commissioner shall disapprove a management contract if:

1. It subjects the sponsor to excessive charges;
2. The contract extends for an unreasonable period of time;
3. The contract does not contain fair and adequate standards of performance;

4. The persons empowered under the contract to manage the insurer are not sufficiently trustworthy, competent, experienced and free from conflict of interest to manage the sponsor with regard to the interests of the insureds, creditors or the public; or

5. The contract contains provisions which impair the interests of the sponsor's insureds, creditors or the public.

#### 11:12-1.21 Report of violations of Code Professional Responsibility

The Commissioner shall report to the New Jersey Supreme Court any information indicating possible violations of the Code of Professional Responsibility of the American Bar Association as amended by the New Jersey Supreme Court.

#### 11:12-1.22 Prohibition against regulation of attorneys

The Commissioner shall not be authorized under this subchapter to regulate or suspend attorneys admitted to practice in this State, or have authority over attorneys' agreements or fees with individual clients or organizations.

#### 11:12-1.23 Retaliatory tax provisions

The provisions of N.J.S.A. 17:32-15 relating to retaliatory tax provisions shall apply to sponsors under this subchapter.

#### 11:12-1.24 Public documents

All applications, filings and reports required under this act shall be treated as public documents. Nothing contained in this subchapter shall require the filing, reporting or disclosure of information of material which is subject to an attorney-client privilege or confidence, and no sponsor shall question the judgment of an attorney providing legal services.

#### 11:12-1.25 Application of Titles 17 and 17B

The provisions of Title 17 of the Revised Statutes and Title 17B of the New Jersey Statutes shall apply generally to legal services insurance offered by insurers as defined in N.J.A.C. 11:12-1.3 provided that legal services insurance sold by such insurers shall be subject to N.J.A.C. 11:12-1.1, 1.3, 1.4(b), 1.8, 1.12, 1.13, 1.2 and 1.27 rather than to the corresponding sections of Title 17 of the Revised Statutes and Title 17B of the New Jersey Statutes. The provisions of N.J.S.A. 17:30A-1 et seq. shall not apply to legal services insurance offered by insurers.

#### 11:12-1.26 Business transacted prior to effective date

A sponsor who has been transacting the business of legal insurance for more than 90 days prior to the effective date of this subchapter shall submit an application for a certificate of authority within 90 days of the effective date of this subchapter. The sponsor may continue to operate until the Commissioner acts on the application. If the certificate of authority is denied, the sponsor shall be treated as one whose certificate of authority has been revoked.

#### 11:12-1.27 Liquidation or dissolution

A liquidation or dissolution of a sponsor transacting the business of legal insurance shall be accomplished in accordance with the provisions of N.J.S.A. 17:30C-1 et seq.

#### 11:12-1.28 Penalties

The penalty for each violation of this subchapter shall not exceed \$1,000 for the first offense and \$2,000 for each succeeding offense. A penalty shall be enforced and collected by the Commissioner in the name of the State in a summary proceeding in accordance with "the penalty enforcement law," N.J.S.A. 2A:58-1 et seq. A warrant may be issued in lieu of a summons. If the defendant does not pay the amount rendered

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against him, the defendant shall be committed to the county jail as provided in the penalty enforcement law until the penalty and costs are paid. Penalties shall be paid to the Commissioner for the use of the State. The expenses incurred by enforcement of this section, if not otherwise provided for, shall be paid out of the penalties collected and the fees and taxes paid by insurance companies of other states and foreign countries.

11:12-1.29 Severability

If any section of this subchapter is held to be invalid, the validity of remaining parts of this subchapter is not to be affected.

## LABOR

### THE COMMISSIONER

The following proposals are authorized by Charles Serraino, Commissioner, Department of Labor.

For proposals numbered PRN 1986-340, 341, 343, 344, and 345, submit comments by October 8, 1986 to:

Arthur J. O'Neal, Jr., Director  
Division of Planning and Research  
CN 056  
Department of Labor  
Trenton, New Jersey 08625

### (a)

#### 1987 Maximum Weekly Benefit Rates for Unemployment Compensation and State Plan Temporary Disability

##### Proposed Amendment: N.J.A.C. 12:15-1.3

Authority: N.J.S.A. 34:1-5, 34:1-20, 43:21-3(c), 43:21-40.

Proposal Number: PRN 1986-340.

The agency proposal follows:

##### Summary

The proposed amendment establishes the 1987 maximum weekly benefit rate for benefits under the Unemployment Compensation Law and for State Plan benefits under the Temporary Disability Benefits Law.

##### Social Impact

The proposed amendment will ensure that payments to unemployment and disability insurance recipients entitled to maximum benefits will increase in line with the upward trend of wages in the State's economy, thus preserving the real purchasing power of their benefits.

##### Economic Impact

The proposed amendment will increase the weekly benefit rates received by individuals eligible for the maximum weekly benefit rate under the Unemployment Compensation Law and under the Temporary Disability Benefits Law beginning January 1, 1987, in compliance with statutory provisions which automatically adjust these benefit rates each year in accordance with changes in the Statewide average weekly wage. The maximum weekly benefit for Unemployment Compensation is computed as 56 2/3 percent of the Statewide average weekly wage in the second preceding calendar year. As of January 1, 1987, the maximum weekly benefit will increase from \$214.00 to \$228.00.

The maximum weekly benefit for State Plan Temporary Disability is computed at 53 percent of the Statewide average weekly wage in the second preceding calendar year. As of January 1, 1987, the maximum weekly benefit will increase from \$200.00 to \$213.00.

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

12:15-1.3 Maximum weekly benefit rates

(a) In accordance with the provisions of the Unemployment Compensation Law, the maximum weekly benefit rate for benefits under the Unemployment Compensation Law is hereby promulgated as being [\$214.00] **\$228.00** per week.

(b) The maximum weekly benefit rate for State Plan benefits under the Temporary Disability Benefits Law is hereby promulgated as being [\$200.00] **\$213.00** per week.

(c) These maximum benefits shall be effective for the calendar year [1986] **1987** on benefit years and periods of disability commencing on or after January 1, [1986] **1987**.

### (b)

#### 1987 Taxable Wage Base Under the Unemployment Compensation Law

##### Proposed Amendment: N.J.A.C. 12:15-1.4

Authority: N.J.S.A. 34:1-5, 34:1-20 and 43:21-7(b)(3).

Proposal Number: PRN 1986-343.

The agency proposal follows:

##### Summary

The proposed amendment establishes the 1987 taxable wage base for the purpose of contributions under the Unemployment Compensation Law in accordance with N.J.S.A. 43:21-7(b)(3).

##### Social Impact

The amendment will generate increased revenues for the Unemployment Insurance and Disability Insurance Trust Funds needed to offset the increased level of benefits for these programs which are statutorily indexed to the upward trend of wages in the State's economy.

##### Economic Impact

The proposed amendment will increase from \$10,700 to \$11,300 the wages of an individual employee of an employer that are subject to employer and worker contributions under the Unemployment Compensation Law, beginning January 1, 1987. The taxable wage base is computed as 28 times the Statewide average weekly wage in the second preceding calendar year.

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

12:15-1.4 Taxable wage base under the Unemployment Compensation Law

In accordance with the provisions of N.J.S.A. 43:21-7(b)(3), the "wages" of any individual with respect to any one employer for the purpose of contributions under the Unemployment Compensation Law shall include the first [\$10,700] **\$11,300** during the calendar year [1986] **1987**.

### (c)

#### Base Week for Unemployment Compensation and State Plan Temporary Disability

##### Proposed Amendment: N.J.A.C. 12:15-1.6

Authority: N.J.S.A. 34:1-5, 34:1-20, 43:21-19(t), 43:21-27.

Proposal Number: PRN 1986-341.

The agency proposal follows:

##### Summary

The proposed amendment raises the amount of earnings required in 1987 to establish a base week for an individual's claim for unemployment compensation and State Plan temporary disability benefits.

##### Social Impact

The amendment provides for the base week amount to be indexed to wage increases, as benefit payments have been indexed since 1969. Some claimants who work temporarily or intermittently may not qualify for benefits under these tightened eligibility standards.

##### Economic Impact

The proposed amendment will increase the amount an individual must earn to establish a base week under the Unemployment Compensation and Temporary Disability Benefit Laws. The amount is computed as 20 percent of the Statewide average weekly wage in the second preceding calendar year and will increase from \$76.00 to \$81.00 for benefit years and periods of disability commencing January 1, 1987.

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

12:15-1.6 Base Week

In accordance with the provisions of N.J.S.A. 43:21-19(t), the base week amount is hereby promulgated as being [\$76.00] **\$81.00** per week for benefit years and periods of disability commencing [October 1, 1986.] **on or after January 1, 1987**.

**(a)**

**Alternative Earnings Test for Unemployment Compensation and State Plan Temporary Disability**

**Proposed Amendment: N.J.A.C. 12:15-1.7**

Authority: N.J.S.A. 34:1-5, 34:1-20 43:21-4(e), 43:21-41.

Proposal Number: PRN 1986-345.

The agency proposal follows:

**Summary**

The proposed amendment raises the amount of base year earnings required to establish an individual's eligibility for unemployment compensation and State Plan temporary disability benefits.

**Social Impact**

The amendment provides for the amount of earnings to establish eligibility to be indexed to wage increases, as benefit payments have been indexed since 1969. Some claimants who work only temporarily or intermittently may not qualify for benefits under the tightened standards.

**Economic Impact**

The proposed amendment increases the alternative earnings eligibility standard under the law in those situations where the individual has not established 20 base weeks in the base year period. The amount will increase from \$4,600 in 1986 to \$4,900 in 1987. The alternative earnings test is indexed each year at 12 times the Statewide average weekly wage in the second preceding calendar year.

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

12:15-1.7 Alternative earnings test

In accordance with the provisions of N.J.S.A. 43:21-4(e) and 43:21-41 in those instances in which the individual has not established 20 base weeks, the alternative earnings amount for establishing eligibility is hereby promulgated as being [\$4,600] **\$4,900** for benefit years and periods of disability commencing on or after January 1, [1986] **1987**.

**(b)**

**1987 Maximum Weekly Benefit Rate for Workers' Compensation**

**Proposed Amendment: N.J.A.C. 12:235-1.6**

Authority: N.J.S.A. 34:1-5, 34:1-20, 34:15-12.

Proposal Number: PRN 1986-344.

The agency proposal follows:

**Summary**

The proposed amendment establishes the 1987 maximum workers' compensation rates for temporary disability, permanent total disability, permanent partial disability, and dependency.

**Social Impact**

The amendment will ensure that payments to Workers' Compensation recipients entitled to maximum benefits will increase in line with the upward trend of wages in the State's economy, thus preserving the real purchaser power of their benefits.

**Economic Impact**

The proposed amendment will increase from \$284.00 to \$302.00 the weekly benefit rates received by individuals eligible for the maximum weekly benefit rate for temporary disability, permanent total disability, permanent partial disability, and dependency under the Workers' Compensation Law.

The effect of this change, other things being equal, will be to raise the employers' workers' compensation insurance costs.

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

12:235-1.6 **Maximum** workers' compensation benefit rates

(a) In accordance with the provisions of N.J.S.A. 34:15-12(a), the maximum workers' compensation benefit rate for temporary disability, permanent total disability, permanent partial disability, and dependency is hereby promulgated as being [\$284.00] **\$302.00** per week.

(b) This maximum compensation shall be effective as to injuries occurring in the calendar year [1986] **1987**.

**(c)**

**Unemployment Compensation Contribution Rates of Governmental Entities for 1987**

**Proposed Amendment: N.J.A.C. 12:15-1.5**

Authority: N.J.S.A. 34:1-5, 34:1-20, 43:21-7.3(e).

Proposal Number: PRN 1986-342.

Submit comments by October 8, 1986 to:

George M. Krause, Deputy Commissioner-Controller  
Department of Labor  
CN 078  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendment establishes the 1987 contribution rate for governmental entities that elect to pay contributions under the Unemployment Compensation Law.

**Social Impact**

The maintenance of the contribution rate for governmental entities for 1987 at the same level that prevailed in 1986 will create no significant social impact.

**Economic Impact**

The proposed amendment will maintain the contribution rate for governmental entities in 1987 at the same level that prevailed in 1986.

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

12:15-1.5 Contribution rate of governmental entities and instrumentalities

(a) In accordance with the provisions of N.J.S.A. 43:21-7.3(e), the contribution rate for all governmental entities and instrumentalities electing to pay contributions under the Unemployment Compensation Law is hereby promulgated as being one and three-tenths percent (1.3 percent) for the entire calendar year.

(b) This contribution rate shall be effective on taxable wages paid in the calendar year [1986] **1987**.

**LAW AND PUBLIC SAFETY**

**(d)**

**BOARD OF MEDICAL EXAMINERS**

**Advertising and Solicitation Practices**

**Proposed Amendment: N.J.A.C. 13:35-6.10**

Authorized By: Board of Medical Examiners, Edward W. Luka, M.D., President.

Authority: N.J.S.A. 45:9-2.

Proposal Number: PRN 1986-363.

Submit comments by October 8, 1986 to:

Charles A. Janousek, Executive Secretary  
Board of Medical Examiners  
28 West State Street  
Trenton, New Jersey 08608

The agency proposal follows:

**Summary**

The proposed amendment would assure that persons seeking health care treatment by a licensee of the Board of Medical Examiners have adequate opportunity to learn the identity of and make suitable inquiry about the practitioners offering the health care treatment. The rule would impose lesser detailed identification requirements on practitioners employed by ambulatory care facilities licensed by the Department of Health since those premises already function under stringent regulation and record keeping requirements.

**Social Impact**

The proposed amendment will have no impact on licensees engaged in solo practice or in partnerships or in professional associations. There will be an administrative and personal convenience to practitioners employed by licensed ambulatory care facilities in that, while their names must be disclosed to patients anticipating receipt of professional services,

the ongoing business nature of the professional premises makes it unnecessary to list each practitioner's name on the outside of the building or office.

**Economic Impact**

There will be no economic impact on any licensees other than those employed by licensed ambulatory care facilities. The owners of those facilities will not need to create new signs or modify existing signs when accommodating a change of personnel or with respect to ongoing employees whose identities are already listed on the premises and disclosed to patients.

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

13:35-6.10 Advertising and solicitation practices

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

(h) The name and nature of professional practice of every licensee practicing independently or as an employee of another licensee or of a professional service corporation shall appear on professional stationery and shall be conspicuously displayed and kept at the entrance of the place where the licensed practice is conducted. **The name of every licensee employed by an ambulatory health care facility licensed by the New Jersey Department of Health shall be posted at the entrance to the treatment area and the licensee providing professional services shall be identified on the bill and insurance claim form.**

(i)-(k) (No change.)

(l) All Board licensee advertisements and public representations intended to be displayed or circulated away from the office premises shall contain the name and address or name and telephone number of the Board licensee or the professional service corporation or trade name under which the practice is conducted and the nature of the professional practice. All such advertisements, including [the] telephone directory advertisements, may, if desired, list only the professional service corporation or trade name but must disclose the nature of the practice, and address or telephone number, and the name of at least one of the principal practitioners. **This requirement does not apply to licensees employed by an ambulatory health care facility licensed by the New Jersey State Department of Health.**

**STATE ATHLETIC CONTROL BOARD**

For the following proposals, submit comments by October 8, 1986 to:  
Larry Hazzard, Commissioner  
State Athletic Control Board  
CN 180, Justice Complex  
Trenton, New Jersey 08625

**(a)**

**Weight Classes; Age Limitations on Rounds of Boxing; Rules to Safeguard Health**

**Proposed Amendments: N.J.A.C. 13:46-1A.1, 1A.2; N.J.A.C. 13:46-5.19, 12.4.**

Authorized By: Larry Hazzard, Commissioner, State Athletic Control Board.

Authority: N.J.S.A. 5:2A-7(c).

Proposal Number: PRN 1986-356.

The agency proposal follows:

**Summary**

This proposal will establish new weight classes for boxers, grant the Commissioner the discretion to waive the age limitations on rounds of boxing, and codify the Board's current policy of assigning at least two ringside physicians to each boxing program conducted in this State.

The proposal will amend N.J.A.C. 13:46-1A.1 to include junior weight classes for lightweight, welterweights and middleweights. Such classifications are recognized and used throughout the United States and in foreign countries. this amendment, therefore, will permit boxers competing in New Jersey to compete in these weight classes as well. To protect the safety of the boxer, the weight differences between boxers will continue to be governed by N.J.A.C. 13:46-1A.2. This regulation has been amended to reflect the new 195 pound weight limitation for the cruiserweight classification.

N.J.A.C. 13:46-5.19, governing age limitations on rounds of boxing, will be amended to include a new subsection (e), which will grant the

Commissioner the discretion to waive the age limitations in appropriate circumstances. The regulation currently limits boxers who are 18 years of age to six rounds of boxing, boxers who are 19 years of age to eight rounds of boxing, and boxers who are 20 years of age to ten rounds of boxing. In some cases, the Board has found that the regulation has been too restrictive. For example, by the age of 19, a boxer may have had, in a four-to-five year period, a total of 200 to 250 amateur boxing bouts. Some boxers, because of this amateur experience and their professional boxing experience in other states, are therefore ready to box more than eight rounds and are in fact permitted to successfully compete in ten round bouts in other states. Therefore, based upon a thorough review of the boxer's past amateur and professional experience, the Commissioner should have the discretion to waive the age limitations in appropriate cases. The health and safety of the boxer will continue to be safeguarded because of the medical examinations which a boxer must undergo prior to licensure and prior to a bout. No boxer shall be permitted to enter the ring unless the physician appointed by the Commissioner has certified his fitness the engage in a boxing contest.

Finally, the proposal will amend N.J.A.C. 13:46-12.4 to include the requirement that at least two ringside physicians be assigned to cover each boxing program. This regulation codifies the Board's existing practice.

**Social Impact**

The proposal should have a positive social impact. The proposal will permit boxers to compete in a greater number of weight classes for the titles available in such classes. The proposal will also permit young boxers, who have demonstrated their ability in the amateur and professional ranks, to compete against opponents in bouts of a length consistent with their abilities. In addition, consistent with the Board's present practice, the proposal will require that two ringside physicians be assigned to each boxing program conducted in this State.

**Economic Impact**

Because the proposal provides for greater opportunities to boxers to compete in New Jersey, while at the same time protecting their health and safety, the economic impact would be positive. No additional costs to the Board are anticipated due to the fact that a minimum of two ringside physicians will be required to cover each boxing program, since this is already the Board's practice. It is expected that attendance at boxing shows will not decrease as the result of this proposal, thereby economically benefitting the boxing industry and the public through State tax revenue.

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

13:46-1A.1 Classes of boxers

(a) Boxers shall be divided into the following classes:

- |                              |                            |
|------------------------------|----------------------------|
| 1. Flyweight .....           | 112 pounds or under        |
| 2. Bantamweight .....        | over 112 to 118 pounds     |
| 3. Featherweight .....       | over 118 to 126 pounds     |
| 4. Lightweight .....         | over 126 to 135 pounds     |
| 5. Welterweight .....        | over 135 to 147 pounds     |
| 6. Middleweight .....        | over 147 to 160 pounds     |
| 7. Light heavyweight .....   | over 160 to 175 pounds     |
| 8. Cruiserweight .....       | over 175 to 190 pounds     |
| 9. Heavyweight .....         | all over 190 pounds]       |
| 1. Flyweight .....           | <b>up to 112 pounds</b>    |
| 2. Bantamweight .....        | <b>up to 118 pounds</b>    |
| 3. Featherweight .....       | <b>up to 126 pounds</b>    |
| 4. Junior Lightweight .....  | <b>up to 130 pounds</b>    |
| 5. Lightweight .....         | <b>up to 135 pounds</b>    |
| 6. Junior Welterweight ..... | <b>up to 140 pounds</b>    |
| 7. Welterweight .....        | <b>up to 147 pounds</b>    |
| 8. Junior Middleweight ..... | <b>up to 154 pounds</b>    |
| 9. Middleweight .....        | <b>up to 160 pounds</b>    |
| 10. Lighthavyweight .....    | <b>up to 175 pounds</b>    |
| 11. Cruiserweight .....      | <b>up to 195 pounds</b>    |
| 12. Heavyweight .....        | <b>all over 195 pounds</b> |

13:46-1A.2 Weight differences of contestants

(a) No contest shall be scheduled, and no contestants shall engage in a boxing contest where the weight difference shall exceed the allowance as shown in the following schedule, without the written approval of Commissioner:

1. 112 to 118 pounds, not more than three pounds.
2. 118 to 126 pounds, not more than five pounds.
3. 126 to 135 pounds, not more than seven pounds.
4. 135 to 147 pounds, not more than nine pounds.

- 5. 147 to 160 pounds, not more than 11 pounds.
- 6. 160 to 175 pounds, not more than 12 pounds.
- 7. 175 to [190] 195 pounds, not more than [15] 20 pounds.
- 8. [190] 195 pounds and over, no limit.

13:46-5.19 Age limitations on rounds of boxing  
(a)-(d) (No change.)

(e) The Commissioner shall have the discretion to waive the age limitations set forth in (a) through (c) above where, based upon a thorough review of the boxer's amateur and professional boxing experience, he determines that the boxer has demonstrated the ability to compete in a bout of longer duration. The Commissioner's review should include a consideration of the boxer's bouts of longer duration in other jurisdictions during the previous year and his degree of success against opponents who have competed in bouts of longer duration.

13:46-12.4 Duties of ringside physician  
(a)-(c) (No change.)

(d) The Commissioner shall assign a minimum of two physicians to each boxing program.

5. \$2,501.00 to \$3,000.00 net .....	\$ 40.00
6. \$3,001.00 to \$4,000.00 net .....	\$ 50.00
7. \$4,001.00 to \$5,000.00 net .....	\$ 60.00
8. \$5,001.00 to \$6,000.00 net .....	\$ 70.00
9. \$6,001.00 to \$7,000.00 net .....	\$ 80.00
10. \$7,001.00 to \$8,000.00 net .....	\$ 90.00
11. Over \$8,000.00 .....	\$100.00]

(a) For wrestling shows to which only one referee is assigned, the compensation to the referee shall be paid by the promoter conducting the show and shall be on the following basis:

1. When the gross gate receipts of the show do not exceed \$2,500, the fee for the referee shall be \$125.00.
2. When the gross gate receipts of the show are between \$2,500 and \$5,000, the fee for the referee shall be \$150.00.
3. When the gross gate receipts of the show are between \$5,000 and \$10,000, the fee for the referee shall be \$225.00.
4. When the gross gate receipts of the show are between \$10,000 and \$15,000, the fee for the referee shall be \$300.00.
5. When the gross gate receipts of the show are between \$15,000 and \$25,000, the fee for the referee shall be \$375.00.
6. When the gross gate receipts of the show are in excess of \$25,000, the fee for the referee shall be \$450.00

(b) For wrestling shows to which more than one referee is assigned, the compensation to each of the referees shall be paid by the promoter and shall be on the following basis:

1. When the gross gate receipts of the show do not exceed \$2,500, the fee for each of the referees shall be \$75.00.
2. When the gross gate receipts of the show are between \$2,500 and \$5,000, the fee for each of the referees shall be \$100.00.
3. When the gross gate receipts of the show are between \$5,000 and \$10,000, the fee for each of the referees shall be \$150.00.
4. When the gross gate receipts of the show are between \$10,000 and \$15,000, the fee for each of the referees shall be \$200.00.
5. When the gross gate receipts of the show are between \$15,000 and \$25,000, the fee for each of the referees shall be \$250.00.
6. When the gross gate receipts of the show are in excess of \$25,000, the fee for each of the referees shall be \$300.00.

(c) In the event one of the referees assigned to a wrestling show becomes incapacitated, or in an emergency situation where only one of the referees assigned to the show is available, the remaining referee shall referee the remaining contests on the program and, at the discretion of the Commissioner, may be compensated in an amount up to twice the amount of the fee established under (b) above. In such a situation, the compensation to be paid to the incapacitated or unavailable referee shall be reduced accordingly.

**(a)**

**Compensation of Wrestling Referees  
Proposed Repeal and New Rule: 13:46-21.2.**

Authority: N.J.S.A. 5:2A-7(c).  
Proposal Number: PRN 1986-364.  
The agency proposal follows:

**Summary**

The proposed new rule will establish new compensation schedules for wrestling referees.

This proposal amends N.J.A.C. 13:46-21.2. The proposal amends the compensation schedule for wrestling referees and also increases the amounts to be paid to these officials.

The proposal also adds a new provision whereby, at a wrestling show to which more than one referee has been assigned, a referee who must referee an entire, or the remaining portions of a wrestling show because of the incapacity or unforeseen unavailability of the second referee, may receive additional compensation at the discretion of the Commissioner. For example, if the gross gate receipts for a wrestling show were less than \$2,500, the promoter would be required to pay \$75.00 to each of the two referees assigned to the show for a total of \$150.00. If one of these referees became incapacitated at the start of the first match of the show and the other referee then refereed that match and the remaining matches on the program, that referee could be paid up to twice the amount of the fee established under N.J.A.C. 13:46-21.2(b). Thus, for example, the referee who was incapacitated may receive \$20.00 and the referee who worked the entire show would receive \$130.00. This provision is proposed based upon the Board's belief that a referee who performs more than his normal share of the referee duties at a wrestling show, due to unforeseen circumstances, should be compensated accordingly for his efforts.

**Social Impact**

The proposal would have a positive social impact. The new rule would bring the compensation schedules for wrestling referees into line with that paid in other jurisdictions.

**Economic Impact**

The proposal would affect the promoters of boxing shows who are required to pay the fees for the compensation of wrestling referees. The compensation schedules set forth in the new rule for these officials have been increased but are similar in range to those paid to such officials in other jurisdictions. The proposal will help to ensure that New Jersey continues to attract and retain qualified officials to preside at wrestling shows held in this State.

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

13:46-21.2 Compensation for wrestling referees

(a) The compensation to referees shall be paid by the promoter conducting the show and shall be on the following basis:

1. Up to \$700.00 net (after payment of Federal and State taxes) .....	\$ 20.00
2. \$701.00 to \$1,200.00 net .....	\$ 25.00
3. \$1,201.00 to \$2,000.00 net .....	\$ 30.00
4. \$2,001.00 to \$2,500.00 net .....	\$ 35.00

**TRANSPORTATION**

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

Submit comments by October 8, 1986 to:

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

**(b)**

**TRANSPORTATION OPERATIONS  
Restricted Parking and Stopping  
Route 169 in Hudson County  
Proposed Amendment: N.J.A.C 16:28-1.92**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98  
Proposal Number: PRN 1986-348.

The agency proposal follows:

**Summary**

The proposed amendment will establish speed limits along Route 169 in the City of Bayonne, and the City of Jersey City, Hudson County, delineating specific street locations and zones by mileposts for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

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Based upon requests 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 speed limits indicated at the various mileposts and locations were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.92 based upon the request from local officials and the traffic investigation.

#### Social Impact

The proposed amendment will establish speed limits along Route 169 in the City of Bayonne and the City of Jersey City, Hudson County delineating specific street locations and zones by mileposts 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 personnel and equipment requirements. The Department will bear the costs for the installation of speed limit signs. Motorists who violate the rules will be assessed the appropriate fine.

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

16:28-1.92 Route 169

(a) The rate of speed designated for the certain parts of State highway [r]Route number 169 described in this section shall be [and hereby is] established and adopted as the maximum legal rate of speed thereat:

1. For both directions of traffic[.] **in the City of Bayonne, and the City of Jersey City, Hudson County:**

i. **ZONE 1:** 40 miles per hour [from a point 550] **between 500** feet south of [the intersection of] 30th Street[, Bayonne to the intersection of] **and Prospect Avenue[.] (milepost 2.75 to 3.2);** thence

ii. **ZONE 2:** 45 miles per hour [to a point 3,400 feet north of the intersection of] **between** Prospect Avenue[. thence] **and Pulaski Street (milepost 3.2 to 4.0);** thence

iii. **ZONE 3:** 40 miles per hour [to a point 2,100 feet south of the intersection of] **between Pulaski Street and Garfield Avenue (milepost 4.0 to 4.9);** thence [Garfield Avenue, Jersey City; thence]

iv. **ZONE 4:** 35 miles per hour [to the intersection of] **between** Garfield Avenue[, Jersey City.] **and 2,112 feet north of the northernmost leg of John F. Kennedy Boulevard (milepost 4.9 to 5.73).**

## (a)

### TRANSPORTATION SERVICES

#### Transportation of Hazardous Materials

#### Proposed Amendment: N.J.A.C. 16:49-1.3, 1.4, 1.5, 1.6; 16:49-2.1, Appendix

Authority: N.J.S.A. 27:1A-5, 27:1A-6, Hazardous Materials

Transportation Act, Pub. L.93-633 (49 U.S.C. 1801 et seq.),

N.J.S.A. 39:5B-25 et seq. (P.L.1983 Chapter 401) and N.J.S.A.

39:5B-30 et seq. (P.L.1985 Chapter 415).

Proposal Number: PRN 1986-353.

The agency proposal follows:

#### Summary

On November 5, 1984 the Department proposed new rules, N.J.A.C. 16:49 "Transportation of Hazardous Materials" at 16 N.J.R. 2979(a). These rules were adopted on March 18, 1985 at 17 N.J.R. 712(a). The rules are being amended to reflect minor corrections, additions and deletions from the listing of hazardous materials, but more specifically to update the rules in accordance with the 1985 edition of the United States Department of Transportation (USDOT) Hazardous Materials Regulations. Additionally, several technical corrections are also proposed.

#### Social Impact

The proposed amendment impacts on shippers, motor carriers, and their personnel involved in interstate or intrastate commerce who transport hazardous materials in and between the State(s), in that they will be required to comply with and be knowledgeable of the new provisions of the rules. Interstate operations are already subject to the revised provisions.

The impact on the general public will be beneficial in that the safe transportation of hazardous materials will be assured along the highway and rail systems of New Jersey.

#### Economic Impact

The proposed amendment will have no significant economic impact on the motor carrier or railroad industries since the amendments effect only minor changes required to make New Jersey's rules consistent with the federal regulations. Interstate carriers are already subject to these rules under federal law.

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

16:49-1.3 General requirements

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

(g) Any portion of the Federal regulations governing transportation of hazardous materials by air, water, or pipeline [with] **within** Parts 107, 171, 172, 173, 174, 177, 178 and 179 are hereby excluded and not adopted by the Department.

(h) This chapter establishes minimum standards which must be complied with in conjunction with the transportation of hazardous materials. Therefore, in the event of a conflict between this chapter and any other State regulation, the stricter, more stringent standard shall apply and govern. This chapter is intended to complement, **and not to limit** those related statutory and regulatory provisions of the New Jersey Department of Environmental Protection regarding hazardous wastes, radioactive materials, spill compensation and control.

(i) This chapter may be amended from time to time by the New Jersey Department of Transportation. The federal "Hazardous Materials Regulations" referenced herein, are adopted as of November 1, 1983[5]. The "Federal Motor Carrier Safety Regulations" as referenced in Section 177.804 are adopted as of October 31, 1983. The New Jersey Department of Transportation intends to amend these regulations as new Federal publications become available.

(j)-(k) (No change.)

(l) The provisions and requirements of these regulations as well as the federal regulations adopted by reference and made a part hereof are applicable to interstate as well as intrastate transporters of hazardous materials unless specifically stated otherwise. However, transporters of combustible liquids excluded under 49 C.F.R. 173.118a(a) as modified (See Appendix) [are not subject to any of the provisions or requirements of the adopted federal regulations. Furthermore, combustible liquids excluded under] **and** 49 C.F.R. 173.118a(b) as modified (See Appendix) are subject only to the requirements specified therein.

1. (No change.)

2. A transporter carrying a combustible liquid categorized as a hazardous substance or waste[r] under 49 C.F.R. 171.8 or 49 C.F.R. 172.10 (see Appendix) in packaging having a rated capacity of 110 gallons or less is subject only to the requirements specified within 49 C.F.R. 173.118a(b)(1) through (7) as modified in the appendix; it is not subject to any other provision of the adopted federal regulations. A transporter carrying combustible liquids categorized as a hazardous substance or waste[r] in packaging having a rated capacity greater than 110 gallons, a portable tank, cargo tank or tank car is subject to all applicable provisions of this regulation including the adopted Federal regulations.

16:49-1.4 Penalty for violation of these provisions

(a) The penalty for a violation of these provisions including the Federal regulations incorporated by reference in N.J.A.C. 16:49-2 and herein shall be as specified under N.J.S.A. 39:5B-25 et seq., **as amended**.

(b) (No change.)

16:49-1.5 Document availability

(a) Copies of the federal "Hazardous Materials Regulations", Title 49, Code of Federal Regulations, Parts 171, 172, 173, 174, 177, 178, and 179, revised as of November 1, 1983[5], and referenced herein, may be purchased from the places listed below. The "Federal Motor Carrier Safety Regulations," Title 49, Code of Federal Regulations, Parts 390 through 397, revised as of October 31, 1983, and adopted by reference in Section 177.804 of the Appendix to the Regulations Regarding the Transportation of Hazardous Materials may also be purchased at the places listed below:

1.-3. (No change.)

(b) (No change.)

(c) Copies of Title 49, CFR volumes noted above, are further available for review at the New Jersey Department of Transportation, Office of Freight Services, 1035 Parkway Avenue, Trenton, New Jersey 08625. Hours at this office are 8:30 A.M. to 5:00 P.M., Monday through Friday. This office may be contacted at (609) [292-1530.] **530-2821 or 530-2822.**

16:49-1.6 Assistance

For general assistance and procedural questions in matters related to New Jersey's Hazardous Materials Regulations, as adopted herein, contact:

Office of Freight Services  
New Jersey Department of Transportation  
1035 Parkway Avenue  
CN 600  
Trenton, New Jersey 08625  
(609) [292-1530] **530-2821 or 530-2822**

For assistance in matters related to enforcement or interpretation of the Hazardous Materials Regulations, contact:

Office of Hazardous Materials  
Transportation Compliance and Enforcement [New Jersey]  
New Jersey Department of State Police  
P.O. Box 7068  
West Trenton, New Jersey 08625  
(609) 882-2000, extension 2581 or 2582

16:49-2.1 Parts adopted by reference

(a) The New Jersey Department of Transportation, pursuant to N.J.S.A. 39:5B-25 et seq., hereby incorporates by reference the following portions of Title 49—Transportation, Code of Federal Regulations, revised as of November 1, 1983[5]. The parts adopted by reference are found in Chapter 1, referred to as "Research and Special Programs Administration, Department of Transportation." These parts are detailed in the APPENDIX TO THE REGULATIONS REGARDING THE TRANSPORTATION OF HAZARDOUS MATERIALS. The portions adopted are summarized below.

1. (No change.)
2. Part 172 Hazardous Materials Tables and Hazardous Material Communications Regulations. (Modifications are made to Section 172.3.)
3. (No change.)
4. Part 174, Carriage by Rail. [(Section 174.8 is excluded from adoption herein.)]
- 5.-7. (No change.)

APPENDIX TO THE REGULATIONS REGARDING THE  
TRANSPORTATION OF HAZARDOUS MATERIALS

Section 171.12a Canadian shipments and packagings

Section 171.15 is revised to state the following[.]: (Note: Paragraph (a) has been changed and paragraph (d) has been added.)

(a) At the earliest practicable moment, such carrier who transports hazardous materials (including hazardous wastes) shall give notice in accordance with paragraph (b) or paragraph (d) of this section after each incident that occurs during the course of transportation (including loading, unloading and temporary storage) in which as a direct result of hazardous materials:

(1)-(6) (No change.)

(b) Each notice required by paragraph (a) of this section shall be given to the U.S. Department of Transportation by telephone (toll-free) on 800-424-8802. Notice involving etiologic agents may be given to the Director, Center [of] for Disease Control, U.S. Public Health Service, Atlanta, Georgia, Area code (404) [653] **633-5313**, in place of the notice to the U.S. Department of Transportation or (toll call) on 202-426-2675. Each notice must include the following information:

(1)-(7) (No change.)

(c)-(d) (No change.)

Section 171.16—Detailed hazardous materials incidents reports. (New Jersey Revision as noted below.)

Section 171.16 is revised to state the following: (Note: Paragraph (a) has been changed and paragraph (e) has been added.)

(a) (No change.)

(b) Each carrier making a report under this section shall send that report to the Information Systems Manager, [Materials Transportation Bureau.] **Research and Special Programs Administration**, U.S. Department of Transportation, Washington, DC 20590.

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

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

Subpart A—General

Section 172.1 Purpose and scope.

Section 172.3 Applicability.

(a) (No change.)

(b) When a person other than one of those provided for in paragraph (a) of this section, performs a packaging, labeling or marking function required by this part, that person shall perform the function in accordance with this part.

Subpart B—Tables of Hazardous Materials, Their Description, Proper Shipping Name, Class, Label, Packaging, and Other Requirements

Section 172.101 Purpose and use of hazardous materials table, including the Hazardous Materials Table, CERCLA List, Specific Chemical Wastes, Chemicals Listed by EPA under Section 307(a) of the Clean Water Act, Chemicals Listed by EPA under Section 112 of the Clean Air Act.

Section 172.102 Purpose and Use of Optional Hazardous Materials Table for international shipments, including the Optional Hazardous Materials Table.

Appendix A to Subpart B above—Identification Number Cross Reference to Proper Shipping Names in Section 172.101 and Section 172.102.

Subpart C—Shipping Papers. (No change.)

Subpart D—Marking.

Section 172.316 Packagings containing material closed as ORM.

Section 172.328 Cargo [T]tanks.

Subpart E—Labeling. (No change.)

Subpart F—Placarding.

Section 172.505 Special Placarding requirements for certain poisonous materials.

Section 172.512 Freight Container[.]s and aircraft unit load devices.

Appendix A—Office of Hazardous Materials [Regulations] Transportation Color Tolerance Charts and Tables.

Appendix B—Dimensional Specification for Placards

Appendix C—Dimensional Specifications for Recommended Placard Holder

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGING

Subpart A—General

Section 173.2 Classification of a material having more than one hazard as defined in this [P]part.

Section 173.3a Packaging; special requirements for certain poisonous materials.

Section 173.6 Shipment by [A]air.

[Section 173.8 Canadian shipments and packagings.]

Section 173.2 Exceptions for shipment of waste material.

Subpart B—Preparation of Hazardous Materials for Transportation.

Section 173.32 Qualification maintenance and use of portable tanks other than [s]Specification IM portable tanks.

Subpart C—Explosive and Blasting Agents: Definition and Preparation

Section 173.53 Definition of [c]Class A explosives.

Section 173.6 Ammunition, projectiles, grenades, bombs, mines, gas mines, and torpedoes.

Section 173.63 High explosive[s] with liquid explosive ingredient.

Section 173.79 Jet thrust units (jato), Class A explosives; rocket motors, [c]Class A explosive[.]; igniters, jet thrust (jot), [c]Class A explosives; and igniters, rocket motor, [c]Class A explosives.

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...		[Section 173.170	Fibers of fabrics impregnated, saturated or coated.]
Section 173.81	<b>Detonating Cord.</b>		
Section 173.88	Definition of [c]Class B explosives	[Section 173.172	Hair, wet.]
Section 173.92	Jet thrust units (jato), [c]Class B explosives; rocket motors [c]Class B explosives igniters, jet thrust (jato), [c]Class B explosives; igniters, rocket motors, [c]Class B explosives; and starter cartridges, jet engine, [c]Class B explosives.	Section 173.176	[Matches.] <b>Safety matches.</b>
		Section 173.176a	<b>Strike anywhere matches.</b>
		[Section 173.185	Paper stock, wet.]
		[Section 173.186	Paper waste, wet.]
Section 173.102	Explosive cable cutters; explosive power devices, [c]Class C; explosive release devices, or starter cartridges, jet engine, [c]Class C explosives.	[Section 173.199	Rags, oily.]
Section 173.103	Detonators, [c]Class C explosives, and detonating primers, [c]Class C explosives.	[Section 173.200	Rags, wet.]
Section 173.104	[Cordeau detonant fuse.] <b>Cord, detonating flexible; mild detonating fuse, metal clad or flexible; or flexible linear shaped charges, metal clad.</b>	[Section 173.201	Rubber scrap, rubber buffings, reclaimed rubber, or regenerated rubber.]
Section 173.107	Primers, percussion caps, <b>and</b> grenades, empty, primed. [and cartridge cases, empty primed.]	[Section 173.209	Tankage, garbage, and tankage fertilizers.]
		[Section 173.210	Tankages, rough ammoniate.]
		[Section 173.211	Textile waste, wet.]
Section 173.113	Detonating fuses, [c]Class C explosives.	[Section 173.213	Wool waste, wet.]
Section 173.113	Detonating fuses, [c]Class C explosives.	Section 173.217	Calcium hypochlorite, hydrated[;], [c]Calcium hypochlorite[.] mixture dry; lithium hypochlorite mixture, dry; mono-(trichloro) tetra-(monopotassium dichloro)-penta-s-triazinetrione, dry; potassium dichloro-s-triazine[-] trione, dry; sodium dichloro-s-triazinetrione, dry; trichloro-s-triazinetrione, dry.
Subpart D—Flammable, Combustible, and Pyrophoric Liquids: Definitions and Preparation.			
Section 173.118a	Exceptions for combustible liquids. Section 173.118a is revised to state the following: (Note: <b>Subparagraph (a) has been modified and Subparagraph (b)(7) has been added.</b> Most combustible liquids being transported are only subject to items (b)(1) through (b)(7) as stated below. They are not subject to the remainder of New Jersey's Hazardous Material Regulations.)		
	(a) Unless otherwise stated for a specific material, the regulations in this subchapter <b>with the exception of Section 173.24 (Standard requirements for all packages)</b> , do not apply to a material classed as a combustible liquid in a packaging having a rated capacity of 110 gallons or less, unless the combustible liquid is a hazardous substance, or a hazardous waste.		
	(b) A combustible liquid that is a hazardous substance or a hazardous waste in a packaging having a rated capacity of 110 gallons or less, and a combustible liquid in a portable tank, cargo tank or a tank car is not subject to the requirements of this subchapter except those pertaining to: (1)-(7) (No change.)		
Section 173.127	Nitrocellulose or collodion cotton, fibrous or nitrostarch, wet; nitrocellulose flakes; colloided nitrocellulose, granular flake, or block, and lacquer base [of] <b>or</b> lacquer chips, wet.	Section 173.224	Cumene hydroperoxide, dicumyl peroxide, diisopropylbenzene hydroperoxide, paramenthane hydroperoxide, pinane hydroperoxide, and [tertiary] <b>tertiary</b> butylisopropyl benzene hydroperoxide.
[Section 173.129	Polishes (flammable liquids).]	Section 173.228	Zinc ammonium [nitrate] <b>nitrite</b> .
Subpart E—Flammable Solids, Oxidizers, and Organic Peroxides: Definitions and Preparation.		[Section 173.233	Nickel catalyst, finely divided, activated or spent.]
Section 173.154a	[Fuses.] <b>Fusees.</b>	[Section 173.238	Aircraft rocket engines (commercial) and/or aircraft rocket engine igniters (commercial).]
[Section 173.155	Bags, nitrate of soda, empty and unwashed.]		
Section 173.157	Benozyl peroxide, chlorobenzoyl (para), cyclohexanone peroxide, [demethylhexane] <b>dimethylhexane</b> dihydroperoxide, lauroyl peroxide, or succinic acid peroxide, wet.		
Section 173.158	Benozyl peroxide, dry; chlorobenzoyl peroxide (para) dry [;]; cyclohexanone peroxide, dry; lauroyl peroxide, dry; or succinic acid peroxide dry.	Section 173.248	[Acid sludge, sludge acid,] [s]Spent sulfuric acid, or spent mixed acid.
Section 173.164	[Chronic] <b>Chromic</b> acid or chromic acid mixture, dry.	Section 173.249	Alkaline corrosive liquids, n. o. s.; [A] <b>alkaline</b> [corrosive] <b>liquids, n. o. s.; alkaline</b> battery fluid; [P] <b>potassium</b> flouride solution; [P] <b>potassium</b> hydrogen flouride solution; [S] <b>sodium</b> aluminate, liquid; [S] <b>sodium</b> hydroxide solution; [P] <b>potassium</b> hydroxide solution[.]. [Boiler Compound, liquid, solution.]
		Section 173.249a	Cleaning compound, liquid; [C] <b>coal</b> tar dye, liquid; [D] <b>dye</b> intermediate, liquid; [M] <b>mining</b> reagent, liquid; and [T] <b>textile</b> treating compound mixture, liquid.
[Section 173.167	Cotton waste, oily.]		
		Section 173.264	Hydrofluoric acid; [W] <b>white</b> acid.
[Section 173.169	Fiber, burnt.]	Section 173.265	[Hydrofluorosilicic] <b>Fluosilicic</b> acid[.] ( <b>hydrofluorosilicic Acid</b> ) ( <b>hydrofluosilicic acid</b> ).
		[Section 173.298	Memtetrahydro phtholic anhydride.]
		Subpart G—[Compressed] Gases: Definition and Preparation.	

...		[Section 173.1030	Oakum or twisted jute packing.]
Section 173.315	Compressed gases in cargo tanks and portable tanks. [containers.]	[Section 173.1035	Oiled material.]
Section 173.316	[Liquified hydrogen] <b>Cryogenic liquids in cylinders.</b>	...	
Subpart H—Poisonous Materials, Eliologic Agents, and Radioactive Materials; Definitions and Preparation.		[Section 173.1075	Scrap paper or waste.]
...		...	
Section 173.336	Nitrogen dioxide, liquid; nitrogen peroxide, liquid; and nitrogen tetroxide, liquid.	[Section 173.1085	Yeast, active (in liquid or compressed form).]
...		...	
Section 173.353a	Methyl bromide, liquid, and nonflammable, nonliquefied compressed gas mixtures.	Subpart N—Other Regulated Material; ORM-D.	
...		<b>Section 173.1201 Small arms ammunition.</b>	
Section 173.358	Hexaethyl tetraphosphate, methyl parathion, organic phosphate compound, organic phosphor[us]ous compound, parathion, tetraethyl dithio pyrophosphate, and tetraethyl pyrophosphate, liquid.	Subpart O—Other Regulated Material; ORM-E. (No change.)	
...		Appendix A—Method of Testing Corrosion to Skin. (No change.)	
Section 173.368	Arsenical dust, arsenical flue dust, and other poisonous, non[-]combustible by-product dusts; also arsenic trioxide, calcium arsenate, and sodium arsenate.	<b>Appendix B—Procedure for testing chemical compatibility and Rate of Permeation in Polyethylene Packaging and Receptacles.</b>	
...		PART 174—CARRIAGE BY RAIL	
Section 173.381	Irritating materials; [D]definition and general packaging requirements.	Subpart A—General Requirements.	
...		<b>Section 174.8 Inspection.</b>	
Subpart I—Radioactive Materials.		Section 174.11	Canadian shipments and packag[es]ings.
Section 173.417	Authorized packaging-[F]fissile materials.	Subpart B—General Operating Requirements. (No change.)	
...		Subpart C—General Handling and Loading Requirements.	
Section 173.423	Table of activity limits—excepted quantities and [devices.] <b>articles.</b>	Section 174.61	Truck bodies, trailers or freight containers on [flat cars.] <b>flatcars.</b>
...		Subpart D—Handling of Placarded Cars. (No change.)	
Section 173.472	Requirements for exporting DOT [s]Specification Type B and fissile packages.	Subpart E—Detailed Requirements for Explosives. (No change.)	
...		Subpart F—Detailed Requirements for Gases.	
Subpart J—Other Regulated Material; Definition and Preparation. (No change.)		Section 174.204	Tank car delivery of gases[.], <b>including cryogenic liquids.</b>
Subpart K—Other Regulated Material, ORM-A.		...	
Section 173.605	Ammonium hydrosulfide solution, ammonium polysulfide solution, bromochloromethane, dibromodifluoromethane, dichlorodifluoroethylene; dichloromethane, [methyl chloroform.] <b>1, 1, 1-trichloroethane</b> , perfluoro-2-butene, tetrachloroethylene, and trichloroethylene.	Subpart G—Detailed Requirements for Flammable Liquids	
...		Subparts H-M (No change.)	
Subpart L—Other Regulated Materials, ORM-B. (No change.)		PART 177—CARRIAGE BY PUBLIC HIGHWAY (No change.)	
Subpart M—Other Regulated Material; ORM-C.		PARTS 390-396 (No change.)	
[Section 173.925	Box toe board.]	PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES	
...		Section 397.1	Application of the rules in this part.
[Section 173.930	Burlap bags, used and unwashed or not cleaned.]	Section 397.2	Compliance with Federal motor carrier safety regulations.
[Section 173.931	Burlap cloth, burlap bags, new, used, and washed, or vacuum cleaned, wheel cleaned or otherwise mechanically cleaned.]	Section 397.5	Attendance and surveillance of motor vehicles.
...		Section 397.7	Parking.
[Section 173.965	Cotton and other fibers.]	Section 397.11	Fires.
[Section 173.970	Cotton batting, batting dross, wadding seed hull fiber, shavings pulp, and cut linters.]	Section 397.12	Smoking.
[Section 173.975	Cotton sweepings, and textile, cotton, felt, or wool waste.]	Section 397.15	Fueling.
[Section 173.980	Excelsior.]	Section 397.17	Tires.
...		Section 397.19	Instructions and documents.
[Section 173.990	Feed wet mixed.]	Section 397.21	Marking of vehicles operated by private carriers.
...		<b>PART 177—CARRIAGE BY PUBLIC HIGHWAY (CONTINUED).</b>	
[Section 173.1000	Garbage tankage, rough ammoniate tankage, or tankage fertilizer.]	Subpart B—Loading and Unloading	
...		...	
[Section 173.1005	Hay or straw.]	Section 177.840	Compressed gases[.], <b>including cryogenic liquids.</b>
Section 173.1025	Ferrous metal borings, shovings, turnings, or cuttings (excluding stainless steel).	Subpart C—[Loading and Storage] <b>Segregation and Separation</b> Chart of Hazardous Materials.	
		Section 177.848	[Loading and storage] <b>Segregation and Separation</b> chart of hazardous materials.
		Subpart D—Vehicles and shipments in Transit; Accidents.	
		...	
		Subpart E—Regulations Applying to Hazardous Material on Motor Vehicles Carrying Passengers for Hire.	
		16:49-2.1 TRANSPORTATION OF HAZARDOUS MATERIALS	
		APPENDIX A—RELATIONSHIP BETWEEN ROUTING REQUIREMENTS IN PART 177 WITH STATE AND LOCAL REQUIREMENTS	
		Appendix A above, of Part 177, is excluded from adoption herein.	
		PART 178—SHIPPING CONTAINER SPECIFICATIONS	
		Subpart A—Specifications for Carboys, Jugs in Tubs, and Rubber Drums	
		...	

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- Section 178.19 Specification 34: reusable molded polyethylene [container] **drum** for use without overpack. Removable head not authorized.
- Subpart B—Specifications for Inside Containers, and Linings
- Section 178.24 Specification 2U; molded or thermoformed polyethylene containers. [having rated capacity of over one gallon. Removable head containers or containers fabricated from film not authorized.]
- Section 178.35 Specification 2S; polyethylene [packaging.] **container**.
- Section 178.35a Specification 2SL; molded or thermoformed polyethylene [packaging.] **Container**.
- Subpart C—Specifications for Cylinders.
- Section 178.61 Specification 4BW; welded steel cylinders made of definitely prescribed steels with electric-arc welded longitudinal seam.
- Subpart D—Specifications for Metal Barrels, Drums, Kegs, Cases, Trunks, and Boxes. (No change.)
- Subpart E—Specifications for Wooden Barrels, Kegs, Boxes, Kits and Drums. (No change.)
- Subpart F—Specifications for Fiberboard Boxes, Drums, and Mailing Tubes. (No change.)
- Subpart G—Specifications for Bags, Cloth, Burlap, Paper or Plastic. (No change.)
- Subpart H—Specifications for Portable Tanks. (No change.)
- Subpart J—Specifications for Containers for Motor Vehicle Transportation. (No change.)
- Subpart K—Specifications for General Packagings. (No change.)
- Appendix A—Specifications for Steel. (No change.)  
[Appendix B—Specifications for Plastics.]
- PART 179—SPECIFICATIONS FOR TANK CARS**
- Subpart A—Introduction, Approvals, and Reports. (No change.)
- Subpart B—General Design Requirements. (No change.)
- Subpart C—Specifications for Pressure Tank Car Tanks (Classes DOT—105, 109, 112 and 114).
- Section 179.104 Special requirements spec. 105[-]A200-F tank car tanks.
- Subpart D—Specifications for Non-Pressure Tank Car Tanks (Classes DOT—103, 104, 111AF, 111AW, and 115AW).
- Section 179.203 Special requirements for specification III tank cars.**
- Section 179.220 General specifications applicable to non[-]pressure tank car tanks consisting of an inner container supported within an outer shell (Class DOT-115).
- Subpart E—Specifications for Multi-Unit Tank Car Tanks (Classes DOT—106A and 110AW).
- Subpart F—Specification[s] for [Liquefied Hydrogen] **Cryogenic Liquid** Tank Car Tanks and Seamless Steel tanks (Classes DOT-113 [A-W] and 107A).
- [Subpart F—Specifications for Liquefied Hydrogen Tank Car Tanks and Seamless Steel Tanks (Classes DOT—113A-W and 107A).]
- Section 179.400 General specification[s] applicable to [liquefied hydrogen] **cryogenic liquid** tank car tanks.
- Section 179.401 Individual specification requirements [for liquefied hydrogen tank car tanks.] **applicable to inner tanks for cryogenic liquid tank car tanks.**

## TREASURY-GENERAL

### DIVISION OF PENSIONS

For the following proposals, submit comments by October 8, 1986 to:

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

(a)

### Police and Firemen's Retirement System Retirement; Applications

#### Proposed Amendment: N.J.A.C. 17:4-6.1

Authorized By: Board of Trustees, Police and Firemen's

Retirement System, Anthony Ferrazza, Secretary.

Authority: N.J.S.A. 43:16A-13(7).

Proposal Number: PRN 1986-358.

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 rule, the retirement date is advanced by one month if the member does not file the retirement application by the time limit. Under the proposed amendment, 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. It 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 proposed amendment follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

#### 17:4-6.1 Applications

(a) Applications for retirement must be made on forms prescribed by the system. [1.] Such forms must be completed in all respects and filed with the system before the requested date of retirement.

[2.](b) In the event a member files an incomplete application, the [deficiencies] **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.

[3.](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 and the [salary] **salaries** reported for contributions in the member's final years of employment.

[4. 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.]

[(b)](d) In addition to the [requirements set forth in (a) above, the] **foregoing requirements**, 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.

**(a)**

**Prison Officers' Pension Fund  
Retirement; Applications**

**Proposed Amendment: N.J.A.C. 17:7-3.1**

Authorized By: Prison Officers' Pension Fund Commission,

Anthony Ferrazza, Secretary.

Authority: N.J.S.A. 43:7-19.

Proposal Number: PRN 1986-349.

The Agency proposal follows:

**Summary**

The proposed amendment brings the rule into line with current personnel practices. The phrase "or she" has been added to N.J.A.C. 17:7-3.1(a)2. "Employing agency" has been changed to "employer", at N.J.A.C. 17:7-3.1(a)3 and (b). Additionally, "compensation report" has been changed to "salaries reported" to more accurately reflect current pension fund practices.

**Social Impact**

The amendments do not change the impact on those receiving prison officer pensions, but reflect changes made in other areas, such as Equal Employment Opportunity, which have had an impact on the areas covered by N.J.A.C. 17:7-3.1.

**Economic Impact**

There is no change in the economic impact of this rule on the affected individuals. However, the language has been changed to more accurately reflect current practices in the administration of the Prison Officers' Pension Fund.

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

17:7-3.1 Applications

(a) Applications for retirement must be made on forms prescribed by the fund. [1.] Such forms must be completed in all respects and filed with the fund before the requested date of retirement.

[2.](b) In the event a member files an incomplete application, the [deficiencies] **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.

[3.](c) Before an application for retirement may be accepted for processing, it must be supported by a certificate from the [employing agency] **employer** setting forth the employment termination date and the [compensation report] **salaries reported** for contributions in the member's final years of employment.

[(b)](d) In addition to the [requirements set forth in (a) above] **foregoing requirements**, the application for disability retirement must be supported by a report of the member's personal or attending physician and a statement from the [employing agency] **employer** regarding the member's incapacity for further duty.

# RULE ADOPTIONS

## EDUCATION

### (a)

#### STATE BOARD OF EDUCATION

##### Business Services

##### Tuition for Private Schools for the Handicapped

##### Adopted Amendment: N.J.A.C. 6:20-4.4

Proposed: June 16, 1986 at 18 N.J.R. 1237(a).

Adopted: August 11, 1986 by State Board of Education,  
Saul Cooperman, Secretary.

Filed: August 12, 1986 as R.1986 d.360, **without change**.

Effective Date: September 8, 1986.

Expiration Date: August 9, 1990.

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

Six letters with comments were received. Two letters expressed support for the new rules. The others suggested that:

1. Rental charges are well below fair market costs and often do not exceed the actual costs of operating the schools.
2. The rule creates a hardship for schools that need a related corporation to fulfill specific needs.
3. The rule assumes all private schools are rent gougers.
4. The Department of Education should be given the authority to disallow unreasonably high rental charges under "patently unreasonable".
5. Each case should be addressed individually in whatever manner the Department and/or the Attorney General finds appropriate.
6. This proposal is not an effective way of dealing with whatever abuse the Department feels may be occurring.
7. Organizations that fall under the regulation would be suspect and subject to change.
8. It seems more clear to disallow duplicate payments by the related party.
9. "You are killing a fly with a sledge hammer."

The responses of the Department of Education to these comments were that:

1. In instances where rental charges do not exceed the cost of ownership, the proposal will have no effect on the related corporation.
2. The department disagreed. The proposal restricts only the rental charge and not the operation of the related party corporation.
3. The department disagreed. The issue addressed by the proposal is not rent gouging but rather a lack of open competitive bargaining.
4. The department disagreed. The Deputy Attorney General has advised that the department would be unable to restrict less-than-arm's length transactions on the grounds of being "patently unreasonable".
5. The department disagreed, and the Deputy Attorney General has advised that specific code provisions would be needed.
6. The department disagreed and feels that, because related parties are charging in excess of the cost of ownership, there is a need for the regulation.
7. The department disagreed. The regulations do not require a change in the structure of the related party.
8. The department disagreed. The department has authority only over the private school and not the related party.
9. The department disagreed and feels that, because related parties are charging in excess of the cost of ownership, there is a need for the regulation.

Full text of the adoption follows.

##### 6:20-4.4 Non-allowable costs

(a) A cost which is not allowable in the calculation of a tuition rate includes the following:

- 1.-35. (No change.)
36. Rental costs for buildings and equipment when owned by a parent organization not separately incorporated;
37. Certain costs related to transactions between related parties in which one party to the transaction is able to control or substantially influence the actions of the other. Such transactions are defined by the

relationship of the parties and include but are not limited to those between divisions of an institution; institutions or organizations under common control through common officers, directors, or members; and an institution and a director, trustee, officer, or key employee of the institution or his or her immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. Such costs shall include:

i. Rental costs for buildings and equipment in excess of the actual allocated costs of ownership (such as straight line depreciation, mortgage interest, real estate taxes, property insurance and maintenance costs) incurred by the related property owner including a 2.5 percent return calculated on the actual costs of ownership incurred by the related party. The lease agreement shall include a list of anticipated costs to be incurred by the property owner, prepared in the format supplied by the Department of Education, signed by the property owner and notarized;

ii. Rental costs under a sub-lease arrangement with a related party for buildings and equipment in excess of the actual allocated costs related to the lease (such as rent, lease commission expense, and maintenance costs) incurred by the sub-lessor. No profit, return on investment or windfall of any kind shall be included in the sub-rental cost. The sub-lease agreement shall include a list of anticipated costs to be incurred by the sub-lessor, signed by the sub-lessor and notarized;

iii. Cost of purchasing buildings, equipment or other goods from related parties in excess of the original cost to the related party less depreciation calculated using the straight line method;

iv. Cost of personal services paid to a related party when such services are provided by the salaried employee of the private school acting as an employee or agent of the related party;

38. A cost found to be patently unreasonable.

## ENVIRONMENTAL PROTECTION

### (b)

#### DIVISION OF ENVIRONMENTAL QUALITY

##### Office of Quality Assurance

##### Laboratory Certification and Standards of Performance

##### Readoption: N.J.A.C. 7:18

Proposed: June 16, 1986 at 18 N.J.R. 1239(b).

Adopted: August 5, 1986 by Richard T. Dewling, Commissioner,  
Department of Environmental Protection.

Filed: August 6, 1986 as R.1986 d.351, **without change**.

Authority: N.J.S.A. 13:1D-1 et seq., and 58:12A-1 et seq.

Effective Date: August 6, 1986.

Expiration Date: August 6, 1991.

DEP Docket No. 025-86-05.

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

COMMENT: Those laboratories already certified by the department for certain analytes or methods should be granted interim certification status for additional analytes or methods pending full certification.

RESPONSE: The department elects not to grant such interim certification status prior to its full evaluation of the laboratory's capabilities. Further consideration of this issue, however, will be made by the department during its forthcoming revisions to this chapter.

COMMENT: Several modifications to the existing bioassay procedures, including the selection of indicator species used and the handling of receiving water controls, were recommended.

RESPONSE: The department is currently considering these and other significant modifications to the existing bioassay procedures for inclusion in its forthcoming revisions to this chapter. As the department has not resolved these issues, the requested changes to the readoption have not been made.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 7:18.

## DIVISION OF HAZARDOUS WASTE MANAGEMENT

(a)

## Waste Code Numbers for Hazardous Waste Containing Hazardous Constituents

## Adopted Amendment: N.J.A.C. 7:26-8.16

Proposed: April 21, 1986 at 18 N.J.R. 792(a).

Adopted: August 18, 1986, by Michael F. Catania, Deputy Commissioner, Department of Environmental Protection.

Filed: August 18, 1986, as R.1986 d.371 **without change**.

Authority: N.J.S.A. 13:1D-9 and 13:1E-6.

Effective Date: September 8, 1986.

Expiration Date: November 4, 1990.

DEP Docket No. 014-86-03.

## Summary of Public Comments and Agency Responses:

The following comments were received:

COMMENT: Besides assigning a number for each hazardous constituent, a concentration limit should be established for each constituent.

RESPONSE: Although the Department agrees that a concentration limit should be established for each hazardous constituent, this amendment does not address this issue. Establishing threshold concentrations for hundreds of compounds is a resource-intensive process. The United States Environmental Protection Agency (USEPA) has been working on this question and these efforts have resulted in the development of regulatory thresholds for 52 compounds (see 51 FR 21648, June 13, 1986). As USEPA continues to develop regulatory thresholds for the remaining hazardous constituents, the Department will review them. In the meantime, the Department shall use the approach described in N.J.A.C. 7:26-8.6 for specific hazardous waste determinations.

COMMENT: The hazardous constituent list was in alphabetical but not in ascending numerical order.

RESPONSE: The Department has determined that it is not practicable to concurrently maintain ascending numerical and alphabetical orders in a list that is subject to revision. When scientific studies reveal new carcinogenic, mutagenic and teratogenic substances, the Department places such compounds in alphabetical order and assigns to the constituents the next available numerical codes.

Full text of the adoption follows.

## 7:26-8.16 Hazardous constituents

Waste streams containing the hazardous constituents listed below, classified as hazardous waste by the generator or the Department pursuant to N.J.A.C. 7:26-8.6 and 8.7, shall be manifested with the corresponding waste code numbers. Test methods approved by the Department shall be used in determining whether the waste in question contains a given hazardous constituent.

C102 (Acetato) phenylmercury  
 C103 Acetonitrile  
 C463 Acetophenone  
 C104 3-(alpha-Acetylbenzyl)-4-hydroxycoumarin and salts  
 C105 2-Acetylaminofluorene  
 C106 Acetyl chloride  
 C107 1-Acetyl-2-thiourea  
 C108 Acrolein  
 C109 Acrylamide  
 C110 Acrylonitrile  
 C111 Aflatoxins  
 C112 Aldrin  
 C113 Allyl alcohol  
 C114 Aluminum phosphide  
 C115 4-Aminobiphenyl  
 C116 6-Amino-1,1a,2,8,8a,8b-hexahydro-8-(hydroxymethyl)-8a-methoxy-5-methylcarbamate azirino(2',3':3,4) pyrrolo (1,2-a) indole-4,7-dione (ester) (Mitomycin C)  
 C117 5-(Aminomethyl) 3-isoxazolol  
 C118 4-Aminopyridine  
 C119 Amitrole  
 C120 Aniline  
 C121 Antimony and compounds, N.O.S.\*  
 C122 Aramite  
 C123 Arsenic and compounds, N.O.S.  
 C124 Arsenic acid

C125 Arsenic pentoxide  
 C126 Arsenic trioxide  
 C127 Auramine  
 C128 Azaserine  
 C129 Barium and compounds, N.O.S.  
 C130 Barium cyanide  
 C131 Benz [c] acridine  
 C132 Benz [a] anthracene  
 C133 Benzene  
 C464 Benzene (dichloromethyl)  
 C134 Benzenearsonic acid  
 C135 Benzenethiol  
 C136 Benzidine  
 C138 Benzo [b] flouranthene  
 C139 Benzo [j] flouranthene  
 C140 Benzo[a]pyrene  
 C141 Benzotrichloride  
 C142 Benzyl chloride  
 C143 Beryllium and compounds, N.O.S.  
 C144 Bis (2-chloroethoxy) methane  
 C145 Bis (2-chloroethyl) ether  
 C146 N, N-Bis (2-chloroethyl)-2-naphthylamine  
 C147 Bis (2-chloroisopropyl) ether  
 C148 Bis (chloromethyl) ether  
 C149 Bis (2-ethylhexy) phthalate  
 C150 Bromoacetone  
 C151 Bromomethane  
 C152 4-Bromophenyl phenyl ether  
 C153 Brucine  
 C154 2-Butanone peroxide  
 C465 Butyl benzyl phthalate  
 C156 2-sec-Butyl-4,6-dinitrophenol (DNBP)  
 C157 Cadmium and compounds, N.O.S.  
 C158 Calcium chromate  
 C159 Calcium cyanide  
 C160 Carbon disulfide  
 C466 Carbon oxyfluoride chloral  
 C161 Chlorambucil  
 C162 Chlordane (alpha and gamma isomers)  
 C163 Chlorinated benzenes, N.O.S.  
 C164 Chlorinated ethane, N.O.S.  
 C467 Chlorinated fluorocarbons, N.O.S.  
 C165 Chlorinated naphthalene, N.O.S.  
 C166 Chlorinated phenol, N.O.S.  
 C167 Chloroacetaldehyde  
 C168 Chloroalkyl ethers, N.O.S.  
 C169 p-Chloroaniline  
 C170 Chlorobenzene  
 C171 Chlorobenzilate  
 C172 2-Chloro-1, 3-butadiene (Chloroprene)  
 C173 p-Chloro-m-cresol  
 C174 1-Chloro-2,3-epoxybutane  
 C175 2-Chloroethyl vinyl ether  
 C176 Chloroform  
 C177 Chloromethane  
 C178 Chloromethyl methyl ether  
 C179 2-Chloronaphthalene  
 C180 2-Chlorophenol  
 C181 1-(o-Chlorophenyl) thiourea  
 C182 3-Chloropropionitrile  
 C497 3-Chloropropene (allyl chloride)  
 C183 Chlorotoluene, N.O.S.  
 C184 Chromium and compounds, N.O.S.  
 C185 Chrysene  
 C186 Citrus red No. 2  
 C187 Copper cyanide  
 C468 Cresol  
 C188 Creosote  
 C189 Crotonaldehyde  
 C190 Cyanides (soluble salts and complexes), N.O.S.  
 C191 Cyanogen  
 C192 Cyanogen bromide  
 C193 Cyanogen chloride  
 C194 Cycasin  
 C195 2-Cyclohexyl-4,6-dinitrophenol  
 C196 Cyclophosphamide

C197	Daunomycin	C270	Endrin and metabolites
C198	DDD	C272	Ethyl cyanide
C199	DDE	C274	Ethylenebisdithiocarbamac acid, salts and esters
C200	DDT	C275	Ethyleneimine
C201	Diallate	C276	Ethylene oxide
C202	Dibenz [a,h] acridine	C277	Ethylenethiourea
C203	Dibenz [a,j] acridine	C472	Ethyl methacrylate
C204	Dibenz [a,h] anthracene	C278	Ethyl methanesulfonate
C205	7H-Dibenzo [c,g] carbozole	C473	Formic acid
C206	Dibenzo [a,e] pyrene	C279	Flouranthene
C207	Dibenzo [a,h] pyrene	C280	Flourine
C208	Dibenzo [a,i] pyrene	C281	2-Flouroacetamide
C209	1,2-Dibromo-3-chloropropane	C282	Flouracetic acid, sodium salt
C210	1,2-Dibromoethane	C283	Formaldehyde
C211	Dibromomethane	C284	Glycidyladehyde
C212	Di-n-butyl phthalate	C285	Halomethane, N.O.S.
C492	o-Dichlorobenzene	C286	Heptachlor
C493	m-Dichlorobenzene	C287	Heptachlor epoxide (alpha, beta, and gamma isomers)
C494	p-Dichlorobenzene	C288	Hexachlorobenzene
C469	1,4-Dichloro-2-butene	C289	Hexachlorobutadiene
C213	Dichlorobenzene, N.O.S.	C290	Hexachlorocyclohexane (all isomers)
C214	3,3'-Dichlorobenzidine	C291	Hexachlorocyclopentadiene
C470	Dichlorodiflouromethane	C474	Hexachlorodibenzo-p-dioxins
C215	1,1-Dichloroethane	C475	Hexachlorodibenzofurans
C216	1,2-Dichloroethane	C292	Hexachloroethane
C217	trans-1,2-Dichloroethane	C293	1,2,3,4,10,19-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo, endo-dimethanonaphthalene
C218	Dichloroethylene, N.O.S.	C294	Hexachlorophene
C219	1,1-Dichloroethylene	C295	Hexachloropropene
C220	Dichloromethane	C296	Hexaethyl tetraphosphate
C221	2,4-Dichlorophenol	C297	Hydrazine
C222	2,6-Dichlorophenol	C298	Hydrocyanic acid
C223	2,4-Dichlorophenoxyacetic acid (2,4-D)	C476	Hydroxydimethylarsine oxide
C224	Dichloropropane, N.O.S.	C299	Hydrogen sulfide
C225	Dichlorophenylarsine	C300	Indeno (1,2,3-c,d) pyrene
C226	1,2-Dichloropropane	C301	Iodomethane
C227	Dichloropropanol, N.O.S.	C477	Isobutyl alcohol
C228	Dichloropropene, N.O.S.	C302	Isocyanic acid, methyl ester
C229	1,3-Dichloropropene	C303	Isosafrole
C230	Dieldrin	C304	Kepone
C471	Diepoxybutane	C305	Lasiocarpine
C232	Diethylarsine	C306	Lead and compounds, N.O.S.
C234	1,2-Diethylhydrazine	C307	Lead acetate
C235	0,0-Diethyl-S-methylester phosphorodithioic acid	C308	Lead phosphate
C236	0,0-Diethylphosphoric acid, 0-p-nitrophenyl ester	C309	Lead subacetate
C237	Diethyl phthalate	C310	Maleic anhydride
C238	0,0-Diethyl-0-(2-pyrazinyl) phosphorothioate	C478	Maleic hydrazide
C239	Diethylstilbestrol	C311	Malononitrile
C240	Dihydrosafrole	C312	Melphalan
C241	3,4-Dihydroxy-alpha-(methylamino)-methyl benzyl alcohol	C313	Mercury and compounds, N.O.S.
C242	Di-isopropylflourophosphate (DFP)	C479	Mercury fulminate
C243	Dimethoate	C480	Methacrylonitrile
C244	3,3'-Dimethoxybenzidine	C314	Methapyrilene
C245	p-Dimethylaminoazobenzene	C315	Methomyl
C246	7,12-Dimethylbenz anthracene	C316	2-Methylaziridine
C247	3,3'-Dimethylbenzidine	C317	3-Methylcholanthrene
C248	Dimethylcarbamoyl chloride	C481	Methyl chlorocarbonate
C249	1,1-dimethylhydrazine	C318	4,4'-Methylene-bis-(2-chloroaniline)
C250	1,2-Dimethylhydrazine	C319	Methyl ethyl ketone (MEK)
C251	3,3-Dimethyl-1-(methylthio)-2-butanone-O-((methylamino) carbonyl) oxime	C320	Methyl hydrazine
C253	alpha, alpha-Dimethylphenethylamine	C321	2-methylactonitrile
C254	2,4-Dimethylphenol	C322	Methyl methacrylate
C255	Dimethyl phthalate	C323	Methyl methanesulfonate
C256	Dimethyl sulfate	C324	2-Methyl-2-(methylthio) propionaldehyde-o-(methylcarbonyl) oxime
C257	Dinitrobenzene, N.O.S.	C325	N-Methyl-N'-nitro-N-nitrosoguanidine
C258	4,6-Dinitro-o-cresol and salts	C326	Methyl parathion
C259	2,4-Dinitrophenol	C327	Methylthiouracil
C260	2,4-Dinitrotoluene	C328	Mustard gas
C261	2,6-Dinitrotoluene	C329	Naphthalene
C262	Di-n-octyl phthalate	C330	1,4-Naphthoquinone
C263	1,4-Dioxane	C331	1-Naphthylamine
C265	1,2-Diphenylhydrazine	C332	2-Naphthylamine
C266	Di-n-propylnitrosamine	C333	1-Naphthyl-2-thiourea
C267	Disulfoton	C334	Nickel and compounds, N.O.S.
C268	2,4-Dithiobiuret	C335	Nickel carbonyl
C269	Endosulfan		

C336 Nickel cyanide	C413 1,1,1,2-Tetrachloroethane
C337 Nicotine and salts	C414 1,1,2,2-Tetrachloroethane
C338 Nitric oxide	C415 Tetrachloroethene (Tetrachloroethylene)
C339 p-Nitroaniline	C416 Tetrachloromethane
C340 Nitrobenzene	C417 2,3,4,6-Tetrachlorophenol
C341 Nitrogen dioxide	C418 Tetraethylthiopyrophosphate
C342 Nitrogen mustard and hydrochloride salt	C419 Tetraethyl lead
C343 Nitrogen mustard N-oxide and hydrochloride salt	C489 Tetranitromethane
C346 Nitroglycerine	C420 Tetraethylpyrophosphate
C347 4-Nitrophenol	C421 Thallium and compounds, N.O.S.
C348 4-Nitroquinoline-1-oxide	C422 Thallic oxide
C349 Notrisamine, N.O.S.	C423 Thallium (I) acetate
C350 N-Nitrosodi-N-butylamine	C424 Thallium (I) carbonate
C351 N-Nitrosodiethanolamine	C425 Thallium (I) chloride
C352 N-Nitrosodiethylamine	C426 Thallium (I) nitrate
C353 N-Nitrosodimethylamine	C427 Thallium selenite
C356 N-Nitroso-N-ethylurea	C428 Thallium (I) sulfate
C357 N-Nitrosomethylethylamine	C429 Thioacetamide
C358 N-Nitroso-N-methylurea	C430 Thiosemicarbazide
C359 N-Nitroso-N-methylurethane	C431 Thiourea
C360 N-Nitrosomethylvinylamine	C432 Thiuram
C361 N-Nitrosomorpholine	C433 Toluene
C362 N-Nitrosornicotine	C434 Toluene diamine
C363 N-Nitrosopiperidine	C435 o-Toluidine hydrochloride
C482 N-Nitrosopyrrolidine	C436 Tolyene diisocyanate
C365 N-Nitrososarcosine	C437 Toxophene
C366 5-Nitro-o-toluidine	C438 Tribromomethane
C367 Octamethylpyrophosphoramidate	C439 1,2,4-Trichlorobenzene
C369 Osmium tetroxide	C440 1,1,1-Trichloroethane
C370 7-Oxabicyclo heptane-2,3-dicarboxylic acid	C441 1,1,2-Trichloroethane
C483 Paraldehyde	C442 Trichloroethene (Trichloroethylene)
C371 Parathion	C443 Trichloromethanethiol
C372 Pentachlorobenzene	C490 Trichloromonoflouromethane
C484 Pentachlorodibenzo-p-dioxins	C444 2,4,5-Trichlorophenol
C485 Pentachlorodibenzofurans	C445 2,4,6-Trichlorophenol
C373 Pentachloroethane	C446 2,4,5-Trichlorophenoxyacetic acid (2, 4,5-T)
C374 Pentachloronitrobenzene (PCNB)	C447 2,4,5-Trichlorophenoxypropionic acid (2,4,5-TP) (Silvex)
C375 Pentachlorophenol	C448 Trichloropropane, N.O.S.
C376 Phenacetin	C449 1,2,3-Trichloropropane
C377 Phenol	C450 0,0,0-Triethyl phosphorothioate
C380 Phenylmercury acetate	C451 Trinitrobenzene
C381 N-Phenylthiourea	C452 Tris (1-azridinyl) phosphine sulfide
C382 Phosgene	C453 Tris (2, 3-dibromopropyl) phosphate
C383 Phosphine	C491 Trypan blue
C384 Phosphorothioic acid, O,O-diethyl-S-[(ethyltho)methyl](Phorate)	C455 Uracil mustard
C498 Phosphorothioic acid, O-O-dimethyl ester, O-ester with N,N-dimethyl benzene sulfonamide	C456 Urethan
C385 Phthalic acid esters, N.O.S.	C457 Vanadic acid, ammonium salt
C386 Phthalic anhydride	C458 Vanadium pentoxide (dust)
C387 Polychlorinated biphenyl, N.O.S.	C459 Vinyl chloride
C388 Potassium cyanide	C461 Zinc cyanide
C389 Potassium silver cyanide	C462 Zinc phosphide
C390 Pronamide	
C392 1,2-Propane sultone	
C486 n-Propylamine	
C394 Propylthiouracil	
C395 2-Propyn-1-ol	
C396 Pyridine	
C397 Reserpine	
C398 Saccharin	
C399 Safrole	
C400 Selenious acid	
C401 Selenium and compounds, N.O.S.	
C402 Selenium sulfide	
C403 Selenourea	
C404 Silver and compounds, N.O.S.	
C405 Silver cyanide	
C406 Sodium cyanide	
C407 Streptozotocin	
C408 Strontium sulfide	
C409 Strychnine and salts	
C410 1,2,4,5-Tetrachlorobenzene	
C487 Tetrachlorodibenzo-p-dioxins	
C488 Tetrachlorodibenzofurans	
C411 2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)	
C412 Tetrachloroethane, N.O.S.	

## (a)

**Sampling and Analytical Procedures for the Determination of Volatile Organic Substances from Source Operations****Adopted New Rule: N.J.A.C. 7:27B-3**

Proposed: September 16, 1985, at 17 N.J.R. 2194(a).

Adopted: August 11, 1986, by Richard T. Dewling,

Commissioner, Department of Environmental Protection.

Filed: August 18, 1986 as R.1986 d.377, **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. 13:1D-5, 13:1D-9, 26:2C-8.

Effective Date: September 8, 1986.

Operative Date: October 10, 1986.

Expiration Date: Pursuant to 42 U.S.C. 7401 et seq. Rule Exempt.

DEP Docket No. 049-85-08.

NEW JERSEY REGISTER, MONDAY, SEPTEMBER 8, 1986

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

The comment period commenced on September 16, 1985. A public hearing was held on October 24, 1985 and the comment period closed on November 1, 1985. All comments received during the public comment period became part of the administrative record. Comments include those made by the United States Environmental Protection Agency; the State of Delaware (Department of Natural Resources, Division of Environmental Control); the Exxon Company, the Architectural Woodwork Institute, the Kitchen Cabinet Manufacturers, and Rossnagel and Associates. A summary of these comments and agency responses to them are provided below.

The following comments were received from the **United States Environmental Protection Agency (USEPA)**:

**COMMENT:** With reference to N.J.A.C. 7:27B-3.1, "ppm" (parts per million) should state whether it is based on VOS (Volatile Organic Substance) volume or mass, and SCFM (standard cubic feet per minute) should be designated wet or dry.

**RESPONSE:** The Department agrees with the comment. In order to clarify the text, the definition of "ppm" was changed to read parts per million by volume, and SCFM was changed to read "on a wet basis, unless otherwise specified in the text."

**COMMENT:** With reference to N.J.A.C. 7:27B-3.8 and 3.9, before analysis is performed, quality assurance procedures for determining adequate peak resolution and field audit of the analysis should be carried out.

**RESPONSE:** A procedure for the determination of adequate peak resolution is specified in N.J.A.C. 7:27B-3.8(e)2ii and 3.9(e)2ii, and a field audit of the calibration is specified in N.J.A.C. 7:27B-3.8(e)2xi, (e)3ix, and N.J.A.C. 7:27B-3.9(e)2xi, and (e)3xvi.

**COMMENT:** With reference to N.J.A.C. 7:27B-3.8 and 3.9, a heated sample line was not included.

**RESPONSE:** A heated sample line is required to prevent VOS or moisture condensation. In response to the comment, a definition of the term "sample line" was included in N.J.A.C. 7:27B-3.1. N.J.A.C. 7:27B-3.8(d), and 3.9(d) were also changed to include the term.

**COMMENT:** With reference to N.J.A.C. 7:27B-3.9(e)3, the size and the storage of the tedlar sample bags might affect the stability of the VOS. Sample bags should have sufficient capacity to minimize pressure effects on the components. They should be protected from sunlight and heat to ensure stability of the sample and should be analyzed within 24 hours of collection. It was also suggested that bags be tested for leaks and contamination by filling the bag with an inert gas for 24 hours and analyzing by gas chromatography. Deflation of the bag would indicate a leak.

**RESPONSE:** Pressure, heat, and storage time very definitely affect the reactions which occur in the sample container and thus on the measured concentrations. N.J.A.C. 7:27B-3.9(e)3i and 3ii, 3.9(e)4i and 4ii have been changed to incorporate procedures for checking the sample bags for leaks and contamination. A procedure for sample bag protection has been included at N.J.A.C. 7:27B-3.9(e)3xiii and 3.9(e)4xiv. The size of the sampling bag is specified in N.J.A.C. 7:27B-3.9(d)9.

**COMMENT:** With reference to N.J.A.C. 7:27B-3.9(e)3vii, the five minute purge procedure will collect condensable VOS in the impinger system, resulting in higher than actual VOS concentrations.

**RESPONSE:** The Department intended the regulation as proposed in N.J.A.C. 7:27B-3.9(e)3iv (adopted at 7:27B-3.9(e)3vi) to require the meter volume to be recorded prior to the purge. The subsequent volume sampled during the test run, including the purged volume, is used to relate the condensable VOS collected in the impinger system to a specific air volume and, therefore, will not result in higher than actual VOS concentrations, if the procedure specified in N.J.A.C. 7:27B-3.9(e)vii is performed. The sentence "Record the initial meter volume" was added upon adoption to clarify the Department's intent.

**COMMENT:** With reference to N.J.A.C. 7:27B-3.11(e)6, there was some ambiguity concerning testing for leaks during a compliance test of bulk gasoline transfers.

**RESPONSE:** In response to the comment, the Department has clarified the regulation. The proposed rule was confusing, in that different concentrations were specified in N.J.A.C. 7:27B-3.11 and in N.J.A.C. 7:27B-3.15. In N.J.A.C. 7:27B-3.11(e)6, the designation of a leak as 10,000 ppm methane has been replaced with the lower explosive limit (LEL) of propane. The definition of the leak standard as 20,000 ppm propane in N.J.A.C. 7:27B-3.11(d)7i, has been changed to read "a propane standard".

**COMMENT:** With reference to N.J.A.C. 7:27B-3.11 and 3.14, these sections allow the option of using one to two different calibration gases. Only one calibration gas should be specified.

**RESPONSE:** N.J.A.C. 7:27B-3.11 refers to the testing of gasoline loading operations. This regulation is based on 40 CFR, Part 60, Subpart XX "Standards of Performance for Bulk Gasoline Terminals", which specifies that propane or butane be used as the calibration gas. N.J.A.C. 7:27B-3.14 refers to the detection of fugitive leaks in industry. This regulation is based on 40 CFR, Part 60, Subpart VV "Standards of Performance for Equipment Leaks of VOS in the Synthetic Organic Chemical Industry", which specifies both methane and n-hexane as acceptable calibration standards.

**COMMENT:** With reference to N.J.A.C. 7:27B-3.14(e)2iii, 9,000 ppm is inconsistent with 10,000 ppm, which appears at 3:14(d)3.

**RESPONSE:** The concentration level of 10,000 ppm in N.J.A.C. 7:27B-3.14(d)3 relates only to the function of the dilutor to dilute the concentration of the sample gas within the operating range of the detector.

**COMMENT:** With reference to N.J.A.C. 7:27B-3.15(d)4 and 3:14(e)2iii, the definition of calibration gas is different in each section.

**RESPONSE:** The definition of the standard calibration gas has been changed in N.J.A.C. 7:27B-3.15(d)4 to read: a mixture of "at least 50 percent but less than 100 percent of the LEL of propane in air", and in N.J.A.C. 7:27B-3.15(e)2 "standard calibration gas" has been substituted for the concentration. Moreover, because many of the combustion meters are not field adjustable, N.J.A.C. 7:27B-3.15(e)2iii was amended to take this into consideration.

The following comments were received from the **State of Delaware, Department of Natural Resources, Division of Environmental Control**:

**COMMENT:** With reference to N.J.A.C. 7:27B-3.1, the definition of "Probe Glass" was confusing.

**RESPONSE:** The definition of "probe glass" was incorrect and has been changed to state: "Probe" means glass, etc.

**COMMENT:** With reference to N.J.A.C. 7:27B-3.9(e)3x (adopted at 7:27B-3.9(e)3xii), amber-colored bottles should be used for rinse and impinger solutions. Filling the bottles would prevent loss of volatile organics in the head space of the containers.

**RESPONSE:** The Department agree with the comment. Opaque bottles would lessen the effects of sunlight on the samples, and filling the bottles would prevent loss of volatile organics in the head space of the container. Accordingly, the regulation was changed to incorporate these suggestions into the procedures adopted at N.J.A.C. 7:27B-3.9(e)3xii.

The following comments were submitted by the **Exxon Company**:

**COMMENT:** With reference to N.J.A.C. 7:27B-3.7(d)4iv, the percent response to be achieved by an instrument in the stated time should be specified.

**RESPONSE:** The Department agrees with the comment and the information has been included in the regulation in all relevant sections. (See N.J.A.C. 7:27B-3.7(d)5iv; 3.11(d)6ii(4), and 3.14(d)4iii.)

**COMMENT:** With reference to N.J.A.C. 7:27B-3.7 and 3.8, no procedure for leak testing the sampling system was included.

**RESPONSE:** Since the calibration gas should be introduced to the instrument in the same manner as the source gas, leaks in the system will be calibrated out; thus, a separate leak test is not necessary.

**COMMENT:** With reference to N.J.A.C. 7:27B-3.7, 3.8, and 3.9, it is not clear whether the results of the tests should be reported individually or averaged.

**RESPONSE:** N.J.A.C. 7:27B-3.7(g)8, 3.8(g)9, and 3.9(g)9 specify that the results should be reported as pounds per hour for each individual test.

**COMMENT:** With reference to N.J.A.C. 7:27B-3.7(e)3vii, 3.8(e)2xi, and 3.9(e)2xi, there is some confusion concerning pre- and post-test instrument checks and the type of standard that should be used. Both the USEPA and Exxon also commented that there is some confusion between laboratory calibration standards and field standards at N.J.A.C. 7:27B-3.7(d)7i and 3.7(f)3 and (f)5. The USEPA also commented that accuracy limits for laboratory standard gases should be specified.

**RESPONSE:** These comments are the result of an unclear definition of field standards in the regulation. The Department intended that laboratory calibration standards should be certified mixtures of a single or multiple VOS's in an inert diluent, while field standards were intended to be a reference mixture such as methane or propane, whose response would be related to the laboratory standard and used to adjust instrument response in the field without going through the entire calibration procedure. N.J.A.C. 7:27B-3.7(d)7ii has been changed to reflect the original intent, and accuracy specifications have been added to the definition

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of "laboratory standard calibration gases" at N.J.A.C. 7:27B-3.1. Additionally, the procedures for the pre- and post-test checks have been separated in these sections for greater clarity, and the type of standard to be used (laboratory or field) has been indicated. (See: N.J.A.C. 7:27B-3.7(e)2iv and (e)3iii, 3.8(e)2xi, and 3.9(e)3xvi.) This clarification should result in making the field calibration less difficult to perform.

COMMENT: With reference to N.J.A.C. 7:27B-3.8(e)3i and 3.9(e)4i, the schematics of the sampling train are missing.

RESPONSE: The schematics were inadvertently omitted and have been included (See Appendix C).

COMMENT: With reference to N.J.A.C. 7:27B-3.9(f)3, the density of the gas being measured should be included in the list of flowmeter corrections.

RESPONSE: It is true that the density of the gas being measured affects the flowmeter reading, however, all gas measured in N.J.A.C. 7:27B-3.9 is non-source ambient air. If a dilution gas of a density other than ambient air is used, a correction for specific gas density may be necessary. N.J.A.C. 7:27B-3.9(f)3 has been changed to include a specific gas density correction if it is necessary.

COMMENT: With reference to N.J.A.C. 7:27B-3.9(f)5, the probe rinse has not been included in the calculation of the mass emission rate.

RESPONSE: This information has been included in the calculation.

COMMENT: With reference to N.J.A.C. 7:27B-3.14(d)5, the proposed 10,000 ppm hexane standard is too concentrated. Hexane at this concentration level tends to condense in the cylinder. A concentration of 8,000 ppm is suggested as a compromise.

RESPONSE: The suggested concentration in the regulation has been changed to 8,000 take this into account, at N.J.A.C. 7:27B-3.14(d)5.

The following comment was received from the **Architectural Woodwork Institute and the Kitchen Cabinet Manufacturers**:

COMMENT: The Architectural Woodwork Institute and the Kitchen Cabinet Manufacturers requested that the adoption of the rule be postponed until the exact parameters of the overall VOS rule-making have been settled. The commentators further stated that there is no feasible method of providing a stack to be tested because the objects coated or painted range to large sizes and are not confined; thus, there are no stacks.

RESPONSE: The regulation sets forth standards for sampling and analytical procedures for determining compliance with N.J.A.C. 7:27-16. The majority of the comments relate to standards proposed in N.J.A.C. 7:27-16 and are not relevant to this test method. Stack testing of this type of source without emission controls is not required. Emissions from these uncontrolled sources are determined by analysis of the coating as outlined in N.J.A.C. 7:27B-3.10.

The following comments were received from **Rossnagel and Associates, Engineering and Testing Consultants**:

COMMENT: The Social Impact Statement does not state that the samples should be analyzed by a State-certified laboratory.

RESPONSE: While the integrity of sample analysis would probably be increased with a laboratory certification program, at the present time the State has no program for certifying laboratories doing analysis of air samples.

COMMENT: The Economic Impact Statement does not contain an accurate estimate on the costs. The cost to conduct a single test of three one hour test runs will be between \$3,500-\$5,000 and will be incurred by the industry.

RESPONSE: The rule concerns testing and analytical methods. It does not address which industry will have to conduct tests or how often the tests should be conducted. The economic impact of the regulation relates only to the purchase of the necessary sampling and analytical equipment needed to conduct the tests. Most consultants doing sampling and analysis presently conduct organic testing and possess most or all the equipment needed to perform the sampling and analyses incorporated in the regulation.

COMMENT: With reference to N.J.A.C. 7:27B-3.1, the definition of "Surface Coating Formulation" should be the same as the definition in N.J.A.C. 7:27-16.

RESPONSE: The definitions in N.J.A.C. 7:27B-3.1 and N.J.A.C. 7:27-16 are identical and no change was warranted.

COMMENT: With reference to N.J.A.C. 7:27B-3.1, "Velometer" should not be defined because it is a trade name for an air flow device which gives a direct reading off a movable dial on the instrument.

RESPONSE: The Department agrees with the comment. "Velometer" is a trade name. "Velocity meter" has been substituted in the definitions and throughout the regulation.

COMMENT: With reference to N.J.A.C. 7:27B-3.2, the use of additional gas chromatography should be allowed before mass spectrographic analysis is required.

RESPONSE: The Department cannot include all possible alternative methods in the regulation. The regulation allows for the use of alternative methods pursuant to N.J.A.C. 7:27B-3.2(c), (d), and (e).

COMMENT: A procedure for sampling isokinetically, using the modified USEPA Method 5 procedure, should be included.

RESPONSE: The modified USEPA Method 5 sampling train can be used in most circumstances where isokinetic sampling is required. However, the modified USEPA Method 5 does not collect all organic compounds as may be required by N.J.A.C. 7:27-16. It was not included in this regulation for that reason. The modified USEPA Method 5 sampling train or an alternative isokinetic sampling train can be used when warranted pursuant to N.J.A.C. 7:27B-3.2(e), (d), and (e).

COMMENT: With reference to N.J.A.C. 7:27B-3.6(a), the commentator questioned the requirement that vapor pressure be measured on a compound of research grade and requested clarification of when the vapor pressure should be measured.

RESPONSE: The Department intended to allow the use of vapor pressures reported in literature other than the sources listed in N.J.A.C. 7:27B-3.6(a), provided the vapor pressure measurement was performed on a VOS of research grade or equivalent. Actual measure is required only when the vapor pressure is not reported in literature. This section has been clarified in response to the comment.

COMMENT: With reference to N.J.A.C. 7:27B-3.7, 3.8, and 3.9, since batch cycles may last eight hours, the three required test runs should be conducted in series if the batch cycle is longer than one hour.

RESPONSE: The emission limitations set forth in N.J.A.C. 7:27-16 are based on an hourly emission rate premised on a batch average. Essentially, each batch must be considered one test run. Since the emissions during an eight hour batch can vary widely, each batch should be tested in its entirety and should be considered only one valid test run.

COMMENT: With reference to N.J.A.C. 7:27B-3.7, New Jersey is the only state in which Rossnagel has conducted tests that does not allow averaging of the three runs. The Department should allow the averaging of the pound/hour emission rates.

RESPONSE: Tests are conducted to determine compliance with standards as set forth in the New Jersey Administrative Code. Therefore, when a standard based on a one-hour average is involved, averaging the results of the separate test runs will not indicate whether the emissions comply with the standard.

COMMENT: With reference to N.J.A.C. 7:27B-3.7(e)1, the presampling survey of the source operation may entail conducting almost an entire test, and the proposal should have included the potential cost of the presampling survey.

RESPONSE: The presampling survey may be a simple procedure such as a visual observation of the source, or it may entail conducting almost a complete source test. Therefore, an estimate of the potential cost of testing is impossible to determine.

COMMENT: With reference to N.J.A.C. 7:27B-3.7, "Official Tests" and "Evaluation Tests" should be defined.

RESPONSE: The regulation does not use terms "Official Test" and "Evaluation Test", but rather "Test" or "Performance Test"; therefore the latter terms are defined.

COMMENT: With reference to N.J.A.C. 7:27B-3.8(e)2x, which states that "extrapolation beyond the calibration range is not acceptable," this requirement should read "extrapolation beyond 20 percent of the calibrated range is not acceptable".

RESPONSE: The reliability of the analytical results diminishes with extrapolation beyond the calibrated range; therefore, the suggestion was not incorporated into the regulation.

COMMENT: With response to N.J.A.C. 7:27B-3.8(e)3, hose lines are not adequately addressed.

RESPONSE: The Department agrees with the comment. Accordingly, a definition for sample line, which is the equivalent of hose line, has been added at N.J.A.C. 7:27B-3.1, and the term has been added at N.J.A.C. 7:27B-3.8(d)2 and 3.8(e)3i.

COMMENT: With reference to N.J.A.C. 7:27B-3.8, a policy on how to address VOS emissions from an oil fired fume incinerator should be addressed.

RESPONSE: Except where destruction and removal efficiencies for specific VOS are required, the VOS emissions from a fume incinerator will normally be included in N.J.A.C. 7:27B-3.2(i)4.

COMMENT: With reference to N.J.A.C. 7:27B-9(b)2, procedures for the use of evacuated cylinders should be included.

**RESPONSE:** Because of the ease and convenience of using Tedlar Bags as compared to evacuated cylinders, very few companies would choose evacuated cylinders for sampling. Therefore, the Department has not made the requested change. However, it should be noted that the use of evacuated cylinders may be allowed as an alternative pursuant to section N.J.A.C. 7:27B-3.2(c), with Department approval of the sampling and analytical techniques.

**COMMENT:** With reference to N.J.A.C. 7:27B-3.9(e)4, the leak check procedure should be clarified.

**RESPONSE:** The Department agrees with the comment. Accordingly, the leak check procedure has been revised for clarification.

**COMMENT:** With reference to N.J.A.C. 7:27B-3.9(e)4ii, the procedure was well-written.

**RESPONSE:** The Department appreciates the comment.

**COMMENT:** With reference to N.J.A.C. 7:27B-3.9(e)6, the National Institute for Occupational Safety and Health (NIOSH) Method 127, should be cited as a reference.

**RESPONSE:** NIOSH Method 127 refers to the use of charcoal adsorption tubes for the collection of VOS. While the use of adsorption tubes is a possible method for the collection of VOS, because of the problems of moisture, breakthrough, and selection of proper adsorbent, the method was not included in the rule. However, adsorption methods may be allowed as an alternative under N.J.A.C. 7:27B-3.2(c) and (d).

**COMMENT:** With reference to N.J.A.C. 7:27B-3.10(d)2v(3), there is no definition for PW.

**RESPONSE:** The rule defines P and W separately. Confusion arose because the terms were typed too closely together. A space has been added between the two terms to eliminate the problem.

**AGENCY NOTE:** The following changes to the regulations have been made by the Department in order to clarify the text:

N.J.A.C. 7:27B-3.1: The definition of Needle valve was corrected.

N.J.A.C. 7:27B-3.2(a): The addition of the citation 7:27-8 was added to clarify the application of the regulation to the granting of permits and certificates.

N.J.A.C. 7:27B-3.2(i)5: Language was added to reflect the requirement for departmental review, which is set forth at N.J.A.C. 7:27B-3.2(a), (b), and (c).

N.J.A.C. 7:27B-3.7(e)3viii: Language was added clarifying the requirement of recording the result in writing.

N.J.A.C. 7:27B-3.8(e)2x: The substitution of "straight line" for "smooth curve" was made because while the terms are equivalent, the former is more technically correct.

N.J.A.C. 7:27-3.9(d)9: Language was added to clarify the determination of capacity.

N.J.A.C. 7:27B-3.9(e)3iv(1) and (2): Language specifying alternate and equivalent testing procedures was added.

N.J.A.C. 7:27B-3.10(d)2v(1): Language was added to clarify the testing procedure.

N.J.A.C. 7:27B-3.11(e)10 and (f)1: Language was added to clarify the testing procedure and make the equation consistent with the others set forth in the regulation.

N.J.A.C. 7:27B-3.15(d)3: The proposal was deleted upon adoption because it specified an unnecessary procedure.

N.J.A.C. 7:27B-3.15(e)2iii: Language was added to clarify the testing procedure.

N.J.A.C. 7:27B-3.16(a): The word "underground" was deleted in order to clarify the application of the test method to both above ground and underground storage tanks.

**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 3. AIR TEST METHOD 3: SAMPLING AND ANALYTICAL PROCEDURES FOR THE DETERMINATION OF VOLATILE ORGANIC SUBSTANCES FROM SOURCE OPERATIONS

#### 7:27B-3.1 Definitions

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

"Aliquot" means a representative portion of a sample.

"Atm" means atmosphere.

"Batch cycle" means the total elapsed time per batch in any single manufacturing process vessel, including all phases of the operation during which the vessel contains process materials, excluding time waiting for removal from the vessel.

"Calibration gas" means a gas of known composition and concentration, **\*certified to within  $\pm$  two percent by the manufacturer or, if laboratory blended, an independent analysis has been performed.\***

"Carrier gas" means nitrogen or helium containing less than two ppm of equivalent carbon or methane.

"Combustion gas" means air which contains less than two ppm of equivalent carbon or methane and is used to support the combustion of Volatile Organic Substances in the sample gas.

"Condenser" means a system for determining the moisture content of the source gas and consisting of: a probe, two Greenburg-Smith impingers (one standard type containing 100 mls of distilled water and one dry modified type, both immersed in an ice bath), a drying tube containing a suitable desiccant, a pump, and a dry gas meter with a thermometer all connected in series. The condenser collects the moisture in a measured amount of source gas.

"Cutback asphalt" means any paving asphalt which has been liquified by blending with petroleum solvents, or produced directly from the distillation of petroleum and having vaporization properties similar to the blended and liquified asphalt.

"Department" means the New Jersey Department of Environmental Protection.

"Dilution gas" means air or nitrogen containing less than two ppm of equivalent carbon or methane.

"Direct analysis" means the continuous or semi-continuous on-site sampling and immediate analysis of the source sample.

"Emulsified asphalt" means asphalt which has been liquified by mixing **\*with\*** water and an emulsifying agent.

"Fuel gas" means hydrogen or a mixture of hydrogen and an inert gas which contains less than one ppm of equivalent carbon or methane.

"Gas chromatograph-flame ionization detector **\*[GC-FID]** **\*[GC-FID]\***" means a gas **\*[chromograph]\*** **\*chromatograph\*** instrument equipped with a flame ionization detector and a suitable column to separate the VOS. The flame ionization detector must have a heating system capable of preventing any condensation of the sample gas. The flame ionization detector must be capable of meeting or exceeding **\*by demonstration\*** the manufacturer's specifications. **\*[by demonstration.]\***

"Gasoline" means any petroleum distillate having a Reid vapor pressure of four pounds per square inch (207 millimeters of mercury) or greater and used as an automotive fuel.

"Gas sampling valve" means a two-position heated valve used to purge the sample loop with the source gas and to insert the loop containing the source gas sample into the carrier gas stream leading to the chromatograph. Both loop and valve must be heated to a temperature that will prevent any condensation of the sample gas.

**\*[Hg]** means the element mercury.]\*

"Isokinetic sampling" means drawing a gas sample through a nozzle into a sampling train at the same velocity as that in the stack or duct.

"Laboratory standard calibrations gases" means three gas mixtures each containing known concentrations of each of the VOS in the source gas (except trace components) in the same matrix, if possible, as will be sampled. One mixture is to have greater than, one mixture is to be approximately equal to, and one mixture is to have less than the expected concentration of VOS in the source gas. These gases can be certified **\*to  $\pm$  two percent\*** by the manufacturer or produced locally by approved techniques if the concentration is confirmed by an independent analysis. The standards must be stable in the matrix and container over their period of use.

**\*LFL** means lower explosive limit.\*

"Modified particulate train" means a sampling train capable of collecting organic emissions at an isokinetic sampling rate.

"Needle valve" means **\*a fine adjustment valve used to control the source gas sampling rate and constructed of corrosion-resistant material.\*** **\*[a stainless steel or Teflon-coated fine adjustment valve which is used to control the source gas sampling rate.]\***

"Organic substance" means any chemical compound or mixture of chemical compounds of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate.

"Ppm" means part per million **\*by volume\***.

"Partial pressure" means the pressure exerted by a specified component in a mixture of gases.

"Performance test" or "test" means a series of test runs used for the purpose of determining emissions of air contaminants to the outdoor atmosphere.

"Petroleum solvent dry cleaning" means a process used for the cleaning of textiles and fabric products in which articles are washed in a solution

of organic material produced by petroleum distillation that exists as a liquid under standard conditions, and then dried by exposure to a heated air stream.

"Probe" \*[glass]\* means **glass,\*** \*[a]\* **stainless steel or Teflon tubing as required by source gas conditions and equipped with a filter, if necessary. The probe and filter must have a heating or dilution system capable of preventing any condensation of the sample gas.**

"Psia" means pounds per square inch \*[atmospheric]\* **absolute\*.**

"Pump" means a leakless Teflon-coated diaphragm pump or equivalent with an appropriate capacity and a heating or dilution system capable of preventing any condensation of the sample.

"Pure component standards" means a gas mixture consisting of only one VOS in an inert gas. A separate mixture is required for each VOS suspected in the source gas.

"Recorder/Integrator" means a strip chart recorder and an optional integrator to calculate the results.

"Reid vapor pressure" means the absolute vapor pressure of a petroleum product at 100°F (37.8°C) as measured by the standard test method set forth in the American Society for Testing and Materials (ASTM) Designation D323-79 (N.J.A.C. 7:27B-3.18, Reference 3) or approved equivalent pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

"Rigid sampling container" means a leak-free sampling container large enough to hold a gas sampling bag and capable of being evacuated to **a pressure of\* 20 inches** \*[H<sub>2</sub>O]\* **water\*** without collapsing.

"Run" or "test run" means a single integrated measurement or procedure used for the purpose of collecting a sample of air contaminants emitted to the outdoor atmosphere during a specified time interval.

"Sample collector" means any device used to selectively separate and collect a sample of a specified contaminant from a gas stream, including, but not limited to, thimbles, filters, impingers, bubblers, cyclones, condensers, and absorbers.

**\*"Sample line" means glass, Teflon or stainless steel tubing with Teflon or stainless steel fittings, heated if necessary to prevent condensation.\***

"Sampling location" means the specific position at which a sampling port is located in a stack or chimney.

"Sampling port" means an opening in a stack or chimney into which sampling or measuring devices may be inserted or through which a sample is extracted.

"Sampling rate" means the volume rate at which stack gases are drawn through a sampling train.

"Sampling train" means a combination of entrapment devices, instruments, and auxiliary apparatus arranged in a prescribed sequence to selectively separate and collect samples of specified air contaminants.

"SCFH" means standard cubic feet per hour **\*on a wet basis unless otherwise specified in the text\*.**

"SCFM" means standard cubic feet per minute **\*on a wet basis unless otherwise specified in the text\*.**

"Solvent recovery dryer" means a class of dry cleaning dryers that employs a condenser to liquify and recover solvent vapors evaporated in a closed-loop, recirculating stream of heated air.

"Source" **\*or\*** "source operations" means any process, or any identifiable part of a process\*,\* emitting an air contaminant into the outdoor atmosphere through one or more stacks or chimneys.

"Standard conditions" means 70°F (21.1°C) and one atmosphere pressure (14.7 psia **\*[or]\* 760 mm Mercury** **\*or 29.92 inches Mercury\*).**

"Std" means standard.

"Surface coating formulation" means the material including, but not limited to, paint, varnish, ink, and adhesive, applied to a solid surface in order to achieve a finished coating.

"Temperature sensor" means a thermometer, potentiometer with thermocouple\*,\* or other temperature sensing device calibrated with an approved standard.

"Test" or "performance test" means a series of test runs used for the purpose of determining emissions of air contaminants to the outdoor atmosphere.

"Test Run" or "run" means a single integrated measurement or procedure used for the purpose of collecting a sample of air contaminants emitted to the outdoor atmosphere during a specified time interval.

"Transfer operation" means the moving of any substance from any storage tank, manufacturing process vessel, or delivery vessel into any receiving vessel.

"Vapor" means the gaseous form of substances which, under standard conditions\*,\* are in the solid or liquid state and which can be changed to these states by either increasing the pressure or decreasing the temperature.

"Vapor pressure" means the pressure of the vapor phase of a substance, or the sum of the partial pressures of the vapor phases of individual substances in a mixture of substances, when in equilibrium with the non-vapor phase of the substance or substances.

**\*\*Velocity Meter\*\*** **\*["Velometer"]\*** means an "S" type Pitot tube with a manometer or other appropriate gas flow measuring device.

"Volatile organic substances" (VOS) means any organic substances, mixture of organic substances, or mixture of organic and inorganic substances including, but not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents, and thinners which have vapor pressures or sums of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury) absolute or greater measured at standard conditions; and, in the case of surface coating formulations, includes any coalescing or other agent, regardless of vapor pressure, which evaporates from the coating during the drying phase; but does not include methane, trichlorofluoromethane, dichlorodifluoromethane, chlorodifluoromethane, trifluoromethane, 1,1,2 trichloro-1,2,2 trifluoroethane, 1,2 dichloro-1,1,2,2, tetrafluoroethane, and chloropentafluoroethane.

"Zero gas" means air or gas which contains less than 1 ppm of equivalent carbon or methane.

7:27B-3.2 Sampling and analytical protocol: acceptable test methods

(a) When N.J.A.C. **\*7:27-8,\*** 7:27-16 or 7:27-17 requires a source emissions test, the applicant shall submit a written protocol to the Department at least 30 days prior to the date of the test, to the following address:

**\*[Supervisor,]\* \*Chief, Bureau of\* Technical Services Section  
Division of Environmental Quality  
Department of Environmental Protection  
380 Scotch Road  
Trenton, New Jersey 08628**

(b) The written protocol shall include a detailed description of the following:

1. Sampling location;
2. Sampling equipment;
3. Sampling and analytical procedures for the tests;
4. Data reporting forms; and
5. Quality assurance procedures.

(c) Any alternative test method, analytical method, instrumentation, source, test period, or data reporting forms shall be submitted in writing with the test protocol for approval at the discretion of the Department at least 30 days prior to the test, to the address set forth in (a) above.

(d) Any changes from the procedures and methods set forth in the protocol may be approved verbally prior to the test at the discretion of the Department; however, the applicant shall note the request and the Department's response in the final test report submitted by the applicant to the Department.

(e) Any Departmental approval pursuant to (c) or (d) above shall be confirmed in writing by the Department.

(f) The Department may itself employ such alternative procedures when warranted by test conditions or other circumstances.

(g) The applicant shall give notice to the Department at least 48 hours prior to the test in order to afford the opportunity for a Departmental observer(s) to be present.

(h) Performance tests shall be conducted in accordance with test methods set forth hereinafter.

(i) For determining the quality and quantity of VOS from source operations, the prescribed test procedures shall be as follows:

1. For a single known VOS: Procedures for the Direct Measurement of VOS Using a Flame Ionization Detector or a Photoionization Detector or a Non-Dispersive Infrared Analyzer (N.J.A.C. 7:27B-3.7).
2. For a mixture of known VOS in known proportion: Procedures for the Direct Measurement of VOS Using a Flame Ionization Detector, a Photoionization Detector or a Non-Dispersive Infrared Analyzer (N.J.A.C. 7:27B-3.7).
3. For a mixture of known VOS in unknown proportions: Procedures for the Direct Measurement of VOS Using a Gas Chromatograph with a Flame Ionization Detector or other suitable detector (N.J.A.C. 7:27B-3.8).

4. For a mixture containing unknown VOS: A procedure has not been included in the test methods, but an analysis using a gas chromatograph with a mass spectrometer will be required and conducted in accordance with established procedures by a qualified operator. Prior to any such test, the Department must receive and approve a written protocol from the operator.

5. For a known or unknown VOS in a stack where condensation is present\*[:]\* \* \* \* [Isokinetic]\* \* isokinetic\* sampling will be required. A procedure has not been included in these test methods, but sampling using \*a]\* \* an approved\* modified particulate train will be required, \*which shall be submitted for Departmental review pursuant to N.J.A.C. 7:27B-3.2(c), (d), and (e)\*.

(j) Whenever a direct analysis at the source is not possible, the samples shall be taken in accordance with the procedure described at N.J.A.C. 7:27B-3.9.

(k) Whenever a volume flow rate must be determined to establish mass emission rates of VOS or for any other reason, the methods prescribed in N.J.A.C. 7:27B-1, AIR TEST METHOD 1 (N.J.A.C. 7:27B-3.18 Reference 1), or other flow determining method, which shall be submitted for Departmental review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

7:27B-3.3 Operating conditions during the test

Insofar as practical, the source operation will be tested while operating at normal routine conditions and, as necessary, at other conditions including, but not limited to, design, maximum and fluctuating rates.

7:27B-3.4 Sampling facilities

(a) The following sampling facilities shall be provided by the party responsible for the emissions:

1. Sampling ports installed at locations specified by the Department and of a size large enough to accommodate the sampling equipment;

2. Safe sampling platforms and safe access thereto conforming with laws and regulations concerning safe construction and safe practice (N.J.A.C. 7:27B-3.18, Reference 2);

3. Utilities as needed for sampling and testing equipment, which may include electrical power and water;

4. Any other facilities exclusive of instrumentation and sensing devices as may be necessary for the Department to accurately determine the emissions of VOS from the source operation; and

5. Facilities, as necessary, for representative sampling of raw materials and for the determination of the amount of raw materials being used during the test run.

6. The facilities installed may be either permanent or temporary, at the discretion of the party responsible for their provision.

7:27B-3.5 Source operations and applicable test methods

The following chart sets forth the applicable test methods, shown by section designation, for the various source operations that are regulated by N.J.A.C. 7:27-8, 7:27-16, and 7:27-17:

Applicable Test Methods

	Vapor Pressure	Efficiency of *[Central]* *Control* Apparatus	Leaks From Source	Emissions From Source	VOS Content	Leak Tightness of Delivery Vessel	Recovered Solvent Flow Rate
Source Operation							
Storage of VOS	3.6	3.7 3.8 3.9	3.14				
Transfer Operations	3.6	3.16	3.15	3.11		3.13	
Open Top Tanks and Surface Cleaners	3.6	3.7 3.8 3.9		3.7 3.8 3.9			
Surface Coating Operations		3.7 3.8 3.9		3.7 3.8 3.9	3.10		
Source Operations Other than Storage Tanks, Open Top Tanks and Surface Outers	3.6	3.7 3.8 3.9	3.14	3.7 3.8 3.9			
Cutback and Emulsified Asphalt					3.12		
Petroleum Solvent Dry Cleaners				3.7 3.8 3.9	3.17		3.17

7:27B-3.6 Procedures for the determinations of vapor pressures of a single known VOS or mixtures of known and/or unknown VOS

(a) The vapor pressure of a single known volatile organic substance shall be determined as follows:

1. The vapor pressure of certain single known VOS\*[:]\* \* may be\* found in the following, or other sources which shall be submitted to the Department for review, pursuant to N.J.A.C. 7:27B-3.2(c), (d)\*, \* and (e) \* , and\* may be used provided \*the vapor pressure was measured and\* the VOS \*[is]\* \* was\* certified by the manufacturer or by the National Bureau of Standards as being of or equivalent to research grade.

i. Weast, R.C., "Handbook of Chemistry and Physics," Section D, Chemical Rubber Co., Cleveland, Ohio;

ii. Perry, J.H., "Chemical Engineers" Handbook, Section 3, McGraw-Hill, New York;

iii. Lange, N.A., "Handbook of Chemistry," McGraw-Hill, New York;

iv. Boublik, T.; Grued, V.; and Hala, E., "The Vapor Pressure of Pure Substances," Elsevier Scientific Publishing, New York;

v. Jordan T.E., "Vapor Pressure of Organic Compounds" Interscience Publishers, New York.

2. In the absence of the referenced data above, the vapor pressure of the single VOS may be determined by the following methods:

i. ASTM Designation D323-79, "Standard Method of Test for Vapor Pressure of Petroleum Products (Reid Method)", (N.J.A.C. 7:27B-3.18, Reference 3). This method may be used only if the sensitivity of the

pressure measuring device is sufficient for the vapor pressure level. The results must be converted to and reported as the true vapor pressure at standard conditions (N.J.A.C. 7:27B-3.18, Reference 3); or

ii. ASTM Designation D2879-75, "Standard Method of Test for Vapor Pressure—Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope" (N.J.A.C. 7:27B-3.18, Reference 4).

(b) The vapor pressures of mixtures of known volatile organic substances in known proportions shall be determined as follows:

1. Data on partial pressure for certain mixtures of VOS are published in the International Critical Tables and in scientific journals. The vapor pressure of a mixture which has been reported in such sources will be acceptable provided the source is documented by a reprint which shall be submitted for review by the Department, pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

2. The vapor pressure may also be determined by the \*[following methods:

i. The]\* method set forth in (a)2i, above. The Reid method is specific for volatile crude oil and volatile nonviscous petroleum products but is adaptable to other mixtures of VOS. For petroleum and petroleum distillates, refer to American Petroleum Institute (API) Bulletin 2517, "Selecting the Proper Nomograph" (N.J.A.C. 7:27B-3.18, Reference 5). The Reid vapor pressure can be converted to true vapor pressure at standard conditions. For mixtures other than petroleum and petroleum distillates, the resulting Reid vapor pressure may be converted to true vapor pressure at standard conditions using Table 1.

**TABLE 1**  
**CONVERSION OF REID VAPOR PRESSURES TO**  
**TRUE VAPOR PRESSURES**

Reid Vapor Pressure Psia	True Vapor Pressure Psia
1	0.5
2	1.1
3	1.7
4	2.3
5	2.9
6	3.6
7	4.2
8	4.8
9	5.5
10	6.1
11	6.7
12	7.4
13	8.0
14	8.6
14.7	9.0

NOTE: Straight-line interpolation is to be used for intermediate values. Applicable for volatile organic substance(s) other than petroleum and petroleum **\*[distilleries]\* \*distillates\***.

(c) The vapor pressure of mixtures of known and/or unknown volatile organic substances shall be determined as follows:

1. The method set forth in (a)2i above;
2. ASTM Designation D2551-80, "Standard Method of Test of Vapor Pressure of Petroleum Products (Micromethod)" (N.J.A.C. 7:27B-3.18, Reference 6); or
3. The method set forth in (a)2ii above.

7:27B-3.7 Procedures for the direct measurement of volatile organic substances using a flame ionization detector (FID), a photoionization detector (PID) or a non-dispersive infrared analyzer (NDIR)

(a) The method in this section is applicable for the determination of the concentration and the mass emission rate of a known VOS or a mixture of known VOS in known proportions in systems with constant emissions and flow rates. For the same circumstances as described above, the procedures specified in N.J.A.C. 7:27B-3.8 or 3.9 may be used in place of this method. Any other alternative test method shall be submitted to the Department for review, pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon the following principles:

1. The flame ionization method is based upon ionization produced when the organic vapor in the sample is combusted in a hydrogen flame. The ions and electrons formed in the flame enter an electrode gap, decrease the gap resistance, and thus permit a current flow in an external circuit. The resulting current is proportional to the instantaneous concentration of the organic vapor.

2. The photoionization method is based upon ionization produced when an organic vapor in the sample is exposed to a high intensity ultraviolet source. The ions and electrons formed enter an electrode gap, decrease the gap resistance, and thus permit a current flow in an external circuit. The resulting current is proportional to the instantaneous concentration of the organic vapor. **\*(The PID is recommended for sources suspecting of emitting methane.)\***

3. The non-dispersive infrared method is based upon absorption of infrared energy when a band of infrared energy containing the proper frequencies is alternately passed through an absorption cell containing the organic vapor and a reference cell. The difference in absorption between the reference cell and the absorption cell containing the organic vapor is proportional to the instantaneous concentration of the organic vapor.

(c) The following is a summary of this method:

1. The instrument is calibrated with standard gas mixtures to establish the instrument response to the VOS being analyzed. A representative sample of the source gas is drawn into the instrument under conditions which prevent any condensation of the source gas and which remove particulate matter. The response is recorded at specified intervals during the test period, and the true concentration of the VOS is calculated from previously determined response factors. The total gas flow rate, moisture content, and the average molecular weight of the gas are determined during the sampling period, and the mass emission rate of the VOS is calculated and reported as pounds per hour.

2. For the purposes of this procedure, three separate test runs will be conducted, each of which shall extend for one hour or a batch cycle whichever is longer. Any alternative test period shall be submitted to the Department for review, pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e). (d) The following is a list of equipment used in this method:

1. Probe;

**\*2. Sample line;\***

**\*3.\* [2.]\*** Temperature sensor;

**\*4.\*\*[3.]\*** Pump;

**\*5.\*\*[4.]\*** Detector\*[,]\*\*.\* **\*[which is]\*** a total hydrocarbon analysis instrument having a flame ionization\*[\*]\*, a photoionization or a non-dispersive infrared detector and a sampling system capable of preventing any condensation of the sample gas. The detector must be capable of meeting or exceeding the manufacturer's specifications by demonstration, preferably by the manufacturer, and the other specifications listed below:

i. Linearity: the instrument response to the VOS being measured shall not deviate from linearity by more than five percent of the full scale value of the range being used.

ii. Zero drift: less than three percent of full scale per test period or one hour, whichever is shorter.

iii. Span drift: less than three percent of full scale per test period or one hour whichever is shorter.

iv. Response time: equal to or less than 30 seconds **\*for 95 percent full scale.\***

**\*[†]NOTE:** Many FID instruments require that the sample contain at least 15 percent oxygen to maintain the flame. If the sample does not, it should be diluted by known ratios with hydrocarbon free air to obtain suitable oxygen levels.]\*

**\*6.\*\*[5.]\*** Recorder/Integrator;

**\*7.\*\*[6.]\*** Gas cylinder supplies as follows:

i. Laboratory standard calibration gases;

**\*[ii. Field standard calibration gases: known concentrations of propane or other suitable VOS in the same matrix if possible as will be sampled, which will give responses less than, approximately equal to and greater than the VOS to be measured. The standard gases may be produced locally using approved techniques or may be supplied and certified by a vendor. If produced locally, the concentrations must be verified by an independent analysis:]\***

**\*ii. Field standard: a known concentration of methane used to check instrument response in the field;\***

iii. Fuel gas;

iv. Combustion gas; and

v. Zero gas;

**\*8.\*\*[7. Velometer;]\* \*Velocity meter;\***

**\*9.\*\*[8.]\*** Condensor; and

**\*10.\*\*[9.]\*** Dilution system (if necessary): a system supplied by the instrument manufacturer or one similar to that specified in N.J.A.C. 7:27B-3.9(e)4, capable of producing dilution ratios which will prevent any condensation of the sample gas and capable of bringing the sample concentration within the linear range of the detector.

(e) The procedure for this section shall be as follows:

1. A presampling survey of the source operation shall be conducted to establish certain basic information including but not limited to: sampling location; stack temperature and pressure; stack gas moisture content; approximate particulate concentrations; composition of the gases; and the identification and approximate concentrations of the VOS to be analyzed. It may be necessary to take samples for analysis to acquire any information that is not readily available.

2. The instrument shall be calibrated as follows:

i. The instrument shall be operated according to the manufacturer's instructions;

ii. Adjust the analyzer to the zero reading by using zero gas; and

iii. Introduce three laboratory standard calibration gases separately recording the response for each. Plot the response versus the concentration. No response should deviate from the best fit line through the three points by more than five percent. If linearity cannot be obtained over the concentration range expected, the sample should be diluted to a concentration level where linearity can be obtained.

**\*iv. Introduce a sample of the field standard and record the response.\***

3. The sampling and analysis shall be conducted as follows:

i. Assemble and connect any sampling probe, filter, and heating or dilution system to the instrument. All connections shall be tight and leak-free;

ii. Adjust the heating or dilution system to prevent any condensation of the sample gas;

\*[iii. If a dilution system is used, run three field standards through the dilution system and the instrument and record each response. The response should not deviate from linearity by more than five percent.]\*

\*iii. Analyze a sample of the field standard and adjust the instrument to the reading determined during calibration. If a dilution system must be used, record the response of the field standard with the dilution system in place and determine a new calibration curve at the same conditions used in the field.\*

iv. The probe should be positioned at least two feet into the stack or at the centroid of the stack. The sample port location should be in accordance with N.J.A.C. 7:27B-1, Air Test Method 1, (N.J.A.C. 7:27B-3.18, Reference 1);

v. Activate the system and adjust as necessary to achieve the manufacturer's recommended operating conditions. Record the instrument response using a continuous recording device if available; if a continuous reading device is not available, take a reading at intervals of no less than one minute. Note any non-representative operations or occurrences during the testing and omit those corresponding analyzer readings from the calculations;

vi. For the purposes of this procedure,\* three separate and valid test runs will be conducted, each of which shall extend for one hour or a batch cycle whichever is longer. Any alternative test period shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e);

vii. During the test period, determine the stack gas velocity, temperature, moisture content, average gas molecular weight, and volumetric flow rates in accordance with the methods prescribed in N.J.A.C. 7:27B-3.18, Reference 1) or other flow determining method which shall be submitted to the Department for review, pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e). See Appendix A for the required reporting form. (Any alternative reporting form shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e).)

viii. At the conclusion of each test run, note the time and introduce the field standard \*[calibration]\* gas \*and determine and record its response.\* \*[closest to the concentration found.]\* The net response must agree within five percent of the pretest response for the test to be valid.

(f) The calculations shall be performed as follows:

1. Establish the molecular weight of each VOS and calculate a weighted average molecular weight if more than one VOS is present.

2. Calculate the total gas flow rate \*from the source\* in SCFM (70°F and 1 atm) including the contribution of the VOS and any moisture present.

3. Determine the response factor (RF) of the lab standard from the following equation.

$$RF = \frac{C \text{ ppm (std)}}{\text{Response (Meter Reading)}}$$

4. Calculate the concentration of VOS as the standard as follows:

$$C \text{ (VOS as std.)} = \text{Instrument Response} \times RF$$

5. Calculate the emission rate in lbs/hr. expressed as the \*[calibration standard]\* \*laboratory standard calibration gas\*.

$$\frac{\text{lbs. VOS}}{\text{hr}} = \frac{\text{Avg. C ppm (VOS as std.)} \times \text{SCFM}}{\text{x MW(std.)} \times 60(\text{min/hr})^*}$$

Where:  $\frac{\text{lbs. VOS}}{\text{hr}} = \frac{\text{C ppm (std.)} \times \text{SCFM}}{387 \times 10^6}$

C ppm (std) = the concentration in ppm of the standard mixture.

Avg. C ppm (VOS as std.) = average parts per million of VOS over the test period as \*[calibration standard]\* \*laboratory standard calibration gas\*.

MW (std) = molecular weight of \*[calibration standard]\* \*laboratory calibration standard\* (pounds per pound-mol).

SCFM = cubic feet per minute at 70°F and 1 atm emitted from the source operation.

387 = molar volume at standard conditions \*in\* \*([ cubic feet per pound-mol\*])].\*

RF = response factor for VOS.

NOTE: This formula is based upon the assumption that both the standards and the sample have been passed through the same sampling system and are diluted by the same amount.

(g) The test report shall include the following information submitted on the required reporting forms in Appendix B (any alternative reporting form shall be submitted to the Department for review prior to use pursuant to N.J.A.C. 7:27B-3.2(c) and (e)):

1. A dimensioned sketch of the sampling location;
2. All data used to determine the volume flow rate;

3. The composition of the gas and its average molecular weight;
4. A sketch and/or description of the sampling system used;
5. The identity, concentration and means of verification for each standard used;
6. A description of the analysis instrument and the conditions of operation;
7. Sufficient details of the calculations to allow the results to be reproduced independently;
8. The emission rate measured in lbs/hr of each VOS for each test;
9. Operating conditions of the source operation; and
10. An explanation for any unusual procedures or results.

7:27B-3.8 Procedures for the direct measurement of volatile organic substances using a gas chromatograph (GC) with a flame ionization detector (FID) or other suitable detector

(a) The method in this section is applicable for the determination of the concentrations and the mass emission rates of known VOS in unknown proportions in systems with constant emissions and flow rates. For the same circumstances as described above, the procedure specified in N.J.A.C. 7:27B-3.9 may be used in place of this method. Any other alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon the following principles:

1. Gas chromatography, whereby VOS are separated by passing an inert gas stream containing a known volume of the sample gas or a standard gas through a column containing a suitable stationary phase and/or a solid support; and

2. Ionization produced when each VOS in the gas sample as eluted from the \*[gas]\* \*gap\* chromatograph is combusted in a hydrogen flame. The ions and electrons formed in the flame enter an electrode gap, decrease the gas resistance, and thus permit a current flow in an external circuit. The resulting current is proportional to the instantaneous concentration of the VOS. Any alternative detector shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(c) The following is a summary of this method:

1. The GC-FID is calibrated with standard gas mixtures \*[of]\* \*containing\* each VOS being measured to establish the calibration curves and retention times. A representative sample is drawn into the gas sampling loop under conditions which prevent any condensation of the sample gas and which remove particulate matter. The sample is injected into the GC and the responses and retention times of the individual VOS are recorded on a strip chart recorder and the peak areas of each VOS is measured. The peaks are identified from the established retention times. The concentration of each VOS is determined by referring to the calibration curve. The total gas flow rate, moisture content, and the average molecular weight of the gas are determined during the sampling period, and the mass emission rate of the VOS is calculated and reported as pounds per hour.

2. For the purposes of this procedure, three separate test runs will be conducted, each of which \*[will]\* \*shall\* extend for one hour or a batch cycle whichever is longer. Any alternative test period shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

3. In situations where safety considerations, location, or number of sample points prohibit direct analysis at the VOS source, the samples are collected in accordance with the method prescribed in N.J.A.C. 7:27B-3.9 and transported to the GC-FID for analysis.

(d) The following is a list of equipment used in this method:

1. Probe:

\*2. Sample line;\*

\*3.\*\*[2.]\* Temperature sensor;

\*4.\*\*[3.]\* Pump;

\*5.\*\*[4.]\* Gas sampling valve;

\*6.\*\*[5.]\* Needle valve;

\*7.\*\*[6.]\* Gas chromatograph-flame ionization detector (GC-FID);

\*8.\*\*[7.]\* Recorder/Integrator;

\*9.\*\*[8.]\* Gas cylinder supplies as follows:

i. Laboratory standard calibration gases;

ii. Pure components standard;

iii. Fuel gas;

iv. Combustion gas; and

v. Carrier gas.

\*10.\*\*[9. Velometer;]\* \*Velocity meter;\*

\*11.\*\*[10.]\* Condensor; and

\*12.\*\*[11.]\* Dilution system (if necessary) \*[which is]\* \* a system as described in N.J.A.C. 7:27B-3.9(e)4, capable of producing dilution

ratios which will prevent any condensation of the sample gas and capable of bringing the sample concentration within the linear range of the GC detector.

(e) The procedure for this section shall be as follows:

1. A presampling survey of the source operation(s) shall be conducted to establish certain basic information including but not limited to: sampling location; stack temperature and pressure; stack gas moisture content; approximate particulate concentration; composition of the gases, and the identification and approximate concentrations of the VOS to be analyzed. It may be necessary to take samples for analysis to acquire any information that is not readily available.

2. The instrument shall be calibrated as follows:

i. The instrument shall be operated according to the manufacturer's instructions:

ii. The operating parameters of the instrument such as column selections, temperatures, carrier gas flow rate, and chart speed shall be established for the VOS to be measured, and verified in the laboratory prior to actual sampling. The conditions selected should produce baseline separation of the individual VOS peaks, if possible, but in no case should the height of the valley between the two peaks measured from the baseline to the lowest point in the valley be greater than 30 percent of the height of the shorter of the two peaks. More than one set of conditions may be necessary for complete resolution:

iii. The instrument operating conditions shall be recorded on the chart and maintained throughout the calibration and sample gas analyses. The operating conditions **\*to be recorded\*** are sample loop temperature, column temperature, carrier gas flow rate, and chart speed. Attenuator setting shall be adjusted as required and recorded on the chart to indicate the time and amount of adjustment:

iv. Purge the sample loop with one of the calibration gas mixtures and record the concentration:

v. Activate the sampling valve to inject the sample and mark the injection point on the chart:

vi. Measure the distance on the chart from the injection point to the time at which the peak maximum occurs for the calibration mixture. This distance divided by the chart speed will provide the retention time for each compound:

vii. Calculate the sample peak areas by multiplying the height times the width at half height and adjust each peak area by the attenuator setting as required. An integrator may be used to calculate peak areas:

viii. Repeat steps iv through vii for each calibration gas until two consecutive analyses agree within five percent. The corresponding peak areas for each VOS shall then be averaged:

ix. Plot the areas of each peak versus the concentration on suitable graph paper. If any point should deviate from a straight line by more than five percent, the calibration shall be repeated. If a straight line is not obtained, less concentrated standards or a smaller sample must be used to bring the response within the linear range of the detector; and

x. Draw a **\*[smooth curve]\* \*straight line\*** through the points to establish a calibration curve for each VOS. Calculate the unknown VOS concentrations from their peak areas by reading from the appropriate calibration curve or by multiplying the peak area by the slope of the calibration curve. Extrapolation beyond the calibrated range is not acceptable.

xi. The instrument calibration shall be checked just prior to **\*[and following]\*** each test. The calibration gas shall be introduced through the sampling system in a manner similar to the introduction of the source gas.

3. The sampling and analysis shall be conducted as follows:

i. Assemble and connect any sampling probe, **\*sample line,\*** filter and heating or dilution system to the GC-FID. All connections shall be tight. **\*[and leak-free;]\***

ii. Turn on the GC and source gas sampling systems and adjust conditions to prevent any condensation of the sample gas:

iii. If a dilution system is used, run three field standards through the dilution system and the instrument and record each response. The response shall not deviate from linearity by more than five percent:

iv. The probe shall be positioned at least two feet into the stack or at the centroid of the stack. The sample port location shall be in accordance with N.J.A.C. 7:27B-1, AIR TEST METHOD 1 (N.J.A.C. 7:27B-3.18, Reference 1);

v. After thoroughly purging the gas sampling loop with source gas, analyze a sample of the source gas maintaining the same instrument operating conditions used during the calibration procedures. Calculate the concentrations of the components by referring to the calibration curve; and

vi. Repeat the analysis at uniform intervals as many times as practical during the test run. No less than three sample analyses per test run shall be acceptable;

vii. For the purposes of this procedure three separate and valid test runs will be conducted, each of which shall extend for one hour or a batch cycle whichever is longer. Any alternative test period shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

viii. During the test period, determine the stack gas velocity, temperature, moisture content, average gas molecular weight, and volumetric flow rates in accordance with the methods prescribed in N.J.A.C. 7:27B-1, AIR TEST METHOD 1 (N.J.A.C. 7:27B-3.18, Reference 1), or other flow determining method submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e). See Appendix A for the required reporting form. (Any alternative reporting forms shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e).)

**\*ix. At the conclusion of each test run introduce the calibration gas in a manner similar to the introduction of the source gas and determine the response. The net response must agree to within ± five percent of the pretest response for the test to be valid.\***

(f) The calculations shall be performed as follows:

1. Establish the molecular weight of each VOS.

2. Calculate the total gas flow rate **\*from the source operation(s)\*** in SCFM (70°F and 1 atm) including **\*[into account]\*** the contribution of the VOS and any moisture present.

3. Record the individual concentrations (C ppm) and determine the average concentration (C) of each VOS in ppm (avg. C ppm) for each test run from the calibration curves.

4. Calculate the emission rate in lbs/hr of each VOS as follows:

$$\frac{\text{lbs VOS}}{\text{hr}} = \frac{\text{Avg. C ppm(VOS)} \times \text{SCFM}}{387 \times 10^6 \times \text{MW(VOS)}} \times 60 \text{ min/hr}$$

Where:

Avg. C ppm(VOS) = average parts per million of VOS over the test period.

MW (VOS) = molecular weight of VOS (pounds per pound-mol).

SCFM = cubic feet per minute at 70°F and 1 atm emitted from the source operation.

387 = molar volume at standard conditions **\*in\* \*([cubic feet per pound-mol])\***.

NOTE: This formula is based upon the assumption that both the standards and the sample have been passed through the same sampling system and diluted by the same amount.

5. Calculate the total emission rate in lbs/hr of the VOS by totaling the individual VOS calculated in (f)4 above.

(g) The test report shall include the following information submitted on the required reporting form in Appendix C (any alternative reporting form shall be submitted to the Department for review pursuant to N.J.A.C. 7:27-3.2(c) and (e)):

1. A dimensioned sketch of the sampling location;

2. All data used to determine the volume flow rates;

3. The composition of the gas and its average molecular weight;

4. A sketch and/or description of the sampling system used;

5. The identity, concentration, and means of verification for each standard used;

6. A description of the analysis instrument and the conditions of operation;

7. Copies of the chromatograms for each standard and each test run identified as to time taken and pertinent instrument and dilution conditions;

8. Sufficient details of the calculations to allow the results to be reproduced independently;

9. The emission rate measured in lbs/hr of each VOS for each test;

10. Operating conditions of the source operations; and

11. An explanation for any unusual procedures or results.

7:27B-3.9 Procedures for the sampling and remote analysis of known volatile organic substances using a gas chromatograph (GC) with a flame ionization detector (FID) or other suitable detector

(a) The method in this section is applicable for the determination of the concentration and the mass emission rates of known VOS from a source where it is not practical to conduct a direct analysis at the source or in systems where the flow rates are not constant. For the same circumstances as described above, any other alternative test method shall be

submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon the following principles:

1. The reduction of the moisture and VOS levels in the **\*source\*** gas **\*[to be analyzed]\*** by condensation or dilution;

2. Collecting the resulting dry sample gas in a Tedlar or equivalent bag;

3. Gas chromatography whereby VOS are separated by passing an inert gas stream containing a known volume of the sample gas or standard gas through a column containing a stationary phase and/or a solid support; **\*and\***

4. Ionization produced when each VOS in the sample gas as eluted from the gas chromatograph is combusted in a hydrogen flame. The ions and electrons formed in the flame enter an electrode gap, decrease the gap resistance, and thus permit a current flow in an external circuit. The resulting current is proportional to the instantaneous concentration of the VOS. Any alternative detector shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(c) The following is a summary of this method:

1. A representative sample from the source is drawn at a constant rate through a heated sample line to a series of condensers in an ice bath where the moisture and condensable VOS are removed, or to a dilution system which reduces the concentration of the source gas by a known amount with hydrocarbon-free air. The dry sample gas is collected in a Tedlar or equivalent sampling bag which, along with any collected condensate, is transported to the GC-FID for analysis.

2. The GC-FID is calibrated with standard gas mixtures of each VOS being measured to establish the calibration curve and retention times. Representative portions of any condensate and the bag sample are injected separately into the calibrated GC-FID.

**\*[3.]\*** The responses and retention times of the individual VOS are recorded on a strip chart recorder and the peak areas of each VOS are measured. The peaks are identified from the established retention times. The concentration of each VOS is determined by referring to the calibration curve.

**\*[4.]\*** The total gas flow rate, moisture content, and the average molecular weight of the gas are determined during the sample period, and the mass emission rate of the VOS is calculated and reported as pounds per hour.

**\*3.\*\*[5.]\*** For the purposes of this procedure, three separate test runs will be conducted, each of which shall extend for one hour or a batch cycle whichever is longer. Any alternative test period shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(d) The following is a list of equipment used in this method:

1. Probe;

**\*2. Sample line;\***

**\*3.\*\*[2.]\*** Temperature sensor;

**\*4.\*\*[3.]\*** Pump;

**\*5.\*\*[4.]\*** Gas sampling valve;

**\*6.\*\*[5.]\*** Needle valve;

**\*7.\*\*[6.]\*** Condensation trap: three midget impingers (two with 10 ml of distilled water and one dry) in an ice bath;

**\*8.\*\*[7.]\*** Gas meter: a dry gas meter to measure the volume of the gas sample collected;

**\*9.\*\*[8.]\*** Sample bag: a Tedlar or equivalent bag with **\*a volume at least 50 percent greater than the expected sample size\*** **\*[an appropriate capacity]\*** and equipped with a hose connection and shut-off valve to collect and store the sample;

**\*10.\*\*[9.]\*** Gas chromatograph—flame ionization detector (GC-FID);

**\*11.\*\*[10.]\*** Recorder/**\*[Integrator;]\*** **\*Integrator;\***

**\*12.\*\*[11.]\*** Gas cylinder supplies, including the following:

i. Laboratory standard calibrations gases;

ii. Pure component standards;

iii. Fuel gas;

iv. Combustion gas; and

v. Carrier gas.

**\*13.\*\*[12.]\*** Velometer;

**\*14.\*\*[13.]\*** Condensor (water);

**\*15.\*\*[14.]\*** Condensor (VOS) **\*[which is]\*** **\*:\*** a system as specified in (e)3 below for collecting condensible VOS and moisture from the source gas consisting of: a probe, three midget impingers (two containing ten ml. of distilled water and one dry, all three immersed in an ice bath), a pump, and a dry gas meter all connected in series;

**\*16.\*\*[15.]\*** Dilution system (if circumstances require) **\*[which is]\*** **\*:\*** a system as specified in (e)4 below, capable of producing dilution ratios

which will prevent any condensation of the sample gas and capable of bringing the sample concentration within the linear range of the detector:

**\*17.\*\*[16.]\*** Rotameters: flowmeters constructed of glass, stainless steel or Teflon of appropriate size used to measure the gas flow rate. The meters must be heated, if necessary, and calibrated with the gas to be measured. A calibration may be made with another gas and then corrected<sup>\*</sup>**\*[;]\*** **\*accordingly;\***

**\*[17. Sample line:]** Sample line: Sample line or stainless steel tubing with Teflon or stainless steel fittings;<sup>\*</sup>

18. Charcoal tube: a drying tube filled with activated charcoal with glass wool plugs in both ends to absorb organic vapors from the vented sample gas and to prevent the release of VOS into the work area;

19. Dilution gas; and

20. Sparger module: a sparge-desorb module to strip VOS from the impinging condensate and trap the VOS on a suitable adsorbant.

(e) The procedure for this section shall be as follows:

1. A presampling survey of the source operation(s) must be conducted to establish certain basic information including but not limited to: sampling location, stack temperature and pressure, stack gas moisture content, approximate particulate concentration, composition of the gases, and the identification and approximate concentrations of the VOS to be analyzed. It may be necessary to take samples for analysis to acquire any information that is not readily available;

2. The instrument shall be calibrated as follows:

i. The instrument shall be operated according to the manufacturer's instruction;

ii. The operating parameters of the instrument such as: column selections, temperatures, carrier gas flow rate, and chart speed must be established for the VOS to be measured, and verified in the laboratory prior to the actual sampling. The conditions selected should produce baseline separation of the individual VOS peaks, if possible, but in no case should the height of the valley between the peaks measured from the baseline to the lowest point in the valley be greater than 30 percent of the height of the shorter of the two peaks. More than one set of conditions may be necessary for complete resolution;

iii. The instrument operating conditions shall be recorded on the chart and maintained throughout the calibration and sample gas analyses. The operating conditions are sample loop temperature, column temperature, carrier gas flow rate, and chart speed. Attenuator settings shall be adjusted as required and recorded on the chart to indicate the time and amount of adjustment;

iv. Purge the sample loop with one of the calibration gas mixtures and record the concentration;

v. Activate the sampling valve to inject the sample and mark the injection point on the chart;

vi. Measure the distance on the chart from the injection point to the time at which the peak maximum occurs for the calibration mixture. This distance divided by the chart speed will provide the retention time for each compound; and

vii. Calculate the sample peak areas by multiplying the height times the width at half height and adjust each peak area by the attenuator setting as required. An integrator may be used to calculate peak areas.

viii. Repeat steps iv through vii for each calibration gas until two consecutive analyses agree within five percent. The corresponding peak areas for each VOS shall then be averaged.

ix. Plot the areas of each peak versus the concentrations on suitable graph paper. If any point should deviate from a straight line by more than five percent, the calibration shall be repeated. If a straight line is not obtained, less concentration standards or a smaller sample must be used to bring the response within the linear range of the detector.

x. Draw a **\*[smooth curve]\*** **\*straight line\*** through the points to establish a calibration curve for each VOS. Calculate the unknown VOS concentrations from their peak areas by reading from appropriate calibration curve or by multiplying the peak area by the slope of the calibration curve. Extrapolation beyond the calibrated range is not acceptable.

xi. The instrument calibration shall be checked just prior to **\*[and following]\*** each test. The calibration gas shall be introduced through the sampling system in a manner similar to the introduction of the source gas.

3. Sampling shall be conducted as follows when using a condensor system:

**\*i. Each bag shall be tested for contamination by filling with nitrogen or air and allowing it to stand for 24 hours. The gases shall be analyzed by gas chromatograph at high sensitivity. Any bag found to be contaminated shall be discarded.**

ii. Each bag shall be checked for leaks by pressurizing it to two to four inches of water and allow to stand overnight. A deflated bag indicates a leak.\*

\*iii.\*\*[i.]\* Connect the probe to a condenser, sample bag, pump, and a dry gas meter as shown. \*See Appendix C.\* See Appendix \*[C]\* \*D\* for the required reporting form\*. \*([a]\*\*A\*ny alternative reporting form shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e));

\*iv.\*\*[ii.]\* Conduct a leak check according to the following procedure\*[:]\* \*;\*:

(1) Insert a clean, leak-free sample bag in the rigid container and prepare the container for a leak check. If the sampling container is truly rigid, the following leak-check shall be performed\*:

(A)\*\*[(1)]\* Adjust the three-way valves to allow the evacuation of the rigid container:

(B)\*\*[(2)]\* Plug the end of the probe and pull a vacuum of 15\*[<sup>2</sup>Hg.]\* \*inches mercury\* across the sampling train; and

(C)\*\*[(3)]\* Monitor the flow meter and gas meter for flow movement. Any leak equal to or greater than four percent of the sampling rate is unacceptable\*[:]\* \*;\*:

(D)\*\*[(4)]\* If an unacceptable leak exists, it shall be corrected and the leak check procedure repeated. If a leak occurred, the sample bag will have to be reevacuated prior to sampling. This is done by realigning the three-way valves so that a vacuum can be applied directly to the sample bag.

(2) If the sampling container cannot hold a vacuum of 15 inches mercury, then the following leak check procedures shall be used:

(A) Adjust the three-way valves to prevent any flow from entering the sample bag and with a water manometer in the line, pull a vacuum of 5-10 cm water (2-4 in. water) on the rigid container and then seal the container in such a way as to monitor the container pressure. Allow to stand for ten minutes. Any displacement in the water manometer indicates a leak. Refer to (1)(D), above if a leak occurs.

(B) After successfully leak checking the rigid container, adjust the three-way valves to by-pass the rigid container; and repeat steps (1)(B) and (1)(C), above.\*

\*v.\*\*[iii.]\* Turn on the probe heating system and adjust to a temperature to prevent any condensation of the sample gas:

\*vi.\*\*[iv.]\* The probe should be positioned at least two feet into the stack or at the centroid of the stack. The sample port location shall be in accordance with N.J.A.C. 7:27B-3.18, Reference 1. \*Record the initial meter volume\*:\*

\*vii.\*\*[v.]\* Purge the system by aligning the three-way valves on the rigid container so that a vacuum can be pulled directly on the impingers. The three-way valves shall be located close to the rigid container to avoid dilution air from entering the sample bag;

\*viii.\*\*[vi.]\* Turn on the pump and adjust the flow so that a minimum of 20 liters of sample gas will be collected during the test period;

\*ix.\*\*[vii.]\* Purge the system for five minutes, then realign the three-way valves on the rigid container so that the sample bag will \*[inflate]\* \*be on the stream with the source gas.\* Continue to sample in this manner for the remainder of the test run;

\*x.\*\*[viii.]\* Record the temperatures and pressures at five-minute intervals during the test period. See Appendix E for the required reporting form\*. \*([a]\*\*A\*ny alternative reporting form shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e)\*.\*[:]\*

\*xi.\*\*[ix.]\* Record the final meter volume at the conclusion of the test run. Remove the probe from the stack and perform a leak check as previously described. The test shall be voided if the leak rate is equal to or greater than four percent of the sampling rate as determined on the first post test leak check attempt; and

\*xii.\*\*[x.]\* Rinse the probe, all connecting lines through the impingers and the impingers with an appropriate solvent. The rinse solution and impinger collect shall be placed in \*an opaque\* leak-proof container\*[s]\* for later analysis. \*The container should be filled to minimize loss of VOS in the headspace.\*

\*xiii. The sample bag must be protected from heat and sunlight to prevent reactions between sample components and should be analyzed within 24 hours unless it can be shown that significant sample degradation does not occur.\*

\*xiv.\*\*[xi.]\* For the purposes of this procedure, three separate and valid test runs will be conducted, each of which shall extend for one hour or a batch cycle whichever is longer. Any alternative test period shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

\*xv.\*\*[xii.]\* During the test period, determine the stack gas velocity, temperature, moisture content, average gas molecular weight and volumetric flow rate in accordance with the methods prescribed in N.J.A.C. 7:27B-1 AIR TEST METHOD 1 (N.J.A.C. 7:27B-3.18, Reference 1), or other alternative method, which shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e). See Appendix A for the required reporting form\*. \*([a]\*\*A\*ny alternative reporting form shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e)\*.\*[:]\*

\*xvi. At the conclusion of each test run introduce the calibration gas in a manner similar to the introduction of the source gas and determine the response. The net response must agree to within  $\pm$  five percent of the pretest response for the test to be valid.\*

4. Sampling shall be conducted as follows when using a dilution system:

\*i. Each bag shall be tested for contamination by filling with nitrogen or air and allowing it to stand for 24 hours. The gas shall be analyzed by gas chromatograph at high sensitivity. Any bag found to be contaminated shall be discarded.

ii. Each bag shall be checked for leaks by pressurizing it to two to four inches of water and allow to stand overnight. A deflated bag indicates a leak.\*

\*iii.\*\*[i.]\* Connect the probe to a dilution system, sample bag, pump, and a dry gas meter in series as shown. See Appendix C\*. See Appendix D\* for the required reporting form\*. \*([a]\*\*A\*ny alternative reporting form shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e)\*.\*[:]\*

\*iv.\*\*[ii.]\* Conduct a leak check according to the procedure outlined in (e)iii above;

\*v.\*\*[iii.]\* Turn on the probe heating system and adjust to a temperature which will prevent condensation;

\*vi.\*\*[iv.]\* The probe shall be positioned at least two feet into the stack or at the centroid of the stack. The sample port location should be in accordance with N.J.A.C. 7:27B-1, AIR TEST METHOD 1 (N.J.A.C. 7:27B-3.18, Reference 1);

\*vii.\*\*[v.]\* Purge the system by aligning the three-way valves on the rigid container so a vacuum can be pulled directly on the dilution system. The three-way valves shall be located close to the rigid container to avoid dilution air from entering the sample bag;

\*viii.\*\*[vi.]\* Turn on the pump and adjust the flow to give the desired dilution rate and to ensure that a minimum of 20 liters of sample gas will be collected during the test period;

\*ix.\*\*[vii.]\* Before sampling, verify that the system is working properly by introducing a calibration gas into the system and collect an audit sample maintaining the same operation conditions to be used during sampling. Transport this sample to the GC for immediate analysis, if possible; otherwise repeat the audit at the end of the tests and transport the audit samples to the laboratory along with the test samples. The audit results should be within five percent of the calibration gas concentration; if not, correct the problem and repeat the audit. In cases where immediate analysis is not possible, the audit results may be used to determine a correction factor;

\*x.\*\*[viii.]\* Purge the system for five minutes. Then realign the three-way valves on the rigid container so the sample bag will \*[inflate]\* \*be on stream with the source gas.\* Continue to sample maintaining the same dilution rate used for the audit test for the remainder of the test run;

\*xi.\*\*[ix.]\* Record the temperatures and pressures at five-minute intervals during the test period. See Appendix E for required reporting form\*. \*([a]\*\*A\*ny alternative reporting form shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e)\*.\*[:]\*

\*xii.\*\*[x.]\* Record the final meter volume at the conclusion of the test run. Remove the probe from the stack and perform a leak check as previously described. The test shall be voided if the leak rate is equal to or greater than four percent of the sampling rate as determined\*<sup>d</sup> on the first post test leak check attempt; and

\*xiii.\*\*[xi.]\* Remove the sample bag from the rigid container. Visually inspect the sample bag. If any condensation is observed, the test run shall be voided and \*a\* new run must be conducted using a greater dilution ratio.

\*xiv. The sample bag must be protected from heat and sunlight to prevent reactions between sample components and should be analyzed within 24 hours unless it can be shown that significant sample degradation does not occur.\*

\*xv.\*\*[xii.]\* For the purpose of this procedure\*,\* three separate and valid test runs shall be conducted, each of which shall extend for one

hour or a batch cycle, whichever is longer. Any alternative test period shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

\*xvi.\*\*[xiii.]\* During the test period, determine the stock gas velocity, temperature, moisture content, average gas molecular weight, and volumetric flow rate in accordance with the methods prescribed in N.J.A.C. 7:27B-1 AIR TEST METHOD 1 (N.J.A.C. 7:27B-3.18, Reference 1), or other appropriate flow determining method which shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e). See the required reporting form at Appendix A.\* (\*[a]\*\*A\*ny alternative reporting form shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e).\*)\*[\*]\*

5. The bag sample shall be analyzed as follows:

i. Turn on the GC and adjust the sample valve and those conditions which will prevent any condensation of the sample gas;  
ii. After thoroughly purging the gas sampling loop with source gas, analyze an aliquot of the bag sample maintaining the same instrument operating conditions used during the calibration procedures; and  
iii. Analyze each sample until two consecutive analyses agree within five percent. Average the corresponding peak areas for each compound. Calculate the concentrations of the components by referring to the calibration curves.

6. The condensation trap shall be analyzed as follows:

i. Connect the sparge and trap module to the GC injection system and set the valve, desorb temperature, and the inert gas flow rate as per manufacturer's specifications;

ii. Mix the condensate solution to obtain a representative sample and fill the sparger to the recommended volume;

iii. Sparge the sample into an appropriate trap for a minimum of ten minutes with an inert gas. Thermally desorb the VOS from the trap onto the GC column and analyze the VOS employing the same instrument conditions used during the calibration procedures. Measure the area under each VOS peak. Save the sparged solution;

iv. Analyze each sample until two consecutive analyses agree within five percent. Average the corresponding peak areas for each component and calculate the concentrations of the components by referring to the calibration curves;

v. Combine the sparged solutions and analyze by either extracting with a solvent or by re-sparging an aliquot as a check on the sparge efficiency; and

vi. Inject an appropriate aliquot of the rinse solution into the GC, employing the same instrument conditions used during the calibration procedures. Measure the area under each peak, eliminating the solvent area.

(f) The calculations shall be performed as follows:

1. Establish the molecular weight of each VOS from the literature.

2. Calculate the total gas flow rate \*from the source operations\* in SCFM (70°F and 1 atm) including the VOS and any moisture present.

\*i. If impingers are used calculate the SCFM on a dry basis.

\*ii. If a dilution system is used with no impingers calculate the SCFM on a wet basis.

3. All flow meter readings must be corrected for temperature. \*[and]\* pressure \*and specific gas density if necessary\*.

4. Bag Sample: Determine the concentration (C) of each VOS in ppm (C<sub>ppm</sub> VOS) by using the calibration curves developed in (e)2x, above and the area of each VOS. If the sample is collected using a dilution system, the concentrations shall be corrected by the dilution factor (Df) as determined by the following formula:

$$Df = \frac{\text{ml/min dilution gas} + \text{ml/min source gas}}{\text{ml/min source gas}}$$

5. Condensate \*and rinse\*: Convert the calibration curves used in (e)2x, above from ppm vs. area to microgram (ugm) vs. area. Determine the concentration (C) of each VOS in the condensate \*and rinse\* in ppm (C<sub>ppm</sub> VOS) in the vapor phase from the VOS peak areas and the calibration curves using the following formula:

$$C_{ppm} \text{ VOS} = \frac{(\text{Area}) (\text{slope}) \times V_c \times 24.1}{V_j \times MW (\text{VOS}) \times V_g}$$

Where:

Area = area of VOS peak (area units).

Slope = slope of calibration curve (ugm/area unit).

V<sub>c</sub> = Condensate Volume (milliliters).

V<sub>j</sub> = injection volume (milliliters).

V<sub>g</sub> = volume of gas sampled (liters).

MW VOS = molecular weight of VOS (gram per gram mol).

24.1 = molar volume at standard conditions \*in liters\* \*[(Liters)\* per gram mol\*[\*]]\*.

6. Determine the total concentration (c) of each VOS in the source gas in ppm (C<sub>ppm</sub>) by summing the results of each VOS from 4 and 5, above;

7. Calculate the emission rate in lbs/hr of each VOS as follows:

$$\frac{\text{lbs VOS}}{\text{hr}} = \frac{C_{ppm}(\text{VOS}) \times \text{SCFM} \times \text{MW} (\text{VOS}) \times 60 \text{ min/hr}}{387 \times 10^6}$$

Where:

C<sub>ppm</sub> (VOS) = sum of bag sample and condensate concentrations in part per million of each VOS.

MW (VOS) = molecular weight of VOS\*[\*]\* \*(pounds per pound-mol)\*

SCFM = cubic feet minute at 70°F and 1 atm emitted \*[by]\* \*from\* the source \*operation\* \*(dry if impingers used; wet if no impingers used)\*.

387 = molar volume at standard conditions \*in cubic feet\* \*[(cu ft)\* per pound-mol\*].

8. Calculate the total emission rate of VOS in lb/hr by totaling the emission rates of each individual VOS as calculated in 6 above.

(g) The test report shall include the following information submitted on the required reporting forms listed in Appendices D and E (any alternative reporting forms shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e)):

1. A dimensioned sketch of the sampling location;

2. All data used to determine the volume flow rate;

3. The composition of the gas and its average molecular weight;

4. A sketch and/or description of the sampling system used;

5. The identity, concentration and means of verification for each standard used;

6. A description of the analysis instrument and the conditions of operations;

7. Copies of the chromatograms for each standard and each test run identified as to time taken and pertinent instrument and dilution conditions;

8. Sufficient details of the calculations to allow the results to be reproduced independently;

9. The emission rate measured in lbs/hr of each VOS for each test;

10. Operating conditions of the source operation; and

11. An explanation for any unusual procedures or results.

7:27B-3.10 Procedures for the determination of volatile organic substances in surface coating formulations

(a) The method in this section is applicable for the determination of the VOS contained in formulations used in surface coating operations. Any alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon the determination of the amount of VOS and water, if present, in a surface coating formulation, the density of the surface coating formulation, and the density of the volatile fraction of the surface quality.

(c) The procedure for this section shall be as follows:

1. Completely fill a container with a representative sample of the surface coating formulation to be analyzed. Seal the container so that the VOS present will not escape; and

2. Classify each surface coating material as follows:

i. Class I: General solvent type paints (oil base), varnishes and lacquers including clear and pigmented varnishes and lacquers and coatings not clearly belong\*ing\* to Class II; or

ii. Class II: Water-thinned coatings including emulsions, latex paints and colored enamels.

(d) The coating samples shall be analyzed as follows:

1. Class I surface coatings shall be analyzed as follows:

i. Determine the density of the formulation using the procedure specified in ASTM Designation D 1475-60, "Standard Method for Test for Density of Paint, Varnish, Lacquer, and Related Products" (N.J.A.C. 7:27B-3.18, Reference 7);

ii. Determine the content of the VOS by using the procedure specified in ASTM Designation D 2369-81, "Standard Method of Test for Volatile Content of Coatings" (N.J.A.C. 7:27B-3.18, Reference 8);

iii. Calculate the VOS content in  $\frac{\text{kg}}{\text{L}}$  as follows:

$$c_{\text{VOS}} \frac{\text{kg}}{\text{L}} = \frac{(W_1 - W_2) (\text{DM}) \times \text{kg} \times 1000\text{ml}}{S \times 1000 \text{ gm} \times \text{L}} \quad *[\downarrow]*$$

Where:

W<sub>1</sub> = weight of dish + sample (gm)

W<sub>2</sub> = weight of dish + sample after heating (gm)

DM = density of coating (gm/ml)

S = sample weight (gm)

L = liters

iv. Sources included in a mathematical combination **\*regulated by N.J.A.C. 7:27-16.5(a)\*** shall be analyzed as follows:

(1) Separate the volatile fraction from the solids either by high speed centrifuge, ASTM D2698-73, "Standard Test Method for the Determination of the Pigment Content of Solvent Reducible Paints by High Speed Centrifuging" (N.J.A.C. 7:27B-3.18, Reference 12), or by distillation, ASTM D95-83, "Standard Test Method for Determining Water in Petroleum and Bituminous Materials by Distillation" (N.J.A.C. 7:27B-3.18, Reference 13). ASTM D95-83 shall be modified by not adding the required solvent and continuing the distillation until the sample is dry. Measure the volume V and the weight W of the volatile fraction (see Appendix I);

(2) Calculate the density of the VOS fraction in gm/ml as follows:

$$D(\text{vos}) = \frac{W}{V}$$

Where:

W = weight of the volatile fraction

V = volume of the volatile fraction

(3) Convert density VOS from gm/ml to lb/gal as follows:

$$D(\text{vos})\text{lb/gal} = 8.34 \times D^*(\text{vos}) \times \text{VOS} \text{ gm/ml}$$

2. Class II surface coatings shall be analyzed as follows:

i. Determine the density of the formulation using the procedure specified in ASTM Designation D 1475-60, "Standard Method for Test for Density of Paint, Varnish, Lacquer, and Related Products" (N.J.A.C. 7:27B-3.18, Reference 7);

ii. Determine the water content of the formulation using the procedure specified in ASTM D4017-81, "Standard Test Method for Water in Paints and Paint Materials" by Karl Fisher (N.J.A.C. 7:27B-3.18, Reference 9);

iii. Determine the content of the VOS by using the procedure specified in ASTM Designation D2369-81, "Standard Method of Test for Volatile Content of Coatings" (N.J.A.C. 7:27B-3.18, Reference 8);

iv. Calculate the VOS content in kg VOS per liter of coating less water as follows:

$$c_{\text{VOS}} \frac{\text{kg}}{\text{L}} = \frac{(W_1 - W_2 - 0.1 \text{ PS})}{\text{DH}} \times \frac{D_m \times \text{kg} \times 1000 \text{ ml}}{S \times 1000 \text{ gm} \times \text{L}}$$

Where:

W<sub>1</sub> = weight of dish + sample (gm)

W<sub>2</sub> = weight of dish + sample after heating (gm)

P = **\*[D/water]\* \*percentage of water (%)\***

D<sub>m</sub> = density of coating (gm/ml)

D<sub>H</sub> = density of water (gm/ml)

S = sample weight (gm)

L = liter

Convert VOS content from kg/l to lb/gal as follows:

$$c_{\text{VOS}} \frac{\text{lb}}{\text{gal}} = \frac{c_{\text{VOS}} \text{ kg} \times 8.345}{\text{L}}$$

v. Sources included in a mathematical combination shall be analyzed as follows:

(1) Separate the volatile fraction (including water if present) from the solids either by high speed centrifuge, using ASTM D2698-73, "Standard Test Method for the Determination of Pigment, Content of Solvent Reducible Paints by High Speed Centrifuging" (N.J.A.C. 7:27B-3.18, Reference 12), or by distillation, ASTM D95-83, "Standard Test Method for Determining Water in Petroleum and Bituminous and Materials by Distillation" (N.J.A.C. 7:27B-3.18, Reference 13). ASTM D95-83 shall be modified by not adding the required solvent and continuing the distillation until the sample is dry **\*and by purging the distillation apparatus with 5-10 CC/min air or nitrogen.\*** **[m]\*\*M** measure the volume V (mix) and the weight W (mix) of the volatile fraction. See Appendix I.

(2) Calculate the density of the volatile fraction in gm/ml.

$$D(\text{mix}) = \frac{W(\text{mix})}{V(\text{mix})}$$

Where:

W(mix) = weight of the volatile fraction

V(mix) = volume of the volatile fraction

(3) Calculate the density of the VOS in gm/ml.

$$D^*(\text{vos}) \times \text{VOS} \text{ gm/ml} = \frac{(1 - P) W(\text{mix})}{D(w) W(\text{mix}) - [PW]^*} = \frac{D(w) D(\text{mix})}{P W^* (\text{mix}) D(\text{mix})}$$

Where:

P = **\*[% water]\* \*percentage of water (%)\***

W(mix) = weight of the volatile fraction (gm)

D(mix) = density of the volatile fraction (gm/ml)

D(w) = density of water (gm/ml)

(4) Convert density of the volatile mixture from gm/ml to lb/gal as follows:

$$D(\text{mix})\text{lb/gal} = [9] \times 8 \times 3.45 D(\text{mix})\text{gm/ml}$$

7:27B-3.11 Procedures for the determination of volatile organic substances emitted from transfer operations using a flame ionization detector (FID) or non-dispersive infrared analyzer (NDIR)

(a) The procedure in this section is applicable for the determination of the mass emission of VOS rates from the transfer or loading of gasoline. Any alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon one of the following two principles:

1. Flame Ionization, which involves ionization produced when the VOS in the sample is combusted in a hydrogen flame. The ions and electrons formed in the flame enter an electrode gap, decrease the gap resistance, and thus permit a current flow in an external circuit. The resulting current is proportional to the instantaneous concentration of the VOS; or

2. Non-Dispersive Infra-**[r]\*\*R**ed, which involves absorption of infrared energy when a band of infrared energy containing the proper frequencies is alternately passed through an absorption cell containing the organic vapor and a reference cell. The difference in absorption between the reference cell and the absorption cell containing the organic vapor is proportional to the instantaneous concentration of the organic vapor.

(c) The following is a summary of this method:

1. The instrument is calibrated with a propane or butane calibration gas to establish the response of the instrument. A representative sample of the VOS is drawn into the detector and the instrument response is recorded on a strip chart recorder. The total gas flow rate and the volume of gasoline pumped is determined for each five minute period. The mass emission rate of VOS is calculated as propane and the results are summed for each five minute period and reported as either percent control efficiency or pounds of VOS per 10,000 gallons of gasoline transferred.

2. For the purpose of this procedure, three separate test runs will be conducted. Each test run shall be conducted over a period of time during which at least 10,000 gallons of gasoline are transferred but in no case shall the test period be less than one hour in duration unless an alternative period shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

3. During each test run, all flanges, valves, connections and fittings shall be tested for leaks using the test procedures outlined in N.J.A.C. 7:27B-3.15

(d) The following is a list of equipment used in this method:

1. Probe;

2. Temperature sensor;

3. Pump;

4. Flow meter **\*[which is]\*\*:** an appropriate flow measuring device as specified in EPA Method **[s]\*\*** 2A or if testing a vapor incinerator Method 2B (N.J.A.C. 7:27B-3.18, Reference 16);

5. Needle valve;

6. Detector, as set forth below:

i. Flame ionization **\*[meter]\* \*detector\*:** the instrument shall be capable of meeting manufacturer's specifications by demonstration and those specifications listed in ii below;

ii. Non-Dispersive Infra-**[r]\*\*R**ed **\*detector: the\*** specifications are as follows:

(1) Linearity: the instrument response **\*[to methane]\* \*to propane or butane\*** shall not deviate from linearity by more than five percent of the full scale value of the range being used;

(2) Zero drift: less than five percent of full scale per test period or one hour whichever is less;

(3) Span drift: less than five percent of full scale per test period or one hour whichever is less; and

(4) Response time: less than or equal to 30 seconds **\*for 95 percent full scale.\***

7. Gas supplies:

i. Calibration gases: three manufacturer's certified propane mixture in the range of 1,000; 10,000; **\*and\*** 100,000 ppm and a **[20,000 ppm]\*** propane standard for leak determination as specified in N.J.A.C. 7:27B-3.15;

ii. Zero gas;

iii. Fuel gas; and

iv. Combustion gas.

8. Sample line: Teflon or stainless steel tubing with Teflon or stainless steel fittings.

(e) The procedure for this section shall be as follows:

1. Calibrate and install a pressure measurement device (liquid manometer, manometric gauge, or equivalent instrument), capable of measuring up to 500 mm of water gauge pressure with ± 2.5 mm of water precision.

2. Connect the pressure measurement device to a pressure tap in the terminal's vapor collection system, located as closely as possible to the connection with the gasoline tank truck.

3. During the performance test, record the pressure every five minutes while a gasoline tank truck is being loaded, and record the highest instantaneous pressure that occurs during each loading. Every loading position shall be tested at least once during the performance test.

4. For the determination of volume at the exhaust vent, the following EPA reference methods shall be used (N.J.A.C. 7:27B-3.18, Reference 16):

- i. Method 2B for combustion vapor processing systems; or
- ii. Method 2A for all other vapor processing systems.

5. For the determination of VOS concentration at the exhaust vent, procedures outlined in N.J.A.C. 7:27B-3.7 shall be used. The calibration gas shall be either propane or butane.

6. Immediately prior to a performance test all potential sources of vapor leakage in the terminal's vapor collection system equipment shall be monitored for leaks using the procedures outlined in N.J.A.C. 7:27B-3.15. The monitoring shall be conducted only while a gasoline tank truck is being loaded. A reading of **\*100 percent lower explosive limit or greater of propane\*** \*[10,000 ppmv or greater as methane]\* shall be considered a leak. All leaks shall be repaired prior to conducting the performance test.

i. All testing equipment shall be prepared and installed as specified in the appropriate test methods.

7. The volume of gasoline dispensed during the performance test period at all loading racks whose vapor emissions are controlled by the processing system being tested shall be determined. This volume may be determined from terminal records or from gasoline dispensing meters at each loading rack.

8. An emission testing interval shall consist of each five-minute period during the performance test. For each interval:

i. The reading from each measurement instrument shall be recorded; and

ii. The volume **\*[exhausted]\* \*discharged\*** and the average VOS concentration in the exhaust vent shall be determined, as specified in the appropriate test method. The average VOS concentration shall correspond to the volume measurement and shall be adjusted by the sampling system response time.

9. Unless specified by the Department, each performance test shall consist of not less than three separate and valid test runs. Each test run shall be conducted over a period of time during which at least 10,000 gallons of gasoline are transferred but in no case shall the test period be less than one hour in duration.

10. To determine the efficiency of a control device, **\*[a]\* simultaneous test\*s\*** shall be conducted on the **\*[gas]\* \*vapor in the gaseous stream\*** displaced from the receiving vessel upstream of any vapor control system **\*and at the exhaust vent of the control system.\***

(f) The calculations shall be performed as follows:

1. Calculate the mass emitted during each testing interval as follows:

$$\frac{\text{lbs VOS}}{\text{test interval}} = \frac{\text{C ppm (as std)} \times 5 \text{ min}}{387 \times 10^6} \times \text{SCFM} \times \text{Mol. Wt (std)}$$

Where:

C ppm (as std) = parts per million of VOS as standard (propane or butane).

**\*[Mol Wt]\* \*MW\*** (std) = molecular weight **\*[or]\* \*of\*** standard (propane or butane).

SCFM = Cubic feet per minute at 70°F and 1 atm emitted by the source.

387 = molar volume at standard conditions **\*[(cu ft.)\* \*in cubic feet per pound-mol\*]**

**\*[n = number of 5 minute test intervals]\***

2. Calculate the total VOS emitted during the test period by summing the lbs. VOS per each test interval as calculated in 1 above.

3. Calculate the efficiency of the emission control system as follows:

$$\% \text{ Efficiency} = \frac{*(\text{lbs/test inlet} - \text{lbs/test outlet}) \times 100*}{(\text{lbs/test inlet})}$$

$$*100 - \left[ \frac{\text{lbs/test (outlet)} \times 100}{\text{lbs/test (inlet)}} \right]*$$

4. Calculate total emission rate of the VOS in lbs per 10,000 gallons of gasoline transferred as follows:

$$\frac{\text{lbs VOS}}{10,000 \text{ gallons}} = \frac{\text{lbs VOS} \times 10,000}{\text{gallons of gasoline transferred}}$$

(g) The test report shall include the following information submitted on the required reporting form found in Appendix B (any alternative reporting form shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e)):

- 1. A dimensioned sketch of the sampling location;
- 2. All flow rate data;
- 3. A sketch and/or description of the sampling system used;
- 4. The identity, concentration and means of verification for each standard used;
- 5. A description of the analysis instrument and the conditions of operation;
- 6. Sufficient details of the calculations to allow the results to be reproduced independently;
- 7. The emissions in lbs/10,000 gallons of gasoline transferred for each test;
- 8. The percent efficiency of the control device, if required;
- 9. Concentration of VOS in gas displaced from delivery vessel, volume percent, if required;
- 10. Operating conditions of the source operation; and
- 11. An explanation for any unusual procedures or results.

7:27B-3.12 Procedures for the determination of volatile organic substances in cutback and emulsified asphalts

(a) The method in this section is applicable for the determination of VOS in cutback or emulsified asphalts. For the same circumstances as described above, any alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon the separation by distillation of the more volatile organic constituents from cutback and emulsified asphalts. A representative sample of the cutback or emulsified asphalt is subjected to distillation at a controlled rate to a temperature of 347°F (175°C) and the weight and volume of the resulting distillate excluding water is determined.

(c) The procedure for this section shall be as follows:

- 1. Obtain a representative sample of the cutback or emulsified asphalt.
- 2. Analyze the sample as follows:

i. Distill at 347°F (175°C) a measured weight to the nearest 0.1 gm using the distillation apparatus described in ASTM Designation D 402-76 "Distillation of Cut-Back Asphaltic (Bituminous) Products" (N.J.A.C. 7:27B-3.18, Reference 10);

ii. Determine the specific gravity of the Cut-Back or Emulsified Asphalt by ASTM Designation D-70-76 "Specific Gravity of Semi-Solid Bituminous Materials" (N.J.A.C. 7:27B-3.18, Reference 11); and

iii. Collect and measure to the nearest .5 ml the volume of the distillate excluding any water present.

3. The calculations shall be performed as follows:

i. Calculate the sample volume from the sample weight and its **\*[specific gravity]\* \*density\*** using the following formula:

$$* \left[ \frac{\text{volume of}}{\text{Sample (cc)}} = \text{sample gms} \times \text{specific gravity} \frac{(\text{cc})}{(\text{gm})} \right] *$$

$$*\text{volume of sample (cc)} = \text{sample grams} \times \text{density} \frac{\text{gms}}{\text{cc}}*$$

ii. Calculate and report the VOS distillate as a volume percent of the total sample using the following formula:

$$\text{Volume \%} = \frac{\text{Volume VOS distillate} \times 100}{\text{Volume Sample}}$$

7:27B-3.13 Procedures for the determination of leak tightness of gasoline delivery vessels

(a) The method in this section is applicable for the determination of the leak tightness of gasoline delivery vessels. For the same circumstances as described above, any alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon the application of a pressure/vacuum to the compartment(s) of a gasoline delivery vessel and the measurement of the change in pressure/vacuum over a period of time.

(c) The following is a list of equipment used in this method:

1. Pressure source: pump or compressed gas cylinder of air or inert gas sufficient to pressurize the delivery vessel to 25 inches of **\*[H<sub>2</sub>O ]\* \*water\*** (47 millimeters of **\*[Hg]\* \*mercury\***);

2. Regulator: low pressure regulator for controlling the pressurization of the delivery vessel;

3. Vacuum source: vacuum pump capable of evacuating the delivery vessel to 10 inches of  $^*[\text{H}_2\text{O}]^*$  **\*water\*** (19 millimeters of  $^*[\text{Hg}]^*$  **\*mercury\***)

4. Manometer: liquid manometer, or equivalent, capable of measuring up to 25 inches of  $^*[\text{H}_2\text{O}]^*$  **\*water\*** (47 millimeters of  $^*[\text{Hg}]^*$  **\*mercury\***) with  $\pm 0.1$  inch  $^*[\text{H}_2\text{O}]^*$  **\*water\*** (02 millimeters of  $^*[\text{Hg}]^*$  **\*mercury\***) precision;

5. Test cap for vapor recovery hose fittings: a cap shall be equipped with a tap for the manometer connection and shall be equipped with a shut-off valve for connection to the pressure/vacuum source; and

6. Pressure/vacuum relief valves: the test apparatus shall be equipped with an in-line pressure/vacuum relief valve set to activate at 28 inches of  $^*[\text{H}_2\text{O}]^*$  **\*water\*** (53 millimeters of  $^*[\text{Hg}]^*$  **\*mercury\***) above atmospheric pressure and 12 inches of  $^*[\text{H}_2\text{O}]^*$  **\*water\*** (23 millimeters of  $^*[\text{Hg}]^*$  **\*mercury\***) below atmospheric pressure. The valves shall have a flow capacity greater than or equal to the pressurizing or evacuating pump rates.

(d) The following pretest conditions shall be met:

1. The delivery vessel shall be purged of gasoline vapors and tested empty; and

2. The delivery vessel shall be tested where it will be protected from the sun.

(e) The procedure for this section shall be as follows:

1. The dome covers are to be opened and **\*then\*** closed;

2. Connect static electrical ground connections to the delivery vessel. Attach the delivery and vapor hoses, remove the delivery elbows, and plug the liquid delivery fittings;

3. Attach the test cap to the vapor recovery line of the delivery vessel;

4. Connect the compartments of the delivery vessel internally to each other (if connecting the compartments internally is not possible, each compartment shall be tested separately);

5. Connect the pressure/vacuum supply hose and the pressure/vacuum relief valve to the shut-off valve. Attach the pressure source to the hose. Attach a manometer to the pressure tap;

6. Open the shut-off valve in the vapor recovery hose cap. Applying air pressure slowly, pressurize the delivery vessel to 18 inches of  $^*[\text{H}_2\text{O}]^*$  **\*water\*** (34 millimeters of  $^*[\text{Hg}]^*$  **\*mercury\***);

7. Close the shut-off valve and allow the pressure in the delivery vessel to stabilize. Adjust the pressure, if necessary, to maintain 18 inches of water (34 millimeters of  $^*[\text{Hg}]^*$  **\*mercury\***). When the pressure stabilizes, record the time and initial pressure; and

8. At the end of five minutes, record the final pressure.

9. Repeat steps 6 through 8 above until the pressure for two consecutive runs agrees to within  $\pm 12.5$  mm  $^*[\text{H}_2\text{O}]^*$  **\*water\***.

10. Disconnect the pressure source from the pressure/vacuum supply hose, and slowly open the shut-off valve to bring the tank to atmospheric pressure;

11. Connect the vacuum source to the pressure/vacuum supply hose;

12. Slowly evacuate the tank to six inches of  $^*[\text{H}_2\text{O}]^*$  **\*water\*** (11 millimeters of  $^*[\text{Hg}]^*$  **\*mercury\***);

13. Close the shut-off valve and allow the pressure in the delivery vessel to stabilize. Adjust the pressure, if necessary, to maintain six inches of  $^*[\text{H}_2\text{O}]^*$  **\*water\*** (11 millimeters of  $^*[\text{Hg}]^*$  **\*mercury\***) vacuum. When the pressure stabilizes, record the time and initial pressure; and

14. At the end of five minutes, record the time and final pressure.

15. Repeat steps 6 through 14 for each compartment if **\*they\*** **\*these\*** were not interconnected.

16. Alternate methods for purging and pressurizing shall be submitted for review by the Department pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e). See Appendix G for the required reporting form (any alternative reporting form shall be submitted to the Department for review, pursuant to N.J.A.C. 7:27B-3.2(c) and (e)).

7:27B-3.14 Procedures for the direct detection of **\*fugitive\*** volatile organic substances **\*[fugitive]\*** leaks

(a) The method in this section is applicable for the detection of fugitive **\*[VOS]\*** **\*volatile organic substances\*** leaks. **\*[For the same circumstances as described above, any]\*** **\*Any\*** alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon the detection of **\*[a]\*** volatile organic substances **leak\*s\*** from individual sources by a portable instrument. The instrument detector type is not specified but shall meet the performance criteria of (d)4 below. This procedure is intended to locate and classify leaks only and shall not be used to measure mass emission rates from individual sources.

(c) The following is a summary of this method:

1. The detector is calibrated with a standard gas mixture to establish the response of the instrument. A representative sample of fugitive emissions is drawn into the instrument. The response is read **\*directly\*** from the instrument meter.

2. For purposes of this procedure a single test shall be sufficient to establish the presence of a leak.

(d) The following is a list of equipment used in this method:

1. Probe: glass, stainless steel, or Teflon tubing as required by source gas conditions and equipped with 0.4 inch (one centimeter) tip spacer;

2. Pump: a leakless Teflon-coated diaphragm pump capable of maintaining an appropriate flow to the detector;

3. Dilutor: (if circumstances require) capable of diluting the sample gas into the range of the instrument such that concentration levels of 10,000 ppm can be measured. The dilutor tip shall be equipped with a 0.4 inch (one centimeter) spacer;

4. Monitoring instrument, as set forth below:

i. The monitoring instrument shall be certified as safe for operation in explosive atmospheres;

ii. The monitoring instrument detector shall be capable of measuring the leak **\*[definition]\*** concentration specified in the appropriate section in N.J.A.C. 7:27-16. Detector types which meet this requirement include but are not limited to catalytic oxidation, flame ionization, infra-red absorption, and photoionization; and

iii. The instrument shall be readable to within five percent of the specified leak concentration and shall have a response time **\*less than or equal to\*** of 30 seconds **\*[or less;]\*** **\*for 95 percent of scale;\*** **\*[and]\***

5. Standard calibration gas—**\*[10,000]\*** **\*8,000\*** ppmv Hexane or Methane in air.

(e) The procedure for this section shall be as follows:

1. A presampling survey shall be conducted to locate components where potential leaks could occur;

2. Calibration shall be conducted as follows:

i. The instrument should be operated according to the manufacturer's directions;

ii. Adjust the analyzer to zero by using ambient air; and

iii. Introduce the **\*[9,000]\*** **\*8,000\*** ppm calibration gas into the instrument sample probe. Adjust the instrument meter readout and chart recorder to correspond to the calibration value. If necessary, use a dilution system to bring the calibration gas into the instrument range.

3. Sampling and analyses shall be conducted as follows:

Place the instrument probe with the 0.4 inch (one centimeter) spacer at the surface of the component interface where leakage **\*[could occur]\*** **\*is suspected\***. Move the probe along the interface periphery while observing the instrument readout. If an increased meter reading is observed, slowly probe the interface where leakage is indicated until the maximum meter reading is obtained. Leave the probe at the maximum reading location for approximately two times the instrument response time. If the concentration reading is in excess of the range of the instrument, add the dilution assembly and sample as above using a correction factor to convert the measurements to the undiluted bases. Record the date, time and identity of the leaking components. See Appendix F for the required reporting form. (Any alternative form shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e).)

7:27B-3.15 Procedures for the direct detection of **\*fugitive\*** volatile organic substances **\*[fugitive emissions]\*** **\*leaks\*** from gasoline tank trucks and vapor collection systems using a combustible gas detector

(a) The method in this section is applicable for the detection of fugitive **\*[VOS]\*** **\*volatile organic substances\*** leaks from gasoline tank trucks and vapor collection systems. For the same circumstances as described above, any alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon the detection of **\*[a]\*** volatile organic substance **s\* leak\*s\*** from individual sources by a portable instrument. The instrument detector type is not specified but must meet the performance criteria of N.J.A.C. 7:27B-3.14(d)4. This procedure is intended to locate and classify leaks only and shall not be used as a measure of mass emission rates from individual sources.

(c) The following is a summary of this method:

1. The detector is calibrated with a standard gas mixture to establish the response of the instrument. A representative sample of the fugitive emissions is drawn into the instrument. The response is read **\*directly\*** from the instrument meter.

2. For purposes of this procedure a single test shall be sufficient to establish the presence of a leak.

(d) The following is a list of equipment used in this method:

1. Probe: glass, stainless steel, or Teflon tubing as required by source gas conditions and equipped with a 1.0 inch (2.54 centimeter) tip spacer;

2. Pump: a leakless Teflon-coated diaphragm pump **\*or other suitable pump\*** capable of maintaining an appropriate flow to the detector;

**\*[3. Dilutor: (if circumstances require) capable of diluting the sample gas into the range of the instrument such that concentration levels of 20,000 ppm can be measured. The dilutor tip shall be equipped with a 1.0 inch (2.54 centimeter) spacer;]\***

**\*3.\*\*[4.]\*** Monitoring instrument as set forth below:

i. The monitoring instrument shall be certified as safe for operation in explosive atmosphere;

ii. The monitoring instrument detector shall be capable of measuring the leak **\*[definition]\*** concentration specified in the appropriate section of N.J.A.C. 7:27-16. Detector types meeting this requirement include but are not limited to catalytic oxidation, flame ionization, infra-red absorption, and photoionization; and

iii. The instrument shall be readable to within five percent of the specified leak concentration and shall have a response time of 30 seconds or less; **\*[and]\***

**\*4.\*\*[5.]\*** Standard calibration gas—**\*[20,000 ppm]\* \*at least 50 percent but less than 100 percent LEL of\* propane in air.**

**(e)\*\*[(d)]\*** The procedure for this section shall be as follows:

1. A presampling survey shall be conducted to locate components where potential leaks could occur;

2. Calibration shall be **\*[conducted]\* \*conducted\*** as follows:

i. The instrument shall be operated according to the manufacturer's directions;

ii. Adjust the analyzer to zero **\*[by using zero gas; and]\* \*according to the manufacturer's instructions; and\***

iii. Introduce the **\*[22,000 ppm]\* \*standard\*** calibration gas into the instrument sample probe. Adjust the instrument meter readout **\*[such that a reading between 50 and 100 percent of scale is obtained.]\* \*to obtain the correct response. If unable to obtain the correct response within ± five percent the instrument is unacceptable for use.\***

3. Sampling and Analysis shall be conducted as follows:

i. All leak testing shall be done during a loading operation;

ii. Place the instrument probe with the 1.0 inch (2.54 centimeters) spacer at the surface of the component interface where leakage could occur. Move the probe along the interface periphery while observing the instrument readout. If an increased meter reading is observed, slowly probe the interface where leakage is indicated until the maximum reading is obtained. Leave the probe at the maximum reading location for approximately two times the instrument response time. If the concentration reading is in excess of the range of the instrument, add the dilution assembly and sample as above using a correction factor to convert the measurements to the undiluted basis. Record the date, time, amount, and identity of the leaking components. See Appendix F for the required reporting form. (Any alternative reporting form shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e).)

7:27B-3.16 Procedures for determining the efficiency of gasoline vapor recovery systems at service stations

(a) The method for this section is applicable for the determination of the efficiency of vapor recovery systems controlling gasoline vapors emitted during the filling of underground storage tanks. For the same circumstances as described above, any alternative method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon the amount of gasoline vapor discharged from the atmospheric vent(s) of underground storage tank(s) being filled. The procedure is intended for all control systems which have a vapor recovery line connecting the underground storage tank to the tank truck.

(c) The following is a summary of this method:

1. A positive displacement meter is mounted on each atmospheric vent pipe to determine the amount of vapor displaced during the filling of underground storage tanks. The efficiency of the vapor recovery system is determined by comparing the amount of vapor emitted from the atmospheric vents with the total amount of gasoline transferred to the underground storage tanks.

2. For the purpose of this procedure, a single test shall be sufficient to establish the efficiency of the vapor recovery system.

(d) The following is a list of equipment used in this method:

1. Gas meter device: a positive displacement meter with a capacity of 3000 SCFH and a pressure drop of 0.05 inches of water at an air flow of 30 SCFH. This meter shall be designed to read (in 0.1 cubic foot

increments) only the amount of positive vapors displaced and shall allow for any negative in-breathing. The meter shall be equipped with taps for a thermocouple and a pressure sensor;

2. Coupling for atmospheric vent pipe: a coupling to connect the gas metering device to the atmospheric vent pipe. Coupling shall be sized for a minimum pressure drop;

3. Thermocouples: temperature sensing devices to measure the temperature of the vapors emitted at the gas metering device and ambient temperature; and

4. Manometer: liquid manometer or other equivalent pressure sensing device capable of measuring zero to ten inches of water at the gas metering device.

5. Leak detection equipment standards shall be as follows:

i. The leak detection equipment shall be certified as safe for operation in explosive atmospheres;

ii. The monitoring instrument detector shall be capable of measuring the leak definition concentration specified in the appropriate section in N.J.A.C. 7:27-16. Detector types meeting this requirement include but are not limited to catalytic oxidation, flame oxidation, infrared absorption and photoionization; and

iii. The instrument shall be readable to within five percent of the specific leak concentration and shall have a response time of 30 seconds or less.

(e) The procedure for this section shall be as follows:

1. Mount the positive displacement meter to the top of the atmospheric vent of **\*[underground storage tank]\* \*the storage tank(s)\***. If the vent has restriction, remove the restriction before mounting the meter;

2. Connect the manometer and thermocouple to the taps on the meter;

3. Connect tank truck fuel and vapor return hoses to the underground storage tanks in accordance with procedures outlined by the manufacturer;

4. Check the tank truck and all vapor return line connections with **\*[an explosimeter]\* \*a leak detection instrument\*** for a tight seal before and during the test;

5. Record the initial reading of the gas meter(s);

6. Start the transfer of gasoline to **\*[underground]\* \*the\* storage tank(s)** in accordance with **\*[manufacturer's]\* \*facilities\*** established normal procedures;

7. Record temperature, pressure, and gas meter readings at two minute intervals;

8. Record at the start and the end of the test the barometric pressure and ambient temperature;

9. Disconnect the tank truck hoses from the **\*[underground]\* storage tank** in accordance with the procedures outlined by the **\*[manufacturer]\* \*facility\*** when the transfer has been completed;

10. Continue to record temperature, pressure, and gas meter readings at the underground storage tank vent(s) at two-minute intervals for a period of ten minutes after the completion of the gasoline transfer;

11. Record the final reading of the gas meter;

12. Record the **\*total\*** volume of gasoline that was transferred; and

13. Disconnect **\*[instrumentation]\* \*the positive displacement meter\*** from the atmospheric vent**\*[(s)]\***.

(f) Calculate the efficiency of the vapor recovery system using the following equation:

$$E = 1 - \left[ \frac{V_v (7.481) (T_s + 460) (P_b) * [100]}{V_T (T_v + 460) (29.92)} \right] \times 100$$

Where:

E = **\*Percent\* \*E]\*\*e** efficiency of the vapor recovery system at standard conditions.

V<sub>v</sub> = Volume of displaced vapors vented from the atmospheric vent in actual cubic feet (ACF).

V<sub>T</sub> = Volume of gasoline transferred to **\*[underground]\* storage tanks** **\*[(gallons)]\* \*in gallons\***.

T<sub>v</sub> = Temperature of vapors vented from atmospheric vent **\*[° (°F)]\* \*in degrees Fahrenheit\***.

T<sub>s</sub> = Standard temperature (70°F).

P<sub>b</sub> = Average barometric pressure during test **\*[(inches Hg.)]\* \*in inches of mercury.\***

7.481 = Conversion factor **\*[—]\* \*of\* gallons per cubic foot (Gal/ft<sup>3</sup>).**

29.92 = Standard pressure **\*[(inches Hg.)]\* \*in inches of mercury.\***

(g) The test report shall include the following information submitted on the required reporting forms listed in Appendix H: **\*[a]\*\*A**ny alternative report form shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e):

1. A dimensioned sketch of the sampling location detailing number of storage tanks **\*[:]\* \*,\* type of fill pipe; and type of vapor recovery system;**

2. The total amount of each **[product]\* \*type of gasoline\*** transferred;
3. The size of the **[underground]\* storage tank(s) [product]\* \*into which the gasoline\*** was transferred **[into]\***;
4. The total amount of **[product existing]\* \*gasoline present\*** in the **[underground]\* storage tank\*(s)\*** prior to transfer;
5. Pressure/vacuum **\*test\*** date listed on **[delivery vessel]\* \*the tank truck\***; and
6. Identification of **[delivery vessel.]\* \*the tank truck.\***

7:27B-3.17 Procedures for the determination of volatile organic substances emitted from petroleum solvent dry cleaning operations

(a) The method in this section is applicable for the determination of the final recovered solvent flow rate at the completion of the recovery cycle, and the **[VOS]\* \*volatile organic substances\*** content in all filtration waste. For the same circumstances as described above, any alternative method shall be submitted to the Department for review, pursuant to N.J.A.C. 7:27B-3.2(c), (d), and (e).

(b) This method is based upon:

1. The **[volume]\*** determination of the **\*volume of the\*** recovered solvent; and

2. The separation and weight determination of the **[VOS]\* solvent\***.

(c) The following is a summary of this method:

1. The recovered solvent is diverted to a graduated cylinder at the end of the recovery cycle. The volume of solvent recovered during a one minute period is **\*measured and\*** recorded.

2. The **[VOS]\* \*recovered solvent\*** is separated from other filtration waste and weighed.

(d) The procedure for this section shall be as follows:

1. Recovered solvent shall be determined as follows:

i. The flow rate of the recovered solvent is **[determined from]\* \*measured at\*** the outlet of the solvent-water separator;

ii. The flow rate of the recovered solvent is **[determined]\* \*measured\*** at the end of the solvent recovery phase;

iii. Divert the flow of the recovered solvent to a graduated cylinder;

iv. Record the volume of recovered solvent to the nearest milliliter, after a one minute interval;

v. Record the type of articles cleaned and the length of the recovery cycle; and

vi. Repeat steps i-v over three cleaning cycles.

2. **[VOS]\* \*The solvent\*** content in filtration waste shall be determined as follows:

i. Collect three one-kilogram samples of still and filtration waste in air-tight containers which are impervious to petroleum solvents;

ii. Record the total mass of articles **\*in kilograms\*** cleaned since the last still boildown or filter change;

iii. Record the total mass of still **[or]\* \*and\*** filter waste **\*in kilograms\*** produced since the last waste removal;

iv. Determine the solvent content of the still and filter waste using the procedure specified in ASTM **[Method]\* D322-80**, "Standard Test Method for Gasoline Diluent in Used Gasoline Engine Oils by Distillation" (N.J.A.C. 7:27B-3.18, Reference 15); and

v. Report the results as mass of VOS per mass of dry weight of articles dry cleaned **\*in (kilograms per kilogram)\***.

7:27B-3.18 Test methods and sources incorporated by reference

(a) The following sources and test methods are incorporated by reference in this subchapter:

1. New Jersey Administrative Code Title 7, Chapter 27B-1, **[Air Test Method]\* \*AIR TEST METHOD\* 1** is available from New Jersey Department of Environmental Protection, John Fitch Plaza, CN 027, Trenton, New Jersey 08625. (Free)

2. Code of Federal Regulations, Title 29, Chapter XVII, Parts 1910 and 1926 are available from the Occupational Safety and Health Administration, U.S. Department of Labor, 1515 Broadway, New York, New York 10036.

3. ASTM Designation D323-79, Standard Method of Test for Vapor Pressure of Petroleum Products (Reid Method), American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103 (\$4.00).

4. ASTM Designation D2879-75, Standard Method for Test for Vapor Pressure—Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103 (\$4.00).

5. API (American Petroleum Institute) Bulletin 2517, Selecting the Proper Nomograph, 156 William Street, New York, New York 10038.

6. ASTM Designation D2551-80, Standard Method of Test **[of]\* \*for\*** Vapor Pressure of Petroleum Products (micromethod), American

Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103 (\$4.00).

7. ASTM Designation D1475-60, Standard Method of Test for Density of Paint, Varnish, Lacquer, and Related Products, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103 (\$4.00).

8. ASTM Designation D2369-81, Standard Method of Test for Volatile Content of Coatings, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103 (\$4.00).

9. ASTM Designation D4017-81, Standard Test Method for Water in Paints and Paint Materials by Karl Fischer Titration Method, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. **\*( \$4.00)\***

10. ASTM Designation D402-76, Standard Test Method for Distillation of Cut-Back Asphaltic (Bituminous) Products, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103 (\$4.00).

11. ASTM Designation D-70-76, Standard Test Method for Specific Gravity of Semi-Solid Bituminous Materials, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103 (\$4.00).

12. ASTM Designation D2698-73, Standard Test Method for the Determination of the Pigment Content of Solvent Reducible Paints by High Speed Centrifuging, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103 (\$4.00).

13. ASTM Designation D95-83, Standard Method for Determining water in Petroleum and Bituminous Materials by Distillation, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103 (\$4.00).

14. Method 2-1 California Air Resources Board, Test Procedures for Determining the Efficiency of Gasoline Vapor Recovery Systems at Service Stations. Available from State of California, Air Resources Board, 1102 Q Street, Sacramento, California 95812.

15. ASTM Designation D322-80, Standard Test Method for Gasoline Diluent in Used Gasoline Engine Oils by Distillation, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103 (\$4.00).

16. Code of Federal Regulations, Title 40, Part 60—Reference Methods 2A and 2B are available from the Superintendent of **[d]\*D\*** ocuments, Government Printing Office, Washington, D.C. 20402.

OFFICE OF ADMINISTRATIVE LAW NOTE: Appendices A through I were submitted as part of this adoption but have not been reproduced herein.

## HEALTH

### DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

#### (a)

#### Renal Disease Services Standards and General Criteria for the Planning and Certification of Need for Regional End-Stage Renal Disease Services

##### Adopted Amendment: N.J.A.C. 8:33F-1.2

Proposed: June 16, 1986 at 18 N.J.R. 1241(a).

Adopted: August 15, 1986 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: August 18, 1986 as R.1986 d.372, **without change**.

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Effective Date: September 8, 1986.

Expiration Date: January 14, 1990.

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

Written comments were received during the comment period. The four commenters were National Medical Care, Inc., from Massachusetts, who wrote on behalf of the six free-standing dialysis facilities which they own in New Jersey; the New Jersey State Nurses Association; Englewood Hospital and Bridgeton Hospital.

COMMENT: The New Jersey State Nurses Association recommended that the word **Registered** be inserted before the word **Nurse** in the first paragraph of the Social Impact Statement.

RESPONSE: The Rule Summary, as well as the Social and Economic Impact statements, does not become part of the regulation when finally adopted and serves only to provide background information and perspective to the reader during the proposal phase of the regulatory process. It would be of no consequence, therefore, to make a change in this part of the document, which has no legal impact. It is important to note, however, that the Standards for Licensure of Hospital Facilities: Renal Dialysis Services—N.J.A.C. 8:43B-15.14 require that home and self-care dialysis training be the responsibility of a "registered professional nurse."

COMMENT: Both Englewood Hospital and the BMA Management Company, Inc. which is a Division of National Medical Care, Inc. from Waltham, Massachusetts, recommended that the continuous ambulatory peritoneal dialysis (CAPD) not require a Certificate of Need because neither capital expenditures nor equipment nor additional dialysis station capacity are required to provide the service.

RESPONSE: Although the provision of CAPD services does not require significant capital expenditures or expensive equipment and supplies, the provision of this service necessitates detailed training and instruction of patients by qualified professional staff. The delivery of quality health care services must include provisions for ongoing monitoring, assessment, and availability of sophisticated technical back-up.

The Department of Health is therefore committed to the current state requirements which indicate that the provision of CAPD services requires a Certificate of Need and that qualified training personnel must be provided, as indicated in N.J.A.C. 8:33F-1.2, in a facility offering both peritoneal dialysis and hemodialysis treatment.

COMMENT: Bridgeton Hospital recommended that those ESRD facilities operating under an existing approved Certificate of Need from the Department of Health who have subsequently been approved for CAPD either through the Certificate of Need process, or through application to, and approval from HCFA directly, should be grandfathered into operation. Documents to and from HCFA should be submitted to the New Jersey Department of Health to substantiate these claims.

RESPONSE: The Department believes that there may have been isolated HCFA approvals, without New Jersey Certificate of Need approval, of hospitals for the provision of CAPD services due to that agency's misunderstanding of implicit New Jersey regulatory requirements for this modality of care. It is not the intention of the Department to penalize those ESRD providers who had requested and received federal approval for this service. Instead, the Department will seek to ensure that those few facilities which are currently under State licensure for the provision of other modalities of ESRD services will also comply with State standards of care for CAPD services.

Full text of the adopted amendment follows.

#### 8:33F-1.2 Utilization standards

(a) The following minimum utilization rates shall apply for the initiation of new ESRD services:

1.-4. (No change.)

5. Self-care and home dialysis training:

i. Each application for a certificate of need from an approved ESRD facility which proposes to offer self-care and home dialysis training for all forms of chronic hemodialysis and chronic peritoneal dialysis, including continuous ambulatory peritoneal dialysis (CAPD), must provide written evidence of:

(1) ESRD projections and description of the methodology by which projections were determined;

(2) Expected sources of patient referrals, including anticipated number of referrals by sources;

(3) Plans to meet the self-care level of the goals proposed by the New Jersey Renal Disease Network (see Appendix A), the Health Systems Plan and the State Health Plan; and

(4) Qualified training personnel.

ii. The Department will require impact statements from approved area facilities already providing the service(s), describing the anticipated effects of the proposed service upon the type(s), scope, cost or organization of health care services within the proposed service area.

6.-7. (No change.)

8. Chronic peritoneal dialysis:

i. Chronic peritoneal dialysis, which includes all chronic ambulatory peritoneal dialysis (C.A.P.D.), continuous cycling peritoneal dialysis (C.C.P.D.), intermittent peritoneal dialysis (I.P.D.), and all other related chronic dialysis services utilizing the peritoneal membrane, as well as self-care and home training services for these modalities, is regulated by certificate of need at the present time. The choice of delivery of dialysis, whether by hemodialysis or peritoneal dialysis, is a medical choice, and

both services should be available for the patient. It is not in the best interest of patients to have a unit approved for one service without the other. The Department of Health will not recommend or approve an applicant seeking to establish a chronic or self-care training program for peritoneal dialysis unless the applicant is already approved for the same levels of hemodialysis.

(b) (No change.)

(a)

### Certificate of Need: Hospital Capital Policy

#### Adopted New Rule: N.J.A.C. 8:43G

Proposed: June 16, 1986 at 18 N.J.R. 1242(a).

Adopted: August 15, 1986 by Molly Joel Coye, M.D.,

Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: August 18, 1986 as R.1986 d.375, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: September 8, 1986.

Expiration Date: September 8, 1991.

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

Written comments were received from four organizations during the comment period. These included the Health Corporation of the Archdiocese of Newark (HCAN), United Hospital Medical Center (UHMC), Healthcare Financial Management Association (HFMA) in conjunction with the Hospital Planning and Marketing Society of New Jersey, and the West Jersey Health System (WJHS). The latter two organizations also presented their comments at a July 10, 1986 public hearing held by the Health Care Administration Board on these proposed rules and potential changes in capital reimbursement policy. At this public hearing eight other individuals spoke of the changing health care environment, the general need for a capital policy, and the need for changes in the way capital is reimbursed.

COMMENT: In commenting on the access provision of 8:43G-1.3(d)2., HFMA stated that they "assume that the accessibility criteria specified in the Certificate of Need Rules (N.J.A.C. 8:33-2.1) will be applied."

RESPONSE: HFMA is correct in their assumption. In reviewing applications for Certificate of Need under the Capital Policy Rules, the access criteria specified in N.J.A.C. 8:33-2.1 will be applied.

COMMENT: HFMA suggested that 8:43G-1.3(d)4. be reworded to recognize that projects may require cost additions in order to assure future savings and that technological advancements and improved quality may not result in cost savings.

RESPONSE: The Department sees no need to amend this section. The section is one of five capital policy goals which these rules strive to achieve. Its inclusion in a capital policy rule is a recognition that certain projects may require the expenditure of capital funds at the present time in order to assure future savings.

COMMENT: HFMA and HCAN commented on the final general capital policy goal at 8:43G-1.3(d)5. which reads "Maintenance of a level of capital debt as appropriate to a cost efficient health care delivery system." The commenters were unaware of any research which has shown what level of debt was appropriate or any studies which established an empirical relationship between a level of capital debt and an efficient health care delivery.

RESPONSE: This section is not intended to suggest that the Department has established such an "empirical relationship." Rather it attempts to establish a greater public sensitivity to the issue of capital debt and its impact on the health care system. The commenters did not suggest any specific changes in this section and the Department sees no need for any.

COMMENT: Concerning 8:43G-1.3(d)5, HFMA also suggested that the word "efficient" be replaced by the word "effective." Efficiency is a process measure while effectiveness focuses on the results of a process.

RESPONSE: The Department concurs with this comment and has made the suggested language change.

COMMENT: Concerning the definition of Relative Length of Stay (RLOS) Index included in 8:43G-1.4, HFMA noted:

1. The RLOS Index should be supplemented by other data, for example, case-mix adjusted cost per discharge, teaching concentration, SHARE peer comparisons, and the like:

2. The RLOS Index must either consistently include or exclude Same Day Surgery and one day stays as defined by the Department of Health:

3. Add the following language to this definition: "Most recent data collected by the Department may not be older than 24 months from current date."

RESPONSE: 1. The Department concurs. The RLOS Index is one of several tools that will be used to guide the Certificate of Need decision-making process. This is also indicated at 8:43G-1.7(a)4. where hospital efficiency is "through generally accepted industry efficiency standards", such as those noted in the comment.

2. The Department agrees. The RLOS Index data prepared for both 1983 and 1984 excludes same day surgery data for all hospitals.

3. The Department concurs and has added the suggested language to the definition of RLOS Index.

COMMENT: HFMA commented that the prohibition on acute care bed additions under these rules should be limited to the October 15, 1986 batch.

RESPONSE: These entire rules, including the prohibition on acute care bed additions noted at 8:43G-1.5(a), are applicable only to the October 15, 1986 batch.

COMMENT: HFMA noted that the occupancy level projections required at 8:43G-1.5(c)4. should be defined consistently to include or exclude same day surgery and one day stays. Further, the role of occupancy in capital policy should be reconsidered after the reimbursement methodology is defined.

RESPONSE: The Department agrees. For the purposes of this rule, occupancy rates will be calculated excluding same day surgery and one day stays for all hospitals. Further, the role of occupancy levels in capital policy will certainly be further discussed as a new Hospital Policy Manual and reimbursement methodologies are developed.

COMMENT: Both HFMA and HCAN commented that the 24 month utilization data trend required at 8:43G-1.6(b) should be increased to 36 or 48 months.

RESPONSE: The Department does not believe that such a change is necessary. This entire rule was developed through a deliberate, careful, consensus-building process with the Presidential Task Force of the New Jersey Hospital Association. This particular section of the rule, as well as all others, were thoughtfully considered by the participants in this process and agreement was reached on the time-frame as proposed.

COMMENT: HFMA had the following comments on 8:43G-1.7(a)1.i. and ii.:

1. In 1.i., replace the words "greater than" with the words "at least."
2. In 1.ii., replace the word "above" with the words "at least."
3. In 1.ii., it is assumed that the Department will use the currently applicable definition of same day surgery.

RESPONSE: 1. The Department concurs and has made the suggested change.

2. The Department concurs and has made the suggested change.

3. The assumption is correct.

COMMENT: In commenting on 8:43G-1.7(a)2., Efficient size, HFMA stated that reasons supporting definition of minimum bed size should be statistically demonstrated prior to final adoption of the Hospital Policy Manual.

RESPONSE: All criteria in this and other regulations are based on a review of the literature and the recommendations of advisory groups such as the Presidential Task Force of the New Jersey Hospital Association. This same kind of process will occur in the development of all criteria proposed for inclusion in a new Hospital Policy Manual.

COMMENT: In commenting on 8:43G-1.7(a)3., Excess bed areas, both HCAN and UHMC were concerned that this section included a separate set of standards which supercedes 8:43G-1.7(a)1. which requires a 75 percent occupancy at the conclusion of the project. While both understand the intent to eliminate excess capacity through bed reductions, they question why this must be done in certain areas through mergers/consolidations and why these areas are subject to more than the 75 percent occupancy criterion.

RESPONSE: During deliberations on the development of these rules it was recognized that certain areas of the State are experiencing a greater excess capacity situation than others. Thus, this section of the proposal was very carefully considered by both the Department and the Presidential Task Force of the New Jersey Hospital Association.

The intent of these rules, as well as our enabling statutes, is to promote the development of an efficient and effective health care system. In the current environment such development necessarily means systems shrinkage. To be meaningful such shrinkage must mean more than closing a few beds at individual hospitals; it must also include a reduction in

the number of hospitals. The proposal seeks to promote the latter through the encouragement of "mergers or joint applications."

COMMENT: In commenting on 8:43G-1.7(a)4., Hospital Efficiency, HCAN asked to be assured that the RLOS Index will consistently include or exclude same day surgery admissions across years and hospitals; HFMA asked that the word "and" at the end of the second line of this paragraph be changed to "or" so that hospital efficiency could be measured by generally accepted industry standards or by the RLOS Index.

RESPONSE: The RLOS Index will be developed excluding same day surgery admissions for all hospitals.

The Department does not agree with the HFMA suggestion. We believe that the RLOS Index is an appropriate measure of efficiency in that it measures length of stay adjusted for case-mix and that it should be used in conjunction with other standards.

COMMENT: In commenting on 8:43G-1.7(a)5.i. (formerly Appendix A in the initial proposal) regarding exceptions for geographically isolated hospitals, HFMA suggested replacing the words "... residents of ..." with the words "... patients from ..."

RESPONSE: The Department agrees and has made this change.

COMMENT: HFMA notes that the "definition" of a hospital merger application described in 8:43G-1.7(a)5.iii.(2) is extremely limiting and differs greatly from the generally accepted definitions of a merger.

RESPONSE: This section contains no definition of a merger as such. It simply states certain objectives that must be satisfied by a hospital seeking exemptions from the rule by submitting a merger application. It is not intended to be a formalized description of how all mergers in the hospital industry can or should occur.

COMMENT: In commenting on 8:43G-1.8, Guidelines for reviewing project component need, HFMA, HCAN, and UHMC all suggested caution so that the review recognizes the "synergistic relationships" within hospitals and does not change the "nature and functional purpose of a proposed project."

RESPONSE: The Department and its reviewing bodies are always cognizant of the issues raised and are careful to avoid changing the nature of a project. However, the burden is still placed on the Certificate of Need applicant to demonstrate that each component of a project and its cost is necessary either individually or as part of a whole.

COMMENT: In commenting on 8:43G-1.9(a), regarding a 15 percent equity contribution, both HFMA and HCAN noted that this requirement might be unreasonable in many instances. It was suggested that the requirement be evaluated on an institution-specific basis.

RESPONSE: The Department disagrees that this requirement is unreasonable. There is a provision in the rule for a reduction of the equity requirement if a hospital's uncompensated care percentage exceeds the statewide average uncompensated care percentage for acute care hospitals. It must also be noted that this same requirement appears in the Certificate of Need Application and Review Process rules at N.J.A.C. 8:33-2.15(a)2.

COMMENT: Both HFMA and HCAN commented that 8:43G-1.9(d) is inconsistent with the currently existing reimbursement methodology and should be deleted. This section states that the capital reimbursement shall be predicated upon the higher of actual volume or volumes projected in approved application.

RESPONSE: The intent of this section is to obtain more accurate and realistic volume projections in Certificate of Need applications and to hold applicants accountable for such projections.

The section introduces the concept of limited volume variability for capital reimbursement. During deliberations on these rules with the Hospital Association's Presidential Task Force the department was consistently reminded of the need for changes in the reimbursement methodology. The Department concurred with this need and will propose such changes, including the language proposed at 8:43G-1.9(d), to the Health Care Administration Board in the near future. Since any hospitals approved under these Capital Policy Rules in the October 15, 1986 batch will not be seeking reimbursement for their approved projects until well after changes in the reimbursement rules become effective, it is both necessary and appropriate to maintain the language proposed at 8:43G-1.9(d) so all applicants are aware "up-front" of at least this part of future reimbursement policy.

It must also be noted that this same language appears in the Certificate of Need Application and Review Process rules at N.J.A.C. 8:33-2.15(a)4 and that the language may currently be placed as a condition on any Certificate of Need approval.

COMMENT: In commenting on 8:43G-1.9(e) regarding the requirement for a financial feasibility study to be submitted concurrently with

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the Certificate of Need application, HFMA suggested that the nature and scope of the study should be consistent with information previously supplied in Certificate of Need applications and should not be overly burdensome. It should be limited to representations from the institution so as to avoid the cost of obtaining an independent opinion of the study. In addition, all assumptions should be consistent for all hospitals.

UHMC commented that it was inappropriate to adopt new rules for financial feasibility studies before the assumptions upon which the studies are based are determined and analyzed by the industry.

RESPONSE: The Department concurs with the comment of the HFMA. A form on which to complete the financial feasibility study has been developed by the Department and shared with the New Jersey Hospital Association. It is the Department's belief that this form can be completed by an applicant without costly outside assistance and is not "overly burdensome." Assumptions will be consistent for all hospitals.

In response to UHMC, it must be reiterated that for some time the Statewide Health Coordinating Council and the Health Care Facilities Financing Authority have urged that a financial feasibility study be included as a part of the Certificate of Need application for major capital projects. Only in this way can the Certificate of Need decision making process make any realistic judgement about the affordability (both for the applicant and the health care system) of a particular project.

The Department has worked with the Hospital Association in developing the assumptions to be used in the study and these will be distributed to those facilities which submitted a Letter of Intent to file an application in the October 15, 1986 batch covered by these rules.

However, in order to clarify the requirements of the financial feasibility study, the Department does agree to amend 8:43G-1.9(e) to read:

"All applicants must demonstrate the financial feasibility of their projects. A financial feasibility study must be submitted at the time of Certificate of Need application on feasibility forms provided by the Department. This study must test the feasibility of the project under the assumptions regarding capital reimbursement policies that are currently under consideration at both the federal and state levels. These assumptions will be identified by the Department prior to the submission of applications."

COMMENT: UHMC asked that the elimination of the comfort letter noted at 8:43G-1.9(f) be reconsidered. UHMC states that the only consequence of this will be to increase the cost of borrowing which in a capital-scarce environment is not a sound goal.

RESPONSE: With the reimbursement system in a state of uncertainty awaiting Health Care Financing Administration (HCFA) action on Medicare reimbursement for capital, it is not possible, nor is it wise public policy, to guarantee future full capital reimbursement. In addition, the Department and others have for some time been pointing out the potential capital shortfalls that may flow from HCFA actions. Thus, these rules, the Department and its Certificate of Need review bodies, and all Certificate of Need applicants must take this potentially serious shortfall problem into account. The Department has responded by noting that it cannot guarantee future capital reimbursement. It is expected that applicants will respond by developing their projects with this situation in mind.

COMMENT: In commenting on 8:43G-1.12, Guidelines regarding pediatric intensive care/critical care units, HFMA concluded that "this item appears to be inappropriate in this document."

WJHS commented that this section was inappropriate, vague, and unnecessary. Such units need not be regionalized, but should be provided based primarily on an institution's existing pediatric capacity and patient mix. If an institution already has an established pediatric service with the necessary ancillary and specialized support, the provision of pediatric intensive care can and should be a natural extension of those services. The guidelines also do not define geographic areas for such services and make no reference to how many are necessary. In addition, there is no definition of terms like "tertiary care service" and "cooperative arrangements."

WJHS also proposed that if these services are regionalized that reviewing procedure be developed to insure total community input from all interested parties within the proposed region. Finally, they questioned whether or not those institutions currently providing pediatric intensive care services would be grandfathered or whether the State would require some type of review.

RESPONSE: This language is included in these rules because no other regulation specifically addresses expensive pediatric intensive care services and the Department is aware of provider interest in offering these services. Further, the development of such services is often proposed as a component of a larger major capital project.

The Department understands the nature of the comments received and concedes that the language provides only general guidance for the Certificate of Need decision-making process. The Department believes that such general guidance is implicit in its enabling statute and in the Certificate of Need Application and Review Process rules (N.J.A.C. 8:33) and thus does not have to be repeated in these rules. Therefore, the Department agrees to delete this section as requested by the commenters.

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

## CHAPTER 43G

## CERTIFICATE OF NEED: CAPITAL POLICY RULES

## SUBCHAPTER 1. STANDARDS AND CRITERIA

## 8:43G-1.1 Scope

The rules in this chapter are intended to provide substantive criteria for the review of Certificate of Need applications by applicants proposing major modernization/renovation or new construction projects with proposed costs in excess of \$5 million. All Certificate of Need applications for modernization renovation/new construction shall continue to be separately or concurrently reviewed under the general criteria of the existing Hospital Policy Manual (N.J.A.C. 8:43E) and under other existing Certificate of Need regulations (N.J.A.C. 8:33 or 8:43) where applicable to specific project components not addressed in these rules.

## 8:43G-1.2 Batching schedule

(a) The batching schedule for hospital bed additions, modernization/renovation or new construction projects in excess of \$10 million, as identified in N.J.A.C. 8:33-1.5(d), is modified as follows:

1. The processing of applications for conversion/renovation/modernization projects for cycles after October 15, 1986 is deferred until a date 60 days (to the nearest 1st of the month) following the effective date of amendments to the Hospital Policy Manual, N.J.A.C. 8:43E.

2. This rule applies to an October 15, 1986 batching cycle with a September 1, 1986 project submission date.

3. The \$10,000,000 limitation or threshold for batching is reduced to \$5,000,000 from the date of adoption of this regulation until amendments are adopted to the Hospital Policy Manual (N.J.A.C. 8:43E) as referenced in 1. above.

4. Any project submitted in the October 15, 1986 batching cycle and subsequently deferred will be reviewed using the regulations in effect at the time the CN review is conducted.

## 8:43G-1.3 General policies

(a) The general policies identified herein shall apply to all facilities licensed and regulated under N.J.S.A. 26:2H-1 et seq. and amendments thereto.

(b) No Certificate of Need shall be issued unless the action proposed in the application for such certificate is necessary to provide required health care in the area to be served, can be economically accomplished and maintained, and will contribute to the orderly development of adequate and effective health care services.

(c) Each Certificate of Need application shall comply with the State Health Plan and all appropriate health planning and rate setting regulations adopted by the Department of Health (with approval of The Health Care Administration Board) and should also be in compliance with the Health Systems Plan of the health system agency in which the action is planned.

(d) In reviewing Certificate of Need applications, the Department will consider as capital policy goals:

1. The reduction of duplicative services and excess bed capacity.
2. Accessibility to all inpatient and outpatient services by the medically indigent in the health care system.
3. The efficient operation of hospitals in the health care system.
4. The achievement of operational cost savings or cost avoidances as a result of proposed new capital expenditures.
5. Maintenance of a level of capital debt as appropriate to a cost **\*[efficient]\* \*effective\*** health care delivery system.

## 8:43G-1.4 Definitions

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

"Construction" means the erection, buildings, alteration, reconstruction, improvement, renovation, extension or modification of a health care facility, including its equipment, the inspection and supervision thereof; and the studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary thereto.

"Department" means the New Jersey Department of Health.

"Equity" means a voluntary non-operating asset contribution which will reduce the total size of the debt.

"Guidelines" means those general factors to be considered in applying a given standard, or to guide decision-making in areas for which specific standards are not available or would not be appropriate.

"Health Systems Agency" means an officially recognized health systems agency formed under the provision of Federal Law 93-641, as amended and supplemented.

"Modernization" means the alteration, expansion, major repair (to the extent permitted by regulations), remodeling, replacement, and renovation of existing buildings (including initial equipment thereof), and the replacement of obsolete equipment of existing buildings.

"Proposed Capital Expenditure" means the sum total of expenditures anticipated by the facility at the conclusion of a project, which includes expenditures by a facility acting as its own contractor, which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance.

"Relative Length of Stay Index" means the analysis published by the Department which compares the Average Length of Stay for an individual hospital within the hospital's peer group controlling for casemix. The methodology for the Relative Length of Stay Index is contained in the official New Jersey State Health Plan, as amended, and shall be based on the most recent data collected by the Department. **\*Most recent data collected by the Department may not be older than 24 months from current date.\***

"Standards" means the specific requirements that applicants must satisfy in developing applications for Certificate of Need approval. To the extent practicable, standards shall address measurable characteristics that such applications must meet.

#### 8:43G-1.5 Standards regarding addition of beds

(a) No acute care bed additions to hospitals shall be approved under these rules.

(b) Hospitals proposing to convert beds to new or alternate services shall demonstrate need for those services in their area under methodologies or criteria contained in the Hospital Policy Manual (N.J.A.C. 8:43E), the State Health Plan, and other applicable approved planning regulations of the Department.

(c) Where the applicant is proposing beds to support specialized services for which there are no methodologies referenced in the documents cited at N.J.A.C. 8:43E-1.10(a), the need for beds shall be documented by an analysis of scientific and medical data which demonstrates that beds for a new service are cost effective, beneficial to patients, accessible, of high quality, and could not be provided in a less costly setting. In addition, an applicant shall provide information demonstrating the need for beds by documenting estimates of:

1. Referrals from major referral sources, as reflected in letters of support, and
2. Projected admissions and average length of stay (the bases for these projections must be specifically identified in the application), and
3. Utilization based upon methodologies established by federal, regional, or other health planning or financing authorities, and
4. Occupancy level projections which shall be demonstrated to have achieved a minimum of 75 percent (for the beds proposed in the application) within the initial two years of full operation.

#### 8:43G-1.6 Standards regarding occupancy rates

(a) For purposes of review of Certificate of Need applications, the minimum occupancy rate based upon licensed beds for an acute general hospital shall be 75 percent at the conclusion of projects, except as noted in (c) below.

(b) The level of excess beds within a hospital shall be that number of licensed beds, which, when deleted from the license, will allow a hospital to achieve a 75 percent minimum occupancy level for a period three years beyond the projected completion date of the project, defined as the "target year". Utilization levels for the target year shall be based on utilization trends for the most recent 24 months for which data is available to the Department, applied forward to the target year from the most recent quarter of available data.

(c) Projects proposing modernization of existing beds through replacement by new construction shall demonstrate minimum target year occupancy of 80 percent in the new beds unless it is documented that new construction is a more cost effective alternative. This exception shall be applied to all criteria contained in N.J.A.C. 8:43G-1.7.

#### 8:43G-1.7 Community need standards

(a) A hospital may be approved for necessary capital renovation funds when it demonstrates that it meets the following standards:

1. Utilization standards:
  - i. Overall occupancy rates of \*[greater than]\* **\*at least\*** 75 percent at the conclusion of the project.
  - ii. Trends in volume (admissions ALOS and/or patient days) which indicate occupancy will continue to be above 75 percent of total remaining licensed beds for a period of at least three years beyond completion of the project. Same Day Surgery volume shall be taken into consideration in this calculation.
2. Efficient size: A hospital shall maintain at least 200 beds while maintaining an overall occupancy rate of at least 75 percent. Where it fails to meet this standard, capital projects may only be approved where the hospital is geographically isolated, efficiently operated, or merged into a multi-hospital system in its area.
3. Excess bed areas: Where the number of excess beds as determined under N.J.A.C. 8:43G-1.6(b) in an area (as defined by the Department in consultation with Health Systems Agency), exceeds 75 percent of licensed bed capacity of an applicant hospital, no approval be granted except where multi-hospital arrangements, including mergers or joint applications resulting in consolidation of services and substantial reductions in excess capacity, are proposed within the project. Exceptions may be considered if the applicant meets criteria outlined in 2. above.
4. Hospital efficiency: The applicant must demonstrate that it is operated in an economically efficient manner through generally accepted industry efficiency standards and through its ranking on the Relative Length of Stay Index. Exceptions may be considered if the applicant meets criteria outlined in 2. above.
5. The following criteria will be utilized in determining exceptions to (a)2-4 above.

i. A hospital is geographically isolated, where there is lack of another acute care hospital within a 15 mile radius of an applicant hospital, where at least 50 percent of the \*[residents]\* **\*patients from\*** of the service area utilize the hospital, or

ii. A hospital is efficient, where its occupancy rates are above 80 percent overall for the last four quarters reported to the Department and where the hospital's ranking is below 1 standard deviation of the mean for its peer group on the Relative Length of Stay Index (a low length of stay within its peer group adjusted for case mix).

iii. A multi-hospital system application may be proposed in two forms:

(1) Joint community application: An application submitted jointly by all hospitals (or a combination of hospitals constituting a majority of needed beds) within a 15 mile radius of the applicant hospital or in a health-service area as defined by HSAs and approved by the Department, that accomplishes the following objectives:

(A) Consolidation and regionalization of services in the area, accomplishing the reduction of duplicative inpatient, outpatient, therapeutic and diagnostic services and of ancillary and administrative functions between institutions; and,

(B) Creation of specific operational cost savings which will be incorporated into the rates upon completion of the project; and

(C) Establishment of a joint planning committee for the area which includes all hospitals identified in the application, as well as community and HSA participants.

(2) Hospital merger applications: An application for transfer of ownership between two or more institutions within a 15 mile radius or in a health-service area as defined by HSAs and approved by the Department in which all assets are merged under a single corporate entity operated by a single board of trustees, which accomplishes the following objectives:

(A) Reduction of all excess beds within the merged institutions and conversion, closure, or consolidation of unnecessary physical plant areas in a manner achieving cost savings to the system; and

(B) Consolidation of duplicative inpatient, outpatient, therapeutic and diagnostic services and ancillary and administrative functions where appropriate to the overall health care needs of the health service area.

(C) Compliance with standards identified at N.J.A.C. 8:43G-1.10.

(b) Planning of alternatives available to hospitals not meeting the criteria for community need identified in (a) above include application for capital planning funds as a one time rate adjustment under N.J.A.C. 8:83 (Hospital Reimbursement regulations) for the following:

1. Conversion of acute-care beds study: Hospitals have a variety of options in converting all or a portion of their acute care bed components to non-acute care purposes. The study of conversion of acute-care beds

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would determine the capital and operating costs associated with each option, and assess reimbursement applications.

2. Closure study: The closure study must address the impact on medically underserved populations, the ambulatory-care needs of the community, an employee retraining or job relocation plan, and a financial analysis of both short-term and long-term debt. To be eligible for a closure study, the hospital must not be in default or in bankruptcy.

(c) An exception to N.J.A.C. 8:43G-1.7 may be considered by the Commissioner where the project scope is limited to correction of conditions constituting an imminent hazard to the health and safety of patients and staff as determined by the Department.

#### 8:43G-1.8 Guidelines for reviewing project component need

In addition to demonstrating continued community need, all hospitals must demonstrate the need for each component part of the proposed project. A component shall mean any element of the overall project that is associated with the modernization or renovation, expansion, or new construction of an identifiable physical plant area, such as a nursing unit, ancillary department, administrative area, or any structural element of the facility. Priority will be given to the approval of components proposing to address modernization/renovation or construction of physical plant areas for needed services and departments where capital expenditures are necessary for correcting functional or structural obsolescence, life safety code requirements (N.F.P.A. 101), or to achieve demonstrable and proportionate improvements in patient care as determined by the Department. Where a component is the subject of an approved planning regulation, that component must satisfy all applicable criteria. Any components of a Certificate of Need project not demonstrated to be needed as determined by the Department may be denied.

#### 8:43G-1.9 Standards regarding equity contributions and financing

(a) Financing of hospital construction, modernization/renovation, or major moveable equipment projects requires a minimum equity contribution from the hospital of at least 15 percent of total project costs, including all financing and carrying charges. This equity requirement may be reduced by one half of one percent for each full percentage point the hospital uncompensated care percentage exceeds the statewide average uncompensated care percentage for acute care hospitals.

(b) All projects involving long-term financing of capital construction costs shall demonstrate use of the least-cost financing reasonably available.

(c) Financing arrangements for construction, expansion, renovation, or purchase of facilities shall not entail debt obligations of greater duration than the expected useful life of the assets financed.

(d) It shall be a condition of any approved Certificate of Need that capital reimbursement shall be predicated upon the higher of actual volume or volumes projected in the approved application.

\*(e) All applicants must demonstrate the financial feasibility of their projects. An appropriate financial feasibility study must be submitted at the time of application which must test the feasibility of the project under various assumptions regarding both capital and non-capital reimbursement policies that are currently under consideration at both the federal and state levels. These assumptions will be identified by the Department prior to the time of application.]\*

\*(e) All applicants must demonstrate the financial feasibility of their projects. A financial feasibility study must be submitted at the time of Certificate of Need application on feasibility forms provided by the Department. This study must test the feasibility of the project under the assumptions regarding capital reimbursement policies that are currently under consideration at both the federal and state levels. These assumptions will be identified by the Department prior to the submission of applications.\*

(f) Capital costs approved through Certificate of Need applications under these rules will not be guaranteed future reimbursement.

#### 8:43G-1.10 Standards regarding accessibility

The applicant must demonstrate compliance with all accessibility criteria as identified in N.J.A.C. 8:33-2.1, "Certificate of Need Application and Review Process."

#### 8:43G-1.11 Multi-hospital arrangements

(a) Hospitals which propose the merger, acquisition, or joint establishment of corporate structures with any other licensed hospital(s) for the purpose of providing a health care service, or where a change in ownership Certificate of Need application is filed by a licensed hospital, it shall demonstrate in the Certificate of Need that:

1. Cost efficiencies will be effected and will result in significant and proportionate long term net operational savings to the participating hospitals and to the health care system as a whole; and

2. Where the project is related to inpatient services, a substantial reduction of excess bed capacity, as determined under N.J.A.C. 8:43G-1.6, will result for participating hospitals through decertification or conversion of acute care beds; and

3. Duplication of services will be eliminated where appropriate through the proposed merger, acquisition of corporate restructuring.

#### \*[8:43G-1.12 Pediatric intensive care/critical care units

(a) Pediatric Intensive Care beds shall be provided on a regionalized basis. No facility shall offer such services without Certificate of Need approval. No Certificate of Need shall be awarded unless need is demonstrated through casemix, delivery of tertiary care services, and establishment of cooperative arrangements with area hospitals.]\*

## DIVISION OF OCCUPATIONAL AND ENVIRONMENTAL HEALTH

### (a)

#### Worker and Community Right to Know Act

**Adopted Amendments: N.J.A.C. 8:59-1.3, 2.1, 3.13, 5.1, 5.5, 6.2, 7.1, 7.2, 8.1, 8.2, 8.5 and 10.3**

**Adopted New Rules: N.J.A.C. 8:59-1.5, 8.6, 8.7, 8.8, 8.9, 8.10, 8.11 and 8.12**

Proposed: July 7, 1986 at 18 N.J.R. 1363(a).

Adopted: August 13, 1986, by Molly Joel Coye, M.D.,  
Commissioner, State Department of Health.

Filed: August 18, 1986 as R.1986 d.373, with substantive changes not requiring additional public notice and comment. (See N.J.A.C. 1:30-4.3).

Authority: L. 1983, c. 315, N.J.S.A. 34:5A-1 et seq., specifically N.J.S.A. 34:5A-32; N.J.S.A. 26:1A-16; N.J.S.A. 26:1A-37.

Effective Date: September 8, 1986.

Expiration Date: October 1, 1989.

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

The New Jersey Department of Health proposed amendments and new rules to the Worker and Community Right to Know Act regulations, N.J.A.C. 8:59, in the New Jersey Register on July 7, 1986, 18 N.J.R. 1363. The public comment period remained open for 30 days through August 6, 1986. Seven written comments were submitted by the following:

Atlantic Electric

Fragrance Materials Association of the U.S./Flavor and Extract

Manufacturer's Association of the U.S. (FMA/FEMA)

New Jersey Dental Association

New Jersey Dental Laboratory Association, Inc.

New Jersey Department of the Treasury

New Jersey Hospital Association

Raritan Bay Medical Center

The following summarizes the comments received and provides the Department's response to these comments. All comments are on file at the Department of Health.

1. COMMENT: N.J.A.C. 8:59-1.3—The New Jersey Dental Association and the New Jersey Dental Laboratory Association, Inc. supported the amendment to the definition of "Employer" which deleted Standard Industrial Classification Codes 8021—Offices of Dentists and 8072—Dental Laboratories. The New Jersey Hospital Association believes that SIC Code 806—Hospitals, should be deleted from the law.

RESPONSE: The amendment to the definition of "Employer" is consistent with and reflects the January 21, 1986, amendment to the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq. (hereinafter referred to as "the Act"). Suggestions for additions and deletions of employer groups should be directed to the legislature, which has control over such matters.

2. COMMENT: N.J.A.C. 8:59-1.3—Raritan Bay Medical Center and the New Jersey Hospital Association believe that the changes to the definition of "Technically qualified person" removes from the list of possible trainers in a hospital setting individuals who, by virtue of their experience and specialized training, are qualified to conduct a Right to Know education and training program. The Medical Center recommends that the definition remain as written and that the amendment be added as an alternative to the existing definition. Atlantic Electric suggests that the amendments grandfather in those individuals presently recognized as

technically qualified persons, or allow one year to comply with the new requirements. The New Jersey Hospital Association also suggests that persons who present a purchased professionally prepared training program should not be required to meet the requirements of a "technically qualified person" and that years of experience be allowed to be substituted for years of formal education.

RESPONSE: The new more detailed definition of "Technically qualified person" was adopted by the Department of Health after much discussion by the Right to Know Advisory Council during the summer of 1985. It is not a "new" requirement. It was widely distributed to cover employers as Education and Training Program Guidelines in September 1985. The Department is now codifying these guidelines. There is no need to grandfather existing Right to Know trainers because they should already meet the guidelines. The Department believes that the former definition was not specific enough to adequately guide employers in the selection of qualified Right to Know trainers. A trainer must have an appropriate degree in the field of science or health or must have taken 30 hours of hazardous materials training along with one year of supervisory experience over employees who handle hazardous substances.

The individuals of concern to the commenters are first line supervisors, trainers and safety officers who would have the one year of supervisory experience but not the appropriate degree or 30 hours of training. The Department does not feel it is too burdensome to require these individuals to have taken 30 hours of formal training. Thirty hours is equivalent to a one-semester college course and constitutes minimum training for one who is responsible for training others and responding to questions. The thirty hours can be met by one thirty-hour course or ten three-hour courses or any combination of hazardous materials courses. Looking at the alternative qualifications, the Department believes a hospital has a greater likelihood of having a person with the appropriate degree such as a registered nurse or a health educator than most covered employers. A first line supervisor, trainer or safety officer who does not meet the necessary qualifications can, of course, assist the qualified trainer.

3. COMMENT: N.J.A.C. 8:59-2.1—The Department of Treasury recommends that a statement be added to indicate when the yearly update to the Workplace Survey is due or whether a notice or forms will be sent to employers for each update.

RESPONSE: N.J.A.C. 8:59-2.1(a) states that the Department of Labor shall mail the Department of Health's Workplace Survey to every covered employer. In addition to the initial survey, this would include yearly updates. Upon receipt of the survey from the mailing, an employer has 90 days to complete and return it to the Department of Health. The due date will be listed on the address label on the survey. A sentence has been added to N.J.A.C. 8:59-2.1(d) clarifying that the annual Workplace Survey update must be completed within 90 days of receipt.

4. COMMENT: N.J.A.C. 8:59-5.1—Atlantic Electric suggests that N.J.A.C. 8:59-5.1(c) requiring labeling of the five most predominant substances in a container be eliminated.

RESPONSE: N.J.A.C. 8:59-5.1(c) is not the subject of any amendments. This section is required by the statute and is not subject to change.

5. COMMENT: N.J.A.C. 8:59-8.1—FMA/FEMA proposes that reference should be made to the provision in the statute that gives the authority to the Department of Health to enforce N.J.S.A. 34:5A-7(a) and N.J.S.A. 34:5A-10 through 14 of the Act.

RESPONSE: Since this is clearly set forth in the statute, it is not necessary to repeat it in the rules.

6. COMMENT: N.J.A.C. 8:59-8.2—Atlantic Electric states that it should not be considered a violation if an employer has shown a good faith effort to obtain information necessary for compliance but was unsuccessful in obtaining it. The Department of Treasury believes that a set criteria for schedule of factor values is needed to minimize subjectivity by the Right to Know Enforcement Officer and that "willful" is inappropriate for violations of training, labeling and posting regulations (N.J.A.C. 8:59-8.2(b)4). The Department of Treasury also asks whether the \$1000 per day penalty starts when a specified correction date has elapsed and whether correction dates can be extended (N.J.A.C. 8:59-8.2(b)5ii).

FMA/FEMA alleges that there is no statutory authority for the assessment of penalties in connection with the Department of Health's review of trade secret claims and any provisions that do so must be deleted (N.J.A.C. 8:59-8.2(b)). They also recommend that N.J.A.C. 8:59-8.2(b)1ii(4) be amended to clarify that it only applies to completion of the Workplace Survey.

RESPONSE: The Department does not consider it a violation of the law for completion of the survey, labeling and education and training if the employer has made a good faith effort in obtaining this information

through no fault of the employer. The employer must be able to document this good faith effort through copies of letters and memorandums documenting phone calls.

In regard to the Schedule of Factor Values for the computation of civil administrative penalties, the Department believes that ranges for the values for significant, major and minor seriousness are appropriate because they allow for a variety of information to be taken into account within certain ranges. No two violation situations are identical and there must be some leeway in assessing different penalties. "Willful" is not inappropriate for violations of the Right to Know Law. Even though extensive documentation may be required to prove a "willful" violation, such a violation is serious and must be treated as such. In regard to the portion of the civil administrative penalty that commences upon issuance of a civil administrative order, said penalty (\$1000 maximum per day of violation) would start at the end of the period allowed for compliance in the order. Given a good faith effort and partial compliance, correction dates can be extended. The procedure would be for the employer to make such a request in writing to the Department of Health prior to the expiration of the correction date.

The lack of statutory authority for N.J.A.C. 8:59-8.2(b)1i(2) appears to be correct and this paragraph has been deleted. The suggested limitation to making a good faith effort to obtain the chemical names and CAS numbers of the components of products will not be adopted. While an employer certainly must make a good faith effort to obtain the chemical substance components and CAS numbers of products while completing the Workplace Survey, he should continue this effort after submitting the survey whenever he receives a product any time during the year so that he can label the product container properly and conduct appropriate education and training for his employees.

7. COMMENT: N.J.A.C. 8:59-8.8—In the section about civil penalties in reference to violations of the Act from falsifying, tampering with, or knowingly rendering inaccurate any monitoring device required to be maintained pursuant to the Act, the Department of Treasury asks what type of monitoring device is referred to (N.J.A.C. 8:59-8.8(b)). The Department of Treasury also suggests that the potential civil penalty should be "not less than \$5,000 nor more than \$10,000 per day of violation" rather than "not less than \$10,000 nor more than \$5,000 per day of violation". Finally, they suggest that criteria be established to ensure consistent determinations of willful and knowing violations of the Act.

RESPONSE: The wording referred to by the commenter comes directly from the statute. The Department of Health does not require an employer to utilize monitoring devices. The civil penalty provision referred to above is difficult to interpret. An opinion of the Attorney General will be sought to clarify this phrase. The determination of willful and knowing violations of the Act pursuant to this section will be made by a court which will utilize precedent and its own reasoning in establishing what it considers to be sufficient evidence of willful and knowing violations of the Act.

8. COMMENT: N.J.A.C. 8:59-8.9—Atlantic Electric feels that this section provides a Right to Know Enforcement Officer (RTKEO) with an inappropriate amount of authorization and power in the workplace and discriminates against an employer by allowing the RTKEO to exclude an employer's representative to be present during employee questioning (N.J.A.C. 8:59-8.9(e)). The Department of Treasury asks how an inspection will be initiated, and whether it will be based on failure to return a survey, survey information indicating a need for training, employee complaints, or general scheduling. Treasury also asks whether prior notice of an inspection will be given. FMA/FEMA recommends the addition of a new paragraph to this section to provide trade secret protection for records, photographs and other information taken or obtained during an inspection which might reveal a trade secret.

RESPONSE: The ability of a Right to Know Enforcement Officer to question privately an employee outside the influence or pressure of his or her employer is fundamental to determining whether that employee has received adequate education and training and thus whether the employer has complied with the provisions of the Right to Know Act. The presence of an employer representative may inhibit an employee from responding completely to the inquiries of the enforcement officer. This provision will not be changed.

Inspections will be initiated for different reasons. Complaints will trigger inspections. Failure to return a survey may also trigger an inspection but even if it does not, a civil administrative order and penalty can be issued without an inspection since the violation can be documented by the Department's certifying that it has not received the survey. Other than complaints, employers will be placed in a general schedule of programmed inspections with some receiving higher priority than others. In most cases,

prior notice of an inspection will not be given. Only in those cases where it is anticipated that advance notice would assist the inspection, will advance notice be given.

The commenter is concerned about the protection of documents, supporting information and photographs which the employer deems to be a trade secret or which might reveal a trade secret. Prior to any inspection or taking of photographs, the employer must notify the RTKEO that trade secrets are present. The RTKEO will then contact the Department for further instructions. The Department may agree to sign a mutually agreed upon confidentiality agreement or an agreement may be worked out to inspect the appropriate documents at the facility and not take copies or notes or photographs of the trade secret information. If a verbal or written confidentiality agreement is worked out between the employer and the Department, the Department will maintain the trade secret documents or photographs as confidential information in the same secure manner in which it maintains trade secret claims covered under N.J.A.C. 8:59-3. The Department does not believe that a new paragraph is necessary to address this issue.

9. COMMENT: N.J.A.C. 8:59-8.10—Atlantic Electric does not feel that the Right to Know Enforcement Officer should have the right to limit the number of employer representatives on an inspection (N.J.A.C. 8:59-8.10(a)); that the RTKEO should not have the right to select the employer's representative (N.J.A.C. 8:59-8.10(b)); and that the employer should have advance notification of a third party allowed by the RTKEO to accompany him on the inspection because the employer should have the right to restrict access to unauthorized persons (N.J.A.C. 8:59-8.10(c)).

RESPONSE: In order to conduct a proper inspection, the Right to Know Enforcement Officer must be able to control the number of persons who accompany him or her on the inspection. Employers sometimes have several employer representatives accompany an inspector which inhibits the ability of an inspector to see all that should be seen and talk to appropriate employees. Therefore, the number of walkaround representatives is limited to one each from both sides—employer and employee. If the employer can convince the inspector that additional employer representatives are necessary to accompany him, the RTKEO will allow it. The same holds true for employees. This section will be modified to remove the authority of the RTKEO to determine who is the authorized employer representative. While a third party may be necessary for the conduct of an adequate inspection, the Department realizes that the employer must have some control over who has access to his facility. The RTKEO will take the arguments of the employer into account in determining whether a particular third party should accompany him on the inspection. The presence of a third party does not mean the employer cannot place reasonable conditions on the third party's presence in the facility, but they cannot be unreasonable.

10. COMMENT: N.J.A.C. 8:59-8.11—The Department of Treasury asks whether the notice of complaint by an employee must be given in an oral or written form.

RESPONSE: A complaint by an employee alleging a violation of the Right to Know Act may be given orally or in writing. A complaint form that has been developed by the Department may be used for filing a written complaint.

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

The following is a complete listing of employer groups who are currently covered by the Right to Know law:

SIC	DESCRIPTION		
	AGRICULTURAL SERVICES		
0782	Lawn and garden services	5181	PRINTING AND PUBLISHING (ENTIRE GROUP)
20	FOOD AND KINDRED PRODUCTS (ENTIRE GROUP)	5182	CHEMICALS AND ALLIED PRODUCTS (ENTIRE GROUP)
21	TOBACCO MANUFACTURING (ENTIRE GROUP)	5191	PETROLEUM AND COAL PRODUCTS (ENTIRE GROUP)
22	TEXTILE MILL PRODUCTS (ENTIRE GROUP)	5194	RUBBER AND MISCELLANEOUS PLASTIC PRODUCTS (ENTIRE GROUP)
23	APPAREL AND OTHER TEXTILE PRODUCTS (ENTIRE GROUP)	5198	LEATHER AND LEATHER PRODUCTS (ENTIRE GROUP)
24	LUMBER AND WOOD PRODUCTS (ENTIRE GROUP)	5199	STONE, CLAY AND GLASS PRODUCTS (ENTIRE GROUP)
25	FURNITURE AND FIXTURES (ENTIRE GROUP)	5511	PRIMARY METAL INDUSTRIES (ENTIRE GROUP)
26	PAPER AND ALLIED PRODUCTS (ENTIRE GROUP)	5521	FABRICATED METAL PRODUCTS (ENTIRE GROUP)
		5541	MACHINERY, EXCEPT ELECTRICAL (ENTIRE GROUP)
		7216	ELECTRICAL AND ELECTRONIC EQUIPMENT (ENTIRE GROUP)
		7217	TRANSPORTATION EQUIPMENT (ENTIRE GROUP)
		4511	INSTRUMENTS AND RELATED PRODUCTS (ENTIRE GROUP)
		4582	MISCELLANEOUS MANUFACTURING INDUSTRIES (ENTIRE GROUP)
		4583	TRANSPORTATION BY AIR
		46	Air transportation, certificated carriers
		4712	Airports and flying fields
		4742	Airport terminal services
		4743	PIPE LINES, EXCEPT NATURAL GAS (ENTIRE GROUP)
		4782	TRANSPORTATION SERVICES
		4783	Freight forwarding
		4784	Rental of railroad cars with care of lading
		4789	Rental of railroad cars without care of lading
		4811	Inspection and weighing services connected with transportation
		4821	Packing and crating
		49	Fixed facilities for handling motor vehicle transportation, not elsewhere classified
		5085	Services incidental to transportation, not elsewhere classified
		5087	COMMUNICATION
		5093	Telephone communication (wire or radio)
		5122	Telegraph communication (wire or radio)
		5161	ELECTRIC, GAS, AND SANITARY SERVICES (ENTIRE GROUP)
		5171	WHOLESALE TRADE—DURABLE GOODS
		5172	Industrial supplies
		5181	Service establishment equipment and supplies
		5182	Scrap and waste materials
		5191	WHOLESALE TRADE—NONDURABLE GOODS
		5194	Drugs, drug proprietaries, and druggists' sundries
		5198	Chemicals and allied products
		5199	Petroleum bulk stations & terminals
		5511	Petroleum and petroleum products wholesalers, except bulk stations and terminals
		5521	Beer and ale
		5541	Wines and distilled alcoholic beverages
		7216	Farm supplies
		7217	Tobacco and tobacco products
			Paints, varnishes, and supplies
			Nondurable goods, not elsewhere classified
			AUTOMOBILE DEALERS AND GASOLINE SERVICE STATIONS
			Motor vehicle dealers (new and used)
			Motor vehicle dealers (used only)
			Gasoline service stations
			PERSONAL SERVICES
			Dry cleaning plants, except rug cleaning
			Carpet and upholstery cleaning

- 7218 Industrial launderers
- BUSINESS SERVICES**
- 7397 Commercial testing laboratories
- AUTOMOTIVE REPAIR, SERVICES, AND GARAGES**
- 7531 Top and body repair shops
- 7534 Tire retreading and repair shops
- 7535 Paint shops
- 7538 General automotive repair shops
- 7539 Automotive repair shops, not elsewhere classified
- MISCELLANEOUS REPAIR SERVICES**
- 7692 Welding repair
- HEALTH SERVICES**
- 8062 General medical & surgical hospitals
- 8063 Psychiatric hospitals
- 8069 Specialty hospitals, except psychiatric
- EDUCATIONAL SERVICES**
- 8211 Elementary and secondary schools
- 8221 Colleges, universities, and professional schools
- 8222 Junior colleges and technical institutes
- 8249 Vocational schools, except vocational high schools, not elsewhere classified

8:59-1.3 Definitions

...  
 "Chemical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry or the Chemical Abstracts Service rules of nomenclature.

...  
 "Employer" means any person or corporation in the State engaged in business operations which has a Standard Industrial Classification, as designated in the Standard Industrial Classification Manual prepared by the federal Office of Management and Budget, with the following Major Group Numbers, Group Numbers, or Industry Numbers, as the case may be: Major Group Number 07 (Agricultural Services), only Industry Number 0782—Lawn and garden services; Major Group Numbers 20 through 39 inclusive (manufacturing industries; Major Group Number 45 (Transportation by Air), only Industry Number 4511—Air Transportation, certified carriers, and Group Number 458—Air Transportation Services; Major Group Number 46 (Pipelines, Except Natural Gas); Major Group Number 47 (Transportation Services), only Group Numbers 471—Freight Forwarding, 474—Rental of Railroad Cars, and 478—Miscellaneous Services Incidental to Transportation; Major Group Number 48 (Communication), only Group Numbers 481—Telephone Communication, and 482—Telegraph Communication; Major Group Number 49 (Electric, Gas and Sanitary Services); Major Group Number 50 (Wholesale Trade—Durable Goods), only Industry Numbers 5085—Industrial Supplies, 5087—Service Establishment Equipment and Supplies, and 5093—Scrap and Waste Materials; Major Group Number 51 (Wholesale trade, nondurable goods), only Group Numbers 512—Drugs, Drug Proprietaries and Druggists' Sundries, 516—Chemicals and Allied Products, 517—Petroleum and Petroleum Products, 518—Beer, Wine and Distilled Alcoholic Beverages, and 519—Miscellaneous Nondurable Goods; Major Group Number 55 (Automobile Dealers and Gasoline Service Stations), only Group Numbers 551—Motor Vehicle Dealers (New and Used), 552—Motor Vehicle Dealers (Used only), and 554—Gasoline Service Stations; Major Group Number 72 (Personal Services), only Industry Numbers 7216—Dry Cleaning Plants, Except Rug Cleaning, 7217—Carpet and Upholstery Cleaning, and 7218—Industrial Launderers; Major Group Number 73 (Business Services), only Industry Number 7397—Commercial testing laboratories; Major Group Number 75 (automotive repair, services, and garages), only Group Number 753—Automotive Repair Shops; Major Group Number 76 (miscellaneous repair services), only Industry Number 7692—Welding Repair; Major Group Number 80 (health services), only Group Number 806—Hospitals; and Major Group Number 82 (educational services), only Group Numbers 821—Elementary and Secondary Schools and 822—Colleges and Universities, and Industry Number 8249—Vocational Schools. Except for the purposes of the Worker and Community Right to Know Fund, N.J.S.A. 34:5A-26, "employer" means the State and local governments, or any agency, authority, department, bureau, or instrumentality thereof.

...

"Technically qualified person" means a person who is a registered nurse, or has a bachelor's degree in industrial hygiene, environmental science, health education, chemistry, or a related field and understands the health risks associated with exposure to hazardous substances; or has completed at least 30 hours of hazardous materials training offered by the New Jersey State Safety Council, an accredited public or private educational institution, labor union, trade association, or government agency and understands the health risks associated with exposure to hazardous substances, and has at least one year of experience supervising employees who handle hazardous substances or work with hazardous substances. The thirty hour requirement may be met by the combination of one or more hazardous materials training courses.

...

8:59-1.5 Severability  
 (No change in text.)

8:59-1.4 Covered employers exempt from provisions of the law  
 (a) Any employer whose workplace survey transmitted to the Department of Health indicates that no hazardous substances are present at the facility, shall be exempt from the provisions of the Act for that facility, except for the requirement to annually update the workplace survey pursuant to N.J.A.C. 8:59-2, and except for the provisions of N.J.S.A. 34:5A-33 and N.J.A.C. 8:59-8 providing for enforcement of violations of the Act.

(b) Any employer exempted from the provisions of the Act pursuant to this section who transmits to the Department of Health an update of the workplace survey which indicates that a hazardous substance is present at the employer's facility shall immediately be subject to the provisions of the Act.

**SUBCHAPTER 2. WORKPLACE SURVEY**

8:59-2.1 General provisions

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

(d) By October 30, 1985, or within 90 days of receipt of a workplace survey, whichever is later, an employer shall complete and transmit the survey to the Department of Health; the county health department, county clerk, or designated county lead agency, of the county in which the employer's facility is located; the local fire department; and the local police department. **\*These deadlines shall apply to the first workplace survey and to annual workplace survey updates.\***

(e) (No change.)

**SUBCHAPTER 3. TRADE SECRETS**

8:59-3.13 Appeal of determination

(No change in text.)

**SUBCHAPTER 5. LABELING CONTAINERS**

8:59-5.1 General provisions

(a) By October 30, 1985, every container at an employer's facility containing a hazardous substance shall bear a label indicating the chemical name and Chemical Abstracts Service number of the hazardous substance or the trade secret registry number assigned to the hazardous substance. Common names specified in N.J.A.C. 8:59-5.7 may be substituted for the chemical name of the substance.

(b) By October 30, 1985, every container at an employer's facility in which more than one percent of the contents of the container are unknown, shall bear a label stating "Contents Unknown" or "Contents Partially Unknown", as appropriate, in addition to other labeling required by N.J.A.C. 8:59-5.

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

(h) Reaction vessels are containers in which a reaction or mixing takes place which do not meet the definition of process container. Reaction vessels shall contain labels which identify the substances which are added to the vessel and removed from the vessel. These labels may be placed on an adjoining wall or post in close proximity to the reaction vessel. Batch sheets or operating manuals which contain the information required for labeling in N.J.A.C. 8:59-5.1(a), (b), and (c) may be placed on an adjoining wall or post in close proximity to the reaction vessel to meet the requirement of this section.

(i)-(j) (No change.)

8:59-5.5 Exceptions to labeling requirements

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

(i) Labels on shipping containers of controlled substances regulated by the Federal Controlled Substances Act and/or the Controlled Substances

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Import and Export Act which purposefully do not indicate the contents of the container as controlled substances in order to guard against storage and in-transit losses may be substituted for the information required by N.J.A.C. 8:59-5.1.

## SUBCHAPTER 6. EDUCATION AND TRAINING PROGRAM

## 8:59-6.2 Program for employees

(a) By October 30, 1985, an employer shall establish an education and training program for his employees. By December 31, 1985, an employer shall provide current employees with a complete education and training program, and annually thereafter.

(b) Beginning on January 1, 1986, an employer shall provide new or reassigned employees with an education and training program within the first month of employment or reassignment.

(c)-(d) (No change.)

(e) Beginning on January 1, 1986, prior to entering an employment agreement with a prospective employee, an employer shall notify the prospective employee of the availability of workplace surveys and appropriate hazardous substance fact sheets at the Department of Health; county health department, county clerk, or designated county lead agency; and employer's facility for the facility at which the prospective employee will be employed.

## SUBCHAPTER 7. EMPLOYEE AND PUBLIC ACCESS TO INFORMATION

## 8:59-7.1 Department of Health obligations

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

(c) Any person may request in writing from the department a copy of a workplace survey for a facility or a copy of any hazardous substance fact sheet.

(d)-(g) (No change.)

(h) The department shall have the right to charge for making and supplying copies of any documents requested by any persons in accordance with N.J.S.A. 47:1A-1 et seq. The department shall have the right to charge for copies of hazardous substance fact sheets requested by any person except for those sent to an employer in response to hazardous substances reported on the workplace survey and except for research and development laboratories covered by the Act.

## 8:59-7.2 Employer obligations

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

(d) An employer shall, upon written request, provide an employee or employee representative with a copy of a workplace survey, appropriate hazardous substance fact sheets and, if applicable, an environmental survey, at no cost. This information shall be provided as soon as possible but at the latest within five working days of the request.

(e) An employer shall, upon written request, provide an employee or employee representative with the chemical name of a substance in a container labeled with a common name. This information shall be provided as soon as possible but at the latest within five working days of the request.

(f) An employer shall, upon written request, provide an employee or employee representative with the chemical name and Chemical Abstracts Service number or trade secret registry number of all hazardous substances and, after August 29, 1986, the five most predominant substances contained in any container which is not labeled pursuant to the Act. This information shall be provided as soon as possible but at the latest within five working days of the request.

(g)-(i) (No change.)

## SUBCHAPTER 8. ENFORCEMENT

## 8:59-8.1 Violations

Whenever, on the basis of information available to him, the Commissioner of the Department of Health finds that an employer is in violation of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., or any rule or regulation adopted pursuant thereto, the Commissioner of the Department of Health shall issue an order requiring the employer to comply, shall bring a civil action, shall levy a civil administrative penalty, or shall bring an action for a civil penalty, in accordance with N.J.S.A. 34:5A-33. The exercise of any of the remedies provided in this subchapter shall not preclude recourse to any other remedy so provided.

## 8:59-8.2 Civil administrative penalty

(a) The Commissioner of the State Department of Health is authorized pursuant to N.J.S.A. 34:5A-33 to impose a civil administrative penalty of not more than \$2,500 for each violation and additional penalties of

not more than \$1,000 for each day during which a violation continues after receipt of an order from the Commissioner to cease the violation.

(b) The penalty which may be assessed for a violation is to be determined by application of factors indicative of the seriousness and type of the violation, as set forth below.

1. Seriousness:

i. Within the Commissioner's discretion, significant violations shall include, but not be limited to:

(1) Filing false information on the workplace survey;

\*[(2) Filing a trade secret claim in bad faith which clearly does not meet the criteria for a trade secret;]\*

\*[(3)]\* \*(2)\* Failure to conduct an education and training program;

\*[(4)]\* \*(3)\* Failure to supply information requested by a county health department, county clerk, or designated county lead agency, local police department, or local fire department concerning the workplace survey.

ii. Within the Commissioner's discretion, major violations shall include, but not be limited to:

(1) Failure to return a completed workplace survey to the department within the deadline set forth in N.J.A.C. 8:59-2;

(2) Failure to convey copies of the workplace survey to the county health department, county clerk, or designated county lead agency, local fire department, or local police department;

(3) Omission from the workplace survey of more than five percent of the hazardous substances present at the employer's facility;

(4) Failure to make a good faith effort to obtain the chemical names and Chemical Abstract Service numbers of the components of a product which are unknown to the employer, from the manufacturer or supplier of the product;

(5) Failure to supply the chemical name or common name and Chemical Abstracts Service number of a substance claimed to be a trade secret on the trade secret section of the workplace survey which is filed with the department;

(6) Failure to file the trade secret section of the workplace survey with the department, if applicable;

(7) Failure to prepare a hazardous substance fact sheet for a trade secret substance in accordance with the requirements of N.J.A.C. 8:59-4.4(b);

(8) Failure to label more than five percent of containers containing hazardous substances by the deadlines set forth in N.J.A.C. 8:59-5.1;

(9) Failure to label more than five percent of all containers by the deadline set forth in N.J.A.C. 8:59-5.1(c);

(10) Failure to label more than five percent of containers in accordance with the requirements of N.J.A.C. 8:59-5;

(11) Conducting an education and training program that does not comply with the requirements set forth in N.J.A.C. 8:59-6;

(12) Failure to provide employees with material provided by the department;

(13) Failure to post posters provided by the department to inform employees of their rights under the law;

(14) Failure to provide an employee with a copy of a workplace survey, appropriate hazardous substance fact sheets, and, if applicable, an environmental survey, as soon as possible but at the latest within five working days of the request;

(15) Failure to provide copies of employee health and exposure records requested by the department;

(16) Failure to grant the department access to employees in order to request permission to review their health and exposure records;

(17) Failure to establish and maintain a central file which contains a workplace survey, appropriate hazardous substance fact sheets, and, if applicable, an environmental survey;

(18) Failure to provide an employee with the chemical name of a substance in a container labeled with a common name, or in a container which is not labeled pursuant to the provisions of N.J.A.C. 8:59-5, as soon as possible or at the latest within five working days of the request.

iii. Within the Commissioner's discretion, any other violations of the Act or these regulations shall be considered non-serious violations. The Commissioner reserves the right to find other violations of the Act to be serious.

2. Type factor: The type factor reflects the circumstances of the violation and the responsibility of the violator. There are three types of violations:

i. Willful: A willful violation is one which is the result of some deliberate, knowing or purposeful action or inaction by the violator.

ii. Highly foreseeable: A highly foreseeable violation is one which, while not willful, was so clearly likely to have happened under all the

circumstances that the violator can be charged with having known it was going to happen and failing to prevent it.

iii. Unintentional but foreseeable: An unintentional but foreseeable violation is one which the violator, by the exercise of reasonable diligence, could and should have foreseen and prevented.

3. The following presumptions shall be applied in the determination of the appropriate type factor:

i. An employer is presumed to have knowledge of all statutes and regulations applicable to its facility.

ii. Any violation known to the violator which continues for a period of 30 days or more without the violator taking steps to eliminate it, shall be presumed a willful violation.

4. Schedule of factor values: Penalties for violations shall be computed after assigning values to the Seriousness and Type Factors from the ranges set forth below:

i. Seriousness	Values
(1) Significant	1.00
(2) Major	1.00 to 0.40
(3) Minor	0.40 to 0

ii. Type:

(1) Willful	1.00
(2) Highly foreseeable	1.00 to 0.50
(3) Unintentional but foreseeable	0.50 to 0

5. Computation of penalty: The penalty for violations shall be computed as follows:

i.  $(\text{Seriousness}) \times (\text{Type}) \times (\$2,500) = \text{Penalty for each violation.}$

ii.  $(\text{Seriousness}) \times (\text{Type}) \times (\$1,000) = \text{Penalty for each day of violation after receipt of an administrative order to cease the violation from the date specified in the order for correction of the violation.}$

(c) Before any civil administrative penalty is imposed pursuant to this subchapter, the employer shall be notified by certified mail, return receipt requested, or by personal service. Such notice shall include:

1. A reference to the section of the Act, rule, regulation or order violated;

2. A concise statement of the facts alleged to constitute a violation;

3. A statement of the amount of the civil administrative penalties to be imposed; and

4. A statement of the employer's right to a hearing.

(d) The employer shall have 20 calendar days from receipt of the notice of imposition of a civil administrative penalty within which to deliver to the Commissioner a written request for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Rules of Procedure, N.J.A.C. 1:1-1 et seq. Subsequent to the hearing and upon finding that a violation has occurred, the Commissioner may issue a final order imposing the amount of the fine specified in the notice or such lesser amount as he may assess pursuant to the provisions on compromise of N.J.A.C. 8:59-8.2(h).

(e) If no hearing is requested, the notice of imposition of a civil administrative penalty shall become a final order upon expiration of the 20 calendar day period following receipt of the notice by the employer.

(f) Payment of the civil administrative penalty is due when a final order is issued or when the notice of imposition of a civil administrative penalty becomes a final order.

(g) The authority to levy a civil administrative penalty is in addition to all other enforcement provisions in the Act, and the payment of a civil administrative penalty shall not be deemed to affect the availability of any other enforcement provision in connection with the violation for which the penalty is levied.

(h) A civil administrative penalty imposed pursuant to this subchapter may be compromised by the Commissioner, in whole or in part, upon the posting by the employer of a performance bond in an amount and upon terms and conditions deemed satisfactory by the Commissioner.

#### 8:59-8.5 Employee health and exposure records

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

(d) The use of the employee health and exposure records obtained pursuant to (a) and (b) above is not limited to the evaluation of an employee's health and exposure to hazardous substances. The information obtained will be used in epidemiological studies to determine the impact of hazardous substances on worker and community populations. The study of worker exposure to a hazardous substance indicates the health effect of that substance on a person, whether he is in the workplace or in the community. Such data from health and exposure records are necessary for determining the health effects to community residents from hazardous substances.

(e) The Commissioner's authority to obtain employee health and exposure records on behalf of the public's health is further set forth in N.J.S.A. 26:1A-16 and N.J.S.A. 26:1A-37.

#### 8:59-8.6 Civil administrative order

(a) Whenever, on the basis of information available to him, the Commissioner of the Department of Health finds that an employer is in violation of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., or any rule or regulation adopted pursuant thereto, the Commissioner of the Department of Health may issue an order:

1. Specifying the provision or provisions of the Act, or the rule or regulation adopted pursuant thereto, of which the employer is in violation;

2. Citing the action which caused the violation;

3. Requiring the employer to comply with the provision of the Act or the rules and regulations adopted pursuant thereto of which the employer is in violation; and

4. Giving notice to the employer of the right to a hearing on the matter contained in the order.

(b) A civil administrative order shall be sent to an employer by certified mail, return receipt requested, or by personal service.

(c) The employer shall have 20 calendar days from receipt of the civil administrative order within which to deliver to the Commissioner a written request for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Rules of Procedure, N.J.A.C. 1:1-1 et seq. Subsequent to the hearing and upon finding that a violation has occurred, the Commissioner may issue a final order requiring the employer to comply with the provision of the Act or the rules and regulations adopted pursuant thereto of which the employer is in violation, as specified in the civil administrative order.

(d) If no hearing is requested, the civil administrative order shall become a final order upon expiration of the 20 calendar day period following receipt of the order by the employer.

(e) The authority to issue a civil administrative order is in addition to all other enforcement provisions in the Act, and compliance with an administrative order shall not be deemed to affect the viability of any other enforcement provisions in connection with the violation for which the order was issued.

#### 8:59-8.7 Civil action

The Commissioner of the Department of Health is authorized to commence a civil action in Superior Court for appropriate relief from a violation of the Act. The relief may include an assessment against the violator for the costs of any investigation, inspection, or monitoring survey which led to the discovery and establishment of the violation, and for the reasonable costs of preparing and litigating the case under this subchapter.

#### 8:59-8.8 Civil penalty

(a) An employer who violates the Act, an order issued pursuant to N.J.A.C. 8:59-8.6, or a court order issued pursuant to N.J.A.C. 8:59-8.7, or who fails to pay in full a civil administrative penalty levied pursuant to N.J.A.C. 8:59-8.2, shall be subject, upon order of a court, to a civil penalty not to exceed \$2,500 for each day during which the violation continues.

(b) An employer who willfully or knowingly violates the Act, or who willfully or knowingly makes a false statement, representation, or certification in any document filed or required to be maintained under the Act, or who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device required to be maintained pursuant to the Act, is subject upon order of a court, to a civil penalty of not less than \$10,000 nor more than \$5,000 per day of violation.

(c) Any penalty imposed pursuant to this section may be collected, and any costs incurred in connection therewith may be recovered, in a summary proceeding pursuant to the "Penalty Enforcement Law", N.J.S.A. 2A:58-1 et seq. The Superior Court shall have jurisdiction to enforce the "Penalty Enforcement Law".

#### 8:59-8.9 Inspection procedures

(a) Right to Know Enforcement Officers of the Department of Health are authorized to enter during normal operating hours any facility or other area where work is performed by an employee of an employer; to inspect and investigate during normal operating hours within reasonable limits and in a reasonable manner, any such facility; and to review records required by the Act and rules and regulations promulgated pursuant thereto, and other records which are directly related to the purpose of the inspection.

(b) Upon a refusal to permit the Right to Know Enforcement Officer, in exercise of his official duties, to enter an employer's facility during

normal operating hours, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, the department shall take appropriate action, including compulsory process, if necessary. The term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent.

(c) Any permission by an employer to enter, inspect, review records, or question any person, shall not imply or be conditioned upon a waiver of any cause of action, civil administrative order, or penalty under the Act.

(d) Right to Know Enforcement Officers shall have the authority to take or obtain photographs related to the purpose of the inspection.

(e) Right to Know Enforcement Officers shall have the authority to question privately any employer, owner, operator, agent or employee of a facility concerning matters regarding the Worker and Community Right to Know Act to the extent they deem necessary for the conduct of an effective and thorough inspection.

8:59-8.10 Representatives of employers and employees

(a) Right to Know Enforcement Officers shall be in charge of inspections and questioning of persons. A representative of the employer and representative authorized by his employees shall be given an opportunity to accompany the Right to Know Enforcement Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Right to Know Enforcement Officer may permit additional employer representatives and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Right to Know Enforcement Officer during each different phase of an inspection if this will not interfere with the conduct of the inspection.

(b) If there is a disagreement as to who is the representative authorized by the employer and employees to accompany the Right to Know Enforcement Officer on the inspection, the Right to Know Enforcement Officer shall make the final determination as to who is the authorized representative. The Right to Know Enforcement Officer shall have the authority to talk to any employee of the facility during the inspection concerning matters regarding Right to Know compliance.

(c) If in the judgment of the Right to Know Enforcement Officer good cause has been shown why accompaniment by a third party who is not an employee of the employer is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Right to Know Enforcement Officer during the inspection.

(d) Right to Know Enforcement Officers are authorized to deny the right of accompaniment under this section to any person whose conduct interferes with a fair and orderly inspection.

8:59-8.11 Complaints by employees

(a) Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the department or a Right to Know Enforcement Officer. Upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall be kept confidential by the department.

(b) Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Right to Know Enforcement Officer of any violation of the Act which he has reason to believe exists in such workplace.

8:59-8.12 Posting of orders, penalties and notices of contest

(a) Upon receipt of any civil administrative order, civil administrative penalty, court order, or civil penalty under the Act, the employer shall immediately post such order or penalty, or a copy thereof, unedited, at or near each place an alleged violation referred to in the order or penalty occurred. Where, because of the nature of the employer's operations, it is not practicable to post the order or penalty at or near each place of alleged violation, such order or penalty shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees.

(b) Each civil administrative order, civil administrative penalty, court order, or civil penalty or a copy thereof, shall remain posted until the violation has been abated, or for three working days, whichever is later.

(c) Any employer who contests the provisions of a civil administrative order, civil administrative penalty, court order, or civil penalty, shall post such notice of contest next to the order or penalty being contested for as long as the order or penalty is required to be posted.

SUBCHAPTER 10. SPECIAL HEALTH HAZARD SUBSTANCE LIST

8:59-10.3 Modification of the list

The Special Health Hazard Substance List shall be modified in accordance with the procedures set forth in N.J.A.C. 8:59-9.3, and with the use of other reference sources deemed appropriate by the department.

**NARCOTIC AND DRUG ABUSE CONTROL**

**(a)**

**Controlled Dangerous Substances  
Addition of Quazepam and Midazolam to Schedule IV**

**Adopted Amendment: N.J.A.C. 8:65-10.4**

Proposed: June 2, 1986 at 18 N.J.R. 1166(b).

Adopted: August 13, 1986 by Molly J. Coye, M.D.,

Commissioner, Department of Health.

Filed: August 18, 1986 as R.1986 d.374, **without change.**

Authority: N.J.S.A. 24:21-3.

Effective Date: September 8, 1986.

Expiration Date: Exempt from the provisions of Executive Order No. 66(1978) pursuant to N.J.S.A. 24:21-3.

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

**No comments received.**

**Full text** of the adoption follows.

8:65-10.4 Controlled dangerous substances; Schedule IV

(a) (No change.)

(b) "Depressants" Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (listed by generic/established or chemical name with CDS code):

...	
methylphenobarbital (mephobarbital)	2250
midazolam	2884
nimetrazepam	2837
...	
prazepam	2764
quazepam	2881
temazepam	2925
...	

**HUMAN SERVICES**

**(b)**

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

**Independent Clinic Services Manual  
Fees for Transportation Services**

**Adopted Amendment: N.J.A.C. 10:66-3**

Proposed: May 19, 1986 at 18 N.J.R. 1053(c).

Adopted: August 15, 1986 by Drew Altman, Ph.D.,

Commissioner, Department of Human Services.

Filed: August 18, 1986 as R.1986 d.369, **without change.**

Authority: N.J.S.A. 30:4D-6b(3)(15), 7, 7a, 7b, 7c; 42 CFR 431.53; 42 CFR 440.170(a).

Effective Date: September 8, 1986.

Expiration Date: December 15, 1988.

Summary of Public Comments and Agency Responses:

COMMENT: There was one comment submitted by the Community Psychiatric Institute of East Orange/Maplewood. The commenter supported the proposal, and requested the fee be increased annually to keep pace with rising costs associated with the efficient and safe operation of a transportation service.

RESPONSE: The Division of Medical Assistance and Health Services will consider a yearly review of the transportation fee and will act in accord with federal and state fiscal constraints in assessing the fee and any increase thereof.

Full text of the adoption follows.

OFFICE OF ADMINISTRATIVE LAW NOTE: The full text of HCFA Common Procedures Coding System as it appears in the Independent Clinic Services Manual has not been printed in the New Jersey Register, but is available from the Administrative Practice Officer, Division of Medical Assistance and Health Services, CN-712, Trenton, N.J. 08625 and at each Medicaid District Office.

10:66-3.2 HCPCS CODE NUMBERS AND MAXIMUM FEE SCHEDULE

Table with columns: HCPCS IND CODE MOD, FOLLOW UP DAYS, MEDICAID DOLLAR VALUE (S, S, NS). Rows include (a) through (l) (No change.), (m) Other Services, L Z0330, L Z0335.

APPENDIX A

INDEPENDENT CLINIC SERVICES

Codes and Narratives Not Found in CPT-4 (Level II and Level III Codes)

Table with columns: HCPCS IND CODE MOD, DESCRIPTION, FOLLOW UP DAYS, MEDICAID DOLLAR VALUE (S, S, NS). Rows include Z0330 and Z0335 with detailed descriptions of transportation services.

COMMERCE AND ECONOMIC DEVELOPMENT

(a)

NEW JERSEY COMMISSION ON SCIENCE AND TECHNOLOGY

Commission on Science and Technology Innovation Partnership Grant Program

Adopted New Rule: N.J.A.C. 12A:100

Proposed: June 2, 1986 at 18 N.J.R. 1175(a).

Adopted: July 16, 1986 by the New Jersey Commission on Science and Technology, Edward Barr, Chairman; Edward Cohen, Executive Director.

Filed: July 31, 1986 as R.1986 d.350, with substantive changes not requiring additional public notice (see N.J.A.C. 1:30-4.5).

Authority: P.L. 1985, c.102.

Effective Date: September 8, 1986.

Expiration Date: September 8, 1991.

Summary of Public Comments and Agency Responses:

Representatives of academic institutions commented on the proposal and are in agreement with the changes in the language from proposal to adoption.

COMMENT: The language in the program description that no more than 10 percent of the project overhead will be charged to the Commission implies that the agency will permit the budgeting of only 10 percent of the overhead rate itself. Since this rate varies from one institution to another, this statement raises questions of inconsistency and possible inequity. Clarification of the language is needed.

RESPONSE: The Commission agrees with the comment and has clarified the language of the rule in the program description.

COMMENT: In the proposed rule on the commitment of matching funds, asking the institution to return expended funds awarded to it if it is unable to finalize an innovation partner is very severe, if not punitive.

RESPONSE: The Commission agrees with the comment and has modified the language under commitment of matching funds.

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]\*).

TITLE 12A CHAPTER 100 NEW JERSEY COMMISSION ON SCIENCE AND TECHNOLOGY

SUBCHAPTER 1. INNOVATION PARTNERSHIP GRANT PROGRAM

12A:100-1.1 Scope and purpose

(a) The New Jersey Commission on Science and Technology is responsible for facilitating a technology-based development strategy that will benefit the industries, businesses and educational institutions of the state. The basic approach of the Commission is to provide mechanisms that will encourage and enable the industrial and academic community to work together on research projects of common interest and, in turn, enhance the economic development of the state.

(b) The Commission sponsors innovation partnership grants at qualifying New Jersey academic institutions in specified science and technology fields identified by the Commission and its expert panels as having outstanding potential for economic growth in New Jersey.

(c) An innovation partnership shall be designed to produce tangible results within a 12 month period and shall involve a financial investment by the academic institution, the industry sponsor, and the Commission on Science and Technology.

12A:100-1.2 Definitions

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

"Innovation partnership" means a specifically directed research project undertaken as a cooperative venture between an academic researcher and an industrial sponsor. The objective of these partnerships is to explore new areas of research in a given technology for the purpose of producing new concepts, materials, devices, processes or knowledge that will:

- 1. Enhance the research program and overall reputation of the academic institution;
2. Assist and advance the activities of the industries involved in the technology;
3. Permit the commercialization of cooperative research.

"Qualifying academic institution" means a regionally accredited research institution of higher education in New Jersey, offering doctoral degrees in science and engineering in fields pertinent to the Commission's sponsorship.

12A:100-1.3 Program description

(a) Innovation partnership grants will provide support for academic researchers conducting basic, applied, or generic research in specified fields, and will be matched by funds provided by a New Jersey-based industry or business. The investment of the Commission will be used to support the cost of equipment, supplies and the faculty and graduate students assigned to the research project. \*It is expected that the facilities required for the project will be provided by the academic institution or industry sponsor and that no more than 10 percent of the project overhead will be charged to the Commission.\* \*It is expected that the facilities required for the project will be provided by the academic institution or

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**industry sponsor and that indirect costs equal to no more than 10 percent of all direct costs, exclusive of equipment, will be charged to the Commission.\***

(b) The individual innovation partnership grants to be made by the Commission will be for at least \$10,000 and no more than \$250,000 and will cover no more than a 12 month research effort.

(c) The Commission is particularly interested in innovation partnerships that will involve newly formed or expanding New Jersey-based companies for whom the support of the Commission and the cooperation of an academic research institution is necessary for continued business growth and development.

#### 12A:100-1.4 Submission of grant proposal

(a) The Commission will receive proposals for innovation partnership grants in specified fields from institutions of higher education in New Jersey with graduate research programs in related fields. Three copies of the proposal must be submitted.

(b) While grant proposals shall be submitted by an academic institution and officially sanctioned by its institutional representatives, the Commission encourages industries and businesses to propose projects to academic researchers and to assist, where necessary, with the preparation of the project proposal.

#### 12A:100-1.5 Contents of grant proposal

(a) All grant proposals submitted for consideration by the Commission shall be signed by the designated institutional officer and the principal investigator, and shall include the following:

1. The project title;
2. A brief introduction that summarizes **\*in plain language\*** the objectives of the project;
3. A brief discussion of the scientific principles that support the proposed research;
4. A description of the proposed research plan;
5. A description of the expected project outcome;
6. A discussion of the significance, implication and utility of the expected project results;
7. A listing of names and locations of the industry sponsors of the project;
8. The name, title, department, institution, address and telephone number of the principal investigator;
9. The names and curriculum vitae of the key personnel to be assigned to the project;
10. A project budget;
11. A listing and approximate cost of the equipment to be purchased for the project; and
12. A description of the resources to be provided by the sponsoring industries and academic institutions.

#### 12A:100-1.6 Review criteria

(a) The grant proposals submitted in response to any request-for-proposal will be reviewed under Commission staff coordination, by a panel of experts from related industries and out-of-state universities. The criteria that will be used to rank and evaluate each of the proposals are as follows:

1. Technical and scientific merit of the project;
2. The creativity and inventiveness of the proposed research;
3. The unique nature of the research and the degree to which state-of-the-art techniques and processes are to be used;
4. The ability of the project to strengthen the overall research program of the institution and to have a positive long term effective on the institution's scientific capabilities and reputation;
5. The commercial applicability and usefulness of the proposed project outcome; and
6. The degree of interest shown by industry and the apparent availability of matching funds.

#### 12A:100-1.7 Matching fund requirements

(a) The Commission requires that any funds it commits to support the work of an individual or group of researchers through an innovation partnership shall be matched in at least an equal amount by an industry sponsor.

(b) The industry sponsor shall be a New Jersey-based company or business with a vested interest in the outcome of the project. The industry sponsor can be a company or industry based in another state if it can be shown that the outcome of the project will be of benefit to New Jersey.

#### 12A:100-1.8 Acceptable categories of matching funds

(a) The following are considered acceptable categories of matching funds:

1. Cash or in-kind contributions to the sponsoring academic institutions for the expenses of the research project (salaries, supplies, equipment, graduate student tuition expense, indirect cost recovery);
2. Equipment donations (the certified value of the contribution to the academic institution should be identified) or vendor discounts on equipment purchases (beyond any prevailing educational discount for equipment to support one of the Commission's programs);
3. Supplies or materials required for the project;
4. Support or sponsorship of graduate students assigned to the project and working at the facilities of the industry sponsor.

#### 12A:100-1.9 Commitment of matching funds

(a) When a grant proposal for an innovation partnership grant is submitted to the Commission, the intended sources of industry matching funds should be clearly identified.

(b) If and when a grant award is made, the sponsoring academic institution must provide to the Commission a copy of a letter from the industry sponsor, confirming the financial commitment of the sponsor to the project. The total amount of the grant will not be released to the institution until such confirmation of commitment is received by the Commission. Instead, the institution will receive 50 percent of the Commission's award and be allowed six months after the date of the award to identify and obtain commitments from an innovation partner.

(c) **\*[Should no innovation partner be identified within six months, the institution will be required to return all awarded monies to the Commission.]\*** **\*Should no innovation partner be identified within six months to fully match the award, the institution will be required to return to the Commission the portion of the award monies that have not been matched.\***

(d) All final project reports and financial statements must identify the amount and allocation of the industry matching funds.

#### 12A:100-1.10 Accounting and auditing

(a) When an award is made, the recipient institution shall commit itself to the matching requirements of N.J.A.C. 12A:100-1.5 as a part of the terms and conditions of the grant document.

(b) No grants received under the Commission's programs will be commingled with any other funds derived from State sources. Separate financial accounts will be maintained for funds matching State funds. Audits will follow procedures established by the State Auditor, in accordance with P.L. 1985, c.102.

## LAW AND PUBLIC SAFETY

(a)

### NEW JERSEY RACING COMMISSION

#### Thoroughbred Rules Policing Requirements

#### Adopted Amendment: N.J.A.C. 13:70-1.17

Proposed: April 21, 1986 at 18 N.J.R. 819(a).

Adopted: July 29, 1986 by New Jersey Racing Commission,

Bruce G. Garland, Executive Director.

Filed: August 11, 1986 as R.1986 d.359, **without change.**

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

Effective Date: September 8, 1986.

Expiration Date: February 25, 1986.

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

**No comments received.**

**Full text** of the adoption follows.

#### 13:70-1.17 Policing requirements

(a) An association conducting race meetings under license from the Racing Commission shall properly police its grounds, including the stable area and paddock, and shall eject therefrom all unauthorized persons, known undesirables, touts, persons believed to be bookmakers or connected with bookmakers, persons under suspension or ruled off, persons of lewd or immoral character, and persons guilty of boisterous or disorderly conduct or other conduct detrimental to racing or the public welfare.

(b) (No change.)

(a)

**Harness Rules  
Policing Requirements**

**Adopted Amendment: N.J.A.C. 13:71-5.1**

Proposed: April 21, 1986 at 18 N.J.R. 820(a).  
Adopted: July 29, 1986 by New Jersey Racing Commission,  
Bruce G. Garland, Executive Director.  
Filed: August 11, 1986 as R.1986 d.358, **without change**.  
Authority: N.J.S.A. 5:5-30.  
Effective Date: September 8, 1986.  
Expiration Date: February 25, 1990.

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

Full text of the adoption follows.

13:71-5.1 Policing requirements

(a) An association conducting race meetings under license from the Racing Commission shall properly police its grounds, including the stable area and paddock, and shall eject therefrom all unauthorized persons, known undesirables, touts, persons believed to be bookmakers or connected with bookmakers, persons under suspension or ruled off, persons of lewd or immoral character, and persons guilty of boisterous or disorderly conduct or other conduct detrimental to racing or the public welfare.

(b) (No change.)

**PUBLIC UTILITIES**

**BOARD OF PUBLIC UTILITIES**

(b)

**Telephone Rules  
Regulation of InterLATA Telecommunications  
Carriers**

**Adopted New Rules: N.J.A.C. 14:10-5.1 through  
14:10-5.9**

Proposed: August 19, 1985 at 17 N.J.R. 2012(a).  
Adopted: August 15, 1986 by Board of Public Utilities,  
Barbara A. Curran, President.  
Filed: August 18, 1986 as R.1986 d.368, **with substantive changes**  
not requiring additional public notice and comment (see  
N.J.A.C. 1:30-4.5).  
Authority: N.J.S.A. 48:2-12.  
BPU Docket No. 8312-1126.  
Effective Date: September 8, 1986.  
Expiration Date: September 8, 1991.

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

COMMENT: Several parties recommended that the Board hold evidentiary hearings to establish a record on the issue of whether the proposed regulations should apply to all interLATA carriers, or whether it should apply only to "non-dominant" carriers, and to establish a record to support the change in regulatory policy which is reflected in the proposal.

RESPONSE: Evidentiary hearings are not required to support the position that all carriers should be accorded the same regulatory treatment, particularly in light of the fact that these rules will be effective on an experimental basis for a period of five years.

The general authority of the Board provides sufficient basis for this change in regulatory policy.

On May 13, 1986, a public hearing was held to allow the affected companies as well as members of the public further opportunity to comment on the proposal. At that time, the record in **The Board's Investigation of Intrastate Telecommunications Competition in the State of New Jersey** (Docket No. 8312-1126) was made a part of the record in this rulemaking proceeding. The testimony in that docket does not support the contention that market dominance justifies different regulatory treatment.

COMMENT: Several carriers do not use the Uniform System of Accounts, making it difficult to determine the effect of a rate filing on its rate of return.

RESPONSE: The 300 basis point change in rate of return is only one trigger for implementation of a rate case. The parties to this proceeding will continue discussions in an attempt to develop a surrogate for return on equity.

COMMENT: The 300 basis point range is unreasonably broad and will allow the carriers to earn excessive returns.

RESPONSE: The Board's duty to determine reasonable rates inherently allows it the flexibility to determine a reasonable "range" of rates. The adopted rules do not affect the Board's authority to conduct an investigation into a carrier's rates, should the Board determine that such a proceeding is warranted.

COMMENT: The proposal does not specify whether the 25 percent rate adjustment applies to individual rates or aggregate rates.

RESPONSE: The adopted rules make it clear that the 25 percent adjustment applies to rates for individual services.

COMMENT: The proposal will allow a carrier with dominant market status to engage in predatory pricing.

RESPONSE: The adopted rules, by allowing the Board or a Commissioner to postpone any proposed rate adjustment, provides adequate protection against predatory pricing.

COMMENT: The FCC does not regulate all interexchange carriers in the same manner. The Board should follow the FCC's example.

RESPONSE: As noted above, the adopted rules contain adequate protection against predatory pricing. All carriers should be regulated in the same manner, so as to encourage development of a truly competitive market.

COMMENT: Carriers should have the option of providing notice by publication or by direct mailing. Notice to competing carriers should not be required.

RESPONSE: The adopted rules provide the option of notice by publication or direct mail and retains the requirement of notice to competing carriers.

The intent of these rules is to allow flexibility consistent with New Jersey statutory and case law. The adopted rules do not in any way eliminate or reduce the Board's supervisory, regulatory, or investigatory powers. Procedures which allow rapid rate adjustment while retaining regulatory supervision should allow the benefits of competition to be realized by New Jersey ratepayers.

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

SUBCHAPTER 5. REGULATION OF INTERLATA  
TELECOMMUNICATIONS CARRIERS

14:10-5.1 Scope

The regulations in this subchapter govern the adjustment of rates by telecommunications interexchange carriers subject to the jurisdiction of the New Jersey Board of Public Utilities. The regulations will apply to the adjustment of rates for **\*only those services which are clearly competitive for\*** all intrastate interLATA carriers, after initial tariffs have been approved by the Board. Connection, service discontinuance, and other matters, unless expressly stated herein, will continue to be governed by existing sections of Title 14 of the New Jersey Administrative Code.

14:10-5.2 Construction and amendment

(a) These rules, for the regulation of rates for intrastate interLATA carriers, shall be construed to allow maximum flexibility in setting rates for interexchange carriers, consistent with relevant case law and statutes, in light of the competitive environment in which interexchange carriers operate.

(b) These rules will be operative for a period of five years. Prior to the end of that period, the Board will evaluate and review their effectiveness to determine if they should be continued.

14:10-5.3 Definitions

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

"Board" means the New Jersey Board of Public Utilities.

"Intrastate interLATA carriers" and "interexchange carriers" mean AT&T Communications of New Jersey, MCI, GTE-Sprint, USTS, RCI, Western Union and other common carriers (OCC's) authorized by the Board to provide intrastate interLATA telecommunications service in New Jersey.

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"Return on equity" is the percentage return on equity set by the Board for each individual interexchange carrier or a general rate set by the Board for all interexchange carriers. The return on equity as set by the Board shall be the midpoint of a range of returns on equity approved by the Board. The range of returns on equity shall be plus or minus 300 basis points over or under the midpoint set by the Board.

## 14:10-5.4 Initial rates

Initial rates for interexchange carriers currently authorized to operate in New Jersey shall be the rates in effect upon Board adoption of these regulations. For any additional carriers that may subsequently be authorized to provide intrastate interLATA service, initial rates shall be those contained in the initial tariffs approved by the Board. Initial rates, as used herein, shall be the midpoint of the range of rates approved for each interexchange carrier. The range of rates approved for each carrier is hereby determined to be plus or minus 25 percent over or under **\*each individual\* \*the\* initial rate\*s\*** approved by the Board.

## 14:10-5.5 Upward adjustments in rates; notice

(a) Upward adjustments in **\*individual\*** rates of up to 25 percent over initial rates or rates set after a rate proceeding, held according to appropriate statutory requirements, shall be allowed without the requirement of a rate proceeding before the Board. Such upward adjustments may be effective 14 days after the required notice of the proposed adjustment absent Board determination to **\*[suspend]\* \*postpone implementation of\*** the rate change.

(b) The notice requirement for an upward rate adjustment shall be **\*by direct mail to all affected customers or by\*** publication in newspapers of general circulation throughout the affected service area and actual service of notice of the proposed rates served on Rate Counsel and the Board's Secretary.

(c) Regular mail notices of proposed rates must be sent to all other interexchange carriers no later than the date of actual service on the Board's Secretary.

(d) Board's Staff, Rate Counsel, or any other interested party may, upon notice of the proposed upward adjustment, oppose the change in writing at any time prior to the proposed effective date. A Commissioner, or the Board's designee, upon receipt of such objection may, by letter, **\*[suspend]\* \*postpone implementation of\*** the proposed rates for two weeks from the proposed effective date. Further suspension of rates, by procedures similar to those outlined in N.J.S.A. 48:2-21 may be authorized by the Board.

## 14:10-5.6 Downward adjustments in rates; notice

(a) Downward adjustments in **\*individual\*** rates of up to 25 percent, below initial rates or rates set after a rate proceeding, held according to appropriate statutory requirements, shall be allowed without the requirement of a rate proceeding before the Board. Such downward adjustments may be effective five days after the required notice, absent Board determination to **\*[suspend]\* \*postpone implementation of\*** the rate change.

(b) The notice requirement for a downward rate adjustment shall be actual notice of the proposed rates served on Rate Counsel and the Board's Secretary.

(c) Regular mail notice of proposed rates must be sent to all other interexchange carriers no later than the date of actual service on the Board's Secretary.

(d) Opposition to a proposed downward adjustment and disposition thereof, shall be in accordance with the method outlined in N.J.A.C. 14:10-5.5 for opposition to upward rate adjustments.

## 14:10-5.7 Rate proceedings

(a) A rate proceeding shall be instituted:

1. Upon suspension of a rate adjustment by the Board;
2. Upon total proposed upward adjustments of **\*individual rates of\*** greater than 25 percent above initial rates or rates set after a rate proceeding; or
3. Upon realization of a return on equity 300 basis points or more above that authorized by the Board.

(b) The Board may institute a rate proceeding:

1. Upon its own motion or a properly filed petition;
2. Upon a proposed downward adjustment of greater than 25 percent; or
3. Upon realization **\*[on]\* \*of\*** a return on equity 300 basis points or more below **\*[than]\* \*that\*** authorized by the Board.

(c) A rate proceeding authorized under this regulation shall be held in accordance with the appropriate statutory requirements for adjustment of rates.

## 14:10-5.8 Reporting requirements

Board Staff, in conjunction with Rate Counsel and the interexchange carriers, shall within six months of the effective date of these rules develop appropriate reporting mechanisms to insure proper notification on and oversight of earnings, return on equity and the rate changes contemplated herein. These reporting mechanisms shall be placed upon the Board's Agenda for approval.

## 14:10-5.9 Discontinuance of service offerings

(a) Any interexchange carrier, unless it is the sole provider of the service in question, may, unless otherwise directed by the Board, upon 30 days notice to the Board and its customers, discontinue any service offering.

(b) Service offerings, provided solely by a single interexchange carrier, may be discontinued only upon petition approved by the Board.

(c) Petitions for discontinuance must be served upon the Board in accordance with the provisions of N.J.A.C. 14:10-5.5.

(a)

## Office of Cable Television

## Reporting of, and Credit for Service Outages

## Adopted Amendments: N.J.A.C. 14:18-1.2 and 3.9

Proposed: April 7, 1986 at 18 N.J.R. 619(a).

Adopted: August 15, 1986 by Rinaldo D'Argenio, Deputy Director, Office of Cable Television.

Filed: August 18, 1986 as R.1986 d.376, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 48:5A-6 and 10.

Effective Date: September 8, 1986.

Expiration Date: July 29, 1990.

## Summary of Public Comments and Agency Responses:

Oral or written comments concerning the present proposal were provided by the New Jersey Cable Television Association, Suburban Cablevision, Service Electric Cable TV of New Jersey, UA Columbia Cablevision, Comcast Corporation, Community Cable TV, the New Jersey Cable Users Association, Ms. Lynne Blackman, Ms. Deborah Lawler, and the East Brunswick Director of Consumer Affairs.

Correspondence received by the Office of Cable Television included letters from two subscribers stating that the threshold time of six hours was too long and that it was difficult to obtain an adjustment without aggravation even when most basic channels were out. The Director of Consumer Affairs for East Brunswick wrote in support of the proposal, noting there have been "many negative comments" about the existing company requirement of 24 hours without any picture prior to crediting a subscriber.

Comments considered by the Board include those on record for prior versions both written and oral, as well as those specifically directed to the present proposal. The OCTV finds the prior comments have either been addressed in subsequent changes in the proposed rule or are repeated in comments on the current proposal.

The key comments from a number of parties in the cable television industry opposing the subscriber credit portion of the rule can be generalized as follows:

1. The rule is a solution for a problem which does not exist: the OCTV has not presented sufficient reasons for such a rule.
2. Present company outage policies are adequate and flexible, so this rule will interfere with the company-subscriber relationship.
3. The rule creates a disincentive to repair in off-hours and weekends.
4. No credit should be required for outages lasting less than 24 hours.
5. The rule is penal in nature; any credit should be prorated.

Industry representatives also asserted some general problems with the amendments to the outage reporting portion of the rule:

1. It is difficult to determine the number of subscribers affected by reportable outages under the rule.
2. The reporting requirements are duplicative of the outage reports maintained in company offices for inspection.
3. The minimum duration for a reportable outage should be more than two hours.
4. Requiring outages to be phoned in will be difficult to comply with during hours when OCTV is closed, such as on weekends.

In addition to the general comments summarized above, there were several parties that made the following specific comments:

The New Jersey Cable Television Association asserts that the rule is not based on a practical knowledge of cable television operations. The NJCTA also asserted procedural and legal objections to the rulemaking. All prior comments and statements of the association were adopted by reference in its most recent comments. Suburban Cablevision claims two hours is an adequate response time and therefore operators should not be required to report outages less than two hours.

Service Electric Cable TV of N.J. asserts customers now usually get more credit than they would under the proposed rule. A recent outage elicited only one credit request through the OCTV, which the company sees as evidence of customer satisfaction with service. The rule would be a disincentive to make prompt repairs over a weekend, as it would be cheaper to pay the few requests for credit than to send repair crews out on overtime. It would be a problem for Service Electric, which uses coupon books with only one annual adjustment credit to subscribers. An alternative would be a statistically developed annual credit. Service Electric was "on 99.1 percent of all possible hours" last year according to its manager. That figure goes to 96.9 when outages due to factors beyond the company's control are included.

UA Columbia Cablevision argues that difficulty would arise in determining the number of subs affected. It also points out a typographical error in paragraph (g)(2) should read "... If service is restored within six hours after the restoration of service becomes possible."

Community Cable TV states that the rule should take into account variations in local factors, such as the number of utilities to be dealt with, and the amount of underground plant in the system.

New Jersey Cable Users Association was pleased by the proposal to end outage reporting based on company size. The group was puzzled by the companies' argument that they would be exempt from responsibility on the weekends. The users believe the six hour rule is realistically justified, because it is the subscriber's observation that triggers the rule.

#### AGENCY RESPONSE

Since 1981, the OCTV and the Board have attempted to develop a reasonable rule with minimum statewide standards which would satisfy both the consumer and the operator. Presently, subscribers have no alternative short of discontinuing service to register their dissatisfaction when the cable company fails to deliver the prepaid signal. The OCTV finds that, at least under data available under present reporting requirements, 24 hour outages which trigger the company's voluntary crediting policies are too infrequent to satisfy unhappy subscribers. Such outages are nearly always of such magnitude that exemption would be available under the present proposal.

Cable operators commenting on the proposal felt that the amendments to the outage reporting requirements of N.J.A.C. 14:18-3.9 were duplicative of existing requirements, and that it would not be feasible to notify the OCTV by phone in off-hours. The primary purpose of this provision is to insure that the OCTV will be able to respond immediately to queries when outages affect large numbers of subscribers occur during regular business hours.

The OCTV cannot find merit in the objections to the changes in the reporting portion of the rule. Cable operators have always been required to maintain a record of all outages for one year. See N.J.A.C. 14:18-3.9(b). The only change is that some of this information must now be forwarded to the OCTV. Not only will this reporting aid in the administration of the crediting portion of the rule, it will also facilitate OCTV evaluation of the functioning of the credit rule, as a result of the improved data base.

The cable operator concerns that the proposed rule will unreasonably burden operators and adversely affect the relationship between the cable systems and their customers are overstated. The present proposal is the product of a lengthy series of hearings and responsive revisions which have resulted in inclusion of a number of protections for the cable operator. For example, drop lines and service problems within the home are excluded from the six hour threshold, subject instead to the 24 hours threshold considered acceptable by the operators. Additional provisions limit credits only to those subscribers requesting them, allowance for waivers, and protection against delays in restoration beyond the control of the operator.

The Board finds that the present proposal best meets its objectives for an outage credit policy:

1. Subscribers will not have to pay for services they do not receive.

2. The rule, contrary to assertions of operators, will encourage prompt restoration of service. Operators will never know the full extent of an outage until they have made the effort to repair it; they should be unwilling to run the risk of delaying service and incurring substantial credit claims from those who are unable to get through on the phone to report.

3. The rule will provide an understandable and consistent uniform minimum standard. It does not prohibit credits for interruptions lasting less than six hours.

4. The rule will encourage greater priority to outages affecting large numbers of subscribers.

5. The present proposal is simpler to administer than the earlier proposals, and avoids the problems one would encounter in applying the prior proposals.

6. The proposal is fair and reasonable, balancing a number of factors such as rounding off the average viewing time to an even six hours in order to simplify calculations of the credit.

7. The rule will improve the reporting and tracking of outage patterns.

In light of the comments received and the responses thereto the OCTV adopted the proposal as published.

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

#### 14:18-1.2 Definitions

...  
 "Distribution plant" is the hardware, wires, electronics, equipment and other instrumentalities which deliver cable television service to the drop line feeding an individual subscriber's home.  
 ...

...  
 "Outage" means the total loss of audio and visual portion of any level of cable television service for which the cable television company imposes a separate charge and which affects the cable television company's distribution plant.  
 ...

#### 14:18-3.9 Interruptions and outages

(a) Each CATV company shall exercise reasonable diligence to avoid interruptions, curtailments or deficiencies of service and, when such interruptions occur, service shall be restored as promptly as possible, consistent with safe practice.

(b) Each CATV company shall keep a record for a period of one year of each outage.

(c) Records of outages shall be kept in a manner suitable for analysis for the purpose of minimizing possible future interruptions and shall include the time, cause and duration of the interruptions as well as the remedial action taken.

(d) All outages where service to subscribers is interrupted for at least two hours and which affect 50 or more subscribers shall be reported by each cable television company to the Office on a form prescribed by the Director. Such reports shall be collected and forwarded to the Office monthly, and shall be sent to the Office within 15 days of the end of the month for which the report is filed.

1. In addition to (d) above, cable companies must report to the Office by telephone during the course of the outage all outages which exceed one hour in length and affect more than 500 subscribers.

(e) Planned interruptions for operating reasons shall always be preceded by reasonable notice, preferably on the local organization channel, to all affected subscribers, and the work shall be planned to minimize subscriber's inconvenience.

(f) A cable television company shall credit subscribers for outages as follows:

1. In the event of an outage lasting six or more hours the company shall make an appropriate credit on the subscriber's bill.

2. The amount of credit shall be in one day units, prorated on the basis of the subscribers monthly rate for each service not available.

3. For outages which extend more than 24 hours, subscribers shall receive a credit for each calendar day or part thereof if greater than six hours, during which service is out.

4. The cable television company shall not be liable to a subscriber for any indirect or consequential damages resulting from the outage unless the cable television company expressly agrees to such liability.

5. In order to obtain a credit, subscribers must notify the cable television company by phone or in writing within 30 days after any such outage; or else, within 30 days notify the Office or other designated complaint officer.

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6. A cable television company may, at its option, provide a subscriber with a rebate rather than a credit on the subscriber's bill to fulfill the requirements of this subsection.

(g) A cable television company shall not be required to provide a credit or rebate under (f) above if:

1. the cable television company can demonstrate that restoration of service was not possible within the six hour period due to factors beyond control of their company; and

2. If service is restored within six hours after the restoration of service becomes **\*[impossible]\* \*possible\***.

(h) Any cable television company may petition the Board for a waiver of providing credit required by (f) above in the event such credits would create an undue hardship on the cable television company.

(i) In instances where a subscriber is without cable television service for at least 24 hours, and the loss of service is not the result of an outage, the company shall credit or rebate at the company's option, the subscriber for one day unit for each 24 hour period in which the subscriber was without service. No cable company shall be required to provide a subscriber with a rebate or credit if the loss of service was caused by an act on the part of the subscriber requesting such a credit or rebate.

(j) Intermittent or cumulative service interruptions and other service related complaints are to be analyzed in accordance with the complaint procedure pursuant to N.J.A.C. 14:17-7.1.

(k) Each company shall periodically inform its subscribers of the procedures by which a subscriber may obtain a credit. Notifying subscribers in a manner sufficient to inform subscribers of the identity of the complaint officer pursuant to N.J.S.A. 48:5A-26(c), shall be deemed sufficient to **\*[company]\* \*comply\*** with this subsection.

## ENERGY

### (a)

#### DIVISION OF ENERGY PLANNING AND CONSERVATION

#### Business Energy Improvement Subsidy Program

#### Adopted Amendments: N.J.A.C. 14A:6-2

Proposed: July 7, 1986 at 18 N.J.R. 1347(a).

Adopted: August 6, 1986 by Charles A. Richman, Acting

Commissioner, Department of Energy.

Filed: August 15, 1986 as R.1986 d.367, **without change**.

Authority: N.J.S.A. 52:27F-11g and m; Pub. L. 97-377 (1982).

Effective Date: September 8, 1986.

Expiration Date: August 6, 1989.

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

The Department by letter solicited comments from the banks participating in the current business subsidy program. The Department received no comments from these participants or the public at large.

**Full text** of the adoption follows.

#### CHAPTER 6 GRANT AND LOAN PROGRAMS

#### SUBCHAPTER 2. BUSINESS ENERGY IMPROVEMENT SUBSIDY PROGRAM

##### 14A:6-2.1 Scope and purpose

(a) This subchapter establishes the rules governing the Business Energy Improvement Subsidy Program. The Program provides subsidies to eligible businesses for energy conservation renovations, energy conserving construction and alternative energy production facilities. The subsidies are intended to encourage these purposes by reducing the cost of these projects.

(b) The program is designed to assist mature projects that are beyond the conceptual stage.

##### 14A:6-2.2 Definitions

"Alternative Energy Production Facility" means a facility that produces energy by using: (a) solar technologies; (b) hydro power; (c) wind power; (d) cogeneration; or (e) recovery from solid waste.

"Applicant" means the owner or lessee of an eligible business who applies for a subsidy pursuant to this subchapter.

"Application" means a Business Energy Improvement Subsidy application.

"Commissioner" means the Commissioner of the Department or its successor.

"Department" means the New Jersey Department of Energy or its successor.

"Eligible business" means:

1. Businesses meeting the Small Business Administration definition of small business contained in 13 C.F.R. Part 121.2 (49 F.R. 5030-37);

2. Qualified Urban Enterprise Zone businesses as defined in P.L. 1983 c.303, and

3. Multi-family buildings, condominiums, cooperatives and not-for-profit businesses, but not including religiously-owned or affiliated businesses, which are located in New Jersey.

"Eligible loan" means a loan made by a lender to the applicant for energy conservation renovations or alternative energy production facility, which meets the requirements of N.J.A.C. 14A:6-2.6.

"Energy conservation renovation" means any equipment, materials, alterations or improvements installed within an existing structure owned or leased by an eligible business that reduce energy consumption or increase energy efficiency, and which have been approved by the Department pursuant to N.J.A.C. 14A:6-2.7, but shall not include new construction or energy conservation renovations installed prior to approval of a Business Energy Improvement Subsidy application by the Department.

"Energy conserving construction" means materials, practices or equipment that exceeds the energy efficiency of those required under the "Energy Subcode", N.J.A.C. 14A:3-4 as amended. Only Urban Enterprise Zone businesses are eligible for energy conserving construction subsidies.

"Grant" means full payment for the incremental cost of using materials, practices and equipment that exceed those required under the "Energy Subcode", N.J.A.C. 14A:3-4, as amended, in lieu of using materials, practices and equipment that only meet the "Energy Subcode", N.J.A.C. 14A:3-4, as amended.

"Interest subsidy" means funds provided by the Department to reduce the effective interest rate on an eligible loan.

"Lender" means State chartered banks, savings banks, savings and loan associations, national banks, federally-chartered savings and loan associations, approved out of State banks, economic development agencies, and other corporations authorized to transact the business of banking.

"Multi-family buildings" means owners and other proprietors of multi-family buildings used for residential occupancy and containing five or more dwelling units.

"Program" means the Business Energy Improvement Subsidy Program established by this subchapter.

"Urban Enterprise Zone" or "Enterprise Zone" means an area that has been designated by the Commissioner of Community Affairs as an "area in need of rehabilitation" under the five-year tax abatement process (P.L. 1977, c.12 (C.54:4-3.95 et. seq.) or is qualified for that designation, and meets the criteria established by the Enterprise Zone Authority.

##### 14A:6-2.3 Program duration and limitation of funding

(a) The number and amount of interest subsidies and the duration of the Program shall depend on the availability of sufficient revenues to cover interest subsidies previously approved by the Department and to provide sufficient monies for further interest subsidies.

(b) The Commissioner may suspend the Program (with respect to new applicants) in the event that funds are exhausted or the anticipated demand for interest subsidies exceeds available funds.

(c) Upon receipt of a subsidy, the applicant shall have 90 days to obtain all state, federal or local permit approvals or petition the Department for an extension with full explanation of the reason for the extension.

##### 14A:6-2.4 Requests for applications

The Department shall make available Business Energy Improvement Subsidy applications on request, until the Program is suspended pursuant to N.J.A.C. 14A:6-2.3.

##### 14A:6-2.5 Submission requirements

(a) Each Business Energy Improvement Subsidy application submitted to the Department shall include the following information:

1. Name and address of the applicant.

2. A precise description of each energy conservation renovation, energy conserving construction or alternative energy production facility for which subsidy is sought.

3. For energy conservation renovations, an analysis of the energy conservation renovation requirements of the eligible business shall be comprised of the results of a Commercial and Apartment Conservation

Service (CACS) energy audit, Commercial Light Industrial Energy Technical Service (CLIENTS) survey, or other energy consumption and cost analysis of the eligible business approved by the Department.

4. For energy conserving renovations and energy conserving construction, the following information shall be submitted:

i. A reasonable construction bid with respect to the energy conserving renovations or energy conserving construction, including cost estimates for each energy conservation renovation or energy conserving construction. The construction bid shall be accompanied by the following:

(1) A sworn statement by the bidder, or an officer or partner of the bidder, indicating that the bidder is not, at the time of the construction bid, included on the State Treasurer's List of Debarred, Suspended and Disqualified Bidders; and

(2) A certification that, where applicable, the bidder is in compliance with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 et seq. and the rules and regulations promulgated pursuant thereto.

ii. Engineering calculations and energy savings calculations for each energy conservation renovation or energy conserving construction.

iv. The simple payback period and calculations for each energy conservation renovation or energy conserving construction. Only energy conservation renovations or energy conserving construction having a simple payback period of less than or equal to five years shall be included in the application and shall be eligible for subsidy.

5. For alternative energy production facilities, the following shall be submitted:

i. An engineering analysis detailing:

(1) Cost of construction of the facility including a reasonable construction bid;

(2) Type and quantity of alternative energy units produced;

(3) Cost of production per unit;

(4) Total avoided energy cost of conventional energy sources resulting from the alternative energy production units;

(5) Avoided energy cost per unit;

(6) Overall cost benefit of the facility.

6. For energy conserving renovations and alternative energy production facilities a commitment by a lender for an eligible loan and the terms thereof; provided, however, that in the event that the commitment is not available on the date of submission of the application, same may be submitted as a supplement to the application, in accordance with the provisions of N.J.A.C. 14A:6-2.7(c)2ii.

7. For energy conserving construction, evidence that capital expenditures sufficient to cover the construction cost estimate provided under (a)4i. above, will be made.

8. Such additional information as may be required by the Department to provide a complete and accurate description of the project.

(b) All calculations with respect to information contained in the application and any supporting documents shall be based on the energy estimating methods of the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc. ("ASHRAE"), including all revisions and updates adopted by ASHRAE. Copies of the document may be obtained from ASHRAE, Inc., 1791 Tullie Circle, N.E., Atlanta, Georgia 30329.

#### 14A:6-2.6 Eligible loans

(a) Only eligible loans shall be reviewed by the Department for interest subsidies pursuant to N.J.A.C. 14A:6-2.8. In order to be eligible for an interest subsidy, the loan shall meet the following requirements:

1. The loan (and any supporting or related documents) shall:

i. Be for the purpose of financing the installation of energy conservation renovations or alternative energy production facilities that meet the requirements of N.J.A.C. 14A:6-2.5 and that are approved by the Department pursuant to N.J.A.C. 14A:6-2.8.

ii. State separately the amount representing the principal, interest, and penalties with respect to all energy conservation renovations or alternative energy production facility, and separately account for same for each energy conservation renovation or alternative energy production facility during the term of the loan;

iii. Be for an amount (of principal) of not more than:

(1) \$500,000 for Energy Conservation Renovations;

(2) \$12,000,000 for Alternative Energy Production Facilities.

iv. Have a term of not more than five years for loans up to \$500,000 and a term of not more than 20 years for loans up to \$12,000,000.

v. Have a fixed interest rate; provided, however, that in the event of a substantial change in commercial loan market conditions, the Commissioner may, in his discretion, modify the requirement specified herein.

vi. Be amortized according to a predetermined monthly amortization schedule.

vii. Not obligate or render the Department liable to pay the lender or the applicant at any time, any amount of principal, interest, interest accruals or penalties, for any reason, including but not limited to:

(1) The default or late payment of the eligible loan by the applicant.

(2) Failure to pay, withholding of payment or seeking the return of the interest subsidy by the Department.

viii. Have been reviewed and approved by the lender in accordance with standard procedures.

(b) The Department does not guarantee the approval by lenders of loans for energy conservation renovations or alternative energy production facility. Applicants that are denied loans shall have no recourse to the Department. The Department shall not participate in any manner in any aspect of the lender's loan review process.

#### 14A:6-2.7 Eligible grants

In order to be eligible for a subsidy, the grant shall be for the purpose of financing the energy conserving construction that meets the requirements of N.J.A.C. 14A:6-2.5 and that is approved by the Department pursuant to N.J.A.C. 14A:6-2.8.

#### 14A:6-2.8 Application and review procedures

(a) Applicants shall submit to the Department a completed Business Energy Improvement Subsidy application. The application shall bear either a legible (non-metered) postmark or a date stamp from the Department's Office of Operations indicating that the application was submitted on or before any deadline established pursuant to N.J.A.C. 14A:6-2.3.

(b) The Department shall conduct a review of the applications commencing with the application bearing the earliest submission date. The Department may require the submission of additional information to complete the application or may require the resubmission of the entire application if incomplete. The Department shall review the applications to determine whether:

1. The application is made on behalf of an eligible business;

2. The application covers energy conservation renovations, energy conserving construction or alternative energy production facilities;

3. The application is complete as to form (required documentation is present and complete);

4. The application is complete as to the submission requirements of N.J.A.C. 14A:6-2.5;

5. The engineering calculations and other technical matters with respect to the energy conservation renovations, energy conserving construction or alternative energy production facilities are accurate and correct; and

6. The energy conservation renovations or energy conserving construction are appropriate for the eligible business.

(c) Upon completion of the review of an application pursuant to (b) above, the Department shall notify the applicant in writing whether the application has been approved, approved with the condition that an eligible loan be obtained, or denied. Interest subsidies or grants shall be extended to applicants in the order that applications are approved.

1. In the event that an application is approved a subsidy agreement shall be executed pursuant to (d) below.

2. In the event that an application is approved with the condition that the applicant obtain an eligible loan, the Department shall:

i. Indicate preliminarily in writing, the terms of which an interest subsidy will be extended to the applicant, including but not limited to the energy conservation renovations for which the interest subsidy will be extended and the amount of the interest subsidy.

ii. Allow the applicant a period of 30 calendar days from the date of approval of the application to obtain an eligible loan on the terms which include any requirements established pursuant to (c)2i. above and to file same with the Department.

iii. In the event that an eligible loan is not obtained for the energy conservation renovations or the alternative energy production facilities approved by the Department within the 30 calendar day period, the Department may, in its discretion, extend the period for obtaining and filing the loan for an additional 30 calendar days. Upon filing of the loan by the applicant, the Department shall review the loan for eligibility in accordance with the requirements of N.J.A.C. 14A:6-2.6. The Department shall notify the applicant whether the application is approved pursuant to (c)1 above or denied pursuant to (c)3 below.

iv. Failure of the applicant to obtain an eligible loan by the conclusion of the appropriate 30 calendar day period and to file same with the Department shall result in a denial of the application.

v. In the event that a loan is obtained for energy conservation renovations or alternative energy production facilities on terms other than those approved by the Department, the applicant shall be required to

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file a new application with the Department pursuant to N.J.A.C. 14A:6-2.5 in order to be considered for an interest subsidy.

3. In the event that an application is denied, the applicant shall be ineligible to receive a subsidy for the particular energy conservation renovations, energy conserving construction or alternative energy production facilities included in the application and shall not be permitted to submit another application for the same projects.

(d) Upon approval of an application pursuant to (c) above, the Department and the applicant shall execute in writing a subsidy agreement, which shall include but not be limited to provisions specifying the energy conservation renovations, energy conserving construction or the alternative energy production facilities to which the subsidy shall apply, the terms and conditions on which the subsidy shall be made by the Department, the amount of the subsidy and the payment schedule and the effect of prepayment on any outstanding balance of an interest subsidy. All subsidy agreements, whether specifically stated therein or not, shall be subject to the provisions of this subchapter.

#### 14A:6-2.9 Conditions for payment of subsidies

(a) The Department shall pay subsidies directly to the applicant.

(b) The following terms govern payment of interest subsidies:

1. The applicant shall be solely responsible and liable for repayment of the principal, interest, interest accruals and penalties with respect to the eligible loan. The Department shall not be liable to the applicant for the repayment of principal, interest, interest accruals or penalties.

2. Interest subsidies shall be made by the Department at 50 percent of the lender's commercial lending rate up to 600 basis points; provided, however, that in the event of a substantial increase or decrease in commercial lending rates, the Commissioner may, in his discretion, modify the percentage or basis points available to applications for which an interest subsidy agreement has not been executed pursuant to N.J.A.C. 14A:6-2.7(c).

3. Interest subsidies shall be paid by the Department at intervals not exceeding six months in accordance with the terms of the interest subsidy agreement.

4. The Department may in its discretion, pay the entire subsidy in one initial lump-sum payment at a negotiable discount rate no lower than six percent. The total value of the subsidy will be the same if the prepaid subsidy were invested at the negotiable discount rate compounded semi-annually over the term of the loan.

5. The applicant shall provide, or cause to be provided, to the Department, at intervals not exceeding six months, and commencing not more than six months after the due date of the first repayment of the eligible loan, a certification that repayment of the eligible loan is being made timely to the lender, in accordance with the terms of the interest subsidy agreement. The certification shall be in the form of an official audit confirmation from the lender. This confirmation is due 15 days prior to the scheduled subsidy payment.

#### 14A:6-2.10 Monitoring

The Department shall monitor all work related to energy conservation renovations, energy conserving construction or alternative energy production facilities that are the subject of an subsidy agreement by the Department. "Monitoring" shall include, but not be limited to, reviewing plans, specifications and other documents and information and conducting on-site inspections to assess the progress and completion of work. The applicant shall comply promptly with all requests by the Department to conduct monitoring activities.

#### 14A:6-2.11 Rescission and withholding of funds

(a) The Department, in addition to any other rights or remedies available pursuant to law, may withhold or rescind payment of a subsidy or any portion thereof for good cause. Such withholding or rescission shall terminate the obligation of the Department to make further payments of subsidies to the applicant. The term "good cause" shall include, but not be limited to the following:

1. Failure to comply with the requirements of this subchapter, or other applicable State laws or regulations.

2. Failure to comply with any condition or requirement of the subsidy agreement.

3. Submission of false or misleading information, or failing to submit relevant information to the Department.

4. Non-payment or failure to make timely repayment of an eligible loan, or declaration by the lender that the applicant is in default of an eligible loan.

5. Insolvency, bankruptcy or other condition affecting the financial integrity of the applicant.

6. Use of the subsidy for any purpose other than as specified in the subsidy agreement.

7. Inability or failure to install the energy conservation renovations, energy conserving construction or the alternative energy production facility in a timely manner, absent force majeure or other exigent circumstances.

8. Failure to provide documentation with respect to the installation of energy conservation renovations, energy conserving construction or the building of alternative energy production facility.

9. Modification of the terms of the eligible loan without express written consent of the Department.

(b) Subsidies shall be withheld or rescinded according to the following procedures:

1. The Department shall give written notice to the applicant of its intent to withhold or rescind a subsidy in whole or in part.

2. Prior to the withholding or rescission of the subsidy the Department shall afford the applicant a period of 20 days, commencing on the date of written notice, to consult the Department in the matter, and cure the issues forcing rescission. The Department may, thereafter, withhold or rescind the subsidy in whole or in part. The withholding or rescission determination shall be in writing and shall be effective on the date such action is taken. The determination will be provided to the applicant.

3. The determination to withhold or rescind a subsidy shall be solely within the discretion of the Department and is not subject to further review by the Department.

(c) In the event that a subsidy is withheld or rescinded by the Department the applicant shall refund immediately the total amount of subsidy paid by the Department as of the date of rescission or withholding.

1. The Department shall return all rescinded monies to the Business Energy Improvement Subsidy Program.

#### 14A:6-2.12 Severability

If any section, subsection, provision, clause or portion of this subchapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

## TRANSPORTATION

### (a)

#### TRANSPORTATION OPERATIONS

##### Design

##### Bureau of Traffic Engineering

##### Adopted New Rule: N.J.A.C. 16:27

Proposed: June 2, 1986 at 18 N.J.R. 1184(a).

Adopted: July 25, 1986 by Traffic and Local Road Design,

John F. Dunn, Jr., Assistant Chief Engineer.

Filed: August 6, 1986 as R.1986 d.352, **without change**.

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

Effective Date: September 8, 1986.

Expiration Date: September 8, 1991.

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

**No comments received.**

**Full text** of the expired rules adopted as new appears in the New Jersey Administrative Code at N.J.A.C. 16:27.

**(a)**

**Restricted Parking and Stopping  
Truck Route U.S. 1 and 9 in Hudson County; Routes  
38 in Burlington County; 33 in Monmouth County;  
67 in Bergen County and 168 in Camden County  
Adopted Amendments: N.J.A.C. 16:28A-1.23, 1.27,  
1.51 and 1.71**

Proposed: July 7, 1986 at 18 N.J.R. 1350(a).  
Adopted: August 7, 1986 by John F. Dunn, Jr., Assistant Chief  
Engineer, Traffic and Local Road Design.  
Filed: August 12, 1986 as R.1986 d.361, **without change**.  
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139,  
39:4-199.

Effective Date: September 8, 1986.  
Expiration Date: November 7, 1988.

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

Full text of the adoption follows:

16:28A-1.106 Truck Route U.S. 1 and 9

(a) The certain parts of State highway Truck Route U.S. 1 and 9 which runs from mile post 51 to mile post 54.5 (approximately 4.14 miles), below the Pulaski Skyway, described in this section shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1. No stopping or standing in the City of Jersey City, Hudson County:  
i. Along both sides of Truck route U.S. 1 and 9:

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

16:28A-1.23 Route 33

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

(c) The certain parts of State highway Route 33 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1.-6. (No change.)

7. Along the eastbound (southerly) side in Howell Township, Monmouth County:

i. (See adoption at 18 N.J.R. 1105(a).)

ii. Mid-block bus stop:

(1) Between Howell Road and Fairfield—Beginning 1,037 feet east of the easterly curb line of Howell Road and extending 135 feet easterly therefrom.

8. Along the westbound (northerly) side in Howell Township, Monmouth County:

i. (See adoption at 18 N.J.R. 1105(a).)

ii. Mid-block bus stop:

(1) Between Five Points Road and Brickyard Road—Beginning 1,037 feet east of the easterly curb line of Five Points Road and extending 135 feet easterly therefrom.

16:28A-1.27 Route 38

(a) The certain parts of State highway Route 38 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.-3. (No change.)

4. No stopping or standing in Mount Laurel Township, Burlington County:

i. Along both sides:

(1) (No change.)

(2) From the easterly curb line of Ark Road to a point 650 feet easterly therefrom, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

(b) (No change.)

16:28A-1.51 Route 168

(a) (No change.)

(b) The certain parts of State highway Route 168 described in this section shall be designated and established as "no parking" zones where

parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1.-5. (No change.)

6. Along the northbound (easterly) side in Gloucester Township, Camden County:

i. Mid-block bus stop:

(1) Erial Road—Beginning 200 feet south of the southerly curb line of Erial Road and extending 135 feet southerly therefrom.

16:28A-1.71 Route 67

(a) The certain parts of State highway Route 67 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1. Along the westerly (southbound) side in Fort Lee Borough, Bergen County:

i. (No change.)

ii. Far side bus stops:

(1) Along Lemoine Avenue:

(A) (No change.)

(B) Palisade Avenue—Beginning at the prolongation of the southerly curb line of Palisade Avenue and extending 100 feet southerly therefrom.

iii. Near side bus stop:

(1) Along Lemoine Avenue:

(a) Myrtle Avenue—Beginning at the northerly curb line of Myrtle Avenue and extending 107 feet northerly therefrom.

(b) Lincoln Avenue—Beginning at the northerly curb line of Lincoln Avenue and extending 155 feet northerly therefrom.

(c) Whiteman Street—Beginning at the northerly curb line of Whiteman Street and extending 155 feet northerly therefrom.

iv. Mid-block stop:

(1) Along Lemoine Avenue:

(a) Between Main Street and Bridge Plaza South—Beginning 132 feet north of the northerly curb line of Main Street and extending 149 feet northerly therefrom.

2. (No change.)

3. Along the easterly (northbound) side in Fort Lee Borough, Bergen County:

i. Far side bus stops:

(1) Along Lemoine Avenue:

(A) (No change.)

(B) Palisade Avenue—Beginning at the northerly curb line of Palisade Avenue and extending 155 feet northerly therefrom.

(C) Main Street—Beginning at the northerly curb line of Main Street and extending 130 feet northerly therefrom.

(D) Bridge Plaza South—Beginning at the northerly curb line of Bridge Plaza South and extending 150 feet northerly therefrom.

(E) Lincoln Avenue—Beginning at the prolongation of the northerly curb line of Lincoln Avenue and extending 140 feet northerly therefrom.

(F) Myrtle Avenue—Beginning at the northerly curb line of Myrtle Avenue and extending 101 feet northerly therefrom.

(G) Kensington Road—Beginning at the northerly curb line of Kensington Road and continuing to a point 120 feet north thereof.

**(b)**

**Restricted Parking and Stopping  
Route U.S. 9W in Bergen County  
Adopted Amendment: N.J.A.C. 16:28A-1.61**

Proposed: July 7, 1986 at 18 N.J.R. 1351(a).  
Adopted: August 7, 1986 by John F. Dunn, Jr., Assistant Chief  
Engineer, Traffic and Local Road Design.  
Filed: August 12, 1986 as R.1986 d.362, **without change**.  
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-199.  
Effective Date: September 8, 1986.  
Expiration Date: November 7, 1988.

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

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Full text of the adoption follows:

16:28A-1.61 Route U.S. 9W

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

1. (No change.)
2. Along the westerly (southbound) side in Englewood Cliffs Borough, Bergen County:
  - i. Far side bus stops:
    - (1)-(6) (No change.)
    - (7) John Street—Beginning at the southerly curb line of John Street and extending 140 feet southerly therefrom.
  - ii. Near side bus stops:
    - (1)-(2) (No change.)
    - (3) Charlotte Place—Beginning at the northerly curb line of Charlotte Place and extending 170 feet northerly therefrom.
    - (4) Middlesex Avenue—Beginning at the northerly curb line of Middlesex Avenue and extending 155 feet northerly therefrom.
    - (5) West Bayview Avenue—Beginning at the northerly curb line of West Bayview Avenue and extending 155 feet northerly therefrom.
3. Along the easterly (northbound) side in Englewood Cliffs Borough, Bergen County:
  - i. Far side bus stops:
    - (1)-(6) (No change.)
    - (7) Middlesex Avenue—Beginning at the prolongation of the northerly curb line of Middlesex Avenue and extending 231 feet northerly therefrom.
  - ii. Near side bus stops:
    - (1) Palisades Avenue—Beginning at the southerly curb line of Palisades Avenue and extending 178 feet southerly therefrom.
    - (2) Sage Road—120 feet.
    - (3) Charlotte Place—Beginning at the southerly curb line of Charlotte Place and extending 155 feet southerly therefrom.
    - (4) Clendinen Place—Beginning at the southerly curb line of Clendinen Place and extending 170 feet southerly therefrom.
    - (5) Bayview Avenue—Beginning at the southerly curb line of Bayview Avenue and extending 180 feet southerly therefrom.
- 4.-7. (No change.)
- (b) (No change.)

(a)

## Turns

### Route 35 in Middlesex County

#### Adopted Amendment: N.J.A.C. 16:31-1.4

Proposed: July 7, 1986 at 18 N.J.R. 1352(a).

Adopted: August 7, 1986 by John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design.

Filed: August 12, 1986 as R.1986 d.363, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-183.6.

Effective Date: September 8, 1986.

Expiration Date: November 7, 1988.

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

**No comments received.**

Full text of the adoption follows:

16:31-1.4 Route 35

(a) Turning movements of traffic on the certain parts of State highway Route 35 described in this section are regulated as follows:

1. No left turn:
  - i.-x. (No change.)
  - xi. North to west into the Amboy Cinema driveway in Sayreville Borough, Middlesex County.
2. (No change.)

## TRANSPORTATION OPERATIONS

(b)

### Construction and Maintenance

#### Permits

#### Outdoor Advertising

#### Adopted Amendment: N.J.A.C. 16:41-8.9

Proposed: April 7, 1986 at 18 N.J.R. 625(b).

Adopted: August 5, 1986 by Jack Freidenrich, Assistant

Commissioner for Engineering and Operations (State Highway Engineer).

Filed: August 18, 1986 as R.1986 d.378, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7A-11 and 27:7A-17.

Effective Date: September 8, 1986.

Expiration Date: November 15, 1987.

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

One comment was received regarding the proposed rule from Mr. Bill Nierstedt of Elizabeth, New Jersey, who objected to the proposal for two reasons:

1. The permit fee is ridiculously low. It will cost the taxpayers far more to maintain vegetation than the cost of the permit; and there is no mention of enforcement or penalties for those who do not pay.
2. It is not in the state's best interest to provide billboard companies with a service which would force drivers to see billboards rather than nature. Billboards are ugly, cause accidents, and we should be allowing trees to grow and hide them rather than clearing trees so we have to look at them.

RESPONSE: The established permit fee was based on a cost analysis with the intent to provide sufficient funding to cover Department expenditures without creating an additional expense to the taxpayer.

Non-compliance with the guidelines set forth in the rule have been previously established in other areas of Chapter 41 which provide the criteria for imposing fines and penalties.

It is not the intention of the Department to indiscriminately issue permits to the advertising sector. Only locations which are not maintained by the Department and are not designated as a beautification area will be available for permit issue.

Only those advertising structures under permit on non-limited access highways will be provided the legal means for control of indiscriminate vegetation which is obstructing the message to the viewer.

In addition to providing a better control for the Department under this subject, an advertising structure void of obstacles may actually be an accident deterrent to the viewing motorist.

The proposed amendment was adopted without change.

Full text of the adoption follows.

16:41-8.9 Permit fees

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

(h) The application and permit fees for the control of vegetation on State right-of-way which is within 500 feet of an existing outdoor advertising structure shall be as stated below:

1. Limited Access Highways:
  - i. Application fee: \$50.00;
  - ii. Permit fee: \$500.00.
2. Non-limited Access Highways:
  - i. Single location/Single Incident:
    - (1) Application fee: \$5.00.
    - (2) Permit fee: \$200.00.
  - ii. Multi location/Single Incident:
    - (1) Application fee: \$5.00;
    - (2) Permit fee: \$200.00 plus \$20.00 per each location.
3. Single location/Annual Permit:
  - i. Application fee: \$5.00;
  - ii. Permit fee: \$300.00.
4. Multi location/Annual permit:
  - i. Application fee: \$5.00;
  - ii. Permit fee: \$300.00 plus \$20.00 per each location.

NOTE: An annual permit begins on the date of Permit Approval and expires one year from the date.

## TREASURY-GENERAL

### DIVISION OF INVESTMENT

#### (a)

#### Common and Preferred Stocks Issues Convertible into Common Stock Limitations

##### Adopted Amendments: N.J.A.C. 17:16-17.1 and 17.3

Proposed: July 7, 1986 at 18 N.J.R. 1353(a).

Adopted: August 7, 1986 by Roland M. Machold, Director,  
Division of Investment and State Investment Council.

Filed: August 8, 1986 as R.1986 d.356, **without change**.

Authority: N.J.S.A. 52:18A-91.

Effective Date: September 8, 1986.

Expiration Date: December 2, 1990.

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

**No comments received.**

**Full text** of the adoption follows.

#### SUBCHAPTER 17. COMMON AND PREFERRED STOCKS AND ISSUES CONVERTIBLE INTO COMMON STOCK

##### 17:16-17.1 Permissible investments

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

(e) Notwithstanding the above restrictions, the Director may:

1. Exercise the conversion privileges in the common stock of any security acquired under this Subchapter or Subchapter 7 of this Chapter. 2.-3. (No change.)

##### 17:16-17.3 Limitations

(a) (No change.)

(b) Not more than four percent of the book value of any fund shall be invested in the common and preferred stock of any one corporation except that this limitation for the Trustees for the Support of Public Schools shall be 10 percent.

(c) The total amount of stock purchased or acquired of any one corporation shall not exceed 10 percent of the common stock, or of any other class of stock which entitles the holder thereof to vote at all elections of directors, of such corporation.

#### (b)

#### Repurchase Agreements Permissible Investments

##### Adopted Amendment: N.J.A.C. 17:16-37.1

Proposed: July 7, 1986 at 18 N.J.R. 1353(b).

Adopted: August 7, 1986 by Roland M. Machold, Director,  
Division of Investment and State Investment Council.

Filed: August 8, 1986 as R.1986 d.357, **without change**.

Authority: N.J.S.A. 52:18A-91.

Effective Date: September 8, 1986.

Expiration Date: December 2, 1990.

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

**No comments received.**

**Full text** of the adoption follows.

##### 17:16-37.1 Permissible investments

(a) Subject to the limitations contained in this subchapter, the Director may invest and reinvest moneys of any pension and annuity, static, demand, temporary reserve or trust group fund in repurchase agreements of any bank, provided that:

1. The seller is a bank or trust company or a wholly-owned subsidiary of such bank or trust company which:

- i. Is headquartered in the United States; and
- ii. Is not controlled by a foreign entity.

2.-3. (No change.)

## OTHER AGENCIES

### PUBLIC EMPLOYMENT RELATIONS COMMISSION

#### (c)

#### Mediation and Fact-Finding, and Arbitration

##### Readoption with Amendments: N.J.A.C. 19:12

Proposed: July 7, 1986 at 18 N.J.R. 1357(a).

Adopted: August 7, 1986 by James W. Mastriani, Chairman,  
Public Employment Relations Commission.

Filed: August 7, 1986 as R.1986 d.354, **without change**.

Authority: N.J.S.A. 34:13A-5.4(e), N.J.S.A. 34:13A-6(b) and  
N.J.S.A. 34:13A-11 et seq.

Effective Date of Amendments: September 8, 1986.

Effective Date of Readoption: August 7, 1986.

Expiration Date: August 7, 1991.

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

Two written comments were received. Michael Romano, Labor Chairman of the New Jersey State Firemen's Benevolent Association, wrote in support of the proposal, as did Anthony D. Rinaldo, attorney for the NJFBA. At the August 6, 1986 hearing, Thomas Iskrzycki, president of the New Jersey State Troopers Fraternal Association, testified in support of these rules.

**Full text** of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 19:12.

**Full text** of the amendments to the readoption follows.

##### 19:12-4.2 Appointment of fact-finder

(a) (No change.)

(b) The fact-finder appointed pursuant to this subchapter may be a member of the Commission, an officer or employee of the Commission, a member of the Commission's fact-finding panel, or any other fact-finder, all of whom shall be considered officers of the Commission for the purpose of assisting the parties to effect a voluntary settlement and/or making findings of fact and recommending the terms of settlement. If an appointed fact-finder is unable to serve or if for any reason cannot proceed pursuant to the appointment, another fact-finder shall be appointed. The appointment of a fact-finder pursuant to this subchapter shall not be reviewable.

##### 19:12-5.2 Request for submission of panel

Arbitration under these rules is initiated by written request to the Director of Arbitration. One original and four copies of such request, signed and dated by the requesting party or parties, shall be filed requesting the submission of a panel of arbitrators. The request shall set forth the names and addresses of the parties, the names, titles and telephone numbers of the parties' representative to contact, and a statement identifying the grievance to be arbitrated. The request shall be accompanied by a copy of the arbitration provisions of the parties' agreement.

##### 19:12-5.3 Appointment of an arbitrator

Upon receipt of a written request pursuant to N.J.A.C. 19:12-5.2 (Request for submission of panel), the Director of Arbitration shall submit simultaneously to each party a copy of such request and an identical list of names of at least five persons chosen from the Arbitration Panel. Each party shall have seven days from the mailing date in which to cross off any names to which it objects, number the remaining names indicating in order of preference, and return the list to the Director of Arbitration. If a party does not return the list within the time specified, all persons named thereon shall be deemed acceptable. The Director of Arbitration shall appoint an arbitrator giving recognition to the parties' preference. If the parties' preference does not result in agreement upon any of the persons names, the Director of Arbitration shall submit a second such list and the procedures set forth above shall be repeated, except that each party shall number at least three names contained thereon indicating its order of preference. If the arbitrator appointed pursuant to this section declines or is unable to serve, the Director of Arbitration shall have the power to appoint an arbitrator not previously rejected by any party, without submission of any additional list. If parties have agreed upon a method of appointment different from that set forth above, such method shall be followed. Action of the Director of Arbitration hereunder shall not be reviewable.

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## 19:12-5.9 Award

The arbitrator shall issue an award as soon as possible after the close of hearing, but not more than 45 days thereafter or such other time for the date of award that the arbitrator shall fix upon written notice to the parties. The award of the arbitrator shall be in writing and submitted directly to the Public Employment Relations Commission which will then serve the parties simultaneously. The arbitrator may, upon the mutual agreement of the parties, submit the award without a written opinion.

**(a)**

### **Negotiations, Impasse Procedures and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments**

#### **Readoption with Amendments: N.J.A.C. 19:16**

Proposed: July 7, 1986 at 18 N.J.R. 1358(a).

Adopted: August 7, 1986 by James W. Mastriani, Chairman, Public Employment Relations Commission.

Filed: August 7, 1986 as R.1986 d.355, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 34:13A-5.4(e), N.J.S.A. 34:13A-6(b) and N.J.S.A. 34:13A-11 et seq.

Effective Date of Amendments: September 8, 1986.

Effective Date for Readoption: August 7, 1986.

Expiration Date: August 7, 1991.

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

One written comment was received. Michael Romano, Labor Chairman of the New Jersey State Firemen's Benevolent Association, wrote in support of the proposal, as did Anthony D. Rinaldo, attorney for the NJFBA. At the August 6, 1986 hearing, Thomas Iskrzycki, president of the New Jersey State Troopers Fraternal Association, testified in support of readoption of these rules with amendments. The Chairman of the Commission distributed a minor change in the proposed amendment to N.J.A.C. 19:16-5.9 which would allow the Director of Arbitration to grant the arbitrator permission to extend the 45 day period to a specified date. Mr. Iskrzycki supported the change. No additional comments were received.

**Full text** of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 19:16.

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

## 19:16-5.7 Conduct of the arbitration proceeding

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

(h) The arbitrator shall be permitted to take evidence, but shall not render a decision on any issue which is the subject of a petition for a scope of negotiations determination filed with the Commission or on any issue which is the subject of an issue definition proceeding pursuant to N.J.A.C. 19:16-8.1 et seq.

(i)-(j) (No change.)

(k) The parties, at the discretion of the arbitrator, may file post-hearing briefs. The arbitrator, after consultation with the parties, shall have the authority to set a time period for the submission of briefs, but that period shall not exceed 30 days from the close of the hearing. Briefs shall be submitted to the arbitrator along with submission of proof of service on all parties. The parties shall not be permitted to revise their positions or to introduce any new factual material in the post-hearing briefs, except upon special permission of the arbitrator.

## 19:16-5.9 Opinion and award

If the impasse is not otherwise resolved, the arbitrator or arbitrators shall decide the dispute and issue a written opinion and award within 45 days after the filing of briefs\*, **unless the Director of Arbitration grants the arbitrator permission to extend this time period to a specified date.\*** The opinion and award shall be signed and based on a reasonable determination of the issues, giving due weight to those factors listed in N.J.S.A. 34:13A-16(g) which are judged relevant for the resolution of the specific dispute. The opinion and award shall set forth the reasons for the result reached. Copies of the opinion and award shall be submitted directly to the Commission which will then serve the parties simultaneously.

## 19:16-6.2 Procedure

(a) (No change.)

(b) (No change.)

1.-3. (No change.)

4. A listing of the item or items on which there is a dispute as to the definition of the issue or issues as economic or noneconomic issues.

5. (No change.)

(c) The party opposing the definition of the disputed issue or issues set forth in the petition may submit to the Commission within 10 days of receipt of the petition its position with respect to each disputed issue or issues, together with a brief or statement in lieu of brief to support its position. Failure to submit such a response shall be deemed to indicate acceptance of the issue definition advanced by the petitioner. A copy of the response must be served on the petitioner and proof of such service must be filed with the Commission.

(d)-(g) (No change.)

## **CASINO CONTROL COMMISSION**

**(b)**

### **Accounting and Internal Controls Patron Credit**

#### **Adopted Amendment: N.J.A.C. 19:45-1.27**

Proposed: May 5, 1986 at 18 N.J.R. 935(b).

Adopted: August 14, 1986 by Casino Control Commission, Walter N. Read, Chairman.

Filed: August 14, 1986 as R.1986 d.365, **without change.**

Authority: N.J.S.A. 5:12-63(c), 5:12-69, 5:12-70(g) and (l) and 5:12-101.

Effective Date: September 8, 1986.

Expiration Date: April 7, 1988.

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

The only comments concerning the proposed amendments were submitted by the Division of Gaming Enforcement (Division). The Division generally supported the proposed amendments to N.J.A.C. 19:45-1.27(d) and (e), but suggested that the wording of the amendments to subsection (d) be modified to insure that casino licensees are obtaining current information from bank verification services or other alternative sources. The Division suggested that this goal could be achieved by amending the rules to provide that information obtained from bank verification services or other alternative sources shall not satisfy the casino licensee's verification obligations under N.J.A.C. 19:45-1.27(c) and (d) unless the information had been obtained by the bank verification service or alternative source within the previous six month period.

The Commission has rejected the Division's proposed modifications to N.J.A.C. 19:45-1.27(d) for the following reasons. First, the Commission does not believe specific time limitations are necessary because the overriding obligation imposed on casino licensees by N.J.A.C. 19:45-1.27(c) is to "[v]erify the patron's outstanding indebtedness . . . and personal checking account information." In other words, before a casino licensee may approve a patron's requested credit limit, the casino must verify the credit information provided by the patron in the credit application. The Commission's credit rules do not presently attempt to establish specific guidelines within the general parameters of N.J.A.C. 19:45-1.27(d) as to what constitutes sufficient verification of such information. Rather, the rules generally allow a casino licensee to use its own business judgment as to what constitutes sufficient verification as long as the credit limit and any change thereto is "supported by the information contained in the credit file." N.J.A.C. 19:45-1.27(a).

The casino licensee is thus required to take reasonable steps to verify the credit information provided by the patron. If the licensee were to verify a patron's outstanding indebtedness directly, the licensee would certainly be expected to ask the credit bureau the amount of debt currently owed by the patron and the date that this information was obtained. It is reasonable to assume that a prudent casino licensee which was unable to contact a credit bureau on a weekend would strive to ascertain the same information through the alternative source. A casino licensee which made credit decisions based on outdated information or, alternatively, without knowing the timeliness of the credit information it had received, could certainly be required to later justify those decisions under the aforesaid requirements imposed by N.J.A.C. 19:45-1.27(a) and (c).

Although the Commission's credit regulations are designed to provide a casino licensee with substantial flexibility in performing the verifications required by N.J.A.C. 19:45-1.27(c), the final option available to the licensee when credit information cannot be adequately verified is simply to deny the patron's credit application.

The Commission could, of course, adopt an alternative regulatory approach which would establish fixed detailed standards for all aspects of the verification process. For example, the Commission could prohibit the extension of credit to any patron whose personal checking account information had not been verified within the previous two weeks. The Division's proposed amendments to the rule proposal are more consistent with this type of regulatory approach. Unless or until it is determined that detailed verification standards are necessary or appropriate and addressed on a comprehensive basis, the Commission does not favor the imposition of specific timing requirements such as those proposed by the Division.

Full text of the adoption follows.

19:45-1.27 Procedures for granting credit, and recording checks exchanged, redeemed or consolidated

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

(d) All verifications performed by the credit department in (c) above together with accurate and verifiable information received from the security and surveillance departments pursuant to N.J.A.C. 19:45-1.11(c) shall be recorded in the credit file and accompanied by the signature of the credit department representative who performed the required verifications or filed the relevant information. The date and time of the signature of the credit department representative shall be recorded either mechanically or manually contemporaneously with the transaction. The casino licensee's credit department shall fulfill the requirements of (c) above as follows:

1.-2. (No change.)

3. Verification of the patron's outstanding indebtedness, as required by (c)3 above, shall be performed by contacting a consumer credit bureau which is reasonably likely to possess information concerning the patron, to the extent such consumer credit bureau is available, and a casino credit bureau to determine whether the applicant has any liabilities or if there is any derogatory information concerning the applicant's credit history. Such contact shall be considered a verification of the outstanding indebtedness provided by the patron. If such contact is not immediately possible, the casino licensee may use an alternative source which has made the required contact. The casino licensee shall record the source of verification and the method by which such verification was performed in the patron's credit file. If either one or both of these credit bureaus do not have information relating to a patron's outstanding indebtedness this shall be recorded in the patron's credit file. The verification may be performed telephonically prior to the credit approval provided the casino licensee requests written documentation of all information obtained as soon as possible and includes such written documentation in the patron's credit file. All requests for written documentation shall be maintained in the patron's credit file until such documentation is obtained.

4. Verification of the patron's personal checking account information, as required by (c)4 above, shall be performed by the casino licensee or a bank verification service directly with the patron's bank. If such information is not immediately available, the casino licensee may use an alternative source. The casino licensee shall record the source of verification and the method by which such verification was performed in the patron's credit file. The verification may be performed telephonically prior to the credit approval provided the casino licensee or bank verification service requests written documentation of all information obtained as soon as possible and such written documentation is included in the patron's credit file. All requests for written documentation shall be maintained in the patron's credit file until such documentation is obtained. No bank verification service may be used by a casino licensee to perform the verifications required by this section unless the bank verification service has filed a completed application for an appropriate casino service industry license under N.J.S.A. 5:12-92 and N.J.A.C. 19:43. If a bank verification service is used as a primary source of verification, the licensee shall, in addition to complying with any other requirement imposed by this section, record the date that the patron's personal checking account information was obtained from the bank by the service.

(e) Any New Jersey casino licensee requesting information from another New Jersey casino licensee concerning a credit patron shall represent to the requested casino licensee that the patron has a credit line or has applied for credit and shall provide the patron's name, address of the patron's residence and the name and location of the patron's bank.

Upon receipt of this information, the requested New Jersey casino licensee shall be required to furnish to the requesting New Jersey casino any information in its possession concerning a patron as required by (c) above.

(f)-(p) (No change.)

(a)

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

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

Proposed: January 21, 1986 at 18 N.J.R. 160(a).

Adopted: August 14, 1986 by the Casino Control Commission,  
Walter N. Read, Chairman.

Filed: August 14, 1986 as R.1986 d.364, with substantive changes  
not requiring additional public notice and comment (see  
N.J.A.C. 1:30-4.3).

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

Effective Date: September 8, 1986.

Expiration Date: May 23, 1988.

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

A comment was received from Trump's Castle Hotel & Casino which strongly opposed the proposed regulation, particularly if it would be interpreted as requiring labeling of carafes and similar containers served directly to patrons for on-premises consumption. Trump's Castle submitted that the proposed regulation did not require labeling in such circumstances, and was concerned about a possible contrary interpretation. Furthermore, Trump's Castle indicated that if such labeling were required, it would most likely result in the cessation of the use of carafes for patron service.

However, the proposed regulation does not apply to the situation described in the comment. The dispensing of wine into an open container (such as a pitcher, carafe, or glass) for immediate sale to and consumption by a patron, is expressly authorized by the Casino Control Act. N.J.S.A. 5:12-103(g)(1)-(4) inclusive provide that alcoholic beverages may be sold "by the glass or other open receptacle" (emphasis added). Therefore, no labels would be required on carafes of wine served to patrons for immediate on-premises consumption.

In response to the above comment, and to eliminate possible confusion, the proposed regulation was modified upon adoption to indicate that labeling would be required only on interim wine storage containers, and would not be required on wine carafes served directly to patrons for on-premises consumption.

Trump's Castle had also objected generally to the proposed regulation on the ground that it would require labeling of interim storage containers. Such labeling is presently required by the New Jersey Division of Alcoholic Beverage Control regulation N.J.A.C. 13:2-28.1, which the Commission is bound to follow unless it finds that the uniqueness of casino operations and the public interest require otherwise. See N.J.S.A. 5:12-103(d) and (e). Such a departure from existing regulations of the New Jersey Division of Alcoholic Beverage Control does not appear to be justified at this time.

A comment was also received from the Division of Gaming Enforcement, indicating that it recommended adoption of the proposed regulation.

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

19:50-1.6 General regulations concerning operating conditions of licensees

(a)-(x) (No change.)

(y) The holder of any casino hotel alcoholic beverage license authorizing the sale of alcoholic beverages for consumption in an authorized location may transfer wine from an original tax paid barrel, cask, keg or other container in the authorized location to another barrel, cask, keg, decanter, bottle or similar \*[receptacle]\* **\*container for purposes of interim storage\*** and serve such wine therefrom: provided, however that **\*[the last]\* \*each\* barrel, cask, keg\*, decanter, bottle\* or other **\*interim storage\*** container **\*[from which the contents thereof were drawn]\*** shall have affixed thereto at all times a gummed label clearly identifying the**

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contents thereof; \*and provided further, however, that nothing herein shall be deemed to prohibit the transfer of wine to unlabeled carafes, glasses or similar open receptacles for immediate service to patrons for consumption in the authorized location.\* The prescribed label shall be substantially in the form set forth below, and each statement made shall be true:

This tax paid \_\_\_\_\_ contains  
(type of container)  
\_\_\_\_\_ wine, received from \_\_\_\_\_  
(type \*[of]\* \*and\* brand) (name and address)  
\_\_\_\_\_ on \_\_\_\_\_  
of seller) (date of receipt)  
\_\_\_\_\_  
(signature)

(a)

**Advertising  
General Provisions**

**Readoption with Amendments: N.J.A.C. 19:51**

Proposed: June 16, 1986 at 18 N.J.R. 1258(a).  
Adopted: August 14, 1986 by Casino Control Commission,  
Walter N. Read, Chairman.  
Filed: August 14, 1986 as R.1986 d.366, **without change.**  
Authority: N.J.S.A. 5:12-69 and 5:12-70(o).  
Effective Date for Readoption: August 14, 1986.  
Effective Date for Amendments: September 8, 1986.  
Expiration Date: August 14, 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. 19:51.

**Full text** of the amendments to the readoption follows.

- 19:51-1.1 Applicability of advertising regulations
  - (a) Any inducement or other means of calling to the attention of the public by advertising of any sort including broadcasting, publication, or any other means of dissemination by a casino licensee or applicant, or any agent thereof, shall be subject to the standards established by these regulations.
  - (b) (No change.)
  - (c) Any advertisement by an applicant for a junket representative license or a junket representative licensee or by an applicant for a junket enterprise license or a junket enterprise licensee shall be subject to these regulations if such an advertisement is directly related to casino gaming or casino gaming activity.
- 19:51-1.2 General criteria governing advertising
  - Renumber (c)-(f) as (a)-(d) (No change in text.)
- 19:51-1.3 Prohibited advertising of casino gaming or casino gaming activity
  - Renumber (b) and (c) as (a) and (b) (No change in text.)
- 19:51-1.4 Commission approval
  - (a) All advertising or in the case of standard or recurring advertising, a sample thereof, which is directly related to casino gaming or casino gaming activity, shall be maintained by the casino licensee or applicant, or the casino service industry licensee or applicant, or the junket representative licensee or applicant or the junket enterprise licensee or applicant, as appropriate, for a period of one year from the date of placement of such advertisement. Advertising which must be maintained shall include such advertising as may have been placed for or on behalf of the casino licensee or applicant or casino service industry licensee or applicant or

the junket representative licensee or applicant or the junket enterprise licensee or applicant. Advertising required to be maintained by this section shall be maintained at the principal place of business of the licensee or applicant, and shall be made available or produced for inspection upon the request of the Casino Control Commission or the Division of Gaming Enforcement.

(b) Each casino licensee or applicant shall maintain a file containing samples of the types and forms of advertising and promotional materials not directly related to casino gaming or casino gaming activity for a period of six months from the date of placement of such advertisement or promotion. Such advertising shall be maintained at the principal place of business of the casino licensee or applicant, and shall be made available or produced for inspection upon the request of the Casino Control Commission or the Division of Gaming Enforcement.

Renumber (d) as (c) (No change in text.)

(b)

**DELAWARE RIVER BASIN COMMISSION  
Water Code and Administrative Manual—Part III  
Water Quality Regulations**

Adopted: July 30, 1986 by Delaware River Basin Commission,  
Susan M. Weisman, Secretary.  
Filed: August 6, 1986 as R.1986 d.353.  
Effective Date: September 8, 1986.

**Full text** of the adoption follows.

NO. 86-18

A RESOLUTION to temporarily amend the Water Code and Administrative Manual—Part III Water Quality Regulations in relation to interstate disinfection requirements.

WHEREAS, the Commission has decided that additional data were needed to determine whether shellfishing water quality could be protected if dischargers to interstate streams were allowed to practice seasonal disinfection; and

WHEREAS, the Commission's Water Quality Advisory Committee has recommended a two-year monitoring program to obtain the necessary data; and

WHEREAS, the program calls for dischargers to the tidal Delaware River between Trenton and Marcus Hook to be excused from the disinfection requirement from October 1, 1987 to April 30, 1988; and

WHEREAS, the Commission's Water Code and Administrative Manual—Part III Water Quality Regulations currently require year-round disinfection of discharges to interstate streams containing human excreta or disease-producing organisms (except for stormwater bypass); and

WHEREAS, the Commission held a public hearing on July 30, 1986 on proposed amendments suspending the application of the disinfection requirement to dischargers to a limited reach of the Delaware River for a limited period of time for the purpose of the monitoring program and testimony has been received and considered by the Commission; now therefore

BE IT RESOLVED by the Delaware River Basin Commission:

1. The Water Code and Administrative Manual—Part III Water Quality Regulations are temporarily amended by inserting the following new temporary section in Section 3.30 to read:

The application of subsections 3.30.2C8, 3.30.3C8, and 3.30.4C8 to all existing dischargers in Zones 2, 3, and 4 is temporarily suspended from October 1, 1987 to April 30, 1988 unless reinstated earlier in whole or in part by order of the Executive Director. This section shall expire on May 1, 1988.

OFFICE OF ADMINISTRATIVE LAW NOTE: These rules are not subject to codification and will not appear in the New Jersey Administrative Code.

# MISCELLANEOUS NOTICES

## COMMUNITY AFFAIRS

### (a)

#### DIVISION OF HOUSING AND DEVELOPMENT

##### Uniform Construction Code Enforcement Activities Reserved to the State Notice of Administrative Change: N.J.A.C. 5:23-3.11

Take notice that the text of N.J.A.C. 5:23-3.11 concerning enforcement activities reserved to the State has been administratively changed. In order to separate the requirements applicable to the Department of Community Affairs from those applicable to other State agencies, the provisions concerning enforcement activities reserved to other agencies have been placed in a separate section as N.J.A.C. 5:23-3.11A and the remaining provisions of N.J.A.C. 5:23-3.11 have been redesignated in a logical manner. No change in the language of the rules have been made.

The administrative change to N.J.A.C. 5:23-3.11 follows:

#### 5:23-3.11 Enforcement activities reserved to the State

(a) The Department of Community Affairs shall be the sole plan review agency for the following structures:

1. Electrical generating stations and substations, including nuclear;
2. Incineration plants;
3. Solid waste disposal plants;
4. Class I and Class II structures where required in accordance with N.J.A.C. 5:23-3.10 and N.J.A.C. 5:23-4.24(a)2ii;
5. Compliance with the energy subcode for structures submitted under the alternate systems and non-depletable energy source provisions of the energy subcode;
6. Casino hotels;
7. All modular construction other than those authorized to be approved by an inplant inspection agency as provided in N.J.A.C. 5:23-4.29(a) and (d).

(b) A permit shall not be issued until the required plans for the building or structure have been released by the department. The department shall insure that the municipal enforcing agency receives a copy of the approved plans.

(c) The department may perform field inspections for any of the above projects when it deems such activity appropriate. However, such action shall not relieve the municipality of the obligation to perform field inspections for any project for which the municipality has granted a permit.

(d) Whenever the department shall determine that there exists a violation of these regulations, it shall take appropriate action and shall provide the municipality with copies of all notices, orders, and other applicable information. The department and any municipality may consolidate or take other steps to expedite any matter of which they jointly complain, but in no event shall the owner of any building subject to the act be sanctioned twice for the same violations.

(e) In any case where the department shall notify a municipality that a violation exists, no certificate of occupancy may issue until the department notifies the municipality that the violation has been abated.

#### 5:23-3.11A Enforcement activities reserved to other State agencies

- (a) (Present text of 5:23-3.11(b).)
- (b) (Present text of 5:23-3.11(c).)
- (c) (Present text of 5:23-3.11(d).)

## ENVIRONMENTAL PROTECTION

### DIVISION OF WATER RESOURCES

### (b)

#### Amendment to the Mercer County Water Quality Management Plan

##### Public Notice

Take notice that on July 1, 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 Mercer County Water Quality Management Plan entitled "An Amendment Concerning the Application of Wetlands Policy (Section 4.5.1, Point Source Control: Functional Program and Agencies)", was adopted by the Department. This amendment changes the existing policy and will provide for specific amendments. The first of which will allow a temporary disturbance of wetlands for the construction of a specified drainage pipe and outfall to serve the Lawrence Square Village development in Lawrence Township.

### (c)

#### Amendment to the Statewide Water Quality Management Program Plan

##### Public Notice

The New Jersey Department of Environmental Protection (Department) proposes to amend the Statewide Water Quality Management Program Plan (Statewide WQM Plan) by adding the following paragraph at the end of Chapter I.D (page I-6):

9. "The New Jersey Continuing Planning Process for Water Quality Management—Descriptions of Selected Management Processes". This document provides descriptive information and outlines suggested future actions concerning priority water bodies, water quality limited segments, total maximum daily loads and wasteload allocations, water quality standards, water quality monitoring, the construction grant priority list, consistency of discharge permits and construction grants with WQM Plans, and the water quality inventory (305(b)) report.

The proposed amendment identifies, as one of the components of the Statewide WQM Plan, a document prepared by the Department, entitled "The New Jersey Continuing Planning Process for Water Quality Management—Descriptions of Selected Management Processes". The Department has now completed a final draft of this document, which was prepared in response to a request made by the United States Environmental Protection Agency (USEPA) in 1983. Notice of the Department's intention to propose this amendment was published at 18 N.J.R. 711(d) on April 7, 1986.

The federal Clean Water Act (33 U.S.C. 1251 et seq.) and the New Jersey Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.) require the Department to have a Continuing Planning Process (CPP) for water quality management. Department rules provide that the Statewide WQM Plan contains the written provisions of the CPP (N.J.A.C. 7:15-2.2(a)). The phrase "Selected Management Processes" in the document title refers to eight CPP management processes that were of particular nationwide interest to the USEPA in 1983:

- Determining Priority Water Bodies
- Identifying Water Quality Limited Segments
- Developing Total Maximum Daily Loads and Wasteload Allocations
- Reviewing Water Quality Standards
- Conducting Water Quality Monitoring Activities and Developing Monitoring Strategies
- Developing the Construction Grant Priority List
- Reviewing Discharge Permits and Construction Grants for Consistency With Water Quality Management Plans
- Completing the Water Quality Inventory (305(b)) Report

The Department is proposing that the document become a component of the Statewide WQM Plan that provides descriptive information and

outlines suggested future actions, but that is not binding on the Department or other persons (see page I-2 of the document). In this respect, the document resembles the "strategies" in the present Statewide WQM Plan.

**This notice** is being given to inform the public that the Department is proposing to amend the Statewide WQM Plan. The document that is the subject of the proposed amendment is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday, at the office of the Department of Environmental Protection, Division of Water Resources, Bureau of Water Resources Management Planning located at 25 Arctic Parkway, CN 029, Trenton, NJ 08625. Copies of the document are also available for inspection at depository libraries for New Jersey documents. A list of these libraries may be obtained by contacting the Bureau of Water Resources Management Planning at (609) 633-7021. For reasons of economy due to the length of the document, copies of the document are being mailed only to those interested persons who request (or have already requested) a copy of the document by writing to George Horzepa at the Department address cited above.

**Interested persons** may submit written comments on the proposed amendment to George Horzepa, Bureau of Water Resources Management Planning, at the Department address cited above. All comments must be submitted within thirty 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 the Department with respect to the proposed amendment.

**Any interested persons** may request in writing that the Department hold a nonadversarial public hearing on the proposed amendment. This request must state the nature of the issues to be raised at the public hearing and must be submitted within thirty days of the date of this public notice to Mr. Horzepa at the Department 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 the Atlantic County Water Quality Management Plan****Public Notice**

The Atlantic County Utilities Authority (ACUA) has petitioned Atlantic County to amend the Atlantic County Water Quality Management (WQM) Plan. This amendment, "The Coastal Alternative Interceptor", would expand the Coastal Sewer Service Area to include the lower Great Egg Harbor River Region, eliminate a major discharge to the Great Egg Harbor River and transport wastewater via a combination of force mains and gravity lines within the abandoned railroad right-of-way along West Jersey Avenue in Hamilton and Egg Harbor Townships. Treatment of wastewater will take place at the ACUA City Island Treatment Plant with discharge via a two-mile ocean outfall line.

**This notice** is being given to inform the public that a plan amendment has been proposed for the Atlantic County WQM Plan. The engineering studies and maps associated with the amendment are located at the Department of Regional Planning and Development, County Office Building, 1333 Atlantic Avenue, Atlantic City, New Jersey 08401; the Atlantic County Utilities Authority, 1701 Absecon Boulevard, Atlantic City, New Jersey 08401; and the New Jersey Department of Environmental Protection, Division of Water Resources, Bureau of Planning and Standards, 25 Arctic Parkway, CN-029, Trenton, New Jersey 08625. These documents are 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 Mr. James M. Rutala, the Director of County Planning at the County Office Building address cited above; and Mr. George Horzepa, Bureau of Planning and Standards, at the NJDEP address cited above. All comments must be submitted within thirty days following the public notice publication date. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered. The Board shall issue a recommendation on the WQM Plan Amendment to the County Executive and the Chairman of the Board of Chosen Freeholders. In addition, adoption of the amendment shall be by ordinance by the Atlantic County Board of Chosen Freeholders. The NJDEP must review the amendment prior to final adoption into the State Water Quality Management Plan.

**(b)****Amendment to the Cape May County Water Quality Management Plan****Public Notice**

The New Jersey Department of Human Services, through the Division of Building and Construction, has requested an amendment to the Cape May County Water Quality Management (WQM) Plan. The amendment provides for the construction and operation of a spray irrigation system to dispose of treated wastewater generated by the Woodbine Development Center. The proposed spray irrigation system consists of storage lagoons, a pumping station and spray irrigation fields located in the Borough of Woodbine. The new spray irrigation system will be owned and operated by the Department of Human Services.

**This notice** is being given to inform the public that a plan amendment has been developed for the Cape May County 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 Water Resources Management Planning, 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 Mr. George Horzepa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within thirty 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 thirty 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.

**DIVISION OF ENVIRONMENTAL QUALITY****(c)****Noise Control Council****Aircraft Noise****Public Notice**

**Take notice** that pursuant to the "Noise Control Act of 1971", N.J.S.A. 13:1G-1 et seq., the Noise Control Council will hold a public hearing as follows:

Wednesday, October 8, 1986  
9:00 a.m. to 12:00 noon  
1:00 p.m. to 5:00 p.m.  
State of New Jersey  
Museum Auditorium  
205 West State Street  
Trenton, NJ

Speakers are invited to present testimony relevant to the hearing subject, "Aircraft Noise—What Can Be Done About It In New Jersey?" From 9:00 a.m. until noon there will be an informational session. The afternoon session, from 1:00 p.m. to 5:00 p.m., will be devoted to public comment.

Invited speakers include representatives from the New Jersey Congressional Delegation, the Port Authority of New York and New Jersey, the Aviation Development Council, the Federal Aviation Administration, the NJ Department of the Public Advocate, the NJ Office of the Attorney General, the US Environmental Protection Agency, the US Department of Transportation, the NJ Department of Transportation, and the NJ Department of Environmental Protection.

It is the responsibility of the New Jersey Noise Control Council to advise the Commissioner of the Department of Environmental Protection about issues relating to noise control. Written and oral comments received will assist the Council in the formulation of recommendations to the Commissioner.

## LAW AND PUBLIC SAFETY

### (a)

#### BOARD OF DENTISTRY

#### Petition for Rulemaking Dental Hygienist Rules

**N.J.A.C. 13:30-2.10, 2.14, 2.18, 2.9, 6.2, 6.9**

Petitioners: New Jersey Dental Hygienists Association  
Authority: N.J.S.A. 52:14B-4(f).

**Take notice** that on July 2, 1986 petitioners filed a petition with the Board of Dentistry requesting amendments to N.J.A.C. 13:30-2.10, 2.14, 2.18, 2.9, 6.2, 6.9, concerning dental hygienists and dental assistants.

The petition requests modification of existing regulations in the following areas: (A) Eliminate the requirement in N.J.A.C. 13:30-2.10(a) that dental hygienists perform under the direct supervision of a licensed dentist in a dentist's office. Petitioners state that modifying the regulation to read "under the supervision of a licensed dentist" will eliminate a double standard between institutional settings and private practice settings and increase consumer access to care; (B) Eliminate the distinction between traditional and expanded functions by placing the functions currently listed under N.J.A.C. 13:30-2.10(c) under revised section 2.10(a). Petitioners state that all functions taught to dental hygiene students must be taught to clinical competence; (C) Add local infiltration anesthesia to the duties of a licensed dental hygienist under N.J.A.C. 13:30-2.10(a); (D) Add a new section N.J.A.C. 13:30-2.9(i) to create an inactive status for dental hygienists; (E) Amend N.J.A.C. 13:30-6.2(a) to allow a director or dean of a school of oral hygiene to be either a licensed dental hygienist or a licensed dentist; (F) Eliminate N.J.A.C. 13:30-6.9(a) to permit entrance of a candidate to a school of oral hygiene regardless of sex. Petitioners state that the current regulation is discriminatory.

After due notice, this petition will be considered by the Board of Dentistry in accordance with the provisions of N.J.S.A. 52:14B-4(f).

The Board's response to this petition appeared in the August 18, 1986, New Jersey Register at 18 N.J.R. 1715(c). Pursuant to that notice, the Board solicits comments or other pertinent information on the petitioner's proposed amendments and the general issue prompting the petition for rulemaking. **Interested persons** may submit written comments on the petition for rulemaking until October 15, 1986. Address comments to:

William Gutman, Executive Secretary  
N.J. State Board of Dentistry  
1100 Raymond Boulevard  
Room 321  
Newark, New Jersey 07102

## TREASURY-GENERAL

### (a)

#### Architect-Engineer Selection

#### Notice of Assignments—Month of July

Solicitations of design services for major projects are made by notices published in construction trade publications and newspapers and by direct notification of professional associations/societies and listed, pre-qualified New Jersey consulting firms. For information on DBC's pre-qualification and assignment procedures, call (609) 984-6979.

Last list dated July 8, 1986.

The following assignments have been made:

DBC#	PROJECT	A/E	CCE
C312	Feasibility Study Adult Diagnostic Treatment Center Avenel, NJ	BBM Architects	\$ 39,900 Services
H874	Sewage Treatment Plant Phase I, Temporary Abatement School of Conservation Montclair State College Upper Montclair, NJ	Langan Engineering Associates, Inc.	\$ 5,000 Services

A285	Preliminary Services Plaza Sculpture-Green Acres Office Building Dept. of Environmental Protection Trenton, NJ	Athena Tacha (Artist)	\$ 7,500 Services
P330	Wall Mural Visitors Center Allaire State Park Wall Township, NJ	Keith Jones (Artist)	\$ 16,500 Services
T165	Ceramic Tile Artwork DOT Freehold Headquarters Complex Office Building Freehold, NJ	Nina Yankowitz (Artist)	\$ 39,970 Services
M512	Slate and Steel Sculpture NJ Veterans Memorial Cemetery Armytown, NJ	John Van Alstine (Artist)	\$ 10,200 Services
P505	Pedestrian Bridges Millstone Aqueduct Bogans Meadow & Caldwell Park Delaware & Raritan Canal State Park	Maitra Associates, Inc.	\$ 150,000
H801	Design Criteria Development & Review Commission on Science & Technology Dept. of Higher Education	John M. Kenney, Architect	\$ 50,000 Services
A491	Taxation Building Renovations Dept. of the Treasury Trenton, NJ	The Hillier Group	\$ 35,000 Services
F022	Facility Consultant Trenton State College Dept. of Higher Education	Barnickel Engineering	\$ 50,000 Services
F023	Facility Consultant Trenton State College Dept. of Higher Education	Armstrong, Jordan Pease	\$ 50,000 Services
D011	Facility Consultant Dept. of Corrections	Costanza-Spector Associates	\$ 25,000 Services
D012	Facility Consultant Dept. of Corrections	John M. Di Giacinto & Associates	\$ 25,000 Services
D013	Facility Consultant Dept. of Corrections	Maitra Associates	\$ 10,000 Services
D014	Facility Consultants Dept. of Corrections	Trenton Engineering Company	\$ 10,000 Services
D015	Facility Consultant Dept. of Corrections	Vaughn Organization	\$ 25,000 Services
D016	Facility Consultant Dept. of Corrections	Frank R. Holtaway & Son	\$ 10,000 Services
D017	Facility Consultant Dept. of Corrections	BBM Architects	\$ 25,000 Services
D018	Facility Consultant Dept. of Corrections	M. Benton & Assoc.	\$ 20,000 Services
D019	Facility Consultant Dept. of Corrections	Borda Engineers & Energy Consultants	\$ 10,000 Services
D020	Facility Consultant Dept. of Corrections	Barnickel Engineering	\$ 20,000 Services
D021	Facility Consultant Dept. of Corrections	Pedro E. Campos, AIA	\$ 25,000 Services
F027	Facility Consultant Glassboro State College Dept. of Higher Education	Harry A. Di Fazio, RA, PA	\$ 50,000 Services
F028	Facility Consultant Glassboro State College Dept. of Higher Education	Borda Engineers & Energy Consultants	\$ 25,000 Services
F029	Facility Consultant Glassboro State College Dept. of Higher Education	Lammey & Giorgio	\$ 50,000 Services
F030	Facility Consultant Glassboro State College Dept. of Higher Education	Roy Larry Schlein & Associates	\$ 25,000 Services
F025	Facility Consultant Montclair State College Upper Montclair, NJ	London, Kantor, Umland & Associates	\$ 40,000 Services
F026	Facility Consultant Montclair State College Dept. of Higher Education	Dennis A. Mylan, AIA	\$ 10,000 Services
F024	Facility Consultant William Paterson College of NJ Dept. of Higher Education	Jansen & Rogan, Engineers	\$ 25,000 Services
F031	Facility Consultant Stockton State College Dept. of Higher Education	A & A Engineering Associates, Inc.	\$ 50,000 Services

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F032	Facility Consultant Stockton State College Dept. of Higher Education	Bernard De Annuntis & Associates	\$ 50,000 Services
F033	Facility Consultant Stockton State College Dept. of Higher Education	Pennoni Assoc. Inc.	\$ 30,000 Services
F034	Facility Consultant Stockton State College Dept. of Higher Education	Martin F. Blumberg, PA	\$ 19,950 Services
P494	Union Lake Dam Reconstruction Millville, NJ	PRC Engineering	\$8,500,000
COMPETITIVE PROPOSALS			
	PRC Engineering	4.65%	
	Ebasco Services, Inc.	5.869%	
	Stone & Webster Engineering Corp.	7.32%	

M905	Reassigned Project	London, Kantor Umland & Associates	\$ 300,000
	Power House Improvements Glen Gardner Center for Geriatrics Glen Gardner, NJ		
COMPETITIVE PROPOSALS			
	London, Kantor, Umland & Assoc.	8.90%	
	M. Benton & Associates	8.34%	

M680	Chilled Water System & Roof Replacement Johnstone Training Center Bordertown, NJ	Joseph N. Wirth & Associates	\$ 230,000
COMPETITIVE PROPOSALS			
	Joseph N. Wirth & Associates	11.25%	
	Richard M. Horowitz, AIA	12.44%	
	Matthew L. Rue, AIA	12.92%	
	Dinklage & Sebring Associates	Proposal Not Received	

M902	Replacement of Radiator Control Valves Ancora Psychiatric Hospital Ancora, NJ	Roy Larry Schlein	\$ 250,000
COMPETITIVE PROPOSALS			
	Roy Larry Schlein & Associates	4.84%	
	A & A Engineering Associates, Inc.	6.00%	
	Stone & Webster Engineering Corp.	10.00%	

E162	Roof Replacement Bleshman Regional Day School Paramus, NJ	Zywotow & Eckert, AIA	\$ 425,000
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COMPETITIVE PROPOSALS			
	Zywotow & Eckert, AIA	9.48%	
	Goldberg Associates, PA	12.00%	
	James Goldstein & Partners	23.959%	
M673	Replacement of Wastewater Treatment Plant Woodbine Development Center Woodbine, NJ	Metcalf & Eddy, Inc.	\$1,675,000
COMPETITIVE PROPOSALS			
	Metcalf & Eddy, Inc.	5.68%	
	Pennoni Associates	9.90%	
	Kupper Associates	10.69%	

## TREASURY-TAXATION

### DIVISION OF TAXATION

(a)

#### Diplomat/Consular Sales Tax Exemption Cards Notice of Change in Tax Exemption Status: Brazil Public Notice

The Division of Taxation hereby gives notice to all New Jersey vendors that it has been advised by the United States Department of State, Office of Foreign Missions that, as a result of policy determinations based on reciprocity, the blue-striped sales tax exemption cards now held by the personnel of the Embassy and Consulates of Brazil that entitle the bearer to exemption from sales taxes on all purchases will be replaced effective August 1, 1986. After this date, no vendor should accept the now invalid blue-striped full exemption cards.

These personnel will be issued new red-striped sales tax exemption cards that entitle the bearer to exemption from sales taxes on purchases over the amount of \$200.00.

NOTE: This exchange does not apply to mission cards used for official purchases, to the personnel of the mission of Brazil to the United Nations (cards with country name Brazil-UN), nor to the personnel of the mission of Brazil to the Organization of American States (Brazil-OAS).

Questions pertaining to the eligibility of individual diplomatic or consular personnel to sales tax exemption should be directed to the Office of Foreign Missions, United States Department of State, Washington, DC 20520, Telephone (202) 673-3842 or (202) 673-3846.

## EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by **Title** and **Chapter**. If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the **Title** Table of Contents for each executive department or agency and on the **Subtitle** page for each group of chapters in a Title. Please disregard all expiration dates appearing elsewhere in a Title volume.

This listing is revised monthly and appears in the first issue of each month.

<b>OFFICE OF ADMINISTRATIVE LAW—TITLE 1</b>		<b>N.J.A.C.</b>	<b>Expiration Date</b>
<b>N.J.A.C.</b>	<b>Expiration Date</b>		
1:1	5/15/90	3:11	3/19/89
1:2	5/15/90	(Except for 3:11-2 which expired 6/3/85)	
1:6	8/18/91	3:17	6/18/91
1:6A	1/1/88	3:19	3/17/91
1:7	8/9/90	3:21	11/2/86
1:10	3/4/90	(Except for 3:21-1 which expired 2/2/84)	
1:10A	9/16/90	3:22	5/21/89
1:11	3/4/90	3:23	5/3/87
1:20	8/1/88	3:24	8/20/89
1:21	7/15/90	3:26	12/31/90
1:30	2/14/91	3:27	9/16/90
1:31	8/12/87	3:28	12/17/89
		3:30	10/17/88
		3:38	9/7/87
		3:41	10/16/90
<b>AGRICULTURE—TITLE 2</b>			
<b>N.J.A.C.</b>	<b>Expiration Date</b>		
2:1	9/3/90		
2:2	10/3/88		
(Except for 2:2-9 which expired 6/11/84)			
2:3	6/18/89		
(Except for 2:3-4 which expired 1/8/86)			
2:5	6/18/89		
2:6	9/3/90		
2:7	9/29/88		
2:9	7/7/91		
2:16	5/7/90		
2:22	1/18/87		
2:23	6/6/88		
2:24	2/11/90		
2:32	2/3/91		
2:48	11/27/90		
2:50	7/15/87		
2:52	6/7/90		
2:53	3/3/91		
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)		
2:68	8/1/88		
2:69	10/3/88		
2:70	5/7/90		
2:71	9/1/88		
2:72	9/1/88		
2:73	7/18/88		
2:74	9/1/88		
2:76	8/29/89		
2:90	6/24/90		
<b>CIVIL SERVICE—TITLE 4</b>			
<b>N.J.A.C.</b>	<b>Expiration Date</b>		
4:1	1/28/90		
4:2	1/28/90		
4:3	6/4/89		
4:4	12/7/86		
4:5	12/7/86		
4:6	5/5/91		
<b>COMMUNITY AFFAIRS—TITLE 5</b>			
<b>N.J.A.C.</b>	<b>Expiration Date</b>		
5:3	9/1/88		
5:10	12/1/88		
5:11	3/1/89		
5:12	1/1/90		
5:13	1/1/88		
5:14	12/1/90		
5:17	6/1/89		
5:18	2/1/90		
5:18A	2/1/90		
5:18B	2/1/90		
5:22	12/1/90		
5:23	4/1/88		
5:24	9/1/90		
5:25	3/1/91		
5:26	3/1/91		
5:27	6/1/90		
5:28	12/20/90		
5:29	6/18/91		
5:30	6/1/88		
5:31	12/1/89		
5:37	11/18/90		
5:38	11/7/88		
5:51	9/1/88		
5:70	8/16/87		
5:71	3/1/90		
5:80	5/20/90		
5:91	6/16/91		
5:92	6/16/91		
5:100	5/7/89		
<b>BANKING—TITLE 3</b>			
<b>N.J.A.C.</b>	<b>Expiration Date</b>		
3:1	1/6/91		
3:2	4/15/90		
3:6	3/3/91		
(Except for 3:6-8 which expired 4/9/85)			
3:7	9/16/90		

**DEPARTMENT OF DEFENSE—TITLE 5A**

N.J.A.C.	Expiration Date
5A:2	5/20/90

**EDUCATION—TITLE 6**

N.J.A.C.	Expiration Date
6:2	3/1/89
6:3	8/18/88
6:8	1/1/87
6:11	12/12/90
6:12	4/2/91
6:20	8/9/90
6:21	8/9/90
6:22	9/3/90
6:24	4/2/91
6:26	1/24/90
6:27	1/24/90
6:28	6/1/89
6:29	3/25/90
6:30	8/31/88
6:31	1/24/90
6:39	10/18/89
6:43	4/7/91
6:46	12/1/86
6:53	9/1/87
6:64	5/1/88
6:68	4/12/90
6:70	1/25/90
6:79	2/1/88

**ENVIRONMENTAL PROTECTION—TITLE 7**

N.J.A.C.	Expiration Date
7:1 (Except for 7:1-3 which expired 3/5/87)	9/16/90
7:1A	6/7/87
7:1C	6/17/90
7:1D	12/1/88
7:1E	7/15/90
7:1F	3/27/87 (Governor's Waiver)
7:1G	10/1/89
7:1H	7/24/90
7:1I	11/18/88
7:2	7/19/88
7:4	Expired 8/16/84
7:6	12/19/88
7:7	5/7/89
7:7E	7/24/90
7:7F	12/6/87
7:8	2/7/88
7:9	1/21/91
(Except for 7:9-1 which expired 4/25/85)	
7:10	9/4/89
7:11	6/6/88
7:12	6/6/88
7:13	5/4/89
7:14	4/27/89
(Except for 7:14-5 which expired 6/23/85)	
7:14A	6/4/89
7:15	4/2/89
7:17	4/7/91
7:18	8/6/91
7:19	4/15/90
7:19A	2/19/90
7:19B	2/19/90
7:20	5/6/90
7:20A	12/19/88
7:22	12/7/86

N.J.A.C.	Expiration Date
7:23	6/18/89
7:24	5/19/91
7:25	2/18/91
(Except for 7:25-1 which expired 9/17/85)	
7:25A	5/6/90
7:26	11/4/90
(Except for 7:26-5 which expired 10/7/85)	
7:27	Exempt
7:27A	Expired 10/7/85
7:27B-3	Exempt
7:28	10/7/90
7:29	3/18/90
7:29B	4/5/87
7:30	12/6/87
7:36-1	8/5/90
7:36-2	Expired 1/9/86
7:36-3	Expired 1/9/86
7:36-4	8/5/90
7:36-5	Expired 1/9/86
7:36-6	Expired 1/9/86
7:36-7	8/5/90
7:37	Exempt
7:38	9/18/90
7:45	Expired 1/11/85

**HEALTH—TITLE 8**

N.J.A.C.	Expiration Date
8:7	9/16/90
8:8	5/21/89
8:9	2/18/91
8:13	8/2/87
8:19	6/28/90
8:20	3/4/90
8:21	11/18/90
(Except for 8:21-1 which expired 5/15/85; 8:21-4 which expired 7/21/83; 8:21-6 which expired 9/18/85)	
8:21A	4/1/90
8:22	8/4/91
8:23	12/17/89
8:24	4/4/88
8:25	5/20/88
8:26	8/4/91
8:31	11/5/89
8:31A	3/18/90
8:31B	10/15/90
(Except for 8:31B-1 which expired 7/19/84)	
8:32	Expired 3/12/85
8:33	10/7/90
8:33A	4/15/90
8:33B	10/7/90
8:33C	8/20/89
8:33D	2/1/87
8:33E	2/4/90
8:33F	1/14/90
8:33G	7/20/89
8:33H	7/19/90
8:33I	11/2/86
8:33J	5/17/89
8:33K	4/16/89
8:34	11/18/88
8:39	6/20/88
8:40	4/15/90
8:42	3/18/90
8:42A	6/12/91
8:42B	8/1/88
8:43	1/21/91
8:43A	9/3/90
8:43B	1/21/91

N.J.A.C.	Expiration Date
8:43E	1/17/88
8:43F	3/18/90
8:43G	9/8/91
8:44	11/7/88
8:45	5/20/90
8:48	8/20/89
8:51	9/16/90
8:53	8/4/91
8:57	6/18/90
8:58	Expired 5/1/84
8:59	10/1/89
8:60	5/3/90
8:65	12/2/90
8:70	9/17/88
8:71	4/2/89

N.J.A.C.	Expiration Date
10:68	7/7/91
10:69A	4/26/88
10:69B	11/21/88
10:70	6/16/91
10:80	8/23/89
10:81	10/15/89
10:82	10/29/89
10:85	1/30/90
10:87	3/1/89
10:89	9/11/90
10:90	11/15/87
10:94	1/6/91
10:95	8/23/89
10:97	4/16/89
10:98	7/12/87
10:99	2/19/90
10:100	2/6/89
10:109	3/17/91
10:112	2/17/89
10:120	9/26/88
10:121	3/13/89
10:121A	8/6/87
10:122	8/6/89
10:122A	Exempt
10:122B	9/10/89
10:123	7/20/90
10:124	7/19/87
10:125	7/16/89
10:127	9/19/88
10:129	10/11/89
10:130	9/19/88
10:131	9/20/87
10:132	11/16/86
10:140	12/31/86
10:141	2/21/89

**HIGHER EDUCATION—TITLE 9**

N.J.A.C.	Expiration Date
9:1	1/17/89
9:2	6/17/90
9:3	10/17/88
9:4	11/2/86
9:5	1/21/91
9:6	5/20/90
9:7	4/13/88
9:8	11/4/90
9:9	10/3/88
9:11	1/17/89
9:12	1/17/89
9:14	5/20/90
9:15	10/25/88
9:16	Expired 7/9/85

**CORRECTIONS—TITLE 10A**

N.J.A.C.	Expiration Date
10A:4	7/21/91
10A:31	2/4/90
10A:32	3/4/90
10A:33	7/16/89
10A:70	Exempt
10A:71	4/15/90

**HUMAN SERVICES—TITLE 10**

N.J.A.C.	Expiration Date
10:1	5/6/88
10:3	9/19/88
10:4	1/3/88
10:5	12/19/88
10:6	2/21/89
10:36	8/18/91
10:37	11/4/90
10:38	5/28/91
10:40	3/15/89
10:42	8/18/91
10:43	9/1/88
10:44	10/3/88
10:44A	2/7/88
10:44B	4/15/90
10:45	9/19/88
10:47	11/4/90
10:48	1/21/91
10:49	8/12/90
10:50	3/3/91
10:51	10/28/90
10:52	2/19/90
10:53	4/29/90
10:54	3/3/91
10:55	3/11/90
10:56	9/10/86
10:57	3/3/91
10:58	3/3/91
10:59	3/3/91
10:60	8/27/90
10:61	3/3/91
10:62	3/3/91
10:63	11/29/89
10:64	3/3/91
10:65	11/5/89
10:66	12/15/88
10:67	3/3/91

**INSURANCE—TITLE 11**

N.J.A.C.	Expiration Date
11:1	2/3/91
11:1-20	7/7/88
11:1-22	7/7/88
11:2	12/2/90
11:3	1/6/91
11:4	12/2/90
11:5	11/7/88
11:10	7/15/90
11:12	11/2/86
11:13	12/6/87
11:14	7/2/89
11:15	12/3/89
11:16	2/3/91

**LABOR—TITLE 12**

N.J.A.C.	Expiration Date
12:15	8/19/90
12:16	4/1/90
12:17	1/6/91
12:20	11/5/89
12:35	8/5/90
12:45	5/2/88

N.J.A.C.	Expiration Date
12:46	5/2/88
12:47	5/2/88
12:48	5/2/88
12:49	5/2/88
12:51	6/30/91
12:56	9/26/90
12:57	9/26/90
12:58	9/26/90
12:90	12/17/89
12:100	11/5/89
12:105	1/21/91
12:120	5/3/90
12:175	12/9/88
12:190	9/5/87
12:195	9/6/88
12:200	8/5/90
12:235	5/5/91

**COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A**

N.J.A.C.	Expiration Date
12A:100-1	9/8/91

**LAW AND PUBLIC SAFETY—TITLE 13**

N.J.A.C.	Expiration Date
13:1	7/19/88
13:1C	Expired 12/1/83
13:2	8/5/90
13:3	8/1/88
13:4	1/21/91
13:10	5/27/89
13:13	6/17/90
13:18	4/1/90
13:19	8/23/89
13:20	12/18/90
13:21	12/16/90
13:22	1/7/90
13:23	6/4/89
13:24	11/5/89
13:25	3/18/90
13:26	10/17/88
13:27	4/1/90
13:27A	11/1/87
13:28	9/3/90
13:29	6/3/90
13:30	4/15/90
13:31	12/21/86
13:32	11/1/87
13:33	3/18/90
13:34	11/21/88
13:35	11/19/89
13:36	11/19/89
13:37	2/11/90
13:38	10/7/90
13:39	1/6/91
13:39A	7/7/91
13:40	9/3/90
13:41	9/3/90
13:42	11/3/88
13:43	9/8/88
13:44	8/20/89
13:44A	Expired 5/17/84
13:44B	5/3/87
13:44C	6/2/91
13:45A	12/16/90
13:46	6/3/90
13:47A	8/16/87
(Except for 13:47A-25 which expired 8/14/83)	
13:47B	1/4/89
13:47C	8/20/89

N.J.A.C.	Expiration Date
13:48	1/21/91
13:49	12/19/88
13:51	6/21/87
13:58	9/7/89
13:59	9/16/90
13:70	2/25/90
13:71	2/25/90
13:75	8/20/89
13:76	9/6/88

**PUBLIC UTILITIES—TITLE 14**

N.J.A.C.	Expiration Date
14:1	12/16/90
14:3	5/6/90
14:5	12/16/90
14:6	3/3/91
14:9	4/15/90
14:11	2/1/87
14:10	9/8/91
14:17	5/7/89
14:18	7/29/90

**ENERGY—TITLE 14A**

N.J.A.C.	Expiration Date
14A:2	4/17/89
14A:3	10/7/90
(Except for 14A:3-10 which expired 9/1/85)	
14A:4	10/19/88
14A:5	10/19/88
14A:6	8/6/89
14A:7	9/16/90
14A:8	9/20/89
14A:9	Expired 4/27/84
14A:11	9/20/89
14A:12	2/7/88
14A:13	11/2/86
14A:14	2/6/89
14A:20	2/3/91
14A:21	11/21/90
14A:22	6/4/89

**STATE—TITLE 15**

N.J.A.C.	Expiration Date
15:2	3/7/88
15:3	7/7/91
15:10	2/18/91

**TRANSPORTATION—TITLE 16**

N.J.A.C.	Expiration Date
16:1	8/5/90
16:2	10/3/88
16:6	9/3/90
16:13	5/7/89
16:16	11/7/88
16:17	11/7/88
16:20A	12/17/89
16:20B	12/17/89
16:21	9/3/90
16:21A	8/20/89
16:22	2/3/91
16:25-12	Expired 2/5/84
16:25-13	Expired 2/5/84
16:26	8/6/89
16:27	9/8/91
16:28	11/7/88
16:28A	11/7/88
16:29	11/7/88

N.J.A.C.	Expiration Date
16:30	11/7/88
16:31	11/7/88
16:31A	10/20/88
16:32	4/15/90
16:33	9/3/90
16:41	11/15/87
16:41A	2/19/90
16:41B	3/4/90
16:43	9/3/90
16:44	10/3/88
16:49	3/18/90
16:53	3/19/89
16:53A	4/15/90
16:53B	Expired 8/21/84
16:53C	9/19/88
16:53D	5/7/89
16:54	4/7/91
16:55	11/7/88
16:56	6/4/89
16:60	11/7/88
16:61	11/7/88
16:62	4/15/90
16:72	3/31/91
16:73	2/16/87
16:75	6/6/88
16:76	12/19/88
16:77	1/21/90
16:78	10/7/90

**TREASURY-TAXATION—TITLE 18**

N.J.A.C.	Expiration Date
18:3	4/23/89
18:5	4/16/89
18:6	4/2/89
18:7	4/2/89
18:8	4/2/89
18:9	8/12/88
18:12	8/12/88
18:12A	8/12/88
18:14	8/12/88
18:15	8/12/88
18:16	8/12/88
18:17	8/12/88
18:18	4/2/89
18:19	4/6/89
18:22	4/2/89
18:23	4/2/89
18:23A	8/5/90
18:24	8/12/88
18:25	1/6/91
18:26	8/12/88
18:30	4/2/89
18:35	8/12/88
18:36	2/4/90
18:37	8/5/90

**TREASURY-GENERAL—TITLE 17**

N.J.A.C.	Expiration Date
17:1	6/6/88
17:2	12/17/89
17:3	6/6/88
17:4	7/1/90
17:5	12/2/90
17:6	2/19/89
17:7	6/6/88
17:8	6/27/90
17:9	6/6/88
17:10	6/6/88
17:12	8/15/89
17:16	12/2/90
17:19	3/18/90
(Except for 17:19-10 which expired 3/3/85)	
17:19A	Expired 2/1/84
17:20	11/7/88
17:25	6/18/89
17:27	11/7/88
17:28	9/13/90
17:29	10/18/90

**OTHER AGENCIES—TITLE 19**

N.J.A.C.	Expiration Date
19:3	6/19/88
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	11/7/88
19:4A	5/2/88
19:8	6/1/88
19:9	7/13/88
19:12	8/7/91
19:16	8/7/91
19:17	7/15/88
19:25	1/9/91
19:30	10/7/90
19:40	9/26/89
19:41	5/17/88
19:42	5/17/88
19:43	4/27/89
19:44	10/13/88
19:45	4/7/88
19:46	5/4/88
19:47	5/4/88
19:48	10/13/88
19:49	3/29/88
19:50	5/23/88
19:51	8/14/91
19:52	10/8/86
19:53	5/4/88
19:54	4/15/88
19:61	7/7/91
19:65	7/7/91
19:75	1/17/89

# 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 July 7, 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.

**MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: JUNE 16, 1986.**

**NEXT UPDATE WILL BE DATED JULY 21, 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. 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	18 N.J.R. 1505 and 1640	August 4, 1986
18 N.J.R. 235 and 376	February 3, 1986	18 N.J.R. 1641 and 1726	August 18, 1986
18 N.J.R. 377 and 446	February 18, 1986	18 N.J.R. 1727 and 1862	September 8, 1986

**N.J.A.C.  
CITATION**

**ADMINISTRATIVE LAW—TITLE 1**

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
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)	R.1986 d.340 18 N.J.R. 1699(a)
1:1-15.10	Prior transcribed testimony	18 N.J.R. 1020(a)	
1:5	Council on Affordable Housing hearings	18 N.J.R. 1506(a)	
1:6	Education budget hearings	18 N.J.R. 1020(b)	R.1986 d.342 18 N.J.R. 1699(b)
1:10B	Medicaid and Medically Needy hearings	18 N.J.R. 1507(a)	

(TRANSMITTAL 22, dated June 16, 1986)

**AGRICULTURE—TITLE 2**

2:7-1.2, 1.3, 1.4	Pullorum and fowl typhoid control	18 N.J.R. 1508(a)	
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)
2:76-6.2, 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 41, dated June 16, 1986)

**BANKING—TITLE 3**

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)	
3:13-1	Registration of bank holding companies	18 N.J.R. 1434(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)	
3:41	Cemeteries: disinterment and reinterment of human remains	18 N.J.R. 1642(a)	

(TRANSMITTAL 33, dated April 21, 1986)

**CIVIL SERVICE—TITLE 4**

4:1-2.1, 5.2, 11.2, 16, 24	Separations, demotions, layoffs; review and appeals	18 N.J.R. 450(a)	
4:1-8.4	Promotional examinations	18 N.J.R. 591(a)	
4:1-12.18	Disposition of certification by appointing authority	18 N.J.R. 1642(b)	
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)	
4:3-16	Separations and demotions	18 N.J.R. 450(a)	

(TRANSMITTAL 31, dated June 16, 1986)

**COMMUNITY AFFAIRS—TITLE 5**

5:11-2.1	Uniform Fire Code enforcement and relocation assistance	17 N.J.R. 2938(a)	
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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
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)
5:18-2.5, 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)		
5:23-3.2	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)		
5:23-3.11	Uniform Construction Code: correction to Administrative Code	_____	_____	18 N.J.R. 1621(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)	R.1986 d.315	18 N.J.R. 1524(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)
5:91-1.2, 1.3, 2.1, 3.1, 5.1, 7.1, 13.3, 13.4	Council on Affordable Housing: procedural rules	18 N.J.R. 1643(a)		
5:92	Council on Affordable Housing: substantive rules	18 N.J.R. 1124(b)	R.1986 d.333	18 N.J.R. 1527(a)

(TRANSMITTAL 42, dated June 16, 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)	R.1986 d.360	18 N.J.R. 1797(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)
6:29-4.4	Children with HIV infection and school attendance	18 N.J.R. 1509(a)		
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)	R.1986 d.310	18 N.J.R. 1561(a)
6:46-1	Area vocational technical schools	18 N.J.R. 1511(a)		
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 41, dated June 16, 1986)

## ENVIRONMENTAL PROTECTION—TITLE 7

7:1-6	Disposal of solid waste	18 N.J.R. 883(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	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)
7:6-1.42	Boating rules: diving and swimming	Emergency	R.1986 d.345	18 N.J.R. 1712(a)
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)	R.1986 d.349	18 N.J.R. 1700(a)
7:11-3	Use of water from Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir Complex	18 N.J.R. 1330(a)		
7:13-7.1	Floodway delineations along East Branch of Stony Brook, South Branch of Rockaway Creek, and Whale Pond Brook	18 N.J.R. 1239(a)		
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)	R.1986 d.346	18 N.J.R. 1700(b)
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)	R.1986 d.351	18 N.J.R. 1797(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
7:19-3	Water allocation permit fees	18 N.J.R. 789(a)	R.1986 d.263	18 N.J.R. 1376(a)
7:19-4.14	Water quality criteria for Mainstem Delaware River Zones	18 N.J.R. 1435(a)		
7:22	Wastewater treatment facilities: construction grants and loans	18 N.J.R. 243(a)		
7:25-2.20	Higbee Beach Wildlife Management Area	18 N.J.R. 1511(b)		
7:25-6	1987-88 Fish Code	18 N.J.R. 1644(a)		
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)	R.1986 d.347	18 N.J.R. 1701(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)	R.1986 d.371	18 N.J.R. 1798(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)	R.1986 d.377	18 N.J.R. 1800(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)		
7:45-1, 2, 3	Delineation of Review Zone within Delaware and Raritan Canal State Park: reopening of comment period	18 N.J.R. 457(a)		

## (TRANSMITTAL 43, dated June 16, 1986)

**HEALTH—TITLE 8**

8:21-5	Foods, drugs, cosmetics, devices: order to remove from sale and recall	18 N.J.R. 1361(b)		
8:21-5	Order to remove from sale and recall of foods, drugs, cosmetics, and devices: extension of proposal comment period	18 N.J.R. 1715(b)		
8:22-1	Campgrounds sanitation	18 N.J.R. 1038(a)	R.1986 d.329	18 N.J.R. 1576(a)
8:26	Recreational bathing	18 N.J.R. 1040(a)	R.1986 d.328	18 N.J.R. 1576(b)
8:31-25.1	Mobile intensive care: administration of medications	18 N.J.R. 602(a)		
8:31-30.1	Health facilities construction: plan review fees	18 N.J.R. 795(a)		
8:31B-3.19	RIM methodology for nursing cost allocation: implementation date	17 N.J.R. 2464(a)		
8:31B-3.31	Hospital reimbursement: transfer of residency positions	18 N.J.R. 795(b)	R.1986 d.260	18 N.J.R. 1379(c)
8:31B-3.76-3.82	Hospital reimbursement: URO performance evaluation; post-billing denial of payments	18 N.J.R. 150(b)		
8:33-1.5	Home health care services: batching cycle change			18 N.J.R. 1414(a)
8:33B-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)
8:33F-1.2	Continuous ambulatory peritoneal dialysis	18 N.J.R. 1241(a)	R.1986 d.372	18 N.J.R. 1816(a)
8:33I	Megavoltage radiation oncology services	18 N.J.R. 1436(a)		
8:34-1.31	Licensing of nursing home administrators	17 N.J.R. 2212(a)		
8:39-3.11	Availability of information at long-term care facilities	18 N.J.R. 1241(b)		
8:41-8	Mobile intensive care: administration of medications	18 N.J.R. 602(a)		
8:42A	Alcoholism treatment facilities	18 N.J.R. 796(a)	R.1986 d.257	18 N.J.R. 1380(a)
8:43E-1	Hospital Policy Manual	18 N.J.R. 825(a)		
8:43G	Hospital capital policy	18 N.J.R. 1242(a)	R.1986 d.375	18 N.J.R. 1817(a)
8:44-2.11	Reportable occupational and environmental diseases and poisons	17 N.J.R. 1831(a)	R.1985 d.518	17 N.J.R. 2554(b)
8:51-1—6	Standards for local boards of health	18 N.J.R. 1690(a)		
8:52	Standards for local boards of health	18 N.J.R. 1690(a)		
8:53	Implementation of Local Health Services Act	17 N.J.R. 2836(a)	R.1986 d.332	18 N.J.R. 1591(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
8:57-1.14	Reporting of AIDS and AID Related Complex	18 N.J.R. 1245(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)	R.1986 d.373	18 N.J.R. 1821(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)		
8:61-1.1	Children and adults with HIV infection and school attendance	18 N.J.R. 1512(a)		
8:65-10.1	Controlled dangerous substances: Parafluorofentanyl	18 N.J.R. 603(a)	R.1986 d.326	18 N.J.R. 1591(b)
8:65-10.2	Removal of Nalmeferne from Schedule II of controlled substances	18 N.J.R. 536(a)	R.1986 d.327	18 N.J.R. 1592(a)
8:65-10.4	Controlled substances: Quazepam and Midazolam	18 N.J.R. 1166(b)	R.1986 d.374	18 N.J.R. 1827(a)
8:65-11	Narcotic treatment programs	18 N.J.R. 924(b)	R.1986 d.330	18 N.J.R. 1592(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 40, dated June 16, 1986)

**HIGHER EDUCATION—TITLE 9**

9:2-5	Management of computerized information	18 N.J.R. 799(a)		
9:4	Policies and procedures for community colleges	18 N.J.R. 1439(a)		
9:7-2.2	Residency and student assistance	18 N.J.R. 801(a)	R.1986 d.322	18 N.J.R. 1592(c)
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)	R.1986 d.323	18 N.J.R. 1593(a)
9:7-3.1	Tuition Aid Grant Program: 1986-87 Award Table	Emergency	R.1986 d.348	18 N.J.R. 1713(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)	R.1986 d.344	18 N.J.R. 1704(a)
9:11-1.7	EOF: grant amounts	18 N.J.R. 926(b)	R.1986 d.343	18 N.J.R. 1704(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)	R.1986 d.331	18 N.J.R. 1704(c)
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)	R.1986 d.341	18 N.J.R. 1707(a)
10:45-1.3	Guardianship services: correction to Administrative Code	_____	_____	18 N.J.R. 1493(e)
10:51-1.14, 5.16	Pharmaceutical services: ineligible prescription drugs	17 N.J.R. 2730(a)		
10:51-2.2, 2.3, 2.6	Pharmaceutical Services Manual: pharmacy claims	18 N.J.R. 1674(a)		
10:52-1.5, 1.17	Out-of-state inpatient hospital services	18 N.J.R. 538(a)		
10:54-4	Physician's Services: common procedure coding (HCPCS)	18 N.J.R. 927(a)	R.1986 d.320	18 N.J.R. 1593(b)
10:56	Dental Services manual	18 N.J.R. 1337(a)		
10:61-1, 2	Independent laboratory services	18 N.J.R. 540(a)		
10:62-1, 2, 3	Vision Care Manual	18 N.J.R. 1246(a)		
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)		
10:66-2, 3	Independent clinic services	18 N.J.R. 541(a)		
10:66-3	Independent Clinic Services: common procedure coding (HCPCS)	18 N.J.R. 927(a)	R.1986 d.320	18 N.J.R. 1593(b)
10:66-3	Independent clinic transportation services: HCPCS codes	18 N.J.R. 1053(a)	R.1986 d.369	18 N.J.R. 1827(b)
10:66-3	Independent clinic transportation services: HCPCS codes	18 N.J.R. 1252(a)		
10:68	Chiropractic services and billing procedures	18 N.J.R. 1053(b)	R.1986 d.309	18 N.J.R. 1594(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)	R.1986 d.321	18 N.J.R. 1594(b)
10:81-3.17, 3.18, 5.9, 5.10	PAM: AFDC eligibility, WIN status, LLR reevaluation	18 N.J.R. 1513(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
10:81-3.34	PAM: temporary absence of child from home	18 N.J.R. 1675(a)		
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)	R.1986 d.317	18 N.J.R. 1594(c)
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)	R.1986 d.318	18 N.J.R. 1595(a)
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)	R.1986 d.319	18 N.J.R. 1595(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)	R.1986 d.316	18 N.J.R. 1595(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)	Expired	
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)
10:89-2.2, 2.3, 3.4	Home Energy Assistance	18 N.J.R. 1676(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)	R.1986 d.307	18 N.J.R. 1596(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)	R.1986 d.324	18 N.J.R. 1609(a)

## (TRANSMITTAL 41, dated June 16, 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:4-4.1	Inmate prohibited acts: correction			18 N.J.R. 1709(a)
10A:5	Close custody units	18 N.J.R. 1067(a)		
10A:9	Classification of inmates	18 N.J.R. 1649(a)		
10A:16	Medical and health services	18 N.J.R. 1662(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)	R.1986 d.306	18 N.J.R. 1610(a)

## (TRANSMITTAL 11, dated May 19, 1986)

## INSURANCE—TITLE 11

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)
11:1-20.1, 20.2, 20.3, 22.1	Cancellation and nonrenewal of commercial policies	18 N.J.R. 1445(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)		
11:4-16.6	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)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
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)		
11:5-1.15	Advertising by real estate licensees	18 N.J.R. 1679(a)		
11:5-1.16, 1.23	Obligations of real estate licensees	18 N.J.R. 1677(a)		
11:5-1.23	Obligations of real estate licensees	18 N.J.R. 1680(a)		
11:5-1.25	Sales of interstate properties	18 N.J.R. 1678(a)		
11:5-1.28	Certification as approved real estate education instructor	18 N.J.R. 1681(a)		
11:17-1	Surplus lines insurance guaranty fund surcharge	18 N.J.R. 1173(a)		

## (TRANSMITTAL 39, dated June 16, 1986)

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