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THE JOURNAL OF STATE AGENCY RULEMAKING

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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: DECEMBER 18, 1989
See the Register Index for Subsequent Rulemaking Activity.
NEXT UPDATE: SUPPLEMENT JANUARY 16, 1990

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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. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

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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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EXECUTIVE ORDER

(a)

OFFICE OF THE GOVERNOR
Governor JAMES J. FLORIO
Executive Order Number 4(1990)
Management of State Cars

Issued: January 31, 1990

Effective: January 31, 1990

Expiration: Indefinite

WHEREAS, State government is entrusted with the responsibility to provide services to the public in a manner that carefully conserves taxpayer dollars; and

WHEREAS, the cost of acquiring and maintaining the State's fleet of cars constitutes a significant public expense; and

WHEREAS, the assignment and use of State cars must be scrutinized to ensure that the size of the State's car fleet is tailored to meet the legitimate needs of State workers on public business in the most cost-efficient manner; and

WHEREAS, the misuse of State cars shall not be tolerated and must result in the imposition of timely disciplinary sanctions on those who have been determined to misuse these cars;

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The Department of Treasury shall assume title, management, control and supervision over all State cars, whether owned or leased by the State.

2. The State Treasurer shall issue such guidelines and promulgate such rules or regulations as may be necessary to assure the proper assignment and use of State-owned and leased cars.

3. The Commissioner of Personnel shall issue such guidelines and promulgate such rules and regulations as may be necessary for the discipline of State employees who misuse State cars or fail to comply with any guideline, rule or regulation promulgated by the State Treasurer pursuant to paragraph 2 of this Order.

4. This Order shall take effect immediately and shall supersede any prior Executive Order to the extent inconsistent with this Order.

RULE PROPOSALS

BANKING (a)

THE COMMISSIONER

Notice of Pre-Proposed Rulemaking and Joint Public Hearings

Compensation to Mortgage Bankers, Mortgage Brokers and Real Estate Licensees for Placing Mortgage Loans

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

Authority: N.J.S.A. 17:11B-1, 2, 4, 13 and 14; *Mortgage Bankers Ass'n v. New Jersey Real Estate Commission, et al.*, 102 N.J. 176 (1986) (remanded).

OAL Docket Number: BRE 228-87.

Pre-Proposal Number: PPR 1990-4.

Take notice that, pursuant to the remand order of the New Jersey Supreme Court in *Mortgage Bankers Ass'n v. New Jersey Real Estate Commission, et al.*, 102 N.J. 176 (1986), the Office of Administrative Law will conduct joint public hearings for the Department of Insurance, Division of the Real Estate Commission, and the Department of Banking wherein the administrative law judge will receive and consider oral and written comment and draft proposed rules from the public, the Public Advocate, the real estate industry, the banking industry, the Department of Banking and the Real Estate Commission, and will recommend appropriate regulation of the mortgage financing activities of real estate licensees and of lenders and mortgage banking and broker licensees under the Real Estate Licensing Law, N.J.S.A. 45:15-1 et seq. and the Mortgage Bankers and Brokers Act, N.J.S.A. 17:11B-1 et seq., to protect real estate consumers and further the public interest. A public hearing on this pre-proposed rulemaking was conducted by the Office of Administrative Law on February 21, 1990 at its Newark offices.

The second and final **public hearing** concerning this pre-proposed rulemaking will be held at the following time and location:

Wednesday, March 14, 1990 at 10:00 A.M.

Office of Administrative Law
Quakerbridge Plaza
Building 9

Trenton (Hamilton Township), New Jersey

(Overflow Date: Thursday, March 15, 1990, only if needed)

Interested persons wishing to make oral comments at the public hearing should appear and register to speak on March 14, 1990 in Trenton. An overflow hearing has been scheduled on the immediately following day (March 15, 1990) to accommodate any persons who appear and register to speak, but who are not reached on the primary hearing date. **No hearing will be conducted on the overflow day if all registered persons have been reached on the primary day.**

Written comments or draft proposed rules should be submitted by March 30, 1990 to:

The Honorable Arnold Samuels, ALJ
Office of Administrative Law
185 Washington Street
Newark, New Jersey 07102

All written materials submitted should contain the following OAL Docket Number: OAL Dkt. No. BRE 228-87.

Background

The need for such regulation has arisen in the context of a variety of recent innovations in the delivery of residential home mortgage financing products and services to the home-buying public. In particular, over the past several years, a number of real estate licensees have proposed or formed financial and contractual relationships with mortgage lenders whereby a real estate buyer may obtain mortgage financing through the affiliated lender, and the real estate broker or, in some cases, salesperson may receive various fees for each loan placed or dividends or other returns on investment from the affiliated lender. Other real estate licensees are participating with mortgage lenders in programs for computerized mortgage loan selection and origination, in real estate brokerage offices. Pursuant to a remand by the New Jersey Supreme Court in *Mortgage*

Bankers Ass'n v. New Jersey Real Estate Commission, et al., 102 N.J. 176 (1986), public hearings are now scheduled to solicit public comments on appropriate regulation of the mortgage financing activities of real estate licensees and mortgage banking and broker licensees. (A plenary, declaratory ruling hearing, governing the proper interpretation of the Real Estate Licensing Law, N.J.S.A. 45:15-17i., was completed in November 1989).

Issues

The hearings will address the following specific questions related to Banking:

1. Under what circumstances should a real estate broker or salesperson be deemed to be "engaged in the business of a mortgage banker or broker" within the meaning of the Mortgage Bankers and Brokers Act? N.J.S.A. 17:11B-1 et seq.

2. Under what circumstances, if any, may a real estate salesperson employed by a real estate broker also be deemed to be a mortgage solicitor within the meaning of the Mortgage Bankers and Brokers Act?

3. (a) What dangers, if any, are posed to borrowers by the "steering" of mortgage loans by mortgage bankers, brokers or solicitors to lenders with whom they are in some way affiliated?

(b) What form do such "affiliations" typically assume in the industry?
(c) Is there some form of disclosure that would adequately protect the public from such dangers?

(d) Would a rule permitting mortgage bankers, brokers or solicitors to charge permitted fees only to borrowers, and only upon condition that disclosure be made, adequately protect the public against such dangers?

(e) Would the public be better served by such a rule than by a mere requirement for disclosure?

(f) What other or additional rules would be advisable to protect the public interest in these circumstances?

(b)

DIVISION OF SUPERVISION

Advertising

Proposed Readoption with Amendments: N.J.A.C. 3:2

Authorized By: Robert M. Jaworski, Acting Commissioner,
Department of Banking.

Authority: N.J.S.A. 17:16H-1 et seq.

Proposal Number: PRN 1990-105.

Submit comments by April 4, 1990 to:

Robert M. Jaworski, Acting Commissioner
Department of Banking
CN 040
Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 3:2, Advertising, expires on April 15, 1990. The Department of Banking has reviewed the rules as required by the Executive Order and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

These rules regulate advertisements and other solicitations of banks, savings banks, savings and loan associations, and other persons subject to supervision, regulation or licensing by the Department of Banking. Pursuant to these rules, all advertisements must comply with the requirements set forth in the Federal Truth-in-Lending law, 15 U.S.C. 1601 et seq. and Regulation Z, 12 CFR 226 et seq. In addition, the rules prohibit advertising practices which are inaccurate, untrue, deceptive or misleading, or which negatively affect the public's confidence in such financial institutions. Listed in the rules are six practices which the Department deems to be deceptive or misleading.

In the event the Commissioner determines that an advertisement violates this standard, the rules provide that the Commissioner shall notify the institution of the violation and request a response. If no response or an unsatisfactory response is given, the Commissioner may issue a show cause order referencing the statute or rule which allegedly was violated. Parties desiring to contest this order may request an adminis-

trative hearing. An institution which continues to violate these rules after being ordered to cease and after the order is not successfully contested is subject to a \$500.00 penalty for each violation.

The Department proposes to amend the rules at N.J.A.C. 3:2-1.4 by designating an additional practice to be deceptive or misleading. Depositories frequently advertise an interest rate on a certificate of deposit, and also advertise a yield. On certificates of less than one year, the yield is typically based on the assumption that the certificate will be redeposited at the end of the original term and that the interest rate over the succeeding term will be identical to the original rate. Depositors are frequently surprised when the interest paid on a six-month certificate of deposit, for example, does not equal the advertised yield. To help remedy this problem, the Department proposes an amendment to these rules requiring that an advertisement of a yield of a certificate maturing in less than one year include a reference to the basis of the compounding. If the yield is based on the assumption that principal and interest will be redeposited upon maturity at the same interest rate, the advertisement shall indicate that fact, along with a statement indicating whether the same interest rate is guaranteed to be available on the renewal date.

Social Impact

The rules proposed for re-adoption apply to all financial institutions subject to supervision, regulation or licensing by the Department. They have the beneficial impact of prohibiting particular advertising practices which the Department believes are deceptive or misleading. Loan applicants and prospective borrowers are the direct beneficiaries of these rules. The proposed amendment extends this protection by requiring disclosure as to the assumptions underlying a short-term certificate of deposit.

Economic Impact

The rules proposed for re-adoption are expected to have no discernible economic impact on financial institutions since the amendments merely prohibit certain advertising practices. Consumers are expected to receive an incidental economic benefit of additional advertising disclosures. There will be no economic impact upon the Department.

Regulatory Flexibility Analysis

The financial institutions regulated by these rules proposed for re-adoption are predominantly small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The only areas of compliance, that is, disclosure and advertising prohibitions, are not expected to necessitate professional services or require initial capital costs. Annual costs are expected to be minimal, if at all discernible. Many depositories already include such a notice in their advertisements. Minimization of any adverse impact upon small businesses is not attainable since the amendments enhance the general welfare of the public.

Full text of the proposed re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:2.

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

3:2-1.4 Violations of the Act

(a) (No change.)

(b) Without limiting (a) above, the following conduct shall be deemed deceptive or misleading:

1.-4. (No change.)

5. The advertisement of a mortgage loan by a mortgage broker (or a mortgage banker that acts merely as a mortgage broker with regard to the advertised loan) which does not specifically and conspicuously state that the advertiser will not make any mortgage loan commitments or fund any mortgage loans under the advertised program; [and]

6. The advertisement of a mortgage loan by a mortgage banker or mortgage broker without including in the advertisement or broadcast announcement the words "licensed mortgage banker—N.J. Department of Banking" or "licensed mortgage broker—N.J. Department of Banking," whichever the case may be[.]; and

7. The advertisement of a yield on a deposit account for a term of less than one year without reference to the basis of the compounding. If the yield is based upon the assumption that principal and interest will be redeposited upon maturity at the same interest rate, the advertisement shall indicate that fact, along with a statement indicating

whether the same interest rate is guaranteed to be available on the renewal date.

(c)-(d) (No change.)

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

**Uniform Construction Code
Industrialized and Modular Buildings**

Proposed Amendments: N.J.A.C. 5:23-1.1, 1.4, 3.11, 4.1, 4.12, 4.13, 4.14, 4.15, 4.21, 4.22, 4.24, 4.26, 4.29, 4.31 and 4.39

Proposed Repeals: N.J.A.C. 5:23-4.25, 4.27, 4.28, 4.30, 4.32, 4.33, 4.34, 4.35, 4.36, 4.37 and 4.38

Proposed New Rules: N.J.A.C. 5:23-4A

Authorized By: Anthony M. Villane, Jr., D.D.S., Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-124, 135 and 136.

Proposal Number: PRN 1990-77.

Submit comments by March 22, 1990 to:

Michael L. Ticktin, Esq.

Administrative Practice Officer

Department of Community Affairs

CN 802

Trenton, NJ 08625

The agency proposal follows:

Summary

N.J.S.A. 52:27D-135 gives the Commissioner of Community Affairs authority to regulate premanufactured systems, defined in N.J.S.A. 52:27D-121 as "an assembly of materials or products that is intended to comprise all or part of a building or structure and that is assembled offsite by a repetitive process under circumstances intended to insure uniformity of quality and material content." N.J.S.A. 52:27D-136 permits the Commissioner to extend reciprocity to premanufactured systems adequately constructed and inspected in other states.

The proposed amendments and new rules reflect an attempt by the Joint Council on Industrialized/Modular Construction, also known as the Council of Twenty-One, a group of state code administrators, manufacturers and Federal representatives, working with the National Conference of States on Building Codes and Standards (NCSBCS), to foster uniform rules among the states and to encourage reciprocity and thereby eliminate duplicative inspections by officials of different states. The model rules developed by the Council of Twenty-One are the basis for the changes proposed.

Existing administrative rules, but not technical standards, dealing with manufactured housing and inplant inspection agencies have been proposed for either amendment or repeal, in order to avoid inconsistency with the proposed new rules.

The definition of "premanufactured system" has been amended to include a system which is a school facility, in accordance with the current requirements of N.J.S.A. 52:27D-135.

Social Impact

The Department anticipates that, as more states adopt the model rules, plan review and inspection of premanufactured systems and units will become more standardized throughout the country. Standardization will make it easier for builders and homebuyers to purchase such systems and units in one state for installation in another, and will provide builders and homebuyers with a wider range of options.

Economic Impact

As more states adopt uniform model rules, the production of premanufactured systems and units will become more economical, as it will not be necessary to comply with the separate administrative requirements of each state in order to satisfy the requirements of different state codes. For example, one set of requirements for plans and for labeling of units will have to be met, rather than separate requirements for each state. This will result in cost savings. New Jersey's adoption of the

uniform standards will extend these savings to both purchasers and producers of premanufactured systems and units in this state.

Regulatory Flexibility Analysis

The proposed amendments and new rules impose reporting, recordkeeping and other requirements on those builders utilizing premanufactured systems and the manufacturers of these systems, some of whom may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. It is not possible to determine the number of small businesses affected by the proposed changes; however, there will be no change from the current rules in the recordkeeping, performance or design standards. Changes involve the licensing and certification process. The proposed changes are part of a movement toward uniformity in requirements, and similar action by other states is anticipated. The uniformity should be beneficial to small businesses engaged in the production of premanufactured systems and units, as well as to those purchasing such systems and units. The Department has determined that, in the interest of public safety and welfare, there should be no differentiation based on business size in this proposal.

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

5:23-1.1 Title, division into subchapters

(a) (No change.)

(b) The regulations consist of the following subchapters:

1.-4. (No change.)

5. **“Industrialized/Modular Buildings and Building Components which may be cited throughout the regulations as N.J.A.C. 5:23-4A and when referred to N.J.A.C. 5:23-4A may be cited as this subchapter.**

Recodify existing 5.-8. as 6.-9. (No change in text.)

5:23-1.4 Definitions

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

...
 “Premanufactured system” or “premanufactured construction” means an assembly of materials or products [which] that is intended to comprise all or part of a building or structure [, exclusive of a public school facility,] and [which] that is assembled off-site by a repetitive process under circumstances intended to insure uniformity of quality and material content. The term shall include, but not be limited to, manufactured homes **and industrialized/modular buildings.**
 ...

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:

1-6. (No change.)

7. All [modular construction] **premanufactured system components for Class 1 and Class 2 structures** other than those authorized to be approved by an inplant inspection agency **licensed to perform Class 1 and Class 2 plan review** as provided in N.J.A.C. 5:23-4.29(a) [and (d)] **and N.J.A.C. 5:23-4A.8 and all onsite installation of Class 1 and Class 2 premanufactured construction.**

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

5:23-4.1 Title; scope; intent

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

(c) This subchapter **and N.J.A.C. 5:23-4A** shall control matters relating to: the structure, organization, and procedures of municipal, State, and interlocal enforcing agencies; their interrelationships; the structure, organization, and procedures of boards of appeal; the approval of premanufactured [components] **construction or industrialized/modular buildings;** [and] private enforcing agencies; and the establishment of fees.

(d) (No change.)

5:23-4.12 Private enforcing agencies—establishment

(a) (No change.)

[(b) Private inplant inspection agencies:

1. The Department shall authorize the establishment of private inplant inspection agencies for the purpose of approving premanufactured systems, assemblies or components pursuant to the regulations.

2. The following shall be the requirements for receipt of the Department’s authorization as an inplant inspection agency:

i. Submission of an application to the Department, including all pertinent information. The application shall be accompanied by the fee established pursuant to the regulations.

3. The Department shall review and evaluate the information contained in the application and such other information as the Department shall deem necessary to make a determination of approval or disapproval. Within 90 days following the receipt of a completed application, the Department shall approve or disapprove the applicant as an inplant inspection agency. The Department shall provide the applicant with either a letter of authorization or written explanation of the reasons for disapproval.

4. The application shall contain information relating to:

i. The financial integrity of the applicant and any of its principal officers.

ii. The qualification of the management and technical personnel of the applicant, including a statement that all technical personnel are certified by the commissioner in accordance with N.J.A.C. 5:23-5.

iii. The range of salaries and other compensation of all of the inspectors and other technical personnel of the applicant.

iv. The policies and procedures of the applicant for the hiring, training and supervision of all technical personnel, including education and training.

v. The extent, if any, to which the applicant will engage independent consultants and the functions the independent consultants will perform.

vi. The prior experience of the applicant in performing similar or related functions.

vii. The capability, if any, of the applicant to perform testing, including the nature of such testing and the facilities and personnel to perform it, and the identity, facilities and experience of any independent testing agencies with which arrangements have been made for testing services, and the nature of such testing services.

viii. The extent, if any, to which the applicant is affiliated with or influenced or controlled by any producer, manufacturer, supplier or vendor of products, supplies or equipment used in premanufactured construction, components or assemblies.

ix. The procedures to be used by the applicant in discharging its duties as an inplant inspection agency.

5. Authorization shall be valid for a period of one year.

6. Any inplant inspection agency authorized by the Department may apply to the Department for reauthorization. An application for reauthorization shall be filed at least 60 days prior to the scheduled expiration of the current approval from the Department. The applicant shall make current the information previously submitted to the Department. The applicant shall provide such additional information as the Department may request. The application shall be accompanied by the fee established pursuant to the regulations. The Department may conduct such additional investigations of the applicant as it may deem necessary.

i. Within 30 days following the receipt by the Department of any application for reauthorization, the Department shall make its determination whether the inplant inspection agency continues to meet the requirements of the regulations. In the event of disapproval, the Department shall provide the inplant inspection agency with a written explanation of the reasons for such disapproval. Each reauthorization shall expire one year from the date of the current authorization from the Department.

ii. The Department may, on its own motion or at the request of any inplant inspection agency, grant a temporary reauthorization of any inplant inspection agency for a period not to exceed 60 days.]

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

5:23-4.13 Private enforcing agencies—organization

(a) (No change.)

[(b) Private inplant inspection agencies:

1. An inplant inspection agency may be an individual, partnership, corporation, or other business entity organized for the purposes of inspecting and approving premanufactured systems and components as an agent of the Department pursuant to the regulations:

i. Each inplant inspection agency that is designated by the Department as an inplant inspection agency shall organize and structure its operations to effectively fulfill the requirements of these regulations.

2. All technical personnel, including, without limitation, plan reviewers, engineers, architect and inspectors, shall be licensed by the Department in accordance with N.J.A.C. 5:23-5. The inplant inspection agency shall hire sufficient personnel to adequately discharge its obligations under its authorization by the Department.

3. Notification of changes: Each approved inplant inspection agency shall within 10 business days notify the Department of any event or occurrence which would materially affect its ability to discharge its responsibilities under these regulations or that constitutes a material change from the information currently on file in the Department with the inplant inspection agency's applications for authorization or reauthorization. Examples of such events or occurrences are changes of ownership, changes of key supervisory or managerial personnel, or significant deterioration in its financial condition. The inplant inspection agency shall within 30 calendar days notify the Department of all other changes such as the resignation and appointment of inspectors contained in the information on file with the Department.]

5:23-4.14 Private enforcing agencies—administration and enforcement

(a) (No change.)

[(b) Private inplant inspection agencies:

1. Inplant inspection agencies shall maintain such records of inspection activity as hereinafter provided;

2. The inplant agency shall provide the following:

i. A copy of each executed contract and all amendments pursuant to 2iii below;

ii. A list of names, telephone numbers, and addresses of responsible officials of the agency, who may be contacted during normal business hours; and in the event of an emergency, in other than normal business hours;

iii. A list of names, certification numbers, and telephone numbers of all technical personnel employed by the agency;

iv. Evidence of completion of training programs as required by part IV of the regulations;

v. A copy of each approved premanufactured system documentation and compliance assurance program and all amendments thereto.

3. Except as stated in the regulations, an executed implementing contract between the inplant inspection agency and the manufacturer or premanufactured systems, shall be required prior to the enforcement of the regulations by any inplant inspection agency;

4. Each inplant inspection agency shall have the following responsibilities:

i. To perform all investigation, evaluation, testing and, if justified, approval of each set of premanufactured system documentation; and each amendment thereto, submitted to it by a manufacturer with which it has an implementing contract for compliance with the regulations;

ii. To perform all investigation, evaluation and, if justified, approval of the compliance assurance program, and each amendment thereto, relating to the manufacture, transportation and installation of the premanufactured construction, components or assemblies described in each set of premanufactured system documentation;

iii. To prepare and periodically revise, as necessary, the premanufactured system documentation and related compliance assurance program;

iv. To monitor the manufacturer's compliance control installation of premanufactured construction, components or assemblies of each manufacturer with which it has an implementing contract;

v. To verify that premanufactured construction, components or assemblies have been manufactured pursuant to approved premanufactured system documentation and an approved compliance assurance program and authorization to the manufacturer of the attachment of insignia of certification to such premanufactured construction, components or assemblies;

vi. To prepare all reports to the Department as are required by the regulations or as may be required from time to time;

vii. To carry liability insurance, at least in the amount of \$1,000,000 for each person and each occurrence to satisfy claims or judgments for property damage and/or personal injury arising out of the failure of its employees to properly discharge their duties and responsibilities.

viii. To carry to full completion all projects initiated prior to the termination of their contract with the manufacturer by reason of non-renewal unsuccessful bidding, Department authorization disapproval or other reason except suspension or revocation.]

5:23-4.15 Suspension and revocation

(a) General:

1. In addition to any other remedies provided by the regulations, the [department] **Department** may suspend or revoke its authorization of any private on-site [or inplant inspection] agency if the [department] **Department** determines that the authorization or reauthorization was based on the submission of fraudulent or materially inaccurate information, or that the authorization or reauthorization was issued in violation of the regulations, or that a change of facts or circumstances make it unlikely that the inspection agency can continue to discharge its responsibilities under the regulations in a satisfactory manner, or that the inspection agency has violated the regulations.

2. (No change.)

(b) (No change.)

(c) Revocation without suspension:

1. (No change.)

2. No such agency shall reapply for approval as an on-site [or inplant] agency until the expiration of one year from the date of the order of revocation.

(d) (No change.)

(e) [Temporary arrangement:

1. In the case of the suspension or revocation of any inplant inspection agency, the Department shall, upon the request of any manufacturer with an implementing contract with the suspended or revoked inplant inspection agency, consult with such manufacturer to establish a temporary arrangement by which the manufacturer can continue to manufacture, sell, lease and install premanufactured construction, components and assembled in conformity with the act and these regulations until the suspension or revocation is lifted or an implementing contact entered into with another inplant inspection agency. For these purposes, the department may, at its discretion, discharge some or all of the responsibilities of an inplant inspection agency. The Department may also approve any other temporary arrangement that the Department determines would best promote the purposes of the act and these regulations under the circumstances.]

[2.] (No change in text.)

(f) (No change.)

5:23-4.21 Private enforcing agency authorization and reauthorization fees

(a) Authorization fee: Any onsite inspection agency submitting an application to the Department under N.J.A.C. 5:23-4.12 for approval as an inspection agency shall pay a fee of \$2,000 for each subcode for which authorization is sought. [The total fee for an inplant agency application shall be \$500.00.]

(b) Reauthorization fee:

1. (No change.)

[2. The total fee for reauthorization of an inplant inspection agency shall be \$250.00.]

5:23-4.22 [Premanufactured construction] **Building element and manufactured home add-on unit insignia of certification fees**

(a) [Modular unit insignia of certification fee: An inplant inspection agency requesting the Department to issue insignia(s) of certification for modular construction shall pay a fee of \$100.00 for each such insignia.

(b) Premanufactured component] **Building element insignia of certification fee:** An inplant inspection agency requesting the [department] **Department** to issue component insignia(s) of certification for [premanufactured components] **building elements** shall pay a fee of \$50.00 for each such insignia.

[(c)] (b) Manufactured (Mobile) Home add-on unit insignia of certification fee: An inplant inspection agency requesting the Department to issue insignia(s) of certification for manufactured (mobile) home add-on units shall pay a fee of \$50.00 for each such insignia.

5:23-4.24 Plan review; Department of Community Affairs

(a) Rules concerning establishment are:

1. (No change.)

2. Plan review:

i.-ii. (No change.)

iii. Premanufactured construction: Department plan review and release shall be required for 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)] 5:23-4A.

(b) (No change.)

5:23-4.25 [Premanufactured construction] (Reserved)

[(a)] This chapter governs the design, manufacture, storage, transportation and installation of premanufactured construction which is sold, leased, or installed, or intended for sale, lease or installation, for use on a site in the State of New Jersey. This chapter applies to premanufactured construction manufactured in facilities within or outside the State; provided, however, that nothing herein shall conflict with any provision of the Federal Manufactured Housing Construction and Safety Standards Act of 1974 and regulations promulgated thereunder. Whenever a provision of this subchapter shall conflict with any Federal standard or requirement under such act or regulations, Federal law shall govern.]

5:23-4.26 Certification [premanufactured construction] of **manufactured homes and building elements**

(a) [Except as otherwise provided in this chapter, no person may sell, lease or install for use on any site in the State of New Jersey any premanufactured construction unless such premanufactured construction is certified in accordance with the following provisions:

1. Modular construction: A complete structure comprising one or more modules (boxes) and/or components built in accordance with the New Jersey Uniform Construction Code; certified by an approved inplant inspection agency and bearing modular unit insignia(s) of certification as provided in N.J.A.C. 5:23-4.31(e) and (f)]. **Manufactured home and building elements shall be certified in accordance with the following provisions:**

[2.]1. Manufactured Home (formerly called mobile home): Single family dwelling built in accordance with the Federal Manufactured Home Construction and Safety Standards and bearing a Federal insignia of certification.

[3. Components:

i. Building elements such as bathroom modules and kitchen modules built in accordance with the New Jersey Uniform Construction Code; certified by an approved inplant inspection agency and bearing premanufactured component insignia of certification as provided in N.J.A.C. 5:23-4.31(f)4.

ii.]2. Building elements such as trusses, fire walls, fire separation walls, wall panels, pre-stressed/prefabricated floor or roof panels pre-engineered structural frames built in accordance with the New Jersey Uniform Construction Code may be approved by any of the following options:

[(1)]i. Approval for both design and construction by a nationally recognized laboratory. The local municipal subcode official has the authority to [accent] **accept** such approvals based on the evidence, test and/or documentation presented to him **or her**.

[(2)]ii. Approval for both design and construction by a professional engineer licensed either in the State of New Jersey or in the state of manufacture. The local municipal subcode official has the authority to accept such approvals based on the evidence, of test and/or documentation presented to him **or her**.

[(3)]3. Approval for both design and construction by a New Jersey inplant inspection agency. The evidence of such approval shall be in the form of premanufactured component insignia of certification attached to the component(s) as provided in N.J.A.C. 5:23-4.31]4A.

4. (No change.)

[(b)] Premanufactured construction which has never been occupied and which serves for model or demonstration purposes for the manufacturer does not have to bear an insignia of certification under these regulations, until such time as such premanufactured construction is offered for sale, lease or occupancy.

(c) Premanufactured construction which is intended for prototype, experimental or demonstration purposes in or on a site in the State designated by the Department as a test facility may be installed without bearing insignia(s) of certification. Subsequent sale or lease of such premanufactured construction shall require proper approval and bear insignia(s) of certification in accordance with the appropriate provisions of this chapter.]

5:23-4.27 [Inspections and approvals of premanufactured construction projects by the Department and/or local enforcement agency] (Reserved)

[(a)] All premanufactured construction bearing appropriate insignia(s) of certification shall be accepted in all municipalities of the State as meeting the requirements of the State Uniform Construction Code.

(b) All elements of the certified premanufactured construction which are not described or included in the approved premanufactured system documentation shall be subject to review, inspections and approval by the local enforcement agency.

(c) Premanufactured construction and assemblies in which components are installed subsequent to their certification shall comply with the requirements of the State Uniform Construction Code, except that construction of manufactured homes (mobile homes) and manufactured (mobile) home add-on units shall comply with all applicable provisions of the Federal Manufactured Housing Construction and Safety Standards Act of 1974 and the regulations promulgated pursuant thereto.

(d) The local municipal enforcement agency shall require the following for issuance of construction permit and necessary inspections:

1. Plans for certified premanufactured construction shall be approved either by the Department or by an inplant inspection agency in accordance with N.J.A.C. 5:23-3.11(a)7 and 5:23-4.29(a) and (d). The evidence of approvals of these plans shall meet the requirements of N.J.A.C. 5:23-2.15(e)3.i.(2) or 5:23-4.29(b).

2. The plans for all on-site construction required in connection with the proper setup and erection of the certified premanufactured construction shall include without limitation, foundation system, basement or crawl space, external utility systems, hook-ups and connections of various modules (boxes) and/or components. The design review and approval of such plans shall meet the following requirements:

i. Structures which an inplant inspection agency is authorized to review and approve as provided in N.J.A.C. 5:23-4.29(a): Plans and specifications for all the on-site construction required in connection with the proper set up and erection of such structures shall comply with all applicable requirements of the regulations and shall be signed and sealed by a New Jersey licensed professional engineer or registered architect. The local enforcement agency is responsible for review and approval of such on-site construction plans and specifications if the agency is classified in accordance with N.J.A.C. 5:23-3.10 and its classification meets the level of the specific project.

ii. All structures other than those addressed in (d)2.i. above: Plans and specifications for all the on-site construction required in connection with the proper set up and erection of such structures shall be approved by the Department. These plans and specifications shall meet the applicable requirements of these regulations and shall be signed and sealed by a New Jersey licensed professional engineer or a New Jersey registered architect.]

5:23-4.28 [General requirements for inspection and certification of premanufactured construction] (Reserved)

[(a)] Premanufactured construction shall be inspected and certified by an approved inplant inspection agency if such premanufactured construction has been manufactured pursuant to premanufactured system documentation approved in accordance with N.J.A.C. 5:23-4.29 and the compliance assurance program approved in accordance with N.J.A.C. 5:23-4.30. The inplant inspection agency

shall make necessary inspections during production of each such construction to insure compliance to the approved documents and the regulations. Approval of premanufactured construction shall be evidenced by insignia(s) of certification which conform to the requirements of these regulations. The number of insignias required for the certification of premanufactured construction shall be governed by the applicable provisions of the regulations of N.J.A.C. 5:23-4.31. Department insignia of certification shall not be required in case of components eligible to be approved by a nationally recognized laboratory or a professional engineer licensed either in New Jersey or in the state of manufacture in accordance with the provisions of N.J.A.C. 5:23-4.26(a)3.ii.(1) and (2).]

5:23-4.29 Approval of [premanufactured system] **manufactured home add-on units and building elements** documentation

(a) An inplant inspection agency is authorized to review and approve the premanufactured system documentation for the [following] types of [structures] **industrialized/modular buildings and building components listed in N.J.A.C. 5:23-4A.8,**

[1. Factory built portions of one- and two-family detached dwellings of Use Group R-3 as defined in the building subcode or Use Group R-4 as defined in the one- and two-family dwelling subcode;

2. Factory built portions of buildings of Use Group R-3 of Types 5A or 5B construction meeting the requirements of Section 1409.1.2, 1984 Edition, 1985 Supplement of the building subcode, and not exceeding 4800 square feet per floor;

3. Factory built portions of buildings of Use Group R-2 of Types 5A or 5B construction as defined in the building subcode, and not exceeding 4800 square feet per floor;

4. Building components] **building elements** as defined in accordance with N.J.A.C. 5:23-4.26[(a)3] **(a)2, and**

[5. Structures like kiosks, parking lot attendant booths, toll and telephone booths not exceeding 25 square feet in area;

6.] **Manufactured (mobile) home add-on units.**

(b) The inplant inspection agency shall approve a set of [premanufactured system] **manufactured home add-on unit and building element** documentation if the agency determines that such documentation conforms to all applicable requirements of the State Uniform Construction Code. The [premanufactured system] **manufactured home add-on unit and building element** documentation shall include all of the drawings, design calculations, specifications, details, and shop drawings required for code compliance review. Such documentation shall require the signature and seal of a professional engineer or architect registered in the state of manufacture or in New Jersey.

[1. Approval of premanufactured system documentation shall be evidenced by the stamp of approval of the inplant inspection agency, affixed on each sheet of the premanufactured system documentation and signed by a designated employee of the agency. Each stamp shall show the date of approval of each sheet of the premanufactured system documentation to which it is affixed. Each sheet constituting the approved premanufactured system documentation shall have a separate identification number.

(c) Premanufactured system documentation for all premanufactured construction projects other than those authorized to be approved by an inplant inspection agency as provided in N.J.A.C. 5:23-4.29(a)1. through 6. shall require approval by the Department or by such other agency of the State government as the Department shall designate in these regulations. The plans, specifications, details and design calculations, shall meet the requirements of N.J.A.C. 5:23-2.15(e)3.i.

(d) Approval for factory built portions of projects not addressed in N.J.A.C. 5:23-4.29(a) may be obtained in either of the following ways:

1. By a qualified inplant inspection agency classified as Class I, II or III in accordance with N.J.A.C. 5:23-3 as required for the specific project. The evidence of such approvals shall be in accordance with N.J.A.C. 5:23-4.29(b)1; or

2. By the Department.

(e) Premanufactured system documentation may be approved as a prototype in accordance with N.J.A.C. 5:23-2.15(e)3.i.(4).

(f) Premanufactured system documentation approved pursuant to these regulations may contain alternates or a range of alternates for one or more elements of the premanufactured construction described in the premanufactured system documentations, provided that the approved premanufactured system documentation conforms to all of the applicable requirements of the State Uniform Construction Code.

(g) The inplant inspection agency shall approve amendments to the premanufactured system documentation submitted to it by the manufacturer if the premanufactured system documentation, as so amended, conforms to all of the applicable requirements of the State Uniform Construction Code provided that such amendments shall be approved by an inplant inspection agency only if the agency was responsible for the initial approval of the premanufactured system documentation.

1. Approval of amendments to premanufactured system documentation shall be evidenced by the stamp of approval of the inplant inspection agency affixed on each sheet of the amendments and signed by a designated employee of the agency. Each stamp shall show the date of approval of each sheet of the amendments to which it is affixed. Each sheet constituting the amendments shall have a separate identification number.

2. Approvals of amendments to premanufactured system documentation may be by oral authorization of an officer or a designated employee of the agency, but in such event the approval shall be subsequently evidenced by the stamp of approval affixed on the amended sheets of the premanufactured system documentation and signed by the designated employee of the agency within 10 days after the oral authorization.]

5:23-4.30 [Compliance assurance program for premanufactured construction] **(Reserved)**

[(a) An inplant inspection agency shall approve the manufacturer's compliance assurance program for the facility which meets the requirements of this subchapter. This compliance assurance program will be monitored by the inplant inspection agency to insure its effective functioning in the manufacturing facility.

(b) Basic requirements for a compliance control program are:

1. An inplant inspection agency shall approve a compliance control program if it determines that:

i. The implementation of the compliance control program will assure that the premanufactured construction, when installed at the site, will conform to the approved premanufactured system documentation.

ii. The manufacturer possesses the facilities, personnel and organization to implement its compliance control program properly; and

iii. The requirements of these regulations are met;

2. The approval of a compliance control program under these regulations does not relieve the manufacturer and the inplant inspection agency of responsibility for assuring that the premanufactured construction manufactured for sale, lease or installation for use on sites in New Jersey conforms in every respect to the approved premanufactured system documentation and the regulations.

3. To facilitate review and approval, the manufacturer's compliance control program shall present an overview of its policies and procedures on the following:

i. The placement, storage and handling of materials;

ii. The station by station manufacturing process within the manufacturing facilities;

iii. The storage and transportation of premanufactured construction to the site; and

iv. The installation of premanufactured construction at the site.

4. For approval, except as modified under this chapter, the compliance control program shall include requirements on the following items:

i. Specific assignments of responsibility to designated divisions or employees of the manufacturer for every significant phase in the production, transportation and installation of the premanufactured construction;

ii. A list of quality control inspections required by the manufacturer at each station and identification by title of each person who will be accountable for each quality control inspection;

iii. Procedures for marking identified deficiencies (such as fabrication checklists to accompany each item being manufactured) and for assuring their correction or the disposal of the deficient item;

iv. Procedures to assure that the fabrication or shop drawings for the premanufactured construction conform to the approved premanufactured system documentation;

v. Procedures to maintain, file and control all fabrication or shop drawings and all documents constituting the premanufactured construction;

vi. Procedures to maintain complete and reliable records of the manufacture, transportation and installation of the premanufactured construction each unit of which shall be assigned a manufacturer's serial number to facilitate identification;

vii. Procedures employed by the inplant inspection agency to request, store, and attach the insignia of certification issued to it by the department;

viii. Procedures for controlling the storage and transportation of premanufactured construction from the manufacturing facilities to the site, identifying specific functions and techniques that are of critical importance;

ix. Procedures for controlling the installation of premanufactured construction at the site, identifying specific functions and techniques that are of critical importance;

x. A brief identification and description of all physical testing to be performed at any point during any phase of manufacture, transportation, and installation, the frequency of its performance, and the identification and qualifications of the persons performing such testing.

(1) The above list of topics is not exclusive and is not intended to preclude additional items and greater details prior to approving a compliance control program;

5. If a manufacturer transfers title to, and effective control over, its premanufactured construction to other, unrelated persons at any point prior to its installation at the site, the manufacturer shall be responsible for furnishing to the persons responsible for transportation and installation adequate information and manuals relating to the transportation and installation of such premanufactured construction, including the relevant portions from its compliance control program referred to in these regulations, but the manufacturer shall not be responsible for implementation after the transfer of title and effective control.

6. The inplant inspection agency shall approve changes and amendments to the manufacturer's compliance control program provided that the compliance control program, as so amended, meets all of the applicable requirements of these regulations.]

5:23-4.31 Insignia of certification for [premanufactured construction] **manufactured home add-on unit and building element**

(a) [All modular construction, applicable premanufactured components and manufactured (mobile) home add-on units shall bear appropriate insignia(s) of certification meeting the requirements of these regulations. Such insignias of certification shall be furnished by the Department to the inplant inspection agency under the procedures outlined in this section. The inplant inspection agency shall request insignias for issuance on a form prescribed by the Department for such purpose. The agency shall enclose its check as a fee for the insignias requested. A check from any person or entity other than an inplant inspection agency shall be a certified check or a cashier's check. The fees for Department insignias of certification shall be as per requirements of N.J.A.C. 5:23-4.22.

(b) The manufacturer shall permanently locate the insignia of certification in a readily accessible and visible location identified in the premanufactured system documentation.

(c) Each insignia of certification shall bear an indestructible serial number furnished by the Department which cannot be removed without destroying it.

(d) If the size, shape or other physical characteristics of the premanufactured component makes impractical the use of such insignia of certification, the Department may specify such alternative forms of insignia as may be appropriate.

(e) Only one modular unit insignia of certification shall be required for each dwelling unit in any residential modular construction even if the construction is comprised of two or more modules (boxes) and/or components. However, each module (box) shall be properly identified by the manufacturer's serial number and the inplant inspection agency's insignia.

(f) All premanufactured construction other than residential modular construction shall require Department insignia(s) of certification as follows:

1. Each module (box) shall require a separate modular unit insignia of certification for modular construction.

2. In case of a multimodule (multibox) project, the data plate on each module (box) shall identify the serial numbers of the Department insignia of certification of all other modules (boxes) which form part of the entire project.

3.] If the [premanufactured component] **building element** is approved in accordance with N.J.A.C. 5:23-4.26[a]3.ii.(3) (a)2, then each such element shall require a premanufactured component insignia of certification. For elements inspected and grouped in one lot of not more than 25 elements, one premanufactured component insignia of certification shall be required for each lot.

[4. Components such as bathroom or kitchen modules shall each require a premanufactured component insignia of certification.

5.](b) Manufactured (mobile) home add-on units shall each require a mobile home add-on unit insignia of certification.

5:23-4.32 [Insignia of inplant inspection agencies for premanufactured construction] **(Reserved)**

(a) The inplant inspection agency shall attach its insignia to each premanufactured construction which is transported to construction site for assembly and installation.

(b) The insignia of the inplant inspection agency shall identify the name of the inspection agency and a serial number.

(c) Each insignia must be attached in such a way that it cannot be removed without destroying it. Such insignia shall be located in a readily accessible and visible location identified in the premanufactured system documentation.]

5:23-4.33 [Data plate for premanufactured construction] **(Reserved)**

[(a) In residential construction, there shall be one data plate per dwelling unit; in all other construction, there shall be one data plate per building. The data plate shall be furnished by the manufacturer and shall be permanently attached by the manufacturer in a visible location in the utility room or utility area, or any other accessible location identified in the premanufactured system documentation. The data plate shall contain the following information:

1. Name of manufacturer;
2. Address of the manufacturing facility where the premanufactured construction was built;
3. Manufacturer's model designation for the premanufactured construction;
4. Type of construction and use group classification in accordance with the provisions of the building subcode;
5. Manufacturer's serial number for the premanufactured construction;
6. Serial number of New Jersey insignia of certification for the premanufactured construction. Serial number(s) of New Jersey insignia(s) of certification of other modules (boxes), if applicable, forming part of the entire certified premanufactured project;
7. Serial number of insignia of inplant inspection agency for the premanufactured construction. Serial numbers of insignias of inplant inspection agency for other modules (boxes) forming part of the entire certified premanufactured project;
8. Serial or other identifying numbers of each element, if any, of the premanufactured construction separately transported to the construction site for assembly and installation;
9. Snow loads maximum where applicable;
10. Wind loads maximum where applicable;
11. Other special environmental factors;
12. Applicable codes, including name of code, edition, year of publication and applicable supplement, if any;
13. Date of manufacture;

14. Date the data plate was attached to the premanufactured construction.]

5:23-4.34 [Custody, attachment and record of department insignia of certification for premanufactured construction] **(Reserved)**

[(a) The inplant inspection agency shall entrust the custody of the insignia of certification received from the department only to employees designated in the compliance control program as responsible for the custody and control of the insignia of certification. The manufacturer shall attach the insignia to premanufactured construction only in the circumstances prescribed in the compliance control program and only with the prior specific authorization from the inplant inspection agency. The manufacturer shall attach the insignia of certification in the manner specified by the department. The inplant inspection agency shall promptly record the attachment of each insignia of certification in the insignia of certification monthly report. The monthly report with all columns filled in by the inplant inspection agency shall be sent to the department by the tenth day of each month.]

5:23-4.35 [Modification of premanufactured construction after certification] **(Reserved)**

[(a) Approved premanufactured constructions bearing the insignia of certification shall not be modified in any way at any time after the insignia of certification has been attached, unless the modification is approved in advance by the inplant inspection agency or the Department on the basis that the premanufactured construction as so modified, will still conform to the approved premanufactured system documentation. Approvals of any modifications which are consistent with the approved premanufactured system documentation may be by oral authorization by an officer or designated employee of the inplant inspection agency or the Department, but in such event each approval shall be subsequently evidenced by a letter from the inplant inspection agency or the Department to the manufacturer within ten days after the oral authorization. Proposed modifications which are inconsistent with the approved premanufactured documentation shall be treated as proposed amendments to the premanufactured system documentation subject to the approval of the inplant inspection agency or the Department.

(b) Modifications of certified premanufactured construction are not prohibited under this chapter if such modifications are made after the issuance of a certificate of occupancy by the municipal enforcing agency. Such modifications shall be subject to the provisions of the State Uniform Construction Code.

(c) Nothing in this section shall prevent any manufacturer, on its own motion or at the order of the inplant inspection agency or of the department, from at any time repairing any damage to or remedying any defect found in any premanufactured construction.]

5:23-4.36 [Premanufactured construction for prototype, experimental or demonstration purposes] **(Reserved)**

[(a) Premanufactured construction which is intended for prototype, experimental or demonstration purposes in or on a site in the State designated by the department as a test facility may be approved by the department, and insignia of certification attached thereto to evidence such certification, upon a determination by the department, on the basis of such evaluations and inspections as may be appropriate, that the premanufactured system documentation for such premanufactured construction conforms to the applicable requirements of the State Uniform Construction Code, and the premanufactured construction as manufactured and installed, conforms to the approved premanufactured system documentation and the regulations. The department may designate any inplant inspection agency to make such determination, to certify such premanufactured construction and to authorize the attachment thereto of insignia of certification.]

5:23-4.37 [Monitoring inspections of premanufactured construction and right of entry] **(Reserved)**

[(a) For monitoring purposes, the Department and inplant inspection agency are authorized to inspect during normal business hours without prior notice any manufacturing facilities of any manufacturer

with approved premanufactured system documentation, the transportation systems utilized for the transport of certified premanufactured construction, the construction sites on which premanufactured construction has or is intended to be installed, the books and records (wherever maintained) of any manufacturer with approved premanufactured system documentation which relates to the manufacture, sale, lease or installation of premanufactured construction for use on a site in the State, and the facilities and the books and records of any inplant inspection agency which relate to the discharge of its responsibilities under these regulations. Every manufacturer with approved premanufactured system documentation and every approved inplant inspection agency shall be deemed to grant to all authorized representatives of the department the right of entry on its property at any reasonable time (including without limitation, during all normal business hours) without prior notice, for the purpose of conducting such inspections and examinations as are authorized to the department under these regulations. Persons selling, acquiring or leasing such premanufactured construction and persons engaged in its transportation to and installation at the construction site, shall be deemed to grant to all authorized representatives of the Department the same right-of-entry on their property as the manufacturer is required to grant under this chapter.

(b) Every manufacturer with approved premanufactured system documentation shall be deemed to grant to all authorized representatives of the inplant inspection agency with which it has an implementing contract the right-of-entry on its property during normal business hours, without prior notice, for the purpose of conducting such inspections and examinations as such inspection agency deems necessary to discharge its responsibilities under these regulations and under its contract with the manufacturer. Persons selling, acquiring or leasing such premanufactured construction and persons engaged in its transportation to and installation on the construction site, shall be deemed to grant to the inplant inspection agency with an implementing contract with the manufacturer the same right-of-entry on their property as the manufacturer is required to grant under these regulations.]

5:23-4.38 [Applicability] **(Reserved)**

[(a) No provision of the act and these regulations shall apply to premanufactured construction installed for use on a site in the State prior to January 1, 1977.]

5:23-4.39 Enforcement of Federal manufactured home standards

(a) The authority of the Department of Community Affairs as the State Administrative Agency to enforce Federal manufactured home construction and safety standards is hereby delegated to the Bureau of [Construction] Code [Enforcement] Services (the "Bureau"), CN [805] 816, Trenton, New Jersey 08625.

(b)-(k) (No change.)

(l) Nothing in this chapter shall be read to conflict with any provision of the Federal Manufactured Housing Construction and Safety Standards Act of 1974, (P.L. 93-383) as amended, and Federal regulations promulgated thereunder (42 U.S.C. § 5401 et seq.). Whenever it shall appear that a provision of these rules is in conflict with any Federal standard or requirement under the Federal Manufactured Housing Construction and Safety Standards Act, Federal law shall govern.

SUBCHAPTER 4A. INDUSTRIALIZED/MODULAR BUILDINGS AND BUILDING COMPONENTS

5:23-4A.1 Purpose

The purposes of this subchapter are to establish uniformity in compliance requirements, to promote the use of new technologies, techniques and materials, and to increase the availability of safe, decent and affordable housing and other types of buildings.

5:23-4A.2 Objective

The objective of this subchapter is to facilitate the interstate and intrastate transportation and utilization of industrialized/modular buildings and building components. Use of uniform administrative procedures and technical standards can provide assurance that industrialized/modular buildings and building components comply with appli-

cable codes, that building systems are adequate, and that evaluation and inspection agencies are competent and are performing adequately.

5:23-4A.3 Scope

(a) This subchapter governs the design, manufacture, handling, storage, delivery, and installation of industrialized/modular buildings and building components intended for installation in this State or in any other state or local governmental jurisdiction in which such buildings or building components and the labels thereon are accepted. Industrialized/modular buildings or building components may be sold for, delivered to, or installed on building sites located in any jurisdiction of this State, if such buildings or building components have been approved and certified pursuant to N.J.A.C. 5:23.

1. Industrialized/modular buildings and building components that are manufactured and installed within an enforcing agency's jurisdiction may be inspected and approved by the enforcing agency, if qualified, upon approval from the Department.

(b) Industrialized/modular buildings and building components certified pursuant to N.J.A.C. 5:23 shall be deemed to comply with the requirements of all laws, ordinances, rules, and regulations that govern the matters within the scope of the approval and certification, regardless of the provisions of any other such law, ordinance, rule, or regulation. Nothing in this subchapter shall be read to invalidate the requirements of the State conflict of interest restrictions at N.J.A.C. 5:23-4.5(h) that shall apply to the inspectors and evaluators of products to be sold in New Jersey pursuant to this subchapter, as if those inspectors or evaluators were employed in positions specifically listed in that subsection.

5:23-4A.4 Definitions

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

"Building component," as used with reference to industrialized/modular buildings, any subsystem, subassembly, or other system of closed construction designed for use in or as part of a structure, that may include structural, electrical, mechanical, plumbing, and fire protection systems and other systems affecting health and safety.

"Building systems" means the method of constructing a type of industrialized/modular buildings or building components described by plans, specifications, and other documentation that together establish a set of limits meeting the building codes, standards, and other requirements of N.J.A.C. 5:23 for that type of industrialized/modular buildings or building components, that may include structural, electrical, mechanical, plumbing, fire protection systems, and other systems affecting health and safety.

"Certification" of industrialized/modular buildings means the process by which enforcing agencies are assured that elements of closed construction, not practical to inspect on site, have been properly reviewed and inspected by the Department or an approved agency and conform to applicable construction codes.

"Closed construction" for industrialized/modular buildings means any building, building component, assembly, or system manufactured in such a manner that concealed parts or processes of manufacture cannot be inspected at the site without disassembly, damage, or destruction. The definition shall not include products, such as electrical and plumbing fixtures and equipment that are tested, listed, labeled and certified by a nationally recognized testing laboratory.

"Compliance assurance program" means the policies and procedures that assure that industrialized/modular buildings and building components, including their manufacture, storage, delivery, assembly, handling, and installation, conform with the construction codes and N.J.A.C. 5:23.

"Evaluation and inspection agency" means an approved person or organization, private or public, determined by the Department to be qualified by reason of facilities, personnel, experience, and demonstrated reliability and independence of judgement, to inspect, investigate and evaluate industrialized/modular buildings, building components, building systems, or compliance assurance programs, pursuant to N.J.A.C. 5:23.

"Independence of judgment" means not being affiliated with or influenced or controlled by building manufacturers or by producers, suppliers, or vendors of products or equipment used in industrialized/

modular buildings and building components, in any manner that is likely to affect capacity to render reports and findings objectively and without bias.

"Industrialized/modular building" means any building that is of closed construction and is made or assembled in manufacturing facilities, off the building site, for installation, or assembly and installation, on the building site. This definition shall not be construed to include any structure labeled in accordance with the Federal Manufactured Home Construction and Safety Standards Act of 1974 (P.L. 93-383; 42 U.S.C. §5401 et seq.).

"Installation" means the process of affixing, or assembling and affixing, industrialized/modular buildings or building components on the building site.

"Label" means an approved insignia or seal evidencing certification, in accordance with N.J.A.C. 5:23.

5:23-4A.5 Standards

(a) Industrialized/modular buildings, building components and building systems, as defined for the purpose of this subchapter, shall:

1. Comply with all applicable provisions of the State Uniform Construction Code; or

2. Be certified pursuant to N.J.A.C. 5:23-4A.21.

(b) N.J.A.C. 5:23-4A is not intended to prevent the use of any technology, techniques, or materials not specifically prescribed by the subcodes if an alternate has been approved by the enforcing agency. The Department or the local enforcing agency may approve any alternate if it finds that the proposed design complies with the provisions of N.J.A.C. 5:23 and that the material, method or work offered, is, for the purpose intended, consistent with the State Uniform Construction Code concerning quality, strength, effectiveness, fire resistance, durability and safety. The Department shall require that sufficient evidence or proof be submitted to substantiate any claims that may be made regarding the use of any alternate.

(c) Industrialized/modular buildings that have never been occupied and that serve for model or demonstration purposes for the manufacturer shall not be required to bear an insignia of certification pursuant to this chapter, until such time as such buildings are offered for sale, lease or occupancy.

(d) Industrialized/modular buildings that are intended for prototype, experimental or demonstration purposes in or on a site in the State designated by the Department as a test facility may be installed without bearing insignia(s) of certification. Subsequent sale or lease of such buildings shall require prior approval and bear insignia(s) of certification in accordance with the appropriate provisions of this chapter.

5:23-4A.6 Amendments

(a) The Department may amend these rules pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq..

(b) Any proposed amendments to national codes adopted by reference in these regulations shall be undertaken pursuant to N.J.A.C. 5:23-3.13, State-sponsored code change proposals.

5:23-4A.7 Administration and enforcement

(a) The Department shall administer and enforce all provisions of these rules. The Department shall have responsibility for evaluating and approving building systems and for inspecting and certifying industrialized/modular buildings and building components for compliance with N.J.A.C. 5:23. The Department shall allow the use in the State of New Jersey of industrialized/modular buildings, building components and systems and compliance assurance programs labeled and certified by approved evaluation and inspection agencies in accordance with this chapter.

(b) The Department shall approve industrialized/modular buildings, building components, and building systems that comply with the State Uniform Construction Code and shall approve compliance assurance programs that comply with the requirements of this chapter. The Department may delegate to evaluation agencies all or part of the evaluation of building systems and compliance assurance programs, in accordance with N.J.A.C. 5:23-3.

5:23-4A.8 Approvals of building systems and compliance assurance programs

(a) Approved evaluation agencies shall be permitted to approve building systems and compliance assurance programs for the following types of industrialized/modular buildings and building components, including, without limitation, the factory built portions of the buildings of the Use groups listed in the Class 3 agency schedule set forth at N.J.A.C. 5:23-3.10(c)1:

1. Factory built portions of Use group B less than 7,200 square feet, two stories and 30 feet high;
2. Factory built portions of Use group M less than 4,800 square feet, one story and 20 feet high;
3. Factory built portions of Use group S-1 less than 4,200 square feet, one story and 20 feet high;
4. Factory built portions of Use group S-2 less than 7,200 square feet, two stories and 30 feet high;
5. Factory built portions of one- and two-family detached dwellings of Use group R-3 as defined in the building subcode or Use group R-4 as defined in the one- and two-family dwelling subcode;
6. Factory built portions of buildings of Use group R-3 of types 5A or 5B construction meeting the requirements of Section 910.3 of the 1987 edition of the building subcode and not exceeding 4,800 square feet per floor;
7. Factory built portions of buildings of Use group R-2 of types 5A or 5B construction not exceeding 4,800 square feet per floor;
8. Building elements, as defined in accordance with N.J.A.C. 5:23-4.26(a);
9. Kiosks, parking lot attendant booths, toll and telephone booths, and similar structures not exceeding 25 square feet in area; and
10. Manufactured (mobile) home add-on units.

(b) Approval for factory built portions of projects not addressed in N.J.A.C. 5:23-4A.8(a) may be obtained from:

1. An approved inplant evaluation and inspection agency qualified as Class I or II in accordance with N.J.A.C. 5:23-3, as required for the specific project. (The evidence of such approval shall be in accordance with this subchapter.) or
2. The Department.

(c) Building systems shall be evaluated as follows:

1. In order to obtain approval for industrialized/modular buildings and building components, a manufacturer shall submit a building system for evaluation to an approved evaluation and inspection agency in accordance with the requirements of this subchapter.
2. The evaluation and inspection agency shall perform a complete evaluation and issue its evaluation report on the complete building system, as submitted.
 - i. In the event that the building system is found to be unsuitable for evaluation, the applicant shall be notified in writing of such unsuitability and the basis thereof within 15 calendar days of the date the building system was received by the evaluation and inspection agency. Subsequent submissions shall each be treated as a new application.
 - ii. In the event that the building system is found to be suitable for evaluation, a complete evaluation shall be performed within 30 calendar days of the date the building system was received by the evaluation and inspection agency. The applicant shall be notified in writing of the results of the evaluation, upon completion.
3. The evaluation and inspection agency may require tests to determine whether a building system meets the requirements of this chapter, if that determination cannot be made from evaluation of plans, specifications, and documentation alone. The building system test procedures used shall be reviewed and evaluated by the evaluation and inspection agency.
4. Approval of building systems shall be evidenced by the stamp and date of approval of the evaluation and inspection agency and the signature of a designated employee of the agency, on each sheet of the building system documentation. One copy of all approved plans, specifications, documentation, and a building system approval letter shall be returned to the applicant and one copy shall be forwarded to the Department. The documentation shall require the signature and seal of a professional engineer or architect registered in the state of manufacture or in New Jersey.

5. An approved building system shall not be varied without prior authorization by the evaluation and inspection agency. All approved changes shall be made a part of the written record of the approval. Authorization changes shall be in writing or be confirmed in writing within 10 calendar days of any oral authorization.

6. No regulatory amendments to N.J.A.C. 5:23 shall apply retroactively. The Department shall notify all manufacturers with approved building systems and evaluation agencies of record of all such changes. Publication constituting legal notice within the State shall constitute notice for the purpose of this regulation. Each manufacturer shall have 180 calendar days following the sending of such notification, or such additional time as the Department shall deem reasonable, to submit appropriate design changes to the evaluation and inspection agency in order to implement the code changes in its already approved building system(s).

7. Amendments to building systems may be proposed by submitting appropriate plans, specifications, or documentation to the evaluation and inspection agency for approval.

8. The evaluation and inspection agency may suspend or revoke the approval of any building system whenever the approval was issued in error, was issued on the basis of incorrect information, or was issued in violation of this chapter, or is later found to be in violation of this chapter. Notice to the manufacturer, evaluation and inspection agency and the Department of such suspension or revocation of the approval shall be in writing with the reasons for suspension or revocation set forth therein. A listing of all certified units that are not in compliance, due to the suspension or revocation of the approval of a building system, shall be provided by the manufacturer to the evaluation and inspection agency and the Department. The manufacturer shall correct the nonconformances of these units in accordance with this chapter.

9. If a building system is disapproved, the evaluation and inspection agency shall notify the applicant with a written explanation of the reasons for disapproval attached thereto.

(d) Compliance assurance programs shall be required, as follows:

1. A manufacturer shall obtain approval for a compliance assurance program for its building system. Industrialized/modular buildings or building components shall be manufactured in accordance with an approved program in order to be certified. Compliance assurance programs shall be submitted to the evaluation and inspection agency for approval, in accordance with N.J.A.C. 5:23-4A.

2. Prior to full evaluation, the evaluation and inspection agency shall determine that the quality assurance program submitted is suitable for processing, pursuant to the requirements of this subchapter.

i. In the event that the quality assurance program is found to be unsuitable for processing, the applicant shall be notified in writing of such unsuitability and the basis thereof within 15 calendar days of the date it is received by the evaluation and inspection agency. Any subsequent submission shall be treated as a new application.

ii. In the event that the quality assurance program is found to be suitable for processing, it shall receive full evaluation within 30 calendar days of the date the application was received by the evaluation and inspection agency. The applicant shall be notified in writing of the results of the evaluation, upon completion.

3. Compliance assurance programs submitted for approval shall be evaluated for compliance with this chapter.

4. If a compliance assurance program is disapproved, the evaluation and inspection agency shall notify the applicant, with a written explanation, of the reasons for disapproval.

5. Approval of compliance assurance programs shall be evidenced by the stamp of approval of the evaluation and inspection agency on each sheet of the program documents. One copy of the approved quality assurance program and documentation shall be returned to the applicant.

6. A compliance assurance program or any amendment thereto that has been approved shall not be varied in any way without prior authorization by the evaluation and inspection agency. All approved amendments shall be made a part of the written record of the approval. Such authorization shall be in writing or be confirmed in writing within 10 calendar days of any oral authorization.

7. The evaluation and inspection agency may suspend or revoke or cause to be suspended or revoked, its approval of any compliance

assurance program whenever the approval was issued in error, or was issued on the basis of incorrect information, or was issued in violation of this chapter. If the evaluation and inspection agency determines that industrialized/modular buildings or building components manufactured pursuant to an approved building system do not comply with the State Uniform Construction Code and the manufacturer fails to comply in response to notice and an order, the evaluation and inspection agency may suspend or revoke, or cause to be suspended or revoked, the approval of the manufacturer's compliance assurance program. Notice to the manufacturer, and the inspection agency, and the Department of suspension or revocation of approval shall be in writing with the reasons for suspension or revocation set forth therein.

5:23-4A.9 Certification

(a) Industrialized/modular buildings or building components, accepted by the Department or by an approved inspection agency as having been manufactured according to an approved building system and an approved compliance assurance program, shall be certified by the Department as complying with the requirements of this chapter.

(b) The Department may delegate to evaluation and inspection agencies all or part of the inspection or the issuance or attachment of labels to industrialized/modular buildings or building components (or groups of components).

(c) A label for each industrialized/modular building or building component (or group of components) that is certified pursuant to this subchapter shall be permanently attached thereto, one certification label located in the kitchen sink base cabinet, master bedroom closet, or, if such locations are not practical, near the building entry or in another easily accessible location. The location of the label should be indicated on the approved building system.

1. An approved label shall indicate:

i. Certification that the building, or building component, has been manufactured in accordance with an approved building system and compliance assurance program under the auspices and approval of the State of New Jersey;

ii. The label serial number; and

iii. The Department of Community Affairs or the name of the approved agency issuing the label. At the discretion of the Department, labels may be limited in size for components whose shape or size does not permit the full information to be placed thereon.

2. The approved label shall be issued by the Department or its agents in accordance with the following:

i. When the Department delegates the issuance of labels to an approved evaluation and inspection agency, the agency shall be required to obtain approval from the Department for the procedures by which it issues labels;

ii. Labels shall be serially numbered;

iii. A manufacturer's compliance assurance program, approved in accordance with this subchapter, shall include requirements for issuance, possession of, attachment of, and accounting for all labels to assure that labels are attached only to buildings or building components manufactured pursuant to an approved building system and inspected pursuant to an approved compliance assurance program; and

iv. The Department or approved evaluation and inspection agency may entrust labels to the custody of one or more designated employees of the manufacturer, who shall be charged with controlling the use of such labels. Such employees shall not be given custody of more labels than are necessary to accommodate the manufacturer's anticipated production. If the conditions of custody of N.J.A.C. 5:23-4A.9(c)2iv are violated, the Department or the approved evaluation and inspection agency shall immediately regain possession of all labels that have not been attached to the industrialized/modular buildings or building components and shall take such further action with respect to buildings or components already labeled, and with respect to future labeling, as it may deem necessary to assure compliance with this chapter.

3. Permanent records shall be kept of the handling of labels, indicating, at a minimum, the number of labels that have been attached to buildings or building components (or groups of components); the serial numbers of labels that have been attached to buildings or building components and the types of buildings to which they have been attached; the disposition of any damaged or rejected labels, the location and custody of all unused labels; and the first destination of labeled buildings

or building components. Records shall be maintained by the manufacturer or by the evaluation and inspection agency. A copy of all records for each label shall be sent to the Department monthly.

4. The Department or the approved evaluation and inspection agency shall attach labels to buildings or building components manufactured in accordance with an approved building system, and meeting the requirements of an approved compliance assurance program. Manufacturers may attach labels to industrialized/modular buildings or building components manufactured in accordance with an approved compliance assurance program, if custody of the labels has been entrusted to them, in accordance with this subchapter.

(d) The following information shall be placed on the permanent manufacturer's data plate located in the vicinity of the certification label:

1. The name and address of the manufacturer;
2. The manufacturer's identification number (serial number);
3. The manufacturer's plan approval number (model number);
4. The State label audit control number;
5. The construction type;
6. The occupancy type;
7. The seismic zone;
8. The gas type, if appropriate;
9. The wind velocity load;
10. The roof live load;
11. The name and date of applicable nationally recognized code(s) complied with;

12. The serial numbers of insignias of inplant inspection agency for other modules forming part of the entire certified industrialized/modular buildings project; and

13. A reference to any manual, if appropriate.

(e) If, in the judgement of the Department, the shape or size of a building component is such that the information required by (d) above cannot be attached to it permanently, the information may be recorded in a manual crated with the component or, if the information is not such that a future occupant of the building should be aware of it for safe occupancy, on a tag attached to the crate in which the component is shipped. Information recorded in a manual shall be presented to the occupant upon transfer of possession. If life safety is involved, the item in question shall be plainly labeled.

(f) The following provisions relate to violations and remedial actions:

1. Regarding individual nonconformances:

i. Whenever the Department or an approved evaluation and inspection agency shall have reason to believe that an individual building or dwelling unit constructed under N.J.A.C. 5:23-4 and 4A fails to conform to the Uniform Construction Code, the Department or the evaluation and inspection agency shall notify the manufacturer of the nonconformance and shall afford the manufacturer an opportunity to correct the nonconformance in a manner acceptable to the Department or to the evaluation and inspection agency. If the nonconformance is first noticed by the Department, the Department shall notify the evaluation and inspection agency, which shall carry out its responsibilities under N.J.A.C. 5:23.

ii. If the manufacturer fails to successfully resolve a problem or correct a nonconformance within 30 calendar days following notification by the Department or such reasonable additional time as set by the evaluation and inspection agency, then the evaluation and inspection agency shall notify the Department of the failure. The Department shall order the manufacturer to correct the nonconformance.

iii. If a nonconformance involves a building for which a certificate of occupancy has not been issued, the approved evaluation and inspection agency shall affix or cause to be affixed an invalidation to the label and shall notify the enforcing agency that the label has been invalidated and that the certificate of occupancy should be revoked. If nonconformance does not create a clear and present hazard to the health or safety of the intended occupants of the building, an approved evaluation and inspection agency may advise the local agency that the invalidation should not prevent the issuance of a temporary certificate of occupancy provided that the evaluation and inspection agency shall specify a time within which the nonconformance shall be corrected.

iv. When a manufacturer fails to correct a nonconformance within a reasonable period of time, as specified by the Department or by an

approved evaluation and inspection agency, that failure shall be grounds to subject the manufacturer to the penalties provided by N.J.A.C. 5:23.

2. Regarding class nonconformance:

i. Whenever the Department has reason to believe that a class of industrialized/modular buildings or building components may not conform to the requirements of the State Uniform Construction Code, the Department shall order the manufacturer to correct the class nonconformance at all buildings or building components affected by it.

ii. A condition shall be a class nonconformance if:

(1) The building system approval under which a building or building component was constructed did not provide for compliance with the State Uniform Construction Code, or a series of individual nonconformances establishes that there has been a failure of the compliance assurance program under which the building or building component was manufactured; and

(2) The nonconformance constitutes a real and present hazard to the health and safety of the occupants or intended occupants of the building or building component or the nonconformance constitutes a major structural defect that impairs the ability of any load-bearing portion of the building or building component to carry the loads intended in accordance with the requirements of the code.

iii. Failure of a manufacturer to correct all instances of a class nonconformance in such reasonable time as may be fixed by the Department shall subject the manufacturer to the penalties provided by N.J.A.C. 5:23. In addition, the Department may find that the failure to correct a class nonconformance constitutes a program nonconformance and it may apply the sanctions provided in this subchapter.

3. Regarding program nonconformance:

i. Whenever the Department or an approved evaluation and inspection agency shall discover a pattern or practice of failure to follow the provisions of an approved quality assurance program, or when the Department or an approved agency shall discover a serious violation of the State Uniform Construction Code in an approved building system that cannot be corrected while production continues, the Department shall order the suspension or revocation of the approval of the building system and of the quality assurance program, and shall invalidate all labels attached to any building or building component covered by the suspended approval. A determination as to whether a suspension or revocation is to be issued shall be based on the following:

(1) A suspension shall be ordered when the Department finds that the problems that lead to the suspension can be corrected and production then resumed.

(2) A revocation shall be ordered when the Department finds that the failure or refusal to adhere to the approved quality assurance program has been habitual, whether that habitual failure has been deliberate or the result of negligence on the part of the manufacturer, its agents, or its employees.

(3) A revocation shall also be ordered where the revocation results from the failure or refusal of a manufacturer to correct a class nonconformance in accordance with this subchapter.

ii. After suspension of any building system or quality assurance program, no label shall be attached to any industrialized/modular building or building component manufactured pursuant to the building system or compliance assurance program. Upon reinstatement, labels may be attached after the date upon which approval is reinstated. Any building or building component manufactured during a period of suspension for which an appeal is pending shall not be labeled unless the appeal is resolved in favor of the manufacturer, and the Department, approved evaluation agency, or an approved inspection agency has approved the building or building component, and all requirements for attaching a label have been met.

iii. The manufacturer shall return all labels allocated for any building or building component under suspension to the issuing agency within 10 calendar days of the effective date of the suspension. The manufacturer shall be entitled to a refund of any applicable label fees that may have been paid for the returned labels.

iv. A request for a stay of any order of suspension or revocation shall be appealed in writing, filed first with the agency that issued the order, setting forth the appellant's position. Then, if denied, further appeal to the office or court having jurisdiction to hear the appeal. Appeals from suspensions or revocations issued by the Department shall be

reviewed in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(g) Industrialized/modular buildings or building components certified and labeled pursuant to this chapter shall not be altered in any way prior to the issuance of a certificate of occupancy unless the alteration to the unit has been submitted and approved by an approved evaluation and inspection agency or a construction permit for the alterations has been obtained from the enforcing agency having jurisdiction. An approved evaluation and inspection agency shall inspect alterations made to the industrialized modular building or building component wherever it is located, and the inspection may include tests or destructive or non-destructive disassembly that the approved evaluation and inspection agency deems necessary to assure compliance with this chapter. Enforcing agencies may be designated as evaluation and inspection agencies for this purpose.

5:23-4A.10 Inspections by the Department or by an approved agency

(a) The Department shall make, or cause to be made, such inspections of the entire process of manufacturing, certifying, handling, storing, and delivering industrialized/modular buildings or building components produced pursuant to approved building systems as it deems necessary.

(b) As part of the process of evaluating building systems and compliance assurance programs, the Department or approved evaluation and inspection agency shall inspect the manufacturing facilities in which the buildings or building components are manufactured.

(c) The Department or approved evaluation and inspection agency shall make such inspections as may be required by an approved compliance assurance program or as may be deemed necessary by the Department.

(d) Prior to the issuance of a certificate of occupancy, the Department or approved evaluation and inspection agency shall inspect, or cause to be inspected, industrialized/modular buildings or building components that it determines to have been sufficiently damaged after certification to warrant such inspection and to take such action with regard to such buildings or building components as is authorized under this subchapter or as is otherwise necessary to eliminate dangerous conditions.

1. The Department shall require industrialized/modular buildings or building components that are so damaged that they no longer comply with the State Uniform Construction Code to be brought into compliance promptly. If such buildings or building components are not brought into compliance with the State Uniform Construction Code within a reasonable time, or if they are so damaged that they cannot be brought into compliance, the Department shall order that the labels be removed from the noncomplying buildings or building components. Irreparably damaged buildings or building components shall be disposed of in accordance with applicable law.

(e) No inspection requiring disassembly, damage to, or destruction of certified industrialized/modular buildings or building components shall be conducted except to implement (d) above.

5:23-4A.11 Enforcing agency procedures and inspections

(a) Enforcing agencies shall issue construction permits for certified industrialized/modular buildings prior to installation, and shall not withhold issuance of construction permits for buildings containing certified building components that in all other respects comply with all applicable construction codes, provided that any industrialized/modular buildings or building component that the Department finds does comply with this chapter shall be brought into compliance before installation. An application to an enforcing agency for a construction permit shall, when requested, in addition to any other requirements, contain:

1. A statement that the work to be performed under the permit includes the installation of a certified industrialized/modular building or building component in accordance with the provisions of the State Uniform Construction Code. The statement shall be signed by the applicant or his agent, with the signatory's current address;

2. Schematic floor plan layouts and typical elevations showing the arrangement and layout of the specific building to be manufactured and installed wherein the manufacturer cites the Department's identifying numbers for the building, building systems, or building component approval. A schematic floor plan layout and typical elevation need not

include sections, construction details, or structural, plumbing, mechanical, and electrical layouts or details typical to the building, building systems and building components approved by the Department. These schematic plans need not be prepared and sealed by an architect or engineer;

3. Detailed plans prepared by an architect or engineer licensed pursuant to law in the State of New Jersey for any site-built construction related to the installation of the industrialized/modular buildings or building components. All elements of the certified industrialized/modular buildings or building components that are not described or included in the approved building system documentation shall be subject to review, inspection and approval by the local enforcement agency. The plans for all on-site construction required in connection with the proper setup and erection of the certified industrialized/modular buildings or building component shall include without limitation, foundation system, basement or crawl space, external utility systems, hook-ups and connections of various modules (boxes) and/or components. The review and approval of such plans shall be completed by:

- i. The Department; or
 - ii. The local enforcement agency for the types of industrialized/modular buildings and building components listed in N.J.A.C. 5:23-4A.8(a) provided the agency is classified in accordance with N.J.A.C. 5:23-3.10 and its classification meets the level of the specific project; and
4. A copy of any installation instructions for the industrialized/modular building or building component as set forth in N.J.A.C. 5:23-4A.16(d).

(b) Enforcing agencies shall inspect work performed on site, including foundations and the structural, mechanical, plumbing, and electrical connections for compliance with this chapter.

(c) Enforcing agencies shall inspect all industrialized/modular buildings or building components upon, or promptly after, installation at the building site to determine whether all site-built construction is in accordance with the plans filed with the permit application, the installation instructions, and the conditions listed on the manufacturer's data plate. This inspection shall include nondestructive plumbing and electrical tests in accordance with this subchapter and visual inspection for any damage that occurred during transportation.

1. Destructive disassembly of certified buildings and building components shall not be performed in order to conduct such tests or inspections, nor shall the enforcing agency impose any standards or test criteria different from those adopted by the Department;

2. Non-destructive disassembly may be performed only to the extent of opening access panels and cover plates; and

3. Systems tested during manufacture shall not be subjected to retesting at the building site unless damage is suspected.

(d) Enforcing agencies shall issue certificates of occupancy for certified industrialized/modular buildings and for buildings containing certified building components that otherwise comply with all applicable construction codes after they have been installed, inspected and approved in accordance with this chapter, provided that any industrialized/modular building or building component found not to comply with the plans and specifications filed with the permit shall be brought into compliance before a certificate of occupancy shall be issued.

(e) If the enforcing agency finds violations, it shall report the details of the violations in writing to the Department. Where violations are hazardous to occupants, a certificate of occupancy shall not be issued and the building shall not be occupied before such hazards are corrected. If the violations are not hazardous, temporary certificate of occupancy shall be issued. Upon being recertified by the Department or by an approved evaluation and inspection agency, a certificate of occupancy shall be issued.

(f) The enforcing agency shall accept relocated industrialized/modular buildings or building components labeled in accordance with this chapter provided the buildings comply with N.J.A.C. 5:23-2.6(a).

(g) Industrialized/modular buildings or building components when repaired or altered shall conform to the requirements of N.J.A.C. 5:23-2.4.

(h) A change in use of an industrialized/modular building or building component shall be in accordance with N.J.A.C. 5:23-2.6.

5:23-4A.12 Fees for labels; labels

(a) Fees for labels shall be as follows:

1. An approved evaluation and inspection agency requesting the Department to issue labels of certification for industrialized/modular buildings shall pay a fee of \$100.00 for each label.

2. An approved evaluation and inspection agency requesting the Department to issue component labels of certification for building components shall pay a fee of \$50.00 for each label.

3. Payments shall be made pursuant to N.J.A.C. 5:23-4.23.

(b) Only one modular unit label of certification shall be required for each dwelling unit in any residential modular construction even if the construction is comprised of two or more modules and/or components. However, each module shall be properly identified by the manufacturer's serial number and the inspecting agency's insignia.

(c) All industrialized/modular buildings other than residential modular construction shall require Department label(s) of certification as follows:

1. Each module (box) shall require a separate modular unit label of certification for modular construction.

2. In case of a multimodule (multibox) project, the data plate on each module (box) shall identify the serial numbers of the Department label of certification of all other modules (boxes) that form part of the entire project.

3. Components such as bathroom or kitchen modules shall each require a building component label of certification.

5:23-4A.13 Notification of changes in name, address, ownership or location

(a) Manufacturers shall notify the Department and evaluation and inspection agency in writing within 30 calendar days of any of the following occurrences:

1. The corporate name is changed;

2. The address of the headquarters of the company or its State of incorporation is changed;

3. The location of any manufacturing facility is changed; or

4. A new manufacturing facility is established.

(b) Each approved evaluation and inspection agency shall notify the Department in writing within 30 calendar days of any of the following occurrences:

1. The company name is changed;

2. The address of the headquarters of the company or its State or incorporation is changed;

3. There is a change in 25 percent or more of the ownership interest or control of the company within a 12 month period;

4. The location of any testing facility is changed;

5. A new testing facility is established; or

6. There are changes in principal officers or other key supervisory or responsible personnel of the firm.

5:23-4A.14 Proprietary information

All information relating to building systems and compliance assurance programs that the manufacturer or any other party considers proprietary shall be so designated at the time of its submission, and shall be kept confidential, to the extent permitted by law, by the Department and by any approved evaluation and inspection agency, and local enforcement agency, unless the Department determines, in a given case, that disclosure is necessary to carry out its responsibilities under the State Uniform Construction Code. The Department shall make reasonable efforts to obtain the written consent of the owner prior to the release of any confidential information.

5:23-4A.15 Requirements for submission of compliance assurance programs

(a) A compliance assurance program shall be approved if it meets the requirements of this section and of N.J.A.C. 5:23-4A.16.

(b) It is a manufacturer's nondelegable duty to comply with every requirement of this section and of N.J.A.C. 5:23-4A.16, and to comply with corrective orders. No contract between a manufacturer and its evaluation and inspection agency shall diminish or alter a manufacturer's duty under this subsection.

(c) A manufacturer shall cooperate with its evaluation and inspection agency by providing all requested information such as reports, documents and records; shall allow access to all facilities and equipment;

shall supply samples as requested; and shall otherwise comply with the requests of its evaluation and inspection agency made pursuant to this chapter.

(d) A manufacturer's compliance assurance documentation, as required in N.J.A.C. 5:23-4A.16, shall be submitted in a detailed form that completely and accurately describes all the compliance assurance activities of both the manufacturer and the evaluation and inspection agency.

1. Documentation shall be comprehensively indexed; and
2. Documentation shall detail all features required by this chapter.

5:23-4A.16 Building system documentation, quality control program requirements and on-site installation instructions requirements

(a) Building system documentation shall be submitted in the following manner and shall include the following:

1. Six sets of plans, specifications and other documentation shall be submitted;
2. All documents submitted shall bear the manufacturer's name;
3. Manufacturer's submitted plans shall show all elements of specific systems on identifiable sheets;
4. Structural connections and connection of systems, equipment and appliances to be performed on-site shall be identified, detailed and distinguished from work to be performed in the manufacturing facility;
5. Plans shall indicate the method of interconnection between industrialized/modular buildings or components and the location of such connections;
6. Design calculations and test reports shall be submitted when required by the evaluation agency;
7. Documents shall indicate the location of the approved label;
8. Plans shall be dated and identified and shall include an index that indicates whether the set is complete; and
9. Documents shall indicate graphically or as a notation: occupancy or use; area, height, and number of stories; type of construction and loads (wind, floor, snow and seismic).

(b) Required construction details shall be documented. Documents for industrialized/modular buildings or components shall indicate graphically or as a notation, the details listed in (b)1 through 6 below. Only the minimum documentation necessary to show each alternative within the system shall be required.

1. General requirements, which shall include:
 - i. Details and methods of installation of industrialized/modular buildings or components on foundations and/or to each other;
 - ii. Floor plan(s) and typical elevation(s);
 - iii. Cross sections necessary to identify major building components;
 - iv. Details of flashing, such as at openings and at penetrations through roofs and subcomponent connections. Flashing material and gauge to be used shall be indicated;
 - v. Attic access and attic ventilation, when required by N.J.A.C. 5:23;
 - vi. Exterior wall, roof and soffit material;
 - vii. Interior wall and ceiling material;
 - viii. Barrier-free provisions, if applicable;
 - ix. The size, location and type of doors and windows; and
 - x. Suggested foundation plans, vents and underfloor access.
2. Fire safety requirements, which shall include:
 - i. Details of fire rated assemblies, including reference listing or test report for all stairway enclosures, doors, walls, floors, ceilings, partitions, columns, roof and other enclosures;
 - ii. Means of egress, including details of aisles, exits, corridors, passageways, and stairway enclosures;
 - iii. The flame spread and smoke developed classification of interior finish materials;
 - iv. The location of required draftstops and firestops;
 - v. Opening protectives in fire resistance rated systems and assemblies; and
 - vi. Plans of fire suppression systems, standpipes, fire alarms, and detection systems, when required.
3. Structural detail requirements, which shall include:
 - i. Calculations of structural members and/or test results, where appropriate except where compliance can be demonstrated through code tables, accepted handbooks, or listing documents;

- ii. Details of structural elements, including framing details, spacing, size and connections;
 - iii. The grade, species and specifications of materials;
 - iv. A typical foundation plan and details, including details or reinforcing steel and assumed design soil bearing value;
 - v. The schedule of roof, floor, wind and seismic loads upon which design is based; and
 - vi. The column loads and column schedule.
4. Mechanical detail requirements, which shall include:
 - i. The location of all equipment, appliances and baseboard radiation units, indicating equipment and appliance listing or labeling agencies;
 - ii. Energy conservation calculations;
 - iii. The make, model number and input/output rating of all equipment and appliances, as appropriate;
 - iv. Duct and register locations, sizes and materials, as appropriate;
 - v. The method of providing combustion air, if required; and
 - vi. The location of flues, vents and chimneys; and clearances from air intakes, combustible materials, and other vents and flues.
 5. Plumbing detail requirements, which shall include:
 - i. Schematic plans of the plumbing layout, including, but not limited to, size of piping; fittings; traps and vents; cleanouts and valves; and gas, water and draining systems; and
 - ii. Plumbing materials and location of all equipment, appliances and safety controls to be used. Make, model number, rating and capacity of equipment and appliances. Indicate equipment and appliance listing or labeling agencies.
 6. Electrical detail requirements, which shall include:
 - i. Details of service equipment;
 - ii. The method of grounding service equipment;
 - iii. Load calculations for service and feeders;
 - iv. Sizes of branch circuit conductors;
 - v. The size, rating and location of main disconnect and overcurrent protection devices; and
 - vi. The location of outlets, junction boxes, fixtures and appliances.
- (c) The manufacturer's production quality control program manual shall include:
1. Organizational requirements as follows:
 - i. The manufacturer's name, corporate office address, state of incorporation, and the address of each manufacturing facility;
 - ii. A table of contents with the evaluation and inspection agency's dated stamp of approval on the initial sheet and on any revised pages;
 - iii. A depiction of the organizational structure for implementing and maintaining the compliance assurance program and its functional relationship to other parts of the manufacturer's organization. The compliance assurance program shall function independently of the production department.
 - (1) Managerial employees in the compliance assurance program shall be identified and their training and qualifications specified.
 - (2) When required, employees of evaluation and inspection agencies shall be certified;
 - iv. A uniform system of monitoring and evaluation to insure the program is effective;
 - v. A serial numbering system for industrialized/modular buildings or building components; and
 - vi. The method of safekeeping, handling and attaching labels.
 2. Materials control requirements as follows:
 - i. Procedures for inspection of materials, supplies and other items when received;
 - ii. The method for protection and storage of materials when received; and
 - iii. The procedure for disposal of nonconforming materials, supplies and other items.
 3. Production control requirements as follows:
 - i. Procedures for timely remedial and preventive action to assure product quality;
 - ii. The provision, maintenance and use of testing and inspection equipment to assure compliance with approved building system specifications;
 - iii. The frequency of sampling inspections;
 - iv. The delegation of authority to reject defective work and to carry out compliance assurance functions notwithstanding production goals;

v. A description of the manufacturing process indicating the timing of inspections performed;

vi. Inspection and test procedures, including accept and reject criteria, and mandatory inspection standards; and

vii. The procedure for disposition of rejected material.

4. Finished product control requirements as follows:

i. Procedures for handling and storing all finished industrialized/modular buildings or components at the manufacturing plant or other storage site; and

ii. Procedures for packing and shipping operations and related inspections.

(d) A manufacturer shall submit on-site installation instructions that specify the materials and methods required to install industrialized/modular building or component in accordance with applicable codes and standards, including:

1. Specifications for anchoring to an approved foundation;

2. Structural connections between buildings and components;

3. Connections necessary to complete mechanical and utility systems; and

4. Any special conditions or requirements concerning other structural elements.

5:23-4A.17 Approval of evaluation and inspection agencies

(a) An evaluation and inspection agency seeking approval shall submit an application accompanied by the fee established pursuant to this chapter to the Department that shall include the following items:

1. The original articles of incorporation of the agency and all subsequent amendments thereto, along with copies of any additional information filed in the state of incorporation;

2. The bylaws of the organization, if any;

3. The names, addresses, and business of all members of the Board of Directors and of top management personnel;

4. Certification by the agency that:

i. Its board of directors, as a body, and its technical personnel, as individuals, can exercise independence of judgment;

ii. Its activities pursuant hereto will result in no financial benefit to the agency via stock ownership, or other financial interests in any producer, supplier, or vendor of products involved, other than through standard published fees for services rendered; and

iii. The evaluation and inspection agency will not perform design or quality assurance program approvals for any manufacturer whose design or quality assurance program has been created in whole or in part by members of the evaluation and inspection agency or any affiliated organization;

5. The names, years of experience, state(s) in which professionally registered, and other qualifications of the directors of inspection or evaluation programs. Registration in more than one state is not required;

6. The names and years of experience of employees practicing in the following disciplines: architecture, structural engineering, mechanical engineering, electrical engineering, other branches of engineering and fire protection; the state(s) in which each is registered; and the duties of each. New Jersey Department of Community Affairs licensure requirements at N.J.A.C. 5:23-5 shall be met and documented;

7. An organizational chart showing management and supervisory personnel including the number of graduate engineers and architects, and the names of all consulting engineers or architects, designating which are full-time and which are part-time engineers;

8. The number and location of factory inspectors, supervisors, and other technicians, including evaluators of factory inspectors and the qualifications of each specialized group, including records of work experience, licenses held, and other pertinent qualifications; descriptions of the duties of each group and the duties each technician is expected to perform; and the qualifications of each group and the qualifications of each technician to perform the duties assigned;

9. A statement from the agency to assure that all inspectors, evaluators, and other technicians are properly trained and licensed to do each job assigned to them;

10. An outline of the general procedures for supervision of inspectors and evaluators, including checking and evaluation of their work;

11. The names of all engineers, technicians, and other personnel such as consultants to the agency who are not its employees, and the supervisory and other relationships that each will have to the agency;

12. The type of products, components, equipment, structures, and other items that the organization has evaluated, tested, or inspected, the number of years of experience the organization has had with each, and the codes, standards, specifications, and requirements with respect to which the organization has had experience in providing evaluation, inspection, or testing services, and the number of years of experience with each;

13. A description of the record-keeping system the agency proposes to use with particular regard to the ability of the Department to access all records and the agency's capacity to render reports to the Department. The agency shall record all design approvals and inspections and shall conform its record retention policies to the Department's requirements;

14. A description of the frequency with which the agency performs inspections or evaluations;

15. A list of the states in which the agency is now approved to inspect or evaluate industrialized/modular buildings or building components; and

16. Certification that the agency is able to evaluate building systems for compliance with the State Uniform Construction Code and this subchapter.

(b) Each evaluation and inspection agency shall:

1. Carry liability insurance, at least in the amount of \$1,000,000 for each person and each occurrence to satisfy claims or judgements for property damage and/or personal injury arising out of the failure of its employees to properly discharge their duties and responsibilities; and

2. Carry to full completion all projects initiated prior to the termination of their contract with the manufacturer by reason of non-renewal unsuccessful bidding, Department authorization disapproval or other reason except suspension or revocation.

5:23-4A.18 Procedures for approving evaluation and inspection agencies and delegating authority to them

(a) The Department may approve evaluation and inspection agencies that meet the requirements of N.J.A.C. 5:23 and that the Department finds otherwise qualified to perform the functions proposed to be delegated to them.

(b) Prior to a full evaluation of an application for approval, the Department shall determine whether such application is suitable for processing. In the event the application is found to be unsuitable for processing, pursuant to N.J.A.C. 5:23, the applicant shall be notified in writing of such unsuitability and the basis thereof within 30 calendar days of the date the application is received by the Department. In such event, the findings of unsuitability shall be without prejudice. In the event the application is found to be suitable, the applicant shall be notified in writing within 30 calendar days and the evaluation shall be conducted within 60 calendar days of the date the application is received by the Department.

(c) In the event an evaluation and inspection agency is not approved, the Department shall return one complete application to the applicant with a written explanation of the reasons for such disapproval attached thereto.

(d) Approval of evaluation and inspection agencies shall be evidenced by a letter to the applicant indicating such approval and stating specifically the functions that the applicant has been approved to perform.

(e) Authorization shall be valid for a period of one year.

(f) The total fee for an application for authorization as an evaluation and inspection agency shall be \$500.00.

5:23-4A.19 Continued approval of evaluation and inspection agencies

(a) The Department or its agent shall monitor each approved evaluation and inspection agency at any reasonable time, with or without prior announcement, in order to assess the reliability of each agency. Each review shall investigate the adequacy of all evaluative procedures including engineering evaluation of plans, specifications and test results, testing, and analysis of compliance assurance programs. The results of such review shall be kept on file at the Department. Copies of evaluation reports shall be sent to the evaluation and inspection agency. Agencies shall be specifically notified of any deficiencies and of the manner in

and time by which deficiencies shall be eliminated. If deemed necessary by the Department, approval of an evaluation and inspection agency may be suspended or revoked as provided for in this subchapter. Reviews shall also be conducted before reapproving an evaluation and inspection agency.

(b) The Department or its agent shall monitor each approved evaluation and inspection agency, at any reasonable time, with or without prior announcement, at either the evaluation and inspection agency's office or at a manufacturer's place of business, in order to measure the performance of each agency and of its monitoring of the manufacturer's compliance assurance program. Each such review shall investigate the adequacy of all procedures used by the agency in the monitoring activity including personnel selection, training, supervision, reporting accuracy, use of approved documents, evaluation of reports, decision criteria, and all other activities that measure the effectiveness of the manufacturer's program. The results of such reviews shall be kept on file at the Department. Copies of evaluation reports shall be sent to the evaluation and inspection agency. The evaluation and inspection agency shall be specifically notified of any deficiencies and the means and time by which deficiencies must be eliminated. If deemed necessary by the Department, an agency's approval may be suspended or revoked in accordance with these regulations. Monitoring reviews shall also be conducted before the approving of an evaluation and inspection agency.

(c) Each reauthorization shall expire one year from the date of the current authorization from the Department.

(d) The total fee for reauthorization as an evaluation and inspection agency shall be \$250.00.

5:23-4A.20 Suspension and revocation; evaluation and inspection agencies

(a) Grounds for suspension and/or revocation shall be as follows:

1. If the Department determines that an evaluation and inspection agency has failed to perform its functions properly, the Department shall notify the evaluation and inspection agency and shall arrange for a conference.

2. The Department may suspend or revoke its approval of any evaluation and inspection agency if the approval was issued on the basis of incorrect information or issued in violation of N.J.A.C. 5:23. Appeals from suspensions or revocations shall be reviewed in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

3. No agency whose approval was revoked shall reapply for approval as an evaluation and inspection agency until the expiration of one year from the date of the order of revocation.

(b) If the Department suspends or revokes the approval of an evaluation and inspection agency, the manufacturers being evaluated or inspected by the agency shall be given notice in writing after the disposition of any appeal of the suspension or revocation with the reasons set forth therein.

(c) An evaluation and inspection agency for which approval has been suspended or revoked shall, within 30 calendar days of the suspension or revocation, deliver to the custody of the Department all labels and other required documents in the agency's possession, under its control, or for which it is responsible, pursuant to the State Uniform Construction Code.

(d) Under the suspension or revocation of any evaluation or inspection agency, the Department, at the request of any manufacturer affected, shall establish a temporary arrangement by which the manufacturer can continue to manufacture, sell, lease, deliver, and install industrialized/modular buildings or building components in conformance with the State Uniform Construction Code until suspension or revocation is rescinded or, in the event of sustained revocation, arrangements are made to use another approved evaluation and inspection agency.

5:23-4A.21 Reciprocity

If the Department finds that the standards for the manufacture and inspection of industrialized/modular buildings or building components prescribed by statute or by the rules or regulations of another state, or other governmental agency, meet the objectives of the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.) and N.J.A.C. 5:23 and are enforced satisfactorily by the other state or other governmental agency, or by its agents, the Department shall accept industrialized/modular buildings or building components that have been

certified by the other state or governmental agency, and shall assure that the appropriate label is attached thereto. The standards of another state or governmental agency shall not be deemed to be adequately enforced unless the other state or governmental agency provides for notification of the Department of suspensions or revocations of approvals issued by the other state or governmental agency in a manner satisfactory to the Department.

5:23-4A.22 Procedures for granting or refusing reciprocity to another jurisdiction

(a) If the Department finds that the standards prescribed by the statute and regulations of another state or other governmental agency meet the objectives of the State Uniform Construction Code Act and that these regulations are satisfactorily enforced, it shall extend reciprocity to that jurisdiction by:

1. Giving notice to any requesting manufacturer; and
2. Giving notice to the appropriate authorities in the other jurisdiction.

(b) If the standards of another state or governmental agency do not meet the objectives of the State Uniform Construction Code Act, or are inadequately enforced, or both, reciprocity shall not be extended. In that event, the Department shall notify any requesting manufacturer and appropriate authority of the other state of the refusal and the reasons therefor.

5:23-4A.23 Procedures for reciprocal certification of industrialized/modular buildings or building components

A manufacturer from a jurisdiction to which reciprocity has been extended shall submit to the Department evidence that its building system and compliance assurance program have been approved by its state or governmental agency. The Department shall verify the approval and shall notify the manufacturer in writing of the verification and of the fact that properly labeled (New Jersey label along with state of manufacture label) buildings or building components that it has manufactured will be accepted.

5:23-4A.24 Suspension and revocation; reciprocal certification

The Department shall suspend or revoke, or cause to be suspended or revoked, its acceptance and certification of any reciprocally certified industrialized/modular buildings or building component if it determines that the standards for the manufacture and inspection of any industrialized/modular buildings or building component of another state or other governmental agency do not meet the objectives of the State Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq., and these regulations, or that such standards are not being enforced to the satisfaction of the Department. If another state or governmental agency or its agents suspend or revoke its approval and certification, the acceptance or certification or both granted reciprocally under this section shall be deemed to be revoked or suspended accordingly. Notice to the manufacturer and to the appropriate authority of another state of a suspension or revocation shall be in writing with the reasons for the suspension or revocation set forth therein. Appeals from suspensions or revocations shall be reviewed in an administrative hearing conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

5:23-4A.25 State licensure and training

(a) Employees of private or reciprocally approved evaluation and inspection and enforcement agencies that perform inspection and enforcement functions under this subchapter shall be licensed pursuant to N.J.A.C. 5:23-5.

(b) Licensing of such employees shall be through the office established pursuant to N.J.A.C. 5:23-5.2.

(c) All licensure requirements, examination requirements, continuing education requirements, fees, renewals, suspension and revocation procedures for employees of private or reciprocally approved evaluation and inspection and enforcement agencies identified in (a) above shall be identical to those for State employees in N.J.A.C. 5:23-5.

5:23-4A.26 Appeals

(a) Any person, firm, or corporation acting on behalf of itself or a class adversely affected by any rule, regulation, decision of, or action by any evaluation and inspection agency or the Commissioner may file an appeal.

(b) An application for a hearing must be filed within 15 days of receipt of a ruling, action order or notice by the applicant who has received the ruling, action, order or notice complained of.

(c) The notice of appeal may be filed either in person or by mail and may be addressed to the Hearing Coordinator, Division of Housing and Development, CN 802, Trenton, NJ 08625.

(d) The application shall be in writing and shall set forth the rule under which the appeal is being brought and the facts and circumstances of the case.

(e) The application shall include, where appropriate, the following information and documentation:

- 1. A copy of the law or regulation, written instruction, decision, direction, ruling, or order that is the subject of the appeal;
2. A copy of the building system, compliance assurance program, or other document involved;
3. A description of the industrialized/modular building or building component affected;
4. A statement of the relief sought by the appellant; and
5. In the event of an appeal from an action or decision of an evaluation and inspection agency, the application shall contain a copy or, if that is unavailable, a written statement, of the prior decision or other action of the agency being appealed.

5:23-4A.27 Conduct of hearings

Hearings in contested cases shall be conducted by the Office of Administrative Law pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Notice of Public Meeting
Uniform Construction Code
FRT Plywood Code Interpretation

Proposed New Rule: N.J.A.C. 5:23-9.3

Take notice that a public meeting to discuss the proposed code interpretation on the subject of FRT Plywood, proposed in the December 18, 1989 New Jersey Register at 21 N.J.R. 3870(a), will be held at the offices of the Construction Code Element, 3131 Princeton Pike, Lawrenceville, New Jersey, on March 16, 1990 at 10:00 A.M.

Persons who have submitted comments or otherwise expressed interest in this issue have been invited to attend this meeting. Other members of the public who wish to attend and participate in the discussion are welcome to do so.

(b)

LOCAL FINANCE BOARD

Local Finance Board Rules
Proposed Amendments: N.J.A.C. 5:30
Proposed New Rules: N.J.A.C. 5:33

Authorized By: Local Finance Board, Barry Skokowski, Sr., Chairman.

Authority: N.J.S.A. 52:27BB-10, 52:27BB-32, 52:27D-18, 40A:4-83, 40A:5-38, 40A:11-11 and 40A:12-6.

Proposal Number: PRN 1990-104.

Submit comments by April 17, 1990 to:
Harry L. Mansmann, Executive Secretary
Local Finance Board
CN 803
Trenton, NJ 08625

The agency proposal follows:

Summary

This proposed rulemaking has three purposes: to repeal rules that are obsolete due to legislative changes or elimination of programs; to reorganize the chapter into more logical subchapters and create new chapters as appropriate; and to make technical amendments to reflect

established practices and codify previously adopted Local Finance Board policies.

N.J.A.C. 5:30 contains a number of rules concerning the operating and policies of the Local Finance Board. Over the years a number of changes have taken place concerning the Board and its procedures that have not been reflected in N.J.A.C. 5:30. This rulemaking will update the rules to reflect these practices. It should be noted that few actions proposed herein are of a substantial nature and for the most part are ministerial and organizational changes.

Specifically, those actions that are considered significant policy changes include:

In N.J.A.C. 5:30-1.11, the requirement for submission of a Realized Revenue Report is amended from appearing to require all municipalities to submit them, to apply only to those municipalities specifically required to submit one by the Board.

N.J.A.C. 5:30-2.2 is amended to formalize existing Board policy that, on occasion, extraordinary circumstances will permit authorization of bond and note financing without a downpayment, where the existing indebtedness is not in excess of the normal debt limitation.

Proposed new N.J.A.C. 5:30-1.7 permits forms required by statute or regulation to be promulgated upon approval of the Board or Director, but the form itself not necessarily made part of the New Jersey Administrative Code.

Proposed new N.J.A.C. 5:33-2.1 revises the education content of Certified Tax Collector courses to meet existing requirements.

The following rules are either completely or significantly repealed, for the following reasons:

N.J.A.C. 5:30-1.7(a)-(d) and (j) are obsolete, as Federal program procedures have been revised.

N.J.A.C. 5:30-1.10 was replaced by the provisions of N.J.A.C. 5:30-14. N.J.A.C. 5:30-1.13 and 1.15 are obsolete, as the Federal revenue sharing program was abandoned.

N.J.A.C. 5:30-7.11 is no longer relevant, as it concerns a 1963 timetable of adoption of bond schedules.

N.J.A.C. 5:30-8.8 is replaced by the tax collector's course requirements in N.J.A.C. 5:33-2.1.

N.J.A.C. 5:30-13.2 contains a form related to an expired Federal revenue sharing program.

N.J.A.C. 5:30-13.4 and 13.5 form requirements are replaced by new rule N.J.A.C. 5:30-1.7.

N.J.A.C. 5:30-15.1 and 15.2 have been superseded by law in N.J.S.A. 40A:4-1 et seq.

Concerned individuals should carefully review the proposal as many sections appearing to be repealed reappear as "new" rules with no textual changes. The following chart is provided to assist in understanding the actions proposed in this rulemaking.

Table with 2 columns: Current Citation and Proposed New Citation or Action. Lists various rule numbers and their corresponding new citations or actions like 'Repealed', 'Amended', or 'Deleted'.

| | |
|------------------------------|------------------------|
| — | 5.3 (former 1.8) |
| 6.1 through 7.9 | 6.1 through 7.9 |
| 7.10 | 8.3 |
| 7.11 | Repealed |
| 7.12 | 8.4 |
| 8.1 through 8.5 (Reserved) | Deleted |
| 8.6 | 8.1 |
| 8.7 | 5:33-1.1 |
| 8.8 | Repealed |
| 8.9 | 8.2 |
| 9.1 | 5:33-1.2 |
| 9.2 | 5:33-1.3 |
| — | 5:33-2.1 (new) |
| 9.3 | 5:33-2.2 |
| 9.4 through 9.8 (Reserved) | Deleted |
| 9.9 | 8.5 |
| 9.10 | 8.6 |
| 10.1 and 10.2 | 10.1 and 10.2 |
| 11.1 through 11.7 (Reserved) | Deleted |
| 11.8 | 8.7 |
| 12.1 through 12.4 | 12.1 through 12.4 |
| 13.1 | Repealed (see new 1.7) |
| 13.2 | Repealed |
| 13.3 | 5:33-1.4 (new rule) |
| 13.4 | Repealed |
| 13.5 | Repealed |
| 14.1 through 14.5 | 14.1 through 14.5 |
| 15.1 | Repealed |
| 15.2 | Repealed |
| 16.1 through 16.10 | 5:33-3.1 through 3.10 |
| 17.1 through 17.9 | 17.1 through 17.9 |
| APPENDIX | 5:33-3.11 |

Social Impact

This rulemaking action has limited or negligible social impact as it is basically a restructuring of existing rules and bringing administrative details of existing rules to current standards.

Economic Impact

Because there are no fees being established or amended, nor new procedural or technical requirements being imposed, there will be no economic charges as a result of adoption of these proposed rulemaking actions.

Regulatory Flexibility Statement

These rules are necessitated by N.J.S.A. 52:27BB-10 and other statutes. Because the adoption of these rules would affect only the regulation of local governmental units, these rules do not apply to, or affect, small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

5:30-1.1 Rules and regulations

(a) (No change.)

(b) The Local Finance Board shall meet on the third Monday of January, April, July, and October of each year; in addition, it shall meet on the **third Tuesday of each month** at its office, [28 West State Street] **101 South Broad Street**, Trenton, New Jersey [on each Tuesday] at [10:00] **9:30 A.M.**, unless otherwise ordered by formal action of the board [except during the month of August in each year].

(c)-(d) (No change.)

5:30-1.2 and 1.3 (No change.)

5:30-1.4 Vote

(a) In the case of a vote on any appeal from a determination of the [director] **Director**, the [director] **Director** shall disqualify himself or herself from a vote, but shall preside at the hearing on the appeal. A vote of a majority of the whole board, namely, [three] **five** votes, shall be required in determining whether any appeal from any action of the [director] **Director** shall be sustained or reserved.

(b) (No change.)

5:30-1.5 and 1.6 (No change.)

5:30-1.7 Forms; general provisions

All forms required to be filed with the Local Finance Board or Division of Local Government Services, such as statements, applications and reports shall be filed on forms (or approved facsimiles) approved by the Board or the Director of the Division of Local Government Services, certified as to their accuracy by an appropriate official and in accordance with the instructions relating to each. Forms are available upon request to the Local Finance Board or the Division of Local Government Services.

[5:30-1.7 Implementation of the Housing and Community Development Act of 1974

(a) The governing body of each local unit shall adopt a resolution authorizing the chief executive officer of its county or municipality to request for an advance of ten per cent of the entitlement amount available under the Housing and Community Development Act of 1974.

(b) The adopted resolution shall include the authorization of the local unit to incur costs against the ten per cent advance being requested as long as the expenses conform with the eligible uses of the money.

(c) The adopted resolution shall be forwarded to the Department of Housing and Urban Development.

(d) There may be established an interfund should the municipality expect to expend funds prior to the receipt of the ten per cent advance requested.

(e) The dedicated revenues from the Housing and Community Development Act of 1974 and appropriated for the purpose to which the revenue is dedicated will be made a part of the budget of the local unit as a dedication by rider under the provisions of N.J.S.A. 40A:4-39.

(f) The local unit shall establish a separate bank account entitled "community development block grant" which shall be part of a separate trust fund.

(g) All operating expenditures must conform to each contract.

(h) Expenditures for capital purposes shall follow the process of adoption of an ordinance authorizing such capital expenditures.

(i) All the provisions of the Local Public Contracts Law (N.J.S.A. 40A:11) and the Local Lands and Buildings Law (N.J.S.A. 40A:12) shall be complied with.

(j) Separate auditing guidelines shall be promulgated by the local finance board to insure compliance with Federal regulations.]

[5:30-1.8 Emergency resolutions exceeding the three per cent limitation; written opinion required

All emergency resolutions exceeding the three per cent limitation as prescribed by N.J.S.A. 40A:4-49, prior to being reviewed and approved by the Director, Division of Local Government Services, must be accompanied by a written opinion from the municipal attorney as to its compliance with N.J.S.A. 40A:4-46.]

[5:30-1.9 Implementation of the Housing and Community Development Act of 1974; urban counties

(a) The governing body of each participating municipality shall adopt an ordinance to enter into an agreement with their respective county as prescribed by the Division of Local Government Services for compliance with the Interlocal Services Act.

(b) There may be established an interfund loan should the participating municipality expect to expend funds prior to receipt of Housing and Community Development Act of 1974 funds from the county.

(c) The dedicated revenues from the Housing and Community Development Act of 1974 and appropriated for the purpose to which the revenue is dedicated will be made a part of the budget of the local unit as a dedication by rider under the provisions of N.J.S.A. 40A:4-39.

(d) The local unit shall establish a separate bank account entitled "community development block grant" which shall be part of a separate trust fund.

(e) All operating expenditures must conform to each contract. Any expenditures not included in contract with the county shall be considered an overexpenditure and a violation of N.J.S.A. 40A:4-57.

(f) Expenditures for capital purposes shall follow the process of adoption of an ordinance authorizing such capital expenditures.

(g) All the provisions of the Local Public Contracts Law (N.J.S.A. 40A:11) and the Local Lands and Building Law (N.J.S.A. 40A:12) shall be complied with.

(h) Separate auditing guidelines shall be promulgated by the Local Finance Board to insure compliance with Federal regulations.]

[5:30-1.10 Contracts; expenditures

(a) Before the governing body of any local unit shall consider or pass any resolution authorizing the entering into of any contract calling for the expenditure of public funds, it shall first ascertain that there are available sufficient legally appropriated funds for that purpose.

(b) The chief financial officer or the local financial officer charged with the responsibility of maintaining the financial records of the local unit shall certify in writing to the governing body the availability or lack thereof of adequate funds for each contract which is pending approval by the governing body. Said certification shall designate specifically the line item appropriation(s) of the official budget adopted pursuant to the Local Budget Law to which the contract will be properly charged in accordance with the comptroller function, taking care that the same funds shall not be certified as available for more than one pending contract.

(c) No resolution (or ordinance) authorizing the entering into of any contract pursuant to N.J.S.A. 40A:11 or any other law for the expenditure of public funds to a vendor, contractor or other entrepreneur shall be enacted unless it shall recite that such a certificate showing availability of funds has been provided. The resolution (or ordinance) shall specify the exact line item appropriation(s) or ordinance which shall be charged.

(d) The certification of availability of funds shall be attached to the original copy of the resolution (or ordinance) and kept in the files of the municipal clerk (or clerk of the board of chosen freeholders).

(e) Before certifying to the legality of any such resolution (or ordinance), the municipal (county) attorney shall satisfy himself that the proper certificate of availability has been provided showing funds to be available.

(f) Any person knowingly failing to discharge the responsibilities enumerated above shall be subject to the misdemeanor penalties prescribed by N.J.S.A. 52:27BB-52 in addition to such other sanctions as may pertain.

(g) Governing bodies should endeavor to see that adequate procedures, such as encumbrance systems, either formal or informal, exist so as to avoid violation of N.J.S.A. 40A:4-57 with respect to contracts or purchases made other than by resolution or ordinance.]

5:30-1.11 Realized revenue

(a) [Commencing July 1, 1981, municipalities shall file a statement containing a "Realized Revenues Analysis," as prescribed by Attach-

ment A of this section, with the Director of the Division of Local Government Services on April 1, July 1, and each month thereafter during that year for a total of seven reports. This applies only to those municipalities that:

1. Have not been given qualified bond status by the Local Finance Board pursuant to N.J.S.A. 40A:3-1 et seq.;

2. Can meet their revenue projection during the first three-month period and the second three-month period of the budget year; or

3. Have not had a deficit in any of the realized revenue categories listed on Attachment A of this section for any one or more of the past three years.] **When required to do so by the Local Finance Board, governmental units shall file a form entitled "Realized Revenue Report." The form of the Realized Revenue Report shall be approved by the Board.**

(b) [All other municipalities that do not meet the criteria in (a) above must continue to submit a Realized Revenue Report monthly.

(c) Each municipal government shall take whatever steps are necessary to assure a full and accurate compilation and transcription of the required information on the Realized Revenue Analysis form (Attachment A).

1. The Budget Amount or Levy Column of the Realized Revenues Analysis form should reflect the budgeted revenue amount for each specific revenue item or the property tax levy.

2. The property tax levy item in the Budget Amount or Levy Column should reflect an amount for that item based on a January 1 to June 30 levy; i.e., half of the amount levied in the prior year and a July 1 to December 31 levy which is the balance of the property tax levy to meet the total amount to be raised by taxation for that year. After the actual yearly levy has been determined, this can be consolidated into one item.

(d) Commencing July 1, 1981, each county shall file a statement containing a "Realized Revenues Analysis," as prescribed by Attachment B of this section, with the Director of the Division of Local Government Services on April 1, July 1 and each month thereafter during that year for a total of seven reports. This applies only to counties that:

1. Can meet their revenue projections during the first three-month period and the second three-month period of the budget year; or

2. Have not had a deficit in any of the realized revenue categories listed on Attachment B of this section for any one or more of the past three years.

(e) All other counties that do not meet the criteria in (d) above must continue to submit a Realized Revenue Report monthly.

(f) The first statement filed will include all information from January of the current year.

(g) All statements shall be certified as being accurate and complete by the Chief Financial Officer of the local unit.

[ATTACHMENT A
Division of Local Government Services
Realized Revenues Analysis
for _____, County of _____
Report of: Date _____

Table with 4 columns: Description, Budget Revenues & Ch. 159 Amendments & Tax Levy, Realized for the Period (Amount %), Total to Date (Amount %). Rows include Cash Surplus Revenues Anticipated, Miscellaneous Revenues Anticipated, State Aid Programs, Franchise & Gross Receipt Taxes, Interest on Investments, Replacement Revenue—Business Personal Property Tax, State Revenue Sharing, Municipal Purpose Tax Assistance Act, Federal General Revenue Sharing, Interest on Federal General Revenue Sharing, CETA, Other Federal Programs, Proceeds from Sale of Municipal Assets, All Other Miscellaneous Revenue, Total Miscellaneous Revenue Anticipated, Receipts for Delinquent Taxes (including Tax Title Liens), Property Tax Levy 1-1 to 6-30, 7-1 to 12-31, Added Assessments (Oct. 1), Rollback Taxes (Oct. 1).

*After the actual yearly levy has been determined this can be consolidated into one item.

Prepared by _____
Title _____
Date _____

If you had any problem or deviated from expected amounts this month please explain:]

[ATTACHMENT B
Division of Local Government Services
Realized Revenues Analysis
COUNTY _____ Date _____

Table with 4 columns: Description, Budget Revenues & Ch. 159 Amendments & Tax Levy, Realized for the Period (Amount %), Total to Date (Amount %). Rows include Cash Surplus Revenues Anticipated, Miscellaneous Revenues Anticipated, State Aid Programs, Other State Programs, Interest on Investments, Courts, County Clerk & Registrar, Surrogate, Sheriff, CETA, Federal General Revenue Sharing, Total Other Federal Programs, All Other Miscellaneous Revenue, Total Miscellaneous Revenue Anticipated, Amount to be Raised by Taxes.

Prepared by _____
Title _____
Date _____

If you had any problem or deviated from expected amounts this month please explain:]

[5:30-1.12 Supplemental detail in support of current budget appropriation

(a) The need for detailed information pertaining to the current budget appropriations is recognized and the regulations of the Local Finance Board are stated below:

1. Resolved that the Local Finance Board, having considered the matter of budget preparation, is hereby recorded to the effect that the published budget must contain a minimum breakdown for "salaries and wages" and "other expenses"; and

2. Be it further resolved that if in any instance any person petitions the board to the effect that he is unable to secure appropriate detail covering the makeup of any appropriation under the foregoing classification, the board will forthwith require the local unit to submit to it forms specifically breaking down "salaries and wages" and "other expenses", together with a budget information sheet covering such further detail in the form hereinabove recommended and added detail which may be deemed necessary.

3. The board in considering budget procedure can only conclude the preparation of the budget is a matter for the sound discretion of the governing body. The members of the governing body are the elected representatives of the people and it is their duty to introduce and approve the budget. This responsibility cannot be delegated; however, the governing body can hold pre-budget conferences if they so elect. This procedure has been helpful and productive, plus it has generated excellent public relations where it has been tried.

4. Insofar as the preparation of the supporting detail for the current budget is concerned, the board is of the opinion that this material should be available at any time after the introduction of the budget and, in any event, at least one week before the time set for the public hearing. This is necessary in order that interested persons may have an opportunity to study the material in conjunction with the printed budget and presentation at the public hearing.

5. The board directs that any petition must be filed not less than seven days prior to the time set for the public hearing on the budget. The board further directs that in case satisfactory information is made available by the local unit, the petitioner must notify the board at least three days before the time set for the public hearing on the budget that the request of the petitioner has been met. This regulation is made with the idea that some orderly procedure is necessary to avoid confusion and eliminate unnecessary hearings.

(b) The board recommends the use of standardized work sheets or budget request forms covering the following in reasonable detail:

1. Salaries and wages;
2. Other expenses;
3. Budget recapitulation sheet;
4. Budget information sheet.]

[5:30-1.13 Federal antirecession fiscal assistance program

(a) Whereas, the Federal antirecession fiscal assistance program limits use of said funds to the payment of salaries and wages and only other expense items that have no more than a one-year life, and whereas, the Local Finance Board, in keeping with its statutory responsibility, wishes to assure that municipal and county governments do not violate this requirement and face the possibility of repaying any funds misspent, now therefore, be it resolved that the Local Finance Board does hereby promulgate that all chapter 159 budget amendments and Title 40A:85 "change of title and text" requests, submitted to the Division of Local Government Services for review, that are funded from the antirecession fiscal assistance program must contain a breakdown of "other expense" items along with a statement from the chief financial officer of the municipality or county that said "other expense" items funded by the Federal antirecession fiscal assistance program have a useful life of less than one year.

(b) Be it further resolved that all antirecession fiscal assistance program appropriations in the 1978 and succeeding years' budgets be accompanied by such specificity of appropriation and certification of compliance with the one-year life span for "other expense" items in order that the Division of Local Government Services may assure compliance with the appropriate Federal statute;]

[5:30-1.14 Public participation in the revenue sharing program

All 1978 and succeeding years' municipal and county budgets that utilize general revenue sharing funds shall include in the Local Finance Board prescribed municipal or county budget forms, in the area denoted "Explanatory Statement", a statement denoting that a hearing on general revenue sharing will be held on the date the budget is adopted. The format to be used is as follows:

On _____, 197____, at _____ (A.M. or P.M.) in the (name of municipal building), room _____, a hearing on general revenue sharing will be held. The public has the right and is encouraged to provide oral and written comments, ask questions and otherwise participate in the budget adoption process including the relationship of general revenue sharing funds to said budget. Information on the 197____ (municipal/county) budget, together participate in the budget adoption process including the relationship of general revenue sharing funds to said budget. Information on the 197____ (municipal/county) budget, together with a true copy of the entire proposed budget is available to the public for their inspection by contacting (Mr., Mrs. Ms.) _____ at
(insert address/telephone number).]

[5:30-1.15 Urban aid reporting system

(a) The Local Finance Board has been requested to continue the established urban aid reporting system by the director of the Division of Local Government Services and the Local Finance Board has also been requested to insure that urban aid moneys are to be utilized to maintain, upgrade and improve municipal services, as specified in chapter 14 of the Public Laws of 1978. All moneys distributed pursuant to this act as well as all other municipal funds may be subject to an operational audit by the director of the Division of Local Government Services.

(b) The Local Finance Board hereby stipulates that prior to July 1, 1978, and every July 1 thereafter each municipality receiving State aid pursuant to chapter 14, P.L. 1978, shall submit to the director of the Division of Local Government Services in the Department of Community Affairs program performance data specifying how the moneys are to be utilized to maintain, upgrade and improve municipal services. The data shall be submitted in sufficient detail to permit the director to evaluate municipal expenditure and program purposes as to service, need and performance, including unit costs. In addition, each municipality receiving aid pursuant to this act shall submit to the director on December 31, 1978, and every December 31 thereafter a report describing the achievement of the program plans developed in accordance with the act.]

5:30-2.1 (No change.)**5:30-2.2 Interpretation of N.J.S.A. 40A:2-7 and N.J.S.A. 40A:2-11(c)**

(a) (No change.)

(b) The Local Finance Board has determined as a matter of policy that approvals of bond and note financing will not be granted under paragraphs (c), (d) and (e) of Section 40A:2-7 of the Local Bond Law of New Jersey where the amount of such bonds or notes together with existing indebtedness is not in excess of the debt limitation, **unless extraordinary conditions have been presented to the Board by an applicant to justify the waiver of this policy.** The provisions of the existing Local Bond Law permit necessary down payments to be raised by emergency appropriation as was not possible prior to 1962.

[(c) The Local Finance board accordingly determines that the provisions of Section 40A:2-7 of the Local Bond Law of New Jersey requiring this action should not be used where the municipality or county is within the debt limitations, but has no down payment available under budget appropriation.]

5:30-2.3 through 3.4 (No change.)**5:30-3.5 Supplemental detail in support of current budget appropriation**

(a) The need for detailed information pertaining to the current budget appropriations is recognized and the regulations of the Local Finance Board are stated below:

1. Resolved that the Local Finance Board, having considered the matter of budget preparation, is hereby recorded to the effect that the published budget must contain a minimum breakdown for "salaries and wages" and "other expenses"; and

2. Be it further resolved that if in any instance any person petitions the board to the effect that he is unable to secure appropriate detail covering the makeup of any appropriation under the foregoing classification, the board will forthwith require the local unit to submit to its forms specifically breaking down "salaries and wages" and "other expenses", together with a budget information sheet covering such further detail in the form hereinabove recommended and added detail which may be deemed necessary.

3. The board in considering budget procedure can only conclude the preparation of the budget is a matter for the sound discretion of the governing body. The members of the governing body are the elected representatives of the people and it is their duty to introduce and approve the budget. This responsibility cannot be delegated; however, the governing body can hold pre-budget conferences if they so elect. This procedure has been helpful and productive, plus it has generated excellent public relations where it has been tried.

4. Insofar as the preparation of the supporting detail for the current budget is concerned, the board is of the opinion that this material should be available at any time after the introduction of the budget and, in any event, at least one week before the time set for the public hearing. This is necessary in order that interested persons may have an opportunity to study the material in conjunction with the printed budget and presentation at the public hearing.

5. The board directs that any petition must be filed not less than seven days prior to the time set for the public hearing on the budget. The board further directs that in case satisfactory information is made available by the local unit, the petitioner must notify the board at least three days before the time set for the public hearing on the budget that the request of the petitioner has been met. This regulation is made with the idea that some orderly procedure is necessary to avoid confusion and eliminate unnecessary hearings.

(b) The board recommends the use of standardized work sheets or budget request forms covering the following in reasonable detail:

1. Salaries and wages;
2. Other expenses;
3. Budget recapitulation sheet;
4. Budget information sheet.

5:30-3.6 through 5:30-3.8 (Reserved)

5:30-4.1 through 4.9 (No change.)

SUBCHAPTER 5. EMERGENCY APPROPRIATIONS

[5:30-5.1 through 5:30-5.11 (Reserved)]

5:30-[5.12]5.1 Road repairs

(a) The Local Finance Board reviewed certain suggested procedures in connection with the operation of this statute. In accordance with the statute, the Local Finance Board will require that a copy of every ordinance together with a statement supporting the request for approval of funds be filed with the Local Finance Board upon introduction of the ordinance and passage on first reading.

(b) The Local Finance Board also considered a form of an ordinance, a form of supporting statement to be signed by the chief financial officer, road supervisor and engineer, and a form of emergency resolution.

(c) The procedures outlined in (a) and (b) above, together with a form of ordinance, supporting statement and emergency resolution must be approved, and the forms made part of the official minutes of the Local Finance Board.

[5:30-5.13 (Reserved)]

5:30-[5.14]5.2 Disaster accounting procedures

(a) The Local Finance Board has reviewed the accounting requirements in connection with "Disaster" accounting required by

Chapters 16 and 18, Laws of 1962. While the administrative procedures in the two Chapters differ, the accounting procedures are the same. Local Finance Board, is, therefore, setting forth certain procedures to be followed in "Disaster" accounting. These will be followed in connection with all "Disaster" expenditures regardless of whether these expenditures are subject to Federal or State Aid:

1. There must be an appropriation to which all expenditures are or will be charged.

2. Procedure approved by the State Treasurer will control in all instances.

3. Where there are, or were, current budget appropriations, the procedure set forth in this section will apply and be required.

4. Where there are ordinance appropriations pursuant to N.J.S.A. 40A-2.3, the same procedures hereinafter referred to will apply to amounts received or to be received from the Federal, State or other governmental units.

5. All revenues from the Federal or State governments shall be miscellaneous revenues and in no instance shall be credited to any appropriation.

6. At the completion of State or Federal work amounts received as advances or reimbursements shall be credited to "deferred charges" created by any emergency appropriations which have heretofore been adopted by the local unit. The foregoing shall apply in all cases where financing has been by emergency appropriations.

7. Where advantage of a five year emergency is being taken, an appropriation shall be included in the budget for not less than 20 percent of the net deferred charge unless the local unit elects to include a greater amount.

8. When an emergency appropriation is being funded pursuant to the Local Bond Law, the funding shall be for the net amount reflected in the "deferred charge" and shall represent the total subject to bonding plus not more than one percent of the amount of the "deferred charge" for issuing expense.

9. Where expenses were covered by 1962 budget appropriation, the revenue derived from Federal or State Aid shall be treated as current revenue.

10. Paragraphs (a) through 9 above will set forth certain procedures needed to provide for orderly financing of "disaster" appropriations and is hereby approved by the following resolution: the foregoing shall constitute a required procedure for all local units in connection with the funding or other disposition of "disaster appropriations". (L.F.B. Regulation)

5:30-5.3 Emergency resolutions exceeding the three percent limitation; written opinion required

All emergency resolutions exceeding the three percent limitation as prescribed by N.J.S.A. 40A:4-49, prior to being reviewed and approved by the Director, Division of Local Government Services, must be accompanied by a written opinion from the municipal attorney as to its compliance with N.J.S.A. 40A:4-46.

5:30-6.1 through 7.9 (No change.)

[5:30-7.10 Minimum surety bond coverage for tax collectors

(a) The Local Finance Board has further considered the provisions of N.J.S.A. 54:4-122.5 and has determined that the minimum surety bond coverage for tax collections should be made applicable to the collector of utility rentals and charges.

(b) The Local Finance Board promulgated the following requirements:

1. The minimum requirement for the surety bond of each tax collector (or the collector's office) shall be such percentage of the preceding year's tax duplicate as is required by the schedule set forth in paragraph 3 of this subsection.

2. The minimum requirement for the surety bond of each collector of utility rents shall be such percentage of the preceding year's utility charges as is required by the schedule set forth in paragraph 3 of this subsection.

3. Tax Levy or Utility Charges Minimum Bond Required

| | |
|----------------------------|---------------------------------------|
| Up to \$100,000 | 25% of the Levy |
| \$100,000 to \$250,000 | \$25,000 + 8% of all over \$100,000 |
| \$250,000 to \$500,000 | \$37,000 + 6% of all over \$250,000 |
| \$500,000 to \$750,000 | \$52,000 + 4% of all over \$500,000 |
| \$750,000 to \$1,000,000 | \$62,000 + 2% of all over \$750,000 |
| \$1,000,000 to \$2,000,000 | \$67,000 + 1% of all over \$1,000,000 |
| \$2,000,000 to \$5,000,000 | \$77,000 + ½% of all over \$2,000,000 |
| \$5,000,000 and upwards | \$92,000 + ¼% of all over \$5,000,000 |

4. That in fixing such minimum bond the nearest even \$1,000 shall be used.

5. When the collector of taxes and the collector of utility charges is the same person the minimum surety bond coverage shall be computed separately. The required amounts shall be combined in a single surety bond.

6. That the minimum coverage arrived at by use of the foregoing schedule shall be an overall minimum amount where there is more than one person in the office. The several persons handling funds should be bonded in accordance with their responsibility.

7. The Board hereby directs that the Director of Local Finance notify every municipality that each and every collector, collector's office and utility collector or utility collector's office be bonded in accordance with the aforementioned minimum amounts.

8. That in any case where a municipality desires to substitute for the foregoing method any other method which it deems satisfactory and which complies with the provisions of the existing statutes, such substituted procedure, shall if approved by the Local Finance Board, be deemed to comply with the regulations of the Board.]

[5:30-7.11 Effective date

(a) The revised bond schedule shall become effective as of December 31, 1963.

(b) All bonds written after December 31, 1963, shall be in accordance with the revised schedule.

(c) All bonds written prior to December 31, 1963, for the term of office be brought into conformity by December 31, 1964.]

[5:30-7.12 Minimum surety bond requirements for municipal courts

(a) The Local Finance Board reviewed the present minimum surety bond requirements for the municipal courts. The minimum surety bond requirements shall be in accordance with the following schedule:

| Total Annual Receipts | Minimum Bond Required |
|--------------------------|---------------------------------------|
| \$1 to \$5,000 | \$2,000 |
| \$5,000 to \$10,000 | \$2,000 + 30% of all over \$5,000 |
| \$10,000 to \$20,000 | \$3,500 + 25% of all over \$10,000 |
| \$20,000 to \$50,000 | \$6,000 + 15% of all over \$20,000 |
| \$50,000 to \$100,000 | \$10,500 + 12% of all over \$50,000 |
| \$100,000 to \$200,000 | \$16,500 + 8% of all over \$100,000 |
| \$200,000 to \$500,000 | \$24,000 + 5% of all over \$200,000 |
| \$500,000 to \$1,000,000 | \$39,500 + 2% of all over \$500,000 |
| \$1,000,000 and up | \$49,500 + 1% of all over \$1,000,000 |

(b) The Magistrate as well as the Clerk of the Court, and all other proper officers, shall be bonded in such amount as may be deemed appropriate and adequate under the circumstances, the amount, including all assistants, to be not less than the minimum referred to in subsection (a) of this section, and in every case where the minimum requirement applies, based on the volume of annual transactions, the Magistrate and the Clerk of the Court shall be bonded in the amount of not less than \$1,000.00 each.

(c) In those cases where the minimum requirement, based on the volume of business of the Court, calls for an amount in excess of \$2,000.00, it may be appropriate to bond the Magistrate or the Clerk, as the case may be, in an amount which shall be above the \$1,000.00 minimum required by statute to the nearest \$500.00 above said minimum.

(d) The municipal governing body and the Municipal Judge may allocate the amount of the coverage as between the Magistrate, the Clerk of the Court and other employees, in accordance with the

financial responsibility of each officer with due regard to the \$1,000.00 minimum for each individual.

(e) There shall be a recomputation as to the minimum bond requirement annually and if the bond presently in force is less than the minimum required by the above schedule, the bond shall be increased.

(f) In all cases, however, a new bond shall be obtained at least every three years, coinciding with the term of office of the Magistrate.]

5:30-7.13 (Reserved)

SUBCHAPTER 8. [ACCOUNTING] FINANCIAL ADMINISTRATION

[5:30-8.1 through 5:30-8.5 (Reserved)]

5:30-[8.6]8.1 Mechanical and data processing accounting

(a) In any instance where a local unit is planning any mechanical, punch card or E.D.P. installation or utilizing the services of an Electronic Data Processing Center, it shall before entering into any agreement or contract submit a detailed resume of the program, the type thereof, the results to be obtained, the personnel required and the savings in operations (a complete brochure).

(b) Effective December 1, 1964, the Division will indicate its disapproval thereof if there are any unworkable features such as a failure to have at all times a complete, visible statement of a taxpayer's account, or information needed for tax searches, or conventional visible forms for other financial activities capable of being checked by approved auditing standards either in detail or by adequate "test check". (L.F.B. regulation)

[5:30-8.7 Tax bill receipting machine

In any municipality, the governing body may require the collector to use a tax bill receipting machine so constructed as to imprint duplicate figures on a continuous record locked within the machine, simultaneously as bills are receipted. Such machine shall be subject to approval as to design, type and function by the State Board. Access to the recording section of the machine shall be restricted to the clerk, who, not less than once each week, shall remove the recorded figures and compare them with the collector's bank deposits during the same period. Whenever such comparison reveals any default, delinquency or official misconduct, the clerk shall immediately report the results thereof to the local governing body and to the collector's surety. Not less than once each month, the clerk shall certify to the local governing body that he has complied with the requirements of this section during the next preceding 30 days.]

[5:30-8.8 Tax collector's course

(a) The Local Finance Board has considered a course of instruction in the functions and duties of tax collectors pursuant to N.J.S.A. 40:46-6.22a as proposed by the Bureau of Government Research and the University Extension Division of Rutgers, The State University entitled "Principles of Municipal Tax Collection".

(b) The following outline of the course and regulation are hereby adopted for the course of instruction and duties of tax collectors pursuant to Chapter 243, P.L. 1965:

1. The course shall include, but not be limited to:
 - i. Duties and responsibilities of collector;
 - ii. Basic records and equipment;
 - iii. Accounting controls;
 - iv. Machine bookkeeping and the E.D.P.;
 - v. Functions of assessor and county board of taxation;
 - vi. Billing and collection procedure;
 - vii. Assessments for improvements;
 - viii. Enforcement methods—real property and personal property taxes;
 - ix. Tax searches;
 - x. Custodian of school funds.
2. Each candidate shall attend a minimum of nine sessions in addition to the two sessions devoted to examinations.
3. The grading of the examinations shall be conducted by the course instructors under the supervision of the Bureau of Govern-

ment Research and the University Extension Division of Rutgers, the State University.

4. The passing grades for the course shall be in accordance with the standards in effect and as prescribed by Rutgers, The State University (L.F.B. regulations).]

5:30-[8.9]8.2 Unbudgeted school aid refunds per P.L. 1977, c.15

(a) This regulation is adopted to implement the provisions of section 6 of chapter 15, P.L. 1977. Under this section, it is the responsibility of the Division of Local Government Services to promulgate rules and regulations to determine methods as to how the prorated apportionment shall be refunded to the property owners in each school district by May 1, 1977.

(b) Each municipal governing body affected by the provision of the above referenced section shall take all steps necessary to assure that each tax collector and treasurer shall implement the refunds by the methods set forth herein.

(c) General rules include the following:

1. The "unbudgeted State school aid" to be refunded shall be placed in a separate bank account in the trust fund as an escrow account so that accountability is easily recognizable and funds will not be intermingled. Such escrow account shall be held for a minimum of two years in order to have funds available for those items returned because of unknown addressee. Such balances may be placed in an interest bearing account and any interest earned shall be credited to interest or investments.

2. Chapter 15, P.L. 1977, indicates that the distribution of "unbudgeted State school aid funds" shall be refunded to all taxpayers on or before May 1, 1977, and it is hereby interpreted to indicate that the term "refund" means that a payment must have been made; therefore, it is hereby determined that:

i. Any properties with unpaid 1976 property taxes shall have the amount of "refund" applied by check directly to payment of the balances of taxes, net of interest due. Notification shall be made to taxpayer of the action by written notice.

ii. Any 1976 property taxes transferred to tax title liens shall have the "refund" applied directly by check to pay the 1977 taxes due, net of interest due;

iii. Any bankrupt properties as shown on the tax records shall have the "refund" credited by check against the unpaid 1976 taxes;

iv. Any properties having had an increase or decrease in assessed valuation in 1976 due to a tax appeal shall have the check prepared utilizing the adjusted assessed valuation;

v. Increased assessed valuation due to added assessments or omitted assessments cannot be considered as a basis in computing amount of refund due.

3. The envelopes used for mailing should include the wording "Do Not Forward, Return to Sender", or a similar notation to assure that if names of taxpayer have changed from billing date the municipality will be notified. Upon such notification, it shall be the responsibility of the tax collector, assessor and treasurer to collectively determine the proportionate shares of refund due the previous property owner and the present property owner. It is recommended that the municipal attorney be consulted in determining such a breakdown.

(d) Accounting procedures include the following:

1. The treasurer shall adjust the general ledger records by decreasing "school taxes payable" and increasing an account entitled "unbudgeted State school aid payable" by the amount shown on the notification prepared by the Commissioner of Education.

2. The treasurer shall deduct from the amount to be paid to the custodian of school funds an amount sufficient to meet the required unbudgeted State aid to be refunded.

3. Disbursement checks shall be charged to the general ledger account entitled "unbudgeted State school aid payable".

(e) Tax collector's office rules are:

1. In determining the property owners entitled to the unbudgeted State school aid refund, the data to be utilized will be the exact data utilized in mailing property tax bills for the last two quarters in 1976 and the first two quarters in 1977 (August 1, 1976; November 1, 1976; February 1, 1977; and May 1, 1977).

2. The tax collector's office shall prepare or have prepared a register to determine the amount required to be refunded to each property

owner by utilizing the tax rate reduction shown on the Commissioner of Education's notification to a limit of not less than five decimal places; that is .0045.

3. The register shall be forwarded to the treasurer.

(f) Treasurer's office rules are:

1. The treasurer shall be responsible for preparing checks for distribution to each property owner as shown on the register on or before May 1, 1977.

2. Prior to distributing each check it shall be the responsibility of the tax collector to advise the treasurer of all unpaid 1976 taxes or all properties that have been transferred to tax title liens in 1976, so that the treasurer can prepare checks in accordance with the provisions of subsection (c)2 of this section relating to delinquent tax balances, tax title liens and bankrupt properties.

3. Each check issued shall include with it an informational notice which will be provided by the Division of Local Government Services, Department of Treasury, and additional explanatory information may be included by the municipality.

(g) Local units of government shall have the option of acquiring the services of an outside contractor to prepare the requirements necessary to respond to chapter 15, P.L. 1977. Should the local unit of government accept this option, it shall be accomplished by a resolution of the governing body authorizing the use of an outside contractor. In authorizing such a resolution a determination must be made by municipal legal counsel whether such contract is subject to the bidding requirements of the Local Public Contracts Law (chapter 198, P.L. 1971).

1. Using the tax reduction rate provided in the certification from the Department of Education, the contractor shall calculate by taxpayer line item the amount of refund due each taxpayer;

2. Print a check register with control totals and audit trail reports;

3. Deliver the documentation to the municipality for check preparation, stuffing and mailing to be completed on or before May 1, 1977.

4. Such contracts may further include procedures to:

i. Prepare checks on the standard check format;

ii. Using a check signer, sign all checks with the authorized municipal signatures;

iii. Print a message on the checks to explain the reason for the refund to the taxpayer;

iv. Prepare a complete reconciliation of returned checks.

5. It shall be further required that all material prepared by the outside contractor, such as the check register, cancelled checks, bank statements, computer runoffs, and so forth, shall be the property of the local unit of government and that the contractor shall have sufficient surety coverage to account for any shortages.

6. It will be the responsibility of the local unit of government to assure itself that the outside contractor will have the ability to accomplish the contract within the statutory timetable, May 1, 1977.

(h) The Director of the Division of Local Government Services is hereby authorized to take such additional action as may be necessary to clarify or extend these regulations and to provide additional direction or modification of these requirements as he may deem, in his sole judgment, to be necessary to effectuate the purposes of chapter 15, P.L. 1977, within the time period allowed.

5:30-8.3 Minimum surety bond coverage for tax collectors

(a) **The Local Finance Board has further considered the provisions of N.J.S.A. 54:4-122.5 and has determined that the minimum surety bond coverage for tax collections should be made applicable to the collector of utility rentals and charges.**

(b) **The Local Finance Board promulgated the following requirements:**

1. **The minimum requirement for the surety bond of each tax collector (or the collector's office) shall be such percentage of the preceding year's tax duplicate as is required by the schedule set forth in paragraph 3 of this subsection.**

2. **The minimum requirement for the surety bond of each collector of utility rents shall be such percentage of the preceding year's utility charges as is required by the schedule set forth in paragraph 3 of this subsection.**

| 3. Tax Levy or Utility Charges | Minimum Bond Required |
|--------------------------------|---------------------------------------|
| Up to \$100,000 | 25% of the Levy |
| \$100,000 to \$250,000 | \$25,000 + 8% of all over \$100,000 |
| \$250,000 to \$500,000 | \$37,000 + 6% of all over \$250,000 |
| \$500,000 to \$750,000 | \$52,000 + 4% of all over \$500,000 |
| \$750,000 to \$1,000,000 | \$62,000 + 2% of all over \$750,000 |
| \$1,000,000 to \$2,000,000 | \$67,000 + 1% of all over \$1,000,000 |
| \$2,000,000 to \$5,000,000 | \$77,000 + ½% of all over \$2,000,000 |
| \$5,000,000 and upwards | \$92,000 + ¼% of all over \$5,000,000 |

4. That in fixing such minimum bond the nearest even \$1,000 shall be used.

5. When the collector of taxes and the collector of utility charges is the same person the minimum surety bond coverage shall be computed separately. The required amounts shall be combined in a single surety bond.

6. That the minimum coverage arrived at by use of the foregoing schedule shall be an overall minimum amount where there is more than one person in the office. The several persons handling funds should be bonded in accordance with their responsibility.

7. The Board hereby directs that the Director of Local Finance notify every municipality that each and every collector, collector's office and utility collector or utility collector's office be bonded in accordance with the aforementioned minimum amounts.

8. That in any case where a municipality desires to substitute for the foregoing method any other method which it deems satisfactory and which complies with the provisions of the existing statutes, such substituted procedure, shall, if approved by the Local Finance Board, be deemed to comply with the regulations of the Board.

5:30-8.4 Minimum surety bond requirements for municipal courts

(a) The Local Finance Board reviewed the present minimum surety bond requirements for the municipal courts. The minimum surety bond requirements shall be in accordance with the following schedule:

| Total Annual Receipts | Minimum Bond Required |
|--------------------------|---------------------------------------|
| \$1 to \$5,000 | \$2,000 |
| \$5,000 to \$10,000 | \$2,000 + 30% of all over \$5,000 |
| \$10,000 to \$20,000 | \$3,500 + 25% of all over \$10,000 |
| \$20,000 to \$50,000 | \$6,000 + 15% of all over \$20,000 |
| \$50,000 to \$100,000 | \$10,500 + 12% of all over \$50,000 |
| \$100,000 to \$200,000 | \$16,500 + 8% of all over \$100,000 |
| \$200,000 to \$500,000 | \$24,500 + 5% of all over \$200,000 |
| \$500,000 to \$1,000,000 | \$39,500 + 2% of all over \$500,000 |
| \$1,000,000 and up | \$49,500 + 1% of all over \$1,000,000 |

(b) The Magistrate as well as the Clerk of the Court, and all other proper officers, shall be bonded in such amount as may be deemed appropriate and adequate under the circumstances, the amount, including all assistants, to be not less than the minimum referred to in subsection (a) of this section, and in every case where the minimum requirement applies, based on the volume of annual transactions, the Magistrate and the Clerk of the Court shall be bonded in the amount of not less than \$1,000.00 each.

(c) In those cases where the minimum requirement, based on the volume of business of the Court, calls for an amount in excess of \$2,000.00, it may be appropriate to bond the Magistrate or the Clerk, as the case may be, in an amount which shall be above the \$1,000.00 minimum required by statute to the nearest \$500.00 above said minimum.

(d) The municipal governing body and the Municipal Judge may allocate the amount of the coverage as between the Magistrate, the Clerk of the Court and other employees, in accordance with the financial responsibility of each officer with due regard to the \$1,000.00 minimum for each individual.

(e) There shall be a recomputation as to the minimum bond requirement annually and if the bond presently in force is less than the minimum required by the above schedule, the bond shall be increased.

(f) In all cases, however, a new bond shall be obtained at least every three years, coinciding with the term of office of the Magistrate.

5:30-8.5 Guidelines concerning receipt and custody of public funds

(a) No officer of a local unit shall accept in receipt of the payment of any tax, license, fee or other charge, a check in excess of the amount actually due.

(b) Under no circumstances shall said officer engage in the practice of cashing checks with public funds.

(c) The Director of the Division of Local Government Services shall provide copies of this resolution to all fiscal units together with such explanatory information as he may deem appropriate, and he is hereby directed to take such steps as are necessary to implement this resolution.

5:30-8.6 Signatures on checks drawn upon the treasury of the local unit

(a) Each municipality by July 1, 1972 and at each subsequent organizational meeting shall designate by resolution the individual or individuals, in accordance with N.J.S.A. 40A:5-17b, in addition to the signature of the treasurer, or if there is no treasurer, such other person who is the custodian of funds of the municipality, whose signature or signatures shall appear on checks drawn upon the treasury of the municipality.

(b) Each county board of freeholders at its annual first organizational meeting shall designate such county officer(s), in addition to the county treasurer, or if there is no treasurer, such other person who is custodian of funds of the county, whose signature or signatures shall appear on checks drawn upon the treasury of the county.

(c) Pursuant to N.J.S.A. 40A:5-19, a different signature practice may be established by ordinance in the case of a municipality and by resolution in the case of a county, for checks for wages and salaries.

(d) The Director of the Division of Local Government Services shall provide copies of the resolution to all affected local units together with such explanatory information as he may deem appropriate, and he is hereby directed to take such steps as are necessary to implement this resolution.

5:30-8.7 Type I school bonds

(a) The provisions of N.J.S.A. 18:10-15 and N.J.S.A. 18:10-29, 52 to 59 are intended to provide a method of preventing defaults in the payment of certain school bonds; and it is apparent that it will be necessary to secure information from the municipality in the case of a Type I school bond or interest which may go into default.

(b) It is the duty and responsibility of the municipal treasurer to advise the Division of Local Finance and the Department of Education in any case where there might be a prospective default in the payment of principal or interest of any school bonds falling due from this date (1958); and a copy of this resolution be incorporated in the next Newsletter of the Division as due notice of the requirements made necessary by N.J.S.A. 18:10-15 and N.J.S.A. 18:10-29, 52 to 59, and a form of notice be attached to such letter and it is hereby directed that the municipal clerk turn this notice over to the municipal treasurer, together with a copy of this resolution in order that he may be informed of his duties in connection with the statutes. (L.F. Board Regulation)

5:30-8.8 Implementation of the Housing and Community Development Act of 1974

(a) The dedicated revenues from the Housing and Community Development Act of 1974 and appropriated for the purpose to which the revenue is dedicated will be made a part of the budget of the local unit as a dedication by rider under the provisions of N.J.S.A. 40A:4-39.

(b) The local unit shall establish a separate bank account entitled "community development block grant" which shall be part of a separate trust fund.

(c) All operating expenditures must conform to each contract.

(d) Expenditures for capital purposes shall follow the process of adoption of an ordinance authorizing such capital expenditures.

(e) All the provisions of the Local Public Contracts Law (N.J.S.A. 40A:11) and the Local Lands and Buildings Law (N.J.S.A. 40A:12) shall be complied with.

5:30-8.9 Implementation of the Housing and Community Development Act of 1974; urban counties

(a) The governing body of each participating municipality shall adopt an ordinance to enter into an agreement with their respective county as prescribed by the Division of Local Government Services for compliance with the Interlocal Services Act.

(b) There may be established an interfund loan should the participating municipality expect to expend funds prior to receipt of Housing and Community Development Act of 1974 funds from the county.

(c) The dedicated revenues from the Housing and Community Development Act of 1974 and appropriated for the purpose to which the revenue is dedicated will be made a part of the budget of the local unit as a dedication by rider under the provisions of N.J.S.A. 40A:4-39.

(d) The local unit shall establish a separate bank account entitled "community development block grant" which shall be part of a separate trust fund.

(e) All operating expenditures must conform to each contract. Any expenditures not included in contract with the county shall be considered an overexpenditure and a violation of N.J.S.A. 40A:4-57.

(f) Expenditures for capital purposes shall follow the process of adoption of an ordinance authorizing such capital expenditures.

(g) All the provisions of the Local Public Contracts Law, N.J.S.A. 40A:11, and the Local Lands and Building Law, N.J.S.A. 40A:12, shall be complied with.

[SUBCHAPTER 9. FINANCIAL ADMINISTRATION]

[5:30-9.1 Bank collection of tax payments

(a) Any municipality adopting a resolution to contract for services in connection with this Act shall, prior to awarding the contract, receive approval of the Director of the Division of Local Government Services of the contract. Such contract shall include detailed procedures to be used in implementing procedures to receive and deposit funds, forwarding of back-up materials to the collector, holding of funds, audit trails and all other information required for evaluation of the proposed system.

(b) The bank or trust company designated by any resolution to receive current tax payments, current water and sewer rents, and other public moneys must be designated as an official depository in accordance with N.J.S.A. 40A:5-14.

(c) Any municipality which has contracted with a bank or trust company under this Act shall notify all taxpayers at least once annually that such a service has been contracted. Notification must be made by mail to all taxpayers at least 30 days prior to the next payment due, payable and subject to possible receipt by such bank or trust company agent, following the designation of such agent.

(d) The following words, when used in this subchapter, have the following meanings.

"Current" payment means any payment which is not yet due and payable, or any payment which became due and payable within the tenth calendar day prior to its receipt, provided that the municipality has adopted a resolution allowing "that no interest shall be charged if payment of any installment is made within the tenth calendar day following the date upon which the same became payable" in accordance with provisions of N.J.S.A. 54:4-67.

"Delinquent" payment means any payment which is not current (as defined above), plus any payments for accounts on which a municipality held Tax Title Lien exists.]

[5:30-9.2 Form of tax collection record

Copies of this form of tax collection record for the use of municipal taxing districts of the State of New Jersey can be obtained from:

Division of Local Government Services
 Department of Community Affairs
 CN 803
 Trenton, N.J. 08625]

[5:30-9.3 Examination previews: Tax collector certification

(a) Review of a particular examination will be permitted only for those applicants who were not successful in passing such an examination.

(b) All examination reviews will be conducted in the offices of the Division of Local Government Services, 363 W. State Street, Trenton, New Jersey 08625.

(c) Requests for examination reviews must be made in writing within two months of the date which appears on the notice of the mailing of the examination results. To arrange an examination review, an unsuccessful applicant must make a written request to the Division of Local Government Services, CN 803, 363 W. State Street,

Trenton, New Jersey 08625, setting forth several alternative dates and times which would be convenient to attend such a review. One of the dates will be selected and the applicant will be advised of the appointment date and time.

(d) Examination reviews will be conducted by a representative or representatives of the Division of Local Government Services. No one other than representatives of the Division of Local Government Services and the unsuccessful applicant for whom the review is being conducted shall be present at the examination review.

(e) The examination review will consist of the following:

1. Informing the applicant of his grade and explaining the manner in which the grade has been calculated.

2. Informing the applicant of the grade required for passage of the examination.

3. Specifying the categories of questions covered in the examination and informing the applicant how he fared category by category.

4. In limited circumstances, the representative of the Division conducting the review may discuss and review a specific question with the applicant.

(f) No applicant will be permitted to copy any questions or answers.

(g) No applicant will be permitted more than one review of a particular examination.

(h) The availability of examination reviews and instructions for requesting such a review are to be announced by proctors at examination centers before each examination commences.]

[5:30-9.4 through 5:30-9.8 (Reserved)]

[5:30-9.9 Guidelines concerning receipt and custody of public funds

(a) No officer of a local unit shall accept in receipt of the payment of any tax, license, fee or other charge, a check in excess of the amount actually due.

(b) Under no circumstances shall said officer engage in the practice of cashing checks with public funds.

(c) The Director of the Division of Local Finance shall provide copies of this resolution to all fiscal units together with such explanatory information as he may deem appropriate, and he is hereby directed to take such steps as are necessary to implement this resolution.]

[5:30-9.10 Signatures on checks drawn upon the treasury of the local unit

(a) Each municipality by July 1, 1972 and at each subsequent organizational meeting shall designate by resolution the individual or individuals, in accordance with N.J.S.A. 40A:5-17b, in addition to the signature of the treasurer, or if there is no treasurer, such other person who is the custodian of funds of the municipality, whose signature or signatures shall appear on checks drawn upon the treasury of the municipality.

(b) Each county board of freeholders at its annual first organizational meeting shall designate such county officer(s), in addition to the county treasurer, or if there is no treasurer, such other person who is custodian of funds of the county, whose signature or signatures shall appear on checks drawn upon the treasury of the county.

(c) Pursuant to N.J.S.A. 40A:5-19, a different signature practice may be established by ordinance in the case of a municipality and by resolution in the case of a county, for checks for wages and salaries.

(d) The Director of the Division of Local Finance shall provide copies of the resolution to all affected local units together with such explanatory information as he may deem appropriate, and he is hereby directed to take such steps as are necessary to implement this resolution.]

SUBCHAPTER 10. (No change.)

SUBCHAPTER 11. SCHOOL BONDS

5:30-11.1 through 5:30-11.7 (Reserved)

[5:30-11.8 Type I school bonds

(a) The provisions of N.J.S.A. 18:10-15 and N.J.S.A. 18:10-29, 52 to 59 are intended to provide a method of preventing defaults in the

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payment of certain school bonds; and it is apparent that it will be necessary to secure information from the municipalities in the case of a Type I school bond or interest which may go into default.

(b) It is the duty and responsibility of the municipal treasurer to advise the Division of Local Finance and the Department of Education in any case where there might be a prospective default in the payment of principal or interest of any school bonds falling due from this date (1958); and a copy of this resolution be incorporated in the next Newsletter of the Division as due notice of the requirements made necessary by N.J.S.A. 18:10-15 and N.J.S.A. 18:10-29, 52 to 59, and a form of notice be attached to such letter and it is hereby directed that the municipal clerk turn this notice over to the municipal treasurer, together with a copy of this resolution in order that he may be informed of his duties in connection with the statutes. (L.F. Board Regulation)]

SUBCHAPTER 12. (No change.)

[SUBCHAPTER 13. FORMS

5:30-13.1 General provisions

All forms pertaining to such matters as applications and statements shall be prepared and submitted to the Division of Local Finance and are available upon application to the Division of Local Finance.

5:30-13.2 Form of resolution requesting change in priorities of State and Local Fiscal Assistance Act of 1972 entitlement period allotment(s)

(a) The form of resolution requesting a change in priorities of State and Local Fiscal Assistance Act of 1972 entitlement period allotment(s) budgeted and reserved is as follows:

FORM OF RESOLUTION REQUESTING CHANGE IN PRIORITIES OF STATE AND LOCAL FISCAL ASSISTANCE ACT OF 1972 ENTITLEMENT PERIOD ALLOTMENT(S) BUDGETED AND RESERVED

WHEREAS, the Rules and Regulations adopted by the U.S. Department of Treasury regarding the State and Local Fiscal Assistance Act of 1972 allows for changes in the priorities of the planned use of entitlement period allotments and,

WHEREAS, the Local Finance Board has promulgated that such changes made after entitlement period allotments have been budgeted, must be advertised and approved by the Director,

NOW, THEREFORE, BE IT RESOLVED that in accordance with the above provisions, the _____ hereby requests the Director of the Division of Local Government Services to make the following corrections in the "Reverse for State and Local Fiscal Assistance Act of 1972" by entitlement period and priorities:

BE IT FURTHER RESOLVED that the foregoing change in the entitlement period allotment priority is in the opinion of the Governing Body warranted, and is necessary for the most advantageous utilization of such funds for the reasons herein set forth:

BE IT FURTHER RESOLVED, that this resolution, in accordance with the provisions of the Division of Local Government Services, be published in the _____ in the issue of _____

(date)

(Name of newspaper)

Adopted this _____ day of _____ 19 _____, and certified as a true copy of an original

TRENTON, NEW JERSEY

APPROVED _____, 19 _____

Director, Division of Local Gov't Services

Note: No resolution will be considered or approved unless filed in duplicate and manually certified by the municipal clerk.

FORM OF RESOLUTION

5:30-13.3 Tax sale certificate for unpaid municipal liens

Be it resolved by the Local Finance Board that the forms of the original and duplicate certificates of sale for unpaid municipal liens, for use by the municipalities of the State of New Jersey, are hereby approved.

Editor's note: Due to space limitations, the actual forms cited above are not reproduced herein. Information concerning these forms may be obtained from the Local Finance Board, P.O. Box 1959, Trenton, New Jersey 08625.

5:30-13.4 Certificate of sale for unpaid municipal liens; form

Editor's Note: The form concerning the certificate of sale for unpaid municipal liens is not reproduced herein. Further information concerning this form may be obtained from the Local Finance Board, Department of Community Affairs, 363 West State St., P.O. Box 2768, Trenton, N.J. 08625.

5:30-13.5 Certificate of search for municipal liens; form

Editor's Note: The form concerning the certificate of search for municipal liens is not reproduced herein. Further information concerning this form may be obtained from the Local Finance Board, Department of Community Affairs, 363 West State St., P.O. Box 2768, Trenton, N.J. 08625.]

SUBCHAPTER 14. (No change.)

[SUBCHAPTER 15. APPROPRIATION CAPS

5:30-15.1 Procedures for municipalities to exceed appropriation caps via referendum

(a) Chapter 68, P.L. 1976, provides that "in the preparation of its budget a municipality shall limit any increase in said budget to 5% over the previous year's final appropriations subject to the following modifications. . . . i. when approved by referendum." Pursuant to its authority set forth at N.J.S.A. 52:27B-32 and 40A:4-83, the Local Finance Board does hereby adopt the following mandatory procedures to be followed by municipalities seeking to act under the above quoted section. The purpose of these regulations is to provide an orderly system of financial administration which will meet the requirements of chapter 68 and also the Local Budget Law.

1. The requirements of the Local Budget Law and the powers and duties of the Division of Local Government Services shall not be impaired or altered by virtue of action taken under chapter 68, P.L. 1976, except as is specifically herein provided.

2. No budget may be introduced pursuant to N.J.S.A. 40A:4-5 which is in excess of the appropriation cap pursuant to the above quoted section, unless there is also passed by a vote of not less than a majority of the full membership of the governing body a resolution directing that a referendum be held at a special election for the purpose of public approval or disapproval of the question of exceeding the cap. The manner and substance of the referendum shall be as hereinafter set forth.

3. The approved budget, together with a certified copy of the resolution, shall be transmitted to the Director, Division of Local Government Services, within three days after approval as required by N.J.S.A. 40A:4-5. The director's review and approval shall be made in accordance with the usual requirements of N.J.S.A. 40A:4-76 et seq., except that the approval shall be conditional with respect to the outcome of the referendum, and shall be subject to final approval

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with respect thereto upon receipt and review of the finally adopted budget and a certified report from the municipal clerk on the results of the referendum.

4. In the event of any change required to be made in the budget from what was introduced and approved, be it by reason of the exercise of the statutory review powers of the Director of the Division of Local Government Services or other lawful necessity, the budget as finally adopted shall not exceed the total appropriations shown in the introduced budget, nor shall the amount by which the budget exceeds the five per cent cap be greater than the figure upon which the voters granted their authorization by referendum.

5. In those cases where a referendum is required, the resolution of the governing body requesting the question to be placed on the ballot shall be delivered to the municipal clerk promptly, and it shall be his responsibility to conduct a special election for purposes of the referendum. The referendum shall be conducted within 30 days of receipt of the request, but in no event later than March 4 nor earlier than February 23. The referendum shall not be held until at least 12 days after the full municipal budget has been published. The election procedures to be followed shall be those normally required by the law for such matters.

6. Special schedule: In order to meet the requirements of the Local Budget Law and to provide for an orderly timetable by which all affected parties may properly exercise their rights and responsibilities, the following timetable must be followed in those municipalities going for referenda:

| Action | Latest date |
|---|--------------|
| i. Faulkner Act municipalities requiring the chief executive to submit the proposed budget to the governing body by January 15 shall accelerate presentation of proposed budget to this date: | January 10; |
| ii. Introduction and approval of budget; | February 4; |
| iii. Resolution of governing body requesting referendum: | February 4; |
| iv. Publish budget. (N.J.S.A. 40A:4-6): | February 11; |
| v. Referendum (earliest date, must be at least 12 days after publication of budget): | February 23; |
| vi. Referendum (last date; 30 days from resolution): | March 4; |
| vii. Municipal clerk certifies results to governing body: | March 9; |
| viii. Public hearing (and adoption or amendment): | March 10; |
| ix. Advertise proposed amendments (if necessary N.J.S.A. 40A:4-9): | March 16; |
| x. Hearing on amended budget (if required): | March 20; |
| xi. Adoption (last date): | March 20. |

7. Municipalities exceeding the cap shall add on plain white paper,¹ a new sheet numbered 19A. This sheet shall contain the following statement which shall be considered part of the budget and shall be included when the budget is advertised:

The amount shown on sheet 19 for total general appropriations for municipal purposes within five per cent caps (item H-1) is actually \$ _____ in excess of the limitations and will only become effective upon authorization of the voters by referendum.

8. The question to be placed on the ballot shall be as follows:

Shall the (governing body) of the _____ of _____ be authorized to adopt the _____ (year) _____ municipal purposes budget, notwithstanding that its "final appropriations" exceeds the five per cent increase limitations by _____ as provided by chapter 68, P.L. 1976?

_____ Yes _____ No

Interpretation

A "yes" vote will authorize the governing body of the municipality to adopt the budget which was introduced and published. Chapter 68, P.L. 1976, provides a "cap" of five per cent on the amount of increase, which can be exceeded "when approved by referendum." If approved by the voters, a public hearing will be held and this budget will be adopted subject to the total dollar increase over the "cap" hereby authorized, in accordance with the Local Budget Law

and the regulations of the Local Finance Board. Any amendment to the introduced budget shall not result in the above figure being exceeded.²

9. The Director of the Division of Local Government Services is hereby authorized to take such additional action as may be necessary to effectuate the orderly processing of municipal budgets, and to provide additional direction or modification of these requirements as he may deem, in his sole judgment, to be necessary for the proper course of financial administration in light of the requirements of law.

¹To the official budget.

²A "no" vote means that the governing body must adopt the budget within the increase limits set forth by the law.

5:30-15.2 Procedure and form of emergency ordinance under N.J.S.A. 40A:4-45.3(c)

(a) The Local Finance Board approved the form of an emergency ordinance to be submitted to the Local Finance Board by the municipalities of the State of New Jersey. These ordinances require approval of the Local Finance Board in accordance with the provisions of N.J.S.A. 40A:4-45.3(c). The Local Finance Board also considered the form of a statement regarding the emergency ordinance, which must be filed with the Municipal Clerk prior to the adoption of the emergency ordinance and filed with the Director of Local Government Services at the time of filing the emergency ordinance.

(b) The following procedures should be adhered to in the processing of the emergency ordinances:

1. Introduction and first reading of the emergency ordinance by the governing body;
2. Publication at least once in a newspaper published and circulated in the municipality, if there is one, and if not, in a newspaper printed in the county and circulating in the municipality at least seven days prior to consideration for final adoption;
3. Hearing on the emergency ordinance as advertised;
4. Final adoption of the emergency ordinance: At least ten days after the introduction and first reading of the emergency ordinance;
5. Submission of three certified copies of the emergency ordinance to the Local Finance Board for its review.

Editor's Note: The form of emergency ordinance requiring approval of the Local Finance Board N.J.S.A. 40A:4-45.3(c) was filed with these rules but are not reproduced herein. Further information on this item may be obtained from the Local Finance Board, 363 West State Street, Trenton, New Jersey 08625.]

[SUBCHAPTER 16. TENANTS' PROPERTY TAX REBATE PROGRAM

5:30-16.1 Background of program

(a) The Tenants' Property Tax Rebate Act was approved as P.L. 1976, c. 63, on August 17, 1976, and subsequently amended by chapter 81, P.L. 1977. The purpose of this act is to require owners of "qualified real rental property" to pass to their residential tenants in the form of a rebate or credit, a specified proportion of tax reductions owners receive after 1976.

(b) The Director of the Division of Local Government Services is responsible, under this act, to promulgate rules and regulations prescribing the procedure for computing property tax reductions and rebates or credits in 1977 and thereafter, and the necessary forms to be used by local officials and "qualified real rental property" owners in determining same. The Director of the Division of Local Government Services may also promulgate such other rules or regulations as he deems necessary or advisable for the efficient administration and implementation of the purposes and provisions of this act.

(c) All correspondence and inquiries regarding the tenants' property tax rebate program should be addressed to the Division of Local Government Services, Department of Community Affairs, 363 West State Street, Trenton, New Jersey 08625.

5:30-16.2 Definitions

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

"Base year" means, for a property qualifying on the effective date of this act, the calendar year 1976, and for qualified real rental

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property which is first rented or leased or offered for rent or lease after the effective date of this act, the calendar year in which it is first offered for rent or lease.

"Owners" means owner(s) of qualified real rental property.

"Property tax reduction" means 0.65 times the difference between the amount of property tax paid or payable in any year on any qualified real rental property, exclusive of improvements not included in the assessment on the real property for the base year and exclusive of such improvements included in succeeding years, and the amount of property tax paid in the base year; but such calculations for the property tax reduction shall exclude reductions resulting from judgments entered by county boards of taxation, the Division of Tax Appeals in the Department of the Treasury, or by courts of competent jurisdiction. "Property tax reduction" shall also include 0.65 times any rebate or refund of school property taxes which may be provided pursuant to c.15, P.L. 1977. "Property tax reduction" shall not include any amount in excess of that which is identified herein. Any such amount shall be retained by the property owner.

"Qualified real rental property" means any real property containing a mobile home park or two or more spaces which are rented or leased or offered for rent or lease for occupancy by mobile homes, or any building or structure or complex of buildings or structures in which housing units are rented or leased or offered for rental or lease for residential purposes, except hotels, motels or other guest houses serving transient or seasonal guests, and owner-occupied structures of three units or less.

5:30-16.3 Responsibility of municipal tax collector

(a) Municipal property tax bills are prepared pursuant to N.J.S.A. 54:4-64. For the tax year 1977, and each year thereafter, the municipal tax collector when preparing property tax bills shall compute the amount of property tax reduction for the year for each owner of qualified real rental property and shall notify owner(s) of such reduction within 30 days after mailing the 1977 property tax bill. Such property tax reduction notification shall also include any amount of unbudgeted school aid moneys applicable and pursuant to chapter 15, P.L. 1977. Tax collectors, in so informing owners, will indicate the amount, where applicable, that owners are required to rebate or credit to their tenants, which shall be equal to 0.65 of the property tax reduction as defined in these regulations. A copy of the notice shall be provided to the rent leveling board, or similar agency charged with regulating rents, or where no such board exists, retained by the tax collector.

(b) The Division of Local Government Services in the Department of Community Affairs shall provide, pursuant to N.J.A.C. 5:30-16.2(c), the manner in which municipal tax collectors are to compute the property tax reduction that each owner of a qualified real rental property receives, and methods of locating property owners of qualified real rental properties.

(c) The tax collector's certification to the property owner may be reproduced in any legible format so long as it provides the information called for on lines a,b,c,d, and e of the sample certification and the note to owners. (See appendix.)

(d) In municipalities where ordinances regulate rent and the municipal tax collector determines that 1977 property tax bills are higher than 1976 property tax bills for the same properties, the tax collector need only certify the amount of unbudgeted school aid refund received by an owner.

(e) Since there exists a difficulty in determining which taxpayer is affected by this act, the municipal tax collector shall notify all property taxpayers of his/her property tax reduction, or may develop an alternate system of notifying owners of qualified real rental property for purposes intended by these regulations.

5:30-16.4 Rebate or credit distribution process

(a) The owner calculates the rebate or credit pursuant to N.J.A.C. 5:30-16.6. When the first rent payment is made 30 days after receipt of the municipal tax collector's certification, the tenant shall receive a credit or rebate retroactive to January 1 from the owner(s). An example would be as follows:

| Type of unit | 1977 annual rebate/credit | Rebate/credit in August (8/12) | Rebate/credit due Sept., Oct., Nov., Dec., (1/12) |
|--------------|---------------------------|--------------------------------|---|
| A | \$110.00 | \$9.00x8 months=\$72.00 | \$9.17 rounded to \$9.00 |
| B | 90.00 | \$8.00x8 months=\$64.00 | \$7.50 rounded to \$8.00 |

1. Beginning with the effective date of these regulations, owners must make a total commitment to obtain forwarding addresses of tenants who move out during a year for which they may be entitled to rebates or credits.

(b) Rebates or credits will apply to the tenant or tenants who reside in qualified real rental property beginning on January 1, 1977.

(c) By December 31, 1977, owner(s) will rebate or credit to tenants the entire unbudgeted school rebate and property tax reduction certified to the owner(s) by the municipal tax collector for calendar year 1977.

(d) For calendar year 1978 and subsequent calendar years, the tenant rebate or credit shall be determined by calculating said rebates or credits pursuant to the procedures depicted in N.J.A.C. 5:30-16.6.

(e) All tenant rebates or credits are determined by the property tax reduction certified by the municipal tax collector using 1976 as the base year, unless a "qualified real rental property" is erected and occupied after the base year.

5:30-16.5 Applicability of property tax reduction

(a) In municipalities, where ordinances regulate rent, the unbudgeted school aid refund shall not be netted as shown below, but rather individually calculated and applied to the tenant who will receive said rebate or credit.

(b) In municipalities where there are no rent control ordinances, tenant rebates or credits are applicable only when there is a reduction of property taxes as certified by the municipal tax collector.

1. Where the municipal tax collector certifies to the owner(s) a net increase of 1977 property taxes combined with any 1976 unbudgeted State school aid, as compared to the base year property tax as defined in this act, no tenant rebate or credit is applicable.

2. Where the municipal tax collector certifies to the owner(s) an amount of 1977 property taxes combined with any 1976 unbudgeted State school aid equal to the base year property tax as defined in this act, no tenant rebate or credit is applicable.

3. Where the municipal tax collector certifies to the owner(s) a net reduction of the 1977 property taxes combined with any 1976 unbudgeted State school aid, as compared to the base year property tax defined in this act, tenant rebate(s) or credit(s) are applicable provided the criteria stated in N.J.A.C. 5:30-16.7(b) are met.

i. The municipal tax collector's certification will be based upon the methodology employed in the following hypothetical table:

| Property Tax | | 1976 Unbudgeted State school aid | Property tax reduction |
|--------------|----------|----------------------------------|------------------------|
| 1976 | 1977 | | |
| \$100,000 | \$90,000 | \$10,000 | \$20,000 |
| 100,000 | 92,000 | 10,000 | 18,000 |
| 100,000 | 100,000 | 10,000 | 10,000 |
| 100,000 | 90,000 | -0- | 10,000 |
| 100,000 | 102,000 | 10,000 | 8,000 |
| 100,000 | 120,000 | 10,000 | None* |
| 100,000 | 110,000 | 10,000 | None* |
| 100,000 | 110,000 | -0- | None* |

*In cases where the unbudgeted school aid is less than the property tax increase, 65 per cent of such funds must be credited against any rent increases that the tenant would pay due to the increase in property taxes.

5:30-16.6 Responsibility of property owner

(a) Chapter 63, P.L. 1976, as amended, provides that the property tax rebate for each tenant residing in qualified real rental property shall be computed by the property owner in either of the two following manners:

1. Upon notification by the municipal tax collector of the property tax reduction and/or the amount of tax rebate of refund received by the owner pursuant to chapter 15 of the Public Laws of 1977, the following annual rent computation shall be employed by the owner:

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Interested Persons see Inside Front Cover

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Property tax reduction:

Total annual rent for all occupied or unoccupied dwelling units. (multiplied by) Annual rent of each individual dwelling unit in the qualified real rental property.

i. Hypothetically, an example would be:

- (1) \$ 78,699.72—1976 property tax;
- (2) 46,357.10—1977 property tax;
- (3) 32,342.62—Property tax reduction;
- (4) 7,466.00—1976 unbudgeted school aid;
- (5) 39,808.62—Total tax collectors certification to owner(s);
- (6) 25,875.60—Tenants' property tax reduction (0.65);
- (7) \$828,240.00—Total annual rent for all occupied and unoccupied units for the calendar year prior to the current year are

computed as follows:

- (A) \$240,720.00 = 68 class A units at \$3,540 per annual rent;
- (B) \$587,520.00 = 204 class B units at \$2,880 per annual rent;
- (8) Class A unit:
 $\frac{\$ 25,875.60}{\$828,240.00} \times \$3,540 = \$110.59;$
- (9) Class B unit:
 $\frac{\$ 25,875.60}{\$828,240.00} \times \$2,880 = \$89.97;$

Note: The act requires that rebate/credit be made at the time rents are paid or payable. Therefore, the following schedule would apply to the above illustration.

| | Class A | Rounded | Class B | Rounded |
|---------------|----------|----------|---------|---------|
| Annual | \$110.59 | \$111.00 | \$89.97 | \$90.00 |
| Quarterly | 27.64 | 28.00 | 22.49 | 22.00 |
| Monthly 1/12 | 9.21 | 9.00 | 7.49 | 7.00 |
| Biweekly 1/26 | 4.25 | 4.00 | 3.46 | 3.00 |
| Weekly 1/52 | 2.12 | 2.00 | 1.73 | 2.00 |

(10) Should a unit(s) be unoccupied, that is, a unit(s) for which there is no verbal or written lease covering a specific period of time, then the owner shall retain such applicable rebate/credit as if said unit(s) were occupied;

(11) Where a structure contains commercial unit(s) as well as qualified residential rental units as defined under this act, the owner will subtract from the tax collector's certification for the commercial units before computing the applicable residential tenants' rebate or credit.

(A) After the June 1, 1978, tax bill is received, the rebate or credit schedule is calculated pursuant to N.J.A.C. 5:30-16.6(a) exclusive of unbudgeted school aid refund.

(B) In calendar 1979, the system repeats itself.

2. Instead of the annual rent method, municipalities have the option of providing by ordinance that the property tax reduction shall be computed by a square foot method. This option method is depicted as follows:

$$\frac{\text{Property tax reduction for such qualified property}}{\text{Total rentable square footage}} = \text{Rebate or credit per square foot}$$

$$\text{Rebate per square foot (X) square feet of residential unit} = \text{Annual amount of property tax rebate per unit}$$

Using elementary amounts in an example of the square foot method:

\$100—property tax reduction for owner
 1000—total rentable square footage
 250 square feet—amount of square footage in a particular residential unit of such property

$$\frac{\$100}{1000 \text{ square feet}} = \$0.10$$

0.10 (X) 250 square feet = \$25.00 annual property tax rebate for this unit.

Note: Rebates or credits based on the square footage methodology shall follow the same rounding procedures depicted in the example of this section that employs the rent computation methodology. This calculation must be repeated annually for the duration of this act.

3. When advertising for rental units, owner(s) shall indicate that the rent(s) will be subject to any applicable rebate of credit. It is further suggested that owners seek cooperation from newspapers in obtaining a single statement relating to the fact that all newspaper advertisements for qualified real rental property are subject to a rebate or credit. This would satisfy the requirement of this section of these regulations. It is recommended that leasehold agreements, from the effective date of these regulations, indicate that rents are subject to applicable rebates or credits under chapter 81, P.L. 1977.

5:30-16.7 Tenant rebate or credit

(a) All applicable tenant rebates or credits are payable at the time each rent payment is made, except in cases where a tenant does not pay his/her rent, then a rebate is not owing to such tenant at such time.

(b) The amount of the rebate or credit due the tenant at the time the rent is paid shall be rounded off whereby any amount less than \$0.50 shall be reduced to the next lower dollar and any amount \$0.50 or higher shall be increased to the next higher dollar. Stated differently, an amount of \$0.49 or less at the time the rent is paid shall mean no rebate or credit, and an amount of \$1.00, or more than \$0.50, shall mean a rebate of credit of \$1.00.

(c) Owners receiving reductions are required to state on a form required to be filed with the rent leveling board or similar agency charged with regulating rents, or where no such board exists, with the municipal tax collector, the total property tax rebate paid accruing to the qualified real rental property, and shall certify that the provisions of this act have been fulfilled.

1. This form shall be filed within 30 days following notification by the municipal tax collector of the amount of property tax reduction.

2. Upon such filing, the owner shall also post and maintain in a prominent place within his qualified real rental property a notice indicating the specific amount of rent rebate applicable pursuant to N.J.A.C. 5:30-16.6 for each rental unit category.

(d) Owners shall inform prior tenants eligible for a rebate by mailing to the last known forwarding address of such tenants a notification of same. If, after one year from the date of mailing, such tenant does not claim such rebate, the owner shall retain the rebate without further obligation.

(e) Owners who have not paid their property taxes during the duration of this act shall rebate or credit their tenants pursuant to the provisions of this act.

(f) Tenants who are delinquent in the payment of their rent shall receive rebates or credits pursuant to this act when such rent payments are made to the owner. However, if a tenant fails to pay his rent within one year, no rebate or credit will be required to be passed through to such tenant.

5:30-16.8 Failure to provide rebate or credit

(a) If an owner fails to provide a tenant with a property tax rebate or credit as defined in the provisions of this act, the owner shall be liable to the tenant for twice the amount of the computed property tax rebate or credit to which the tenant was entitled, or \$100.00, whichever is greater.

(b) Any owner who fails to provide property tax rebates or credits to his tenants in accordance with the provisions of this act, or who knowingly and willfully fails to comply with any of the provisions of this act, shall be liable for a penalty of not more than \$100.00 for each offense. Such penalty shall be collected and enforced pursuant to the Penalty Enforcement Law (N.J.S.A. 2:58-1 et seq.). The county district court of the county and the municipal court of the municipality where the qualified real rental property is located shall have jurisdiction in proceedings involving purported violations of the Tenants' Property Tax Rebate Act. Any money received as a result of such proceedings shall be paid over to the governing body of the municipality in which the qualified real rental property is located and may be used by the governing body for any lawful municipal purpose.

5:30-16.9 Consistency with municipal ordinances

The provisions of this act and the regulations promulgated thereunder take precedence insofar as any municipal ordinance conflicts with any of the provisions of this act or regulations.

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5:30-16.10 Severability

If any section, subsection, clause, sentence, paragraph or part of these regulations or the application thereof to any person(s) or circumstance(s) shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of these regulations.

5:30-16.11 (Reserved)]

SUBCHAPTER 17. (No change.)

[APPENDIX

1978 Tax Collector Certification
of Property Tax Reduction to Property Owner

- I a) 1976 Property Tax Paid or Payable on a "Qualified Real Rental Property" (see definition below) \$ _____
- b) 1978 Property Tax for same property* \$ _____
- II Property Tax Reduction Certification** \$ _____
(Line Ia minus Line Ib)
- III Certification of 65% of Line II. This is the amount to be Rebated/Credited to Tenants by Owner \$ _____

*Exclusive of improvements not included in the assessment on the real property for 1976.

**Reduction resulting from judgement entered by county boards of taxation, the Division of Tax Appeals in the Department of Treasury or by courts of competent jurisdiction are excluded from the calculation.

Instructions to Residential Property Owner:

1. Amount on Line III is the total amount to be rebated to calendar year 1978 tenants, subject to the following modifications:

a. If any part of the property is not rented or is rented for purposes other than residential the amount may be reduced in the proportion that the non-residential rental property bears to the property as a whole, preferably on the basis of assessed valuation. Your local tax assessor should be consulted.

b. If any dwelling units in this property are occupied by the owner or his/her employees, the amount may be reduced by the proportion that the number of such units bears to the total number of units in the property. (For example, if one unit of a four unit structure is occupied by the owner or an employee, one-quarter may be deducted from line III above.)

2. The amount to be rebated is to be divided proportionally, according to the annual rent of each apartment unit. Where tenancy is less than the entire annual period (January 1-December 31) prorate the apartment unit's annual rebate on a monthly or daily basis. (For example, if there were two tenants residing in a unit during the year, each for six months, each tenant would be eligible for 50% of the rebate due for the unit.)

3. Commercial tenants are not entitled to receive rebates under this program.

4. Within 30 days of the receipt of this form, you must file a statement* with the local rent control/rent leveling board or tax collector, showing:

- Total amount to be rebated (Line III);
- An explanation of modifications, if any, made to that amount;
- The actual amount being rebated;
- The amount of rebate per year and per rent payment for each category of rent payable.

*This statement must also be posted and maintained in a prominent place within the qualified rental property, within 30 days of date receipt of this form.

**IF YOU DO NOT RENT THIS PROPERTY,
DISREGARD THIS FORM**

This form applies only to owners of "Qualified Real Rental Property" which is defined as any real property containing a mobile home park or two or more spaces which are rented or leased or offered for rent or lease for occupancy by mobile homes, or any building

or structure or complex of buildings or structures in which housing units are rented or leased or offered for rental or lease for residential purposes except hotels, motels or other guest-houses serving transient or seasonal guests, residents of a residential cooperative or mutual housing corporation who are entitled to a homestead rebate pursuant to section 1 of P.L. 1976, c.72 (c.54:4-3.80), and owner-occupied structures of three units or less.

For further information or assistance, call the Tenant Rebate Hotline at (609) 394-0440.

Minimum Standards for
Owner's Certification to
Rent Leveling Board/Tax Collector
of Rebates or Credits

Tenant Rebate/Credit Schedule for Calendar Year _____

Name of Residential Property* _____

Street Address _____

Municipality _____

Rents are paid on a (Monthly) basis

| Type of Unit | Rebate/Credit Per (Month) | Annual Rebate or Credit Per Year |
|--|---------------------------|----------------------------------|
| Type A**\$295 rent per month (\$3540 rent per annum) | \$7.48 rounded to \$7.00 | \$89.85 |
| Type B \$240 rent per month (\$2880 rent per annum) | \$6.09 rounded to \$6.00 | \$73.10 |

Signed _____
Owner or Manager

Address _____

*If no name, indicate owner's name.

**When authorized by municipal ordinance, use square foot method.]

CHAPTER 33

TAX COLLECTION ADMINISTRATION

SUBCHAPTER 1. TAX COLLECTION PROCEDURES

5:33-1.1 Tax bill receipting machine

In any municipality, the governing body may require the collector to use a tax bill receipting machine so constructed as to imprint duplicate figures on a continuous record locked within the machine, simultaneously as bills are receipted. Such machine shall be subject to approval as to design, type and function by the State Board. Access to the recording section of the machine shall be restricted to the clerk, who, not less than once each week, shall remove the recorded figures and compare them with the collector's bank deposits during the same period. Whenever such comparison reveals any default, delinquency or official misconduct, the clerk shall immediately report the results thereof to the local governing body and to the collector's surety. Not less than once each month, the clerk shall certify to the local governing body that he has complied with the requirements of this section during the next preceding 30 days.

5:33-1.2 Bank collection of tax payments

(a) Any municipality adopting a resolution to contract for services in connection with this Act shall, prior to awarding the contract, receive approval of the Director of the Division of Local Government Services of the contract. Such contract shall include detailed procedures to be used in implementing procedures to receive and deposit funds, forwarding of back-up materials to the collector, holding of funds, audit trails and all other information required for evaluation of the proposed system.

(b) The bank or trust company designated by any resolution to receive current tax payments, current water and sewer rents, and other public moneys must be designated as an official depository in accordance with N.J.S.A. 40A:5-14.

(c) Any municipality which has contracted with a bank or trust company under this Act shall notify all taxpayers at least once annually that such a service has been contracted. Notification must be made by mail to all taxpayers at least 30 days prior to the next payment due, payable and subject to possible receipt by such bank or trust company agent, following the designation of such agent.

(d) The following words, when used in this subchapter, have the following meanings.

"Current" payment means any payment which is not yet due and payable, or any payment which became due and payable within the tenth calendar day prior to its receipt, provided that the municipality has adopted a resolution allowing "that no interest shall be charged if payment of any installment is made within the tenth calendar day following the date upon which the same became payable" in accordance with provisions of N.J.S.A. 54:4-67.

"Delinquent" payment means any payment which is not current (as defined above), plus any payments for accounts on which a municipality held Tax Title Lien exists.

5:33-1.3 Form of tax collection record

Use of this form of tax collection record for posting preliminary and final taxes is required by municipal taxing districts of the State of New Jersey. Sample copies can be obtained from:

Division of Local Government Services
Department of Community Affairs
CN 803
Trenton, N.J. 08625

5:33-1.4 Municipal Lien Forms

(a) Use of the following forms for the stated purposes is required by municipal taxing districts in the State of New Jersey.

1. Original and Duplicate Certificates of Sale for Unpaid Municipal Liens; and

2. Official Search and Certificates of Search for Municipal Liens.

(b) Samples of these forms are available through the Division of Local Government Services.

SUBCHAPTER 2. TAX COLLECTOR CERTIFICATION

5:33-2.1 Course of instruction—Certified Tax Collector

(a) In addition to other requirements defined by statute, successful completion of the three courses described in (b) through (d) below and as administered through Rutgers, the State University Bureau of Government Research, shall be required of candidates for Municipal Tax Collector certification (see N.J.S.A. 40A:9-145).

(b) Principles of Municipal Tax Collection I, as follows:

- i. Local government in New Jersey;
- ii. Office and duties of the tax collector;
- iii. Office and duties of the assessor and the county board of taxation;
- iv. Assessments for local improvements;
- v. Tax deductions and exemptions;
- vi. Billing duties;
- vii. Cashier duties;
- viii. Reports;
- ix. Interest;
- x. Enforcement duties prior to tax sale;
- xi. Personal property;
- xii. Miscellaneous duties;
- xiii. Office and duties of the treasurer;
- xiv. Office and duties of the utility collector;
- xv. Office and duties of the tax search officer;
- xvi. Treasurer of school monies;
- xvii. Tax sale overview.

(c) Principles of Municipal Tax Collection II, as follows:

i. Study of N.J.S.A. 54:5, Articles 1 through 11.

(d) Principles of Municipal Tax Collection III, as follows:

- i. Setting up an office;
- ii. Management techniques;
- iii. Office procedures;
- iv. Internal control;
- v. Records;
- vi. Reconciliations;

- vii. Reports; and
- viii. Miscellaneous.

(e) A Certificate of Completion of each course is subject to the following requirements:

1. Each candidate must attend at least three-quarters of the scheduled classes in addition to the final examination period(s); and

2. Passage of the final examination. The passing grades for the final examination shall be in accordance with the standards in effect and as prescribed by Rutgers, the State University, and shall be graded by the course instructors under the supervision of the Bureau of Government Research.

5:33-2.2 Examination previews: tax collector certification

(a) Review of a particular examination will be permitted only for those applicants who were not successful in passing such an examination.

(b) All examination reviews will be conducted in the offices of the Division of Local Government Services, 101 South Broad Street, Trenton, New Jersey 08625.

(c) Requests for examination reviews must be made in writing within two months of the date which appears on the notice of the mailing of the examination results. To arrange an examination review, an unsuccessful applicant must make a written request to the Division of Local Government Services, 101 South Broad Street, CN 803, Trenton, New Jersey 08625, setting forth several alternative dates and times which would be convenient to attend such a review. One of the dates will be selected and the applicant will be advised of the appointment date and time.

(d) Examination reviews will be conducted by a representative or representatives of the Division of Local Government Services. No one other than representatives of the Division of Local Government Services and the unsuccessful applicant for whom the review is being conducted shall be present at the examination review.

(e) The examination review will consist of the following:

1. Informing the applicant of his grade and explaining the manner in which the grade has been calculated.

2. Informing the applicant of the grade required for passage of the examination.

3. Specifying the categories of questions covered in the examination and informing the applicant how he fared category by category.

4. In limited circumstances, the representative of the Division conducting the review may discuss and review a specific question with the applicant.

(f) No applicant will be permitted to copy any questions or answers.

(g) No applicant will be permitted more than one review of a particular examination.

(h) The availability of examination reviews and instructions for requesting such a review are to be announced by proctors at examination centers before each examination commences.

SUBCHAPTER 3. TENANTS' PROPERTY TAX REBATE PROGRAM

5:33-3.1 Background of program

(a) The Tenants' Property Tax Rebate Act was approved as P.L. 1976, c. 63, on August 17, 1976, and subsequently amended by chapter 81, P.L. 1977. The purpose of this act is to require owners of "qualified real rental property" to pass to their residential tenants in the form of a rebate or credit, a specified proportion of tax reductions owners receive after 1976.

(b) The Director of the Division of Local Government Services is responsible, under this act, to promulgate rules and regulations prescribing the procedure for computing property tax reductions and rebates or credits in 1977 and thereafter, and the necessary forms to be used by local officials and "qualified real rental property" owners in determining same. The Director of the Division of Local Government Services may also promulgate such other rules or regulations as he deems necessary or advisable for the efficient administration and implementation of the purposes and provisions of this act.

(c) All correspondence and inquiries regarding the tenants' property tax rebate program should be addressed to the Division of Local Government Services, Department of Community Affairs, 363 West State Street, Trenton, New Jersey 08625.

5:33-3.2 Definitions

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

“Base year” means, for a property qualifying on the effective date of this act, the calendar year 1976, and for qualified real rental property which is first rented or leased or offered for rent or lease after the effective date of this act, the calendar year in which it is first offered for rent or lease.

“Owners” means owner(s) of qualified real rental property.

“Property tax reduction” means 0.65 times the difference between the amount of property tax paid or payable in any year on any qualified real rental property, exclusive of improvements not included in the assessment on the real property for the base year and exclusive of such improvements included in succeeding years, and the amount of property tax paid in the base year; but such calculations for the property tax reduction shall exclude reductions resulting from judgments entered by county boards of taxation, the Division of Tax Appeals in the Department of the Treasury, or by courts of competent jurisdiction. “Property tax reduction” shall also include 0.65 times any rebate or refund of school property taxes which may be provided pursuant to c.15, P.L. 1977. “Property tax reduction” shall not include any amount in excess of that which is identified herein. Any such amount shall be retained by the property owner.

“Qualified real rental property” means any real property containing a mobile home park or two or more spaces which are rented or leased or offered for rent or lease for occupancy by mobile homes, or any building or structure or complex of buildings or structures in which housing units are rented or leased or offered for rental or lease for residential purposes, except hotels, motels or other guest houses serving transient or seasonal guests, and owner-occupied structures of three units or less.

5:33-3.3 Responsibility of municipal tax collector

(a) Municipal property tax bills are prepared pursuant to N.J.S.A. 54:4-64. For the tax year 1977, and each year thereafter, the municipal tax collector when preparing property tax bills shall compute the amount of property tax reduction for the year for each owner of qualified real rental property and shall notify owner(s) of such reduction within 30 days after mailing the 1977 property tax bill. Such property tax reduction notification shall also include any amount of unbudgeted school aid moneys applicable and pursuant to chapter 15, P.L. 1977. Tax collectors, in so informing owners, will indicate the amount, where applicable, that owners are required to rebate or credit to their tenants, which shall be equal to 0.65 of the property tax reduction as defined in these regulations. A copy of the notice shall be provided to the rent leveling board, or similar agency charged with regulating rents, or where no such board exists, retained by the tax collector.

(b) The Division of Local Government Services in the Department of Community Affairs shall provide, pursuant to N.J.A.C. 5:33-3.2(c), the manner in which municipal tax collectors are to compute the property tax reduction that each owner of a qualified real rental property receives, and methods of locating property owners of qualified real rental properties.

(c) The tax collector’s certification to the property owner may be reproduced in any legible format so long as it provides information for the appropriate fiscal period as indicated on the sample form in N.J.A.C. 5:33-3.11.

(d) In municipalities where ordinances regulate rent and the municipal tax collector determines that 1977 property tax bills are higher than 1976 property tax bills for the same properties, the tax collector need only certify the amount of unbudgeted school aid refund received by an owner.

(e) Since there exists a difficulty in determining which taxpayer is affected by this act, the municipal tax collector shall notify all property taxpayers of his or her property tax reduction, or may develop an alternate system of notifying owners of qualified real rental property for purposes intended by these regulations.

5:33-3.4 Rebate or credit distribution process

(a) The owner calculates the rebate or credit pursuant to N.J.A.C. 5:33-3.6. When the first rent payment is made 30 days after receipt of the municipal tax collector’s certification, the tenant shall receive

a credit or rebate retroactive to January 1 from the owner(s). An example would be as follows:

| Type of unit | 1977 annual rebate/credit | Rebate/credit in August (8/12) months=\$72.00 | Rebate/credit due Sept., Oct., Nov., Dec., (1/12) \$9.17 rounded to \$9.00 |
|--------------|------------------------------|---|--|
| A | \$110.00 | \$9.00x8 months=\$72.00 | \$9.17 rounded to \$9.00 |
| B | 90.00 | \$8.00x8 months=\$64.00 | \$7.50 rounded to \$8.00 |

1. Beginning with the effective date of these regulations, owners must make a total commitment to obtain forwarding addresses of tenants who move out during a year for which they may be entitled to rebates or credits.

(b) Rebates or credits will apply to the tenant or tenants who reside in qualified real rental property beginning on January 1, 1977.

(c) By December 31, 1977, owner(s) will rebate or credit to tenants the entire unbudgeted school rebate and property tax reduction certified to the owner(s) by the municipal tax collector for calendar year 1977.

(d) For calendar year 1978 and subsequent calendar years, the tenant rebate or credit shall be determined by calculating said rebates or credits pursuant to the procedures depicted in N.J.A.C. 5:33-3.6.

(e) All tenant rebates or credits are determined by the property tax reduction certified by the municipal tax collector using 1976 as the base year, unless a “qualified real rental property” is erected and occupied after the base year.

5:33-3.5 Applicability of property tax reduction

(a) In municipalities, where ordinances regulate rent, the unbudgeted school aid refund shall not be netted as shown below, but rather individually calculated and applied to the tenant who will receive said rebate or credit.

(b) In municipalities where there are no rent control ordinances, tenant rebates or credits are applicable only when there is a reduction of property taxes as certified by the municipal tax collector.

1. Where the municipal tax collector certifies to the owner(s) a net increase of 1977 property tax combined with any 1976 unbudgeted State school aid, as compared to the base year property tax as defined in this act, no tenant rebate or credit is applicable.

2. Where the municipal tax collector certifies to the owner(s) an amount of 1977 property taxes combined with any 1976 unbudgeted State school aid equal to the base year property tax as defined in this act, no tenant rebate or credit is applicable.

3. Where the municipal tax collector certifies to the owner(s) a net reduction of the 1977 property taxes combined with any 1976 unbudgeted State school aid, as compared to the base year property tax defined in this act, tenant rebate(s) or credit(s) are applicable provided the criteria stated in N.J.A.C. 5:33-3.7(b) are met.

i. The municipal tax collector’s certification will be based upon the methodology employed in the following hypothetical table:

| Property Tax | 1976 | 1977 | 1976 Unbudgeted State school aid | Property tax reduction |
|--------------|-----------|----------|-------------------------------------|---------------------------|
| \$100,000 | \$100,000 | \$90,000 | \$10,000 | \$20,000 |
| 100,000 | 100,000 | 92,000 | 10,000 | 18,000 |
| 100,000 | 100,000 | 100,000 | 10,000 | 10,000 |
| 100,000 | 100,000 | 90,000 | -0- | 10,000 |
| 100,000 | 100,000 | 102,000 | 10,000 | 8,000 |
| 100,000 | 100,000 | 120,000 | 10,000 | None* |
| 100,000 | 100,000 | 110,000 | 10,000 | None* |
| 100,000 | 100,000 | 110,000 | -0- | None* |

*In cases where the unbudgeted school aid is less than the property tax increase, 65 per cent of such funds must be credited against any rent increases that the tenant would pay due to the increase in property taxes.

5:33-3.6 Responsibility of property owner

(a) Chapter 63, P.L. 1976, as amended, provides that the property tax rebate for each tenant residing in qualified real rental property shall be computed by the property owner in either of the two following manners:

1. Upon notification by the municipal tax collector of the property tax reduction and/or the amount of tax rebate of refund received by the owner pursuant to chapter 15 of the Public Laws of 1977, the following annual rent computation shall be employed by the owner:

Property tax reduction:

Total annual rent for all occupied or unoccupied dwelling units. (multiplied by) Annual rent of each individual dwelling unit in the qualified real rental property.

i. Hypothetically, an example would be:

- (1) \$ 78,699.72—1976 property tax;
- (2) 46,357.10—1977 property tax;
- (3) 32,342.62—Property tax reduction;
- (4) 7,466.00—1976 unbudgeted school aid;
- (5) 39,808.62—Total tax collectors certification to owner(s);
- (6) 25,875.60—Tenants' property tax reduction (0.65);
- (7) \$828,240.00—Total annual rent for all occupied and unoccupied units for the calendar year prior to the current year are computed as follows:

(A) \$240,720.00 = 68 class A units at \$3,540 per annual rent;

(B) \$587,520.00 = 204 class B units at \$2,880 per annual rent;

(8) Class A unit:

$$\frac{\$ 25,875.60}{\$828,240.00} \times \$3,540 = \$110.59;$$

(9) Class B unit:

$$\frac{\$ 25,875.60}{\$828,240.00} \times \$2,880 = \$89.97;$$

Note: The act requires that rebate/credit be made at the time rents are paid or payable. Therefore, the following schedule would apply to the above illustration.

| | Class A | Rounded | Class B | Rounded |
|---------------|----------|----------|---------|---------|
| Annual | \$110.59 | \$111.00 | \$89.97 | \$90.00 |
| Quarterly | 27.64 | 28.00 | 22.49 | 22.00 |
| Monthly 1/12 | 9.21 | 9.00 | 7.49 | 7.00 |
| Biweekly 1/26 | 4.25 | 4.00 | 3.46 | 3.00 |
| Weekly 1/52 | 2.12 | 2.00 | 1.73 | 2.00 |

(10) Should a unit(s) be unoccupied, that is, a unit(s) for which there is no verbal or written lease covering a specific period of time, then the owner shall retain such applicable rebate/credit as if said unit(s) were occupied;

(11) Where a structure contains commercial unit(s) as well as qualified residential rental units as defined under this act, the owner will subtract from the tax collector's certification for the commercial units before computing the applicable residential tenants' rebate or credit.

(A) After the June 1, 1978, tax bill is received, the rebate or credit schedule is calculated pursuant to (a) above exclusive of unbudgeted school aid refund.

(B) In calendar 1979, the system repeats itself.

2. Instead of the annual rent method, municipalities have the option of providing by ordinance that the property tax reduction shall be computed by a square foot method. This option method is depicted as follows:

$$\frac{\text{Property tax reduction for such qualified property}}{\text{Total rentable square footage}} = \text{Rebate or credit per square foot}$$

$$\text{Rebate per square foot (X) square feet of residential unit} = \text{Annual amount of property tax rebate per unit}$$

Using elementary amounts in an example of the square foot method:

\$100—property tax reduction for owner

1000—total rentable square footage

250 square feet—amount of square footage in a particular residential unit of such property

$$\frac{\$100}{1000 \text{ square feet}} = \$0.10$$

0.10 (X) 250 square feet = \$25.00 annual property tax rebate for this unit.

Note: Rebates or credits based on the square footage methodology shall follow the same rounding procedures depicted in the example of this section that employs the rent computation methodology. This calculation must be repeated annually for the duration of this act.

3. When advertising for rental units, owner(s) shall indicate that the rent(s) will be subject to any applicable rebate of credit. It is further suggested that owners seek cooperation from newspapers in obtaining

a single statement relating to the fact that all newspaper advertisements for qualified real rental property are subject to a rebate or credit. This would satisfy the requirement of this section of these regulations. It is recommended that leasehold agreements, from the effective date of these regulations, indicate that rents are subject to applicable rebates or credits under chapter 81, P.L. 1977.

5:33-3.7 Tenant rebate or credit

(a) All applicable tenant rebates or credits are payable at the time each rent payment is made, except in cases where a tenant does not pay his/her rent, then a rebate is not owing to such tenant at such time.

(b) The amount of the rebate or credit due the tenant at the time the rent is paid shall be rounded off whereby any amount less than \$0.50 shall be reduced to the next lower dollar and any amount \$0.50 or higher shall be increased to the next higher dollar. Stated differently, an amount of \$0.49 or less at the time the rent is paid shall mean no rebate or credit, and an amount of \$1.00, or more than \$0.50, shall mean a rebate of credit of \$1.00.

(c) Owners receiving reductions are required to state on a form required to be filed with the rent leveling board or similar agency charged with regulating rents, or where no such board exists, with the municipal tax collector, the total property tax rebate paid accruing to the qualified real rental property, and shall certify that the provisions of this act have been fulfilled.

1. This form shall be filed within 30 days following notification by the municipal tax collector of the amount of property tax reduction.

2. Upon such filing, the owner shall also post and maintain in a prominent place within his qualified real rental property a notice indicating the specific amount of rent rebate applicable pursuant to N.J.A.C. 5:33-6.6 for each rental unit category.

(d) Owners shall inform prior tenants eligible for a rebate by mailing to the last known forwarding address of such tenants a notification of same. If, after one year from the date of mailing, such tenant does not claim such rebate, the owner shall retain the rebate without further obligation.

(e) Owners who have not paid their property taxes during the duration of this act shall rebate or credit their tenants pursuant to the provisions of this act.

(f) Tenants who are delinquent in the payment of their rent shall receive rebates or credits pursuant to this act when such rent payments are made to the owner. However, if a tenant fails to pay his rent within one year, no rebate or credit will be required to be passed through to such tenant.

5:33-3.8 Failure to provide rebate or credit

(a) If an owner fails to provide a tenant with a property tax rebate or credit as defined in the provisions of this act, the owner shall be liable to the tenant for twice the amount of the computed property tax rebate or credit to which the tenant was entitled, or \$100.00, whichever is greater.

(b) Any owner who fails to provide property tax rebates or credits to his tenants in accordance with the provisions of this act, or who knowingly and willfully fails to comply with any of the provisions of this act, shall be liable for a penalty of not more than \$100.00 for each offense. Such penalty shall be collected and enforced pursuant to the Penalty Enforcement Law, N.J.S.A. 2:58-1 et seq. The county district court of the county and the municipal court of the municipality where the qualified real rental property is located shall have jurisdiction in proceedings involving purported violations of the Tenants' Property Tax Rebate Act. Any money received as a result of such proceedings shall be paid over to the governing body of the municipality in which the qualified real rental property is located and may be used by the governing body for any lawful municipal purpose.

5:33-3.9 Consistency with municipal ordinances

The provisions of this act and the regulations promulgated thereunder take precedence insofar as any municipal ordinance conflicts with any of the provisions of this act or regulations.

5:33-3.10 Severability

If any section, subsection, clause, sentence, paragraph or part of these regulations or the application thereof to any person(s) or circumstance(s) shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of these regulations.

5:33-3.11 Tax collector certification of property tax reduction to property owner; minimum standards for owner's certification to rent leveling board/tax collector of rebates or credits

(a) The following is an example form, based in the year 1978, for a Tax Collector Certification of Property Tax Reduction to Property Owner:

1978 Tax Collector Certification
of Property Tax Reduction to Property Owner

I (a) 1976 Property Tax Paid or Payable on a "Qualified Real Rental Property" (see definition below) \$ _____

(b) 1978 Property Tax for same property* \$ _____

II Property Tax Reduction Certification** \$ _____
(Line Ia minus Line Ib)

III Certification of 65% of Line II. This is the amount to be Rebated/Credited to Tenants by Owner \$ _____

*Exclusive of improvements not included in the assessment on the real property for 1976.

**Reduction resulting from judgement entered by county boards of taxation, the Division of Tax Appeals in the Department of Treasury or by courts of competent jurisdiction are excluded from the calculation.

Instructions to Residential Property Owner:

1. Amount on Line III is the total amount to be rebated to calendar year 1978 tenants, subject to the following modifications:

a. If any part of the property is not rented or is rented for purposes other than residential the amount may be reduced in the proportion that the non-residential rental property bears to the property as a whole, preferably on the basis of assessed valuation. Your local tax assessor should be consulted.

b. If any dwelling units in this property are occupied by the owner or his/her employees, the amount may be reduced by the proportion that the number of such units bears to the total number of units in the property. (For example, if one unit of a four unit structure is occupied by the owner or an employee, one-quarter may be deducted from line III above.)

2. The amount to be rebated is to be divided proportionally, according to the annual rent of each apartment unit. Where tenancy is less than the entire annual period (January 1-December 31) prorate the apartment unit's annual rebate on a monthly or daily basis. (For example, if there were two tenants residing in a unit during the year, each for six months, each tenant would be eligible for 50% of the rebate due for the unit.)

3. Commercial tenants are not entitled to receive rebates under this program.

4. Within 30 days of the receipt of this form, you must file a statement* with the local rent control/rent leveling board or tax collector, showing:

- Total amount to be rebated (Line III);
- An explanation of modifications, if any, made to that amount;
- The actual amount being rebated;
- The amount of rebate per year and per rent payment for each category of rent payable.

*This statement must also be posted and maintained in a prominent place within the qualified rental property, within 30 days of date receipt of this form.

IF YOU DO NOT RENT THIS PROPERTY,
DISREGARD THIS FORM

This form applies only to owners of "Qualified Real Rental Property" which is defined as any real property containing a mobile home park or two or more spaces which are rented or leased or offered for rent or lease for occupancy by mobile homes, or any building or structure or complex of buildings or structures in which housing units are rented or leased or offered for rental or lease for residential purposes except hotels, motels or other guest-houses serving transient or seasonal guests, residents of a residential cooperative or mutual housing corporation who are entitled to a homestead rebate pursuant to section 1 of P.L. 1976, c.72 (c.54:4-3.80), and owner-occupied structures of three units or less.

(CITE 22 N.J.R. 724)

For further information or assistance, call the Tenant Rebate Hotline at (609) 394-0440.

(b) The following is an example form for Maximum Standards for Owner's Certification to Rent Leveling Board/Tax Collector of Rebates or Credits:

Minimum Standards for Owner's Certification to Rent Leveling Board/
Tax Collector of Rebates or Credits

Tenant Rebate/Credit Schedule for Calendar Year _____

Name of Residential Property* _____

Street Address _____

Municipality _____

Rents are paid on a (Monthly) basis

| Type of Unit | Rebate/Credit Per (Month) | Annual Rebate or Credit Per Year |
|--|---------------------------|----------------------------------|
| Type A**\$295 rent per month (\$3540 rent per annum) | \$7.48 rounded to \$7.00 | \$89.85 |
| Type B \$240 rent per month (\$2880 rent per annum) | \$6.09 rounded to \$6.00 | \$73.10 |

Signed _____
Owner or Manager

Address _____

*If no name, indicate owner's name.

**When authorized by municipal ordinance, use square foot method.

(a)

LOCAL FINANCE BOARD

Local Public Contracts

Proposed New Rules: N.J.A.C. 5:34

Proposed Repeals: N.J.A.C. 5:30-14

Proposed Recodification: N.J.A.C. 5:30-17 to 5:34-7

Authorized By: Local Finance Board, Barry Skokowski, Sr.,
Chairman and Director, Division of Local Government Services.

Authority: N.J.S.A. 52:27BB-1 et seq., 40A:11-11 et seq.

Proposal Number: PRN 1990-103.

Submit comments by May 11, 1990 to:

Harry L. Mansmann, Executive Secretary
Local Finance Board
CN 803
Trenton, NJ 08625

The agency proposal follows:

Summary

In an effort to promote the highest standards of propriety in the purchasing and contracting procedures of local units of government, the Division of Local Government Services promulgated the original Local Public Contracts Law regulations some 12 years ago. As part of the ongoing evaluation of the Division's responsibility of protecting the integrity of the fiscal affairs of local governmental units, the Division has become aware of new issues which need to be addressed. In addition, the application of the rules has brought to the attention of the Division language which is inappropriate, unnecessary or confusing.

In view of the above, the Division intends, with this proposal, to amend, restate, recodify and add to the Local Public Contracts Law rules. This proposal represents a complete rewrite of the rules in N.J.A.C. 5:30-14, involving the repeal of existing N.J.A.C. 5:30-14 et seq. in their entirety and a recodification of N.J.A.C. 5:30-17 as N.J.A.C. 5:34-7, with the new rules becoming a separate chapter, N.J.A.C. 5:34. The proposed repeals and new rules clarify and eliminate inappropriate, unnecessary, or confusing language. The new rules further increase the clarity of the

requirements by presenting a more logical flow. The new provisions will address issues which are of concern to local units.

In addition, the new provisions will aid the Division in fulfilling the regulatory purpose of promoting the highest standards in purchasing procedures by more completely addressing all outstanding issues. Of particular note are three new provisions. The first of these provisions will permit change orders under limited circumstances, which exceed the general 20 percent limitation. This provision eliminates the uncertainty which arises when a legitimate situation results in a change order which would exceed 20 percent of the original bid price (N.J.A.C. 5:34-4.8). The second new provision concerns emergency purchases (N.J.A.C. 5:34-6). The Division hopes to eliminate some of the abuses of this bidding exemption. Lastly, the Division clarifies the need for a resolution of the governing body to award a contract when purchasing through the State Division of Purchase and Property (N.J.A.C. 5:34-1.2).

In summary, the proposed new rules seek to more completely and clearly address the regulatory requirements for the purchasing and contracting procedures of local governments.

Social Impact

Perhaps no single area of governmental operations undergoes closer scrutiny than purchasing. It is essential that every effort is made to assure the public that contracts are entered into absent fraud, corruption and favoritism. This is the intent of the Local Public Contracts Law itself and the Legislature has assigned to the Division of Local Government Services the responsibility of furthering its intent through the regulatory process. Thus, these rules aid in obtaining the stated legislative goal while attempting to help preserve the fiscal integrity of local units of government.

The above regulatory purpose is accomplished in many ways. For instance, the rules guide local governments in the proper use of public bidding exemptions, such as emergencies and extraordinary unspecifiable services (EUS). They regulate the use of change orders which if abused could easily result in the unnecessary expenditure of public monies. The certification of funds is required to ensure that the local unit does not overexpend and complements the required encumbrance accounting systems which must be implemented by local units of governments. In all cases, the Division attempts to create a purchasing environment which is free of the taint of impropriety and also preserves the fiscal integrity of the local unit.

Economic Impact

The social and economic impact of the proposed new rules tend to overlap. The chief economic benefit also lies in promoting the highest standards of propriety in the purchasing and contracting procedures of local units of government. Of course, it is hoped that proper use of the competitive bidding process will also result in fair prices for the goods and services necessarily required by local governments. These were the benefits of the original Local Public Contracts Law rules and will continue to be the chief economic benefits of these proposed rules.

There are no direct costs imposed by these new rules. There will be, however, indirect costs associated with the administration of local government functions pursuant to the rules. Any such indirect costs must be balanced against the gain of public confidence in the purchasing procedures utilized by the local government. It is essential that the public believe that the goods and services of local government are obtained in a fair, open and competitive manner. These rules aid in the attainment of that goal.

Regulatory Flexibility Statement

The proposed new rules will only affect the internal purchasing operations of local governments and, therefore, will not impact on any business addressed under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 5:30-14.

Full text of the proposed new rules follows:

CHAPTER 34

LOCAL PUBLIC CONTRACTS

SUBCHAPTER 1. GENERAL PROVISIONS AND CONTRACTS THROUGH STATE AGENCY

5:34-1.1 Application, compliance and penalties

(a) Unless specifically stated to the contrary, the rules in this chapter apply to all local government agencies that are encompassed

by the definition of contracting unit in N.J.S.A. 40A:11-2(1), by whatever name called.

(b) Every governing body and chief executive officer shall take all steps necessary so that all officials and employees shall be aware of and comply with the requirements of these rules.

(c) Any person knowingly failing to discharge the responsibilities required by these rules shall be subject to the misdemeanor penalties prescribed by N.J.S.A. 52:27BB-52 in addition to such other sanctions as may pertain.

5:34-1.2 Contracts through State agency

Any local contracting unit purchasing, pursuant to N.J.S.A. 40A:11-12, materials, supplies or equipment under a contract entered into by the State Division of Purchase and Property shall authorize the award of such contract by resolution of the governing body unless the contract is awarded by a contracting agent pursuant to N.J.S.A. 40A:11-3.

SUBCHAPTER 2. EXTRAORDINARY, UNSPECIFIABLE SERVICES

5:34-2.1 Definition of extraordinary, unspecifiable services

Extraordinary, unspecifiable services are defined by the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., at N.J.S.A. 40A:11-2(7) as "services which are specialized and qualitative in nature requiring expertise, extensive training and proven reputation in the field of endeavor." N.J.S.A. 40A:11-5(1)(a)ii permits local contracting units to award contracts without competitive bidding for extraordinary, unspecifiable services. The application of this exception for extraordinary, unspecifiable services shall be construed narrowly in favor of open competitive bidding wherever possible.

5:34-2.2 General requirements limiting the use of the exception

(a) The assertion that the service can only be provided by a single contractor ("sole source") shall not be sufficient to justify avoidance of competitive bidding as an extraordinary, unspecifiable service (hereinafter referred to as EUS).

(b) The fact that the service is in the nature of a personal, human, social or training services contract, or includes within its description such terms as "engineering," "technical," "management," "consultant," or similar descriptions suggesting some special nature shall not in itself be sufficient to utilize this exception. The need for expertise, extensive training and proven reputation in the field of endeavor must be critical and essential to the project, and not merely a desire to have a reliable job performed.

(c) The services must be of such a qualitative nature that the performance of the services cannot be reasonably described by written specifications.

(d) Services that meet the requirements of EUS may not be combined with other work in a contract which is predominantly characterized as being a biddable activity so as to avoid the necessity of bidding for the work which in its own right is subject to competitive bidding.

(e) No firm, having been previously retained to study, survey or prepare specifications for a given system, function or equipment, may be selected as an EUS without competitive bidding to operate, implement or provide any material or services on the basis of intimate or specialized knowledge acquired as a result thereof. Appropriate care should be taken so that such a firm is not authorized to participate in bidding if its earlier participation in studies, etc. would give it unfair advantage.

5:34-2.3 Procedures for implementation of the exception

(a) If the estimated cost or price exceeds the informal quotation threshold of N.J.S.A. 40A:11-6.1, quotations as to the cost or price must be solicited by the contracting agent whenever practicable, and the contract shall be awarded on the basis of the lowest responsible quotation and which quotation is most advantageous to the contracting unit, price and other factors considered. If the award is not made on the basis of the lowest quotation, the contracting agent shall file a statement of explanation which shall be placed in the contract file. (See N.J.S.A. 40A:11-6.1 for full details.)

(b) Before the governing body awards a contract under the EUS provisions which exceeds the bid threshold established in accordance

with N.J.S.A. 40A:11-3, a designated administrative official of the contracting unit must file a certificate with the governing body clearly describing the nature of the work to be done, stating that it is not reasonably possible to draft specifications, describing the informal solicitation of quotations, and describing in detail why the contract meets the provisions of the statute and these rules. A mere recitation of the language in the statute shall not be sufficient for this purpose. A standard certification format is available from the Division of Local Government Services and must be utilized. The certification must be kept with the resolution awarding the contract.

(c) The governing body, in addition to stating the supporting reasons for its action in the resolution awarding the contract, is required to place a notice of the action in a newspaper. (See N.J.S.A. 40A:11-5(1)(a) for full requirement.)

5:34-2.4 Examples for purposes of guidance

(a) The Division believes that the following services satisfy all the criteria for an EUS and they are therefore listed as examples for purposes of guidance:

1. Specification drafting;
2. Management consultant studies;
3. Labor management consultants;
4. Professional landscape architects;
5. EDP preliminary feasibility surveys only;
6. Expert financial advisors;
7. Public relations consultants;
8. Insurance, including the purchase of insurance coverage and consultant services;
9. Child custody, foster care, and similar services when contracted directly with the individuals performing the services and not with any firm, corporation or partnership which employs others to perform the work;
10. Establishment of a fixed assets inventory when the total system includes an accounting component;
11. Expert witnesses; and
12. Clerk of the works or construction advisor (not the actual construction).

(b) The Division believes that the following services do not satisfy all the criteria for an EUS and they are therefore listed as examples for purposes of guidance:

1. Facilities management contracts (for data processing or other operations);
2. EDP services, including design of systems, programming, service bureau processing, rental of data processing equipment, purchasing of data processing equipment. These activities are in some cases complex but are specifiable;
3. Construction management contracts (involving price guarantee, responsibility for entering into contracts for actual construction, or actual or contingent responsibility for conducting the construction, etc.);
4. Physical taking of a fixed assets inventory;
5. Electrical equipment maintenance;
6. Maintenance of typewriters, dictating machines and other common office equipment;
7. Tradesmen;
8. Heating specialists;
9. Maintenance of motor vehicle fleets;
10. Feeding programs; and

Revaluation services except as provided pursuant to N.J.S.A. 40A:4-56.

SUBCHAPTER 3. CERTAIN LEASES OF EQUIPMENT AND SERVICE AGREEMENTS BEYOND THE FISCAL YEAR, ADOPTED PURSUANT TO N.J.S.A. 40A:11-15

5:34-3.1 Duration of contract

(a) Leases (which term includes rental agreements) and service agreements for items authorized by the applicable provision of N.J.S.A. 40A:11-15 shall not be renewed or extended beyond the maximum allowable statutory period. The specifications for rebidding after the maximum allowable statutory period should not require that the equipment be in the possession and/or service of the contracting unit.

(b) Such leases and service agreements may be written for any period of time not to exceed the maximum allowable statutory period, or for shorter periods with provision for renewal at the option of the contracting unit, provided that such renewal shall not cause the cumulative length to exceed the maximum allowable statutory period. Such renewals may be authorized only by resolution of the governing body.

5:34-3.2 Application of bidding requirements

All leases or service agreements authorized under N.J.S.A. 40A:11-15 shall be subject to competitive bidding if the cumulative amount to be expended during the duration of the multi-year lease exceeds the competitive bidding threshold of N.J.S.A. 40A:11-3.

5:34-3.3 Option to purchase, prohibitions, cancellation clause

(a) In addition to providing for the use of equipment during the period of the lease, the lease may provide for rental payments to be credited towards the purchase price for purpose of acquisition of the equipment if the contracting unit, at its sole option, decides to buy the equipment, and said option was included in the original specifications and in the original contract.

(b) Leases shall not, however, provide for the acquisition of ownership at the beginning of the lease term, with installment payments to be made thereafter. This prohibition includes lease-purchase financing arrangements between a lessor and a lessee with financing provided by an outside non-contractual third party.

(c) While N.J.S.A. 40A:11-15 authorizes lease arrangements, such contractual arrangements must contain a clause making them subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation, or contain an annual cancellation clause. N.J.S.A. 40A:11-15 does, however, provide several exceptions to this requirement. (See N.J.S.A. 40A:11-15 for details.)

5:34-3.4 Equipment changes

(a) Equipment leased shall not be expanded, upgraded or otherwise materially changed or increased in cost during the term of the lease without competitive bidding, except as follows:

1. Equipment changes which were specifically described, either by itemization or by performance standards, in the original bidding specifications and for which all bidders were requested to submit proposals, when in accordance with a formal written plan of time-phased expansion, prepared prior to solicitation of bids, and when the proposals for such changes were considered in the determination of the successful bidder; or

2. An item of equipment which is discontinued by the vendor may be replaced with a comparable model which performs the same or increased workload provided that neither the workload nor the cost exceeds that specified in the original contract or the plan of expansion referred to in (a)1 above.

(b) Any such changes made in accordance with this section shall be made by an amendatory contract and the procedure followed shall be in compliance with the regulations regarding change orders.

SUBCHAPTER 4. CHANGE ORDERS AND OPEN-END CONTRACTS

5:34-4.1 Definitions

(a) A change order is a properly prepared document authorized by the governing body which directs and authorizes a contractor, consultant or other vendor performing work for or supplying materials and supplies to a local unit pursuant to a contract to change the quantity or character of work, service, or materials to be performed, rendered or furnished, from that originally specified or estimated and to correspondingly change the payment due therefor.

(b) Open-end contracts are contracts for which price bids were solicited on a unit basis because exact quantities needed were not known at the time bids were sought. Such contracts, when advertised and awarded, must include a minimum and a maximum number of units that can be ordered for each item under the contract. Orders placed under such open-end contracts shall not be considered as change orders for purposes of this section, but shall be subject to the requirements specified in N.J.A.C. 5:34-4.9. Examples include, but are not limited to, blacktopping and office supplies such as stationery.

5:34-4.2 General requirements for all change orders

(a) No changes in quantities, work performed, services rendered, materials, supplies or equipment delivered or provided shall be authorized, permitted or accepted except by the procedures established herein. All change orders unless otherwise stated in this subchapter shall be subject to the following:

1. Each change order shall be in writing and shall be numbered consecutively (beginning with number one) and attached to the original purchase order or contract for each project.

2. Change orders which result in payment reduction below the originally contracted price may be made by locally established procedure, provided that any change orders increasing cost on the same contract shall include reference to such reductions.

3. Quantities of items or work shall not be changed in such a manner as to nullify the effect of the competitive determination of lowest responsible price which was made at the time of contract award, if at said time the changes could have been reasonably foreseen.

4. Responsibility required by these rules to be exercised specifically by the governing body, including authorization of change orders, shall not be delegated except for minor field (site) modifications pursuant to N.J.A.C. 5:34-4.3.

5. Change orders may be executed by the representative appointed by the governing body but the responsibility for the authorization of change orders shall not be delegated by the governing body except for minor field (site) modifications pursuant to N.J.A.C. 5:34-4.3.

6. Change orders shall be used to change the number of units or items originally advertised and contracted for, provided that:

i. Unit prices or a price methodology were sought in the original specifications and included in the contract;

ii. The original specification and the contract included a provision that the unit prices could be so used; and

iii. If (a)6i and ii above were not contained in the original specification, a change order shall not be issued.

7. Change orders shall not be used to substantially change the quality or character of the items or work to be provided, inasmuch as such would have been a determining factor in the original bidding.

8. Change orders shall not serve the purpose of escalation clauses and, therefore, shall not be utilized to effectuate upward price adjustments.

9. Total number of change orders executed for a particular contract shall not cause the originally awarded contract price to be exceeded cumulatively by more than 20 percent net unless otherwise authorized by these rules.

10. If proposed change orders do exceed the 20 percent limitation of (a)9 above, no work shall be performed or purchases made until the procedures of N.J.A.C. 5:34-4.8 have been completed. If the governing body determines issuance of the change order is not justifiable, a new contract shall be executed in accordance with the procedures of the Local Public Contracts Law.

11. Before authorizing any change orders resulting in additional expenditures, the availability of funds shall be certified in writing by the chief financial officer or certifying finance officer, as appropriate.

12. The governing body shall be assured in writing that adequate appropriations are available in accordance with N.J.A.C. 5:34-4.5, Certification of funds.

13. The 20 percent limitation of (a)9 above shall not apply to emergency situations as defined within N.J.S.A. 40A:11-6.

14. Change order authorizations shall not be withheld until the completion of the entire project.

5:34-4.3 Procedures for minor field (site) modifications

The governing body shall be required to authorize all change orders, except that minor field (site) modifications (for example, additional fill stone needed, modifications of footings, additional rock blasting) may be authorized, provided that they do not affect the overall scope of work of the contract, by the designated representative of the governing body. These change orders shall result only in minor price increases to the originally awarded contract price.

5:34-4.4 General procedures for all change orders

(a) The governing body approval process for change orders shall be as follows:

1. The chief executive officer of the governmental unit or his or her designee shall file with the governing body a request for the change order, stating the facts involved and indicating that the proposed change order may be allowed under these rules. If the request and justification are prepared by other than an official of the governmental unit, they must be countersigned by the chief executive officer or his or her designee.

2. The governing body shall take such steps as it may find appropriate to assure that a change is necessary and that the work will be completed.

3. The governing body shall then pass a resolution authorizing a written amendatory contract to be entered into covering the change(s) to be made. The exact form of this amendatory contract shall be at the discretion of the local attorney.

4. The resolution described in (a)3 above shall be passed before execution of the change order. No work shall be performed or purchases made on the involved phase of the contract until the resolution is passed.

5:34-4.5 Professional and/or consultant contract change orders

(a) The rules of this section and N.J.A.C. 5:34-4.6 and 4.7 shall apply only to the particular type of contract in question unless otherwise provided.

(b) In case of conflict with the general requirements of N.J.A.C. 5:34-4.2, the specific language of the particular section shall prevail but, otherwise, the requirements of N.J.A.C. 5:34-4.2 shall be satisfied.

(c) Changes should be within the scope of activities of the original contract, and not for the purpose of undertaking new or different work or projects. Changes in payments for activities within the scope of activities of the contract shall be in accordance with a schedule of specific charges or rates contained in the contract and shall be effectuated by a written change order authorized by the governing body. If such a schedule is not included in the contract, the contract should be amended to provide for same.

(d) The 20 percent limitation of N.J.A.C. 5:34-4.2(a)9 shall not apply to professional and/or consultant contract change orders.

(e) If the change is not within the scope of activities of the original contract and the contract was awarded without competitive bidding being required by law or rule (as is the case for professional services and certain authorized extraordinary, unspecifiable services in accordance with N.J.S.A. 40A:11-5(1)(a)), any change beyond the original scope of activities shall be made by amendatory contract approved by the governing body.

(f) If the consulting contract was not a professional service or a qualified EUS and was required to be subject to competitive bidding, any change beyond the original scope of activity shall be by new contract based on new bidding.

5:34-4.6 Change orders for materials, supplies and equipment which are part of construction contract

Change orders for materials, supplies and equipment items which are part of a contract which is primarily a construction contract shall be processed in accordance with the rules governing construction contracts. Contracts awarded on a unit price basis (including, but not limited to, asphalt overlays, curbing) as an open-end contract shall be handled under the section dealing with open-end contracts. However, contracts awarded for the paving, construction or reconstruction of specifically described streets or sections shall be treated as construction contracts.

5:34-4.7 Change orders for construction, reconstruction and major repair contracts

(a) Change orders for construction, reconstruction and major repair contracts shall be limited to the following types:

1. Unforeseeable problems, which are defined as conditions or circumstances that could not be foreseen at the time the specifications were written and the contract awarded or prior to their actual discovery; provided that a substantial amount of the construction would be delayed, which would result in substantial increases in costs above the original contract amount or substantial inconvenience to the public if bidding were to be required; and

2. Minor modifications to effect economies, improve service or resolve minor problems with affected property owners.

(b) Change orders for construction, reconstruction and major repair contracts shall not be made for the following:

1. Changes that materially expand upon the size, nature or scope of the project as it was originally described in the bid specifications; or
2. Extra work that could reasonably be effectuated by a separately bid contract without unduly disrupting the basic work or imposing adverse cost consequences.

5:34-4.8 Procedures for change orders which exceed 20 percent limitation

(a) General provisions regarding the procedures for change orders which exceed the 20 percent limitation are as follows:

1. The procedures in this section shall only be followed when a particular change order on any type of contract, except professional and consultant contracts, will cause the total amount of change orders executed for the particular contract to exceed the originally awarded contract price by more than 20 percent net. The purpose of the procedures is to allow for such a change only in limited instances. Such a change shall not be permitted when the factual circumstances make it reasonably possible to execute a new contract for the additional work. Such a change may be allowed, for example, when an unforeseen circumstance or differing site condition is combined with a situation which renders execution of a new contract an unreasonable interference with the efficient completion of the work.

2. The Division of Local Government Services emphasizes that generally such change orders are not justifiable and the ready issuance of them by contracting units would constitute an abuse of these regulations.

(b) A written certification justifying the performance of the work or the furnishing of the services which would necessitate issuance of such a change order shall be filed by the contractor with the chief executive officer or his designee. This certification shall include an explanation of the factual circumstances which necessitate issuance of the change order; a statement indicating why these circumstances could not have been foreseen; a statement indicating why issuance of the change order would be in the best interests of the contracting unit and would not constitute an abuse of these rules; and, if the nature of the change order is technical, the certification shall include a certified statement from the contractor's appropriate expert, such as an engineer or architect. This statement shall explain in detail the factual circumstances which necessitate issuance of the proposed change order. A rewrite or paraphrase of the rules in this subchapter is not acceptable.

(c) The governing body approval process for change orders which exceed the 20 percent limitation is as follows:

1. The chief executive officer or his or her designee shall file a request for the change order with the governing body. This request shall include a statement indicating why the proposed change may be allowed under this subchapter. A copy of the certification required under (b) above must also be attached to the request.

2. If the certification required pursuant to (b) above includes a certified statement from an engineer or other expert as required by (b) above, the request to the governing body shall also include a statement from the contracting unit's engineer or an official or employee with the appropriate expertise. This statement shall explain in detail the factual circumstances which justify issuance of the proposed change order. A rewrite or paraphrase of the rules in this subchapter is not acceptable.

3. The governing body shall take appropriate steps to assure that the change order is proper and allowable under this subchapter.

4. The governing body shall then pass a resolution authorizing a written amendatory contract to be entered into covering the change(s) to be made. The exact form of this amendatory contract shall be at the discretion of the local attorney.

5. The resolution described in (c)4 above shall be passed before execution of the change order.

6. The governing body shall cause to be printed once, in a newspaper authorized by law to publish its legal advertisements, a brief notice indicating the additional amount to be expended, the original contract price, the nature of the original and additional work and why it is necessary to expend the additional funds. A copy of the

advertisement shall also be filed with the clerk of the governing body and be available for inspection by the public.

(d) Reporting requirements under this section are as follows:

1. Actions taken under the provisions of this section shall be reported in the annual audit filed with the Division of Local Government Services.

2. On or before the last day of February, the clerk of the governing body shall report to the Division of Local Government Services all change orders from the previous year which exceeded the 20 percent limitation. This report shall be made on a form provided by the Division of Local Government Services.

5:34-4.9 Open-end contracts

(a) The issuance of purchase orders pursuant to an open-end contract shall be considered to be the carrying out of the contract and not a change order. The following requirements shall apply:

1. Orders under open-end contracts shall not be used for purposes such as changing the quality or character of items to be provided, nor to exceed the maximum number(s) of items or units provided for in the original specifications and contract. Such changes would constitute a change order.

2. The contract shall not be for a period longer than 12 consecutive months unless specifically authorized by N.J.S.A. 40A:11-15.

3. The Certificate of Availability of Funds required by N.J.A.C. 5:34-5 shall be executed each time an order is placed, covering the amount of the order unless the local unit wishes to commit and certify the full amount at the outset. Note that the point at which the Certificate must be executed is just before the local unit incurs a contractual liability on its part.

4. Orders shall be placed by the official authorized to serve as contracting agent, subject to such controls or approval requirements as the governing body, chief executive or other administrative officer may lawfully impose.

SUBCHAPTER 5. CERTIFICATION OF FUNDS AND APPLICABLE ACCOUNTING PROCEDURES

5:34-5.1 General requirements

(a) The chief financial officer, appointed pursuant to N.J.S.A. 40A:9-140.1 et seq., shall be responsible for determining the availability of sufficient funds. The delegation of this duty by the chief financial officer does not relieve him or her of this responsibility.

(b) The governing bodies of all other contracting units shall designate by resolution or ordinance, as appropriate, an individual to serve as the certifying finance officer. The certifying finance officer shall be responsible for determining the availability of sufficient funds. The delegation of this duty by the certifying finance officer does not relieve him or her of this responsibility.

(c) If a purchase or the execution of a contract does not require, either by State law or any State or local regulation, specific authorization by formal action of the governing body, then the authorized administrative official or employee issuing the contract or making the purchase shall ascertain from the chief financial officer or certifying finance officer, as appropriate, that there are available sufficient uncommitted appropriations to provide for the payment. The administrative official or employee shall be so authorized pursuant to N.J.S.A. 40A:11-3.

5:34-5.2 Procedure

(a) The following procedure shall be utilized by the governing body for the certification of funds:

1. The chief financial officer or certifying finance officer, as appropriate, charged with the responsibility of maintaining the financial records of the local unit shall certify in writing to the governing body the availability or lack thereof of adequate funds for each contract which is pending approval by the governing body. Said certification shall designate specifically the line item appropriation(s) of the official budget to which the contract will be properly charged, taking care that the same funds shall not be certified as available for more than one pending contract. Said officer shall be solely responsible for the accuracy of the certification.

2. No resolution authorizing the entering into of any contract pursuant to N.J.S.A. 40A:11-1 et seq. or any other law for the

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expenditure of public funds to a vendor, contractor or other entrepreneur shall be enacted unless it shall recite that such a certificate showing availability of funds has been provided. The resolution shall specify the exact line item appropriation(s) or ordinance which shall be charged.

3. The certification of availability of funds shall be attached to the original copy of the resolution or ordinance and kept in the files of the municipal clerk, clerk of the board of chosen freeholders or secretary to the governing body.

4. Before certifying to the legality of a resolution or ordinance authorizing the entering into of a contract, the local unit's attorney shall be satisfied that the proper certificate of availability of funds has been provided.

5. A contracting unit's governing body shall not enter into or execute a contract unless it has been presented with a written certification from its chief financial officer or certifying finance officer, as appropriate, stating the availability of sufficient funds for the contract(s) pending approval by the governing body.

5:34-5.3 Methods of accounting for and certifying available funds for special situations

(a) Temporary budget: When a local unit is operating under a temporary budget, as provided for in N.J.S.A. 40A:4-19, it may enter into a contract for a period extending beyond the time period funded in the temporary budget, subject to the following:

1. The full cost of the contract for that fiscal year shall be certified against the temporary budget, which must contain sufficient appropriations therefor; or

2. If the full cost of that year is not charged against the temporary budget, at least the pro-rated amount reflecting all liability to be incurred through March 31, or later if permitted by statute, must be charged and certified, and the contract must contain a clause making its continuation past such date subject to the appropriation of sufficient funds. Immediately after the final budget adoption, a certificate of available funds shall be prepared for the remaining balance and filed with the original ordinance or resolution.

(b) Open end contracts: When a contract provides for certain goods or services to be provided upon request, up to an established maximum, and the local unit is not obligated to order, accept or pay for said goods or services except when it orders them, then the certification of available funds shall be as follows:

1. The full maximum amount covered by the contract shall be charged against the budget at the time the contract is awarded, and the full amount shall be certified; or

2. No amount shall be chargeable or certified until such time as goods or services are ordered or otherwise called for. Prior to incurring the liability by placing the order, the certification of available funds shall be made by the chief financial officer or certifying finance officer, as appropriate, and attached to the file copy of the purchase order or other such document. It shall be the responsibility of the official responsible for issuing the purchase order to notify and seek the certification of availability of funds from the chief financial officer or certifying finance officer, as appropriate. Failure to do so, causing lack of funds authorized to meet the payment of the order, will result in the official issuing the purchase order being personally responsible.

(c) Contracts up to 12 months not coinciding with fiscal year: When a contract is awarded for a period of up to 12 months not coinciding with the established fiscal year of the local unit, the following methods shall be followed for purposes of accounting and providing the certification of available funds:

1. If the contract is for a professional service or is essentially a single undertaking or project with one basic work project required (such as, but not limited to, contracts for revaluation, codification, management studies and feasibility surveys), rather than being divisible into separate steps or actions which in themselves are independently acceptable as complete work products, then the full cost of the contract shall be chargeable to and certified against the budget or appropriation of the year in which the contract is awarded. This method may also, at local option, be followed for contracts described in (c)2 below.

2. If the contract is not of the character described in (c)1 above, and provides for goods or services to be provided at separate intervals

over the contract period, then the amounts for which liability is to be incurred shall be charged and certified to the two respective years' appropriations at the times, as appropriate, of the contract being awarded (with respect to the amount from the first fiscal year); the adoption of the temporary budget (for the period at least through March 31); and the adoption of the final budget (for the remainder of the contract for the second fiscal year).

(d) Multi-year contract requirements are as follows:

1. Contracts entered into pursuant to N.J.S.A. 40A:11-15 for periods in excess of 12 months shall be charged and certified as follows:

i. For construction and related services authorized by N.J.S.A. 40A:11-15(9), for professional services or single undertakings or projects with one, basic work product required, as described in (c)1 above, to the budget or appropriation in full at the time of contract award;

ii. For other contracts, to the respective budgets in accordance with the time(s) at which the respective work or services are performed or liability for payment otherwise incurred, and subject to such requirements of this section as might apply with respect to temporary budgets, open-end contracts or contracts not commencing at the beginning of the fiscal year.

2. All multi-year leases and contracts except contracts specifically exempted pursuant to N.J.S.A. 40A:11-15 shall contain a clause making them subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation or contain an annual cancellation clause.

(e) Advance award of contracts: No contract shall be awarded in one fiscal year if the date on which it properly takes effect falls in the next fiscal year unless the local unit's attorney rules that this action does not constitute the binding of a future governing body in an unlawful manner and unless the contract includes a provision making it subject to the availability and appropriation of sufficient funds in the year in which it takes effect.

(f) Payment from proceeds shall be as follows:

1. The general rule is that liabilities shall not be incurred and payments shall not be made without sufficient appropriation. (See N.J.S.A. 40A:4-57.) When a contractual liability may be incurred and a payment may lawfully be made without an appropriation, such as for professional services for liquidation or foreclosure of tax title liens as provided by N.J.S.A. 40:50-6, the certification of available funds should simply recite that fact and cite the statute.

2. Contracts for services to be paid from savings generated or from State or Federal aid funds not yet received and appropriated are not permitted; an appropriation must be made at the outset.

SUBCHAPTER 6. EMERGENCY PURCHASES AND CONTRACTS

5:34-6.1 General requirements

(a) No contracts shall be entered into on an emergency basis pursuant to N.J.S.A. 40A:11-6 unless the circumstances meet all of the following requirements:

1. An actual or imminent emergency must exist requiring the immediate delivery of the article or the performance of the service;

2. The emergency condition must affect the public health, safety or welfare and require the immediate delivery of the article or the performance of the service to alleviate such effect;

3. The emergency purchasing procedure may not be used if the need for the articles or services could have been reasonably foreseen.

4. Emergency situations may not be created as a result of inadequate planning, delay, failure to take into account construction seasons, or administrative convenience;

5. The contract shall be of such limited duration as to meet only the immediate needs of the emergency; and

6. Under no circumstances shall the emergency purchasing procedure be used to enter into a multi-year contract.

5:34-6.2 Procedure for emergency purchases and contracts

(a) A written requisition for the performance of work or labor, or the furnishing of materials, supplies or services, as defined in N.J.A.C. 5:34-6.1 is filed with the contracting agent (usually the

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purchasing agent) or his or her deputy in charge describing the nature of the emergency, the time of its occurrence and the need for invoking this section, certified by the officer or director in charge of the department wherein the emergency occurred, or by his or her designee. The contracting agent or his or her deputy in charge, if he or she is satisfied that the emergency exists, is then authorized to award a contract for said work or labor, materials, supplies or services.

(b) A governing body may by resolution reserve the power to award emergency contracts. Said resolution may distinguish between situations involving imminent peril to life or property and situations that are urgent but could wait until the governing body can convene.

(c) Upon the furnishing of such work or labor, materials, supplies or services, in accordance with the terms of the contract or agreement, the contractor furnishing such work or labor, materials, supplies or services, shall be entitled to be paid therefor and the contracting unit shall be obligated for said payment. The governing body of the contracting unit shall take such action as shall be required to provide for the payment of the contract price.

(d) Payments made under emergency circumstances shall not be in excess of the available budgeted appropriations, as such would constitute a violation of the Local Budget Law, N.J.S.A. 40A:1 et seq., at N.J.S.A. 40A:4-57.

Recodify existing N.J.A.C. 5:30-17.1 through 5:30-17.9 as N.J.A.C. 5:34-7.1 through 5:34-7.9. (No change in text.)

(a)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

**Substantive Rules
Municipal Adjustments
Adjustment Process**

Proposed Amendment: N.J.A.C. 5:92-8.2

Authorized By: William A. Angus, Jr., Acting Chairman.
Authority: N.J.S.A. 52:27D-301 et seq., specifically 52:27D-307.
Proposal Number: PRN 1990-111.

Submit comments by April 4, 1990 to:
Douglas V. Opalski, Executive Director
New Jersey Council on Affordable Housing
CN 813
Trenton, New Jersey 08625-0813

The agency proposal follows:

Summary

The Fair Housing Act, N.J.S.A. 52:27D-301 et seq., requires the Council on Affordable Housing to allow municipalities to adjust their low and moderate income housing obligations for environmentally sensitive lands. In implementing its mandate, the Council allowed communities to exclude sites (in whole or in part) from consideration for low and moderate income housing if these environmental factors were present.

In the case of wetlands and floodplains, the Council's rule is consistent with rules developed by the New Jersey Department of Environmental Protection (DEP). However, DEP has no rule prohibiting development on steep slopes. Therefore, municipalities may permit market rate housing and non-residential development on slopes in excess of 15 percent.

The Council recognizes that there may be cases in which it is appropriate for the Council to rule that a site is unsuitable for steep slopes. It also recognizes that it is appropriate for communities to regulate slopes in excess of 15 percent if they choose to adopt a steep slope ordinance. However, it may also be appropriate to allow inclusionary development on these slopes in the absence of municipal regulation.

Thus, the Council is proposing an amendment to N.J.A.C. 5:92-8.2 that will allow more of a case by case analysis. The amendment allows communities to regulate inclusionary development, by ordinance, provided the ordinance regulates non-inclusionary developments in a consistent manner.

Social Impact

The proposed amendment will have a positive impact because it treats inclusionary development in a manner consistent with all other develop-

ment. It does not prohibit low and moderate income housing to be constructed when market housing and non-residential development may take place.

Economic Impact

The proposed amendment will have a positive economic impact because it removes arbitrary barriers to housing development. It allows sensible development of low and moderate income housing as regulated by municipal ordinance.

Regulatory Flexibility Analysis

The proposed amendment imposes no reporting, recordkeeping or compliance requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment only affects municipalities.

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

5:92-8.2 Adjustment process

(a) (No change.)

(b) The Council shall determine the amount and location of vacant and undeveloped land within a municipality. Specific parcels of vacant and developable lands shall be excluded as potential sites for low and moderate income housing based on the following criteria:

1.-2. (No change.)

3. Environmentally sensitive lands shall be excluded as follows:

i. (No change.)

ii. In areas of the State not regulated by the Pinelands Commission, the Division of Coastal Resources and the Hackensack Meadowlands Development Commission, [the Council shall] **municipalities may** exclude as potential sites for low and moderate income housing: inland wetlands as delineated on the U.S. Fish and Wildlife Service National Wetlands Inventory; or as delineated on-site by the U.S. Army Corps of Engineers or New Jersey Department of Environmental Protection, whichever agency has jurisdiction; when on-site delineation is required by the Council; flood hazard areas as defined in N.J.A.C. 7:13; and sites with slopes in excess of 15 percent as determined from the U.S.G.S. Topographic Quadrangles which render a site unsuitable for low and moderate income housing. In cases where part of a site is unsuitable for low and moderate income housing because of [steep slopes,] floor hazard areas or inland wetlands, the Council shall not permit low and moderate income housing to be constructed on that unsuitable part of the site; provided however, that this regulation shall not prohibit construction of low and moderate income housing on the remainder of the site. **In the case of slopes in excess of 15 percent, a municipality may regulate inclusionary development through a steep slope ordinance provided the ordinance also regulates non-inclusionary developments in a consistent manner. The Council reserves the right to exclude sites in whole or in part when excessive slopes threaten the viability of an inclusionary development.**

iii. (No change.)

EDUCATION

(b)

**STATE BOARD OF EDUCATION
Notice of Public Testimony Session
April 18, 1990**

Take notice that the following agenda items are scheduled for Notice of Proposal in the April 2, 1990 New Jersey Register and are, therefore, subject to public comment. Pursuant to the policy of the New Jersey State Board of Education, a public testimony session will be held for the purpose of receiving public comment, as well as to receive comment on any educational topic, on Wednesday, April 18, 1990 from 4:00 P.M. to 6:00 P.M. in the State Board Conference Room, Department of Education, 225 West State Street, Trenton, New Jersey.

To reserve time to speak call Celeste Carpiano at (609) 292-0739 by 12:00 noon Friday, April, 13, 1990.

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Interested Persons see **Inside Front Cover**

ENVIRONMENTAL PROTECTION

RULE PROPOSAL:

- N.J.A.C. 6:3-2 Pupil Records Amendments
- N.J.A.C. 6:22 School Facility Planning Services
- N.J.A.C. 6:20 Business Services

Please note: Publication of the above items are subject to change depending upon the actions taken by the State Board of Education at the March 7, 1990 monthly public meeting.

ENVIRONMENTAL PROTECTION

(a)

**DIVISION OF COASTAL RESOURCES
DIVISION OF WATER RESOURCES**

Ninety-Day Construction Permit Rules

Proposed Readoption with Amendments: N.J.A.C. 7:1C

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-9, and 13:1D-29 et seq., specifically 13:1D-33.

DEP Docket Number: 005-90-02.

Proposal Number: PRN 1990-113.

A **public hearing** concerning this proposal will be held on:

Tuesday, April 10, 1990 at 10:00 A.M.
Division of Coastal Resources
Conference Room A, 2nd Floor
501 East State Street
Trenton, New Jersey

Submit written comments by April 23, 1990 to:

Jane F. Engel, Esq.
Division of Regulatory Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to the requirements and criteria of Executive Order No. 66(1978), N.J.A.C. 7:1C expires on June 17, 1990. As required by the Executive Order, the Department of Environmental Protection (Department) has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The Department proposes to readopt these rules with amendments.

The 90-Day Construction Permit Rules have been in effect since 1975. These rules implement the Construction Permit Law, N.J.S.A. 13:1D-29 et seq., which was enacted in 1975 to secure timely decisions from the Department regarding its administration of five permit programs and to insure adequate public notice of those decisions. The readoption of these 90-day construction permit rules will enable the Department to continue to use unified procedures and time frames in reviewing and issuing construction permits pursuant to the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq.; the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.; the Waterfront Development Law, N.J.S.A. 12:5-3; the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.; and the Water Pollution Control Act, N.J.S.A. 58:10A-1 (specifically, treatment works approvals for changes to a sanitary sewage collection, treatment and discharge system). Within the Department, the Division of Coastal Resources administers the first four permit programs and the Division of Water Resources administers the treatment works approval program.

A summary of each section follows:

N.J.A.C. 7:1C-1.1 explains the purpose of these rules.

N.J.A.C. 7:1C-1.2 defines the terms that are essential to the understanding of these rules.

N.J.A.C. 7:1C-1.3 outlines the procedures and requirements a potential applicant shall follow, if required by the appropriate agency as defined at N.J.A.C. 7:1C-1.2, prior to the submission of a permit application.

N.J.A.C. 7:1C-1.4 outlines the general procedural requirements for a construction permit application.

N.J.A.C. 7:1C-1.5 contains the fee schedules for permit applications, extensions and modifications.

N.J.A.C. 7:1C-1.6 describes how the Department will use the DEP Bulletin to publish permit application status reports.

N.J.A.C. 7:1C-1.7 outlines the Department's application processing responsibilities within the first 20 working days of the receipt of an application.

N.J.A.C. 7:1C-1.8 sets forth the time limits within which the DEP must make a decision regarding an application.

N.J.A.C. 7:1C-1.9 sets forth the procedures for appealing permit decisions by the Department.

N.J.A.C. 7:1C-1.10, 7:1C-1.11, and 7:1C-1.12 set forth the limitations, the effect of partial judicial invalidation, and the applicability of these rules.

N.J.A.C. 7:1C-1.13 outlines the procedure and requirements for over-the-counter processing of minor stream encroachment permits and minor sewer extension projects.

N.J.A.C. 7:1C-1.14 clarifies that all permit applications subject to these rules will also be subject to the specific programmatic rules of the appropriate agency, and identifies those specific rules which either supersede or are in addition to this chapter.

A summary of the proposed amendments follows:

At N.J.A.C. 7:1C-1.2, the mailing addresses for the Division of Coastal Resources and the Division of Water Resources were added to the definition of "appropriate agency" to clarify the addresses where documents must be submitted pursuant to these rules.

The Waterfront Development Permit application fee structure at N.J.A.C. 7:1C-1.5(a)li is modified to include a new fee schedule for smaller upland waterfront development projects. This new fee schedule will decrease the fees for a large number of small upland waterfront development projects within the Coastal Zone that are now regulated by the Department as a result of the emergency amendments to the Coastal Permit Program Rules, N.J.A.C. 7:7-2.3, effective October 3, 1988. The amendments will also decrease the fees for a small number of upland waterfront developments that have been regulated by the Department pursuant to N.J.A.C. 7:7-2.3 since September 26, 1980. The Department received 718 upland Waterfront Development Permit applications between October 1988 and September 1989; 694 of the applications were due to the recent emergency amendments at N.J.A.C. 7:7-2.3.

The existing coastal construction permit application fee structure was used as a guide in developing this new fee schedule so that the new fee schedule may be easily integrated into the current structure. For residential developments, a base fee of \$250.00 is proposed for the first four dwelling units plus \$50.00 per unit for each additional dwelling unit. This change will decrease the fee presently required by the existing rules for the construction of a single family home from \$1,010 to \$250.00. A base fee of \$500.00 plus one-half of one percent of the construction cost as defined at N.J.A.C. 7:1C-1.2 up to a maximum of \$1,500 is proposed for all non-residential developments. This change will decrease the fees for non-residential developments which are smaller than CAFRA facilities as defined in N.J.A.C. 7:7-2.1 from \$1,500 and above to between \$500.00 and \$1,500. This new fee schedule more closely reflects the Department's costs in reviewing the smaller scale developments now requiring Waterfront Development permits.

At N.J.A.C. 7:1C-1.7(a) "following the date" was added and N.J.A.C. 7:7-1.8(a) was modified to clarify the commencement of the timetable for the review and decision on an application, and to be consistent with the Construction Permit Law.

Social Impact

The readoption rules with the proposed amendments will have a positive social impact on the people of the State by continuing to implement a permitting system that is clear and understandable to the general public, the regulated community and the administering agencies. By readopting these rules, the Department will be able to maintain the efficiency and uniformity of the current permit review system, which is designed to secure timely decisions and adequate public notice of permit applications.

Economic Impact

The proposed readoption of the 90-Day Construction Permit Rules will continue to impose economic burdens on individual applicants seeking a permit, but on a larger scale these rules will have a positive economic impact on the regulated community and the general public. The fees collected pursuant to these rules will enable the administering agencies to fund staff to review and process these applications at a cost to the

regulated community and not the general public. Because these fees usually constitute only a minute portion of the total project cost, they are not expected to have any measurable impact to an individual applicant or the building industry.

The proposed fees are necessary to support and maintain the efficiency and effectiveness of the program; they, therefore, will have a positive economic impact. The proposed amendment to the Waterfront Development Permit application fee schedule will decrease the fee required by existing rules for smaller waterfront development projects. For example, for a single family home the fee will decrease from \$1,010 to \$250.00. Fees for other developments will remain the same.

Environmental Impact

Through the five permit programs, the Department regulates the growth and development of the Coastal Area, the uses of the tidal wetlands, the uses and developments in the flood plains and changes to sanitary sewage collection treatment and discharge systems. The re-adoption of these rules will enable the Department to continue to streamline its permit review process and concentrate its effort on the actual review of applications for consistency with the goals and objectives of each of the programs, for example, protection of the natural and cultural resources of the coastal area, the promotion of public safety, health and welfare, and the protection and maintenance of surface and ground water quality. The environment will indirectly benefit from the efficient and effective administration of programs permitting projects meeting the applicable regulatory criteria.

Regulatory Flexibility Analysis

This proposed re-adoption with amendments would apply to all applicants for CAFRA, waterfront development, coastal wetlands, stream encroachment permits and treatment works approvals. It is estimated that of the roughly 4,900 applicants affected by these rules, 3,546 are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and will continue to be affected. In order to comply with these rules as amended, the small businesses will have to submit a fee and a complete application. In so doing, it is likely that small businesses will need to engage the services of accountants, consultants and/or professional engineers. It is expected that the costs of compliance for each small business could range from \$150.00 to \$10,000 and up for fees and services. In accordance with N.J.S.A. 13:1D-33, the Commissioner is directed to "establish and charge reasonable fees for the filing and review of any application for a construction project." The fee schedules in these rules are designed so that smaller projects will pay a smaller fee. In re-adopting these rules with proposed amendments, the Department has balanced the need to protect the environment against the economic impact of the proposed rules and has determined that to minimize the impact of the rules based upon the size of the business affected would endanger the environment, public health and public safety and, therefore, no exemption from coverage is provided. The Department has determined that the size of the project, rather than the size of the business proposing to engage in the permitted project, provides a sound basis for the fee determination.

Full text of the re-adoption with amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

CHAPTER 1C
NINETY-DAY CONSTRUCTION PERMITS

SUBCHAPTER 1. 90-DAY CONSTRUCTION PERMIT RULES

7:1C-1.1 (No change.)

7:1C-1.2 Definitions

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

- ...
 - "Appropriate agency" means:
 - 1. The Division of Coastal Resources, CN 401, Trenton, New Jersey 08625 for:
 - i.-iv. (No change.)
 - 2. The Division of Water Resources, Wastewater Facilities Management Element, CN 029, Trenton, New Jersey 08625 for:
 - i. (No change.)
- ...

7:1C-1.3 to 1.4 (No change.)

7:1C-1.5 Fees

(a) Fees shall be charged for the review of any application for a construction permit in accordance with the following schedule:

1. Waterfront development:

i. The fee for any work consisting solely of capital repairs or reconstruction with all work taking place above the mean high water elevation on piles or other support structures or taking place landward of the mean high water line or the identical structural replacement of piles or other supports in the same location shall be \$250.00.

[i.iii. [For all other waterfront development projects with] The fee for any work taking place landward of the mean high water line[, the fee] and qualifying as a CAFRA facility as defined in N.J.A.C. 7:7-2.1 shall be as set forth in (a)3 below.

iii. The fee for any work taking place landward of the mean high water line and not qualifying as a CAFRA facility as defined in N.J.A.C. 7:7-2.1 shall be \$250.00 for the first four residential dwelling units plus \$50.00 for each additional dwelling unit, and shall be \$500.00 plus half of one percent of the construction cost, up to a maximum of \$1,500, for all non-residential developments.

[ii]iv. (No change in text.)

2.-5. (No change.)

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

7:1C-1.6 (No change.)

7:1C-1.7 Review of application

(a) Within a maximum of 20 working days following the date of receipt of the application, the appropriate agency shall:

1.-5. (No change.)

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

7:1C-1.8 Decision on permit application

(a) The Department shall approve, condition, or disapprove an application for a construction permit, other than CAFRA permit, within 90 days [after the application] following the date of receipt of an application that has been accepted for filing, except when additional information has been requested. In the latter case, the Department shall make a decision on the permit application within 90 days [after such additional information has been accepted.] following the date of receipt of the information requested. The date of receipt of the application or of the additional information requested is the date that an application or additional information is received by the appropriate agency.

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

7:1C-1.9 to 1.14 (No change.)

(a)

**OFFICE OF THE COMMISSIONER
County Environmental Health Standards of
Administrative Procedure and Performance
Proposed Re-adoption: N.J.A.C. 7:1H**

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 26:3A2-21 et seq., specifically 26:3A2-28, and 13:1D-1 et seq.

DEP Docket Number: 004-90-02.

Proposal Number: PRN 1990-112.

Submit comments by May 4, 1990 to:

Michael P. Marotta, Esq.
Division of Regulatory Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 7:1H will expire on July 24, 1990. The Department has reviewed these rules and has

determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

The Department of Environmental Protection proposes to readopt the rules concerning County Environmental Health Standards of Administrative Procedure and Performance, N.J.A.C. 7:1H. These rules provide the Department with the regulatory structure to implement the provisions of the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq. The Department finds that the rules, which provide for the administration of environmental health services by county health departments and those municipal and regional health agencies which qualify for certification by the Commissioner of Environmental Protection pursuant to N.J.S.A. 26:3A2-33, continue to be necessary to protect the environment of the State.

While the Department proposes at this time to readopt these rules without change so that there will be no interruption in the program and the services it provides, it is in the process of re-evaluating these standards and if it is found to be necessary, will, in the near future, propose a set of amendments to update and improve the rules.

N.J.A.C. 7:1H-1 sets forth the scope, construction and purpose of the rules and defines specific terminology that is used throughout the chapter.

N.J.A.C. 7:1H-2 generally provides standards of administrative procedure and performance to be met throughout each county pursuant to a work program prepared by each county health department or certified lead agency and approved by the Commissioner. The work program provides a description of program elements, delineates responsibilities for program implementation, identifies personnel and resources required to meet program requirements and provides a time schedule for achieving full program implementation.

N.J.A.C. 7:1H-2.2 sets forth standards and requirements governing the duties and powers of local health agencies with respect to air pollution control, noise pollution control, hazardous substance control, solid waste control, laboratory services, potable water supply, water pollution control, and on-site sewage system management. These requirements are to be fulfilled in accordance with the provisions of N.J.A.C. 7:1H-3 which set specific standards to be met in each area of environmental concern.

N.J.A.C. 7:1H-2.3 requires the submission of a work plan to meet the environmental health performance standards. The submittal can be made by a county health department or, in counties without a health department, by a lead agency designated by the county governing body in accordance with N.J.A.C. 7:1H-2.4. The work plan must describe the nature and scope of the environmental health programs, the personnel and resources required to meet program objectives, the delineation of responsibilities in each program area and a schedule for program implementation. The Department uses the information set forth in the work program as the criteria for its decisions regarding agency certification, program content, funding eligibility and future program direction.

The designation and certification of a lead agency are done in accordance with standards and requirements established by these Regulations at N.J.A.C. 7:1H-2.4. Certification may be given to municipal or regional health agencies which are willing to coordinate their environmental health programs so as to be consistent with the county plan. The Department has included a 25,000 minimum population criterion as a condition of certification. This requirement is consistent with the criteria for participation in other public health State aid funding programs and is generally recognized as a minimum population level for the efficient and economic delivery of health services.

The personnel standards at N.J.A.C. 7:1H-2.5 are largely consistent with those established by the Department of Health for persons employed by local health agencies in public health and environmental health positions.

Social Impact

The proposed readoption of these rules will allow the Department to continue, in full force and effect, the beneficial environmental programs resulting from the promulgation of these rules. The on-going implementation of these rules has resulted in a strong cooperative effort between State and local agencies. These rules have improved, and will continue to improve, long range planning, program development and implementation required by Federal and State laws in the control of air, water, solid waste, hazardous waste and noise pollution.

Economic Impact

The proposed readoption of these rules will result in a continuation of the existing program. Consequently, the Department foresees no additional economic impact. The present economic impact upon the affected parties will continue as a result of the readoption. This will include the

expenses of compliance with the rules, including formulating and maintaining the work plan and the local environmental health program. Typically these expenses approximate \$5,000 annually per county.

In fiscal year 1990, \$2,000,000 in State aid funds are available for certified local health agencies. These funds are to support, in part, the implementation of the County Environmental Health Act Programs on a 50 percent match basis.

Environmental Impact

The proposed readoption of the rules will have the positive environmental impact of continuing the regulatory framework necessary to implement the benefits of the County Environmental Health Act, which include local health agency investigation, inspection, emergency response, enforcement, laboratory, and monitoring activities resulting in timely actions to minimize environmental impacts and ensure appropriate remedial and enforcement action when necessary. At present, 17 counties have obtained program approval and several more are pending. There is in place, therefore, a growing system of local environmental services that supplement and enhance the individual State and local efforts.

Regulatory Flexibility Statement

The proposed readoption provides standards for the development of agreements between the Department and local health agencies to implement the provisions of the County Environmental Health Act. A continuation of the rules will, therefore, impose no reporting, recordkeeping or compliance upon small businesses as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 7:1H.

HEALTH

(a)

COMMUNITY HEALTH SERVICES

Newborn Screening Program

Proposed Readoption with Amendments: N.J.A.C. 8:19

Authorized By: Leah Z. Ziskin, M.D., M.S., Acting Commissioner, Department of Health.

Authority: N.J.S.A. 26:2-101 et seq., 26:2-110, 26:2-111 and 26:2H-5.

Proposal Number: PRN 1990-126.

Submit written comments by April 4, 1990 to:

Celeste F. Andriot, Chief
Specialized Pediatric Services Program
Special Child Health Services
363 W. State St., CN-364
Trenton, N.J. 08625-0364

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:19 expires on June 28, 1990. The Department of Health has reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated, as required by the Executive Order.

The Newborn Hearing Screening Program has been in operation since the rules were originally adopted in July 1980. The program requires a screening of the medical history of all newborns in New Jersey to detect risk factors for possible hearing loss. The program also provides follow-up to at risk cases in order to identify as early as possible those with hearing impairment and provide information on early intervention and remediation services which are available.

The following amendments to N.J.A.C. 8:19-1, proposed to be retitled Newborn Hearing Screening, are proposed:

N.J.A.C. 8:19-1.1 is amended to include birthing centers as being responsible for disseminating the literature on hearing development and the hearing screening program provided by the Department of Health.

N.J.A.C. 8:19-1.2(a) is amended to clarify the definition of the population to be screened. The proposed changes also include birthing centers

as being responsible for completing Newborn Hearing Screening Report Forms.

N.J.A.C. 8:19-1.2(b) is amended to include birthing centers in this process and to clarify when a report form is to be submitted to the Department of Health.

N.J.A.C. 8:19-1.2(c) is amended to eliminate the requirement of dissemination of specific literature to parents of newborns with risk factors for hearing loss since descriptive information on the Newborn Hearing Screening Program is now included in the literature disseminated to all parents or legal guardians as described in N.J.A.C. 8:19-1.1. The subsection is also amended to require a parent's or legal guardian's signature on the Newborn Hearing Screening Report Form. This subsection also explains the parent's or guardian's right to dissent from participation in the screening program based on their religious beliefs.

N.J.A.C. 8:19-1.2(d) is amended to require that one copy of the Newborn Hearing Screening Report Form be given to the parent or legal guardian when no apparent risk factor(s) for hearing loss is identified, in addition to filing a copy in the newborn's permanent medical record.

N.J.A.C. 8:19-1.2(e) is amended to substitute the word "screening" for "evaluation" to more clearly describe the procedure performed and to require birthing centers to document the screening.

N.J.A.C. 8:19-1.2(f) is amended by a technical correction.

N.J.A.C. 8:19-1.3 is amended to include legal guardians of high risk infants in the rule and to substitute the term "screening" for "screening/assessment" to more clearly describe the minimum amount of intervention the rule recommends to parents and guardians. Another proposed change in this section would allow appropriately trained professionals who may not be under the direct supervision of a physician or audiologist to complete the follow-up hearing screening. This will permit nurses or speech pathologists who have proper training and do not work under direct supervision of a physician or audiologist to complete auditory screenings. This will increase the availability of follow-up services by broadening the range of qualified providers.

N.J.A.C. 8:19-1.4 is amended to change the title of this section to more accurately describe the recommended follow-up procedures and to substitute the word "person" as a grammatical change.

N.J.A.C. 8:19-1.5 is amended to include a statement that the conditions screened for as risk factors for hearing loss are included in the literature distributed to parents or legal guardians of newborns and to identify N.J.A.C. 8:19-1.1 as the section which describes the literature.

No conditions have been removed from or added to the list of risk conditions. Changes are proposed to clarify the conditions which may cause increased risk of hearing loss.

N.J.A.C. 8:19-1.6 is amended to specify the "Department of Health" as the State department responsible for confidentiality of reported information and to further clarify this responsibility.

In addition, since 1964, newborns in New Jersey are tested for biochemical disorders which, if not treated early in life, can cause mental retardation or death. The purpose of the biochemical screening program is to identify affected children through special tests, and assure that they get the treatment they need before damage occurs. The program is effective. Each year 40 to 50 New Jersey newborns are saved from mental retardation, death or serious illness because of early identification and timely referral for appropriate care.

N.J.A.C. 8:19-2, proposed at 21 N.J.R. 3633(a) and adopted in this issue of the New Jersey Register, describes the responsibilities of all the health care providers involved in newborn biochemical screening. No amendments are proposed to subchapter 2.

Social Impact

The basic intent of N.J.A.C. 8:19 is not altered by the proposed amendments. The amendments have been written to clarify the screening process through which newborns in New Jersey can be identified as being at risk for a hearing loss which may impede normal speech and language development.

Identification of a hearing impairment during the first year of life allows for early intervention during the critical language learning period, from birth to three years. Research shows that early detection and initiation of treatment reduces the degree of handicap a child will experience, socially, educationally and eventually vocationally. The positive social impact of the Newborn Hearing Screening Program is clearly evident for the affected children, their families and for society as a whole.

The impact of newborn biochemical screening, subchapter 2, is great. Cases of abnormal results are followed until disposition by the follow-up unit, Special Child Health Services, Division of Community Health Services, State Department of Health. Medical specialists are available

for assistance with diagnosis and management. The result of this effort has a demonstrable positive effect: the children, now identified and treated can grow up to participate fully in society. Early identification can permit early treatment and a more positive outcome for the identified children.

Economic Impact

No amendments have been proposed which will increase the financial obligations of the hospitals and birth centers in complying with N.J.A.C. 8:19. All forms, literature, and costs of maintaining the registry for the Newborn Hearing Screening Program are assumed by the Department of Health. The only expense to be incurred by the facilities will continue to be postage for weekly mailing of screening report forms to Special Child Health Services and staff time to complete the reports.

Some costs may be incurred by parents or guardians of high risk infants identified through the program for the recommended six month screening or subsequent assessment. Auditory screening services may be covered by third party payers. Special Child Health Services supports various agencies throughout the state which provide auditory screening, assessment and treatment services on a sliding fee basis to individuals who do not have third party coverage and do not have the personal financial resources to pay for such services.

The Newborn Hearing Screening Program actually saves money since hearing impaired children who are identified early and receive appropriate intervention require less costly special education services and have the potential for increased lifetime earnings.

Newborn biochemical screening is effective in saving children from death or lifelong disability. The cost in dollars of identifying and treating affected children is less than the cost of maintaining untreated children in special education programs, sheltered work settings or institutions. Additionally, society does not lose potential wage earners and families are spared the anguish of raising a disabled child.

The budget of the Department of Health for newborn biochemical screening is partially offset by the testing fee paid per infant. The fee is paid per initial specimen by hospitals and birthing centers. They, in turn, charge the individual patient for the test. The cost of treatment for an affected child is between \$200 to \$2,500 per year, depending on the disease, the severity and the child's age. Untreated, the cost to society for each child would be between \$20,000 to \$40,000 each year; lifetime care expenses for a child could total over one million dollars.

Newborn biochemical screening is in place and readoption of these rules will not shift the expenses.

Regulatory Flexibility Analysis

These rules impose considerable reporting, recordkeeping, and other requirements, such as parent education. The majority of the in-State births, 99.4 percent, take place in hospitals which employ more than 100 people. There are two birthing centers in the State which employ fewer than 100 people and which can be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The requirements of the amendments do impose costs on the birthing centers; however, the birthing centers are now voluntarily complying. The Department believes that the requirements of this chapter must be uniformly applied in order to provide all newborns in the State, and their families, with the benefits of the screening program. The Department, therefore, does not believe that any exemption or differentiation should be made for these two small businesses, in the interest of public health.

Full text of the proposed readoption may be found in N.J.A.C. 8:19.

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

CHAPTER 19 NEWBORN SCREENING PROGRAM

SUBCHAPTER 1. NEWBORN HEARING SCREENING

8:19-1.1 Hearing development literature supplied to parents

Prior to the discharge of a live newborn from any hospital or birthing center in the State of New Jersey, the hospital nursery, [or] neonatal intensive care unit or birthing center shall provide all parents or legal guardians of the newborn with literature provided by the Department of Health describing the normal development of auditory function and the Newborn Hearing Screening Program. Such literature will be designed to provide parents with an understanding of the

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implications of hearing loss on the development of speech-language and provide information regarding normal auditory behavior. All literature shall be furnished free of charge to hospitals and birthing centers by the Department of Health.

8:19-1.2 Newborn hearing screening report form required

(a) All hospital nurseries, including neonatal intensive care units and birthing centers, shall complete a Newborn Hearing Screening Report Form (SCH-1) on all live newborns [being discharged from their facility] **regardless of the presence or absence of a risk factor.** This Newborn Hearing Screening Report Form contains high risk categories that are associated with possible hearing impairment. These high risk categories are defined in [section 5 of this subchapter] N.J.A.C. 8:19-1.5. The Newborn Hearing Screening Report Form is composed of three identical copies. Registered nurses in the hospital nursery [or] and neonatal intensive care unit or the birth attendant shall complete the Newborn Hearing Screening Report Form.

(b) The hospital nursery [and], neonatal intensive care unit or birthing center [where discharge of a live newborn occurs] shall forward one copy of the Newborn Hearing Screening Report Form[, for those infants identified as having a risk factor] to [the] Special Child Health Services [Program], New Jersey State Department of Health, CN 364, Trenton, New Jersey 08625-0364 **upon discharge of each live newborn identified as having a risk factor(s) and for each live newborn transferred to a neonatal intensive care unit regardless of the presence or absence of a risk factor.** [within one week of the infant's discharge.] **The hospital or birthing center shall submit the Newborn Hearing Screening Report Form to the Department within one week of discharge or transfer.** The second copy of the Newborn Hearing Screening Report Form shall be placed in the newborn's permanent medical record. The third copy shall be given to the infant's parent(s) or legal guardian.

(c) [Parents of newborns with one or more high risk factors shall be provided with literature describing the Newborn Hearing Screening Program prior to discharge of the live newborn from the hospital nursery or a neonatal intensive care unit. Such literature shall be provided free of charge to the hospitals by the Department.] **The hospital nursery, including neonatal intensive care units, and birthing centers shall assure that the newborn's parent or legal guardian is informed of the purpose and need for newborn hearing screening, shall obtain consent from the parent or legal guardian and shall document consent by obtaining the parent's or legal guardian's signature on the Newborn Hearing Screening Report Form. When a parent or legal guardian objects to the screening on the grounds screening would conflict with his or her religious tenets or practices, such refusal shall be documented on the Newborn Hearing Screening Report Form and placed in the newborn's permanent medical record.**

(d) For those children who have no risk factors, a completed Newborn Hearing Screening Report Form shall be placed in the newborn's permanent medical record **and one copy shall be given to the infant's parent(s) or legal guardian.**

(e) The [evaluation] screening shall be documented in the Nursery Log Book for each live newborn being discharged from the hospital nursery [or], neonatal intensive care unit or birthing center.

(f) Special Child Health Services [Program] personnel shall have the authority to review, on site, the Nursery Log Book and medical records.

8:19-1.3 High risk infant registry

[The] Special Child Health Services [Program] shall maintain a registry of high risk infants for hearing impairment so as to remind parents or legal guardians of [(high risk)] **high risk** infants for the need for a six month auditory screening[/assessment] of the high risk infant by a licensed physician, [or] licensed audiologist or [person(s) under their direction] **other appropriate trained professional.**

8:19-1.4 Six month auditory screening[/assessment] report

[Physician(s) or audiologist(s) or person(s) under the direction] **The person** completing the six month auditory screening[/assessment] of the infants at high risk for hearing impairment shall report their results to Special Child Health Services [Program], New Jersey State Department of Health, CN 364, Trenton, New Jersey 08625-0364. [Response forms] **A Hearing Screening Follow-Up Form**

(SCH-2) shall be provided at no cost by Special Child Health Services [Program] to the parents of infants at high risk and to any other persons who may request such forms.

8:19-1.5 High risk conditions

(a) [The literature required by N.J.A.C. 8:19-1.2 shall describe the following risk conditions:] **The following conditions will be screened for as risk factors associated with possible hearing impairment. These conditions shall be described in the literature as required by N.J.A.C. 8:19-1.1.**

1. Five minutes Apgar Score of six or less[.];
2. [Meningitis.] **Bacterial Meningitis, especially haemophilus influenza;**
3. [Congenital] **Confirmed or suspected congenital** or perinatal infections [(such as) **including, but not limited to,** rubella, herpes, toxoplasmosis, syphilis, cytomegalovirus [TORCH complex].];
4. Defects of head or neck (such as cranio-facial syndromal or non-syndromal abnormalities, overt or submucous cleft palate, morphologic abnormalities of the pinna) exclusive of isolated skin tags[.];
5. Elevated bilirubin exceeding indication for exchange transfusion[.];
6. Family history of childhood hearing impairment[.];
7. Birthweight of 1500 grams or less[.];
8. Ototoxic drugs (such as gentamycin or kanamycin) [were] administered to the infant for 14 days or more or **through** multiple courses of therapy[.]; **and**
9. Evidence of intracranial hemorrhage.

8:19-1.6 Confidentiality of reports

Any forms and reports furnished to the Department of Health as required by these [regulations] **rules** shall not be made public so as to disclose the identity of the person to whom they relate. Information obtained from forms and reports furnished to the Department [will be confidentially shared with participating local health service agencies to provide follow-up for high risk infants] **shall be used by the Department for purposes of follow up of high risk infants.** [All parents shall have the option to deny release of any information to local health service agencies.] **No information shall be released for any other purpose without the written consent of the parent or legal guardian.**

SUBCHAPTER 2. NEWBORN BIOCHEMICAL SCREENING

8:19-2.1 to 2.10 (No change.)

(a)

HOSPITAL REIMBURSEMENT

Procedural and Methodological Regulations Reimbursement Methodology for Graduate Medical Education

Proposed Amendment: N.J.A.C. 8:31B—Appendix XI

Authorized By: Leah Z. Ziskin, M.D., Acting Commissioner, Department of Health (with the approval of the Health Care Administration Board).

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

Proposal Number: PRN 1990-124.

Submit written comments by April 4, 1990 to:
 Beatrice E. Manning, Director
 Reimbursement Systems Development,
 Evaluation and Research
 New Jersey Department of Health, Room 602
 CN 360
 Trenton, NJ 08625-0360

HEALTH

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The agency proposal follows:

Summary

N.J.A.C. 8:31B—Appendix XI, Reimbursement Methodology for Graduate Medical Education, includes the assignments of all DRGs to one of four residency categories for purposes of calculating the direct costs associated with Graduate Medical Education. Because the current listing was adopted in July of 1988, it does not include the newest DRGs added in the New York State Version 7 GROUPER. This proposed amendment now allocates those DRGs to the appropriate residency category.

Two newly recognized subspecialties (Trauma and Medicine/Pediatrics) have also become operational in New Jersey hospitals. Therefore, it is also proposed that they be included in the Teaching Methodology which is designed to recognize the direct costs incurred by all GME programs in the State.

Inclusion of additional DRGs and GME programs will ensure that the Teaching Methodology reimburses hospitals fully for all their direct Graduate Medical Education direct costs. Hospitals with patients in these DRGs, or programs in these subspecialties, will not lack the appropriate reimbursement.

Social Impact

The reimbursement methodology for Graduate Medical Education is presently being utilized in the acute care hospitals and this proposed refinement will provide a more precise reallocation of direct patient care dollars. Reimbursement to hospitals will be more directly related to the medical education services rendered to patients, who will be assigned to the additional Diagnosis Related Groups as contained in the New York State GROUPER Version 7.0, presently in use. The amendment to the reimbursement methodology will have no direct impact on the provision of services to patients.

Economic Impact

Addition of these DRGs and programs will neither add to nor subtract from the total Statewide level of reimbursement for the direct costs of Graduate Medical Education. Rather, it will ensure that the costs associated with them are recognized by appropriate levels of reimbursement.

Regulatory Flexibility Statement

The proposed amendment applies only to the 89 hospitals that have rates established by the Hospital Rate Setting Commission. Each of these hospitals employs more than 100 full-time employees and, therefore, does fall into the category of small business as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

APPENDIX XI

Reimbursement Methodology for Graduate Medical Education

A. (No change.)

B. All DRGs will be assigned to one of four residency categories for purposes of calculating the direct costs associated with Graduate Medical Education. The assignments are as follows:

I. Medicine

(a) Included programs:

1.-9. (No change.)

10. Medicine/Pediatrics

[10.]**11. Nephrology (Renal Disease)**

[11.]**12. Neurology**

[12.]**13. Physical Medicine and Rehabilitation**

[13.]**14. Preventive Medicine and Rehabilitation**

[14.]**15. Pulmonary Diseases (Medical Diseases of the Chest)**

[15.]**16. Rheumatology**

[16.]**17. Psychiatry**

[17.]**18. Child Psychiatry**

(b) Included DRGs:

009-025, 027-029, 031-032, 034-035, 078-080, 082-090, 092-097, 099-102, 104, 106, 112, 115-118, 121-136, 138-145, 172-183, 188-189, 202-208, 240-248, 256, 271-273, 277-278, 283-284, 294-297, 299-301, 316-317, 395, 397-399, 403-404, 409-414, 416, 418-421, 423, 425-432, 447, 449-450, 452-455, 462-467, 473, 475, **532-533, 539-544, 548-553, 557, 562-563, 566, 568-570, 574-578, 580-581, 701-702, 704-705, 707-708, 710-711, 713-714, 735-736, 743-751, 753.**

(CITE 22 N.J.R. 736)

II. Surgery

(a) Included programs:

1.-17. (No change.)

18. Trauma

[18.]**19. Urology**

[19.]**20. Vascular Surgery, General**

(b) Included DRGs:

001[-2,004]-8, 036-047, 049-069, 071-073, 075-077, 103, 105, 107-111, 113-114, 119-120, 146-171, 185-187, 191-201, 209-**213, 216-239, 249-251, 253-254, 257-270, 274-276, 280-281, 285-293, 302-315, 318-321, 323-326, 328-329, 331-332, 334-342, 344-352, 392-394, 400-402, 406-408, 415, 424, 439-445, 456-461, 468, 471-472, 476-477, 530-531, 534-538, 545-547, 554-556, 558-561, 564-565, 567, 571, 579, 582-583, 730-734, 741-742, 755-758.**

III. Obstetrics/Gynecology

(a) (No change.)

(b) Included DRGs: 353-384, **572-573, 650-652.**

IV. Pediatrics

(a) (No change.)

(b) Included DRGs:

026, 030, 033, 048, 070, 074, 081, 091, 098, 137, 184, 190, 252, 255, 279, 282, 298, 322, 327, 330, 333, 343, 396, 405, 417, 422, 446, 448, 451, 600-**649, 653-700, 712, 737-740, 752, 754.**

V. (No change.)

C. (No change.)

HEALTH/LABOR

(a)

**ASBESTOS CONTROL SERVICE
DIVISION OF WORKPLACE STANDARDS
Asbestos Training Courses**

**Proposed Readoption with Amendments: N.J.A.C.
8:60 and 12:120**

Authorized By: Leah Z. Ziskin, M.D., M.S., Acting
Commissioner, Department of Health, and Raymond L.
Bramucci, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:5A-39 (P.L. 1984 c.173).

Proposal Number: PRN 1990-125.

Submit comments by April 4, 1990 to:

Michael F. Lakat

Special Assistant to the Director

Asbestos Control Service, Room 501

New Jersey Department of Health

CN 360

Trenton, New Jersey 08625-0360

The agencies' proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:60 and 12:120 expires on May 3, 1990. This chapter was filed and became effective as emergency new rules and was adopted jointly by the Departments of Health and Labor as R.1985 d.144, effective March 4, 1985. The chapter was readopted with amendments, jointly by the Departments of Health and Labor, effective May 3, 1985 as R.1985 d.262.

The Departments' of Health and Labor review of these rules has resulted in the conclusion that they remain necessary, reasonable, and proper for the purpose for which they were originally promulgated, except as noted in the discussion of proposed changes.

The proposed amendments which are described below include several major changes in the previously existing asbestos licensing and permitting rules. These amendments represent the product of the collective experience of the Departments of Health and Labor regarding these rules since they were initially adopted in 1985. Further, the proposed amendments reflect a codification of on-going policy which has been established by both agencies.

Pursuant to Appendix C to Subpart E of 40 C.F.R. 763, Asbestos-Containing Materials in Schools, New Jersey received approval from the

U.S. Environmental Protection Agency (EPA) on February 10, 1988, retroactive to June 18, 1985, for the licensing of employers and the permitting of asbestos workers and supervisors. These training courses are EPA-approved for purposes of the Toxic Substances Control Act Title II. Several of the proposed amendments contained herein serve to ensure continued EPA approval.

N.J.A.C. 8:60-1 and 12:120-1, General Provisions, sets forth the general policy considerations in the licensing and permitting of asbestos contractors and workers, respectively, and the certification of asbestos training agencies and asbestos training courses. N.J.A.C. 8:60-1.3 and 12:120-1.3 has been amended to clarify and broaden the purpose of the rules. N.J.A.C. 8:60-1.4 and 12:120-1.4 has been amended to clarify and broaden the scope of the rules. N.J.A.C. 8:60-1.5 and 12:120-1.5 sets forth the standards and publications referred to in the chapter. N.J.A.C. 8:60-1.6 and 12:120-1.6 contains a statement of the validity of the rules.

In N.J.A.C. 8:60-2, Definitions, the terms "accepted engineering practice", "applicant", "certificant", "C.F.R.", "Employment Service Office", "facility", "may", "supervisor", "trainee", "U.S.C.", and "worker" have been added. The Departments have determined that these definitions are necessary to ensure the proper understanding of the rules.

N.J.A.C. 8:60-3 and 12:120-3, Administration, sets forth the compliance and penalty procedures of the chapter. N.J.A.C. 8:60-3.2 and 12:120-3.2 has been amended to clarify those corporations and individuals who must comply with these rules. N.J.A.C. 8:60-3.3 and 12:120-3.3 sets forth the responsibilities and duties of the Departments of Health and Labor under this chapter. N.J.A.C. 8:60-3.4 and 12:120-3.4 and N.J.A.C. 8:60-3.5 and 12:120-3.5 set forth the penalties which may be assessed for violations of the rules. N.J.A.C. 8:60-3.6 and 12:120-3.6 sets forth the procedures by which aggrieved parties may seek redress from imposed penalties.

N.J.A.C. 8:60-4 and 12:120-4, Licensing of Employers, sets forth the procedure which shall be followed by applicants and the Departments' when applying for and processing applications for asbestos employer licenses.

N.J.A.C. 8:60-4.2 and 12:120-4.2 has been amended to clarify the procedure to be followed to apply for an employer license. N.J.A.C. 8:60-4.3 and 12:120-4.3 has been amended to clarify the eligibility of and applicant for an employer license. N.J.A.C. 8:60-4.4 and 12:120-4.4 sets forth the procedures to be followed by the Department of Labor in issuing an employer license. It has been amended to make the license valid for two years and be nontransferable. It has further been amended to increase the age of eligibility for a license to 21 years of age. N.J.A.C. 8:60-4.5 and 12:120-4.5 clarifies the identification required by the licensee during the conduct of asbestos abatement projects. N.J.A.C. 8:60-4.6 and 12:120-4.6 establishes the work practices which must be followed by the licensee during the conduct of an asbestos abatement project. N.J.A.C. 8:60-4.7 and 12:120-4.7 sets forth how and when the Departments may suspend or revoke an employer license. The Asbestos Control and Licensing Act allows the Departments to suspend or revoke an employer's license for violations of the Act, these rules, an administrative order of either of the Commissioners, or when in the public interest. N.J.A.C. 8:60-4.8 and 12:120-4.8 sets forth the conditions employers must follow to renew their licenses. This subchapter has been amended to increase the fee for a duplicate license to \$20.00. N.J.A.C. 8:60-4.9 and 12:120-4.9 is amended to permit the Commissioner of Labor or Health to suspend or revoke a license prior to a hearing in the interest of protecting the health and safety of the public.

N.J.A.C. 8:60-5 and 12:120-5, Requirements and Procedures for Obtaining an Asbestos Worker or an Asbestos Supervisor Permit, has been amended for clarification and to further ensure against fraudulent use of permits. N.J.A.C. 8:60-5.2 and 12:120-5.2 has been deleted and the entire subchapter has been consequently recodified. N.J.A.C. 8:60-5.4 and 12:120-5.4 has been amended to prohibit the copying of questions or answers from the asbestos worker or asbestos supervisor examinations and to prohibit the use of fraudulent means in taking the examinations. Additionally, applicants are required to take the examination within one year of completion of training. N.J.A.C. 8:60-5.5 and 12:120-5.5 has been amended to increase the fee for an asbestos worker or an asbestos supervisor permit from \$20.00 to \$50.00 and to require the applicant to submit proof of successful completion of the appropriate written examination. N.J.A.C. 8:60-5.6 and 12:120-5.6 has been amended to increase the length of the permit to two years and to require the permittee to have the permit validated annually. This validation is contingent upon submission of evidence of satisfactory completion of a refresher training course approved by the Department of Health. N.J.A.C. 8:60-5.10 and 12:120-5.10

has been amended to clarify the mechanism by which an asbestos workers or an asbestos supervisor renews their permit and to require refresher training prior to renewal.

N.J.A.C. 8:60-6 and 12:120-6, Certification of Training Agencies, sets forth the procedures which shall be followed by applicants and the Department of Health when applying for and when processing applications for the certification of training agencies. Further, this subchapter sets forth the qualifications required to maintain and renew certification. The proposed amendment to N.J.A.C. 8:60-6.2 and 12:120-6.2 increases the length of the basic course from 24 to 26 hours for workers and requires a minimum course of 32 hours for the supervisor. This section has been further amended to require six hours of annual refresher training for workers and eight hours of annual refresher training for supervisors. N.J.A.C. 8:60-6.3 and 12:120-6.3 concerns the process by which an applicant applies for certification for training courses. This section has been amended to require the establishment and maintenance of a no-smoking policy for all trainees. N.J.A.C. 8:60-6.4 and 12:120-6.4 sets forth the eligibility requirements of training courses for certification and sets forth minimum standards while N.J.A.C. 8:60-6.5 and 12:120-6.5 sets forth the minimum standards for course instructors. The minimum requirements for asbestos worker and asbestos supervisor course contents are set forth at N.J.A.C. 8:60-6.6 and 12:120-6.6 and N.J.A.C. 8:60-6.7 and 12:120-6.7, respectively. These sections are further amended to include material on smoking cessation, various smoking cessation methodologies, and resources available to aid in smoking cessation. N.J.A.C. 8:60-6.8 and 12:120-6.8 specifies the topics required for annual refresher training. N.J.A.C. 8:60-6.9 and 12:120-6.9 addresses the granting of certification to training agencies. N.J.A.C. 8:60-6.10 and 12:120-6.10 sets forth the training agency operating requirements while N.J.A.C. 8:60-6.11 and 12:120-6.11 outlines the process by which training agency certification can be renewed. N.J.A.C. 8:60-6.12 and 12:120-6.12 sets forth how and when the Department of Health may suspend or revoke a training agency's certification. The Asbestos Control and Licensing Acts allows the Department of Health to suspend or revoke training agency's certification for violations of the Act, these rules, or when it is in the public interest. N.J.A.C. 8:60-6.13 and 12:120-6.13 clarifies the procedure by which applicants may appeal denial, suspension, or revocation of their certification.

N.J.A.C. 8:60-7 and 12:120-7, Asbestos Work Notification Requirements, has been added and establishes the requirements for notifying the Departments of Health and Labor as to when and where asbestos work will be conducted.

Social Impact

Once readopted, these rules will continue to provide reasonable standards to regulate the asbestos abatement industry in New Jersey. Failure to readopt these rules would jeopardize the health and safety of asbestos abatement workers, building occupants, and the general public. Further, the assurances that the work has been performed by adequately trained and duly certified personnel will exist.

The licensing of asbestos contractors and the permitting of asbestos workers and asbestos supervisors, upon successful completion of a certified training program, has served to reduce the public's exposure to airborne asbestos fibers by ensuring that asbestos remediation is performed by knowledgeable and competent workers operating in accordance with scientifically accepted work practices.

Building owners contracting with licensed asbestos contractors and contractors employing permitted asbestos workers and asbestos supervisors are assured that asbestos remediation is being performed by individuals who have received adequate training and demonstrated a level of competency.

The certification of training programs has assured license and permit applicants that successful completion of such a program means that they have the information and skill necessary to perform asbestos remediation without endangering either their health or that of other building occupants.

The public has been assured that buildings in which asbestos work has been performed are safe for occupancy upon completion of the project.

In sum, the public benefit which would be derived is the prevention of asbestos-related disease and disability and public confidence in asbestos abatement work which has been the subject of much adverse publicity in the past.

The proposed amendments are expected to clarify the procedures to be followed in the licensing of abatement contractors, the permitting of abatement workers and supervisors, and the certification of asbestos training courses, and training agencies. Thus, the rules will continue this

important and innovative program and further minimize the exposure of the citizens to the inherent dangers from operations which involve the remediation of asbestos-containing materials.

The compliance and enforcement activities under these rules is an indispensable part of the Departments' efforts to ensure that all asbestos abatement work meets state-of-the-art and state-of-the-science guidelines. Failure on the part of any of the regulated parties could result in an increase in asbestos-related disease and disability.

Economic Impact

The administration of these rules, which is a cooperative effort between the Departments of Health and Labor, requires the asbestos abatement industry to meet and maintain strict requirements and obtain certification from the State of New Jersey. At its inception five years ago, this program was the first such regulatory effort by a state in the nation and over the years has served as a model for other states.

For the past five years, building owners have benefited from the assurance that they are paying qualified, competent, and knowledgeable personnel contracted to perform asbestos abatement work. Licensed contractors and permitted workers and supervisors have benefited from the elimination of unfair competition from unqualified contractors and their employees performing asbestos remediation in violation of scientifically accepted work practices.

The public has benefited from reductions in wage loss, insurance costs, medical expenses, disability compensation payments, and other costs resulting from asbestos-related disability and death.

License and permit fees as well as the fee schedule established to certify training agencies and training courses are minimal and competitive. The costs incurred due to compliance with mandated work practices are more than offset by the benefits set forth above. The proposed increases in license and permit fees would not be burdensome to the asbestos abatement industry, insofar as they are well below the rate of inflation.

Regulatory Flexibility Analysis

This proposed readoption applies to asbestos abatement contractors, abatement workers and supervisors, and certified asbestos abatement training agencies. Most of the contractors and training agencies are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Based upon the Departments' prior experience in administering this program, it is not anticipated that any initial capital costs will have to be incurred either by the agencies which are licensed or permitted currently, or by the agencies which will become licensed or permitted in the future. Further, the Departments estimate the annual cost of compliance with the continuing reporting and recordkeeping requirements will be minimal. Agencies which have participated in the program have not indicated any significant costs incurred in this regard beyond those costs normally incurred for the bookkeeping and recordkeeping activities required by their day-to-day business activities. Given asbestos' health unless and the need for competent training, the Departments are not able to provide lesser requirements or exemptions for small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:60 and 12:120.

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

8:60-1.3 (12:120-1.3) Purpose

(a) The purpose of this chapter is to provide reasonable standards for:

1. Licensing of employers;
2. Permitting of [employees] workers; [and]
3. [Certifying training courses.] **Permitting of supervisors; and**
4. **Certifying of training agencies and courses for the above job classifications.**

8:60-1.4 (12:120-1.4) Scope

- (a) This chapter shall apply to:
1. [The licensing] **Licensing of employers;**
 2. [The examination] **Examination** and issuance of permits to [employees] workers;
 3. [Certification of training courses] **Permitting of supervisors;**
 4. **Certifying of training agencies and courses for the above job classifications;**

[4.] **5.** Employers having a [contracted] **contractual** relationship for asbestos work with the owner of a building or structure or equipment for the application, [or] enclosure, [or] encapsulation, [or] **repair, or removal [or disposal] of [asbestos:] asbestos-containing material; and**

[5. Employers using their own employees for the application or enclosure or encapsulation or removal or disposal of asbestos; and]

6. (No change.)

(b) This chapter shall not apply to:

1. The limited repair of [asbestos] **asbestos-containing material** on any pipe, duct, boiler, tank, structural member or similar equipment by [applying] **the application** of duct tape, rewettable glass cloth, canvas, cement or other sealable material to seal exposed areas [where] **from which** asbestos fibers may be released; [or]

2. The stripping or removal of 10 feet or less of asbestos from piping; [or]

3. The stripping or removal of 25 square feet or less of asbestos from any duct, boiler, tank, structural member or similar equipment; [or]

4. The sale or storage of asbestos; [or]

5. The application, enclosure, encapsulation, repair, or removal of asbestos-containing roofing and exterior siding materials[.] **in all but demolition projects; or**

6. **Private employers subject to the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., using their own employees to apply, enclose, encapsulate, repair, or remove asbestos-containing material in their own facility.**

8:60-1.5 (12:120-1.5) Documents referred to by reference

The availability of standards and publications referred to in this chapter is [explained in] set forth at N.J.A.C. [12:120-7] **12:120-8 and [8:60-7] 8:60-8.**

8:60-1.6 (12:120-1.6) Validity

[Should] If any section, paragraph, sentence or word of this chapter [be declared for any reason] **is determined** to be invalid by **any court of competent jurisdiction**, such [decision] **determination** shall not affect [the remaining portions] **or impair the validity of the remainder** of this chapter.

8:60-2.1 (12:120-2.1) Definitions

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

"Accepted engineering practice" means those practices which conform to accepted principles, tests, or standards of nationally recognized technical or scientific authorities.

"Applicant" means any person seeking to obtain either an asbestos worker permit, an asbestos supervisor permit, or an employer license.

"Asbestos" means the asbestiform varieties of chrysotile; crocidolite; amosite; anthophyllite; tremolite; or [antinitolite] **actinolite** and includes any asbestos-containing material.

"Asbestos-containing material" means any material which contains more than one percent asbestos by weight.

"Asbestos work" means the application, [or] enclosure, [or] encapsulation, [or] **repair, or removal [or disposal] of asbestos-containing material.**

"Certificant" means any training agency certified by the Department of Health pursuant to N.J.A.C. 8:60-6 and 12:120-6.

"C.F.R." means the Code of Federal Regulations.

"Contractor" means an employer who hires [employees] workers to perform asbestos work or performs the asbestos work directly.

"Department of Health" means the [Occupational Health Program] **Asbestos Control Service** [in] of the New Jersey Department of Health, CN 360, Trenton, N.J. 08625-0360.

"Employee" means:

1. Any person, including supervisory personnel, suffered or permitted to work by an employer[.]; or

2. (No change.)

“Employment Services Office” means any local office or outstation of the New Jersey Department of Labor, Division of Employment Services.

“Experienced asbestos worker” [see N.J.A.C. 12:120-5.4(b) and 8:60-5.4(b)] means any person who has worked with either the application, enclosure, encapsulation, repair, or removal of asbestos-containing material and who has completed an approved New Jersey Department of Health Experienced Asbestos Worker training course prior to June 18, 1985.

“Facility” means any building or structure.

“License” means a certificate documenting acceptance by the [commissioner] Commissioner of an employer as competent to perform the application, [or] enclosure, [or] encapsulation, [or] repair, or removal of asbestos-containing material and to bid for or to contract to perform such work.

“May” means a discretionary term.

“Permit” means a certificate documenting acceptance by the [commissioner] Commissioner of [an employee] a worker or a supervisor as competent to perform the application, [or] enclosure, [or] encapsulation, [or] repair, or removal of asbestos-containing material. Workers shall work under the direction of a supervisor who holds a valid New Jersey asbestos supervisor permit.

“Supervisor” means any person who has completed an asbestos supervisor training course approved by the Department of Health and who has successfully passed a written asbestos supervisor examination devised and administered under the approval of the Department of Health for the position of supervisor and who possesses a valid asbestos supervisor permit issued by the Department of Labor. Individuals who qualify under the experienced worker provision of this chapter shall also be recognized as supervisors.

“Trainee” means any person who is enrolled in an asbestos worker or asbestos supervisor training course approved by the Department of Health.

“U.S.C.” means the United States Code.

“Worker” means a person who has completed an asbestos worker training course approved by the Department of Health and who has successfully passed a written asbestos worker examination devised and administered under the approval of the Department of Health for the position of worker and who possesses a valid asbestos worker permit issued by the Department of Labor.

8:60-3.1 (12:120-3.1) Scope of subchapter

This subchapter shall apply to the administration of the licensing, permitting, and certification standards mandated by this chapter.

8:60-3.2 (12:120-3.2) Compliance

(a) [Every employer doing the application or enclosure or encapsulation or removal of asbestos shall comply with the provisions of this chapter and shall have a license.] Every employer falling within the scope of this chapter, whose employees apply, enclose, encapsulate, repair, or remove asbestos-containing materials shall comply with the provisions of this chapter and shall be duly licensed by the Commissioner of Labor.

(b) [Every employee doing the application or enclosure or encapsulation or removal of asbestos shall comply with the provisions of this chapter as they pertain to the employee and shall have a permit.] Every employee falling within the scope of this chapter who applies, encloses, encapsulates, repairs, or removes asbestos-containing materials shall be required to hold a permit for such purpose issued by the Commissioner of Labor pursuant to this chapter.

(c) (No change.)

[(d) Until June 15, 1986, the commissioner may waive compliance with any of the provisions of this chapter to the employer and his employees upon certification from the employer of the following:

1. The work of application or enclosure or encapsulation or removal of asbestos is incidental to the performance of other primary, non-asbestos construction or renovation or demolition work; or

2. The owner or owner’s representative has attempted to secure a licensed employer and has been unable to do so; and

3. Halting the construction project for the purpose of securing licensed employers or permitted employees or both will result in undue hardship to the building owner. The nature and degree of the undue hardship shall be specified.]

8:60-3.3 (12:120-3.3) Interface of State agencies

(a) The Department of Labor [shall], under the provisions of this chapter, shall:

1. (No change.)

2. Issue permits to qualified [employees] workers;

3. Issue permits to qualified supervisors;

[3.] 4. Collect the fees for licenses and permits;

[4.] 5. Determine that employers have a valid license; and

[5.] 6. Determine that [employees] workers and supervisors have [a] valid permits.

(b) The Department of Health [shall], under the provisions of this chapter, shall:

1. Certify training agencies which use Department of Health-approved courses to train workers and supervisors and to determine compliance by such training agencies with this chapter;

[1.] 2. Certify the course of training and the examination thereon given to [the employee] workers and supervisors;

[2.] 3. Have the authority to determine that an employer has a valid license; and

3. Have the authority to determine that [an employee has a] workers and supervisors have valid permits.

8:60-3.4 (12:120-3.4) Disorderly persons offense

(a) In accordance with N.J.S.A. 34:5A-41, any person who violates a provision of this chapter is guilty of a disorderly persons offense and is liable [to] for a fine of \$1,000 or imprisonment not in excess of six months, or both.

(b) The Commissioner of Labor or the Commissioner of Health, as the case may be, as an [alternate] alternative to or in addition to the fines and imprisonment [specified] authorized in (a) above, may impose administrative penalties in accordance with N.J.A.C. 12:120-3.5 and 8:60-3.5.

8:60-3.5 (12:120-3.5) Administrative penalties

(a) Employers and training agencies shall be required to pay the administrative penalties of Table 3.5(a) for each violation of the Act or this chapter.

Table 3.5(a)
Employer/Training Agency Penalties

| [Employer] Violation | Penalty Up To |
|--|---------------|
| 1. Performing as an employer without a license | \$1000.00 |
| 2. Allowing an employee to work without a permit | \$1000.00 |
| 3. Submitting false information on the application for a license | \$1000.00 |
| 4. Submitting false information on the application for a course certification | \$1000.00 |
| 5. Performing as a training agency without certification | \$1000.00 |
| [4.]6. Failure to [perform quality asbestos work] follow required work practices | \$1000.00 |
| 7. Failure to perform quality asbestos training | \$1000.00 |
| [5.]8. Other violations of the [act] Act or this chapter | \$ 500.00 |

(b) [Employees,]Workers, supervisors, and trainees shall be required to pay the administrative penalties of Table 3.5(b) for each violation of the Act or this chapter.

Table 3.5(b)

[Employee] Worker/Supervisor/Trainee Penalties

| [Employee] Violation | Penalty Up To |
|---|---------------|
| 1. Working as an employee without a permit | \$500.00 |
| 2. Submitting false information on the application for a permit | \$[2]500.00 |
| 3. Submitting false information on the application for an examination | \$500.00 |
| 4. Using fraudulent means to pass an examination | \$500.00 |
| 5. Tampering with, altering, or defacing a permit | \$500.00 |
| [3.]6. Other violations of the [act] Act or this chapter | \$[1]500.00 |

(c) In assessing an administrative penalty pursuant to this chapter, the Commissioner of Labor or the Commissioner of Health, as the case may be, shall consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violations:

1. Degree of hazard posed to human health and the environment;
2. Degree of harm posed to the proper administration of the licensing/permitting program;
3. Category of culpability evidenced by the violator's action, including knowing action, reckless action, or negligent action;
 - i. In determining culpability, ignorance of any legal requirement of the Act or this chapter shall constitute a negligent action unless the legal requirement is one of which the violator has constructive notice, in which case the violator's action shall be classified as reckless;
 - ii. Actual notice of the legal requirement of the Act or this chapter shall constitute a finding of knowing action;
4. Past history of compliance on the part of the violator;
5. Economic benefit which the violator accrues as a result of their violation; and
6. Cooperation of the violator in correcting the violation.

[(c)](d) In addition to other sanctions in [this chapter or the Act] the Act or this chapter, the Commissioner of Labor or the Commissioner of Health, as the case may be, shall have the authority to require:

1. (No change.)
2. The removal of the employer from the job site within the meaning and purposes of the Act; [and]
3. The removal of [the employee] any worker from the job site within the meaning and purposes of the Act[.]; and
4. The removal of any supervisor from the job site within the meaning and purposes of the Act.

8:60-3.6 (12:120-3.6) Hearings

(a) When the Commissioner of Labor or the Commissioner of Health, as the case may be, assesses an administrative penalty under N.J.A.C. 12:120-3.5 and 8:60-3.5, the employer, the supervisor, the training agency, the trainee, or the [employee] worker shall have the right to an informal hearing under (b) below or a formal hearing under (c) below or both.

(b) Any employer, supervisor, training agency, trainee, or worker shall have the right to [An] an informal hearing before the Commissioner of Labor or the Commissioner of Health, as the case may be[.]. Such hearing may be held provided that a written request for the same is submitted within [ten] 10 days after the assessment of an administrative penalty under N.J.A.C. 12:120-3.5 and 8:60-3.5. When the hearing is held before the Commissioner of Labor [and] or the Commissioner of Health, as the case may be, he or she shall state his or her findings and conclusions in writing and transmit a copy to the employer [or the employee] supervisor, training agency, trainee, or worker.

(c) [The]Any employer, supervisor, training agency, trainee, or [the employee] worker shall have the right to a formal hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative [Rules of Practice] Procedure Rules, N.J.A.C. 1:1-1 et seq., provided that a written request for the same is submitted within 10 days after the assessment of an administrative penalty under N.J.A.C. 12:120-3.5 and 8:60-3.5.

(d) Recipients of an administrative penalty assessment may request the initiation of a settlement conference at the time that a hearing request is made.

8:60-4.1 (12:120-4.1) Scope of subchapter

This subchapter shall apply to the procedures required to obtain or to renew a license as an employer.

8:60-4.2 (12:120-4.2) Application for license

(a) The application for an employer license shall be made on forms provided by the Division of Workplace Standards.

[(a)](b) The application [to obtain a license as an employer] for an employer license shall be typewritten or neatly and legibly printed in ink.

[(b)](c) All applications shall be carefully completed.

[(c)](d) Applicants [applying for a license in accordance with the terms of N.J.A.C. 12:120-4.3(a)1 and 8:60-4.3(a)1] shall furnish evidence of applicable full time asbestos work experience as an employer. This experience shall have been completed within five years of the filing of the application. This experience shall be listed by job name, location, time involved, and cost of the contract.

[(d)](e) Incomplete or improper applications shall not be accepted.

(e) Applicants denied licenses shall not be permitted to resubmit an application for six months from the date of the denial of the application.

(f) An application for a license shall be made on forms provided by the Division of Workplace Standards.]

[(g)](e) No license shall be granted to an employer:

1. If he is less than [18] 21 years of age; or
2. If he has been found to be in non-compliance with N.J.A.C. 12:120-4.3 and 8:60-4.3.

[(h)](f) All correspondence relative to applications for licenses shall be addressed to the Division of Workplace Standards.

[(i)](g) The Division of Workplace Standards shall be notified by the employer of any change of residence. When writing, the license number shall be specified.

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

[(k)](i) The application fee for a biennial license shall accompany the application and is nonrefundable.

[(l)](j) The application fee for a license shall be paid by certified check or money order made payable to [the order of] the Commissioner of Labor.

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

(l) Applicants denied licenses shall not be permitted to resubmit an application for one year from the date of the denial of the application.

8:60-4.3 (12:120-4.3) Eligibility for employer license

(a) The applicant, to be eligible for a license as an employer, shall:

1. Provide evidence of having successfully completed the training course and examination for supervisors approved by the Commissioner of Health as [provided in] set forth at N.J.A.C. 12:120-6.2 and 8:60-6.2; or
2. Have employed with the firm a job supervisor who [can comply with (a)1 above] holds a valid New Jersey asbestos supervisor permit; or
3. Have employed with the firm an experienced asbestos worker who has received a permit [under] pursuant to N.J.A.C. 12:120-[5.4] 5.2(b) and 8:60-[5.4]5.2(b) and who serves in a supervisor's capacity; and
4. Disclose in and attach to [all information in] the application form [supplied by the Department of Labor] all information including, but not limited to, (a)4i[.] through ix[.] below and such other information as shall demonstrate the applicant's reliability and responsibility:

i. A copy of [his] the employer's certificate of insurance [stipulating] specifying the name of the insurance carrier, policy number, and policy period under which the entire New Jersey Workers' Compensation obligation is insured;

ii.-ix. (No change.)

5. Establish that the applicant is of good moral character. If the applicant is a corporation, this requirement shall apply both to the corporation and to those corporate officers who are responsible for the day-to-day operation of the corporation. Where a corporate applicant is owned by a close corporation, this requirement shall also apply to owners of more than 10 percent of the shares in the corporation.

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8:60-4.4 (12:120-4.4) Granting of **employer** license
 (a) (No change.)
 (b) The license for an employer shall:
 1.-2. (No change.)
 3. Contain [an expiration date] **the date of expiration**;
 4. (No change.)
 5. Be valid for [one] **two** years from the date of issuance; [and]
 6. Be signed by the Commissioner of Labor or his or her designee[.]; **and**
 7. **Be nontransferable.**
 i. **Where an employer license is issued to a close corporation, the transfer in ownership of 10 percent or more of the shares in the license shall constitute a license transfer.**
 (c) The license [granted] shall be either an A license or a B license.
 1.-2. (No change.)

8:60-4.5 (12:120-4.5) Identification of licensee
 (a) The license shall be available at the worksite for examination by the Commissioner of Labor, Commissioner of Health, the contracting agency, and the owner or the [representative of the owner] **owner's representative.**
 (b) [A licensed employer shall post a sign "LICENSED BY THE STATE OF NEW JERSEY FOR ASBESTOS WORK—LICENSE NUMBER _____" in letters more than four inches in height, readily visible, outdoors at the worksite.] **A sign meeting the requirements of this subsection shall be posted and displayed outdoors at the worksite.**
 1. **The sign shall be readily visible; and**
 2. **The sign shall contain the following information in letters not less than four inches in height: "LICENSED BY THE STATE OF NEW JERSEY FOR ASBESTOS WORK—LICENSE NUMBER _____".**
 (c) All commercial vehicles used in connection with the application, [or] enclosure, [or] encapsulation, [or] **repair, or removal of asbestos-containing material** shall be visibly marked with the employer's **New Jersey Department of Labor-issued** license number.
 (d) The employer shall have a **New Jersey Department of Labor-issued** duplicate of the original license available at [more than one] **each job site. This Department of Labor-issued** duplicate of the original license shall be available at a cost of [\$10.00] **\$20.00.**
 (e) (No change.)

8:60-4.6 (12:120-4.6) [Quality of work] **Work Practices**
 (a) Every licensee shall [assure] **ensure** that **all asbestos** work performed conforms to the following:
 1. Accepted engineering practice[. "Accepted engineering practice" means that which conforms to accepted principles, tests, or standards of nationally recognized technical or scientific authorities];
 2. [Subparts A and B of] 40 [CFR] **C.F.R. Part 61, National Emission Standards for Hazardous Air Pollutants, Subparts A and M;**
 3. (No change.)
 4. N.J.A.C. 5:28-8, Asbestos Hazard Abatement Subcode of the Uniform Construction Code in educational facilities **and public buildings as defined at N.J.A.C. 5:23-8.2.**
 (b) Every licensee who performs **asbestos** work [described in (a) above] shall [provide for supervision and inspection while the work is in progress and a final inspection upon completion of the work. This supervision shall include visual inspection and air monitoring.] **ensure that a permitted supervisor is on-site throughout the course of the project.**
 1. **The permitted supervisor and licensee shall be responsible for ensuring that the asbestos work is performed in accordance with the provisions of this section through periodic visual inspections and immediate correction of problems.**
 (c) Every licensee shall **provide for a final inspection upon completion of the project.**
 1. **This final inspection shall include a thorough visual inspection of the work site and the conduct of air monitoring.**
 [(c)](d) Every licensee shall be responsible for **immediately** correcting [immediately and] at no additional charge to the customer, any violation of the standards of (a) above discovered in the work performed by the licensee.

8:60-4.7 (12:120-4.7) Suspension or revocation of **employer** license
 (a) Any employer may have his license suspended or revoked for:
 1. Incompetence; [or]
 2. Negligence; [or]
 3. Failure to comply with contract specifications[.]; **or**
 4. **Any violation of the Asbestos Control and Licensing Act, N.J.S.A. 34:5A-32 et seq. or this chapter.**
 (b) Any employer shall have his license suspended or revoked for:
 1. [Being loaned, abandoned or allowed to pass from the personal control of the owner] **Loaning, abandoning, or allowing the license to pass from his personal control**; [or]
 2. [Being debarred] **Debarment** under the Act or any other State law; [or]
 3. Any valid reason establishing that the licensee is unfit to hold a license; [or]
 4. Any good cause within the meaning and purposes of the Act[.];
 5. **Any violation of N.J.A.C. 8:60 and 12:120 found to be of an extreme nature, taking into account the considerations, where appropriate, specified at N.J.A.C. 8:60-3.5(c) and 12:120-3.5(c); or**
 6. **Any violation of an administrative order lawfully issued by the Commissioner of Labor or the Commissioner of Health as the case may be.**
 (c) [The temporary suspension of a license for violations of this section or this subchapter shall be permitted by the commissioner provided that orally or in writing:
 1. Notice is given to the employer of the violations; and
 2. The employer has the opportunity to respond to the charges.] **Any employer who has his license suspended or revoked pursuant to this section shall not perform asbestos work, including any work which is in progress, any work for which bids are in, or any work which has been contracted for until such license is restored by the Department.**
 (d) **The Commissioner shall suspend a license for violations of this section of this subchapter provided that:**
 1. **Written or oral notice of the violations is provided to the employer; and**
 2. **The employer has the opportunity to respond to the charges.**
 [(d)](e) All **employer** licenses shall expire [unless renewed on or before the anniversary month of the one year or biennial license] **two years from the date of issuance.**
 [(e)](f) A license shall be automatically cancelled on the date of its expiration. Any person performing the duties of a licensee and holding an expired license shall be subject to the penalty provisions of the Act.
 [(f)](g) Any person using fraudulent means to obtain a license shall be subject to prosecution under the Act. Any license acquired through such means shall be invalid.

8:60-4.8 (12:120-4.8) Renewal of **employer** license
 (a) [When applying for the annual renewal of a license, it shall be necessary to submit a fee of \$100.00.] **The application for renewal of a license shall be submitted at least 30 days prior to the date of expiration. When the application for renewal of a license is submitted within the required time period, the license may continue in effect until the Commissioner renders a determination regarding the application.**
 (b) **The license shall be renewed biennially.**
 (c) **The application fee for renewal of a license shall be \$200.00.**
 (d) **The application fee for renewal of a license shall accompany the application and is non-refundable.**
 (e) **The application fee for renewal of a license shall be paid by certified check or money order made payable to the Commissioner of Labor.**
 (f) **No liability shall be assumed by the Division of Workplace Standards for loss in transmission of the application fee for renewal of a license.**
 [(b)](g) An application for renewal of a license shall not be approved until all outstanding penalties lawfully imposed on the applicant under the Act **or this chapter** have been paid.
 [(c)] An application for renewal of a license shall be submitted at least 30 days prior to the date of its expiration. When the application for renewal of a license is submitted within the required time period,

the license shall continue in effect until the commissioner renders a determination on the application.]

[(d)](h) An application for renewal of a license that has expired [may] **shall** be treated as an original application.

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

(i) **The cost of a duplicate license shall be \$20.00.**

(j) **The replacement cost of a license which has been altered, defaced, mutilated, or lost shall be \$20.00. Replacement shall be made only after review by the Commissioner.**

(k) **Photostats, photographs, or reproductions of a license shall have no status and shall not be recognized.**

8:60-4.9 (12:120-4.9) Hearings for employers

[(a) When in the judgment of the Commissioner of Labor or the Commissioner of Health, as the case may be, for the protection of employee health or public health before a hearing, the commissioner may suspend a license pending the hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., N.J.S.A. 56:14B-1 et seq., and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1 et seq. When the license has been suspended, the employer shall have the right to a hearing within 10 days of suspension.]

[(b)] (a) In all cases where the [commissioner] **Commissioner** proposes to revoke or suspend a license, refuses to renew a license, or denies an application for a license, the employer shall have the right to an informal hearing under (c) below or a formal hearing under (d) below or both **upon receipt of a request for the hearing within 10 days of receipt of notice of the proposed agency action.**

(b) **In the interest of protecting employee health or public health, the Commissioner of Labor or the Commissioner of Health, as the case may be, may suspend a license prior to a hearing. When the license has been suspended, the employer shall have the right to a hearing within 10 days of the notice of suspension.**

(c) An informal hearing before the [commissioner] **Commissioner** may be held provided a written request is submitted within five days after due notice has been given that the [commissioner] **Commissioner** proposes to revoke or suspend a license, refuses to renew a license or denies an application for a license. When the hearing is held before the [commissioner] **Commissioner**, he or she shall state his or her findings and conclusions in writing and transmit a copy to the employer.

(d) The employer shall have the right to a **formal hearing** pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., N.J.S.A. 56:14B-1 et seq., and the Uniform Administrative [Rules of Practice] **Procedure Rules**, N.J.A.C. 1:1 [et seq.].

SUBCHAPTER 5. REQUIREMENTS AND PROCEDURES FOR OBTAINING AN ASBESTOS WORKER OR AN ASBESTOS SUPERVISOR PERMIT

8:60-5.1 (12:120-5.1) Scope of subchapter

(No change in text.)

[8.60-5.2 Definitions

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

“Applicant” means any person seeking to obtain either an asbestos worker or an asbestos supervisor permit.

“Employment Services Office” means any local office or outstation of the New Jersey Department of Labor, Division of Employment Services.

“Experienced asbestos worker” means any person who has worked with either the application, enclosure, encapsulation or removal of asbestos and who has completed an approved New Jersey Department of Health Experienced Asbestos Worker training course prior to June 18, 1985.]

8:60-[5.3]5.2 (12:120-[5.3]5.2) Requirements for obtaining [a] **an asbestos worker or an asbestos supervisor permit**

(a) The Commissioner shall issue a permit to each applicant who satisfies the requirements listed below. The applicant shall:

1. (No change.)

2. Verify [his or her] **their** identity at a New Jersey Employment Services Office;

3. Successfully complete either the worker or supervisor training course approved by the Department of Health and pass a written examination devised and administered [by] **under the approval of the Department of Health** for each respective position;

i. Proof of successful completion of the written examination shall be submitted with the permit application; and

4. Complete the permit application, [a copy of which is appended to this subchapter as Appendix A] **a copy of which may be obtained from the Department of Labor.**

(b) The Commissioner shall issue a permit to an experienced asbestos worker who satisfies the requirements listed below. The experienced asbestos worker shall:

1. (No change.)

2. Verify [his or her] **their** identity at a New Jersey Employment Services Office;

3. Submit to the Division of Workplace Standards evidence that [indicates] the applicant has completed a minimum of [24] **26** hours of instruction[s] in a training course which has been approved by the Commissioner of [the Department] Health as substantially complying with the asbestos training programs set forth at N.J.A.C. 12:120-6 and 8:60-6;

4. Submit to the Division of Workplace Standards evidence of having [taken] **had and successfully passed** a qualitative and quantitative respirator fit test administered by a qualified industrial hygienist or health professional;

5. Submit to the Division of Workplace Standards an application as set forth at N.J.A.C. 12:120-[5.6]5.5 and 8:60-[5.6]5.5; and

6. (No change.)

8:60-[5.4]5.3 (12:120-[5.4]5.3) Procedures for verifying identity of **the applicant**

(a) Each applicant shall verify [his or her] **their** identity at a New Jersey Employment Services Office.

(b) Each applicant shall bring to the Employment Services Office a social security card and one of the following:

1.-3. (No change.)

4. An unexpired foreign passport with attached employment authorization; [or]

5. An alien registration card with photograph[.];

6.-8. (No change.)

9. Other documentation that, **in the discretion of the Employment Services Office**, [employee in his or her discretion believes] establishes the applicant's identity[.], [but excluding] **Specifically excluded** is any asbestos permit issued by [either the New Jersey Department of Labor or the New York Department of Environmental Protection] **any local, state, or Federal regulatory agency.**

(c) Each applicant also shall bring to the Employment Services Office one passport-size color photograph[.] **taken against a white background or backdrop with the applicant's face not being less than three-quarters of an inch in width. The applicant shall not wear a hat, glasses, or any other item which may alter or disguise the overall features of the face in the photograph.**

(d) Upon verification of the identity of the applicant, the Employment Services Office shall mail to the Division of Workplace Standards the following:

1. An asbestos permit referral [(see Appendix B)] which shall contain certification by [an] **the Employment Services Office** [employee] that the applicant has been identified; and

2. The applicant's passport-size color photograph.

8:60-[5.5]5.4 (12:120-[5.5]5.4) Procedures for completing training course and examination

(a) Each applicant required by this subchapter to complete asbestos training shall register at a training agency which has been

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certified by the New Jersey Department of Health to offer such training. A list of certified training agencies is available from the Department of Health.

1. The topics for worker and supervisor training are set forth at N.J.A.C. 12:120-6.2, 6.6, and 6.7[, 6.8] and N.J.A.C. 8:60-6.2, 6.6 and 6.7 [and 6.8].

(b) Upon **successful** completion of the training course, each applicant shall register through the training agency to take a written examination administered [by] **under the approval** of the Department of Health.

1. Each applicant shall bring the following to the examination:

i. The trainee's copy of the Asbestos Trainee Evaluation Form [(OES-24),] **(ASB-24)** [a sample of which is appended to this subchapter as Appendix C].

ii. A recent passport-size color photograph of the applicant [to be surrendered at the examination site;] **taken against a white background or backdrop with the applicant's face not being less than three-quarters of an inch in width. The applicant shall not wear a hat, glasses, or any other item which may alter or disguise the overall features of the face in the photograph. This photograph shall be surrendered at the examination site;** and

iii. Any document with the trainee's signature which establishes the applicant's identification as specified [in] at N.J.A.C. 12:120-[5.4] 5.3(b) and N.J.A.C. 8:60-[5.4]5.3(b).

(c) Each applicant who receives a score of at least 70 on the worker examination shall pass the examination for the worker permit.

1. If an applicant fails to pass the worker examination after three opportunities and still desires to obtain a worker permit, such applicant shall retake the entire [five] **four-day** worker training course.

(d) (No change.)

(e) Each applicant for a supervisor permit who achieves a score of [from] 60 to 69, **inclusive**, shall qualify for a worker permit.

1. If an applicant who scores from 60 to 69 decides not to take the supervisor examination within the [two] remaining opportunities, such applicant shall notify the Department of Labor for purposes of obtaining a worker permit and submit to the Department of Labor the applicant's copy of the [OES-24 form] **Asbestos Trainee Evaluation Form (ASB-24)**. If an applicant selects this option, the applicant will lose his or her opportunity to retake the supervisor examination **without retraining**.

[(f) Individuals holding valid permits who have completed the supervisor training prior to January 1, 1988 shall pass the asbestos supervisor exam prior to December 31, 1988 in order to work as a supervisor after the December 31, 1988 deadline.

1. Each individual set forth in this subsection who fails to pass the supervisor exam by December 31, 1988 shall retake the supervisor portion of the asbestos training course.

2. Each individual set forth in this subsection shall bring the following to the examination:

i. A valid New Jersey Asbestos Permit;

ii. A letter addressed from the individual's training agency to the examination administrator designated by the Department of Health with an original instructor's signature that certifies the individual has completed supervisor training;

iii. A photocopy of the individual's OES-24 form attached to the letter set forth in (f)ii above or the individual's original trainee copy of the OES-24 form which indicates completion of supervisor training;

iv. A recent passport size color photograph to be surrendered at the examination site; and

v. Any document with the trainee's signature which establishes the applicant's identification as specified in N.J.A.C. 12:120-5.4(b) and N.J.A.C. 8:60-5.4(b).

3. Each asbestos worker set forth in this subsection shall receive one opportunity to pass the supervisor exam. If such worker fails to pass the exam, the worker shall retake the supervisor portion of the asbestos training course.]

[(g) No applicant who takes the worker or supervisor examination shall copy any questions used in the examination nor retain any questions after finishing the examination.

1. The Department of Labor shall disapprove the permit application of any applicant who violates this provision.

2. Any applicant who violates (g) above may be subject to prosecution and penalties pursuant to the Act.]

(f) **Any applicant who copies or retains any questions or answers used in the asbestos worker or asbestos supervisor examination shall be subject to prosecution under the Act and this chapter. Any permit acquired through such means shall be invalid.**

(g) **Any applicant using fraudulent means during the taking of an asbestos worker or asbestos supervisor examination shall be subject to prosecution under the Act and this chapter. Any permit acquired through such means shall be invalid.**

(h) **Applicants who do not take the examination within one year of completion of their training shall retake the complete training prior to being examined.**

(i) **Applicants who fail to pass the examination within two years of completion of their training shall retake the complete training prior to being examined.**

8:60-[5.6]5.5 (12:120-[5.6]5.5) Procedures for completing permit application

(a) (No change.)

(b) Each applicant shall provide the following to the Division of Workplace Standards:

1. Name, address, date of birth, age, sex, height, weight, eye color, driver's license number, telephone number, social security number; [and]

2. The name and location of the course where the applicant has successfully completed asbestos training, the date of completion, and number of hours of training.

i. (No change.)

ii. [If the applicant has not completed the asbestos training course, the applicant shall send to the Division of Workplace Standards evidence that indicates successful completion of the asbestos training course as soon as possible.] **The applicant shall submit proof of successful completion of the written examination;**

3. Two recent, identical passport-size color photographs **taken against a white background or backdrop** with the applicant's face being not less than three quarters of an inch [wide] in width. The applicant shall not wear a hat, glasses or any other item which may alter or disguise the overall features of the face in the photographs.

i.-iii. (No change.)

4. (No change.)

(c) The applicant shall sign and date a statement certifying that the information contained in the application is accurate, true, and complete to the best of [his or her] **their** knowledge.

(d) The applicant shall submit a [\$20.00] **\$50.00** non-refundable fee (certified check or money order made payable to the Commissioner of Labor) with the permit application.

8:60-[5.7]5.6 (12:120-[5.7]5.6) Length of permit

(a) Each permit issued by the Commissioner shall be **conditionally** valid for a [one] **two** year period.

1. **Each permit holder shall have his permit validated annually upon the submission of evidence of satisfactory completion of a refresher training course approved by the Department of Health. The Department of Health shall establish the contents of the refresher training course.**

8:60-[5.8]5.7 (12:120-[5.8]5.7) Contents of permit

(a) Each permit for an asbestos worker or asbestos supervisor shall be issued in writing, **be signed by the Commissioner of Labor**, and shall contain [the following]:

1.-2. (No change.)

3. The name and address of the worker or supervisor to whom it is issued; **and**

4. The worker's or supervisor's social security number[; and].

[5. The signature of the Commissioner of the Department of Labor.]

(b) Each permit for an asbestos supervisor shall contain, in addition to the requirements set forth [in] at (a) above, "SUPVR" which shall indicate successful completion of the supervisor training course examination and the New Jersey Department of Health supervisor examination.

8:60-[5.9]5.8 (12:120-[5.9]5.8) Identification of permit holder

(a) [Each worker or supervisor shall carry the permit at all times when working on an asbestos project.] **Each worker or supervisor performing asbestos work shall have their permits available at the job site and readily available for inspection by representatives of the Commissioners of the Departments of Labor and Health and of the contracting agency.**

[(b) The permit shall be carried upon the worker's person and be readily available for inspection by representatives of the Commissioners of the Department of Labor and Health and the contracting agency.]

(b) **Tampered with, altered, or defaced permits shall be void.**

8:60-[5.10]5.9 (12:120-[5.10]5.9) Suspension and revocation of permit

(a) (No change.)

(b) The Commissioner may order the immediate suspension or revocation of a worker or supervisor permit if there is an imminent danger to the health and safety of the public or employees.

1. Any worker or supervisor who has his or her permit suspended or revoked pursuant to this section shall not perform asbestos work until such permit is restored by the Department.

(c) Prior to suspending or revoking a permit, the Commissioner shall provide the worker or supervisor with an oral or written notice of the violations. This subsection shall not apply to situations set forth [in] at (b) above.

1. (No change.)

d. (No change.)

(e) Any [individual] applicant using fraudulent means to obtain [a] **an asbestos worker or an asbestos supervisor permit shall be subject to prosecution under the Act and this chapter. Any permit acquired through such means shall be invalid.**

1. The use of fraudulent means to obtain an asbestos supervisor permit shall invalidate any other New Jersey permit which the applicant may possess.

8:60-[5.11]5.10 (12:120-[5.11]5.10) Renewal of permit

(a) [Each worker or supervisor shall renew his or her permit within 30 days prior to the date of the expiration of the permit.] **An application for renewal of a permit shall be submitted at least 30 days prior to its expiration date. When the application for renewal is submitted within the required time period, the permit may continue in effect until the Commissioner renders a determination regarding the application. The applicant shall be notified in writing by the Department whether a valid extension has been granted. This validation together with the expired permit shall be carried upon the worker's person and be readily available for inspection by representatives of the Commissioners of the Departments of Labor and Health and the contracting agency.**

(b) The Commissioner shall renew a worker or supervisor permit if the renewal applicant has:

1. (No change.)

2. Completed an application as set forth [in] at N.J.A.C. 12:120-[5.6]5.5 and 8:60-5.5 within three years of the expiration date of the expired permit;

3. Provided evidence of [any] continuing education or refresher training pursuant to N.J.A.C. 12:120-6.8 and 8:60-6.8 [that may be required by the Commissioner of the Department of Health in consultation with the Commissioner of the Department of Labor]; and

4. (No change.)

(c) (No change.)

(d) Any worker or supervisor who alters, defaces, mutilates or loses a permit or has it stolen shall comply with the requirements set forth [in] at (b) above.

1.-2. (No change.)

8:60-[5.12]5.11 (12:120-[5.12]5.11) Appeal procedures

(a) (No change.)

(b) Any aggrieved individual who disagrees with the Department of Labor's review decision may submit to the Division of Workplace Standards a written request for a formal hearing to be held in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., N.J.S.A. 52:14F-1 et seq., and the Uniform Administrative

[Rules Practice] **Procedure Rules**, N.J.A.C. 1:1, within 10 days from the date of the written decision.

1. **If possible,** [The] the formal hearing shall be held [expeditiously, if possible,] within 30 days [from] of the date the Division of Workplace Standards receives the written request for a formal hearing.

8:60-6.1 (12:120-6.1) Scope of subchapter

This subchapter shall apply to the procedures and qualifications required to obtain and maintain certification from the Commissioner of Health for training agencies and training courses on asbestos abatement as provided for in the Act.

8:60-6.2 (12:120-6.2) Types of courses

[(a) The basic course curriculum shall be presented over four days and shall include 24 hours of training at a minimum (exclusive of lunch and break times). The items which shall be presented in the core curriculum are listed in outline form in N.J.A.C. 12:120-6.6 and 8:60-6.6. All applicant for licenses shall attend a certified training course which covers this curriculum. All applicants for permits, except those who meet the criteria for experienced asbestos workers, shall also attend a certified training course which also covers this curriculum. This core curriculum shall include a minimum of eight hours of hands on practice in all phases of asbestos abatement operations including work are preparation. One full day (at least six hours) of training shall be devoted to practice in removing (non-asbestos) insulation materials with similar adherent properties as asbestos from surfaces which shall include both ceilings and pipes. The removal work shall include wetting, scraping, cleaning, disposal and decontamination.

(b) A supplementary course of at least six hours (exclusive of lunch and break times) shall be presented during a fifth day of training. Asbestos abatement supervisors and contractors shall receive specialized supplemental training designed to meet their particular needs. The items required to be included during this supplemental training are listed in N.J.A.C. 12:120-6.7 and 8:60-6.7. Asbestos abatement workers shall receive specialized supplemental training designed to meet their particular needs. The items required to be presented during this supplemental training are listed in N.J.A.C. 12:120-6.8 and 8:60-6.8.]

(a) **The asbestos abatement worker training course shall be presented over four days and shall include a minimum of 26 hours of training exclusive of lunch and break times. The topics which shall be presented in the asbestos abatement worker training curriculum are set forth at N.J.A.C. 12:120-6.6 and 8:60-6.6.**

1. All applicants for both worker and supervisor permits shall attend a certified training course which covers this curriculum.

2. **The worker training curriculum shall be presented with a minimum of eight hours of hands-on practice in all phases of asbestos abatement operations including worker area preparation and removal of asbestos-like insulation from ceilings and pipes.**

3. **Hands-on removal training shall include wetting, scraping, cleaning, disposal, and decontamination.**

4. **Demonstrations not involving individual participation shall not count as hands-on training.**

(b) **The asbestos abatement supervisor and contractor training course shall be presented over five days and shall include a minimum of 32 hours of training exclusive of lunch and break times. The supervisor and contractor training course shall consist of attendance of the four-day asbestos abatement worker training course specified in (a) above as well as an additional fifth day of training to include a minimum of six hours of training exclusive of lunch and break times. The topics which shall be presented over the fifth day of supervisor and contractor training are set forth at N.J.A.C. 12:120-6.7 and 8:60-6.7.**

1. All applicants for a supervisor permit or contractor/employer license shall attend a certified training course following this curriculum.

(c) **Annual refresher training for asbestos worker and asbestos supervisors shall be at least six hours. An additional two hours shall be required for asbestos supervisors. The items required to be presented during refresher training are set forth at N.J.A.C. 12:120-6.8 and 8:60-6.8.**

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

(a) An applicant for certification of an asbestos abatement training course shall submit a completed "Application for Certification as an Asbestos Training Agency" (ASB-23) and a proposal to the Department of Health, specifying [the following information to the Department of Health]:

1. The name and address of the agency, institution or private firm which plans to conduct the training course, and the name of the responsible individual and his[/] or her telephone number;

2. (No change.)

3. A description of the public outreach and publicity efforts which will be made to inform the appropriate potential [attendees] trainees of the course availability;

4. A detailed outline of the course curriculum including the topics set forth [in] at N.J.A.C. 12:120-6.6[(b) through (q)] and 8:60-6.6[(b) through (q)] for asbestos abatement worker training courses, N.J.A.C. 12:120-6.7 and 8:60-6.7 for asbestos abatement supervisor training courses, the amount of time allotted to each topic, and the name of the instructor for each topic;

5. A description of the teaching methods to be used to present each topic, including, where appropriate, lectures, discussions, demonstrations, **hands-on training**, and audio-visual materials. When applicable, [including] the name, producer, and date of production of audio-visual materials to be used **shall be included**;

6. Copies of written materials to be distributed **as part of the training course**;

7. Evidence demonstrating that the applicant has employed or contracted [as] to **employ a minimum of two** instructors, either on a full time or temporary basis, [a sufficient number of persons (a minimum of two)] to satisfy the education, experience and qualifications criteria as set forth [in] at N.J.A.C. 12:120-6.4 and 8:60-6.4. Resumes describing special training and education and/or prior experience [may] **shall** be submitted [to the Department of Health for the purpose of providing the evidence] **as documentation of compliance with the instructor criteria**;

8-9. (No change.)

10. A description of the materials to be used for hands-on practice exercises and demonstrations including, **but not limited to**, hand tools, ladders, **scaffolding**, plastic sheeting, and other barrier construction supplies, [negative] air filtration units, water spray devices, [and] decontamination facilities, **and simulated asbestos material**;

11. A detailed description of the site of the training course including **the address where demonstrations and hands-on practice exercises will be conducted**;

12. Any restrictions on attendance such as English language only[,] or other language to be used[, and the degree of literacy required for admission to the training course];

13. Instructor-to-student ratio for the hands-on practice experiences and demonstrations[.];

14. **Evidence that a no-smoking policy will be established, maintained, and enforced during all aspects of asbestos abatement training; and**

15. **A copy of the applicant's valid training agency certification previously issued by the Department of Health pursuant to this subchapter where applicable.**

(b) (No change.)

(c) [The Department of Health shall be notified immediately of any significant changes in any information submitted by the applicant.] **The applicant shall be required to successfully pass a pre-commencement inspection of the training facility conducted by the Department of Health.**

(d) **The applicant shall immediately notify the Department of Health in writing of any change(s) in the application information occurring either prior to or after certification.**

8:60-6.4 (12:120-6.4) Eligibility for certification of training courses

(a) [In order to be eligible for certification of an asbestos abatement training course, an applicant shall comply with this section and N.J.A.C. 12:120-6.3, 6.5 and 6.6 (8:60-6.3, 6.5 and 6.6).] **Only training course certification applications meeting the requirements of this subchapter shall be approved by the Department of Health.**

(b) [The applicant shall demonstrate to the Department of Health that it meets the criteria established for education, experience, and access to current control technologies and demonstration facilities.] **The training agency applicant shall have the burden of demonstrating compliance, or the ability to comply, with the requirements of this subchapter.**

(c) [The applicant shall use any training materials, evaluation forms, information and audiovisual aids which may be supplied by the Department of Health.] **The applicant shall have access to sufficient classrooms, off-site demonstration facilities, equipment, materials, and instructors to ensure that adequate training courses meeting the requirements of this subchapter can be conducted.**

1. Class size shall be limited to no more than 25 students.

[(d) The applicant shall send at least one course instructor to any meetings sponsored by the Department of Health for the purpose of ensuring uniform and high quality training courses in asbestos abatement.]

[(e) The applicant shall limit class size to not more than 25 students.]

[(f) The training course for asbestos workers and asbestos supervisors shall be at least five days and 30 hours long. The core course for both asbestos workers and supervisors shall be at least four days and 24 hours long. The fifth day shall be devoted to additional information or exercise as required by N.J.A.C. 12:120-6.7 and 6.8 (8:60-6.7 and 6.8) for the appropriate participants.]

[(g) The applicant shall cooperate fully with the Department of Health in all aspects which pertain to this rule.]

[(h) The applicant shall inform the Department of Health at least two weeks in advance of any asbestos abatement training course to be conducted by the applicant and to permit representatives of the Department of Health to attend, evaluate and monitor any asbestos abatement training courses.]

8:60-6.5 (12:120-6.5) Criteria for training course instructors

(a) To be eligible for certification of any training course, two or more course instructors shall be employed. A sufficient number of instructors shall be hired to ensure that all of the education and experience criteria for instructors set forth below are met:

1. [An] **All** instructors shall have experience in both the design, field performance, and evaluation of air monitoring programs and the design and implementation of respiratory protections programs.

2. [To] **In order to** qualify to teach the sections of the course concerning the health effects of asbestos, a qualified health professional shall be employed.

3. To qualify to teach the hands-on practice sessions, an instructor shall [be employed with] **have** experience as a[n] **New Jersey** asbestos abatement contractor or **as** [experience as an on-site foreman or] a supervisor of asbestos abatement workers. This person shall have had direct experience in all phases of asbestos abatement work including work area preparation, construction of barriers, the use of personal protective equipment, engineering controls, work practices, clean-up, disposal, and decontamination.

4. An instructor shall have experience in designing, implementing, and evaluating either employee educational programs in occupational health and safety or vocational education programs.

5. All translators shall have previously taken and successfully passed the asbestos worker course and shall have taken and successfully passed the examination with a test score of at least 80 in the interpreted language.

8:60-6.6 (12:120-6.6) Criteria for topics in asbestos worker training courses

(a) [In order to be eligible for certification of asbestos abatement training courses for and supervisors/contractors, the applicant shall design and conduct training which shall include at least those topics listed in (b) through (q) below.] **Training courses for asbestos abatement workers shall be designed and conducted to include, at a minimum, the topics specified in (b) through (r) below.**

(b) Introduction:

1. (No change.)

2. **New Jersey State Asbestos Policy**—Trainees should be informed of the penalties which may be imposed for violating regulations issued to implement [P.L. 1984 c. 173] **the Act**;

3. History of asbestos use; **and**
4. (No change.)
- (c) Recognition of asbestos:
1. Types, [and] physical characteristics, **and aerodynamics of asbestos;**
2. (No change.)
3. Products where asbestos may be encountered; **and**
4. (No change.)
- (d) Health effects of asbestos:
- 1.-5. (No change.)
6. Effects of smoking [and smoking cessation.]; **and**
7. **Effects of smoking cessation, various smoking cessation methodologies, and the resources available to aid in smoking cessation.**
- (e) **Relevant Federal, State, and local regulatory requirements, procedures, and standards. Emphasis shall be directed at relevant EPA, OSHA, and State regulations concerning asbestos abatement employers, workers, and supervisors. Further emphasis shall be placed upon:**
1. **The scope of all relevant New Jersey regulatory requirements; and**
2. **The penalties imposed for violation of the Act or the rules promulgated thereunder.**
- [(e)] (f) Purposes and methods of asbestos monitoring and testing:
- 1.-5. (No change.)
6. Current standards and proposed changes; **and**
7. (No change.)
- [(f)] (g) Case Studies: Typical problems and corrective measures:
- [1. Discussion of students' previous experiences with asbestos abatement operations;]
- [2.] 1. Presentation by course instructor(s) of problems which have actually occurred during asbestos abatement operations and how these problems have been resolved;
- [(g)] (h) Introduction of remediation methods, removal, encapsulation and enclosures and to the principles of control which shall be applied to all asbestos application and remediation projects:
- 1.-3. (No change.)
4. Clean-up and disposal; **and**
5. (No change.)
- [(h)] (i) Protection of the worker:
- 1.-5. (No change.)
6. Occupational Safety and Health Administration regulations—29 CFR Part 1910.134—Respiratory Protection; **and**
7. Demonstration exercises of the above respirators, including fit testing or flow testing, wearing, adjusting, filter replacing and cleaning procedures. Each participant shall have individual, supervised personal practice using these procedures with at least one of the types of respirators listed in (i)3, 4 or 5 above. **Fit testing shall be performed on each trainee using the OSHA "Irritant Smoke Protocol".**
- [(i)] (j) Preparation of the work area (hands-on practice required):
- 1.-5. (No change.)
6. Change area; **and**
7. (No change.)
- [(j)] (k) Minimizing fibers in the air while disturbing and removing asbestos insulation[:]: (hands-on practice required):
- 1.-3. (No change.)
4. Specialized tools; **and**
5. (No change.)
- [(k)] (l) Special work practices to minimize exposure and health hazards.
- [(l)] (m) Personal hygiene.
- [(m)] (n) Proper clean-up and disposal (hands-on practice required):
1. Clean-up including techniques and sequence of activities; **and**
2. (No change.)
- [(n)] (o) Decontamination (hands-on practice required):
1. (No change.)
2. Direction of air flow; **and**
3. Sequential steps.
- [(o)] (p) General safety considerations:
- 1.-6. (No change.)
7. Electrical hazards; **and**
8. (No change.)

[(p)] (q) Work practice demonstration:

1. Trainees shall participate in simulated on-the-job activities in the following subjects: suiting up in disposable full body clothing; preparation of the work site; sealing off the work area; construction of a decontamination unit; various abatement techniques to include removal of asbestos; clean-up methods; material handling and disposal. Each trainee shall wear a respirator **and other appropriate personal protective equipment** during these activities. [This] **The** respirator shall be one of those specified [in] at N.J.A.C. 12:120-6.6[(h)] (i) 3, 4, or 5 and 8:60-6.6[(h)] (i) 3, 4, or 5[.]; **and**

2. (No change.)

[(q)] (r) Review and course evaluation:

1. (No change.)

2. Practice tests [(optional)]; **and**

3. (No change.)

8.60-6.7 (12:120-6.7) Additional criteria for supervisor's training course

(a) The specialized course for asbestos abatement supervisors[/] and contractors shall address the following [issues] topics:

1. (No change.)

2. Insurance and bonding to include contractor issues:

i. **Worker's compensation coverage and exclusions;**

ii. **Insurance coverage and exclusions; and**

iii. **Third-party liability and defenses.**

3. (No change.)

4. [United States Environmental Protection Agency and United States Department of Labor Occupational Safety and Health Administration recordkeeping requirements] **Federal, State, and local recordkeeping requirements and records recommended for legal and insurance purposes;**

5. **The requirements as related to Asbestos Abatement Contractors as set forth at N.J.A.C. 5:23-8, Asbestos Hazard Abatement Subcode of the Uniform Construction Code;**

[5.] 6. How to supervise effectively;

[6.] 7. Additional emphasis on work practices, including purpose, proper construction and maintenance of barriers and decontamination systems, posting of warning signs, electrical and ventilation system lock-out, proper working techniques for minimizing fiber release, use of wet methods and surfactants, use of negative pressure ventilation equipment, use and maintenance of HEPA vacuums, proper clean-up and disposal procedures [.];

8. **Air monitoring for asbestos fibers including, but not limited to, aggressive air sampling procedures, air monitoring equipment and instrumentation, purposes of sampling, types of samples, and interpretation of results, specifically from analyses performed by polarized light microscopy, phase contract microscopy, and transmission electron microscopy;**

9. **Pressure differential monitoring including, but not limited to, sampling procedures, monitoring equipment and instrumentation, purposes of sampling, and interpretation of results;**

10. **Discussion of key elements that are included in contract specifications; and**

11. **Procedures for conducting a visual inspection of the worksite.**

[8.60-6.8 (12:120-6.8) Additional criteria for asbestos workers' training course

(a) The course for asbestos workers shall provide each applicant with sufficient opportunities for practice exercises to thoroughly demonstrate to the training agency's satisfaction that the asbestos worker can:

1. Properly perform all aspects of asbestos work;

2. Prevent unnecessary asbestos exposures to other citizens by properly constructing and maintaining temporary plastic barriers, by using protective, disposable clothing, and by using proper decontamination, work area clean-up and waste disposal techniques. At least four hours per applicant shall be devoted to these practice exercises. Each trainee shall wear a respirator during these activities. This respirator shall be one of those specified in N.J.A.C. 12:120-6.6(h)3, 4 or 5 and 8:60-6.6(h)3, 4 or 5.]

PROPOSALS

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HEALTH/LABOR

8:60-6.8 (12:120-6.8) Criteria for topics in refresher training courses

(a) Certification for refresher training courses is expressly conditioned upon holding a certification in good standing for the asbestos abatement worker course and the asbestos abatement supervisor/contractor course.

(b) The asbestos abatement worker refresher training course shall consist of a minimum of six hours of training exclusive of lunch and break times covering:

1. Any changes in the Federal regulatory requirements applicable to workers;
2. Highlights of the New Jersey regulatory requirements applicable to workers;
3. Any new developments in applicable state-of-the-art asbestos abatement procedures; and
4. A review of the items specified at N.J.A.C. 8:60-6.6(b), (d), (h), (i), (j), (k), (l), (m), (n), (o), (p), and (r) and 12:120-6.6(b), (d), (h), (i), (j), (k), (l), (m), (n), (o), (p), and (r).

(c) The asbestos abatement supervisor refresher training course shall consist of a minimum of eight hours of training exclusive of lunch and break times covering the training required in (b) above, as well as an asbestos abatement supervisor-specific refresher training course consisting of two hours of training covering:

1. Any changes in the Federal regulatory requirements applicable to supervisors, contractors, or employers;
2. Highlights of the New Jersey regulatory requirements applicable to supervisors, contractors, or employers;
3. Respiratory protection programs and medical surveillance;
4. New developments in the state-of-the-art and state-of-the-science regarding monitoring for airborne asbestos fibers; and
5. A short review of the items specified at N.J.A.C. 12:120-6.7(a)1, 2, 3, 6, 8, 9, 10, and 11 and 8:60-6.7(a)1, 2, 3, 6, 8, 9, 10, and 11.

(d) The Department of Health reserves the right to require additional refresher training course topics within one month of a certified training agency's receipt of written notice.

(e) Certified training agencies shall issue a certificate of completion to trainees upon their completion of a refresher training course. The certificate of completion shall specify the name of the course, the certificate number, the expiration date of the certificate, the trainee's name, the trainee's social security number, the date of completion of refresher training, the location of the training, and shall be signed by the course instructor.

8:60-6.9 (12:120-6.9) Granting of certification

(a) Two types of certification shall be granted; provisional and complete certification.

1. Provisional certification shall be granted to a training agency, institution or private firm which has submitted materials concerning course content, teaching methods and instructors qualifications which meet the requirements of this subchapter (N.J.A.C. 12:120-6 and 8:60-6). Provisional certification shall expire within six months unless it has been converted to complete certification.

2. Complete certification shall be granted after the Department of Health has granted provisional certification, has conducted a thorough observation and evaluation of a training course in progress, and has determined that the applicant's asbestos abatement training course meets the requirements of this subchapter (N.J.A.C. 12:120-6 and 8:60-6). Complete certification shall not have an expiration date, but shall be good until further notice, unless suspended or revoked.

(b) A letter of certification shall be granted to a training agency, institution or private firm which complies with N.J.A.C. 12:120-6.3 and 6.4 (8:60-6.3 and 6.4).

(c) A letter of certification shall:

1. Contain the date of issuance;
2. Contain an expiration date of a provisional certificate;
3. Contain the name and address of the training agency, institution, or private firm;
4. State whether the certification is provisional or complete;
5. Contain the signature of the Commissioner of Health or his designated agent.]

(a) No training agency shall be eligible for course certification unless the applicant has first received certification as an approved training

agency pursuant to either this section or N.J.A.C. 8:60-6.4 and 12:120-6.4.

(b) A yearly certification shall be granted to a training agency, institution, or firm which has demonstrated the ability to meet the requirements of this subchapter including course content, teaching methods, and instructor qualification based upon the application submission required by N.J.A.C. 8:60-6.3 and 12:120-6.3, and such investigation as the Commissioner of the Department of Health should deem necessary.

(c) All applicants shall be of good moral character. If the applicant is a corporation, this requirement shall apply both to the corporation and to those corporate officers who are responsible for the day-to-day operation of the corporation.

(d) An annual letter of certification shall:

1. Specify the date of issuance;
2. Specify an expiration date;
3. Specify the name and address of the training agency, institution, or firm which is certified;
4. Specify what training courses the certificant is authorized to teach;
5. Be signed by the Commissioner of the Department of Health or his or her designee; and
6. Be nontransferable.

i. Where a training agency certification is issued to a close corporation, the transfer in ownership of 10 percent or more of the shares in the agency shall constitute a certification transfer.

8:60-6.10 (12:120-6.10) Training agency operating requirements

(a) Certified training agencies shall use, in addition to their own, any training materials, evaluation forms, informational or audiovisual aids which may be supplied by the Department of Health.

(b) Certified training agencies shall ensure that at least one course instructor represents them at any meeting sponsored by the Department of Health for the purpose of maintaining uniform and high quality training courses among certificants.

(c) Certified training agencies shall limit class size to 25 students for the basic core curriculum.

(d) Certified training agencies shall limit class size to 30 students for the asbestos supervisor course.

(e) All certified training agencies shall notify the Department of Health at least two weeks in advance of the beginning of any training course. The notification shall specify the address of the training, the times of training, the type of training, the language in which the course is to be instructed, and the expected number of trainees enrolled. If course information changes, the certified training agency shall inform the Department of Health as soon as the agency becomes aware of such changes.

(f) All certified training agencies shall permit entry to all training courses by representatives of the Department of Health for purposes of course evaluation and determination of compliance with this subchapter.

(g) The certified training agency shall limit individual classes to not more than two languages. The language shall be the common language of the instructors and one translated language.

(h) The certified training agency shall provide students taking the asbestos worker examination in a foreign language written materials including, but not limited to, study handouts and related literature in the same language as the New Jersey examination.

(i) All certified training agencies shall maintain daily attendance records and shall maintain copies of examinations administered by the agency for any asbestos abatement course. The agency shall permit representatives of the Department of Health to inspect and to evaluate these records.

(j) All certified training agencies shall notify the Department of Health in advance of any significant changes in any information submitted by the certificant on its agency and its course applications. Any course modifications made subsequently to receipt of certification shall require ten days prior notification and shall be subject to Department of Health approval. A conditional approval may be granted pending detailed evaluation of the changes. Notwithstanding this subsection, any such changes must continue to be in compliance with the substantive requirements of this subchapter.

(k) Notwithstanding (j) above, the certified training agency shall notify the Department of Health in writing at least four weeks in advance of any changes in the hands-on practice session site.

(l) All certified training agencies shall cooperate fully with the Department of Health in all matters related to the conduct of certified training courses, administration of examinations, and licensing of individuals pursuant to this chapter.

8:60-6.11 (12:120-6.11) Renewal of training agency certification

(a) In order to approve a training agency certification renewal application, the Commissioner of Health shall determine, based upon the application, that:

1. The certificant has certified that all information contained on the original application is still correct, or where applicable, has updated such information;

2. All outstanding penalties lawfully imposed on the certificant have been paid;

3. The certificant has exhibited competence, integrity, and responsibility during the previous certification year; and

4. The training agency can operate in compliance with this subchapter.

(c) A complete application for renewal of a certification shall be submitted at least 30 days prior to the date of its expiration. When a complete application is submitted within the required time period, the certification shall continue in effect until the Commissioner of Health renders a final decision on the application.

(d) Any application not complying with (c) above shall be treated as a new application pursuant to N.J.A.C. 8:60-6.3 and 12:120-6.3.

(3) Any application from a certified training agency whose certification has lapsed shall be treated as a new application pursuant to N.J.A.C. 8:60-6.3 and 12:120-6.3.

8:60-[6.10]6.12 (12:120-[6.10]6.12) Suspension or revocation of certification

(a) Any certified training agency [, institution or private firm] may have its certification suspended or revoked for:

1. Incompetence; [or]

2. Failure to adequately present either the topics set forth in this subchapter or any other materials required by the Department of Health; [or]

3. Any violation of N.J.A.C. 8:60-6.10 and 12:120-6.10;

[3.]4. Submitting false information on an initial or renewal application;

[4. Failure to comply with the rules promulgated under the act;]

5. Submitting false information on an "Asbestos Abatement Course Evaluation" form (ASB-25) or on an "Asbestos Trainee Evaluation" form (ASB-24);

6. Any violation of this subchapter; or

[5.]7. Any good cause within the meaning and purpose of the law.

8:60-[6.11]6.13 (12:120-[6.11]6.13) Hearings for applicants and certificants when certification has been denied, revoked or suspended

(a) When in the judgment of the Commissioner of Health, immediate suspension of a training agency certification is necessary to protect license trainees or the public health and safety, the Commissioner of Health may suspend a certification pending the conduct of a hearing. When the certification has been suspended pursuant to this paragraph, the certificant shall have the right to a hearing within 10 days of such request.

1. A certificant shall have 10 calendar days after receipt of written notice of certification suspension pursuant to this section to request a hearing.

[(a)](b) [When the] In all cases where the Commissioner of Health proposes to revoke or suspend a certification, or denies an application for certification, the applicant shall have the right to an informal hearing under [(b)] (c) below or a formal hearing under [(c)] (d) below or both.

[(b)](c) An informal hearing before the Commissioner of Health may be held provided a written request is submitted within [ten] 10 days after the notice has been given that the Commissioner of Health proposes to revoke or suspend certification or proposes to deny an

application for certification. When the hearing is held before the Commissioner of Health, he or she shall state his or her findings and conclusions in writing and transmit a copy to the applicant for certification.

[(c)](d) The [applicant] certificant or certification applicant, as the case may be, shall have the right to a formal hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative [Rules of Practice] Procedure Rules, N.J.A.C. 1:1[-1 et seq.], upon submission of a written request for the hearing. The request for the hearing shall be received by the Commissioner of Health within 10 calendar days of receipt of due notice of the Commissioner of Health's proposed action.

(e) For purposes of this section, due notice shall mean written notice mailed to the certificant or certification applicant's last filed address which specifies:

1. The intended agency action;

2. The legal basis for such action;

3. The facts supporting such legal basis; and

4. Notice of the right to a hearing:

i. The 10 day period to request such hearing; and

ii. The address to which such requests shall be sent.

(f) Where a certificant or certification applicant fails to request a hearing within the 10 day period, his right to a hearing pursuant to this section shall be deemed waived and the Commissioner of Health's proposed action shall become final.

8:60-[6.12]6.14 (12:120-[6.12]6.14) Examination of applicants

(a) Each applicant for a permit under N.J.A.C. 12:120-5 and 8:60-5 shall successfully pass an examination in asbestos work and control. This examination shall be [conducted by] administered under the approval of the Department of Health under procedures [in] as set forth at N.J.A.C. 12:120-[5.3]5.4 and 8:60-[5.3]5.4.

1. Each applicant for an asbestos supervisor permit shall be required to successfully pass an English-language asbestos supervisor examination.

[(b) The examination shall include questions on the topics presented in N.J.A.C. 12:120-6.6 and 8:60-6.6.]

SUBCHAPTER 7. ASBESTOS WORK NOTIFICATION REQUIREMENTS

8:60-7.1 (12:120-7.1) Purpose and scope of subchapter

(a) The purpose of this subchapter is to establish the requirements for notifying the Departments of Labor and Health as to when and where asbestos work will be undertaken.

(b) This subchapter shall be applicable to all licensed contractors who perform asbestos work in New Jersey.

8:60-7.2 (12:120-7.2) Notification requirements

(a) Every licensee who plans to perform asbestos work in New Jersey shall submit a written notification of intent to perform asbestos work at least 10 days prior to beginning such work on forms specified by the Department of Health.

(b) The written notification required by (a) above shall include:

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

2. The license number and type of license held by the licensee;

3. The name and address of the owner of the facility;

4. The location and description of the facility;

5. A description of the asbestos work to be performed;

6. The scheduled starting and completion dates of the asbestos work;

7. The name and address of the waste disposal site where the asbestos-containing material will be disposed; and

8. Any other relevant information which the Commissioner of Labor or the Commissioner of Health, as the case may be, determines to be necessary.

(c) The written notification required by (a) above shall be submitted to:

New Jersey Department of Labor
Office of Asbestos Control and Licensing
28 Yard Avenue, Station Plaza 4
CN 0054
Trenton, NJ 08625-0054
and

New Jersey Department of Health
Asbestos Control Service
CN 360
Trenton, NJ 08625-0360

(d) The Commissioner of Labor or the Commissioner of Health, as the case may be, may allow less than 10 days prior notification where emergency circumstances require.

8:60-7.3 (12:120-7.3) Penalties

Any licensee who fails to comply with the requirements set forth in this subchapter shall be liable for a penalty of up to \$500.00 as provided for at N.J.A.C. 8:60-3.5(a) and 12:120-3.5(a).

**SUBCHAPTER [7.]8. STANDARDS AND PUBLICATIONS
REFERRED TO IN THIS CHAPTER**

8:60-[7.1]8.1 (12:120-[7.1]8.1) Documents referred to by reference

(a) The full title and edition of each of the following standards and publications referred to in this chapter are as follows:

1. (No change.)
2. N.J.A.C. 1:1, Uniform Administrative [Rules of Practice] Procedure Rules;
- 3.-4. (No change.)
5. N.J.S.A. 34:5A-32 et seq., Asbestos Control and Licensing Act; [and]
6. N.J.S.A. 52:14B-1 et seq., Administrative Procedures Act[.]; and
7. 40 C.F.R. 1910.134—Respiratory Protection.

8:60-[7.2]8.2 (12:120-[7.2]8.2) Availability of documents for inspection

A copy of each of the standards and publications referred to in this chapter is on file and may be inspected at the following office of the Division of Workplace Standards between the hours of 9:00 A.M. and 4:00 P.M. on normal working days:

New Jersey Department of Labor
Division of Workplace Standards
[36 West State Street, Room 313]
28 Yard Avenue, Station Plaza 4
3rd Floor
CN 0054
Trenton, New Jersey 08625-0054

8:60-[7.3]8.3 (12:120-[7.3]8.3) Availability of documents from issuing organization

Copies of the standards and publications referred to in this chapter may be obtained from the organizations listed below. The abbreviations preceding these standards and publications have the following meaning, and are the organizations issuing the standards and publications listed in N.J.A.C. 12:120-[7.1]8.1 and 8:60-[7.1]8.1.

CFR—Code of Federal Regulations

Copies available from:
Superintendent of Documents
Government Printing Office
Washington, D.C. 20402

N.J.A.C.—New Jersey Administrative Code

Copies available from:
Division of Workplace Standards
New Jersey Department of Labor
CN 386
Trenton, N.J. 08625-0386

N.J.S.A.—New Jersey Statutes Annotated

Copies available from:
Division of Workplace Standards
New Jersey Department of Labor
CN 386
Trenton, N.J. 08625-0386

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Administrative Policies

Minority Faculty Advancement Loan and Loan Redemption Program; Fund for the Improvement of Collegiate Education; Early Retirement Program for Tenured Faculty, Participant Rehiring as Adjunct Faculty; Alternate Benefit Program; Management of Computerized Information; Rules for Appeals to the Chancellor of Higher Education; Rules for Appeals to the Board of Higher Education; Procedure to Petition for a Rule; Board of Higher Education and Department of Higher Education Structure and Functions; Guidelines on Outside Employment for Public Institutions of Higher Education and the Department of Higher Education and the Code of Ethics; Standards for Baccalaureate Teacher Education Programs at Public Colleges and Universities; Auxiliary Corporation Regulations

Proposed Readoption with Amendments: N.J.A.C. 9:2

Proposed Repeal: N.J.A.C. 9:2-2

Authorized By: Board of Higher Education,

T. Edward Hollander, Chancellor and Secretary.

Authority: N.J.S.A. 18A:72F-11, N.J.S.A. 18A:62-12, N.J.S.A.

18A:66-204, N.J.S.A. 18A:66-170, N.J.S.A. 18A:3-13, N.J.S.A.

18A:3-14(l), N.J.S.A. 18A:3-15, N.J.S.A. 18A:6-26, N.J.S.A.

18A:3-1, N.J.S.A. 18A:3-3, N.J.S.A. 52:14B-4(b), N.J.S.A.

52:13D-12 et seq., N.J.S.A. 18A:3-14(h), N.J.S.A. 18A:3-14(e)

and N.J.S.A. 18A:64-26 et seq.

Proposal Number: PRN 1990-118.

Submit comments by April 4, 1990 to:

Grey J. Dimenna, Esq.

Administrative Practice Officer

Department of Higher Education

20 West State Street

CN 542

Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 9:2 expires on June 17, 1990. The Board of Higher Education has reviewed the various subchapters within this chapter and has determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated as required by the Executive Order, with the exception of N.J.A.C. 9:2-2. A summary of each subchapter and any proposed changes thereto is set forth below:

N.J.A.C. 9:2-1 sets forth program requirements for participation in the Minority Faculty Advancement Loan and Loan Redemption Program. The program allows for loans for minority doctoral students at New Jersey colleges and universities which may be redeemed by faculty service at such institutions upon receipt of the doctoral degree. Several technical changes are made to the program rules proposed for readoption, in addition to changes in the amount of institutional support for program participants and the addition of a provision which allows the Chancellor of Higher Education to grant exceptions to the rules in those instances where strict compliance would result in a hardship to the program participant due to conflicts with doctoral institutions' graduate student policies.

N.J.A.C. 9:2-2, which contains policies and procedures for the Fund for the Improvement of Collegiate Education, is proposed for repeal as that program is no longer funded or operating.

N.J.A.C. 9:2-3 governs certain requirements regarding an Early Retirement Program for Tenured Faculty. Specifically, the rules govern the

circumstances under which a program participant may be rehired by a public institution of higher education as an adjunct faculty member. Although faculty members may no longer retire under this program, the restrictions regarding program participants serving as adjunct faculty are still necessary. These rules are proposed for readoption without change.

N.J.A.C. 9:2-4 sets forth eligibility criteria for participation in the Alternate Benefit Program, the State pension system for certain full-time employees of the Department of Higher Education and the New Jersey public institutions of higher education. No changes are recommended for the readoption of this subchapter.

N.J.A.C. 9:2-5 governs the management of computerized information within the Department of Higher Education. This subchapter sets forth the circumstances under which such information may be released and which offices within the Department have access to such information. The rules proposed for readoption contain one change from the current rules which would allow for the release of individualized records as part of a research project with the student's consent.

N.J.A.C. 9:2-6 sets forth the procedures for appeals of final actions by boards of trustees of State colleges, county community colleges and schools of industrial education to the Chancellor of Higher Education. The rules proposed for readoption include three technical changes with regard to extensions of time for the filing of answers (N.J.A.C. 9:2-6.4(e)), the receipt of hearing officer's reports (N.J.A.C. 9:2-6.18(b)) and the effective date of Chancellor's decisions (N.J.A.C. 9:2-6.20).

N.J.A.C. 9:2-7 governs procedures for appeals to the Board of Higher Education. The rules proposed for readoption include four amendments to the current rules which represent technical changes or modifications to bring the rules into conformity with current practice. Those amendments are as follows: N.J.A.C. 9:2-7.4—correction of a typographical error; N.J.A.C. 9:2-7.5—removal of the restriction against institutional representatives of the Board of Higher Education serving as members of the Committee on Appeals; N.J.A.C. 9:2-7.6—removal of the right of parties to file exceptions to the Committee on Appeals' recommendation to the full Board of Higher Education; and N.J.A.C. 9:2-7.7—technical deletion of redundant language.

N.J.A.C. 9:2-8 establishes procedures whereby entities or individuals may petition the Board of Higher Education for the promulgation, amendment or repeal of its rules. This subchapter is proposed for readoption with one change which reflects the new address of the offices of the Department of Higher Education.

N.J.A.C. 9:2-9 sets forth the structure and functions of the Board and Department of Higher Education. The rules proposed for readoption include amendments which technically correct the representation of the Board of Higher Education and correct the address of the offices of the Department of Higher Education.

N.J.A.C. 9:2-10 contains guidelines for outside employment and a code of ethics for employees of public institutions of higher education and the Department of Higher Education. Beyond certain technical corrections, the rules proposed for readoption allow institutions to adopt their own policies in this area as long as they are equal to or greater in scope to these rules (N.J.A.C. 9:2-10.1(b)), modify certain subsections as a result of the New Jersey Supreme Court decision, *Assn. of State Col. Fac. v. N.J. Bd. of Ed.* 66 *N.J.* 72 (1974), which invalidated such provisions as being in conflict with collective bargaining rights (N.J.A.C. 9:2-10.2(c) through (e)) and specifically require prior approval of the Chancellor for any outside employment by senior staff within the Department of Higher Education (N.J.A.C. 9:2-10.3(a)).

N.J.A.C. 9:2-11 is reserved.

N.J.A.C. 9:2-12 sets forth standards for baccalaureate teacher education programs at public colleges and universities. These rules are not proposed for any changes at this time. The Board of Education has recently revised its standards for teacher certification. These new standards must be reviewed with the various colleges and universities involved in teacher education in order to determine whether any changes are necessary to this subchapter. Once that review process is completed, if any changes are required, they shall be proposed at a later date.

N.J.A.C. 9:2-13 governs auxiliary corporations at State and county community colleges. The Board has determined that these rules should be readopted without change.

Social Impact

The chapter proposed for readoption consists of several subchapters which govern various areas within the responsibility of the Board of Higher Education. Thus the social impact of the proposed readoption varies for each subchapter as set forth below:

N.J.A.C. 9:2-1

This subchapter sets forth program requirements for participants in the Minority Faculty Advancement Loan and Loan Redemption Program. New Jersey, and the rest of the nation, faces a severe shortage of minority faculty teaching at its institutions of higher education. This is due, in part, to a shortage of minorities with doctoral degrees. This program will assist the State in addressing this problem by providing financial assistance through loans and financial incentives through loan redemption for teaching at a New Jersey college or university.

In particular, the proposed modification of N.J.A.C. 9:2-1.6(b) will require that sponsoring institutions of higher education hire program participants upon completion of their degrees. In the past, institutions which sponsored program participants were only required to give serious consideration to hiring those individuals which they sponsored upon receipt of the doctoral degree.

N.J.A.C. 9:2-2

The repeal of this subchapter concerning the Fund for the Improvement of Collegiate Education will have no impact as this program is no longer funded or operational.

N.J.A.C. 9:2-3

This subchapter sets forth the criteria under which participants in New Jersey's early retirement program for tenured faculty may be rehired as adjunct faculty at public institutions of higher education. The rules seek to prevent a program participant from benefitting from the program through retirement while continuing to be employed by a public entity unless the participant's employment is required for certain compelling institutional needs.

N.J.A.C. 9:2-4

This subchapter sets forth eligibility criteria which will determine which employees of public institutions of higher education in New Jersey may enroll in the Alternate Benefit Program as opposed to other public pension systems. The eligibility criteria have been structured to allow institutions of higher education in this State to actively recruit candidates from out-of-State colleges and universities as the Alternate Benefit Program utilizes the same carrier as the majority of higher education institutions and organizations across the country.

N.J.A.C. 9:2-5

This subchapter governs the management of computerized information by the Department of Higher Education. The rules ensure that data collected by the Department shall be kept confidential and shall be released only under circumstances which are consistent with State and Federal law.

N.J.A.C. 9:2-6

This subchapter sets forth criteria governing appeals to the Chancellor of Higher Education. The rules ensure that all such appeals will be treated expeditiously and will receive equal consideration. The rules also ensure that the Chancellor will receive sufficient and properly organized materials from the parties involved in the appeals to allow the Chancellor to reach an appropriate decision.

N.J.A.C. 9:2-7

This subchapter sets forth various procedural rules which ensure that appeals to the Board of Higher Education are handled expeditiously and uniformly. The rules also ensure that the parties are given sufficient opportunities to present their appeal and that the Board of Higher Education receives materials from the parties in appropriate format in order to allow the Board and its committee to properly resolve all appeals.

Specifically with regard to the proposed modification of N.J.A.C. 9:2-7.6(h), whereby the right of parties to file exceptions to the Board of Higher Education's Committee on Appeals' decisions to the full Board has been removed, while this modification, on its face, appears to significantly change the rights of parties with appeals before the Board of Higher Education, it has never been the practice of the Board's Committee on Appeals to follow this procedure. Thus, the procedure is proposed for removal to conform the regulations to the current practice.

N.J.A.C. 9:2-8

This subchapter sets forth the procedures which must be followed when a member of the public or other interested parties wish to petition the Board of Higher Education to take particular actions with regard to its administrative code. The procedures guarantee that all such individuals or groups have access to the Board for this purpose and ensures that their requests for such actions shall be considered.

N.J.A.C. 9:2-9

This subchapter ensures that all members of the public and other groups which are not familiar with the Board of Higher Education and its structure may learn about the Board and its underlying structure.

N.J.A.C. 9:2-10

This subchapter governs outside employment and ethical conduct of employees of the public institutions of higher education and the Department of Higher Education. The rules set forth parameters for the conduct of these public employees to ensure that their conduct does not constitute a conflict of interest with their public duties.

N.J.A.C. 9:2-12

This subchapter sets forth the criteria for students at public institutions of higher education which are enrolled in teacher education programs. It includes such areas as admission, retention and graduation from such programs, curriculum requirements and the supervision of practicum students. These standards seek to ensure the quality of such programs for the training of teachers at New Jersey's public colleges.

N.J.A.C. 9:2-13

This subchapter sets forth requirements for auxiliary corporations at State and county community colleges. The rules set forth particular guidelines for such organizations' formation, operating procedures and reporting requirements.

Economic Impact

The rules proposed for readoption, for the most part, set forth various administrative and procedural rules with regard to such areas as management of computerized information, appeals to the Chancellor and Board of Higher Education, petitions to the Board for rulemaking, organizational structure of the Board and Department of Higher Education, standards for baccalaureate teacher education programs and auxiliary corporations and thus have no economic impact.

N.J.A.C. 9:2-1 does have an economic impact on the program participants in that it determines the amount and source of loans which an individual may receive under the program. Further, the rules set forth the circumstances under which the program participant may be required to repay such loans. In addition, the rules might increase the amount of the subsidy which the institution of higher education attended by the program participant may have to make available to the student as institutional support under the program.

Finally, certain proposed changes (see, for example, N.J.A.C. 9:2-1.9(d) and 9:2-1.10(c)(2)) will result in greater amounts of funding being made available to program participants on an annual basis by the elimination of certain financial aid requirements which are generally applied for other students in order to recognize the unique circumstances of students enrolled in this program.

N.J.A.C. 9:2-3 could have an economic impact on certain citizens as it could prohibit a citizen who is a program participant from accepting employment at a public institution of higher education as an adjunct faculty member.

N.J.A.C. 9:2-10 could have an economic impact on employees of public institutions of higher education and the Department of Higher Education as it could serve to limit the outside employment of such employees where such employment would constitute a conflict of interest with their public duties.

N.J.A.C. 9:4 could have an economic impact on public employees in that the rules determine which public employment retirement system a public employee will enter, thus possibly affecting the nature and amount of the employee's retirement benefits.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed readoption with amendments does not impose reporting, recordkeeping or other compliance requirements on small businesses. The chapter sets forth administrative and procedural rules for the Minority Faculty Advancement Loan and Loan Redemption Program, Early Retirement for Tenured Faculty Program, management of computerized information, appeals to the Chancellor of Higher Education and the Board of Higher Education, procedures for petitioning the Board of Higher Education for rulemaking, organizational structure of the Department of Higher Education, guidelines for outside employment and a code of ethics for employees of public institutions of higher education and the Department of Higher Education, standards for baccalaureate teacher education programs at public colleges and universities, auxiliary corporations and eligibility criteria for participation in the Alternate Benefit Program. No

small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., are, therefore, affected.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 9:2-2.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 9:2.

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

9:2-1.1 Definitions

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

...
 "Faculty member" means any person employed full-time by a New Jersey [state college or other sponsoring institution,] **institution of higher education** to perform primarily teaching or research duties for a full academic year.

...
 "Full-time student" means one who, in each semester, quarter or equivalent thereof, [carries the minimum number of credit hours or other coursework] **is engaged in coursework or research** necessary to constitute [a] full-time graduate student [courseload] **status** as defined by the host institution attended.

...

9:2-1.2 Degree requirements

(a) Each program participant must pursue doctoral studies as a full-time student at an approved host institution.

(b) Eligible disciplines shall be determined [on an annual basis] by the Chancellor [and reported to the Board of Higher Education].

9:2-1.3 Program participation eligibility

(a) (No change.)

[(b) In addition to the requirements in (a) above, to qualify for eligibility under the program, an applicant must fulfill one or more of the following requirements:

1. Be a faculty or staff member of a sponsoring institution who has been nominated by his or her respective institution and has been granted up to a four year leave of absence and a commitment for reemployment upon completion of the program; or

2. Be a recipient of a baccalaureate or master's degree in an academic discipline in which minorities are underrepresented and have a desire to teach that subject at the collegiate level. Included in this category are members of the non-teaching professional staff at New Jersey colleges and universities.]

9:2-1.5 Participation in program

(a) The nomination of eligible candidates for participation in the program after institutional admission[,] shall be determined by the Department of Higher Education Minority Faculty Advancement Program Advisory Committee, established pursuant to N.J.A.C. 9:2-1.15.

(b) (No change.)

9:2-1.6 Sponsoring institution responsibilities

(a) (No change.)

(b) A sponsoring institution may nominate a member of the non-teaching professional staff or any other recipient of a baccalaureate or master's degree to participate in the program under the following conditions:

1. The sponsoring institution [is willing to give serious consideration to the appointment of] **will appoint** said person to the faculty of the institution upon completion of the doctorate; and

2. (No change.)

(c) Prior to a minority faculty member's entrance into the program pursuant to the provisions of the section, the sponsoring institution and the program participant shall execute a written agreement, consistent with existing applicable statutes and regulations, which shall set forth the program participant's employment rights, including, but not limited to, the areas of tenure, seniority, salary and promotion, upon [his] reemployment by the institution.

9:2-1.7 Host institution responsibilities

(a) A host institution shall:

1. Offer a doctoral degree in at least one of the eligible disciplines designated in the program;

2. Provide to each program participant an annual grant of at least \$5,000[,] or **50 percent of total full-time tuition and fees, whichever is greater and** which may include tuition remission, each year for up to four years;

3. Recruit candidates for the program from among minority faculty members who are currently teaching in New Jersey institutions of higher education and minority graduates of baccalaureate and masters programs both in and out of state;

4. Make available appropriate support services[;].

[(b) Each host institution participating in the program shall develop a written policy concerning the operation of the program at that institution which shall include but not be limited to policies regarding admission, institutional aid, appeal procedures and support services.

1. A copy of the written policy shall be provided to each program participant at the host institution upon commencement of the program by the participant.]

9:2-1.9 Source of loan funds

(a) The eligible student will be considered for two loan sources: the [Guaranteed Student] **Stafford** Loan and the Minority Faculty Advancement Loan, in that order. The type and amount of loan(s) will depend on the student's eligibility, in accordance with the policies and procedures set forth by the [Guaranteed Student] **Stafford** Loan and the Minority Faculty Advancement Loan. Regardless of the loan(s) for which the recipient qualifies, these loans will be eligible for loan redemption upon qualifying service as set forth in N.J.A.C. 9:2-1.14.

(b) The maximum loan amount received shall not exceed \$10,000 annually and \$40,000 aggregate for any combination of [Guaranteed Student] **Stafford** Loan and Minority Faculty Advancement Loan.

(c) Sequence of funding will be:

1. Subsidized [Guaranteed Student] **Stafford** Loan;
2. Non-subsidized [Guaranteed Student] **Stafford** Loan;
3. Minority Faculty Advancement Loan.

[(d) The combined maximum annual loan and grant amounts may not exceed the student's budget determined by the educational institution for the program year.]

9:2-1.10 Loan application process

(a) (No change.)

(b) Each academic year, the borrower will obtain a [Guaranteed Student] **Stafford** Loan application from the Direct Loan Office which will be used to process a subsidized and/or non-subsidized [Guaranteed Student] **Stafford** Loan, and a Minority Advancement Loan.

(c) [Finance charges levied will be as follows:

1.] As required by Federal rules, an origination fee will be levied on the subsidized and/or non-subsidized [Guaranteed Student] **Stafford** Loan and will be deducted from the proceeds of the loan disbursement.

2. A one percent insurance premium/processing fee will be levied on the subsidized and/or non-subsidized Guaranteed Student Loan and will be deducted from the proceeds of the loan disbursement, however, it will not be levied on the Minority Faculty Advancement Loan.]

9:2-1.11 Redemption

(a) Borrowers with earned doctoral degrees will be eligible for redemption of their [Guaranteed Student] **Stafford** Loan(s) and Minority Faculty Advancement Loan(s) over a four-year period of qualifying service as defined by N.J.A.C. 9:2-1.14.

(b) The principal balance of each loan **account** will be cancelled at an annual rate of 25 percent, in return for each full academic year of service as set forth in N.J.A.C. 9:1-1.14.

(c) Total cancellation of loan indebtedness will not exceed the maximum of \$40,000 per student. Any previous loans obtained by the borrower will not be eligible for loan redemption **under this program**.

(d) Prior to the annual redemption of loan indebtedness, participants shall submit institutional certification of qualifying service to the Department of Higher Education.

(e) If the borrower is deemed ineligible for loan redemption or chooses not to have the loans redeemed, the unpaid principal balance plus accruing interest at the prevailing rate for [Guaranteed Student] **Stafford** Loans and Minority Faculty Advancement Loans at the time the loans were made on the portion of loans not already redeemed will be converted to an installment contract and serviced by the Direct Loan Office of the Authority.

9:2-1.12 Terms of repayment

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

1. For subsidized [Guaranteed Student] **Stafford** Loan:

i. Repayment of the loan shall be governed by the appropriate policies and procedures of the [Guaranteed Student] **Stafford** Loan program.

[2.]ii. Interest shall be at the prevailing rate established for the [Guaranteed Student] **Stafford** Loan program at the time the loan is made, and will be paid by the Federal government during [inschool] **at least half-time** enrollment and grace periods and authorized periods of deferment.

[3.]iii. Interest will begin accruing at the time of repayment, which will commence six months following less than half-time enrollment, withdrawal, graduation, or thereafter, in the absence of qualifying service as defined in N.J.A.C. 9:2-1.14.

[4.]2. For non-subsidized [Guaranteed Student] **Stafford** Loan:

i. Repayment of the loan shall be governed by the appropriate policies and procedures of the [Guaranteed Student] **Stafford** Loan program.

ii. Interest shall be at the prevailing rate established for the [Guaranteed Student] **Stafford** Loan program at the time the loan is made and will be waived during [full-time] **at least half-time** enrollment periods, grace period, and authorized periods of deferment.

iii. Interest will begin accruing [subsequent to a six month grace period,] **at the time of repayment which will commence six months** following less than half-time enrollment, withdrawal, or graduation or thereafter in the absence of qualifying service as defined in N.J.A.C. 9:2-1.14.

[iv. Repayment shall then commence following a six month grace period, with all outstanding accrued interest being capitalized to the principal balance at the time.]

[5.]3. For Minority Faculty Advancement Loan:

i. Repayment of the loan shall be governed by the appropriate policies and procedures of the [Guaranteed Student] **Stafford** Loan program.

ii. Interest shall be at the prevailing rate established for the [Guaranteed Student] **Stafford** Loan program at the time the loan is made, and will be waived during [full-time] **at least half-time** enrollment, grace period and authorized periods of deferment.

iii. Interest will begin accruing [subsequent to a six month grace period,] **at the time of repayment which will commence six months** following less than [full] half-time enrollment, withdrawal, graduation, or thereafter, in the absence of qualifying service as defined in N.J.A.C. 9:2-1.14.

[iv. Repayment shall then commence following a six month period of forbearance, with all outstanding interest being capitalized to the principal balance at the time.]

(b) The [Guaranteed Student] **Stafford** Loan and Minority Faculty Advancement Loan will be converted to repayment simultaneously.

9:2-1.13 Loan forgiveness

(a) In the case of a program participant's death or total and permanent disability, the loan will be forgiven pursuant to the guidelines set forth under the [guaranteed student] **Stafford** [loan] **Loan** program.

(b) [Requests for deferment or forgiveness of loans must be made by the borrower to the Chancellor. Such requests shall be referred for an initial recommendation to a three member panel appointed by the Chancellor. Following receipt of such recommendation the Chancellor shall issue a final determination.] **Requests for deferment,**

forbearance or forgiveness of loans must be made by the borrower to the Authority's Direct Loan Office.

9:2-1.14 Faculty service requirements

(a) Faculty service requirements for loan redemption purposes shall be satisfied:

1. For those program participants nominated by a sponsoring institution, by faculty service at the sponsoring institution unless otherwise mutually agreed upon by the president of the institution and the program. [Professional employees from a sponsoring institution may redeem their loan by service in an academic administration position at the sponsoring institution if no faculty position is available at a New Jersey college or university.] A sponsoring institution [which does not desire to] **must** reemploy a program participant who successfully completes the program and was nominated by that institution. [may not reemploy the program participant] **Exceptions to this requirement may be made** only under extreme circumstances and with the approval of the Chancellor; or

2. By faculty service in an appropriate position, as determined by the Chancellor of Higher Education, at an institution of higher education within New Jersey; or

3. If no faculty position is available at a New Jersey college or university, by service in an appropriate position, as determined by the Chancellor of Higher Education, in an agency of State government.

(b) Host institutions shall be responsible for assisting program participants not nominated by a sponsoring institution who successfully complete the program in obtaining an appropriate position to fulfill faculty service requirements.

9:2-1.16 Exceptions to rules

An exception to these rules, on a case by case basis, may be granted by the Chancellor of Higher Education in cases where application of these rules, inasmuch as they might conflict with host institution policies, would not be in the best interests of, or would result in financial hardship to, program participants.

9:2-5.3 Protection of privacy rights

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

(d) Upon written application to the Chancellor, individualized student records may be made available to statutorily authorized non-DHE staff with legitimate educational interests. Such application shall summarize the objectives of the research, methodology and projected date for completion. An agreement that the applicant will not permit any other party to have access to such information without the written consent of the student and that a report on the study results will be forwarded to DHE must be provided. Individualized records that are made available to non-DHE staff shall not contain the student's name, social security number, and zip code of home address, **unless the student has given consent for such release.**

(e)-(f) (No change.)

9:2-6.4 Filing, service of answer and extensions of time to answer

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

(e) Extension of the time in which to answer will be granted in the discretion of the Chancellor only if exceptional reasons are presented to justify such request. Requests for an extension of the time in which to answer shall be submitted in writing to the Chancellor at least five days before the 20-day answering period has expired. At the same time a request is made to the Chancellor, a copy of such request shall be served on the other party or parties. The Chancellor will notify all parties of the decision with respect to the request. [In no event shall an extension be granted for more than 10 days.]

(f) (No change.)

9:2-6.18 Report of hearing officer

(a) (No change.)

(b) The Chancellor shall adopt, reject or modify the recommendations contained in the Report of the Hearing Officer within [20] **45** days of the Report.

(c) (No change.)

9:2-6.20 Effective date of Chancellor's decision

[(a)] Except where otherwise provided by law, the administrative adjudication of the Chancellor shall be effective on the date of delivery or on the date of mailing of the final decision to the parties of record, whichever shall occur first or shall be effective on any date after the date of delivery or mailing, as the Board of Higher Education or the Chancellor may provide by general rule or by order in the appeal.

[(b)] The date of delivery or mailing shall be stamped on the face of the decision.]

9:2-7.4 Extensions of time

Extensions of time for filing by the parties of points of appeal, answering points, memoranda and objections or exceptions to a report and replies thereto will not be granted unless exceptional reasons are presented by the parties to justify such a request. Requests for extensions of time shall be submitted in writing to the secretary to the Board for Appeals, with a copy to the other party or parties. The secretary [tot he] **to the Board for Appeals** will notify all parties of the committee's or board's decision with respect to the request.

9:2-7.5 Committee on appeals

(a) (No change.)

(b) The Committee on Appeals shall consist of not less than three members of the Board of Higher Education appointed by the chairman from among the [public] members of the board, which members shall serve in such capacity until replacements are appointed.

(c)-(d) (No change.)

9:2-7.6 Functions of Committee on Appeals

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

(h) The Committee on Appeals, considering a given appeal, shall set forth its determination thereon in a written report which shall include findings of fact, conclusions of law, and recommendations of appropriate action to be taken in the matter. If, after reviewing the record and the oral arguments presented, if any, the Committee on Appeals is in agreement with any or all of the findings of fact and conclusions of law contained in the Chancellor's decision, it may specifically adopt those findings and conclusions as its own and make a written report containing recommendations based thereon. [The written report of the Committee on Appeals shall be simultaneously delivered or mailed to parties or record affected thereby or their attorneys of record, who may within 15 days of such delivery or mailing, file written exceptions and objections thereto with the Board of Higher Education in care of the secretary of the Board for Appeals. Replies to exceptions and objections shall be filed within 10 days from the date on which the exceptions and objections were delivered or mailed.]

(i) (No change.)

9:2-7.7 Decision of the Board of Higher Education

(a) After receiving the report of the Committee on Appeals, the Board of Higher Education, in open meeting, shall adopt, reject, or modify the findings of fact, conclusions of law, and recommendation of the Committee on Appeals and shall thereafter make a final determination with respect to such controversy. Such final determination shall be embodied in a written decision and shall include an appropriate order disposing of the matter. [Such written decision and order shall be embodied in a written decision and shall include an appropriate order disposing of matter.] Such written decision and order shall be delivered or mailed to the parties of record affected thereby or their attorney of record.

(b) (No change.)

9:2-8.1 Public petitions regarding Board of Higher Education rulemaking

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

(c) Petitions for the promulgation, amendment or repeal of a rule of the Board of Higher Education shall be addressed to:

HIGHER EDUCATION

PROPOSALS

Office of Governmental Affairs
 Department of Higher Education
 [225] 20 West State Street
 CN 542
 Trenton, New Jersey 08625

(d) (No change.)

9:2-9.1 Board of Higher Education structure

(a) The Board of Higher Education consists of 18 members, of which nine are citizen members. Seven are representatives of higher education institutions: the chairman of the Board of Governors at Rutgers, The State University, the chairman of the Board of Trustees of the University of Medicine and Dentistry of New Jersey, the chairman of the Board of Trustees of New Jersey Institute of Technology, the chairman of the New Jersey State College Governing Boards Association, the chairman of the Council of County Colleges, the president of the State Board of Education, and the representative of the [Association of Independent Colleges and Universities in New Jersey] **private colleges and universities of New Jersey**. The Chancellor and the State Commissioner of Education are non-voting, ex-officio members.

(b) **Institutional representatives may designate, in writing, alternate members to attend meetings of the Board.**

9:2-9.5 Public information

A member of the public may obtain information in accordance with all applicable Federal or State laws and rules by contacting the Office of the Chancellor, Department of Higher Education, [225] 20 West State Street, CN 542, Trenton, New Jersey 08625.

9:2-10.1 Code of ethics; Department of Higher Education

[(a)] In recognition that it is essential that the conduct of public officials and employees shall hold the respect and confidence of the people, Chapter 182, Public Laws 1971 (N.J.S.A. 52:13D-1 et. seq.) was enacted by the New Jersey Legislature and signed by the Governor on June 2, 1971. That statute provides that within the guidelines contained therein, the head of each state agency shall promulgate a code of ethics to govern and guide the conduct of State officers and employees in his agency.]

[(b)](a) The following code of ethics is applicable to employees paid from Federal, State or county funds and who are employed in the New Jersey Department of Higher Education, **public colleges** [(including county community colleges)] and universities under its jurisdiction, and institutions, commissions and other agencies organized within the Department:

1.-7. (No change.)

(b) **The provisions of this subchapter shall only apply, in whole or in part, to any public institution of higher education in New Jersey which has not adopted or does not have in effect, a policy governing the contents of this subchapter which is equal to or greater than the scope and requirements set forth herein.**

9:2-10.2 Guidelines on outside employment for full-time employees

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

(c) All regular or continuing outside employment of a full-time **non-bargaining unit** employee of a public institution of higher education or the Department during the regular work year [should ordinarily] **must** have the prior and continuing written approval of the chief executive officer of the institution or his designee or the Chancellor for Departmental personnel. **All full-time bargaining unit employees of the Department or a public institution of higher education shall report all such outside employment on forms provided for such purpose.**

(d) No full-time **non-bargaining unit** employee at a public institution of higher education or the Department may perform part-time work of any kind for another public institution or agency unless such part-time work conforms in all respects with [subsections] (a), (b) and (c) [of this Section] **above** and, in addition, has the approval of the chief executive officer of the public institution or agency for which it is to be performed. If such part-time work exceeds in any respect the limitations established in [subsections] (a), (b) and (c) [of this Section] **above** then the full-time and part-time employers should agree upon the share of the employee's full-time salary that each will pay. The part-time employer should reimburse the full-time employer

by means of a certificate of debit and credit if both are State agencies, or otherwise by check.

[(e)] No full-time employee at a public institution of higher education or the Department may receive compensation from or through that institution in excess of his or her regular full-time salary, except as follows:

1. Faculty members may receive payment for overload teaching and other professional services to the extent permitted by contract or institutional regulations.

2. Faculty members may receive release time for the administration of grants or special projects that benefit the institution. The institution should recover the cost of such release time from the moneys received for such grants or projects.

3. Administrators may receive payment for teaching one course per semester. Such payment should be made at the institution's overload teaching rate.

4. Classified employees who perform overtime work should be compensated in accordance with established regulations.]

[(f)](e) These guidelines shall not apply to outside employment undertaken by a full-time employee during his or her annual leave or vacation periods, except that no such employee may engage at any one time in outside employment that constitutes a conflict of interest.

[(g)](f) These guidelines shall not apply to outside employment as defined in [Sections] N.J.S.A. 18A:6-8.1 and 18A:6-8.2 [of the New Jersey Statutes]. Such outside employment, however, should be reported to the institution's chief executive officer or the Chancellor as a matter of record:

NOTE: The intention of [subsection] (c) [of this Section] **above** is to differentiate between outside employment which may be regular or continuing and which therefore requires the written approval of the chief executive officer or his designee or the Chancellor for Departmental personnel and outside employment which may be irregular or infrequent and which therefore does not require such approval. Regardless of whether a specific instance of outside employment need be approved under these guidelines, it must in each instance meet the three requirements of [subsection] (b) [of this Section] **above**.

It is difficult to clearly define "regular or continuing," as opposed to "irregular or infrequent," outside employment. Each employee is therefore responsible for making this judgment in a reasonable manner which is consistent with the spirit of these guidelines. The following examples of outside employment activities which may be classified as "regular or continuing" are given in order to illustrate the intent of the guidelines and are not meant to be an exhaustive listing of such activities.

1.-4. (No change.)

9:2-10.3 Procedures for reporting outside employment status

(a) Any employee who intends to undertake regular or continuing outside employment shall report in advance and in writing his or her intention to the Chancellor in the case of Departmental personnel or to the chief executive officer or his designee. Where prior approval is not feasible, all regular and continuing outside employment should be reported promptly **provided, however, that any outside employment by the Vice Chancellor or an Assistant Chancellor of the Department of Higher Education must be approved by the Chancellor prior to commencement of the employment.** For all outside employment for which approval is necessary, the employee shall file a status report with the approval officer at the beginning of each succeeding fiscal year during which he or she intends to continue the outside employment.

(b) Each institution of higher education **and the Department** shall devise its own form for the reporting of outside employment [status and shall file a sample copy thereof with the Chancellor by May 1, 1973]. The form should contain enough specific information to allow the approval officer to determine whether or not the employee intends to engage in regular or continuing outside employment, and to insure that the outside employment, if permitted, will not:

1.-3. (No change.)

(c) (No change.)

(a)

**BOARD OF HIGHER EDUCATION
County Community Colleges
Code of Ethics**

Proposed Amendment: N.J.A.C. 9:4-2.4

Authorized By: Board of Higher Education, T. Edward
Hollander, Chancellor and Secretary.
Authority: N.J.S.A. 18A:64A-7, 18A:64A-12 and 18A:3-14(h).
Proposal Number: PRN 1990-116.

Submit comments by April 4, 1990 to:
Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

This proposed amendment supplements a new rule proposed in the May 15, 1989 New Jersey Register at 21 N.J.R. 1269(a) regarding codes of ethics at county colleges and adopted elsewhere, with substantive and technical changes not requiring additional public notice and comment, in this issue of the New Jersey Register. The amendment adds to the code of ethics for board of trustee members at such institutions by stating a trustee's responsibility to render effective service, to limit his or her use of authority and to function as a policy maker at the college, not an administrator.

Social Impact

The proposed amendment clarifies the nature of the trustee's role and responsibilities at the college to ensure that each trustee properly fulfills his or her role as a policy maker and reviewer of administrative performance in an effective manner without improperly interfering in the administration of the college.

Economic Impact

The proposed amendment sets forth certain guidelines for the performance of members of boards of trustees at county community colleges and commissions and, thus, does not have any economic impact.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment contains provisions regarding the actions of members of boards of trustees of county community colleges and commissions.

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

9:4-2.4 Code of ethics

(a) A trustee should devote time, thought and study to the duties and responsibilities of a community college trustee so as to render effective and creditable service.

(b) As an individual, a trustee has no legal authority outside of the meetings of the board and should conduct himself or herself accordingly with the college staff, local citizens, and all facets of the local community.

(c) An important function of the board of trustees is to establish the policies and the goals of the institution and to audit the performance of the administration in the fulfillment of these policies and the progress towards the goals but the educational program and the conduct of the college's business should be left to the president and the president's staff.

Recodify existing (a)-(i) as (d)-(l) (No change in text.)

(b)

**BOARD OF HIGHER EDUCATION
State Colleges**

Proposed Readoption: N.J.A.C. 9:6

Authorized By: Board of Higher Education, T. Edward
Hollander, Chancellor and Secretary.
Authority: N.J.S.A. 18A:64-6 and 18A:3-14.
Proposal Number: PRN 1990-117.

Submit comments by April 4, 1990 to:
Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 9:6 expires on May 20, 1990. The Board of Higher Education has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The Board proposes to readopt these rules without change.

Members of the Department of Higher Education, on behalf of the Board, have been working in conjunction with the State colleges during the past several months with regard to certain new rules which will be located within this chapter. Those new rules were not completed in time to include them within this proposal. If this proposal had been delayed, the chapter would have expired prior to its readoption with the new provisions. Thus, the Board determined to proceed with this readoption at this time. At a later date, the Board will propose new rules which, if adopted, will become part of this chapter.

The provisions of this chapter govern various areas at the State colleges including admissions policies, baccalaureate degree standards, academic personnel policies, tenure and multiyear contract rules, reduction in force policies and student trustee policies.

Social Impact

The rules proposed for readoption, for the most part, set forth certain policies which seek to ensure the quality of the State colleges within New Jersey's system of higher education. This is accomplished in many areas. The admissions policies seek to ensure that regularly admitted students at the State colleges will be of a sufficiently high standard while at the same time, provision is to be made for the admission of special categories of students to ensure equal educational opportunity. The rules also seek to maintain high academic standards for the degree programs offered by the institutions and also that the faculty of the institutions meet certain qualifications. The rules also set forth criteria for the employment of non-teaching professional staff and procedures for the reduction of staff at times of fiscal exigency.

Economic Impact

In general, the rules proposed for readoption do not have any direct economic impact on the State colleges as they mainly govern various academic standards and procedures that must be followed by the State colleges.

N.J.A.C. 9:6-3 and 4 do impact upon individual employees at the State colleges to the degree that the rules concerning qualifications, promotions, merit awards, tenure and annual contracts may affect the salary levels of such employees.

N.J.A.C. 9:6-5, which defines the process by which staff may be reduced in times of fiscal crisis, would have an impact both on the colleges, which may invoke the procedures set forth within this subchapter and thereby reduce the amount of their payroll, and on individual staff members who could be laid off under these provisions.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because these rules do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules set forth particular academic and personnel policies at New Jersey State colleges.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 9:6.

HUMAN SERVICES

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES Manual of Standards for Licensed Community Care Residences for the Developmentally Disabled Proposed Readoption with Amendments: N.J.A.C. 10:44B

Authorized By: William Waldman, Acting Commissioner,
Department of Human Services.

Authority: N.J.S.A. 30:11B-1 et seq., specifically 30:11B-4.
Proposal Number: PRN 1990-128.

Submit comments by April 4, 1990 to:

James M. Evanochko
Administrative Practice Officer
Division of Developmental Disabilities
CN 700
Trenton, NJ 08625

The agency proposal follows:

Summary

N.J.A.C. 10:44B, Manual of Standards for Skill Development Homes, Family Care Homes and Family-Based Respite Care Homes, will expire on April 15, 1990, pursuant to Executive Order No. 66(1978). The Division of Developmental Disabilities has reviewed these rules and found them, with the amendments proposed herein, to be reasonable, necessary and proper for the purposes for which they were originally promulgated.

N.J.S.A. 30:11B-1 et seq., Community Care Residences for the Developmentally Disabled and the Mentally Ill, requires that the Division set appropriate standards for community residences. Rules containing standards for group homes and supervised apartments serving up to 16 developmentally disabled individuals were adopted on June 22, 1988, and can be found at N.J.A.C. 10:44A.

This chapter applies to programs where a maximum of four developmentally disabled individuals live in owner-occupied residences, and receive room, board and personal guidance commensurate with their individual needs.

The rules proposed for readoption cover physical and program requirements for the purpose of protecting the health, safety, welfare and human rights of the individuals residing in these licensed community care residences for the developmentally disabled. The rules will enhance such individuals' opportunities for normalized living in accordance with the current consensus of professionals, consumer and advocacy groups on desirable and beneficial services to the developmentally disabled.

The majority of the proposed amendments are structural or language changes, which did not serve to add or expand requirements but, rather, were intended to achieve greater clarity regarding compliance with individual standards.

Seven major changes were introduced based upon a review of the past application of the current rules by licensing staff, recommendations received in response to a written survey of the licensees, or the final recommendations from an advisory committee, comprised of representatives of provider organizations and Division staff.

1. Skill development, family care, and respite care homes have been consolidated under one separate classification and license, community care residence.

2. The restriction prohibiting the use of an alternate for more than six hours has been changed to allow a family member to serve as an alternate during time spans in which clients are not receiving training, specifically normal bedtime hours.

3. Clients requiring skilled nursing care can be placed in providers' homes if the provider has a valid LPN or RN license. Additionally, the alternate shall also be required to have a valid LPN or RN license.

4. Mantoux Test results for tuberculosis shall be required as part of all client physicals. This test shall be administered to every client and every three years.

5. Electric-powered or battery-powered smoke detectors shall be allowed in licensed residences. Local building codes require the installation of electric-powered smoke detectors in single family or multi-family dwellings.

6. At least one client bedroom window shall be operable and open directly outdoors. Additionally, first floor windows shall have an operable window space of five square feet and second floor windows shall have an operable window space of 5.7 square feet.

7. Clients' bedrooms are now required to have both dresser drawers and an enclosed closet for the storage of personal possessions.

N.J.A.C. 10:44B-1 deals with the purpose and scope of the chapter, definitions of words and terms used in the rules, the procedure to be followed for application for a license and the options on non-compliance with standards. A definition of negative licensing sanction has been added to clarify the types of actions which may be taken by the Department against a licensee for noncompliance with this chapter. New definitions for respite care and skill development programs to eliminate redundant and possibly misleading language.

N.J.A.C. 10:44B-2 addresses administrative policies and practices: qualifications of a licensee and reporting and recordkeeping responsibilities. At N.J.A.C. 10:44B-2.1(f)3iii, additional language has been added setting forth the requirements for the reporting of abuse of the elderly imposed under N.J.A.C. 5:100, rules of the Ombudsman for the Institutionalized Elderly, and the enabling statute, N.J.S.A. 52:27G-1 et seq.

N.J.A.C. 10:44B-3 addresses the rights of the developmentally disabled individuals in residence, personal care, clothing and nutrition.

N.J.A.C. 10:44B-4 addresses the habilitation process whereby personal growth and development is pursued for each individual. N.J.A.C. 10:44B-4.1 has been clarified to more accurately reflect the Individual Habilitation Plan and Individual Education Plan record maintenance requirements placed on the community care residences. The Department believes it is important to have these documents available in the community care residence.

N.J.A.C. 10:44B-5 addresses health services: general medical health care and medication requirements. N.J.A.C. 10:44B-5.1(c), regarding Mantoux Skin Tests, has been added to conform with current Department medical practices concerning physical examinations of individuals receiving services from the Division of Developmental Disabilities.

N.J.A.C. 10:44B-6 addresses physical plant requirements for the overall condition of the home, fire safety, and individual rooms for the developmentally disabled person. N.J.A.C. 10:44B-6.1(s), regarding swimming pools and 10:44B-6.3(a), regarding windows, have been added to conform to the requirements of the Uniform Construction Code, N.J.A.C. 5:23, and local ordinances.

Social Impact

The anticipated positive effect of the rules proposed for readoption with amendments is to preserve and improve the level of service in owner-occupied community care residences so that those individuals living in them may develop their potential to the fullest, in a normalized environment. For example, N.J.A.C. 10:44B-3.3(f), regarding dining with the licensee's family, has been added to clarify the Department's intent that the individual's program be as normalized as possible. Family dining, on a regular basis, is a means to this end. At N.J.A.C. 10:44B-4.2(a)3, text has been added which permits individuals who are 55 years or older to decide whether they would like to continue to work or to retire. The proposed rule clarifies that the community care residence licensee is responsible for encouraging the individual to engage in age-appropriate activities outside the residence if retirement is selected as an option.

The rules provide for the delivery of essential services in an individualized manner, to better serve the needs of the developmentally disabled and their families. It is anticipated that the regulated group will have a positive reaction to the rules as amended, due to the extensive input solicited by the Division.

Economic Impact

The Department expects that the new rule on the service providers will not increase the economic impact on licensees. No additional supplies or equipment are required by the amended rule.

The Department is proposing the elimination of the current license fee of two dollars, in order to further encourage applications to provide this service. Furthermore, the present fee does not justify the administrative costs associated with its processing; therefore, an actual saving will be achieved for the general public upon elimination of the fee.

Regulatory Flexibility Statement

The rules proposed for re-adoption affect small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. The rules impose program and physical plant reporting, recordkeeping and other compliance requirements on licensed community care residences for the developmentally disabled. There are approximately 850 community care residences in New Jersey, all of which can be defined as small businesses. Since the entire regulated group consists of small businesses, there is no reason for differentiation, based on business size, in these requirements.

Full text of the proposed re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:44B.

Full text of the proposed amendments follows (additions shown in boldface thus; deletions shown in brackets [thus]):

CHAPTER 44B

MANUAL OF STANDARDS FOR [SKILL DEVELOPMENT HOMES, FAMILY CARE HOMES AND FAMILY-BASED RESPITE] COMMUNITY CARE RESIDENCES

SUBCHAPTER 1: GENERAL PROVISIONS

10:44B-1.1 Purpose and scope

The purpose of this chapter is to provide for the protection of persons with developmental disabilities who require such supervision and to provide for overall improvement of the quality of life for individuals residing in community care residences for the developmentally disabled. If all persons living in a particular place of residence are developmentally disabled, and where all such individuals do not require personal guidance, as determined by the interdisciplinary teams, licensure is available on a voluntary basis in accordance with the expressed preferences of the developmentally disabled individuals.

10:44B-1.2 Severability

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

10:44B-[1.1]1.3 Definitions

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

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

"Advocate" means a public or private officer, agency, or organization designated by state legislation, state plan, or the governor to represent the interests of persons with developmental disabilities and speak on behalf of such individuals.

"Age appropriateness" means that aspect of normalization which reinforces recognition of an individual as a person of a certain chronological age.

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

"Boarder" [shall] means any person residing in the residence who is not a member of the family, who is not developmentally disabled, and who receives room, board, and personal guidance.

"Capacity" [shall] means the maximum number of individuals, including boarders, who may be accommodated in the home, other than family members, at any time under the terms of the home's license.

[Case manager shall mean the authorized representative of any agency, who coordinates the provision of social services to boarders or clients residing in the home.]

"Case manager" means the authorized representative of any agency who coordinates the provision of social services and/or habilitation services to boarders or developmentally disabled individuals.

"Cerebral Palsy" [shall] means a persisting qualitative motor disturbance appearing before the age of three, due to non-progressive damage of the brain.

"Chores" [shall] means those duties which are normally performed by members of a household as a matter of routine.

["Client" shall mean a developmentally disabled person admitted to or eligible for admission to a community residence.]

"Community care residence" means a private home or apartment in which an adult person or family contracts to provide developmentally disabled persons with care and/or training.

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

"Community Services" means a component of the Division of Developmental Disabilities which provides work and training programs, housing and supportive services to aid persons with developmental disabilities in establishing themselves in the community.

"Department" means the Department of Human Services.

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

"Developmental disability" means a severe, chronic disability of a person which:

1. Is attributable to a mental or physical impairment or combination of mental or physical impairments;
2. Is manifest before age 22;
3. Is likely to continue indefinitely;
4. Results in substantial functional limitations in three or more of the following areas of major activity; self care, receptive and/or expressive language, learning, mobility, self-direction; and capacity for independent living or economic self-sufficiency; and
5. Reflects the need for a combination and sequence of special interdisciplinary or generic care, treatment, or other services which are of life-long or extended duration and are individually planned and coordinated.

"Epilepsy" [shall] means a chronic disease of the central nervous system characterized by convulsions and often unconsciousness.

"Exploitation" [shall] means any unjust or improper use of another person for one's profit or advantage.

[Family care home" shall mean a private home or apartment in which an adult person or family contracts to provide developmentally disabled persons with room, board, and personal guidance. Although individualized training is not provided in the home, the licensee must assist the individuals in working toward their personal development.]

"Family care program" means a private home or apartment in which the community care licensee contracts to provide developmentally disabled persons with room, board, and personal guidance.

"Immediate family" [shall] means the licensee's spouse, parents, step-parents, children, step-children, grandchildren, and grand-parents.

"Individual" means a person with developmental disabilities residing in a licensed community residence for the developmentally disabled.

"Individual with developmental disabilities" will be used as necessary to distinguish between such persons and others, such as staff of the agency or staff of the Division of Developmental Disabilities.

"Interdisciplinary team" (IDT) means a group of persons with a variety of skills and services knowledge who assist in the development of a habilitation plan appropriate to a specific individual who is being served.

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

"Individual Habilitation Plan" (IHP) means a document that provides an evaluation of the individual's capabilities and needs and sets forth clearly-defined goals and measurable, behaviorally-stated objectives describing an individualized program of care, training, treatment, and therapies designed to attain and/or maintain the physical, social, emotional, educational and vocational functioning of which the individual is presently or potentially capable.

"License" [is] means the authorization issued by the Department of Human Services for a period of up to one year to operate a community residence providing services to developmentally disabled persons. A license can be denied, revoked, suspended, or can be placed on provisional status by the Department of Human Services for violations of minimum standards promulgated herein.

"Licensee" [shall] means one or more adults, otherwise known as providers, responsible for the overall operation of the home, and who are named on the license.

"Licensing agency" [shall] means the Office of Licensing and Inspections, within the Department of Human Services, Division of [Mental Retardation] **Developmental Disabilities**.

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

"Natural person" [shall] means an individual human being, as opposed to a corporation (an "artificial" or "legal" person).

"Negative licensing sanction" means an action taken which imposes a restriction on a licensee and may include suspension of admissions, issuance of a provisional license, a reduction in the licensed capacity, a non-renewal of license, a suspension of the license, or a revocation of the license.

"Neglect" [shall] means the failure of an individual to provide for or maintain the care and safety of [clients] **individuals** under his or her supervision, including, but not limited to, failure to provide and maintain proper and sufficient food, clothing, health care, shelter, and/or adult supervision.

"Pattern of non-compliance" means the recurrence of licensing violations over time.

"Personal guidance" means the assistance provided to an individual with developmental disabilities in activities of daily living because he or she routinely requires help completing activities of daily living and/or cannot direct someone to complete such activities when physical handicaps prevent self-completion; or there is a documented health or mental health problem requiring supervision of the person for the protection of the individual or others. In the absence of a court determination, the IDT shall determine the need for personal guidance for each individual.

"Private placement" means the status of an individual who does not receive services from the Division of Developmental Disabilities at the time of his or her admission to a community residence governed by this chapter.

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

["Respite care home" is a family-based community residence in which room, board, and personal guidance are provided on a tempor-

ary basis, not to exceed 30 days. Unless otherwise specified within the body of this chapter, all regulations herein apply to these facilities.]

"Respite care program" means the provision of room, board and personal guidance services, on a temporary basis not to exceed 30 days, in a licensed community care residence.

["Skill development home" shall mean a private home or apartment in which an adult person or family contracts to provide developmentally disabled persons with care and training. The individual or family are paid for the developmentally disabled client's room and board as well as a fee for one to one, goal-directed training which is conducted in accordance with the client's Individual Habilitation Plan and overseen by the case manager.]

"Skill development program" means care and training conducted in accordance with an Individual Habilitation Plan and overseen by the case manager, provided in a private home or apartment to developmentally disabled persons by an adult person or family under contract with the Department.

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

"Variance" [shall mean the permission granted to the licensee to meet the intent of a standard in an alternative manner.] means recognition that the licensee has complied with the intent of a standard in a Division-approved alternative manner.

"Waiver" shall mean the temporary suspension of a standard, which is granted in writing by the licensing agency.

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

[10:44B-1.2 Application for license]

10:44B-1.4 Application for community care licensure

(a) All initial inquiries for a license to operate a [Skill Development Home, Family Care Home, or Respite Care home] **community care residence** shall be made to the appropriate Regional Office of the Division of [Mental Retardation] **Developmental Disabilities**.

| | |
|--------------------------------|---|
| Regional Office: | Counties of Jurisdiction: |
| Northern Regional Office | Sussex, Morris, Warren, [Hunterdon, Somerset] Passaic, Bergen, Hudson |
| [Metropolitan Regional Office] | [Bergen, Passaic, Essex, Hudson, Union] |
| Upper Central Regional Office | Essex, Somerset, Union |
| [Central Regional Office] | |
| Lower Central Regional Office | Middlesex, Monmouth, Mercer, Ocean [Burlington], Hunterdon |
| Southern Regional Office | Camden, Atlantic, Gloucester, Cumberland, Salem, Cape May, Burlington |

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

(c) An initial interview and review of the applicant's home ("Home Study") shall be conducted.

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

10:44B-[1.3]1.5 Licenses and inspection

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

Office of Licensing and Inspections
 Division of [Mental Retardation] **Developmental Disabilities**
 [Capitol Place One
 222 South Warren Street]
 CN 700
 Trenton, New Jersey 08625

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

(c) The initial license shall permit a [provider] licensee to operate [for a] a **maximum** six-month period in which to demonstrate their ability to comply with minimum standards.

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

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

(f) [The license fee shall be set at two dollars per year.] **The community care residence shall be the licensee's primary address.**

(g) No licensee shall operate more than one [Skill Development Home, Family Care Home or Respite Care Home] **community care residence**.

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

(i)-(j) (No change.)

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

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

(m) Waivers or variances of specific standards may be granted at the discretion of the Division of [Mental Retardation] **Developmental Disabilities**, provided that:

1. Strict enforcement of the rule would result in unreasonable hardship on the [facility] **residence**;

2. The waiver or variance is not simply for the convenience of the licensee or other [non-clients] **occupants of the home**;

3. The waiver or variance is in accordance with the particular needs of [clients] **an individual(s)**.

i. The waiver or variance does not adversely affect the health, safety, welfare, or rights of [the client] **any individual**.

ii. Verification that the waiver or variance is in accordance with [client] **individual** needs may be requested from the case manager by the licensing agency; and

4. The waiver is requested in writing by the licensee complete with substantial detail justifying the request.

10:44B-[1.4]1.6 Options on non-compliance with standard

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

(b) If the inspection report indicates substantial non-compliance and/or willful non-compliance with the regulations contained in this manual, or if any of the regulations not met represent a threat to

the health, safety, or rights of the [clients] **individuals** or boarders, licensure may be denied or revoked, following 30-day notice to the provider of such intent. Any subsequent application may be denied.

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

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

SUBCHAPTER 2. ADMINISTRATIVE POLICIES AND PRACTICES

10:44B-2.1 Licensee requirements

(a) The licensee shall have overall responsibility for the [clients] **individuals with developmental disabilities** and boarders in the [home] **residence**.

1. Except as otherwise provided in the Rehabilitated Offenders Act, no license will be issued to any person who, at any time, has been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, crimes against the person or other like offense(s). Additionally, no license shall be issued for a [home] **residence** in which any occupant has been adjudged civilly or criminally liable for abuse of another person.

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

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

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

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

(c) Any applicant who receives or applies, subsequent to licensure, for public assistance shall document in writing to the licensing agency that he[/] or she has notified the welfare agency or board of social services of his[/] or her intention to seek licensure as a community residence for the developmentally disabled, as well as information on the allowable rates for reimbursement in the program.

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

1. An alternate [must] **shall** be available in case of emergency.

2. The use of an alternate for more than six hours daily is prohibited[.] **unless the following conditions are met:**

i. **The alternate shall complete an approved training and orientation program as designated by the placing and/or licensing agency;**

ii. **The alternate shall meet the requirements of (a)3i above;**

iii. **The alternate shall be a family member that resides at the residence; and**

iv. **The alternate shall only be used during an individual's normal bedtime hours.**

3. The alternate must be familiar with the [clients] **individuals**, the licensee's [home] **residence**, and all emergency procedures.

4. The alternate shall meet the requirements of [N.J.A.C. 10:44B-2.1](a) **above** with the exception of [2.1](a)3i **above**.

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

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

(e) **An individual(s) may be permitted to be left unsupervised for specific amounts of time with documented approval of the Inter-**

disciplinary Team. Additionally, approval must be documented in the IHP.

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

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

2. [Clients] **Individuals** shall not be directed or allowed to discipline other [clients] **individuals** in the [home] **residence**.

3. All alleged and suspected mistreatment of [clients] **individuals** shall be reported immediately to the responsible placing agency representatives.

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

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

iii. **Suspected abuse or neglect of a person 60 years of age or older who resides in living arrangements other than their own home shall be reported to the New Jersey Office of the Ombudsman.**

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

1. Death of [a client] **an individual** or a boarder;
2. Admission of the [client] **individual** or boarder to a hospital or treatment in an emergency room;
3. Emergency removal of [a client] **an individual** or a boarder;
4. [A client] **An individual** or boarder missing for more than two hours, or [a client's] **an individual's** returning from a home or other visit two hours or more past scheduled time;
5. Injuries to [a client] **an individual** or boarder involving sutures, fractures, lost teeth, etc;
6. Any fire requiring the services of a fire department; or
7. The disruption of any vital utility, [e.g.] **for example**, heat, water, electricity, [phone] **telephone**, etc.

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

1. Any disruption of day program;
2. The grossly negative impact of any [clients'] **individuals'** visits to or with family or friends; [or]
3. An increase in the number of family members in the [home] **residence**; or
4. **Any change of the licensee's telephone number.**

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

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

(j)(k) No licensee or his[/] or her relative shall be the legal guardian, representative payee or beneficiary of an insurance policy for any [client] **individual** residing in the licensee's [home] **residence**.

(k)(l) The licensee shall be required to complete [a course of instruction provided by the Division of Mental Retardation] **all courses of instruction that are required or deemed necessary by the placing agency and/or licensing agency.**

10:44B-2.2 Placements and departures

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

1. No more than four [clients] **individuals receiving services from** [of] the Division of [Mental Retardation] **Developmental Disabilities** shall be placed in any one [home] **residence**.

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

(c) The licensee shall at no time exceed the licensed bed capacity of the [home] **residence. Individuals shall only occupy bedrooms that**

have been inspected and/or approved by the Office of Licensing and Inspections.

(d) Third floor occupancy by [clients] **individuals** shall be prohibited.

(e) [Clients who are mobile non-ambulatory (capable of independent bed-to-wheelchair transfer) or with ambulation difficulties, shall be housed on ground floors exclusively.] **Non-ambulatory individuals shall not have bedrooms above or below the first floor of any residence, unless a specific waiver is granted by the Office of Licensing and Inspections.**

(f) The licensee shall accept only [clients] **individuals** for whom he[/] or she can provide adequate care.

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

2. [Clients] **Individuals** requiring skilled nursing care shall not be maintained in the [home.] **residence unless the following requirements are met:**

- i. **The licensee shall have a valid LPN or RN license; and**
- ii. **The alternate shall have a valid LPN or RN license.**

(g) The licensee shall notify the Regional Office **60 days in advance** of any intention to voluntarily cease to operate a community residence.

(h) **The licensee shall notify the Regional Office in writing, 30 days prior, of any intention to have an individual discharged from the home.**

10:44B-2.3 Records

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

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

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

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

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

(e) [An individual client] **A separate folder shall be maintained for each individual and be appropriately marked with his[/] or her name.**

(f) [Individual client records] **Each individual's record shall include:**

1. [Full] **The full name of [client] the individual;**
2. [Date] **The individual's date of birth;**
3. [Date] **The date of placement into [home] the residence;**
4. [Names] **The names and addresses of all persons or agencies responsible for placement;**
5. [Name] **The name and address of all personal physicians and dentists;**
6. [Name] **The name, address and telephone numbers of the individual's legal guardian (or guardianship worker), next of kin, and other interested person(s);**

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

- i. [Responsibilities] **The responsibilities of all parties;**
- ii. [Rate] **The rate of payment to the licensee;**
- iii. [Effective] **The effective dates of the contract;**
- iv. [Amount] **The amount of [client] the individual's spending money/personal needs allowance; and**
- v. [Signature] **The signatures of all parties[.];**
8. Background information to include:
 - i. [Client] **Individual** abilities;
 - ii. Religious preference;
 - iii. Social Security number;
 - iv. Special dietary needs;

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- v. Behavioral characteristics;
- vi. Additional handicaps or disabilities;
- vii. Interests, hobbies; **and**
- viii. Medical history to include:
 - (1) Allergies;
 - (2) Seizure history;
 - (3) Present medication;
 - (4) Special medical problems; **and**
 - (5) For children, an immunization record[.];
- 9. Monthly reports of [clients'] **individual's** social and behavioral progress or regression (Does not apply to Respite Care [homes] **Program**);
 - i. [Reports shall include, but not be limited to, client's progress on Individual Habilitation Plan goals.] **Monthly reports of individuals receiving skill development training shall include, but not be limited to, the individual's progress on Individual Habilitation Plan goals.**
 - ii. If the [client] **individual** is subject to seizures, the [sponsor] **provider** shall indicate all seizure activity in the monthly report (including date, time, duration, surrounding circumstances, and treatment given)[.];
- 10. A copy of the current Individual Habilitation Plan [(Does not apply to Respite Care Homes)];
- 11. Annual physical examination[.]; **and the results of the Mantoux Test for tuberculosis completed within the last three years;**
- 12. A medication record, if the [client] **individual** receives [prescribed medication] **any medication prescribed or ordered by a physician;**
- 13. Authorization for emergency medical treatment (for [clients] **individuals** requiring a guardian);
- 14. Medical insurance information regarding payment for emergency services; **and**
- 15. **Licensees providing Respite Care services are required to maintain all records of individuals receiving services, to include (f)1-14 above, with the exception of (f)10i above.**
 - (g) If the [client] **individual** is not capable of managing his[/] or her own funds, the licensee shall maintain a record of all expenditures of the [client's] **individual's** personal funds. The record shall include:
 - 1. The date the [client's] **individual's** funds were **received and** disbursed;
 - 2. The amount **received and** disbursed;
 - 3. The purpose of each disbursement or expenditure; **and**
 - 4. All receipts related to disbursements or expenditures over \$10.00, which shall be saved by the licensee until the case manager signs off on the financial record.
 - (h) The licensee shall keep on file, at the [home] **residence**, the following administrative records:
 - 1. A placement agreement with all social service agencies from which the licensee will accept [clients] **individuals**;
 - 2. A record of all admissions and departures, including names and dates, for the previous 12-month period;
 - 3. A current copy of this Manual of Standards;
 - 4. A record of monthly fire evacuation drills, as specified in N.J.A.C. 10:44B-6.2[(f)](g)1; **and**
 - 5. A copy of his[/] or her current license.

SUBCHAPTER 3. [CLIENT] CARE OF THE INDIVIDUAL

10:44B-3.1 [Client] **Individual** rights and responsibilities

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

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

(b) The licensee may establish reasonable house rules **which shall not infringe on the rights of the individuals**.

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

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

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

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

iii. Complete privacy shall be afforded during visits.

3. Visiting is to be permitted during reasonable hours.

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

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

1. Licensees shall not impose their religious beliefs on [clients] **individuals** under their care.

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

(e) [Clients] **Individuals** shall have an opportunity to register and vote.

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

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

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

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

(j) Licensees shall not read [clients'] **individuals'** incoming or outgoing mail unless requested by the [client] **individual**.

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

(l) [Clients] **Individuals** shall be allowed to handle their own money consistent with their ability as determined by the case manager, licensee, and guardian (guardianship worker).

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

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

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

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

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

(c) Individual toilet articles—soap, washcloths, towels and toilet tissue—shall be available without additional expense to [clients] **individuals**.

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

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

10:44B-3.3 Food

(a) The licensee shall ensure that [a client] **an individual** receiving services is provided with three meals daily, either in the [home] **residence** itself or in the community.

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

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

(d) The daily diet for each [client] **individual** shall include foods from the four basic food groups:

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

(e) Food shall be wholesome, stored in a manner to keep it clean and safe for human consumption, prepared in the form that meets

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the medical and dietary needs of the [clients and served family style] **individual.**

(f) [Clients shall be consulted for preferences in determining menus.] **Individual(s) shall dine with the licensee's family on a regular basis.**

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

(h) **Licensees shall make a reasonable attempt to comply with food preferences requested by the individual(s) residing in the home.**

10:44B-3.4 Clothing

(a) Each [client] **individual** shall have the opportunity to select and purchase his[/or her own clothing as independently as possible.

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

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

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

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

SUBCHAPTER 4: HABILITATION

10:44B-4.1 Individualized Habilitation Plan

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

(a) An Individual Habilitation Plan shall be developed for each individual in accordance with N.J.S.A. 30:6D-10, 11, and 12 and shall be kept on file in the home. A copy of the Individual Education Plan for school age individuals shall also be kept on file in the home. (These requirements do not apply to Respite Care Programs).

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

(b) Each plan shall be developed by an interdisciplinary team consisting of those persons providing service to the individual. Documentation of who participated in the plan shall be provided on the sign-in sheet page of the IHP.

(c) Training received by [a resident] **an individual** in the home shall be consistent with the Individual Habilitation Plan.

(d) Written monthly progress notes shall be available at the residence and correspond to the IHP goals and objectives currently being implemented for each individual. The progress notes shall sufficiently describe the individual's progress or regression to give a clear picture of the individual's functioning in the skill area.

[(d)] (e) If an [client] **individual** is to be transferred or discharged, the Individual Habilitation Plan shall specify the plan to be followed upon his/her transfer or discharge. Except in an emergency, the Individual Habilitation Plan shall be prepared at least 30 days prior to the time the actual discharge or transfer takes place.

10:44B-4.2 Day programs

(a) [No client shall be prohibited by the licensee from participating in an organized program of habilitation or rehabilitation.] **Each individual shall be afforded an opportunity to participate in an organized program of habilitation, rehabilitation, or employment.**

1. Every [client] **individual** between the ages of three and 22 years shall receive an appropriate education in accordance with Federal and State laws.

2. All individuals over 22 years of age[, who so desire,] shall be provided with a program, unless a physician certifies in writing that such activity is medically inadvisable.

3. If employed, individuals 55 years or older may elect to retire; however, involvement in age-appropriate activities outside the residence shall be encouraged by the licensee.

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

SUBCHAPTER 5: HEALTH SERVICES

10:44B-5.1 General medical and health care

(a) A personal, primary physician or **medical group** shall be provided for each [client] **individual.**

(b) Each [client] **individual** shall have an annual medical examination.

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

2. A copy of the annual examination, signed and dated by the physician, shall be kept on file at the [home] **residence.**

(c) A Mantoux Skin Test shall be administered to every individual every three years.

1. If the Mantoux Skin Test for tuberculosis is negative, the test shall be repeated at three-year intervals or upon exposure to a case of tuberculosis.

2. If the Mantoux Skin Test for tuberculosis is positive, certification by a physician that the individual is free of contagion shall be obtained initially and at three-year intervals.

3. A copy of the complete examination signed and dated by the physician, shall be kept on file at the residence.

[(c)] (d) Each [client] **individual** shall have at least an annual dental examination.

1. Documentation from the dentist of this examination, signed and dated by the dentist, shall be kept on file at the [home] **residence.**

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

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

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

1. Antiseptic;
2. [Two-inch] **Sterile** rolled gauze bandage (**kerlix**);
3. [2" X 2"] **Sterile** gauze pads or **telfa pads**;
4. Adhesive tape or **surgical tape**;
5. Scissors;
6. Adhesive bandage, ([e.g.] for example, band aids) or **ribbon tape**.; and
7. A **thermometer (standard or digital).**

10:44B-5.2 Medication and drugs

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

1. [The determination of whether a particular client is capable of self-administering medication should be made and documented at the time the individual Habilitation Plan is developed or revised.] **Individuals receiving medication shall be trained to take their own medication to the extent that it is possible, as assessed and determined by the Interdisciplinary Team and documented in the IHP.**

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

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

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

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

PROPOSALS

Interested Persons see Inside Front Cover

HUMAN SERVICES

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

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

- i. [Signature] **The signature** of any persons administering medication followed by his[] or her initials;
- ii. [Type] **The type** of medication;
- iii. [Dosage] **The dosage**;
- iv. [Date] **The date** and time of administration; and
- v. A record of each dosage administered identified by the initials of the person administering the medication.

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

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

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

SUBCHAPTER 6. PHYSICAL PLANT AND SAFETY

10:44B-6.1 General home requirements

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

(b) Any one or two family dwelling shall be subject to the requirements of the New Jersey Uniform Construction Code (Use Group Category R-3) [and Department of Community Affairs Binding Interpretation no. 12 (June 4, 1981)].

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

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

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

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

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

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

(f) The licensee shall have an operable telephone.

1. The telephone number of the [DMR] **Division of Developmental Disabilities** hotline, as well as the nearest hospital, fire department, ambulance service, and police department shall be [posted by each phone] **readily accessible by the primary telephone.**

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

(h) Stair treads shall be at least nine inches deep and have risers no more than 8-1/4[] inches high.

(i)-(k) (No change.)

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

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

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

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

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

2. Toilet paper shall be available at each toilet.

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

(p) The accumulation of garbage or waste shall be [prevented] **prohibited.** Garbage containers shall be non-corrosive and non-combustible, leak-proof, and provided with tight fitting covers. **Any garbage container 13 gallons or less used inside the residence will not require a lid.**

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

(r) The **interior and exterior** of the [premises] **residence** shall be maintained free of hazards to the health, safety, and welfare of the [clients] **individuals.**

(s) **Swimming pools shall meet the requirements of all local ordinances and the State Uniform Construction Code.**

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

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

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

1. Design of the [home] **residence** shall be approved by the licensing agency prior to placement of such [clients] **individuals.**

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

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

[(w)](x) Kitchen facilities[;] **requirements are as follows:**

1. Storage space shall be clean and well ventilated.

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

2.-6. (No change.)

10:44B-6.2 Fire safety

(a) [Independent battery-powered smoke detectors shall be installed on each floor, including the basement, and located in the following areas:] **Independent battery or electric powered smoke detectors shall be securely mounted on the ceiling, at least four inches from the wall or according to manufacturers' instructions. Detectors shall be installed on each floor, including the basement, and located in the following areas:**

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

2. One unit in the general living area of the [home.] **residence; and**

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

(b) **Smoke detectors shall be properly maintained and be in good operating condition.**

[(b)](c) The licensee shall test **all** the smoke detectors monthly.

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

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

[(e)](f) The licensee shall develop and have available for review a written diagram for fire evacuation **that indicates exits and evacuation routes.**

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

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

2. Evacuation time shall be 2½ minutes or less.
3. A fire drill shall be conducted within [48] 24 hours of any admission.

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

4. Locations of the hypothetical fire shall vary.

5. If there is any reason to believe that an evacuation problem exists, a representative of [DMR] the **Division of Developmental Disabilities** shall observe a fire drill conducted in the [home] residence.

[(g)](h) Combustible materials shall not be stored within three feet of the furnace or hot water heater.

[(h)](i) Portable area or space heater shall be prohibited.

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

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

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

2. Protective screening shall be provided as necessary.

[(k)](l) Combustive materials shall be stored in non-combustible containers.

[(l)](m) The accumulation of combustible materials in attics, basements or other parts of the [home] residence is prohibited.

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

(o) **The licensee's bedroom shall be located within one floor of an individual(s) bedroom.**

10:44B-6.3 [Client] Individual rooms

(a) Every [client] individual bedroom shall be provided with at least one operable window [facing] opening directly outdoors.

1. **First floor windows shall have an operable window space of five square feet. Second floor windows shall have an operable window space of 5.7 square feet.**

2. **Plastic covering on an individual's bedroom window shall be prohibited.**

(b) [Clients'] **Individuals'** bedrooms shall not be a means of access to any other room. **The primary access to an individual's bedroom shall not be accessible through a bathroom or other bedroom.**

(c) [Clients] **Individual** occupancy shall be limited to floors on or above grade level. However, under certain conditions, basement occupancy may be permitted.

1. Such occupancy shall be allowed if:

- i. More than half the height of the room is above grade level;
- ii. The basement is provided with two or more independent means of egress, at least one of which leads directly outside; and
- iii. There are no other conditions which hinder the health, safety, or welfare of the [client] individual.

(d) There shall be a limit of three [clients] **individuals** to a bedroom.

(e) **Bedrooms** used by [clients] **individuals** shall contain the following minimum areas per person:

1. 70 square feet for occupancy by one person;
2. 130 square feet for occupancy by two people;
3. 190 square feet for occupancy by three people.

(f) At least one half of the floor area of every [client] **individual's** room shall have a ceiling height of 7½ feet. The floor area of that part of any room where the ceiling is less than five feet shall not be considered in determining allowable floor space.

(g) Every [client] **individual** room shall be provided with sufficient electrical outlets and lamps or light fixtures.

1. No temporary wiring shall be used except U.L.-listed extension cords, which do not run under rugs, through walls, or through doorways.

(h) Each [client] **individual** shall be provided:

1. A separate bed of proper size and height for his[er] or her convenience. High hospital beds shall not be used except for physically handicapped persons requiring them.

i. The bed may not be of the fold-up or convertible type. Roll-aways, cots, hide-a-beds, trundle beds, double deck beds, and day beds shall be prohibited[.];

2. A clean, comfortable mattress of fire resistant material not less than four inches thick[.];

3. A bed spring in good repair, **unless a platform bed is being utilized[.];**

4. A pillow, of non-allergenic material if necessary[.];

5. Drawers [or a] **and an enclosed closet for the storage of personal possessions, and in-season clothing. Out-of-season clothing may be stored in a place other than the individual's bedroom[.];**

6. Sufficient light for reading or hobbies[.];

7. Adequate sheets and blankets;

i. **Bed linen shall be changed a minimum of once a week; and**

8. [A] **One mirror of sufficient size.**

(i) Bed linen shall be changed a minimum of once a week.]

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Notice of Public Hearings

Determination of Eligibility for Services of the Division of Developmental Disabilities

Reproposed Repeal and New Rules: N.J.A.C. 10:46

Take notice that the Division of Developmental Disabilities will hold public hearings on the repeal and new rules proposed in the December 4, 1989 New Jersey Register at 21 N.J.R. 3712(a), regarding eligibility requirements for the services of the Division. The services are both residential and non-residential. Residential services include placement in State-operated developmental centers, community-based living arrangements and private institutions. Non-residential services include case management, report services, counseling, educational services, health services and day program services.

The locations and dates of the hearings are as follows:

Northern Region

Tuesday, March 27, 1990

North Jersey Developmental Center

Commissary Building

169 Minnisink Road

Totowa, N.J. 07512

Time: 5 P.M.-8 P.M.

Central Region

Thursday, April 5, 1990

North Princeton Developmental Center

George W. Radcliffe Multipurpose Building

County Route 61

Skillman, N.J. 08558

Time: 3:30 P.M.-6:30 P.M.

Southern Region

Tuesday, April 3, 1990

Vineland Developmental Center

West Campus

Learning Center

Almond Road Entrance

Vineland, N.J. 08360

Time: 5 P.M.-8 P.M.

All facilities are barrier-free. Should you require special arrangements (Signing, Translation) please contact the person(s) listed below.

Individuals interested in testifying at the hearings must advise the Division of Developmental Disabilities, Trenton, New Jersey, by telephone and/or in writing, **no later than Thursday, March 22, 1990**. Individuals should provide their name(s), organization represented, telephone number, and location at which the individual will be testifying. Speakers will be limited to 10 minutes of oral testimony. Interested parties may submit written testimony at the hearings.

For requests, comments, additional information or to be listed as a speaker contact:

James Evanochko and/or Deborah Barry

Division of Developmental Disabilities

CN 726

Trenton, New Jersey 08625

Telephone: (609) 292-6390

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**Manual for Special Hospital Services Coverage****Proposed Readoption with Amendment: N.J.A.C. 10:53**

Authorized By: William Waldman, Acting Commissioner,
Department of Human Services.
Authority: N.J.S.A. 30:4D-6a(1)(2); 30:4D-7, 7a, b and c;
30:4D-12; 42 CFR 440.10, 42 CFR 440.160, 42 CFR 482.1.
Proposal Number: PRN 1990-127.

Submit comments by April 4, 1990 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance
and Health Services
CN-712
Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the Manual for Special Hospital Services, N.J.A.C. 10:53, expires on April 29, 1990. The Division of Medical Assistance and Health Services has reviewed these rules and determined them to be necessary, reasonable, adequate, efficient, understandable and responsive to the purpose for which they were originally promulgated. The readoption of both subchapters is necessary because they describe the conditions of coverage and admission and billing procedures. The readoption of the existing rules becomes effective upon the filing of a notice of readoption with the Office of Administrative Law, if filed prior to the chapter's expiration. The proposed amendment to the existing rules becomes effective upon the publication in the Register of a notice of adoption.

An approved special hospital is one that meets one of the three Classifications, which are Classification A (acute or short term), Classification B (Rehabilitation), and Classification C (Special Hospital that does not meet the standards of Classification A or B). (Reference is made to N.J.A.C. 10:53-1.1, Definitions. In general, this manual relates to those hospitals that provide specialized services including rehabilitation. Special hospitals must meet applicable licensure standards.

N.J.A.C. 10:53-1 covers such topics as covered and non-covered hospital services, conditions of payment, outpatient rehabilitation services, approved private psychiatric hospitals, and Ambulatory Surgical Centers.

N.J.A.C. 10:53-2 sets forth admission and billing procedures, and also contains a standardized reference to the requirement for timely claim submittal, which may be cited as N.J.A.C. 10:49-1.12. This standardization occurred as the result of an amendment in 1982 (see 19 N.J.R. 1155(a), 19 N.J.R. 1800(a)).

There have been additional amendments since the last readoption. The definition of ambulatory surgical center (ASC) and requirements relating to an ASC participating as a Medicaid provider were added to enable ASC services to be provided in a special hospital setting (see 16 N.J.R. 3153(a), 17 N.J.R. 2894(b)). The Medically Needy coverage group was added in 1986 (see 18 N.J.R. 803(a), 18 N.J.R. 1287(a)).

There is one amendment being made upon readoption. The amendment concerns approval for private psychiatric hospitals. The current text of N.J.A.C. 10:53-1.12 indicates that a private psychiatric hospital may be either qualified under Title XVIII (Medicare) or be accredited by the Joint Commission on Accreditation of Hospitals (JCAH). The rule is being amended to specify that a private psychiatric hospital must meet Medicare requirements including the special Medicare staffing and record requirements for psychiatric hospitals.

A private psychiatric hospital accredited by the Joint Commission on Accreditation of Health Organizations (JCAHO) is deemed to meet Medicare requirements except for staffing and records. The Health Care Financing Administration (HCFA), the Federal agency that administers the Medicare Program, surveys psychiatric hospitals for compliance with the special staffing and record requirements.

A psychiatric facility that is not JCAHO-accredited must be surveyed by the New Jersey Department of Health to determine compliance with the Medicare standards except for staffing and records which, as previously indicated, are surveyed by HCFA. However, a psychiatric facility that

provides inpatient services to children under 21 years of age must have either the program or facility accredited by JCAHO (42 CFR 440.160).

All private psychiatric hospitals must be licensed by the State of New Jersey or the state in which they are located.

Social Impact

The rules proposed for readoption impact potentially on all Medicaid recipients, since they may require services in a special hospital setting, including inpatient psychiatric hospitalization. There is no addition or deletion of services connected with this readoption.

The rules proposed for readoption impact generally on those providers who are classified as special hospitals and that participate in the New Jersey Medicaid Program. The rules describe the conditions of participation, covered and non-covered services, and the billing procedures.

The proposed amendment specifically impacts on private psychiatric hospitals in, or that may choose to participate in, the New Jersey Medicaid Program. The proposed amendment sets forth the criteria for approval that conforms with Federal and State law and regulations.

Economic Impact

There is no cost to the Medicaid patient for special hospital services. Special hospitals will be reimbursed in accordance with Medicaid policies and procedures for claims timely and accurately submitted.

The Division of Medical Assistance and Health Services spent approximately 66 million dollars (Federal-State share combined) on Special Hospitals in State Fiscal Year 1988. It is anticipated that the proposed amendment will neither increase nor decrease the economic impact of N.J.A.C. 10:53.

Regulatory Flexibility Analysis

In general, special hospitals would not be considered a small business, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because they employ more than 100 full-time employees. However, in the event that a special hospital, or portion thereof, would be considered a small business because they employ less than 100 full-time employees, this analysis is being made.

Special hospitals are required to keep sufficient records to document the name of the recipient to whom the service was rendered, the date of service, nature and extent of service, and any additional information that is required by regulation (see N.J.S.A. 30:4D-12(d)). The rules apply equally to all special hospitals. There is no differentiation based on size. The requirements are necessary for the health, safety, and welfare of the Medicaid patients and to insure compliance with the State law cited above. In addition, special hospitals are required to submit claims for reimbursement. The rules are designed to minimize any adverse impact on a small business by requiring only one claim form for each type of service rendered to an individual patient.

It is anticipated that claims which are submitted timely and accurately will be reimbursed promptly.

With respect to psychiatric hospitals there is no differentiation based on size. Providers are required either by Federal or State law or regulation to meet necessary licensure and accreditation standards, which are necessary for the health, safety and welfare of the Medicaid patients. The Division has no discretion to waive these standards.

There are no capital costs associated with this proposed readoption with amendment.

There are no changes in the existing reporting, recordkeeping, or other compliance requirements associated with this readoption.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:53.

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

10:53-1.12 Approved private psychiatric hospitals

(a) An approved private psychiatric hospital is one which meets all of the following conditions:

1. Licensed by the State of New Jersey as a psychiatric hospital or licensed as a psychiatric hospital by the appropriate agency under the laws of the respective state in which the hospital is located [and is];

[2. Qualified to participate as a psychiatric hospital under the Title XVIII (Medicare) program; and/or is

3. Accredited by the Joint Commission on Accreditation of Hospitals (JCAH) or by the Committee on Hospitals of the American Osteopathic Association; and has]

2. Meets the requirements of Medicare (Title XVIII of the Social Security Act) participation and certification as a psychiatric hospital and has in effect a hospital utilization review plan applicable to all patients who receive medical assistance under Medicaid (Title XIX);

3. Meets the special Medicare standards relative to staffing requirements and clinical records; and

4. [Signed] Has signed an agreement to participate and abide by the rules and regulations of the New Jersey [Health Services] Medicaid Program.

(b) In addition to (a)1 and 4 above, a psychiatric facility which provides inpatient services to children under 21 years of age shall have facility or program accreditation by the Joint Commission on the Accreditation of HealthCare Organizations (JCAHO).

(a)

COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

Commodities and Services Council State Use Law for Rehabilitation Facilities

Proposed New Rules: N.J.A.C. 10:99

Authorized By: William Waldman, Acting Commissioner,
Department of Human Services.

Authority: N.J.S.A. 30:6-23 et seq., specifically 30:6-32.

Proposal Number: PRN 1990-109.

Submit comments by April 4, 1990 to:

Michael E. Cassels, Administrative Practice Officer
Commission for the Blind and Visually Impaired
1100 Raymond Boulevard
Newark, NJ 07102

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:99 expired on February 19, 1990. The Commission for the Blind and Visually Impaired has reviewed the rules set out in N.J.A.C. 10:99 and has determined that they continue to be reasonable, proper and necessary for the purposes for which they were originally promulgated. Pursuant to N.J.A.C. 1:30-4.4(g), these rules are proposed as new rules.

The Commission proposes to readopt N.J.A.C. 10:99 as new rules at this time without amendments, although amendments will be proposed to the rules governing the Commodities and Services Council, State Use Law for Rehabilitation Facilities upon changes to N.J.S.A. 30:6-23 et seq., which are being approved by the legislature. These proposed changes were not fully acted upon during this legislative session.

N.J.A.C. 10:99 sets forth the rules governing the Commodities and Services Council, State Use Law for Rehabilitation Facilities. The State Use Program permits the setting-aside of selected commodities or services to be provided to purchasing agencies within the State by rehabilitation facilities. These facilities must be certified for participation in the program.

N.J.A.C. 10:99-1 provides the chapter definitions.

N.J.A.C. 10:99-2 establishes the Commodities and Services Council, which is responsible for monitoring the activities of the Central Nonprofit Agency in its relations with participating rehabilitation facilities and State Use customer agencies, and reporting to the Commissioner of Human Services on the activities and results of the State Use Program.

The designation of the Central Nonprofit Agency is provided for under N.J.A.C. 10:99-3. The Central Nonprofit Agency is a private not-for-profit organization designated by the Commissioner of Human Services, as provided for in the State Use Law for rehabilitation facilities, to carry out all activities necessary, for the implementation of the State Use Law. The Central Nonprofit Agency is responsible for processing applications for set-aside by rehabilitation facilities, developing commodities and services work for rehabilitation facilities, determining the capability of rehabilitation facilities to provide the commodity or service in question, and recommending to the Commodities and Services Council approval or rejection of the set-aside application.

N.J.A.C. 10:99-4 details the documentation a rehabilitation facility shall provide to the Commodities and Services Council through the Central Nonprofit Agency that demonstrates the facilities' eligibility to participate in the State Use Program. N.J.A.C. 10:99-4 also outlines

facilities' responsibilities for continued participation in the program, the requirements when purchasing materials and subsequent commodities production. The proposed subchapter describes the conditions under which a facility's contract with the Central Nonprofit Agency may be suspended and the appeal procedures available to a facility in the event of a suspension.

N.J.A.C. 10:99-5 describes the responsibilities of the Central Nonprofit Agency when allocating orders for commodities or services to the rehabilitation facility designated to fill the order, as well as the preparation of certificates of exception when there are instances where a rehabilitation facility is unable to fill an order, resulting in the need to fill orders from commercial sources. N.J.A.C. 10:99-5 also outlines the pricing, shipping and packaging requirements when orders are filled, in addition to how cancellations or changes are to be dealt with. Manufacturing compliance and specification requirements are also detailed.

Social Impact

The proposed new rules will permit the continuance of existing guidelines for the benefit of those affected by the Program, which is designed to provide better working conditions, more remunerative training and work opportunities for blind and visually impaired and other severely handicapped persons in rehabilitation facilities in New Jersey.

Economic Impact

The New Jersey Commission for the Blind and Visually Impaired monitors an annual supplemental resolution grant in the amount of \$250,000, which is utilized by the Central Nonprofit Agency to pay its operational and technical assistance costs in the administration of the State Use Program. As the program begins to increase its profits, as a non-profit entity, from contract commissions, it will decrease its dependence on State funding for its operational and technical assistance costs.

Regulatory Flexibility Statement

The proposed new rules impose a compliance requirement on rehabilitation facilities, which are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Rehabilitation facilities are required to produce, upon the request of the Council or Central Nonprofit Agency, documentation confirming their status, documentation that they are required to maintain under a number of statutes. As this compliance requirement should not cause the facilities to incur any capital cost or to employ any professional services, no lesser requirement is imposed upon them as small businesses.

Full text of the proposed new rules may be found in the New Jersey Administrative Code at N.J.A.C. 10:99.

(b)

DIVISION OF YOUTH AND FAMILY SERVICES Notice of Reopening of Public Comment Period Capital Funding Program

Proposed New Rules: N.J.A.C. 10:125

Take notice that the comment period for the proposed new rules published in the New Jersey Register at 21 N.J.R. 1514(a) has been reopened. The comment period will be open from March 5, 1990 to April 4, 1990.

Submit comments by April 4, 1990 to:

Kathryn Clark, Esq.
Division of Youth and Family Services
CN 717
1 South Montgomery St.
Trenton, N.J. 08625

(a)

**DIVISION OF YOUTH AND FAMILY SERVICES
Standards for Shelters for Victims of Domestic
Violence**

Proposed New Rules: N.J.A.C. 10:130

Authorized By: William Waldman, Acting Commissioner,
Department of Human Services.
Authority: N.J.S.A. 30:14-1 et seq., specifically N.J.S.A. 30:14-5,
and N.J.S.A. 37:1-12.1 et seq., specifically 37:1-12.3.
Proposal Number: PRN 1990-72.

Submit comments in writing by April 4, 1990 to:
Kathryn A. Clark, Esq.
Administrative Practice Officer
Division of Youth and Family Services
CN 717
1 South Montgomery Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Shelters for Victims of Domestic Violence Act, N.J.S.A. 30:14-1 et seq., became effective in 1980. Under this Act, the Department of Human Services was directed to establish standards to be met by shelters to assure the availability of necessary specialized personnel, resources and equipment. Subsequently, the enactment in 1981 of N.J.S.A. 37:1-12.1 et seq. provided funds for the development and maintenance of such shelters from an additional \$5.00 fee for marriage licenses. At N.J.S.A. 37:1-12.3, the Commissioner of Human Services was directed to adopt rules to implement the Act. Accordingly, in 1982, the Department adopted rules establishing standards for shelters for domestic violence victims, and in 1983, established funding priorities for such shelters who sought funds collected from marriage license fees.

Recently, the New Jersey Department of Community Affairs (DCA) was given statutory authority (N.J.S.A. 55:13C-1 et seq.) for licensing emergency shelters for the homeless, which include shelters for victims of domestic violence. On May 1, 1989, DCA adopted official licensing rules at N.J.A.C. 5:15 pursuant to N.J.S.A. 55:13C-1 et seq. Discussions involving DCA, the Division of Youth and Family Services (Division) and the Attorney General's Office have resulted in the determination that the standards previously promulgated by the Division and allowed to expire on September 19, 1988, by operation of Executive Order Number 66(1978), are still necessary and should be repromulgated to reflect the Division's continuing role in implementing the Shelters for Victims of Domestic Violence Act and the marriage license fee fund distribution. While the appearance of the proposed standards is different from the expired rules, due to recodification, the requirements remain the same.

Proposed N.J.A.C. 10:130-1.1 sets the goals for the standards for shelters for victims of domestic violence.

Proposed N.J.A.C. 10:130-1.2 requires shelters receiving services or funding under the Shelters for Victims of Domestic Violence Act, N.J.S.A. 30:14-1 et seq., or under N.J.S.A. 37:1-12.1 et seq., the additional marriage license fee trust fund, to comply with the provisions of not only this chapter, but also the rules of the Department of Community Affairs, N.J.A.C. 5:15.

Proposed N.J.A.C. 10:130-2.1 outlines the standards which reflect and complement the rules of the Department of Community Affairs, N.J.A.C. 5:15, and calls for disclosure by all staff and job applicants of any record of criminal convictions.

Proposed N.J.A.C. 10:130-3.1 provides the legal basis, scope and purpose of the rules governing the use of the additional marriage license fee monies.

Proposed N.J.A.C. 10:130-3.2 sets funding priorities and requirements for existing and new programs.

Proposed N.J.A.C. 10:130-3.3 provides for program fiscal responsibility.

Social Impact

These rules will provide standards under which shelters for victims of domestic violence will continue to receive funding through the trust fund established pursuant to N.J.S.A. 37:1-12.2. This will continue the process of distribution of the marriage license fee monies dedicated to maintaining and establishing shelters for victims of domestic violence. Besides residen-

tial services, these shelters also provide hot-line services and non-residential counseling for domestic violence victims.

Economic Impact

Statewide program statistics indicate that a grand total of 67,681 individuals received violence protection and support services in 1988. Of this figure, approximately 4,718 women and children sought and received temporary safe refuge in emergency shelters for victims of domestic violence.

The Division currently distributes an annual amount of almost \$4.6 million in Federal and State funds to offset the operational costs of maintaining New Jersey's domestic violence programs. \$325,000 in Marriage License Tax funds are distributed each year to those 13 battered women's shelters which were in operation at the time the original allocation plan was first determined. Since then, continuous new shelter development and fluctuations in annual receipts, based on the number of marriage licenses purchased each year, have resulted in a shortage of Marriage License Tax funds. In Fiscal Year 1986, the Division distributed an additional \$100,000 in Special State Appropriations to four newly developed shelter programs as a supplement in lieu of the original Marriage License fees. A total of 17 shelters currently receive funds under the Marriage License Tax Act and the supplement "in lieu of" program. As new shelter development efforts continue, so does the need for additional funding. At this point, five programs (one new shelter, two emerging shelters, and two emergency "sheltering" programs) are currently operating without Marriage License Tax related assistance.

Regulatory Flexibility Analysis

The proposed new rules establish reporting, recordkeeping and program requirements for shelters for victims of domestic violence in the State of New Jersey.

The proposed new rules also affect New Jersey shelters for victims of domestic violence who receive funds from the trust fund established pursuant to N.J.S.A. 37:1-12.2, into which is deposited an additional fee of \$5.00 for each marriage license issued in New Jersey. All of these shelters fall within the definition of a small business, as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. It is not appropriate or necessary to establish different standards which would apply to larger or smaller shelters, as all regulated entities are small businesses or governmental entities. The providers are required to submit quarterly expenditure and level of service reports on DYFS-supplied forms. Payment is then made based on the information supplied. Also, a final yearly expenditure report summarizing the year's activities, again prepared on a DYFS-supplied form, is required. No other additional recordkeeping is required.

Full text of the proposed new rules follows:

**CHAPTER 130
STANDARDS FOR SHELTERS FOR VICTIMS
OF DOMESTIC VIOLENCE**

**SUBCHAPTER 1. GENERAL PROVISIONS FOR SHELTERS
FOR VICTIMS OF DOMESTIC VIOLENCE**

10:130-1.1 Purpose

(a) The Department recognizes that seeking and receiving shelter care is a trying emotional experience for victims of domestic violence. The purpose of shelters for victims of domestic violence is to provide an environment in which the client and the family experience the least amount of disruption possible through the provision of "a home setting," to the extent possible; a clean and safe environment; and protection from further violence.

10:130-1.2 Scope; applicability

This chapter shall apply to all shelters for victims of domestic violence in the State of New Jersey. Shelters for victims of domestic violence shall comply with the provisions of this chapter and with the provisions of N.J.A.C. 5:15, Rules Governing Emergency Shelters for the Homeless, which is incorporated herein by reference.

10:130-1.3 Legal authority of chapter

This chapter is promulgated pursuant to N.J.S.A. 30:14-1 et seq., the Shelters for Victims of Domestic Violence Act.

HUMAN SERVICES**PROPOSALS****SUBCHAPTER 2. STANDARDS FOR SHELTERS FOR VICTIMS OF DOMESTIC VIOLENCE****10:130-2.1 Client access to shelter**

(a) A shelter shall have a 24-hour hotline and emergency support services available at all times.

(b) A shelter shall have a 24-hour entry available.

10:130-2.2 Shelter site

A shelter shall provide a residential area which provides safe refuge for victims of domestic violence. A shelter shall also provide a day program or drop-in center, located at the shelter site or in a separate facility, which can assist victims of domestic violence who have not made a decision to leave their home, or who have found other shelter but who nevertheless have a need for other domestic violence services provided by the shelter.

10:130-2.3 Physical plant

(a) A shelter shall undergo a Division of Youth and Family Services health and safety inspection at least every two years.

(b) To the extent possible, an area of the shelter shall be designated for private communications with lawyers, counselors, etc.

10:130-2.4 Staff requirements

(a) A shelter shall require all staff and job applicants to make a full, written disclosure of his or her criminal convictions, if any. Should a criminal conviction be disclosed, the shelter operators shall apply the provisions of the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1 et seq., in determining whether to hire the job applicant or retain the staff member.

(b) To the extent feasible, one or more of the shelter personnel shall be fluent in the language of the non-English speaking population of the shelter. An effort shall be made to recruit and train victims of domestic assault as staff members.

10:130-2.5 Shelter services

(a) A shelter shall arrange for or provide the following services to victims of domestic violence:

1. Emergency medical care;
2. Emergency legal assistance;
3. Emergency psychological support and counseling, as requested; and
4. Information regarding education, welfare, and other available social services accomplished, wherever possible, by referrals to appropriate authorities or agencies.

(b) The shelter staff shall advocate on behalf of the clients to assist them in receiving equitable and uniform services from agencies, including, but not limited to, the Division of Youth and Family Services, public assistance agencies, the Department of Education, and local educational agencies as well as appropriate governmental groups or agencies.

(c) A shelter shall have an ongoing individual and group counseling program.

(d) Shelters shall assure that nutritionally adequate meals are available to all shelter residents.

(e) Shelters shall provide recreational programs for sheltered children.

(f) Shelter programs shall foster positive parenting skills and non-violent models.

10:130-2.6 Educational services

(a) All shelters shall advocate for the provision of educational services for all children residing within the shelter. This shall be accomplished in accordance with the Public School Education Act of 1975. The shelter shall advocate for the following for all children residing in the facility:

1. Education in the home school;
2. Education in the school district in which the shelter is located;
3. Education in the district in which the family is located; or
4. Education on a tutorial basis within the shelter.

10:130-2.7 Release of a minor

No shelter providing care for a minor who was in actual custody, guardianship, or the custody of a parent or other person at the time such person applied for shelter services, shall release the minor person

to anyone, including the child's other parent or person sharing legal guardianship or custody, without the consent of the person who sought shelter, except as may be otherwise required by court order.

10:130-2.8 Confidentiality

Information which may reveal the identity or location of a person seeking or receiving shelter services shall not be disclosed, except as otherwise specifically required by law.

10:130-2.9 Non-discrimination; clients and employees

A shelter shall not discriminate in providing appropriate residential services and other domestic violence services based on age, race, creed, national origin, sex, handicap condition, and/or financial status.

10:130-2.10 House rules

Established written house rules shall be presented to, and signed by, clients upon entering the shelter.

SUBCHAPTER 3. MAINTAINING AND ESTABLISHING SHELTERS FOR VICTIMS OF DOMESTIC VIOLENCE THROUGH MARRIAGE LICENSE FEES**10:130-3.1 Legal authority of subchapter**

(a) This subchapter is promulgated pursuant to N.J.S.A. 37:1-12.1 et seq., which increased the fees charged for the issuance of a marriage license, provided for the use of such fees by the Department in establishing and maintaining shelters for victims of domestic violence and directed the Commissioner to adopt rules to implement the purpose of the legislation.

(b) Under N.J.S.A. 37:1-12.1 and 12.2, the Department of Human Services is authorized to receive revenues from additional \$5.00 fees charged with the issuance of a marriage license, for purposes of maintaining and establishing shelters for victims of domestic violence.

10:130-3.2 Delegation of responsibility to the Division of Youth and Family Services

Responsibility for ensuring that revenues are used according to the provisions of N.J.S.A. 37:1-12.1 et seq. is hereby delegated by the Department of Human Services to the Division of Youth and Family Services.

10:130-3.3 Purpose of subchapter

The purpose of this subchapter, which governs the distribution of collections made through N.J.S.A. 37:1-12.1 et seq., is to assure that such funds are available for the continued support of programs serving victims of domestic violence and for the development of new programs. These programs are essential to provide persons who have been subject to or threatened with violence at home with a safe refuge where they can examine alternatives and receive supportive services.

10:130-3.4 Scope of subchapter

This subchapter shall apply to all shelters for victims of domestic violence which receive funds from the collections made through N.J.S.A. 37:1-12.1 et seq., within the State of New Jersey.

10:130-3.5 Funding priorities

(a) Agencies receiving funds from the Division of Youth and Family Services prior to January 1, 1990 shall be eligible to receive a portion of at least 80 percent of marriage license fee collections. Donor matching will not be required.

(b) Funding for the development of new programs shall be subject to the following conditions:

1. New program development may receive up to a maximum of 20 percent of marriage license fee collections;
2. Eligibility will be limited to counties which do not have emergency residential shelter programs;
3. Donor match will not be required;
4. Proposals received for programs including an emergency residential shelter component in addition to initial response and linkage to other services, will be given first priority for funding;

5. Second priority will be given to non-residential programs which include initial response, linkage to other services, and emergency housing provisions; and

6. Applications for new program funding shall be solicited through a formal request for proposals process and reviewed on the basis of program and fiscal criteria established in the proposal request.

10:130-3.6 Program fiscal responsibility

(a) Funding for shelter programs is contingent on the ability of programs to meet the fiscal and programmatic practices required by the agency's contract with the Division of Youth and Family Services.

(b) All programs applying for or receiving funding under the provisions of this subchapter shall be subject to fiscal and program review by the Division of Youth and Family Services of the requirements of their contracts with the Division.

(c) All emergency residential shelter programs applying for or receiving funding under the provisions of this subchapter shall comply with the provisions of this chapter, Standards for Shelters Serving Victims of Domestic Violence, N.J.A.C. 10:130 and with the provisions of N.J.A.C. 5:15, Rules Governing Emergency Shelters for the Homeless.

INSURANCE

(a)

DIVISION OF ADMINISTRATION

**Notice of Administrative Correction and Comment
Period Extension**

Reproposed Repeal and New Rule: N.J.A.C. 11:3-8.4

Take notice that Exhibits C and D of the Appendix to reproposed new rule N.J.A.C. 11:3-8.4 were inadvertently not published with the reproposed new rule in the February 5, 1990 edition of the New Jersey Register (see 22 N.J.R. 316(a)). These Exhibits are set forth below.

Pursuant to N.J.S.A. 52:14B-4, the time to submit written comments regarding the reproposed repeal and new rule is extended until April 4, 1990.

Submit comments by April 4, 1990 to:

Verice M. Mason, Assistant Commissioner
Department of Insurance
Legislative and Regulatory Affairs
20 West State Street
CN-325
Trenton, New Jersey 08625-0325

Full text of the proposed Exhibits follows:

APPENDIX

Exhibits A and B (No change.)

EXHIBIT C

NONRENEWAL REPORT—C
Multi-Tier Rating System

Insurer Group Name: _____
Company Name: _____
(list all companies in multi-tier plan)

NAIC Group No. _____
NAIC Company No. _____

| (1) Territory | (2) Vehicles Insured 12/31/— | (3) Vehicles Cancelled | (4) Vehicles N/R by Insured | (5) Vehicles N/R for cause N.J.A.C. 11:3-8.3 | (6) Vehicles N/R Underwriting N.J.A.C. 11:3-8.4(a) | (7) Vehicles N/R 2% Rule N.J.A.C. 11:3-8.4(b) | (8) Vehicles N/R 2:1 Rule N.J.A.C. 11:3-8.4(d) | (9) Vehicles Newly Insured | (10) JUA Depopulation Quota | (11) Vehicles Insured —/—/— |
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Totals:

Notes: Column (1) shall be numbered in accordance with insurer's approved rating plan.
Column (2) shall be dated as of previous year.
Columns (3) through (10) shall contain information as of date in column (10).
No cancellation or nonrenewal shall be double counted by including it in more than one column.

Renewals within multi-tier system are not to be reported as nonrenewals or cancellations.
 Nonrenewals for underwriting (column 6) do not qualify for highest rated tier of multi-tier plan.
 Column (7) cannot be greater than .02 x column (2).
 Report total only for column (10).
 Column (11) equals column (2) plus column (9) minus columns (3), (4), (5), (6), (7) and (8).

Date Submitted _____

EXHIBIT D

NONRENEWAL REPORT—D
 Individual Company

| Company Name: _____ | | NAIC Company No. _____ | | | | | | | |
|---------------------|--------------------------|------------------------|-------------------------|--|---|--|------------------------|------------------------|------------------------|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) |
| Territory | Vehicles Insured 12/31/— | Vehicles Cancelled | Vehicles N/R by Insured | Vehicles N/R for cause N.J.A.C. 11:3-8.3 | Vehicles N/R 2% Rule N.J.A.C. 11:3-8.4(b) | Vehicles N/R 2:1 Rule N.J.A.C. 11:3-8.4(c) | Vehicles Newly Insured | JUA Depopulation Quota | Vehicles Insured —/—/— |
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Totals: _____

Notes: Column (1) shall be numbered in accordance with insurer's approved rating plan.
 Column (2) shall be dated as of previous year.
 Columns (3) through (10) shall contain information as of date in column (10).
 No cancellation or nonrenewal shall be double counted by including it in more than one column.
 Column (6) cannot be greater than .02 x column (2).
 Report total only for column (9).
 Column (10) equals column (2) plus column (8) minus columns (3), (4), (5), (6) and (7).

Date Submitted _____

(a)**DIVISION OF ACTUARIAL SERVICES****Medicare Supplement Coverage****Appendix to Subchapters 16 and 23 of Chapter 4****Reproposed Amendments: N.J.A.C. 11:4-16.6, 16.8, 23.6 and 23.8; Appendix to Subchapter 16 and 23****"Bridging the Medicare Gaps: A Guide to Medicare Supplements" and Medicare Deductibles and Co-payments for 1986****Proposed Repeal: Appendix to Subchapters 16 and 23 "Bridging the Medicare Gaps: A Guide to Medicare Supplement (Information Concerning Changes to the Medicare Program Effective January 1, 1989); Notice on Changes in Medicare and Your Medicare Supplement Coverage—1989, 1990 and 1991, and Medicare Deductibles and Co-payments for 1989**

Authorized by: Jasper J. Jackson, Acting Commissioner,
Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:35C-7 and
17B:26A-7.

Proposal Number: PRN 1990-123.

Submit comments by April 4, 1990 to:

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

The agency proposal follows:

Summary

This proposal to amend N.J.A.C. 11:4-16.6, 16.8, 23.6, 23.8 and the Appendices to Subchapters 16 and 23 supersedes any other proposed amendments to these rules.

Specifically, this proposal supersedes the proposal which appeared in the September 18, 1989 New Jersey Register at 21 N.J.R. 2877(a), which was captioned "Minimum Standards for 65-and-Older Health Coverage ("65-and-Older proposal"). The Department of Insurance ("Department") has decided not to adopt the 65-and-Older proposal at this time. Repeal of the Medicare Catastrophic Coverage Act of 1988, P.L.100-360 ("MCCA") on December 13, 1989, and the contemporaneous adoption by the National Association of Insurance Commissioners ("NAIC") of a transitional minimum benefits regulation in response to the repeal of the MCCA, caused significant portions of the 65-and-Older proposal to be inconsistent with the current Medicare program and Federal standards for Medicare supplement policies and contracts. Implementing the appropriate revisions to the 65-and-Older proposal would not have been possible upon adoption because the needed revisions represented substantial changes requiring an additional comment period.

Furthermore, the adoption by the NAIC of a revised model minimum standards regulation for Medicare supplement coverage on December 7, 1989, also prompted the Department to re-evaluate the 65-and-Older proposal. Portions of the NAIC's model regulation and the 65-and-Older proposal represented divergent policy agendas.

There are sections of this State's current rules regarding Medicare supplement coverage which can and should be amended, for practical purposes, while the Department determines if it needs to redefine its goals in the regulation of this area of insurance. Specifically, the Department believes that it is desirable to propose amendments to the current disclosure requirements contained in N.J.A.C. 11:4-16.6 and 16.8 and N.J.A.C. 11:4-23, as well as amending the disclosure materials contained in the Appendices to subchapters 16 and 23 of Chapter 4.

The informational brochure required to be sent by insurers to applicants for coverage, set forth in N.J.A.C. 11:4-16.8(a)14 and 23.8(a)6, needs to be updated. Since its last publication, the Medicare carrier for New Jersey has changed and several addresses have changed; advice from the Department of Health concerning Medicaid has changed somewhat; and long-term care policies are becoming a more significant factor in the

Medicare supplementary and complementary market. Proposed amendments to the brochure, "Bridging the Medicare Gaps: A Guide to Medicare Supplements," reflect these changes.

Also being updated by these proposed amendments is the Medicare deductible and co-payment chart, which is required to be enclosed with the brochure, in accordance with N.J.A.C. 11:4-16.8(a)15iii and 23.8(a)7iii. These proposed amendments reflect changes in the Medicare program.

The informational insert to the brochure, entitled "Information Concerning Changes to the Medicare Program Effective January 1, 1989", specified in N.J.A.C. 11:4-16.8(a)15iv and 23.8(a)7iv is being deleted. It is obsolete.

Finally, the notice requirements set forth in N.J.A.C. 11:4-16.6(j)3vii and viii and N.J.A.C. 11:4-23.6(b)6 and 7 are being proposed for amendment. The information contained in the current 1989, 1990 and 1991 notices would be deleted as obsolete. A new 1990 notice is proposed to reflect the Medicare program benefits which became effective January 1, 1990.

The Department determined it is desirable to propose amendments to the disclosure requirements and materials contained in the appendices as soon as possible, in order to minimize the delay involved in providing insurers with information on reproduction of these materials (due to protracted bidding procedures which must be followed in contracting for the publishing of the informational brochure). Insurers should be aware, however, that information concerning the reproduction of the brochure will probably not be available until after June 1990. Until then, insurers should consult the Department's **Bulletin 90-1** for the guidelines to follow in complying with the disclosure requirements in N.J.A.C. 11:4-16.8(a)14 and 16.8(a)15iii and iv, as well as N.J.A.C. 11:4-23.8(a)6 and 23.8(a)7iii and iv.

Social Impact

These proposed amendments are intended to update and clarify portions of the informational materials insurers are required to distribute to their insureds or prospective insureds. These proposed amendments will provide senior citizens with more accurate information regarding the 1990 Medicare program and Medicare supplement coverage available in this State. Accurate information is a valuable component in the decision-making process and will provide those persons currently seeking supplemental or complementary coverage to their Medicare coverage a necessary tool in determining how best to allocate their health care dollars.

Economic Impact

The economic impact on both insurers and the Department will be substantial, but unavoidable. The costs involved with updating the informational brochure have been anticipated for some time by both insurers and the Department, pending resolution by the Federal government of its actions concerning the Medicare program. With repeal of the MCCA, the changes necessary to update the required disclosure materials and the consequent costs have been minimized.

Regulatory Flexibility Analysis

The Department is unaware of any insurers selling Medicare supplement insurance in this State who meet the definition of "small business" set forth at N.J.S.A. 52:14B-16 et seq. Furthermore, no new reporting or record keeping requirements are contained in the proposed amendments. Thus, a regulatory flexibility analysis is not required.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 11:4, pages 4-158 through 4-169.

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

11:4-16.6 Minimum standards for benefits

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

(j) "Medicare supplement coverage" is a health insurance policy sold to a Medicare eligible person, which is designed primarily to supplement Medicare, or is advertised, marketed, or otherwise purported to be a supplement to Medicare and which meets the following minimum benefit standards and rules:

1.-2. (No change.)

3. Medicare supplement coverage shall comply with the following: i.-vii. (No change.)

viii. The notices mandated by [the Medicare Catastrophic Coverage Act of 1988] (j)3vii above shall be in the format set forth in

the Appendix to [this chapter] **subchapters 16 and 23 of this chapter, Exhibit C (Notice [on] of Changes in Medicare and Your Medicare Supplement [insurance] Coverage)**, which is incorporated herein as part of this rule. [,and] **Notices** shall not contain or be accompanied by any solicitation. No modifications shall be made to an existing Medicare supplement policy [as the result of the Medicare Catastrophic Coverage Act of 1988] **when the notices are sent** except those necessary to eliminate duplication of Medicare benefits;

ix.-xi. (No change.)

(k) (No change.)

11:4-16.8 Required disclosure provisions

(a) General disclosure requirements are as follows:

1.-13. (No change.)

14. An informational brochure for persons eligible for Medicare by reason of age which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of Medicare, shall be furnished by each insurer to each such Medicare eligible person in connection with the purchase of a health insurance policy other than a short-term nonrenewable policy. The full text of the approved guide appears as an Appendix to [Chapter 4] **subchapters 16 and 23 of this chapter, Exhibit A** and is entitled "Bridging the Medicare Gaps: A Guide to Medicare Supplements".

15. To ensure uniformity in the content, form and printing of the guide, each insurer shall comply with the following requirements:

i.-ii. (No change.)

iii. A chart entitled "Medicare Deductibles and Co-payments for [1989] **19**" shall be included in the back pocket of each guide. A sample copy of this chart appears as an Appendix to [this subchapter] **subchapters 16 and 23 of this chapter, Exhibit B**. [(1)] To ensure uniform design, content and printing of the chart, the Department of Insurance, Division of Public Affairs, will provide sample copies of the chart to insurers[. Insurers], **to the format of which insurers must adhere exactly** [to the format of the chart, and must include the chart in the back pocket of each guide].

[iv. Information explaining the changes to the Medicare program effective January 1, 1989, shall be included in the back pocket of each guide. A copy of this information appears in an Appendix to subchapters 16 and 23 of this chapter and is entitled: "Information Concerning Changes to the Medicare Program Effective January 1, 1989".]

16. (No change.)

(b)-(n) (No change.)

11:4-23.6 Minimum benefit standards

(a) (No change.)

(b) The following general standards apply to Medicare Supplement policies and are in addition to all other requirements of this subchapter:

1.-6. (No change.)

7. The notices mandated by [the Medicare Catastrophic Coverage Act of 1988] (b)6 above shall be in the format set forth in the Appendix to [this subchapter] **subchapters 16 and 23 of this chapter, Exhibit C (Notice [on] of Changes in Medicare and Your Medicare Supplement [Insurance] Coverage)**, which is incorporated herein as part of this rule. [, and] **Notices** shall not contain or be accompanied by any solicitations. No modifications shall be made to an existing Medicare supplement policy [as the result of the Medicare Catastrophic Coverage Act of 1988] **when the notices are sent** except those necessary to eliminate duplication of Medicare benefits.

8.-10. (No change.)

(c) (No change.)

11:4-23.8 Required disclosure provisions

(a) General rules concerning required disclosure provisions include the following:

1.-5. (No change.)

6. Insurers and hospital or medical service corporations issuing policies, certificates or subscriber contracts which provide hospital or medical expense coverage on an expense incurred, indemnity, or service benefit basis, other than incidentally, to [a person(s)] **persons** eligible for Medicare by reason of age shall provide for delivery to

all applicants an informational brochure, which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of Medicare. The full text of the approved guide appears as an Appendix to [Chapter 4] **subchapters 16 and 23 of this chapter, Exhibit A**, and is entitled "Bridging the Medicare Gaps: A Guide to Medicare Supplements".

7. To ensure uniformity in the content, format and printing of the guide, each insurer shall comply with the following requirements:

i.-ii. (No change.)

iii. A chart entitled "Medicare Deductibles and Co-payments for [1989] **19**" shall be included in the back pocket of each guide. A sample copy of this chart appears as an Appendix to [this chapter] **subchapters 16 and 23 of this chapter, Exhibit B**. [(1)] To ensure uniform design, content and printing of the chart, the Department of Insurance, Division of Public Affairs, will provide sample copies of the chart to insurers[. Insurers], **to the format of which insurers must adhere exactly** [to the format of the chart, and must include the chart in the back pocket of each guide].

[iv. Information explaining the changes to the Medicare program effective January 1, 1989, shall be included in the back pocket of each guide. A copy of this information appears as an Appendix to subchapters 16 and 23 of this chapter and is entitled: "Information Concerning Changes to the Medicare Program Effective January 1, 1989".]

8.-9. (No change.)

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

APPENDIX TO SUBCHAPTERS 16 and 23 EXHIBIT A BRIDGING THE MEDICARE GAPS: A GUIDE TO MEDICARE SUPPLEMENTS

INTRODUCTION

Medicare. The word can be both a comfort and a puzzle. A comfort because Medicare is a program which provides good, basic health coverage at minimal cost. A puzzle because the program's structure makes it look harder to understand than it really is.

Medicare historically has paid a relatively stable share of health care costs for older citizens, ranging from about 40 percent in 1977 [to], 45 percent in 1984 and **40.1 percent in 1988**, according to the U.S. House of Representatives Select Committee on Aging.

But health care costs have been rising faster than inflation—which means higher medical bills. So even though older people have been paying a relatively constant percentage of their medical bills, the bills themselves are larger. The bottom line is that older citizens are paying more total dollars for their share of health care costs.

[Some people can afford to pay their health care bills. But others, who fear being caught between their fixed incomes and rising health care costs, will want to buy additional insurance to shield themselves.]

Before making a decision about what kind of insurance to buy, everyone should assess his or her own needs. Assessing the need for additional protection is easier if one understands the basic structure of Medicare. The first section of this booklet is designed with that in mind.

The rest of this booklet will tell you what other types of insurance are available to fill some of Medicare's gaps.

[The Building Blocks of Medicare] BASIC STRUCTURE OF MEDICARE

...

Part B, the medical portion [is not free. It] requires a monthly premium, which, **for most people**, is deducted from [your] the Social Security check. [You don't have to take Part B, medical insurance, but for most people, it is a good buy.] **You're automatically enrolled in Part B when you enroll in Part A, unless you specifically state you don't want it.** If you choose not to enroll in Part B when you sign up for Medicare, you can join the program later. But if you wait, the premiums will be higher. **If you wait because you're still working and you're still covered under your employer's group health plan, you will not have to pay the higher Part B premium when you do sign up.**

Each of the two parts has a deductible, an amount of money which you have to pay before Medicare starts paying.

PROPOSALS

Interested Persons see Inside Front Cover

INSURANCE

Each also requires a co-payment, [which means you have to pay] a part of each bill **you're required to pay.**

And each has its own rules about when these payments are required. The specific dollar amounts [have been increasing over time, so they are not listed here] **can change from year to year.** [However, the] **The chart in the back pocket [will tell you the exact cost of the] of this booklet shows this year's deductible[s] and co-payment [s this year] amounts.**

Medicare Part A—Hospital Insurance

The hospital insurance portion of Medicare Part A, [the heart of the Medicare program,] pays hospital room and board fees. It also pays for some goods and services (such as laboratory costs, physical therapy and [prescriptions] you receive while you are) **drugs) while you're a patient in the hospital.**

Part A does not cover all hospital bills. It covers a portion of them, depending on how long you are in the hospital and on the basis of benefit periods (see page [5] —).

Drawn on a graph like the one on page [11] —, the system resembles a three-step staircase. First you pay the Part A hospital deductible (which is roughly equal to the average national cost of one day in a hospital).

...

What Part A Also Covers

Medicare also pays for three of the newer, less expensive alternatives to hospitalization—skilled nursing [facilities] **facility care**, home health care and hospice care.

How Often Can You Collect?

Medicare Part A pays hospital expenses on the basis of benefit periods. A **benefit period** starts when you enter a hospital and ends when you have been out of the hospital or skilled nursing [home] **facility** for 60 days in a row.

...

When Will Medicare Refuse to Pay?

Medicare covers time in skilled nursing facilities, which are sometimes called nursing homes. But **Medicare does not cover custodial nursing home care** that [only] provides only a place to live and help with personal needs such as bathing, feeding, dressing and taking medicine.

Usually [medicare] Medicare pays hospitalization, **skilled nursing facility and home health agency fees only [for] when the facility or agency is Medicare-approved [hospitals]. Although all New Jersey hospitals are approved**, some hospitals and treatment centers in other states may not be. **And even if a skilled nursing facility or home health agency is licensed by the state, it may not be Medicare-approved.**

Medicare may also refuse to pay for **experimental or controversial procedures.**

Except under certain very limited conditions in Canada and Mexico, Medicare will not cover care received outside the United States.

...

Medicare Part B—Medical Insurance

Medicare Part B, medical insurance, is the section that helps to pay your doctor, whether you are in or out of the hospital. It also serves as a catch-all for the wide range of services people use when they are not patients in hospitals—outpatient visits to hospitals, physical therapy, laboratory tests, medical equipment (like wheelchairs or oxygen), and **medically necessary home health visits.**

The medical insurance portion, Part B, has an annual deductible, an amount which you must pay once each year before Medicare will pay any bills related to Part B. The deductible can change, so the chart in the pocket on the back page shows the amount for this year.

How Much Does It Pay?

...

Some doctors accept assignment some of the time, some accept it all the time, while others never accept it at all. Find out, before treatment, whether your doctor will accept assignment. Each year, doctors and medical service suppliers can sign agreements to become Medicare-participating doctors or suppliers. This means they agree in advance to accept assignment on all Medicare claims. The "Medicare-Participating Physician/Supplier Directory," which is available in Social Security offices and county offices on Aging, gives the names and addresses of Medicare-participating doctors and suppliers. You can also get this directory from

[Prudential] **Blue Shield of Pennsylvania**, the Medicare carrier [in] for New Jersey.

For a detailed description of the Medicare program, ask your local Social Security office for a free copy of **Your Medicare Handbook.**

FILLING IN THE GAPS

You can bridge the gaps in Medicare in a variety of ways. But there are choices to make. Different policies tend to plug different holes in the Medicare program, so you probably won't find one policy that pays all of your health care costs.

To decide which policy suits you best, begin by evaluating your needs and financial circumstances. How much you can afford to pay for insurance? Do you [need help paying day-to-day health care costs] **want first dollar coverage that will help pay Medicare's deductibles and co-payments?** Or are you more concerned about covering [yourself against the possibility of a months-long hospital stay that exhausts your Medicare benefits] **things that Medicare does not—for example, doctors' bills that go beyond the Medicare-approved amount or care outside the United States?** Will you find it easier to budget regular insurance payments than to worry about later medical bills you might not be able to pay?

Medicaid

For some people, paying even small amounts for medical expenses or another health insurance policy may be a real hardship. If you are one of them, [start by checking] **check** with your local Social Security Office or the state or county welfare agency to see if you are eligible for Medicaid, a free health care program for low-income people funded by the state and federal governments.

[If you are eligible for Medicaid, you will not need any other coverage, because the combination of Medicare and Medicaid pays almost all medical expenses. Anything not covered by both is probably not covered by private health insurance policies either.]

Although the combination of Medicare and Medicaid pays many of your health care costs, you should consider the following points before dropping any Medicare supplement policy you may already have:

1. **A Medicare supplement policy may cover services not paid by Medicaid, such as private duty nursing, care outside the United States, a private room in a hospital;**
2. **if your Medicaid eligibility ends, you may have a six month waiting period before a new policy will pay benefits for health conditions you already have;**
3. **if you enter a nursing home, Medicaid will pay the premium for your Medicare supplement policy;**
4. **if you cancel Medicare supplement coverage that has been available to you at no charge as a retirement benefit or through your spouse, it may not be renewable if you no longer qualify for Medicaid.**

New Jersey also has a variety of health care programs available to certain needy residents who may not qualify for the traditional Medicaid Program. Each program has its own eligibility requirements. Contact your County Welfare Agency or Board of Social Services to see if you qualify for any of the following:

**New Jersey Care
Medically Needy
Community Care Program for the Elderly and Disabled (CCPED)
AIDS Community Care Alternative Program (ACCAP)**

Prescriptions and Hearing Aids

New Jersey has a program that will help pay for prescription drugs, and another that will help pay for hearing aids.

[New Jersey also has a special prescription drug program, called] **The Pharmaceutical Assistance to the Aged and Disabled (PAAD) Program helps [to help] pay for prescription medicines and some pharmacy items such as insulin syringes and needles.**

The Hearing Aid Assistance to the Aged and Disabled (HAAAD) Program reimburses \$100 to eligible residents of New Jersey who buy a hearing aid.

To qualify for **PAAD or HAAAD**, you must be at least 65 or [older] **be receiving Social Security Disability**, and you must meet certain income limits. The limits which are higher than those for Medicaid, **can change [each year].**

For more information [on this year's limits] **about each program call the toll-free hotline[,] at (800) 792-9745 [, or write to the New Jersey Department of Human Services, Division of Medical Assistance and Health Services, PAAD Program, CN 715, Trenton, N.J. 08625].**

What Does Your Employer Offer?

One kind of insurance you may be able to [secure] keep through continuation or conversion is a major medical [or catastrophic coverage] policy.

[If you feel you can afford to pay Medicare's deductibles and co-payments out of your own pocket, but would like to insure against major expenses, you might consider this type of coverage. However, it isn't appropriate if you are worried about covering day-to-day health costs.]

Health Maintenance Organizations

Membership in a health maintenance organization—HMO—is another way to fill the gaps in Medicare. HMOs are prepaid health care programs [which provide health services through one organization]. **Like insurance policies, HMOs cover certain health care costs. Unlike insurance policies, HMOs actually provide health care services.** Some HMOs have contracts with Medicare. As a Medicare beneficiary, you're eligible to join [one of these] **an HMO** if you participate [in both parts] **in at least Part B** of Medicare and live in a county where an HMO that contracts with Medicare is available.

If you join an HMO, you don't have to pay the Medicare deductibles or co-payments or file claims. You pay a monthly premium to the HMO, which provides doctors' services and most other health care [for an additional fee of \$1 to \$5 per visit]. **You may have to pay a co-payment of \$1 to \$10 for some services.**

There are different kinds of HMOs. Some [resemble hospitals, with] have all their doctors located in facilities owned by the HMO. Some are networks of physicians who maintain their own offices and [serve] service HMO patients as a part of their regular practice.

HMO plans and premiums [also] vary. A "low option" HMO plan generally covers at least the services included under the regular Medicare program. A "high option" plan [sometimes] usually includes [eye care.] **additional services not covered by Medicare, for example, eye care.**

For further information on **Medicare-contracting HMOs**, write the New Jersey Department of [Health Alternative Health Systems, American Bridge Building, CN 367.] **Insurance, Public Affairs Division, Senior Health Insurance Program, CN 325, Trenton, N.J. 08625.**

Medicare Supplement Policies

If you are looking for a policy specifically designed to coordinate with Medicare, you may want to consider a Medicare supplement policy. The phrase "Medicare supplement" is a special term reserved in New Jersey for policies that meet minimum standards set by the state. Most policies sold to individuals are required to cover at least:

- the [Medicare] Part A [(hospitalization)] **hospital co-payment[s] amounts;**
- 90% of hospital expenses after 150 days (when Medicare runs out), up to a total of 365 days;
- [• some expenses that Medicare doesn't pay under Part B up to a maximum of \$5,000 a year; and]
- 20% of Medicare's approved amounts under Part B subject to a maximum calendar year deductible of \$75;
- the reasonable cost of the first three pints of blood;
- 20% of the costs for immunosuppressive drug therapy for one year following an organ transplant.

[• the co-payment for days 21-100 in a skilled nursing facility.
The exception is the Blue Cross and Blue Shield Medicare supplement policy.

We have established separate minimum standards for group policies and the Blue Cross and Blue Shield individual Medicare supplement policy. These do not have to cover the co-payment for days 21-100 in a skilled nursing facility.]

Medicare supplement policies vary widely in price, depending on what they cover. Some supplements, for example, also cover [the Part A hospital deductible,] a part of private duty nursing care, prescription drugs and the Part B deductible. Generally, the more comprehensive the coverage, the more expensive the policy will be.

The Department of Insurance maintains a chart listing the individual Medicare supplement policies for sale in New Jersey. The listing includes

the cost of the policy and the benefits it offers. The chart is updated each year.

If you need a copy of the chart or other help, write the [department] **Department.**

Blue Cross and Blue Shield Coverage

Blue Cross and Blue Shield of New Jersey, Inc. is a non-profit health service corporation offering three **individual** plans designed to coordinate with Medicare. **However, only one of the three plans meets New Jersey's minimum standards for Medicare supplements.**

SUPER 65

Blue Cross and Blue Shield Super 65 meets New Jersey's minimum standards for Medicare supplements. It pays the Part A deductible and Medicare's hospital co-payments. **After 150 days in a hospital when Medicare stops paying, Super 65 covers 100 percent of Medicare eligible expenses for an unlimited number of days.** It pays the Part B [annual] deductible, [the] 20 percent [co-payments] of Medicare's **allowed amounts** for doctors [who see you while you're hospitalized, and costs for home and office medical visits] and other out of hospital services without any dollar maximums. [After 150 days in a hospital when Medicare stops paying, Super 65 covers 100 percent of Medicare eligible expenses for an unlimited number of days.] **Super 65 covers the cost for care received outside the United States.** You may enroll [for] in Super 65 any time during the year. However, there is a six month waiting period for pre-existing conditions.

The following two plans [do not meet New Jersey's minimum standards for Medicare supplements] are "limited benefit" policies because they do **not pay all the benefits, or the dollar amounts of the benefits are less than what we require of Medicare supplements:**

65

Blue Cross and Blue Shield 65 is designed to provide basic hospitalization coverage. It pays the Part A deductible and co-payments, and costs **for care outside the United States. It also pays** the Part B [annual] deductible and 20 percent [co-payments] of Medicare's **approved amount** for doctors who see you while you're hospitalized. Blue Cross and Blue Shield 65 [will also pay] **pays 20 percent** co-payments for some services outside a hospital but there are annual dollar maximums. It [will] **does not pay** for hospitalization after 150 days (when Medicare runs out) [or for skilled nursing home care] **and it does not cover physician home or office visits.**

65 SELECT

Blue Cross and Blue Shield 65 Select is primarily aimed at covering the costs for people who fear the expense of a long hospital stay. You pay the everyday health care costs—the Part A and [Part] B deductibles and some medical co-payments—yourself. 65 Select will pay the Part B co-payment for physician care in the hospital, the Part A hospitalization co-payments, and 90 percent of hospital costs after Medicare runs out. It [also] pays [the Part B co-payments] for some services performed outside a hospital, subject to annual dollar maximums, **and for health care costs while traveling outside the United States. 65 Select does not cover physician home or office visits.**

[If you don't] **You can apply for Blue Cross and Blue Shield 65 or 65 Select [coverages 60 days before or 31 days after] within 31 days of your 65th birthday, or your Medicare effective date if you're disabled. If more than 31 days have passed since your 65th birthday, you can apply during the open enrollment period from February 1 through April 30 of each year. Your coverage will take effect on July 1.**

Hospital Indemnity Policies

The disadvantage is [the fact] that they pay only if you're hospitalized. No matter what your medical bills are, you can't collect unless you're in the hospital.

The other thing to be careful about is [the fact] that the payments made to you may be much lower than your bills—even though [the payments] **policies sold in New Jersey are required to [be] pay at least \$40 a day.** Also, the amount of the benefit can remain the same year after year, so unless you update your coverage occasionally, inflation will take its toll on the value of the payments. If you do buy a hospital indemnity policy, try to update it every few years.

[Nursing Home] **Long Term Care Policies**

["Nursing home" is a term that causes much confusion. Both skilled nursing facilities and custodial care facilities are called "nursing homes." But neither Medicare nor most insurance policies pay for custodial care. And custodial care facilities are the places most people associate with the phrase "nursing home."]

Long-term care refers to a wide range of medical and non-medical services people need for a long period of time due to a chronic illness, disability, or physical or mental handicap. Long-term care can be provided in a nursing home, at home or in a community facility.

Long-term care insurance policies cover different levels of nursing home care—skilled, intermediate, and custodial. Some will also help pay for alternatives to nursing home care: for example, home care and adult day care.

Before you buy a [nursing home] **long-term care** policy, be sure to read the policy provisions carefully. [If a policy does not pay benefits for custodial care, it will state that in the Outline of Coverage under "Exclusions."] **Will the policy pay benefits for skilled, intermediate and custodial nursing home care? Will it cover home health care? What is the definition for each level of care? Is there a waiting period (a period of time you have to be in the nursing home or receive home care before the policy will pay benefits)? Does the policy specifically exclude coverage for any conditions? How long will the policy pay benefits? Under what conditions can the company cancel or refuse to renew the policy?**

For more information about long-term care policies, write the Department of Insurance for a copy of our "Buyer's Guide to Long-Term Care Insurance."

[A Bad Buy] **Specified Disease Policies**

[Dread] **Specified** disease policies are a bad buy because they pay in so few situations that odds are heavily stacked against the company ever paying you anything.

Be An Educated Consumer

Don't duplicate coverage. **It's better to buy the most comprehensive policy you can afford than several policies that duplicate coverage.** Some policies will not pay for an expense already covered under another policy. So if you buy two of the same kind of policy, you can wind up with two sets of payments but only one set of benefits. **It is a federal crime for someone to knowingly sell you a policy that duplicates Medicare or any private health policy you already have, but that will not pay costs covered by another insurance policy.**

[Other Considerations] **Watch Out for Key Phrases**

Policies are contracts, and like other legal documents, they use [a] special vocabulary, including:

[Also watch out for these key phrases:]

...
Renewal. Find out if and when a company can refuse to renew the policy. There are three common types of renewal conditions:

Guaranteed renewable. This means that the company agrees to renew each year until you reach a certain age or for life as long as you pay the premium. [Policies with a guaranteed renewal clause sold in New Jersey guarantee your right to renew for at least five years after the date of issue.] **Medicare supplement policies in New Jersey must be guaranteed renewable.**

You may see policies other than Medicare supplements that are:

Conditionally renewable. This means that the company agrees to renew as long as the company continues to insure people in the state with the same kind of policy. If the company decides to discontinue selling that kind of policy here, the coverage can be [cancelled] **non-renewed** at the end of the policy year or the next premium due date. [Most policies are conditionally renewable.]

Renewable at company option. A policy with this provision can be [cancelled] **non-renewed** for any reason at the end of the policy year. **This kind of clause is [banned] prohibited in New Jersey for individual policies, but you may see sales materials for [these type of] policies with this type of renewal clause from outside the state.**

...
A Few Cautions

...
Be honest on [your] **the insurance** application. If you lie or don't give a complete medical history, the company can refuse to pay. If someone else helps you fill out the application, check it before signing. It is **your** claim that will be denied if incorrect medical history is on the application.

...
By law, you have a [10-day] **30-day "free look"** [period, or 30 days if you are buying a mail order policy] to read the policy and return it for a full refund if your are not satisfied.

...
[Reminder] **Getting Help**

To get help filling out claim forms, evaluating policies and finding answers to your health insurance questions, you can contact the Senior Health Insurance Program (SHIP). SHIP is a free service designed to help you with your health insurance problems or questions. You can contact the New Jersey Division on Aging at 1-800-792-8820 for the number of the SHIP office in your county.

The Department of Insurance maintains [a] charts listing the individual Medicare supplement policies and long-term care policies for sale in New Jersey. The listings include[s] the costs of the [policy] policies and the benefits [it offers] offered. The charts [is] are updated each year.

If you need [a copy] copies of the charts or other help, write the [department] Department of Insurance at [201 East] 20 West State Street, CN-325, Trenton, New Jersey 08625.

[APPENDIX] EXHIBIT B
 MEDICARE DEDUCTIBLES AND CO-PAYMENTS FOR [1986] 1990

MEDICARE PART A

| Service | Length of Stay | You Pay | Medicare Pays |
|--|------------------------|--|----------------|
| Hospitalization | First 60 days | \$(492] 592 deductible | Balance |
| | 61st-90th day | \$(123] 148 co-payment per day | Balance |
| | 91st-150th day | \$(246] 296 co-payment per day | Balance |
| | Beyond 150 days | All costs | Nothing |
| Post-hospital Skilled Nursing Facility Care | First 20 days | Nothing *provided all conditions are met (see Your Medicare Handbook) | All Costs |
| | 21st-100th day | \$(61.50] 74 co-payment per day | Balance |
| Home Health Care | | Nothing *provided all conditions are met (see Your Medicare Handbook) | All Costs |
| Hospice Care *Nursing care, physician's services, physical/occupational therapy, medical supplies, home health aide services, counseling services (except for bereavement counseling). *Drugs and Biologicals *Respite Care | | Nothing *provided all conditions are met (see Your Medicare Handbook) | All Costs |
| | | 5% co-payment | Balance |
| | | 5% co-payment | Balance |

MEDICARE PART B

| | | |
|------------------|--|--|
| Medical Expenses | \$75 annual deductible 20% of Medicare-approved amount after deductible | 80% of Medicare-approved amount after deductible |
|------------------|--|--|

EXHIBIT C
 (COMPANY NAME)

NOTICE OF CHANGES IN MEDICARE AND YOUR MEDICARE SUPPLEMENT COVERAGE—1990

THE FOLLOWING OUTLINE BRIEFLY DESCRIBES THE MODIFICATIONS IN MEDICARE AND IN YOUR MEDICARE SUPPLEMENT COVERAGE. PLEASE READ THIS CAREFULLY!

(A BRIEF DESCRIPTION OF THE REVISIONS TO MEDICARE PARTS A & B WITH A PARALLEL DESCRIPTION OF SUPPLEMENTAL BENEFITS WITH SUBSEQUENT CHANGES, INCLUDING DOLLAR AMOUNTS, PROVIDED BY THE MEDICARE SUPPLEMENT COVERAGE IN SUBSTANTIALLY THE FOLLOWING FORMAT.)

| SERVICES | MEDICARE BENEFITS | | YOUR MEDICARE SUPPLEMENT COVERAGE | |
|--|--|---|-----------------------------------|--|
| | In 1989 Medicare Pays Per Calendar Year | Effective January 1, 1990, Medicare Will Pay | In 1989 Your Coverage Pays | Effective January 1, 1990 Your Coverage Will Pay |
| MEDICARE PART A SERVICES AND SUPPLIES | | | | |
| Inpatient Hospital Services | Unlimited number of hospital days after \$560 deductible | All but \$592 for first 60 days/benefit period | | |
| Semi-Private Room & Board | | All but \$148 a day for 61st-90th days/benefit period | | |

PROPOSALS

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INSURANCE

| | | |
|--|--|---|
| <p>Misc. Hospital Services & Supplies, such as Drugs, X-Rays, Lab Tests & Operating Room</p> | | <p>All but \$296 a day for 91st-150th days (if individual chooses to use 60 nonrenewable lifetime reserve days)</p> |
| <p>BLOOD</p> | <p>Pays all costs except payment of deductible (equal to costs for first 3 pints) each calendar year. Part A blood deductible reduced to the extent paid under Part B</p> | <p>Pays all costs except nonreplacement fees (blood deductible) for first 3 pints in each benefit period</p> |
| <p>SKILLED NURSING FACILITY CARE</p> | <p>There is no prior confinement requirement for this benefit</p> <p>First 8 days— All but \$25.50 a day</p> <p>9th through 150th day— 100% of costs</p> <p>Beyond 150 days— Nothing</p> | <p>100% of costs for 1st 20 days (after a 3 day prior hospital confinement)/benefit period</p> <p>All but \$74.00 a day for 21st-100th days/benefit period</p> <p>Beyond 100 days— Nothing/benefit period</p> |
| <p>MEDICARE PART B SERVICES AND SUPPLIES</p> | <p>80% of allowable charges (after \$75 deductible)</p> | <p>80% of allowable charges (after \$75 deductible/calendar year)</p> |
| <p>PRESCRIPTION DRUGS</p> | <p>Inpatient prescription drugs. 80% of allowable charges for immunosuppressive drugs during the first year following a covered transplant after \$75 deductible/calendar year)</p> | <p>Inpatient prescription drugs. 80% of allowable charges for immunosuppressive drugs during the first year following a covered transplant (after \$75 deductible/calendar year)</p> |
| <p>BLOOD</p> | <p>80% of all costs except nonreplacement fees (blood deductible) for first 3 pints in each benefit period (after \$75 deductible/calendar year)</p> | <p>80% of all costs except nonreplacement fees (blood deductible) for first 3 pints (after \$75 deductible/calendar year)</p> |

(Any other policy benefits not mentioned in this chart should be added to the chart in the order prescribed by the outline or coverage. If there are corresponding Medicare benefits, they should be shown.)

(Describe any coverage provisions changing due to Medicare modifications.)

(Include information about when premium adjustments that may be necessary due to changes in Medicare benefits will be effective.)

THIS CHART SUMMARIZING THE CHANGES IN YOUR MEDICARE BENEFITS AND IN YOUR MEDICARE SUPPLEMENT PROVIDED BY (COMPANY) ONLY BRIEFLY DESCRIBES SUCH BENEFITS. FOR INFORMATION ON YOUR MEDICARE BENEFITS CONTACT YOUR SOCIAL SECURITY OFFICE OR THE HEALTH CARE FINANCING ADMINISTRATION. FOR INFORMATION ON YOUR MEDICARE SUPPLEMENT (Policy) CONTACT:

(COMPANY OR FOR AN INDIVIDUAL POLICY—NAME OF AGENT) (ADDRESS/PHONE NUMBER)

(a)

The agency proposal follows:

Summary

The Commission is proposing to amend N.J.A.C. 11:5-1.28, Approved schools; requirements.

This amendment was preceded by a Notice of Pre-Proposal which was published in the New Jersey Register at 21 N.J.R. 1641(a) on June 19, 1989. The proposed amendment incorporates some of the suggestions made by the public in comments submitted in response to the pre-proposal and clarifies the Commission's policy and procedures in regard to the recruitment of students enrolled in salesperson pre-licensure courses at an approved real estate school by licensed brokers or their representatives. The amendment requires that there be a total separation between the instructional activity conducted by approved schools and any recruiting activity by real estate brokers at school locations.

The proposed amendment would require all approved schools to provide to all students, at the first class session they attend, a written notice which informs the students of the Commission's policy on recruit-

DIVISION OF THE REAL ESTATE COMMISSION

Approved Schools

Proposed Amendment: N.J.A.C. 11:5-1.28

Authorized By: The New Jersey Real Estate Commission,
Daryl G. Bell, Executive Director.

Authority: N.J.S.A. 45:15-6.

Proposal Number: PRN 1990-106.

Submit comments by April 5, 1990 to:

Robert J. Melillo
Special Assistant to the Director
New Jersey Real Estate Commission
20 West State Street, CN 328
Trenton, New Jersey 08625

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ment by brokers at schools. Furthermore, the proposed amendment prohibits brokers from soliciting students to become employed by them as salespersons during class hours or breaks between such hours. An approved school may permit such solicitation before, after or separate from prescribed class hours, such as during "career" nights if certain conditions are fulfilled. However, no school director, instructor, guest lecturer or staff member may engage in any recruitment activity at any time before a student has successfully completed the course.

The proposed amendment also prohibits any approved school from offering a reduced tuition rate where eligibility for the lower tuition is contingent upon a student making a commitment to become licensed through a particular broker upon qualifying for licensure.

In addition, the amendment provides that an approved school whose name includes the name of an affiliated licensed real estate broker or franchiser must state in all of its advertisements that attending that school will not guarantee a student an interview or a job with the affiliated real estate broker(s). Also, if the approved school is located in a building which also houses brokerage offices, there must be a primary means of access to and egress from the school premises which is separate and apart from any area wherein brokerage activity is conducted.

Social Impact

The proposed amendment will have a beneficial impact on all students who attend salesperson pre-licensure education courses. Students will be protected from overly disruptive recruitment practices. It is anticipated that this will create an atmosphere more conducive to learning and, therefore, enhance the quality of education provided in such courses.

Economic Impact

It is not anticipated that the proposed amendment will have a significant economic impact on schools which conduct real estate pre-licensure courses. Some school locations now housed in buildings which also contain brokerage offices may have to expend monies for signage, the creation of separate entrances or, in the most extreme case, to relocate. However, the benefit to students and to other brokers which will result from a total separation of instructional activity from brokerage operations is, in the minds of the Commissioners, ample justification for imposing such costs. Furthermore, in most known cases where a school is located under the same roof as a brokerage office, it is a school affiliated with one of the larger brokers in the State, that is, those best able to afford any costs incurred in complying with this amendment.

Approved schools will be able to offer competitive tuition rates so long as eligibility for the rate is not made contingent on a student's commitment to become employed with a particular broker upon qualifying for a salesperson's license. Consequently, students will be able to select an approved school on the basis of the student's particular desires and ability to pay. Furthermore, by requiring schools which permit recruitment activities on their premises to treat all brokers equitably, smaller brokers who have no affiliation with any particular school will be afforded a greater opportunity to attract new salespersons.

Finally, the prohibitions upon recruitment by brokers of pre-licensure course students imposed by the amendment may adversely affect some brokers who have previously engaged in such activity, particularly those who operate schools. However, the comments submitted in response to the notice of pre-proposal did not indicate that this was a widespread practice. In any event, again, the Commission feels that the benefits to be gained by restricting such recruitment efforts, that is, guaranteeing that students will not be subjected to recruitment presentations during class time, and leveling the playing field so that smaller brokers, not affiliated with any pre-licensure school will have a better opportunity to compete with their larger counterparts to recruit new salespersons to their firms, outweigh any adverse effect which the adoption of this amendment may have upon the recruitment efforts of brokers who operate affiliated pre-licensure schools.

Regulatory Flexibility Analysis

The proposed amendment affects real estate brokers and approved real estate schools, most of which are small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. While the amendment imposes no reporting or record keeping requirements, compliance requirements are imposed on brokers and approved schools.

Approved schools are required to distribute to students the notice set forth in proposed paragraph (x)1, and substantial limitations on the recruiting of students for employment with brokers are imposed. Reduced tuition rates based upon student's employment commitments are forbidden, and the distribution or posting of employment solicitation material, if done for one broker, must be done for all so requesting. Ap-

proved school advertising may not include the telephone number of any licensee nor the name of any broker, except when the school is owned by a licensee or franchisor, and the use of the broker's name is allowed as part of the school name. Paragraph (x)8 places restrictions on the location and physical lay-out of an approved school, in relation to a broker's office. Lastly, approved schools cannot permit solicitation, on school premises, of students for real estate business leads. The proposed amendment also places restrictions on real estate brokers' recruiting and advertising activities in relation to approved schools.

As most of these requirements imposed upon brokers and approved schools are administrative in nature (that is, policies to be implemented), no significant capital costs of compliance or the need for professional services are anticipated. The requirements of paragraph (x)8 may require non-complying schools to redesign their classroom structure at their present location, or, if that is not possible, to relocate. While the capital costs of such actions may be significant, the Commission's purpose in proposing this amendment, to ensure the integrity of the licensure education process, cannot be accomplished if exemptions or lesser requirements are granted to approved schools and brokers who are small businesses.

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

11:5-1.28 Approved schools; requirements

(a)-(w) (No change.)

(x) The purpose of this subsection is to assure that there is a total separation between instructional activity conducted by approved schools and recruiting or brokerage activity. These provisions will be construed in a manner consistent with that regulatory objective. A violation of any of these provisions will be considered by the Commission as conduct demonstrating unworthiness for licensure, thereby subjecting the licensee to sanctions pursuant to N.J.S.A. 45:15-17(e) and (r). Requirements regulating the involvement of approved schools in recruiting students to become salespersons for particular real estate brokers are as follows:

1. At the beginning of the first class session of all salesperson prelicensure courses, all approved schools shall distribute to all students in attendance in writing the following:

NOTICE

**TO: ALL SALESPERSON COURSE STUDENTS
FROM: NEW JERSEY REAL ESTATE COMMISSION
RE: RECRUITMENT OF SALESPERSON LICENSE
CANDIDATES AT PRELICENSURE SCHOOLS**

It is the policy of the New Jersey Real Estate Commission that there be a complete and total separation between the instruction you receive in your prelicensure education course and any efforts by brokers to recruit you to join their firms after you are licensed. This policy is reflected in Commission rule N.J.A.C. 11:5-1.28(x), which is reproduced in its entirety below.

If you are subjected to any recruitment efforts during class time you should immediately notify your instructor, the Director of your school, and the New Jersey Real Estate Commission by writing to:

**New Jersey Real Estate Commission
20 West State Street, CN 328
Trenton, New Jersey 08625**

Attn: Director, Real Estate Education

You are free to negotiate the terms of your employment with any broker. It is in your own best interest to talk to several prospective employing brokers before deciding which offers the best compensation plan, including post-termination payment provisions, and support package for you.

(Repeat text of N.J.A.C. 11:5-1.28(x))

In the event an enrolled student does not attend the first session of a salespersons course, a copy of the foregoing notice shall be delivered to that student at the commencement of the first class session which that student does attend.

2. For the purposes of this subsection, the following definitions shall apply:

i. The phrase "brokerage activity" means any activity which, pursuant to N.J.S.A. 45:15-1 and 15-3 would require the person engaging in such activity to hold a license as a real estate broker or real estate salesperson;

ii. The term "solicit" means to invite or urge a student to seek employment with a particular broker, or to list, purchase or lease through, or to make referrals of listing, purchaser or lessee prospects to a particular broker; and

iii. The phrase "successful completion" means the receipt by the student of a Real Estate Commission school certificate form, duly signed by the instructor and school director and stamped by the school, certifying to the student's having completed and passed an approved precicensure course.

3. With the exception of posting or distributing written materials as provided in (x)5 below, no school director, instructor, guest lecturer or staff member shall, prior to a student's successful completion of a course, solicit a student to become a salesperson for any particular real estate broker, nor shall any such person at any time accept any fee or other compensation for soliciting or recruiting students attending their school to apply for employment with a particular real estate broker.

4. No in-person or electronic solicitation of students to apply for employment as salespersons with a particular real estate broker or any referral program shall be permitted at an approved school location during the prescribed class hours, nor in the breaks between such class hours. Such soliciting may be scheduled and held at approved schools before, after or separate from prescribed class hours, for example as a "career night" for students, provided that students are notified in writing in advance that their attendance at such recruitment functions is completely voluntary. However, no school director, instructor, guest lecturer or staff member shall engage in such activity at any time prior to a student's successful completion of a course.

5. Any approved school which posts or distributes written material which solicits students to inquire about employment as a salesperson with a particular broker must similarly post or distribute comparable written material from any real estate broker who requests the school to do so.

6. No approved school may offer a reduced tuition rate to students where eligibility for the lower tuition is contingent upon a student making a commitment to become licensed through a particular broker subsequent to their qualifying for licensure and no approved school may otherwise make or imply any promise or guarantee of employment to any student.

7. No oral statements or written text referring to an approved school may be included or contained in any advertisement by a real estate licensee and no advertisement of an approved school may refer to the brokerage operation or include the telephone number of any licensee, except that a school which is owned by a real estate licensee or franchisor may use that name in its school name.

i. Any advertisement by a school whose name includes the name of an affiliated licensed real estate broker or franchisor shall include the following disclosure legend:

Attending this school will not guarantee you an interview or a job with our affiliated real estate broker(s).

ii. No advertisement referring to an approved school may be placed in the Help Wanted classified section of any newspaper or periodical.

8. No approved school shall conduct precicensure course sessions in any area which is a part of a location which is licensed as a main or branch office of a real estate broker. For the purposes of this paragraph, an area will be considered as part of a licensed location if any brokerage activity is conducted in that area at any time.

i. Where space on two or more floors in a multi-story building is licensed as a main or branch office location, it is permissible for precicensure courses to be conducted in such a building, provided that the primary means of access to and egress from the floor where the courses are conducted does not require the students to walk through any area of the licensed office location wherein brokerage activity occurs.

ii. Where only one floor in a building is licensed as a main or branch office, it is permissible for precicensure courses to be conducted in another area on that floor, provided that there is a separate entrance to that area either from the exterior of the building or from a common foyer or lobby and provided that the primary means of access to and

egress from the area wherein the courses will be conducted does not require students to walk through a portion of the licensed premises wherein brokerage activity takes place.

iii. In all situations where precicensure courses are conducted in the same building in which brokerage activity occurs under the authority of a broker in any way affiliated with the approved school conducting such courses, the broker shall post signs either on the exterior of the building or in any common foyer or lobby, directing students either to the separate exterior entrance to the school location or to the primary route of access to the school location from such foyer or lobby.

9. No approved school shall grant permission to, nor allow any person to, solicit students enrolled in, or considering enrolling in, a precicensure course for listings; to purchase or lease any property; or for referrals of prospective sellers, purchasers or lessees at any time while such students are on school premises.

(a)

**DIVISION OF THE REAL ESTATE COMMISSION
Notice of Pre-Proposed Rulemaking and Joint Public Hearings
Compensation to Real Estate Licensees for Placing Mortgage Loans**

Authorized By: New Jersey Real Estate Commission,
Daryl G. Bell, Executive Director.

Authority: N.J.S.A. 45:15-3, 6, 16 and 17; *Mortgage Bankers Ass'n v. New Jersey Real Estate Commission, et al.*, 102 N.J. 176 (1986) (remanded).

OAL Docket Number: BRE 228-87.

Pre-Proposal Number: PPR 1990-3.

Take notice that, pursuant to the remand order of the New Jersey Supreme Court in *Mortgage Bankers Ass'n v. New Jersey Real Estate Commission, et al.*, 102 N.J. 176 (1986), the Office of Administrative Law will conduct joint public hearings for the Department of Insurance, Division of the Real Estate Commission, and the Department of Banking wherein the administrative law judge will receive and consider oral and written comment and draft proposed rules from the public, the Public Advocate, the real estate industry, the banking industry, the Department of Banking and the Real Estate Commission, and recommend appropriate regulation of the mortgage financing activities of real estate licensees and of lenders and mortgage banking and broker licensees under the Real Estate Licensing Law, N.J.S.A. 45:15-1 et seq. and the Mortgage Bankers and Brokers' Act, N.J.S.A. 17:11B-1 et seq., to protect real estate consumers and further the public interest. A public hearing on this pre-proposed rulemaking was conducted by the Office of Administrative Law on February 21, 1990 at its Newark offices.

The second and final public hearing concerning this pre-proposed rulemaking will be held at the following time and location:

Wednesday, March 14, 1990 at 10:00 A.M.
Office of Administrative Law
Quakerbridge Plaza
Building 9
Trenton (Hamilton Township), New Jersey
(Overflow Date: Thursday, March 15, 1990)

Interested persons wishing to make oral comments at the public hearing should appear and register to speak on March 14, 1990 in Trenton. An overflow hearing has been scheduled on the following day (March 15, 1990) to accommodate any persons who appear and register to speak, but who are not reached on the primary hearing date. No hearing will be conducted on the overflow day if all registered persons have been reached on the primary day.

Written comments or draft proposed rules should be submitted by March 30, 1990 to:

The Honorable Arnold Samuels, ALJ
Office of Administrative Law
185 Washington Street
Newark, New Jersey 07102

All written materials submitted should contain the following OAL Docket Number: OAL Dkt. No. BRE 228-87.

Background

The need for such regulation has arisen in the context of a variety of recent innovations in the delivery of residential home mortgage financing products and services to the home-buying public. In particular, over the past several years, a number of real estate licensees has proposed or formed financial and contractual relationships with mortgage lenders whereby a real estate buyer may obtain mortgage financing through the affiliated lender, and the real estate broker or, in some cases, salesperson may receive various fees for each loan placed or dividends or other returns on investment from the affiliated lender. Other real estate brokers are participating with mortgage loan selection and origination, in real estate brokerage offices. Pursuant to a remand by the New Jersey Supreme Court in *Mortgage Bankers Ass'n v. New Jersey Real Estate Commission, et al.*, 102 N.J. 176 (1986), public hearings are now scheduled to solicit public comments on appropriate regulation of the mortgage financing activities of real estate licensees and mortgage banking and broker licensees. (A plenary, declaratory ruling hearing, governing the proper interpretation of the Real Estate Licensing Law, N.J.S.A. 45:15-17i, was completed in November 1989).

Issues

The hearings related to Real Estate are intended to consider the following specific topics or areas of discussion and other related areas, including those within the purview of the Department of Banking.

1. What are the various financial and contractual relationships which exist between real estate licensees and mortgage lenders in New Jersey?

2. Do any of the financial relationships between New Jersey real estate licensees and mortgage lenders constitute violations of N.J.S.A. 45:15-17i, when mortgage services are provided to the buyer in the same transaction, where a sales commission is received from the seller?

3. What regulation of the mortgage financing activities of real estate licensees would be appropriate and in the public interest under Real Estate Licensing Law? For example:

(a) Have particular problem areas been identified in the hearing which should be addressed by regulation?

(b) Would regulations requiring written disclosure of the financial relationships between a real estate licensee and a mortgage lender benefit the involved consumer?

(c) Can the provisions of the federal Real Estate Settlement Procedures Act (RESPA) and its regulations serve as a model for state regulation of these activities?

(d) Would it be appropriate for agency regulations to differentiate between commercial and residential real estate transactions?

COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT (a)

URBAN DEVELOPMENT CORPORATION**Urban Development Corporation Economic
Development Programs****Proposed Repeal and New Rules: N.J.A.C. 12A:80****Proposed repeals: N.J.A.C. 12A:81 and 82**

Authorized By: New Jersey Urban Development Corporation,

Elizabeth F. Defeis, Chair.

Authority: N.J.S.A. 55:19-6(d).

Proposal Number: PRN 1990-115.

Submit comments by April 4, 1990 to:

Philip P. Rowan, Executive Director
New Jersey Urban Development Corporation
150 West State Street, CN 834
Trenton, New Jersey 08625

The agency proposal follows:

Summary

These proposed new rules and repeals replace N.J.A.C. 12A:80-1, 12A:81 and 12A:82 and are designed to consolidate the rules of the economic development programs of the Urban Development Corporation, and to maintain in the Board of Directors of the Urban Development Corporation (the "Corporation") flexibility in executing the goals of the Corporation through the Urban Development Program, the Urban

Small Business Incubator Program, and the Neighborhood Development Corporation Program.

The Urban Development Program provides financing for non-residential projects. The Urban Small Business Incubator Program provides financing for the development of small business incubators. The Neighborhood Development Corporation Program provides financing for the creation of neighborhood-based, for-profit corporations which undertake non-residential real estate development projects.

The new proposed rules replace the "but for" requirement with language that is consistent with language used in the Urban Development Corporation Act which states that projects which demonstrate insufficient responsible interest by the private financial or development community are eligible. Finally, the revisions will allow the Board of Directors to exercise discretion in executing its responsibilities provided that its actions are consistent with the provisions of the Urban Development Corporation Act.

Other amendments address the function of an existing Project Review Committee to review applications and a reconsideration procedure.

Also, the Application Fee is proposed to increase to \$500.00 from \$250.00 for the Urban Development Program and the Urban Small Business Incubator Program to more closely cover actual costs to review.

Social Impact

The social impact of these proposed new rules should be positive. More potential applicants may apply for funding because the Board of Directors will have more latitude in its decisions. Consequently, more projects may be financed through a variety of economic development programs of the Corporation thus helping to eliminate a greater amount of urban distress.

Economic Impact

In general, the economic development programs of the Corporation impact on the State in a positive economic manner, by providing low cost capital and other assistance for certain non-residential projects in the more distressed urban municipalities in the State.

The increase in the application fee for the Urban Development Program and the Urban Small Business Incubator Program requires an additional expenditure to applicants. It serves, however, to defray administrative costs associated with the operation of the respective programs.

Regulatory Flexibility Analysis

The majority of applicants are expected to be small businesses as defined under N.J.S.A. 52:14B-16 et seq. and in most instances a cost may be incurred to hire an independent certified public accountant to prepare financial statements. Such financial statements are minimum requirements of an organization such as the Corporation in the operation and monitoring of funding programs. This requirement is not onerous but is customary for lending institutions. Other reports of recipients of funds will not require additional costs in their preparation or submission. The Corporation considers these requirements to be the minimum necessary to insure a secure and efficient loan program.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 12A:80, 81 and 82.

Full text of the proposed new rules follows:

CHAPTER 80

NEW JERSEY URBAN DEVELOPMENT CORPORATION

SUBCHAPTER 1. URBAN DEVELOPMENT CORPORATION
ECONOMIC DEVELOPMENT
PROGRAMS

12A:80-1.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the New Jersey Urban Development Corporation to implement the Corporation's Urban Development Program, Urban Small Business Incubator Program, and Neighborhood Development Corporation Program.

(b) These programs provide for the Corporation to fund specific types of development projects in certain qualified municipalities. The Urban Development Program provides assistance for non-residential projects. The Urban Small Business Incubator Program provides assistance for the development of small business incubators. The Neighborhood Development Corporation Program provides assistance for the creation and development of neighborhood development corporations.

(c) Applications and questions regarding participation in this program should be directed to:

New Jersey Urban Development Corporation
150 West State Street
CN 834
Trenton, New Jersey 08625

12A:80-1.2 Definitions

The words and terms in this subchapter shall have the following meanings unless the context clearly indicates otherwise:

“Applicant” means an educational institution, local government unit, county government unit, economic development groups, private-for-profit business, non-profit corporation, neighborhood development corporation, or subsidiary of the Corporation.

“Board” or “Board of Directors” means the directors of the New Jersey Urban Development Corporation, pursuant to N.J.S.A. 55:19-4.

“Corporation” means the New Jersey Urban Development Corporation, established pursuant to N.J.S.A. 55:19-1 et seq.

“Educational institution” means a private college or university, or a state sponsored and supported college or university.

“Eligible project cost” means the cost of developing, executing and making operational a Board approved project when such costs are contained in a budget approved by the Board and amended from time to time. Eligible project cost includes the cost:

1. Of purchasing, leasing, condemning, or otherwise acquiring land and/or other property, or an interest therein, in the designated project or as necessary for a right-of-way or other easement to or from the project area;

2. Incurred for or in connection with or incidental to acquiring the land, property, or interest;

3. Incurred for or in connection with the relocation and moving of persons displaced by acquisition;

4. Of development or redevelopment, including:

i. The comprehensive renovation or rehabilitation of the land, property or interest;

ii. The cost of equipment and fixtures, which are part of the real estate, and the cost of production machinery and equipment necessary for the operation of the project; and

iii. The disposition of land or other property for these purposes.

5. Of demolishing, removing, relocating, renovating, altering, constructing, reconstructing, installing or repairing any land or any building, street, highway, alley, utility, service or other structure or improvement;

6. Of acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements necessary to the project;

7. Of planning and/or feasibility studies of proposed projects that are likely to result in UDC applications for financial assistance and appear reasonably likely to prove feasible prior to commencement of the study; and

8. Other incurred or incidental cost approved by the Board.

“Female business” means a female business as defined in N.J.A.C. 17:14-1.1.

“Financial assistance” includes, but is not limited to direct loans, loan guarantees, equity investment, and/or stock underwriting purchases provided by the Corporation.

“For-profit corporation” means a corporation, organized and incorporated for the purpose of making a profit and as defined by N.J.S.A. 14A:1-2(g).

“Minority business” means a minority business as defined in N.J.A.C. 17:14-1.1.

“Neighborhood” means an area designated within a qualified municipality and approved by the Board.

“Neighborhood Development Corporation” or “NDC” means a for-profit corporation formed for the sole purpose of owning, supervising, and/or managing one or more specific projects within the designated neighborhood area.

“Non-profit corporation” means a corporation organized and incorporated pursuant to N.J.S.A. 15A:1-2.

“Project” means a specific work or improvement including lands, buildings, improvements, real and personal property or any interest

therein (including lands under water, riparian rights, space rights, and air rights) acquired, owned, constructed, reconstructed, rehabilitated, or improved by the Corporation, a subsidiary of the Corporation, or by any other person, firm, or corporate entity under agreement with the Corporation or subsidiary of the Corporation pursuant to the provisions of the Urban Development Corporation Act (N.J.S.A. 55:19-1 et seq.).

“Project Review Committee” means a committee of no more than four members of the Corporation’s Board who review requests for Corporation assistance and make recommendations to the Board for approval.

“Qualified municipality” means any municipality which, at the time of the initiation of a project, was eligible to receive State aid under P.L. 1977, c. 260, N.J.S.A. 52:27D-162 et seq.; or any other municipality which in any year subsequent to the enactment of P.L. 1978, c. 14, N.J.S.A. 52:27D-178 et seq., was eligible to receive State aid pursuant to that Act; or any municipality which has a population of 15,000 or less, according to the most recent federal decennial census; a population density of 5,000 or more per square mile; 100 or more children enrolled in the Aid to Families with Dependent Children Program, according to the data available to and utilized by the Director of the Division of Local Government Services in the New Jersey Department of Community Affairs to determine eligibility for State aid under the provisions of P.L. 1978, c. 14; an equalized tax rate which exceeds the State equalized tax rate; and an equalized valuation per capita which is less than the State equalized valuation per capita.

“Small business” means a business duly approved pursuant to the New Jersey Set-Aside Act for Small Businesses, Female Businesses, and Minority Businesses, N.J.S.A. 52:32-17 (see also N.J.A.C. 12A:10-1).

“Small business incubator” means a facility owned and/or operated by an applicant with some type of financial assistance from the Corporation. The facility may provide any of the following services to tenants which are primarily new businesses, or any other services as approved by the Board:

1. Physical space in the incubator;
2. Business and management assistance, which may include access to experts in professional areas; and/or
3. Facility services.

“Subsidiary” means a corporation established by resolution of the Corporation, that has a majority of its outstanding voting shares owned by the Corporation or where the Corporation has the power to designate, and has so designated, a majority of the directors of such corporation.

“Technical assistance” means, but shall not be limited to, organizational development, incorporation, project feasibility, development and project administration.

“Time of the initiation of the project,” means the date and time of physical receipt of a completed application by the Corporation.

12A:80-1.3 Application for Corporation financial assistance

(a) Each application for financial assistance shall be on forms prescribed by the Corporation and be accompanied by, but not be limited to, the following:

1. A non-refundable application fee of \$500.00 for the Urban Development Program and the Urban Small Business Incubator Program. The non-refundable application fee for NDCs is \$250.00;
2. Evidence of support of the municipality in which the project is located. For purposes of these rules, evidence of municipal support shall include:
 - i. A certified copy of a resolution of the governing body of the local municipality; and
 - ii. A letter of support from the chief executive of the local municipality;
3. Evidence of private resources or other public sector funding commitments;
4. Evidence of all requisite federal and/or state environmental permits where necessary for the project;
5. A Small Business, Female Business, and Minority Business Set-Aside Plan pursuant to the rules concerning Minority and Female

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Subcontractor Participation in State Construction Contracts (N.J.A.C. 17:14);

6. Where applicable, a notarized letter from the local planning or zoning board which indicates that the project complies with local zoning requirements or has obtained the necessary variance;

7. A feasibility study or other information which demonstrates the feasibility of the proposed project; and

8. In the case of an NDC,

i. A copy of the NDC's by-laws and certificate of incorporation;

ii. A listing of all the principals in the NDC, which shall include: names, addresses, social security numbers, dates of birth, and resumes or statements as to their background and qualifications. For purposes of these rules, principal shall mean any officer, director, or individual who directly or indirectly holds any beneficial ownership of the securities or property of the NDC. It shall also mean any employee of the NDC who is empowered by title or by explicit assignment to authorize the procurement, purchase, or contracting of equipment, goods, services or suppliers involving an expenditure of \$1,000 or greater for NDC use; and

iii. A listing of stockholders who own five percent or more of issued shares. The stockholders listing shall disclose the names, addresses, social security numbers, date of birth, class of stock owned, approximate voting power of stock owned, and number of shares owned.

12A:80-1.4 Time for application for financial assistance from the Corporation

An applicant may apply to the Corporation at any time for financial assistance. However, the Corporation may establish deadlines for receipt and approval of applications. The Board shall notify all eligible municipalities in writing by certified mail at least 60 days prior to establishing deadlines.

12A:80-1.5 Financial assistance

(a) No more than \$1 million shall be allocated to any one county from all of the Corporation's development programs during the period in which the Corporation is allocating any of the initial \$30 million provided by the Community Development Bond Act, P.L. 1981, c. 486.

(b) The Corporation may provide financial assistance to a project in any of the following manners:

1. Direct loans from the Corporation in the form of permanent financing for eligible project costs at Corporation designated interest rates. Terms of direct loans from the Corporation shall not exceed a period of 20 years;

2. Loan guarantees by the Corporation which guarantee loans for no more than 90 percent of the eligible project cost. Terms of a loan guarantee shall not be for more than 10 years;

3. Equity investments by the Corporation through joint ventures with private or public sector entities, by providing venture capital, purchase of stock, or other forms of equity investment as may be offered by the specific project or the sponsor in general. If the Corporation or its subsidiary assumes an equity interest in a project, the other owner, partner or other business entity shall be required to comply with all Corporation rules and requirements; or

4. Grants may be made by the Corporation to projects, when determined by the Board to be necessary and appropriate. The Corporation may convert such grants to loans consistent with conditions agreed to by the Corporation and the grant recipient.

(c) The applicant shall secure interim financing for all projects, unless the Corporation, by Board resolution, agrees otherwise. The interim lender shall assume full responsibility for monitoring the timely completion of a project.

(d) The maximum amount of financial assistance for any one project shall be \$3,000,000. The minimum amount of financial assistance from the Corporation shall be \$50,000 for development projects, and \$10,000 for feasibility studies.

(e) The applicant shall certify in writing that there is a compelling public need to undertake such project and insufficient responsible interest by the private financial or development community to undertake the project without the Corporation's assistance or involvement.

(f) The Corporation may provide financial assistance to a small business incubator through participation in a seed venture fund created for the purpose of investing in Corporation financed small business incubator tenant firms.

12A:80-1.6 Evaluation of applications for financial assistance from the Corporation

(a) The Corporation shall evaluate each application for the following factors:

1. The distress level of the municipality in which the project is to be located, as well as the immediate area of the project;

2. The ratio of total Corporation financing to permanent jobs created as a result of the financing;

3. The amount of new tax ratables created within the municipality where the project is located;

4. The amount of financing for the project from sources other than the Corporation;

5. The impact the project will have in stimulating investment and development in the municipality and the immediate areas in which the project is located;

6. The readiness of the project to proceed and the likely success of the project;

7. The return on the investment made by the Corporation in the project;

8. The degree of support for, participation in, and/or consultation with the community and municipality in which the project is to be located;

9. The experience and track record of the applicant;

10. If an NDC, whether the ownership of the NDC is representative of the neighborhood in which the project is to be located; and

11. In an NDC, the amount of technical assistance that will be needed by the NDC from the Corporation.

(b) After an evaluation of the project by the Executive Director and the Project Review Committee is completed, the project will be presented to the Board for consideration of granting preliminary approval in principle. Approved projects will then be reviewed again by the Executive Director and Project Review Committee prior to presentation to the Board for consideration of final approval.

(c) The Corporation shall have 120 days from receipt of a completed application in which to review a request for financial assistance and advise an applicant that:

1. The request has been approved;

2. The request has been approved contingent on modification;

3. The request has been rejected; or

4. The request is continuing to be considered pending additional information being received.

(d) An applicant may submit additional information and request that the Executive Director and the Project Review Committee reconsider the application if the Project Review Committee does not recommend approval of the application to the Board.

12A:80-1.7 Small business, female business and minority business set-aside plans and requirements

(a) Each project approved to receive financial assistance from the Corporation shall comply with the rules concerning Minority and Female Subcontractor Participation in State Construction Contracts, N.J.A.C. 17:14. These rules apply to projects involving construction-related work on public structures or facilities.

(b) The applicant shall identify the small businesses, female businesses and minority businesses that will participate, by construction trade, together with the contract sum to be paid to each small business, female business, and minority business.

(c) In determining compliance with these goals, an applicant may only utilize those small businesses, female businesses, and minority businesses duly approved and registered pursuant to the Set-Aside Act for Small Businesses, Female Businesses and Minority Businesses, N.J.S.A. 52:32-17 (see N.J.A.C. 12A:10-1).

12A:80-1.8 Special NDC requirements

(a) For the purposes of this subchapter:

1. No shareholder of an NDC, without prior Board approval, may, directly or indirectly, purchase, obtain or otherwise acquire more than 10 percent ownership of NDC issued stock;

2. No one individual, without prior Board approval, may directly or indirectly acquire more than 15 percent voting control of the NDC; and

3. No one family, without prior Board approval, may directly or indirectly purchase, obtain or otherwise acquire more than 30 percent ownership of NDC issued stock. A family shall be defined as relatives of husband, wife, father, mother, brother and sister whether or not residing in the same household.

12A:80-1.9 Reporting and compliance

(a) Upon the receipt of Corporation financial assistance, the applicant shall be required to submit an annual report to the Corporation which shall include:

1. An annual review or audit of the applicant prepared by a certified public accountant;
2. A report on the number of employees working at the project location and, if a small business incubator, the number of employees of each tenant;
3. Current and three-year projected budgets of the approved project;
4. Plans for capital investments;
5. Any other information that the Corporation may require; and
6. If an incubator:
 - i. Changes in any incubator policies or marketing plans affecting incubator occupancy of the financial viability of the incubator;
 - ii. The occupancy rate of the incubator; and
 - iii. A listing of all tenants in the incubator during the year.

12A:80-1.10 Other Board action

In the case of matters not covered by these rules, the Board may undertake any action which it deems appropriate and is consistent with the provisions of the Urban Development Corporation Act.

LAW AND PUBLIC SAFETY

(a)

**DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY**

Announcement of Practice in a Special Area of Dentistry

Proposed Amendment: N.J.A.C. 13:30-8.4

Authorized By: State Board of Dentistry, William Gutman, Executive Director.

Authority: N.J.S.A. 45:6-7.

Proposal Number: PRN 1990-121.

Submit written comments by April 4, 1990 to:

William Gutman, Executive Director
State Board of Dentistry, Room 510
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Board of Dentistry seeks to expand and clarify the scope of permissible advertising of practice in a special area of dentistry by amending the current rule, N.J.A.C. 13:30-8.4. Through the deletion of subsection (d), many of the existing restrictions on advertising by specialists are removed, and through the deletion of subsection (e) general dentists are permitted to announce services in a special area of dentistry or a limitation of practice.

The Board proposes to delete subsection (d) since it primarily concerns advertising by a specialist and, pursuant to this amendment, all dentists, not just specialists, will now be permitted to advertise a specialty. In addition, the Board wishes to clarify that other than the two restrictions set forth in subsection (h), it will place no restrictions on the content of an advertisement as long as the advertisement is truthful and non-deceptive.

The Board proposes to delete subsection (e) to specifically permit a general dentist to advertise a specialty. Since a general dentist legally may limit his or her practice to a special area of dentistry, the Board feels

the public will benefit from a general dentist's advertisement of the availability of such services, provided the advertisement is truthful and non-deceptive. However, the Board also is of the opinion that the possibility exists for deception, or at least confusion, in that the potential patient reading the advertisement may not be able to distinguish between a licensee who is a specialist by virtue of advanced education and a general dentist who has elected to limit his or her practice to one specialty area. In order to assure that the advertising is not misleading, the proposed amendments include a new subsection (h), which will require a general dentist who advertises to use the phrase "General Dentist" immediately following his or her name. The words "specialist," "specialty" or "specializing" may not be used by a general dentist even if he or she limits the practice to one area of dentistry. The Board believes that the public perceives those terms as connoting a licensee who has advanced education in the specialty area.

The Board proposes to delete the words "subsequent to October 15, 1975" from N.J.A.C. 13:30-8.4(c)2 and to delete N.J.A.C. 13:30-8.4(c)3 in its entirety. These provisions are now obsolete in light of the Board's proposal to permit all dentists to advertise a specialty. Those dentists now holding a specialty permit will be allowed to continue to do so.

The remaining changes in the requirements for announcement of practice in a special area have been made to clarify that limitation of practice is not identical with "specialization," according to the Board's standards for use of that term. References and sections related to "limited practice" have been deleted.

The Board will continue to require that a licensee who wishes to announce to the public that he or she is a specialist obtain a permit from the Board upon proper application and include the permit number in all advertising of specialization. The permit or a copy of it must be displayed in all office locations. Finally, a few technical changes have been made for clarification and to correct typographical errors.

Social Impact

These proposed amendments will have a positive effect on potential patients seeking a dentist in a specialty area; since a general dentist will be permitted to advertise his or her specialty area, the potential patient will have access to a larger list of dentists in the specialty area from which to choose. The general dentist should also benefit since advertising may result in additional patients. The potential patient and the specialist, that is, a licensee with advanced professional education or certification, will benefit from the requirement that a general dentist who advertises the availability of services in a specialty area must distinguish himself or herself from a specialist; this distinction will diminish any possibility of confusion as to the licensee's specific credentials. Finally, since the amendments remove many of the restrictions on the content of the advertisement, all licensees who advertise will be able to supply additional information to potential patients, such as the number of years in practice, hospital or university affiliation, etc. The potential patient will therefore be better informed when choosing a dentist in a specialty area.

Economic Impact

There will be no economic impact upon the public as a result of the proposed amendments. General dentists who choose to advertise the availability of their services in a specialty area may gain economically in that they may attract more patients as a result of such advertising.

Regulatory Flexibility Analysis

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., dentists are deemed "small businesses" within the meaning of the statute, the following statement is applicable:

The State Board of Dentistry licenses approximately 19,500 dentists. The proposed amendment creates no new reporting or recordkeeping requirements for these licensees, and the services of other professionals are not needed in order to comply. There are no initial capital costs or annual costs to comply. The only compliance requirement is specific identification as a "general dentist" in any announcement of practice in a special area. Because this requirement is intended to reduce confusion on the part of the public, no exemption from it is possible regardless of the size of practice.

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

13:30-8.4 Announcement of practice in a special area of dentistry

(a) Any licensee who seeks to announce to the public that he is a specialist[,] or specializes in [or limits his practice to] one or more area(s) of dental practice listed in (b) below shall first obtain a permit

to do so from the Board of Dentistry [for the licensee's main office and all branch locations].

(b) The following special areas of dentistry are hereby recognized as suitable for the announcement of [limited] **specialty** dental practices:

1. Endodontics;
2. Oral surgery;
3. Oral pathology;
4. [Orthodontics] **Orthodontics**;
5. Pediatric dentistry (also called Pedodontics);
6. Periodontics;
7. Prosthodontics;
8. Public health.

(c) The Board shall grant permission to announce [such limitation of practice] **specialty** or **specialization** to:

1. Any licensed dentist who is currently certified or currently eligible for certification by a specialty board recognized by the American Dental Association appropriate to that area of dental practice listed in (b) above; or

2. Any licensed dentist who first meets the educational requirements and standards approved by the Board. The educational requirements and standards of the Board[, subsequent to October 15, 1975] shall be the successful completion of a post-doctoral education of two or more years in duration in one or more of the special areas [of (c)1 above] **listed in (b) above** and which, at the time of completion, was accredited or [previously] **provisionally** accredited by the American Dental Association Council on Dental Education[; or].

[3. Any licensed dentist who has announced, in this State, a limitation of practice in a special area(s) of dentistry included in (b) above prior to October 15, 1975.]

[4.]i. The Board may review the credentials and educational background of any licensed dentist eligible by (c)2 above and [to] approve or deny permission to announce [limitation] **specialization** in a special area of dentistry.

[(d) A licensed dentist who wishes to announce the limitation of practice in a special area of dentistry in (b) above and who is permitted to do so under (c) above may use any of the following words and phrases in all advertisements as permitted by N.J.A.C. 18:30-8.6;

1. "Practice limited to . . ." or "Specializing in . . ." using the appropriate name for the special area of dentistry in subsection (b), in which the licensee was granted permission to announce limitation of practice, such as Endodontics, Oral Surgery, etc., and/or the name that identifies an individual licensee permitted to announce in that special area, such as Endodontist, Oral Surgeon, etc.

2. The post-graduate degree received from a recognized accredited academic institution.

3. The name of the current specialty board certification.

4. The limitation of practice certificate permit number issued by this Board.

(e) All licensed dentists who are not permitted by (c) above to announce the limitation of practice in a special area of dentistry shall be prohibited from doing so and shall not hold out to the public as being qualified in any special area of dentistry by:

1. Announcement through the press, sign, card, letterhead or printed matter, or any other means of public advertising;

2. Use of a term as "specialist";

3. Use of the name of a specialty or any phrase customarily used to imply to the public limitation of practice in a special area of dentistry as contained in (b) and (d) above.]

[(f)](d) A licensed dentist permitted to announce by (c) above shall avoid any inference, implication or announcement by press, sign, card, letterhead or printed matter or any other means of public advertising that another licensed dentist not permitted to announce, and associated or employed in the same practice, is also qualified for the announcement in the [limited] **specialty** practice area.

[(g)](e) These rules regarding the announcement of [limited] **specialty** practice shall not prohibit any licensed dentist from engaging in [an] **any** aspect of the practice of dentistry in accord with applicable laws or other rules and regulations of the Board.

[(h)](f) Prior to making any announcement of [limitation of practice] **specialty** in accord with the preceding paragraphs, a licensed dentist shall apply to the Board for permission to do so. Application

to the Board for permission to announce in a special area of dental practice shall be upon such form and contain such information as the Board may direct. When granted a permit of announcement of [limited practice] **specialty** in a designated area(s) of dentistry, a licensee shall display this permit or a copy thereof in [the main (and all branch)] **all** office location(s) during the period of [limited] **specialty** practice. If a licensee discontinues a [limited] **specialty** practice, the Board shall be so notified.

[(i) A licensed dentist granted a permit of announcement of limited practice by this section, but who wishes to conduct general practice combined with a practice in a special area(s) contained in (b) above shall

1. Inform the board of such intentions and retain the permit of announcement in accord with (h) above;

2. Announce such a practice to the public by stating "General Practice of Dentistry and . . ." using the appropriate name of the special area(s) in which the permit of announcement has been granted contained in (b) above;

3. Conform to (d) above, except for (d)1;

4. Not use the term "specialist" nor any term which would convey a singular area of expertise.]

[(j)](g) All advertisements and public representations of a licensee granted a permit of announcement of [limited practice or] **specialization** [in a special area of dentistry] shall contain the licensee's name and permit number.

(h) **If a dentist, other than a specialist granted a permit by the Board, wishes to advertise services in one or more of the special areas of dentistry in (b) above, such advertisement shall contain the licensee's name and the phrase "General Dentist" immediately following. The advertisement may not use the terms "specialist", "specialty", or "specializing".**

[(k)](i) A licensee advertising or publicly representing that his or her practice specializes in [or is limited to] one or more area(s) of dental practice listed in (b) above shall list the name and permit number of the Board licensee(s) rendering dental services in said special area(s) in all advertisements and public representations.

[(l)](j) Noncompliance with these rules for announcement of [limitation] **specialization** or for announcement of the availability of services in a specialty area of practice may subject the licensee to suspension or revocation of his or her license to practice dentistry.

[(m)](k) Applications may be obtained by writing to the Office of the Board of Dentistry, 1100 Raymond Boulevard, Newark, New Jersey 07102.

(a)

DIVISION OF CONSUMER AFFAIRS

State Board of Examiners of Master Plumbers

General Rules and Regulations

Application for Examination; Identification of Licensees; Requirement of Pressure Seal Defined; Return of Pressure Seal; Supervision; Professional Fees

Proposed New Rules: N.J.A.C. 13:32-1.10, 1.11 and 1.12

Proposed Amendments: N.J.A.C. 13:32-1.2, 1.7 and 1.8

Authorized By: State Board of Examiners of Master Plumbers,

Christine T. DeGregorio, Executive Director.

Authority: N.J.S.A. 45:14C-7.

Proposal Number: PRN 1990-122.

Submit written comments by April 4, 1990 to:

Christine T. DeGregorio, Executive Director
Board of Examiners of Master Plumbers, Room 503
1100 Raymond Blvd.
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Board of Examiners of Master Plumbers is proposing amendments to N.J.A.C. 13:32-1.2, 1.7 and 1.8 and three new rules, N.J.A.C. 13:32-1.10, 1.11 and 1.12.

The proposed amendment to N.J.A.C. 13:32-1.2 informs applicants that an application containing a post office box number as the applicant's mailing address is not complete. The Board has found that in a number of instances it was unable to send Board correspondence or serve subpoenas and final orders because it did not have the licensee's complete mailing address, including a street name and number.

The proposed amendments to N.J.A.C. 13:32-1.7 and 1.8 and new rule N.J.A.C. 13:32-1.11 are all intended to emphasize that a licensee may not lend his or her license or permit its use by anyone other than a qualified representative. Specifically, N.J.A.C. 13:32-1.7(b) states that the license number appearing on all correspondence, stationery and advertising shall be that of the owner or qualified bona fide representative only. New subsection 13:32-1.7(c) states that a licensee is ultimately responsible for any advertisement containing his or her name, office address, place of practice or license number. New language was added to N.J.A.C. 13:32-1.8 to include as an act deemed to be the use or employment of dishonesty, fraud, deception, misrepresentation or false pretense the "securing of a plumbing permit for an unlicensed person." New rule N.J.A.C. 13:32-1.11 requires that all work supervised by a master plumber be performed only by the licensee's or plumbing contractor's employees. The Board believes these two amendments and the new rule are necessary because it has found some instances of licensees taking out permits for a general contractor and permitting the contractor's employees to perform the work without adequate supervision by the licensee. The Board has also found instances of license lending for the purpose of advertising. In order to protect the consumer from inferior plumbing work performed by inexperienced, unlicensed individuals and to prevent misleading advertising, the Board wishes to clearly advise its licensees that this practice of "license lending" is prohibited.

Finally, the Board is also proposing the following rules. N.J.A.C. 13:32-1.10, which requires the immediate return of the pressure seal to the Board in the event a licensee has failed to renew the license or has had the license suspended or revoked for any reason, is intended to clearly advise licensees that the pressure seal may only be possessed by active licensees who have not had their license suspended or revoked. New rule N.J.A.C. 13:32-1.12 provides specific guidance to licensees concerning professional fees. This new rule sets forth factors which may be considered in determining whether a fee is excessive and advises licensees that charging an excessive fee shall constitute occupational misconduct which may subject the licensee to disciplinary action. These new rules will enable the Board to have in place procedures which serve and protect the public's best interests.

Social Impact

The proposed amendment to N.J.A.C. 13:32-1.2, which affects all applicants for licensure, will have no impact upon licensees; it merely requires an applicant for licensure to provide a complete address on the application form. The consumer will benefit, however, by having access to the licensee's complete address in the event service of process is required.

The proposed amendments to N.J.A.C. 13:32-1.7 and 1.8 and new rule N.J.A.C. 13:32-1.11, which are intended to emphasize the prohibition against a licensee's lending his or her license, will clearly benefit both licensees and consumers. Licensees will be precisely advised of impermissible conduct and consumers will be assured that the person who advertises or who performs plumbing work is, in fact, a State-licensed master plumber, not one who has been lent a license. New rule N.J.A.C. 13:32-1.11 will enhance the licensee's ability to adequately supervise work performed under his or her license since it requires that all work supervised by a master plumber be performed only by the licensee's or plumbing contractor's employees; the consumer will benefit from the resultant quality workmanship. A negative impact may arise for those persons who perform plumbing work but who are not in the employ of a licensed master plumber or plumbing contractor, since they will be unable to perform plumbing work.

New rule N.J.A.C. 13:32-1.10 will have no impact upon licensees since it merely clarifies that the pressure seal must be returned if the licensee fails to renew his or her license or has his or her license suspended or revoked for any reason. However, this new rule will have a positive impact upon consumers because it will ensure that all pressure seals are in the

hands of currently licensed master plumbers; therefore, the consumer can expect that plumbing work performed under a sealed permit will be performed and/or supervised by a licensed professional who has attained the standards of competency set by statutory mandate as well as Board rules.

Proposed new rule N.J.A.C. 13:32-1.12 regarding professional fees will benefit both licensees and consumers since they will be specifically advised of factors considered in determining whether a fee is excessive. In addition, this new rule will aid the Board in carrying out its statutory duty of promoting the safety, protection and welfare of the consumer because it establishes guidelines for charging professional fees.

Economic Impact

The proposed amendment to N.J.A.C. 13:32-1.2 will have no economic impact on licensees or the general public since it merely advises applicants for licensure of what constitutes a complete application.

The amendments to N.J.A.C. 13:32-1.7 and 1.8 will have no discernible economic impact upon licensees since they merely broaden the current rules by emphasizing that license lending is prohibited. However, monetary penalties may be imposed upon a licensee who lends his or her license in violation of these rules. These amendments may result in a positive economic impact on the consumer by eliminating economic losses resulting from inferior workmanship performed by unlicensed and unsupervised individuals.

Proposed new rule N.J.A.C. 13:32-1.10 will have no economic impact upon licensees or the general public since it merely formalizes the Board requirement of the immediate return of the pressure seal upon a licensee's failure to renew the license or upon license suspension or revocation.

Proposed new rule N.J.A.C. 13:32-1.11, requiring that all plumbing work supervised by a licensee be performed by the licensee's or plumbing contractor's employees, will have a negative economic impact upon those licensees who do not have a sufficient number of employees to perform large plumbing jobs. These licensees will no longer be able to hire unlicensed general contractors who then provide laborers to perform the work; they will have to hire additional employees with the concurrent payroll and tax expenses. However, these increased operational costs should be offset by the reduced potential for costly litigation due to unsupervised, inadequate workmanship. The consumer will experience a positive economic impact as a result of this new rule for the same reason set forth with respect to the amendments to N.J.A.C. 13:32-1.7 and 1.8; that is, the possibility of economic losses resulting from inferior workmanship performed by unlicensed and unsupervised individuals should be eliminated.

Proposed new rule N.J.A.C. 13:32-1.12 will impact upon both licensees and consumers since it sets forth guidelines for the charging of professional fees which should provide additional protection against overcharges to the user of plumbing services. A monetary penalty may be imposed upon a licensee who charges an excessive fee as defined in this new rule.

Regulatory Flexibility Analysis

The proposed amendments and new rules will affect a large number of small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. The specific number is impossible to determine since the Board licenses individuals and not entities. Currently, the Board licenses approximately 7,500 individuals. The proposed amendments and new rules must be uniformly applicable to all licensees because they are based upon considerations of public safety and welfare.

There will be no new reporting, recordkeeping or other compliance requirements, nor will there be initial capital costs or annual costs of compliance, in connection with the amendments to N.J.A.C. 13:32-1.2, 1.7 and 1.8 and new rules N.J.A.C. 13:32-1.10 and 1.12 for the following reasons: The amendment to 13:32-1.2 relates only to applicants for licensure. The amendments to N.J.A.C. 13:32-1.7 and 1.8 merely advise licensees that license lending is prohibited. Likewise, new rules N.J.A.C. 13:32-1.10 and 1.12 advise licensees that the pressure seal must be returned upon failure to renew the license or upon license suspension or revocation and provide guidelines for the charging of professional fees.

However, proposed new rule N.J.A.C. 13:32-1.11, which requires that all plumbing work supervised by a licensed master plumber is performed only by the licensee's or plumbing contractor's employees, will directly impact upon those small businesses that have heretofore hired unlicensed general contractors to do plumbing jobs. Hiring the services of a licensed plumber or plumbing contractor may involve greater costs than using the services of an unlicensed general contractor, but because of the variables involved, it is impossible to determine the annual cost to small businesses

of compliance with this rule. Any adverse economic impact upon small businesses is justified, in the Board's opinion, by the maintenance of high standards of professionalism. Such standards are necessary for public safety; they protect lives as well as property.

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

13:32-1.2 Application for examination; notice

(a) (No change.)

(b) In order to be considered by the Board an application shall be complete in all respects **and shall include a street name. An application containing a post office box number as a mailing address is not a complete application.**

(c) (No change.)

13:32-1.7 Identification of licensees

(a) (No change.)

(b) All business correspondence and stationery and all advertising shall display the license number **and address, including street name, of the owner or qualified bona fide representative.**

(c) **Every State-licensed master plumber whose name, office address, place of practice or license number appears or is mentioned in any advertisement of any kind or character shall be presumed to have caused, permitted, or approved the advertising and shall be personally responsible for its content and character.**

13:32-1.8 Requirement of pressure seal defined

(a) (No change.)

(b) Use of a seal by any person other than the State licensed master plumber to whom it was issued **or the securing of a plumbing permit for an unlicensed person** shall be deemed to be the use or employment of dishonesty, fraud, deception, misrepresentation or false pretense. Such conduct may be grounds for the suspension or revocation of the license of the unauthorized user if he is already licensed by the Board. With respect to an unlicensed user, such conduct shall be grounds for the refusal to issue a State license at any point in the future.

(c) (No change.)

13:32-1.10 Return of pressure seal

A licensee who has failed to renew the State license in accordance with N.J.S.A. 45:14C-18 or who has had his license suspended or revoked for any reason shall immediately return the pressure seal to the Board.

13:32-1.11 Supervision

Any and all plumbing work supervised by a licensed master plumber shall be performed only by the licensee's or plumbing contractor's employees.

13:32-1.12 Professional fees

(a) A licensee of the Board of Examiners of Master Plumbers shall not charge an excessive fee for services. A fee is excessive when, after review of the facts, a licensee of ordinary prudence would be left with a definite and firm conviction that the fee is so high as to be manifestly unconscionable or overreaching under the circumstances.

(b) Factors which may be considered in determining whether a fee is excessive include, but are not limited to, the following:

1. The time and effort required;
2. The novelty or difficulty of the job;
3. The skill required to perform the job properly;
4. Any special conditions placed upon the performance of the job by the person or entity for which the work is being performed; and
5. The experience, reputation and ability of the licensee to perform the services.

(c) **Charging an excessive fee shall constitute occupational misconduct within the meaning of N.J.S.A. 45:1-21(e) and may subject the licensee to disciplinary action.**

(a)

DIVISION OF CONSUMER AFFAIRS

Administrative Rules

Petition for Rulemaking: N.J.A.C. 13:45A-19.1

Authorized By: James J. Barry, Jr., Director, Division of Consumer Affairs.

Authority: N.J.S.A. 52:17B-122a.

Proposal Number: PRN 1990-101.

Submit written comments by April 4, 1990 to:

James J. Barry, Jr., Director
Division of Consumer Affairs, Room 504
1100 Raymond Blvd.
Newark, New Jersey 07102

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-4(f), any interested person may petition an agency to promulgate, amend or repeal a rule. N.J.A.C. 1:30-3.7(d) requires each agency to prescribe by rule the form of a petition for rulemaking and the procedures for its submission. In order to comply with this requirement, the Division of Consumer Affairs is proposing a new rule, comprising subchapter 19 entitled "Petition for Rulemaking." The new rule is designed to inform the public of the procedures which must be followed for submitting a petition for rulemaking to the Division; it sets forth the required content of the petition and advises the public of the time deadlines for Division action on the petition.

Social Impact

The proposed new rule at N.J.A.C. 13:45A-19.1 will be beneficial to the public because it clearly outlines the required content of a petition for rulemaking and the procedures for submitting the petition to the Division and advises the public of deadlines for Division action. Furthermore, the proposed new rule will aid the Division in carrying out its statutory duty of promoting the safety, protection and welfare of the consumer because the rule will assure that relevant information is available to facilitate public input into the rulemaking process.

Economic Impact

The proposed new rule will have no adverse economic impact on the public since it merely advises the public of the required content of a petition for rulemaking and the procedures for submitting it to the Division of Consumer Affairs. The new rule may result in a saving of valuable time since the information contained in the new rule will enable the consumer or other interested party to submit a complete petition, thereby avoiding any unnecessary resubmission.

The proposed new rule will impose no additional expenses upon the Division of Consumer Affairs; the requirement that the Division process petitions for publication is already mandated by N.J.S.A. 52:14B-4(f).

Regulatory Flexibility Analysis

The proposed new rule does not impose any reporting or recordkeeping requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since it merely informs the public of the requirements for submitting a petition for rulemaking to the Division of Consumer Affairs. While the rule contains certain requirements relating to the contents of the petition, such requirements impose no costs on petitioners, nor should they require the engagement of professional services. Therefore, and because the petition process is voluntary, no differentiation in requirements based upon petitioner business size is made.

Full text of the proposed new rule follows:

SUBCHAPTER 19. PETITION FOR RULEMAKING

13:45A-19.1 Petition for promulgating, amending or repealing rules

(a) Any interested person may file a petition with the Director of the Division of Consumer Affairs to promulgate, amend or repeal a rule.

(b) With respect to a petition for a new rule, the petitioner shall include his or her name and address, the substance or nature of the request, the problem or purpose which is the subject of the request, the proposed text of the new rule and the statutory authority under which the requested action may be taken.

(c) With respect to a petition for an amended rule, the petitioner shall indicate any existing text to be deleted and include any new text to be added.

(d) Within 15 days of receiving the petition, the Director shall file with the Office of Administrative Law for publication in the New Jersey Register a notice of petition pursuant to N.J.A.C. 1:30-3.6(a).

(e) Within 30 days of receiving the petition, the Director shall advise the petitioner in writing of the response to the request and shall file with the Office of Administrative Law for publication in the New Jersey Register a notice of action on the petition pursuant to N.J.A.C. 1:30-3.6(b).

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Routes U.S. 46 and N.J. 57 in Warren County and N.J. 152 in Atlantic County

Proposed Amendments: N.J.A.C. 16:28-1.10, 1.38, and 1.42

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.

Proposal Number: PRN 1990-119.

Submit comments by April 4, 1990 to:

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

The agency proposal follows:

Summary

The proposed amendments will establish "speed limit" zones along Routes U.S. 46 in Independence Township, Warren County; N.J. 57 in Mansfield Township, Warren County; and N.J. 152 in the City of Somers Point and Egg Harbor Township, Atlantic County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon requests from the local governments in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "speed limit" zones along Routes U.S. 46 and N.J. 57 in Warren County and N.J. 152 in Atlantic County was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.10, 1.38 and 1.42 based upon the requests from the local governments and the traffic investigations.

Social Impact

The proposed amendments will establish "speed limit" zones along Route U.S. 46 in Independence Township, Warren County; N.J. 57 in Mansfield Township, Warren County; and N.J. 152 in the City of Somers Point and Egg Harbor Township, Atlantic County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zones signs. Motorists who violate the amended rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

The proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments primarily affect the motoring public.

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

16:28-1.10 Route U.S. 46 including Route U.S. 1, 9 and 46

(a) The rate of speed designated for the certain parts of State highway Route U.S. 46 described in this [section] subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i.-ii. (No change in text.)

iii. Zone three: 50 mph to 700 feet east of the Liberty Township-Independence line (mileposts 15.83); thence

iv. Zone four: 40 mph to 650 feet east of Bakers Mill Road, Independence Township (milepost 17.75), except

(1) School zone: 25 mph in the central school zone, Independence Township during the recess or while children are going to or leaving school, during opening or closing hours; thence

v. Zone five: 45 mph to 600 feet east of the Independence Township-Hackettstown Town line (milepost 20.73); thence]

iii. In Independence Township, Warren County:

(1) Zone three: 50 mph between the Liberty Township-Independence Township Corporate Line and 700 feet east of corporate line (mileposts 15.70 to 15.83); thence

(2) Zone four: 40 mph between 700 feet east of the Liberty Township-Independence Township Corporate line and 650 feet east of Baker Mill Road, except for 25 mph when passing through the Central School zone while "25 MPH WHEN FLASHING" signs are operating during recess or while children are going to or leaving school during opening or closing hours (mileposts 15.83 to 17.75);

(3) Zone five: 45 mph between 650 feet east of Baker Mill Road and the Town of Hackettstown-Independence Township Corporate line (Morris County) (mileposts 17.75 to 20.60); thence

Recodify existing [vi.-viii.] as iv.-vi. (No change in text.)

2.-6. (No change in text.)

(b) (No change in text.)

16:28-1.38 Route N.J. 57

(a) The rate of speed designated for the certain part of State highway [Route number] Route 57 described in this [section] subsection shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic:

i.-xi. (No change in text.)

xii. 50 miles per hour to the intersection of Brantwood Terrace, Mansfield Township; thence

xiii. 40 miles per hour to a point 1,100 feet east of the center line of Airport Road; thence

xiv. 50 miles per hour to the intersection of Route 182 in the Town of Hackettstown.]

xii. In Mansfield Township, Warren County:

(1) Zone 12: 50 miles per hour between the Washington Township-Mansfield Township line and 300 feet west of Komar Road (mileposts 12.60 to 13.80); thence

(2) Zone 12A: 45 miles per hour between 300 feet west of Komar Road and 1200 feet west of Water Street (mileposts 13.80 to 15.53); thence

(3) Zone 12B: 50 miles per hour between 1200 feet west of Water Street and Brantwood Terrace (mileposts 15.53 to 18.93); thence

(4) 40 miles per hour to a point 1,100 feet east of the center line of Airport Road; thence

(5) 50 miles per hour to the intersection of Route 182 in the Town of Hackettstown.

16:28-1.42 Route 152

(a) The rate of speed designated for the certain part of State highway [route number 152] Route 152 described in this [section] subsection shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

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- 1. For both directions of traffic:
 - i. 50 miles per hour from the westerly abutment line of the John F. Kennedy Memorial Bridge over Risley Channel, to a point 1,500 feet east of the centerline of Bay Avenue in Egg Harbor Township; thence
 - ii. 40 miles per hour to the intersection of Bay Avenue in the City of Somers Point.
- (b) In accordance with the provisions of N.J.S.A. 39:4-98 (as amended) the rate of speed designated for the certain part of State highway route number 152 described in this section shall be and hereby is established and adopted as the maximum legal rate of speed thereat:
 - 1. For both directions of traffic:
 - i. 20 miles per hour for the entire length of the bridge over Broad Thorofare.
 - 2. The provisions of this subsection temporarily supersede the provisions of any other speed regulation at the location hereinabove.
 - i. **In Atlantic County:**
 - (1) **City of Somers Point:**
 - (A) **Zone 1: 40 miles per hour between Bay Avenue in the City of Somers Point and 1300 feet east of Bay Avenue in the Township of Egg Harbor (mileposts 0.00 to 0.245); thence**
 - (2) **Township of Egg Harbor:**
 - (A) **Zone 2: 50 miles per hour between 1,300 feet east of Bay Avenue and the westerly abutment line of the John F. Kennedy Memorial Bridge over Risley Channel (mileposts 0.245 to 3.17).**

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Speed Limits
Route N.J. 23 in Morris County
Proposed Amendment: N.J.A.C. 16:28-1.25**

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.
Proposal Number: PRN 1990-120.

Submit comments by April 4, 1990 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment will establish a "speed limit" zone along Route N.J. 23 for southbound traffic in Riverdale Borough, Morris County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon requests from the local government in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of a reduction in speed within the "speed limit" zone along Route N.J. 23 in Riverdale Borough, Morris County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.25 based upon the request from the local government and the traffic investigation.

Social Impact

The proposed amendment will establish a "speed limit" zone along Route N.J. 23 in Riverdale Borough, Morris County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zone signs. Motorists who violate the amended rule will be assessed the appropriate fine.

Regulatory Flexibility Statement

The proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment primarily affects the motoring public.

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

16:28-1.25 Route 23

(a) The rate of speed designated for the certain parts of State highway Route 23 described in this [section] subsection shall be established and adopted as the maximum legal rate of speed:

1.-2. (No change.)

3. For southbound traffic:

i.-iii. (No change.)

iv. Zone four: 50 mph in Kinnelon Borough, West Milford Township, Butler Borough, [Kinnelon Borough, Riverdale Borough,] Pequannock Township, Wayne Township to the intersection of Laguna Drive (milepost 7.4).

(1) **In Riverdale Borough, Morris County**

(A) **45 miles per hour between the southerly intersection of Cutlas Road (milepost 13.65) and Wind Beam Road (milepost 12.47).**

v.-vi. (No change.)

4. (No change.)

(b)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Speed Limits
Route U.S. 30 in Atlantic County
Proposed Amendment: N.J.A.C. 16:28-1.57**

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.
Proposal Number: PRN 1990-102.

Submit comments by April 4, 1990 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment will establish "speed limit" zones along Route U.S. 30 in the Town of Hammonton; Mullica Township; Egg Harbor City; Galloway Township; Absecon City; and the City of Atlantic City, Atlantic County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon requests from the local governments in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "speed limit" zones along Route U.S. 30 in Atlantic County was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.57 based upon the requests from the local governments and the traffic investigations.

Social Impact

The proposed amendment will establish "speed limit" zones along Route U.S. 30 in the Town of Hammonton; Mullica Township; Egg Harbor City; Galloway Township; Absecon City; and the City of Atlantic

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Interested Persons see Inside Front Cover

TREASURY-TAXATION

City, Atlantic County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zones signs. Motorists who violate the amended rule will be assessed the appropriate fine.

Regulatory Flexibility Statement

The proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment primarily affects the motoring public.

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

16:28-1.57 Route U.S. 30

(a) The rate of speed designated for the certain parts of State highway Route U.S. 30 described in this subsection shall be established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic:

i. In Atlantic County:

(1) Town of Hammonton:

(A) Zone 1: 50 mph between Winslow Township and Fairview Avenue (Co. Rd. 678) (mileposts 27.97 to 29.13); thence

(B) Zone 2: 40 mph between Fairview Avenue and Central Avenue (Co. Rd. 680) (mileposts 29.13 to 31.02); thence

(C) Zone 3: 50 mph between Central Avenue and the Mullica Township Line (mileposts 31.02 to 32.60).

(2) Mullica Township:

(A) Zone 1: 50 mph between the Township of Hammonton Line and 950 feet east of Union Avenue (Co. Rd. 623) (mileposts 32.60 to 36.45); thence

(B) Zone 2: 55 mph between 950 feet east of Union Avenue and Heidelberg Avenue (mileposts 36.45 to 40.23); thence

(C) Zone 3: 45 mph between Heidelberg Avenue and the Egg Harbor Township Line (mileposts 40.23 to 40.68).

(3) Egg Harbor City:

(A) Zone 1: 45 mph between Mullica Township Line and Second Street (mileposts 40.68 to 40.95); thence

(B) Zone 2: 35 mph between Second Street and Boston Avenue (mileposts 40.95 to 41.60); thence

(C) Zone 3: 45 mph between Boston Avenue and Galloway Township Line (mileposts 41.60 to 42.12).

(4) Galloway Township:

(A) Zone 1: 50 mph between Egg Harbor Township Line and Taylor Avenue except for 35 mph when passing through the Church of Assumption School zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school during opening or closing hours (milepost 46.4) (approximate mileposts 42.12 to 49.00); thence

(B) Zone 2: 45 mph between Taylor Avenue and Absecon City Line (mileposts 49.00 to 50.52).

(5) Absecon City:

(A) Zone 1: 45 mph between Galloway Township Line and Mill Road (mileposts 50.52 to 51.16); thence

(B) Zone 2: 40 mph between Mill Road and Shore Road (mileposts 51.16 to 52.01); thence

(C) Zone 3: 45 mph between Shore Road and Reeds Ditch Bridge (#159) (mileposts 52.01 to 52.81); thence

(D) Zone 4: 50 mph between Reeds Ditch Bridge (#159) and Atlantic City Line (mileposts 52.81 to 54.42).

(6) City of Atlantic City:

(A) Zone 1: 50 mph between Absecon City Line and Beach Thorofare Bridge (mileposts 54.42 to 56.76); thence

(B) Zone 2: 40 mph between Beach Thorofare Bridge and Illinois Avenue (mileposts 56.76 to 57.46); thence

(C) Zone 3: 35 mph between Illinois Avenue and Adriatic Avenue (mileposts 57.46 to 58.23).

ii. In Camden County:

Recodify existing i.-viii. as (1)-(8) (No change in text.)

[ix. 40 miles per hour between Fairview Avenue and Central Avenue, Town of Hammonton, Atlantic County (Milepost 29.59 to 27.60); thence

x. 50 miles per hour between Central Avenue and Mullica Township line in the Town of Hammonton, Atlantic County (Milepost 27.60 to 26.05); thence

xi. 50 miles per hour to a point 950 feet east of Union Avenue, Mullica Township (milepost 22.30); thence

xii. 55 miles per hour to a point 1,050 feet east of Heidelberg Avenue, Mullica Township (milepost 18.29); thence

xiii. 45 miles per hour to the Egg Harbor City Line and between the Mullica Township Line and Second Street, Egg Harbor City (milepost 17.75); thence

xiv. 35 miles per hour to Boston Avenue, Egg Harbor City (milepost 17.09); thence

xv. 45 miles per hour to the Galloway Township line, Bermen Avenue (milepost 16.58); thence

xvi. 50 miles per hour between Galloway Township's corporate limits between Bermen Avenue and New Jersey Avenue (milepost 8.15); thence

xvii. 50 miles per hour to a point 900 feet west of Route US 9, Absecon City (milepost 7.21); thence

xviii. 40 miles per hour to a point 300 feet east of Shore Road, Absecon City (milepost 6.60); thence

xix. 50 miles per hour to milepost No. 2 in Atlantic City; thence

xx. 40 miles per hour to Illinois Avenue, Atlantic City (milepost 1.40); thence

xxi. 35 miles per hour to Adriatic Avenue, the end of Route US 30 in Atlantic City (milepost 0.42);

xxii. The legal speed limits through school zones shall be subject to the provisions of N.J.S.A. 39:4-98(a);

xxiii. In Galloway Township, Atlantic County:

(1) 35 mph School speed zone within the Church of the Assumption Elementary School zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours.]

[xxiv.](9) In Lindenwold and Laurel Springs Boroughs[, Camden County]:

(1) 30 mph school speed zone within the Lindenwold School No. 1 zone, St. Lawrence Parochial School zone and the Overbrook Junior High School zone, during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school during opening and closing hours, between 125 feet east of Summit Avenue (approximate milepost 46.05) and 300 feet east of Whitehorse Avenue (approximate milepost 45.55).

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Corporation Business Tax

Recycling Tax Credit

Proposed Amendment: N.J.A.C. 18:7-3.18

Authorized By: John R. Baldwin, Director, Division of Taxation.

Authority: N.J.S.A. 54:10A-27.

Proposal Number: PRN 1990-99.

Submit comments by April 4, 1990 to:

Nicholas Catalano
Chief Tax Counselor
Division of Taxation
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

The Division of Taxation proposes to add a new subsection to N.J.A.C. 18:7-3.18 to make clear that the recycling tax credit allowed under

N.J.S.A. 54:10A-5.3 is available only to corporations which own and use recycling equipment. The credit is, therefore, not available to corporations which acquire recycling equipment but then lease it for use to other corporations, or corporations which lease the equipment for use but do not own it.

Social Impact

The proposed amendment will have a positive social impact in that it will eliminate a point of possible confusion over the availability of the recycling tax credit and clarify the application of the statute. By restricting the availability of the credit to situations where there is bona fide ownership and use of recycling equipment, the amendment will limit the use of corporations formed to acquire and then lease recycling equipment for the sole purpose of obtaining the credit. The objective of the statute to encourage recycling is thereby strengthened by discouraging its use for tax avoidance purposes.

Economic Impact

The proposed amendment will have a positive economic impact by making clear when the recycling equipment tax credit will be available to corporate taxpayers. Restricting the availability of the credit to taxpayers who both own and use recycling equipment will protect State revenues and enhance the statute's policy of encouraging recycling. Expenses for tax preparation and administrative fees may be reduced for taxpayers through clarification of the availability of the credit.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses. The amendment is intended only to provide clarification as to when the recycling equipment tax credit is available to corporate taxpayers. Any reporting, recordkeeping and other compliance requirements currently imposed on taxpayers by the taxing statute are generally applied without regard to whether or not a particular taxpayer is a business employing more than 100 people.

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

18:7-3.18 Recycling tax credit

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

(i) The credit is available only to corporations that own and use recycling equipment. Lessors and lessees of recycling equipment do not qualify for the credit.

Example: Corporation A purchases recycling equipment which is leased for use to Corporation B. Corporation A would not qualify for the credit because it is not using the equipment. Corporation B would not qualify for the credit because it does not own the equipment.

OTHER AGENCIES

(a)

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Contested Transfer Determinations

Proposed New Rules: N.J.A.C. 19:18

Authorized By: Public Employment Relations Commission,
James W. Mastriani, Chairman.

Authority: P.L. 1989, c.269; N.J.S.A. 34:13A-5.2; 34:13A-6(f) and 34:13A-6(g).

Proposal Number: PRN 1990-114.

A **public hearing** will be held on:
March 26, 1990 at 10:00 A.M.
Public Employment Relations
Commission Meeting Room
495 West State Street
Trenton, New Jersey

Submit written comments by April 4, 1990 to:
James W. Mastriani, Chairman
Public Employment Relations Commission
CN 429
495 W. State Street
Trenton, NJ 08625-0429

The agency proposal follows:

Summary

P.L. 1989, c.269, effective January 4, 1990, prohibits an employer, as defined by that law, from transferring an employee between worksites for disciplinary reasons. This law further provides that the Public Employment Relations Commission shall determine whether the basis for a transfer between worksites is predominantly disciplinary. In order to process contested transfer cases, the Commission proposes these new rules.

The proposed new rules regulate contested transfer determinations, including the nature of such proceedings; who may file a petition for a determination; the petition's contents; the procedure for intervention; provision for an informal conference; requirements for petition amendment, withdrawal, dismissal and consolidation; petition answer requirements, including filing, service and amendment; allowance for an answer reply; evidentiary hearing requests; brief requirements; provisions concerning evidentiary hearings; the contents of the record before the Commission; and rules relating to the final determination, a motion for reconsideration and interim relief.

Social Impact

P.L. 1989, c.269, effective January 4, 1990, prohibits an employer as defined by this act and "employer" means "any local or regional school district, educational services commission, jointure commission, county special services school district or board or commission under the authority of the Commissioner or the State Board of Education." These proposed new rules will have a positive impact and should be welcomed by parties litigating contested transfer cases. These rules will provide clear guidance concerning how such cases will be processed and what each party must or may do at each step of the proceedings. The procedures are designed to avoid protracted administrative litigation.

Economic Impact

The proposed new rules will have no discernible economic impact on the general public since the rules simply outline the procedures for contesting a transfer. The proposed new rules are designed to reduce the expense of litigation for the parties and the Commission by minimizing protracted administrative litigation.

Regulatory Flexibility Statement

The proposed rules impose no requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The Commission's actions involve employer-employee relations in public employment.

Full text of the proposed new rules follow:

CHAPTER 18

CONTESTED TRANSFER DETERMINATIONS

SUBCHAPTER 1. NATURE OF PROCEEDINGS

19:18-1.1 Nature of proceedings

N.J.S.A. 34:13A-22 et seq. (P.L. 1989, c.269, effective January 4, 1990) provides that no employer, as defined in N.J.S.A. 34:13A-22, shall transfer an employee between worksites for disciplinary reasons. It further provides that the Commission shall determine whether the basis for a transfer between worksites is predominately disciplinary. The procedures in this chapter are intended to avoid protracted administrative litigation. Contested transfer proceedings will normally lend themselves to expeditious disposition on the basis of the parties' submissions, which these procedures are intended to accommodate.

SUBCHAPTER 2. INITIATION OF PROCEEDINGS

19:18-2.1 Who may file

Any employee, as defined in N.J.S.A. 34:13A-22, or the employee's majority representative may initiate a contested transfer proceeding by filing with the Commission, an original and nine copies of a petition for contested transfer determination together with proof of service of a copy of the petition on the employer. A copy of each petition filed shall be retained in a public docket until the case is closed.

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Interested Persons see Inside Front Cover

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19:18-2.2 Contents of petition for contested transfer determination

(a) A petition¹ shall be in writing and signed, and either shall be sworn to before a person authorized by the laws of this State to administer oaths or shall contain the following dated certification immediately preceding the signature of the person signing it: "I certify that the foregoing statements made by me are true.

I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment." Such petition shall contain the following:

1. The full name, address and telephone number of the petitioner;
 2. The full name, address and telephone number of the affected employee if the petitioner is an employee organization;
 3. The full name, address and telephone number of the employer who has notified the employee of a transfer;
 4. The date the employee was notified of the transfer;
 5. A statement of the specific factual allegations supporting the contention that the basis for the transfer is predominately disciplinary;
 6. All documents and affidavits supporting the petition's factual allegations; and
 7. A list of any other actions before the Commission or any other administrative agency, arbitrator or court, which the petitioner knows about and which involve the same or similar issues.
- (b) The petitioner shall file a petition no later than the 90th day from the date of receipt of a notice of transfer.

¹Petition forms will be supplied upon request. Address such requests to: Public Employment Relations Commission, 495 West State Street, CN 429, Trenton, New Jersey 08625-0429.

SUBCHAPTER 3. PROCEDURE

19:18-3.1 Intervention

A motion for leave to intervene in proceedings under this chapter shall be filed in writing with the Commission, stating the grounds upon which an interest in the proceeding is claimed and stating the extent to which intervention is sought. An original and nine copies of such motion shall be filed, together with proof of service of a copy of such motion upon the parties. The Chairman or such other Commission designee, in his or her discretion, may permit intervention to such extent and upon such terms as may be deemed just.

19:18-3.2 Informal conference

A Commission staff agent may hold a conference to clarify the issues in dispute, explore the possibility of settlement, or take stipulations of fact.

19:18-3.3 Amendment; withdrawal; dismissal; consolidation

(a) The Chairman or such other Commission designee may permit the petitioner to amend the petition at any time upon such terms as may be deemed just. Filing, service, and proof of service of such amended petition shall conform to the provisions of these rules relating to the original petition for contested transfer determination.

(b) A petition for contested transfer determination shall be dismissed and the case closed if the petitioner files a notice of withdrawal at any time before service of the respondent's answer. After service of the answer, a petition may be withdrawn only with the consent of the Chairman or such other Commission designee. Unless otherwise stated in the notice of withdrawal, the dismissal is without prejudice.

(c) The Chairman or such other Commission designee, in his or her discretion, may dismiss the petition on the grounds of lack of jurisdiction, insufficient cause for determination, failure to prosecute or other good reason.

(d) Whenever necessary to effectuate the purposes of the Act or to avoid unnecessary costs or delay, the Chairman or such other Commission designee, in his or her discretion, may consolidate any separate proceedings, or sever any consolidated proceedings.

19:18-3.4 Answer

Within 20 days from the service of the petition, the respondent shall file an answer. The answer shall specifically admit, deny or explain each of the allegations set forth in the petition, unless the

respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the petition, if no answer is filed, or any allegation not specifically denied or explained, unless the respondent shall state that it is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Commission, unless good cause to the contrary is shown. The answer shall include a specific factual rebuttal to the petition, accompanied by all supporting documents and affidavits. The answer shall also include a statement of facts constituting any affirmative defense. The answer shall be in writing and signed, and either shall be sworn to before a person authorized by the laws of this State to administer oaths or shall contain the following dated certification immediately preceding the signature of the person signing it: "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

19:18-3.5 Where to file; number of copies; service

An original and nine copies of the answer shall be filed with the Commission together with proof of service of a copy of the answer on the petitioner and any intervenor.

19:18-3.6 Amendment

The Chairman of the Commission or such other Commission designee may permit the respondent to amend its answer at any time upon such terms as may be deemed just.

19:18-3.7 Reply

Within five days of receipt of the answer, the petitioner may file a reply and any supporting documents and affidavits. No further replies shall be permitted without permission of the Chairman or such other Commission designee.

19:18-3.8 Request for evidentiary hearing

(a) Any party desiring an evidentiary hearing shall file with the Commission an original and nine copies of a request therefor, together with proof of service of a copy of the request on the other party. The petitioner shall file such a request no later than five days from receipt of the respondent's answer. The respondent shall file such a request no later than five days from the date a reply is due. Failure to file a timely request for an evidentiary hearing shall constitute a waiver of any claim to such hearing. Any such request shall set forth in detail the specific factual issues which the requesting party contends necessitate an evidentiary hearing and shall explain why these issues are substantial and material. Factual allegations not raised shall be deemed to be undisputed.

(b) Within five days of receipt of a request for a hearing, the other party shall file with the Commission an original and nine copies of a written response, together with proof of service of a copy of the response on the requesting party. The response shall specifically reply to each factual issue alleged to be in dispute by the requesting party and shall also state what, if any, additional factual issues not raised by the requesting party are alleged to be in dispute. Any factual issue not specifically responded to or raised in the response shall be deemed to be undisputed.

(c) The request for an evidentiary hearing and the response, together with the petition, the answer and any reply, shall constitute the pleadings for the evidentiary hearing.

19:18-3.9 Briefs

(a) In the absence of a hearing, the Chairman or such other Commission designee shall notify each party that it has 14 days from the date of notification to file an original and nine copies of a supporting brief, with proof of service of a copy of such brief on the other party.

(b) Within seven days after receipt of the initial brief, each party may file with the Commission an original and nine copies of a reply brief, together with proof of service of a copy of such brief on the other party. No other briefs shall be served or filed without leave of the Chairman or such other Commission designee.

(c) The Chairman or such other Commission designee, in his or her discretion, may grant written requests for extensions of time within which to file briefs. Such request shall set forth the reasons for the request and the position of the other party regarding the requested extension.

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19:18-3.10 Evidentiary hearings; motions

(a) If, following receipt of a timely request for an evidentiary hearing and a response pursuant to N.J.A.C. 19:18-3.8, or after determination without a request, it appears to the Chairman or such other Commission designee that there are substantial and material disputed factual issues, a notice of hearing shall be issued setting forth the time and place for the evidentiary hearing. The Chairman or such other Commission designee shall appoint a hearing examiner to conduct such hearing.

(b) Any motions filed pursuant to this subchapter shall be governed by the provisions of N.J.A.C. 19:14-4.1 through 19:14-4.8 on unfair practice proceedings, insofar as applicable.

(c) Any evidentiary hearing conducted pursuant to this subchapter shall be governed by the provisions of N.J.A.C. 19:14-6.1 through 19:14-6.13 on unfair practice proceedings, insofar as applicable.

(d) After the evidentiary hearing, or upon the parties' consent before the conclusion of the evidentiary hearing, the hearing examiner shall prepare a report and recommended decision which shall contain findings of fact, conclusions of law, and recommendations as to the disposition of the case. The hearing examiner shall file the original with the Commission, and shall serve a copy on the parties. Upon service on the parties, which shall be complete upon mailing, the case shall be deemed transferred to the Commission.

19:18-3.11 Record before the Commission; exceptions; cross-exceptions

The record before the Commission shall consist of the petition for contested transfer determination, the answer and any replies, the request for evidentiary hearing and any replies, the notice of hearing, the official transcript of the evidentiary hearing, stipulations, exhibits, documentary evidence, and depositions, together with the hearing examiner's report and any exceptions, cross-exceptions, briefs, and answering briefs, which shall be governed by the provisions of N.J.A.C. 19:14-7.3, Exceptions; cross-exceptions; briefs; answering briefs.

19:18-3.12 Oral argument

Proceedings under this chapter shall be submitted for the Commission's consideration without argument unless ordered by the

Chairman or such other Commission designee. Requests for oral argument shall be filed by any party along with its initial brief, or where a hearing has been conducted, along with its exceptions or cross-exceptions. Such request shall be made by a separate paper, an original and two copies of which shall be filed with the Commission, together with proof of service of a copy of such request on the other party. The Chairman or such other Commission designee shall notify the parties of the assigned argument date, if permission to argue orally is granted. The Commission may terminate any argument permitted at any time it deems the issues adequately argued.

19:18-3.13 Final determination; decisions in the absence of exceptions

Based on the parties' submissions and any oral argument, or where an evidentiary hearing has been conducted, based on the record in the case as set forth in N.J.A.C. 19:18-3.11 and any oral argument, the Commission or its designee shall issue and serve on the parties its findings of fact and conclusions of law, including its determination as to whether the basis of the disputed transfer was predominately disciplinary, and may take reasonable action to effectuate the purposes of the Act. If no exceptions are filed, the recommended decision shall become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

19:18-3.14 Motion for reconsideration

After the decision of the Commission or its designee, a motion for reconsideration may be filed in accordance with the provisions of N.J.A.C. 19:14-8.4, Motion for reconsideration.

19:18-3.15 Interim relief

Upon the filing of a petition, the petitioner may apply to the Commission for an order requesting the respondent to show cause why specified interim relief should not be granted pending the disposition of the proceeding. Such a request shall be governed by the provisions of N.J.A.C. 19:14-9.1 through 9.5 on unfair practice proceedings, insofar as applicable.

RULE ADOPTIONS

EDUCATION

(a)

STATE BOARD OF EDUCATION

Health, Safety and Physical Education

Readoption with Amendments: N.J.A.C. 6:29

Proposed: December 18, 1989 at 21 N.J.R. 3815(b).

Adopted: February 7, 1990 by Saul Cooperman, Commissioner,
Department of Education; Secretary, State Board of Education

Filed: February 8, 1990 as R.1990, d.154, with substantive and technical changes, not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 18A:1-1, 18A:4-10, 18A:4-15, 18A:28-7, 18A:16-2, 18A:35-5, 18A:36-19, 18A:40A, 18A:40-16, 18A:42-1, 18A:40A-1, 18A:40A-2, 18A:40-4, 18A:40A-10, 18A:40A-22, 18A:40A-12, 18A:40A-13, 18A:40A-14, 18A:40A-15 and 42 CFR 2.

Effective Date: February 8, 1990, readoption.

March 5, 1990, Amendments.

Expiration Date: February 8, 1995.

Summary of Public Comments and Agency Responses:

Two letters with comments were received. A summary of the comments and the agency responses follows.

COMMENT: N.J.A.C. 6:29-1.4(b) should include a reference to N.J.A.C. 6:3-2.8(b) which provides for the destruction of school records.

RESPONSE: N.J.A.C. 6:29-1.4(b) was revised upon adoption to include this reference.

COMMENT: Language should be added to N.J.A.C. 6:29-4.1(e) to omit instruction in specific methods of birth control, referring the student to his family or family health provider.

RESPONSE: The Department disagrees. Specific contents of curriculum is not included in N.J.A.C. 6:29-4.1(e). District boards of education develop curriculum based upon their individual needs.

COMMENT: Examine the word "appropriate" in N.J.A.C. 6:29-4.1(e)1i. Does it assure widespread participation of the constituent groups named?

RESPONSE: The word "appropriate" does not address the issue of assurance of participation. The Department's mechanism of ensuring compliance with mandates is through existing monitoring procedures.

COMMENT: The language in N.J.A.C. 6:29-4.2(a), "encourage positive health practices," is a vague phrase subject to interpretation and should be deleted.

RESPONSE: The premise of "positive health practices" is included in N.J.A.C. 6:29-4.1(b) and applies to all areas of comprehensive health education. Therefore, the Department decided that it is not necessary that it be repeated in N.J.A.C. 6:29-4.2(a). This phrase was deleted upon adoption.

COMMENT: N.J.A.C. 6:29-4.2(b) should include "community members" and "representative members of the community."

RESPONSE: The use of "community members" and "representative members of the community" in N.J.A.C. 6:29-4.2(b) would be redundant. "Representative members of the community" ensures broader representation from the community.

COMMENT: The language in N.J.A.C. 6:29-4.2(c), "emerging health and social issues," does not identify what constitutes such conditions. If no specific definition is possible, the phrase should be deleted.

RESPONSE: Rules are developed to apply over an extended period of time, during which issues may change. Local districts determine curriculum content based upon their identified needs.

COMMENT: The language in N.J.A.C. 6:29-4.2(d) should include "... in appropriate units developed in accordance with the age and maturity of the pupils," even though such language is included in N.J.A.C. 6:29-4.1(a).

RESPONSE: N.J.A.C. 6:29-4.1(a) is a general requirement for all comprehensive health education, including family life education. It is not necessary to repeat the requirement within the same subchapter.

Summary of Agency Initiated Changes Upon Adoption:

Grammar, spelling and minor typesetting errors are being corrected upon adoption at N.J.A.C. 6:29-1.3, 1.6, 2.4, 5.2 and 6.5.

A reference to N.J.A.C. 6:22, School Facilities, is being added to N.J.A.C. 6:29-1.6(a) in order to create consistency with subsection(b).

It should be noted that N.J.A.C. 6:29-2.1 and 2.2 should have been printed in boldface in the proposal at 21 N.J.R. 3815(b) as they were proposed as new rules. They are being adopted without change.

At N.J.A.C. 6:29-2.5(a), the phrase "guidelines from" is being replaced by "guides" after Centers for Disease Control and at N.J.A.C. 6:29-4.1(e)3 and 4.2(i), "guidelines" was replaced by "instructional guides" to clarify the fact that actual publications are being used.

At N.J.A.C. 6:29-3.2(a), the first sentence was deleted as it did not pertain to the subsection.

At N.J.A.C. 6:29-3.4(d)4, the first two sentences have been joined by the conjunction "or" for clarification.

At N.J.A.C. 6:29-5.2, mention of subsection (k) (formerly N.J.A.C. 6:29-8.2(j)) was inadvertently omitted in the proposal: Upon adoption, it is being correctly replaced in the text.

Phrases regarding "intervention and referral to" have been added in sections N.J.A.C. 6:29-6.2, 6.3 and 6.4 in order to be consistent with N.J.S.A. 18A:40A-10.

At N.J.A.C. 6:29-6.3 and 6.4 "recommended" has been changed to "approved" in order to accurately reflect the role of the State Department of Health.

A paragraph, N.J.A.C. 6:29-6.5(a)10, was deleted at that cite and incorporated in N.J.A.C. 6:29-6.3(a). The language has to do with alcohol use and school performance and is felt to be more appropriately placed in the latter section.

A new subsection, N.J.A.C. 6:29-6.5(b), is being added regarding anabolic steroid reporting procedures. The new subsection incorporates the statutory mandate created by P.L.1989 c.216, signed into law December 29, 1989. Although the change is substantive it does not require further public notice and comment since it simply reiterates the language of the law in the rule. Similarly, language requiring instruction and curriculum regarding the dangers of tobacco use has been added at N.J.A.C. 6:29-6.6, in compliance with P.L.1989 c.225, which mandated such instruction. The addition of anabolic steroids to the substance abuse prevention, intervention and treatment-referral program will favorably impact local school districts. First, the incorporation of anabolic steroid information into the instructional program will provide students with the knowledge of the physical risks involved with the use of anabolic steroids. Secondly, the requirement to report students using or suspected of using anabolic steroids will enable districts to refer for appropriate treatment services those students who may be harmfully involved with anabolic steroids.

The reporting mandate will not be an additional burden on districts since they are already required, by the Substance Abuse rules at N.J.A.C. 6:29-6, to have a mechanism in place for evaluation and referral for students who may be affected by alcohol or other drugs.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6:29.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 1. GENERAL PROVISIONS

6:29-1.1 Purpose

These rules provide standards to district boards of education in their development of policies and procedures to insure the health and safety of students and personnel within the school setting.

6:29-1.2 Health services personnel

(a) Every district board of education shall appoint at least one medical inspector pursuant to N.J.S.A. 18A:40-1.

1. The medical inspector, under the general supervision of the chief school administrator, shall direct the conduct of physical examinations or health screenings, shall develop and provide standards governing professional techniques, and shall direct the professional duties or activities of other medical staff.

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(b) Every district board of education in this State shall appoint at least one school nurse pursuant to N.J.S.A. 18A:40-1.

1. Under the direction of the school medical inspector and the chief school administrator, the duties of the school nurse shall include, but not be limited to:

i. Assisting with physical examinations pursuant to N.J.S.A. 18A:40-4.

ii. Conducting yearly screenings for scoliosis on all pupils 10 years of age through 18 years of age pursuant to N.J.S.A. 18A:40-4.3;

iii. Annually conducting audiometric screening in grades preschool through 4, 6, 8 and 10 pursuant to N.J.S.A. 18A:40-4 and N.J.A.C. 6:29-5.2(c);

iv. Maintaining student health records pursuant to N.J.S.A. 18A:40-4;

v. Observing and recommending to the school principal the exclusion of students who show evidence of communicable disease pursuant to N.J.S.A. 18A:40-7 and 8; and

vi. Lecturing to teachers on communicable diseases and other health concerns pursuant to N.J.S.A. 18A:40-3.

6:29-1.3 Policies and procedures

(a) District boards of education shall adopt written policies and procedures for:

1. Care of pupils who are injured or become ill at school or during participation on a school athletic team or squad;

2. Isolation, exclusion, and readmission of pupils suspected of having a communicable disease;

3. Notification of parents or guardians of students determined to be in need of further immediate medical care;

4. Transportation of students determined to be in need of further immediate medical care;

5. Safe and sanitary operation and maintenance of school buildings and grounds according to the provisions established in N.J.A.C. 6:22;

6. Supervision of pupil safety in the school district which shall include:

i. Safe storage and use of potentially hazardous materials on school property;

ii. Prevention of accidents, panic and fire; and

iii. Provision for and maintenance of suitable and safe equipment;

7. Organization of school safety patrols pursuant to N.J.S.A. 18A:42.1**42-1*, if the decision is made to organize safety patrols;

8. Prohibition of smoking in public school buildings pursuant to P.L. 1989, c.96; and

9. Administration of medication, in consultation with the medical inspector.

(b) All employees shall be informed of such policies and procedures at the beginning of each school year.

(c) District boards of education, medical and other staff shall comply with the rules and regulations of the local boards of health and the State Department of Health.

(d) N.J.A.C. 8:57, pertaining to reportable diseases, shall guide district boards of education in developing their policies and procedures.

(e) Any pupil absent or excluded from *[school]* ***school*** by reason of having or suspected of having communicable disease shall not be readmitted to school until written evidence is presented that risk of contagion is not present. Such evidence shall be by a physician licensed to practice medicine or the school medical inspector who has examined the pupil.

6:29-1.4 Records and reports

(a) The results of student physical examination and health screening procedures by the medical inspector or district personnel shall be recorded upon a record form recommended by the Commissioner of Education.

(b) Such form shall be kept in a permanent file and shall be the property of the district board of education ***[and shall be preserved]***. The original health record shall be forwarded with other school records of pupils who transfer to another school district. If a child leaves for any other reason than transfer, the record shall remain the property of the school. ***Retention and destruction of such record form shall be in accordance with N.J.A.C. 6:3-2.8.***

(c) The results of physical examinations and screenings shall be provided to the pupil's parent or guardian when any condition is identified which requires follow-up by a physician or family health care provider.

6:29-1.5 Health facilities, equipment and supplies

District boards of education shall provide the necessary facilities, equipment and supplies for the performance of the duties required, under State law and rule, by the medical staff.

6:29-1.6 Safe drinking water

(a) District boards of education shall assure the availability of potable drinking water through sanitary means in school buildings or upon school grounds in accordance with the Safe Drinking Water Act, N.J.S.A. 58:11-1 et seq.**, ***[and]*** the rules promulgated pursuant thereto, N.J.A.C. 7:10*[.]***, and **N.J.A.C. 6:22, School Facility Planning Service.***

(b) Testing of school drinking water quality shall be in accordance with the Safe Drinking Water Act, N.J.S.A. 58:11-1 et seq., the rules promulgated pursuant thereto, N.J.A.C. 7:10 and N.J.A.C. 6:22, School Facility Planning ***[Services]* *Service***.

SUBCHAPTER 2. SCHOOL HEALTH SERVICES

6:29-2.1 Student physical examination

(a) Every pupil shall be examined to learn whether any physical defect exists pursuant to N.J.S.A. 18A:40-4.

(b) The examination shall include as a minimum the following components contained in the record form recommended by the Commissioner of Education:

1. Immunizations pursuant to N.J.A.C. 8:57-4.1 to 8:57-4.16;

2. Health history including allergies, past serious illnesses, injuries and/or operations and current health problems;

3. Health screenings including height, weight, hearing and vision; and

4. Physical examination of the body by the school medical inspector.

(c) Medical inspectors may accept a record of a thorough physical examination made by a physician licensed to practice medicine. Such examination shall not be at the expense of the district board of education but shall be reported on a form furnished by the district board of education.

(d) District boards of education shall develop a vision screening program in consultation with the medical inspector, for the early detection of visual problems among pupils. District boards of education may employ one or more optometrists, licensed to practice optometry within the State, pursuant to N.J.S.A. 18A:40-1.

6:29-2.2 Dental clinics

District boards of education may maintain and conduct dental clinics for the treatment of children pursuant to N.J.S.A. 44:6-2.

6:29-2.3 Testing for tuberculosis infection

(a) The following are the rules of the State Department of Education concerning testing for tuberculosis infection by district boards of education for implementation of N.J.S.A. 18A:16-2 and 40-16.

1.-2. (No change.)

3. A Mantoux intradermal tuberculin test shall be given upon employment to all newly hired employees (full-time and part-time), all student teachers, school bus drivers for companies under contract with the district and other persons who have contact with pupils.

i. An employee with a documented Mantoux test administered within the previous six months does not have to be retested.

ii. An employee transferring between school districts within New Jersey would not have to be tuberculin tested if there is a documented record of a Mantoux tuberculin skin test being administered upon his or her initial employment in a New Jersey public school.

4. Procedures for the administration of the Mantoux test, interpretation of tuberculin reactions, follow-up procedures (including a chest x-ray and medical evaluation) and reporting shall be in accordance with the New Jersey Department of Health's document, School Tuberculin Testing in New Jersey, Reference Guide for Physicians and Nurses. For copies contact the New Jersey State Department of Health, Division of Epidemiology and Disease Control,

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Communicable Disease Control Program, CN 360, Trenton, New Jersey 08625-0360.

5. All pupils, employees and other personnel referred for the necessary chest X-ray and medical evaluation shall submit a physician's report. If the physician's report is not received by the school medical inspector within four weeks, or if the medical inspector is unwilling to accept the findings, the pupil, employee or other persons shall have a chest X-ray examination in the manner prescribed by the district board of education.

6. In accordance with standards, referenced in paragraph 4, above, provided by the New Jersey Department of Health, any pupil or employee shall be exempt from tuberculin skin testing upon presentation of documentation from a licensed physician showing a significant tuberculin reaction and a subsequent negative chest X-ray.

6:29-2.4 Attendance at school by HIV (Human Immunodeficiency Virus) infected children

(a) For pupils with HIV infection who are enrolled or seeking enrollment in a school program, the regulations and procedures in this section shall apply.

1. All information about the identity of a student with HIV infection shall be kept confidential and shall comply with the provisions of N.J.A.C. 6:3-2.

(b) Pupils with HIV infection shall not be excluded from attending school unless they manifest those exceptional conditions identified by the State Department of Health and contained in N.J.A.C. 8:61-1.1. A district board of education must reach a determination on the admissibility of a pupil to school no later than 10 days after the request to admit such pupil.

(c) In accordance with N.J.A.C. 8:61-1.1:

1. (No change.)

2. The presence of HIV infection in and of itself may not serve as a basis for excluding a pupil by way of classification as eligible for home instruction in accordance with N.J.A.C. 6:28-3.5(c)2ii.

3. (No change.)

(d) A district board of education may act to exclude a pupil with HIV infection only when:

1. The district medical inspector, the pupil's parent(s) or guardian(s) and physician agree that he or she manifests those exceptional conditions delineated in N.J.A.C. 8:61-1.1. In such cases, the pupil must be provided an appropriate education pursuant to N.J.A.C. 6:28.

2. Conflicting medical opinion exists between the district medical inspector and the pupil's personal physician as to whether the pupil manifests those exceptional conditions set forth in N.J.A.C. 8:61-1.1. In such instances, the procedures delineated in (e) below must be immediately followed. A district board of education may not avoid compliance with the procedures in (e) below by excluding a pupil for reasons other than those listed herein.

(e) If, based upon advice of the district medical inspector, the pupil is deemed to manifest any of the exceptional conditions contained in N.J.A.C. 8:61-1.1 and the pupil's personal physician is in disagreement, the district board of education shall immediately submit a request for a review by the Medical Advisory Panel established by the Department of Health in accordance with the following procedures:

1. (No change.)

2. Home instruction shall be provided as specified below during the pendency of a Commissioner's determination.

i.-iv. (No change.)

3. (No change.)

4. The assistant commissioner shall immediately request the designated official within the State Department of Health to convene the Medical Advisory Panel according to N.J.A.C. 8:61-1.1(c) at the earliest possible time and shall transmit the information required in (e) above to the designated official for panel consideration.

5. (No change.)

6. The Medical Advisory Panel shall render a written determination to the Commissioner as to whether the district board of education has demonstrated that the exclusion is warranted.

i.-ii. (No change.)

7. The written determination of the Medical Advisory Panel shall be transmitted to the Commissioner who shall forward the determination to the parties.

8. Within 10 days of the receipt of the Medical Advisory Panel's written determination, the parties may file with the Commissioner written exceptions to those findings of the panel which the parties believe to be based upon disputed issues of fact or conclusions of law.

9. The Commissioner shall review the determination of the Medical Advisory Panel and the exceptions of the parties and within 10 days of the receipt of the exceptions or the expiration of the time for so filing issue a written determination which shall:

i.-ii. (No change.)

iii. Determine that the matter is a contested case and direct that it be transmitted to the Office of Administrative Law for further determinations. If the Commissioner determines the matter is a contested case, the exceptions filed by the parties to the Medical Advisory Panel's determination shall constitute the pleadings which shall establish the issues for the proceedings before the Office of Administrative Law. The hearing in the matter shall be conducted on an expedited basis.

10. Copies of the Commissioner's determination shall be forwarded to the parties, the Commissioner of Health, the Medical Advisory Panel and the county superintendent of schools.

6:29-2.5 Routine procedures for sanitation and hygiene when handling body fluids

(a) District boards of education shall develop written policies and procedures for sanitation and hygiene when handling blood and body fluids in conformance with N.J.A.C. 8:61-1.1(j) and in conformance with *[guidelines from the]* Centers for Disease Control *guides*, "Recommendations for Prevention of HIV Transmission in Health Care Settings," MMWR Supplement, August 1987, and "Update: Universal Precautions for Prevention of Transmission of Human Immunodeficiency Virus, Hepatitis B Virus, and Other Bloodborne Pathogens in Health-Care Settings" from MMWR, June 24, 1988, Vol. 37, No. 24, pp. 337-382, 387-388. Copies are available through the National AIDS Information Clearinghouse, P.O. Box 6003, Rockville, MD 20850.

(b) District boards of education shall make available to school personnel, compensated and uncompensated (volunteer), training and appropriate supplies for the handling of blood and body fluids, whether or not pupils or school staff with HIV infection are present. School nurses, custodians and teachers in particular should have knowledge of the proper techniques in the handling and disposal of materials.

SUBCHAPTER 3. PHYSICAL EDUCATION AND ATHLETICS PERSONNEL AND PROCEDURES

6:29-3.1 Physical education personnel

(a) In all schools not having the services of certificated physical education teachers, the responsibility for the program of activities and instruction shall be that of each teacher, or such responsibility may be delegated to one or more teachers designated by the chief school administrator.

(b) (No change.)

6:29-3.2 Physical education exemption procedures

(a) *[The foundation program in physical education for the public schools of this State shall be the program as provided in this chapter.]* District boards of education may, at their discretion, accept the successful completion of basic training in the military or naval service of the United States or United States Merchant Marine in full satisfaction of the physical training requirements of N.J.S.A. 18A:35-7.

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

(d) A district board of education may adopt a policy to permit pupils to receive graduation credit in physical education while participating in interscholastic team activity, alternative programs of athletics, or alternative programs of physical education activities that meet the requirements of N.J.A.C. 6:28-4.2 and are consistent with

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local district's physical education program goals and instructional objectives. Health and safety requirements must be satisfied, pursuant to the provisions of N.J.S.A. 18A:35-5. Any policy adopted under this authority shall include, but need not be limited to, the following provisions:

(1) (No change.)

(2) To be eligible to receive graduation credit in physical education through interscholastic team activity, alternative programs of athletics, or alternative programs of physical education activities, the pupil must demonstrate that the interscholastic activity or alternative program will provide activity and development equivalent to that provided by the physical education program.

3. Credit and grading for the alternative program shall be based on proficiencies established by the district board of education.

4.-5. (No change.)

6:29-3.3 Athletics personnel

(a) Any person not certified as a teacher and not in the employ of a district board of education shall not be permitted to organize public school pupils during school time or during any recess in the school day for purposes of instruction, or coaching or for conducting games, events or contests in physical education or athletics.

(b) (No change.)

(c) In the event there is no qualified and certified applicant, the holder of a county substitute certificate is authorized to serve as an athletic coach in the district in which he or she is employed for a designated sports season, provided that:

1. The district chief school administrator demonstrates to the county superintendent that:

i. (No change.)

ii. There was no qualified applicant based on the written standards of the district board of education;

2. The district chief school administrator will provide a letter to the county superintendent attesting to the prospective employee's knowledge and experience in the sport in which he or she will coach; and

3. Approval of the county superintendent shall be obtained prior to such employment by the district board of education. The 20-day limitation noted in N.J.A.C. 6:11-4.4(i) shall not apply to such coaching situations.

6:29-3.4 Athletics procedures

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

(d) Each candidate for a place on a school athletic squad or team shall be given a medical examination by the medical inspector or designated team doctor no more than 60 days prior to the first practice session or in lieu thereof, the medical inspector may accept the report of such an examination by a physician licensed to practice medicine.

1. Any examination which shall be used to determine the fitness of a pupil to participate in athletics shall not be given before the first day of the school year, as defined in N.J.S.A. 18A:36-1, for which such fitness is being determined.

2. Each candidate must undergo one medical examination in each school year.

3. To participate on a subsequent athletic squad or team, a health history update shall be completed by the parent or legal guardian in accordance with district policy.

4. The parent or legal guardian shall receive written notification signed by the medical inspector or team doctor approving the pupil's participation in athletics based upon the medical examination*¹. The] * ²or the³ reasons for the medical inspector's or team doctor's disapproval of the pupil's participation shall be included in such notification. The health findings of the medical examination for participation shall be made a part of the pupil's health record.

(e) A medical examination to determine the fitness of a pupil to participate in athletics shall include, as minimum, no less than the following:

1. A medical history questionnaire, completed by the parent or legal guardian of the pupil, to determine if the pupil:

i.-vi. (No change.)

vii. Has allergies including hives, asthma or reaction to bee stings;

viii.-xi. (No change.)

2. A physical examination which shall include, as a minimum, no less than the following:

i.-xiv. (No change.)

xv. Neurological examination to assess balance and coordination and the presence of abnormal reflexes.

(f) The district board of education shall adopt a policy regarding the content and procedures for the administration of the medical examination required in (e) above. Nothing in this section shall be interpreted as precluding the district board of education from adopting content and procedures in excess of the minimum requirements set forth herein.

(g) Any examination conducted by a physician other than the medical inspector or designated team doctor must be reported to the medical inspector or designated team doctor on a form furnished by the district board of education and, as a minimum, include that content adopted by the board. If, at the request of the parent or legal guardian, the medical examination is conducted by a physician other than the medical inspector or designated team doctor, such examination shall not be at the expense of the district board of education.

(h) A pupil representing his or her school in interscholastic athletic competition shall sign a form furnished by the district board of education, the wording of which shall embody a request to be enrolled as a candidate for a place on a school team in a specified sport. The parent or legal guardian must execute an acknowledgement that physical hazards may be encountered.

(i) Every candidate for a place on the school athletic squad or team shall submit a form furnished by the district board of education conveying the consent of his or her parent or legal guardian to participate.

SUBCHAPTER 4. COMPREHENSIVE HEALTH EDUCATION

6:29-4.1 General requirements

(a) District boards of education shall provide for the development of a comprehensive health education program through a coordinated sequential elementary and secondary curriculum with instructional units appropriate to the age, growth and development, and maturity of the pupils.

(b) Comprehensive health education means health education in a school setting that is planned and carried out with the purpose of maintaining, reinforcing, or enhancing the health, health-related knowledge, skills, and health attitudes and practices of children and youth that are conducive to their good health and that promote wellness, health maintenance, and disease prevention.

(c) Comprehensive health education includes but is not limited to instruction in personal health and hygiene, growth and development, dental health, mental and emotional health, accident prevention and safety, consumer health, community/environmental health, family life education, substance abuse (including alcohol and tobacco), disease prevention and control and human immunodeficiency virus (HIV) infection.

(d) District boards of education shall provide instruction for drug and alcohol education in accordance with the curriculum and instructional provisions cited in N.J.A.C. 6:29-6.6.

(e) HIV prevention education shall be conducted as follows:

1. Each district board of education shall develop an HIV prevention education program.

i. The HIV prevention education curriculum shall be developed through appropriate consultation and participation of teachers, school administrators, parents and guardians, students, physicians, members of the clergy and representative members of the community. The district board of education shall demonstrate prior to the initiation of any education program that such consultation and participation have taken place. The process of consultation shall be continued as the program is revised in future years. Upon the request of parents and guardians, the curriculum shall be made available for their review.

2. The district board of education shall provide for in-service education to those teachers responsible for HIV prevention education.

3. The State Department of Education shall provide training assistance and *[guidelines]* *instructional guides* to district boards

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of education in the development of HIV prevention education programs.

4. The district board of education shall establish procedures whereby any pupil, whose parent or guardian presents to the school principal a signed statement that any part of the instruction in HIV prevention education is in conflict with his or her conscience, or sincerely held moral or religious beliefs, shall be excused from that portion of the course where such instruction is being given and no penalties as to credit or graduation shall result therefrom (see N.J.S.A. 18A:35-4.6 et seq.).

6:29-4.2 Family life education

(a) As used in this subchapter, family life education means instruction to develop an understanding of the physical, mental, emotional, social, economic, and psychological aspects of interpersonal relationships; the physiological, psychological and cultural foundations of human development, sexuality, and reproduction, at various stages of growth; and to provide the opportunity for pupils to acquire knowledge which will support the development of responsible personal behavior, *[encourage positive health practices,]* strengthen their own family life now, and aid in establishing strong family life for themselves in the future thereby contributing to the enrichment of the community.

(b) The family life education curriculum shall be developed through appropriate consultation and participation of teachers, school administrators, parents and guardians, pupils in grades 9 through 12, physicians, members of the clergy and representative members of the community. The district board of education shall demonstrate prior to the initiation of any district board of education program that such consultation and participation have taken place. The process of consultation shall be continued as the program is revised in future years.

1. (No change.)

(c) Family life education instruction should include necessary information on emerging health and social issues.

(d) District boards of education shall develop an elementary/secondary family life education program.

(e) Districts that develop their program with an interdisciplinary approach may use teachers from other disciplines to assist those staff members authorized to give instruction in family life education.

(f) Teaching staff members holding one of the following certificates are authorized to teach in the district's family life education program:

1.-8. (No change.)

9. Teacher of psychology; or

10. Special Education.

(g) Districts may use resource people to assist with their program; that is, physicians, members of the clergy, attorneys, parents and guardians, school social workers, school psychologists, law enforcement personnel, and others as necessary.

(h) The district board of education shall provide for in-service education to those teachers responsible for family life education programs.

(i) The State Department of Education shall provide technical assistance and *[guidelines]* ***instructional guides*** to district boards of education in the development of family life education programs.

(j) The district board of education shall establish procedures whereby any pupil, whose parent or guardian presents to the school principal a signed statement that any part of the instruction in family life education is in conflict with his or her conscience, or sincerely held moral or religious beliefs, shall be excused from that portion of the course where such instruction is being given and no penalties as to credit or graduation shall result therefrom (N.J.S.A. 18A:35-4.6 et seq.).

(k) This section is subject to all of the provisions of N.J.A.C. 6:8-7.1.

SUBCHAPTER 5. AUDIOMETRIC SCREENING

6:29-5.1 Definitions

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

"Audiometer" means an electroacoustical generator which provides pure tones at selected frequencies of output through calibrated earphones mounted in MX-41/AR earmuffs.

...

"Pupils at risk for hearing impairment" means pupils with communication disorders, pupils with cleft palate, pupils with allergies, pupils with frequent upper respiratory or middle ear infections, pupils taking ototoxic medication, and pupils who are exposed to sudden or continuous loud noises.

...

6:29-5.2 Screening procedures

(a) (No change.)

(b) Audiometric screening shall be conducted for pupils who are:

1.-2. (No change.)

3. Enrolled in grades 6, 8*[,]* and 10;

4. Entering the district with no recent record of audiometric screening;

5.-7. (No change.)

(c) The medical inspector, certified school nurse or the health care personnel shall conduct the audiometric screening. All screening shall be conducted in cooperation with the school nurse.

(d) Audiometric screening shall be conducted with an audiometer which is calibrated annually in accordance with ANSI S3.6-1969, American National Standard Specifications for Audiometers, which with all subsequent amendments and supplements is incorporated herein by reference. These standards may be purchased from the American National Standards Institute, Inc. 1430 Broadway, New York, New York 10018.

(e) Each pupil shall be screened individually at 20dB HL in a screening room at the following frequencies: 500Hz, 1000Hz, 2000Hz, 3000Hz and 4000Hz.

Recodify existing (e)-(i) as (f)-(j) (No change in text.)

*** (k) The school nurse shall notify in writing the parent or guardian of pupils failing audiometric screening of the necessity for additional evaluation by a physician or family health care provider.***

SUBCHAPTER 6. SUBSTANCE ABUSE

6:29-6.1 (No change in text from proposal.)

6:29-6.2 Definitions

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

...

["Treatment"]* **Intervention and referral to treatment****** means those programs and services offered to help a pupil because of the use of alcohol or other drugs by the pupil or the pupil's family.

6:29-6.3 Adoption of policies and procedures

(a) District boards of education shall adopt and implement policies and procedures for the evaluation*, **intervention*** and **referral to*** treatment of pupils ***whose use of alcohol and other drugs has affected their school performance or*** who possess, consume or who on reasonable grounds are suspected of being under the influence of the following substances ***in school or at school functions***:

1.-3. (No change from proposal.)

(b) In adopting and implementing policies and procedures for the evaluation*, **intervention*** and **referral to*** treatment of alcohol or other drug-affected pupils, district boards of education shall:

1. Consult with local agencies ***[recommended]* ***approved***** by the State Department of Health; and

2. (No change from proposal.)

(c) Alcohol and other drug policies of district boards of education shall include, but not be limited to, the following components:

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

5. The provision of ***intervention and* treatment*-referral*** services for pupils who are affected by alcohol or other drug use. ***Intervention and* ***[Treatment]* ***treatment-referral***** shall be provided by individuals who are certified by the New Jersey State Board of Examiners as substance awareness coordinators or by individuals who are appropriately certified by the New Jersey State Board of Examiners and**

trained in alcohol and other drug abuse prevention. These programs and services shall include any of the following:

i-iv. (No change from proposal.)

6.-7. (No change from proposal.)

(d) The policies and procedures for the evaluation*, **intervention*** and ***referral to*** treatment of alcohol and other drug-affected pupils developed under this section shall be reviewed and approved by the Department of Education.

6:29-6.4 Review and availability of policies and procedures

(a) Each district board of education shall establish an annual process to review the effectiveness of its alcohol and other drug policies and procedures. The district board of education shall solicit community input as well as consult with local agencies *[recommended]* ***approved*** by the State Department of Health in the review process.

(b) Alcohol and other drug policies and procedures for discipline, evaluation, ***intervention*** and ***referral to*** treatment of pupils shall be made available annually to all school staff, pupils, and parents or guardians.

6:29-6.5 Reporting, notification and examination procedures

(a) In instances involving alcoholic beverages, controlled dangerous substances or any chemical or chemical compound as identified in N.J.A.C. 6:29*-6.3(a), the following shall apply:

1.-9. (No change from proposal.)

[10. The district's policy shall provide for the evaluation and treatment of pupils whose use of alcohol and other drugs has affected their school performance or who possess or consume alcohol or other drugs in school or at school functions.]

[11.] (Recodified to 6.5(c))

***(b) In instances involving anabolic steroids, the following shall apply after July 1, 1990:**

1. Whenever any teaching staff member, school nurse or other educational personnel of any public school shall have reason to believe that a pupil has used or may be using anabolic steroids, that teaching staff member, school nurse or other educational personnel shall report the matter as soon as possible to the school nurse or medical inspector, as the case may be, or to a substance awareness coordinator, and to the principal or, in his or her absence, to his or her designee.

2. The principal or his or her designee, shall immediately notify the parent or guardian and the superintendent of schools, if there be one, or the administrative principal and shall arrange for an examination of the pupil by a doctor selected by the parent or guardian or by the medical inspector. The pupil shall be examined as soon as possible for the purpose of diagnosing whether or not the pupil has been using anabolic steroids.

3. A written report of that examination shall be furnished by the examining physician to the parent or guardian of the pupil and to the superintendent of schools or administrative principal.

4. If it is determined that the pupil has been using anabolic steroids, the pupil shall be interviewed by a substance awareness coordinator or another appropriately trained teaching staff member for the purpose of determining the extent of the pupil's involvement with these substances and possible need for treatment. In order to make this determination, the coordinator or other teaching staff member may conduct a reasonable investigation which may include interviews with the pupil's teachers and parents. The coordinator or other teaching staff member may also consult with such experts in the field of substance abuse as may be necessary and appropriate.

5. If it is determined that the pupil's involvement with and use of these substances represents a danger to the pupil's health and well-being, the coordinator or other teaching staff member shall refer the pupil to an appropriate treatment program which has been approved by the Commissioner of Health.*

*[11.]****(c)*** Any staff member who reports a pupil to the principal or his or her designee in compliance with the provisions of this subsection shall not be liable in civil damages as a result of making such a report as specified in N.J.S.A. 18A:40A-13 and N.J.S.A. 18A:40A-14.

6:29-6.6 Curriculum and instruction

(a) Each school district having kindergarten through sixth grades shall incorporate into its curriculum at each grade level alcohol and (CITE 22 N.J.R. 798)

other drug education*, **including tobacco and anabolic steroids,*** appropriate for the pupil's age and maturity, in accordance with Department of Education Chemical Health Guidelines pursuant to N.J.S.A. 18A:40A-1. These guidelines are available through the New Jersey State Department of Education, 225 West State Street, CN 500, Trenton, New Jersey 08625.

(b) Each school district having seventh through twelfth grades shall incorporate into its curriculum at each seventh through twelfth grade level a minimum of 10 clock hours per school year of alcohol and other drug education, ***including tobacco and anabolic steroids,*** in accordance with Department of Education Chemical Health Guidelines, pursuant to N.J.S.A. 18A:40A-1.

(c) Instructional programs on the nature of anabolic steroids shall be incorporated into the curriculum after July 1, 1990.

SUBCHAPTER 7. SCHOOL EMPLOYEE PHYSICAL EXAMINATIONS

6:29-7.1 Scope and purpose

This subchapter designates the minimum assessments to be used by district boards of education in establishing physical examinations for candidates for employment and district employees.

6:29-7.2 Definitions

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

"Employee" means the holder of any full- or part-time position of employment.

"Health history" means the record of a person's past health events obtained in writing, completed by the individual or their physician.

"Health screening" means the testing of people, using one or more diagnostic tools, to determine the presence or precursors of a particular disease.

"Employee assurance statement" means a statement signed by the employee, certifying that information supplied by the employee is true to the best of his or her knowledge.

"Medical evaluation" means the examination of the body by the school medical inspector or by any physician licensed to practice medicine.

"Physical examination" means the assessment of an individual's health.

"Psychiatric examination" means an examination for the purpose of diagnosis and treatment of mental disorders.

6:29-7.3 Policies and procedures for employee physical examinations

District boards of education shall adopt written policies and procedures for the physical examination of employees, and may adopt written policies and procedures for candidates for employment.

6:29-7.4 Requirements of physical examinations

(a) Any candidate for employment may be required to undergo a physical examination that may include, but not be limited to health history, health screenings and medical evaluation.

(b) Newly employed staff shall be required to undergo a physical examination which shall include, but not be limited to:

1. A health history completed by the individual or their physician which shall include:

- i. Past serious illnesses and injuries;
- ii. Current health problems;
- iii. Allergies; and
- iv. Current medications.

2. Health screenings including:

- i. Height and weight;
- ii. Blood pressure;
- iii. Pulse and respiratory rate; and
- iv. Vision screening, hearing screening and Mantoux test for tuberculosis.

3. A medical evaluation.

(c) Each school employee shall undergo an annual physical examination, which shall include, but not be limited to:

1. An updated employee health history of:
 - i. Current health problems; and

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- ii. Current medications.
- 2. Any updated information provided in accordance with (c)1i and ii above shall require an assurance statement signed by the employee. If an employee refuses to provide updated information with a signed assurance statement, the employee shall undergo a physical examination which includes (b)1 and 3 above.
- (d) Any physical examinations required under this subchapter shall be limited to those assessments necessary to determine the individual's fitness to function in the position which he or she seeks or currently holds, and to detect any health risks to students and other employees.
- (e) All employee medical records for the district shall be stored and maintained separately from other personnel files. Only the employee, the chief school administrator, school medical inspector and/or certified school nurse, shall have access to the medical information in that individual's file.
- (f) Individual psychiatric or physical examinations of any employee may be required by the district board of education whenever, in the judgment of the board, an employee shows evidence of deviation from normal physical or mental health.
- (g) Cost for examinations made by a physician or institution designated by the district board of education shall be borne by the district board of education. If, however, the examination is performed by a physician or institution designated by the employee, with approval of the district board of education, the cost shall be borne by the employee.

(a)

STATE BOARD OF EDUCATION

Local Area Vocational School Districts and Private Vocational Schools Instructional Hours

Adopted Amendments: N.J.A.C. 6:46-1.1, 4.6, 4.10, and 4.12

Proposed: December 4, 1989 at 21 N.J.R. 3700(a).
 Adopted: January 3, 1990 by Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.
 Filed: February 8, 1990 as R.1990 d.150, **without change**.
 Authority: N.J.S.A. 18A:1-1, 18A:4-10, 18A:4-15, 18A:7A-1 et seq., 18A:54-6, 18A:54-10, 18A:69-1 et seq., 18A:4-15, 34:1A-38 and Public Law 98-524.
 Effective Date: March 5, 1990.
 Expiration Date: October 5, 1992.

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

Full text of the adoption follows:

6:46-1.1 Words and phrases defined
 The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

...
 "Instructional hour" in a private vocational school means 60 consecutive minutes of which a minimum of 50 minutes is dedicated to instruction.
 ...

6:46-4.6 Courses or programs offered
 (a) (No change.)
 (b) Each request for course or program approval submitted by the private vocational school shall contain sufficient information for proper evaluation. The information shall include:
 1.-2. (No change.)
 3. The course or program content in outline form showing the major elements of instruction, the number of instructional hours for each element, and the total number of instructional hours required for completion.

- 4.-9. (No change.)
- (c) (No change.)
- (d) An accredited private vocational school approved by the Commissioner may request that the Commissioner grant course or program approval in credit hours. The Commissioner may grant approval in credit hours for a course or program taught in an approved private vocational school provided the course or program approval request contains the information specified in (b) above. In addition, the number of credit hours requested must be in accordance with the conversion formula to credit hours used by the appropriate accrediting agency recognized by the Commissioner and accepted by the Secretary of the United States Department of Education.
- 6:46-4.10 School bulletin
 (a) (No change.)
 (b) The school bulletin shall be the official statement of the school's policies, regulations, charges and fees and shall include, but not be limited to, the following items:
 1.-9. (No change.)
 10. A description of each approved course or program describing course content, type of work or skill to be learned and instructional hours;
 11.-16. (No change.)
 (c)-(d) (No change.)
- 6:46-4.12 Conduct of the school
 (a)-(d) (No change.)
 (e) A pupil shall not be retained by the school when the pupil fails to meet the school's minimum standards of academic progress or exceeds the maximum number of absences as stated in the school bulletin. The maximum number of unexcused absences shall not exceed 20 percent of the total instructional hours of the course or program.
 (f) (No change.)

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(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Manual for Hospital Services Coverage, Admission and Billing Procedures, Teleprocessing Procedures

Readoption with Amendment: N.J.A.C. 10:52

Proposed: December 18, 1989 at 21 N.J.R. 3911(a).
 Adopted: February 8, 1990 by William Waldman, Acting Commissioner, Department of Human Services.
 Filed: February 8, 1990 as R.1990 d.157, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
 Authority: N.J.S.A. 30:4D-6a(1)(2); 30:4D-7, 7a, b and c; 30:4D-12.
 Effective Date: February 8, 1990, Readoption; March 5, 1990, Amendment.
 Expiration Date: February 8, 1995.

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

Summary of Changes Between Proposal and Adoption:
 The Division of Medical Assistance and Health Services (the Division) is making several changes upon adoption.
 The Division is deleting the specific HCPCS procedure codes for laboratory services that appeared in the proposed amendment at N.J.A.C. 10:52-1.6(c)1i and ii. There is already a statement in N.J.A.C. 10:52-1.6(c)1 which indicates that hospital outpatient departments are reimbursed on a fee-for-service basis using the HCPCS procedure codes contained in the Medicare A file.
 The Division is also deleting the reference to the specific HCPCS procedure codes for HealthStart Maternity Health Support Services and

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HealthStart Pediatric Continuity of Care which appeared in the proposal at N.J.A.C. 10:52-1.6(c)5. These codes already appear at N.J.A.C. 10:49-3.19. The HealthStart rules (N.J.A.C. 10:49-3) are referenced generally in subparagraph (c)5i.

Also, the word "basic" is being deleted and replaced with the word "basis" at N.J.A.C. 10:52-1.6(c)5. The word "basis" conveys the proper meaning, that is, the hospital outpatient department is reimbursed on a fee-for-service basis.

These changes do not enlarge or curtail who will be affected, nor do they change what is required. The changes do not enlarge or curtail the scope of the proposed rule. The changes impose no additional burden on hospital outpatient departments, who are still required to submit claim forms timely and accurately to the fiscal agent in order to be reimbursed by the New Jersey Medicaid Program.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:52.

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

10:52-1.6 Outpatient hospital service—basis of payment

(a) Outpatient hospital services are those preventive, diagnostic, therapeutic, rehabilitative or palliative items or services furnished to an outpatient by or under the direction of a physician or dentist licensed pursuant to the laws of the State of New Jersey.

(b) The New Jersey Medicaid Program shall reimburse providers for covered services in a hospital outpatient department consistent with the following conditions and reimbursement methodology:

1. Establishment of a final rate of reimbursement: The final rate of reimbursement shall be based on the lower of cost or charges as defined by Medicare principles of reimbursement, at 42 CFR 447.321;

2. Establishment of an interim rate of reimbursement: The charge for an outpatient service shall be subject to a reduction based on the application of a cost-to-charge ratio determined for each individual hospital by the New Jersey Medicaid Program, in accordance with Medicare principles of reimbursement at 42 CFR 447.321. This cost-to-charge ratio shall be used to assure that reimbursement for outpatient services does not exceed the lower of cost or charges.

(c) Certain outpatient services, that is, most laboratory services, renal dialysis services, dental services, HealthStart services and the Medicare deductible and coinsurance amounts, shall be excluded from a reduction based on the cost-to-charge ratio reimbursement methodology and shall have their own reimbursement methodology as follows:

1. Outpatient laboratory services shall be reimbursed on the basis of a fee-for-service using the HCPCS (Health Care Financing Administration Common Procedure Coding System) procedure codes and fee schedule contained in the Medicare A File (Medicare Laboratory HCPCS Procedure Code File) (see 42 U.S.C. §1395l). If the hospital charge is less than the fee allowance, reimbursement shall be based upon the actual billed charge. In addition, there are situations which have unique billing arrangements, as follows:

i. Specimen collection, that is, a ***routine*** venipuncture ***for collection of specimen*** ***[(HCPCS Procedure Code 36415)]*** or a catheterization ***for collection of urine specimen(s), (multiple) patients,*** ***[(HCPCS Procedure Code P9615)]*** shall be reimbursed at a fixed rate or at the amount of the hospital charge (whichever is less) per specimen type, per encounter, regardless of the number of encounters per day;

ii. Automated, Multi-Channel Laboratory Tests shall be grouped. Multi-channel grouping may start with two tests. Hospitals shall group the individual test codes into one multichannel group and bill the group code only. ***[Multi-channel group codes acceptable for Medicaid reimbursement purposes range from 80002 through 80019]*** A laboratory test that cannot be grouped into a multi-channel group code shall be billed using the HCPCS code assigned for that laboratory test. Laboratory test codes that are billed separately but should be billed as a multi-channel group code, will be combined into the appropriate multi-channel group code during claims processing and shall be reimbursed accordingly.

2. Outpatient laboratory services generally are not subject to cost-to-charge ratio but there are some laboratory HCPCS procedure

codes which are subject to the cost-to-charge ratio. These include procedure codes such as:

i. Those valid for Medicaid reimbursement but not listed on the Medicare Laboratory HCPCS Procedure Code File (see 42 U.S.C. §1395l);

ii. Those HCPCS codes submitted for payment on the same claim with charges for blood products (if no blood product is provided and/or billed for on the same claim, the codes are reimbursed according to the fee allowance schedule); and

iii. Some codes associated with other laboratory services, such as for organ or disease oriented panels; clinical pathology consultations; unlisted chemistry or toxicology procedures; certain bone marrow testing; certain specific or unlisted hematology procedures; certain immunology testing; unlisted microbiology procedures; and certain procedures under anatomic pathology.

3. Renal dialysis services for end-stage renal disease (ESRD) as follows:

i. Reimbursement shall be made at 100 percent of the Medicare composite rate and shall include any add-on charge to the composite rate approved by Medicare.

(1) Renal dialysis services provided on an emergency basis in a hospital center not approved to provide renal dialysis services for ESRD shall be reimbursed actual billed charges, subject to the cost-to-charge ratio.

4. Dental services shall be reimbursed in accordance with the New Jersey Medicaid Program Dental Fee Schedule. This fee-for-service schedule shall be consistent with New Jersey Medicaid Program fees paid to the private practitioners and independent dental clinics. (For policies and procedures for dental services, see the Manual for Dental Services, N.J.A.C. 10:56.)

5. HealthStart Maternity Health Support Services ***[(W9040 through W9043)]*** and HealthStart Pediatric Continuity of Care ***[(W9070)]*** shall be reimbursed on a fee-for-service ***[basic]* *basis*** in the hospital outpatient department.

i. All other HealthStart Maternity Medical Care Services and all other HealthStart Pediatric Care Services shall be reimbursed based on the cost-to-charge ratio. (For policies and procedures for HealthStart Services, see Administration, N.J.A.C. 10:49-3.)

6. The deductible and coinsurance amounts for Medicare/Medicaid crossover claims shall not be subject to the cost-to-charge ratio.

(a)

DIVISION OF ECONOMIC ASSISTANCE

Service Program for Aged, Blind, or Disabled Supplemental Security Income Payment Levels

Adopted Amendment: N.J.A.C. 10:83-1.11

Proposed: January 2, 1990 at 22 N.J.R. 64(a).

Adopted: February 7, 1990 by William Waldman, Acting Commissioner, Department of Human Services.

Filed: February 7, 1990 as R.1990 d.149, **without change**.

Authority: N.J.S.A. 44:7-87 and Section 1618(a) of the Social Security Act.

Effective Date: February 7, 1990.

Expiration Date: January 19, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

10:83-1.11 New Jersey Supplemental Security Income payment levels

New Jersey Supplemental Security Income payment levels are as follows:

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| Living Arrangement Categories | Payment Level |
|--|---------------|
| Eligible Couple | 1/1/90 |
| Licensed Medical Facility (Hospital, Skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence of 16 or less | \$90/579.00† |
| Residential Health Care Facilities and certain residential facilities for children and adults | \$1053.36 |
| Living Alone or with Others | \$604.36 |
| Living in Household of Another, Receiving Support and Maintenance | \$479.09 |
| Eligible Individual | |
| Licensed Medical Facility (Hospital, Skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence of 16 or less | \$45/386.00† |
| Residential Health Care Facilities and certain residential facilities for children and adults | \$536.05 |
| Living Alone or with Others | \$417.25 |
| Living with Ineligible Spouse (No other individuals in household) | \$604.36 |
| Living in Household of Another, Receiving Support and Maintenance | \$301.65 |

†The lower figure applies when Medicaid payments with respect to an individual equal an amount over 50 percent of the cost of services provided in a month.

CORRECTIONS

(a)

THE COMMISSIONER

Adult County Correctional Facilities

Adopted Repeal and New Rules: N.J.A.C. 10A:31

Proposed: September 18, 1989 at 21 N.J.R. 2853(a).

Adopted: February 2, 1990 by William H. Fauver, Commissioner, Department of Corrections.

Filed: February 2, 1990 as R.1990 d.140, with **substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: March 5, 1990.

Expiration Date: March 5, 1995.

Summary of Public Comments and Agency Responses:

These rules were proposed on September 18, 1989, at 21 N.J.R. 2853(a). One written comment was received during the public comment period which ended October 18, 1989, but it did not address county rules. A public hearing was held on December 6, 1989. Five persons presented verbal comments at this hearing.

COMMENT: Commenter suggested that sections N.J.A.C. 10A:31-3.5 and 3.7, which deal with the physical characteristics of housing units, be revised and updated to reflect current acceptable guidelines for the design of correctional facilities. For example, living units, as specified in N.J.A.C. 10A:31-3.5(l), should permit four-bed dormitories in addition to single cell occupancy; lavatories and mirrors may not need to be stainless steel as recommended in N.J.A.C. 10A:31-3.7(e)2 and 4 and the standards for dayrooms also need updating.

RESPONSE: The suggestion to update these subsections is accepted and has in fact been planned. In the near future, revisions will be proposed which will take into account the latest American Correctional Association (A.C.A.) standards and other accepted correctional guidelines.

COMMENT: Commenter suggested that N.J.A.C. 10A:31-13 be modified to include more specific requirements for treatment of pregnant inmates. Commenter suggested that the requirements for the treatment of pregnant inmates be similar in language to that which is found in N.J.A.C. 10A:16-6.1 to 10A:16-6.7 which is applicable to inmates in State correctional facilities.

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RESPONSE: The Department of Corrections agrees with this suggestion and is presently in the process of developing an appropriate revision of the section.

COMMENT: Commenter suggested that more specific procedures for testing inmates for HIV infection should be included in N.J.A.C. 10A:31-13.

RESPONSE: The Department of Corrections rejects this suggestion because it is felt that county jail administrators and physicians are best able to determine which medical tests are necessary.

COMMENT: Commenter suggested that N.J.A.C. 10A:31-13.26 include a mandate which requires the confidentiality of inmate medical records to be applicable to correctional facility staff.

RESPONSE: The Department of Corrections agrees in principle with this comment and will consider revising this section at a later date. In the interim, general standards of professional conduct govern the privacy of medical records.

COMMENT: Commenter suggested that the right to refuse medical treatment should be enunciated in N.J.A.C. 10A:31-13.

RESPONSE: The Department of Corrections agrees and will make the appropriate revisions in the near future.

COMMENT: Commenter suggested that N.J.A.C. 10A:31-20.1 be amended to permit children to visit inmates, and be more specific in identifying those categories of persons who may visit inmates.

RESPONSE: Regulations do not currently prohibit children from visiting. This decision is left to the individual adult county facility administrator who can best determine categories of visitors which the particular facility can accommodate.

COMMENT: Commenter stated that the rule which requires male and female programs to be separate, guarantees that females will have inadequate programming, and suggested that some action should be taken to increase and improve programs for female inmates.

RESPONSE: The Department of Corrections agrees with this suggestion in principle but cannot mandate specific programs which may not be feasible given the limitations of space and resources.

COMMENT: Commenter expressed a preference for the language used in a previous version of N.J.A.C. 10A:31-3.5, that the facility be "easily" rather than "reasonably" accessible to the public.

RESPONSE: The Department of Corrections rejects this suggestion and believes that the difference in choice of wording is not significant, given other considerations which affect accessibility to a correctional facility.

COMMENT: Commenter observed that there were some apparent contradictions in requirements; for example, N.J.A.C. 10A:31-22.2(a) dealing with classification of inmates, categorizing the separation of inmates differently than N.J.A.C. 10A:31-3.5(f). Commenter also suggested that contradictions between sections of the rule should be eliminated or clarified.

RESPONSE: This may have occurred because some subchapters of chapter 31 have not yet been revised. The Department of Corrections intends to correct any conflicts or ambiguities, which may exist now, when the entire chapter's revisions are completed at a future date.

COMMENT: Commenter objected to changes proposed in the requirements for size of windows in cells, noise levels, lighting, cell size and other physical conditions.

RESPONSE: As was pointed out above, this entire subchapter is still under review and will be revised in the near future. All comments will be taken into consideration.

COMMENT: Commenter suggested that "counselors" be added to the list of persons at N.J.A.C. 10A:31-3.15(c) who may visit inmates in private interview areas.

RESPONSE: The Department of Corrections rejects this suggestion because the word "counselor" is too vague, but it will add the word "attorneys" who are permitted to meet with inmates with privacy.

COMMENT: Commenter suggested that regulations for fire safety be spelled out in detail.

RESPONSE: Fire safety regulations are not necessary because they would be repetitious. The State Fire Marshall's code for fire safety governs correctional institutions and is mandatory. County correctional facilities are required to follow them. To repeat them here would be unproductive.

COMMENT: Commenter suggested that N.J.A.C. 10A:31-4.2 list specific categories of information which should be included in a policy and procedure manual.

RESPONSE: The Department of Corrections believes that detailed lists of required information are not necessary since the policies and procedures must include those which will implement N.J.A.C. 10A:31.

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COMMENT: Commenter stated that the revision of N.J.A.C. 10A:31-5 appears to have omitted the Bureau of County Services procedure to assess staffing levels and suggested retention of that activity.

RESPONSE: Commenter is mistaken. Staffing levels will continue to be monitored because inspectors will study post coverage, professional services coverage, social services coverage and other related staffing patterns as part of routine evaluations.

COMMENT: Commenter expressed an objection to the definition of contraband contained in N.J.A.C. 10A:31-8.1(a) as being too broad. Commenter expressed the belief that the interpretation of this definition of contraband will be used as an unjustifiable excuse to strip search a detainee.

RESPONSE: The Department of Corrections disagrees with this comment. The definition of contraband is a broad one because there are many categories and kinds of items which are either dangerous or simply not permitted within a correctional facility. County jail administrators will no doubt be faced with some difficult situations in which a decision will have to be made on whether to strip search. The education, experience and degree of professionalism of county jail administrators will determine whether correct decisions are made.

COMMENT: Commenter stated that the term "minor offense" contained in N.J.A.C. 10A:31-8.4(a) is too vague and fails to provide sufficient direction.

RESPONSE: The Department of Corrections agrees and will substitute the words "non-indictable offense" in N.J.A.C. 10A:31-8.4(a).

COMMENT: Commenter objected to N.J.A.C. 10A:31-8.4(c)6, the strip search of those suspected of communicable disease, and stated that it is contrary to law, although none was cited.

RESPONSE: The Department of Corrections believes that there are circumstances in which a person suspected of having a communicable disease should be subject to a strip search. Discretion must be exercised thoughtfully in this regard, but the procedure should not be ruled out, when justifiably indicated.

COMMENT: Commenter suggested that the use of stun guns be restricted to specific, articulated situations, or should be moved to the category of deadly force weapons.

RESPONSE: The Department of Corrections disagrees. A stun gun is defined as a weapon which is "not likely" to cause death or serious injury. Although most persons would not suffer serious injury by a stun gun, it is possible that particularly susceptible individuals may have unexpected dramatic reactions such as a heart attack. However, this is not sufficient reason to change the use or classification of stun guns.

COMMENT: Commenter objected to permitting the use of force to enforce facility regulations, as set forth in N.J.A.C. 10A:31-8.15(d)6, because the meaning is not sufficiently clear.

RESPONSE: When N.J.A.C. 10A:31-8.15(d)6 is read in conjunction with N.J.A.C. 10A:31-8.15(d), only the minimum amount of force may be used. Therefore, the degree of force will be directly proportionate to the need to enforce a regulation, whatever the situation is. As with many other rules, discretion must be properly exercised. Force may be used where verbal commands and persuasion have failed.

COMMENT: Commenter suggested that a statement be added in N.J.A.C. 10A:31-10.2 which says that foods are required to be served at proper temperatures, such as, hot foods hot and cold foods cold.

RESPONSE: The Department of Health regulates food service. It is, therefore, not necessary to attempt to improve on their standards.

COMMENT: Commenter suggested that a statement was inadvertently omitted and should be added to N.J.A.C. 10A:31-14 permitting inmates to view searches of their cells and living areas, where possible.

RESPONSE: The Department of Corrections agrees and will specify that an inmate shall be permitted to view searches of his or her property from a distance, where reasonably feasible. This was inadvertently omitted when the new rule was proposed. The statement will be added at N.J.A.C. 10A:31-8.6(f).

COMMENT: Commenter objected to N.J.A.C. 10A:31-14.4 because it may result in fewer programs for female inmates. Commenter expressed a preference for language as stated in N.J.A.C. 10A:31-22.4.

RESPONSE: The Department of Corrections will delete section N.J.A.C. 10A:31-14.4 because it is redundant and N.J.A.C. 10A:31-14.5 and 14.6 will be recodified as N.J.A.C. 10A:31-14.4 and 14.5.

COMMENT: Commenter recommended that N.J.A.C. 10A:31-5 include a requirement on training in infectious diseases, especially HIV.

RESPONSE: The Department of Corrections does not believe that the rule needs to contain detailed lists of subjects appropriate for training. This decision depends on each county's perceived needs. HIV is much less prevalent in some counties.

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COMMENT: Commenter expressed an objection to N.J.A.C. 10A:31-6.8 which permits release of psychiatric and psychological reports to law enforcement agencies without the consent of the inmate. The inmate should receive notice that his or her records have been requested.

RESPONSE: The Department of Corrections believes that records should be made available to legitimate law enforcement agencies to assist them in their duties. These records are the property of the institution which has prepared them for classification and treatment purposes.

COMMENT: Commenter observed that at N.J.A.C. 10A:31-6.13, there is no provision for indigent inmates to receive copies of medical records free of charge.

RESPONSE: There is no provision for inmates, under normal circumstances, to receive copies of medical records. Such records are sent to the inmate's physician, psychiatrist or attorneys as may be appropriate.

COMMENT: Commenter suggested that N.J.A.C. 10A:31-13.9 include a requirement for tuberculosis testing.

RESPONSE: The Department of Corrections believes it is preferable that each county's medical professional determine testing needs.

COMMENT: Commenter suggested that N.J.A.C. 10A:31-13 include a procedure for prenatal screening of pregnant inmates, counseling and access to termination of pregnancy services.

RESPONSE: The Department of Corrections agrees that such procedures are desirable and will promulgate them in the near future.

COMMENT: Commenter suggested that N.J.A.C. 10A:31-13.13 be clarified because this subsection appears to limit all physician access to once per week.

RESPONSE: This section will be clarified in the near future to specify the minimum amount of access to a physician which should be provided.

COMMENT: Commenter suggested that N.J.A.C. 10A:31-15.2 provide for a minimum of 20 hours per week access to a law library.

RESPONSE: The Department of Corrections has found that a requirement of specific hours is impractical. Some facilities may be able to provide a greater number of hours of legal access while others, because of population or physical limitations, may not be able to meet a weekly minimum requirement.

COMMENT: Commenter suggested that N.J.A.C. 10A:31-15.1(b) provide for both law libraries and persons trained in the law to assist inmates with legal access.

RESPONSE: It is not necessary to reword N.J.A.C. 10A:31-15.1. Those inmates who are not permitted access to the law library, whether because of disciplinary lockup or other close custody situation, must be provided with someone trained in the law, such as a paralegal, to assist them.

COMMENT: Commenter suggested that N.J.A.C. 10A:31-15 provide for evening visits for attorneys.

RESPONSE: A statement will be added at N.J.A.C. 10A:31-20.7(b) that visit hours shall include evening hours for attorneys, where reasonably feasible.

COMMENT: Commenter objected to the deletion of the word "clearly" (clearly necessary) in N.J.A.C. 10A:31-15.4(d).

RESPONSE: The Department of Corrections believes that "clearly" is overkill in this sentence. If a jail administrator determines that a security requirement is "necessary", it is sufficient.

COMMENT: A commenter suggested that an interpreter be provided during the disciplinary process for those inmates who do not understand English.

RESPONSE: N.J.A.C. 10A:31-16.2(e) provides that the disciplinary rule book shall be available in a foreign language where appropriate. In addition, N.J.A.C. 10A:31-16.12(g) affords inmates with paralegal assistance where needed. An inmate who cannot read or speak English "cannot adequately collect and present evidence".

COMMENT: Commenter objected to N.J.A.C. 10A:17.7(b) which does not permit visit or telephone privileges except legal telephone calls to inmates while in disciplinary detention.

RESPONSE: Disciplinary detention is intended to be punishment for violation of rules. Inmates in disciplinary detention should, therefore, not receive privileges enjoyed by general population inmates.

COMMENT: Commenter suggested that N.J.A.C. 10A:31-19 specify that correspondence to public officials and media representatives be treated like legal mail.

RESPONSE: The Department of Corrections believes that a separate subchapter on legal mail is not necessary since there is no restriction on either outgoing or incoming mail. Incoming mail is only inspected for contraband, as is done with legal mail in State institutions, and outgoing mail is sealed by the inmate and is not inspected unless criminal activity is involved.

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COMMENT: Commenter objected to the omission of male inmates from N.J.A.C. 10A:31-1.3, county work program definition, which permits only females for release to attend to family needs.

RESPONSE: County work release is governed by Statute. Unfortunately, N.J.S.A. 30:8-44 limits family care release to female offenders. The Department of Corrections does not believe it has authority to expand this definition.

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

CHAPTER 31

ADULT COUNTY CORRECTIONAL FACILITIES

SUBCHAPTER 1. INTRODUCTION

10A:31-1.1 Purpose

(a) The purpose of this chapter is to:

1. Establish the minimum criteria for the planning, design and construction of new adult county correctional facilities or renovation of existing facilities;
2. Establish the minimum criteria for the administration of adult county correctional facilities;
3. Establish guidelines for the provision of programs and services to inmates in adult county correctional facilities;
4. Establish guidelines which permit correctional officials at county and State levels to analyze and evaluate the performance and adequacy of services provided to inmates by adult county correctional facilities, and delineate the deficiencies which require improvement;
5. Establish guidelines whereby inmates employed in productive occupations while confined in adult county correctional facilities shall receive compensation for such employment in the form of cash or remission of time from sentence or both;
6. Establish guidelines for the participation of inmates in the Work Release Program; and
7. Establish the abatement process in all cases where conditions or procedures are discovered in adult county correctional facilities which are in violation of the rules of this chapter and where a county has willfully and continuously failed to initiate corrective action in response to notice.

10A:31-1.2 Scope

This chapter shall be applicable to the New Jersey Department of Corrections, the Bureau of County Services and all adult county correctional facilities.

10A:31-1.3 Definitions

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

"Adult county correctional facility" means any place, under the jurisdiction of a county, where adult persons convicted or accused of crimes are confined.

"Classification Committee" means a group of staff members who have been designated to make decisions related to the needs of inmates from the time of admission until the time of release.

"County work release" means a program which permits selected inmates, committed by the municipal or county court to an adult county correctional facility, to be in the community during specified periods to engage in remunerative employment, to attend vocational training and, in the case of female offenders, to attend to family needs.

"Detainer" means a warrant or formal authorization to hold an inmate for prosecution or detention by a Federal, State or local law enforcement agency or the U.S. Immigration Department. Detainers may include, but are not limited to:

1. Adjudicated criminal charges for which sentence has been imposed;
2. Criminal charges resulting from indictment, for which there is no final disposition (open charges);
3. Warrants for violation of parole or probation; and
4. Immigration detainers.

"Disciplinary Board" means a custody supervisor and two non-custody staff members who have been designated by the Jail Administrator to hear and adjudicate inmate violations of facility rules.

"Disciplinary Detention" means the removal of an inmate from the general population to a short term close custody unit because of a violation of facility rules.

"Facility" means an adult county correctional facility.

"Involuntary protective custody" means confinement in Protective Custody which was not requested by the inmate.

"Jail Administrator" means a Sheriff, Warden or any other person who serves as the Chief Executive Officer of an adult county correctional facility.

"On-the-Spot Correction" means the immediate imposition of a sanction upon an inmate for a minor rule violation.

"Prehearing detention" means the removal of an inmate from the general population pending an investigation and a hearing into an alleged violation of a rule.

"Productive occupation" means any assignment exclusive of a work release assignment, which involves work carried on by the governing body or by any board, commission or institution that receives funding from the county.

"Protective custody" means confinement to a secure unit designated to restrict or limit an inmate's activities and contacts with others, in order to provide protection to the inmate from injury or harm actually threatened, or reasonably believed to exist based on events, investigative reports, informants' reports or other reliable sources of information.

"Voluntary protective custody" means confinement in Protective Custody which was requested by the inmate.

SUBCHAPTER 2. ENFORCEMENT PROCEDURES

10A:31-2.1 Authority of the Commissioner, New Jersey Department of Corrections

(a) N.J.S.A. 30:1B-10 gives the Commissioner of the Department of Corrections the authority to establish minimum standards for adult county correctional facilities.

(b) The Commissioner may, in accordance with the Administrative Procedure Act, P.L. 1968, c.410 (N.J.S.A. 52:14B-1 et seq.) promulgate such rules and regulations as are deemed necessary to establish minimum standards for the care, treatment, government and discipline of inmates in adult county correctional facilities.

(c) The Department of Corrections takes note of the fact that a number of older adult county correctional facilities operate under the handicap of certain physical deficiencies. Such facilities will be allowed to make reasonable accommodations to meet this chapter. However, in the areas of renovation and/or new constructions of adult county correctional facilities, the Department of Corrections will insist that there be conformity to this chapter.

10A:31-2.2 Physical inspection and/or program evaluation

(a) The physical inspection and/or programmatic evaluation of adult county correctional facilities shall be conducted by the Bureau of County Services, New Jersey Department of Corrections.

(b) A report of the findings of the physical inspections and/or the programmatic evaluations, listing all violations shall be submitted to the Freeholder Director or County Executive with copies to the Sheriff or Jail Administrator and the County Assignment Judge.

(c) The report shall contain notice that corrective action must be effected or initiated within 60 days, and a date for re-inspection shall be scheduled.

10A:31-2.3 Re-inspection

(a) A re-inspection shall be conducted noting the abatement status of all violations.

(b) If additional violations are discovered during the re-inspection, a separate addendum will be attached to the original list of violations.

(c) A letter indicating the findings of each re-inspection shall be submitted to the parties listed in N.J.A.C. 10A:31-2.2(b).

(d) A date shall be scheduled for final re-inspection prior to any enforcement action.

10A:31-2.4 Extension of time to correct violations

(a) At any time prior to enforcement of restrictions, the county

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may request an extension of time to correct the violations. Said request must be in writing and must specify:

1. The particular violations which the county expects to have difficulty in correcting;

2. The reason(s) for the difficulty;

3. The nature of corrective action being undertaken; and

4. The date by which correction of violations will be completed.

(b) The Commissioner, New Jersey Department of Corrections, may, in his or her discretion, grant, modify or deny the request for an extension after consultation with the Bureau of County Services.

10A:31-2.5 Enforcement action

(a) In the event acceptable corrective action has not been effected or initiated upon final reinspection, notice shall be forwarded, by certified mail, to the county stating that:

1. Effective immediately, the county shall cease to admit persons sentenced to State correctional facilities;

2. Effective 30 days after receipt of notice, the county shall cease to admit persons sentenced to terms in said adult county correctional facility; and

3. Effective 90 days after receipt of notice, the county shall cease to accept all persons sent to said adult county correctional facility.

(b) The notice of restrictions in (a) above shall contain a statement of reasons for imposition of restrictions, based on:

1. The number, seriousness and duration of the violations cited; and

2. The willful, continuous disregard of the county in abating the violations.

(c) Restrictions imposed on a county pursuant to this subchapter shall continue until such time as the Commissioner shall determine that the violations specified have been corrected, or that the adult county correctional facility has initiated actions which will ensure the correction of said violations.

(d) During the pendency of restrictions imposed pursuant to this subchapter, location of inmates and payments therefor shall be governed by N.J.S.A. 30:8-57, 58 and 59.

(e) The Commissioner shall initiate such legal action as may be deemed necessary to ensure the enforcement of this subchapter.

SUBCHAPTER 3. PLANNING AND DESIGN**10A:31-3.1 Notification**

(a) A letter of intent to construct, remodel or renovate any adult county correctional facility shall be submitted to the Chief, Bureau of County Services, Department of Corrections, by the governing body responsible for the facility prior to the initiation of any planning actions. The notification shall specify the proposed action to be taken and the estimated period of construction.

(b) Upon receipt of the letter of intent, the Chief, Bureau of County Services, shall furnish technical assistance throughout the planning process to assure that such planning complies with this subchapter.

10A:31-3.2 Program statement

(a) The Jail Administrator and the architect shall develop an adult county correctional facility program statement as a part of the planning phase. Such a program statement shall include, but not be limited to, a description of criteria for the following:

1. Type of facility needed and evaluation of alternatives to incarceration;

2. Maximum estimated capacity of facility based on projected needs;

3. Types of inmates to be housed;

4. Methods of entry and exit from the facility;

5. Living units;

6. Food preparation and serving facilities;

7. Intake and book area;

8. Visiting and attorney interview areas;

9. Telephone access for inmates;

10. Library facilities;

11. Medical examination areas;

12. Activity areas for exercise and rehabilitation program;

13. Cleaning and/or laundering;

14. Security arrangements and physical relationships among components and

15. All other plans for compliance with these rules.

(b) The facility program statement shall be submitted in duplicate to the Chief, Bureau of County Services, New Jersey Department of Corrections.

10A:31-3.3 Submission of plans and specifications

(a) All plans and specifications shall be submitted to the Chief, Bureau of County Services, New Jersey Department of Corrections, and copies shall also be submitted to other applicable regulatory agencies.

(b) Contracts shall not be let until approval of final documents is received by the Jail Administrator in writing from the Chief, Bureau of County Services, and other applicable regulatory agencies.

10A:31-3.4 Construction principles

(a) All adult county correctional facility construction shall comply with the regulations required by State and local building codes.

(b) Should a conflict exist between the regulations required by State and local building codes and those of any other standards setting agency, the conflicting Department rule shall not be effective until such conflict has been resolved by the Chief, Bureau of County Services, New Jersey Department of Corrections.

10A:31-3.5 General conditions

(a) The requirements within this subchapter shall apply to all areas of the adult county correctional facility with equal importance and shall be considered in the planning process.

(b) The facility shall be reasonably accessible to the public and to the facility staff, as well as to the officers of the court, attorneys and law enforcement officers. This accessibility shall be reflected in the availability of public transportation as well as fully adequate provisions for the parking of official and personal automobiles.

(c) Staff work stations and control rooms shall be situated to provide the greatest degree of observation of traffic flow and supervised internal activities that is possible.

(d) The orderly circulation of inmates through strategically located corridors (minimum four feet wide), eliminating all unnecessary cross-traffic and undesirable contacts between different categories of inmates, will ensure the security and efficiency of operation. The facility shall be so designed that sections or parts can be closed off for varied use to meet changing needs.

(e) Exit and entry control stations shall be separated from the public and inmates by security barriers and shall be protected from direct observation from outside of the facility. Program and custody staff shall be dispersed within resident areas for supervisory and programmatic activities.

(f) The design of the facility shall provide for the secure confinement of inmates and for adequate separation of inmates of one classification from inmates of another. Inmates of the following classifications shall not be confined in the same cells or living areas;

1. Material witnesses and persons committed for crimes;

2. Male and female inmates;

3. Sentenced inmates and unsentenced inmates;

4. Serious offenders and less serious offenders;

5. Inmates in the Work Release Program and inmates in the general population; and

6. Inmates classified as trustees and inmates in other classifications.

(g) The design of the facility shall provide for the segregation of certain types of inmates from the living areas of the general population, such as disciplinary detention, protective custody, etc.

(h) Special purpose cells shall be based on the size and needs of the facility and shall be used only for the temporary detention of inmates who are likely to harm themselves, require protection, or are uncontrollably violent or self-destructive.

*[(l)]***(i)* All living units in new facilities shall be single occupancy units.

*[(m)]***(j)* Consistent with the security requirements of the facility, living units shall be located and designed to safeguard the privacy of inmates.

*[(n)]***(k)* Adult county correctional facilities shall contain sufficient space for programs which can include the public in areas other

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than the living areas of the facility, without compromising the security and control of the facility's operation.

*[(o)]**[(l)]* Storage areas for the personal property of inmates shall be sufficient to accommodate all necessary materials and provide for the separation and security of the personal property of inmates.

*[(p)]**[(m)]* The design shall allow for service deliveries without interference with the security of the facility.

*[(q)]**[(n)]* A two-way communication system shall be installed to provide communication between control stations and living areas.

(r) Provisions shall be made for the security of the following:

1. Keys;
2. Weapons;
3. Drugs and medications;
4. Tools;
5. Valuables;
6. Records;
7. Supplies; and
8. Other materials.

*[(s)]**[(o)]* Secure depositories for weapons shall be provided outside the areas accessible to the inmates.

*[(t)]**[(p)]* Padlocks shall not be used in place of, or in addition to, a security lock on any door, window or cabinet within the facility.

*[(u)]**[(q)]* The illumination level shall provide at least 30 foot candles of illumination in all living areas, and 100 foot candles in all work or study areas of the facility.

*[(v)]**[(r)]* The design of windows shall take into consideration the need for the admission of natural light and ventilation (where such ventilation is not provided mechanically). Security type windows are necessary. Tool resisting steel shall be used in the construction of window sash or permanently fixed security windows where there is mechanical air exchange for ventilation.

*[(w)]**[(s)]* Visiting areas shall be designed for contact visiting, and individual visiting rooms shall be provided. Where necessary, provisions for non-contact visiting may be provided.

*[(x)]**[(t)]* Each entrance to a secure area shall be constructed to permit observation and identification of the person seeking admission thereto.

*[(y)]**[(u)]* Eating areas shall be sufficiently separated from the toilet and shower facilities to avoid offensive or unsanitary conditions.

*[(z)]**[(v)]* Sufficient and secure storage areas shall be provided for:

1. Evidence;
2. Supplies;
3. Equipment;
4. Records; and
5. Inmates' personal property.

10A:31-3.6 Area for reception and booking

(a) Adult county correctional facilities shall have a receiving and discharge area. The space designed for receiving and discharging of inmates shall be constructed inside the security area, but outside the inmates' living quarters.

(b) There shall be a separate inmate entrance (pedestrian and/or vehicle) from a sally-port or safety vestibule into the receiving area with a minimum of corridors or passageways. Stairs should be avoided.

(c) The entrance area shall be arranged and constructed to allow sufficient observation by the correction officer to identify persons approaching the entrance.

(d) A holding room for the confinement of inmates during their initial processing shall provide adequate seating, toilets and wash basins for the holding room's rated capacity. Access to a telephone shall be provided. The holding room may also be used for the movement of inmates to and from the court. Single occupancy holding rooms shall have 70 square feet of floor area. Multiple occupancy holding rooms shall have a minimum of 100 square feet of floor area.

(e) A sufficient number of weapons' lockers outside of the security area shall be provided. Weapons' lockers shall be equipped with individual compartments, each with an individual lock and key.

(f) A sufficient number of individual interviewing rooms shall be provided for use in determining eligibility for diversion or other

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release programs, and in assessing classification and housing assignments.

(g) Facilities shall have a secure vault or storage space for inmate personal property.

(h) Facilities shall have sufficient telephones to meet the needs of the inmate population.

10A:31-3.7 Minimum requirements for housing units, including cell and dayrooms areas

(a) Artificial lighting of at least 30 foot candles of illumination shall be provided in all living areas and 100 foot candles in all work study areas of the adult county correctional facility. Windows within the living areas shall be provided. Night lighting in these areas shall be sufficient to give good visibility for purposes of supervision, but not so bright that sleep is hindered. Within the security perimeter which includes inmate living areas, light fixtures shall be security tamper-proof recessed type protected by laminated tempered glass or break-resistant plastic lens.

(b) Heating and ventilation systems shall be provided to maintain human comfort in accordance with the Guide Book for the American Society of Heating, Refrigeration and Air Conditioning Engineers, incorporated herein by reference.

(c) The noise levels should not interfere with normal human activities. A range of 65 to 70 decibels in daytime and 40 to 45 decibels at night for residential areas is recommended.

(d) All single occupancy cells and rooms shall not be less than 70 square feet in area and have at least 560 cubic feet of air space.

(e) Each cell shall be equipped with the following:

1. A steel detention type bunk which is securely fastened to the floor or wall or both and is capable of accommodating a standard 30 by 76 inch type fire retardant mattress;
2. A detention type toilet/lavatory combination unit, with drinking font (stainless steel is recommended);
3. A steel shelf, approximately eight inches by eight inches, of minimum 12 gauge steel, flanged down at each side, with the rear turned up and securely anchored to the wall in a location where it does not protrude in the walk area; and
4. A metal mirror securely mounted with tamper-proof screws.

(f) Depending on the size of the facility, one or more isolation and/or segregation cells shall be constructed to detain violent and destructive inmates. The isolation and/or segregation cell(s) shall be located near the control center and shall contain:

1. A minimum of 70 square feet in area;
2. A minimum of 560 cubic feet of air space;
3. A bunk firmly affixed to the wall or floor;
4. An inaccessible recessed light;
5. A secure prison type toilet and washbowl with cold water operated by push-buttons; and
6. A water shutoff outside the cell.

(g) Cell bars may be round or hexagonal, not more than four inch on centers, containing preferably a sliding barred door with food pass, and approved detention type paracentric lock. Other suitable and approved material which allows for full front vision into cell may be substituted for barred fronts.

(h) Cells shall contain detention types, preferably flush mounted, light, vent, and exhaust covers with tamper proof screws.

(i) Cell walls shall be at least six inch reinforced concrete or eight inch concrete block filled with cement and reinforcement rods.

(j) Cell ceiling may be pre-stressed concrete or reinforced concrete.

(k) In those cases where maximum security cells are deemed unnecessary, single occupancy temporary detention rooms may be utilized. The temporary detention rooms shall be at least 70 square feet in area and have at least 560 cubic feet of air space. The temporary detention rooms shall be equipped in the same manner as the individual cells. Temporary detention rooms are recommended to provide separate housing for:

1. Civil prisoners;
2. Material witnesses;
3. Work releasees;
4. Minimum security inmates; and
5. Others requiring less security.

(l) Dormitories in an existing facility shall have a minimum rated capacity of four inmates and a maximum capacity of 50 inmates.

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Dormitories shall have a minimum of 75 square feet of floor space per inmate, a minimum ceiling height of 10 feet and adequate space for lockers. Dormitories shall be used only for inmates assigned to:

1. Work release;
2. Education release; or
3. Other partial custody status.

(m) For each eight inmates or fraction thereof, each dormitory shall contain:

1. One toilet;
2. One washbowl with hot and cold running water;
3. One metal mirror; and
4. One drinking fountain.

(n) There shall be at least one shower head available for every 15 inmates in the dormitory.

(o) All adult county correctional facilities shall have dayrooms. The dayroom areas shall contain 35 square feet of floor space per inmate at facility capacity. The dayroom area shall be separate and distinct from the sleeping area, but immediately adjacent and accessible therefrom. Dayrooms shall be located in each housing area and shall serve individual groups of eight to 16 inmates, where possible. Exterior light and view shall be provided. The dayroom should avoid a corridor-like proportion and be conducive to the conduct of various program activities.

(p) Each inmate shall be provided a minimum of two square feet of table space and a minimum width of 24 inches of table and seating space in the dayroom.

(q) For each eight inmates or fraction thereof, dayrooms shall contain:

1. One toilet;
2. One washbowl with hot and cold running water; and
3. One securely mounted metal mirror.

10A:31-3.8 Showers, drinking fountains, shutoff valves and drains in cell areas

(a) There shall be at least one shower available for every 15 inmates in every housing area, and the shower shall be accessible to inmates without the necessity of leaving the immediate housing area.

(b) Drinking fountains shall be located in areas of the facility to ensure that drinking water will be available. In existing facilities, if water from the wash basin faucet is drinkable, drinking fountains need not be provided.

(c) Each cell shall be equipped with an individual water shutoff valve tied into a master valve which will secure the entire line of cells. The master valve and individual shutoff valves shall be located in secure chases.

(d) Floor drains shall be provided and located outside of the actual cell in order to reduce the incidence of malicious tampering and flooding. Drain covers shall be securely anchored.

10A:31-3.9 Exercise areas

(a) Every adult county correctional facility shall contain indoor and outdoor exercise areas.

(b) The outdoor exercise area shall be proportionate to the size of the facility and the number of inmates housed.

(c) The indoor exercise area may be coupled with any other multipurpose room. This area shall provide sufficient space to allow a moderate amount of physical activity and have a minimum clearance height of 18 feet.

10A:31-3.10 Correctional program space

(a) Sufficient flexible area for correctional programming shall be provided in every adult county correctional facility. Such space and furnishing may be in the form of a multipurpose room or rooms with moveable partitions and storage area for seating equipment and writing tables. Such program area and furnishings shall be designed to meet facility needs, and shall include space for the following:

1. Religious services;
2. Group counseling;
3. Interviews;
4. Classroom and study; and
5. Meetings.

10A:31-3.11 Medical examination rooms

(a) There shall be a minimum of one fully equipped medical exam-

ination room in every adult county correctional facility with a daily rated capacity of more than 30 inmates.

(b) The medical examination room shall be designed for the privacy of inmates, and provide sufficient lockable storage space for medical supplies and drugs.

(c) The medical examination room shall be designed in consultation with the designated physician for his or her use in conducting intake medical examinations of inmates prior to assignment to housing, and in diagnosing serious illness or in treating minor illnesses.

10A:31-3.12 Space for hair cutting

Space in a multipurpose room and suitable equipment shall be provided in all adult county correctional facilities for hair cutting and hair dressing.

10A:31-3.13 Inmate commissary

(a) There shall be provision made for inmates to purchase items such as:

1. Food;
2. Tobacco products;
3. Toilet articles;
4. Stationery supplies; and
5. Reading matter.

(b) An area shall be provided for the secure storage of commissary item stock.

10A:31-3.14 Dining areas

(a) Dining areas shall be designated so that inmates will be able to eat together in small groups.

(b) The dayroom or other multipurpose area may be used for dining.

(c) Dining areas shall not contain exposed toilets in the same room or in the view of inmates dining.

10A:31-3.15 Visiting and attorney interviews

(a) Sufficient space shall be provided in all adult county correctional facilities for visiting.

(b) Visiting areas shall be designed for both contact and for non-contact visits.

(c) All facilities shall include interview areas which provide for confidential consultation with visitors, ministers*, attorneys* and parole or probation officers.

10A:31-3.16 Janitor closet

A secure janitor closet containing a mop sink and sufficient area for the storage of cleaning implements shall be provided within the security area of every adult county correctional facility.

10A:31-3.17 Storage rooms

(a) One or more sufficient and secure storage rooms shall be provided for the storage of:

1. Evidence;
2. Supplies;
3. Personal clothing of inmates;
4. Personal property of inmates;
5. Records; and
6. Institutional clothing and bedding.

10A:31-3.18 Administration

(a) Provision shall be made to provide appropriate employee space for administrative, custody, professional and clinical staff including:

1. Conference rooms;
2. An employee lounge;
3. A storage room for records;
4. A public lobby; and
5. Toilet facilities.

10A:31-3.19 Security perimeter

(a) Provision shall be made for a security perimeter which includes, but is not limited to:

1. Security fencing;
2. Electrically operated and interlocking vehicle sally-port gates;
3. A prisoner entrance, controlled from the intake control;
4. Visitors' and delivery entrances; and
5. Other considerations which enhance security within and surrounding the adult county correctional facility.

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10A:31-3.20 Arsenal

The adult county correctional facility arsenal shall be located outside the security perimeter and be inaccessible to all unauthorized persons, but readily accessible to staff members.

10A:31-3.21 Fire alarm system

(a) In addition to regulations promulgated by the State Fire Marshal, there shall be an *[automatic]* ***automatic*** fire alarm system approved by the State Fire Marshal in all adult county correctional facilities.

(b) The automatic fire alarm system shall be capable of alerting personnel at a central control point to the presence of fire and smoke in the facility.

10A:31-3.22 Audio and video monitoring system

In all inmate living areas, there shall be an operable two way audio or combination audiovisual communication system which shall be capable of alerting personnel stationed at a central control station so that personnel may respond to emergencies such as assaults, calls for assistance and attempted suicides.

10A:31-3.23 Emergency power

(a) Provision shall be made for a source of emergency power which is capable of providing minimal lighting in housing units, activities areas, corridors, stairs and central control points.

(b) The emergency power source should provide sufficient power to operate:

1. The security override for housing doors;
2. The electrical systems;
3. The communications systems; and
4. The alarm systems.

10A:31-3.24 Plumbing and mechanical space

All plumbing space or any other mechanical space shall have an access door with a prison type lock. No opening shall remain uncovered that is in excess of four inches.

SUBCHAPTER 4. PERSONNEL

10A:31-4.1 Personnel manual

A personnel manual shall be available to each employee.

10A:31-4.2 Policy and procedure manual

A facility policy and procedure manual shall be issued to each employee, who shall sign a receipt acknowledging that he or she received the manual.

10A:31-4.3 Affirmative Action Program

Each facility shall develop and implement an Affirmative Action Program, which is approved by the appropriate agency, and complies with all laws and government regulations.

10A:31-4.4 Employee records

(a) A current, accurate and confidential personnel record shall be maintained for each employee.

(b) Employee records shall be protected against unwarranted examination.

(c) Employees shall be permitted to review their personnel files, challenge inaccurate information, and have inaccurate information corrected or removed from their files.

10A:31-4.5 Employee performance evaluation

(a) Each employee shall have an annual written performance evaluation based upon defined job criteria and performance standards. The results of the performance evaluation shall be discussed with the employee.

(b) Appeals of the results of a performance evaluation shall be made through appropriate channels.

SUBCHAPTER 5. TRAINING AND STAFF DEVELOPMENT

10A:31-5.1 Training and Staff Development Program

(a) The Training and Staff Development Program shall consider the physical characteristics of the adult county correctional facility, its overall mission and the type of offenders served.

(b) The facility's Training and Staff Development Program for all employees shall be coordinated and supervised by a qualified training officer, at a supervisory level.

10A:31-5.2 Training officer

(a) The training officer shall have responsibility for planning and implementing the training program and coordinating it with other employee programs.

(b) In an adult county correctional facility of over 100 employees, a full time training officer shall be employed.

10A:31-5.3 Orientation and training for employees

(a) All new employees shall receive orientation training prior to job assignment and an additional 40 hours of training during the first year of employment.

(b) Orientation shall cover the following subjects related to the adult county correctional facility:

1. Policies;
2. Organizational structure;
3. Programs; and
4. Regulations.

(c) The additional 40 hours of training shall relate specifically to the new employee's job assignment.

(d) All employees shall receive a minimum of 40 hours of training each year after the first year of employment.

(e) All employees who work in direct and continuing contact with inmates shall receive training that covers, at a minimum:

1. Security procedures;
2. Supervision of inmates;
3. Report writing;
4. Inmate rules and regulations;
5. Grievance and disciplinary procedures;
6. Rights and responsibilities of inmates;
7. Emergency procedures;
8. First aid;
9. Human relations and communication skills;
10. Special needs of minorities and women;
11. Crisis intervention;
12. Significant legal issues; and
13. Problem solving and guidance.

(f) It is recommended that the facility's administrative and senior managerial staff receive additional training in management skills each year.

(g) Library and reference services shall be available to complement the Training and Staff Development Program.

(h) All personnel authorized to use firearms shall be trained in weaponry on a continuing, in-service basis as required by the State Police Training Commission.

(i) All authorized personnel shall be trained thoroughly in the use of chemical agents if such agents are approved for use in the facility.

(j) All security personnel shall be trained in approved methods of applying physical force to control inmates, where necessary.

(k) County facilities shall use the program(s) provided by the Corrections Officers Training Academy and Staff Development Center, New Jersey Department of Corrections for the training of County Correction Officers and Sheriff's Officers unless these county facilities have an in-house accredited program (see N.J.S.A. 52:17B-66 et seq.)

SUBCHAPTER 6. MANAGEMENT INFORMATION SYSTEM AND INMATE RECORDS

10A:31-6.1 Inmate population accounting system

(a) An inmate population accounting system shall be utilized which provides the following information:

1. The arresting agency;
2. The sentencing court;
3. The charge(s);
4. The date of booking;
5. The amount of bail and whether bail was posted;
6. The date of release on bail;
7. The time detained;
8. The sentence imposed;

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- 9. The work and other programs in which inmates are participating;
- 10. The date and manner of release (other than bail);
- 11. Fines imposed, restitution penalties, etc.; and
- 12. Other relevant information.

10A:31-6.2 Intake form

(a) An intake form shall be completed for every inmate admitted to the facility which shall include, but is not limited to, the following information:

- 1. The inmate's picture;
- 2. The booking number;
- 3. The date and time of intake;
- 4. The name and aliases of the inmate;
- 5. The court and sentence, if sentenced;
- 6. The inmate's last known address;
- 7. The date and time of commitment and authority therefor;
- 8. The name, title and signature of delivering officer;
- 9. The specific charge(s);
- 10. The sex of the inmate;
- 11. The age of the inmate;
- 12. The date of birth of the inmate;
- 13. The place of birth of the inmate;
- 14. The race of the inmate;
- 15. The occupation of the inmate;
- 16. The last place of employment;
- 17. The education attained;
- 18. The religion of the inmate;
- 19. Medical information to include:
 - i. Medical insurance coverage;
 - ii. Any open wounds or sores requiring treatment; and
 - iii. Evidence of disease, body vermin, tattoos, or other notable scars or conditions.
- 20. The name and relationship of next of kin;
- 21. The address of next of kin;
- 22. The number and state of the inmate's driver's license;
- 23. The disposition of motor vehicle, where applicable;
- 24. The Social Security number of the inmate;
- 25. The amount of cash and/or property of the inmate; and
- 26. Any additional remarks.

10A:31-6.3 Inmate population movement

(a) The facility shall maintain a report of inmate population movement. This report shall include the following:

- 1. The number of inmates in the facility;
- 2. The inmates' names, numbers, and housing assignments;
- 3. The number and types of daily admissions and releases; and
- 4. The count at close of day.

10A:31-6.4 Inmate records

(a) The facility shall maintain inmate records which contain, but are not limited to:

- 1. Intake information;
- 2. Commitment papers and court orders;
- 3. Cash and property receipts (signed by inmates);
- 4. Reports of disciplinary action and unusual occurrences; and
- 5. Work record and program involvement.

(b) Inmate records shall be reviewed and maintained by qualified personnel to ensure that these records are current and accurate.

(c) Medical and/or mental health information shall be verified promptly with other agencies.

10A:31-6.5 Public records

(a) The following information and documents regarding an adult inmate or parolee shall be available for public inspection and copying:

- 1. Name;
- 2. Number;
- 3. Sentence;
- 4. Place of incarceration;
- 5. Order of Commitment; and
- 6. Any documents filed in a court of competent jurisdiction.

10A:31-6.6 Confidential records

(a) The following types of records are designated confidential and shall not be disclosed to unauthorized persons or agencies:

1. Reports which are evaluative, diagnostic or prognostic in nature furnished with a legitimate expectation of confidentiality and which, if revealed to the inmate, parolee or others, could be detrimental to the inmate or parolee, or could jeopardize the safety of individuals who signed the reports, or were parties to the decisions, conclusions or statement contained therein;

2. Information the disclosure of which could have a substantial adverse impact on the security or orderly operation of the facility;

3. Information or reports which would invade or jeopardize privacy rights of the inmate, parolee or others;

4. Disclosures which would jeopardize internal decision making or policy determinations essential to the effective operation of the facility;

5. Disciplinary and criminal investigative reports, including those from informants, disclosure of which would:

- i. Impede ongoing investigations;
- ii. Create a risk of reprisal; or
- iii. Interfere with the security or orderly operation of the facility; and

6. Such other records as the Jail Administrator, based on his or her experience and exercise of judgment, believes must be kept confidential to ensure the maintenance of discipline and the orderly operation of the facility.

(b) Those documents deemed to be confidential shall be plainly stamped "Confidential Material—Do Not Release to Unauthorized Persons."

10A:31-6.7 Limitation on inmate and parolee records

Information on adult inmate or parolee records other than that outlined in N.J.A.C. 10A:31-6.5 shall not be released to or examined by any unauthorized person or agency except as set forth in this subchapter.

10A:31-6.8 Availability of information to non-institutional persons or outside agencies

(a) Information from adult inmate and parolee records shall be provided to law enforcement agencies or persons, who request it in the performance of their public duties, in accordance with N.J.A.C. 10A:31-6.10.

(b) Adult inmate or parolee records may be made available to the following agencies or persons:

- 1. Courts of competent jurisdiction;
- 2. The Attorney General;
- 3. A county prosecutor;
- 4. The State Parole Board;
- 5. The Bureau of Parole;
- 6. A county probation department; and
- 7. Police departments.

(c) Upon advice of the County Counsel or the Department of Corrections' Special Assistant for Legal Affairs, Office of the Deputy Commissioner, selected records of adult inmates or parolees shall be made available to government agencies or other authorized persons upon request. These agencies and persons include, but are not limited to, the following:

- 1. The Social Security Administration;
- 2. The Veteran's Administration;
- 3. Attorneys of record in pending cases, or investigating claims;
- 4. Law enforcement agencies other than those in (b) above; or
- 5. Medical or psychiatric doctors.

10A:31-6.9 Availability of information to adult county correctional facility personnel

Information from inmate and parolee records shall be provided to adult county correctional personnel on a limited basis, in accordance with written policies and procedures established by the facility.

10A:31-6.10 Procedure for release of confidential inmate or parolee records

(a) All requests for information shall be initially screened by the classification officer of the adult county correctional facility to de-

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termine the purpose for which the information is sought and the legitimacy of the request.

(b) Only the specific documents or information directly related to the purpose for which the information is sought shall be released.

(c) Requests for information which are deemed irrelevant, improper or not authorized by law shall be rejected.

(d) If the classification officer of the facility is unsure as to the legitimacy or authenticity of the request, he or she shall consult with the Jail Administrator, who may telephone the County Counsel or the Department of Corrections' Special Assistant for Legal Affairs, Office of the Deputy Commissioner, for guidance.

(e) When a question or dispute arises concerning release of material or the authority of the agency or person to obtain such information, the decision of the Jail Administrator will be final.

(f) In the event a request for release of the information is denied, the material shall not be released without a court order.

10A:31-6.11 Records authorized by the inmate or parolee for inspection or release

(a) The following categories of records may be inspected by or released to authorized persons or agencies, upon written consent of the adult inmate or parolee:

1. Medical records, except for psychiatric or psychological;
2. Dental records;
3. Educational records;
4. Work records;
5. Any document listed in N.J.A.C. 10A:31-6.5; and
6. Such other material as may be authorized for release under N.J.A.C. 10A:31-6.8(c).

(b) All records released under this section are subject to deletion of confidential information (see N.J.A.C. 10A:31-6.6).

10A:31-6.12 Litigation

All requests for release of information or records concerning any matter which is the subject of pending or ongoing litigation shall be referred to the Office of County Counsel, other county legal representatives and/or the Department of Corrections' Special Assistant for Legal Affairs, Office of the Deputy Commissioner, for handling pursuant to the applicable rules of the court.

10A:31-6.13 Reimbursement for costs of copying

(a) Except as otherwise provided in this subchapter or by law, adult county correctional facilities may charge the following fees for copying records:

- | | |
|-------------------------------|-----------------|
| 1. First through 10th page | \$.50 per page |
| 2. Eleventh through 20th page | \$.25 per page |
| 3. Over 20 pages | \$.10 per page |

(b) Governmental agencies or officers shall be exempt from payment of fees for copying records.

10A:31-6.14 Security of Management Information System and inmate records

(a) The Jail Administrator shall provide for the security of the Management Information System and inmate records, to include:

1. Verification;
2. Access to data; and
3. Protection of the privacy of inmates under the jurisdiction of the adult county correctional facility.

SUBCHAPTER 7. EMERGENCIES**10A:31-7.1 Meeting emergencies**

(a) Emergencies shall be met in a way which will safeguard the welfare of the inmate population, facility staff, and the public at large.

(b) All measures shall be taken to maintain effective security and restore normal conditions as expeditiously as possible.

(c) Each facility shall develop written plans for emergencies such as passive resistance, work stoppage, escapes, riots and natural disasters.

(d) All emergency plans shall be implemented with appropriate consideration and care for both inmate and staff safety.

10A:31-7.2 Passive resistance

(a) Each facility shall develop a written plan for maintaining secur-

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ity and custody of inmates, in the event of passive resistance by inmates.

(b) In the event of passive resistance by inmates, the facility shall be secured.

(c) Additional correction officers shall be readily available in passive resistance situations.

(d) Back up support shall be obtained from outside resources if, in the judgement of the Jail Administrator or his or her designee, the seriousness of the situation warrants.

10A:31-7.3 Work stoppage

(a) Each facility shall develop a written plan for maintaining custody of inmates and the safety and well-being of inmates and staff members in the event of a work stoppage or other job action by employees.

(b) The work stoppage plan shall incorporate the ongoing continuation of essential services which may involve agreements with other law enforcement agencies such as local and State police or other outside resources.

10A:31-7.4 Escapes

(a) Each facility shall develop a written escape plan which shall be evaluated after each escape incident or escape attempt or at least once a year.

(b) All facility staff shall be trained in the specific action which is to be taken during or after an escape or an attempted escape.

(c) The Jail Administrator or the ranking supervisor shall be in charge of the implementation of all emergency escape plans.

(d) All records and relevant information regarding an inmate involved in an escape shall be studied immediately and used in efforts to reaprehend or secure the inmate.

(e) Immediate notice shall be given to all appropriate agencies to protect public safety in the event of an escape.

10A:31-7.5 Riots

(a) Each facility shall develop a written emergency riot plan which shall be evaluated at least once a year and immediately following a riot.

(b) All facility staff shall be trained in the specific action which is to be taken during and after a riot.

(c) The Jail Administrator or the ranking supervisory officer shall be in charge of the implementation of all emergency riot plans.

(d) Immediate efforts shall be made to isolate the troubled area or segment of the inmate population.

(e) Only the restraining action that is necessary to adequately contend with the emergency situation shall be taken.

(f) Progressively lethal forms of weaponry shall be used only with strict supervision and as the seriousness of the situation warrants, in the judgement of the Jail Administrator or the ranking supervisory officer.

(g) Immediate efforts shall be made to secure the facility and obtain as accurate a population count as possible.

(h) All available information shall be assessed and an appointed staff member or team shall be deployed to identify the cause of the riot and to initiate appropriate measures to resolve the situation.

(i) Due care shall be given to the safety of possible hostages, and special attempts shall be made to obtain their safe release.

(j) An alternative of safe return to security shall be offered to all inmates who select to cease and desist from continued participation in the riot.

(k) If the seriousness of the situation warrants, back up support shall be obtained from local and State police.

(l) If the seriousness of the situation warrants, other relevant back up supports may be obtained from the community, such as medical, food service, emergency repairs, etc.

(m) The facility shall have a written post emergency plan which will be implemented as soon as the situation permits.

10A:31-7.6 Natural disasters

(a) Each facility shall develop a written contingency plan which has been coordinated with the appropriate Department of Civil Defense, local and State police, and such other agencies and resources needed to contend with a natural disaster.

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(b) Each facility shall develop a written comprehensive contingency plan for the movement of large numbers of inmates, which has been coordinated with neighboring correctional facilities, local and State police, and such other community resources as required.

(c) The contingency plan in (a) and (b) above shall be reviewed and updated at least once a year.

SUBCHAPTER 8. SECURITY AND CONTROL

10A:31-8.1 Contraband defined

(a) Contraband means:

1. Any item, article or material found in the possession of or under the control of an inmate which is not authorized for retention or receipt;

2. Any item, article or material found within the adult county correctional facility or on the facility's grounds which has not been issued by the facility or authorized as permissible for retention or receipt;

3. Any item, article or material found in the possession of or under the control of staff or visitors within the facility or on the facility grounds which is not authorized for receipt, retention or importation; or

4. Any item, article or material which is authorized for receipt, retention or importation by inmates, staff or visitors but which is found in an excessive amount or which has been altered from its original form. An amount shall be considered excessive if it exceeds stated facility limits or exceeds reasonable safety, security, sanitary or space considerations.

(b) Any article which may be harmful or presents a threat to the security and orderly operation of the facility shall be considered contraband. Items of contraband shall include, but shall not be limited to:

1. Guns and firearms of any type;

2. Ammunition;

3. Explosives;

4. Knives;

5. Tools;

6. Other implements not provided in accordance with facility regulations;

7. Hazardous or poisonous chemicals and gases;

8. Unauthorized drugs and medications;

9. Medicines dispensed or approved by the facility but not consumed or utilized in the manner prescribed;

10. Intoxicants, including, but not limited to, liquor or alcoholic beverages; and

11. Currency and stamps, where prohibited.

10A:31-8.2 Search of inmates and facilities

(a) Facilities and inmates may be searched as provided in this subchapter for the purpose of controlling and deterring the introduction and concealment of contraband.

(b) Each facility shall develop and implement a comprehensive written plan governing searches of facilities and inmates.

10A:31-8.3 Search of inmates

(a) All inmates admitted to an adult county correctional facility shall be thoroughly searched.

(b) All searches shall be conducted under sanitary conditions, in a professional and dignified manner, with maximum courtesy and respect for the inmate's person.

(c) No inmate shall be searched as punishment or discipline.

10A:31-8.4 Strip searches

(a) A person who is detained for a **[minor]* *non-indictable** offense may not be strip searched unless there is a reasonable suspicion that such detainee is carrying or concealing contraband or is suffering from a communicable disease.

(b) The officer authorized to conduct such a strip search shall obtain the permission of the supervisor on duty to conduct the search and the officer shall file a written report explaining the reasons for such search.

(c) Strip searches may be conducted in the following circumstances:

1. Prior to admitting a person to a lockup, detention facility, prison or jail by court order or pursuant to an arrest authorized by law, except detainees for minor offenses as set forth in (a) above;

2. Before an inmate enters the facility after being permitted to leave for any reason;

3. Whenever there is reasonable suspicion that an inmate is carrying contraband;

4. Before placement of an inmate into:

i. Prehearing Detention;

ii. Disciplinary Detention; or

iii. Protective Custody.

5. Before placement of an inmate under a psychological observation or suicide watch;

6. Whenever the person is suspected of a communicable disease;

7. Whenever the person admitted for a minor offense(s) is known to have a history of violent or assaultive conduct or a previous conviction(s) for a crime(s); and

8. After a contact visit.

(d) Before a strip search is conducted, the person who is detained for a minor offense must be afforded a reasonable opportunity to post bail. For the purposes of this section, bail may be fixed and accepted by the law enforcement officer in charge of the adult county correctional facility.

(e) A strip search shall be conducted while the inmate is unclothed. A strip search includes a thorough and systematic examination of the inmate's body and orifices, including a visual inspection of external genital and anal areas, as well as the inmate's clothing and all personal possessions. A strip search shall also include a check for:

1. Body vermin;

2. Cuts;

3. Bruises;

4. Needle scars; and

5. Other injuries, where appropriate.

(f) A strip search shall be conducted in private and no member of the opposite sex shall be present during the search, except as set forth in (g) below.

(g) Strip searches may be conducted by correction officers of the opposite sex under emergent conditions as ordered by the Jail Administrator.

10A:31-8.5 Body cavity searches

(a) Under no circumstances may a body cavity search be conducted unless the correction officer in charge is satisfied that a reasonable suspicion exists that contraband is being concealed in the inmate's body cavity.

(b) A body cavity search may be conducted only by a licensed physician or registered nurse.

(c) During a body cavity search, only those correction officers deemed necessary for security, who are of the same sex as the inmate, may be present.

(d) A written report of the results of a body cavity search shall be made part of the inmate's record.

10A:31-8.6 Search of facilities

(a) All inmate residential, work, training and other areas to which inmates have access shall be searched thoroughly for contraband on a routine, continuing basis. Searches shall be unannounced and irregularly timed, and limited to a specific building or area.

(b) Procedures to be utilized in conducting searches shall be as set forth by each facility's plan governing searches required by N.J.A.C. 10A:31-8.2. Such procedures may provide that an inmate may be excluded from entry into an area being searched to facilitate the safe and effective performance of the search.

(c) Reports on the results of searches of the facility shall be submitted to the Jail Administrator.

(d) Items which are not permitted in the facility shall be confiscated and placed in a secure storage area.

(e) Inmates shall be given a receipt for any property that is confiscated, and disciplinary action shall be initiated when appropriate.

(f) Searches shall be conducted with a minimum amount of disturbance to an inmate's property. An inmate's property shall not be damaged, destroyed or confiscated unless it is determined to be

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contraband. ***An inmate shall be permitted to observe the search of his or her cell and property from a distance, where reasonably feasible.***

(g) All vehicular traffic and supplies entering the facility shall be thoroughly searched by a correction officer.

10A:31-8.7 Center Control

(a) The Center Control shall coordinate all security and communication functions within the facility.

(b) The Center Control shall be staffed 24 hours a day.

(c) Access to the Center Control shall be limited to authorized staff members who shall enter this location from a secure area not accessible to unauthorized persons, such as by way of the sally-port.

(d) All security perimeter doors, Center Control entrances and cell block doors shall remain secure except during use or in an emergency situation.

(e) The Center Control shall be responsible for the following:

1. Inmate counts;
2. Key control;
3. Operational coordination;
4. Internal and perimeter security; and
5. Communications.

(f) The Center Control shall monitor, as warranted, the following systems:

1. Fire alarms;
2. Smoke and thermal detection;
3. Public address;
4. Radio; and
5. Other mechanical and electrical systems.

10A:31-8.8 Counts

(a) At the end of each work shift, a written count shall be taken by the oncoming shift correction officers.

(b) Correction officers taking count shall clearly sign their count sheets, and the count shall be delivered to the Center Control.

(c) Inmates assigned to cell blocks shall be in their respective cells during counts. During the count, correction officers shall verify that the inmates being counted are alive and not in an unsafe situation.

(d) No one except a correction officer shall conduct a count.

(e) During the third shift hours, approximately 10 P.M. to 6 A.M., inmates shall be counted every half hour and the results of these counts shall be submitted to the Center Control by telephone.

(f) The information contained on count slips shall be transposed to a master log located in the Center Control.

10A:31-8.9 Inmate movements

(a) Inmates shall move about the adult county correctional facility in an orderly fashion to facilitate the maintenance of security and the orderly operation of the facility.

(b) Inmate movements shall be observed by correction officers located in strategic areas in order to:

1. Detect the occurrence of assaults;
2. Deter the passage of contraband;
3. Maintain security and order; and
4. Expedite the movement of inmates from one location to another.

10A:31-8.10 Correction officer posts

(a) Every adult county correctional facility shall develop written operating procedures for every post, and these procedures shall be reviewed and updated annually.

(b) Correction officers shall be required to sign for post orders and acknowledge that the content is understood.

(c) Correction officer posts shall be located immediately in or adjacent to inmate living areas.

(d) Correction officers shall not leave their assigned posts without being properly relieved.

(e) Under no circumstances shall a correction officer be removed from his or her post to perform another function if such removal results in the post becoming unmanned.

(f) Correction officers shall not respond to violent situations unless the correction officers have received prior approval from the Center Control.

(g) Post orders for each correction officer working in a housing unit shall include a requirement that each inmate, who has been

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classified as being in need of close supervision, shall be observed as frequently as the Jail Administrator or his or her designee has determined to be necessary.

10A:31-8.11 Electronic surveillance

(a) Observation through electronic surveillance systems may be used only in observing special risk inmates and only when approved by the Jail Administrator. Electronic surveillance shall not substitute for direct staff supervision or for regular contact with staff members.

(b) Electronic surveillance should be utilized in such a manner as to avoid interference with the privacy of inmates, wherever possible.

10A:31-8.12 Transportation of inmates

(a) Correction officers involved in transportation shall receive special instructions which shall include, but not be limited to:

1. Use of firearms;
2. Use of restraints;
3. Search of the transportation vehicle;
4. Strip searches; and
5. Appropriate court room demeanor.

(b) Special written transportation guidelines shall be developed by each facility which emphasize safety and the prevention of escape.

(c) All personnel involved in the transport of inmates shall receive a copy of the transportation guidelines.

10A:31-8.13 Staffing plan

(a) The adult county correctional facility shall have a written staffing plan for all shifts.

(b) The staffing plan shall provide for back up assistance for all correction officers assigned to inmate living areas.

10A:31-8.14 Reports and meetings

(a) A monthly meeting shall be conducted by the Jail Administrator or his or her designee with the supervisory staff.

(b) All supervisors shall submit a daily report to the Jail Administrator that is consistent with their assigned areas of responsibility.

10A:31-8.15 Use of force

(a) All adult county correctional facilities shall promulgate written procedures governing the use of physical force.

(b) Weapons used in the application of non-deadly force may include the use of:

1. Slapsticks;
2. Chemical agents;
3. Batons;
4. Stun guns; and
5. Other weapons which are not likely to cause death or serious injury.

(c) Weapons used in the application of deadly force include, but are not limited to:

1. Shotguns;
2. Handguns;
3. Rifles; and
4. Other lethal weapons.

(d) In any case when a correction officer uses force to control inmates, the minimum force possible under the circumstances shall be used, consistent with facility procedures. Use of force shall be used only for the following reasons:

1. To defend one's self or others against physical assault;
2. To prevent serious damage to property;
3. To prevent escape;
4. To prevent or quell a riot or disturbance;
5. To prevent a suicide or attempted suicide; and
6. To enforce facility regulations or in situations where a ranking supervisory officer believes that the inmate's failure to comply constitutes an immediate threat to facility security or personal safety.

(e) Following the use of physical force, written reports shall be prepared and completed before the completion of the tour of duty by the correction officers involved.

(f) In no case shall force be considered justifiable as punishment or discipline.

(g) Custody personnel shall be prepared to justify the use of physical force.

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SUBCHAPTER 9. USE AND CONTROL OF SECURITY EQUIPMENT

10A:31-9.1 Determining equipment needs

Careful analysis of the physical plant, the inmate population profile, and other relevant factors shall be utilized in determining the equipment an adult correctional facility needs for maintaining effective security and a state of readiness to adequately respond to major disturbances.

10A:31-9.2 Control of equipment

Written procedures shall specify the level of authority required for access and use of equipment for maintaining security.

10A:31-9.3 Use of restraining equipment

(a) Restraining equipment may be used only in the following instances:

1. As a precaution against escape during transit;
2. For medical reasons by direction of a medical officer;
3. To prevent inmate injury or injury to others; or
4. To prevent property damage.

(b) Restraining equipment shall be used to prevent property damage only in instances when such use has been approved by the Jail Administrator or his or her designee.

(c) At no time shall an inmate be left without proper supervision while in restraints.

(d) Restraints shall not be used as punishment, or in any way that causes undue physical discomfort, inflicts physical pain or restricts the blood circulation or breathing of an inmate.

(e) Restraints shall be removed promptly when the reason for their initial use has ceased to exist or has sufficiently abated.

(f) In the event restraints are used, a written report by the correctional personnel involved shall be submitted to the appropriate supervisor before the end of the tour of duty.

10A:31-9.4 Key control

(a) A written ongoing control system shall govern the access, use and return of all adult county correctional facility keys.

(b) Facility keys shall be stored in a secure locker when not in use.

(c) There shall be at least one full set of facility keys, other than the keys in use, that is stored in a safe place. These keys shall be accessible only to appropriate facility personnel for emergency use.

(d) Inmates shall under no condition have access to any facility keys.

10A:31-9.5 Use and storage of chemical agents

(a) Tear gas, mace and related chemical agents may be used only as a last resort and under the strict supervision of the ranking supervisory officer with due consideration for the safety of inmates and staff. Following the use of chemical agents, a report shall be submitted to the Jail Administrator which gives the reason(s) for the use of chemical agents and the results achieved from such use.

(b) No member of the custody staff may carry or use chemical agents unless he or she has received appropriate training in chemical agent uses and effects.

(c) After each instance of use, individuals who have been exposed to chemical agents shall be given a medical examination and treatment as soon as possible.

(d) Chemical agents shall be safely stored in an arsenal which is readily available for emergency use, but outside the security perimeter.

(e) Periodic checks shall be made for leakage or other malfunctions which could interfere with the effective use of chemical agents in an emergency situation.

10A:31-9.6 Storage of weapons

(a) Firearms shall be located in an arsenal readily available in case of emergencies, but outside the security perimeter.

(b) All law enforcement officers entering the adult county correctional facility shall check their weapons at the facility's weapons collection station located outside the security perimeter.

(c) Weapons may be used only under orders of the Jail Administrator or his or her designee, in emergency situations in which any

lesser degree of force would be ineffective, or would subject the correction officer to serious threat of injury.

(d) A strict accounting procedure governing the issue, use and return of weapons shall be developed by the designated staff person. This procedure shall include a record of the lethal and non-lethal projectiles expended.

(e) Any staff or inmate injured in an incident where a weapon is used shall receive an immediate medical examination and treatment.

SUBCHAPTER 10. FOOD SERVICE

10A:31-10.1 Nationally recommended dietary allowance

Each adult county correctional facility shall document that the system of dietary allowance is reviewed at least annually by a dietician, registered by the American Dietetic Association, to ensure compliance with nationally recommended food allowances as stated by the National Academy of Sciences.

10A:31-10.2 Food service management

A staff, experienced in food service management, shall be designated to be responsible for food service management and operations within the adult county correctional facility.

10A:31-10.3 Menus

(a) Menu evaluations shall be conducted and maintained at least quarterly by the adult county correctional facility food service supervisory staff to verify adherence to nationally recommended basic daily serving.

(b) The signature of a registered dietician on the menus shall indicate official approval of the nutritional adequacy of food served to inmates within the facility.

(c) All menus including special diets shall be planned, dated and available for review at least one week in advance.

(d) In any case when a food substitution is made, the food that is substituted shall be of equal nutritional value and a notation of the substitution shall be made on the menu.

(e) A file of tested recipes, adjusted to prepare the number of meals appropriate to the size of the facility, should be maintained on the premises of the facility.

10A:31-10.4 Special diets or alternate foods

(a) Provisions shall be made for special diets as prescribed by a physician or dentist of the adult county correctional facility.

(b) When the religious beliefs of an inmate(s) require the inmate(s) to adhere to dietary laws, provisions shall be made for alternate food items.

10A:31-10.5 Serving of meals

(a) Three meals, of which two are hot, shall be provided at regular meal times during each 24 hour period, and no more than 14 hours shall elapse between the evening and breakfast meals.

(b) All meals shall be served under direct supervision of staff members in order to ensure sanitary conditions and avoid favoritism, careless serving and waste.

(c) A uniform system to record the number, type and cost of meals served to inmates, staff and visitors shall be established and maintained.

(d) A sanitary space shall be provided for group dining. Meals shall not be served in cells unless it is necessary for purposes of safety or security and only if a small table, shelf and seating arrangement can be provided.

(e) Compartment type trays, bowls and cups shall be utilized.

10A:31-10.6 Prohibited use of food for reward or discipline

Food shall not be used as a reward, or as a disciplinary measure.

10A:31-10.7 Medical examination of food service personnel

(a) All food service personnel and inmates shall receive a pre-assignment medical examination to insure freedom from illnesses transmissible by food.

(b) All food service personnel and inmates shall receive a medical examination prior to resumption of duties if, for any reason, the inmate(s) or food service personnel have been away from the job for 30 days or more.

ADOPTIONS

- 10A:31-10.8 Personal hygiene of food service personnel
- (a) All food service personnel shall maintain high standards of personal hygiene and comply with Federal, State and local laws and regulations for food handlers.
- (b) All food handlers shall wash their hands upon reporting to duty and after using toilet facilities.
- (c) A daily inspection of food handlers for cleanliness and to detect any illness or infection shall be conducted by the food service supervisor.
- (d) Written documentation that food service personnel comply with applicable health regulations shall be available for review.
- 10A:31-10.9 Inspection of food service areas and equipment
- (a) A weekly inspection of all food service areas and equipment shall be conducted by administrative or dietary personnel.
- (b) A daily check of refrigerator and water temperatures by administrative or dietary personnel shall be made.
- (c) Written documentation that food service facilities and equipment meet established safety and protection standards and requirements shall be available for review.
- 10A:31-10.10 Storage areas
- (a) Sanitary temperature controlled storage areas for all foods shall be provided in:
1. Refrigerators and freezers;
 2. Cool, dry storage areas; and
 3. Lockable areas for pepper, nutmeg, vanilla, yeast, dry fruit, or other food additives which may be utilized to manufacture illegal products.
- 10A:31-10.11 Security in the food service area
- (a) Written procedures shall be developed and implemented that govern the safe and secure storage of all cutlery items and hazardous kitchen utensils.
- (b) A designated staff person shall be accountable for maintaining an ongoing inventory of all cutlery items.
- 10A:31-10.12 Budgeting, purchasing and accounting procedures
- (a) The food service operation shall follow written budgeting, purchasing and accounting procedures to ensure nutritional and economical meals with minimum waste.
- (b) When the adult county correctional facility's food services are provided by an outside agency or individual, the facility shall have written verification that the outside provider complies with the State and local regulations regarding food service.
- 10A:31-10.13 Written policies and procedures
- Each adult county correctional facility shall develop written policies and procedures consistent with this subchapter.

SUBCHAPTER 11. SANITATION

- 10A:31-11.1 Federal, State and local codes
- Each adult county correctional facility shall comply with Federal, State and local sanitation, safety and health codes.
- 10A:31-11.2 Housekeeping plan
- Each adult county correctional facility shall develop a written housekeeping plan which shall include a cleaning schedule with staff members and inmates assigned to specific duties.
- 10A:31-11.3 Daily sanitation inspections
- (a) The Jail Administrator shall require daily sanitation inspections by a designated staff member utilizing a check list developed by the Jail Administrator and approved by the Department of Corrections.
- (b) The completed inspection check list shall be submitted to the Jail Administrator or his or her designee.
- 10A:31-11.4 Floors
- The floors of each adult county correctional facility shall be kept clean, dry and free from hazardous substances.
- 10A:31-11.5 Control of vermin and pests
- (a) Each adult county correctional facility shall make arrangements for the control of vermin and pests.

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- (b) Licensed pest control professionals shall be used at least once per month to clean or fumigate the facility.
- 10A:31-11.6 Disposal of liquid and solid wastes
- Each adult county correctional facility shall develop a written plan for the disposal of liquid and solid wastes.

SUBCHAPTER 12. INMATE CLOTHING AND HYGIENIC LIVING CONDITIONS

- 10A:31-12.1 Clothing
- (a) All inmates shall be provided with clothing that is clean, climatically suitable, durable and in good condition.
- (b) Inmates participating in food service, sanitation, mechanical and other special work assignments shall be issued appropriate clothing and equipment in quantities that permit exchange as frequently as the work assignment requires.
- 10A:31-12.2 Towels, linen and bedding
- (a) Each inmate shall be issued the following clean items:
1. Two towels;
 2. One fire retardant mattress;
 3. One pillow;
 4. Two sheets;
 5. One pillowcase; and
 6. Sufficient clean blankets to provide comfort under existing temperature conditions.
- 10A:31-12.3 Laundry services
- (a) Laundry services shall permit the exchange of inmate clothing (facility issue and/or personal), linen and bedding on a weekly basis.
- (b) The collection, storage and exchange of clothing and linen shall be accomplished hygienically.
- 10A:31-12.4 Issue of clothing, linen and bedding
- (a) The clothing, linen and bedding supply shall exceed that required for the maximum inmate population in order to allow the adult county correctional facility to compensate without delay for items that are lost, destroyed, or worn out.
- (b) The issue of clothing and bedding shall be recorded to provide accountability for their use. Inmate accountability for clothing and bedding should be specified in the copy of the facility's regulations given to each inmate upon admission.
- 10A:31-12.5 Cleaning of blankets and mattresses
- Blankets and mattresses shall be cleaned, sprayed and/or sterilized before reissue.
- 10A:31-12.6 Storage of inmate personal clothing
- Provisions shall be made for the storage of inmate personal clothing and, when necessary, the clothing shall be cleaned and/or disinfected prior to storage.
- 10A:31-12.7 Personal hygiene products
- (a) As part of the admission process, each inmate shall be provided with the following articles necessary for maintaining proper personal hygiene:
1. Soap;
 2. Toothbrush;
 3. Toothpaste or powder;
 4. A comb;
 5. Toilet paper;
 6. Shaving equipment, upon request; and
 7. Products for the special hygiene needs of female inmates.
- (b) Indigent inmates shall be provided basic items for personal hygiene set forth in (a) above on a continuing basis.
- (c) Personal hygiene needs of inmates shall not be denied for punitive reasons.
- 10A:31-12.8 Shower and hair care services
- (a) Upon admission to the adult county correctional facility inmates shall be required to shower and shall be permitted to shower daily thereafter.
- (b) Hair care services shall be made available to all inmates on a regular basis.

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ADOPTIONS

(c) The area used for hair services shall be located to permit observation by the staff and equipment shall be stored securely when not in use.

10A:31-12.9 Written policies and procedures

Each adult county correctional facility shall develop written policies and procedures consistent with this subchapter.

SUBCHAPTER 13. MEDICAL, DENTAL AND HEALTH SERVICES

10A:31-13.1 Essential medical, dental and health services

The adult county correctional facility shall be responsible for essential medical, dental and health care services.

10A:31-13.2 Responsibility for adult county correctional facility's medical services

(a) A physician, licensed in the State of New Jersey, shall be responsible for the adult county correctional facility's medical services pursuant to a written agreement between:

1. The county funding agency responsible for the facility;
2. The Jail Administrator; and
3. The physician responsible for medical services, or a qualified medical authority, such as a physician's group.

(b) The physician, responsible for medical services, shall have no restriction imposed on him or her by the adult county correctional facility administration regarding the practice of medicine.

10A:31-13.3 Security regulations

Security regulations applicable to adult county correctional facility personnel shall also apply to medical personnel.

10A:31-13.4 Standard operating procedures

(a) Written standard operating procedures, approved by the physician who is responsible for medical services, shall be developed for the following:

1. Medical screening;
2. Health appraisal data collections;
3. Non-emergency medical services;
4. Emergency medical and dental services;
5. Evaluating the emergency nature of illness or injury;
6. Dental screening, prevention, examination and treatment;
7. Medical and dental prosthetics;
8. First aid;
9. Notification of next of kin or legal guardian in case of major surgery, serious illness, injury or death;
10. Chronic care;
11. Convalescent care;
12. Medical preventive maintenance;
13. Screening, referral and care of mentally ill and retarded inmates;
14. Care of inmates requiring close medical supervision;
15. Delousing;
16. Detoxification; and
17. Pharmaceuticals.

10A:31-13.5 Licensure

(a) State licensure and/or certification requirements and restrictions shall apply to health care personnel working in the adult county correctional facility to the same extent as to those working in the community.

(b) Copies of current licenses and/or certification credentials shall be on file in the facility.

10A:31-13.6 Job descriptions

The work of medical personnel shall be governed by written job descriptions which are approved by the physician or medical authority responsible for medical services.

10A:31-13.7 Treatment

(a) Treatment by medical personnel other than the physician, responsible for medical services, shall be performed pursuant to written standing or direct orders from that physician.

(b) In lieu of written standing orders, nationally certified physician assistants and nurse practitioners may practice within the limits of their national certification(s), providing that such practice(s) shall be

consistent with State law and shall be authorized by the physician or a qualified medical authority who is responsible for medical services within the adult county correctional facility.

(c) If medical services are delivered in the facility, adequate space, equipment, supplies and materials as determined by the physician who is responsible for medical services shall be provided for primary health care delivery.

10A:31-13.8 First aid kits

(a) First aid kits shall be available in all adult county correctional facilities.

(b) The physician who is responsible for medical services shall approve the:

1. Content of the kits;
2. Number of kits; and
3. Location of the kits.

(c) Written procedures for the use and monthly inspection of all first aid kits shall be established.

10A:31-13.9 Medical screening

(a) Upon admission, all inmates shall receive:

1. A medical screening by a nurse or medical technician;
2. A physical examination by a licensed physician; and
3. Any tests determined to be necessary by the physician who is responsible for medical services.

(b) The medical screening and physical examination shall be performed on each inmate prior to the inmate's placement in the general population or housing area.

(c) The findings of the medical screening shall be recorded on a printed form approved by the physician who is responsible for medical services.

(d) The medical screening should include, but not be limited to:

1. Current illnesses and health problems, including those specific to women;
2. Medications taken and special health requirements;
3. Evaluating other health problems designated by the physician responsible for medical services;
4. Behavior observation, including state of consciousness and mental awareness;
5. Notation of body deformities, such as trauma markings, bruises, lesions, jaundice, ease of movement;
6. Condition of skin and body orifices, including rashes and infection; and
7. Referral of inmates to qualified medical personnel on an emergency basis.

10A:31-13.10 Access to medical and dental services

At the time of admission, all inmates shall be provided with a copy of the adult county correctional facility's rules and regulations which shall include the procedures for gaining access to medical and dental services (see N.J.A.C. 10A:31-21.4).

10A:31-13.11 Inmate medical complaints

(a) The written medical complaints of inmates shall be collected daily.

(b) The medical staff shall assess the medical complaints of inmates and provide for the treatment of inmates according to priorities of need.

10A:31-13.12 Sick call

(a) Sick call, conducted in adult county correctional facilities by a physician and/or other qualified medical personnel, shall be available to each inmate as follows:

1. Facilities of less than 40 inmates shall conduct sick call at least once a week;
2. Facilities of 50 to 200 inmates shall conduct sick call at least three times per week; and
3. Facilities of over 200 inmates shall conduct sick call at least five times per week.

10A:31-13.13 Physician availability

A physician shall be available at least once each week to respond to inmate complaints.

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10A:31-13.14 Emergency medical and dental care

(a) The adult county correctional facility shall provide 24 hour seven day per week emergency medical and dental care.

(b) Written standard operating procedures (S.O.P.'s) shall be established which shall include, but not be limited to, arrangements for the following:

1. On-site emergency first aid;
2. Emergency evacuation of the inmate from the adult county correctional facility;
3. Use of an emergency medical vehicle;
4. Use of one or more designated hospital emergency rooms or other appropriate health facilities; and
5. An emergency on call physician or dental services when the emergency health facility is not located in a nearby community.

(b) Facility personnel shall be trained in the use of emergency care procedures. This training shall include, but not be limited to:

1. Signs and symptoms of potential emergency situations;
2. Types of action required for potential emergency situations;
3. Administration of first aid;
4. Method of obtaining emergency care;
5. Location of the facility's first aid kits; and
6. Transferring patient to appropriate medical provider.

(c) All facility personnel likely to be needed or involved in a medical emergency shall be trained in basic first aid that is equivalent to that defined by the American Red Cross.

(d) At least one person per shift shall have training in the following:

1. Receiving screening;
2. Basic life support;
3. Cardio-pulmonary resuscitation (C.P.R.); and
4. Recognition of symptoms of the illnesses common to the facility.

10A:31-13.15 Chronic and convalescent care

Chronic care, convalescent care and medical preventive maintenance shall be provided to inmates.

10A:31-13.16 Medical and dental prosthetics

As determined by the physician who is responsible for medical services, medical and dental prosthetics shall be provided when the health of the inmate patient would otherwise be adversely affected.

10A:31-13.17 Dental care

(a) Dental care shall be provided under the direction of a dentist licensed in the State of New Jersey.

(b) Dental screening shall be provided to new admissions.

(c) Inmates shall receive dental treatment as determined by the dentist in accordance with the Classification and Priority Treatment Program (see N.J.A.C. 10A:31-13.18).

10A:31-13.18 Classification and Priority Treatment Program

(a) A written Classification and Priority Treatment Program shall be established that will place inmates into a dental scheduling system.

(b) The Classification and Priority Treatment Program shall use the date of the inmate's incarceration as a basis for placement on the dental treatment lists in all categories of classification.

(c) The Classification and Priority Treatment Program shall give priority scheduling to:

1. Inmates who need emergency dental treatment;
2. Inmates who have medical problems, such as allergies, diabetes, heart conditions and blood diseases; and
3. Inmates who do not have sufficient teeth to masticate the food provided by the adult county correctional facility.

10A:31-13.19 Preventive dentistry

Preventive dentistry shall be routinely implemented into the adult county correctional facility's dental program.

10A:31-13.20 Refusal of treatment

The inmate shall have the right to refuse dental treatment.

10A:31-13.21 Mentally ill and retarded inmates

(a) Screening and referral for care shall be provided to mentally ill or retarded inmates whose adaptation to the adult county correctional facility environment is significantly impaired.

(b) The physician who is responsible for medical services shall provide a written list of symptoms or behavior indicative of mental illness and retardation and shall designate, in advance, specific referral sources.

(c) Facility personnel shall be trained regarding recognition of symptoms of mental illness and retardation.

10A:31-13.22 Close medical supervision program

(a) A special program shall be established for inmates requiring close medical supervision.

(b) An individual medical treatment plan for inmates requiring close medical supervision shall be developed by a physician which includes directions to medical and non-medical personnel regarding the staff's role in the care and supervision of these inmates.

10A:31-13.23 Special diets

Special medical diets shall be prepared and served to inmates as ordered by the physician or dentist who is responsible for medical or dental services (see N.J.A.C. 10A:31-10.4).

10A:31-13.24 Detoxification

Detoxification from alcohol, barbiturates and similar drugs, when not provided in a hospital or community detoxification center, shall be performed at the adult county correctional facility under medical supervision.

10A:31-13.25 Pharmaceutical management

(a) The adult county correctional facility's written standard operating procedures for the management of pharmaceuticals shall include:

1. A formulary;
2. Requirements that the facility shall adhere to regulations established by the State Board of Pharmacy regarding medications;
3. A policy regarding prescription practices which shall include, but not be limited to:
 - i. Prescriptions generated by consultant health providers;
 - ii. Blanket standing orders;
 - iii. Written prescriptions;
 - iv. Oral prescriptions; and
 - v. Renewal schedule of drugs.
4. Policies regarding medication dispensing and administration;
5. Policies on documenting the administration of medication; and
6. Policies regarding the maximum security storage and weekly inventory of all controlled substances, syringes, needles and surgical instruments.

10A:31-13.26 Medical records

(a) The medical record file shall contain the following:

1. Completed medical screening forms;
2. First appraisal data collection forms;
3. All findings, diagnoses, treatments, dispositions, prescriptions and administrations of medication;
4. Notes concerning inmate education; and
5. Notation of place, date and time of medical encounters and discharges from medical treatment.

(b) The method of recording entries in the medical record and the form and format of the record shall be approved by the physician who is responsible for medical services.

(c) Access to medical records is controlled by the physician who is responsible for medical services. The physician/patient privilege shall apply to the medical records (see N.J.A.C. 10A:31-6.11).

(d) The medical record file shall be kept separate from the inmate's classification record.

10A:31-13.27 Informed consent for treatment

All examinations, treatments and procedures affected by informed consent standards in the community shall be likewise observed when providing care for inmates.

10A:31-13.28 Quarterly and annual report

The physician who is responsible for medical services shall prepare and submit to the Jail Administrator a quarterly report on the health delivery system and an annual statistical summary of the health services provided to inmates during the previous year.

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SUBCHAPTER 14. MISCELLANEOUS INMATE RIGHTS

10A:31-14.1 Presumption of innocence

(a) The presumption of innocence of pre-trial detainees shall be respected at all times, and adult county correctional facility staff shall take no action which may interfere with the detainee's right to:

1. Remain silent regarding the charges; or
2. Prepare a defense to the charges.

10A:31-14.2 Protection from abuse

(a) Inmates shall be protected by adult county correctional facility staff from personal abuse, corporal punishment, personal injury, disease, property damage, and harassment.

(b) Appropriate disciplinary action shall be taken against facility staff who engage in abusive behavior and, when necessary, these cases will be referred to the county prosecutor.

10A:31-14.3 Prohibition against discrimination

(a) There shall be no discrimination on the basis of race, sex, national origin, color, religion, economic status, political belief or handicap.

(b) Care, custody and treatment services of inmates shall be provided equally to male and female inmates.

***[10A:31-14.4 Equal access to programs, facilities and services**

Inmates shall be provided equal access to programs, facilities and services, so long as such access does not interfere with the maintenance of security or the orderly operation of the adult county correctional facility.]*

10A:31-[14.5]14.4* Inmate grievance procedure**

A written inmate grievance procedure shall be afforded to all inmates which shall include at least one level of appeal.

10A:31-[14.6]14.5* Opportunity to practice religion**

Inmates shall be afforded full and equal opportunity to practice their religion, or refrain from involvement in religion, subject only to the limitations necessary to maintain order and security (See N.J.A.C. 10A:31-26.3).

10A:31-[14.7]14.6* Access to representatives of the media**

Inmates shall be afforded reasonable access to representatives of the media by correspondence, telephone and/or visits.

SUBCHAPTER 15. ACCESS TO THE COURTS

10A:31-15.1 Inmate access to courts

(a) Persons detained prior to trial and sentenced inmates have a constitutional right of access to the courts.

(b) Jail Administrators shall assist detainees and inmates in the preparation and filing of meaningful legal papers by providing law libraries or adequate assistance from persons trained in the law.

10A:31-15.2 Inmate Law Library

(a) If the Inmate Law Library is the selected method in assisting inmates in the preparation and filing of legal papers, the Inmate Law Library shall be so located as to enable the inmates to be taken to the library to do research.

(b) Arrangements shall be made with a bar association, law school(s), or other law libraries to borrow law books not contained in the adult county correctional facility's own collection.

(c) Inmates who so request shall be given access to the Inmate Law Library on a schedule which permits as many inmates as possible to use the library, depending on:

1. The resources of the adult county correctional facility;
2. The availability of space; and
3. Security considerations.

(d) Punishment for any Inmate Law Library infraction such as damage to law books or disruptive conduct shall not ordinarily include denial of access to the Inmate Law Library.

(e) An inmate who abuses the right of access to the Inmate Law Library may be disciplined in accordance with prescribed procedures as set forth in N.J.A.C. 10A:31-16, Disciplinary Procedures.

(f) In certain extreme instances and only with the approval of the Jail Administrator, an inmate may be denied direct personal access to the Inmate Law Library. In such instances, the inmate shall receive

legal reference materials and related services from assigned persons trained in law.

10A:31-15.3 Access to supplies and services

(a) Inmates shall have access to legal supplies and services for preparing legal papers, such as:

1. Writing paper;
2. Carbon paper;
3. Reproduction equipment; and
4. Large mailing envelopes.

(b) The cost of the legal supplies noted in (a) above shall be borne by the inmate unless the inmate is indigent.

10A:31-15.4 Attorneys and court related personal visits

(a) Suitable meeting facilities shall be provided for inmates to meet with attorneys and representatives of attorneys in privacy with reasonable comfort.

(b) Representatives of attorneys may include:

1. Investigators;
2. Investigative aides;
3. Paralegals; and
4. Law students.

(c) Visits of attorneys and representatives of attorneys shall be permitted without notice, or upon reasonable notice, during at least six hours each business day.

(d) Only necessary security requirements may be permitted to interfere with such visits.

10A:31-15.5 Legal telephone calls

Telephone access to attorneys, courts, probation officers, and parole officers shall be provided for all inmates who so request.

SUBCHAPTER 16. DISCIPLINARY PROCEDURES

10A:31-16.1 Disciplinary rules and sanctions

(a) Equitable and consistent inmate discipline shall be employed to ensure the maintenance of security and the orderly operation of all adult county correctional facilities.

(b) Rules, upon which inmate discipline is based, must be reasonable and evenly applied, and the action taken to determine an alleged infraction must be based on findings of fact.

(c) The sanction(s) for infractions shall not be imposed in any manner that violates the inmate's civil rights. The sanction(s) must be related to the infraction, and must be fairly applied to all inmates.

(d) All persons who supervise the activities of inmates shall receive sufficient training to ensure that these staff members understand the rules of inmate conduct, the sanctions available and the rationale for the rules.

10A:31-16.2 Disciplinary rule book

(a) The adult county correctional facility shall develop a written inmate disciplinary rule book which lists:

1. All chargeable offenses;
2. The schedule of sanctions;
3. The disciplinary procedures; and
4. The disciplinary appeal process.

(b) Each inmate, upon admission to the facility, shall be given a copy of the disciplinary rule book and the inmate shall sign a form acknowledging receipt of the rule book.

(c) Each staff member shall be given a copy of the inmate disciplinary rule book.

(d) Staff members shall assist inmates who have literacy problems in understanding the disciplinary rules.

(e) Where a facility has a large number of inmates in the population who speak a foreign language, the disciplinary rules shall be printed and/or presented verbally in the foreign language.

10A:31-16.3 Disciplinary report

(a) Employees shall prepare a disciplinary report when the employees have reasonable belief that an inmate has committed a violation of the adult county correctional facility rules.

(b) The disciplinary report shall include the following information:

1. The specific rule violated;
2. Facts supporting the charge;
3. Unusual inmate behavior;
4. Staff or inmate witnesses;

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5. The disposition of any physical evidence;
6. Any immediate action taken, including the use of force;
7. The reporting staff member's signature;
8. The date and time the report is prepared; and
9. The date, time and name of staff person who delivers the disciplinary report to the inmate.

10A:31-16.4 Inmate Law Library violation and sanctions

Punishment for any Inmate Law Library infraction, such as damage to the law books or disruptive conduct, shall not ordinarily include denial of access to the Inmate Law Library.

10A:31-16.5 Minor violations and sanctions

(a) The immediate imposition of a sanction upon an inmate for a minor violation shall be referred to as On-The-Spot Correction.

(b) Written guidelines shall specify the minor violations that may be handled informally through the imposition of On-The-Spot Correction.

(c) The following are authorized sanctions for On-The-Spot Correction:

1. Verbal reprimand;
2. Loss of recreation privileges for a period of no more than five days;
3. Up to four hours of extra work duty; and/or
4. Up to four hours confinement to tier, room or cell.

(d) Minor violations must be reported in writing and forwarded immediately to the shift supervisor for review.

(e) The shift supervisor shall issue the inmate a copy of the report and afford the inmate the right to a conference before the imposition of any sanction(s).

(f) If the shift supervisor concurs with the written minor violation report, the On-The-Spot Correction sanction shall be imposed within 24 hours of the shift supervisor's review.

(g) The shift supervisor may also dismiss the minor rule violation or upgrade the minor violation to a major violation.

10A:31-16.6 Major violations and sanctions

(a) Major violations shall be defined as that conduct which is punishable by sanctions more stringent than those for minor violations.

(b) The following are authorized sanctions for major violations:

1. Up to 15 days Disciplinary Detention;
2. Loss of commutation time subject to confirmation by the Jail Administrator;
3. Loss of privileges up to 30 days;
4. Forfeiture/confiscation;
5. Restitution;
6. Any sanction prescribed for On-the-Spot Correction; and/or
7. Suspension of any one or more of the above sanctions at the discretion of the Disciplinary Board for 60 days.

(c) No inmate may receive more than 15 days in Disciplinary Detention as a result of a single disciplinary charge.

(d) If an inmate is found guilty of multiple disciplinary charges, he or she may receive up to 15 days Disciplinary Detention for each charge provided that the total time to be served does not exceed 30 days.

10A:31-16.7 Notification of inmate

(a) As a notification of the major violation charge(s), a copy of the disciplinary report shall be served upon the inmate within 48 hours of the violation unless there are exceptional circumstances, and at least 24 hours prior to the disciplinary hearing unless such notice is waived by the inmate in writing.

(b) The disciplinary report shall be delivered by the reporting staff member or the investigating officer. The report shall be signed by the person delivering it, and the time of delivery shall be noted.

10A:31-16.8 Use immunity

(a) In all cases, the inmate shall be advised of his or her right to use immunity at any investigative interview and at the disciplinary hearing.

(b) The use immunity warning shall consist of a statement which indicates that any statements made in connection with the disciplinary hearing or evidence derived directly or indirectly from those statements shall not be used in any subsequent criminal proceeding.

CORRECTIONS

(c) Failure to give the use immunity warning by the investigative officer shall not be grounds for dismissing the disciplinary report.

10A:31-16.9 Investigation

(a) An investigation of the infraction shall be conducted within 48 hours of the time the disciplinary report is served upon the inmate, unless there are exceptional circumstances for delaying the investigation.

(b) The Jail Administrator shall appoint an investigating officer who was not involved in the incident to be investigated.

(c) The inmate shall be advised of his or her right to consult with a counsel substitute prior to the Disciplinary Hearing.

(d) The inmate shall be advised of his or her right to waive the Disciplinary Hearing and plead guilty to the disciplinary charges.

10A:31-16.10 Prehearing Detention

(a) Until the Disciplinary Hearing, the inmate shall remain in his or her existing status, unless the inmate constitutes a threat to other inmates, staff members, himself or herself or to the orderly operation of the adult county correctional facility.

(b) If Prehearing Detention is ordered by the shift supervisor, such order shall be reviewed by the Jail Administrator or his or her designee within 24 hours. Failure to do so shall return the inmate to his or her previous status.

10A:31-16.11 Disciplinary Board

(a) All hearings for major offenses shall take place before a Disciplinary Board composed of an impartial three member panel which shall include one custody supervisor and two non-custody staff members.

(b) Any Disciplinary Board member shall be disqualified in every case in which:

1. The Board member filed the complaint or witnessed the incident;
2. The Board member participated as an investigating officer;
3. The Board member will be charged with subsequent review of the decision; and/or
4. The Board member has personal interest in the outcome.

10A:31-16.12 Disciplinary hearing

(a) The inmate shall be entitled to a hearing within seven days of the alleged violation, including weekends and holidays, unless such hearing is prevented by exceptional circumstances, unavoidable delays or reasonable postponements. Should the seventh day fall on a Saturday, Sunday or holiday, the hearing shall be held on the weekday immediately following the weekend or holiday.

(b) Inmates confined in Prehearing Detention shall receive a hearing within three days of their placement in Prehearing Detention, including weekends and holidays, unless there are exceptional circumstances, unavoidable delays or reasonable postponements. Should the third day fall on a Saturday, Sunday or holiday, the hearing shall be held on the weekday immediately following the weekend or holiday.

(c) Inmates confined in Prehearing Detention shall be given priority in scheduling their appearance before the Disciplinary Board.

(d) Time spent in Prehearing Detention shall be credited against any subsequent sentence imposed.

(e) No delays in hearing a case shall be permitted for the purpose of punishment or discipline.

(f) An inmate shall be provided the opportunity to be present during the Disciplinary Hearing except for the Disciplinary Board's deliberations and reasons of security. The reasons for excluding an inmate from a Disciplinary Hearing must be documented in the inmate's record.

(g) An inmate may be represented by a counsel substitute (staff or inmate) when it is determined by the Disciplinary Board that the inmate is illiterate or cannot adequately collect and present the evidence in his or her own behalf.

(h) An inmate shall be provided an opportunity to call witnesses on his or her behalf, unless doing so would be irrelevant, repetitive or unduly hazardous to institutional safety. The reasons for denying the opportunity to call witnesses must be stated in writing and filed in the inmate's record.

CORRECTIONS

ADOPTIONS

(i) An inmate shall be provided the opportunity to make a statement and present documentary evidence.

(j) An inmate shall be provided the opportunity to confront and cross-examine his or her accuser and all adverse witnesses unless doing so would be unduly hazardous to institutional safety or would endanger the physical safety of a witness. The reasons for denying the opportunity to cross-examine accusers or adverse witnesses must be stated in writing and filed in the inmate's record.

(k) In absentia hearings may be held if the inmate refuses to attend the Disciplinary Hearing. Documentation of this refusal must be reported in writing.

(l) Should further investigation be required, the Disciplinary Hearing may be postponed by the Disciplinary Board for up to 48 hours for Prehearing Detention cases and for seven days for all other Hearings.

10A:31-16.13 Referral to the prosecutor

All rule violations which may constitute crimes of the first, second, third or fourth degree under the Criminal Code of the State of New Jersey (N.J.S.A. 2C:1-1 et seq.) shall be referred to the prosecutor of the county in which the adult county correctional facility is located.

10A:31-16.14 Decision of the Disciplinary Board

(a) At the conclusion of the Disciplinary Hearing, the Disciplinary Board shall issue a written decision. This decision shall contain:

1. The Board's finding on the question of guilt;
2. The sanction imposed;
3. A summary of the evidence upon which the finding is based, with the exception of confidential information which was withheld for security reasons;
4. A list of all non-confidential witnesses;
5. The reason requested witnesses were not called or cross-examination was not permitted if applicable;
6. The reason for the sanction which shall include such factors as the offender's past history and circumstances of the offense;
7. The date and time of the Disciplinary Hearing; and
8. The signatures of all Board members.

10A:31-16.15 Appeal of disciplinary decisions

(a) The inmate shall be advised of his or her right to appeal the decision of the Disciplinary Board.

(b) Appeals of disciplinary decisions shall be submitted to the Jail Administrator in writing, within 48 hours of the Disciplinary Hearing.

(c) Appeals of disciplinary decisions shall be reviewed by the Jail Administrator who may affirm, rescind or downgrade the decision. The Jail Administrator may reduce but may not increase the sanction imposed by the Disciplinary Board.

(d) Copies of the appeal and the disposition on appeal shall be forwarded to the Disciplinary Board for their records.

10A:31-16.16 Expungement

(a) If the Disciplinary Board finds the inmate innocent of the charges, all reference to the offense shall be removed from the inmate's file.

(b) Copies of the disciplinary report, investigation and adjudication sheet shall be maintained by the adult county correctional facility and the Disciplinary Board in the event of judicial review and for statistical and accounting purposes only. These records shall be maintained separately from the inmate's record.

SUBCHAPTER 17. DISCIPLINARY DETENTION

10A:31-17.1 Placement in Disciplinary Detention

Disciplinary Detention shall be used only when all other possible remedies have failed. A decision to place an inmate in Disciplinary Detention may be made only by the Disciplinary Board subject to review by the Jail Administrator.

10A:31-17.2 Time spent in Disciplinary Detention

(a) Inmates may be placed in Disciplinary Detention by the Disciplinary Board for a period not to exceed 15 days as a result of a single disciplinary charge.

(b) Inmates found guilty of multiple disciplinary charges may receive up to 15 days Disciplinary Detention for each charge provided that the total time to be served does not exceed 30 days.

(c) The time an inmate spends in Disciplinary Detention shall be proportionate to the offense committed, taking into consideration:

1. The severity of the offense;
2. The inmate's prior conduct;
3. The inmate's specific program needs; and
4. Other relevant factors.

10A:31-17.3 Disciplinary problems while in Disciplinary Detention

In the event of further disciplinary infractions by the inmate(s) while in Detention, the inmate(s) shall be charged with the appropriate violation and be given a Disciplinary Hearing by the Disciplinary Board.

10A:31-17.4 Security checks

Security and visual observation checks shall take place every 30 minutes in Disciplinary Detention.

10A:31-17.5 Records in Disciplinary Detention

(a) A written log of all security checks and/or counts shall be maintained, and the log shall be signed by the respective correction officer conducting the security check(s) and/or counts.

(b) Visits by medical, psychiatric, social work or custody supervisory staff, and all unusual behavior shall be noted in the log book together with the time and date.

(c) A record stating the following information shall be maintained in Disciplinary Detention:

1. The inmate's name;
2. The inmate's number;
3. The date of admission;
4. The type of infraction leading to Disciplinary Detention;
5. The expiration date of Disciplinary Detention; and
6. Any special problems, such as medical, behavioral, etc.

10A:31-17.6 Security procedures for Disciplinary Detention

(a) At no time shall correction officers handle Disciplinary Detention inmates on a one-to-one basis. There shall be a minimum of two correction officers to one inmate.

(b) At no time in Disciplinary Detention shall more than one inmate at a time be out of his or her cell.

(c) The Disciplinary Detention area shall be equipped with an alarm device which, when activated, will alert the Center Control of any unusual occurrences. The alarm device shall be tested on each shift.

(d) A telephone(s) shall be available within Disciplinary Detention in order to provide immediate communication with the Center Control.

(e) All inmates in Disciplinary Detention shall be strip-searched any time they enter or leave the Disciplinary Detention area.

(f) Bars, doors, windows, locks, corridors, floors and ceilings of the Disciplinary Detention area shall be checked daily and a written report completed and forwarded to the supervising officer responsible for this area.

10A:31-17.7 Correspondence, visits and telephone calls

(a) Inmates in Disciplinary Detention shall have the same correspondence opportunities that are available to inmates in the general population.

(b) Inmates in Disciplinary Detention shall not be provided with visit or telephone opportunities while in Disciplinary Detention with the exception of legal telephone calls.

(c) The Jail Administrator or his or her designee may authorize a special visit or telephone call for an inmate when there are compelling reasons to do so.

(d) Every effort shall be made to notify expected social visitors of the restriction on ordinary visiting procedures prior to the next regularly scheduled visiting period. If adequate time for correspondence exists, the burden of this notification shall be placed on the inmate.

ADOPTIONS

10A:31-17.8 Correction officer assignment to Disciplinary Detention
 Correction officers shall not be assigned to a Disciplinary Detention Unit for longer than a six month period.

SUBCHAPTER 18. PROTECTIVE CUSTODY

10A:31-18.1 Admission to Protective Custody
 An inmate may be placed in Protective Custody only with the approval of the Jail Administrator or his or her designee.

10A:31-18.2 Hearing procedure for involuntary placement to Protective Custody
 (a) The adult county correctional facility's Classification Committee shall review involuntary Protective Custody placements within seven days.
 (b) At the involuntary Protective Custody review the inmate shall be given the opportunity to appear personally before the Classification Committee.
 (c) The Classification Committee shall provide the inmate with a written notice of the committee's decision and a summary of the evidence relied upon.

10A:31-18.3 Review of inmates in Protective Custody
 Each inmate in Protective Custody shall be reviewed every 30 days by the Classification Committee.

10A:31-18.4 Release of inmates from Protective Custody
 (a) Provided the Classification Committee and the Jail Administrator or his or her designee are satisfied that there is no known danger to the inmate's well being, an inmate who has voluntarily signed himself or herself into Protective Custody may sign himself or herself out upon completion of a release form.
 (b) An inmate who has been placed in Protective Custody involuntarily may be released by the Jail Administrator or his or her designee upon recommendation by the Classification Committee when they are satisfied that the conditions giving rise to the inmate's placement in Protective Custody have abated or no longer exist.
 (c) A release form that is signed by the Jail Administrator and the inmate shall be placed in the inmate's classification folder.

10A:31-18.5 Security procedures for Protective Custody
 (a) Any inmate who is not in a Protective Custody status shall be prohibited from entering the Protective Custody area at any time.
 (b) All Protective Custody inmates shall be escorted by two correction officers any time the inmate or inmates leave the Protective Custody area.
 (c) All inmates in Protective Custody shall be strip-searched when entering and leaving the Protective Custody area.

10A:31-18.6 Correspondence, visits and telephone calls
 The writing, visiting and telephone privileges of inmates shall not be suspended while the inmate(s) is confined in Protective Custody.

SUBCHAPTER 19. MAIL
10A:31-19.1 Limitation on outgoing and incoming mail
 (a) There shall be no limit on the amount of outgoing or incoming correspondence an inmate may send or receive.
 (b) There shall be no restriction on the length, language or content of letters or on the persons to whom an inmate may write, except where there is clear and convincing evidence to justify restrictions to ensure the maintenance of public safety or adult county correctional facility order and security.
10A:31-19.2 Cost of mailing correspondence by indigent inmates
 Indigent inmates shall be provided with postage and stationery enabling the inmates to send at least three letters of general correspondence per week.
10A:31-19.3 Processing mail
 (a) Daily collection, handling and distribution of inmate mail shall be done by authorized staff personnel only.
 (b) Outgoing correspondence shall not be held within the adult county correctional facility more than 24 hours after the cor-

respondence has been received or collected for mailing, except on weekends or holidays.
 (c) Incoming correspondence shall be delivered to the inmate within 24 hours after it has been received at the facility.

10A:31-19.4 Inspection and reading of incoming mail
 (a) All incoming correspondence and packages shall be inspected for cash, checks, money orders and contraband.
 (b) Monies received through the mail shall be credited to the inmate's account and a receipt shall be given to the inmate.
 (c) Contraband shall be removed from incoming correspondence and the inmate shall be notified concerning the items removed and the disposition of the contraband. Contraband shall be fully described in the copy of adult county correctional facility rules and regulations given to the inmate at admissions (see N.J.A.C. 10A:31-21.4).
 (d) Inmate incoming correspondence may not be read except when there is reliable information indicating that the mail is a threat to order and security, or when mail is being used in the furtherance of illegal activity. It shall be the responsibility of the Jail Administrator to document that sufficient reason exists to read an inmate's correspondence.

10A:31-19.5 Inspection of outgoing mail
 Outgoing inmate correspondence shall be permitted to be sealed by the inmate and shall not be opened, inspected or censored unless there is evidence to suspect that there is contraband enclosed or that a criminal activity is involved.

10A:31-19.6 Publications
 Inmates shall be permitted to receive books, magazines, newspapers or other printed matter, unless such publications are deemed to constitute an immediate threat to the security of the adult county correctional facility, or these publications are determined to be obscene by current laws or court decisions on obscenity.
10A:31-19.7 Packages
 (a) Inmates shall be provided with a list of items permitted to be received in packages.
 (b) All incoming and outgoing packages shall be thoroughly searched for contraband (see N.J.A.C. 10A:31-8.1).

10A:31-19.8 Written policy and procedures
 Written policies and procedures consistent with this subchapter shall be developed by all adult county correctional facilities and be made available to staff and inmates.

CORRECTIONS

SUBCHAPTER 20. VISITS
10A:31-20.1 Visit regulations
 Written visit regulations shall be available for all staff, inmates, and visitors.
10A:31-20.2 Visit regulations translated into foreign language
 Where deemed necessary by the Jail Administrator, visit regulations shall be translated into a foreign language.
10A:31-20.3 Contact visits
 An area shall be provided for contact visits, for those inmates who do not represent a substantial security risk.
10A:31-20.4 Non-contact visits
 An area shall be provided for non-contact visits, for those inmates classified as high risk inmates.
10A:31-20.5 Visit scheduling
 (a) The visit program shall include provisions for weekday, evening and weekend visitation.
 (b) Visits shall be no less than 15 minutes in length.
 (c) Limitation on the length or frequency of visits shall be imposed only to avoid overcrowded conditions in the visiting area.
10A:31-20.6 Registering and search of visitors
 (a) Visitors shall register upon entry into the adult county correctional facility, and their belongings shall be searched and/or stored in lockers.

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CORRECTIONS

ADOPTIONS

(b) Circumstances under which a visitor may be searched shall be specified in written visit regulations (N.J.A.C. 10A:31-20.1).

10A:31-20.7 Visits by attorneys and religious advisors

(a) Attorneys and religious advisors (chaplains, ministers, priests, imams, etc.) shall be allowed additional visitation privileges and accommodations that ensure privacy.

(b) Visit hours shall include evening hours for attorneys, where reasonably feasible.

10A:31-20.8 Special visits

(a) Prior arrangements should be made for special visits, if possible.

(b) Special visits may include, but are not limited to:

1. Visits from persons who have come long distances;
2. Visits to hospitalized inmates; and
3. Visits to inmates in disciplinary status.

10A:31-20.9 Written policies and procedures

Each adult county correctional facility shall develop written policies and procedures consistent with this subchapter.

SUBCHAPTER 21. ADMISSION, SEARCH, ORIENTATION, PROPERTY CONTROL AND RELEASE

10A:31-21.1 Written policies and procedures regarding newly admitted inmates

(a) Each adult county correctional facility shall develop written policies and procedures regarding the admission of new inmates which include, but are not limited to:

1. Verification of commitment papers;
2. A thorough search of individual inmates;
3. Disposition of clothing and personal possessions;
4. Medical screening;
5. Telephone calls;
6. Showers;
7. Hair care;
8. Issue of clean institutional clothing;
9. Photographs;
10. Fingerprinting;
11. Notations of identifying marks and unusual characteristics;
12. Intake screening interview by staff member, preferably a social worker or counselor;
13. Issue of personal hygiene items; and
14. Classification and assignment to a housing unit.

10A:31-21.2 Search of newly admitted inmates

Newly admitted inmates may be subjected to a strip search or body cavity search only in accordance with the conditions set forth in N.J.A.C. 10A:31-8.3, 8.4 and 8.5.

10A:31-21.3 Orientation

Orientation shall be provided to newly admitted inmates in their own languages where possible. Such orientation shall be documented by the dated signatures of the inmates who have been oriented to the adult county correctional facility.

10A:31-21.4 Adult county correctional facility rules and regulations

(a) All inmates shall be provided with a copy of the facility's rules and regulations which shall be explained by a staff member.

(b) The rules and regulations shall be available in English and Spanish, where appropriate.

(c) An interpreter may be provided at the discretion of the Jail Administrator.

10A:31-21.5 Telephone calls

Newly admitted inmates shall be permitted to complete at least two local or collect long distance telephone calls as soon as possible during the admission process.

10A:31-21.6 Release or diversion to intervention programs

(a) Written procedures shall be developed with the Court and Probation Department for initial screening and evaluation of individuals for possible release or diversion to intervention programs.

(b) Jail Administrators shall coordinate with the Courts, Probation Departments and other community agencies the release from

confinement under certain conditions, selected individuals who are not a danger to the community.

10A:31-21.7 Property control

(a) Written policy and procedures shall specify the types of personal property inmates can retain in their possession during incarceration.

(b) A written itemized inventory of all personal property shall be given to newly admitted inmates.

(c) Secure storage of inmate property including money and other valuables shall be provided and inmates shall be given receipts for all property held until release.

(d) A system of strict staff accountability shall be maintained to assure the safety of inmate personal property, money and other valuables.

(e) Clothing and personal property taken from inmates shall be cleaned and/or placed in appropriate storage areas.

10A:31-21.8 Release of inmates

(a) Each adult county correctional facility shall develop written policies and procedures related to the release of inmates which include, but are not limited to:

1. Verification of inmate's identity;
2. Verification of inmate's release reports;
3. Completion of release arrangement, including the person or agency to whom the inmate is to be released;
4. Return of inmate's personal property;
5. Verification that no facility property leaves with the inmate; and
6. Completion of any pending action, such as grievances or claims for damages or lost possessions.

SUBCHAPTER 22. CLASSIFICATION

10A:31-22.1 Written classification policies and procedures

(a) Each adult county correctional facility shall develop written policies and procedures for classifying inmates which include the following:

1. The composition and responsibilities of the Classification Committee;
2. The initial classification of inmates;
3. The review of the classification of inmates; and
4. The reassignment or transfer of inmates from one program and/or facility to another.

10A:31-22.2 Separation of inmates

(a) The following types of inmates shall be maintained separately insofar as space permits:

1. Male and female inmates;
2. Aggressive and passive/dependent inmates;
3. Inmates with special problems, such as alcoholics, sex offenders, drug addicts, etc., and inmates who do not have such problems;
4. Physically or mentally ill inmates and healthy inmates;
5. Misdemeanors and felons; and
6. First offenders and habitual criminals.

(b) The classification of inmates in the categories in (a) above may be modified based on the direct observation and supervision of individual inmates, and in such instances each classification decision shall be fully documented.

10A:31-22.3 Segregation of inmates based upon race, color, creed or national origin

Segregation of inmates by race, color, creed, or national origin shall be prohibited.

10A:31-22.4 Male and female inmates' access to programs and activities

Male and female inmates, depending on their custody levels, shall have equal access to all programs and activities, but integrated participation by male and female inmates in programs and activities is not required.

10A:31-22.5 Initial classification

(a) Initial classification of sentenced inmates shall be completed within two weeks after admission from court or transfer from another institution, except where there are clear and convincing reasons to do otherwise.

ADOPTIONS

(b) Wherever possible, inmates shall initially be assigned to an intake area for a two week period which will allow sufficient time for inmates to be appropriately classified and medically screened pursuant to N.J.A.C. 10A:31-13.9.

10A:31-22.6 Classification hearing

All sentenced inmates shall be given 48 hours notice prior to their classification hearing and shall have the opportunity to appear and participate in their hearing.

10A:31-22.7 Appeal of Classification Committee decision

All sentenced inmates shall be given the opportunity to appeal the decision of the Classification Committee to the Jail Administrator or his or her designee.

SUBCHAPTER 23. REMISSION OF TIME FROM SENTENCE**10A:31-23.1 Eligibility for cash or remission of time from sentence**

(a) Inmates who are employed in productive occupations while incarcerated in an adult county correctional facility may receive compensation for such employment in the form of cash or remission of time from sentence or both (see N.J.S.A. 30:4-92).

1. An inmate employed under this section may receive remission of time from sentence not to exceed one day for each five days of productive occupation, but remission granted under this section shall not affect deductions for good behavior as otherwise provided by law.

2. In addition, all inmates classified as minimum security and who are considered sufficiently trustworthy to be employed in honor camps, farms or details, shall receive further remission of time from sentence at the rate of three days per month for each month of such employment.

(b) Inmates in adult county correctional facilities, who are employed in the community pursuant to N.J.A.C. 10A:31-25, Work Release Program, are eligible for diminution of sentence as set forth in N.J.S.A. 30:8-50. The inmate may be granted a diminution of not more than one-quarter of his or her term if the inmate's conduct, diligence and general attitude meet such diminution.

(c) Inmates who are receiving credits while participating in a Work Release Program under (b) above may also, in appropriate circumstances, receive work credits under (a) above. Such additional credits may be granted only where the inmate engages in a productive occupation in the adult county correctional facility in addition to the inmate's participation in the Work Release Program.

(d) Any remission of time shall in no way affect deduction for good behavior as otherwise provided in N.J.S.A. 2A:164-24.

10A:31-23.2 Records and audits

(a) The New Jersey State Department of Corrections shall periodically audit records pertinent to the remission of time or cash payments for periodic occupation or minimum security status of inmates. Such audits shall be conducted not less than annually.

(b) The remission of time or cash payment records shall indicate the following:

1. The dates the inmate was placed upon and removed from productive occupation and/or minimum security status;

2. The reason for removal from productive occupation or minimum security status;

3. The time the inmate earned while in productive occupation or on minimum security status; and

4. The cash remuneration, if any, the inmate received while in productive occupation.

(c) Individual records shall be maintained for each inmate placed in productive occupation or classified on minimum security status.

10A:31-23.3 Reports

(a) The Jail Administrator of the adult county correctional facility shall submit an annual report to the New Jersey State Department of Corrections, Bureau of County Services.

(b) The annual report shall contain, but not be limited to, the following:

1. The operation of the remission of time for productive operations and minimum security status; and/or

2. The payment of cash to inmates for employment in productive occupations.

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(c) In counties electing to provide cash payments for employment in productive occupations, the schedule of payments shall be filed with the New Jersey State Department of Corrections, Bureau of County Services.

10A:31-23.4 Consultations

The New Jersey State Department of Corrections will provide the consultative services of staff members with respect to questions, issues or problems arising out of the interpretation of the Statutes or from operational procedures.

SUBCHAPTER 24. INMATE WORK PROGRAM**10A:31-24.1 Inmate work plan**

(a) The adult county correctional facility shall develop and maintain a written inmate work assignment plan that provides for inmate employment, subject to the availability of work opportunities and the security considerations of the facility.

(b) The inmate work plan shall include provision for inmate employment in facility maintenance and operations such as:

1. Cleaning;

2. Painting;

3. Food service; and

4. Laundry operations.

(c) The inmate work plan shall include provisions for inmate employment in public works projects such as construction work, conservation projects, county road work, and cleaning and maintenance tasks in local government buildings.

(d) The inmate work plan shall include provisions for the employment of handicapped inmates.

10A:31-24.2 Pretrial and unsentenced detainees

Pretrial and unsentenced detainees shall not be required to work except to do personal housekeeping.

10A:31-24.3 Inmate volunteers

Any inmate may volunteer for work assignments or adult county correctional facility programs.

10A:31-24.4 Compensation

(a) Inmates employed in inmate work programs shall receive compensation for employment in the form of cash or remission of time from sentence or both (see N.J.A.C. 10A:31-23).

(b) Any remission of time shall in no way interfere with the reduction for good behavior time.

(c) State sentenced inmates who are being housed in adult county correctional facilities shall be compensated in accordance with N.J.A.C. 10A:9-5.6.

SUBCHAPTER 25. WORK RELEASE PROGRAM**10A:31-25.1 Authority**

N.J.S.A. 30:8-44 authorizes the operation of a County Work Release Program in the counties in which the Board of Freeholders has approved the establishment of this type of program.

10A:31-25.2 Role of New Jersey Department of Corrections

The New Jersey Department of Corrections may make staff available for maintaining general supervision over County Work Release Programs.

10A:31-25.3 Benefit to inmates

(a) Participation in the Work Release Program provides the following benefits to inmates:

1. Provides inmates the opportunity to participate in full time normal employment or vocational training in the community;

2. Permits inmates the opportunity to develop or strengthen good work habits and skills;

3. Affords inmates opportunities to continue or strengthen constructive ties with family, friends and the community;

4. Permits the pre-release preparation of inmates and the opportunity to evaluate the readiness of these inmates for release to the community;

5. Permits disbursements to be made from inmate earnings to help defray the cost of incarceration, support dependents, reduce debts and pay court fines;

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- 6. Enables inmates to accumulate savings to help meet financial needs or burdens after release from confinement;
- 7. Provides inmates the opportunity to meet family needs; and
- 8. Provides inmates the opportunity to earn credits which will reduce the time to be served on the inmate's sentence.

10A:31-25.4 Responsibility for designating County Work Release Administrator

(a) Upon adoption of a resolution to implement a Work Release Program, the County Board of Freeholders shall designate a County Work Release Administrator who may be the Sheriff, Jail Administrator or other person who shall be responsible for administering the Work Release Program.

(b) The Board of Freeholders shall promptly notify the Commissioner of the Department of Corrections of the Board's action and the name of the designated County Work Release Administrator.

10A:31-25.5 Placement in Work Release

A person convicted and sentenced to an adult county correctional facility may be placed in a Work Release Program by order of the court in which such person was convicted, or by the assignment judge of the county in which the sentence was imposed at the time such person is sentenced or at any time thereafter during the term of the sentence.

10A:31-25.6 Inmates inappropriate for Work Release Program participation

(a) The following circumstances shall make an inmate inappropriate for participation in the Work Release Program:

1. Untried detainees for criminal offenses or immigration detainees;
2. Current convictions involving sex or arson offenses;
3. Previous convictions for sex or arson offenses, even if the current conviction is for an offense(s) other than sex or arson; or
4. Current convictions for the sale and/or distribution of controlled dangerous substance (CDS) solely for profit.

(b) An inmate who presently is serving a sentence for one count of a sexual offense and who has a prior adult conviction for one count of a sexual offense under the laws of this State, any other state or the United States; an inmate who presently is serving a sentence for more than one count of a sexual offense under the laws of this State, any other state or the United States; or an inmate who presently is serving a sentence for a nonsexual offense and has prior adult convictions for more than one count of a sexual offense under the laws of this State, any other state or the United States, is inappropriate for the Work Release Program.

(c) For purposes of this subchapter, a sexual offense shall include a conviction obtained in a court of competent jurisdiction of another state, or of the Federal government, or a conviction obtained under the following New Jersey Statutes:

- 2C:14-2 Sexual assault; aggravated sexual assault;
- 2C:14-3 Aggravated criminal sexual contact; criminal sexual contact;
- 2C:24-4 Endangering welfare of children where the official version of the crime indicates that the inmate engaged in sexual contact pursuant to 2C:24-4(a) or committed an offense under 2C:24-4(b) (3, 4 or 5);
- 2C:5-1 Criminal attempt to commit any offense under 2C:14-2, 14-3, 23-4;
- 2C:5-2 Conspiracy to commit an offense under 2C:14-3, 24-4;
- 2C:47-1 et seq. Any convictions obtained under this section;
- 2A:86-3 Abduction of female under age 18 for purpose of marriage or carnal abuse;
- 2A:90-2 Assault with intent to commit rape or sodomy, or to carnally abuse a female under the age of 16, with or without her consent;
- 2A:96-3 Debauching or impairing the morals of a child under the age of 16;
- 2A:138-1 Rape or carnal abuse;
- 2A:138-2 Carnal knowledge of female inmates of a home or institution for the feeble minded or mentally ill;
- 2A:143-1 Sodomy;
- 2A:143-2 Sodomy with children under 16;
- 2A:85-5 Attempt to commit any of the foregoing offenses;

- 2A:85-14 Aiding and abetting the commission of any of the foregoing offenses;
- 2A:98-1 Conspiracy to commit any of the foregoing offenses; and/or
- 2A:164-3 Any conviction obtained under this section, except lewdness.

(d) An inmate who presently is serving a sentence for one count of an arson offense and who has a prior adult conviction for an arson offense; an inmate who presently is serving a sentence for more than one count of an arson offense; or an inmate who presently is serving a sentence for a non-arson offense but who has more than one prior adult conviction for an arson offense, is inappropriate for the Work Release Program.

10A:31-25.7 Application for admission to the Work Release Program

(a) The County Work Release Administrator shall be responsible for advising county sentenced inmates that an application may be submitted to him or her for submission to the court for approval to participate in the Work Release Program.

(b) An inmate sentenced by the court to an adult county correctional facility, who desires an opportunity to participate in the Work Release Program by being released to the community for employment, vocational training or meeting family needs shall be required to complete and submit form CWR-1 APPLICATION AND AGREEMENT FOR ASSIGNMENT UNDER THE WORK RELEASE PROGRAM to the county Work Release Administrator for submission to the court.

(c) The County Work Release Administrator shall review and evaluate the information collected on each application and make a recommendation to the court concerning admission to the Work Release Program. The basic information shall include, but is not limited to:

1. Prior criminal history;
2. Detailed information concerning present offense;
3. Detailed information regarding untried criminal charges pending and the current status of these charges;
4. Psychological and psychiatric evaluations, when available;
5. Record of violent or assaultive conduct;
6. Record of violation of financial or public trust;
7. Data on family relationships including responsibility to assist in family maintenance;
8. Work history;
9. Personal health;
10. Record of substance abuse; and
11. Information on job opportunities or vocational programs to meet the inmate's needs.

(d) The following facts and circumstances shall be viewed as negative factors when considering an inmate's application for the Work Release Program:

1. A record of association with organized crime;
2. A record of serious emotional or personality disorders;
3. A record of violent or assaultive behavior;
4. Previous violations of financial or public trust;
5. A high degree of public notoriety which would cause adverse reaction if the inmate were released to the community;
6. Indications that release to the community would be contrary to punitive intention of sentence; and
7. A history which indicates a record of convictions for offenses related to controlled dangerous substances (CDS).

10A:31-25.8 Job site evaluation

(a) The County Work Release Administrator shall be responsible for evaluating all prospective places of employment of inmates.

(b) Whenever possible, work release employment shall be related to prior vocational training, work experience and/or the institutional training of the inmate.

(c) The following shall initially be taken into account when evaluating the job site:

1. Working conditions of employees;
2. Potential hazards to health of employees;
3. Credibility of the employer;
4. Verification of a fair rate of pay, not less than minimum wage;

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5. Coverage of an appropriate workers' compensation plan;
 6. Availability of transportation;
 7. Duration of the offered employment and benefits; and
 8. Proximity to the adult county correctional facility.
- (d) Inmates shall not be placed in Work Release Program assignments which will result in the displacement of workers employed in the community.
- (e) Representatives of local union central bodies or similar labor union organizations shall be consulted about the placement of inmates with an employer, when appropriate.
- (f) If suitable private outside employment cannot be found for an inmate, the inmate may be employed by the county at a fair wage and reasonable hours of work.

10A:31-25.9 Notice to inmate

Form CWR-2 NOTIFICATION OF ADMISSION TO WORK RELEASE WITH SPECIFIED CONDITIONS shall be used by the County Work Release Administrator to notify the inmate of the court's decision on the inmate's application.

10A:31-25.10 Work Release Plan

(a) The County Work Release Administrator and the inmate shall prepare a detailed Work Release Plan (Form CWR-3 APPROVED WORK RELEASE PLAN). The plan shall include information concerning the job, transportation and a statement authorizing the County Work Release Administrator to make disbursements from earnings.

- (b) The information concerning the job placement shall include, but is not limited to:
1. The name of employer;
 2. The address of employer;
 3. The telephone number of employer;
 4. The location of work site;
 5. The hourly or other rate of pay;
 6. Work days and hours;
 7. A plan for overtime or shift work, if necessary; and
 8. An evaluation of the job offer by the County Work Release Administrator.

(c) Each Work Release Plan shall contain a written detailed Transportation Plan. The Transportation Plan shall include, but is not limited to:

1. The dates and times of leaving and returning to the adult county correctional facility;
2. The times of arrival and departure from the job;
3. The method of transportation (for example, facility vehicle, public, private conveyance);
4. The daily cost of transportation;
5. The routes of travel; and
6. A procedure to be used when there are unexpected changes in travel arrangements, such as extended work conditions, delays caused by breakdowns, etc.

(d) If the Transportation Plan calls for the use of a private conveyance as the method of transportation, the County Work Release Administrator should ensure that the appropriate licensing, vehicle registration and insurance coverage are provided. Copies of these documents shall be contained in the inmate's file.

(e) The Transportation Plan should be flexible so as to allow for normal problems anticipated in daily travel. Generally, travel time to and from a job should not exceed one hour each way.

(f) The final section of the Work Release Plan shall include information on the disbursement of wages.

(g) When the Work Release Plan is completed and reviewed by the County Work Release Administrator, the inmate shall be asked to read and indicate his or her acceptance of the provisions of the Work Release Plan by signing it.

(h) The employer shall receive a copy of the approved Work Release Plan by certified mail, return receipt requested, along with a copy of the court's order placing the inmate in outside employment. The inmate shall also receive a copy of the Work Release Plan.

10A:31-25.11 Disbursement of wages

(a) An inmate participating in the Work Release Program shall submit his or her salary, wages or stipend, in the form that it is paid

(cash or check), to the County Work Release Administrator who shall make payments from these earnings for:

1. Money advances made to purchase or redeem work clothes, travel clothes and/or work tools;
2. The cost of work transportation and cash advanced for miscellaneous daily expenses while outside the adult county correctional facility;
3. Payment of cost for board which shall be charged for each day that the inmate is participating in the Work Release Program;
4. Court costs and fines;
5. Legally ascertained support of dependents after written notice to the appropriate welfare board; and/or
6. Payment on debts and legal obligations acknowledged by the inmate in writing and filed with the County Work Release Administrator on such forms as the Administrator shall specify.

(b) Every effort shall be made to secure full payment of advances as soon as possible. Except in the most unusual situations, full repayment shall be obtained no later than the second full pay.

(c) Any balance of earnings remaining after payment of items in (a) above shall be retained as required by N.J.S.A. 30:8-49(4), and paid to the inmate when he or she is discharged.

(d) Each county shall develop a written system whereby each inmate participating in the Work Release Program shall pay a fair percentage of his or her earnings for board. The daily per capita rate for the payment of board shall not include any part of the costs arising from the administration of the Work Release Program.

10A:31-25.12 Statement of disbursements

(a) An inmate participating in the Work Release Program shall receive a statement on Form CWR-4 STATEMENT OF DISBURSEMENTS itemizing deductions made from each pay check within two weeks of the county's receipt of the pay check.

(b) The statement shall report all income and expenses and accurately reflect the statement of the inmate's account for the period covered.

10A:31-25.13 Vocational Training Release Plan

(a) If the inmate is approved for vocational training, a detailed Vocational Training Release Plan (Form CWR-5 VOCATIONAL TRAINING RELEASE PLAN) shall be prepared by the County Work Release Administrator. A copy of the Vocational Training Release Plan shall be sent to the inmate and a copy shall be sent to the training agency by certified mail, return receipt requested. The plan shall include the following:

1. The name and address of the training agency;
2. The location where training will take place;
3. The dates and times of leaving and returning to the adult county correctional facility;
4. The times of arrival and departure from the training site;
5. The mode of transportation; and
6. Other pertinent data including responsibility for payment of costs, such as transportation, meals, etc.

10A:31-25.14 Family Need Release Plan

(a) A detailed Family Need Release Plan (Form CWR-6 FAMILY NEED RELEASE PLAN) shall be prepared by the County Work Release Administrator with a copy to the inmate outlining the following:

1. The nature of need;
2. The location of where family need is to be served;
3. The dates and times of leaving and returning to the adult county correctional facility;
4. The times of arrival and departure from the family need site;
5. The mode of transportation; and
6. Other pertinent data including responsibility for paying costs, such as transportation, meals, etc.

10A:31-25.15 Notification of local police departments

(a) N.J.S.A. 30:4-91.3(a) requires that the local police departments be notified when the county intends to place an inmate in the respective municipality for the purpose of a visit, study, work or residence.

(b) The local police departments shall be notified in writing whenever an inmate is being considered for placement into the work

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release, vocational training release or family care release phase of the Work Release Program.

10A:31-25.16 Custody status

Inmates approved for outside employment, family care or vocational training under a Work Release Program shall be classified as minimum custody and housed separately from other inmates serving terms in ordinary confinement, if possible.

10A:31-25.17 Orientation

(a) When the inmate has been accepted into the Work Release Program and the appropriate applications and plans have been completed, the County Work Release Administrator shall provide an orientation to the inmate.

(b) The orientation shall ensure that the inmate is made aware of and has a clear understanding of the rules, regulations and conditions governing the Work Release Program.

(c) The County Work Release Administrator or his or her designee shall also ensure that the employer is made aware of the rules and regulations and of the employer's responsibilities concerning the Work Release Program.

(d) The County Work Release Administrator shall make periodic evaluations of the extent of family needs and of job and vocational training sites to ensure that the rules and regulations governing the Work Release Program are not being violated.

10A:31-25.18 Review of status and termination

(a) The County Work Release Administrator may hold the inmate in confinement pending judicial review of the inmate's status, when there is cause to believe that the inmate has:

1. Violated the rules of the Work Release Program; or
2. Been charged with the commission of an offense.

(b) The County Work Release Administrator shall submit a written report to the court which will include the reason(s) for holding the inmate in confinement and a request that the court review the inmate's status in the Program.

(c) The County Work Release Administrator shall implement the court's decision.

(d) No inmate may be removed from the Work Release Program without an order from the court authorizing such a removal.

10A:31-25.19 Escape

(a) An inmate shall be deemed an escapee if the inmate:

1. Fails to return to the adult county correctional facility within the prescribed time or has not notified the facility within the one hour grace period that he or she is in the process of returning; or
2. Fails to notify the facility that he or she has been detained (that is, hospitalized, arrested, etc.); or
3. Fails to obtain authorization to leave his or her place of employment.

(b) If the inmate contacts the facility within the one hour grace period and is given a reasonable time limit within which to return to the facility but fails to do so, the inmate shall be declared an escapee if there are no extenuating circumstances or verified legitimate reasons for the inmate's failure to return within the time limit.

(c) In all cases of escape, the County Work Release Administrator shall arrange for immediate notice to the:

1. County Jail Administrator;
2. Local police;
3. State police; and
4. Court.

10A:31-25.20 Quarterly report

(a) The County Work Release Administrator shall be responsible for preparing a quarterly report (Form CWR-9 QUARTERLY REPORT OF WORK RELEASE) which shall be submitted to the County Board of Freeholders and the New Jersey Department of Corrections.

(b) The quarterly report shall contain a general summary of Work Release Program information, which includes, but is not limited to, the following:

1. The total number of participants in the Program;
2. The total number of admissions to the Program;
3. The total number of terminations from the Program;

4. The total number of revocations for violations of conditions; and

5. The total number of removals because of illness or death.

(c) The quarterly report shall also contain other statistical information on the Work Release Program and facts as may be requested by the County Board of Freeholders and the New Jersey Department of Corrections.

10A:31-25.21 Arrangements with other counties

(a) An inmate may be housed in another county for the purposes of work release when the court, issuing the release placement order, authorizes the County Work Release Administrator to arrange with the County Work Release Administrator of another county for the employment of an inmate within that county.

(b) The inmate shall be in the custody of the other county and subject to the commitment and all applicable regulations while the inmate is participating in the Work Release Program.

(c) Agreements between cooperating counties shall include a statement of financial arrangements.

10A:31-25.22 Time credits

(a) Pursuant to N.J.S.A. 30:8-50, an inmate participant may be granted a reduction of not more than one-quarter of his or her term if the inmate's conduct, diligence and general attitude merit such reduction (see N.J.A.C. 10A:31-23.1).

(b) Form CWR-7 DIMINUTION OF TERM shall be used to notify the appropriate person in the county jail as to the number of days to be credited in reduction of an inmate's sentence.

SUBCHAPTER 26. INMATE SERVICES AND PROGRAMS

10A:31-26.1 Social Services Program

(a) A Social Services Program shall be administered and supervised by a person with a Bachelor's degree or four years experience in the social and behavioral sciences.

(b) Counseling shall be provided by a qualified, trained counselor and shall include, but is not limited to:

1. Individual counseling;
2. Drug and alcohol addiction counseling;
3. Family counseling;
4. Crisis intervention;
5. Vocational counseling;
6. Discharge planning;
7. Release preparations; and
8. The referral of inmates to existing community resources.

(c) In the absence of qualified social service personnel, social services may be provided through contractual arrangements with community agencies.

(d) When community agencies are used to provide social services, a staff member of the adult county correctional facility shall be responsible for coordinating and documenting the use of these community agencies.

(e) Records shall be maintained documenting all counseling activities.

10A:31-26.2 Education Program

(a) An area suitable for conducting educational classes shall be designated for the Education Program.

(b) A qualified teacher shall administer and supervise the Education Program.

(c) Inmates shall have access to educational programs and vocational training, when it is available within the adult county correctional facility.

(d) Educational courses available for inmates shall include, but not be limited to, the following:

1. Adult Basic Education;
2. General Education Diploma (G.E.D.); and
3. Correspondence courses for both high school and college credits.

(e) English as a second language (ESL) may be made available for inmates when deemed appropriate.

10A:31-26.3 Religious services

(a) All inmates shall be afforded full and equal opportunity to practice their religion, or refrain from involvement in religion, subject

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only to the limitations necessary to maintain order and security.

(b) The adult county correctional facility shall provide for inmate participation in religious services on a voluntary basis.

(c) Representatives from the various recognized religions shall be contacted to provide counseling and religious services.

(d) The facility shall ensure that weekly religious services are conducted.

10A:31-26.4 Recreation and Leisure Time Activities Program

(a) A staff member shall administer and supervise the Recreation and Leisure Time Activities Program.

(b) The adult county correctional facility shall provide for both indoor and outdoor recreation areas.

(c) All inmates, except those in disciplinary detention, shall be provided with the opportunity to participate in leisure time activities on a daily basis. Such leisure time activities may include:

1. Watching television;
2. Listening to the radio;
3. Playing cards; and
4. Initiating and completing arts and crafts projects.

(d) The facility shall provide inmates access to recreational opportunities and equipment.

(e) Inmates shall be given the opportunity to participate in a minimum of one hour of physical exercise and recreation each day outside the living unit.

(f) Weather permitting, recreation activities should be scheduled for out-of-doors.

10A:31-26.5 Library Program

(a) An area accessible to inmates shall be designated as the library.

(b) The adult county correctional facility shall provide a staff member or a volunteer to coordinate and supervise the Library Program.

(c) Library services shall be made available to inmates daily, excluding weekends and holidays.

(d) Library services provided shall include, but are not limited to:

1. Materials responsive to the interests and educational needs of users; and
2. An information service to locate facts as needed.

(e) Library resources shall be supplemented by local, regional, and State libraries.

(f) Foreign language materials, as well as materials for the blind and physically handicapped, shall be made accessible when appropriate.

SUBCHAPTER 27. VOLUNTEER SERVICE PROGRAM

10A:31-27.1 Coordinator of Volunteer Service Program

A staff member shall be responsible for coordinating the Volunteer Service Program.

10A:31-27.2 Recruiting volunteers

In adult county correctional facilities where there is limited staff to provide the necessary programs and services, the Jail Administrator shall attempt to secure the services of volunteers and/or county-based organizations.

10A:31-27.3 Credentials

Volunteers shall present their credentials or otherwise prove their professional competency at the time of submitting their initial volunteer application.

10A:31-27.4 Screening process

Any person desiring to become a volunteer shall be screened, and the appropriate State Bureau of Investigation (SBI) and Federal Bureau of Investigation (FBI) checks shall be completed.

10A:31-27.5 Orientation

Volunteers shall receive an orientation appropriate to the nature of their assignments within the adult county correctional facility.

10A:31-27.6 Volunteer identification

(a) A system for volunteer identification shall be developed, which may include, but is not limited to, the following:

1. A volunteer I.D. card;
2. A photograph of the volunteer;

3. The name and address of the volunteer;
4. The home and work telephone number of the volunteer;
5. The agency or group represented by the volunteer; and
6. The volunteer service provided.

10A:31-27.7 Volunteer agreement

Volunteers shall sign an agreement to abide by the adult county correctional facility policies, procedures and rules, particularly those relating to confidentiality of information (see N.J.A.C. 10A:31-6.6).

10A:31-27.8 Curtailing, postponing or discontinuing the services of a volunteer

(a) The Jail Administrator may curtail, postpone or discontinue the services of a volunteer or volunteer organization for reasons which include, but are not limited to:

1. Any breach of confidentiality;
2. Unlawful conduct or breach of adult county correctional facility rules and regulations;
3. Violation(s) of the rules of the Volunteer Service Program; and
4. Any conduct which threatens the order or security of the facility or the safety of the volunteer or others.

SUBCHAPTER 28. JUVENILES

10A:31-28.1 Prohibition against placement in adult county correctional facilities

Pursuant to N.J.S.A. 2A:4A-37, juveniles shall not be detained in an adult county correctional facility, except as set forth in N.J.S.A. 2A:4A-36.

(a)

STATE PAROLE BOARD

Parole Board Rules

Readoption with Amendments: N.J.A.C. 10A:71

Proposed: November 6, 1989 at 21 N.J.R. 3411(c).

Adopted: January 31, 1990 by the New Jersey State Parole Board, Louis Nickolopoulos, Chairman.

Filed: February 5, 1990 as R.1990 d.141, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4-123.48(d).

Effective Date: February 5, 1990, Readoption; March 5, 1990, Amendments.

Expiration Date: February 5, 1995.

Summary of Public Comments and Agency Responses:

N.J.A.C. 10A:71-1.3(b)

COMMENT: The Commissioner of the Department of Corrections suggested that the rule be amended to provide for the presence of correction officers, if security considerations so warrant, at initial parole, Board panel and Board hearings.

RESPONSE: The Board concurs with the suggestion of the Commissioner and will propose such a rule change in the near future.

N.J.A.C. 10A:71-3.19(c) and (d)

COMMENT: The Commissioner of the Department of Corrections objected to full Board hearings being conducted at a "designated location". The Department requires that such hearings be conducted at New Jersey State Prison and requested that the rule be amended accordingly.

RESPONSE: Since full Board hearings are presently being conducted at New Jersey State Prison with the complete cooperation of the Department, the Board concurred with the request of the Department. Accordingly, the rule was amended to reflect the New Jersey State Prison as the location at which full Board hearings will be conducted.

N.J.A.C. 10A:71-3.19(e)

COMMENT: The Commissioner of the Department of Corrections requested that the phrase "immediately notify the Chairperson" be changed to "notify the Chairperson as soon as practicable".

RESPONSE: In view of the number of persons involved in the full Board hearing process, it is essential that the Chairperson be immediately

notified of the unavailability of an inmate in order that the interested parties may be notified of same and work schedules and assignments rearranged accordingly. Therefore, the Board did not elect to amend the rule as suggested.

N.J.A.C. 10A:71-3.21

COMMENT: The Commissioner of the Department of Corrections strongly opposed the proposed increases in the presumptive future parole eligibility terms to be imposed upon denial of parole. The Commissioner advised that the proposed changes would increase the Department's bedspace needs for adult offenders by approximately 3,000 beds. The Commissioner believed that the present efforts to construct additional beds within budgetary and other constraints would inevitably be frustrated by adoption of the proposed amendments.

RESPONSE: The Board determined not to adopt the proposed amendments pertaining to the restructuring of the category of crimes in cases of adult inmates and to the increases in the presumptive future parole eligibility terms that could be imposed upon denial of parole in the cases of both adult and young adult inmates, based on the recommendations of the commenter.

N.J.A.C. 10A:71-3.23

COMMENT: The Commissioner of the Department of Corrections, the Assistant Commissioner for the Division of Juvenile Services, Department of Corrections, the Governor's Committee on Children's Services Planning and the Association for Children of New Jersey submitted various comments in opposition to the proposed increases in the presumptive time goal schedules for juvenile inmates. In general, it was presented that lengthier terms would be detrimental to the rehabilitation and re-orientation of juvenile inmates; that additional expenditures would be necessary to provide beds to confine juvenile inmates longer; that the construction of additional bedspace would divert funding from the development of rehabilitative programming; that the increase in the number of juvenile inmates confined for longer periods of time in the State system would negatively impact on overcrowded county juvenile detention facilities; and that there is no evidence that increasing time goals is an effective deterrent to crime.

RESPONSE: The Board determined not to adopt the proposed increases to the presumptive time goal schedule for juvenile inmates.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10A:71.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

10A:71-1.2 Board meetings

- (a)-(g) (No change.)
- (h) Except as provided in N.J.A.C. 10A:71-1.4, five Board members shall constitute a quorum of the Board.
- (i)-(j) (No change.)

10A:71-1.3 Parole release hearings, board panel and board hearings

- (a) The Chairperson shall establish the schedule of all parole release hearings, Board panel and Board hearings.
- (b) (No change.)
- (c) In addition to appropriate Board personnel, parole release hearings, Board panel and Board hearings shall be open only to such persons as authorized by the Board panel or Board with the consent of any inmate who may be present for a hearing on his or her case.

The inmate's consent shall be in writing and made a part of the Board's record on the inmate.

- (d) (No change.)
- (e) All parole determinations on individual cases shall be made by a majority vote of the appropriate Board panel members or, in the case of Board hearings, by a majority vote of the Board members, subject to the provisions of N.J.A.C. 10A:71-1.4 and 1.5.
- (f) (No change.)

10A:71-3.1 Definitions

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

...
 "Primary eligibility date" shall mean the parole eligibility date established pursuant to N.J.S.A. 30:4-123.51 and N.J.S.A. 30:4-123.64, based upon the sentence imposed by the court or the Board schedules contained in N.J.A.C. 10A:71-3.3 and 7.16. Such date may be altered pursuant to N.J.A.C. 10A:71-3.4, 3.5 and 3.21.
 ...

10A:71-3.2 Calculation of parole eligibility terms

- (a)-(b) (No change.)
- (c) The parole eligibility terms for adult inmates shall be determined by the following:
 - 1.-6. (No change.)
 - 7. Where the inmate has been denied parole and required to serve a future eligibility term pursuant to N.J.A.C. 10A:71-3.21, a new book eligibility date shall be established by adding the additional term to the current book eligibility date and by including, in the case of an adult inmate, commutation credits based on the additional term only. If an inmate's parole eligibility date has passed at the time of the initial parole release hearing, upon the inmate being denied parole and being required to serve an additional term pursuant to N.J.A.C. 10A:71-3.21, a new book date shall be established by adding the additional term to the date of the initial parole hearing and by including, in the case of an adult inmate, commutation credits based on the additional term only and any work and minimum custody credits not applied in the computation of the previous parole eligibility date.
 - (d)-(f) (No change.)
 - (g) Credits shall reduce parole eligibility terms as follows:
 - 1.-3. (No change.)
 - 4. Upon the expiration of a parole eligibility term determined pursuant to (c)3 above, commutation credits and credits for diligent application to work and other assignments accrued during the service of the parole eligibility term determined pursuant to (c)3 above shall not reduce an adjusted parole eligibility date established pursuant to N.J.A.C. 10A:71-3.4 or a future parole eligibility date established pursuant to N.J.A.C. 10A:71-3.21, 3.46 and 7.16.
 - (h) (No change.)

10A:71-3.3 Parole eligibility for young adult inmates

- (a) Except as provided herein, an inmate sentenced to an indeterminate term of years as a young adult inmate shall be primarily eligible for parole consideration on a date established by a hearing officer or the young adult Board panel pursuant to the following schedule of presumptive primary eligibility dates:

PRESUMPTIVE PRIMARY ELIGIBILITY DATES (MONTHS)

LENGTH OF INDETERMINATE TERM
(Years)

| Crime Category | 0-4 | 5-9 | 10-14 | 15-19 | 20-24 | 25-29 | 30-Life |
|----------------|-----|-----|-------|-------|-------|-------|---------|
| Category A | | 40 | 56 | 74 | 90 | 106 | 120 |
| Category B | 16 | 32 | 40 | 48 | 56 | 56 | 56 |
| Category C | 16 | 28 | 36 | 44 | 52 | | |
| Category D | 14 | 20 | 28 | 36 | 44 | | |
| Category E | 12 | 14 | 18 | 22 | 22 | | |
| Category F | 10 | 10 | | | | | |
| Category G | 8 | | | | | | |

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Category A-D (No change.)

Category E Manufacturing, distributing or dispensing a controlled dangerous substance second degree or possession with intent to manufacture, distribute or dispense a controlled dangerous substance second degree.

Category F-G (No change.)

(b)-(j) (No change.)

(k) The prior provisions of (a) above shall apply to young adult inmates whose offenses were committed prior to *[the effective date of the amendments]* ***March 5, 1990*** and shall continue in effect for that purpose. The amendments to (a) above shall apply to young adult inmates whose offenses were committed on or after *[the effective date of the amendments]* ***March 5, 1990***.

10A:71-3.5 Parole eligibility term reductions (exceptional progress)

(a)-(k) (No change.)

(l) The young adult and juvenile Board panels consider exceptional progress of young adult and juvenile inmates respectively at the time of reviews conducted pursuant to N.J.A.C. 3.3(g), 3.25, 3.27 and 3.32.

10A:71-3.9 Inmate statements; adult inmates

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

(c) Such statement shall be filed within 15 days of the date the inmate receives his or her copy of such report, unless the inmate requests and receives a postponement of the hearing process pursuant to N.J.A.C. 10A-71.3.50.

10A:71-3.13 Parole hearing procedures; adult inmates

(a) (No change.)

(b) The hearing officer, Board panel or Board shall receive as evidence any relevant and reliable documents or testimony.

(c)-(d) (No change.)

(e) The inmate shall have the right to be aided by an interpreter, if such aid is determined to be necessary by the hearing officer, Board panel or Board.

(f) (No change.)

(g) The inmate shall have the right to request, in writing, a postponement of the hearing at any time, and the hearing officer or Board panel may grant such request. However, such postponement shall not be deemed a waiver of the time limits contained in this subchapter unless authorized pursuant to N.J.A.C. 10A:71-3.50.

(h) The decision of the hearing officer, Board panel or Board shall be based solely on the evidence presented at the hearing.

(i) (No change.)

10A:71-3.14 Scheduling of initial parole hearing; adult inmates

(a) (No change.)

(b) Except as provided in N.J.A.C. 10A:71-3.50, such hearings shall be conducted at least 60 days or as soon as practicable in advance of the inmate's actual parole eligibility date.

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

10A:71-3.16 Board member review; adult inmates

(a) (No change.)

(b) Except as provided in (c) below, if such Board member(s) concurs with the recommendation of the hearing officer, the member(s) shall certify parole release as soon as practicable after the parole eligibility date by:

1.-5. (No change.)

(c) Pursuant to N.J.S.A. 30:4-123.55(f), in the case of an offender serving a term for the crime of murder, if such Board members concur with the recommendation of the hearing officer, the Board members shall:

1. Not certify parole release;

2. Automatically refer the case for a hearing before the Board; and

3. Notify in writing the inmate, the Department and the Chairperson within seven days that the case has been referred for a hearing before the Board. The provisions of this subsection shall not apply to an inmate who has his or her parole revoked and is returned to custody pursuant to N.J.S.A. 30:4-123.63.

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

10A:71-3.17 Board panel hearing; scheduling for adult inmates

(a) (No change.)

(b) Except as provided in N.J.A.C. 10A:71-3.50, such hearing shall be conducted at least 30 days or as soon as practicable in advance of the inmate's actual parole eligibility date.

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

10A:71-3.18 Board panel hearing; notice of decision for adult inmates

(a) At the conclusion of the Board panel hearing, the Board panel shall take one of the following actions:

1. Certify parole release, except as provided in (b) below, as soon as practicable after the parole eligibility date by:

i.-iv. (No change.)

2. Deny parole and establish a future parole eligibility date pursuant to N.J.A.C. 10A:71-3.21.

3. (No change.)

(b) Pursuant to N.J.S.A. 30:4-123.55(f), the Board panel shall not certify parole release in the case of an offender serving a term for the crime of murder. In such a case, if the Board panel is of the opinion that parole release is appropriate, the Board panel shall automatically refer the case for a hearing before the Board. The provisions of this subsection shall not apply to an inmate who has his or her parole revoked and is returned to custody pursuant to N.J.S.A. 30:4-123.63.

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

10A:71-3.19 Board hearing; scheduling for adult inmates

(a) A case referred to the Board by Board members pursuant to N.J.A.C. 10A:71-3.16(c) or by a Board panel pursuant to N.J.A.C. 10A:71-3.18(b) shall be scheduled by the Chairperson for a hearing by the Board.

(b) Such hearing shall be conducted at least 30 days or as soon as practicable in advance of the inmate's actual parole eligibility date.

(c) The Chairperson, when practicable, shall notify the chief executive officer of the institution, appropriate Department personnel and the inmate of the *[designated location and]* date of the hearing at least seven days prior to the hearing.

(d) It shall be the responsibility of the chief executive officer of the institution and appropriate Department personnel to make the necessary arrangements to have the inmate present at the *[designated location]* ***New Jersey State Prison*** on the hearing date.

(e) It shall be the responsibility of the chief executive officer of the institution to immediately notify the Chairperson if the inmate is unavailable, for any reason, to attend the hearing.

10A:71-3.20 Board hearing; notice of decision for adult inmates

(a) At the conclusion of the Board hearing, the Board shall take one of the actions as specified in N.J.A.C. 10A:71-3.18(a).

(b) If the Board establishes a parole release date based upon a projected eligibility date, the provisions of N.J.A.C. 10A:71-3.18(b) shall apply.

(c) Within 21 days of the Board hearing, the Board shall issue a written notice to the inmate and the Department.

(d) Such notice shall consist of the decision of the Board and, if the Board's decision is to deny or defer decision, the notice shall contain the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or the rules and regulations of the Department.

10A:71-3.21 Board panel action; schedule of future parole eligibility dates for adult inmates

(a) Upon determining to deny parole to a prison inmate, a two-member adult Board panel shall, based upon the following schedule, establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole.

1. Except as provided herein, a prison inmate serving a sentence for murder*, manslaughter, aggravated sexual assault or kidnapping or serving any minimum-maximum or specific sentence in excess of 14 years for a crime not otherwise assigned pursuant to this section* shall serve *[60]* ***27*** additional months.

2. Except as provided herein, a prison inmate serving a sentence for ***armed robbery or robbery or serving any minimum-maximum or specific sentence between eight and 14 years for a crime not otherwise assigned pursuant to this section*** ***[aggravated manslaughter, kidnap-**

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ping first degree, aggravated sexual assault or any other first degree crime]* shall serve *[36]* ***23*** additional months.

3. Except as provided herein, a prison inmate serving a sentence for ***burglary, narcotic law violations, theft, arson or aggravated assault or serving any minimum-maximum or specific sentence of at least four but less than eight years for a crime not otherwise assigned pursuant to this section*** [robbery first degree]* shall serve ***20*** *[32]* additional months.

4. Except as provided herein, a prison inmate serving a sentence for ***escape, bribery, conspiracy, gambling or possession of a dangerous weapon or serving any minimum-maximum or specific sentence less than four years for a crime not otherwise assigned to this section*** [manslaughter, robbery second degree, aggravated assault second degree, sexual assault, burglary second degree, manufacturing, distributing or dispensing a controlled dangerous substance second degree, possession with intent to manufacture, distribute or dispense a controlled dangerous substance second degree or any other second degree crime]* shall serve *[24]* ***17*** additional months.

*[5. Except as provided herein, a prison inmate serving a sentence for burglary third degree, possession of controlled dangerous substance third degree, theft third degree, arson third degree, aggravated assault third degree, death by auto or any other third degree crime shall serve 20 additional months.

6. Except as provided herein, a prison inmate serving a sentence for criminal sexual contact, forgery fourth degree, unlawful possession of a weapon fourth degree, certain persons not to have weapons, criminal trespass or any other fourth degree crime shall be required to serve the balance of the sentence.]*

(b) Upon determining to deny parole to a young adult inmate, a two-member young adult Board panel shall, based upon the following schedule, establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole.

1. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Categories A or B of N.J.A.C. 10A:71-3.3 shall serve *[28]* ***24*** additional months.

2. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Category C of N.J.A.C. 10A:71-3.3 shall serve *[24]* ***20*** additional months.

3. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Category D of N.J.A.C. 10A:71-3.3 shall serve *[20]* ***10*** additional months.

4. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Category E of N.J.A.C. 10A:71-3.3 shall serve *[14]* ***12*** additional months.

5.-6. (No change.)

(c) The future parole eligibility date required pursuant to (a) and (b) above may be increased or decreased by up to nine months [or 18 months in the case of an inmate serving a sentence for murder]* when, in the opinion of the Board panel, the *[circumstances]* ***severity*** of the crime for which the inmate was denied parole and the prior criminal record or other characteristics of the inmate warrant such adjustment.

(d) (No change.)

(e) The Board, upon the conclusion of a hearing conducted pursuant to N.J.A.C. 10A:71-3.16(c) or 3.18(b), may establish a future parole eligibility date which differs from that required by the provisions of (a) or (b) and (c) above if the future parole eligibility date which would be established pursuant to such subsections is clearly inappropriate in consideration of the circumstances of the crime, the characteristics and prior criminal record of the inmate and the inmate's institutional behavior.

1. The board shall include in the notice issued pursuant to N.J.A.C. 10A:71-3.20 the reasons for the establishment of a future parole eligibility date which differs from the provisions of (a) or (b) and (c) above.

(f)-(g) (No change in text.)

(h) The prior provisions of *[(a) and]* (b) above shall apply to ***[prison and]*** young adult inmates*[, respectively,]* whose offenses were committed prior to ***May 6, 1985*** [the effective date of the amendments]* and shall continue in effect for that purpose. The amendments to ***[(a) and]*** (b) above shall be applicable to ***[prison and]*** young adult inmates, respectively, whose offenses were com-

mitted on or after ***May 6, 1985*** [the effective date of the amendments].*
(i) (No change in text.)

10A:71-3.22 Notice of tentative parole release dates; juvenile inmates

(a) Upon the admission of a juvenile inmate to a State correctional facility, it shall be the responsibility of the chief executive officer of such facility to promptly notify the Board and provide to the Board such documents and information as specified in N.J.A.C. 10A:71-3.28 as may be required by the Board in order to establish a tentative parole release date.

(b) (No change.)

(c) Upon establishment of the tentative parole release date pursuant to N.J.A.C. 10A:71-3.23, the juvenile Board panel shall notify in writing the juvenile inmate's parent(s) or guardian(s), the committing court, the prosecuting authority, and the chief executive officer of the institution or designee of the tentative parole release date established. The chief executive officer or designee may further distribute notice of the tentative parole release date as deemed appropriate.

10A:71-3.23 Establishment of tentative parole release dates; juvenile inmates

(a) Except as provided herein, tentative parole release dates shall be established by a hearing officer, a juvenile Board panel member or the juvenile Board panel pursuant to the following schedule of presumptive tentative parole release terms and ranges for tentative parole release terms.

| Act of Delinquency | Presumptive Term (months) | | Range (months) | |
|--|---------------------------|----------------|-----------------|--------------------|
| Murder (N.J.S.A. 2C:11-3(a) (1) or (2)) | *100* | *[140]* | *80-120* | *[100-180]* |
| Murder (N.J.S.A. 2C:11-3(a)(3)) | *50* | *[100]* | *40-60* | *[80-120]* |
| Crime of First Degree (except Murder) | *20* | *[33]* | *16-24* | *[24-42]* |
| Crime of Second Degree | *16* | *[24]* | *12-18* | *[18-32]* |
| Manufacturing, Distributing or Dispensing a Controlled Dangerous Substance second degree, Possession with Intent to Manufacture, Distribute or Dispense a Controlled Dangerous Substance second degree | *12* | *[22]* | *10-14* | *[17-27]* |
| Crime of Third Degree | *10* | *[19]* | *8-12* | *[16-22]* |
| Crime of Fourth Degree | *5* | *[9]* | *4-6* | *[6-12]* |
| Disorderly Persons Offense | *1.5* | *[4]* | *1-2* | *[2-6]* |

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

(g) The prior provisions of (a) above shall apply to juvenile inmates whose offenses were committed prior to [the effective date of the amendments]* ***March 5, 1990*** and shall continue in effect for that purpose. The amendments to (a) above shall apply to juvenile inmates whose offenses were committed on or after [the effective date of the amendments]* ***March 5, 1990***.

10A:71-3.24 Alteration of tentative parole release dates; juvenile inmates

(a) At the time of a quarterly review, any previously established tentative parole release date may be altered pursuant to N.J.A.C. 10A:71-3.30 or 3.32.

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

10A:71-3.25 and 3.26 (No change in text.)

10A:71-3.27 Quarterly review procedures; juvenile inmates

(a) (No change.)

(b) The purpose of the quarterly review shall be to determine whether it appears that the juvenile inmate, when released, will not cause injury to persons or substantial injury to property, to determine whether the tentative parole release date will be reduced pursuant to N.J.A.C. 10A:71-3.24 (a), (b) or (c), or to determine whether the tentative parole release date will be increased pursuant to N.J.A.C. 10A:71-3.24(d).

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(c)-(d) (No change.)

10A:71-3.28 (No change in text.)

10A:71-3.29 Quarterly review notice of decision; juvenile inmates

(a) At the conclusion of the quarterly review conducted by a hearing officer, the hearing officer shall:

1.-3. (No change.)

4. Recommend a decrease in the tentative parole release date in accordance with N.J.A.C. 10A:71-3.24(a), (b) or (c); or

5. Recommend an increase in the tentative parole release date in accordance with N.J.A.C. 10A:71-3.24(d); or

6. (No change.)

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

(e) At the conclusion of the quarterly review conducted by a juvenile Board panel member, the juvenile Board panel member shall render a determination(s) as provided in N.J.A.C. 10A:71-3.30(a).

(f) The provisions of N.J.A.C. 10A:71-3.30(b), (c) and (d) shall apply to those cases in which the quarterly review is conducted by a juvenile Board panel member.

10A:71-3.30 Board member review; juvenile inmates

(a) Upon review of the recommendation of the hearing officer, the assigned member of the juvenile Board panel shall render the following determination(s):

1.-2. (No change.)

3. Certify a reduction in the tentative parole release date pursuant to N.J.A.C. 10A:71-3.24(a), (b) or (c);

4. Certify an increase in the tentative parole release date pursuant to N.J.A.C. 10A:71-3.24(d);

5.-6. (No change.)

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

(d) In those cases in which court approval of a reduction in the tentative parole release date and/or parole release of the juvenile inmate is required;

1.-6. (No change)

7. If the sentencing court does not approve the parole release of the juvenile inmate on the specified date, the juvenile inmate shall be released on parole on the previously established and approved tentative parole release date. The juvenile inmate shall also be scheduled for a quarterly review pursuant to N.J.A.C. 10A:71-3.25. The purpose of the quarterly review shall be to determine whether additional information has been developed which warrants the submission of the juvenile inmate's case to the sentencing court for reconsideration.

8. (No change.)

9. The juvenile inmate shall be notified of the determination of the sentencing court. If parole on the specified date is not approved by the sentencing court, the juvenile inmate shall be notified accordingly and shall be advised of the date on which he can be released on parole status. The juvenile inmate shall also be notified when he will be scheduled for a quarterly review pursuant to N.J.A.C. 10A:71-3.25.

10A:71-3.31 (No change in text.)

10A:71-3.32 Juvenile Board panel case reviews

(a) Each juvenile inmate shall be scheduled for a comprehensive case review by the juvenile Board panel or a juvenile Board panel member during the twelfth month following the establishment of the tentative parole release date and yearly thereafter instead of the quarterly review otherwise required pursuant to N.J.A.C. 10A:71-3.25(a). A schedule of such case reviews shall be established in accordance with the provisions of N.J.A.C. 10A:71-3.25(a).

(b) The purpose of such case review shall be to monitor the cumulative progress of the juvenile inmate, to determine whether it appears that the juvenile inmate, when released, will not cause injury to persons or substantial injury to property, to determine the reasons for the continued confinement of the juvenile inmate, to determine whether the previously established tentative parole release date will be reduced pursuant to N.J.A.C. 10A:71-3.24(a), (b) or (c) and to determine whether the previously established tentative parole release date will be increased pursuant to N.J.A.C. 10A:71-3.24(d).

(c) At the conclusion of the case review conducted by a juvenile Board panel member, the juvenile Board panel member shall recommend an action(s) as provided in (f) below.

1. The juvenile Board panel member shall immediately advise the juvenile inmate in writing of the determination and submit the written determination to a member of the juvenile Board panel for review.

2. If the juvenile Board panel member defers a decision, the juvenile inmate and the reviewing member of the juvenile Board panel shall be advised in writing of the determination upon being rendered.

3. If the juvenile Board panel member recommends the juvenile inmate's release on parole, the juvenile inmate shall be advised of any special conditions recommended.

(d) If the reviewing juvenile Board panel member concurs with the recommendation of the juvenile Board panel member, the determination shall be deemed to be the decision of the juvenile Board panel. The juvenile Board panel shall file a report pursuant to (g) below.

(e) If the reviewing juvenile Board panel member does not concur with the recommendation of the juvenile Board panel member, the juvenile inmate's case shall be referred for a case review before the juvenile Board panel. The juvenile inmate and the chief executive officer of the institution or designee shall be notified in writing that a case review will be scheduled before the juvenile Board panel.

(f) At the conclusion of the case review, the juvenile Board panel shall render the following determination(s):

1.-2. (No change.)

3. Certify a reduction in the tentative parole release date pursuant to N.J.A.C. 10A:71-3.24(a), (b) or (c);

4. (No change.)

5. Certify an increase in the tentative parole release date pursuant to N.J.A.C. 10A:71-3.24(d); or

6. (No change.)

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

(i) In those cases in which court approval of a reduction in the tentative parole release date and/or parole release of the juvenile inmate is required.

1.-2. (No change.)

3. If the sentencing court approves the reduction in the tentative parole release date, the juvenile inmate shall be released on the reduced date upon parole release being certified pursuant to N.J.A.C. 10:71-3.30 or this section.

4. (No change.)

5. When the sentencing court fails to respond within the 30 day time period, the juvenile inmate shall be released on the reduced date upon parole release being certified pursuant to N.J.A.C. 10A:71-3.30 or this section.

6. (No change.)

7. If the sentencing court does not approve the parole of the juvenile inmate on the specified date, the juvenile inmate shall be released on parole on the previously established and approved tentative parole release date. The juvenile inmate shall also be scheduled for a quarterly review pursuant to N.J.A.C. 10A:71-3.25. The purpose of the quarterly review shall be to determine whether additional information has been developed which warrants the submission of the juvenile inmate's case to the sentencing court for reconsideration.

8. (No change.)

9. The juvenile inmate shall be notified of the determination of the sentencing court. If parole on the specified date is not approved by the sentencing court, the juvenile inmate shall be notified accordingly and shall be advised of the date on which he can be released on parole status. The juvenile inmate shall also be notified when he will be scheduled for a quarterly review pursuant to N.J.A.C. 10A:71-3.25.

10A:71-3.33 to 3.35 (No change in text.)

10A:71-3.36 Inmate statements; county inmates

(a) It shall be the responsibility of the chief executive officer of the institution or designee to provide each inmate with a copy of the report filed pursuant to N.J.A.C. 10A:71-3.35 at the time such report is filed with the designated hearing officer or Board panel, except such information classified as confidential by the Board pursuant to

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N.J.A.C. 10A:71-2.1 or by the chief executive officer of the institution.

(b) (No change.)

10A:71-3.37 to 3.40 (No change in text.)

10A:71-3.41 Scheduling of initial parole hearings; county inmates

(a) (No change.)

(b) Except as provided by N.J.A.C. 10A:71-3.50, such hearings shall be conducted at least 21 days in advance of the inmate's parole eligibility date or as soon as administratively feasible.

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

10A:71-3.42 and 3.43 (No change in text.)

10A:71-3.44 Board panel hearings; scheduling for county inmates

(a) Any case referred to a Board panel by a hearing officer pursuant to N.J.A.C. 10A:71-3.42 or by a Board member(s) or a Board member and a senior hearing officer pursuant to N.J.A.C. 10A:71-3.43 shall be scheduled by the Chairperson for a hearing by the appropriate Board panel.

(b) (No change.)

(c) Except as provided in N.J.A.C. 10A:71-3.50, such hearing shall be conducted at least 14 days in advance of the inmate's parole eligibility date or as soon as administratively feasible.

(d)-(h) (No change.)

10A:71-3.45 and 3.46 (No change in text.)

10A:71-3.47 Victim input

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

(i) Except as provided in N.J.A.C. 10A:71-3.50, the assigned senior hearing officer shall conduct a hearing within 30 days from the date the Board received notification pursuant to (h) above of the intent to offer testimony.

(j)-(t) (No change.)

10A:71-3.48 Informational hearing

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

(e) Except as provided in N.J.A.C. 10A:71-3.50, the assigned hearing officer shall conduct the hearing within 30 days from the date the Chairperson or designee received the application submitted pursuant to (a) above.

(f)-(t) (No change.)

10A:71-3.49 and 3.50 (No change in text.)

10A:71-4.2 Appeals by inmates

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

(h) The specific applications of Board schedules pursuant to N.J.A.C. 10A:71-3.3, 3.4, 3.21, 3.23, 3.24 or 7.16 shall be appealable to the Board or the appropriate Board panel, provided one of the following criteria is met:

1.-4. (No change.)

(i) (No change.)

10A:71-5.8 Parole rescission hearing; notice of decision

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

(d) If the Board panel rescinds parole, the written decision shall include any future parole eligibility date established pursuant to N.J.A.C. 10A:71-3.4 or 3.21.

10A:71-6.3 Certificate of parole

(a) (No change.)

(b) Such certificate of parole shall include all general and special conditions of parole imposed prior to release.

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

10A:71-7.16 Board panel action; schedule of future parole eligibility dates upon revocation of parole

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

(f) Except as provided herein, upon revocation of parole, an adult inmate revoked for commission of a crime while on parole shall serve:

1. (No change.)

2. Except as provided in (g) and (p) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for commission of a third degree crime shall serve less than 12 nor more than 16 months.

3. Except as provided in (g) and (p) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for commission of a second degree crime shall serve less than 16 nor more than 28 months.

4.-5. (No change.)

6. Upon the second or subsequent revocation of parole, an adult inmate revoked for commission of a crime while on parole shall serve whatever time remains on the maximum sentence(s) or 10 years, whichever is less.

(g) Except as provided herein, upon a two-member adult Board panel determining that an adult inmate shall serve a future parole eligibility term upon revocation of parole, the two-member adult Board panel shall establish such terms as follows:

1. The two-member adult Board panel shall establish the following:

i. (No change.)

ii. A term of 14 months for the commission of a third degree crime;

iii. A term of 22 months for the commission of a second degree crime;

iv.-v. (No change.)

2. (No change.)

(h) Except as provided herein, upon a two-member young adult Board panel determining that a young adult inmate shall serve a future parole eligibility term upon the revocation of parole, the two-member young adult Board panel shall establish the following:

1. (No change.)

2. Except as provided in (i) and (p) below, a term of 10 months for the commission of a third degree crime.

3. Except as provided in (i) and (p) below, a term of 16 months for the commission of a second degree crime.

4.-5. (No change.)

(i) (No change.)

(j) Except as provided herein, upon the juvenile Board panel determining that a juvenile inmate shall serve a future parole release term upon revocation of parole, the juvenile Board panel shall establish the following:

1. (No change.)

2. Except as provided in (k) and (p) below, a term of eight months for the commission of a third degree crime or an offense which constitutes a crime of the third degree if committed by an adult;

3. Except as provided in (k) and (p) below, a term of 12 months for the commission of a second degree crime or an offense which constitutes a crime of the second degree if committed by an adult;

4.-5. (No change.)

(k) The future parole release term required pursuant to (j) above may be increased or decreased when in the opinion of the juvenile Board panel, pursuant to (n) or (o) below, the circumstances of the parole violation and the characteristics and past record of the parolee warrant such consideration. The increase or decrease shall be no more than the following:

1. (No change.)

2. Four months in the case of the commission of a third degree crime or an offense which constitutes a crime of the third degree if committed by an adult;

3. Six months in the case of the commission of a second degree crime or an offense which constitutes a crime of the second degree if committed by an adult;

4.-5. (No change.)

(l)-(r) (No change.)

(s) If an inmate's maximum sentence will expire prior to the future parole eligibility date that could be established pursuant to (b), (c), (d), (e), (f), (g), (h), (i) above or the future parole release date that could be established pursuant to (j) or (k) above, the appropriate Board panel may direct that such inmate serve his or her maximum sentence and not be eligible for parole consideration on the balance of the maximum sentence.

(t) The prior provisions of (f), (g), (h), (j) and (k) shall apply to inmates who have violated their parole prior to *[the effective date of the amendments]* ***March 5, 1990*** and shall continue in effect for that purpose. The amendments to (f), (g), (h), (i), (j) and (k) shall apply to inmates who have violated their parole on or after *[the effective date of amendments]* ***March 5, 1990***. The amendment

to (f)6 above shall be applicable to any inmate presently incarcerated for violation of parole.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS BOARD OF MARRIAGE COUNSELOR EXAMINERS

Examination Fee

Adopted Amendment: N.J.A.C. 13:34-1.1

Proposed: December 18, 1989 at 21 N.J.R. 3854(a).
Adopted: January 31, 1990, by the Board of Marriage Counselor Examiners, Edward G. Haldeman, Chairman.
Filed: February 8, 1990 as R. 1990 d.152, **without change**.
Authority: N.J.S.A. 45:8B-13 and 45:1-3.2.
Effective Date: March 5, 1990.
Expiration Date: October 26, 1993.

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

Full text of the adoption follows:

- 13:34-1.1 Annual license fees and charges
- (a) There shall be paid to the State Board of Marriage Counselor Examiners the following fees:
- 1.-2. (No change.)
 - 3. Examination fee \$225.00;
 - 4.-10. (No change.)

(b)

DIVISION OF CONSUMER AFFAIRS BOARD OF VETERINARY MEDICAL EXAMINERS

General Provisions; Fees

Adopted Amendment: N.J.A.C. 13:44-4.1

Proposed: January 2, 1990 at 22 N.J.R. 18(b).
Adopted: February 2, 1990 by the Board of Veterinary Medical Examiners, Jean Buist, D.V.M., President.
Filed: February 8, 1990 as R.1990 d.151, **without change**.
Authority: N.J.S.A. 45:16-3.
Effective Date: March 5, 1990.
Expiration Date: August 7, 1994.

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

Full text of the adoption follows:

- 13:44-4.1 General provisions
- (a) The following fees shall be charged by the board:
- 1.-2. (No change.)
 - Recodify existing 4.-9. as 3.-8. (No change in text.)
 - 9. Reinstatement fee 75.00
 - Recodify existing 11.-13. as 10.-12. (No change in text.)

(c)

DIVISION OF STATE POLICE

Boat Safety Course

Adopted New Rules: N.J.A.C. 13:61

Proposed: November 6, 1989 at 21 N.J.R. 3434(a).
Adopted: January 30, 1990 by Colonel Clinton L. Pagano, Superintendent, Division of State Police.
Filed: February 5, 1990 as R.1990 d.142, **without change**.
Authority: N.J.S.A. 12:7-60.
Effective Date: March 5, 1990.
Expiration Date: March 5, 1995.

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

Full text of the adoption follows:

CHAPTER 61 BOAT SAFETY COURSE

SUBCHAPTER 1. BOAT SAFETY COURSE REQUIREMENTS

13:61-1.1 Purpose

This chapter prescribes the procedure and conditions for obtaining approval of a boat safety course for the formal instruction in power vessel handling and safety, and the establishment of a list of approved boat safety courses as pursuant to N.J.S.A. 12:7-60.

13:61-1.2 Definitions

For the purpose of this chapter, the terms set forth herein are defined as follows:

“Approved course” means a boat safety course as approved by the Superintendent of the Division of State Police pursuant to N.J.S.A. 12:7-60.

“Boat safety course” means an approved course by the Superintendent of the Division of State Police pursuant to N.J.S.A. 12:7-60.

“Notice of approval” means written notice from the Superintendent of the Division of State Police of approval of a submitted application set forth at N.J.A.C. 13:61-1.3, Application for Approval, and satisfaction of the requirements for approval set forth at N.J.A.C. 13:61-1.4, Requirements for Approval.

“Notice of Intent to Revoke” means written notice from the Superintendent of the Division of State Police as set forth at N.J.A.C. 13:61-1.8(b), Revocation of approval.

“Superintendent” means the Superintendent of the Division of State Police.

13:61-1.3 Application procedure

(a) An application for approval shall consist of and be submitted in the following manner:

1. A cover letter on the submitting public, private person or agency's letterhead shall contain a request for approval and be signed by either the submitting party's chief executive officer, president or individual of equal authority.

2. Submitted along with the cover letter shall be a written course outline, full course text containing the minimum requirements as set forth at N.J.A.C. 13:61-1.4, and a list of reference material.

3. Application for approval as a boat safety course shall be forwarded to:

Superintendent of State Police
c/o Marine Law Enforcement Bureau
River Road
P.O. Box 7068
West Trenton, NJ 08628-0068

13:61-1.4 Requirements for approval

(a) An approved boat safety course shall include the following course material:

- 1. Vessel Description:
 - i. Definition/classification;
 - ii. Types; and
 - iii. Hull designs.
- 2. Vessel Registration:
 - i. Boat titling law;
 - ii. Registration law;
 - iii. Registration numbers;
 - iv. Documented vessels; and
 - v. Hull identification number.
- 3. Equipment:
 - i. Personal flotation devices;
 - ii. Fire extinguishers;
 - iii. Sound producing devices;
 - iv. Navigational lights;
 - v. Visual distress signals;
 - vi. Ventilation;

- vii. Flame arrestors;
- viii. Mufflers;
- ix. Capacity;
- x. Marine sanitation devices; and
- xi. Anchors.
- 4. Preparation:
 - i. Trailers;
- ii. Weather and sea conditions; and
- iii. Float plan.
- 5. Operation:
 - i. Navigation rules;
 - ii. Aids to navigation;
 - iii. Accidents;
 - iv. Responsibility; and
 - v. Mooring.
- 6. Procedures and Practices:
 - i. Fueling;
 - ii. Anchoring;
 - iii. Loading; and
 - iv. Waterskiing.
- 7. Post Operation:
 - i. Security;
 - ii. Storage; and
 - iii. Preventive maintenance.

(b) An approved boat safety course shall provide a minimum of eight hours of formal instruction.

(c) Upon the completion of the formal instruction, an approved examination shall be administered and successful completion shall be required.

13:61-1.5 Duration of approval

(a) An applicant's approval will be documented by the issuance of a Letter of Approval from the Superintendent.

(b) An approval as evidenced by a Letter of Approval from the Superintendent shall be valid for two years from the date of its issuance.

(c) An application for reapproval of a course shall be submitted pursuant to N.J.A.C. 13:61-1.3, Application procedure, and 13:61-1.4, Requirement for approval.

13:61-1.6 Inspection of approved courses

The Superintendent or designee may inspect any approved course to verify the requirements for approval set forth at N.J.A.C. 13:61-1.4, Requirements for approval, are being satisfied.

13:61-1.7 Approval of out-of-State boat safety courses

The Superintendent may recognize any out-of-State boat safety course which satisfies the minimum requirements for approval as set forth at N.J.A.C. 13:61-1.4, Requirements for approval.

13:61-1.8 Intent to revoke; revocation

(a) The Superintendent may revoke the approval of an approved course for failure to satisfy any requirements as set forth at N.J.A.C. 13:61-1.4, requirements for approval, pending any hearing provided for by law or these rules.

(b) A notice of intent to revoke an approved course shall be in writing from the Superintendent, stating the reason(s) for possible revocation, and effective date thereof.

(c) A notice of revocation of an approved course shall be in writing from the Superintendent stating the reason(s) for revocation and the effective date.

(d) Any course revoked by the Superintendent may seek future approval pursuant at N.J.A.C. 13:61-1.3, Application procedure, and 13:61-1.4, Requirements for approval.

13:61-1.9 Hearings

(a) In the case of the denial of an application, or the refusal to renew an application or notice of intent to revoke, or revocation of an approval, the Superintendent shall notify the applicant or approved party in writing of same and shall state the reasons for the action.

(b) Upon such notification, the Superintendent shall afford the applicant or approved party, an opportunity to be heard thereon in person or by counsel. A request for such an opportunity to be heard shall be made in writing to the Superintendent within 15 days from (CITE 22 N.J.R. 832)

the receipt of notice provided at N.J.A.C. 13:61-1.8, Intent to revoke; revocation.

(c) If a request for an opportunity to be heard is timely received, the Superintendent shall set a date for hearing and notify the parties of the time and place thereof. Such a hearing shall be conducted by the Superintendent or designee.

(d) All hearings shall be held in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

13:61-1.10 Administration

Administrative files will be maintained by Marine Law Enforcement Bureau, Division of State Police and will include applications, copies of Letters of Approval, Notices of Intent to Revoke/Revocation.

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Technical Sufficiency Standards for Solar Energy Devices or Systems for the Purpose of Qualifying for a Sales and Use Tax Exemption

Adopted New Rules: N.J.A.C. 14:25

Proposed: February 6, 1989 at 21 N.J.R. 282(a).

Adopted: December 21, 1989 by the Board of Public Utilities, Christine Todd Whitman, President.

Filed: December 28, 1989 as R.1990 d.64, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 54:32B-8.33 and 52:27F-11q.

Effective Date: March 5, 1990.

Expiration Date: March 5, 1995.

Summary of Public Comments and Agency Responses:

COMMENT: Jersey Central Power and Light Company was the sole commenter on the proposal. The company affirmed the need for technical standards to protect purchasers of these systems based on its experience in the administering loan and rebate programs for solar domestic hot water heating systems.

The company did not suggest any amendment to the rules but did note that design criteria for solar systems should be considered for the State's Uniform Construction Code (UCC). The UCC is administered by the Department of Community Affairs (DCA) in conjunction with the Code Advisory Committee.

RESPONSE: The concerns of the Company have been communicated to staff of the DCA.

The new rules are recodified and changed upon adoption to reflect the transfer of the Division of Energy Planning and Conservation from the Department of Commerce, Energy and Economic Development to the Board of Public Utilities, effective August 14, 1989, pursuant to Governor's Reorganization Plan No. 002-1989.

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

CHAPTER *[55]**25*

TECHNICAL SUFFICIENCY STANDARDS FOR SOLAR ENERGY DEVICES OR SYSTEMS FOR THE PURPOSES OF QUALIFYING FOR A SALES AND USE TAX EXEMPTION

SUBCHAPTER 1. GENERAL PROVISIONS

*[12A:55-1.1]**14:25-1.1* Scope

These technical sufficiency standards for solar energy systems are designed to establish minimum criteria for the purpose of obtaining a sales and use tax exemption pursuant to P.L. 1977, c.465 (N.J.S.A. 54:32B-8).

*[12A:55-1.2]**14:25-1.2* Construction and amendment

(a) These rules shall be liberally construed to permit the *[Commissioner]* *Board of Public Utilities* to effectively carry out *[his]*

its statutory functions and to insure the maximum conservation of energy sources within the State; and

(b) These rules may be amended by the ***[Director of the Division of Energy Planning and Conservation, pursuant to authority of P.L. 1977, c. 465 (N.J.S.A. 54:32B-8).]* *Board of Public Utilities.***

[12A:55-1.3]**14:25-1.3 Definitions

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

"Active system" means a solar energy system which converts solar radiation into thermal energy, and mechanically transfers the energy through the use of pumps and fans for the purpose of heating, cooling or general energy needs of a building.

"Administrator" means the ***[Commissioner of the Department of Commerce, Energy and Economic Development or his or her designee]* *Board of Public Utilities.***

"Building" means any residential, commercial, or industrial structure.

"Collector" means a device that collects, absorbs and converts solar radiation into thermal energy and commonly includes glazing and/or other optical elements.

"Collector kit" means a collector supplied unassembled to the end user that includes all the component parts necessary to assemble the collector.

"Cost" means the purchase price.

"Direct gain" means the transmission of solar radiation directly into the space to be heated wherein the solar radiation is converted to thermal energy by absorption into the interior surfaces.

"Distribution system" means that portion of a solar energy system which transfers thermal energy from the point of collection, through pipes or ducts and/or, from the point of collection to end-use, and where applicable, includes a fan and/or pump, reverse flow protection, and an automatic airpurging valve.

"Eligible" means that a system or component thereof qualifies for an exemption pursuant to N.J.A.C. ***[12A:55-2.1]* *14:25-2.1*.**

"Glazing" means a transparent or translucent material which transmits solar radiation and minimizes loss of thermal energy, including glass, fiberglass, plastics and window films.

"Insulating device" means a fixed or movable exterior or interior device which prevents loss of thermal energy at night and in cold weather through glazing or vents, including insulating shutters, thermal curtains, window films and glazing.

"Passive system" means a solar energy system which utilizes natural convection or thermal radiation to maximize gains of thermal energy for heating and to minimize gains of thermal energy for cooling.

"Photovoltaic cell" means a device which converts solar radiation to electrical energy.

"Shading device" means a device which prevents direct solar gain, including overhangs, shades, and window films.

"Site-built collector" means a collector which must be assembled on-site and is not supplied as a collector kit.

"Solar domestic hot water system" means a system which converts solar radiation into thermal energy for the purpose of heating potable water.

"Solar energy" means energy which has recently originated in the sun, including direct and indirect solar radiation and intermediate solar energy from sources such as wind and sea thermal gradients.

"Solar energy system" means a system or component thereof which uses solar energy to provide all or a portion of the heating, cooling or general energy needs of a building.

"South" shall be defined as falling within the 90 degree envelope from 45 degrees East to 45 degrees West of true South.

"Storage device" means a device which stores solar energy.

"Sunspace" means a collector that also serves as a living space, including a sunroom, solarium, atrium, attached greenhouse and Florida room.

"Thermal storage wall" means a wall of massive material, such as masonry or water in containers, placed between the glazing and the heated space, including a trombe wall and water wall.

"Wind system" means a device which converts wind energy into usable electrical or mechanical energy.

SUBCHAPTER 2. ELIGIBILITY CRITERIA

[12A:55-2.1]**14:25-2.1 Eligible solar energy systems

(a) The following solar energy systems shall be eligible for an exemption from sales and use taxes. The exemption shall be for 100 percent of the tax due on the cost unless stated otherwise.

1. Passive and hybrid systems of the following types, provided that the systems generate a net positive gain of thermal energy for heating and a net loss of thermal energy for cooling in the building.

i. Sunspaces and direct gain devices: The following components shall be eligible, provided that the sunspace or direct gain device contains, at a minimum, (a)1i(1) through (5) below:

- (1) South facing glazing;
- (2) Distribution systems;
- (3) Insulating devices having an R value of 4.0 or greater;
- (4) Shading devices;
- (5) Storage devices, including:
 - (A) Thermal storage walls.

(I) Load bearing thermal storage walls shall be eligible for an exemption for 50 percent of the tax due on the cost.

(II) Non-load bearing thermal storage walls shall be eligible for an exemption of the tax due on the cost thereof in accordance with the formula two square feet of slab for every one square foot of south facing glazing, not to exceed the wall area of the sunspace or room in which the direct gain device is located; or

(B) Mass floors. Such floors shall be eligible for an exemption of the tax due on the cost thereof in accordance with the formula two square feet of slab for every one square foot of south facing glazing, not to exceed the floor area of the sunspace or room in which the direct gain device is located;

(6) Equipment used solely as bracing or fastening for south facing glazing;

(7) Skylights and roof glazing.

2. Active systems and solar domestic hot water systems of the following types:

i. Collectors:

(1) Commercially manufactured collectors which meet the standards set by a nationally recognized testing organization, such as the Air-conditioning and Refrigeration Institute (ARI); Solar Rating and Certification Corporation (SRCC); Florida Solar Energy Center (FSEC); or International Association of Plumbing and Mechanical Officials (IAPMO).

(2) Collector kits which meet the standards specified in (a)2i(1) above;

ii. Distribution systems;

iii. Storage devices.

3. Solar electric generating systems of the following types:

i. Photovoltaic cells, including mounting racks, arrays, wires, batteries, meters, switches, miscellaneous electrical equipment and other devices required for the installation.

4. Wind systems: The following components shall be eligible:

i. Structural parts, including towers and supporting pads;

ii. Electrical equipment, including alternators, generators, inverters, meters, batteries, controls and circuits;

iii. Mechanical equipment, including gearboxes, heads, transmissions, pumps, and shafts;

iv. Interconnecting devices, including wire and conduits used to connect the wind system to the electric service panel, and equipment required to complete the installation and interconnection of the wind system to the utility.

[12A:55-2.2]**14:25-2.2 Ineligible equipment

(a) The following shall not be considered eligible for an exemption from sales and use taxes:

1. Building insulation used to reduce heat lost through walls, roofs, slabs, and foundations;

2. Uninsulated skylights;

3. Heat storage devices or delivery systems which are also utilized for other means of heating and/or cooling including back-up systems;

4. Bracing equipment used as building structural members such as columns, beams, and studs;

5. Devices such as draperies, venetian blinds, and curtains which are not part of the solar energy system and do not meet the definition

of insulating devices and/or shading devices pursuant to N.J.A.C. *[12A:55-1.3]* *14:25-1.3*;

6. Heat pumps and other refrigerators;
7. Devices used to extract and store heat generated by organic waste piles;
8. Trees, shrubbery, and other forms of vegetation.

*[12A:55-2.3]**14:25-2.3* Determination by administrator

(a) If a solar energy system is neither specifically eligible nor ineligible for exemption, or if eligibility is in dispute, or in the case of site-built collectors, the Administrator shall examine said system to determine its eligibility.

1. The applicant for an exemption shall submit information required by the Administrator at the time of application pursuant to N.J.A.C. 18:24-26.

2. The Administrator shall issue a ruling as to the system's eligibility within 20 working days of receipt of the request for a determination and shall communicate the ruling to the applicant and to the Department of Treasury, Division of Taxation.

3. Rulings of the Administrator are prospective and shall apply to all future exemption applications for systems of that type.

4. If a determination is not issued within 20 working days of receipt of the request, the system shall be deemed eligible for a full exemption in this case. This will not affect the eligibility of future systems of the same type.

5. The determination of the Administrator shall constitute final agency action concerning the system's eligibility.

SUBCHAPTER 3. SOLAR SYSTEM STANDARDS

*[12A:55-3.1]**14:25-3.1* Applicability of New Jersey Uniform Construction Code

The manufacturing, sale or installation of solar components and/or systems, solar energy systems constructed or purchased for heating and/or cooling utilizing active and/or passive concepts shall comply with applicable provisions of the New Jersey Uniform Construction Code, N.J.A.C. 5:23.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Adoption of Traffic Regulations, Highway Signs, Application Procedures for the Approval of Traffic Signals and of Channelization on County and Municipal Roads and Streets; Certification of Traffic Control Devices

Adopted Amendments: N.J.A.C. 16:27-1.1, 1.2, 2.1 through 2.4, 4.1 through 4.3, 4.5 through 4.7

Adopted New Rule: N.J.A.C. 16:27-5.1

Proposed: December 18, 1989 at 21 N.J.R. 3866(a).

Adopted: January 18, 1990 by Robert A. Innocenzi, Acting Commissioner, Department of Transportation.

Filed: January 30, 1990 as R.1990 d.138, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1A-44 and 27:1A-51.

Effective Date: March 5, 1990.

Expiration Date: September 8, 1991.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

CHAPTER 27 BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

16:27-4.5 Submission

(a) One of the following methods shall be used in preparing and submitting the signal design:

1.-2. (No change.)

3. The municipality or county may submit a sepia tracing of an intersection plan showing the information set forth in N.J.A.C. 16:27-4.4(a)1 and request the Bureau of Traffic Engineering and Safety Programs to accomplish the design. The Bureau of Traffic Engineering and Safety Programs' engineers will maintain liaison with local officials to insure their concurrence with the final design.

NOTE: (No change.)

16:27-4.6 Installation of signal and submission of signal ordinance

(a) Having obtained the Bureau of Traffic Engineering and Safety Programs' authorization, local officials may proceed with the installation, modification or revamping of the traffic signal.

(b) Upon completion of the authorized signal work, local officials should prepare a traffic signal ordinance (a model traffic signal ordinance is available for inspection at the Division of Traffic Engineering and Local Aid, New Jersey Department of Transportation, 1035 Parkway Avenue, Trenton, New Jersey 08625). If the signalized intersection involves a county roadway, it is necessary that the municipality must also obtain a resolution of consent from the Board of Chosen Freeholders. The proposed municipal ordinance, and county resolution of consent from the Board of Chosen Freeholders if applicable, must be submitted to the Manager, Bureau of Traffic Engineering and Safety Programs for approval.

SUBCHAPTER 1. ADOPTION OF TRAFFIC REGULATIONS

FOREWORD

(No change.)

'A copy of this manual may be inspected at the Office of the Division of Traffic Engineering and Local Aid, New Jersey Department of Transportation, 1035 Parkway Avenue, CN 600, Trenton, NJ during normal business hours.

OAL NOTE: The preceding footnote relates to the Foreword to N.J.A.C. 16:27-1, which is not changed by this proposal and is, therefore, not reproduced herein.

16:27-1.1 Requirements

(a) All matters concerning traffic regulations shall be referred to the Bureau of Traffic Engineering and Safety Programs, Division of Traffic Engineering and Local Aid.

(b) (No change.)

16:27-1.2 Notification

(a) Copies of the regulation with letters of transmittal indicating dates of adoption and approval shall be prepared by the Bureau of Traffic Engineering and Safety Programs and forwarded to the following:

1.-4. (No change.)

5. Bureau of Maintenance Support (N.J.D.O.T.);

6.-7. (No change.)

16:27-1.3 to 16:27-1.6 (No change.)

16:27-2.1 Requirements

All construction plans, including specifications, designed by any agency other than the Department, and which affect the interests of the Department, shall be furnished to the Bureau of Traffic Engineering and Safety Programs for approval prior to the erection of any signs.

16:27-2.2 Requests

All requests for signs, or revisions thereof, shall be submitted in writing to the Bureau of Traffic Engineering and Safety Programs, Division of Traffic Engineering and Local Aid.

16:27-2.3 Authorization

(a) The Manager, Bureau of Traffic Engineering and Safety Programs, shall authorize all signs or changes to existing signs, by memorandum or by a plan drawing signed by him.

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(b) All complaints or suggestions regarding signs received by the Department shall be referred to the Bureau of Traffic Engineering and Safety Programs for investigation, study and action.

16:27-2.4 Erection

All signs shall be erected only as specified by the Manager, Bureau of Traffic Engineering and Safety Programs, whose specifications shall include message, size of sign, letter size and spacing, material, reflectivity or lighting requirements, location, height and any other requirements he may deem necessary.

16:27-4.1 Initial application

(a) An initial application shall be submitted by the authority having jurisdiction, except that on county roads, a municipality may submit an application if accompanied by a letter of consent from county officials. This initial application will enable the Bureau of Traffic Engineering and Safety Programs to determine if a traffic signal or channelization is warranted before time consuming work begins.

(b) (No change.)

16:27-4.2 Information required and initial application

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

NOTE: Traffic count and accident summary forms are available upon request from the Division of Traffic Engineering and Local Aid, New Jersey Department of Transportation, 1035 Parkway Avenue, CN 600, Trenton, New Jersey 08625.

16:27-4.3 Method of applying

(a) Upon receipt of the information indicated in N.J.A.C. 16:27-4.2, the Bureau of Traffic Engineering and Safety Programs' engineers will review the material and if it is determined that a traffic signal and/or channelization is warranted, the Division of Traffic Engineering and Local Aid will authorize the design of the appropriate device.

(b) (No change.)

16:27-4.7 Inspection and approval

(a) The following methods shall be used to insure that the signal installation conforms with the authorized design.

1. After the installation is completed, and before it is placed in operation, responsible officials must notify the Bureau of Traffic Engineering and Safety Programs and request an inspection; or, the responsible professional engineer should forward a letter certifying that the installation has been inspected by him or her, or a member of his or her staff, and conforms with the authorized design.

2. When the installation conforms to the authorized design, and the various regulations set forth in the design have been approved, the Bureau of Traffic Engineering and Safety Programs will recommend approval of the appropriate signal ordinance and/or resolutions.

SUBCHAPTER 5. CERTIFICATION OF TRAFFIC CONTROL DEVICES

16:27-5.1 Information requests

All requests for information concerning whether or not a specific traffic control device has received the approval of the Commissioner of Transportation must be submitted in writing to the Bureau of Traffic Engineering and Safety Programs, New Jersey Department of Transportation, 1035 Parkway Avenue, CN 600, Trenton, New Jersey 08625 accompanied by a payment in the amount of \$20.00.

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

Speed Limits

Routes N.J. 33 in Monmouth County; U.S. 30 in Camden County; N.J. 175 in Mercer County; N.J. 15 in Sussex County; N.J. 91 in Middlesex County; N.J. 53 in Morris County; and N.J. 50 in Cape May and Atlantic Counties

Adopted Amendments: N.J.A.C. 16:28-1.14, 1.57, 1.66, 1.76, 1.103, 1.116 and 1.118

Proposed: December 4, 1989 at 21 N.J.R. 3717(a).

Adopted: January 2, 1990, by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: February 6, 1990 as R.1990 d.144, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.

Effective Date: March 5, 1990.

Expiration Date: June 1, 1993.

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

Full text of the adoption follows:

16:28-1.14 Route 33 including Old Route 33 and Route 33 Freeway
(a) The rate of speed designated for the certain part of State highway Route 33 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i.-viii. (No change in text.)

ix. Zone nine: 55 mph in East Windsor Township extending through Monroe Township, Millstone Township to Millhurst Road (Route 527, milepost 24.1); thence

x. Zone 10:

(1) In Manalapan Township, Monmouth County:

(A) 50 mph between Millhurst Road (Co. Rd. 527) and the Manalapan Township-Freehold Township line (mileposts 24.07 to 25.34); thence

xi. Zone 11:

(1) In Freehold Township, Monmouth County:

(A) 50 mph between the Freehold Township-Manalapan Township line and Wemrock Road (mileposts 25.34 to 25.44); thence

(B) 40 mph between Wemrock Road and Route U.S. 9 (mileposts 25.44 to 26.8); thence

(C) 40 mph in Freehold Township extending into Freehold Borough to 1000 feet east of the Pennsylvania Railroad overpass in Freehold Township (mileposts 26.8 to 28.9); thence

xii.-xvii. (No change.)

16:28-1.57 Route U.S. 30

(a) The rate of speed designated for the certain parts of State highway Route U.S. 30 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i.-iv. (No change in text.)

v. 45 miles per hour to a point 330 feet east of the center line of Clementon Road, Berlin Borough; thence

(1) In Somerdale Borough, Camden County:

(A) 30 mph school speed limit within the Our Lady of Grace Church school zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school during opening or closing hours; thence

vi.-xxiv. (No change in text.)

16:28-1.66 Route 175

(a) The rate of speed designated for State highway Route 175 described in this subsection shall be established and adopted as the maximum legal rate of speed:

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- 1. For both directions of traffic:
 - i. In Ewing Township, Mercer County:
 - (1) Zone 1: 45 mph between the City of Trenton-Ewing Township line and West Upper Ferry Road (mileposts 0.27 to 1.80); thence
 - (2) Zone 2: 40 mph between West Upper Ferry Road and the Delaware-Raritan Feeder Canal (mileposts 1.80 to 2.15); thence
 - (3) Zone 3: 45 mph between the Delaware-Raritan Feeder Canal and the northernmost terminus of Route 175 at Route 29 (mileposts 2.15 to 2.95).

16:28-1.76 Route 15

(a) The rate of speed for the certain parts of State highway Route 15 described in this subsection shall be established and adopted as the maximum legal rate of speed:

- 1.-3. (No change.)
- 4. For both directions of traffic in Sussex County:
 - i. In Sparta Township:
 - (A) Zone 7: 50 mph between the northernmost intersection of Route 181 and the Sparta Township-Lafayette Township line (mileposts 14.17 to 16.16); thence
 - ii. In Lafayette Township:
 - (A) Zone 7:
 - (1) 50 mph between the Lafayette Township-Sparta Township line and 350 feet north of the northernmost intersection of Father Johns Road (mileposts 16.16 to 16.35); thence
 - (2) 35 mph between 350 feet north of the northernmost intersection of Father Johns Road and 500 feet north of Route 94-County Road 623 (mileposts 16:35 to 16:72); thence
 - (B) (No change in text.)

16:28-1.103 Route 91

(a) The rate of speed designated for State highway Route 91 described in this subsection shall be established and adopted as the maximum legal rate of speed:

- 1. For both directions of traffic:
 - i. In North Brunswick Township, Middlesex County:
 - (1) 40 mph between Route U.S. 1 and the New Brunswick City-North Brunswick Township line (mileposts 0.00 to 1.31); thence
 - ii. In the City of New Brunswick, Middlesex County:
 - (1) 40 mph between the North Brunswick Township-New Brunswick City line and Van Dyke Road (mileposts 1.31 to 2.31).

16:28-1.116 Route 53

(a) The rate of speed designated for the certain parts of State highway Route 53 described in this subsection shall be established and adopted as the maximum legal rate of speed:

- 1. For both directions of traffic:
 - i. In Morris Plains Borough, Morris County:
 - (1) Zone 1: 45 mph between Route U.S. 202 and Drake Way (mileposts 0.00 to 1.09); thence
 - (2) Zone 2: 40 mph between Drake Way and the Morris Plains Borough-Parsippany Troy Hills Township line (mileposts 1.09 to 1.55); thence
 - ii. In Parsippany-Troy Hills Township, Morris County:
 - (1) Zone 1: 40 mph between the Parsippany-Troy Hills Township-Morris Plains Borough line and the Denville Township-Parsippany-Troy Hills Township line (mileposts 1.55 to 3.32); thence
 - iii. In Denville Township, Morris County:
 - (1) Zone 1: 40 mph between the Denville Township-Parsippany-Troy Hills Township line and the Prospect Place (mileposts 3.32 to 4.33); thence
 - (2) Zone 2: 30 mph between Prospect Place and Route U.S. 46 (mileposts 4.33 to 4.65).
- (b) (No change.)

16:28-1.118 Route 50 including Route U.S. 40 and 50

(a) The rate of speed designated for the certain parts of State highway Route 50 and U.S. 40 and 50 described in this subsection shall be established and adopted as the maximum legal rate of speed:

- 1. For both directions of traffic:
 - i. In Cape May County:
 - (1) In Upper Township:
 - (A) Zone 1: 40 mph between US 9 and New Bridge Road (mileposts 0.0 to 0.3); thence

(CITE 22 N.J.R. 836)

- (B) Zone 2: 50 mph between New Bridge Road and Pennsylvania Avenue (mileposts 0.3 to 6.14); thence
- (C) Zone 3: 40 mph between Pennsylvania Avenue and Marshall Avenue (mileposts 6.14 to 6.33); thence
- (D) Zone 4: 30 mph between Marshall Avenue and Mosquito Landing (mileposts 6.33 to 6.94); thence
- (E) Zone 5: 40 mph between Mosquito Landing and the Corbin City-Upper Township line (mileposts 6.94 to 7.05); thence
- ii. In Atlantic County:
 - (1) In the City of Corbin City:
 - (A) Zone 1: 40 mph between the Upper Township-Corbin City line and 100 feet north of the southernmost intersection of Main Street (Co. Rd. 611) (mileposts 7.05 to 7.13); thence
 - (B) Zone 2: 50 mph between 100 feet north of the southernmost intersection of Main Street (Co. Rd. 611) and the Estelle Manor City-Corbin City line (mileposts 7.13 to 9.42); thence
 - (2) In the City of Estelle Manor City:
 - (A) 50 mph between the Corbin City-Estelle Manor City line and the Weymouth Township-Estelle Manor City line (mileposts 9.42 to 17.35); thence
 - (3) In Weymouth Township:
 - (A) Zone 1: 50 mph between the Estelle Manor City-Weymouth Township line and 1,000 feet north of Grant Street (mileposts 17.35 to 18.26); thence
 - (B) Zone 2: 45 mph between 1,000 feet north of Grant Street and the Township of Weymouth-Hamilton Township line (mileposts 18.26 to 18.42); thence
 - (4) In the Township of Hamilton:
 - (A) Zone 1: 45 mph between the Weymouth Township-Hamilton Township line and the intersection of Route U.S. 40-Route N.J. 50 (mileposts 18.42 to 18.55); thence
 - (B) Zone 2: 40 mph between the intersection of Route U.S. 40-Route N.J. 50 and 200 feet south of River Road (mileposts 18.55 to 18.98); thence
 - (C) Zone 3: 30 mph between 200 feet south of River Road and 4th Street (mileposts 18.98 to 19.40); thence
 - (D) Zone 4: 35 mph between 4th Street and 10th Street (mileposts 19.40 to 19.73); thence
 - (E) Zone 5: 40 mph between 10th Street and 500 feet north of 11th Street (mileposts 19.73 to 19.88); thence
 - (F) Zone 6: 50 mph between 500 feet north of 11th Street and the Hamilton Township-Galloway Township line (mileposts 19.88 to 25.06); thence
 - (5) In the Township of Galloway:
 - (A) Zone 1: 50 mph between the Hamilton Township-Galloway Township line and Bella Donna Street (mileposts 25.06 to 25.55); thence
 - (B) Zone 2: 40 mph between Bella Donna Street and the Egg Harbor City-Galloway Township line (mileposts 25.55 to 25.94); thence
 - (6) In the City of Egg Harbor City:
 - (A) 30 mph between the Galloway Township-Egg Harbor City line and Route U.S. 30 (mileposts 25.94 to 26.08).

(a)

**DIVISION OF TRANSPORTATION ASSISTANCE
OFFICE OF FREIGHT SERVICE**

Trucks

Readoption: N.J.A.C. 16:32

Adopted Repeal: N.J.A.C. 16:32-2

Proposed: January 2, 1990 at 22 N.J.R. 19(a).

Adopted: February 2, 1990 by Robert A. Innocenzi, Acting Commissioner, Department of Transportation.

Filed: February 8, 1990 as R.1990 d.155, **without change**.

Authority: N.J.S.A. 27:1A-5 and 27:1A-6.

Effective Date: February 8, 1990, Readoption; March 5, 1990, Repeal.

Expiration Date: February 8, 1995.

ADOPTIONS

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

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:32.

(a)

**DIVISION OF CONSTRUCTION AND MAINTENANCE
ENGINEERING SUPPORT
BUREAU OF MAINTENANCE SUPPORT**

Snow and Ice Control

Adopted Repeal: N.J.A.C. 16:40

Proposed: January 2, 1990 at 22 N.J.R. 20(a).
Adopted: February 2, 1990 by Robert A. Innocenzi, Acting
Commissioner, Department of Transportation.
Filed: February 8, 1990 as R.1990 d.158, **without change.**
Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 27:7 et seq.
Effective Date: March 5, 1990.

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

(b)

**DIVISION OF CONSTRUCTION AND MAINTENANCE
ENGINEERING SUPPORT
BUREAU OF MAINTENANCE SUPPORT**

Permits

Permits for Driveways (Access); Street Intersection

Adopted Amendment: N.J.A.C. 16:41-2.4

Proposed: January 2, 1990 at 22 N.J.R. 20(b).
Adopted: February 2, 1990 by Robert A. Innocenzi, Acting
Commissioner, Department of Transportation.
Filed: February 2, 1990 as R.1990 d.139, **without change.**
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7A-11, and 27:7A-17.
Effective Date: March 5, 1990.
Expiration Date: July 28, 1992.

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

Full text of the adoption follows.

16:41-2.4 Permit provisions

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

(r) Upon receipt of the required application fee and affidavit as described herein and upon Department approval for the requested highway access, the permit fee will be adjusted for applicants providing low or moderate income housing units to be constructed pursuant to the Fair Housing Act, P.L. 1985, c.222 (N.J.S.A. 52:27D-301 et seq.) or under court settlement. The permit fee will be adjusted to reflect a reduction to both the application and permit fee of 20 percent where an affidavit from the municipal approving authority is received with the application, which certifies to the Department that the development contains at least a 20 percent set aside for low and moderate income housing, pursuant to the Fair Housing Act P.L. 1985, c.222 (N.J.S.A. 52:27D-301 et seq.) or under court settlement.

(c)

**DIVISION OF TRANSPORTATION ASSISTANCE
OFFICE OF FREIGHT SERVICES**

Transportation of Hazardous Materials

Readoption: N.J.A.C. 16:49

Proposed: January 2, 1990 at 22 N.J.R. 21(a).
Adopted: February 2, 1990 by Robert A. Innocenzi, Acting
Commissioner, Department of Transportation.
Filed: February 8, 1990 as R.1990 d.156, **without change.**

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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.),
and 39:5B-25 et seq.

Effective Date: February 8, 1990.
Expiration Date: February 8, 1995.

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

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:49.

(d)

**NEW JERSEY TRANSIT CORPORATION
Use or Occupancy of NJ TRANSIT-Owned Property
Adopted New Rules: N.J.A.C. 16:77**

Proposed: October 16, 1989 at 21 N.J.R. 3259(b).
Adopted: January 31, 1990 by New Jersey Transit Corporation,
S. Thomas Gagliano, Executive Director.
Filed: February 6, 1990 as R.1990 d.143, **with a technical change**
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 27:25-5(e), (h), (k) and (o) and 27:25-7(b).
Effective Date: March 5, 1990.
Expiration Date: March 5, 1995.

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

Since N.J.A.C. 16:77 expired on January 21, 1990, and the adoption of the proposed readoption with amendments was not filed with the Office of Administrative Law until February 6, 1990, the readopted rules are adopted herein as new rules, in accordance with N.J.A.C. 1:30-4.4(f).

Full text of the adopted new rules may be found in the New Jersey Administrative Code at N.J.A.C. 16:77.

Full text of adopted amendments to the proposed readoption follows (addition indicated in boldface with asterisks *thus*).

16:77-1.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings:

...
"Longitudinal occupation" means any occupation of NJ TRANSIT-owned property other than a direct crossing over or under railroad tracks and right-of-way as defined under N.J.A.C. 16:77-1.6.

"Messenger wires" means any support wire which carries no current signal or communication transmission and shall be considered as part of the wires or cables supported and no charge shall be assessed therefor.

...

16:77-1.2 Permit applications

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

(e) Upon the applicant's request and proper NJ TRANSIT approval, NJ TRANSIT will notify the applicant of its decision regarding the issuance of a permit. If NJ TRANSIT approves the application after being reviewed by the involved jurisdiction, a permit will be sent to the applicant for completion. It shall be the applicant's responsibility to complete the permit and return it to NJ TRANSIT with the designated fee(s). No permit shall be issued unless the designated fee(s), for use and occupancy of NJ TRANSIT-owned property, have been collected, as provided in N.J.A.C. 16:77-1.6. In addition to the above, the applicant shall reimburse the party operating over the affected property for costs related to their review of the applicant's plans and specifications, if applicable.

(f)-(g) (No change.)

16:77-1.3 Permit conditions

(a) The permittee shall provide the indemnification and insurance required by NJ TRANSIT.

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- 1. (No change.)
- (b)-(n) (No change.)

16:77-1.4 Administrative fees

(a) Administrative fees will be charged as follows:

- 1. Wire and cable crossings and longitudinal occupations over or under NJ TRANSIT-owned property:
 - i. Not exceeding 300 volts to one individual service .. \$125.00
 - ii. All other transverse crossings \$250.00
 - iii. All longitudinal occupations and any agreement regardless of voltage, not less than \$500.00
- 2. Pipe and sewer crossings, and longitudinal occupations over or under NJ TRANSIT-owned property:
 - i. Pipe not exceeding 3 inches inside diameter to one individual service \$125.00
 - ii. All other transverse crossings \$250.00
 - iii. All longitudinal occupations and any agreement regardless of size of pipe, not less than \$500.00
- 3. All surface drainage not contained within a pipe occupying NJ TRANSIT property \$500.00
- 4. Short term or occupancy:
 - i. Application for the use or occupancy of track, trains, or property which will require the alteration of track usage or train schedules \$315.00
 - ii. Application for the use or occupation of NJ TRANSIT-owned property not covered by (a)4i above \$125.00
- 5. Any application for any type of permit by a municipality \$125.00
- 6. Additional fees
 - i. All occupations requiring engineering reviews will be assessed an additional fee as compensation to NJ TRANSIT Rail Operations.
 - ii. In addition, when railroad personnel or services are utilized by the permittee, reimbursement to NJ TRANSIT Rail Operations or other involved jurisdictions will be made within 30 days of receipt of billing.

16:77-1.5 Permit fees: general conditions

(a) Long term use or occupancy permit fees are subject to the following conditions:

- 1. The permit fee equals the annual occupancy rate multiplied by the estimated duration of occupancy in years, not to exceed 20 years and no less than one year unless otherwise described within this schedule.
- 2. The minimum annual permit fee under any application shall be \$125.00.
- 3. Any permit generating an annual occupancy fee of less than the minimum per annum fee of \$125.00 will be assessed an annual document maintenance fee of \$50.00. This fee is in addition to the calculated annual occupancy fee. Document maintenance fees will be paid in advance for the same number of years as the prepaid occupancy fee.
- 4. Should the facility be terminated at any time less than the estimated years of occupancy, the fees collected are not subject to a refund. (Minimum 1 year—maximum 20 years).
- 5. NJ TRANSIT reserves the right to consider additional fees for crossings in excess of 200 feet. When increased preparation costs are incurred, the increases will be passed on to the permittee.
- 6. Any occupation of NJ TRANSIT property other than transverse track crossings will be charged as a longitudinal crossing based on the lineal foot of the occupation.
- 7. Fees are based on a minimum right-of-way width of 30 feet with a fee applicable up to a 200 foot width. For all crossings in excess of 200 linear feet, a per foot charge at the applicable 30 foot rate will be assessed, that is, the annual fee for a 300 L.F. transverse occupancy, with an annual occupancy fee of \$120.00 for the first 200 L.F., would be calculated as follows: (300 feet-200 feet) (\$120.00 divided by 30)+\$120.00=fee.
- 8. All fees for occupancies encased as a group or otherwise bundled or joined together will be calculated as if they were individual occupations.
- 9. Should the facility be modified during the term of the permit, new permit, or supplement to the existing permit, the associated increase in fees will be charged. If a new permit is approved, an

amount proportionate to the time remaining on the superseded permit will be credited toward the new fee.

10. In the event the facility goes beyond its paid estimated life, a new fee will be assessed in accordance with the fee schedule rates in effect at that time.

11. Drainage discharge onto NJ TRANSIT property shall be calculated as if it were contained in a circular pipe and the fees shall be in accordance with the transverse occupation fee schedule, under pipes and sewers.

(b) An annual occupancy fee for attachments will be charged as follows when higher rates are not fixed:

- 1. Attachments of aerial wires and cables to poles or other structures of NJ TRANSIT-owned facilities used in wire line construction:
 - i. Up to and including 32,500 volts for each attachment to NJ TRANSIT-owned cross-arms or brackets \$7.00
 - ii. Up to and including 32,500 volts for each attachment to (licensee's) permittee's cross-arms or brackets when they are attached to a NJ TRANSIT-owned facility \$5.00
 - iii. Wires over 32,500 volts attached to the NJ TRANSIT-owned cross-arms or brackets \$12.00 per attachment
 - iv. Wires over 32,500 volts and attached to (licensee's) permittee's cross-arms or brackets when those brackets are attached to NJ TRANSIT-owned facilities \$10.00 per attachment

2. Attachments of aerial wires and cables to buildings or other structures:

- i. Each wire or cable attached to railroad bridges or structures, including railroad or highway bridges \$12.00 per attachment
- 3. Attachments of cable terminals to poles, buildings, or structures including highway bridges, railroad bridges owned by NJ TRANSIT.
 - i. Each cable terminal, loading coil, transformer, or like device is subject to special consideration in each case, but not less than \$45.00.
- 4. Pipeline carried along NJ TRANSIT-owned property on bridges or other supports are subject to special consideration in each case if permitted by current New Jersey Department of Transportation specifications.

5. Charges for attachments of pipes to bridges, buildings, or structures of the NJ TRANSIT-owned property are subject to special consideration in each case.

(c) An annual occupancy fee for guy wire crossings and overhanging cross-arms and power wires and cables of transmission lines outside of NJ TRANSIT-owned right-of-way will be calculated as follows:

- 1. Each guy wire crossing NJ TRANSIT-owned property but not anchored thereon \$7.00
- 2. Cross-arms overhanging NJ TRANSIT-owned property from poles located outside thereof, one or more cross-arms on any pole \$5.00
- 3. Power wires and cables overhanging NJ TRANSIT-owned property from poles located outside thereof shall be calculated at the rates specified in N.J.A.C. 16:77-1.6(b) and (c). "Permit fees: transverse occupations" and on a pro-rated basis, depending upon the number of overhanging wires, excluding the neutral, ground static or lighting wires.

(d) In any event, if a permit fee is determined to be less than the minimum \$125.00 annual fee, the duration of the permit will be extended to whatever multiple is necessary to achieve the minimum fee.

(e) Occupation charges for overhead or underground conveyors, pipe bridges, pedestrian tunnels, or any other facilities not covered by this section will be subject to special consideration.

(f) The minimum permit fee under any agreement where a miscellaneous use of occupancy is involved, not previously defined, shall be \$125.00. The applicant may be subject to possible charges which may result from expenses incurred by NJ TRANSIT's subsidiaries or involved jurisdictions. (NOTE: Permit fees for miscellaneous use or occupancy of NJ TRANSIT-owned property will be determined and charged on an individual basis because of the various types of requests.)

(g) All permits will be charged a fee in accordance with this section; however, at no time shall any fee for an existing occupancy be less than the fee established by the previous owner(s) unless there

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has been a significant reduction in the occupancy. The discount in the fee shall be calculated as a ratio between the old occupancy and fee to the new configuration and fee. Any increase in occupancy shall warrant an increase in the existing fee.

(h) Short-term use on occupancy fees are subject to the following conditions:

1. The permit fee equals the annual occupancy rate pro-rated for the estimated duration of occupancy.
2. The minimum permit fee under any application shall be \$125.00.
3. Should the facility be terminated at any time less than the estimated period of occupancy, the fees collected are not subject to a refund.
4. At no time shall a short-term use and/or occupancy fee be less than the estimated annual fee for the same use covered under the long-term fee schedule.
5. Should the facility be modified during the term of the permit, a new permit and fee will be required. If a new permit is approved, an amount proportionate to the time remaining on the superseded permit will be credited toward the new fee.
6. In the event the facility goes beyond its paid estimated life, a new fee will be assessed in accordance with the fee schedule rates in effect at that time.

(i) NJ TRANSIT may negotiate lower permit fees when requested to do so by any municipal applicant acting on its own behalf.

16:77-1.6 Permit fees, transverse occupation

(a) All fees in this section are based on a minimum right-of-way width of 30 feet with a fee applicable up to a 200 foot width. For all crossings in excess of 200 feet, a per foot charge at the applicable 30 foot rate will be assessed (see example N.J.A.C. 16:77-1.5(a)7).

(b) Aerial and underground wire (power and communication) crossings not exceeding 200 feet in length will be charged an annual occupancy fee as follows:

1. Power:
 - i. All crossings up to but not exceeding 6,900 volts .. \$125.00
 - ii. Over 6,900 volts but not exceeding 32,500 volts \$225.00
 - iii. Over 32,500 volts but not exceeding 50,000 volts . \$375.00
 - iv. Over 50,000 volts but not exceeding 345,000 volts \$500.00
 - v. Over 345,000 volts but not exceeding 500,000 volts \$750.00
 - vi. Over 500,000 volts \$1,000
 - vii. Ducts or pipes carrying conductors NO CHARGE
 - viii. Manholes (each) \$65.00

(NOTE: Attachments of wires, cables, etc. to bridges, buildings, poles or structures of railroad subject to special consideration in each case. Crossings of right-of-way by pipe type cable consisting of one or more high voltage cables encased in a steel pipe, under inert oil pressure and/or further encased in a larger steel pipe and the space between the pipes filled with compacted sand should be subject to special consideration and each case handled individually.)

2. Communication:
 - i. Telephone and other communication cables (not including composite coaxial cables):
 1. Cable containing not more than 500 pairs \$125.00
 2. Cable containing 501 to 1100 pairs \$220.00
 3. Cable containing 1101 to 1800 pairs \$315.00
 4. Cable containing over 1800 pairs \$500.00
 - ii. Composite coaxial cables and coaxial television cables containing not more than four conductors \$185.00
 - iii. All cables containing over four conductors shall be at a rate of \$25.00 for each additional conductor.

3. Fiberoptics:

- i. All fiberoptics installations will be charged through a negotiated fee.

(c) Poles, towers, guys, and anchors and spare ducts or pipes will be charged an annual fee as follows:

1. Single wooden pole (per pole) \$30.00
2. All other supporting structures other than the auxiliary facilities and appurtenances listed in (c)3, 4, 5, 6, 7 and 8 below \$60.00
3. Each brace, stub pole, or anchor \$30.00

4. Each guy anchored on or crossing NJ TRANSIT-owned railroad property \$7.00
5. All towers, if not included in a longitudinal occupation shall be assessed per tower leg at \$40.00
6. Each span guy wire crossing \$30.00
7. Spare or unoccupied ducts or pipes, each (when the duct shall be occupied in the future by a cable, the annual fee shall govern and the \$30.00 charge cease) \$30.00
8. Guys, stubs, anchors, and push or pull braces required by specification for the support of a crossing pole on NJ TRANSIT-owned right-of-way at the request of the NJ TRANSIT-owned shall be considered as part of the crossing pole and no charge made therefore.

(NOTE: The above charges in (c)1-8 are in addition to the wire and cable occupation charges provided in (b)1-3 above.)

(d) Annual permit occupancy fees for pipes and sewer crossings not exceeding 200 feet in length will be calculated as follows:

1. Circular lines carrying no pressure:
 - i. Pipes up to and including 12 inches ID \$125.00
 - ii. Pipes over 12 inches and not exceeding 24 inches ID \$170.00
 - iii. Pipes over 24 inches and not exceeding 60 inches ID will be charged at a rate of \$5.00 per inch of ID over the first 24 inches. This rate is in addition to a minimum fee of \$185.00.
 - iv. Pipes over 60 inches ID will be charged at a rate of \$2.50 per inch of ID over the first 60 inches. This rate is in addition to a minimum fee of \$375.00

2. Circular lines under pressure and carrying non-flammable, non-explosive, or non-combustible supporting materials, except coal and water slurry:

- i. Pipes up to and including 12 inches ID \$150.00
- ii. Pipes over 12 inches but not exceeding 24 inches ID \$190.00
- iii. Pipes over 24 inches ID and not exceeding 60 inches ID will be charged at a rate of \$7.00 per inch of ID over the first 24 inches. This rate is in addition to a minimum fee of \$190.00
- iv. Pipes over 60 inches ID will be charged at a rate of \$5.00 per inch of ID over the first 60 inches. This rate is in addition to a minimum fee of \$400.00

3. Circular lines under pressure and carrying flammable, explosive, or combustible supporting materials, except coal and water slurry:

- i. Pipe not exceeding three inches inside nominal diameter-minimum charge for any one crossing \$185.00
- ii. Pipe over three inches inside nominal diameter and not exceeding 12 inches inside diameter-minimum charge for any one crossing \$250.00
- iii. Pipe over 12 inches inside diameter and not exceeding 24 inches inside diameter shall be charged at a rate of \$12.00 per inch of ID over the first 12 inches. This rate is in addition to a minimum charge for any one crossing of \$250.00
- iv. Pipe exceeding 24 inches in diameter shall be charged at a rate of \$13.00 per inch of ID over the first 24 inches. This is in addition to a minimum charge for any one crossing of \$400.00

4. Charges for non-circular pipes shall be determined by the diameter of a circular pipe having an equivalent cross-sectional area.

5. Charges for pipe tunnels or other special underground construction shall be subject to special consideration.

6. Pipe lines carried over NJ TRANSIT-owned property or other support structures are subject to special consideration in each case, if permitted by NJ TRANSIT current specifications.

7. Manholes (each) \$60.00

8. Charges for attachments of pipes to bridges, buildings, or structures of the NJ TRANSIT-owned property are subject to special consideration in each case.

9. Where pipe or pipes are encased in a protective pipe of larger diameter, no charge shall be made for the protective encasement.

16:77-1.7 Permit fee: longitudinal occupations

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

(c) The following charges cover the complete transmission line occupation and additional charges are not to be made unless there are attachments to NJ TRANSIT-owned facilities. For the purpose of determining voltage, guy wires, messengers and grounded conductors shall be considered as zero voltage. All other conductors shall be rated at voltage to other conductors, whichever is higher.

1. Aerial wires:
 - i. Transmission line, highest voltage not exceeding 6,900 volts \$1,250 per circuit per mile
 - ii. Transmission line over 6,900 volts up to but not including 32,500 volts \$2,250 per circuit per mile
 - iii. Transmission line over 32,500 volts, up to and including 50,000 \$3,125 per circuit per mile
 - iv. Transmission line, 50,000 volts and over. The fee will be based on a negotiated rate.
2. Aerial and underground cables:
 - i. Telephone communication cables (not including composite coaxial cables):
 - (1) Cable containing not more than 1,100 pairs \$1,250 per cable per mile
 - (2) Cable containing 1,101 to 1,800 pairs \$2,250 per cable per mile
 - (3) Cable containing over 1,800 pairs: The fee will be negotiated at a rate not less than \$2,250 per cable mile.
 - (4) For underground communication cables the minimum charge is \$2,500 per cable per mile.
 - ii. Composite coaxial cable and coaxial television cables are subject to negotiation but not less than \$3,125 per mile
 - iii. Underground power cables:
 - (1) When cable is buried in an open trench and covered with soil: Minimum charge \$1,800 per circuit per mile
 - (2) When cable is buried in an open trench and surrounded with from 6 to 12 inches of thermal sand: Minimum charge \$3,125 per circuit per mile
 - (3) When cable is encased in a steel pipe under inert oil pressure and/or further encased in a larger steel pipe and the space between the pipes filled with compacted sand: \$7.00 per inch of nominal diameter of the largest pipe per 100 feet of occupation or fraction thereof with a minimum charge of \$3,125 per mile.
 - iv. Spare or unoccupied ducts or pipes, each per mile \$375.00
 - v. Manholes, splicing chambers on pull boxes, each when these structures are necessary for longitudinal occupation NO CHARGE
 - vi. An additional charge shall be made for use of NJ TRANSIT-owned property duct lines based on the value of the facility. (NOTE: Charges shown under (c)2iv, v and vi above are in addition to the charges shown under (c)2i to iii inclusive.)
 - (d)-(e) (No change.)
 - (f) An annual occupancy fee for pipes and sewers will be charged as follows:
 1. Circular lines carrying no pressure: \$2.50 minimum charge per inch of inside nominal diameter or fraction thereof per 100 feet of occupation or fraction thereof.
 2. Circular lines under pressure and carrying non-flammable, non-explosive, and non-combustible supporting materials, except coal and water slurry: \$3.00 minimum charge per inch of inside nominal diameter per 100 feet of occupation or fraction thereof.
 3. Circular lines under pressure and carrying flammable, explosive, and combustible supporting materials, and coal and water slurry: \$7.00 minimum charge per inch of inside nominal diameter per 100 feet of occupation or fraction thereof.
 4. Charges of non-circular pipes shall be determined by the diameter of a circular pipe having an equivalent cross-sectional area.
 5. Charges for pipe tunnels or other special underground construction shall be subject to special consideration.

16:77-1.8 Automatic annual fee increases

All of the fees set forth in this subchapter shall be increased five percent each year on the anniversary date of the readoption of these rules ***(March 5)*** rounded up to the nearest five dollars (\$5.00).

TREASURY-GENERAL

(a)

STATE INVESTMENT COUNCIL

Common and Preferred Stocks and Issues
Convertible into Common Stock

Adopted Amendment: N.J.A.C. 17:16-17.3

Proposed: January 2, 1990 at 22 N.J.R. 21(b).
Adopted: February 5, 1990 by the State Investment Council,
Roland M. Machold, Director, Division of Investment.
Filed: February 7, 1990 as R.1990 d.147, **without change**.
Authority: N.J.S.A. 52:18A-91.
Effective Date: March 5, 1990.
Expiration Date: December 2, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

17:16-17.3 Limitations

(a) (No change.)

(b) Not more than four percent of the book value of any pension 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. This four percent limitation shall not apply to Common Pension Fund A included in the list of applicable funds listed in N.J.A.C. 17:16-17.2.

(c) (No change.)

OTHER AGENCIES

(b)

HACKENSACK MEADOWLANDS DEVELOPMENT
COMMISSION

Official Zoning Map

Adopted Amendment: N.J.A.C. 19:4-6.28

Proposed: November 6, 1989 at 21 N.J.R. 3445(a).
Adopted: January 24, 1990 by the Hackensack Meadowlands
Development Commission, Anthony Scardino, Jr., Executive
Director.
Filed: February 7, 1990 as R.1990 d.148, **with a substantive change**
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(l), and
N.J.A.C. 19:4-6.27

Effective Date: March 5, 1990.

Expiration Date: May 26, 1993.

The adopted amendment to the Hackensack Meadowlands District Official Zoning Map consists of a change in the zoning designation of Block 196, Lot 1 in North Arlington and Block 235, Lots 8, 9 and 12 in Lyndhurst from Research Distribution Park to Heavy Industrial with a condition that chemical plants which produce or manufacture toxic and hazardous materials not be a permitted use for this specific site.

Summary of Public Comments and Agency Responses:

The Hackensack Meadowlands Development Commission (HMDC) received one letter from a neighboring resident objecting to the proposed zone amendment based on health, environmental and traffic reasons (that is, pollution, chemical and hazardous materials). The HMDC also received testimony at the public hearing from the Borough of North Arlington, the Hackensack Meadowlands Municipal Committee (HMMC) and several other residents of Lyndhurst and North Arlington. The Borough initially opposed the rezoning to Heavy Industrial but later agreed to the change provided that a limitation could be placed on the use in order to prohibit chemical facilities. The HMMC concurred with this provision requested by the Borough of North Arlington.

ADOPTIONS

The HMDC has addressed this concern by conditioning this approval to prohibit the use of the property for chemical facilities unless the applicant can receive a variance. All parties involved agreed to this condition. The neighboring residents voiced concern over traffic and environmental issues. In response to these concerns, the HMDC explained that the peak hour traffic from the site should be less concentrated since there would be less car traffic and more truck traffic anticipated from a Heavy Industrial use than a Research Distribution Park use. Typically, cars ingress and egress a site more frequently at peak hours than trucks. In response to the environmental concerns, the HMDC explained that regardless of the zoning, the property owner must meet all local, State and Federal environmental regulations in order to construct anything upon the subject site.

The aforementioned change results in the following addition to the text of the HMDC District Zoning Regulations:

19:4-6.28 Official Zoning Map

The zoning designation of Block 196, Lot 1 in North Arlington and Block 235, Lots 8, 9 and 12 in Lyndhurst is changed from Research Distribution Park to Heavy Industrial except that chemical plants which are primarily engaged in the manufacture or production of chemicals which are toxic and hazardous and whose manufacture or production would result in a substantial likelihood that the safety, health and well-being of the property owners within 200 feet of the subject site would be seriously affected are not permitted, unless the HMDC grants such through a use variance.

OFFICE OF ADMINISTRATIVE LAW NOTE: The Official Zoning Map is not reproduced herein, but may be viewed at the following locations:

Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071
Office of Administrative Law
Quakerbridge Plaza, Building 9
Quakerbridge Road
Trenton, New Jersey 08625

(a)

CASINO CONTROL COMMISSION

Notice of Temporary Amendment and Adoption of Rules pursuant to Gaming Experiment Accounting and Internal Controls Multi-Casino Progressive Slot Systems; Annuity Jackpots

Temporary Amendment: N.J.A.C. 19:45-1.40A
Temporary New Rules: N.J.A.C. 19:45-1.39A, 1.40B and 1.40C

Petitioner: International Game Technology.

Authority: N.J.S.A. 5:12-69(e) and 5:12-70(f), (l) and (m).

Effective Date: March 23, 1990.

Expiration Date: June 21, 1990.

Take notice that beginning on March 23, 1990, the Casino Control Commission shall, pursuant to N.J.S.A. 5:12-69(e), conduct an experiment for the purpose of determining whether the temporary amendment and new rules cited above should be adopted on a permanent basis to authorize the operation of multi-casino slot systems and the offering of annuity slot machine jackpots in licensed casinos. The experiment shall be conducted in accordance with the amendments and new rules proposed by the Commission in the February 20, 1990 New Jersey Register, although modifications may be made to the temporary rules during the course of the experiment pursuant to the authority granted to the Commission by N.J.S.A. 5:12-69(e). A copy of the temporary rules will be posted in each casino participating in the experiment and will also be available from the Commission upon request.

International Game Technology (IGT) filed a petition requesting that the Commission approve the use of these rules on an experimental basis in the operation of the Megabucks system. The Megabucks system, which is manufactured by IGT, allows the top jackpots on certain progressive slot machines in more than one casino to be linked together. The top jackpot available under the Megabucks system will be offered in the form of an annuity, that is, it will be paid in equal installments over 20 years.

HIGHER EDUCATION

The Commission has determined to utilize the Megabucks system as a means of testing the rules cited above. As noted, the test will begin on March 23, 1990, and will take place in the five casinos which have decided to participate in the Megabucks system: Caesars, Harrah's Marina, Resorts, Showboat and TropWorld. The experiment shall continue for 90 days, unless otherwise terminated by the Commission pursuant to the terms of the experiment.

Upon completion of the experiment and the review of public comments received in response to the notice of proposal in the February 20, 1990 New Jersey Register, the Commission shall consider permanent adoption of the amendment and new rules in accordance with the requirements of N.J.S.A. 52:14B-4 and N.J.A.C. 1:30.

(b)

CASINO CONTROL COMMISSION

Notice of Temporary Amendment of Gaming Equipment pursuant to Automatic Shuffling Device and Vinyl Playing Cards Experiment

Temporary Amendment: N.J.A.C. 19:46-1.18(k) and (n)

Petitioner: Bally's Park Place, Inc.

Authority: N.J.S.A. 5:12-69(e) (P.L. 1987, c.354), 5:12-70(f) and 5:12-100(e).

Effective Date: March 12, 1990.

Expiration Date: June 10, 1990.

Take notice that beginning March 12, 1990, the Casino Control Commission shall, pursuant to N.J.S.A. 5:12-69(e), conduct a test for a period of 90 days for the purpose of determining if new rules should be adopted which would permit casino licensees to reuse vinyl playing cards utilized in conjunction with an automatic shuffling device.

Specifically, the test would allow Bally's Park Place, Inc. to reuse vinyl playing cards used at the game of Blackjack and use in conjunction with an automatic shuffling device. The test will be conducted at Table 206 at Bally's Park Place, Inc. for the purpose of evaluating the viability and operational suitability of the automatic shuffling device and the projected life of the vinyl playing cards. The vinyl playing cards used at Table 206 will not have to be destroyed within 48 hours of use, provided however, they are inspected and determined to be acceptable for subsequent use. Signage will be posted at major casino entrances and at Table 206 in Bally's Park Place, Inc.

A petition for rulemaking on this subject was filed with the Commission on October 21, 1988. Should the test prove successful, the Commission will propose new rules for adoption in accordance with the public notice and comment requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 1:30.

HIGHER EDUCATION

(c)

BOARD OF HIGHER EDUCATION

County Community Colleges

Organization and Administration; Personnel; Standards for Presidential Searches; Code of Ethics

Adopted New Rules: N.J.A.C. 9:4-1.10 and 2.1 to 2.5 Adopted Amendments: N.J.A.C. 9:4-1.3 and 1.9

Proposed: May 15, 1989 at 21 N.J.R. 1269(a).

Adopted: February 8, 1990 by the Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.

Filed: February 8, 1990 as R.1990 d.153, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with N.J.A.C. 9:4-7.5 not adopted.**

Authority: N.J.S.A. 18A:64A-7, N.J.S.A. 18A:64A-12 and N.J.S.A. 18A:3-14(h).

Effective Date: March 5, 1990.

Expiration Date: October 30, 1991.

HIGHER EDUCATION

ADOPTIONS

Summary of Public Comments and Agency Responses:

The Board of Higher Education received comments on the proposed rules and amendments from the Council of County Colleges, several county community colleges, the New Jersey Education Association and the Association of Governing Boards of Universities and Colleges based in Washington, D.C. In many cases, the same comment was made by more than one county college. In those instances, the comments are not repeated. The specific comments and Board responses follow:

COMMENT: With regard to N.J.A.C. 9:4-1.10(b), the Association of Governing Boards of Universities and Colleges (AGB) stated that the language did not make clear the nature of the assistance which would be provided and suggested that the language be modified to require the college to spell out the nature of such assistance in its plan submission.

RESPONSE: The language of N.J.A.C. 9:4-1.10(b) has been modified in accordance with this comment.

COMMENT: With regard to N.J.A.C. 9:4-1.10(a)1, the AGB stated that the word "assistance" in this provision should be more carefully defined to include a minimum of a workshop, and more desirably, presearch consultation or full search consultation.

RESPONSE: The Board believes that the nature and degree of the assistance should be determined by each college depending upon its own circumstances.

COMMENT: With regard to N.J.A.C. 9:4-1.10(a)5, the AGB stated that the consultation provided for in this provision should be limited to only the establishment of search criteria and should not apply to all aspects of the search process as the confidential and sensitive internal discussions in which the committee must engage to select a proper panel of candidates must be guarded.

RESPONSE: The language of N.J.A.C. 9:4-1.10(a)5 has been modified in accordance with this comment.

COMMENT: The Association of New Jersey County College Faculties, an affiliate of the New Jersey Education Association, indicated its general support for the proposal.

RESPONSE: An agency response is not required.

COMMENT: With regard to N.J.A.C. 9:4-1.3(b), Bergen County Community College, through its counsel, stated that this proposed provision conflicts with N.J.S.A. 18A:64A-9 in that it places additional restrictions upon the appointment of a trustee.

RESPONSE: The provisions of this section are consistent with the requirements of N.J.S.A. 18A:64A-8.

COMMENT: With regard to N.J.A.C. 9:4-1.3(h), Bergen County Community College further stated that this provision should be amended to allow for the board of trustees to intervene in the administration of policy if the policy set by the board is not being implemented or if the board chooses to change policy.

RESPONSE: After consultation with the Council of County Colleges, the Board determined not to adopt N.J.A.C. 9:4-1.3(h) as the provision reflects fundamental ideas about the operation of institutions of higher education which are not required in regulatory form. In addition, the Board felt that this area was adequately addressed in N.J.A.C. 9:4-2.4(c) which is being proposed as an amendment to that section of the Administrative Code.

COMMENT: With regard to N.J.A.C. 9:4-1.10(a), Bergen County Community College further stated that the "nationally accepted procedures and standards" referred to in this provision should be set forth in the rules.

RESPONSE: The Board believes that the inclusion of such material within the administrative code would serve to limit the flexibility of individual colleges in this area and would unnecessarily clutter the code with material which is generally recognized and understood throughout higher education. The Board therefore did not agree that the publication of such standards as part of the administrative code was either necessary or desirable.

COMMENT: With regard to N.J.A.C. 9:4-1.10(a)4, Bergen County Community College further stated that the phrase "broadly representative" within this provision is too vague.

RESPONSE: The Board believes that the meaning of this phrase is clear and does not wish to dictate the inclusion of particular groups within the rule but would rather leave such a decision up to each individual college.

COMMENT: With regard to N.J.A.C. 9:4-1.10(b), Bergen County Community College further stated that the requirement within this provision that the presidential search plan be submitted to the Chair of the Board of Higher Education is objectionable as a usurpation by the Board of the power of the board of trustees to select the college president.

RESPONSE: This provision has been amended to require the submission of such plans to the Council of County Colleges.

COMMENT: With regard to N.J.A.C. 9:4-1.10(a)8, Bergen County Community College further stated that this provision presented problems if there were not at least four qualified candidates to be found as a result of the search process.

RESPONSE: The Board, from its experience, believes that if the position is properly advertised that this will not be a problem.

COMMENT: With regard to N.J.A.C. 9:4-2.4(h), Bergen County Community College further states the phrase "unwarranted privileges" in this provision is too vague.

RESPONSE: The Board believes that the meaning of this phrase is clear enough to provide guidance to trustees.

COMMENT: With regard to N.J.A.C. 9:4-1.3(i), Mercer County Community College stated that this provision was unnecessary and would serve to encourage frivolous actions.

RESPONSE: The Board determined not to adopt this subsection as it represents fundamental ideas regarding the operation of institutions of higher education which are not required to be placed within regulations.

COMMENT: With regard to N.J.A.C. 9:4-1.10, Mercer County Community College stated that the requirements set forth therein were unduly cumbersome, costly and contained requirements not imposed upon other sectors of higher education.

RESPONSE: The Board believes that the requirements set forth in this section are necessary for a proper presidential search but did make certain amendments to the section to address these concerns.

COMMENT: With regard to N.J.A.C. 9:4-1.9(n), Mercer County Community College further stated that this provision should be amended to apply to the appointment of only full-time employees.

RESPONSE: Such a change would not be in keeping with statutory requirements for county college boards of trustees.

COMMENT: With regard to N.J.A.C. 9:4-2.4, Mercer County Community College further stated that the language of this section is not clear and should be simplified.

RESPONSE: The Board believes that this language, based upon the State Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq., is as clear as possible for an area which is admittedly not easily covered.

COMMENT: With regard to N.J.A.C. 9:4-1.9(n), Gloucester County College stated that this provision should be amended to reflect other appointments made by the board of trustees without presidential approval.

RESPONSE: The Board recognized that there are certain personnel appointments which involve individuals who report directly to the board of trustees, such as attorneys and auditors, who should be appointed by the board of trustees without necessarily requiring the president's approval and thus the language of this subsection has been modified in accordance with this comment.

COMMENT: With regard to N.J.A.C. 9:4-2.4(e), Cumberland County College stated that this provision should be modified by the addition of the phrase "or any reason" after the words "for pecuniary gain" to strengthen this subsection.

RESPONSE: The Board felt that the inclusion of this language might impose too broad a prohibition and felt that this issue should be addressed by the Council of County Colleges as part of its consideration of county college trustee self-evaluation.

COMMENT: With regard to N.J.A.C. 9:4-2, Burlington County College stated that the code of ethics should not be regulated but should be promulgated by each particular county college.

RESPONSE: The Board disagrees with this point of view and points to N.J.A.C. 9:4-2.2(b) which allows any college to adopt its own code of ethics as long as it meets or exceeds the requirements of N.J.A.C. 9:4-2.4. In effect, colleges are able to adopt their own codes of ethics rather than being governed by the administrative code.

COMMENT: With regard to N.J.A.C. 9:4-2.4(a)-(g), the Council of County Colleges recommended that the use of the word "should" be substituted for the word "shall" in each subsection to conform the language of this section to the New Jersey Conflicts of Interest Law and the code of ethics applicable to other institutions of higher education. (N.J.A.C. 9:2-10.1 et seq.)

RESPONSE: The language of this section has been modified in accordance with this comment.

COMMENT: Commenters objected that proposed N.J.A.C. 9:4-7.5 was either too intrusive or too proscriptive.

RESPONSE: After due consideration of these comments, the Board has decided not to adopt N.J.A.C. 9:4-7.5.

ADOPTIONS

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

9:4-1.3 Organization and administration

(a) (No change.)

(b) Governance of a community college shall be vested in a board of trustees, appointed as required by law. No county college board of trustee member appointed by the county may be sworn into office unless that individual was nominated by the county trustee search committee for consideration by the appointing authority. The board shall be broadly representative of the community to be served. The names of the officers and members of each community college board of trustees shall be filed annually with the Chancellor of Higher Education on the first day of December.

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

***[(h)]** The role of the board of trustees of a county community college is to establish policy. The administration of policy is the responsibility of the president. No county community college board of trustees, nor individual trustee, shall interfere in the administration of policy in a county community college.

(i) The board of trustees shall develop appropriate procedures for hearing within the college, the grievances of students, college employees and citizens. Complainants should be encouraged to follow such established procedures. Within such procedures, the board of trustees should only serve as the final body within the institution, to which a previous determination made at the institution may be brought and reviewed.]*

[(j)-(k)]* *(h)-(i) (No change in text.)

9:4-1.9 Personnel

(a)-(m) (No change.)

(n) All personnel appointments in a county community college shall be made upon the written recommendation of the president to the board of trustees with the exception***s*** of the presidency itself*****, the board attorney, and an external auditor or auditing firm*****. All personnel appointments must be approved by the board of trustees.

9:4-1.10 Standards for presidential searches

(a) Each county community college shall conduct any presidential search in accordance with nationally accepted procedures and standards for pre-search, search, and selection procedures including, at a minimum, the following components:

1. Assistance from, or consultation with, a nationally recognized higher education group, agency or association, at least at the inception of the search process ***or compliance with procedures established by the Council of County Colleges***;

2. Assessment of the needs of the institution;

3. Development of criteria for the selection of a new president;

4. Creation of a search committee that, if it is to contain persons other than trustees, is broadly representative of the college*****, and whose purpose is to make recommendations to the board of trustees for its consideration and action*****;

5. Opportunity for the search committee to consult with various groups within the institutional community ***in establishing search criteria***;

6. Public advertisement of the position of the presidency with a minimum of 60 days to respond ***from the first notice published in a newspaper of regional or national circulation suitable for the institution***;

7. Development of a pool of qualified candidates which includes both men and women, as well as minority candidates; and

8. Interviews of at least four candidates, evaluating each in comparison to the criteria established by the college.

(b) Every county community college conducting a presidential search shall submit, to the ***Council of County Colleges*** ***[chair of the Board of Higher Education]***, its plan for the search ***[and the identity of the group, agency or organization it has obtained to assist in the presidential search or consulted with in establishing its procedures.]*** ***including identification of the means by which the group, agency or organization it has obtained to assist it will be involved in the process.***

HIGHER EDUCATION

SUBCHAPTER 2. CODE OF ETHICS FOR COUNTY COMMUNITY COLLEGES AND COMMISSION BOARDS OF TRUSTEES

9:4-2.1 Purpose

The purpose of this subchapter is to establish general and specific standards ***[to guide]*** ***for*** the conduct of trustees of the county community colleges and commissions in the exercise of their fiduciary responsibilities as trustees of public institutions of higher education.

9:4-2.2 Application

(a) This subchapter shall apply to all county community colleges and commissions established pursuant to N.J.S.A. 18A:64A-1 et seq.

(b) Any county community college or commission may adopt and be governed by an institutional code of ethics so long as the standards of conduct set forth within the institutional code of ethics equals or exceeds the requirements and standards set forth within this subchapter.

9:4-2.3 Definitions

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

“College matter” means any application, award, bid, claim, contract, license, proceeding, resolution or transaction made by, to, against or with a county community college or commission, or which requires any official action by the board of trustees of a county community college or commission, or its officers or employees.

“College trustee” means any person who is a member of the board of trustees of any county community college or commission.

“Interest” means any personal, financial, economic, property or other concern amounting to a right, advantage, share or portion coming either directly or indirectly to a trustee singly, or in affiliation with any person or party as defined herein.

“Person or party” means any natural person, association, corporation, estate, partnership, proprietorship, trust or other legal entity.

9:4-2.4 Code of ethics

(a) No college trustee ***[shall]*** ***should*** accept from any person, directly or indirectly, or through his or her spouse or any member of his or her family any gift, favor, service, employment or other things of value under circumstances from which it might be reasonably inferred or which he or she knows or has reason to believe is offered to him or her with intent to influence his or her public duties and responsibilities.

(b) No college trustee ***[shall]*** ***should*** knowingly act in an official capacity, by voting or otherwise, on any college matter in which he or she has an interest.

(c) Disclosure of the precise nature of the interest or involvement, at first knowledge of the transaction, ***[shall]*** ***should*** be required in the event that a board must consider any college matter which also involves:

1. A member of the board of the college or a member of his or her family (defined as spouse, parents, siblings, or children); and/or

2. An organization with which a member of the board of the college is affiliated.

(d) Disclosure ***[shall]*** ***should*** be further required of board members concerning all relationships and business affiliations that reasonably could give rise to a conflict of interest involving the institution.

(e) No college trustee ***[shall]*** ***should*** act as an officer or agent of the college for the transaction of any business with himself or herself or in which he or she has an interest.

(f) No college trustee ***[shall]*** ***should*** willfully disclose to any person or party for pecuniary gain any information not generally available to members of the public which he or she receives or acquires in the course of his or her official duties.

(g) No college trustee ***[shall]*** ***should*** have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity which might reasonably be expected to impair his or her objectivity or independence of judgment, or which is otherwise in substantial conflict with the proper discharge of his or her duties in the public interest.

HIGHER EDUCATION

(h) No college trustee should use or attempt to use his or her official position to secure unwarranted privileges or advantages for himself or herself or others.

(i) No college trustee should act in his or her official capacity in any matter wherein he or she has a direct or indirect interest that might reasonably be expected to impair his or her objectivity or independence of judgment.

9:4-2.5 Violations

Violations of the provisions of N.J.A.C. 9:4-2.4 may constitute cause for removal from the board of trustees pursuant to N.J.S.A. 18A:64A-9 or N.J.S.A. 18A:64A-32 or other sanctions as determined by the board of trustees.

***[9:4-7.5 Presidential contracts**

(a) County community college presidents should receive initial employment contracts of three years duration, to be reviewed at least 18 months prior to expiration.

(b) If the board of trustees fails to provide written notice to a college president of non-renewal of his or her initial presidential contract, or any extensions thereof which are not governed by a subsequent contract, at least one year prior to its expiration, the president's contract shall be automatically extended for a one-year term.

(c) Subsequent to the president's initial employment contract, the college and the president may mutually agree to terms of employment or an employment contract as permissible by law.]*

HEALTH**(a)****DIVISION OF COMMUNITY HEALTH SERVICES****Newborn Biochemical Screening****Adopted New Rules: N.J.A.C. 8:19-2****Adopted Amendment: N.J.A.C. 8:19**

Proposed: November 20, 1989, at 21 N.J.R. 3633(b).

Adopted: February 1, 1990 by Leah Ziskin, M.D., M.S., Acting Commissioner, Department of Health.

Filed: February 7, 1990 as R.1990 d.146, **without change**.

Authority: N.J.S.A. 26:2-110, 26:2-111 and 26:2H-5.

Effective Date: March 5, 1990.

Expiration Date: June 28, 1990.

Summary of Public Comments and Agency Responses:

A public hearing on this proposal was held at the Health and Agriculture Building, Trenton, New Jersey on January 5, 1990 to provide interested parties the opportunity to present testimony on the proposal. Testimony was given by one commenter and written comments were received from two other commenters prior to the close of comments on January 12, 1990.

COMMENT 1: Two commenters testified in general support of the rules, describing the benefit to society of early identification and treatment in the prevention of mental retardation and developmental disabilities, and supporting the addition of sickle cell testing.

RESPONSE: The Department agrees with these comments.

COMMENT 2: A hospital commented on the lack of timeliness in notifying the submitter of an unsatisfactory specimen, and of reports of test results.

RESPONSE: The Department agrees that the reporting of unsatisfactory specimens and of issuing normal reports should be carried out in a timely fashion. The Newborn Biochemical Screening Program is now being computerized to speed this process. These comments do not apply to abnormal and highly abnormal reports requiring follow-up, which are issued directly to the physician of record and the submitter by the Follow-up Program.

COMMENT 3: A hospital has commented on the cost of carrying out the newborn screening program: nurses, clerks, secretaries, phone, mail, laboratory fees, etc., and requests reimbursement from the State for these costs.

RESPONSE: The Department agrees that there are costs associated with participating in a newborn screening program. They are, however,

routine and predictable, and are accommodated within the State's hospital reimbursement system.

COMMENT 4: A hospital suggests that the Department create a position for a "facilitator" to coordinate all calls to the testing laboratory and assist with follow-up.

RESPONSE: The Department agrees that it would be desirable to have a single person—or group of persons—at the State level to facilitate newborn screening activities. At present, no one person has access to all the information that a single "facilitator" would need; laboratory test results reside in the laboratory, the Follow-up Program assists with follow-up planning. When the computerization of the screening program is complete, the Follow-up Program staff will have direct access to laboratory data and can then provide comprehensive assistance.

Full text of the adoption follows.

CHAPTER 19**NEWBORN SCREENING PROGRAM****SUBCHAPTER 1. NEWBORN HEARING SCREENING**

8:19-1.1 to 1.6 (No change.)

SUBCHAPTER 2. NEWBORN BIOCHEMICAL SCREENING**8:19-2.1 Purpose and scope**

This subchapter constitutes the rules governing the implementation of N.J.S.A. 26:2-110 and 111 (P.L. 1988, c.24), an act providing for the testing of newborn children for the purpose of early detection and treatment of biochemical disorders.

8:19-2.2 Definitions

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

"Biohazardous specimen" means a specimen collected from an infant who may have, or whose mother may have, an infectious disease agent transmissible by blood contact, as determined by the infectious disease officer of the responsible institution.

"Birth attendant" means the physician, nurse-midwife or other person who attends a non-hospital birth and who is required to register the birth of a child under N.J.S.A. 26:8-30 or 26:8-31.

"Chief executive officer" means the person who acts as the administrative officer of the institution and who is responsible to the governing body for overall management of the hospital or agency providing birthing services.

"Department" means the New Jersey State Department of Health.

"Follow-up Program" means the Newborn Biochemical Screening Program, Special Child Health Services, Division of Community Health Services, State of New Jersey Department of Health, CN 364, Trenton, NJ 08625-0364.

"Parent" means the infant's parent or legal guardian or other person legally responsible for the health and well-being of the infant.

"Public health officer" means the officer or commissioner of health of a city, town, county or region.

"Repeat specimen" means an additional satisfactory specimen submitted to the testing laboratory.

"Responsible institution" means the hospital or center providing birthing services.

"Responsible physician" means the physician or other licensed health care provider named on the specimen collection form, the infant's primary health care provider, if different, or the hospital staff physician as designated by the chief executive officer and identified to the testing laboratory.

"Satisfactory specimen" means a specimen received by the testing laboratory in an acceptable condition for testing.

"Serum specimen" means a specimen of serum collected according to established criteria of the laboratory performing the assay.

"Specimen" means a dried blood filter specimen collected on an approved specimen collection form.

"Specimen collection form" means the current specimen collection form as provided by the Department of Health.

"Testing laboratory" means the Inborn Errors of Metabolism Laboratory, Division of Public Health and Environmental Laboratories, State of New Jersey Department of Health, CN 371, Trenton, NJ 08625-0371.

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"Unsatisfactory specimen" means a specimen which is received by the testing laboratory in a condition unacceptable for testing.

8:19-2.3 Diseases and conditions tested

(a) The testing required by N.J.S.A. 26:2-111 and this subchapter shall be done by the testing laboratory according to recognized clinical laboratory procedures.

(b) Diseases and conditions to be tested shall include, but not be limited to:

1. Phenylketonuria;
2. Galactosemia;
3. Hypothyroidism;
4. Sickle cell anemia; and
5. Other hemoglobinopathies; as designated by the Commissioner.

8:19-2.4 Responsibilities of the chief executive officer

(a) The chief executive officer shall:

1. Cause the development and implementation of written policies and procedures, to be reviewed by the Department and revised as required, for the early detection and treatment of biochemical disorders, pursuant to N.J.S.A. 26:2-110 and 111;

2. Designate a staff person to coordinate hospital or agency screening practice and function as a contact person with the Follow-up Program;

3. Assure that a satisfactory specimen is submitted to the testing laboratory for each infant born in the hospital, or admitted to the hospital within the first 28 days of life with no specimen having been previously collected;

4. Assure that the infant's parent is informed of the purpose and need for newborn screening and given newborn screening educational materials provided by the Follow-up Program;

5. Assure that specimen collection forms are properly stored in a cool and dry environment prior to use;

6. Assure that specimens are taken utilizing correct specimen collection techniques as described on the back of the specimen collection form;

7. Assure that specimens conform to the following criteria for satisfactory specimens:

i. The specimen collection forms shall be filled in completely, accurately and legibly;

ii. The sample shall be collected on S&S 903 blotter paper (located on the right side of the collection form);

iii. The blotter paper shall be attached to the forms; and

iv. The specimen quantity shall be sufficient to run all assays;

8. Assure that satisfactory specimens are collected according to the following criteria:

i. The circles on the blotting paper shall be completely and evenly saturated;

ii. The specimen shall not be contaminated or diluted;

iii. The blood shall not be clotted or caked; and

iv. The blotting paper shall not be torn or scratched because of faulty or improper collection techniques;

9. Assure that specimens are taken before the infant is 48 hours old. If an infant is transferred or discharged from a facility prior to 48 hours of life, a specimen shall be collected prior to discharge;

10. Assure that the parent shall be instructed directly and in writing of the need to collect a repeat specimen between the third and seventh day of life if the infant has been fed protein for fewer than 24 hours at the time of discharge;

11. Assure that every effort is made to obtain a specimen prior to any anticipated blood transfusion;

12. Assure that, in the event of prolonged hospitalization for specialized medical care, a specimen is taken when the child is 48 hours old. Repeat specimens shall be taken weekly until there have been 24 hours of normal oral feeding on full strength formula. If an infant is on prolonged hyperalimentation and the physician wishes to stop weekly testing, he or she should consult with a PKU specialist;

13. Assure that in the case of inter-hospital transfer of the infant, the transferring hospital shall provide written notification to the receiving hospital indicating whether or not a specimen has been taken prior to transfer. Following transfer, the chief executive officer of the receiving hospital shall assume responsibility for collection of the specimen in accordance with these regulations;

14. Assure that the date and time of specimen collection are recorded on the infant's permanent health record;

15. Assure that biohazardous specimens are thoroughly dried and then placed individually in a paper envelope. The outside of the envelope shall be labeled as a biohazardous specimen;

16. Assure that all specimens are forwarded to the testing laboratory within 24 hours of collection by first class mail or its equivalent;

17. Assure that all test results forwarded to the chief executive officer or his designee by the testing laboratory are included in the infant's permanent health record;

18. Transmit or cause to be transmitted a copy of test results to the physician of record;

19. Assure that repeat specimens are collected when requested by the testing laboratory for specimens not satisfactory for testing according to criteria in (a)7 and 8 above, or specimens for which assay results cannot be interpreted because of any of the following conditions:

i. Transfusion(s) given before specimen collection;

ii. Antibiotics given before specimen collection (if effects cannot be removed);

iii. Specimen collected before the child has received protein feeding for 24 hours;

iv. Incomplete elution from blotter during assay; and

v. Specimen received 14 days or more after collection date; and

20. Assure that written documentation is submitted to the testing laboratory of efforts made to secure a repeat specimen within 14 days of receipt of the laboratory report when either:

i. An initial specimen is not satisfactory for testing and repeat specimen is not obtained; or

ii. The responsible physician cannot be notified.

8:19-2.5 Responsibilities of the birth attendant

(a) The birth attendant shall:

1. Submit or cause to be submitted to the testing laboratory an initial blood specimen taken before the infant is 48 hours old from all infants born outside of, and not admitted to, a hospital;

2. Follow the specimen collection and submission procedures specified in N.J.A.C. 18:19-2.4;

3. Collect or cause to be collected a repeat specimen when requested by the testing laboratory, and shall submit or cause such repeat specimen to be submitted to the testing laboratory within 24 hours of collection; and

4. If a repeat specimen is not obtained, submit to the testing laboratory written documentation of efforts made to secure or cause to be secured a repeat specimen within 14 days of receipt of the laboratory report.

8:19-2.6 Responsibilities of the responsible physician

(a) The responsible physician shall:

1. Interpret all test results;

2. Comply with the specimen collection and submission procedures specified in N.J.A.C. 18:19-2.4;

3. Promptly collect or cause to be collected repeat specimens requested by the testing laboratory. All repeat specimens shall be clearly marked REPEAT;

4. Promptly collect or cause to be collected repeat specimens or serum specimens as recommended by the laboratory in the case of abnormal test results. All repeat specimens shall be clearly marked REPEAT;

5. If a repeat specimen is not obtained within the time frame recommended on the test report, submit to the testing laboratory written documentation of efforts made to secure a repeat specimen within 14 days of receipt of the laboratory report;

6. Include in the infant's health record the test results received from the chief executive officer or from the testing laboratory;

7. In the case of confirmed abnormal test results, arrange for diagnostic evaluation; and

8. Provide case information, specimens and other information requested by the Follow-up Program.

8:19-2.7 Responsibilities of the public health officer

(a) The public health officer shall:

1. Provide assistance to the Follow-up Program, when requested, in locating families of infants;

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2. Collect or cause a repeat specimen to be collected when notified of the need for a repeat specimen by the Follow-up Program. The specimen shall be submitted within 24 hours of collection; and

3. Submit written documentation, within 14 days of receipt of the laboratory report, to the testing laboratory of efforts made to secure or cause to be secured such repeat specimen if a repeat specimen is not obtained within the time frame recommended by the Follow-up Program.

8:19-2.8 Responsibilities of the testing laboratory

(a) The testing laboratory shall:

1. Determine if a specimen is satisfactory, according to the criteria listed in N.J.A.C. 8:10-2.4 (a) 7, 8, and 19;

2. Request a repeat specimen from the submitter for unsatisfactory specimens;

3. Test satisfactory specimens for disease and conditions, according to recognized clinical laboratory procedures;

4. Issue reports of not clinically significant results to the chief executive officer or to the responsible physician, that is, the submitter of the specimen; and

5. Issue reports of abnormal results to the submitter of the specimen and to the responsible physician.

8:19-2.9 Responsibilities of the Follow-up Program

(a) The Follow-up Program shall:

1. Make every reasonable effort to follow abnormal test results to case disposition as specified in the Follow-up Program Procedures Manual;

2. Assist families of children with abnormal test results to access health care as necessary;

3. Identify and maintain contact with medical consultants (neurologists, endocrinologists, geneticists, hematologists) for each disease tested;

4. Identify treatment resources to families and assure that they are receiving care;

5. Provide educational support for activities carried out under this rule; and

6. In conjunction with the testing laboratory:

i. Monitor compliance with this subchapter;

ii. Identify problems in compliance and assist in their remediation; and

iii. Prepare and distribute an annual report, to include outcome data, descriptive statistics, program evaluation and recommendations.

8:19-2.10 Exemption from testing

(a) This subchapter shall not apply in the case of any infant or child whose parent or guardian objects to the testing on the grounds that testing would conflict with his or her religious tenets or practices.

(b) In case of refusal to test pursuant to (a) above, the chief executive officer or responsible physician or birth attendant shall assure that documentation of refusal to test becomes part of the infant's permanent medical record.

(c) The chief executive officer or responsible physician or birth attendant shall assure that a copy of documentation of refusal to test is forwarded to the testing laboratory.

(a)

DIVISION OF PUBLIC HEALTH AND ENVIRONMENTAL LABORATORIES

**Clinical Laboratory Services
Fees for Licensure of Clinical Laboratories;
Laboratory Charges**

Redoaction with Amendments: N.J.A.C. 8:45

Proposed: December 4, 1989 at 21 N.J.R. 3708(b).

Adopted: February 5, 1990 by Leah Z. Ziskin, M.D., M.S.,
Acting Commissioner, Department of Health.

Filed: February 7, 1990 as R.1990 d.145, **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. 45:9-42.30 and 26:1A-33.

Effective Date: February 7, 1990, Redoaction; March 5, 1990, Amendments.

Operative Date: April 1, 1990.

Expiration Date: February 7, 1995.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Health proposed the redoaction of its Fees for Licensure of Clinical Laboratories; Laboratory Charges with amendments, N.J.A.C. 8:45, in the New Jersey Register on December 4, 1989, 21 N.J.R. 3708(b). Changes have been made upon adoption to N.J.A.C. 8:45-1.4, Proficiency testing fees, for clarification purposes. A public hearing was held on January 5, 1990 at which eight persons testified:

Beth Frederick, Cooper-Bancroft PKU Program

Kris Kolarsick

Alvin Salton, New Jersey Association of Bioanalysts

Dr. Haroutunian, Children's Hospital of New Jersey

Katherine Pinneo, Family Planning of New Jersey

Donna Mine

Sherry Miller

Joann Friedman, PKU Program of Northern and Central New Jersey

Written comments were submitted by 33 persons/organizations:

Mr. and Mrs. Ronald K. Hines

Mrs. Deborah Hughes

Mrs. Mary Gray

Mr. and Mrs. William Jenecke

Mr. and Mrs. R. A. Liscio

Mrs. Kathy Dempsey

Mr. and Mrs. Joseph Avena

Mr. and Mrs. Joseph Altamura

Mr. and Mrs. Carmine Avena

Mr. and Mrs. Bob Brezak

Mr. and Mrs. David Walker

Mrs. Judith A. Knox

Mr. and Mrs. Rick Kolarsick

Mr. Donald E. Knox

Mrs. Dawn M. Hilbmann

Mr. John J. Menasim, Jr.

Mrs. Nichole M. Menasim

Mrs. Maureen S. Walker

Mr. and Mrs. Vincent Kennedy

Mrs. Leona M. LaPerriere

Mr. Harry Walker

Mrs. Joan McCarthy

Mrs. Diana Parks

Ms. Katherine Rowley

Ms. Deborah Landis

Ms. Christine Sevilla

Chester J. Minarcik, Jr. M.D.

Mr. and Mrs. Thomas Lindner

Ms. Linda Ross

Ms. Kim Speak

Ms. Olga Podjko

Mr. Joseph Alifante

Ms. Katherine Pinneo

The following summarizes the comments received and provides the Department's responses to these comments. All comments are on file at the Department of Health.

SUBCHAPTER 1. LICENSURE OF CLINICAL LABORATORIES

1. COMMENT: The Family Planning Association of New Jersey and the New Jersey Family Planning League proposed proficiency testing (P.T.) fees be waived for publicly subsidized family planning clinics or restructured to reflect a much lower cost, for example, 25 percent, for such agencies.

RESPONSE: Fee waivers or reductions could not be granted to publicly subsidized family planning clinics without being also granted to all other publicly subsidized or government agencies. This composite group constitutes such a large portion of all licensed facilities that insufficient funds would be raised to continue the State program forcing all laboratories to enroll in private proficiency evaluations at an even higher cost.

2. COMMENT: The New Jersey Association of Bioanalysts felt this was another unfair cost to the small laboratory, and stated there was no mention as to the number of specimens and their frequency. They also inquired as to whether the State P.T. would be equivalent to the require-

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ments of the 1988 Clinical Laboratory Improvement Act (see P.L. 100-578, October 31, 1988; 102 Stat. 2903, which amended 42 U.S.C. 263a.)

RESPONSE: All facilities will be charged individual fees for a given P.T. It is the Department's intent to provide, at a minimum, samples equivalent in number and frequency to C.L.I.A. '88 requirements in areas where P.T. is offered.

SUBCHAPTER 2. LABORATORY CHARGES

3. COMMENT: All other respondents (29 written, 6 verbal) stated they supported adoption of the proposed laboratory test fees particularly those for Inborn Errors of Metabolism (I.E.M.) as these funds were invaluable in identifying, testing and treating children with I.E.M. disorders.

RESPONSE: The Department appreciates the support.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:45.

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

8:45-1.4 Proficiency testing fees

(a) Those laboratories enrolled in the State's Clinical Laboratory Improvement Services analytical proficiency testing program will be assessed an annual fee by specialty area according to the following table:

Clinical Laboratory Improvement Program
Laboratory Proficiency Testing by Specialty Area:

| | |
|---|----------------|
| *Microbiology* | |
| Bacteriology | \$250.00 |
| Gram Stain *only* | 150.00 |
| Throat *(DAT) only* | 100.00 |
| GC *culture only* | 200.00 |
| *Mycobacteriology (TB)* | 400.00 |
| TB smears only | 100.00 |
| *Parasitology | 250.00* |
| *[Parasites | 250.00]* |
| Pinworms *only* | 200.00 |
| Mycology | 300.00 |
| *Diagnostic Immunology (Serology)* | |
| Syphilis | 100.00 |
| Non-syphilis | 150.00 |
| *Hematology* | |
| *[CBC; Coag; Cyto | 150.00]* |
| *CBC | 150.00* |
| *Coagulation | 150.00* |
| *Cytohematology | 150.00* |
| Hematocrit *only* | 100.00 |
| *[Immunology | 150.00]* |
| *Immunochemistry | 150.00* |
| Chemistry | 200.00 |
| Blood gases | 200.00 |
| *[DOA | 150.00]* |
| *Toxicology* | |
| *Drugs of Abuse | 150.00* |
| Blood Lead | 200.00 |
| *[EP | 200.00]* |
| *Erythrocyte Protoporphyrin | 200.00* |
| *Urinalysis* | |
| *Liquid Chemistry | 100.00* |
| *Microscopic | 100.00* |
| *[Urine (L); Urine (M) | 100.00]* |

8:45-2.1 Fees; generally

(a) Commencing April 1, 1990, the following changes will be made in the fee-for-service cost structure, Division of Public Health and Environmental Laboratories, New Jersey State Department of Health:

Laboratory Test

| | |
|--|---------|
| Inborn Errors of Metabolism (PKU, T4, Galactosemia, Sickle Cell) | \$19.00 |
| RPR Syphilis | \$ 8.00 |

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| | |
|--|---------|
| Toxoplasmosis | \$12.00 |
| HATTS, FTA-ABS (Confirmatory syphilis) | \$ 8.00 |
| Rubella Screen | \$ 9.00 |
| Blood Lead | \$12.00 |
| Mycobacteriology (TB) | \$30.00 |
| Water Bacteriology | \$10.00 |
| Bacteriology Culture | \$30.00 |
| Susceptibility Studies (TB) | \$30.00 |
| Isolation of Special Pathogens | \$30.00 |
| Parasitology | \$15.00 |
| Mycology | \$25.00 |

(b) Commencing April 1, 1990, the following newly established fee for service charges will go into effect:

| | |
|--------------|---------|
| Bacteriology | |
| Lyme Disease | \$20.00 |

(a)

DIVISION OF OCCUPATIONAL AND ENVIRONMENTAL HEALTH

**Notice of Administrative Correction
Worker and Community Right to Know Act Rules
Definitions; Research and Development
Laboratories; Representatives of Employers and
Employees; Contents of the Right to Know
Substance List; Modification of the List; Authority
N.J.A.C. 8:59-1.3, 5.3, 8.10, 9.2, 9.3 and 11.1**

Take notice that the Department of Health has discovered errors in the published text of the Worker and Community Right to Know Act Rules, N.J.A.C. 8:59, as follows:

In the list of employer groups who are currently covered by the Right to Know law appearing in the New Jersey Administrative Code at N.J.A.C. 8:59, prior to the rule text, several modifications are necessary to conform the list to the adopted text of N.J.A.C. 8:59-11.3(b) (see 21 N.J.R. 3516(a), at 3534).

In N.J.A.C. 8:59-1.3, the definition of "common name" contains the term "trade number," which was published in the original proposal and adopted in this chapter (see 16 N.J.R. 478(a) and 1519(a)). However, the term which should appear in the definition, as reflected in the original documents filed by the Department with the Office of Administrative Law (OAL), is "trade number."

In N.J.A.C. 8:59-5.3, the text, "... retained on file by the public employer or emergency responder at the facility which will provide the employee with the chemical name or common name permitted by N.J.A.C. 8:59-5.7, ..." was proposed and adopted, both in the Department documents filed with OAL and in the New Jersey Register (see 21 N.J.R. 1253(a) and 3516(a), at 3528), as, "... retained on file by the employer at the facility which will provide the public employee or emergency responder with the chemical name or common name permitted by N.J.A.C. 8:59-5.7, ..." .

In N.J.A.C. 8:59-8.10, the section heading was adopted (see 21 N.J.R. 3516(a), at 3532) as, "Representatives of employers and public employees." The first use of the term "public employees" in the third sentence of subsection (a) is incorrect; the term was adopted as "public employers" (see 21 N.J.R. 3516(a), at 3532). In the first sentence in subsection (b), the phrase, "... by the employer and employees to accompany ..." was adopted as, "... by the employer and, for public employers, public employees to accompany ..." (see 21 N.J.R. 3516(a), at 3532).

In N.J.A.C. 8:59-9.2(a)1, the date at the end of the paragraph, "July 1, 1983," was proposed for deletion (see 21 N.J.R. 1253(a), at 1266) and did not appear in the published adoption (see 21 N.J.R. 3516(a), at 3533). However, in printing the 11-20-89 update to the New Jersey Administrative Code, the date was retained.

In N.J.A.C. 8:59-9.3(f), substantial new text was proposed for addition in the Register (see 21 N.J.R. 1253(a), at 1267) and was published in the adoption (see 21 N.J.R. 3516(a), at 3533). However, since most of the new text was not highlighted in boldface in the proposal, as is required for text additions, the unhighlighted text was not incorporated into the New Jersey Administrative Code through the 11-20-89 update.

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In N.J.A.C. 8:59-11.1, the proposed case number citation to *New Jersey Chamber of Commerce v. Hughey* (see 21 N.J.R. 1253(a), at 1267) was changed in the adoption document filed with OAL (see R. 1989 d. 543) to a citation to the case location in the Federal case reporter system. While the case number citation was deleted in the published adoption, the new citation erroneously did not appear (see 21 N.J.R. 3516(a), at 3534).

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

**CHAPTER 59
WORKER AND COMMUNITY RIGHT
TO KNOW ACT RULES**

...

The following is a complete list of employer groups who are currently covered by the Right to Know law:

| SIC | DESCRIPTION |
|-------------|---|
| ... | |
| | TRANSPORTATION BY AIR |
| [4511 | Air transportation, certificated carriers] |
| 4512 | Air transportation, scheduled |
| ... | |
| | TRANSPORTATION SERVICES |
| [4712 | Freight forwarding] |
| ... | |
| | [BUSINESS SERVICES] |
| [7397 | Commercial testing laboratories] |
| ... | |
| | EDUCATIONAL SERVICES |
| ... | |
| | ENGINEERING, ACCOUNTING, RESEARCH, MANAGEMENT AND RELATED SERVICES |
| 8734 | Testing laboratories |

8:59-1.3 Definitions

The following words and terms shall have the following meanings unless the context clearly indicates otherwise:

...
 "Common name" means any designation or identification such as a code name, code number, trade [number] **name**, brand name or generic name used to identify a chemical other than by its chemical name.

8:59-5.3 Research and development laboratories

Employers may label containers in a research and development laboratory by means of a code or number system, if the code or number system will enable a public employee or emergency responder to readily make a cross reference to a hazardous substance fact sheet or documentary material retained on file by the [public] employer [or emergency responder] at the facility which will provide the **public employee or emergency responder** with the chemical name or common name permitted by N.J.A.C. 8:59-5.7, and Chemical Abstracts Service number of the substance contained in the container, or the trade secret registry number assigned to the substance. The code or number system shall be designed to allow the public employee free and ready access at all times to the chemical name and Chemical Abstracts Service number of the substances in the container, shall be designed to allow the public employee access to this information without the permission or assistance of management, and shall be available to the public employee at close proximity to his or her specific job location or locations.

8:59-8.10 Representatives of employers and public employees

(a) Right to Know Enforcement Officers shall be in charge of inspections and questioning of persons. A representative of the employer and for public employers, a representative authorized by the public 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 for public [employees] **employers** additional rep-

(CITE 22 N.J.R. 848)

representatives authorized by public employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and, for public employers, public 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, **for public employers, public 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 public or private employee of the facility during the inspection concerning matters regarding Right to Know compliance.

(c)-(d) (No change.)

8:59-9.2 Contents of the Right to Know hazardous substance list

(a) The Right to Know Hazardous Substance List consists of the hazardous substances listed in Appendix A, which includes:

1. Any substance or substance contained in a mixture regulated by the Occupational Safety and Health Administration, United States Department of Labor, under Title 29 Code of Federal Regulations (CFR) Part 1910—Occupational Safety and Health Standards for General Industry, Subpart Z—Toxic and Hazardous Substances[, July 1, 1983].

2.-3. (No change.)

(b) (No change.)

8:59-9.3 Modification of the list

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

(f) Notice of proposed revisions to the Right to Know Hazardous Substance List **which are not included in (b) above** shall be published **as necessary** in the New Jersey Register as a proposed amendment to these rules in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. At least 30 days shall be allowed for public comment. A public hearing shall be held, if, in the Department's determination, there is significant public interest in the proposal. **Notice of revisions made pursuant to (b) above shall be published in the New Jersey Register as a public notice and incorporated into the List.**

(g) (No change.)

8:59-11.1 Authority

This subchapter is promulgated pursuant to the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., in particular, N.J.S.A. 34:5A-14 and 30, and the case of *New Jersey Chamber of Commerce v. Hughey*, **838 F.2d 621 (3rd Cir. 1989)**, cert. den. — U.S. —, **57 U.S.L.W. 3859 (July 3, 1989)**.

(a)

**DIVISION OF ALCOHOLISM AND DRUG ABUSE
Intoxicated Driving Program/Intoxicated Driver
Resource Center**

**Adopted Amendments and New Rules: N.J.A.C.
8:66-1.1, 8:66A**

Proposed: October 15, 1989 at 21 N.J.R. 3283(a).

Adopted: January 25, 1990 by Leah Z. Ziskin, M.D., M.S.A., Acting Commissioner, Department of Health.

Filed: January 26, 1990, as R.1990 d.135 **with substantive and technical changes** not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3) **and with portions not adopted.**

Authority: N.J.S.A. 39:4-50 et seq., specifically 39:4-50(F).

Effective Date: March 5, 1990.

Expiration Date: March 5, 1995.

Summary of Public Comments and Agency Responses:

The Department has elected to not adopt the repeal of N.J.A.C. 8:66 and has recodified the proposed new rules on adoption as N.J.A.C. 8:66A. Changes have been made on adoption to clarify the application of each of these chapters. N.J.S.A. 39:4-50 requires that all persons convicted under the statute must comply with the requirements of the Intoxicated

Driver Resource Centers, found at N.J.A.C. 8:66A, and with the requirements of the Division of Alcoholism and Drug Abuse Intoxicated Driving Program Unit, which include N.J.A.C. 8:66 and N.J.A.C. 8:66A. The requirements of the Division of Alcoholism and Drug Abuse Intoxicated Driving Program Unit which are found at N.J.A.C. 8:66 can continue to be useful in a variety of ways to ensure that persons who present a public danger can be evaluated, educated and sent to treatment, if necessary. The maintenance of both chapters allows for greater flexibility when the Intoxicated Driver Resource Center Program is not available or not applicable, and continues to provide standards for those individuals who were participating in the Intoxicated Driver Resources Center Program prior to the adoption of N.J.A.C. 8:66A. N.J.A.C. 8:66 can be applied to those offenders who were arrested before October 4, 1984. N.J.A.C. 8:66A can be primarily applied to those offenders who were arrested after October 4, 1984. N.J.A.C. 8:66A will also be applied when there is a referral to the Intoxicated Driver Resource Center under N.J.A.C. 8:66. The Bureau of Alcohol Countermeasures rules.

A number of the commenters have been directly quoted or closely paraphrased from the comments submitted.

The Department received several written comments on the rule and a number of comments by telephone responses.

Of the several written comments, six were written in general support of the rules. These comments were from Bergen County Task Force on Alcoholism and Drunk Driving, Alina Lodge, Roosevelt Hospital, Gloucester County Department of Health, the Ocean County ATRA Service Force, and South Amboy Memorial Hospital.

The letter from the Ocean County ATRA Service Force raised some issues regarding changes in legislation for intoxicated boaters and possessing drugs in a motor vehicle as well as calling for criminal offenders to be sent through the Intoxicated Driver Resource Centers. Since these issues did not directly relate to the rules, the Department will not comment on them here. They will be considered if the Department seeks an amendment to the driving under the influence law.

COMMENTER: The Department received a written comment from Human Resources Associates, as set forth below, with the responses.

1. COMMENT: There was an inconsistency in the Department's requirement for the use of DSM III for evaluating the alcohol and drug abusers in N.J.A.C. 8:66A-1.1. In one case the Department stated the DSM III "may" be used and not "shall" be used.

RESPONSE: This was an error in the text. The Department intended that the DSM III shall be used to evaluate alcohol and drug abusers and have amended the text accordingly.

2. COMMENT: In the definition of counselor in N.J.A.C. 8:66A-1.1, the Department cites a certification by the State of New Jersey. The comment author knew of no such certification and stated that he only knew of a voluntary certification process which he believed could not legally be used because he believed "it is illegal to require, or even name, such voluntary certification in law".

RESPONSE: The Department disagrees. It is not illegal to name or require a voluntary certification process and to establish it as a legal standard. For example, the Joint Commission on Accreditation of Hospitals is a non-governmental certification process which is recognized by law. The Department has recognized the Alcohol and Other Drugs of Abuse Counselor Certification Board of New Jersey as qualified to certify alcohol and drug abuse counselors. This is what the Department meant by "certified by the State." The Department may also recognize similar boards from other states or national boards. The Department may also choose to establish its own certification process. To clarify the definition, it was changed to allow certification by the Alcohol and Other Drugs of Abuse Counselor Certification Board of New Jersey.

3. COMMENT: The definition of "intensive outpatient treatment" and N.J.A.C. 8:66A-4.5 needs clarification (as to the length of treatment.)

RESPONSE: The Department concurs in part. The definition of intensive outpatient treatment is clear as to the length of treatment. N.J.A.C. 8:66A-4.5 has been changed to clarify the criteria for sending someone to outpatient treatment.

4. COMMENT: There was a confusion between N.J.A.C. 8:66A-2.1(c)2 and N.J.A.C. 8:66A4.8 in that the former states that the IDRC refers clients to treatment programs and the latter states that the client chooses the program.

RESPONSE: The Department concurs in part. In most cases, the client selects the treatment program. The Intoxicated Driving Program selects the plan of treatment or treatment level. However, there are cases where in the best interest of the client, the Intoxicated Driving Program will choose a particular program. This has been provided for in N.J.A.C.

8:66A-4.8(c). To clear up the confusion, the chapter was changed to include the word "level", where appropriate. The Department changed proposed N.J.A.C. 8:66A-4.8(c) to delete the word "state" as it is repetitive with "condition".

5. COMMENT: N.J.A.C. 8:66A-2.3 allows for referral to the Intoxicated Driver Resource Center/Intoxicated Driving Program for interview and subsequent action of persons not convicted of DWI. This is an expansion of the program and might be abused. In addition, there should be an appeal process.

RESPONSE: The Department disagrees and has had the authority under the previous rules (N.J.A.C. 8:66-1.4) to evaluate persons who may pose a public threat due to driving and drug use and alcohol use. A driving privilege is not a right, it is a privilege granted by the State. The State does not have to wait until a person is convicted of a motor vehicle offense before suspending a license. For example, the Division of Motor Vehicles can suspend a license due to an injury or illness that makes a person unsafe. These determinations are made by the Division of Motor Vehicles Medical Review Board.

The Intoxicated Driving Program receives complaints on an occasional basis about drivers who pose a public threat. For example, a mother will contact the Department regarding her husband who drinks alcohol and takes the children out in the car, or a physician will report an elderly patient who is a chronic alcoholic and has had accidents. This rule is intended to protect public safety in these situations.

Due process is protected by N.J.A.C. 8:66A. First, the Department must receive a referral in writing. A copy of the written referral is provided to the person to be evaluated. The Department does not have the power to suspend the license; the Department merely recommends it to the Division of Motor Vehicles. The Division of Motor Vehicles will then make its own independent evaluation and decide to suspend or not. However, the Department can offer its expertise and make a non-binding recommendation. The Department will testify at any Division of Motor Vehicles hearing on the issue.

In order to clarify the procedure, the Department inserted language at N.J.A.C. 8:66A-2.3(a) indicating that the written referral shall go to the Chief of the Intoxicated Driving Program.

6. COMMENT: Under N.J.A.C. 8:66A-2.4, there is no discussion of offenders referred to the Intoxicated Driver Resource Center for a third or additional offense.

RESPONSE: The Department concurs. Persons convicted of three or more offenses shall attend the first offender program and pay the same fees as first offender clients. All such offenders have already completed a jail or residential treatment sentence. The Department has changed N.J.A.C. 8:66A-2.4 and 6.12 to clarify that all persons convicted of three or more alcohol offenses are sent to treatment for a full year and must attend the Intoxicated Driver Resource Center as required by N.J.S.A. 39:4-50 et seq.

7. COMMENT: Some counties use private agencies to run the Intoxicated Driver Resource Center and these agencies can also take Intoxicated Driver Resource Center treatment referrals. Is this not a conflict of interest?

RESPONSE: The Department disagrees. The driving under the influence statute, N.J.S.A. 39:4-50(f), states that "Nothing in the subsection shall bar these centers [the IDRC's] from establishing their own education and treatment programs, provided they are approved by the Division of Alcoholism". By law, the IDRC's can treat clients. In addition, the Department believes this is an issue for the counties to resolve, since the Intoxicated Driver Resource Center personnel are county employees or under a county contract; hence, the Department requires the counties to determine if a conflict exists.

8. COMMENT: N.J.A.C. 8:66A-4.5 needs to lay out treatment levels in ascending or descending order of criteria for movement to more or less treatment.

RESPONSE: The Department disagrees and believes that the levels are properly laid out, since the Department needed to state the criteria for inpatient prior to discussing intensive outpatient. How a client moves from one level to the other is laid out except for intensive outpatient; therefore, the Department added a sentence to N.J.A.C. 8:66A-4.5(c) regarding intensive outpatient.

9. COMMENT: Please provide a definition of "an operator qualified under State law" in N.J.A.C. 8:66A-4.6.

RESPONSE: The Department has not adopted this section and will evaluate the text further.

10. COMMENT: When donating a specimen for a chemical test, under N.J.A.C. 8:66A-4.7, a person should have privacy, and, if observed, it should be by a person of the same sex.

RESPONSE: Chemical testing for clients (N.J.A.C. 8:66A-4.6 and 4.7) will not be adopted because the Attorney General's Office wants to study it further. Chemical testing rules will be proposed in the future.

11. COMMENT: Add alcohol to the list of drugs to be tested for under N.J.A.C. 8:66A-4.7(d).

RESPONSE: Chemical testing will not be adopted, as stated in the response to Comment 10.

12. COMMENT: Clients should not be allowed to select their own treatment programs under proposed 8:66A-4.8(b).

RESPONSE: The Department disagrees. All of its treatment programs are approved by the Department and are competent to treat alcohol and drug abuse. The Department believes that clients should select their own treatment. This gives clients an opportunity to choose a program based on location, price, and other factors important to the clients. The Department believes that this will help to ensure that clients complete treatment.

COMMENTER: Comments were received from the Division of Motor Vehicles.

13. COMMENT: The statutory name of the agency is the Division of Motor Vehicles, not Motor Vehicles Services as was provided in the rules.

RESPONSE: The Department concurs and has made the appropriate changes in the text.

14. COMMENT: The Director of the Division of Motor Vehicles needs flexibility in deciding what bureau or unit performs which functions; therefore, delete all references to specific Division of Motor Vehicles units.

RESPONSE: The Department concurs and has made the appropriate changes throughout the text.

15. COMMENT: Delete all references when it appears that the Intoxicated Driving Program can suspend licenses; only the Division of Motor Vehicles has the authority to suspend licenses.

RESPONSE: The Department concurs and has made the appropriate change in the text.

16. COMMENT: The Division of Motor Vehicles was concerned about due process afforded to clients prior to any request on the part of Intoxicated Driving Program that a client's driving privilege be suspended.

RESPONSE: The Department met with Division of Motor Vehicles officials and discussed the due process afforded offenders. Clients are afforded due process as follows: First, clients are given a hearing in court on their guilt or innocence on the charge of intoxicated driving. If they are found guilty or plead guilty, they receive a written court order instructing them regarding the court's sentence as to fine and license suspension. In addition, the order states, "Defendant must satisfy screening, evaluation, education or treatment referral, and program requirements of the Bureau of Alcohol Countermeasures and Intoxicated Driver Resource Center. Defendant's failure to attend the IDRC when notified or failure to satisfy any of the above requirements shall result in license suspension until such requirements are met and two days imprisonment in county jail." The client then signs the order under the following certification, "I understand the consequences of failure to meet the requirements of the above referenced program. I further certify the above described defendant information is correct and acknowledge receipt of a copy of and understand the ORDER".

Thus, the client, after a due process hearing, has been convicted and ordered to attend the IDRC and any ordered referral and is provided with a written notice via the court order.

The driving under the influence law, N.J.S.A. 39:4-50, provides that the IDRC's shall, "develop individualized treatment plans for all persons attending the IDRC centers, provided that the duration of any ordered treatment or referral shall not exceed one year." (N.J.S.A. 39:4-50(f))

The statute also states that, "These centers shall have the capability of serving as community treatment and referral centers and as court monitors of a person's compliance with ordered treatment, service alternatives or community service." (N.J.S.A. 39:4-50(f))

In essence, the Intoxicated Driver Resource Center/Intoxicated Driving Program is similar in function to the Probation Department. The issue of a person's possible referral to the Intoxicated Driver Resource Center or treatment has been decided by a judge and made part of a judicial order. In the case of probation, a judge could order a person convicted of a crime "to be evaluated for an alcoholism problem by the Probation Department and, if appropriate, to treatment for the term of probation." The sentence to the Intoxicated Driver Resource Center/Intoxicated Driving Program is similar.

Clients are sent to treatment by the Intoxicated Driver Resource Center/Intoxicated Driving Program only after a thorough evaluation based on objective standards. The definition of alcohol and drug abuser

comes from State statutes and from the American Psychiatric Association. Prior to going to treatment, the client then signs a treatment agreement. In addition, the rules provide that the treatment program has to perform its own independent evaluation and concur with the treatment decision. The client is then given a treatment plan which is explained and which the client signs.

If, in the judgment of the Intoxicated Driving Program/Intoxicated Driver Resource Center Program, the client does not comply, a non-compliance report is filed with the sentencing court. The court will provide a due process hearing when the client is returned to the court.

On a typical noncompliance situation, prior to being sent to the court by Intoxicated Driver Resource Center/Intoxicated Driving Program, the rules provide that the client shall have at least two warning letters sent to him or her regarding the noncompliance. The letters request that the client contact the Intoxicated Driver Resource Center/Intoxicated Driving Program to resolve the matter prior to being sent to court. Furthermore, prior to having his or her driving privileges suspended by the Division of Motor Vehicles, a client can request a hearing at Division of Motor Vehicles.

The above protections provide for more due process than that provided to any similar class of offender.

17. COMMENTS: The Division of Motor Vehicles had comments regarding the definitions in the rules. Those comments are provided below:

N.J.A.C. 8:66A-1.2 Definitions

"Alcohol or drug related offense"

1. It does not appear that there is any requirement that a passenger or driver who violates N.J.S.A. 39:4-51(a) must submit to an IDRC program.

2. It is suggested that the term "operating" be substituted for driving.

3. It is suggested that the term "submit to" be substituted for the term "take".

4. It is suggested that any reference to "fatal accident settlement stipulation" be removed. The circumstances where an individual is required to attend such a program as a result of a settlement with the Division of Motor Vehicles is adequately dealt with in those portions of the proposed rule dealing with the ability of the program to accept referrals.

5. N.J.S.A. 39:4-51(a) does not apply to boats or vessels. "Motor vehicle" as used in this statute is defined in N.J.S.A. 39:1-1 and Title 12 is applicable to boats or vessels.

6. "Blood alcohol concentration"

This term is not otherwise defined in Title 39 or Title 12 of the New Jersey Statutes. It may not be necessary to define it in these rules. It is believed that the precise meaning of this term has been the subject of much litigation in the courts and that if the IDRC does not attempt to define it in connection with these rules, then the term would receive the definition attributed to it under the statute and case law.

RESPONSE: The Department concurs with all of the above comments and has changed the rule text accordingly.

18. COMMENT: With regard to the term "conditional restoration", it is suggested that this definition be deleted. As indicated above, the matter of licensing of drivers and the restoration of driving privileges rests exclusively with the Director of the Division of Motor Vehicles.

RESPONSE: The Department concurs that the DMV has the exclusive power to restore; however, the Department requests restorations. The Department has changed N.J.A.C. 8:66A-8.6 to reflect that the Department requests restoration, and has deleted and other references to conditional restoration. The Department has also deleted the definition for "chemical testing".

19. COMMENT: With regard to the term "first offender", it is suggested that it is not necessary to define this term, since it is a term already defined in the pertinent statutes.

RESPONSE: The Department disagrees and will leave the definition in the rules because it will be useful to attorneys and others who read them.

20. COMMENT: With regard to the term "intoxicated", it is suggested that it may not be necessary to define this term since it is a term of art which has been defined in the case law.

RESPONSE: The Department disagrees and has its own definition of intoxicated which is derived from the Alcoholism Treatment and Rehabilitation Act, N.J.S.A. 26:2B-7 et seq. That definition applies to public intoxication, which is how it is used in the rules. The Department will keep this definition as it is used for this limited purpose.

21. COMMENT: It is noted that N.J.A.C. 8:66A-2.1 says that the Program shall be notified of convictions by the Division. However, N.J.S.A. 39:4-50 says the sentencing court is the one which shall notify

the Program of conviction. It is suggested that this section be amended to conform to the statute.

RESPONSE: The Department concurs and has changed the text.

22. COMMENT: In subparts (a) and (b) of N.J.A.C. 8:66A-2.2, the Program purports to impose a suspension of driving privileges for nonappearance. It is suggested that the Program has no authority to suspend driving privileges nor can it grant such authority to any other agency or impose such a requirement on any other agency. The matter of license suspension is a regulatory matter left to another agency (that is, the Division of Motor Vehicles) or to the sentencing court. Accordingly, these sections are misleading in suggesting that it is the Program which imposes the suspension. Also, N.J.S.A. 39:4-50 requires the Intoxicated Driver Resource Center to notify the sentencing court of any noncompliance. The proposed rule indicates that reporting to the court is discretionary. The proposed rule should be changed to conform to the statute.

RESPONSE: The Department concurs and has changed the text accordingly.

23. COMMENT: In N.J.A.C. 8:66A-2.3(a), the proposed rule states that after consultation with the Division of Motor Vehicles the program may schedule an interview. There does not appear to be any reason for consultation with the Division in this regard. There is no statutory requirement for such consultation, nor is the Division shown to have any expertise which it may lend in the area of scheduling clients.

RESPONSE: The Department concurs and has deleted the language that refers to consultation with the Division of Motor Vehicles.

24. COMMENT: In N.J.A.C. 8:66A-2.3(b), it is suggested that the term "or investigation" be deleted, if the intent of that subsection is to indicate that there is some investigation on the part of the Division of Motor Vehicles.

RESPONSE: The Department concurs and the term "or investigation" has been deleted.

25. COMMENT: In N.J.A.C. 8:66A-2.4, IDP sets a fee of \$80.00 for intoxicated boaters. The legislation sets the fee at \$40.00.

RESPONSE: The Department concurs and has changed the section so that fees will comply with the statutes.

26. COMMENT: N.J.A.C. 8:66-2.5(a)3 is incorrect. The proposal suggests that it is the obligation of the Division of Motor Vehicles to refer to the sentencing court any person who fails to comply with the program or fee requirements. However, N.J.S.A. 39:4-50 provides that it is the obligation of the IDRC to advise the sentencing court of a failure to report. This section should be redrafted to conform to the statutory requirements.

RESPONSE: The Department concurs and has changed the rule accordingly.

27. COMMENT: N.J.A.C. 8:66A-3.2 refers to individuals required to satisfy Program requirements as "offenders". Such individuals may more properly be referred to as "persons".

RESPONSE: The Department concurs. The rule has been changed accordingly.

28. COMMENT: With regard to N.J.A.C. 8:66A-3.3(d), it is noted that the IDRC has no authority to suspend driving privileges. Thus, the suggestion that the license suspension is something that will take place regardless of whether or not the matter referred to the sentencing court is inaccurate.

RESPONSE: The Department concurs and has changed the text accordingly.

29. COMMENT: Regarding N.J.A.C. 8:66A-2.2, N.J.S.A. 39:4-50 requires the IDRC to notify the court if an individual does not appear at an initial screening session. Accordingly, the suggestion in the rule that there is some discretion as to whether or not to refer the matter to the sentencing court is inaccurate.

RESPONSE: The Department concurs and the text has been changed accordingly.

30. COMMENT: N.J.A.C. 8:66A-3.5 refers to the MF-1 card. Since such a card may not be available, particularly where the sentencing court is one that is part of the automated traffic system, it is suggested that any reference to this MF-1 card be deleted.

N.J.A.C. 8:66A-4.1(c)1 also refers to the MF-1 card.

RESPONSE: The Department concurs. The rules have been changed to replace "MF-1 card" with "record of the conviction".

31. COMMENT: In N.J.A.C. 8:66A-4.2, the term "repeat offender" is not defined in these rules. It is noted, however, that the term "repeater" is defined.

RESPONSE: The Department concurs. The rule has been changed accordingly.

32. COMMENT: The use of the term "blood alcohol concentration" should be considered in light of the issues raised in the pending appeal in the case of *State v. Downie*, 229 N.J. Super. 207, 550 A.2d 1313 (App. Div. 1988).

RESPONSE: The rule will not be amended, based upon the final decision in the case.

COMMENTER: Comments were received by telephone from the American Civil Liberties Union.

33. COMMENT: The American Civil Liberties Union requested that a provision be added to the rules regarding indigent clients which would clarify N.J.A.C. 8:66A-6.16.

RESPONSE: The Department concurs that language should be added which would allow clients to claim indigency. The text has been changed accordingly by the addition of subsection (b). This provision is in accordance with the affiliation agreement with the Department which is executed by all treatment programs which receive Intoxicated Driver Resource Center clients. This is also in accordance with the service provision policies of all counties in the State of New Jersey.

34. COMMENT: N.J.A.C. 8:66A-6.1(b) should be clearer on the information provided to the client regarding his or her responsibilities under the treatment plan.

RESPONSE: The Department concurs and has added a fourth sentence in the section regarding client responsibilities, and has changed N.J.A.C. 8:66A-6.4.

35. COMMENT: Define "certified" when discussing certified counselor in the definition of counselor.

RESPONSE: Certified refers to a person certified by the New Jersey Alcohol and Other Drug Counselor Certification Board, or similar boards in other states.

36. COMMENT: Does the requirement of abstinence in N.J.A.C. 8:66A-6.13(b)3 refer to all clients or just alcohol and drug abusers?

RESPONSE: It refers to alcohol or drug abusers. The Department has amended N.J.A.C. 8:66-6.13 in the third sentence of subsection (a) to clarify this.

37. COMMENT: In N.J.A.C. 8:66A-4.2(b)6 it appears that a poor driving record could be a reason to refer to treatment. This should be clarified.

RESPONSE: The Department concurs and has amended the text accordingly for clarification.

38. COMMENT: Concern was expressed about the extent of due process afforded to clients. For example, how may clients appeal treatment referrals or other orders of the Intoxicated Driver Resource Center/Intoxicated Driving Program? Should there be an appeal to the Intoxicated Driving Program unit or some other form of administration hearing? If a client decides that he or she does not need treatment after being referred to treatment, what recourse does the client have? If a client decides not to comply because of an honest disagreement, why not have the Intoxicated Driver Resource Center/Intoxicated Driving Program file a "reconsideration of sentence" document with the court instead of a "noncompliance report" which stigmatizes the client before the court.

RESPONSE: See the discussion in Comment number 16, above, regarding due process. The Department's clients get far more due process than other offenders who are sentenced for evaluation and treatment by the courts. The Department sees no need to change the name of the noncompliance report in case of an honest disagreement. The Department does not feel that this unfairly stigmatizes the clients. The Department bases its opinion on the study it did regarding its noncompliance reports and how the courts respond. In most cases, the courts refer the clients back to the Department to complete the program; they do not send them to jail or impose any further sanctions.

COMMENTER: The Department received comments over the telephone from Mothers Against Drunk Driving.

39. COMMENT: The definition of "intoxicated" in the proposed rules is vague.

RESPONSE: The Department disagrees. The definition is the one found in N.J.S.A. 26:2B-7, the Alcoholism Treatment and Rehabilitation Act, and the Department finds that it is satisfactory.

40. COMMENT: The section on treatment referral criteria (N.J.A.C. 8:66-4.2(b)6) mentions "persistent motor vehicle violations" instead of stating "serious moving violations". Moving violations should be used because they are the most serious.

RESPONSE: The Department concurs and has made changes, as previously mentioned in Comment number 37 above. Persistent violations of any type show a disregard for motor vehicle safety and the law and should be considered in making an evaluation.

41. COMMENT: The definition of Alcohol Safety Institute is not clear.

RESPONSE: The Department concurs and has changed the text accordingly.

42. COMMENT: Make N.J.A.C. 8:66A-6.4 more specific.

RESPONSE: The Department concurs. The rule needs to be more specific. The Department noted that there are two sections N.J.A.C. 8:66-6.4. They have been recodified. The Department recodified the first N.J.A.C. 8:66A-6.4, as N.J.A.C. 8:66A-6.5, and has changed the language in the other to be more specific.

43. COMMENT: In N.J.A.C. 8:66A-6.11 (now N.J.A.C. 8:66A-6.13), the word "drinking" should be changed to alcohol.

RESPONSE: The Department concurs and has changed the text accordingly.

44. COMMENT: In N.J.A.C. 8:66A-6.12 (now N.J.A.C. 8:66A-6.14(a)), it is better to say the client needs treatment instead of saying the client is treatment appropriate.

RESPONSE: The Department concurs and has changed the text accordingly.

45. COMMENT: Define "treatment program".

RESPONSE: This does not need a separate definition. It is a program which provides treatment as treatment is defined.

COMMENTER: The Department received telephone comments from Nathan Kirsch, Esq., a former Judge and the author of the **Guide to Hearing Drunk Driving Cases** published by the Intoxicated Driving Program.

46. COMMENT: The rules need a "client rights" section.

RESPONSE: This may be a topic for future rules, but cannot be added here because it is too a substantive change in the proposed rules.

47. COMMENT: Be more specific on the qualifications of counselor.

RESPONSE: N.J.S.A. 39:4-50 provides the minimum qualifications for IDRC directors by stating that they must be certified counselors or have five years experience in the treatment of alcoholism. Although requiring a certified person to perform treatment is desirable, the Department recognizes that many physicians, psychologists and social workers are qualified by training to perform these services, providing they have experience in lieu of certification. The Department will leave the qualifications as they are.

The Department is contemplating establishing its own Intoxicated Driver Resource Center/Intoxicated Driving Program certification program which, when implemented, will require that all persons performing treatment must be certified by the Intoxicated Driving Program. This is a subject for future rulemaking.

48. COMMENT: The proposed rules combine Intoxicated Driver Resource Center/Intoxicated Driving Program when stating various actions that can be taken. This is not clear.

RESPONSE: In many cases, the Intoxicated Driver Resource Center/Intoxicated Driving Program have joint authority, hence they are jointly mentioned in the rules.

49. COMMENT: Noncompliance is not defined.

RESPONSE: Noncompliance should be defined and the rules have been changed to include a definition.

50. COMMENT: The social impact statement should be expanded to stress that treatment is the goal.

RESPONSE: The Department believes that the goal is stressed throughout the rules.

51. COMMENT: In N.J.A.C. 8:66A-2.3, in the first sentence, delete the word "client" and insert "persons". Not all persons referred to the Department will be clients as it is defined in the proposed rules. In addition, the end of the sentence should read, "persons who are believed to be posing a public danger in the operation of a motor vehicle or vessel." The last sentence in N.J.A.C. 8:66A-2.3(a) should read "shall result in a referral to the Division of Motor Vehicles for appropriate action."

RESPONSE: The Department concurs and has changed the text accordingly.

52. COMMENTS: N.J.A.C. 8:66A-3.4(a) should read that the client is sentenced to jail or workhouse or an IDRC, at N.J.A.C. 8:66A-3.4(c), second offenders who go to treatment should be scheduled for an IRDC.

RESPONSE: The Department concurs and has changed the rule by inserting "or an" as above and has added text to N.J.A.C. 8:66A-3.4(b) and (c) to clarify when a second offender will be referred to the 48 hour or 12 hour IDRC.

53. COMMENT: Clarify how treatment programs are to monitor clients under N.J.A.C. 8:66A-4.4.

RESPONSE: Treatment programs shall monitor clients on a weekly basis and keep a weekly record on the client status. The Department has

changed the rule by deleting the first and third sentences of N.J.A.C. 8:66A-4.4 and inserting clarifying language.

54. COMMENT: N.J.A.C. 8:66A-5.2(b) is too vague, and does not set adequate standards.

RESPONSE: The Department concurs and will not adopt this section, but will repropose it in a future proposal.

55. COMMENT: In N.J.A.C. 8:66A-6.9 (changed to N.J.A.C. 8:66A-6.11), to not use the term "time served"; instead, use the word "attendance".

RESPONSE: The Department concurs and has amended the text accordingly, as well as N.J.A.C. 8:66A-6.18.

56. COMMENT: In N.J.A.C. 8:66A-8.6, the Department assumes that a court in finding noncompliance will allow further treatment. The rule should allow for a different court order.

RESPONSE: The requirements set out are the Program's requirements. The courts are always free to order additional requirements.

COMMENTERS: Other verbal comments were received from the IDRC directors and staff and are provided below.

57. COMMENT: Define affiliation agreement mentioned in N.J.A.C. 8:66A-5.2(a)7.

RESPONSE: The Department concurs on the need for a definition and has inserted a definition.

58. COMMENT: In N.J.A.C. 8:66A-4.1(c) add the court order to the items sent to the treatment program.

RESPONSE: The Department concurs and has added the item as paragraph (c)8.

59. COMMENT: Specimen collection under N.J.A.C. 8:66A 4.6 should be performed by persons or organizations licensed to do so.

RESPONSE: Chemical testing will not be adopted. See the response to Comment number 10 above.

60. COMMENT: N.J.A.C. 8:66A-6.6 does not allow for enough self help group meetings. Some clients need more than one or two a week.

RESPONSE: The Department concurs and has increased the maximum by one for self help in lieu of treatment and as an adjunct to treatment. The Department has moved the third sentence to provide that if a client is sent to the maximum number of meetings, the reasons must be documented. The erroneously codified two N.J.A.C. 8:66A-6.6 sections, as proposed have been recodified as N.J.A.C. 8:66A-6.7 and 6.8.

REPEAL NOT ADOPTED:

In the Proposed rule changes published in the October 16, 1989, New Jersey Register (21 NJR 3283) the Department proposed a repeal of the existing rules (N.J.A.C. 8:66). We have decided not to adopt the repeal at this time because there are a number of clients who N.J.A.C. 8:66 still applies to.

61. COMMENT: In N.J.A.C. 8:66A-6.8 (adopted as N.J.A.C. 8:66A-6.10), the term "friends" should be substituted for "significant other".

RESPONSE: The text was changed accordingly.

62. COMMENT: N.J.A.C. 8:66A-6.12 (adopted as N.J.A.C. 8:66A-6.14(a)) does not provide guidelines on what will happen to a client when referred back to the Intoxicated Driver Resource Center/Intoxicated Driving Program when after the initial interview a treatment program decides the client does not need treatment.

RESPONSE: The Department agrees that guidelines are not provided and, in order to limit the discretion of the Intoxicated Driver Resource Center/Intoxicated Driving Program, the text has been changed on adoption to provide greater rights for the clients. The Department has statutory authority to refer people for treatment without the second opinion. The second opinion is provided by the treatment program, when the client is referred to the treatment program. If the treatment program disagrees with the referral, the Department would still have the authority to override the treatment program's recommendation and to mandate treatment. Through the provisions of the amendment made on adoption, the Department is permitting the client to obtain a third opinion on the necessary treatment. If the third opinion disagrees with the Department's decision, the Department would not override the opinion and mandate treatment, but would refer the client to the court for a due process hearing. Thus, the amendment on adoption provides the client with the benefit of two independent opinions and a due process hearing.

63. COMMENT: There appears to be a discrepancy in the rules regarding the lists of agencies who can review information when a client signs the record release authorization. In some cases, the court or the Intoxicated Driver Resource Center is not included.

RESPONSE: The court and the Intoxicated Driver Resource Center should be included in the list of agencies who can receive information from a records release authorization. This was the Department's intent, as was shown in N.J.A.C. 8:66A-4.1(d). Where appropriate, these changes

ADOPTIONS

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have been made. The Department also noted that there was an issue of client confidentiality at N.J.A.C. 8:66A-6.10, in that the Department was attempting to involve the client's family or friends in the treatment process. The Department does not want clients to feel pressured to breach their confidentiality to involve family and friends; therefore, language has been added at N.J.A.C. 8:66A-6.10 that makes it clear that the client is not obligated to reveal to family or friends that he or she is in treatment.

Additionally, the Department has deleted text at N.J.A.C. 8:66A-7.1(a)5, since it is appropriate to maintain contact with clients, for evaluation and education purposes.

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

8:66-1.1 Purpose and scope

The purpose of this ***[regulation]* *chapter*** is to improve the driving behavior of individuals who have been identified as having some alcohol involvement in connection with the operation of a motor vehicle. ***This chapter shall apply to all persons convicted on or before October 4, 1984, pursuant to N.J.S.A. 39:4-50, and any other motor vehicle violation, who must complete a program of alcohol education, evaluation and treatment in connection with the offense.***

CHAPTER 66*A*

INTOXICATED DRIVING PROGRAM

SUBCHAPTER 1. INTOXICATED DRIVING PROGRAM/
INTOXICATED DRIVER RESOURCE
CENTER8:66*A*-1.1 Purpose and ***[Scope]**scope***

The purpose of this chapter is to improve the driving behavior of individuals who have been identified as having some alcohol or drug involvement in connection with the operation of a motor vehicle or vessel. The chapter applies to all county Intoxicated Driver Resource Centers, all approved treatment programs, and the Department of Health, and all individuals convicted in New Jersey of a drug or alcohol offense related to the operation of a motor vehicle or vessel.

8:66*A*-1.2 Definitions

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

"Affiliation agreement" means a written contract wherein the treatment program in consideration of being approved agrees to abide by State rules.

"Alcohol abuser" means any person who chronically, habitually, or periodically consumes alcoholic beverages to the extent that such use substantially injures his *or her*** health or substantially interferes with his ***or her*** social or economic functioning in the community on a continuous basis, or he or she has lost the power of self control with respect to the use of such beverages. The Diagnostic and Statistical Manual on Mental Disorders (DSM III) of the American Psychiatric Association shall be used as a guide in evaluating this definition.**

["Alcohol Safety Institute" (ASI) means the designation of clients not referred to treatment after being evaluated at the Intoxicated Driver Resource Center.]* **"Alcohol Safety Institute" (ASI) means the designation given to clients who have been evaluated by the Intoxicated Driver Resource Center/Intoxicated Driving Program and are not referred to treatment.**

"Alcohol or drug related offense" means a conviction by a court or a finding by *the*** Division of Motor Vehicles of ***[driving]* *operating*** under the influence, pursuant to N.J.S.A. 39:4-50 et seq. or N.J.S.A. 12:7-34.19 et seq. or N.J.S.A. 12:7-46 et seq. or refusal to ***[take]* *submit to*** a chemical test, pursuant to N.J.S.A. 39:4-50.4(a) et seq., or N.J.S.A. 12:7-57 et seq. ***[, a Fatal Accident Settlement Stipulation, or drug use while driving or as a passenger in a motor vehicle or boat pursuant to N.J.S.A. 39:4-51(a) or possessing drugs in a motor vehicle pursuant to N.J.S.A. 39:4-49.1 et seq.]*****

"Approved treatment agency" means an agency approved by the Intoxicated Driving Program for the education, rehabilitation and treatment of clients.

["Blood alcohol concentration" means the percentage of alcohol per milliliter of a person's blood.]

"Cancellation" means that a previous suspension has been rescinded and removed from the driver's abstract by the Division of Motor Vehicles.

["Chemical test" means a method of analyzing and determining the presence of alcohol or drugs or their metabolites in the human body.]

"Client" means a person who has been convicted of *an*** alcohol or drug related offense or other person who is referred or is otherwise within the jurisdiction of the Intoxicated Driving Program/Intoxicated Driver Resource Center program.**

"Counselor" means a person certified *[by]* *for*** the State of New Jersey ***by the Alcohol and Other Drugs of Abuse Counselor Certification Board of New Jersey*** or another state to counsel alcohol abusers or drug abusers, or a person with five years continuous experience in the treatment of alcohol or drug abusers.**

["Conditional restoration" means the restoration of a driver's license on the condition that all requirements will be satisfactorily completed.]

"Didactic" means group education using lectures, group interaction or audio visual aides.

"Drug abuser" means a person who is using a controlled dangerous substance or other drug and who is in a state of psychic or physical dependence, or both, arising from the use of that controlled substance on a continuous basis. Drug abuse is characterized by behavioral and other responses, including^{*}, but not limited to, a strong compulsion to take the substance on a recurring basis in order to experience its psychic effects, or to avoid the discomfort of its absence. The Diagnostic and Statistical Manual on Mental Disorders of the American Psychiatric Association (DSM III) *[may]* *shall*** be used as a guide in evaluating persons under this definition.**

"First offender" means a person who is convicted once, pursuant to N.J.S.A. 39:4-50 *[et seq.]*** or N.J.S.A. 12:7-34.19 or N.J.S.A. 12:7-46 ***[et seq.]*** within the statutory time period, or is convicted of a refusal to take a chemical test in conjunction with one of the above offenses.**

"First offender program" means the program administered by county Intoxicated Driver Resource Centers for evaluation and referral for first offenders which may also be used to evaluate other offenders or referrals for evaluation. *The program normally consists of six hours a day for two consecutive days for a total of 12 hours.*****

"Intoxicated driving program" means the unit within the Division of Alcoholism and Drug Abuse responsible for administering the *[state]* *State*** post-conviction evaluation and referral program for persons convicted of alcohol or drug related offenses.**

"Incapacitated" means the condition of a person who is:

1. Unconscious, as a result of the use of alcohol or drugs, or whose judgment is so impaired that the person is incapable of realizing and making a rational decision with respect to his ***or her*** need for treatment;

2. In need of substantial medical attention; or

3. Likely to suffer substantial physical harm (N.J.S.A. 26:2B-7)

"Inpatient *[Treatment]* *treatment***" means treatment within a residential treatment facility.**

"Intensive outpatient treatment" means outpatient treatment for a client who meets the criteria for inpatient treatment and who is required by the Intoxicated Driver Resource Center/Intoxicated Driving Program, in lieu of inpatient treatment, to attend more than the normal 16 sessions of outpatient treatment within a 16 week period.

"Intoxicated" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or drugs.

"Intoxicated Driver Resource Center" (IDRC) means the personnel and facilities approved by the Intoxicated Driving Program^[:] which determine, on the basis of an evaluation instrument and counselor evaluation and other information, the extent, if any, of a client's alcohol or drug related problem and which monitor and report on referrals to approved treatment programs.

"Multiple offender" means a client with three or more intoxicated driving related offenses.

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"New law client" means those clients arrested for a violation of N.J.S.A. 39:4-50 [et seq.] after October 4, 1984.

"Noncompliance" means when a client or other person who has been convicted of an alcohol or drug related offense or who is otherwise under the jurisdiction of the Intoxicated Driver Resource Center/Intoxicated Driving Program, refuses, neglects, or inadvertently fails to comply with any ordered referral or evaluation or appointment for education, evaluation, or treatment or who fails to pay the appropriate fees.*

"Old law client" means those clients arrested for a violation of N.J.S.A. 39:4-50 et seq. before October 4, 1984.

"Out of [state]* **State**" means an out of [state]* **State** resident who is convicted in New Jersey of an alcohol or drug related driving offense.

"Outpatient treatment" means non-residential treatment.

"Recidivist" means a client who has been convicted of an alcohol or drug related driving offense and who has completed the Intoxicated Driver Resource Center/Intoxicated Driving Program or its predecessor, and who has been convicted again of an alcohol or drug related driving offense.

"Refusal offense" means a conviction under N.J.S.A. 39:4-50.4(a) or N.J.S.A. 12:7-57.

"Repeater" means a client with two alcohol or drug related offenses.

"Restoration" means driving privileges have been restored after suspension.

"Roster" means a list of clients scheduled to attend an Intoxicated Driver Resource Center.

"Second offender" means a person convicted of two offenses of N.J.S.A. 39:4-50 or N.J.S.A. 12:7-46 or N.J.S.A. 12:7-34.19 within the statutory time period, or two offenses of refusal to take a chemical test under N.J.S.A. 39:4-50.4(a) [et seq.] or N.J.S.A. 12:7-57 [et seq].*

"Second offender program" means the Intoxicated Driver Resource Center program for second offenders. ***This program normally consists of 48 consecutive hours.***

"Self help group" means a peer support group.

"Treatment" means a structured intervention into a client's drinking or drug use, care for alcohol or drug abuse or related problems.

"Z client" means a New Jersey licensed driver convicted of an alcohol or drug-related offense in another state or country who has been ordered to attend alcohol or drug abuse education, evaluation or treatment.

SUBCHAPTER 2. ACTIONS SUBSEQUENT TO CONVICTION FOR N.J.S.A. 39:4-50 OR N.J.S.A. 39:4-50.4(a) OR N.J.S.A. 12:7-57 [ET SEQ.] OR N.J.S.A. 12:7-34.19 [ET SEQ.] OR N.J.S.A. 12:7-46 [ET SEQ.]

8:66*A*-2.1 Notification and evaluation

(a) The Intoxicated Driving Program shall be notified of every conviction for violation of N.J.S.A. 39:4-50 and N.J.S.A. 39:4-50a and N.J.S.A. 12:7-54; N.J.S.A. 12:7-34.19 and N.J.S.A. 12:7-46 and 12:7-57 through (by) [the Bureau of Violation Records of the Division of Motor Vehicle Services]* ***the sentencing court***.

(b) The Intoxicated Driving Program shall schedule persons who have been convicted as described in (a) above*[,*] for an interview and evaluation at an appropriate Intoxicated Driver Resource Center.

(c) The Intoxicated Driver Resource Center shall take the following types of actions:

1. Evaluate and interview all persons referred to the Intoxicated Driver Resource Center by the Intoxicated Driving Program; and
2. Refer a person to an appropriate treatment [program]* ***level*** upon completion of detention at the Intoxicated Driver Resource Center based upon the evaluation instrument, counselor evaluations, the driving record, blood alcohol concentration and other relevant information*[,*] the Intoxicated Driver Resource Center]*.

8:66*A*-2.2 Failure of client to appear or comply

(a) Failure on the part of the client to appear at an Intoxicated Driver Resource Center shall result in a ***referral to Division of Motor Vehicles for appropriate action*** [suspension of New Jersey driving

privileges]*, and, [if appropriate,]* referral to the court of conviction [for the imposition of a jail sentence and other penalties]* ***for appropriate action***.

(b) Failure on the part of the client to comply with the course of action or fee schedule required by the Intoxicated Driving Program/Intoxicated Driver Resource Center or the course of action at an approved treatment agency shall result in [suspension of New Jersey driving privileges]* ***referral to the Division of Motor Vehicles for appropriate action***, and, if appropriate, referral to the court of conviction [and imposition of a jail sentence and other penalties]* ***for appropriate action***.

8:66*A*-2.3 Authorized referrals to the Intoxicated Driving Program

(a) The ***Chief of the*** Intoxicated Driving Program may receive referrals in writing from courts, Motor Vehicle licensing authorities, highway safety agencies, law enforcement agencies, physicians, or [client]* family members, health agencies or social service agencies regarding persons ***who are believed to be posing a public danger in the operation of a motor vehicle or vessel*** [who are posing a public danger by alcohol and/or drug abuse while driving. After consultation with the Division of Motor Vehicles, the]*. ***The*** Intoxicated Driving Program may schedule an interview with the individual at an appropriate Intoxicated Driver Resource Center or the office of the Intoxicated Driving Program for evaluation and appropriate action [under N.J.A.C. 8:66-1.3(a)].* A copy of the referral document will be given to the client at the time of the interview. Client failure to attend the interview or any ordered treatment or referral under this chapter shall result in a [request by the Intoxicated Driving Program to the Division of Motor Vehicle Services to suspend the client's driver license]* ***referral to the Division of Motor Vehicles for appropriate action***.

(b) The Intoxicated Driving Program may receive referrals from any Motor Vehicle Services hearing [or investigation]* in which it is determined that alcohol or drugs may have been involved in the operation of a motor vehicle or vessel, independent of court findings reported to the Division as a result of court action for an alcohol or drug related offense.

(c) The Intoxicated Driving Program may refer a licensee who is referred as a result of a Motor Vehicle Services hearing to a treatment or a rehabilitation program.

8:66*A*-2.4 Fees

[(a)]* Fees shall be paid in accordance with [N.J.S.A. 39:4-50 et seq. A fee of \$80.00]* ***the statutory fees in N.J.S.A. 39:4-50, N.J.S.A. 39:4-50.4, N.J.S.A. 12:7-57, N.J.S.A. 12:7-34.19, or N.J.S.A. 12:7-46 or any amendment thereto and*** shall be payable [to]* ***as designated by*** the Division of Alcoholism and Drug Abuse, from every person each time the person is ***convicted of an alcohol or drug related offense***. [required to satisfy the requirements of a program of alcohol or drug education or rehabilitation under the provisions of this section. A fee of \$50.00 per day shall be payable to the Intoxicated Driver Resource Center for first offenders. A fee of \$75.00 per day shall be payable to the Intoxicated Driver Resource Center for second offenders.]* These fees are owed and due upon conviction, ***pursuant to N.J.S.A. 39:4-50***. [if]* ***If*** the conviction is after October 9, 1986, and upon referral or evaluation to Intoxicated Driver Resource Center/Intoxicated Driving Program Unit if the conviction was prior to October 9, 1986.

8:66*A*-2.5 Authorized license actions*[; appeal]*

(a) The Intoxicated Driving Program may recommend to the [Driver Improvement and Control Services Bureau of the]* Division of Motor Vehicle*s* [Services]* and to the sentencing court the following types of license actions:

1. Full restoration of New Jersey driving privileges upon termination of a court imposed suspension; ***or***
2. [Imposition of conditions in order to retain driving privileges;
3. Referral to the sentencing court of any person who fails to comply with the program or fee requirements; or
- 4.]* Suspension of the driver's license if he or she fails to comply with the Intoxicated Driving Program/Intoxicated Driver Resource Center program or fee requirements.

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[(b) When any action against a driver's license is recommended by the Intoxicated Driving Program, the Driver Improvement and Control Services Bureau and the court will afford the individual all the rights guaranteed to him under the applicable State law and the Division of Motor Vehicle Services regulation on administrative hearings.]

8:66*A*-2.6 Conflict of interest

The county freeholders, through the county counsel or solicitor, shall be responsible for initial enforcement of penalties for conflict of interest, in accordance with county conflict of interest standards, on the part of the Intoxicated Driver Resource Center. A letter is required to be provided from the county counsel or solicitor who shall notify the Intoxicated Driving Program in writing that the Intoxicated Driver Resource Center treatment referral process is not in conflict of interest. Should there be a change in the treatment referral process, it shall be approved by the county counsel or solicitor and a new letter provided to Intoxicated Driving Program prior to initiating the change. If an Intoxicated Driver Resource Center wishes to employ staff who are also working for an approved treatment program, a procedure to avoid conflict of interest shall be established by the Intoxicated Driver Resource Center and approved by the county counsel or solicitor.

8:66*A*-2.7 Intoxicated Driver Resource Center Income and Expenditure Report

(a) At the beginning of each calendar year, each Intoxicated Driver Resource Center shall submit an income and expenditure report to the Intoxicated Driving Program, which shall include information on:

1. Salary and fringe;
2. Rental costs for office;
3. Supplies;
4. Travel;
5. Maintenance of building;
6. Equipment purchase and rental;
7. Telephone;
8. Computer-data processing;
9. Printing and copying;
10. Security;
11. Staff training;
12. Subcontractors;
13. Fee collections; and
14. Other expenses.

8:66*A*-2.8 Curriculum

(a) The information provided in the Intoxicated Driver Resource Center curriculum shall be approved by the Intoxicated Driving Program.

(b) Suggestions for changes to the curriculum shall be submitted in writing to the Chief of the Intoxicated Driving Program.

(c) The Chief of the Intoxicated Driving Program shall have authority to alter and approve the curriculum after consultation with the Intoxicated Driver Resource Center Directors.

8:66*A*-2.9 Confidentiality of computer data base

Access to all Intoxicated Driver Resource Center computer data files shall be limited to intoxicated Driver Resource Center or Intoxicated Driving Program personnel, through a coding mechanism.

8:66*A*-2.10 Data collection

The Intoxicated Driver Resource Centers shall file monthly data reports with the Intoxicated Driving Program.

SUBCHAPTER 3. ATTENDANCE AND SCHEDULING AT AN INTOXICATED DRIVER RESOURCE CENTER

8:66*A*-3.1 Scheduling

All initial scheduling shall be done by the Intoxicated Driving Program or an Intoxicated Driver Resource Center. If scheduling is done by the Intoxicated Driving Program, the Intoxicated Driver Resource Center shall advise the Intoxicated Driving Program of the number of clients they wish to routinely schedule.

8:66*A*-3.2 Scheduling clients convicted of refusal to take a chemical test

[Offenders] *Persons* who are convicted of refusing a chemical test, but who are not convicted of intoxicated driving, are required to participate in the Intoxicated Driving Program/Intoxicated Driver Resource Center program of education, evaluation, and referral to any education or treatment program. The Intoxicated Driving Program shall refer the driver to an Intoxicated Driver Resource Center in accordance with N.J.S.A. 39:4-50.4(a) et seq. or N.J.S.A. 12:7-57 et seq. for this program.

8:66*A*-3.3 Rescheduling

(a) Upon or after the initial scheduling of a client for attendance at the Intoxicated Driver Resource Center, a first rescheduling may be granted by the Intoxicated Driver Resource Center upon client request.

(b) A second rescheduling may be granted for the following reasons only:

1. Health emergency, either personal or family;
2. Death in the family within *[ten]* *10* days prior to scheduled appointment;
3. Documented work emergency; or
4. Family emergency.

(c) The reasons or instances in (b) 1-4 above shall be proved by documentation, such as a physician's letter, obituary notice or a letter from an employer.

(d) Persons who fail to attend without having been excused by the IDRC Director shall be found in non-compliance ***and shall be referred to the sentencing court and the Division of Motor Vehicles for appropriate action*** *[and shall have their license suspended and/or be referred to the sentencing court for additional penalties]*.

8:66*A*-3.4 *[48]* *Forty-eight* hour detainment of second offenders who have been in jail or treatment

(a) A person convicted for a second offense pursuant to N.J.S.A. 39:4-50 et seq. or N.J.S.A. 12:7-46 or 12:7-34.19 et seq. shall be imprisoned at a jail or workhouse *[and]* *or an* Intoxicated Driver Resource Center or inpatient program for at least 48 consecutive hours and satisfy the other program requirements.

(b) A second offender sentenced by the court to imprisonment or inpatient treatment for at least 48 hours ***or who is given detention credit for 48 hours of inpatient treatment by a court*** shall be scheduled ***by the Intoxicated Driver Resource Center/Intoxicated Driving Program*** *[for a 12 hour Intoxicated Driver Resource Center]* ***for a first offender program*** in his or her county of residence. ***All other second offenders shall be scheduled for the second offender program for evaluation and referral.***

(c) A second offender who goes to inpatient treatment ***without a sentence by a court before or*** after sentencing but before scheduling at an Intoxicated Driver Resource Center shall not be given credit for detention unless approval is given by the court.

(d) A person sentenced to a 48 hour Intoxicated Driver Resource Center shall be scheduled there, or if such a facility is not available, referred to an appropriate facility for 48 hours.

8:66*A*-3.5 Transfers from one county to another prior to initial attendance at an Intoxicated Driver Resource Center

(a) A client may be transferred from one county to another. The recipient Intoxicated Driver Resource Center shall not be responsible for any administrative client details until a transfer form is received. A transfer form shall be sent by the transferring Intoxicated Driver Resource Center and shall include: The original abstract from the Intoxicated Driving Program, the record of the conviction ***[(MF-1 form)]***, the original scheduling notice from Intoxicated Driving Program and a noncompliance form, if one has been issued. If a client has a new address, it shall be noted. Upon receipt of the transfer documents, the recipient county shall become responsible for all administrative procedures. Once the transferring Intoxicated Driver Resource Center transfers client records, it shall no longer process any documents pertaining to the client but shall send them to the recipient Intoxicated Driver Resource Center.

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(b) The Intoxicated Driver Resource Center transferring the client shall note on the roster, opposite the name of the client, the Intoxicated Driver Resource Center to which the client has been transferred. The Intoxicated Driver Resource Center receiving the client shall add the client's name to its roster and indicate the Intoxicated Driver Resource Center from which the client was transferred. The transferring Intoxicated Driver Resource Center shall forward all client records (maintaining a copy) to the receiving Intoxicated Driver Resource Center with a brief statement of the reason for the transfer. The receiving Intoxicated Driver Resource Center shall be responsible for collection of fees, treatment monitoring, and follow up, to include maintenance of client records. Once the client has been evaluated and referred, he *or she* remains in the control of the receiving Intoxicated Driver Resource Center.

8:66*A*-3.6 Second offender treatment scheduling

If a 48 hour program sends a second offender to treatment, the Intoxicated Driver Resource Center in the client's home county shall monitor treatment. All client records shall be sent to the monitoring county.

SUBCHAPTER 4. EVALUATION AND TREATMENT PROCEDURES

8:66*A*-4.1 Evaluation procedures

(a) The evaluation instrument shall be distributed to each client at the beginning of the session on the first day of attendance at an Intoxicated Driver Resource Center.

(b) The client shall finish and return the evaluation instrument at the time requested. The test score shall be entered on the client screening evaluation scoring sheet in the space provided. Any observations by staff, which may be helpful to the counselor's evaluation, may be noted on this sheet.

(c) Referrals to ASI shall be so noted on the roster. Referrals to treatment or self help shall also be noted on the roster. If a client is referred to a treatment program, a packet shall be prepared for transmittal to the treatment program which shall include the following information:

1. The court's record of the conviction *[(MF-1 card)]*;
2. Driver abstract;
3. Client screening evaluation scoring sheet;
4. Agreements to participate in treatment;
5. Records release authorization form;
6. Answer sheet to the questionnaire; *[and]*
7. Autobiographical statement*[.]*; *and*

8. The court order.

(d) The records release authorization form shall be filled out to allow information to be released to the court, ***Intoxicated Driving Program,*** and the Division of Alcoholism and Drug Abuse, the treatment program, the Division of Motor Vehicle*s* *[Services]*, the Intoxicated Driver Resource Centers, and the client's attorney. In addition, the client may authorize any other persons to receive protected information by so indicating on the form.

8:66*A*-4.2 Criteria for client referral to treatment

(a) The purpose of Intoxicated Driver Resource Center screening is to identify clients who may be alcohol or drug abusers or who need a structured intervention into their alcohol or drug use.

(b) A referral to treatment or for further evaluation shall take into consideration the following facts as relevant to a client's need for treatment or further evaluation:

1. The client is a *[repeat offender]* ***repeater***;
2. A blood alcohol concentration of .15*[%]* ***percent*** or higher, as evidenced by the client's arrest record if he or she pled guilty, or if convicted at trial with a blood alcohol concentration of .15*[%]* ***percent*** or higher. Blood alcohol concentration shall only be used to refer where other supporting information exists that indicates a need for treatment;
3. A counselor's evaluation of answers on the evaluation instrument, based on the definition of alcohol or drug abuser;
4. Any prior outpatient or inpatient treatment for alcohol or drug abuse;

5. Any prior self help group attendance for an alcohol or drug abuse problem;

[6. Poor driving record. A poor driving record by itself may not be an indication of a serious alcohol or drug abuse. However, a motor vehicle or boat accident, accidents in conjunction with a driving under the influence or intoxicated boating, careless driving, reckless driving, or persistent motor vehicle violations over a period of years may be supporting evidence of a problem;]

6. Driving record. There must be a clear, independent reason for a treatment referral other than a driving record; however, a driving record which includes motor vehicle or boat accidents, reckless or careless driving, or persistent moving or other motor vehicle violations shall be considered in making a treatment referral and shall be mentioned on any client evaluation documents;

7. Counselor interview and observations. All counselor observations and data used to determine treatment appropriateness shall be documented. They may include symptoms of alcohol or drug abuse including voluntary admission by the client that an alcohol or drug problem exists. A counselor's evaluation based on documented observations and data that a client is an alcohol or drug abuser (as defined herein) is sufficient to refer a client to treatment; ***and***

8. Outside information. The Intoxicated Driver Resource Center/Intoxicated Driving Program staff may receive information from outside sources such as a client's family, treatment facilities counselors or physicians. Such information may be utilized if the source of the information is disclosed to the client and he *or she* is given the opportunity to review and comment on the information*[.]*; ****.***

[9. A positive result on a chemical test for controlled substances or alcohol.]

8:66*A*-4.3 Evaluation approval

(a) Any Intoxicated Driver Resource Center/Intoxicated Driving Program initial evaluation and referral to treatment shall be approved by a counselor.

(b) If a counselor decides not to refer a client who meets any of the above criteria in N.J.A.C. 8:66*A*-4.2(b), then documentation must be provided to support the nonreferral.

8:66*A*-4.4 Evaluation of client progress

[The progress of the client shall be evaluated by the treatment program on a continuous basis during treatment.] Clients who continue to abuse alcohol/drugs or otherwise fail to comply with program requirements shall be reported to the Intoxicated Driving Program by the Intoxicated Driver Resource Center. **[Treatment programs shall make a record of the responses of the client to treatment.]** ***The progress of the client shall be monitored and recorded by the treatment program on a weekly basis.*** A client who may be in need of additional treatment options, such as*[.]* family counseling, detoxification, intensive outpatient or inpatient treatment**,** may be assigned to such treatment, with approval from the Intoxicated Driver Resource Center. The treatment options shall be acceptable in lieu of, in whole or in part, the 16 weeks of required treatment.

8:66*A*-4.5 Determining levels of treatment

(a) Outpatient treatment is appropriate for clients who are alcohol or drug abusers.

(b) Inpatient treatment is appropriate for clients who are alcohol or drug abusers, who are experiencing physical dependence on alcohol or drugs, and/or who have had previous outpatient failure.

(c) Intensive outpatient is appropriate for clients who meet the criteria for inpatient treatment but who are required by the Intoxicated Driver Resource Center/Intoxicated Driving Program to attend intensive outpatient treatment in lieu of inpatient treatment. Such clients must attend more than 16 treatment sessions within 16 weeks. ***Clients may be referred to intensive outpatient treatment because the Intoxicated Driver Resource Center/Intoxicated Driving Program determines that the client's treatment can be better addressed in an outpatient program and/or inpatient treatment is not available.***

(d) Self-help groups are appropriate for clients under the following circumstances:

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1. A self help group may be used as a treatment source if the client has been in the self help group for a minimum of three months and is currently active; or

2. Self help groups may also be used for clients in addition to inpatient or outpatient treatment.

*[8:66-4.6 Chemical testing

Chemical testing of clients may be required and utilized by the Intoxicated Driver Resource Center/Intoxicated Driving Program or approved treatment programs as a condition of license restoration, to monitor treatment, or to evaluate the client. Such testing may be required on an announced or unannounced basis. Chemical tests for alcohol in the breath may also be used when performed by an operator qualified under State law. All clients shall receive prior notice that chemical testing may be required. Measures shall be taken to protect the chain of custody of all blood or urine specimens and all testing shall be performed by a State licensed laboratory in accordance with State rules. The Intoxicated Driver Resource Center/Intoxicated Driving Program or approved treatment programs may request that state licensed laboratories examine blood and urine specimens from clients to detect the presence of controlled substances or alcohol in accordance with State rules. A client's refusal to submit to a chemical test in accordance with this section shall be considered noncompliance.

8:66-4.7 Chain of custody for chemical testing

(a) Specimen collection shall be done as follows:

1. Upon arrival at the collection site, if the client has not been identified to the collector, the client's identification shall be checked;

2. The specimen shall be collected in a manner which will ensure that the client does not contaminate or alter it;

3. Upon collecting the specimen, the person supervising the collection shall be immediately given the specimen container and shall quickly seal it;

4. The collector and the client shall initial the container and lid labels to indicate agreement that it contains the client's specimen. The date, time, location of collection, and type of specimen shall also be written on the container label and a chain of custody form or log book shall be filled out.

(b) If testing is done at a treatment program or Intoxicated Driver Resource Center, or Intoxicated Driving Program, it shall be performed in a secure location with limited access to avoid tampering.

(c) Specimen transportation shall be done as follows:

1. A specimen shall be kept in a secure location such as a locked refrigerator or room until it is transported or tested;

2. Each person who handles the specimen shall sign the chain of custody form a log book;

3. A log book or chain of custody form shall accompany each shipment of specimens to record the persons handling the specimen or other pertinent information; and

4. If the specimen is transported to a laboratory, it shall be sent in a sealed container. Registered, first class, special delivery, commercial mail or personal delivery are acceptable means of transportation.

(d) Specimen analysis and reporting shall be done as follows:

1. Upon delivery to the laboratory, all specimens shall be logged on an internal control form. Laboratory personnel who receive the specimens shall sign for their receipt, and note in writing whether seals are intact or the containers are damaged. The label of each container shall then be compared to that on the chain of custody form. Any discrepancies shall be recorded and investigated. New specimens shall be obtained if there are any discrepancies that cannot be accounted for.

2. All specimens shall be kept in air-tight containers and not be exposed to anything that might contaminate the specimen. Containers shall be given a unique identifying number to link the container, chain of custody form, and the test result together for reporting purposes. A log of all transfers of any quantity of the specimen shall be kept as an additional precaution.

3. Any weight, volume, color or other changes in the specimen due to analysis shall be explained in the record.

4. All laboratory personnel who are in the chain of custody shall sign the necessary form or log book noting time, date, location, and action taken regarding the specimen.

5. The initial test shall be an immunoassay. The test result shall be confirmed by a method of equal or greater sensitivity. A second immunoassay is acceptable.

6. The following drugs may be tested for:

- i. Marijuana;
- ii. Cocaine;
- iii. Opiates;
- iv. Phencyclidine; and
- v. Amphetamines.

7. The positive levels for the test results are in nanograms per milliliter (ng/ml) and are as follows:

- i. Marijuana—100 ng/ml;
- ii. Cocaine—300 ng/ml;
- iii. Opiates—300 ng/ml;
- iv. Phencyclidines—25 ng/ml;
- v. Amphetamines—1,000 ng/ml.

8. All drug test results will be reported in accordance with state rules. Intoxicated Driver Resource Center/Intoxicated Driving Program and approved treatment programs are authorized to receive drug test results.*

*[8:66-4.8]**8:66A-4.6* Referral procedures

(a) The Intoxicated Driver Resource Center shall provide each client referred to treatment with a list of approved treatment programs within their county. The list shall reflect the following items:

1. Name of program;
2. Location;
3. Dates/times of operation of any Intoxicated Driver Resource Center client group sessions;

4. Type of treatment and type of counseling (*[i.e.]* **that is** group, individual and number of self help group meetings required, and if family involvement is required);

5. Cost per session (indicate if there is a sliding fee scale or third party payment available and the minimum and maximum fees and any nontreatment fees *[such as chemical testing]; and

6. Notice of chemical testing at the treatment programs;]**.*

(b) Clients shall choose a program from the list and sign the appropriate form indicating that he*[/]* **or** she was shown the list and selected a program.

(c) If the Intoxicated Driver Resource Center chooses a program for the client it shall be because it would substantially benefit the client in his **or her*** present *[state or]* condition.

(d) When a specific modality or program is recommended it shall be noted on the appropriate form with the reason for recommendation. This will provide the client with a quality evaluation and*,* at the same time, reduce the potential for a conflict of interest. All clients shall sign the form to indicate that they understand the content.

(e) Intoxicated Driver Resource Centers shall not make direct referrals to a self help group following evaluation unless the client can demonstrate that he **or she*** is currently actively participating in the self help group. All other treatment appropriate clients shall be referred to self help groups by a treatment program as an addition to treatment. Referrals to self help groups shall not be made simply because the patient says he **or she*** cannot afford another form of treatment.

(f) All clients referred to treatment shall sign a records release authorization prior to leaving the Intoxicated Driver Resource Center. The form shall be completed to allow the **Court*** Intoxicated Driver Resource Center, the Intoxicated Driving Program, the Division of Alcoholism and Drug Abuse and the Division of Motor Vehicle*s* *[Services]*, the client's attorney and the treatment program to exchange information.

(g) If a client refuses to sign the form, the Intoxicated Driver Resource Center shall inform the client that such refusal shall be considered noncompliance. If the client continues to refuse to sign, the client shall be considered noncompliant for refusing to sign the Records Release Authorization form necessary to complete program requirements.

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(h) The client's refusal to sign the form shall not interfere with any lawful right of the above agencies to communicate.

SUBCHAPTER 5. TREATMENT PROGRAM APPROVAL REQUIREMENTS

8:66*A*-5.1 Approved treatment programs

(a) In order for a county treatment program to be approved, the county shall apply to that county's Intoxicated Driver Resource Center Program and the Division of Alcoholism and Drug Abuse's Intoxicated Driving Program. Only the Intoxicated Driving Program has the authority to approve a treatment program; however, the county's comments on the quality of the program are encouraged. If a county believes that a treatment program should not be approved or should be removed from the approved list, the county may notify the Division of Alcoholism in writing. It is the responsibility of Intoxicated Driver Resource Center Director to evaluate each treatment program after an annual site visit.

(b) The Chief of the Intoxicated Driving Program on a temporary basis may waive the approval criteria and approve any treatment program in or out of the *[state]* *State*. This approval shall not exceed four months and shall be approved in the best interest of a client.

(c) All approved treatment programs will be required to report to the Division*s* of Alcoholism and Drug Abuse through the Divisions prescribed reporting system.

8:66*A*-5.2 Treatment program approval criteria

(a) Every treatment program, in order to be approved, must provide the following information to the Intoxicated Driving Program and to the county Intoxicated Driver Resource Center:

1. A statement that it will abide by the Division of Alcoholism and Drug Abuse *[Rules and Regulations]* *rules*;
2. A statement that the treatment will be performed, or supervised, by a Certified Alcoholism or Drug Abuse Counselor, or a person with *[5]* *five* years full time experience in the treatment of alcohol or drug abuse;
3. A fee schedule, including any sliding fee schedule, and whether fees can be paid by health insurance;
4. A statement that the program will adhere to professional standards of care and ethics, and to any applicable State and Federal laws;
5. The address, telephone number, hours of operation and contact person for each office location;
6. A written description of treatment philosophy, program requirements, and treatment curriculum; *and*
7. A signed affiliation agreement*[, and]**.*

[8. A statement regarding the use of chemical testing as a requirement of treatment or evaluation.]

[(b) The county Intoxicated Driver Resource Center Director shall ensure that the physical plant is conducive to treatment modality proposed by the applying treatment agency, taking into account the room size, (group, or individual counseling) location, (availability to public transportation), and number of existing programs in proximity to the applicant.]

*[(c)]***(b)* Applications shall be processed by Intoxicated Driving Program within 60 days from receipt. County Intoxicated Driver Resource Center Directors shall provide Intoxicated Driving Program staff with their comments within three weeks. The Intoxicated Driving Program will deny approval to agencies who do not meet the requirements of this chapter. The Intoxicated Driving Program shall indicate the reasons for denial and shall accept reapplication, if the agency eliminates the obstacles to nonapproval.

8:66*A*-5.3 Affiliation agreements

In order to be approved to treat Intoxicated Driver Resource Center/Intoxicated Driving Program clients, a treatment program shall sign an affiliation agreement, which must be approved by the Intoxicated Driving Program, with the county Intoxicated Driver Resource Center.

8:66*A*-5.4 Intensive outpatient treatment program

(a) If *a* client is determined by the Intoxicated Driver Resource Center/Intoxicated Driving Program to be appropriate for intensive

outpatient treatment, he or she will be required to follow the treatment program or be in non-compliance.

(b) If not referred by the Intoxicated Driver Resource Center/Intoxicated Driving program*,* a client may decide to attend an approved intensive outpatient treatment program with the approval of the Intoxicated Driver Resource Center/Intoxicated Driving Program.

SUBCHAPTER 6. TREATMENT PROGRAM OPERATIONAL REQUIREMENTS

8:66*A*-6.1 Intake evaluation

(a) Each Intoxicated Driver Resource Center client shall receive an individual intake evaluation, preferably with his*[/]* *or* her counselor of record. The purpose of the intake is to make an independent evaluation of the client's needs in treatment.

(b) The treatment program shall conduct an independent evaluation of the client's need for treatment. Any testing tool utilized must be noted in the evaluation. The information packet received from the Intoxicated Driving Program shall also be utilized. ***The treatment program shall inform the client of his or her specific responsibility under the treatment plan. If a client is determined to need treatment, a treatment plan shall be developed and a copy of the plan shall be provided to the client.*** Clients shall be advised that failure to participate in treatment will result in license suspension and a minimum two day jail sentence. The treatment agency shall establish a contract with the client regarding the treatment plan. The client shall sign a records release authorization during the intake process. The form shall be completed to allow the *court, the* Intoxicated Driver Resource Center, the Intoxicated Driving Program, the Division of Alcoholism and Drug Abuse and the Division of Motor Vehicle*s* *[Services]*, the client's attorney, and the treatment program to exchange information.

(c) The treatment program shall report the result of the treatment evaluation of the client and the client's progress in treatment to the Intoxicated Driver Resource Center/Intoxicated Driving Program, as appropriate.

8:66*A*-6.2 Client intake form

The client intake form and the results of the evaluation by the treatment program shall be sent to the Intoxicated Driver Resource Center within seven working days after the intake with the records release authorization. The client's full name, address and phone number, driver license number, the evaluation, the counselor's signature, name of program and the date shall be included in the material sent to the Intoxicated Driver Resource Center.

8:66*A*-6.3 Length of treatment

The minimum length of treatment for outpatient shall be 16 sessions, one session per week. Each session shall be a minimum of one hour. The Intoxicated Driver Resource Center may require a mixture of outpatient, intensive outpatient and/or inpatient, *and* self help*[, and chemical testing]* for a total time of one year from the date treatment commences.

*[8:66-6.4 Failure to comply with treatment requirements

(a) Once the client has been accepted for treatment, any failure to comply with the treatment program shall be reported by the treatment program to the Intoxicated Driver Resource Center in writing within seven working days. Failure to comply with the treatment program shall include, but not be limited to:

1. Failing to attend specific meetings;
2. Failing to comply with the treatment contract;
3. Failing to participate in individual and group counseling; or
4. Failing to attend self help group meetings.]*

8:66*A*-6.4 Treatment plan

*[The Primary purpose of a treatment plan is to educate the client and, if necessary, to reduce resistance and break denial patterns. The long range goal is to have the client accept his or her problem and take full advantage of treatment sources and support systems available. A secondary purpose of treatment is to educate the client about alcohol and drug abuse and driving. The treatment plan should include a series of exercises that will require the client to actively

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participate in the treatment process. The exercises should help the client examine his or her drinking and/or drug use patterns and eliminate rationalizations about this behavior. The exercises should also concentrate on life style activities and personal problems associated with client drinking and/or drug use pattern.]*

***(a) The purpose of the treatment plan is primarily educational. The material presented and the group and individual sessions are intended to provide information and personal insight to the client so that he or she will recognize the extent of his or her alcohol or drug abuse problems and acquire the basic tools to begin and maintain recovery. The plan shall also educate the client about the danger of alcohol and drug use while driving.**

(b) A treatment plan shall include the following;

1. Education on alcohol and drug abuse problems;
2. Information on the effects of addiction on families, work and personal health; and
3. Individual and group counseling aimed at providing personal insight and information on how to recover. The information shall include:
 - i. The location of self-help groups;
 - ii. Information on how self-help groups work;
 - iii. Information on family treatment resources;
 - iv. An opportunity for the client to involve family and friends in the recovery process and treatment; and
 - v. A statement informing the clients of any confidentiality protection he or she is entitled to.

8:66A-6.5 Failure to comply with treatment requirements

(a) Once the client has been accepted for treatment, any failure to comply with the treatment program shall be reported by the treatment program to the Intoxicated Driver Resource Center in writing within seven working days. Failure to comply with the treatment program shall include, but not be limited to:

1. Failing to attend specific meetings;
2. Failing to comply with the treatment contract;
3. Failing to participate in individual and group counseling; or
4. Failing to attend self-help group meetings.*

8:66*[-6.5]**A-6.6* Self help group involvement

The treatment plan for clients shall include some exposure to a self help group. This should be accomplished by requiring a specified number of monitored meetings, having someone from a self help group do a presentation, or educating the client about group purposes and functions. Meetings are not to be substituted for individual or group sessions during the 16 week minimum period.

8:66*[-6.6]**A-6.7* Determining number of self help group meetings per week

If a client is referred to self help in lieu of other treatment by the Intoxicated Driver Resource Center or Intoxicated Driving Program, one meeting per week is the minimum, *[two]* ***three*** per week is the maximum number of meetings that can be required. *[If the maximum is required, there must be documentation to support the decision.]* ***If the maximum is required, there must be documentation to support the decision.*** If the client is sent to a self help group as an adjunct to outpatient treatment, the maximum shall be *[one]* ***two*** meeting*s* per week, unless the client consents to more.

8:66*[-6.6]**A-6.8* Objections to being sent to self help group

Some self help groups are based on religious or spiritual principles. Upon a written petition to the Intoxicated Driver Resource Center or Intoxicated Driving Program by the client stating his ***or her*** objection to a referral to such a self help group, the Intoxicated Driver Resource Center or Intoxicated Driving Program shall place the person in a self help program that is not based on religious or spiritual principles or to out-patient or other treatment.

8:66*[-6.7]**A-6.9* Monitoring the attendance of clients sent to self help groups

(a) Clients sent to self help groups will be monitored by the Intoxicated Driving Program/Intoxicated Driver Resource Center or treatment program using the Intoxicated Driving Program attendance card system or some other system to monitor attendance.

(b) All clients referred to self help groups shall assume the responsibility of inquiry as to who in the group has Intoxicated Driving Program attendance cards.

8:66*[-6.8]**A-6.10* Family involvement

Each client may be requested to have one counseling session with a member of his*[/*] ***or*** her family or a ***[“significant other”]* *friend***. The counselor may make every effort, with the client's consent, to involve the family in the treatment process, including one session on family aspects of alcohol and drug abuse. If necessary, marriage and family counseling shall be available to the client and can be substituted for regular group sessions. If family or ***[“significant others”]* *friend*** refuse to attend, ***or the client does not desire to reveal that he or she is in treatment to the family and friends,*** this is not non-compliance on the part of the client. Self help group information should also be made available.

8:66*[-6.9]**A-6.11* Client transfers from one treatment program to another

Client transfers from one treatment program to another are permitted, if approved by the Intoxicated Driver Resource Center, and if a client is in compliance and a conflict between a program and a client has progressed to the point that treatment is jeopardized. Other valid reasons, such as change of address, or to make more suitable arrangements between clients and programs, may be honored. Credit for successful prior treatment shall be given by the receiving Intoxicated Driver Resource Center. There shall be a presumption of credit for ***[time served]* *attendance*** if the client was in compliance and was successful in treatment and this is documented. Transfer of records shall be channeled through the Intoxicated Driver Resource Center office. The Intoxicated Driver Resource Center who received the fee and provided the evaluation is responsible for administration and follow-up of client monitoring.

8:66*A*-[6.10]**6.12* Treatment monitoring of third plus offenders

All third and subsequent offenders shall be sent to ***the first offender program for evaluation and if they are alcohol or drug abusers they shall be sent to*** treatment for a full year.

8:66*A*-[6.11]**6.13* Final client treatment release and evaluation

(a) In releasing a client from treatment, the counselor is making a professional judgment about the client's *[drinking]* *alcohol*/drug behavior. The client should be in control of his ***or her*** problem. For ***[most clients,]* *alcohol or drug abusers***, this will mean abstinence*[,]**,* for others who are not alcohol or drug abusers*,* this will mean the ability for the client to make rational decisions regarding ***[drinking]* *alcohol*/drug use and driving.******

(b) The following criteria shall be considered by the treatment program counselor to support the counselor's professional judgment:

1. Client cooperation during treatment;
2. Development of positive attitude;
3. Achievement of abstinence;
4. Quality of involvement in treatment or self help group;
5. Family involvement in treatment;
6. Participation in group interaction;
7. Change of behavior patterns related to ***[drinking]* *alcohol*/drug use;**
8. Significant life style changes;
9. Reduction of alcohol/drug intake;
10. Improvement of self image;
11. Use of support systems;
12. Positive observations by family members, other clients, and other counselors; and
13. Chemical test results where available.

8:66*A*-[6.12]**6.14* Client treatment procedures

(a) Both the Intoxicated Driver Resource Center or Intoxicated Driving Program, as appropriate, and the treatment program must conclude that the client *[is treatment appropriate]* *needs treatment*** before treatment is to commence. If the treatment program after performing a proper evaluation under ***[these Rules]* *this chapter***, indicates the client does not need treatment or needs an**

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alternate treatment referral, the client shall be referred back to the Intoxicated Driver Resource Center/Intoxicated Driving Program for further evaluation and,* if appropriate, referral. ***If the client is returned to the Intoxicated Driver Resource Center/Intoxicated Driving Program by the treatment program as not in need of treatment, the Intoxicated Driver Resource Center/Intoxicated Driving Program shall refer the client to another treatment program for another initial evaluation. If this treatment program decides the client does not need treatment and the Intoxicated Driver Resource Center/Intoxicated Driving Program still contends the client needs treatment, and the client does not consent to treatment, the client shall be referred to the sentencing court for appropriate action.***

(b) If a convicted intoxicated driver or licensed driver is sent to treatment by the Intoxicated Driver Resource Center or by Intoxicated Driving Program, he or she must successfully complete a minimum of 16 weeks of treatment. Each session shall consist of one session per week which shall last no less than one hour in duration. The requirement of treatment within a 16 week period can be waived by the Intoxicated Driver Resource Center director to meet the extraordinary circumstances of the client, upon a written petition from the client and with the approval of the Intoxicated Driving Program (for example, if the client has an out-of-State work assignment or is attending an out-of-State educational institution). The requirement of 16 sessions of treatment cannot be waived.

(c) If the treatment program decides that the client needs additional treatment beyond 16 sessions, the program shall state its reasons in writing to the Intoxicated Driver Resource Center or Intoxicated Driving Program as appropriate and receive written approval *[from the Intoxicated Driver Resource Center or Intoxicated Driving Program, as appropriate.]* before commencing any additional treatment. The client shall receive written notice regarding the request for the extension and may submit comments regarding the appropriateness of the decision to the Intoxicated Driver Resource Center or the Intoxicated Driver Program, as appropriate, within 10 days of this notice.

(d) If a client is not able to safely resume driving after a year of continuous treatment, the Intoxicated Driver Resource Center/Intoxicated Driving Program shall report this to the Division of Motor Vehicle*s* *[Services]*.

(e) All clients referred to treatment shall contact the treatment program within 10 working days of the referral. Treatment agencies must report to the Intoxicated Driver Resource Center or Intoxicated Driving Program as appropriate that the client has commenced treatment within 30 days of the initial contact.

8:66*[-6.13]**A-6.15* Unauthorized use of intoxicated driving program cards

(a) The Intoxicated Driver Resource Centers and Intoxicated Driving Program and approved treatment programs use computer cards generated by the Intoxicated Driving Program to monitor attendance of Intoxicated Driver Resource Center/Intoxicated Driving Program clients at self help groups. Such cards shall remain the property of the Intoxicated Driving Program. Any other person, organization, public or private, who uses the cards to monitor self help group attendance without the written permission of the Chief of the Intoxicated Driving Program or who uses the cards in an unauthorized manner may be reported by the Intoxicated Driving Program to the Office of the Attorney General for investigation.

(b) Prior to sending a client to a self help group, an Intoxicated Driving Program self help group agreement form shall be executed. The client shall bring the form to the self help group as proof that he or she is a client.

8:66*[-6.14]**A-6.16* Treatment costs

(a) The Intoxicated Driver Resource Center or Intoxicated Driving Program shall not be responsible for any treatment or treatment agency evaluation costs for clients.

(b) If a client claims indigency and meets the indigency criteria for the county wherein the client has been assigned to an Intoxicated Driver Resource Center, treatment shall be provided to the client at no cost or on a sliding fee basis. Approved treatment programs shall provide 10 percent of their treatment at no cost for indigent Intoxicated Driver Resource Center/Intoxicated Driving Program clients.

8:66*[-6.15]**A-6.17* Treatment programs

Each Intoxicated Driver Resource Center shall update its approved treatment lists quarterly and shall send a copy of the list to the Intoxicated Driving Program.

8:66*[-6.16]**A-6.18* Treatment prior to conviction

The Intoxicated Driver Resource Center may give credit for *[time served]* ***attendance*** in treatment after arrest, if the treatment was at an approved facility; such time served does not exempt offenders from Intoxicated Driver Resource Center detention requirements.

SUBCHAPTER 7. CLIENT CONDUCT

8:66*A*-7.1 Intoxication at the Intoxicated Driver Resource Center

(a) If a client appears to be under the influence of alcohol or drugs upon arrival or during the Intoxicated Driver Resource Center session, the Intoxicated Driver Resource Center may implement the following procedure:

1. Evaluate the client to see if he or she is incapacitated or intoxicated as defined herein;

2. If the client is incapacitated, the Intoxicated Driver Resource Center may call the police, Service Force, or Emergency Medical Service and have the client removed to a hospital or other facility for detoxification. After detoxification, the client may be processed through the Intoxicated Driver Resource Center. The fact that the client was under the influence shall be noted in the client's file and used as part of the counselor's evaluation;

3. If the client is not incapacitated, but is intoxicated, the Intoxicated Driver Resource Center shall admit the client or reschedule the client. The fact that the client was under the influence shall be noted in the client's file and shall be used as part of the counselor's evaluation;

4. All persons who appear to be under the influence of alcohol or drugs (clients or non-clients) and drive a vehicle away from the Intoxicated Driver Resource Center may be reported to the police; and

5. Intoxicated clients who are disruptive *[should be asked to leave the Intoxicated Driver Resource Center and]* shall be found in non-compliance.

8:66*A*-7.2 Improper client conduct at Intoxicated Driver Resource Center or Intoxicated Driving Program

Improper conduct, such as being threatening or disruptive or purposely not completing forms or providing relevant information*,* shall be considered non-compliance.

SUBCHAPTER 8. CLIENT NON-COMPLIANCE PROCEDURES

8:66*A*-8.1 Failure to attend the Intoxicated Driver Resource Center/Intoxicated Driving Program or pay the required fees

(a) Failure to attend the Intoxicated Driver Resource Center/Intoxicated Driving Program or to pay the required fees shall be considered noncompliance. In such cases, the Intoxicated Driver Resource Center/Intoxicated Driving Program shall take the following steps:

(a)**1. A notice of noncompliance shall be mailed to the client's address on the record of conviction or the client's most recent address if the client has notified the Intoxicated Driver Resource Center/Intoxicated Driving Program of a change of address.

(b)**2. If there is no reply, or if the client remains in non-compliance, the Intoxicated Driver Resource Center/Intoxicated Driving Program, within 10 working days of mailing the notice of noncompliance, may issue a noncompliance report:

[1.]**i. A copy of the report shall be mailed to the client.

[2.]**ii. If the client is a new law offender, a copy of the report shall be mailed to the court of conviction with a copy of the original notice of noncompliance.

[c]**3. If the noncompliance is not resolved within 30 calendar days after issuance of the noncompliance report, a copy of the non-compliance report and supporting documents shall be mailed to the Intoxicated Driving Program. The Intoxicated Driving Program shall request that the Division of Motor Vehicle*s* *[Services]* suspend the client's license.

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8:66*A*-8.2 Failure to contact treatment facility

(a) When the Intoxicated Driver Resource Center/Intoxicated Driving Program has been notified that a client has not contacted the treatment facility by the contact date, the Intoxicated Driver Resource Center/Intoxicated Driving Program shall follow the procedures of N.J.A.C. 8:66*A*-8.1 (a)-(c) and shall, for New Law clients, in addition to the other documents, mail a copy of the treatment agreement to the court of conviction.

8:66*A*-8.3 Failure to comply with the treatment program

(a) Upon receipt of a Client Treatment Release form indicating that the client did not comply with the treatment program requirements, the Intoxicated Driver Resource Center/Intoxicated Driving Program shall follow the procedures in N.J.A.C. 8:66*A*-8.1 (a)-(c) and shall, for New Law clients, in addition to the other documents, mail a copy of the treatment agreement to the court of conviction.

8:66*A*-8.4 Other noncompliance

If the client is in noncompliance for any reason, the Intoxicated Driver Resource Center/Intoxicated Driving Program will follow the procedures in N.J.A.C. 8:66*A*-8.1 (a)-(c) and shall, for New Law clients, mail any necessary documents to the court of conviction.

8:66*A*-8.5 Failure to follow noncompliance procedures

The failure of Intoxicated Driver Resource Center/Intoxicated Driving Program to follow the noncompliance procedures shall not relieve a client of noncompliance.

8:66*A*-8.6 ***[Conditional restoration of a client]* *Conditions for a request for restoration of a client's driving privileges* after a finding of noncompliance by a court**

(a) A client referred to treatment who is subsequently found in noncompliance by the court shall satisfactorily complete two consecutive months of treatment before the Intoxicated Driving Program shall be notified by the Intoxicated Driver Resource Center to ***[restore conditionally]* *request that the Division of Motor Vehicles restore the client's license driving privilege***.

(b) A multiple offender who was found in noncompliance by a court shall satisfactorily complete three consecutive months of treatment before the Intoxicated Driving Program ***[is notified to conditionally restore]* *shall be notified by the Intoxicated Driver Resource Center to request that the Division of Motor Vehicles restore the client's driving privilege***. However, at the discretion of the Intoxicated Driver Resource Center director, program completion may be required.

(c) The Intoxicated Driver Resource Center shall receive written notice from the treatment facility of satisfactory performance before notifying the Intoxicated Driving Program to ***request that the Division of Motor Vehicles* restore *[conditionally]* *the client's driving privileges***.

8:66*A*-8.7 Noncompliance with treatment

The treatment programs shall notify the Intoxicated Driver Resource Center/Intoxicated Driving Program of any noncompliance in writing within seven working days. The Intoxicated Driver Resource Center shall notify the courts and the Intoxicated Driving Program utilizing the noncompliance report.

8:66*A*-8.8 Proof of mailing; change of address

The Intoxicated Driving Program provides a certified mailing list with every roster sent to the Intoxicated Driver Resource Centers. The Intoxicated Driver Resource Centers shall use this as proof of mailing in cases of noncompliance to the original scheduling notice. Intoxicated Driver Resource Centers are responsible for keeping a record of rescheduling notices so that the notices can be sent to court to prove noncompliance. In all cases, copies of the certification of mailing should be sent to the courts along with reports of noncompliance when appropriate. All Intoxicated Driver Resource Centers/Intoxicated Driving Program letters, notices or other correspondence shall be sent to client's address on the record of conviction or to the most recent address provided to the Intoxicated Driver Resource Centers/Intoxicated Driving Program. It shall be the client's responsibility to keep the Intoxicated Driver Resource Centers/Intoxicated Driving Program informed as to his ***or her***

current address. Upon a change of address, the client shall notify both the Intoxicated Driving Resource Center and the Intoxicated Drivers Program in writing within 10 days.

SUBCHAPTER 9. MISCELLANEOUS OFFENDERS

8:66*A*-9.1 Multiple offenders

(a) Prior to restoration of a driver's license, a client shall be evaluated by the Intoxicated Driver Resource Center/Intoxicated Driving Program, and if treatment is complete, ***a recommendation for license restoration will be made to the Division of Motor Vehicles* *the client may conditionally have his or her license restored*** providing:

1. His or her suspension period is satisfied; and
2. He or she has successfully completed three months of approved treatment requirements and agrees to complete the remainder of any ordered treatment plan.

(b) If treatment completion took place more than a year before the request to restore the driver's license, documentation and an update by a counselor is required, or reevaluation may be required by the Intoxicated Driver Resource Center at an approved facility, or the reevaluation may be done by the Intoxicated Driver Resource Center itself.

8:66*A*-9.2 Out-of-State offenders

(a) Out^{*}-of^{*}-State residents will be given the opportunity by the Intoxicated Driving Program to complete program requirements and programs in their home state or in New Jersey. Clients who choose New Jersey will be scheduled in the normal fashion. If a client chooses to participate in his ***or her*** home state, the Intoxicated Driving Program will provide the client with a blank certificate of detention and instructions on program compliance.

(b) New Jersey residents convicted out^{*}-of^{*}-State (referred to as "Z" clients) will be referred to the Intoxicated Driving Program by the Division of Motor Vehicle^{s*} ***[Services]***, other state Intoxicated Driving Programs, probation authorities, foreign countries, or attorneys. Once appropriate documentation is received, the "Z" client shall be referred to a county Intoxicated Driver Resource Center. Any client who has not as yet been scheduled at the local Intoxicated Driver Resource Center, must call the out^{*}-of^{*}-State desk or Z desk at the Intoxicated Driving Program. No out of state or Z clients can be admitted to the Intoxicated Driver Resource Center without Intoxicated Driving Program approval.

(c) If an ***[out of state]* *out-of-State*** or Z client is rescheduled at the local Intoxicated Driver Resource Center, then Intoxicated Driver Resource Center personnel should place an OS (out-of-State resident) or Z (State resident convicted in another state) clearly next to their name on reschedule rosters, noncompliance forms, compliance or treatment completion forms.

8:66*A*-9.3 New Jersey residents convicted in a foreign state

New Jersey resident/licensees convicted abroad (in non-compact nations, provinces or territories) of alcohol or drug-related driving violations shall be required to participate in the Intoxicated Driving Program/Intoxicated Driver Resource Center Program as a ***[condition]* *requirement*** of continued New Jersey licensure.

8:66*A*-9.4 New Jersey clients who move out-of-State

If a New Jersey resident attends an Intoxicated Driver Resource Center, and pays the fee and is referred to treatment, but then moves out-of-State, the Intoxicated Driver Resource Center shall be responsible for continued monitoring. All treatment entry, program and completion reports shall be handled by the Intoxicated Driver Resource Center and the case closed and data entered per normal procedure on satisfactory program completion.

8:66*A*-9.5 Intoxicated boaters

Intoxicated boaters are not required to complete the mandatory two day jail sentence for noncompliance with Intoxicated Driver Resource Center/Intoxicated Driving Program requirements; however, they are required to comply with all other Intoxicated Driver Resource Center/Intoxicated Driving Program requirements.

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF ENVIRONMENTAL QUALITY Notice of Receipt of Petition for Rulemaking Control of Air Pollution by Volatile Organic Substances Emissions from Auto Refinish Industry

Petitioner: Natural Paint and Coatings Association (NPCA).
Authority: N.J.S.A. 26:2C-1 et seq., specifically 26:2C-8, and
52:14B-4(f).

Take notice that on January 12, 1990, the Department of Environmental Protection (DEP) received a petition from a representative of the auto refinish industry for rulemaking concerning the control of air pollution by volatile organic substances (VOS) emissions. A substitute, corrected version of the original petition was filed on January 16, 1990.

The petitioner requests that DEP revise N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Substances, by amending N.J.A.C. 7:27-16.5. N.J.A.C. 7:27-16.5 regulates surface coating and graphic arts operations, including those operations which refinish automobiles and light duty trucks in the State of New Jersey. The proposed revisions would reduce VOS emissions by using integrated paint systems, rather than product-by-product reformulation as required by N.J.A.C. 7:27-16.5. According to the petitioner, reformulation would require manufacturers to spend considerable funds to achieve relatively small incremental reductions from specific paint products. The NPCA petition would, according to a companion technical study by the Midwest Research Institute (MRI), achieve a 17.1 percent VOS reduction. The NPCA petition seeks to (1) add definitions; (2) phase-in new paint technologies while requiring the phase-out of the older, higher VOS paint systems; (3) exempt touch up operations, graphic design applications, coating of radiators, and original equipment manufacturer operations; (4) improve record keeping and (5) eliminate the exemption of small operations. The petitioner projects major VOS reductions to result from proper surface preparation and cleanup techniques, including collection of cleanup solvent and storage of solvent and solvent laden paper. The NPCA petition is a modified version of California Bay Area Air Quality Management District Regulation 8 Rule 45 (BAAQMD Rule 45).

In accordance with the provisions of N.J.A.C. 7:1-1.2, the Department shall subsequently mail to the petitioner, and file with the Office of Administrative Law, a notice of action on the petition.

(b)

DIVISION OF HAZARDOUS WASTE MANAGEMENT Notice of Receipt of Petition for Rulemaking Operational Requirements for Hazardous Waste Landfills

N.J.A.C. 7:26-10.8(e)7

Petitioner: PPG Industries, Inc.
Authority: N.J.S.A. 13:1E-6(a)2; 52:14B-4(f).

Take notice that on January 24, 1990, the Department of Environmental Protection received a petition from PPG Industries, Inc. requesting an amendment to N.J.A.C. 7:26-10.8(e)7, concerning operational requirements for hazardous waste landfills.

Specifically, petitioner is requesting an amendment to the present requirement that no waste disposal or waste disposal operation shall occur within 200 feet (60.6 meters) of the property boundary. Petitioner requests the creation of a variance for this setback requirement for hazardous waste landfills.

This petition will be considered by the Department of Environmental Protection in accordance with the provisions of N.J.A.C. 7:1-1.2. A notice of action on the petition will subsequently be mailed to the petitioner and filed with the Office of Administrative Law.

(c)

DIVISION OF WATER RESOURCES

Notice of Adoption of Amendment to the Mercer County Water Quality Management Plan

Take notice that on August 28, 1989, 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 was adopted by the Department. This amendment approves a revised Wastewater Management Plan for East Windsor Township. Among the actions authorized by the Wastewater Management Plan are an expansion of the existing East Windsor Municipal Utilities Authority sewage treatment plant to 3.35 million gallons per day and a new East Windsor Municipal Utilities Authority sewage treatment plant with a capacity of 1.15 million gallons per day.

(d)

DIVISION OF WATER RESOURCES

Notice of Adoption of Amendment to the Monmouth County Water Quality Management Plan

Take notice that on August 2, 1989, an amendment to the Monmouth County Water Quality Management Plan was adopted by the Department. This amendment, which became effective on January 31, 1990, adopts a Wastewater Management Plan (WMP) for the Township of Holmdel. In the northern part of the Township, the WMP provides for the expansion of the sewer service area of the Bayshore Regional Sewerage Authority within their facilities planning area. The southern portion of the Township will continue to be served by individual septic tanks and, in designated areas, on-site wastewater treatment plants. The Township agrees to be co-permittee for these on-site facilities.

On August 2, 1989, the Department adopted this amendment subject to the condition that the Township make specified modifications to the WMP. The August 2, 1989 adoption statement also declared that the WMP would become effective when the Department issued a letter verifying that this condition had been met. On November 13, 1989, the Township submitted a modified WMP to the Department. The Department has reviewed the modified WMP and has issued a letter verifying that the condition has been met.

This amendment was given preliminary approval and noticed in the New Jersey Register in 1988 under the Department's former "Water Quality Management Planning and Implementation Process" rules, N.J.A.C. 7:15, and under the "Water Quality and Wastewater Management Policies and Procedures" (including the "Policy on Wastewater Management Plans") in Chapter III of the Statewide Water Quality Management Program Plan. On September 6, 1989, the Department adopted its present Statewide Water Quality Management Planning rules, N.J.A.C. 7:15, and repealed all of the "Water Quality and Wastewater Management Policies and Procedures" in Chapter III of the Statewide Water Quality Management Program Plan. These adoption and repeal actions became effective on October 2, 1989 (see 21 N.J.R. 3099(a), 21 N.J.R. 3184(a)).

This amendment was given preliminary approval on July 19, 1988, and was noticed in the New Jersey Register on September 6, 1988; due to difficulties in obtaining the required newspaper publication, the public comment period was extended to November 9, 1988. A public hearing was noticed in the New Jersey Register on April 3, 1989 and held on May 18, 1989 to provide interested persons the opportunity to present testimony on the proposed amendment. As noticed in the New Jersey Register on May 15, 1989, the comment period was extended until June 2, 1989.

The Department received written comments from approximately 1200 persons, and 32 persons presented comments at the public hearing. Approximately 20 persons fully supported the WMP; the other persons completely opposed the WMP or objected to one or more of its provisions. The WMP was endorsed, however, by the Mayor and Township Committee of Holmdel Township.

PUBLIC NOTICES

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The Department has reviewed the comments made at the public hearing and during the comment period. The Department has prepared a document entitled "Holmdel Township Wastewater Management Plan: Summary of Public Comments and Agency Responses". This document is available for inspection at the office of NJDEP Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN 029, Trenton, New Jersey 08625, between 8:30 A.M. and 4:00 P.M., Monday through Friday, and at the Office of Administrative Law, 9 Quakerbridge Plaza, Trenton, New Jersey. Interested persons may submit written requests for a copy of this document to the Bureau of Water Quality Planning at the NJDEP address cited above.

(a)

**DIVISION OF WATER RESOURCES
Amendment to the Northeast Water Quality
Management Plan
Public Notice**

Take notice that an amendment to the Northeast Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt a Wastewater Management Plan (WMP) for the Borough of Wanaque. That document allows for an expansion of the Wanaque Valley Regional Wastewater Treatment Plant from 0.70 million gallons per day (mgd) to a projected wastewater flow of 1.566 mgd and establishes a sewer service area for that facility.

This notice is being given to inform the public that a plan amendment has been developed for the Northeast 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 Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 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 Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(b)

**DIVISION OF WATER RESOURCES
Amendment to the Ocean County Water Quality
Management Plan
Public Notice**

Take notice that an amendment to the Ocean County Water Quality Management (WQM) Plan has been submitted for approval. This amendment is for the proposed Pinelands Middle School located at lot 21A, block 78, on the north side of Nugentown Road in Little Egg Harbor Township which will be added to the existing sewer service area. The projected flow for the Middle School is 32,000 gallons per day (gpd) based on 1300 people times 25 GPD. The wastewater will be treated at the Ocean County Utilities Authority's Southern Water Pollution Control Facility.

This notice is being given to inform the public that a plan amendment has been proposed for the Ocean County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Ocean County Planning Board, Court House Square, CN 2191, Toms River, New Jersey 08754; and the NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 3rd Floor, 401 East State Street, CN-029, Trenton, New Jersey 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 Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 10 working

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 person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of this public notice to Mr. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(c)

**DIVISION OF WATER RESOURCES
Amendment to the Upper Raritan Water Quality
Management Plan
Public Notice**

Take notice that an amendment to the Upper Raritan Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt a Wastewater Management Plan (WMP) for the Borough of Far Hills, Somerset County. The WMP identifies an expanded Bedminster Township Sewage Treatment Plant sewer service area within the Borough of Far Hills. The expanded sewer service area includes a proposed development known as the "Polo Club" and three adjacent lots. The remainder of the Borough is to be served by individual subsurface sewage disposal systems.

This notice is being given to inform the public that a plan amendment has been developed for the Upper Raritan WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 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 Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

HUMAN SERVICES

(d)

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH
SERVICES
Notice of Action on Petition for Rulemaking
Long Term Care Reimbursement
N.J.A.C. 10:63-3**

Petitioners: New Jersey Association of Health Care Facilities and the New Jersey Association of Non-Profit Homes for the Aging.

Take notice that on January 11, 1990, the Department of Human Services received a petition for rulemaking with regard to the Medicaid reimbursement system for long term care facilities. The Notice of Receipt of Petition for Rulemaking was published in the February 20, 1990 New Jersey Register. The purpose of the petition for rulemaking is to increase payments to long term facilities to assure that efficiently and economically operated facilities recover their actual allowable costs of providing services to Medicaid recipients. The petitioners allege that the implementation of this rulemaking petition will require the promulgation of regulations which would:

1. Set payment rates for nursing services costs at a level to cover the actual costs of 80 percent of the facilities Statewide;

HUMAN SERVICES

2. Set payment rates for non-nursing operating costs at a level to cover the actual costs of 50 percent of the facilities Statewide;
3. Modify the Capital Facilities Allowance to take into account the property-capital costs of facilities which commenced operations after the implementation of the current reimbursement system;
4. Utilize a different set of weights and indices than is currently used to calculate the inflation adjustment factor; and
5. Increase the wage equalization factor for facilities classified in the low salary region.

The petition was duly considered pursuant to law. The Department acknowledges the concern of the long term care industry regarding the adequacy of long term care reimbursement for Medicaid patients. Because of the importance of this issue and the volume of data which must be evaluated in order to adequately respond to these concerns, the Department is not prepared to initiate rulemaking on these issues at the present time. Further study and discussion is necessary prior to determining if regulatory action is warranted. This includes review of the considerable documentation supplied by the petitioners with their formal submission. It will also involve compilation and analysis of more recent financial data which the Department will be receiving from the industry by way of annual facility cost reports.

The Department will conclude deliberations by September 28, 1990, at which time final notice of action on the petition will be mailed to the petitioners and submitted to the Office of Administrative Law (OAL) for publication in the New Jersey Register. **Interested persons** may obtain a copy of the petition for rulemaking by writing Saul M. Kilstein, Director, Division of Medical Assistance and Health Services, CN-712, Trenton, New Jersey 08625-0712. **Interested persons** may submit written comments on the petition for rulemaking within 30 days of the publication of this notice of action. Address comments and inquiries to: Henry W. Hardy, Esq., Administrative Practice Officer, Office of Legal & Regulatory Liaison/DMAHS, CN-712, Trenton, NJ 08625-0712.

TRANSPORTATION

(a)

THE COMMISSIONER

Notice of Receipt of Petition for Rulemaking Permits for Driveways (Access); Street Intersection Rules

Government Driveway Permit Fee

N.J.A.C. 16:41-2.4(h)3

Petitioner: John E. Trafford, Executive Director, New Jersey
State League of Municipalities.

Take notice that, on January 26, 1990, the Department of Transportation received a petition for rulemaking with regard to the permit fee for Government Driveway. Specifically, the petitioner requests the promulgation of rules and regulations prescribing: (1) the permit fee of \$500.00 at a minimum be lowered to \$50.00; (2) at the maximum, the Government Driveway application and permit fees be repealed; and (3) municipalities given a full and complete exemption from any driveway access fees. In submitting its present fee structure, municipalities being non-profit entities and political subdivisions of the State would be charged a higher fee than that being charged to private developers. Petitioner's petition for rulemaking is on file at the office of the Commissioner, Department of Transportation.

Interested persons may obtain a copy by writing Charles L. Meyers, Administrative Practice Office, Department of Transportation, 1035 Parkway Avenue, CN 600, Trenton, New Jersey 08625.

PUBLIC NOTICES

In accordance with the provision of N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6, the petition for rulemaking will be reviewed to determine what action should be taken in response to the petition. Thereafter, a notice of action taken shall be mailed to the petitioner and filed with the Office of Administrative Law for publication in the New Jersey Register.

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Public Notice

Gross Income Tax

Homestead Tax Relief

Take notice that a taxpayer who takes credit for other jurisdiction income or wage taxes and paid New Jersey real property taxes in excess of the statutory schedules provided in N.J.S.A. 54A:3A-3 (homeowners) or N.J.S.A. 54A:3A-4 (tenants) was previously unable to claim the amount of property tax paid as a deduction from gross income. Instead, such taxpayer was limited to the property tax credit which is statutorily fixed at \$65.00 for homeowners and \$35.00 for tenants. N.J.S.A. 54A:3A-8b.

As a result of the recent decision of the Appellate Division of the New Jersey Superior Court (Docket No. A-3033-88 T2, January 2, 1990) affirming the Tax Court's decision in the case of *Baldwin v. Director, Division of Taxation*, 10 N.J. Tax 273 (1988), a New Jersey resident taxpayer who files a gross income tax return, claims a credit for taxes paid to other jurisdictions, and who pays property taxes is now entitled to choose between the property tax credit and the property tax deduction.

Taxpayers who wish to file amended returns for taxable years in which they would have elected to use the property tax deduction may do so, providing that the statute of limitations is still open for that taxable year. Claim for credit or refund of an overpayment of income tax shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid. N.J.S.A. 54A:9-8(a).

Please refer questions concerning this notice to the Taxpayer Information Service at (609) 292-6400 or (800) 323-4400 or write: 1474 Prospect Street, CN 269, Trenton, NJ 08646.

ENVIRONMENTAL PROTECTION

(c)

DIVISION OF FISH, GAME AND WILDLIFE

Notice of Extension of Commercial Pheasant, Quail and Partridge-Shooting Preserve Season

Authority: N.J.S.A. 23:3-32.

Take notice that the Commissioner, Department of Environmental Protection, hereby extends the commercial pheasant, quail and partridge-shooting preserve season from March 16, 1990 to April 15, 1990, upon the recommendation of the Director of the Division of Fish, Game and Wildlife, pursuant to statutory authority granted at N.J.S.A. 23:3-32.

This notice shall take effect immediately.

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.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1

| N.J.A.C. | Expiration Date | N.J.A.C. | Expiration Date |
|----------|-----------------|----------|-----------------|
| 1:1 | 5/4/92 | 3:19 | 3/17/91 |
| 1:5 | 10/20/91 | 3:21 | 2/2/92 |
| 1:6 | 5/4/92 | 3:22 | 5/12/94 |
| 1:6A | 5/4/92 | 3:23 | 7/6/92 |
| 1:7 | 5/4/92 | 3:24 | 8/18/94 |
| 1:10 | 5/4/92 | 3:25 | 8/17/92 |
| 1:10A | 5/4/92 | 3:26 | 12/31/90 |
| 1:10B | 10/6/91 | 3:27 | 9/16/90 |
| 1:11 | 5/4/92 | 3:28 | 12/12/94 |
| 1:13 | 5/4/92 | 3:32 | 10/3/93 |
| 1:13A | 4/3/94 | 3:33 | 9/18/94 |
| 1:20 | 5/4/92 | 3:38 | 10/5/92 |
| 1:21 | 5/4/92 | 3:41 | 10/16/90 |
| 1:30 | 2/14/91 | 3:42 | 4/4/93 |
| 1:31 | 6/17/92 | | |

PERSONNEL (CIVIL SERVICE)—TITLE 4/4A

AGRICULTURE—TITLE 2

| N.J.A.C. | Expiration Date | N.J.A.C. | Expiration Date |
|----------|---|----------|-----------------|
| 2:1 | 9/3/90 | 4:1 | 1/28/90 |
| 2:2 | 1/17/94 | 4:2 | 1/28/90 |
| 2:3 | 8/21/94 | 4:3 | 6/20/94 |
| 2:5 | 8/21/94 | 4:6 | 5/5/91 |
| 2:6 | 9/3/90 | 4A:1 | 10/5/92 |
| 2:9 | 7/7/91 | 4A:2 | 10/5/92 |
| 2:16 | 5/7/90 | 4A:3 | 9/6/93 |
| 2:22 | 7/6/92 | 4A:4 | 6/6/93 |
| 2:23 | 7/18/93 | 4A:5 | 10/5/92 |
| 2:24 | 2/11/90 | 4A:6 | 1/4/93 |
| 2:32 | 6/1/92 | 4A:7 | 10/5/92 |
| 2:33 | 3/6/94 | 4A:8 | 1/16/95 |
| 2:34 | 1/2/95 | 4A:9 | 10/5/92 |
| 2:48 | 11/27/90 | 4A:10 | 11/2/92 |
| 2:50 | 5/1/92 | | |
| 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 | 11/7/93 | | |
| 2:69 | 11/7/93 | | |
| 2:70 | 5/7/90 | | |
| 2:71 | 7/8/93 | | |
| 2:72 | 7/8/93 | | |
| 2:73 | 7/8/93 | | |
| 2:74 | 7/8/93 | | |
| 2:76 | 7/31/94 | | |
| 2:90 | 6/24/90 | | |

COMMUNITY AFFAIRS—TITLE 5

| N.J.A.C. | Expiration Date | N.J.A.C. | Expiration Date |
|----------|-----------------|----------|-----------------|
| 3:1 | 1/6/91 | 5:1 | 2/5/95 |
| 3:2 | 4/15/90 | 5:2 | 4/10/94 |
| 3:3 | 1/11/95 | 5:3 | 9/1/93 |
| 3:6 | 3/3/91 | 5:4 | 10/5/92 |
| 3:7 | 9/16/90 | 5:10 | 11/17/93 |
| 3:11 | 5/1/94 | 5:11 | 3/10/94 |
| 3:13 | 11/17/91 | 5:12 | 12/27/94 |
| 3:17 | 6/18/91 | 5:13 | 12/24/92 |
| 3:18 | 1/19/93 | 5:14 | 12/1/90 |
| | | 5:15 | 5/1/94 |
| | | 5:18 | 1/4/95 |
| | | 5:18A | 1/4/95 |
| | | 5:18B | 1/4/95 |
| | | 5:18C | 2/5/95 |
| | | 5:19 | 2/1/93 |
| | | 5:22 | 2/5/95 |
| | | 5:23 | 3/1/93 |
| | | 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 | 6/29/93 |
| | | 5:31 | 12/1/94 |
| | | 5:37 | 11/18/90 |
| | | 5:38 | 10/27/93 |

BANKING—TITLE 3

| N.J.A.C. | Expiration Date |
|----------|-----------------|
| 3:1 | 1/6/91 |
| 3:2 | 4/15/90 |
| 3:3 | 1/11/95 |
| 3:6 | 3/3/91 |
| 3:7 | 9/16/90 |
| 3:11 | 5/1/94 |
| 3:13 | 11/17/91 |
| 3:17 | 6/18/91 |
| 3:18 | 1/19/93 |

| N.J.A.C. | Expiration Date | N.J.A.C. | Expiration Date |
|-----------------|------------------------|-----------------|------------------------|
| 5:51 | 9/1/93 | 7:17 | 4/7/91 |
| 5:52 | 1/2/95 | 7:18 | 8/6/91 |
| 5:70 | 7/9/92 | 7:19 | 4/15/90 |
| 5:71 | 3/1/90 | 7:19A | 2/19/90 |
| 5:80 | 5/20/90 | 7:19B | 2/19/90 |
| 5:91 | 6/16/91 | 7:20 | 5/6/90 |
| 5:92 | 6/16/91 | 7:20A | 12/16/93 |
| 5:100 | 5/5/94 | 7:22 | 1/5/92 |

DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS—TITLE 5A

| N.J.A.C. | Expiration Date |
|-----------------|------------------------|
| 5A:2 | 5/20/90 |

EDUCATION—TITLE 6

| N.J.A.C. | Expiration Date |
|-----------------|------------------------|
| 6:2 | 2/6/94 |
| 6:3 | 7/8/93 |
| 6:7 | 1/2/95 |
| 6:8 | 1/5/92 |
| 6:11 | 12/12/90 |
| 6:12 | 4/2/91 |
| 6:20 | 8/9/90 |
| 6:21 | 11/22/94 |
| 6:22 | 9/30/90 |
| 6:22A | 12/19/93 |
| 6:24 | 4/2/91 |
| 6:28 | 4/10/94 |
| 6:29 | 2/8/95 |
| 6:30 | 7/5/93 |
| 6:31 | 11/16/94 |
| 6:39 | 8/14/94 |
| 6:43 | 4/7/91 |
| 6:46 | 10/5/92 |
| 6:53 | 7/7/92 |
| 6:64 | 1/11/93 |
| 6:68 | 4/12/90 |
| 6:69 | 6/4/91 |
| 6:70 | 10/17/94 |
| 6:78 | 11/7/93 |
| 6:79 | 11/25/92 |

ENVIRONMENTAL PROTECTION—TITLE 7

| N.J.A.C. | Expiration Date |
|-----------------|------------------------|
| 7:1 | 9/16/90 |
| 7:1A | 6/5/92 |
| 7:1C | 6/17/90 |
| 7:1D | 11/28/93 |
| 7:1E | 7/15/90 |
| 7:1F | 4/20/92 |
| 7:1G | 9/29/94 |
| 7:1H | 7/24/90 |
| 7:1I | 7/18/93 |
| 7:2 | 6/24/93 |
| 7:3 | 3/21/93 |
| 7:4A | 9/18/94 |
| 7:5C | 1/16/95 |
| 7:6 | 6/9/94 |
| 7:7 | 5/12/94 |
| 7:7A | 6/6/93 |
| 7:7E | 7/24/90 |
| 7:7F | 1/19/93 |
| 7:8 | 2/5/93 |
| 7:9 | 1/21/91 |
| 7:9A | 8/21/94 |
| 7:10 | 9/1/94 |
| 7:11 | 5/13/93 |
| 7:12 | 4/11/93 |
| 7:13 | 7/14/94 |
| 7:14 | 4/27/94 |
| 7:14A | 6/2/94 |
| 7:14B | 12/21/92 |
| 7:15 | 10/2/94 |

| N.J.A.C. | Expiration Date |
|-----------------|------------------------|
| 7:23 | 6/9/94 |
| 7:24 | 5/19/91 |
| 7:25 | 2/18/91 |
| 7:25A | 5/6/90 |
| 7:26 | 11/4/90 |
| 7:26B | 12/21/92 |
| 7:27 | Exempt |
| 7:27A | 12/4/94 |
| 7:27B-3 | Exempt |
| 7:28 | 10/7/90 |
| 7:29 | 3/18/90 |
| 7:29B | 2/1/93 |
| 7:30 | 12/4/92 |
| 7:31 | 6/20/93 |
| 7:36 | 11/21/93 |
| 7:38 | 9/18/90 |
| 7:45 | 2/6/94 |

HEALTH—TITLE 8

| N.J.A.C. | Expiration Date |
|-----------------|------------------------|
| 8:7 | 9/16/90 |
| 8:8 | 4/12/94 |
| 8:9 | 2/18/91 |
| 8:13 | 9/8/92 |
| 8:18 | 11/6/94 |
| 8:19 | 6/28/90 |
| 8:20 | 3/4/90 |
| 8:21 | 11/18/90 |
| 8:21A | 4/1/90 |
| 8:22 | 8/4/91 |
| 8:23 | 12/13/94 |
| 8:24 | 5/2/93 |
| 8:25 | 5/19/93 |
| 8:26 | 8/4/91 |
| 8:31 | 1/16/95 |
| 8:31A | 3/18/90 |
| 8:31B | 10/15/90 |
| 8:31C | 1/20/92 |
| 8:33 | 10/7/90 |
| 8:33A | 4/15/90 |
| 8:33B | 10/7/90 |
| 8:33C | 7/17/91 |
| 8:33E | 6/23/92 |
| 8:33F | 11/16/94 |
| 8:33G | 7/17/94 |
| 8:33H | 7/19/90 |
| 8:33I | 9/15/91 |
| 8:33J | 4/24/94 |
| 8:33K | 3/27/94 |
| 8:33L | 11/16/92 |
| 8:33M | 7/17/94 |
| 8:33N | 5/15/94 |
| 8:34 | 11/15/93 |
| 8:39 | 6/20/93 |
| 8:40 | 4/15/90 |
| 8:41 | 2/17/92 |
| 8:42 | 8/17/92 |
| 8:42A | 6/19/94 |
| 8:42B | 7/18/93 |
| 8:43 | 1/21/91 |
| 8:43A | 9/3/90 |
| 8:43E | 12/11/92 |
| 8:43F | 2/20/95 |
| 8:43G | 2/5/95 |
| 8:43H | 8/21/94 |
| 8:43I | 3/21/93 |

| N.J.A.C. | Expiration Date | N.J.A.C. | Expiration Date |
|----------|-----------------|----------|-----------------|
| 8:44 | 11/2/93 | 10:66 | 12/15/93 |
| 8:45 | 2/7/95 | 10:67 | 3/3/91 |
| 8:48 | 8/20/89 | 10:68 | 7/7/91 |
| 8:51 | 9/16/90 | 10:69 | 6/6/93 |
| 8:52 | 12/15/91 | 10:69A | 4/20/93 |
| 8:53 | 8/4/91 | 10:69B | 11/21/93 |
| 8:57 | 6/18/90 | 10:70 | 6/16/91 |
| 8:59 | 9/29/94 | 10:71 | 1/6/91 |
| 8:60 | 5/3/90 | 10:72 | 8/27/92 |
| 8:61 | 10/6/91 | 10:80 | 5/19/94 |
| 8:65 | 12/2/90 | 10:81 | 8/24/94 |
| 8:66A | 3/5/95 | 10:82 | 8/24/94 |
| 8:70 | 8/19/93 | 10:83 | 1/19/94 |
| 8:71 | 2/17/94 | 10:85 | 12/20/94 |
| | | 10:87 | 1/27/94 |
| | | 10:89 | 9/11/90 |
| | | 10:90 | 10/14/92 |
| | | 10:94 | 1/6/91 |
| | | 10:95 | 8/23/89 |
| | | 10:97 | 5/15/94 |
| | | 10:99 | 2/19/90 |
| | | 10:109 | 3/17/91 |
| | | 10:120 | 8/21/91 |
| | | 10:121 | 3/13/89 |
| | | 10:121A | 12/7/92 |
| | | 10:122 | 5/15/94 |
| | | 10:122A | Exempt |
| | | 10:122B | 9/10/89 |
| | | 10:123 | 7/29/90 |
| | | 10:124 | 12/7/92 |
| | | 10:125 | 7/16/89 |
| | | 10:126 | 11/7/93 |
| | | 10:127 | 8/26/93 |
| | | 10:129 | 10/11/89 |
| | | 10:130 | 9/19/88 |
| | | 10:131 | 12/7/92 |
| | | 10:132 | 1/5/92 |
| | | 10:141 | 2/7/94 |

HIGHER EDUCATION—TITLE 9

| N.J.A.C. | Expiration Date |
|----------|-----------------|
| 9:1 | 2/21/94 |
| 9:2 | 6/17/90 |
| 9:3 | 9/27/93 |
| 9:4 | 10/30/91 |
| 9:5 | 1/21/91 |
| 9:6 | 5/20/90 |
| 9:6A | 1/4/93 |
| 9:7 | 2/28/93 |
| 9:8 | 11/4/90 |
| 9:9 | 10/3/93 |
| 9:11 | 4/17/94 |
| 9:12 | 4/17/94 |
| 9:14 | 5/20/90 |
| 9:15 | 8/21/94 |

HUMAN SERVICES—TITLE 10

| N.J.A.C. | Expiration Date |
|----------|-----------------|
| 10:1 | 11/7/93 |
| 10:2 | 1/5/92 |
| 10:3 | 11/21/93 |
| 10:4 | 1/3/88 |
| 10:11 | 1/16/95 |
| 10:12 | 1/5/92 |
| 10:13 | 7/18/93 |
| 10:14 | 5/16/93 |
| 10:31 | 6/5/94 |
| 10:36 | 8/18/91 |
| 10:37 | 11/4/90 |
| 10:38 | 5/28/91 |
| 10:39 | 2/21/94 |
| 10:40 | 5/11/94 |
| 10:41 | 3/20/94 |
| 10:42 | 8/18/91 |
| 10:43 | 8/21/94 |
| 10:44 | 10/3/88 |
| 10:44A | 11/21/93 |
| 10:44B | 4/15/90 |
| 10:45 | 2/20/95 |
| 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 | 2/8/95 |
| 10:53 | 4/29/90 |
| 10:54 | 3/3/91 |
| 10:55 | 3/11/90 |
| 10:56 | 8/26/91 |
| 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 | 11/28/94 |
| 10:64 | 3/3/91 |
| 10:65 | 8/25/94 |

| N.J.A.C. | Expiration Date |
|----------|-----------------|
| 10A:1 | 7/6/92 |
| 10A:2 | 2/5/95 |
| 10A:3 | 10/6/91 |
| 10A:4 | 7/21/91 |
| 10A:5 | 10/6/91 |
| 10A:6 | 11/2/92 |
| 10A:8 | 11/16/92 |
| 10A:9 | 1/20/92 |
| 10A:10-6 | 8/17/92 |
| 10A:16 | 4/6/92 |
| 10A:17 | 12/15/91 |
| 10A:18 | 7/6/92 |
| 10A:19 | 8/21/94 |
| 10A:22 | 7/5/93 |
| 10A:31 | 3/5/95 |
| 10A:32 | 3/4/90 |
| 10A:33 | 5/2/94 |
| 10A:34 | 4/6/92 |
| 10A:70 | Exempt |
| 10A:71 | 4/15/90 |

INSURANCE—TITLE 11

| N.J.A.C. | Expiration Date |
|----------|-----------------|
| 11:1 | 2/3/91 |
| 11:1-20 | 6/24/90 |
| 11:1-22 | 6/24/90 |
| 11:2 | 12/2/90 |
| 11:3 | 1/6/91 |
| 11:4 | 12/2/90 |
| 11:5 | 10/28/93 |
| 11:7 | 10/19/92 |
| 11:10 | 7/15/90 |

| N.J.A.C. | Expiration Date | N.J.A.C. | Expiration Date |
|----------|-----------------|----------|-----------------|
| 11:12 | 10/27/91 | 13:13 | 6/17/90 |
| 11:13 | 11/12/92 | 13:18 | 4/1/90 |
| 11:15 | 10/26/94 | 13:19 | 8/18/94 |
| 11:16 | 2/3/91 | 13:20 | 12/18/90 |
| 11:17 | 4/18/93 | 13:21 | 12/16/90 |
| 11:17A | 1/2/95 | 13:22 | 1/7/90 |
| 11:17B | 1/2/95 | 13:23 | 5/26/94 |
| 11:17C | 1/2/95 | 13:24 | 9/27/94 |
| 11:17D | 1/2/95 | 13:25 | 3/18/90 |
| 11:18 | 12/18/94 | 13:26 | 9/26/93 |
| | | 13:27 | 4/1/90 |
| | | 13:28 | 5/16/93 |
| | | 13:29 | 6/3/90 |
| | | 13:30 | 4/15/90 |
| | | 13:31 | 12/12/91 |
| | | 13:32 | 10/23/92 |
| | | 13:33 | 3/18/90 |
| | | 13:34 | 10/26/93 |
| | | 13:35 | 9/21/94 |
| | | 13:36 | 9/27/94 |
| | | 13:37 | 1/23/95 |
| | | 13:38 | 10/7/90 |
| | | 13:39 | 6/19/94 |
| | | 13:39A | 7/7/91 |
| | | 13:40 | 9/3/90 |
| | | 13:41 | 9/3/90 |
| | | 13:42 | 10/31/93 |
| | | 13:43 | 9/1/93 |
| | | 13:44 | 8/7/94 |
| | | 13:44B | 11/2/92 |
| | | 13:44C | 7/18/93 |
| | | 13:44D | 8/7/94 |
| | | 13:45A | 12/16/90 |
| | | 13:45B | 4/17/94 |
| | | 13:46 | 6/3/90 |
| | | 13:47 | 2/2/92 |
| | | 13:47A | 10/5/92 |
| | | 13:47B | 2/21/94 |
| | | 13:47C | 6/9/94 |
| | | 13:48 | 1/21/91 |
| | | 13:49 | 12/16/93 |
| | | 13:51 | 4/27/92 |
| | | 13:54 | 10/5/91 |
| | | 13:58 | 9/7/89 |
| | | 13:59 | 9/16/90 |
| | | 13:60 | 1/20/92 |
| | | 13:61 | 3/5/95 |
| | | 13:70 | 1/25/95 |
| | | 13:71 | 1/25/95 |
| | | 13:75 | 6/5/94 |
| | | 13:76 | 6/27/93 |
| | | 13:77 | 2/1/93 |
| | | 13:78 | 3/20/94 |

LABOR—TITLE 12

| N.J.A.C. | Expiration Date | N.J.A.C. | Expiration Date |
|----------|-----------------|----------|-----------------|
| 12:3 | 12/19/93 | 13:31 | 12/12/91 |
| 12:5 | 9/19/93 | 13:32 | 10/23/92 |
| 12:6 | 10/17/93 | 13:33 | 3/18/90 |
| 12:15 | 8/19/90 | 13:34 | 10/26/93 |
| 12:16 | 4/1/90 | 13:35 | 9/21/94 |
| 12:17 | 1/6/91 | 13:36 | 9/27/94 |
| 12:18 | 3/7/93 | 13:37 | 1/23/95 |
| 12:20 | 8/14/94 | 13:38 | 10/7/90 |
| 12:35 | 8/5/90 | 13:39 | 6/19/94 |
| 12:40 | 2/5/95 | 13:39A | 7/7/91 |
| 12:41 | 1/17/94 | 13:40 | 9/3/90 |
| 12:45 | 5/2/93 | 13:41 | 9/3/90 |
| 12:46 | 5/2/93 | 13:42 | 10/31/93 |
| 12:47 | 5/2/93 | 13:43 | 9/1/93 |
| 12:48 | 5/2/93 | 13:44 | 8/7/94 |
| 12:49 | 5/2/93 | 13:44B | 11/2/92 |
| 12:51 | 6/30/91 | 13:44C | 7/18/93 |
| 12:56 | 9/26/90 | 13:44D | 8/7/94 |
| 12:57 | 9/26/90 | 13:45A | 12/16/90 |
| 12:58 | 9/26/90 | 13:45B | 4/17/94 |
| 12:60 | 3/21/93 | 13:46 | 6/3/90 |
| 12:90 | 12/15/94 | 13:47 | 2/2/92 |
| 12:100 | 9/22/94 | 13:47A | 10/5/92 |
| 12:105 | 1/21/91 | 13:47B | 2/21/94 |
| 12:110 | 1/19/93 | 13:47C | 6/9/94 |
| 12:112 | 9/6/93 | 13:48 | 1/21/91 |
| 12:120 | 5/3/90 | 13:49 | 12/16/93 |
| 12:175 | 11/28/93 | 13:51 | 4/27/92 |
| 12:190 | 1/4/93 | 13:54 | 10/5/91 |
| 12:195 | 6/24/93 | 13:58 | 9/7/89 |
| 12:200 | 8/5/90 | 13:59 | 9/16/90 |
| 12:210 | 9/6/93 | 13:60 | 1/20/92 |
| 12:235 | 5/5/91 | 13:61 | 3/5/95 |
| | | 13:70 | 1/25/95 |
| | | 13:71 | 1/25/95 |
| | | 13:75 | 6/5/94 |
| | | 13:76 | 6/27/93 |
| | | 13:77 | 2/1/93 |
| | | 13:78 | 3/20/94 |

COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A

| N.J.A.C. | Expiration Date |
|-----------|-----------------|
| 12A:9 | 3/7/93 |
| 12A:10-1 | 10/13/94 |
| 12A:11 | 9/21/92 |
| 12A:12 | 9/21/92 |
| 12A:50 | 8/15/93 |
| 12A:54 | 8/15/93 |
| 12A:60 | 11/21/93 |
| 12A:80 | 2/6/94 |
| 12A:81 | 2/6/94 |
| 12A:82 | 2/6/94 |
| 12A:100-1 | 9/8/91 |
| 12A:120 | 9/6/93 |
| 12A:121 | 12/5/93 |

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 |
| 14:10 | 9/8/91 |
| 14:10-6 | 9/5/91 |
| 14:11 | 1/27/92 |
| 14:17 | 4/24/94 |
| 14:18 | 7/29/90 |
| 14:25 | 3/5/95 |

LAW AND PUBLIC SAFETY—TITLE 13

| N.J.A.C. | Expiration Date |
|----------|-----------------|
| 13:1 | 7/5/93 |
| 13:2 | 8/5/90 |
| 13:3 | 4/25/93 |
| 13:4 | 1/21/91 |
| 13:10 | 3/27/94 |

ENERGY—TITLE 14A

| N.J.A.C. | Expiration Date |
|----------|-----------------|
| 14A:2 | 4/17/89 |
| 14A:3 | 10/7/90 |
| 14A:5 | 10/19/88 |
| 14A:6 | 1/16/95 |

| N.J.A.C. | Expiration Date | N.J.A.C. | Expiration Date |
|----------|-----------------|----------|-----------------|
| 14A:7 | 9/16/90 | 16:81 | 11/7/93 |
| 14A:8 | 1/16/95 | 16:82 | 9/5/94 |
| 14A:11 | 1/16/95 | | |
| 14A:13 | 2/2/92 | | |
| 14A:14 | 1/30/94 | | |
| 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 | 5/2/93 |
| 15:3 | 7/7/91 |
| 15:5 | 2/17/92 |
| 15:10 | 2/18/91 |

PUBLIC ADVOCATE—TITLE 15A

| N.J.A.C. | Expiration Date |
|----------|-----------------|
| 15A:2 | 12/27/94 |

TRANSPORTATION—TITLE 16

| N.J.A.C. | Expiration Date |
|----------|-----------------|
| 16:1 | 8/5/90 |
| 16:1A | 6/16/94 |
| 16:5 | 11/20/94 |
| 16:6 | 8/7/94 |
| 16:7 | 3/6/94 |
| 16:13 | 5/7/89 |
| 16:20A | 2/20/95 |
| 16:20B | 2/20/95 |
| 16:21 | 9/3/90 |
| 16:21A | 11/20/94 |
| 16:22 | 2/3/91 |
| 16:24 | 2/5/95 |
| 16:25 | 8/15/93 |
| 16:25A | 7/18/93 |
| 16:26 | 9/5/94 |
| 16:27 | 9/8/91 |
| 16:28 | 6/1/93 |
| 16:28A | 6/1/93 |
| 16:29 | 6/1/93 |
| 16:30 | 6/1/93 |
| 16:31 | 6/1/93 |
| 16:31A | 6/1/93 |
| 16:32 | 2/8/95 |
| 16:41 | 7/28/92 |
| 16:41A | 1/23/95 |
| 16:41B | 3/4/90 |
| 16:43 | 9/3/90 |
| 16:44 | 5/25/93 |
| 16:45 | 9/18/94 |
| 16:46 | 11/6/94 |
| 16:49 | 2/8/95 |
| 16:51 | 4/6/92 |
| 16:53 | 7/17/94 |
| 16:53B | 7/3/94 |
| 16:53C | 6/16/93 |
| 16:53D | 5/3/94 |
| 16:54 | 4/7/91 |
| 16:55 | 6/14/93 |
| 16:56 | 8/7/94 |
| 16:60 | 6/14/93 |
| 16:61 | 6/14/93 |
| 16:62 | 4/15/90 |
| 16:72 | 3/31/91 |
| 16:73 | 1/30/92 |
| 16:75 | 5/13/93 |
| 16:76 | 2/6/94 |
| 16:77 | 3/5/95 |
| 16:78 | 10/7/90 |
| 16:79 | 10/20/91 |
| 16:80 | 11/7/93 |

TREASURY-GENERAL—TITLE 17

| N.J.A.C. | Expiration Date |
|----------|-----------------|
| 17:1 | 5/6/93 |
| 17:2 | 11/8/94 |
| 17:3 | 8/15/93 |
| 17:4 | 7/1/90 |
| 17:5 | 12/2/90 |
| 17:6 | 11/22/93 |
| 17:7 | 12/19/93 |
| 17:8 | 6/27/90 |
| 17:9 | 10/3/93 |
| 17:10 | 5/6/93 |
| 17:12 | 10/13/94 |
| 17:13 | 10/13/94 |
| 17:14 | 10/13/94 |
| 17:16 | 12/2/90 |
| 17:19 | 3/18/90 |
| 17:20 | 9/26/93 |
| 17:25 | 5/26/94 |
| 17:27 | 10/7/93 |
| 17:28 | 9/13/90 |
| 17:29 | 10/18/90 |
| 17:30 | 5/4/92 |
| 17:32 | 3/21/93 |
| 17:33 | 4/17/94 |

TREASURY-TAXATION—TITLE 18

| N.J.A.C. | Expiration Date |
|----------|-----------------|
| 18:1 | 7/21/94 |
| 18:2 | 9/6/93 |
| 18:3 | 3/14/94 |
| 18:5 | 3/14/94 |
| 18:6 | 3/14/94 |
| 18:7 | 3/14/94 |
| 18:8 | 2/24/94 |
| 18:9 | 6/7/93 |
| 18:12 | 7/29/93 |
| 18:12A | 7/29/93 |
| 18:14 | 7/29/93 |
| 18:15 | 7/29/93 |
| 18:16 | 7/29/93 |
| 18:17 | 7/29/93 |
| 18:18 | 3/14/94 |
| 18:19 | 3/14/94 |
| 18:22 | 2/24/94 |
| 18:23 | 2/24/94 |
| 18:23A | 8/5/90 |
| 18:24 | 6/7/93 |
| 18:25 | 1/6/91 |
| 18:26 | 6/7/93 |
| 18:30 | 4/2/89 |
| 18:35 | 6/7/93 |
| 18:36 | 2/4/90 |
| 18:37 | 8/5/90 |
| 18:38 | 2/16/93 |
| 18:39 | 9/8/92 |

OTHER AGENCIES—TITLE 19

| N.J.A.C. | Expiration Date |
|----------|---------------------------|
| 19:3 | 5/26/93 |
| 19:3B | Exempt (N.J.S.A. 13:17-1) |
| 19:4 | 5/26/93 |
| 19:4A | 6/20/93 |
| 19:8 | 7/5/93 |
| 19:9 | 10/17/93 |
| 19:10 | 9/5/94 |
| 19:12 | 8/7/91 |
| 19:16 | 8/7/91 |
| 19:17 | 6/8/93 |

| N.J.A.C. | Expiration Date | N.J.A.C. | Expiration Date |
|-----------------|------------------------|-----------------|------------------------|
| 19:20 | 2/5/95 | 19:48 | 10/13/93 |
| 19:25 | 1/9/91 | 19:49 | 3/24/93 |
| 19:30 | 10/7/90 | 19:50 | 5/12/93 |
| 19:40 | 8/24/94 | 19:51 | 8/14/91 |
| 19:41 | 5/12/93 | 19:52 | 9/25/91 |
| 19:42 | 5/12/93 | 19:53 | 4/28/93 |
| 19:43 | 4/27/94 | 19:54 | 3/24/93 |
| 19:44 | 9/29/93 | 19:61 | 7/7/91 |
| 19:45 | 3/24/93 | 19:65 | 7/7/91 |
| 19:46 | 4/28/93 | 19:75 | 1/13/94 |
| 19:47 | 4/28/93 | | |

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 January 2, 1990 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(c).

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.1990 d.1 means the first rule adopted in 1990.

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 series number and supplement 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: SUPPLEMENT DECEMBER 18, 1989

NEXT UPDATE: SUPPLEMENT JANUARY 16, 1990

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 |
|------------------------------------|--|------------------------------------|--|
| 21 N.J.R. 589 and 658 | March 6, 1989 | 21 N.J.R. 2843 and 3042 | September 18, 1989 |
| 21 N.J.R. 659 and 810 | March 20, 1989 | 21 N.J.R. 3043 and 3204 | October 2, 1989 |
| 21 N.J.R. 811 and 954 | April 3, 1989 | 21 N.J.R. 3205 and 3330 | October 16, 1989 |
| 21 N.J.R. 955 and 1036 | April 17, 1989 | 21 N.J.R. 3331 and 3584 | November 6, 1989 |
| 21 N.J.R. 1037 and 1178 | May 1, 1989 | 21 N.J.R. 3585 and 3688 | November 20, 1989 |
| 21 N.J.R. 1179 and 1474 | May 15, 1989 | 21 N.J.R. 3689 and 3812 | December 4, 1989 |
| 21 N.J.R. 1475 and 1598 | June 5, 1989 | 21 N.J.R. 3813 and 3986 | December 18, 1989 |
| 21 N.J.R. 1599 and 1762 | June 19, 1989 | 22 N.J.R. 1 and 88 | January 2, 1990 |
| 21 N.J.R. 1763 and 1934 | July 3, 1989 | 22 N.J.R. 89 and 272 | January 16, 1990 |
| 21 N.J.R. 1935 and 2148 | July 17, 1989 | 22 N.J.R. 273 and 584 | February 5, 1990 |
| 21 N.J.R. 2149 and 2426 | August 7, 1989 | 22 N.J.R. 585 and 686 | February 20, 1990 |
| 21 N.J.R. 2427 and 2690 | August 21, 1989 | 22 N.J.R. 687 and 884 | March 5, 1990 |
| 21 N.J.R. 2691 and 2842 | September 5, 1989 | | |

| N.J.A.C. CITATION | | PROPOSAL NOTICE (N.J.R. CITATION) | DOCUMENT NUMBER | ADOPTION NOTICE (N.J.R. CITATION) |
|-----------------------------------|--|-----------------------------------|-----------------|-----------------------------------|
| ADMINISTRATIVE LAW—TITLE 1 | | | | |
| 1:1-5.4 | Nonlawyer representation | 21 N.J.R. 2693(a) | | |
| 1:1-12.5 | Partial summary decisions | 22 N.J.R. 3(a) | | |
| 1:1-14.11 | Transcripts of OAL hearings | 21 N.J.R. 3587(a) | R.1990 d.68 | 22 N.J.R. 334(a) |
| 1:1-19.2 | Withdrawal of request for hearing or defense raised | 21 N.J.R. 3589(a) | R.1990 d.71 | 22 N.J.R. 334(b) |
| 1:6A | Special education hearings | 21 N.J.R. 2693(a) | | |
| 1:6A | Special education hearings: public hearings | 21 N.J.R. 3045(a) | | |
| 1:11-10.1 | Discovery in private passenger automobile insurance rate hearings | 21 N.J.R. 3815(a) | | |
| 1:13-1.1, 14.4 | DMV cases involving excessive points, surcharges, and certain failures to appear | 22 N.J.R. 91(a) | | |

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| 2:2-3.3 | Tuberculin testing of cattle | 21 N.J.R. 3333(a) | | |
| 2:5-2.2, 3.1 | Equine infectious anemia; avian influenza: administrative corrections | | | 22 N.J.R. 628(a) |
| 2:24 | Registration and transportation of bees | 21 N.J.R. 3045(b) | | |
| 2:32-2.22 | Sire Stakes qualifying times at pari-mutuel tracks | 22 N.J.R. 3(b) | | |
| 2:34-2 | Equine Advisory Board rules | 21 N.J.R. 2151(a) | R.1990 d.15 | 22 N.J.R. 25(a) |

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| 3:0 | Compensation to mortgage bankers, brokers and real estate licensees for placing mortgage loans: preproposal | 22 N.J.R. 275(a) | | |
| 3:1-14 | Revolving credit equity loans | 21 N.J.R. 3333(b) | | |
| 3:1-17 | Senior citizen homeowner's reverse mortgage loans | 21 N.J.R. 3207(b) | | |
| 3:3-1.1 | Department organization | Exempt | R.1990 d.103 | 22 N.J.R. 335(a) |
| 3:18-3.5 | Repeal (see 3:1-14) | 21 N.J.R. 3333(b) | | |
| 3:28 | Bookkeeping and accounting by savings and loan associations | 21 N.J.R. 3336(a) | R.1990 d.18 | 22 N.J.R. 164(a) |
| 3:42-2.2, 7 | Pinelands Development Credit Bank: resale of bank-owned credits | 21 N.J.R. 3691(a) | R.1990 d.119 | 22 N.J.R. 628(b) |

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| 4:2-7.7(c) | Repeal (see 4A:3-4.11) | 21 N.J.R. 1184(a) | R.1990 d.45 | 22 N.J.R. 166(a) |
| 4:2-16.1, 16.2 | Repeal (see 4A:8) | 21 N.J.R. 3340(a) | R.1990 d.49 | 22 N.J.R. 169(a) |
| 4:3-16.1, 16.2 | Repeal (see 4A:8) | 21 N.J.R. 3340(a) | R.1990 d.49 | 22 N.J.R. 169(a) |

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| 4A:3-4.11 | State service: downward title reevaluation pay adjustments | 21 N.J.R. 1184(a) | R.1990 d.45 | 22 N.J.R. 166(a) |
| 4A:3-38 | Intermittent employees in State service: leave entitlements | 21 N.J.R. 3337(a) | R.1990 d.48 | 22 N.J.R. 166(b) |
| 4A:4-1.11 | Vacancy Review Board: State service | 21 N.J.R. 3337(a) | R.1990 d.48 | 22 N.J.R. 166(b) |

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| 4A:6-1.2, 1.3, 1.9, 2.4 | Intermittent employees in State service: leaves and holiday pay | 21 N.J.R. 3337(a) | R.1990 d.48 | 22 N.J.R. 166(b) |
| 4A:8 | Layoffs | 21 N.J.R. 3340(a) | R.1990 d.49 | 22 N.J.R. 169(a) |
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| 5:10-1.6, 1.11, 1.12, 2.2 | Hotels and multiple dwellings: retreat lodging facility registration and inspection certificates | 22 N.J.R. 275(b) | | |
| 5:11-1.2, 6.2 | Relocation assistance: definitions; relocation plans | 21 N.J.R. 3694(a) | R.1990 d.113 | 22 N.J.R. 336(a) |
| 5:12 | Homelessness Prevention Program | 21 N.J.R. 2845(a) | R.1990 d.68 | 22 N.J.R. 336(b) |
| 5:14-4.1 | Neighborhood Preservation Balanced Housing Program: administration of affordability controls | 21 N.J.R. 3695(a) | R.1990 d.100 | 22 N.J.R. 337(a) |
| 5:18 | Uniform Fire Code | 21 N.J.R. 3344(a) | R.1990 d.72 | 22 N.J.R. 337(b) |
| 5:18-2.7 | Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits | 21 N.J.R. 1654(a) | | |
| 5:18A | Fire Code Enforcement | 21 N.J.R. 3344(a) | R.1990 d.72 | 22 N.J.R. 337(b) |
| 5:18A-4 | Repeal (see 5:18C) | 21 N.J.R. 1655(a) | R.1990 d.114 | 22 N.J.R. 337(c) |
| 5:18B | High Level Alarms | 21 N.J.R. 3344(a) | R.1990 d.72 | 22 N.J.R. 337(b) |
| 5:18C | Uniform Fire Code: fire service training and certification | 21 N.J.R. 1655(a) | R.1990 d.114 | 22 N.J.R. 337(c) |
| 5:22 | Exemptions from local property taxation | 21 N.J.R. 3345(a) | R.1990 d.60 | 22 N.J.R. 350(a) |
| 5:22-2.5 | Rehabilitation of multiple dwellings: administrative correction | _____ | _____ | 22 N.J.R. 632(a) |
| 5:22-3 | Urban enterprise zone municipalities: tax abatements for residential construction | 22 N.J.R. 591(a) | | |
| 5:23-1.1, 3.4, 4.5, 10 | Uniform Construction Code: Radon Mitigation Subcode | 21 N.J.R. 3696(a) | | |
| 5:23-1.4 | Uniform Construction Code: underground storage tank compliance | 21 N.J.R. 3345(b) | R.1990 d.57 | 22 N.J.R. 350(b) |
| 5:23-2.18A | Utility load management devices: public hearing concerning installation programs | 21 N.J.R. 1185(b) | | |
| 5:23-3.14 | Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits | 21 N.J.R. 1654(a) | | |
| 5:23-3.15 | UCC: plumbing subcode | 21 N.J.R. 3346(a) | R.1990 d.58 | 22 N.J.R. 351(a) |
| 5:23-4.5, 4.19, 4.20 | UCC enforcing agencies: standardized forms; remittance of training fees | 21 N.J.R. 3346(b) | R.1990 d.61 | 22 N.J.R. 351(b) |
| 5:23-4.17 | Dedication of fee revenue for UCC enforcement | 21 N.J.R. 3348(a) | R.1990 d.115 | 22 N.J.R. 352(a) |
| 5:23-4.24A | Uniform Construction Code: alternative plan review program for large projects | 21 N.J.R. 1770(a) | | |
| 5:23-7.2-7.6, 7.8, 7.9, 7.11, 7.12, 7.17, 7.18, 7.30, 7.37, 7.41, 7.55-7.57, 7.61, 7.67, 7.68, 7.71-7.73, 7.75, 7.76, 7.80-7.82, 7.87, 7.94-7.97 | Barrier Free Subcode | 21 N.J.R. 2774(a) | | |
| 5:23-9.3 | Uniform Construction Code: FRT plywood as roof sheathing | 21 N.J.R. 3870(a) | | |
| 5:23-9.4 | Uniform Construction Code: earthquake zones and seismic design requirements | 22 N.J.R. 592(a) | | |
| 5:25-5.4 | New Home Warranty Security Plan: builder premium rates | 21 N.J.R. 3698(a) | | |
| 5:25-5.4 | New Home Warranty Security Plan: builder premium rates | 22 N.J.R. 277(a) | | |
| 5:27 | Rooming and boarding houses | 21 N.J.R. 3871(a) | | |
| 5:29-1, 2.2 | Landlord registration form for one and two-unit rental dwellings | 21 N.J.R. 3349(a) | R.1990 d.59 | 22 N.J.R. 354(a) |
| 5:29-1.2 | Landlord registration form for one and two-unit rental dwellings: administrative correction | 21 N.J.R. 3699(a) | | |
| 5:31 | Local authorities | 21 N.J.R. 3046(a) | R.1990 d.4 | 22 N.J.R. 26(a) |
| 5:33 | Urbanaid program | 21 N.J.R. 3046(b) | R.1990 d.16 | 22 N.J.R. 26(b) |
| 5:35 | State aid for planning local effectiveness program | 21 N.J.R. 3046(b) | R.1990 d.16 | 22 N.J.R. 26(b) |
| 5:52-1 | Volunteer coaches' safety orientation and training skills programs: minimum standards | 21 N.J.R. 2159(a) | R.1990 d.12 | 22 N.J.R. 26(c) |
| 5:80 | New Jersey Housing and Mortgage Finance Agency | 22 N.J.R. 277(b) | | |
| 5:80-18.1, 18.2, 18.3, 18.8 | Housing and Mortgage Finance Agency: debarment from agency contracting | 21 N.J.R. 3350(a) | | |
| 5:80-28.1 | Housing and Mortgage Finance Agency: nonpublic records | 21 N.J.R. 3351(a) | | |
| 5:91-1.2, 4.5, 6.2, 7.1-7.6 | Council on Affordable Housing: mediation and post mediation process | 21 N.J.R. 1773(a) | | |
| 5:92-18 | Council on Affordable Housing: municipal conformance with State Development and Redevelopment Plan | 21 N.J.R. 1186(a) | | |

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| 5:100 | Ombudsman for institutionalized elderly: practice and procedure | 21 N.J.R. 1510(a) | | |
| 5:100 | Ombudsman practice and procedure: extension of comment period | 21 N.J.R. 1995(a) | | |

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MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1989-1 (supplement July 17, 1989)

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| 6:7 | Evaluation of building principals in State-operated districts | 21 N.J.R. 3352(a) | R.1990 d.13 | 22 N.J.R. 28(a) |
| 6:11-6.1, 6.2 | Certification of nursery teachers | 21 N.J.R. 3209(a) | R.1990 d.134 | 22 N.J.R. 632(b) |
| 6:11-10.4, 10.10, 10.11, 10.14 | Certification of school business administrators | 21 N.J.R. 2915(a) | R.1990 d.47 | 22 N.J.R. 174(a) |
| 6:20-2 | Local district bookkeeping and accounting | 21 N.J.R. 2919(a) | R.1990 d.21 | 22 N.J.R. 176(a) |
| 6:20-2A | Double entry bookkeeping and GAAP accounting | 21 N.J.R. 2919(a) | R.1990 d.21 | 22 N.J.R. 176(a) |
| 6:21-7.6 | Pupil transportation: administrative correction | | | 22 N.J.R. 366(b) |
| 6:22-1.1, 1.3, 1.4, 1.7, 1.8 | Private school and State facilities for handicapped pupils | 21 N.J.R. 3210(a) | R.1990 d.110 | 22 N.J.R. 366(a) |
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| 6:29 | Health, safety and physical education | 21 N.J.R. 3815(b) | R.1990 d.154 | 22 N.J.R. 793(a) |
| 6:39-1.2 | Levels of pupil proficiency: administrative correction | | | 22 N.J.R. 366(b) |
| 6:46-1.1, 4.6, 4.10, 4.12 | Private vocational schools: instructional hours | 21 N.J.R. 3700(a) | R.1990 d.150 | 22 N.J.R. 799(a) |
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| 6:68 | State Library Assistance Programs | 21 N.J.R. 3822(a) | | |

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| 7:5C | Endangered Plant Species Program | 21 N.J.R. 2847(a) | R.1990 d.22 | 22 N.J.R. 179(a) |
| 7:5C-5.1 | Endangered plant species | 22 N.J.R. 94(a) | | |
| 7:7A-9.2 | Freshwater wetlands protection: Statewide general permits | 22 N.J.R. 278(a) | | |
| 7:11-2.1, 2.2, 2.3, 2.9 | Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir System: schedule of rates | 21 N.J.R. 3836(a) | | |
| 7:11-4 | Manasquan Reservoir Water Supply System: rate schedule | 21 N.J.R. 3838(a) | | |
| 7:11-4 | Manasquan Reservoir Water Supply System rate schedule: change of public hearing location | 22 N.J.R. 4(a) | | |
| 7:11-5 | Use of water from Manasquan Reservoir water supply system | 21 N.J.R. 3701(a) | | |
| 7:12-1.2, 9 | Soft clam and hard clam depuration | 22 N.J.R. 97(a) | | |
| 7:13-7.1 | Redelineation of Rowe Brook in Tewksbury Township, Hunterdon County | 21 N.J.R. 3843(a) | | |
| 7:13-7.1 | Redelineation of Pond Run in Hamilton Township, Mercer County | 21 N.J.R. 3843(b) | | |
| 7:14A-1.8 | NJPDES fee schedule for permittees and applicants | 21 N.J.R. 3590(a) | | |
| 7:14A-4.7 | Hazardous waste management: polychlorinated biphenyls (PCBs) | 21 N.J.R. 1047(a) | | |
| 7:14A-6.15 | NJPDES program: list of hazardous constituents for groundwater monitoring | 21 N.J.R. 3844(a) | | |
| 7:14A-12.22, 12.23 | Sewer connection ban exemptions | 21 N.J.R. 2240(c) | | |
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| 7:14B-13 | Underground Storage Tank Improvement Fund loan program | 21 N.J.R. 2265(a) | | |
| 7:17 | Repeal (see 7:12-1.2, 9) | 22 N.J.R. 97(a) | | |
| 7:18-1.1, 1.4, 1.6, 1.7, 1.9, 2.1-2.4, 2.6, 2.7, 2.10-2.13, 2.15, 5.3, 5.4, 5.5, 5.7, 5.8 | Radon laboratory certification program | 21 N.J.R. 3354(a) | | |
| 7:19 | Water supply allocation permits | 21 N.J.R. 3594(a) | | |
| 7:19A | Emergency water supply allocation | 22 N.J.R. 102(a) | | |
| 7:19B | Water emergency surcharge schedule | 22 N.J.R. 106(a) | | |
| 7:20-1 | Dam safety standards | 22 N.J.R. 279(a) | | |
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| 7:25-12 | Surf clam management | 21 N.J.R. 3214(a) | R.1990 d.46 | 22 N.J.R. 183(a) |
| 7:25-12.9 | Surf clamming: administrative correction | | | 22 N.J.R. 633(a) |

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| 7:25A | Oyster resource management | 22 N.J.R. 283(a) | | |
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| 7:26-1.4, 7.4, 8.2 | Hazardous waste management: testing facility exemptions for treatability studies | 21 N.J.R. 3705(a) | | |
| 7:26-1.13, 8.15 | Hazardous waste management: exclusion or exemption from rules; discarded commercial chemicals | 21 N.J.R. 3219(a) | R.1990 d.65 | 22 N.J.R. 382(a) |
| 7:26-2, 2A, 2B, 8 | Management of resource recovery facility combustion residual ash: preproposal | 22 N.J.R. 108(b) | | |
| 7:26-2A.8 | Sanitary landfill requirements: administrative correction | _____ | _____ | 22 N.J.R. 382(b) |
| 7:26-5 | Hazardous and solid waste management: civil administrative penalties and adjudicatory hearings | 21 N.J.R. 2734(a) | R.1990 d.50 | 22 N.J.R. 187(a) |
| 7:26-6.5 | Interdistrict and intradistrict solid waste flow: Bergen County | 21 N.J.R. 1486(b) | | |
| 7:26-6.5 | Interdistrict and intradistrict solid waste flow: Camden, Gloucester, Essex and Sussex counties | 22 N.J.R. 284(a) | | |
| 7:26-7.2, 7.4, 8.1, 8.5, 8.7, 8.13, 8.20 | Hazardous waste management: waste code hierarchy; waste determination; waste oils listing; container labeling | 22 N.J.R. 288(a) | | |
| 7:26-8.2, 12.3 | Radioactive mixed wastes | 21 N.J.R. 1053(a) | | |
| 7:26-8.13 | Manifesting of nonhazardous waste: preproposal | 21 N.J.R. 3220(a) | | |
| 7:26-8.21, 12.2 | NJPDES program: list of hazardous constituents for groundwater monitoring | 21 N.J.R. 3844(a) | | |
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| 7:27-8 | Air pollution control permit and certificate process | 22 N.J.R. 292(a) | | |
| 7:27-8.2 | Air pollution control permit and certificate process: correction to proposed amendment | 22 N.J.R. 593(a) | | |
| 7:27-23.2-23.7 | Volatile organic substances in architectural coatings and air fresheners | 21 N.J.R. 3360(a) | | |
| 7:27A-3 | Air pollution control: operative date of civil administrative penalties and adjudicatory hearing rules | _____ | _____ | 22 N.J.R. 29(a) |
| 7:28-1.4, 20 | Particle accelerators for industrial and research use | 21 N.J.R. 3364(a) | | |
| 7:28-27 | Certification of radon testers and mitigators | 21 N.J.R. 3369(a) | | |
| 7:29 | Noise control | 22 N.J.R. 307(a) | | |
| 7:36-8 | Green Acres Program: public hearing requirement on proposed transfers or use of Department-held land and water | 22 N.J.R. 593(b) | | |
| 7:45-1.2, 1.3, 2.6, 2.11, 4.1, 6, 9, 11.1-11.5 | Delaware and Raritan Canal State Park review zone rules | 21 N.J.R. 828(a) | R.1990 d.106 | 22 N.J.R. 383(b) |
| 7:50-2.11, 4.2, 4.3, 4.5, 4.53, 4.62, 4.66, 5.2, 5.13, 5.23, 5.24, 5.28, 5.43, 5.44, 5.47, 6.65, 6.154, 6.156 | Pinelands Comprehensive Management Plan | 21 N.J.R. 3381(a) | | |

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HEALTH—TITLE 8

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| 8:19-2 | Newborn biochemical screening | 21 N.J.R. 3633(b) | R.1990 d.146 | 22 N.J.R. 844(a) |
| 8:19-2 | Newborn biochemical screening: public hearing | 21 N.J.R. 3708(a) | | |
| 8:20 | Birth defects registry | 21 N.J.R. 3636(a) | | |
| 8:23 | Veterinary public health | 21 N.J.R. 3274(a) | R.1990 d.20 | 22 N.J.R. 204(a) |
| 8:31-30 | Health care facility construction: plan review fee (recodify as 8:31-31) | 21 N.J.R. 2447(a) | R.1990 d.39 | 22 N.J.R. 205(a) |
| 8:31A | Standard Hospital Accounting and Rate Evaluation (SHARE) | 21 N.J.R. 3872(a) | | |
| 8:31B-3.3, 4.6, 4.41 | Hospital reimbursement: uncompensated care audit | 21 N.J.R. 3638(a) | | |
| 8:31B-3.17 | Hospital reimbursement: on-site audits | 21 N.J.R. 3639(a) | | |
| 8:31B-3.22 | Hospital reimbursement: standard costs per case | 21 N.J.R. 3275(a) | R.1990 d.36 | 22 N.J.R. 205(b) |
| 8:31B-3.23 | Hospital reimbursement: emergency room patients | 21 N.J.R. 3275(b) | R.1990 d.38 | 22 N.J.R. 206(a) |
| 8:31B-3.24 | Hospital reimbursement: employee health insurance | 21 N.J.R. 3277(a) | | |
| 8:31B-3.27 | Hospital reimbursement: capital facilities formula allowance | 21 N.J.R. 3278(a) | R.1990 d.40 | 22 N.J.R. 211(a) |
| 8:31B-3.51 | Hospital reimbursement: Schedule of Rates notification appeal and review | 21 N.J.R. 3278(b) | R.1990 d.41 | 22 N.J.R. 212(a) |
| 8:31B-4.38, 4.61 | Hospital reimbursement: Maternity, Outreach, and Management Services (MOMS) | 22 N.J.R. 594(a) | | |
| 8:31B-4.40 | Hospital reimbursement: appropriate collection procedures | 21 N.J.R. 3873(a) | | |

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| 8:31B-4.125 | Hospital reimbursement: outside collection costs | 21 N.J.R. 3639(b) | | |
| 8:31B-5.3 | Hospital reimbursement: Diagnosis Related Groups classification | 21 N.J.R. 3873(b) | | |
| 8:31B-5.3 | Diagnosis Related Groups classification: correction to proposal and extension of comment period | 22 N.J.R. 308(a) | | |
| 8:33A | Surgical facilities: certificate of need | 21 N.J.R. 3888(a) | | |
| 8:33I-1.2, 1.3, 1.5 | Megavoltage radiation oncology units: need review | 21 N.J.R. 3640(a) | R.1990 d.132 | 22 N.J.R. 633(b) |
| 8:33P | Designation of trauma centers: certificate of need | 21 N.J.R. 3889(a) | | |
| 8:39-29.4 | Licensed nursing homes: non-prescription medications | 21 N.J.R. 1607(a) | R.1990 d.131 | 22 N.J.R. 634(a) |
| 8:39-44 | Respite care services | 21 N.J.R. 2924(a) | R.1990 d.133 | 22 N.J.R. 634(b) |
| 8:40 | Invalid coach and ambulance services | 22 N.J.R. 595(a) | | |
| 8:43B-1-17 | Hospital licensing standards (repeal) | 21 N.J.R. 2925(a) | R.1990 d.77 | 22 N.J.R. 488(a) |
| 8:43B-18 | Anesthesia (recodify to 8:43G-6) | 21 N.J.R. 2925(a) | R.1990 d.77 | 22 N.J.R. 488(a) |
| 8:43F | Adult day health care facilities: standards for licensure | 21 N.J.R. 3385(a) | R.1990 d.136 | 22 N.J.R. 635(a) |
| 8:43F-23, 24 | Adult day health care facilities: physical plant and functional requirements | 21 N.J.R. 3403(a) | | |
| 8:43G-1, 2, 5, 19, 21, 22, 24, 26, 29, 30, 31, 35 | Hospital licensure: administration, obstetrics, oncology, pediatrics, plant safety, psychiatry, physical and occupational therapy, renal dialysis, respiratory care, postanesthesia care | 21 N.J.R. 2926(a) | R.1990 d.95 | 22 N.J.R. 441(b) |
| 8:43G-3 | Hospital licensure: compliance with mandatory rules and advisory standards | 21 N.J.R. 1608(a) | | |
| 8:43G-4 | Hospital licensure: patient rights | 21 N.J.R. 2160(b) | R.1990 d.98 | 22 N.J.R. 484(a) |
| 8:43G-4.2 | Patient rights (advisory) | 21 N.J.R. 2160(b) | | |
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| 8:43G-6 | Hospital licensure: anesthesia | 21 N.J.R. 2925(a) | R.1990 d.77 | 22 N.J.R. 488(a) |
| 8:43G-7 | Hospital licensure: cardiac services | 21 N.J.R. 2162(a) | R.1990 d.97 | 22 N.J.R. 488(b) |
| 8:43G-7.4, 7.6, 7.11, 7.13, 7.27, 7.36 | Cardiac services (advisory) | 21 N.J.R. 2162(a) | | |
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| 8:43G-9 | Hospital licensure: critical and intermediate care | 21 N.J.R. 2167(a) | R.1990 d.94 | 22 N.J.R. 498(a) |
| 8:43G-9.3, 9.6, 9.8, 9.10, 9.12, 9.15, 9.17, 9.22 | Critical and intermediate care (advisory) | 21 N.J.R. 2167(a) | | |
| 8:43G-10 | Hospital licensure: dietary standard | 21 N.J.R. 1611(a) | R.1990 d.78 | 22 N.J.R. 505(a) |
| 8:43G-10.2, 10.5, 10.7, 10.9 | Dietary standards (advisory) | 21 N.J.R. 1611(a) | | |
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| 8:43G-12 | Hospital licensure: emergency department | 21 N.J.R. 1613(a) | R.1990 d.92 | 22 N.J.R. 510(a) |
| 8:43G-12.4, 12.6, 12.8 | Emergency department (advisory) | 21 N.J.R. 1613(a) | | |
| 8:43G-13 | Hospital licensure: housekeeping and laundry | 21 N.J.R. 1616(a) | R.1990 d.91 | 22 N.J.R. 514(a) |
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| 8:43G-14 | Hospital licensure: infection control and sanitation | 21 N.J.R. 1618(a) | R.1990 d.90 | 22 N.J.R. 517(a) |
| 8:43G-14.2, 14.4 | Infection control and sanitation (advisory) | 21 N.J.R. 1618(a) | | |
| 8:43G-15 | Hospital licensure: medical records | 21 N.J.R. 2171(a) | R.1990 d.88 | 22 N.J.R. 520(a) |
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| 8:43G-28 | Hospital licensure: radiology | 21 N.J.R. 2174(a) | R.1990 d.81 | 22 N.J.R. 544(a) |
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| 8:43G-33.4, 33.5, 33.7 | Social work (advisory) | 21 N.J.R. 1631(a) | | |
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| 8:45 | Clinical laboratory services: licensure and charges | 21 N.J.R. 3708(b) | R.1990 d.145 | 22 N.J.R. 846(a) |
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| 8:57-6 | Cancer Registry (recodify to 8:57A) | 21 N.J.R. 3909(a) | | |
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| 8:71 | Interchangeable drug products (see 21 N.J.R. 2107(c), 2996(a)) | 21 N.J.R. 662(a) | R.1989 d.575 | 21 N.J.R. 3665(a) |
| 8:71 | Interchangeable drug products (see 21 N.J.R. 2997(a), 3664(a)) | 21 N.J.R. 1790(a) | R.1990 d.37 | 22 N.J.R. 214(b) |
| 8:71 | Interchangeable drug products | 21 N.J.R. 3292(a) | R.1990 d.43 | 22 N.J.R. 214(c) |
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| 9:4-7.6 | Evaluation of community college presidents | 21 N.J.R. 2697(a) | | |
| 9:7-3.2 | Tuition Aid Grant 1990-91 Award Table | 22 N.J.R. 309(a) | | |
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| 10:37-7.8 | Community mental health services: fee collection | 21 N.J.R. 3221(a) | | |
| 10:38 | Interim Assistance Program for discharged psychiatric hospital clients | 21 N.J.R. 2280(a) | | |
| 10:39 | Community residences for mentally ill: licensure standards | 21 N.J.R. 1995(b) | | |
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| 10:49-1.10 | Medicaid/Medicare claims processing | 22 N.J.R. 117(a) | | |
| 10:52 | Manual for Hospital Services | 21 N.J.R. 3911(a) | R.1990 d.157 | 22 N.J.R. 799(b) |
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| 10:53-1.2 | Bed reserve in long-term care facilities | 21 N.J.R. 1634(a) | R.1990 d.26 | 22 N.J.R. 217(a) |
| 10:55 | Prosthetic and Orthotic Services Manual | 22 N.J.R. 4(b) | | |
| 10:60-4 | Home Care Expansion Program | 22 N.J.R. 597(a) | | |
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| 10:63-1.15 | Long-term care facilities: Medicaid Program requirements and sanctions | 22 N.J.R. 5(a) | | |
| 10:63-1.16 | Long-term care facilities: preproposal concerning pre-admission screening of Medicaid patients | 21 N.J.R. 2773(a) | | |
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| 10:72-3.4 | Medicaid program: newborn care | 21 N.J.R. 965(a) | | |
| 10:81-14.18 | REACH program: post-AFDC child care | 22 N.J.R. 136(a) | | |
| 10:83-1.11 | Supplemental Security Income payment levels | 22 N.J.R. 64(a) | R.1990 d.149 | 22 N.J.R. 800(a) |
| 10:85 | General Assistance Manual | 21 N.J.R. 3221(b) | R.1990 d.33 | 22 N.J.R. 218(a) |
| 10:85-3.3 | General Assistance: income and eligibility | 21 N.J.R. 836(b) | | |
| 10:85-4.6 | Emergency shelter assistance for individuals with AIDS/HIV positive with symptoms and for terminally ill | 21 N.J.R. 3790(a) | R.1990 d.117 | 22 N.J.R. 355(a) |
| 10:87-2.2, 2.3, 2.14, 2.17, 2.19, 2.20, 2.21, 2.23, 2.28, 2.29, 2.31, 2.34-2.38, 3.1, 3.6-3.8, 3.11, 4.3, 4.5, 4.8, 4.12, 5.1, 5.2, 5.4, 5.6, 5.9, 5.10, 6.3, 6.19, 7.6, 7.16, 7.18, 9.5, 10.7, 10.12, 11.31 | Food Stamp Program administration | 22 N.J.R. 139(a) | | |
| 10:89 | Home Energy Assistance | 22 N.J.R. 599(a) | | |
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| 10:95 | Repeal (see 10:91) | 21 N.J.R. 2753(a) | | |
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| 10:123-3.2 | Residential health care facilities and boarding homes: personal needs allowance for GPA and SSI recipients | 21 N.J.R. 3912(a) | R.1990 d.137 | 22 N.J.R. 661(a) |
| 10:125 | Youth and Family Services capital funding program | 21 N.J.R. 1514(a) | | |
| 10:126A | Family day care standards | 22 N.J.R. 13(a) | | |

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| 10A:2-10 | Grants procedure | 22 N.J.R. 14(a) | | |
| 10A:4-6, 6.3, 6.4 | Inmate discipline: chronic violator procedure | 21 N.J.R. 3240(a) | R.1990 d.34 | 22 N.J.R. 232(a) |
| 10A:5-3.1, 3.2 | Administrative segregation | 21 N.J.R. 3409(a) | R.1990 d.120 | 22 N.J.R. 661(b) |
| 10A:9-4 | Reduced custody consideration | 21 N.J.R. 3050(a) | | |
| 10A:16-5.2, 5.6 | Medical and health services: guardianship of an adult inmate | 21 N.J.R. 2851(a) | | |
| 10A:16-11 | Special Medical Units | 22 N.J.R. 310(c) | | |
| 10A:18-2.6 | Incoming correspondence: inspection and identification | 22 N.J.R. 147(a) | | |
| 10A:18-2.7 | Inspection of outgoing correspondence | 21 N.J.R. 3913(a) | | |
| 10A:18-6.4 | Employee visits with incarcerated relatives | 21 N.J.R. 3410(a) | R.1990 d.124 | 22 N.J.R. 662(a) |
| 10A:22-2.6 | Release of confidential inmate or parolee records | 21 N.J.R. 3411(a) | | |
| 10A:22-4.1 | Expungement or inmate records: administrative correction | _____ | _____ | 22 N.J.R. 29(d) |
| 10A:31 | Adult county correctional facilities | 21 N.J.R. 2853(a) | R.1990 d.140 | 22 N.J.R. 801(a) |
| 10A:31 | Adult county correctional facilities: public hearing | 21 N.J.R. 3411(b) | | |
| 10A:32 | Juvenile detention facilities | 22 N.J.R. 313(a) | | |

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| 11:1-5.2 | Cancellation and nonrenewal of fire and casualty coverage | 21 N.J.R. 3240(b) | R.1990 d.107 | 22 N.J.R. 391(a) |
| 11:1-10.7 | Foreign and alien property and casualty insurers: appeals regarding admission denials | 21 N.J.R. 3418(a) | R.1990 d.17 | 22 N.J.R. 30(a) |
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| 11:1-28 | Formation of property and casualty insurance corporation or reciprocal insurance exchange | 21 N.J.R. 3607(a) | | |
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| 11:3-1 | Commercial Automobile Insurance Plan | 21 N.J.R. 3613(a) | R.1990 d.118 | 22 N.J.R. 392(b) |
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| 11:3-16 | Private passenger automobile rate filings | 21 N.J.R. 2182(a) | R.1990 d.116 | 22 N.J.R. 399(a) |
| 11:3-16A | Automobile coverage: flex rate percentage calculations | 21 N.J.R. 3719(a) | | |
| 11:3-18 | Review of rate filings for private passenger automobile coverage | 21 N.J.R. 3422(b) | R.1990 d.109 | 22 N.J.R. 421(a) |
| 11:3-19 | Multi-tier and good driver rating plans | 21 N.J.R. 3721(a) | | |
| 11:3-25.4 | Residual market equalization charges: suspension of certain changes to N.J.A.C. 11:3-25.4; new public comment period | 21 N.J.R. 2208(a) | | |
| 11:3-29 | Automobile insurance personal injury protection: medical fee schedules | 21 N.J.R. 842(b) | | |
| 11:3-31 | Private passenger automobile insurers: examination of financial experience | 21 N.J.R. 3726(a) | R.1990 d.108 | 22 N.J.R. 425(a) |
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| 11:5-1.28 | Approval real estate schools: pre-proposal | 21 N.J.R. 1641(a) | | |
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