

# NEW JERSEY



# REGISTER

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## REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS\*, PAGE 2299.

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\*The New Jersey Register supplements the New Jersey Administrative Code. To complete your research of the latest State Agency rule changes, see the Register Index of Rule Proposals and Adoptions in this issue.

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# RULE PROPOSALS

Interested persons may submit, in writing, information or arguments concerning any of the following proposals until **October 16, 1985**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

## AGRICULTURE

### (a)

#### DIVISION OF RURAL RESOURCES

##### State Soil Conservation Committee Procedure; Minor Subdivision

**Proposed Amendment: N.J.A.C. 2:90-1.5**

**Proposed New Rule: N.J.A.C. 2:90-1.14**

Authorized By: Arthur R. Brown, Jr., Chairman, State  
Soil Conservation Committee.

Authority: N.J.S.A. 4:24-3 and 4:24-42

Proposal Number: PRN 1985-483.

Submit comments by October 16, 1985 to:  
Samuel R. Race, Executive Secretary  
State Soil Conservation Committee  
CN 330, Room 203  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39, et seq., requires that disturbances of more than 5,000 square feet of the surface area of land be conditioned upon certification of a plan for soil erosion and sediment control by the soil conservation district. On occasion, applicants have relied on such district certification as final approval to engage in the proposed land use activity. However, soil conservation district plan certification does not confer final approval to engage in the land use proposed by the applicant unless all other agencies controlling such land use have granted such approval. The proposed amendment to N.J.A.C. 2:90-1.5 clarifies that the applicant must have approval for the use from the appropriate controlling agency prior to commencing the project.

The Act defines an application for development as, among other things, a proposed subdivision. In addition, the Act applies only to activities where more than 5,000 square feet of land disturbance is proposed by the subdivision action. In the case of a minor subdivision where the extent, location and timing of land disturbance is not known at the time of the subdivision action, it is unclear from the language of the Act as to when the requirement for a certified plan should be applied. In some instances a "typical" plan has been required and in other situations the subdivision action has not been conditioned upon the need for certification. The proposed new rule clarifies that a minor subdivision, where land disturbance is not immediately anticipated by the subdivider, shall not be subject to the requirements of the Act until such time that the actual ownership, extent, location and timing of such disturbance is known. Subsequent municipal construction permit

## NEW JERSEY REGISTER

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approvals on two or more lots derived from such minor subdivision by the same applicant shall be conditioned upon district certification.

**Social Impact**

The proposed new rule and amendment will have a favorable social impact through elimination of misunderstanding that district certification is authorization to engage in the proposed use and by clarifying under what conditions minor subdivisions are subject to erosion control requirements.

**Economic Impact**

The proposed new rule and amendment will have a favorable economic impact. Potential for fiscal penalties, to be imposed upon persons who have initiated land disturbance by erroneously relying upon district certification when other approvals are required, will be reduced or eliminated. Cost for public enforcement will be reduced. Subdivisions proposing no disturbance will not be required to have a soil erosion and sediment control plan thereby reducing costs to the subdivider and to affected public agencies.

**Environmental Impact**

Potential soil loss, sedimentation and water and air quality impairment will be reduced through elimination or reduction of instances where land disturbance is initiated without all required approvals. Enforcing agency shut downs of such projects, which may result in soil erosion because of incomplete installation of controls, will be reduced. With regard to the clarification of minor subdivisions, the requirement for erosion controls will be applied at the actual land disturbance stage. No environmental impact change is anticipated.

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

**2:90-1.5 Procedure**

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

(e) **The district shall include in the notice of certification or on the certified plan the following clause: "This approval is limited to the soil erosion, sedimentation and related stormwater management controls specified in this plan. It is not authorization to engage in the proposed land use unless such use has been previously approved by the municipality or other controlling agency."**

Redesignate existing (e)-(g) as (f)-(h) (No change in text.)

**2:90-1.14 Minor subdivision**

**An application for minor subdivision, where the subdivider certifies in writing that no land disturbance is proposed, shall not be deemed a project for the purposes of the Soil Erosion and Sediment Control Act of 1975, as amended. Municipal approval of subsequent applications for construction permits on lots derived from such subdivisions, shall be conditioned upon district certification of a plan for soil erosion and sediment control where more than 5,000 square feet of the surface area of land will be disturbed by the applicant for the concurrent construction of two or more single family dwelling units or other structures. Concurrent construction, with respect to this policy, means any activity where land is disturbed in two or more lots at the same time by the same applicant in the same subdivision.**

**COMMUNITY AFFAIRS**

**(a)**

**DIVISION OF HOUSING AND DEVELOPMENT**

**Public Employee Occupational Safety and Health and Fire Service**

**Notice of Pre-proposal for a Rule**

Authorized By: William M. Connolly, Director,  
Division of Housing and Development.

Authority: N.J.S.A. 52:27-192 et seq.

Pre-Proposal Number: PPR 1985-6.

Submit comments by October 16, 1985 to:

Robert Burns  
Division of Housing and Development  
Department of Community Affairs  
CN 805  
Trenton, New Jersey 08625

This is a Notice of Pre-Proposal for a rule (see N.J.A.C. 1:30-3.2). Any rule concerning the subject of this pre-proposal must still comply with the rulemaking provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Office of Administrative Law's Rules for Agency Rulemaking, N.J.A.C. 1:30.

**Summary**

The Department of Labor has at N.J.A.C. 12:100-4.2(a)9, adopted by reference, and intends to apply to both paid and volunteer Fire Departments, the provisions of Subpart L—Fire Protection of the Federal Occupational Safety and Health regulations (29 CFR Part 1910). These requirements apply to specific areas of Fire Fighter Training and Fire Fighter Protection Equipment. They are to become effective on November 6, 1986.

The Department of Community Affairs has authority, under the Uniform Fire Safety Act (N.J.S.A. 52:27-192 et seq.), to promulgate rules concerning fire safety. To the extent of any inconsistency, the Community Affairs rules would supersede the rules of the Labor Department with regard to fire safety issues. The Department of Community Affairs seeks to solicit comments concerning the impact upon the Fire Service of the Labor Department's adoption by reference of the Federal Fire Protection rules and also seeks recommendations as to rules which it should adopt.

**Interested parties** should note that the Department of Labor has defined the term "Fire Brigade" so as to include any fire Department (Brigade) where an individual is covered by a worker's compensation program.

**Full text** of the pre-proposal follows.

**Subpart L-Fire Protection**

§1910.155 Scope, application and definitions applicable to this subpart.

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(a) Scope. This subpart contains requirements for fire brigades, and all portable and fixed fire suppression equipment, fire detection systems, and fire or employee alarm systems installed to meet the fire protection requirements of 29 CFR Part 1910.

(b) Application. This subpart applies to all employments except for maritime, construction, and agriculture.

(c) Definitions applicable to this subpart. (1) "After-flame" means the time a test specimen continues to flame after the flame source has been removed.

(2) "Aqueous film forming foam (AFFF)" means a fluorinated surfactant with a foam stabilizer which is diluted with water to act as a temporary barrier to exclude air from mixing with the fuel vapor by developing an aqueous film on the fuel surface of some hydrocarbons which is capable of suppressing the generation of fuel vapors.

(3) "Approved" means acceptable to the Assistant Secretary under the following criteria:

(i) If it is accepted, or certified, or listed, or labeled or otherwise determined to be safe by a nationally recognized testing laboratory, such as, but not limited to, Underwriters' Laboratories, Inc. or the Factory Mutual System; or

(ii) With respect to an installation or equipment of a kind which no nationally recognized testing laboratory accepts, certifies, lists, labels, or determines to be safe, if it is inspected or tested by another Federal agency and found in compliance with the provisions of the applicable National Fire Protection Association Fire Code; or

(iii) With respect to custom-made equipment or related installations which are designed, fabricated for, and intended for use by its manufacturer on the basis of test data which the employer keeps and makes available for inspection to the Assistant Secretary.

(iv) For the purposes of paragraph (c) (3) of this section:

(A) Equipment is listed if it is of a kind mentioned in a list which is published by a nationally recognized testing laboratory which makes periodic inspections of the production of such equipment and which states that such equipment meets nationally recognized standards or has been tested and found safe for use in a specified manner;

(B) Equipment is labeled if there is attached to it a label, symbol, or other identifying mark of a nationally recognized testing laboratory which makes periodic inspections of the production of such equipment, and whose labeling indicates compliance with nationally recognized standards or tests to determine safe use in a specified manner.

(C) Equipment is accepted if it has been inspected and found by a nationally recognized testing laboratory to conform to specified plans or to procedures of applicable codes; and

(D) Equipment is certified if it has been tested and found by a nationally recognized testing laboratory to meet nationally recognized standards or to be safe for use in a specified manner or is of a kind whose production is periodically inspected by a nationally recognized testing laboratory, and if it bears a label, tag, or other record of certification.

(4) "Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health or designee.

(5) "Automatic fire detection device" means a device designed to automatically detect the presence of fire by heat, flame, light, smoke or other products of combustion.

(6) "Buddy-breathing device" means an accessory to self-contained breathing apparatus which permits a second person to share the same air supply as that of the wearer of the apparatus.

(7) "Carbon dioxide" means a colorless, odorless, electrically nonconductive inert gas (chemical formula  $\text{CO}_2$ ) that is a medium for extinguishing fires by reducing the concentration of oxygen or fuel vapor in the air to the point where combustion is impossible.

(8) "Class A fire" means a fire involving ordinary combustible materials such as paper, wood, cloth, and some rubber and plastic materials.

(9) "Class B fire" means a fire involving flammable or combustible liquids, flammable gases, greases and similar materials, and some rubber and plastic materials.

(10) "Class C fire" means a fire involving energized electrical equipment where safety to the employee requires the use of electrically nonconductive extinguishing media.

(11) "Class D fire" means a fire involving combustible metals such as magnesium, titanium, zirconium, sodium, lithium and potassium.

(12) "Dry chemical" means an extinguishing agent composed of very small particles of chemicals such as, but not limited to, sodium bicarbonate, potassium bicarbonate, urea-based potassium bicarbonate, potassium chloride, or monoammonium phosphate supplemented by special treatment to provide resistance to packing and moisture absorption (caking) as well as to provide proper flow capabilities. Dry chemical does not include dry powders.

(13) "Dry powder" means a compound used to extinguish or control Class D fires.

(14) "Education" means the process of imparting knowledge or skill through systematic instruction. It does not require formal classroom instruction.

(15) "Enclosed structure" means a structure with a roof or ceiling and at least two walls which may present fire hazards to employees, such as accumulations of smoke, toxic gases and heat, similar to those found in buildings.

(16) "Extinguisher classification" means the letter classification given an extinguisher to designate the class or classes of fire on which an extinguisher will be effective.

(17) "Extinguisher rating" means the numerical rating given to an extinguisher which indicates the extinguishing potential of the unit based on standardized tests developed by Underwriters' Laboratories, Inc.

(18) "Fire brigade" (private fire department, industrial fire department) means an organized group of employees who are knowledgeable, trained, and skilled in at least basic fire fighting operations.

(19) "Fixed extinguishing system" means a permanently installed system that either extinguishes or controls a fire at the location of the system.

(20) "Flame resistance" is the property of materials, or combinations of component materials, to retard ignition and restrict the spread of flame.

(21) "Foam" means a stable aggregation of small bubbles which flow freely over a burning liquid surface and form a coherent blanket which seals combustible vapors and thereby extinguishes the fire.

(22) "Gaseous agent" is a fire extinguishing agent which is in the gaseous state at normal room temperature and pressure. It has low viscosity, can expand or contract with changes in pressure and temperature, and has the ability to diffuse readily and to distribute itself uniformly throughout an enclosure.

(23) "Halon 1211" means a colorless, faintly sweet smelling, electrically nonconductive liquified as (chemical formula  $\text{CBrClF}_2$ ) which is a medium for extinguishing fires by inhibiting the chemical chain reaction of fuel and oxygen. It is also known as bromochlorodifluoromethane.

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(24) "Halon 1301" means a colorless, odorless, electrically nonconductive gas (chemical formula  $\text{CBrF}_3$ ) which is a medium for extinguishing fires by inhibiting the chemical chain reaction of fuel and oxygen. It is also known as bromotrifluoromethane.

(25) "Helmet" is a head protective device consisting of a rigid shell, energy absorption system, and chin strap intended to be worn to provide protection for the head or portions thereof, against impact, flying or falling objects, electric shock, penetration, heat and flame.

(26) "Incipient stage fire" means a fire which is in the initial or beginning stage and which can be controlled or extinguished by portable fire extinguishers, Class II standpipe or small hose systems without the need for protective clothing or breathing apparatus.

(27) "Inspection" means a visual check of fire protection systems, and equipment to ensure that they are in place, charged, and ready for use in the event of a fire.

(28) "Interior structural fire fighting" means the physical activity of fire suppression, rescue or both, inside of buildings or enclosed structures which are involved in a fire situation beyond the incipient stage.

(29) "Lining" means a material permanently attached to the inside of the outer shell of a garment for the purpose of thermal protection and padding.

(30) "Local application system" means a fixed fire suppression system which has a supply of extinguishing agent, with nozzles arranged to automatically discharge extinguishing agent directly on the burning material to extinguish or control a fire.

(31) "Maintenance" means the performance of services on fire protection equipment and systems to assure that they will perform as expected in the event of a fire. Maintenance differs from inspection in that maintenance requires the checking of internal fittings, devices and agent supplies.

(32) "Multipurpose dry chemical" means a dry chemical which is approved for use on Class A, Class B and Class C fires.

(33) "Outer shell" is the exterior layer of material on the fire coat and protective trousers which forms the outermost barrier between the fire fighter and the environment. It is attached to the vapor barrier and liner and is usually constructed with a storm flap, suitable closures, and pockets.

(34) "Positive-pressure breathing apparatus" means self-contained breathing apparatus in which the pressure in the breathing zone is positive in relation to the immediate environment during inhalation and exhalation.

(35) "Pre-discharge employee alarm" means an alarm which will sound at a set time prior to actual discharge of an extinguishing system so that employees may evacuate the discharged area prior to system discharge.

(36) "Quick disconnect valve" means a device which starts the flow of air by inserting of the hose (which leads from the facepiece) into the regulator of self-contained breathing apparatus, and stops the flow of air by disconnection of the hose from the regulator.

(37) "Sprinkler alarm" means an approved device installed so that any waterflow from a sprinkler system equal to or greater than that from single automatic sprinkler will result in an audible alarm signal on the premises.

(38) "Sprinkler system" means a system of piping designed in accordance with fire protecting engineering standards and installed to control or extinguish fires. The system includes an adequate and reliable water supply, and a network of specially sized piping and sprinklers which are interconnected.

The system also includes a control valve and a device for actuating an alarm when the system is in operation.

(39) "Standpipe systems". (i) "Class I standpipe system" means a 2½" (6.3 cm) hose connection for use by fire departments and those trained in handling heavy fire streams.

(ii) "Class II standpipe system" means a 1½ (3.8 cm) hose system which provides a means for the control or extinguishment of incipient stage fires.

(iii) "Class III standpipe system" means a combined system of hose which is for the use of employees trained in the use of hose operations and which is capable of furnishing effective water discharge during the more advanced stages of fire (beyond the incipient stage) in the interior of workplaces. Hose outlets are available for both 1½" (3.8 cm) and 2½" (6.3 cm) hose.

(iv) "Small hose system" means a system of hose ranging in diameter from 5/8" (1.6 cm) up to 1½" (3.8 cm) which is for the use of employees and which provides a means for the control and extinguishment of incipient stage fires.

(40) "Total flooding system" means a fixed suppression system which is arranged to automatically discharge a predetermined concentration of agent into an enclosed space for the purpose of fire extinguishment or control.

(41) "Training" means the process of making proficient through instruction and hands-on practice in the operation of equipment, including respiratory protection equipment, that is expected to be used and in the performance of assigned duties.

(42) "Vapor barrier" means that material used to prevent or substantially inhibit the transfer of water, corrosive liquids and steam or other hot vapors from the outside of a garment to the wearer's body.

### §1910.156 Fire brigades.

(a) Scope and application. (1) Scope. This section contains requirements for the organization, training, and personal protective equipment of fire brigades whenever they are established by an employer.

(2) Application. The requirements of this section apply to fire brigades, industrial fire departments and private or contractual type fire departments. Personal protective equipment requirements apply only to members of fire brigades performing interior structural fire fighting. The requirements of this section do not apply to airport crash rescue or forest fire fighting operations.

(b) Organization. (1) Organizational statement. The employer shall prepare and maintain a statement or written policy which establishes the existence of a fire brigade; the basic organizational structure; the type, amount, and frequency of training to be provided to fire brigade members; the expected number of members in the fire brigade; and the functions that the fire brigade is to perform at the workplace. The organizational statement shall be available for inspection by the Assistant Secretary and by employees or their designated representatives.

(2) Personnel. The employer shall assure that employees who are expected to do interior structural fire fighting are physically capable of performing duties which may be assigned to them during emergencies. The employer shall not permit employees with known heart disease, epilepsy, or emphysema, to participate in fire brigade emergency activities unless a physician's certificate of the employees' fitness to participate in such activities is provided. For employees assigned to fire brigades before September 15, 1980, this paragraph is effective on September 15, 1980. For employees assigned to fire

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brigades on or after September 15, 1980, this paragraph is effective December 15, 1980.

(c) Training and education. (1) The employer shall provide training and education for all fire brigade members commensurate with those duties and functions that fire brigade members are expected to perform. Such training and education shall be provided to fire brigade members before they perform fire brigade emergency activities. Fire brigade leaders and training instructors shall be provided with training and education which is more comprehensive than that provided to the general membership of the fire brigade.

(2) The employer shall assure that training and education is conducted frequently enough to assure that each member of the fire brigade is able to perform the member's assigned duties and functions satisfactorily and in a safe manner so as not to endanger fire brigade members or other employees. All fire brigade members shall be provided with training at least annually. In addition, fire brigade members who are expected to perform interior structural fire fighting shall be provided with an education session or training at least quarterly.

(3) The quality of the training and education program for fire brigade members shall be similar to those conducted by such fire training schools as the Maryland Fire and Rescue Institute; Iowa Fire Service Extension; West Virginia Fire Service Extension; Georgia Fire Academy, New York State Department, Fire Prevention and Control; Louisiana State University Firemen Training Program, or Washington State's Fire Service Training Commission for Vocational Education. (For example, for the oil refinery industry, with its unique hazards, the training and education program for those fire brigade members shall be similar to those conducted by Texas A & M University, Lamar University, Reno Fire School, or the Delaware State Fire School.)

(4) The employer shall inform fire brigade members about special hazards such as storage and use of flammable liquids and gases, toxic chemicals, radioactive sources, and water reactive substances, to which they may be exposed during fire and other changes that occur in relation to the special hazards. The employer shall develop and make available for inspection by fire brigade members, written procedures that describe the actions to be taken in situations involving the special hazards and shall include these in the training and education program.

(d) Fire fighting equipment. The employer shall maintain and inspect, at least annually, fire fighting equipment to assure the safe operational condition of the equipment. Portable fire extinguishers and respirators shall be inspected at least monthly. Fire fighting equipment that is in damaged or unserviceable condition shall be removed from service and replaced.

(e) Protective clothing. The following requirements apply to those employees who perform interior structural fire fighting. The requirements do not apply to employees who use fire extinguishers or standpipe systems to control or extinguish fires only in the incipient stage.

(1) General. (i) The employer shall provide at no cost to the employee and assure the use of protective clothing which complies with the requirements of this paragraph. The employer shall assure that protective clothing ordered or purchased after July, 1981, meets the requirements contained in this paragraph. As the new equipment is provided, the employer shall assure that all fire brigade members wear the equipment when performing interior structural fire fighting. After July 1, 1985, the employer shall assure that all fire brigade members wear protective clothing meeting the requirements of this paragraph when performing interior structural

fire fighting.

(ii) The employer shall assure that protective clothing protects the head, body, and extremities, and consists of at least the following components: foot and leg protection; hand protection; body protection; eye, face and head protection.

(2) Foot and leg protection. (i) Foot and leg protection shall meet the requirements of paragraphs (e)(2)(ii) and (e)(2)(iii) of this section, and may be achieved by either of the following methods:

(A) Fully extended boots which provide protection for the legs; or

(B) Protective shoes or boots worn in combination with protective trousers that meet the requirements of paragraph (e)(3) of this section.

(ii) Protective footwear shall meet the requirements of §1910.136 for Class 75 footwear. In addition, protective footwear shall be water-resistant for at least 5 inches (12.7 cm) above the bottom of the heel and shall be equipped with slip-resistant outer soles.

(iii) Protective footwear shall be tested in accordance with paragraph (1) of Appendix E, and shall provide protection against penetration of the midsole by a size 8D common nail when at least 300 pounds (1330 N) of static force is applied to the nail.

(3) Body protection. (i) Body protection shall be coordinated with foot and leg protection to ensure full body protection for the wearer. This shall be achieved by one of the following methods:

(A) Wearing of a fire-resistant coat meeting the requirements of paragraph (e)(3)(ii) of this section in combination with fully extended boots meeting the requirements of paragraphs (e)(2)(iii) of this section; or

(B) Wearing of a fire-resistive coat in combination with protective trousers both of which meet the requirements of paragraph (e)(3)(ii) of this section.

(ii) The performance, construction, and testing of fire-resistive coats and protective trousers shall be at least equivalent to the requirements of the National Fire Protection Association (NFPA) standard NFPA No. 1971-1975, "Protective Clothing for Structural Fire Fighting," (See Appendix D to Subpart L) with the following permissible variations from those requirements:

(A) Tearing strength of the outer shell shall be a minimum of 8 pounds (35.6 N) in any direction when tested in accordance with paragraph (2) of Appendix E; and

(B) The outer shell may discolor but shall not separate or melt when placed in a forced air laboratory oven at a temperature of 500°F (260°C) for a period of five minutes. After cooling to ambient temperature and using the test method specified in paragraph (3) of Appendix E, char length shall not exceed 4.0 inches (10.2 cm) and after-flame shall not exceed 2.0 seconds.

(4) Hand protection. (i) Hand protection shall consist of protective gloves or glove system which will provide protection against cut, puncture, and heat penetration. Gloves or glove system shall be tested in accordance with the test methods contained in the National Institute for Occupational Safety and Health (NIOSH) 1976 publication, "The Development of Criteria for Fire Fighter's Gloves: Vol. II, Part II: Test Methods," (See Appendix D to Subpart L) and shall meet the following criteria for cut, puncture, and heat penetration:

(A) Materials used for gloves shall resist surface cut by a blade with an edge having a 60° included angle and a .001 inch (.0025 cm) radius, under an applied force of 16 lbf (72N), and at a slicing velocity of greater or equal to 60 in/min (2.5

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cm/sec):

(B) Materials used for the palm and palm side of the fingers shall resist puncture by a penetrometer (simulating a 4d lath nail), under an applied force of 13.2 lbf (60N), and at a velocity greater or equal to 20 in/min (.85 cm/sec); and

(C) The temperature inside the palm and gripping surface of the fingers of gloves shall not exceed 135°F (57°C) when gloves or glove system are exposed to 932°F (500°C) for five seconds at 4 psi (28 kPa) pressure.

(ii) Exterior materials of gloves shall be flame resistant and shall be tested in accordance with paragraph (3) of Appendix E. Maximum allowable afterflame shall be 2.0 seconds, and the maximum char length shall be 4.0 inches (10.2 cm).

(iii) When design of the fire-resistive coat does not otherwise provide protection for the wrists, protective gloves shall have wristlets of at least 4.0 inches (10.2 cm) in length to protect the wrist area when the arms are extended upward and outward from the body.

(5) Head, eye and face protection. (i) Head protection shall consist of a protective head device with ear flaps and chin strap which meet the performance, construction, and testing requirements of the National Fire Safety and Research Office of the National Fire Prevention and Control Administration, U.S. Department of Commerce (now known as the U.S. Fire Administration), which are contained in "Model Performance Criteria for Structural Firefighters' Helmets" (August 1977) (See Appendix D to Subpart L).

(ii) Protective eye and face devices which comply with §1910.133 shall be used by fire brigade members when performing operations where the hazards of flying or falling materials which may cause eye and face injuries are present. Protective eye and face devices provided as accessories to protective head devices (face shields) are permitted when such devices meet the requirements of §1910.133.

(iii) Full facepieces, helmets, or hoods of breathing apparatus which meet the requirements of §1910.134 and paragraph (f) of this section, shall be acceptable as meeting the eye and face protection requirements of paragraph (e)(5)(ii) of this section.

(f) Respiratory protection devices.

(i) General requirements. (i) The employer shall provide at no cost to the employee and assure the use of respirators which comply with the requirements of this paragraph. The employer shall assure that respiratory protection devices worn by fire brigade members meet the requirements contained in §1910.134 and the requirements contained in this paragraph, and are certified under 30 CFR Part 11.

(ii) Approved self-contained breathing apparatus with full-facepiece, or with approved helmet or hood configuration, shall be provided to and worn by fire brigade members while working inside buildings or confined spaces where toxic products of combustion or an oxygen deficiency may be present.

Such apparatus shall also be worn during emergency situations involving toxic substances.

(iii) Approved self-contained breathing apparatus may be equipped with either a "buddy-breathing" device or a quick disconnect valve, even if these devices are not certified by NIOSH. If these accessories are used, they shall not cause damage to the apparatus, or restrict the air flow of the apparatus, or obstruct the normal operation of the apparatus.

(iv) Approved self-contained compressed air breathing apparatus may be used with approved cylinders from other approved self-contained compressed air breathing apparatus provided that such cylinders are of the same capacity and pressure rating. All compressed air cylinders used with self-

contained breathing apparatus shall meet DOT and NIOSH criteria.

(v) Self-contained breathing apparatus shall have a minimum service life rating of 30 minutes in accordance with the methods and requirements of the Mine Safety and Health Administration (MSHA) and NIOSH, except for escape self-contained breathing apparatus (ESCBA) used only for emergency escape purposes.

(vi) Self-contained breathing apparatus shall be provided with an indicator which automatically sounds an audible alarm when the remaining service life of the apparatus is reduced to within a range of 20 to 25 percent of its rate service time.

(2) Positive-pressure breathing apparatus. (i) The employer shall assure that self-contained breathing apparatus ordered or purchased after July 1, 1981, for use by fire brigade members performing interior structural fire fighting operations, are of the pressure-demand or other positive-pressure type. Effective July 1, 1983, only pressure-demand or other positive-pressure self-contained breathing apparatus shall be worn by fire brigade members performing interior structural fire fighting.

(ii) This paragraph does not prohibit the use of a self-contained breathing apparatus where the apparatus can be switched from a demand to a positive-pressure mode. However, such apparatus shall be in the positive-pressure mode when fire brigade members are performing interior structural fire fighting operations.

(iii) Negative-pressure self-contained breathing apparatus with a rated service life of more than 2 hours and which have a minimum protection factor of 5,000 as determined by an acceptable quantitative fit test performed on each individual, is acceptable for use only during those interior structural fire fighting situations for which the employer demonstrates that long duration breathing apparatus is necessary. Quantitative fit test procedures shall be available for inspection by the Assistant Secretary or authorized representative. Such negative-pressure breathing apparatus will continue to be acceptable for 18 months after a positive-pressure breathing apparatus with the same or longer rated service life is certified by NIOSH. After this 18-month period, all self-contained breathing apparatus used for these long duration situations shall be of the positive-pressure type.

[45 FR 60706, September 12, 1980; 46 FR 24557, May 1, 1981]

**APPENDICES TO SUBPART L**

NOTE: The following appendices to Subpart L, except Appendix E, serve as non-mandatory guidelines to assist employers in complying with the appropriate requirements of Subpart L.

**APPENDIX A—FIRE PROTECTION**

§1910.156 Fire brigades.

1. Scope. This section does not require an employer to organize a fire brigade. However, if an employer does decide to organize a fire brigade, the requirements of this section apply.

2. Pre-fire planning. It is suggested that pre-fire planning be conducted by the local fire department and/or the workplace fire brigade in order for them to be familiar with the workplace and process hazards. Involvement with the local fire department or fire prevention bureau is encouraged to facilitate coordination and cooperation between members of

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the fire brigade and those who might be called upon for assistance during a fire emergency.

3. Organizational statement. In addition to the information required in the organizational statement, paragraph 1910.156(b)(1), it is suggested that the organizational statement also contain the following information: a description of the duties that the fire brigade members are expected to perform; the line authority of each fire brigade officer; the number of the fire brigade officers and number of training instructors; and a list and description of the types of awards or recognition that brigade members may be eligible to receive.

4. Physical capability. The physical capability requirement applies only to those fire brigade members who perform interior structural fire fighting. It is suggested that fire brigade members who are unable to perform interior structural fire fighting be assigned less stressful and physically demanding fire brigade duties, e.g., certain types of training, recordkeeping, fire prevention inspection and maintenance, and fire pump operations.

Physically capable can be defined as being able to perform those duties specified in the training requirements of section 1910.156(c). Physically capable can also be determined by physical performance tests or by a physical examination when the examining physician is aware of the duties that the fire brigade member is expected to perform.

It is also recommended that fire brigade members participate in a physical fitness program. There are many benefits which can be attributed to being physically fit. It is believed that physical fitness may help to reduce the number of sprain and strain injuries as well as contributing to the improvement of the cardiovascular system.

5. Training and education. The paragraph on training and education does not contain specific training and education requirements because the type, amount, and frequency of training and education will be as varied as are the purposes for which fire brigades are organized. However, the paragraph does require that training and education be commensurate with those functions that the fire brigade is expected to perform; i.e., those functions specified in the organizational statement. Such a performance requirement provides the necessary flexibility to design a training program which meets the needs of individual fire brigades.

At a minimum, hands-on training is required to be conducted annually for all fire brigade members. However, for those fire brigade members who are expected to perform interior structural fire fighting, some type of training or education session must be provided at least quarterly.

In addition to the required hands-on training, it is strongly recommended that fire brigade members receive other types of training and education such as: classroom instruction, review of emergency action procedures, pre-fire planning, review of special hazards in the workplace, and practice in the use of self-contained breathing apparatus.

It is not necessary for the employer to duplicate the same training or education that a fire brigade member receives as a member of a community volunteer fire department, rescue squad, or similar organization. However, such training or education must have been provided to the fire brigade member within the past year and it must be documented that the fire brigade member has received the training or education. For example: there is no need for a fire brigade member to receive another training class in the use of positive-pressure self-contained breathing apparatus if the fire brigade member has recently completed such training as a member of a community fire department. Instead, the fire brigade member should re-

ceive training or education covering other important equipment or duties of the fire brigade as they relate to the workplace hazards, facilities and processes.

It is generally recognized that the effectiveness of fire brigade training and education depends upon the expertise of those providing the training and education as well as the motivation of the fire brigade members. Fire brigade training instructors must receive a higher level of training and education than the fire brigade members they will be teaching. This includes being more knowledgeable about the functions to be performed by the fire brigade and the hazards involved. The instructors should be qualified to train fire brigade members and demonstrate skills in communication, methods of teaching, and motivation. It is important for instructors and fire brigade members alike to be motivated toward the goals of the fire brigade and be aware of the importance of the service that they are providing for the protection of other employees and the workplace.

It is suggested that publications from the International Fire Service Training Association, The National Fire Protection Association (NFPA-1041), the International Society of Fire Service Instructors and other fire training sources be consulted for recommended qualifications of fire brigade training instructors.

In order to be effective, fire brigades must have competent leadership and supervision. It is important for those who supervise the fire brigade during emergency situations, e.g., fire brigade chiefs, leaders, etc., to receive the necessary training and education for supervising fire brigade activities during these hazardous and stressful situations. These fire brigade members with leadership responsibilities should demonstrate skills in strategy and tactics, fire suppression and prevention techniques, leadership principles, pre-fire planning, and safety practices. It is again suggested that fire service training sources be consulted for determining the kinds of training and education which are necessary for those with fire brigade leadership responsibilities.

It is further suggested that fire brigade leaders and fire brigade instructors receive more formalized training and education on a continuing basis by attending classes provided by such training sources as universities and university fire extension services.

The following recommendations should not be considered to be all of the necessary elements of a complete comprehensive training program, but the information may be helpful as a guide in developing a fire brigade training program.

All fire brigade members should be familiar with exit facilities and their location, emergency escape routes for handicapped workers, and the workplace "emergency action plan."

In addition, fire brigade members who are expected to control and extinguish fires in the incipient stage should, at a minimum, be trained in the use of fire extinguishers, standpipes, and other fire equipment they are assigned to use. They should also be aware of first aid medical procedures and procedures for dealing with special hazards to which they may be exposed. Training and education should include both classroom instruction and actual operation of the equipment under simulated emergency conditions. Hands-on type training must be conducted at least annually but some functions should be reviewed more often.

In addition to the above training, fire brigade members who are expected to perform emergency rescue and interior structural fire fighting should, at a minimum, be familiar with the proper techniques in rescue and fire suppression procedures. Training and education should include fire protection courses,

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classroom training, simulated fire situations including "wet drills" and, when feasible, extinguishment of actual mock fires. Frequency of training or education must be at least quarterly, but some drills or classroom training should be conducted as often as monthly or even weekly to maintain the proficiency of fire brigade members.

There are many excellent sources of training and education that the employer may want to use in developing a training program for the workplace fire brigade. These sources include publications, seminars, and courses offered by universities.

There are also excellent fire school courses by such facilities as Texas A & M University, Delaware State Fire School, Lamar University, and Reno Fire School, that deal with those unique hazards which may be encountered by fire brigades in the oil and chemical industry. These schools, and others, also offer excellent training courses which would be beneficial to fire brigades in other types of industries. These courses should be a continuing part of the training program, and employers are strongly encouraged to take advantage of these excellent resources.

It is also important that fire brigade members be informed about special hazards to which they may be exposed during fire and other emergencies. Such hazards as storage and use areas of flammable liquids and gases, toxic chemicals, water-reactive substances, etc., can pose difficult problems. There must be written procedures developed that describe the actions to be taken in situations involving special hazards. Fire brigade members must be trained in handling these special hazards as well as keeping abreast of any changes that occur in relation to these special hazards.

6. Fire fighting equipment. It is important that fire fighting equipment that is in damaged or unserviceable condition be removed from service and replaced. This will prevent fire brigade members from using unsafe equipment by mistake.

Fire fighting equipment, except portable fire extinguishers and respirators, must be inspected at least annually. Portable fire extinguishers and respirators are required to be inspected at least monthly.

7. Protective clothing. (A) General. Paragraph (e) of §1910.156 does not require all fire brigade members to wear protective clothing. It is not the intention of these standards to require employers to provide a full ensemble of protective clothing for every fire brigade member without consideration given to the types of hazardous environments to which the fire brigade member might be exposed. It is the intention of these standards to require adequate protection for those fire brigade members who might be exposed to fires in an advanced stage, smoke, toxic gases, and high temperatures. Therefore, the protective clothing requirements only apply to those fire brigade members who perform interior structural fire fighting operations.

Additionally, the protective clothing requirements do not apply to the protective clothing worn during outside fire fighting operations (brush and forest fires, crash crew operations) or other special fire fighting activities. It is important that the protective clothing to be worn during these types of fire fighting operations reflect the hazards which are expected to be encountered by fire brigade members.

(B) Foot and leg protection. §1910.156 permits an option to achieve foot and leg protection.

The section recognizes the interdependence of protective clothing to cover one or more parts of the body. Therefore, an option is given so that fire brigade members may meet the foot and leg requirements by either wearing long fire-resistive coats in combination with full extended boots, or by wearing

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shorter fire-resistive coats in combination with protective trousers and protective shoes or shorter boots.

(C) Body protection. Paragraph (c)(3) of §1910.156 provides an option for fire brigade members to achieve body protection. Fire brigade members may wear a fire-resistive coat in combination with fully extended boots, or they may wear a fire-resistive coat in combination with protective trousers.

Fire-resistive coats and protective trousers meeting all of the requirements contained in NFPA 1971-1975 "Protective Clothing for Structural Fire Fighters," are acceptable as meeting the requirements of this standard.

The lining is required to be permanently attached to the outer shell. However, it is permissible to attach the lining to the outer shell material by stitching in one area such as at the neck. Fastener tape or snap fasteners may be used to secure the rest of the lining to the outer shell to facilitate cleaning. Reference to permanent lining does not refer to a winter liner which is a detachable extra lining used to give added protection to the wearer against the effects of cold weather and wind.

(D) Hand protection. The requirements of the paragraph on hand protection may be met by protective gloves or a glove system. A glove system consists of a combination of different gloves. The usual components of a glove system consist of a pair of gloves, which provide thermal insulation to the hands, worn in combination with a second pair of gloves which provide protection against flame, cut and puncture.

It is suggested that protective gloves provide dexterity and a sense of feel for objects. Criteria and test methods for dexterity are contained in the NIOSH publications, "The Development of Criteria for Firefighters' Gloves: Vol. I: Glove Requirements" and Vol. II: Glove Criteria and Test Methods." These NIOSH publications also contain a permissible modified version of Federal Test Method 191, Method 5903, (paragraph (3) of Appendix E) for flame resistance when gloves, rather than glove material, are tested for flame resistance.

(E) Head, eye, and face protection. Head protective devices which meet the requirements contained in NFPA No. 1972 are acceptable as meeting the requirements of this standard for head protection.

Head protective devices are required to be provided with ear flaps so that the ear flaps will be available if needed. It is recommended that ear protection always be used while fighting interior structural fires.

Many head protective devices are equipped with face shields to protect the eyes and face. These face shields are permissible as meeting the eye and face protection requirements of this paragraph as long as such face shields meet the requirements of §1910.133 of the General Industry Standards.

Additionally, full facepieces, helmets or hoods of approved breathing apparatus which meet the requirements of §1910.134 and paragraph (f) of §1910.156 are also acceptable as meeting the eye and face protection requirements.

It is recommended that a flame resistant protective head covering such as a hood or snood, which will not adversely affect the seal of a respirator facepiece, be worn during interior structural fire fighting operations to protect the sides of the face and hair.

8. Respiratory protective devices. Respiratory protection is required to be worn by fire brigade members while working inside buildings or confined spaces where toxic products of combustion or an oxygen deficiency is likely to be present; respirators are also to be worn during emergency situations involving toxic substances. When fire brigade members re-

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spond to emergency situations, they may be exposed to unknown contaminants in unknown concentrations. Therefore, it is imperative that fire brigade members wear proper respiratory protective devices during these situations. Additionally, there are many instances where toxic products of combustion are still present during mop-up and overhaul operations. Therefore, fire brigade members should continue to wear respirators during these types of operations.

Self-contained breathing apparatus are not required to be equipped with either a buddy-breathing device or a quick-disconnect valve. However, these accessories may be very useful and are acceptable as long as such accessories do not cause damage to the apparatus, restrict the air flow of the apparatus, or obstruct the normal operation of the apparatus.

Buddy-breathing devices are useful for emergency situations where a victim or another fire brigade member can share the same air supply with the wearer of the apparatus for emergency escape purposes.

The employer is encouraged to provide fire brigade members with an alternative means of respiratory protection to be used only for emergency escape purposes if the self-contained breathing apparatus becomes inoperative. Such alternative means of respiratory protection may be either a buddy-breathing device or an escape self-contained breathing apparatus (ESCBA). The ESCBA is a short-duration respiratory protective device which is approved for only emergency escape purposes. It is suggested that if ESCBA units are used, that they be of at least 5 minutes service life.

Quick-disconnect valves are devices which start the flow of air by insertion of the hose (which leads to the facepiece) into the regulator of self-contained breathing apparatus, and stop the flow of air by disconnecting the hose from the regulator. These devices are particularly useful for those positive-pressure self-contained breathing apparatus which do not have the capability of being switched from the demand to the positive-pressure mode.

The use of a self-contained breathing apparatus where the apparatus can be switched from a demand to a positive-pressure mode is acceptable as long as the apparatus is in the positive-pressure mode when performing interior structural fire fighting operations. Also acceptable are approved respiratory protective devices which have been converted to the positive-pressure type when such modification is accomplished by trained and experienced persons using the kits or parts approved by NIOSH and provided by the manufacturer and by following the manufacturer's instructions.

There are situations which require the use of respirators which have a duration of 2 hours or more. Presently, there are no approved positive-pressure apparatus with a rated service life of more than 2 hours. Consequently, negative-pressure self-contained breathing apparatus with a rated service life of more than 2 hours and which have a minimum protection factor of 5,000 as determined by an acceptable quantitative fit test performed on each individual, will be acceptable for use during situations which require long duration apparatus. Long duration apparatus may be needed in such instances as working in tunnels, subway systems, etc. Such negative-pressure breathing apparatus will continue to be acceptable for a maximum of 18 months after a positive-pressure apparatus with the same or longer rated service life of more than 2 hours is certified by NIOSH/MSHA. After this 18 month phase-in period, all self-contained breathing apparatus used for these long duration situations will have to be of the positive-pressure type.

Protection factor (sometimes called fit factor) is defined as the ratio of the contaminant concentrations outside of the respirator to the contaminant concentrations inside the facepiece of the respirator. Protection factors are determined by quantitative fit tests. An acceptable quantitative fit test should include the following elements:

1. A fire brigade member who is physically and medically capable of wearing respirators, and who is trained in the use of respirators, dons a self-contained breathing apparatus equipped with a device that will monitor the concentration of a contaminant inside the facepiece.

2. The fire brigade member then performs a qualitative fit test to assure that best face test can consist of a negative-pressure test, positive-pressure test, isoamyl acetate vapor (banana oil) test, or an irritant smoke test. For more details on respirator fitting see the NIOSH booklet entitled "A Guide to Industrial Respiratory Protection" June, 1976, and HEW publication No. (NIOSH) 76-189.

3. The wearer should then perform physical activity which reflects the level of work activity which would be expected during the fire fighting activities. The physical activity should include simulated fire-ground work activity or physical exercise such as running-in-place, a step test, etc.

4. Without readjusting the apparatus, the wearer is placed in a test atmosphere containing a non-toxic contaminant with a known, constant, concentration.

The protection factor is then determined by dividing the known concentration of the contaminant in the test atmosphere by the concentration of the contaminant inside the facepiece when the following exercises are performed:

- (a) Normal breathing with head motionless for one minute;
- (b) Deep breathing with head motionless for 30 seconds;
- (c) Turning head slowly from side to side while breathing normally, pausing for at least two breaths before changing direction. Continue for at least one minute;
- (d) Moving head slowly up and down while breathing normally, pausing for at least two breaths before changing direction. Continue for at least two minutes;
- (e) Reading from a prepared text, slowly and clearly, and loudly enough to be heard and understood. Continue for one minute; and
- (f) Normal breathing with head motionless for at least one minute.

The protection factor which is determined must be at least 5,000. The quantitative fit test should be conducted at least three times. It is acceptable to conduct all three tests on the same day. However, there should be at least one hour between tests to reflect the protection afforded by the apparatus during different times of the day.

The above elements are not meant to be a comprehensive, technical description of a quantitative fit test protocol. However, quantitative fit test procedures which include these elements are acceptable for determining protection factors. Procedures for a quantitative fit test are required to be available for inspection by the Assistant Secretary or authorized representative.

Organizations such as Los Alamos Scientific Laboratory, Lawrence Livermore Laboratory, NIOSH, and American National Standards Institute (ANSI) are excellent sources for additional information concerning qualitative and quantitative fit testing.

# EDUCATION

## (a)

### STATE BOARD OF EDUCATION

#### Basic Certification Requirements

**Proposed Readoption: N.J.A.C. 6:11-3.1 through 6:11-3.25**

**Proposed Amendments: N.J.A.C. 6:11-3.3, 3.6 and 3.23.**

**Proposed Repeal: N.J.A.C. 6:11-3.13**

Authorized By: New Jersey State Board of Education, Saul Cooperman, Secretary.

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

Proposal Number: PRN 1985-487.

Submit comments by October 16, 1985 to:  
Virginia Csillan  
Education Planner  
Department of Education  
225 West State Street  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

Under the provision of Executive Order No. 66 (1978), which provides for the expiration of amended or new rules within five years, N.J.A.C. 6:11-3 (Basic Certification Requirements) will expire January 1, 1986, unless readopted.

The State Board of Education, pursuant to the authority of N.J.S.A. 18A:1-1, 18A:4-15, 18A:6-7, 18A:6-34, 18A:6-38 and 18A:26-10, proposes to readopt N.J.A.C. 6:11-3 with amendments.

On September 5, 1984, the State Board of Education adopted amendments to N.J.A.C. 6:11-1 through 6:11-8, in which N.J.A.C. 6:11-3 was included. These amendments will not become operative until September 1, 1985; therefore the Department currently is operating under another set of rules. In essence, N.J.A.C. 6:11-3 is a readoption and amendment of rules that will become operative September 1, 1985.

N.J.A.C. 6:11-3 explains basic requirements for certification including the requirement of certification for employment, fees for certificates, enforcement of certification regulations, grounds for revocation, recognition of degrees, and waiver of requirements. A more detailed summary of the proposed amendments is presented as follows:

N.J.A.C. 6:11-3.3, State Board of Education responsible for rules; fees required, has been revised at the advice of the Office of the Attorney General to require that the process for establishing fees for certificates is consistent with the Administrative Procedure Act.

N.J.A.C. 6:11-3.6, Assignment of titles, has been amended to provide that assignments of titles and certificate requirements by county superintendents to teachers in unrecognized positions are binding for purposes of determining seniority.

N.J.A.C. 6:11-3.13, Certification for experimental curriculum, has been eliminated in order to prohibit the issuance of special certificates to persons in schools with experimental curricula.

N.J.A.C. 6:11-3.23, Substitution of alternative educational background and/or experience, has been revised to prohibit the State Board of Examiners from waiving the state certification test requirement.

#### Social Impact

N.J.A.C. 6:11-3 is intended to fulfill state law that all public school personnel be certified by the state. In the past, the rule has been effective in assuring that public school personnel possess the basic competence and minimum qualification necessary to work in their job assignments. The rule also has provided an effective system of enforcement of certification requirements by county and local superintendents and a system of certificate suspension and revocation by a state licensing board in cases where a teacher exhibits unbecoming personal conduct, professional incapacity, insufficiency, or other behavior warranting such consideration. Proposed amendments to the rule, in particular a provision which would make a subject-screening examination absolute, will provide additional public assurance of the competence of public school teaching personnel.

The proposed amendments in the rules regarding fees are intended to insure adequate public notice of fee increases. Other proposed amendments are intended to foster consistency and quality in the certification process by requiring that all teachers earn recognized certificates and that each pass a standardized state certification examination. Finally, the proposed changes will provide for consistency and fairness in the rendering of seniority determinations in cases where a teaching staff member holds an unrecognized position.

#### Economic Impact

The entire certification process—issuance, enforcement, revocation and suspension—has had no fiscal impact on the State budget or to the public at large because it is funded by individual fees paid by applicants. Historically, the fee has been nominal and poses no economic hardship on the applicant. The proposed rule will not result in increased fees charged to individual applicants.

The proposed amendments protect the public interest in that the certification fee schedule may not be increased by State Board resolution, but rather only in accordance with the rulemaking procedure as required by the Administrative Procedure Act.

**Full text** of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 6:11-3.

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

6:11-3.3 State Board of Education responsible for rules; fees required

(a) The State Board of Education may make and enforce rules and regulations for the granting of appropriate certificates or licenses to teach or to administer, direct, or supervise, the teaching, instruction or educational guidance of pupils in public schools operated by district boards of education. For each certificate, a fee of [not less than \$20.00] **\$30.00**

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shall be charged. [; said fee shall be subject to change from time to time by formal resolution of the State Board. The resolution cannot be adopted less than 30 days after it is introduced.]

(b) Rules for certification fees include the following:

1. A request for evaluation of credentials for the purpose of determining eligibility to take a particular State licensing examination or for obtaining information concerning qualification for issuance of any particular certificate shall be accompanied by a fee of [not less than] \$10.00 for each certificate or test to be considered. [; said fee shall be subject to change from time to time by formal resolution of the State Board. The resolution cannot be adopted less than 30 days after it is introduced.]

2. [A formal application for certification shall be accompanied by a fee of not less than \$20.00 for each certificate requested; said fee shall be subject to change from time to time by formal resolution of the State Board. The resolution cannot be adopted less than 30 days after it is introduced.] **Fees and refunds for obtaining a "qualifying academic certificate" as defined in N.J.S.A. 18A:6-40 are provided in N.J.S.A. 18A:6-41 (L. 1980, c. 80, 1 eff. July 13, 1984).**

[3. In the case of persons who file a formal application for certification and who are found not to meet certification requirements, a fee of not less than \$10.00 shall be deducted from each separate refund to that person; said fee shall be subject to change from time to time by formal resolution of the State Board. The resolution cannot be adopted less than 30 days after it is introduced.]

(c) The State Board may establish **from time to time** a fee schedule for services related to the issuance of certificates, including but not limited to fees charged by local districts to provisional teachers to pay for their training, fees for a duplicate certificate and for renewal of a substandard certificate; said fee schedule shall be in addition to any tuition and fees charged by institutions of higher education for courses and credits offered in connection with State-approved training programs. [and shall be subject to change from time to time by formal resolution of the State Board. The resolution cannot be adopted less than 30 days after it is introduced.]

6:11-3.6 Assignment of titles

(a) [School districts] **District boards of education** shall assign position titles to teaching staff members which are recognized in these rules.

(b) If a district board of education determines that the use of an unrecognized position title is desirable, or if a previously established unrecognized title exists, such **district board of education** shall submit a written request for permission to use the proposed title to the county superintendent of schools, prior to making such appointment. Such request shall include a detailed job description. The county superintendent shall exercise his or her discretion regarding approval of such request, and make a determination of the appropriate certification and title for the position. The county superintendent of schools shall review annually all previously approved unrecognized position titles, and determine whether such titles shall be continued for the next school year. **Decisions rendered by county superintendents regarding titles and certificates for unrecognized positions shall be binding upon future seniority determinations on a case-by-case basis.**

[6:11-3.13 Certification for experimental curriculum

Certification to teach in a school having an experimental curriculum not covered by these certification rules may be granted by the Commissioner of Education.]

Recodify 6:11-3.14 through 6:11-3.23 as **6:11-3.13** through **6:11-3.22** (No change in text.)

6:11-3.[24]**23** Substitution of alternative educational background and/or experience

(a) Notice of certification deficiency rules are:

1. The Secretary of the State Board of Examiners shall notify all unsuccessful applicants for certification of the certification requirements lacking and of the procedures set forth in (b) below for submitting evidence of alternative education and/or experience.

(b) Offer of alternative education and/or experience rules are:

1. Any [such unsuccessful] applicant **lacking required preparation** may supply the State Board of Examiners with [materials which the applicant considers] evidence of alternative education and/or experience [warranting certification.] **except that such education and/or experience may not be substituted for a passing score on the state certification test nor may the Board of Examiners in any circumstances waive the test requirement.**

2.-3. (No change.)

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

6:11-3.[25]**24** Interstate contracts

(No change in text.)

## ENVIRONMENTAL PROTECTION

The following proposals, except PRN 1985-514, are authorized by Robert E. Hughey, Commissioner, Department of Environmental Protection.

### DIVISION OF WATER RESOURCES

**(a)**

#### Grants for Restoring Publicly Owned Freshwater Lakes

#### Proposed New Rules: N.J.A.C. 7:9-15

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

DEP Docket No. 050-85-08.

Proposal Number: PRN 1985-512.

Submit comments by October 16, 1985 to:

Bud Cann  
Clean Lakes Coordinator  
New Jersey Department of  
Environmental Protection  
25 Arctic Parkway  
Trenton, N.J. 08625

The agency proposal follows:

**Summary**

Section 314 of the Federal Clean Water Act, 33 U.S.C. 1324, provides financial assistance to the State for the restoration of publicly owned lakes, making Federal grants available for

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a wide range of activities which include dredging, shoreline stabilization and stormwater management. The New Jersey Legislature has provided funds in recent years to supplement Federal funding and this proposal applies to the disbursement of the State funds.

The proposed new rules set forth criteria for grant eligibility and establish policies and procedures for the distribution of funds to local governments for studies and implementation activities designed to improve water quality in freshwater lakes.

The original rules promulgated as N.J.A.C. 7:9-15 in 1980 will expire on August 21, 1985. The proposed new rules do not substantially differ from those rules but have been amended and in some cases recodified to provide a clearer more concise rule. The new rules are intended to continue in effect, the original program and to provide flexibility in the face of uncertain funding from Federal and State sources.

A section-by-section summary of the proposed regulations, N.J.A.C. 7:9-15 follows:

N.J.A.C. 7:9-15.1 (Scope) established this subchapter as the authority for policies and procedures to be used to assist local governments in the restoration of publicly owned freshwater lakes.

N.J.A.C. 7:9-15.2 (Construction) provides for this subchapter to be liberally construed.

N.J.A.C. 7:9-15.3 (Purpose) states that this proposal is to establish grant eligibility criteria and procedures for the distribution of funds.

7:9-15.4 (Definitions) defines "applicant," "department," "Diagnostic—feasibility study" and "freshwater lake" as used in this subchapter.

7:9-15.5 (Grant Eligibility) establishes the criteria for determining if a particular lake qualifies for a grant. Necessary qualifications include public accessibility, uses in addition to use as a source of drinking water and consistency with an applicable Water Quality Management Plan. The lake is not eligible if its pollution problems could be solved through the conditions of a permit under section 402 of the Federal Clean Water Act, 33 U.S.C. 1342, or through the construction of a waste water treatment facility under section 201 of the Federal Clean Water Act, 33 U.S.C. 1281.

7:9-15.6 (Types of Grant Assistance) provides the funding formulas to be used for the two phases of lake restoration, Phase I Diagnostic—Feasibility Study and Phase II Implementation. The funding formulas are being modified to reflect varying levels of State and Federal funding. For both types of grant, the applicant shall be responsible for securing matching funds.

7:9-15.8 (Phase I Grant Assistance Criteria) is closely modeled upon 40 CFR 35.1600 et seq., and is intended to assure that all Phase I Projects will meet the necessary criteria for Federally funded projects.

7:9-15.9 (Phase II Grant Assistance Criteria) is also closely modeled upon 40 CFR 35.1600 et seq., and is intended to assure that all Phase II Projects will meet the necessary criteria for federally funded projects.

7:9-15.10 (Project Period) established maximum project periods of three years for Phase I projects and four years for Phase II projects. This is intended to make projects conform to Federal regulations.

7:9-15.11 (Public Participation) assures that there will be adequate opportunities for members of the community to express their opinions on all aspects of the proposed project.

7:9-15.12 (Program Administration) indicates that the program shall be administered by the Division of Water Re-

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sources, and also prioritizes applications received before September 1 of each fiscal year. This section also sets a 90 day deadline for the Department to approve or disapprove the application.

### Social Impact

A major factor in the success of previous lake restoration activities under the program has been the degree of local involvement that was required. The local agency is responsible for securing required matching funds and for deciding upon the type of activity which will be undertaken. This allows for maximum local initiative and participation and ultimately all issues with local impact will be decided at the local level. The expectation is that there will be a positive social impact.

The social impact will be further enhanced by the improved water quality which in turn will lead to enhanced recreational opportunities and aesthetic values.

### Economic Impact

These regulations are intended to fund activities which will restore degraded water bodies to a more acceptable condition. The resulting benefits will be improved recreational opportunities, aesthetic values, property values, wildlife habitat, and public health. The completed project may affect one or more of these parameters, either by re-establishing or enhancing a current use, or establishing a new use. The United States Environmental Protection Agency has established a cost-benefit ratio of 4:1 for dollars spent on lake restoration activities. The economic impact of these projects is expected to be favorable to the communities which surround the project areas.

### Environmental Impact

The projects which will be funded under these regulations are intended to improve the environmental quality of the State's lakes. While some aspects of the project may cause temporary environmental impairments, the final results will be a lake with improved physical, biological, and chemical quality. Also, since the project is initiated and monitored at the local level, it is expected that all feasible methods to lessen negative environmental impacts at the local level will be taken.

Full text of the proposed new rules follows.

#### 7:9-15.1 Scope of rules

Unless otherwise provided by rule or statute, the following shall constitute the rules of the Department of Environmental Protection concerning policies and procedures for grants to assist local government in carrying out the restoration of publicly owned freshwater lakes pursuant to the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. and the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.

#### 7:9-15.2 Construction

This subchapter shall be liberally construed to permit the department and its various divisions to discharge their statutory functions.

#### 7:9-15.3 Purpose

(a) This subchapter is promulgated for the following purposes:

1. To set forth grant eligibility; and
2. To establish policies and procedures for distribution of funds to local governments for Phase I Diagnostic-feasibility studies and for Phase II Implementation activities.

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### 7:9-15.4 Definition

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

"Applicant" means the governmental agency which has jurisdiction over or controls access to the freshwater lake.

"Department" means the Department of Environmental Protection.

"Diagnostic-feasibility study" means a two part study to determine a lake's current condition and to develop possible methods for lake restoration and protection.

"EPA" means the United States Environmental Protection Agency.

"Freshwater lake" means any inland pond, reservoir, impoundment, or other similar body of water that has recreational value, that exhibits no oceanic and tidal influences, and that has a total dissolved solids concentration of less than one percent.

### 7:9-15.5 Grant eligibility

(a) To be eligible for funding, an applicant shall meet the following criteria:

1. The freshwater lake shall offer public access through publicly owned contiguous land so that any member of the public may have the same or equivalent opportunity to enjoy privileges and benefits of the lake as any other member of the public or as any resident around the lake;

2. If user fees are charged for public use and access, the fees shall be used solely for maintenance of the access and recreational facilities or for improving the lake;

3. The freshwater lake shall not be used only as a source of drinking water;

4. The proposed project shall be consistent with the applicable adopted Water Quality Management Plan;

5. Chemical application programs for aquatic weed control are not eligible for funding; and

6. A lake that can be restored by controlling the discharge of pollutants from a point source through a municipal or industrial permit under section 402 of the Federal Clean Water Act, 33 U.S.C. 1342, or through the planning and construction of wastewater treatment facilities under section 201 of the Federal Clean Water Act, 33 U.S.C. 1281, shall not be eligible for funding.

### 7:9-15.6 Types of grant assistance

(a) The Department will administer the following types of grants pursuant to this subchapter:

1. Subject to the availability of funds, approved Phase I Diagnostic-Feasibility Studies will be funded through the Department pursuant to the following formulas:

i. If an EPA grant is awarded for the project, a maximum of 70 percent of allowable costs shall be funded by EPA; a maximum of fifteen percent of allowable costs shall be funded by the Department; and the remainder of the costs shall be funded by the applicant.

ii. If no EPA grant is awarded for the project, a maximum of 50 percent of allowable costs shall be funded by the Department and the remainder of the costs shall be funded by the applicant.

2. Subject to the availability of funds, approved Phase II Implementation activities will be funded through the Department pursuant to the following formulas:

i. If an EPA grant is awarded for the project, a maximum of 50 percent of allowable costs shall be funded by EPA; a maximum of 40 percent of allowable costs shall be funded by the Department; and the remainder shall be funded by the

applicant.

ii. If no EPA grant is awarded for the project, a maximum of 50 percent of allowable costs shall be funded by the Department and the remainder of the costs shall be funded by the applicant.

3. In the event that legislation is enacted appropriating funds for a specific lake restoration project which indicates that a different funding formula shall be used, that funding formula designated by the legislature shall apply.

### 7:9-15.7 (Reserved)

### 7:9-15.8 Phase I grant assistance criteria

(a) Projects for Phase I grant assistance will be evaluated for funding based upon the following criteria:

1. Eligibility for federal funding:

i. Federal funding, when available, will provide up to 70 percent of the allowable costs of the project.

ii. The Department shall apply for federal funding for the project when these funds are available through EPA, under the Clean Lakes Program, established pursuant to section 314 of the Clean Water Act, and the regulations promulgated thereunder at 40 CFR 35.1600 et seq.:

2. Availability of local funding;

3. Accessibility of the lake to the public;

4. Population size and demography with a 15 mile radius of the lake;

5. The amount and kind of public transportation available for transport of the public to and from the public access points;

6. Consideration of whether other relatively clean publicly owned freshwater lakes within a 50 kilometer radius already adequately serve the population;

7. The historical uses of the lake and the need for and practicality of restoring the lake for those uses;

8. The degree to which the project considers the "open space" policies contained in sections 201(f), 201(g) and 208(b)(2)(A) of the Clean Water Act;

9. The reasonableness of the proposed costs relative to the proposed work, the likelihood that the project will succeed, and the potential public benefits;

10. The means for controlling anticipated adverse environmental impacts which could result from the proposed restoration of the lake;

11. Water quality in the lake, as indicated by existing data;

12. The technical feasibility of the proposed project approach and where appropriate, the estimated improvement in the lake water quality; and

13. The anticipated positive changes that the project would produce in the overall lake ecosystem, including the watershed, such as the net reduction in sediment, nutrient, and other pollutant loadings.

### 7:9-15.9 Phase II grant assistance

(a) Projects for Phase II grant assistance will be evaluated for funding based upon the following criteria:

1. Eligibility for federal funding;

i. Federal funding, when available, will provide up to 50 percent of the cost of the project.

ii. The Department shall apply for federal funding for the project as set forth in N.J.A.C. 7:9-15.8(a)1ii.

2. The criteria contained in N.J.A.C. 7:9-15.8(a)1 through 13 will be considered; and

3. When a Phase I grant has been awarded, the Phase II project shall conform to the final plan selected under Phase I.

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### 7:9-15.10 Project period

(a) The project period for Phase I projects shall not exceed three years.

(b) The project period for Phase 2 projects shall not exceed four years.

### 7:9-15.11 Public participation

(a) The applicant for a Phase I grant shall provide for, encourage, and assist public participation in developing a proposed lake restoration project. The applicant shall solicit public comment on the plan of study, prepare a summary of responses to the public comment, and submit the summary as part of the Phase I application.

(b) Phase I grant recipients shall solicit public comment in developing, evaluating, and selecting alternatives, in assessing potential adverse environmental impacts, and in identifying measures to mitigate any adverse impacts that were identified.

1. The grantee shall provide information relevant to these decisions in fact sheet or summary form and distribute such information to the public at least 30 days before selecting a proposed method of lake restoration.

2. The grantee shall hold a formal or informal meeting with the public after all pertinent information is distributed.

3. A formal public hearing shall be held if the grantee selects a lake restoration method which involves major construction, dredging, or significant modifications to the environment, or if the department determines that a hearing would be beneficial.

(c) Phase 2 grant applicants shall hold a formal public hearing if one has not been held subsequent to completion of Phase I and prepare a summary of the responses to all public comments. The applicant shall submit the summary along with copies of any written comments to the Department with the Phase 2 application.

### 7:9-15.12 Program administration

(a) The program shall be administered by the Division of Water Resources.

(b) Within 90 days of receiving a complete application, the Department will either:

1. Conditionally approve the project for funding in an amount determined to be appropriate for the project, and if federal funding is available, submit the application to EPA for final approval;

2. Return the application to the applicant due to lack of funding; or

3. Disapprove the application and state the reasons for disapproval.

(c) Requests for further information concerning this program as well as program proposals should be directed to:

New Jersey Department of  
Environmental Protection  
Division of Water Resources  
CN 029  
Trenton, New Jersey 08625  
Attn: Lakes Management Coordinator

**(a)**

**Bureau of Shellfish Control  
Shellfish-Growing Water Classification  
Relay Program**

**Proposed Amendment: N.J.A.C. 7:12-2.7**

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Authority: N.J.S.A. 13:1D-1 et seq. and 58:24-1 et seq.  
DEP Docket No. 048-85-08.

Proposal Number: PRN 1985-517.

Submit comments by October 16, 1985 to:

William J. Eisele, Jr., Chief  
Bureau of Shellfish Control  
Stoney Hill Road, Leeds Point  
Star Route  
Absecon, New Jersey 08201

The agency proposal follows:

### Summary

The department proposes to update its special relay permit which is issued by the Bureau of Shellfish Control, in the Division of Water Resources, in accordance with N.J.A.C. 7:12-2. This permit specifies the controlled conditions under which hard clams may be harvested, processed, and in some cases marketed, from shellfish-growing waters that do not meet the sanitary guidelines for Approved waters established by the State and United States Food and Drug Administration.

Relay allows for the safe utilization via purification of shellfish from Condemned, Special Restricted, or Seasonal Special Restricted waters that would otherwise be unavailable to the consuming public.

The proposed revisions to the relay program are for the most part administrative in nature with only minor changes to the actual permit program itself. They provide for the department's designation of agents for the sealing of vehicles taking on clams at the loading site and the opening of such seals at the off-loading site. Furthermore, the proposal provides for the enforcement unit's specification of the overland route to be taken by the participant's vehicle while transporting shellfish from the harvest landing site to the planting off-loading site. These changes bring these regulations into conformity with the Division of Fish, Game and Wildlife's hard clam relay rules appearing at N.J.A.C. 7:25-15.1

### Social Impact

The department does not anticipate any negative social impact to be associated with the proposed changes to the special permit program. In fact, just the opposite would be true since these changes will add increased assurance of purity of the shellfish product and more clearly clarify the permittees' responsibilities and also assist the State in being more efficient and responsive in managing the programs.

### Economic Impact

The proposed changes to the special permits will have little economic impact on the relay program as it currently exists with no anticipated increase in costs to the department. The overall effect of the program over the years has been positive to the economy of the State. Through the controlled harvest and sale of a shellfish product from waters classified as Condemned, Special Restricted, and Seasonal Special Restricted, both the shellfish industry and the public have benefited.

### Environmental Impact

The proposed changes to the relay permits will have no adverse environmental impact. Although the special permit programs make available to the public shellfish that would not otherwise be utilized, they are a renewable resource under direct State management. Consequently, it is not expected that

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a sustained harvest of these shellfish will deplete or otherwise endanger the fishery.

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

7:12-2.7 Relay program

(a) (No change.)

(b) Permits 5a and 5b shall be valid only under the following specific requirements or conditions. Violation may subject the holder to prosecution under N.J.S.A. 58:24-3. These rules must be read together with the Shellfisheries regulations which appear at N.J.A.C. 7:25-15.1.

1.-14. (No change.)

15. Shellfish taken from the designated relay section shall be bagged by the participant, three-quarter bushel to the bag, in bags available to the participant from the department. These bags will be provided, at cost, to the participant through the Leeds Point office of this Bureau. No unmarked bags will be allowed in the harvesters' or buyers' vehicles or boat except during reharvest. Each bag shall have a tag attached, marked with the harvester's and/or buyer's name and permit number. Shellfish not in compliance with the bagging requirements will be seized and returned to Condemned waters by the designated enforcement unit. Participants will place the shellfish in vehicles provided by them and approved by the department. The vehicles will be sealed by the department, or [New Jersey State employee] **an agent** designated by the department, at the harvest landing site and opened by the department **or a designated agent** at the off-loading site. [Each participant shall inform the designated enforcement unit(s) of the route he will routinely follow from the harvest area to the planting area.] **The enforcement unit may specify the route to be taken from the harvest landing site to the planting off-loading site.**

16.-21. (No change.)

**(a)**

**Flood Hazard Area Delineations  
Flood Plain Delineation of Portions of the  
Maurice River, Manantico Creek, Scotland  
Run, Cedar Branch, Blackwater Branch,  
Petticoat Stream, Piney Branch, Long  
Branch, Still Run, Little Ease Run, White  
Marsh Run and the Manumuskin River**

**Proposed Amendment: N.J.A.C. 7:13-7.1**

Authority: N.J.S.A. 58:16A-50 et seq.  
DEP Docket No. 051-85-08.  
Proposal Number: PRN 1985-511.

A public hearing concerning this proposal will be held on:  
October 15, 1985 at 1:00 P.M.  
Council Chambers of City Hall  
7th and Wood Streets  
Vineland, New Jersey

Submit comments by October 29, 1985 to:  
Robert L. Vincent, Hearing Officer  
New Jersey Department of  
Environmental Protection

Division of Water Resources  
CN 029  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendment provides for the application of rules and regulations concerning the development and use of land in designated floodways and flood hazard areas to portions of the Maurice River, Manantico Creek, Scotland Run, Cedar Branch, Blackwater Branch, Petticoat Stream, Piney Branch, Long Branch, Still Run, Little Ease Run, White Marsh Run and the Manumuskin River. Regulations of delineated flood hazard areas are designed to preserve the flood carrying capacity and to minimize the threat to the public safety, health and general welfare.

**Social Impact**

The proposed delineation indicates floodways and flood hazard areas where added flood protection measures will apply within the Maurice River Basin in the following municipalities:

- |                      |                        |
|----------------------|------------------------|
| City of Millville    | Township of Deerfield  |
| City of Vineland     | Township of Pittsgrove |
| Township of Franklin |                        |

**Economic Impact**

The proposed amendment will have only a minor economic impact. The delineations clearly defines the flood hazard areas, thus reductions in property value could result by restricting future development in the floodway and requiring elevated construction in flood fringe areas. However, minor property diminution would be offset by the savings to governmental bodies and private homeowners due to little or no future rehabilitation and rescue expenditures from flood damage in the delineated areas.

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

7:13-7.1 Delineated floodways

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

(c) A list of delineated streams in the Delaware Basin follows:

1.-28. (No change.)

29. . . . Maurice River from the downstream corporate limit of Millville upstream to Weymouth Road and Willow Grove Lake Dam in Vineland; Manantico Creek from Manantico Lake Dam upstream to its confluence with Cedar Branch; Scotland Run from approximately 2,000 feet downstream of Malaga Lake Dam to Washington Avenue in Franklin Township, Gloucester County; Cedar Branch from its confluence with Manantico Creek to Maple Avenue in Vineland; Blackwater Branch from its confluence with the Maurice River upstream to the Franklin-Vineland municipality boundary; Petticoat Stream from its confluence with the Maurice River upstream to Tenth Street, northwesterly of Hance Bridge Road; Piney Branch from its confluence with Blackwater Branch upstream 7,500 feet to North Vale Road in Vineland; Long Branch from its confluence with Blackwater Branch upstream 1,940 ft. to the Vineland-Franklin municipality boundary; Still Run for its entire length within Franklin Township, from its downstream corporate limit upstream to approximately 190 feet upstream of Little Mill Road; Little Ease Run from its confluence with Still Run upstream to

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the Franklin-Clayton municipal boundary; White Marsh Run from its confluence with the Maurice River upstream to Reick Avenue in Millville; and the Manumuskin River for its entire reach within Vineland, from its downstream corporate limit in Vineland to a point 1,900 feet upstream of Daughy's Tavern Road.

30.-31. (No change.)

(d)-(g) (No change.)

AGENCY NOTE: All relevant information and documents are available for inspection during normal working hours at the Office of the Bureau of Flood Plain Management, 1911 Princeton Avenue, Trenton, New Jersey.

In addition, maps of the proposed delineations have been sent to Clerks of the affected municipalities and to the Planning Boards of the affected Counties.

OFFICE OF ADMINISTRATIVE LAW NOTE: Maps delineating the flood hazard area described in this notice were submitted as part of the Department's notice of proposed rule and are available for review at the Office of Administrative Law at Quakerbridge Plaza, Building Number 9, Quakerbridge Road, Trenton, New Jersey.

## DIVISION OF FISH, GAME AND WILDLIFE

(a)

### Fish and Game Council 1986-87 Fish Code

#### Proposed Amendment: N.J.A.C. 7:25-6

Authorized By: Fish and Game Council, Anthony DiGiovanni, Chairman.

Authority: N.J.S.A. 13:1B-30 et seq. and N.J.S.A. 23:1-1 et seq.

DEP Docket No. 045-85-08.

Proposal Number: PRN 1985-514.

A public hearing concerning this proposal will be held on:  
October 8, 1985 at 8:00 P.M.  
Division of Fish, Game and Wildlife  
363 Pennington Avenue  
Trenton, NJ 08625

Submit comments by October 16, 1985 to:  
A. Bruce Pyle, Chief  
Bureau of Freshwater Fisheries  
Division of Fish, Game and Wildlife  
Department of Environmental Protection  
CN 400  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The proposed 1986-87 Fish Code states when, by what means, at which location, in what numbers, and at what sizes fish may be pursued, caught, killed or possessed.

The proposed amendments include grammatical and punctuation corrections and the following revisions to the previous code:

1. New Jersey's trout season traditionally had opened on

the first Saturday following the sixth of April. The proposed 1986-87 Fish Code breaks with this tradition and declares opening day as Saturday, April 5, 1986. The rationale for this change is discussed under "Social Impact."

2. Spruce Run Reservoir, Swartswood Lake, Lake Hopatcong and Wawayanda Lake will remain open for fishing during the pre-season trout stocking period. As a consequence of this action these waters will not be stocked with trout prior to opening day of the trout season, but will be stocked during the week immediately following it. Trout, if taken in these waters, may be retained in accordance with prevailing possession limits, that is, four trout daily during the period of January 1, 1986 through April 5, 1986.

3. Hook's Creek Lake located in Cheesapeake State Park, Middlesex County is reinstated on the trout-stocked waters list.

4. It is anticipated that the Delaware-Raritan Canal and the Delaware-Raritan Feeder Canal in Hunterdon County and Mercer County will have been reflooded in time for the 1986 trout season and, therefore, trout stocking will resume in these waters.

5. Silver Lake, in Warren County, has been deleted from the trout-stocked waters list because of low public use due to inadequate public access.

6. The "slot" size limit, whereby anglers were allowed to keep one lake trout between 18 inches and 22 inches taken from Round Valley, has been discontinued in favor of a new minimum size of 24 inches. The "slot" limit had been instituted as a temporary measure to thin out a dominant year class of lake trout which was having a negative impact on the growth rate of the reservoir's overall trout population. This objective is considered to have been accomplished. The possession limit for lake trout has also been reduced to one per day.

7. Language affecting striped bass and their hybrids, which have been stocked in several lakes around the State, has been added to several sections of the code (that is, bow and arrow fishing at N.J.A.C. 7:25-6.11 and snagging prohibited at N.J.A.C. 7:25-6.8) so that this species and the "sunshine bass" hybrid would be adequately protected in freshwaters of this State.

8. As part of a coordinated effort along the entire Atlantic Coast to achieve a 55 percent reduction in the total mortality of striped bass in an attempt to halt the population decline of this species, new legislation has been enacted which further restricts the taking of this species. N.J.A.C. 7:25-6.9(k) and 7:25-6.15(a) are adjusted accordingly to bring these sections into compliance with the law.

9. A size limit of 30 inches and a daily possession limit of two fish has been established for muskellunge in Greenwood Lake. These limits have been set in coordination with the New York State Department of Environmental Conservation in anticipation of the stocking of this species by a local sportsmen's organization.

#### Social Impact

The intent of the early opening of the trout season is to maximize recreational potential, avoid conflicts with the opening days in neighboring states, and avoid the need for the closure of waters (for stocking) on Memorial Day.

The discontinuation of pre-season stocking and the year-round open water status intended for Lake Hopatcong, Swartswood Lake, Spruce Run Reservoir and Wawayanda Lake also is intended to maximize the recreational potential of these waters. It will now be legal to fish these waters for

species such as perch, bass, and sunfish during the period when they were traditionally closed to fishing to accommodate their pre-season stocking with trout. As these waters generally do not start yielding stocked trout until later in the spring as their temperatures increase and since they will be stocked during the first week of in-season stocking, it is anticipated that the lack of pre-season stockings in these waters will have no adverse social impacts. Anglers who traditionally fish these waters for trout on opening day will seek other trout stocked waters to fish. This increase in angling pressure on other waters is not expected to be of a magnitude that would have a negative impact on the quality of the fishery.

The abolition of the lake trout "slot" limit will reduce the "take-home" catch somewhat; however, this should be offset to a degree by the increased availability of larger trout which will result from this management tactic.

#### Economic Impact

No specific, significant economic impact or detriment is foreseen arising from the proposal since the amendments are primarily a continuation after annual review, of the existing Fish Code.

#### Environmental Impact

The Fish Code has been established to promote the greatest recreational use of the State's freshwater fisheries without endangering the future of that resource. The Council considered the division's opinion that based on the results of scientific investigations the change in the April opening of the trout season (which results in an earlier opening date than would normally have been the case) has increased the risk of mortality to pre-season stocked trout in certain central New Jersey streams owing to prevailing water conditions normally encountered at this time. However, the Council decided that the social benefits from that change, regardless of any management adjustments that may be necessary, significantly outweigh the "cost" of any adverse impact.

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

### SUBCHAPTER 6. [1985-86] 1986-87 FISH CODE

#### 7:25-6.1 General Provisions

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

(d) This Code, when adopted and when effective, shall supersede the provisions of the [1984-85] **1985-86** Fish Code.

#### 7:25-6.2 Trout Season and Angling in Trout-Stocked Waters [Authority: N.J.S.A. 23:5-1]

(a) The trout season for [1985] **1986** shall commence 12:01 [a.m.] **A.M.** January 1, [1985] **1986** and extend to midnight March [24, 1985] **16, 1986**. The trout season shall re-open at 8:00 [a.m.] **A.M.** Saturday, April [13, 1985] **5, 1986** and extend to include March [23, 1986] **22, 1987**. (See separate regulations for Greenwood Lake, the Delaware River between New Jersey and Pennsylvania, Round Valley Reservoir, Lake Hopatcong, Spruce Run Reservoir, Swartswood Lake, Wawayanda Lake, Musconetcong River "No Kill" area, and the Van Campens Brook Natural Trout Fishing Area.)

(b) It shall be unlawful to fish for any species of fish [between midnight on March 24, 1985] **from midnight of the 16th of March** [and] to 8:00 [a.m.] **A.M.** on April [13, 1985] **5, 1986** in ponds, lakes or those portions of streams that are listed herein for stocking during [1985] **1986, except in those separately regulated areas as noted parenthetically at (a) above.**

(c) (No change.)

(d) Trout stocked waters for which in-season closures will be in force [.] **are as follows** (waters will be closed from 5:00 [a.m.] **A.M.** to 5:00 [p.m.] **P.M.** on dates indicated)[.]:

1. Big Flat Brook—100 ft. above Steam Mill Bridge on Crigger Road in Stokes State Forest to Delaware River—April [19, 26] **11, 18, 25**; May [3, 10, 17, 24, 31.] **2, 9, 16, 23**;

2. Black River—Route 206, Chester to Dam at lower end of Hacklebarney State Park—April [18, 25] **10, 17, 24**; May [2, 9, 16, 23, 30.] **1, 8, 15, 22**;

3. Manasquan River—Route 9 bridge downstream to Bennetts Bridge, Manasquan Wildlife Management Area—April [15, 22, 29] **7, 14, 21, 28**; May [6, 13, 20, 27.] **5, 12, 19**;

4. Metedeconk River, N. Br.—Aldrich Road Bridge to Ridge Avenue—April [15, 22, 29] **7, 14, 21, 28**; May [6, 13, 20, 27.] **5, 12, 19**;

5. Metedeconk River, S. Br.—Bennetts Mills dam to twin wooded foot bridge, opposite Lake Park Boulevard, on South Lake Drive, Lakewood—April [15, 22, 29] **7, 14, 21, 28**; May [6, 13, 20, 27.] **5, 12, 19**;

6. Musconetcong River—Lake Hopatcong Dam to Delaware River including all main stem impoundments, but excluding Lake Musconetcong, Netcong.—April [19, 26] **11, 18, 25**; May [3, 10, 17, 24, 31.] **2, 9, 16, 23**;

7. Paulinskill River—Limecrest Railroad Spur Bridge, Sparta Township, to Columbia Lake dam—April [18, 25] **10, 17, 24**; May [2, 9, 16, 23, 30.] **1, 8, 15, 22**;

8. Pequest River—Source to Delaware River—April [19, 26] **11, 18, 25**; May [3, 10, 17, 24, 31.] **2, 9, 16, 23**;

9. Pohatcong Creek—Route 31 to Delaware River—April [16, 23, 30] **8, 15, 22, 29**; May [7, 14, 21, 28.] **6, 13, 20**;

10. Ramapo River—State line to Pompton Lake—April [18, 25] **10, 17, 24**; May [2, 9, 16, 23, 30.] **1, 2, 15, 22**;

11. Raritan River, N. Br.—Peapack Road Bridge in Far Hills to Jct. with S. Br. Raritan River—April [17, 24] **9, 16, 23, 30**; May [1, 8, 15, 22, 29.] **7, 14, 21**;

12. Raritan River, S. Br.—Budd Lake dam through Hunterdon and Somerset Counties to Jct. with N. Br. Raritan River—April [16, 23, 30] **8, 15, 22, 29**; May [7, 14, 21, 28.] **6, 13, 20**;

13. Rockaway River—Longwood Lake dam to Jersey City Reservoir in Boonton—April [15, 22, 29] **7, 14, 21, 28**; May [6, 13, 20, 27.] **5, 12, 19**;

14. Tom's River—Ocean County Route 528 Holmansville to confluence with Maple Root Branch and Route 70 to County Route 571—April [15, 22, 29] **7, 14, 21, 28**; May [6, 13, 20, 27.] **5, 12, 19**;

15. Wallkill River—W. Mt. Road to Route 23, Hamburg—April [15, 22, 29] **7, 14, 21, 28**; May [6, 13, 20, 27.] **5, 12, 19**; and

16. Wanaque River—Greenwood Lake dam to Jct. with Pequannock River, excluding Wanaque Reservoir and Lake Inez—April [19, 26] **11, 18, 25**; May [3, 10, 17, 31] **2, 9, 16, 23**.

(Note: The division reserves the right not to stock on the above dates when emergency situations prevail.)

(e) (No change.)

(f) Trout stocked waters for which no in-season closures will be in force **are as follows**: [F] (figures in [parenthesis] **parentheses** indicate[s] the anticipated numbers of stockings to be carried out from April [15] **14** through May 31 [.]]; [(N) note: [T]the [D] division reserves the right to suspend stocking when emergency conditions prevail[.]];

1.-9. (No change.)

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**ENVIRONMENTAL PROTECTION**

10. Hunterdon County

- Alexandria Brook—Milford, entire length—(2)
- Alexauken Creek—Mt. Airy, entire length—(2)
- Amwell Lake—Linvale—(4)
- Beaver Brook—Annandale, entire length—(2)
- Capoolong Creek—Pittstown, entire length—(6)
- Delaware—Raritan Feeder Canal—Bulls Island to [Prallsville Lock] **Hunterdon—Mercer County line**—(6)
- Everittstown Brook—Everittstown, entire length—(2)
- Frenchtown Brook—Frenchtown, entire length—(1)
- Hakihohake Creek—Milford, entire length—(2)
- Little York Brook—Little York, entire length—(2)
- Lockatong Creek—Opdyke Road Bridge, Kingwood Township to Delaware-Raritan Feeder Canal—(3)
- Milford Brook—Milford, entire length—(1)
- Mt. Pleasant Brook—Mt. Pleasant, entire length—(0)
- Mulhockaway Creek—Pattenburg, source to Spruce Run Reservoir—(2)
- Neshanic River—Kuhl Road to Hunterdon County Route 514—(1)
- Prescott Brook—Clinton Township, entire length—(1)
- Rockaway Creek, N/B—Tewksbury and Readington Township, entire length—(4)
- Rockaway Creek, S/B—Lebanon to Whitehouse, entire length—(3)
- Round Valley Reservoir—Lebanon—(1)
- Spring Mills Brook—Spring Mills, entire length—(0)
- Spruce Run—Glen Gardner and Lebanon Township, entire length—(3)
- Spruce Run Reservoir—Clinton—[(5)](6)
- Sydney Brook—Sydney, entire length—(0)
- Tetertown Brook—Tetertown, entire length—(0)
- Wickechoke Creek—Covered Bridge, Sergeantsville to Delaware River—(1)

11. Mercer County

- Assunpink Creek—Assunpink Site 5 dam upstream of Rt. 130 Bridge to Carnegie Road, Hamilton Township—(4)
- Colonia Lake—Lawrence Township—(2)
- Delaware—Raritan Canal—U.S. 1 to Alexander St., Princeton**—(4)
- Delaware—Raritan Feeder Canal—Hunterdon-Mercer County Line to Upper Ferry Road Bridge**—(6)
- Rosedale Lake—Rosedale—(4)
- Stony Brook—Woodsville to Port Mercer—(4)

12. Middlesex County

- Farrington Lake—North Brunswick—(4)
  - Hook's Creek Lake, Cheesequake State Park**—(1)
  - Ireland Brook—Farrington Lake to point 500 ft. upstream of Riva Avenue—(0)
  - Lawrence Brook—Dam at Farrington Lake to 2nd RR Bridge (Raritan Railroad) below Main St. Milltown—(5)
  - Roosevelt Park Pond—Edison Township—(4)
13. (No change.)

14. Morris County

- Beaver Brook—Rockaway, entire length—(3)
- Burnett Brook—Ralston, entire length—(2)
- Burnham Park Pond—Morristown—(1)
- Den Brook—Union Hill, entire length—(1)
- Drakes Brook—Flanders, entire length—(1)
- Flanders Brook—Mt. Olive, entire length—(3)
- Hibernia Brook—Hibernia, entire length—(4)
- India Brook—Mt. Freedom to Rt. 24, Ralston, entire length—(2)

- India Brook Impoundment—Colemans Hollow—(2)
- Lake Hopatcong—Lake Hopatcong—[(2)] (3)
- Lake Musconetcong—Netcong—(2)
- Ledgewood Brook—Ledgewood—(2)
- Mill Brook—Center Grove, entire length—(2)
- Mt. Hope Pond—Mt. Hope—(2)
- Passaic River—White Bridge to Dead River—(6)
- Pompton River—Pequannock Township (see Passaic Co.)—(6)
- Reservoir Brook—Brookside, entire length—(1)
- Rhinehart's Brook—Hacklebarney State Park, entire length—(2)
- Russia Brook—Jefferson Township, Ridge Road to Lake Swannanoa—(2)
- Speedwell Lake—Morristown—(2)
- Trout Brook—Hacklebarney State Park, entire length—(2)
- Washington Valley Brook—Morristown, entire length—(3) 15.-18. (No change.)

19. Sussex County

- Alm's House Brook—Myrtle Grove, Hampton Township, entire length—(2)
- Andover Junction Brook—Andover, entire length—(3)
- Beaver Run Brook—Beaver Run, entire length—(1)
- Bier's Kill—Shaytown, entire length—(2)
- Big Flat Brook, Upper—Saw Mill Lake, High Point State Park to 100 ft. above Stream Mill Bridge on Crigger Road—(1)
- Clove River—Junction of Route 23 and Mt. Salem Road to Route 565 bridge—(3)
- Cranberry Lake—Byram Township—(2)
- Culver's Lake Brook—Frankford Township, entire length—(2)
- Dragon Brook—Cranberry Lake, Byram Township, entire length—(3)
- Dry Brook—Branchville, entire length—(0)
- Franklin Pond Creek—Hamburg Mt. W.M.A., entire length—(3)
- Glenwood Brook—Lake Glenwood to Stateline—(1)
- Hardystonville Brook—Hardystonville, entire length—(1)
- Iliff Lake—Andover Township—(3)
- Kymer's Brook—Andover, entire length—(2)
- Lake Musconetcong—Netcong—(2)
- Lake Hopatcong—Lake Hopatcong—(2)
- Lake Ocquittunk—Stokes State Forest—(6)
- Little Flat Brook—Sandyston Township, entire length—(3)
- Little Swartswood Lake—Swartswood—(2)
- Lubbers Run—Byram Township, entire length—(3)
- Neldon Brook—Swartswood, entire length—(2)
- North Church Brook—Monroe, entire length—(1)
- Papakating Creek—Plains Road bridge to Route 565 Lewisburg—(2)
- Papakating Creek, W. Br.—Libertyville, entire length—(2)
- Parker Brook—Stokes State Forest, entire length—(1)
- Pond Brook—Middleville, entire length—(2)
- Roy Spring Brook—Stillwater, entire length—(2)
- Saw Mill Lake—High Point State Park—(6)
- Shimers Brook—Montague Township, entire length—(1)
- Sparta Junction Brook—Sparta Junction, entire length—(3)
- Stony Brook—Stokes State Forest, entire length—(2)
- Stoney Lake—Stokes State Forest—(3)
- Swartswood Lake—Swartswood—[(3)] (4)
- Trout Brook—Middleville, entire length—(2)
- Tuttles Corner Brook—Tuttles Corner, entire length—(2)
- Wawayanda Lake—Highland Lakes—[(3)] (4)

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## 20. Union County

Green Brook—Route 527, Berkely Heights to Route 22, Scotch Plains—(2)

Lower Echo Park Pond—Mountainside—(2)

Milton Lake—Madison Hill Road Bridge to Milton Lake Dam, Rahway—(2)

Rahway River—Morris Ave. (Route 524 to St. George Ave. (Route 27), Rahway—(4)

Seeleys Pond—Berkely Heights—(2)

21. (No change.)

(g) (No change.)

(h) No person shall take, kill, or have in possession in one day more than 6 in the aggregate of brook trout, brown trout, rainbow trout, or hybrids thereof, during the period extending from 8:00 [a.m.] A.M. April [13, 1985] **5, 1986** until midnight May 31, [1985] **1986**, or more than [4] **four** of these species during the periods of January 1, [1985] **1986** to midnight March [24, 1985] **16, 1986** and June 1, [1985] **1986** through midnight March [23, 1986] **22, 1987** except as designated for Special Regulation Trout Fishing Areas and Round Valley Reservoir. [Authority: N.J.S.A. 23:5-10.]

(i) (No change.)

(j) **Lake Hopatcong in Morris County, Spruce Run Reservoir in Hunterdon County, and Swartwood Lake and Wawayanda Lake in Sussex County will remain open to angling year-round. There shall be no closed season for brook trout, brown trout, and rainbow trout in these waters.**

## 7:25-6.3 Fly-fishing waters

[Authority: N.J.S.A. 13:1B-31, 23:5-10, 23:5-11, 23:5-17]

(a) From and after 5:00 [a.m.] A.M. on Monday April [22, 1985] **14, 1986** to and including November 30, [1985] **1986** the following stretches are open to fly-fishing only[,] and closed to all fishing from 5:00 [a.m.] A.M. to 5:00 [p.m.] P.M. on the days listed for stocking:

1. Big Flat Brook, Sussex County—from the concrete bridge on Route 206 downstream to the Roy Bridge on Mountain Road, a distance of approximately [4] **four** miles, except that portion known as the Blewett Tract, regulated below [(see b.1)] **at (b)1.**

2. (No change.)

(b) Beginning January 1, [1985] **1986** to midnight March [24, 1985] **16, 1986** and from 8:00 [a.m.] A.M. on April [13, 1985] **5, 1986** to midnight, March [23, 1986] **22, 1987**, the following stretch is open to fly-fishing only, but is closed to all fishing from 5:00 [a.m.] A.M. to 5:00 [p.m.] P.M. on days listed for stocking:

1. (No change.)

(c) (No change.)

(d) The following regulations shall apply to the above designated fly-fishing waters:

1. (No change.)

2. Not more than (6) **six** trout may be killed daily during the April [7] **5** through May 31 portion of the season; at other times the limit is four.

i. Any number of trout **in excess of the aforementioned daily limit of six** may be caught provided that such **excess** trout are immediately returned to the water unharmed, except that the Musconetcong fly-fishing stretch is designated a "no kill" area and all trout caught in this stretch must be immediately returned to the water unharmed. Authority: N.J.S.A. 23:5-10.

3.-5. (No change.)

## 7:25-6.4 Natural Trout Fishing Areas

(No change.)

## 7:25-6.5 Round Valley Reservoir

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

(d) The season for lake trout shall extend from 12:01 [a.m.] A.M. January 1, [1985] **1986** to midnight September 30, [1985] **1986.**

(e) [The legal size for lake trout shall be from 18 inches to 22 inches and in excess of 28 inches. The daily bag and possession limit shall be two, of which only one may be between 18 inches and 22 inches and only one may be in excess of 28 inches.] **The minimum size for lake trout shall be 24 inches and the daily bag and possession limit shall be one.** [Authority: N.J.S.A. 23:5-7, 23:5-10.]

(f) (No change.)

## 7:25-6.6 Baitfish

(a) (No change.)

(b) In waters listed in this code to be stocked with trout [during 1984], it is prohibited to net, trap or attempt to net or trap baitfish from March [18] **16** to June 15 [th] except where the taking is otherwise provided for. For the remainder of the year, up to 35 baitfish per person per day may be taken with a seine not over 10 feet in length and [4] **four** feet in depth or a minnow trap not larger than 24 inches in length with a funnel mouth greater than [2] **two** inches in diameter. [Authority: N.J.S.A. 23:5-11.]

(c) (No change.)

## 7:25-6.7 Nets

(No change.)

## 7:25-6.8 Snagging prohibited

(a) The foul hooking of largemouth bass (*Micropterus salmoides*), small-mouth bass (*Micropterus dolomieu*), **striped bass (*Morone saxatilis*) or any hybrid thereof**, chain pickerel (*Esox niger*), northern pike (*Esox lucius*), muskellunge (*Esox masquinongy*) or any hybrid thereof, walleye (*stizostedion vitreum vitreum*), **and brook trout (*Salvelinus fontinalis*), lake trout (*Salvelinus namaycush*), brown trout (*Salmo trutta*), and rainbow trout (*Salmo gairdneri*), or any hybrids thereof**, shall be prohibited in open waters. Any of the aforementioned fish so hooked must be immediately returned to the water. This shall not apply to fish so taken through the ice during the ice fishing season (see separate regulations for Greenwood Lake, and for the Delaware River between New Jersey and Pennsylvania). [Authority: N.J.S.A. 23:5-11.]

## 7:35-6.9 Warmwater fish

(a) Except as noted for waters stocked with trout, closed seasons are hereby eliminated in open (unfrozen) waters on all freshwater fish of striped bass form all other fresh waters is March 1 to December 31[.] (see Delaware River between New Jersey and Pennsylvania, and ice fishing sections for separate regulations). [Authority: N.J.S.A. 23:5-1.]

(b)-(j) (No change.)

(k) The minimum length [on] for striped bass (*Morone Saxatilis*) **shall be 24 inches and the minimum length for their hybrids shall be 18 inches.** [and the] **Except for the Delaware River** the daily bag and possession limit **for either** shall be two in [lakes] **waters upstream of dams.** For the **Delaware River** and all other freshwaters, tidal and non-tidal, [the minimum length shall be 18 inches and] the daily bag and possession limit shall be five [(see exception for the Delaware River)].

## 7:25-6.10 Ice fishing

(No change.)

## 7:25-6.11 Bow and arrow fishing

It shall be legal to take any species of fish except brook trout

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(*Salvelinus fontinalis*), lake trout (*Salvelinus namaycush*), brown trout (*Salmo trutta*), rainbow trout (*Salmo gairdneri*), landlocked Atlantic salmon (*Salmo salar*), largemouth bass (*Micropterus salmoides*), smallmouth bass (*Micropterus dolomieu*), **striped bass (*Morone saxatilis*) or any hybrid thereof**, chain pickerel (*Esox niger*), northern pike (*Esox lucius*), muskellunge (*Esox masquinongy*) or any hybrid thereof, or walleye (*Stizostedion vitreum vitreum*), at any time by use of longbow and arrow with line attached, provided a person has a proper fishing license. (See separate regulations for Greenwood Lake, for the Delaware River between New Jersey and Pennsylvania, and for the waters listed for trout stocking during the current season.)

I.	Season
Trout	No closed season
Largemouth bass & smallmouth bass	No closed season
Chain pickerel	No closed season
<b>Muskellunge &amp; any hybrid thereof</b>	<b>No closed season</b>
All other species	No closed season

[Authority: N.J.S.A. 23:5-1; 23:5-10]  
2.-5. (No change.)

7:25-6.15 Delaware River between New Jersey and Pennsylvania

(a) In cooperation with the Pennsylvania Fish Commission, the following regulations for the Delaware River between New

I.	Season
Trout	April [15]5-Sept. 30
Largemouth bass & smallmouth bass	No closed season
Walleye	No closed season
Chain pickerel	No closed season
Muskellunge, & any hybrid thereof	No closed season
Northern pike	No closed season
Striped bass	March 1-Dec. 31
Baitfish, Fish bait	No closed season
Shortnose sturgeon	Closed-endangered species
All other freshwater species	No closed season

[Authority: N.J.S.A. 23:9-12, 23:9-13, 23:9-34.]  
2.-7. (No change.)

7:25-6.16 Fresh tidal tributaries of the Delaware River and Bay

(No change.)

7:25-6.17 Definitions

(No change.)

**(a)**

**Bureau of Shellfisheries  
Clam Relay Program**

**Proposed Amendment: N.J.A.C. 7:25-15.1**

Authority: N.J.S.A. 23:2B-14 and 50:1-5.  
DEP Docket No. 047-85-08.

7:25-6.12 Closed waters

(No change.)

7:25-6.13 Emergency closure notice

(No change.)

7:25-6.14 Greenwood Lake

(a) In cooperation with the New York State Department of Environmental Conservation, Division of Fish and Wildlife, the following regulations for Greenwood Lake, which lies partly in Passaic County, New Jersey, and partly in Orange County, New York, are made a part of the New Jersey State Fish and Game Code and will be enforced on the whole lake by the conservation authorities of both states.

Size	Bag Limit
No minimum	3
9" minimum	5 singly or in aggregate
No minimum	10
<b>30" minimum</b>	<b>1</b>
No minimum	No limit

Jersey and Pennsylvania are made a part of the New Jersey State Fish and Game Code and will be enforced by the conservation authorities of each state.

Size Limit	Bag Limit
No minimum	5
9" minimum	5 in aggregate
15" minimum	5
12" minimum	5
30" minimum	2
24" minimum	2
[18"] <b>24" minimum</b>	5
No minimum	50
No minimum	No limit

**Proposal Number: PRN 1985-516.**

A **public hearing** concerning this proposal will be held on:  
Thursday, October 10, 1985 at 6:30 P.M.  
Ocean County Administration Bldg.  
Hooper Avenue  
Toms River, New Jersey

Submit comments by October 16, 1985 to:  
Gail Critchlow, Chief  
Bureau of Shellfisheries  
Division of Fish, Game and Wildlife  
1566 Edgewood Avenue  
Trenton, New Jersey 08618

The agency proposal follows:

**Summary**

This proposal adds language reflecting the additional water

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classification, Seasonal Special Restricted waters, by the Bureau of Shellfish Control in the Division of Water Resources. It specifies the annual relay lease application closure date and the annual lease fee reduction from \$50.00 to \$5.00. The proposal makes clear that nonleased lots within designated lease areas are not open to the harvest of shellfish. Provision is made for the stopping and inspection of vehicles involved in over-land transport of shellfish engaged in the relay program as a permit condition for purposes of ensuring compliance with these regulations and protecting the public's health. Finally, a penalty schedule for technical program violations dealing with record keeping and marking of leaseholds and vessels is established.

**Social Impact**

The principal social impact of the proposed amendment will be to give the enforcement officer and clammer more realistic responsibilities in the relay program.

The enforcement personnel will be allowed to spot check all phases of clam harvest and transfer in the northern area of the State thereby reducing cause for fear by the public from the health hazard caused by the illegal harvest of polluted clams. Although provision is made for a "stop and search" of any relay vehicle from the time loading commences at the landing site until off-loading is completed at the planting site, such enforcement activity is rationally related to assuring necessary deterrence from violations of these regulations designed to protect the public health with the limited resources available to enforcement personnel. This industry is already subject to extensive regulation justified by the health concerns attached to a process handling a food product harvested from polluted waters, and, therefore, expectations of privacy in commercial vehicles transporting those clams should be minimal.

Finally, the State will place greater reliance on the clammer's record keeping for enforcement.

**Economic Impact**

By providing for surveillance on a random basis, the relay program can be allowed to proceed not only on weekdays but on State holidays as well without additional cost to the State. Also, the State may not have to require minimum participation in the relay program to justify enforcement as is now the case. The State should be able to deploy its enforcement personnel more effectively and the clammers will benefit from greater harvest opportunities. Reduction in annual lease fees reflects the prior cessation of the State's transport of clams and will prove economically favorable to the clammer.

**Environmental Impact**

No adverse environmental impact is anticipated since the extra days' harvest should not increase the total yearly harvest by a significant number of clams.

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

7:25-15.1 Relay of hard clams

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

(e) Any person who wishes to participate in this program must comply with the following conditions in order to be eligible for participation:

1. (No change.)

2. Posses one of the following special permits issued by the Division of Water Resources (N.J.S.A. 58:24-3 and N.J.A.C.

7:12-2) to harvest and/or buy and/or sell hard clams from condemned waters:

- i. Permit 5a: SPECIAL PERMIT TO HARVEST, BUY, SELL AND RELAY HARD CLAMS FROM SPECIFIED SPECIAL RESTRICTED, SEASONAL SPECIAL RESTRICTED, OR CONDEMNED WATERS IN CONJUNCTION WITH A STATE APPROVED SHELLFISH RELAY PROGRAM; or
- ii. Permit 5b: SPECIAL PERMIT TO HARVEST HARD CLAMS FROM SPECIFIED SPECIAL RESTRICTED, SEASONAL SPECIAL RESTRICTED, OR CONDEMNED WATERS FOR SALE PURPOSES ONLY IN CONJUNCTION WITH A STATE APPROVED SHELLFISH RELAY PROGRAM; and

3. (No change.)

(f) Any person applying for permit 5a must have acquired a special relay lease from the department for three one-half acre lots of shellfish cleansing grounds on which the relayed shellfish are to be planted by the means hereinafter set forth. No person shall hold more than one relay lease. Applications for leases must be made in person at the Nacote Creek Shellfish Office for the department. The lease shall be subject to the following additional conditions:

1. This special relay lease shall be issued for only one year and [can] shall be reapplied for annually **on or before December 31 for the following calendar year**;

2. The **annual** fee for this lease, to be paid at the time of application, shall be [\$50.00] **\$5.00**;

3.-8. (No change.)

**9. Nonleased lots within designated relay lease areas are not open to harvest of shellfish at any time.**

**10. The designated enforcement unit may stop and inspect any vehicles involved in the hard clam relay program from the time loading begins at the landing site until the off-loading at the planting site. All such stops and inspections shall be expressly for the purpose of ensuring compliance with the hard clam relay regulations and protection of the public's health.**

(g)-(l) (No change.)

(m) Penalty:

1. Any participant violating this rule or the terms of the special relay permit issued by the Division of Water Resources may [cause the violator's] **have his** permits [to be] revoked or suspended. This participant may also be subject to prosecution, including fine, imprisonment, and forfeiture of vessel, vehicle, and all equipment.

2. Any lessee who is convicted of an offense which results in the revocation of a Shellfish Harvesting License or a Special Permit mentioned in (e)2 above shall have this lease terminated by the department; provided, however, that upon lessee's giving notice to the division within 10 days of departmental notice of termination of said lease, the lessee shall be given the opportunity to show why his lease should not be terminated. Upon issuance of summons to lessee, any transfer of lease will be stayed pending final disposition of said summons. If notice is given within the aforementioned 10-day period, termination of the lease will be effective until the next regularly scheduled meeting of the Atlantic Coast **Section of the [Shellfisheries] Shell Fisheries Council**. The Atlantic Coast **Section of the [Shellfisheries] Shell Fisheries Council** shall have the authority to permanently suspend such termination for good cause shown.

3. Nothing in this section shall allow the termination of a lease because of a violation of N.J.S.A. 50:2-1 or N.J.S.A. 50:2-5. A violation [for] of this rule is a violation of N.J.S.A. 50:1-5 and is subject to a penalty under N.J.S.A. 23:2B-14a

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(first offense \$100.00 to \$3,000.00; subsequent offense \$200.00 to \$5,000.00); except that anyone in violation of N.J.A.C. 7:25-15.1(d) and (h)1 (failure to complete report), (f)6 (failure to properly post lot), and (f)7 (failure to mark harvest boat) shall be subject to a penalty of \$20.00 for the first offense and \$40.00 for each subsequent offense.

**(a)**

**Defining Fishing Lines**

**Proposed New Rule: N.J.A.C. 7:25-16.1**

Authority: N.J.S.A. 23:1-2, 23:3-1 and 23:9-1.  
DEP Docket No. 046-85-08.  
Proposal Number: PRN 1985-515.

A public hearing concerning this proposal will be held in conjunction with the public hearing for the 1986-87 Fish Code: October 8, 1985 at 8:00 P.M.  
Division of Fish, Game and Wildlife  
363 Pennington Avenue  
Trenton, New Jersey 08625

Submit comments by October 16, 1985 to:  
A. Bruce Pyle, Chief  
Bureau of Freshwater Fisheries  
Division of Fish, Game and Wildlife  
CN 400  
Trenton, New Jersey 08625  
(609) 292-8642

The agency proposal follows:

**Summary**

N.J.S.A. 23:3-1 states, in part, that no person above the age of 14 may fish in the freshwaters of the State without a fishing license. This necessitates that the freshwaters of the State be distinguished from the State's salt waters and that the transition line between the two be defined. To determine this point the State's inland tidal streams were monitored to establish their freshwater background chemical character and then they were monitored downstream, at high tide, to determine the upstream extent of salt-water influence. Determinations were made under streamflow conditions ranging from 40 to 60 percent of the average freshwater discharge and, therefore, these license lines are substantially conservative in the upstream direction. For purposes of reasonable and adequate notice, this transition line is adjusted upstream to the nearest readily discernible landmark. As such, this transition line should be close, but may not be identical, to the downstream limit of "fresh water(s)" as defined in the department's Surface Water Quality Standards at N.J.A.C. 7:9-4. The so-called "license lines" are identical for both New Jersey residents and nonresidents.

N.J.A.C. 7:25-16.1 was originally adopted and became effective on August 18, 1978, with an operative date of January 1, 1979. In accordance with the "sunset" and other provisions of Executive Order No. 66 (1978), this rule expired on August 18, 1983. It was proposed for readoption on August 6, 1984 at 16 N.J.R. 2044 but never adopted. This proposal is identical to both the original adoption in 1978 and the 1984 proposal except for the proposed amendments of the license lines for the Maurice River, Manumuskin River, and Menantico

Creek, in Cumberland County, based on the results of recently conducted salinity sampling. The revised line on the Maurice River is approximately 8.3 miles downstream of the Route 49 bridge, which was the former line. The lines for the Manumuskin River and Menantico Creek have been readjusted downstream, as they enter the Maurice River downstream of the old line and upstream of the new line. The distances involved on these waters are about 0.3 miles and 0.7 miles, respectively.

Since the text of N.J.A.C. 7:25-16.1 as it currently appears in the New Jersey Administrative Code expired on August 18, 1983 pursuant to the Executive Order, the text is proposed as a new rule although only the proposed amendments are published.

**Social Impact**

Adoption of this proposal will add certainty to those attempting to comply with N.J.S.A. 23:3-1. In basing the license lines on scientific determination, prosecution of violators will be aided and court challenges reduced. As a result of the above-noted revision, a fishing license will now be required on an additional 8.3 miles of the Maurice River and 0.3 and 0.7 miles on the Manamuskin River and Menantico Creek, respectively.

**Economic Impact**

The proposal reinstates and adds to the expired requirement of possessing fishing licenses for many areas previously open to fishing without a license. It is anticipated that the proposal will add some financial burden on those who traditionally fished these areas for free. The added license sales which will occur as a result of this rule will bring some increase in revenue to the division.

**Environmental Impact**

No immediate environmental impact is anticipated from the readoption of these regulations. However, the revision relocating the license lines downstream on three waters will entitle these waters to receive full consideration for benefits under the State's freshwater fisheries management program.

Full text of the expired rule proposed as a new rule appears in the New Jersey Administrative Code at N.J.A.C. 7:25-16.1.

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

7:25-16.1 Defining lines upstream of which license is required to fish with handline, rod and line or long bow and arrow

(a) The following table defines the upstream of which a license is required to fish with handline, rod and line or long bow and arrow.

Name of Water	License required upstream of this location
• • •	• • •
<b>CUMBERLAND COUNTY</b>	
Andrews Creek	None—all saline water
Back Creek	None—all saline water
Cedar Creek	100 ft. downstream of Cedar Lake Dam
Cohansey River	Route 49 Bridge at Bridgeton

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Dividing Creek	Route 55 Bridge
Fishing Creek	None—all saline water
Fortescue Cr., Br. or Oranoken Cr.	None—all saline water
Manumuskin River	[Route 47 Southbound Bridge] <b>Required whole length</b>
Maurice River	[Route 49 Bridge, Millville] <b>Mouth of Manumuskin River near Port Elizabeth</b>
Menantico Creek	[Route 55 Southbound Bridge] <b>Required whole length</b>
Mill Cr.—Tributary of Cohansey at Fairton	Route 553 Bridge, Fairton
Muskee Creek	S. side of bridge on Weatherby Rd.
Nantuxent Creek (Pages Run)	Route 553, North of Frames Corner
Oranoken Creek	Whitecar Mill, North of Beaver Dam
Oyster Creek	None—all saline water
Riggins Ditch	Route 47
Sow and Pigs Br. of Nantuxent	None—all saline water
Stow Creek	Buckhorn Rd. Bridge, Jericho
Straight Creek	None—all saline water
West Creek	100 Ft. below West Creek Lake Dams (Pickle Factory Pond)

• • •

• • •

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

**(a)**

**DIVISION OF ENVIRONMENTAL QUALITY**

**Sampling and Analytical Procedures for the Determination of Volatile Organic Substances from Source Operations**

**Proposed New Rule: N.J.A.C. 7:27B-3**

Authority: N.J.S.A. 13:1D-5, 13:1D-9, 26:2C-8.  
 DEP Docket No. 049-85-08.  
 Proposal Number: PRN 1985-513.

**Public hearings** concerning this proposal will be held on:  
 October 24, 1985 at 9:00 A.M.  
 New Jersey State Library  
 First Floor Meeting Room  
 185 West State Street  
 Trenton, New Jersey

Submit comments by November 1, 1985 to:  
 Milton Polakovic, Assistant Chief  
 Bureau of Engineering and Technology  
 Division of Environmental Quality  
 New Jersey Department of  
 Environmental Protection  
 CN 027  
 Trenton, NJ 08625

Copies of this notice, of the proposed regulations, appendices, and of the Basis and Background document will be available for inspection during normal office hours until November 1, 1985 at:

- Atlantic County Health Department  
 1200 Harding Highway  
 Mays Landing, New Jersey 08330
- N.J. Bureau of Air Pollution Control  
 Room 1108, Labor and Industry Building  
 John Fitch Plaza  
 Trenton, New Jersey 08625
- N.J. Bureau of Air Pollution Control  
 Northern Field Office  
 1259 Route 46  
 Parsippany, New Jersey 07054
- N.J. Bureau of Air Pollution Control  
 Central Field Office  
 Twin Rivers Professional Bldg.  
 East Windsor, New Jersey 08520
- N.J. Bureau of Air Pollution Control  
 Southern Field Office  
 100A Larwin Road  
 Cherry Hill, New Jersey 08034
- N.J. Bureau of Air Pollution Control  
 Metropolitan Field Office  
 1110 Raymond Boulevard—Fifth Floor  
 Newark, New Jersey 07102
- New Jersey State Library  
 185 West State Street  
 CN 520  
 Trenton, New Jersey 08625
- Warren County Health Department  
 151 West Washington Avenue  
 Washington, New Jersey 07882

A copy of the test methods incorporated in proposed N.J.A.C. 7:27B-3 by reference is available for inspection in Room 1107, Labor and Industry Building, John Fitch Plaza, Trenton, attention: Milton P. Polakovic, Assistant Chief, Bureau of Engineering and Technology.

The new rule will become operative 60 days after adoption by the Commissioner (see N.J.S.A. 26:2C-8).

The agency proposal follows:

**Summary**

The New Jersey Department of Environmental Protection (the Department) is proposing a new rule, N.J.A.C. 7:27B-3, Sampling and Analytical Procedures for the Determination of Volatile Organic Substances from Source Operations, which prescribes specific test methods for measuring emissions of volatile organic substances (VOS), primarily in order to determine compliance with N.J.A.C. 7:27-16 and other applicable rules.

In the 1982 New Jersey State Implementation Plan, (SIP) the Department made certain commitments for the attainment and maintenance of the National Ambient Air Quality Standard (NAAQS) for ozone as required under the Federal Clean Air Act, as amended August 1977, 42 U.S.C. 7401 et seq. Implicit in the adoption of N.J.A.C. 7:27-16, which controls or prohibits the emissions of VOS to the atmosphere (which

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in the presence of sunlight, form ozone and other highly reactive pollutants) is determining compliance with the various prescribed emission standards in N.J.A.C. 7:27, and in particular, N.J.A.C. 7:27-8, (Permits and Certificates). Also included among these standards and rules is N.J.A.C. 7:27-17 (Control and Prohibition of air Pollution by Toxic Substances).

The Department formulated the sampling and analytical procedures prescribed in the proposed new rule from existing technology on the measurement of volatile organic substances, and adapted it to the requirements of the specific prescribed standards in N.J.A.C. 7:27. Where applicable and appropriate, existing test methods or analytical procedures established by agencies or institutions such as the United States Environmental Protection Agency (hereinafter "EPA") and the American Society for Testing and Materials (ASTM) are incorporated in N.J.A.C. 7:27B-3 by reference.

The Department realizes that it is impossible to specify a set of procedures which would cover every situation involving the measurement of VOS emissions. In this regard, alternate test methods may be approved by the Department if shown to be valid and equivalent to the methods in N.J.A.C. 7:27B-3. (See N.J.A.C. 7:27B-3.2(e)).

In addition to the methods described for determining the vapor pressure of VOS and of mixtures of VOS, the proposed new rule prescribes test methods for the following six general categories for which standards are specified in N.J.A.C. 7:27-16:

1. Surface Coating Operations: Analytical methods are described for analyzing representative samples of surface coating materials to determine the VOS content. The methods prescribed are established ASTM procedures which are incorporated by reference.

2. Delivery Vessel Leaks: The proposal describes a pressure/vacuum method for determining the leak tightness of delivery vessels such as tank trucks which transport gasoline or other volatile organic substances.

3. Leak Detection Process: A procedure including the use of a portable instrument is described for the purpose of detecting leaks and fugitive VOS emissions from valves, flanges, pumps, etc. used in manufacturing processes.

4. Cutback And Emulsified Asphalts: A method is described for the determination of the VOS content by distillation and the density determination of representative samples of cutback or emulsified asphalts using established ASTM procedures which are incorporated by reference.

5. Process And Transfer Operations: The proposed regulation describes the methods for determining source emissions for a single known VOS, a mixture of known VOS in known proportions, and a mixture of known VOS in unknown proportions, from process and transfer operations.

6. Petroleum Dry Cleaning Operations: The proposed new rule describes the methods for determining the solvent recovery rate, the solvent content in filtration wastes, and the VOS emissions from petroleum dry cleaning operations.

### Social Impact

The proposed new rule would establish consistent and accurate methods for testing VOS and guide the regulated community on appropriate methods. The proposed new rule would help to ensure that the social benefits of promoting a more pollution-free atmosphere and protection of public health are achieved by aiding in the attainment of the NAAQS for ozone. In order to implement the proposed new rule, the State will assign personnel to conduct tests, or to observe those tests which are conducted by industry, in order to determine com-

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pliance with those regulations at N.J.A.C. 7:27-16 and 7:27-17, which control or prohibit the emission of VOS and/or toxic VOS into the atmosphere. Private industry will be required to either purchase the equipment required to conduct the tests, if qualified persons are currently employed by the industry to be tested, or to hire consultant firms who possess the personnel and equipment required to conduct the sampling and analytical methods prescribed by proposed N.J.A.C. 7:27B-3.

### Economic Impact

The State will incur the costs of purchasing equipment necessary to conduct the sampling and analysis required by Air Test Method 3, as well as attendant personnel costs. The profitability and competitive position of firms and the cost of products will not be affected beyond the requirements and impacts of the standards in N.J.A.C. 7:27-16 or any other applicable regulations. The proposed rule will provide consistent and accurate methods for fulfilling established compliance determination requirements. Industry will incur the costs of either purchasing the equipment for conducting the tests, if the firm employs personnel who can conduct them, or hiring a consultant firm which will supply the personnel and equipment to conduct the sampling and analytical procedures prescribed by proposed N.J.A.C. 7:27B-3.

### Environmental Impact

The goal of the New Jersey ozone SIP and the proposed new rule is the attainment of the ozone NAAQS through achieving reductions in the emissions of VOS. The proposed new rule will provide methods which will be used to determine whether the required reductions in VOS emissions are achieved and maintained. The proposed new rule will also be used to provide accurate measurements of emissions of toxic VOS and to determine compliance with established standards to minimize public exposure to toxic substances.

Full text of the proposed new rule follows:

### SUBCHAPTER 3. AIR TEST METHOD 3: SAMPLING AND ANALYTICAL PROCEDURES FOR THE DETERMINATION OF VOLATILE ORGANIC SUBSTANCES FROM SOURCE OPERATIONS

#### 7:27B-3.1 Definitions

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

"Aliquot" means a representative portion of a sample.

"Atm" means atmosphere.

"Batch cycle" means the total elapsed time per batch in any single manufacturing process vessel, including all phases of the operation during which the vessel contains process materials, excluding time waiting for removal from the vessel.

"Calibration gas" means a gas of known composition and concentration.

"Carrier gas" means nitrogen or helium containing less than two ppm of equivalent carbon or methane.

"Combustion gas" means air which contains less than two ppm of equivalent carbon or methane and is used to support the combustion of Volatile Organic Substances in the sample gas.

"Condenser" means a system for determining the moisture content of the source gas and consisting of: a probe, two Greenburg-Smith impingers (one standard type containing 100

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mls of distilled water and one dry modified type, both immersed in an ice bath), a drying tube containing a suitable desiccant, a pump, and a dry gas meter with a thermometer all connected in series. The condenser collects the moisture in a measured amount of source gas.

"Cutback asphalt" means any paving asphalt which has been liquified by blending with petroleum solvents, or produced directly from the distillation of petroleum and having vaporization properties similar to the blended and liquified asphalt.

"Department" means the New Jersey Department of Environmental Protection.

"Dilution gas" means air or nitrogen containing less than two ppm of equivalent carbon or methane.

"Direct analysis" means the continuous or semi-continuous on-site sampling and immediate analysis of the source sample.

"Emulsified asphalt" means asphalt which has been liquified by mixing water and an emulsifying agent.

"Fuel gas" means hydrogen or a mixture of hydrogen and an inert gas which contains less than one ppm of equivalent carbon or methane.

"Gas chromatograph-flame ionization detector 'GC-FID' " means a gas chromatograph instrument equipped with a flame ionization detector and a suitable column to separate the VOS. The flame ionization detector must have a heating system capable of preventing any condensation of the sample gas. The flame ionization detector must be capable of meeting or exceeding the manufacturer's specifications by demonstration.

"Gasoline" means any petroleum distillate having a Reid vapor pressure of four pounds per square inch (207 millimeters of mercury) or greater and used as an automotive fuel.

"Gas sampling valve" means a two-position heated valve used to purge the sample loop with the source gas and to insert the loop containing the source gas sample into the carrier gas stream leading to the chromatograph. Both loop and valve must be heated to a temperature that will prevent any condensation of the sample gas.

"Hg" means the element mercury.

"Isokinetic sampling" means drawing a gas sample through a nozzle into a sampling train at the same velocity as that in the stack or duct.

"Laboratory standard calibration gases" means three gas mixtures each containing known concentrations of each of the VOS in the source gas (except trace components) in the same matrix, if possible, as will be sampled. One mixture is to have greater than, one mixture is to be approximately equal to, and one mixture is to have less than the expected concentration of VOS in the source gas. These gases can be certified by the manufacturer or produced locally by approved techniques if the concentration is confirmed by an independent analysis. The standards must be stable in the matrix and container over their period of use.

"Modified particulate train" means a sampling train capable of collecting organic emissions at an isokinetic sampling rate.

"Needle valve" means a stainless steel or Teflon-coated fine adjustment valve which is used to control the source gas sampling rate.

"Organic substance" means any chemical compound or mixture of chemical compounds of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate.

"Ppm" means part per million.

"Partial pressure" means the pressure exerted by a specified component in a mixture of gases.

"Performance test" or "test" means a series of test runs used for the purpose of determining emissions of air contaminants to the outdoor atmosphere.

"Petroleum solvent dry cleaning" means a process used for the cleaning of textiles and fabric products in which articles are washed in a solution of organic material produced by petroleum distillation that exists as a liquid under standard conditions, and then dried by exposure to a heated air stream.

"Probe glass" means a stainless steel or Teflon tubing as required by source gas conditions and equipped with a filter, if necessary. The probe and filter must have a heating or dilution system capable of preventing any condensation of the sample gas.

"Psia" means pounds per square inch atmospheric.

"Pump" means a leakless Teflon-coated diaphragm pump or equivalent with an appropriate capacity and a heating or dilution system capable of preventing any condensation of the sample.

"Pure component standards" means a gas mixture consisting of only one VOS in an inert gas. A separate mixture is required for each VOS suspected in the source gas.

"Recorder/Integrator" means a strip chart recorder and an optional integrator to calculate the results.

"Reid vapor pressure" means the absolute vapor pressure of a petroleum product at 100°F (37.8°C) as measured by the standard test method set forth in the American Society for Testing and Materials (ASTM) Designation D323-79 (N.J.A.C. 7:27B-3.18, Reference 3) or approved equivalent pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

"Rigid sampling container" means a leak-free sampling container large enough to hold a gas sampling bag and capable of being evacuated to 20 inches H<sub>2</sub>O without collapsing.

"Run" or "test run" means a single integrated measurement or procedure used for the purpose of collecting a sample of air contaminants emitted to the outdoor atmosphere during a specified time interval.

"Sample collector" means any device used to selectively separate and collect a sample of a specified contaminant from a gas stream, including, but not limited to, thimbles, filters, impingers, bubblers, cyclones, condensers, and absorbers.

"Sampling location" means the specific position at which a sampling port is located in a stack or chimney.

"Sampling port" means an opening in a stack or chimney into which sampling or measuring devices may be inserted or through which a sample is extracted.

"Sampling rate" means the volume rate at which stack gases are drawn through a sampling train.

"Sampling train" means a combination of entrapment devices, instruments, and auxiliary apparatus arranged in a prescribed sequence to selectively separate and collect samples of specified air contaminants.

"SCFH" means standard cubic feet per hour.

"SCFM" means standard cubic feet per minute.

"Solvent recovery dryer" means a class of dry cleaning dryers that employs a condenser to liquify and recover solvent vapors evaporated in a closed-loop, recirculating stream of heated air.

"Source" "source operations" means any process, or any identifiable part of a process emitting an air contaminant into the outdoor atmosphere through one or more stacks or chimneys.

"Standard conditions" means 70°F (21.1°C) and one atmosphere pressure (14.7 psia or 760 mm Mercury).

"Std" means standard.

"Surface coating formulation" means the material includ-

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ing, but not limited to, paint, varnish, ink, and adhesive, applied to a solid surface in order to achieve a finished coating.

"Temperature sensor" means a thermometer, potentiometer with thermocouple or other temperature sensing device calibrated with an approved standard.

"Test" or "performance test" means a series of test runs used for the purpose of determining emissions of air contaminants to the outdoor atmosphere.

"Test Run" or "run" means a single integrated measurement or procedure used for the purpose of collecting a sample of air contaminants emitted to the outdoor atmosphere during a specified time interval.

"Transfer operation" means the moving of any substance from any storage tank, manufacturing process vessel, or delivery vessel into any receiving vessel.

"Vapor" means the gaseous form of substances which, under standard conditions are in the solid or liquid state and which can be changed to these states by either increasing the pressure or decreasing the temperature.

"Vapor pressure" means the pressure of the vapor phase of a substance, or the sum of the partial pressures of the vapor phases of individual substances in a mixture of substances, when in equilibrium with the non-vapor phase of the substance or substances.

"Velometer" means an "S" type Pitot tube with a manometer or other appropriate gas flow measuring device.

"Volatile organic substances" (VOS) means any organic substances, mixture of organic substances, or mixture of organic and inorganic substances including, but not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents, and thinners which have vapor pressures or sums of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury) absolute or greater measured at standard conditions; and, in the case of surface coating formulations, includes any coalescing or other agent, regardless of vapor pressure, which evaporates from the coating during the drying phase; but does not include methane, trichlorofluoromethane, dichlorodifluoromethane, chlorodifluoromethane, trifluoromethane, 1,1,2 trichloro-1,2,2 trifluoroethane, 1,2 dichloro-1,1,2,2, tetrafluoroethane, and chloropentafluoroethane.

"Zero gas" means air or gas which contains less than 1 ppm of equivalent carbon or methane.

### 7:27B-3.2 Sampling and analytical protocol: acceptable test methods

(a) When N.J.A.C. 7:27-16 or 7:27-17 requires a source emissions test, the applicant shall submit a written protocol to the Department at least 30 days prior to the date of the test, to the following address:

Supervisor, Technical Services Section  
Division of Environmental Quality  
Department of Environmental Protection  
380 Scotch Road  
Trenton, New Jersey 08628

(b) The written protocol shall include a detailed description of the following:

1. Sampling location;
2. Sampling equipment;
3. Sampling and analytical procedures for the tests;
4. Data reporting forms; and
5. Quality assurance procedures.

(c) Any alternative test method, analytical method, instrumentation, source, test period, or data reporting forms shall be submitted in writing with the test protocol for ap-

proval at the discretion of the Department at least 30 days prior to the test, to the address set forth in (a) above.

(d) Any changes from the procedures and methods set forth in the protocol may be approved verbally prior to the test at the discretion of the Department; however, the applicant shall note the request and the Department's response in the final test report submitted by the applicant to the Department.

(e) Any Departmental approval pursuant to (c) or (d) above shall be confirmed in writing by the Department.

(f) The Department may itself employ such alternative procedures when warranted by test conditions or other circumstances.

(g) The applicant shall give notice to the Department at least 48 hours prior to the test in order to afford the opportunity for a Departmental observer(s) to be present.

(h) Performance tests shall be conducted in accordance with test methods set forth hereinafter.

(i) For determining the quality and quantity of VOS from source operations, the prescribed test procedures shall be as follows:

1. For a single known VOS: Procedures for the Direct Measurement of VOS Using a Flame Ionization Detector or a Photoionization Detector or a Non-Dispersive Infrared Analyzer (N.J.A.C. 7:27B-3.7).

2. For a mixture of known VOS in known proportion: Procedures for the Direct Measurement of VOS Using a Flame Ionization Detector, a Photoionization Detector or a Non-Dispersive Infrared Analyzer (N.J.A.C. 7:27B-3.7).

3. For a mixture of known VOS in unknown proportions: Procedures for the Direct Measurement of VOS Using a Gas Chromatograph with a Flame Ionization Detector or other suitable detector (N.J.A.C. 7:27B-3.8).

4. For a mixture containing unknown VOS: A procedure has not been included in the test methods, but an analysis using a gas chromatograph with a mass spectrometer will be required and conducted in accordance with established procedures by a qualified operator. Prior to any such test, the Department must receive and approve a written protocol from the operator.

5. For a known or unknown VOS in a stack where condensation is present: Isokinetic sampling will be required. A procedure has not been included in these test methods, but sampling using a modified particulate train will be required.

(j) Whenever a direct analysis at the source is not possible, the samples shall be taken in accordance with the procedure described at N.J.A.C. 7:27B-3.9.

(k) Whenever a volume flow rate must be determined to establish mass emission rates of VOS or for any other reason, the methods prescribed in N.J.A.C. 7:27B-1, AIR TEST METHOD 1 (N.J.A.C. 7:27B-3.18 Reference 1), or other flow determining method, which shall be submitted for Departmental review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

### 7:27B-3.3 Operating conditions during the test

Insofar as practical, the source operation will be tested while operating at normal routine conditions and, as necessary, at other conditions including, but not limited to, design, maximum and fluctuating rates.

### 7:27B-3.4 Sampling facilities

(a) The following sampling facilities shall be provided by the party responsible for the emissions:

1. Sampling ports installed at locations specified by the Department and of a size large enough to accommodate the sampling equipment;

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- 2. Safe sampling platforms and safe access thereto conforming with laws and regulations concerning safe construction and safe practice (N.J.A.C. 7:27B-3.18, Reference 2);
- 3. Utilities as needed for sampling and testing equipment, which may include electrical power and water;
- 4. Any other facilities exclusive of instrumentation and sensing devices as may be necessary for the Department to accurately determine the emissions of VOS from the source operation; and
- 5. Facilities, as necessary, for representative sampling of

raw materials and for the determination of the amount of raw materials being used during the test run.

6. The facilities installed may be either permanent or temporary, at the discretion of the party responsible for their provision.

7:27B-3.5 Source operations and applicable test methods

The following chart sets forth the applicable test methods, shown by section designation, for the various source operations that are regulated by N.J.A.C. 7:27-8, 7:27-16, and 7:27-17:

**Applicable Test Methods**

Source Operation	Vapor Pressure	Efficiency of Central Apparatus	Leaks From Source	Emissions From Source	VOS Content	Leak Tightness of Delivery Vessel	Recovered Solvent Flow Rate
Storage of VOS	3.6	3.7 3.8 3.9	3.14				
Transfer Operations	3.6	3.16	3.15	3.11		3.13	
Open Top Tanks and Surface Cleaners	3.6	3.7 3.8 3.9		3.7 3.8 3.9			
Surface Coating Operations		3.7 3.8 3.9		3.7 3.8 3.9	3.10		
Source Operations Other than Storage Tanks, Open Top Tanks and Surface Outers	3.6	3.7 3.8 3.9	3.14	3.7 3.8 3.9			
Cutback and Emulsified Asphalt					3.12		
Petroleum Solvent Dry Cleaners				3.7 3.8 3.9	3.17		3.17

7:27B-3.6 Procedures for the determinations of vapor pressures of a single known VOS or mixtures of known and/or unknown VOS

(a) The vapor pressure of a single known volatile organic substance shall be determined as follows:

1. The vapor pressure of certain single known VOS, found in the following, or other sources which shall be submitted to the Department for review, pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e) may be used provided the VOS is certified by the manufacturer or by the National Bureau of Standards as being of or equivalent to research grade.

- i. Weast, R.C., "Handbook of Chemistry and Physics," Section D, Chemical Rubber Co., Cleveland, Ohio;
- ii. Perry, J.H., "Chemical Engineers" Handbook, Section 3, McGraw-Hill, New York;
- iii. Lange, N.A., "Handbook of Chemistry," McGraw-Hill, New York;
- iv. Boublik, T.; Grued, V.; and Hala, E., "The Vapor Pressure of Pure Substances," Elsevier Scientific Publishing, New York;
- v. Jordan T.E., "Vapor Pressure of Organic Compounds" Interscience Publishers, New York.

2. In the absence of the referenced data above, the vapor pressure of the single VOS may be determined by the following methods:

- i. ASTM Designation D323-79, "Standard Method of Test for Vapor Pressure of Petroleum Products (Reid Method)", (N.J.A.C. 7:27B-3.18, Reference 3). This method may be used only if the sensitivity of the pressure measuring device is sufficient for the vapor pressure level. The results must be converted to and reported as the true vapor pressure at standard conditions (N.J.A.C. 7:27B-3.18, Reference 3); or
- ii. ASTM Designation D2879-75, "Standard Method of Test for Vapor Pressure—Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope" (N.J.A.C. 7:27B-3.18, Reference 4).

(b) The vapor pressures of mixtures of known volatile organic substances in known proportions shall be determined as follows:

1. Data on partial pressure for certain mixtures of VOS are published in the International Critical Tables and in scientific journals. The vapor pressure of a mixture which has been reported in such sources will be acceptable provided the source is documented by a reprint which shall be submitted for review

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by the Department, pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

2. The vapor pressure may also be determined by the following methods:

i. The method set forth in (a)2i, above. The Reid method is specific for volatile crude oil and volatile nonviscous petroleum products but is adaptable to other mixtures of VOS. For petroleum and petroleum distillates, refer to American Petroleum Institute (API) Bulletin 2517, "Selecting the Proper Nomograph" (N.J.A.C. 7:27B-3.18, Reference 5). The Reid vapor pressure can be converted to true vapor pressure at standard conditions. For mixtures other than petroleum and petroleum distillates, the resulting Reid vapor pressure may be converted to true vapor pressure at standard conditions using Table 1.

**TABLE 1**  
**CONVERSION OF REID VAPOR PRESSURES TO TRUE VAPOR PRESSURES**

Reid Vapor Pressure Psia	True Vapor Pressure Psia
1	0.5
2	1.1
3	1.7
4	2.3
5	2.9
6	3.6
7	4.2
8	4.8
9	5.5
10	6.1
11	6.7
12	7.4
13	8.0
14	8.6
14.7	9.0

NOTE: Straight-line interpolation is to be used for intermediate values. Applicable for volatile organic substance(s) other than petroleum and petroleum distilleries.

(c) The vapor pressure of mixtures of known and/or unknown volatile organic substances shall be determined as follows:

1. The method set forth in (a)2i above;
2. ASTM Designation D2551-80, "Standard Method of Test of Vapor Pressure of Petroleum Products (Micro-method)" (N.J.A.C. 7:27B-3.18, Reference 6); or
3. The method set forth in (a)2ii above.

7:27B-3.7 Procedures for the direct measurement of volatile organic substances using a flame ionization detector (FID), a photoionization detector (PID) or a non-dispersive infrared analyzer (NDIR)

(a) The method in this section is applicable for the determination of the concentration and the mass emission rate of a known VOS or a mixture of known VOS in known proportions in systems with constant emissions and flow rates. For the same circumstances as described above, the procedures specified in N.J.A.C. 7:27B-3.8 or 3.9 may be used in place of this method. Any other alternative test method shall be submitted to the Department for review, pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon the following principles:

1. The flame ionization method is based upon ionization produced when the organic vapor in the sample is combusted in a hydrogen flame. The ions and electrons formed in the flame enter an electrode gap, decrease the gap resistance, and thus permit a current flow in an external circuit. The resulting current is proportional to the instantaneous concentration of the organic vapor.

2. The photoionization method is based upon ionization produced when an organic vapor in the sample is exposed to a high intensity ultraviolet source. The ions and electrons formed enter an electrode gap, decrease the gap resistance, and thus permit a current flow in an external circuit. The resulting current is proportional to the instantaneous concentration of the organic vapor. (The PID is recommended for sources suspecting of emitting methane.)

3. The non-dispersive infrared method is based upon absorption of infrared energy when a band of infrared energy containing the proper frequencies is alternately passed through an absorption cell containing the organic vapor and a reference cell. The difference in absorption between the reference cell and the absorption cell containing the organic vapor is proportional to the instantaneous concentration of the organic vapor.

(c) The following is a summary of this method:

1. The instrument is calibrated with standard gas mixtures to establish the instrument response to the VOS being analyzed. A representative sample of the source gas is drawn into the instrument under conditions which prevent any condensation of the source gas and which remove particulate matter. The response is recorded at specified intervals during the test period, and the true concentration of the VOS is calculated from previously determined response factors. The total gas flow rate, moisture content, and the average molecular weight of the gas are determined during the sampling period, and the mass emission rate of the VOS is calculated and reported as pounds per hour.

2. For the purposes of this procedure, three separate test runs will be conducted, each of which shall extend for one hour or a batch cycle whichever is longer. Any alternative test period shall be submitted to the Department for review, pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(d) The following is a list of equipment used in this method:

1. Probe;
2. Temperature sensor;
3. Pump;
4. Detector, which is a total hydrocarbon analysis instrument having a flame ionization†, a photoionization or a non-dispersive infrared detector and a sampling system capable of preventing any condensation of the sample gas. The detector must be capable of meeting or exceeding the manufacturer's specifications by demonstration, preferably by the manufacturer, and the other specifications listed below:
  - i. Linearity: the instrument response to the VOS being measured shall not deviate from linearity by more than five percent of the full scale value of the range being used.
  - ii. Zero drift: less than three percent of full scale per test period or one hour, whichever is shorter.
  - iii. Span drift: less than three percent of full scale per test period or one hour whichever is shorter.
  - iv. Response time: equal to or less than 30 seconds;

†NOTE: Many FID instruments require that the sample contain at least 15 percent oxygen to maintain the flame. If the sample does not, it should be diluted by known ratios with hydrocarbon free air to obtain suitable oxygen levels.

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5. Recorder/Integrator:
6. Gas cylinder supplies as follows:
  - i. Laboratory standard calibration gases;
  - ii. Field standard calibration gases: known concentrations of propane or other suitable VOS in the same matrix if possible as will be sampled, which will give responses less than, approximately equal to and greater than the VOS to be measured. The standard gases may be produced locally using approved techniques or may be supplied and certified by a vendor. If produced locally, the concentrations must be verified by an independent analysis;
  - iii. Fuel gas;
  - iv. Combustion gas; and
  - v. Zero gas;
7. Velometer;
8. Condensor; and
9. Dilution system (if necessary): a system supplied by the instrument manufacturer or one similar to that specified in N.J.A.C. 7:27B-3.9(e)4, capable of producing dilution ratios which will prevent any condensation of the sample gas and capable of bringing the sample concentration within the linear range of the detector.
  - (e) The procedure for this section shall be as follows:
    1. A presampling survey of the source operation shall be conducted to establish certain basic information including but not limited to: sampling location; stack temperature and pressure; stack gas moisture content; approximate particulate concentrations; composition of the gases; and the identification and approximate concentrations of the VOS to be analyzed. It may be necessary to take samples for analysis to acquire any information that is not readily available.
    2. The instrument shall be calibrated as follows:
      - i. The instrument shall be operated according to the manufacturer's instructions;
      - ii. Adjust the analyzer to the zero reading by using zero gas; and
      - iii. Introduce three laboratory standard calibration gases separately recording the response for each. Plot the response versus the concentration. No response should deviate from the best fit line through the three points by more than five percent. If linearity cannot be obtained over the concentration range expected, the sample should be diluted to a concentration level where linearity can be obtained.
    3. The sampling and analysis shall be conducted as follows:
      - i. Assemble and connect any sampling probe, filter, and heating or dilution system to the instrument. All connections shall be tight and leak-free;
      - ii. Adjust the heating or dilution system to prevent any condensation of the sample gas;
      - iii. If a dilution system is used, run three field standards through the dilution system and the instrument and record each response. The response should not deviate from linearity by more than five percent;
      - iv. The probe should be positioned at least two feet into the stack or at the centroid of the stack. The sample port location should be in accordance with N.J.A.C. 7:27B-1, Air Test Method 1, (N.J.A.C. 7:27B-3.18, Reference 1);
      - v. Activate the system and adjust as necessary to achieve the manufacturer's recommended operating conditions. Record the instrument response using a continuous recording device if available; if a continuous reading device is not available, take a reading at intervals of no less than one minute. Note any non-representative operations or occurrences during the testing and omit those corresponding analyzer readings from the calculations;

vi. For the purposes of this procedure three separate and valid test runs will be conducted, each of which shall extend for one hour or a batch cycle whichever is longer. Any alternative test period shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e);

vii. During the test period, determine the stack gas velocity, temperature, moisture content, average gas molecular weight, and volumetric flow rates in accordance with the methods prescribed in N.J.A.C. 7:27B-1, Air Test Method 1 (N.J.A.C. 7:27B-3.18, Reference 1) or other flow determining method which shall be submitted to the Department for review, pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e). See Appendix A for the required reporting form. (Any alternative reporting form shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e).)

viii. At the conclusion of each test run, note the time and introduce the field standard calibration gas closest to the concentration found. The net response must agree within five percent of the pretest response for the test to be valid.

(f) The calculations shall be performed as follows:

1. Establish the molecular weight of each VOS and calculate a weighted average molecular weight if more than one VOS is present.

2. Calculate the total gas flow rate in SCFM (70°F and 1 atm) including the contribution of the VOS and any moisture present.

3. Determine the response factor (RF) of the lab standard from the following equation.

$$RF = \frac{C \text{ ppm (std)}}{\text{Response (Meter Reading)}}$$

4. Calculate the concentration of VOS as the standard as follows:

$$C \text{ (VOS as std.)} = \text{Instrument Response} \times RF$$

5. Calculate the emission rate in lbs/hr. expressed as the calibration standard.

$$\frac{\text{lbs. VOS}}{\text{hr}} = \frac{\text{Avg. C ppm (VOS as std.)} \times \text{SCFM}}{\text{x MW(std.)} \times 60(\text{min/hr})^*} \times 10^6$$

Where:

C ppm (std) = the concentration in ppm of the standard mixture.

Avg. C ppm (VOS as std.) = average parts per million of VOS over the test period as calibration standard.

MW (std) = molecular weight of calibration standard (pounds per pound-mol).

SCFM = cubic feet per minute at 70°F and 1 atm emitted from the source operation.

387 = molar volume at standard conditions (cubic feet per pound-mol).

RF = response factor for VOS.

NOTE: This formula is based upon the assumption that both the standards and the sample have been passed through the same sampling system and are diluted by the same amount.

(g) The test report shall include the following information submitted on the required reporting forms in Appendix B (any alternative reporting form shall be submitted to the Department for review prior to use pursuant to N.J.A.C. 7:27B-3.2(c) and (e)):

1. A dimensioned sketch of the sampling location;
2. All data used to determine the volume flow rate;
3. The composition of the gas and its average molecular

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weight;

4. A sketch and/or description of the sampling system used;
5. The identity, concentration and means of verification for each standard used;
6. A description of the analysis instrument and the conditions of operation;
7. Sufficient details of the calculations to allow the results to be reproduced independently;
8. The emission rate measured in lbs/hr of each VOS for each test;
9. Operating conditions of the source operation; and
10. An explanation for any unusual procedures or results.

**7:27B-3.8 Procedures for the direct measurement of volatile organic substances using a gas chromatograph (GC) with a flame ionization detector (FID) or other suitable detector**

(a) The method in this section is applicable for the determination of the concentrations and the mass emission rates of known VOS in unknown proportions in systems with constant emissions and flow rates. For the same circumstances as described above, the procedure specified in N.J.A.C. 7:27B-3.9 may be used in place of this method. Any other alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon the following principles:

1. Gas chromatography, whereby VOS are separated by passing an inert gas stream containing a known volume of the sample gas or a standard gas through a column containing a suitable stationary phase and/or a solid support; and
2. Ionization produced when each VOS in the gas sample as eluted from the gas chromatograph is combusted in a hydrogen flame. The ions and electrons formed in the flame enter an electrode gap, decrease the gas resistance, and thus permit a current flow in an external circuit. The resulting current is proportional to the instantaneous concentration of the VOS. Any alternative detector shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(c) The following is a summary of this method:

1. The GC-FID is calibrated with standard gas mixtures of each VOS being measured to establish the calibration curves and retention times. A representative sample is drawn into the gas sampling loop under conditions which prevent any condensation of the sample gas and which remove particulate matter. The sample is injected into the GC and the responses and retention times of the individual VOS are recorded on a strip chart recorder and the peak areas of each VOS is measured. The peaks are identified from the established retention times. The concentration of each VOS is determined by referring to the calibration curve. The total gas flow rate, moisture content, and the average molecular weight of the gas are determined during the sampling period, and the mass emission rate of the VOS is calculated and reported as pounds per hour.
2. For the purposes of this procedure, three separate test runs will be conducted, each of which will extend for one hour or a batch cycle whichever is longer. Any alternative test period shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).
3. In situations where safety considerations, location, or number of sample points prohibit direct analysis at the VOS source, the samples are collected in accordance with the method prescribed in N.J.A.C. 7:27B-3.9 and transported to the GC-FID for analysis.

(d) The following is a list of equipment used in this method:

1. Probe;
2. Temperature sensor;
3. Pump;
4. Gas sampling valve;
5. Needle valve;
6. Gas chromatograph-flame ionization detector (GC-FID);
7. Recorder/Integrator;
8. Gas cylinder supplies as follows:
  - i. Laboratory standard calibration gases;
  - ii. Pure components standard;
  - iii. Fuel gas;
  - iv. Combustion gas; and
  - v. Carrier gas.
9. Velometer;
10. Condensor; and

11. Dilution system (if necessary) which is a system as described in N.J.A.C. 7:27B-3.9.(e)4, capable of producing dilution ratios which will prevent any condensation of the sample gas and capable of bringing the sample concentration within the linear range of the GC detector.

(e) The procedure for this section shall be as follows:

1. A presampling survey of the source operation(s) shall be conducted to establish certain basic information including but not limited to: sampling location; stack temperature and pressure; stack gas moisture content; approximate particulate concentration; composition of the gases, and the identification and approximate concentrations of the VOS to be analyzed. It may be necessary to take samples for analysis to acquire any information that is not readily available.
2. The instrument shall be calibrated as follows:
  - i. The instrument shall be operated according to the manufacturer's instructions;
  - ii. The operating parameters of the instrument such as column selections, temperatures, carrier gas flow rate, and chart speed shall be established for the VOS to be measured, and verified in the laboratory prior to actual sampling. The conditions selected should produce baseline separation of the individual VOS peaks, if possible, but in no case should the height of the valley between the two peaks measured from the baseline to the lowest point in the valley be greater than 30 percent of the height of the shorter of the two peaks. More than one set of conditions may be necessary for complete resolution;
  - iii. The instrument operating conditions shall be recorded on the chart and maintained throughout the calibration and sample gas analyses. The operating conditions are sample loop temperature, column temperature, carrier gas flow rate, and chart speed. Attenuator setting shall be adjusted as required and recorded on the chart to indicate the time and amount of adjustment;
  - iv. Purge the sample loop with one of the calibration gas mixtures and record the concentration;
  - v. Activate the sampling valve to inject the sample and mark the injection point on the chart;
  - vi. Measure the distance on the chart from the injection point to the time at which the peak maximum occurs for the calibration mixture. This distance divided by the chart speed will provide the retention time for each compound;
  - vii. Calculate the sample peak areas by multiplying the height times the width at half height and adjust each peak area by the attenuator setting as required. An integrator may be used to calculate peak areas;
  - viii. Repeat steps iv through vii for each calibration gas

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until two consecutive analyses agree within five percent. The corresponding peak areas for each VOS shall then be averaged;

ix. Plot the areas of each peak versus the concentration on suitable graph paper. If any point should deviate from a straight line by more than five percent, the calibration shall be repeated. If a straight line is not obtained, less concentrated standards or a smaller sample must be used to bring the response within the linear range of the detector; and

x. Draw a smooth curve through the points to establish a calibration curve for each VOS. Calculate the unknown VOS concentrations from their peak areas by reading from the appropriate calibration curve or by multiplying the peak area by the slope of the calibration curve. Extrapolation beyond the calibrated range is not acceptable.

xi. The instrument calibration shall be checked just prior to and following each test. The calibration gas shall be introduced through the sampling system in a manner similar to the introduction of the source gas.

3. The sampling and analysis shall be conducted as follows:

i. Assemble and connect any sampling probe, filter and heating or dilution system to the GC-FID. All connections shall be tight and leak-free;

ii. Turn on the GC and source gas sampling systems and adjust conditions to prevent any condensation of the sample gas;

iii. If a dilution system is used, run three field standards through the dilution system and the instrument and record each response. The response shall not deviate from linearity by more than five percent;

iv. The probe shall be positioned at least two feet into the stack or at the centroid of the stack. The sample port location shall be in accordance with N.J.A.C. 7:27B-1, AIR TEST METHOD 1 (N.J.A.C. 7:27B-3.18, Reference 1);

v. After thoroughly purging the gas sampling loop with source gas, analyze a sample of the source gas maintaining the same instrument operating conditions used during the calibration procedures. Calculate the concentrations of the components by referring to the calibration curve; and

vi. Repeat the analysis at uniform intervals as many times as practical during the test run. No less than three sample analyses per test run shall be acceptable;

vii. For the purposes of this procedure three separate and valid test runs will be conducted, each of which shall extend for one hour or a batch cycle whichever is longer. Any alternative test period shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

viii. During the test period, determine the stack gas velocity, temperature, moisture content, average gas molecular weight, and volumetric flow rates in accordance with the methods prescribed in N.J.A.C. 7:27B-1, AIR TEST METHOD 1 (N.J.A.C. 7:27B-3.18, Reference 1), or other flow determining method submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e). See Appendix A for the required reporting form. (Any alternative reporting forms shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e).)

(f) The calculations shall be performed as follows:

1. Establish the molecular weight of each VOS.

2. Calculate the total gas flow rate in SCFM (70°F and 1 atm) including into account the contribution of the VOS and any moisture present.

3. Record the individual concentrations (C ppm) and determine the average concentration (C) of each VOS in ppm (avg. C ppm) for each test run from the calibration curves.

4. Calculate the emission rate in lbs/hr of each VOS as follows:

$$\frac{\text{lbs VOS}}{\text{hr}} = \frac{\text{Avg. C ppm(VOS)} \times \text{SCFM}}{\text{x MW(VOS)} \times 60 \text{ min/hr}} \times 387 \times 10^6$$

Where:

Avg. C ppm(VOS) = average parts per million of VOS over the test period.

MW (VOS) = molecular weight of VOS (pounds per pound-mol).

SCFM = cubic feet per minute at 70°F and 1 atm emitted from the source operation.

387 = molar volume at standard conditions (cubic feet per pound-mol).

NOTE: This formula is based upon the assumption that both the standards and the sample have been passed through the same sampling system and diluted by the same amount.

5. Calculate the total emission rate in lbs/hr of the VOS by totaling the individual VOS calculated in (f)4 above.

(g) The test report shall include the following information submitted on the required reporting form in Appendix C (any alternative reporting form shall be submitted to the Department for review pursuant to N.J.A.C. 7:27-3.2(c) and (e)):

1. A dimensioned sketch of the sampling location;

2. All data used to determine the volume flow rates;

3. The composition of the gas and its average molecular weight;

4. A sketch and/or description of the sampling system used;

5. The identity, concentration, and means of verification for each standard used;

6. A description of the analysis instrument and the conditions of operation;

7. Copies of the chromatograms for each standard and each test run identified as to time taken and pertinent instrument and dilution conditions;

8. Sufficient details of the calculations to allow the results to be reproduced independently;

9. The emission rate measured in lbs/hr of each VOS for each test;

10. Operating conditions of the source operations; and

11. An explanation for any unusual procedures or results.

7:27B-3.9 Procedures for the sampling and remote analysis of known volatile organic substances using a gas chromatograph (GC) with a flame ionization detector (FID) or other suitable detector

(a) The method in this section is applicable for the determination of the concentration and the mass emission rates of known VOS from a source where it is not practical to conduct a direct analysis at the source or in systems where the flow rates are not constant. For the same circumstances as described above, any other alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon the following principles:

1. The reduction of the moisture and VOS levels in the gas to be analyzed by condensation or dilution;

2. Collecting the resulting dry sample gas in a Tedlar or equivalent bag;

3. Gas chromatography whereby VOS are separated by passing an inert gas stream containing a known volume of the sample gas or standard gas through a column containing a stationary phase and/or a solid support;

4. Ionization produced when each VOS in the sample gas

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as eluted from the gas chromatograph is combusted in a hydrogen flame. The ions and electrons formed in the flame enter an electrode gap, decrease the gap resistance, and thus permit a current flow in an external circuit. The resulting current is proportional to the instantaneous concentration of the VOS. Any alternative detector shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(c) The following is a summary of this method:

1. A representative sample from the source is drawn at a constant rate through a heated sample line to a series of condensers in an ice bath where the moisture and condensable VOS are removed, or to a dilution system which reduces the concentration of the source gas by a known amount with hydrocarbon-free air. The dry sample gas is collected in a Tedlar or equivalent sampling bag which, along with any collected condensate, is transported to the GC-FID for analysis.

2. The GC-FID is calibrated with standard gas mixtures of each VOS being measured to establish the calibration curve and retention times. Representative portions of any condensate and the bag sample are injected separately into the calibrated GC-FID.

3. The responses and retention times of the individual VOS are recorded on a strip chart recorder and the peak areas of each VOS are measured. The peaks are identified from the established retention times. The concentration of each VOS is determined by referring to the calibration curve.

4. The total gas flow rate, moisture content, and the average molecular weight of the gas are determined during the sample period, and the mass emission rate of the VOS is calculated and reported as pounds per hour.

5. For the purposes of this procedure, three separate test runs will be conducted, each of which shall extend for one hour or a batch cycle whichever is longer. Any alternative test period shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(d) The following is a list of equipment used in this method:

1. Probe;
2. Temperature sensor;
3. Pump;
4. Gas sampling valve;
5. Needle valve;
6. Condensation trap: three midjet impingers (two with 10 ml of distilled water and one dry) in an ice bath;
7. Gas meter: a dry gas meter to measure the volume of the gas sample collected;
8. Sample bag: a Tedlar or equivalent bag with an appropriate capacity and equipped with a hose connection and shut-off valve to collect and store the sample;
9. Gas chromatograph—flame ionization detector (GC-FID);
10. Recorder/Integrator;
11. Gas cylinder supplies, including the following:
  - i. Laboratory standard calibrations gases;
  - ii. Pure component standards;
  - iii. Fuel gas;
  - iv. Combustion gas; and
  - v. Carrier gas.
12. Velometer;
13. Condensor (water);
14. Condensor (VOS) which is a system as specified in (e)3 below for collecting condensable VOS and moisture from the source gas consisting of: a probe, three midjet impingers (two containing ten ml. of distilled water and one dry, all three

immersed in an ice bath), a pump, and a dry gas meter all connected in series;

15. Dilution system (if circumstances require) which is a system as specified in (e)4 below, capable of producing dilution ratios which will prevent any condensation of the sample gas and capable of bringing the sample concentration within the linear range of the detector;

16. Rotameters: flowmeters constructed of glass, stainless steel or Teflon of appropriate size used to measure the gas flow rate. The meters must be heated, if necessary, and calibrated with the gas to be measured. A calibration may be made with another gas and then corrected;

17. Sample line: Teflon or stainless steel tubing with Teflon or stainless steel fittings;

18. Charcoal tube: a drying tube filled with activated charcoal with glass wool plugs in both ends to absorb organic vapors from the vented sample gas and to prevent the release of VOS into the work area;

19. Dilution gas: and

20. Sparger module: a sparge-desorb module to strip VOS from the impinger condensate and trap the VOS on a suitable adsorbant.

(e) The procedure for this section shall be as follows:

1. A presampling survey of the source operation(s) must be conducted to establish certain basic information including but not limited to: sampling location, stack temperature and pressure, stack gas moisture content, approximate particulate concentration, composition of the gases, and the identification and approximate concentrations of the VOS to be analyzed. It may be necessary to take samples for analysis to acquire any information that is not readily available;

2. The instrument shall be calibrated as follows:

i. The instrument shall be operated according to the manufacturer's instruction;

ii. The operating parameters of the instrument such as: column selections, temperatures, carrier gas flow rate, and chart speed must be established for the VOS to be measured, and verified in the laboratory prior to the actual sampling. The conditions selected should produce baseline separation of the individual VOS peaks, if possible, but in no case should the height of the valley between the peaks measured from the baseline to the lowest point in the valley be greater than 30 percent of the height of the shorter of the two peaks. More than one set of conditions may be necessary for complete resolution;

iii. The instrument operating conditions shall be recorded on the chart and maintained throughout the calibration and sample gas analyses. The operating conditions are sample loop temperature, column temperature, carrier gas flow rate, and chart speed. Attenuator settings shall be adjusted as required and recorded on the chart to indicate the time and amount of adjustment;

iv. Purge the sample loop with one of the calibration gas mixtures and record the concentration;

v. Activate the sampling valve to inject the sample and mark the injection point on the chart;

vi. Measure the distance on the chart from the injection point to the time at which the peak maximum occurs for the calibration mixture. This distance divided by the chart speed will provide the retention time for each compound; and

vii. Calculate the sample peak areas by multiplying the height times the width at half height and adjust each peak area by the attenuator setting as required. An integrator may be used to calculate peak areas.

viii. Repeat steps iv through vii for each calibration gas

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until two consecutive analyses agree within five percent. The corresponding peak areas for each VOS shall then be averaged.

ix. Plot the areas of each peak versus the concentrations on suitable graph paper. If any point should deviate from a straight line by more than five percent, the calibration shall be repeated. If a straight line is not obtained, less concentration standards or a smaller sample must be used to bring the response within the linear range of the detector.

x. Draw a smooth curve through the points to establish a calibration curve for each VOS. Calculate the unknown VOS concentrations from their peak areas by reading from appropriate calibration curve or by multiplying the peak area by the slope of the calibration curve. Extrapolation beyond the calibrated range is not acceptable.

xi. The instrument calibration shall be checked just prior to and following each test. The calibration gas shall be introduced through the sampling system in a manner similar to the introduction of the source gas.

3. Sampling shall be conducted as follows when using a condensor system:

i. Connect the probe to a condensor, sample bag, pump, and a dry gas meter as shown. See Appendix C for the required reporting form (any alternative reporting form shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e));

ii. Conduct a leak check according to the following procedure:

(1) Adjust the three-way valves to allow the evacuation of the rigid container;

(2) Plug the end of the probe and pull a vacuum of 15" Hg. across the sampling train; and

(3) Monitor the flow meter and gas meter for flow movement. Any leak equal to or greater than four percent of the sampling rate is unacceptable.

(4) If an unacceptable leak exists, it shall be corrected and the leak check procedure repeated. If a leak occurred, the sample bag will have to be reevacuated prior to sampling. This is done by realigning the three-way valves so that a vacuum can be applied directly to the sample bag.

iii. Turn on the probe heating system and adjust to a temperature to prevent any condensation of the sample gas;

iv. The probe should be positioned at least two feet into the stack or at the centroid of the stack. The sample port location shall be in accordance with N.J.A.C. 7:27B-3.18, Reference 1;

v. Purge the system by aligning the three-way valves on the rigid container so that a vacuum can be pulled directly on the impingers. The three-way valves shall be located close to the rigid container to avoid dilution air from entering the sample bag;

vi. Turn on the pump and adjust the flow so that a minimum of 20 liters of sample gas will be collected during the test period;

vii. Purge the system for five minutes, then realign the three-way valves on the rigid container so that the sample bag will inflate. Continue to sample in this manner for the remainder of the test run;

viii. Record the temperatures and pressures at five-minute intervals during the test period. See Appendix E for the required reporting form (any alternative reporting form shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e));

ix. Record the final meter volume at the conclusion of the test run. Remove the probe from the stack and perform a leak

check as previously described. The test shall be voided if the leak rate is equal to or greater than four percent of the sampling rate as determined on the first post test leak check attempt; and

x. Rinse the probe, all connecting lines through the impingers and the impingers with an appropriate solvent. The rinse solution and impinger collect shall be placed in leak-proof containers for later analysis.

xi. For the purposes of this procedure, three separate and valid test runs will be conducted, each of which shall extend for one hour or a batch cycle whichever is longer. Any alternative test period shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

xii. During the test period, determine the stack gas velocity, temperature, moisture content, average gas molecular weight and volumetric flow rate in accordance with the methods prescribed in N.J.A.C. 7:27B-1 AIR TEST METHOD 1 (N.J.A.C. 7:27B-3.18, Reference 1), or other alternative method, which shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e). See Appendix A for the required reporting form (any alternative reporting form shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e)).

4. Sampling shall be conducted as follows when using a dilution system:

i. Connect the probe to a dilution system, sample bag, pump, and a dry gas meter in series as shown. See Appendix C for the required reporting form (any alternative reporting form shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e));

ii. Conduct a leak check according to the procedure outlined in (e)3ii above;

iii. Turn on the probe heating system and adjust to a temperature which will prevent condensation;

iv. The probe shall be positioned at least two feet into the stack or at the centroid of the stack. The sample port location should be in accordance with N.J.A.C. 7:27B-1, AIR TEST METHOD 1 (N.J.A.C. 7:27B-3.18, Reference 1);

v. Purge the system by aligning the three-way valves on the rigid container so a vacuum can be pulled directly on the dilution system. The three-way valves shall be located close to the rigid container to avoid dilution air from entering the sample bag;

vi. Turn on the pump and adjust the flow to give the desired dilution rate and to ensure that a minimum of 20 liters of sample gas will be collected during the test period;

vii. Before sampling, verify that the system is working properly by introducing a calibration gas into the system and collect an audit sample maintaining the same operation conditions to be used during sampling. Transport this sample to the GC for immediate analysis, if possible; otherwise repeat the audit at the end of the tests and transport the audit samples to the laboratory along with the test samples. The audit results should be within five percent of the calibration gas concentration; if not, correct the problem and repeat the audit. In cases where immediate analysis is not possible, the audit results may be used to determine a correction factor;

viii. Purge the system for five minutes. Then realign the three-way valves on the rigid container so the sample bag will inflate. Continue to sample maintaining the same dilution rate used for the audit test for the remainder of the test run;

ix. Record the temperatures and pressures at five-minute intervals during the test period. See Appendix E for required reporting form (any alternative reporting form shall be submitted to the Department for review pursuant to N.J.A.C.

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7:27B-3.2(c) and (e));

x. Record the final meter volume at the conclusion of the test run. Remove the probe from the stack and perform a leak check as previously described. The test shall be voided if the leak rate is equal or greater than four percent of the sampling rate as determined on the first post test leak check attempt; and

xi. Remove the sample bag from the rigid container. Visually inspect the sample bag. If any condensation is observed, the test run shall be voided and new run must be conducted using a greater dilution ratio.

xii. For the purpose of this procedure three separate and valid test runs shall be conducted, each of which shall extend for one hour or a batch cycle, whichever is longer. Any alternative test period shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

xiii. During the test period, determine the stock gas velocity, temperature, moisture content, average gas molecular weight, and volumetric flow rate in accordance with the methods prescribed in N.J.A.C. 7:27B-1 AIR TEST METHOD 1 (N.J.A.C. 7:27B-3.18, Reference 1), or other appropriate flow determining method which shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e). See the required reporting form at Appendix A (any alternative reporting form shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e)).

5. The bag sample shall be analyzed as follows:

i. Turn on the GC and adjust the sample valve and those conditions which will prevent any condensation of the sample gas;

ii. After thoroughly purging the gas sampling loop with source gas, analyze an aliquot of the bag sample maintaining the same instrument operating conditions used during the calibration procedures; and

iii. Analyze each sample until two consecutive analyses agree within five percent. Average the corresponding peak areas for each compound. Calculate the concentrations of the components by referring to the calibration curves.

6. The condensation trap shall be analyzed as follows:

i. Connect the sparge and trap module to the GC injection system and set the valve, desorb temperature, and the inert gas flow rate as per manufacturer's specifications;

ii. Mix the condensate solution to obtain a representative sample and fill the sparger to the recommended volume;

iii. Sparge the sample into an appropriate trap for a minimum of ten minutes with an inert gas. Thermally desorb the VOS from the trap onto the GC column and analyze the VOS employing the same instrument conditions used during the calibration procedures. Measure the area under each VOS peak. Save the sparged solution;

iv. Analyze each sample until two consecutive analyses agree within five percent. Average the corresponding peak areas for each component and calculate the concentrations of the components by referring to the calibration curves;

v. Combine the sparged solutions and analyze by either extracting with a solvent or by re-sparging an aliquot as a check on the sparge efficiency; and

vi. Inject an appropriate aliquot of the rinse solution into the GC, employing the same instrument conditions used during the calibration procedures. Measure the area under each peak, eliminating the solvent area.

(f) The calculations shall be performed as follows:

1. Establish the molecular weight of each VOS from the literature.

2. Calculate the total gas flow rate in SCFM (70°F and 1

atm) including the VOS and any moisture present.

3. All flow meter readings must be corrected for temperature and pressure.

4. Bag Sample: Determine the concentration (C) of each VOS in ppm (C<sub>ppm</sub> VOS) by using the calibration curves developed in (e)2x, above and the area of each VOS. If the sample is collected using a dilution system, the concentrations shall be corrected by the dilution factor (Df) as determined by the following formula:

$$Df = \frac{\text{ml/min dilution gas} + \text{ml/min source gas}}{\text{ml/min source gas}}$$

5. Condensate: Convert the calibration curves used in (e)2x, above from ppm vs. area to microgram (ugm) vs. area. Determine the concentration (C) of each VOS in the condensate in ppm (C<sub>ppm</sub> VOS) in the vapor phase from the VOS peak areas and the calibration curves using the following formula:

$$C_{ppm} \text{ VOS} = \frac{(\text{Area}) (\text{slope}) \times V_c \times 24.1}{V_j \times MW (\text{VOS}) \times V_g}$$

Where:

Area = area of VOS peak (area units).

Slope = slope of calibration curve (ugm/area unit).

V<sub>c</sub> = Condensate Volume (milliliters).

V<sub>j</sub> = injection volume (milliliters).

V<sub>g</sub> = volume of gas sampled (liters).

MW VOS = molecular weight of VOS (gram per gram mol).

24.1 = molar volume at standard conditions (Liters per gram mol).

6. Determine the total concentration (c) of each VOS in the source gas in ppm (C<sub>ppm</sub>) by summing the results of each VOS from 4 and 5, above;

7. Calculate the emission rate in lbs/hr of each VOS as follows:

$$\frac{\text{lbs VOS}}{\text{hr}} = \frac{C_{ppm}(\text{VOS}) \times \text{SCFM} \times \text{MW} (\text{VOS}) \times 60 \text{ min/hr}}{387 \times 10^6}$$

Where:

C<sub>ppm</sub> (VOS) = sum of bag sample and condensate concentrations in part per million of each VOS.

MW (VOS) = molecular weight of VOS.

SCFM = cubic feet minute at 70°F and 1 atm emitted by the source.

387 = molar volume at standard conditions (cu ft).

8. Calculate the total emission rate of VOS in lb/hr by totaling the emission rates of each individual VOS as calculated in 6 above.

(g) The test report shall include the following information submitted on the required reporting forms listed in Appendices D and E (any alternative reporting forms shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e)):

1. A dimensioned sketch of the sampling location;
2. All data used to determine the volume flow rate;
3. The composition of the gas and its average molecular weight;
4. A sketch and/or description of the sampling system used;
5. The identity, concentration and means of verification for each standard used;
6. A description of the analysis instrument and the conditions of operations;
7. Copies of the chromatograms for each standard and each test run identified as to time taken and pertinent instrument and dilution conditions;
8. Sufficient details of the calculations to allow the results

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to be reproduced independently;

- 9. The emission rate measured in lbs/hr of each VOS for each test;
- 10. Operating conditions of the source operation; and
- 11. An explanation for any unusual procedures or results.

**7:27B-3.10 Procedures for the determination of volatile organic substances in surface coating formulations**

(a) The method in this section is applicable for the determination of the VOS contained in formulations used in surface coating operations. Any alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon the determination of the amount of VOS and water, if present, in a surface coating formulation, the density of the surface coating formulation, and the density of the volatile fraction of the surface quality.

(c) The procedure for this section shall be as follows:

- 1. Completely fill a container with a representative sample of the surface coating formulation to be analyzed. Seal the container so that the VOS present will not escape; and
- 2. Classify each surface coating material as follows:
  - i. Class I: General solvent type paints (oil base), varnishes and lacquers including clear and pigmented varnishes and lacquers and coatings not clearly belong to Class II; or
  - ii. Class II: Water-thinned coatings including emulsions, latex paints and colored enamels.

(d) The coating samples shall be analyzed as follows:

- 1. Class I surface coatings shall be analyzed as follows:
  - i. Determine the density of the formulation using the procedure specified in ASTM Designation D 1475-60, "Standard Method for Test for Density of Paint, Varnish, Lacquer, and Related Products" (N.J.A.C. 7:27B-3.18, Reference 7);
  - ii. Determine the content of the VOS by using the procedure specified in ASTM Designation D 2369-81, "Standard Method of Test for Volatile Content of Coatings" (N.J.A.C. 7:27B-3.18, Reference 8);

iii. Calculate the VOS content in  $\frac{kg}{L}$  as follows:

$$cVOS \frac{kg}{L} = \frac{(W_1 - W_2) (DM) \times kg \times 1000ml}{S \times 1000 \text{ gm} \times L}$$

Where:

- $W_1$  = weight of dish + sample (gm)
- $W_2$  = weight of dish + sample after heating (gm)
- $DM$  = density of coating (gm/ml)
- $S$  = sample weight (gm)
- $L$  = liters

iv. Sources included in a mathematical combination shall be analyzed as follows:

(1) Separate the volatile fraction from the solids either by high speed centrifuge, ASTM D2698-73, "Standard Test Method for the Determination of the Pigment Content of Solvent Reducible Paints by High Speed Centrifuging" (N.J.A.C. 7:27B-3.18, Reference 12), or by distillation, ASTM D95-83, "Standard Test Method for Determining Water in Petroleum and Bituminous Materials by Distillation" (N.J.A.C. 7:27B-3.18, Reference 13). ASTM D95-83 shall be modified by not adding the required solvent and continuing the distillation until the sample is dry. Measure the volume  $V$  and the weight  $W$  of the volatile fraction (see Appendix I);

(2) Calculate the density of the VOS fraction in gm/ml as follows:

$$D(vos) = \frac{W}{V}$$

Where:

- $W$  = weight of the volatile fraction
- $V$  = volume of the volatile fraction
- (3) Convert density VOS from gm/ml to lb/gal as follows:  
 $D(vos)lb/gal = 8.34 D(vos)gm/ml$

2. Class II surface coatings shall be analyzed as follows:

i. Determine the density of the formulation using the procedure specified in ASTM Designation D 1475-60, "Standard Method for Test for Density of Paint, Varnish, Lacquer, and Related Products" (N.J.A.C. 7:27B-3.18, Reference 7);

ii. Determine the water content of the formulation using the procedure specified in ASTM D4017-81, "Standard Test Method for Water in Paints and Paint Materials" by Karl Fisher (N.J.A.C. 7:27B-3.18, Reference 9);

iii. Determine the content of the VOS by using the procedure specified in ASTM Designation D2369-81, "Standard Method of Test for Volatile Content of Coatings" (N.J.A.C. 7:27B-3.18, Reference 8);

iv. Calculate the VOS content in kg VOS per liter of coating less water as follows:

$$cVOS \frac{kg}{L} = \frac{(W_1 - W_2 - 0.1 PS)}{(1 - .01P D_m)} \frac{Dm \times kg \times 1000 ml}{S \times 1000 \text{ gm} \times L}$$

Where:

- $W_1$  = weight of dish + sample (gm)
- $W_2$  = weight of dish + sample after heating (gm)
- $P$  = D/water
- $Dm$  = density of coating (gm/ml)
- $D_H$  = density of water (gm/ml)
- $S$  = sample weight (gm)
- $L$  = liter

Convert VOS content from kg/l to lb/gal as follows:

$$cVOS \frac{lb}{gal} = \frac{cVOS \text{ kg} \times 8.345}{L}$$

v. Sources included in a mathematical combination shall be analyzed as follows:

- (1) Separate the volatile fraction (including water if present) from the solids either by high speed centrifuge, using ASTM D2698-73, "Standard Test Method for the Determination of Pigment, Content of Solvent Reducible Paints by High Speed Centrifuging" (N.J.A.C. 7:27B-3.18, Reference 12), or by distillation, ASTM D95-83, "Standard Test Method for Determining Water in Petroleum and Bituminous and Materials by Distillation" (N.J.A.C. 7:27B-3.18, Reference 13). ASTM D95-83 shall be modified by not adding the required solvent and continuing the distillation until the sample is dry measure the volume  $V$  (mix) and the weight  $W$  (mix) of the volatile fraction. See Appendix I.
- (2) Calculate the density of the volatile fraction in gm/ml.

$$D(mix) = \frac{W(mix)}{V(mix)}$$

Where:

- $W(mix)$  = weight of the volatile fraction
- $V(mix)$  = volume of the volatile fraction
- (3) Calculate the density of the VOS in gm/ml.

$$D(vos)gm/ml = \frac{(1 - P) W(mix) D(w) D(mix)}{D(w) W(mix) - PW(mix) D(mix)}$$

Where:

- $P$  = % water
- $W(mix)$  = weight of the volatile fraction (gm)

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$D(\text{mix})$  = density of the volatile fraction (gm/ml)

$D(\text{w})$  = density of water (gm/ml)

(4) Convert density of the volatile mixture from gm/ml to lb/gal as follows:

$$D(\text{mix})\text{lb/gal} = 9.345D(\text{mix})\text{gm/ml}$$

7:27B-3.11 Procedures for the determination of volatile organic substances emitted from transfer operations using a flame ionization detector (FID) or non-dispersive infrared analyzer (NDIR)

(a) The procedure in this section is applicable for the determination of the mass emission of VOS rates from the transfer or loading of gasoline. Any alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon one of the following two principles:

1. Flame Ionization, which involves ionization produced when the VOS in the sample is combusted in a hydrogen flame. The ions and electrons formed in the flame enter an electrode gap, decrease the gap resistance, and thus permit a current flow in an external circuit. The resulting current is proportional to the instantaneous concentration of the VOS; or

2. Non-Dispersive Infra-red, which involves absorption of infrared energy when a band of infrared energy containing the proper frequencies is alternately passed through an absorption cell containing the organic vapor and a reference cell. The difference in absorption between the reference cell and the absorption cell containing the organic vapor is proportional to the instantaneous concentration of the organic vapor.

(c) The following is a summary of this method:

1. The instrument is calibrated with a propane or butane calibration gas to establish the response of the instrument. A representative sample of the VOS is drawn into the detector and the instrument response is recorded on a strip chart recorder. The total gas flow rate and the volume of gasoline pumped is determined for each five minute period. The mass emission rate of VOS is calculated as propane and the results are summed for each five minute period and reported as either percent control efficiency or pounds of VOS per 10,000 gallons of gasoline transferred.

2. For the purpose of this procedure, three separate test runs will be conducted. Each test run shall be conducted over a period of time during which at least 10,000 gallons of gasoline are transferred but in no case shall the test period be less than one hour in duration unless an alternative period shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

3. During each test run, all flanges, valves, connections and fittings shall be tested for leaks using the test procedures outlined in N.J.A.C. 7:27B-3.15

(d) The following is a list of equipment used in this method:

1. Probe;
2. Temperature sensor;
3. Pump;
4. Flow meter which is an appropriate flow measuring device as specified in EPA Methods 2A or if testing a vapor incinerator Method 2B (N.J.A.C. 7:27B-3.18, Reference 16);
5. Needle valve;
6. Detector, as set forth below:

i. Flame ionization meter: the instrument shall be capable of meeting manufacturer's specifications by demonstration and those specifications listed in ii below;

ii. Non-Dispersive Infra-red specifications are as follows:

(1) Linearity: the instrument response to methane shall not

deviate from linearity by more than five percent of the full scale value of the range being used;

(2) Zero drift: less than five percent of full scale per test period or one hour whichever is less;

(3) Span drift: less than five percent of full scale per test period or one hour whichever is less; and

(4) Response time: less than or equal to 30 seconds.

7. Gas supplies:

i. Calibration gases: three manufacturer's certified propane mixture in the range of 1,000; 10,000; 100,000 ppm and a 20,000 ppm propane standard for leak determination as specified in N.J.A.C. 7:27B-3.15;

ii. Zero gas;

iii. Fuel gas; and

iv. Combustion gas.

8. Sample line: Teflon or stainless steel tubing with Teflon or stainless steel fittings.

(e) The procedure for this section shall be as follows:

1. Calibrate and install a pressure measurement device (liquid manometer, magnehelic gauge, or equivalent instrument), capable of measuring up to 500 mm of water gauge pressure with  $\pm 2.5$  mm of water precision.

2. Connect the pressure measurement device to a pressure tap in the terminal vapor collection system, located as closely as possible to the connection with the gasoline tank truck.

3. During the performance test, record the pressure every five minutes while a gasoline tank truck is being loaded, and record the highest instantaneous pressure that occurs during each loading. Every loading position shall be tested at least once during the performance test.

4. For the determination of volume at the exhaust vent, the following EPA reference methods shall be used (N.J.A.C. 7:27B-3.18, Reference 16):

- i. Method 2B for combustion vapor processing systems; or
- ii. Method 2A for all other vapor processing systems.

5. For the determination of VOS concentration at the exhaust vent, procedures outlined in N.J.A.C. 7:27B-3.7 shall be used. The calibration gas shall be either propane or butane.

6. Immediately prior to a performance test all potential sources of vapor leakage in the terminal's vapor collection system equipment shall be monitored for leaks using the procedures outlined in N.J.A.C. 7:27B-3.15. The monitoring shall be conducted only while a gasoline tank truck is being loaded. A reading of 10,000 ppmv or greater as methane shall be considered a leak. All leaks shall be repaired prior to conducting the performance test.

i. All testing equipment shall be prepared and installed as specified in the appropriate test methods.

7. The volume of gasoline dispensed during the performance test period at all loading racks whose vapor emissions are controlled by the processing system being tested shall be determined. This volume may be determined from terminal records or from gasoline dispensing meters at each loading rack.

8. An emission testing interval shall consist of each five-minute period during the performance test. For each interval:

i. The reading from each measurement instrument shall be recorded; and

ii. The volume exhausted and the average VOS concentration in the exhaust vent shall be determined, as specified in the appropriate test method. The average VOS concentration shall correspond to the volume measurement and shall be adjusted by the sampling system response time.

9. Unless specified by the Department, each performance test shall consist of not less than three separate and valid test

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runs. Each test run shall be conducted over a period of time during which at least 10,000 gallons of gasoline are transferred but in no case shall the test period be less than one hour in duration.

10. To determine the efficiency of a control device, a simultaneous test shall be conducted on the gas displaced from the receiving vessel upstream of any vapor control system.

(f) The calculations shall be performed as follows:

1. Calculate the mass emitted during each testing interval as follows:

$$\frac{\text{lbs VOS}}{\text{test interval}} = \frac{\text{C ppm (as std)} \times 5 \text{ min} \times \text{SCFM} \times \text{Mol. Wt (std)}}{387 \times 10^6}$$

Where:

C ppm (as std) = parts per million of VOS as standard (propane or butane).

Mol Wt (std) = molecular weight or standard (propane or butane).

SCFM = Cubic feet per minute at 70°F and 1 atm emitted by the source.

387 = molar volume at standard conditions (cu ft).

n = number of 5 minute test intervals

2. Calculate the total VOS emitted during the test period by summing the lbs. VOS per each test interval as calculated in 1 above.

3. Calculate the efficiency of the emission control system as follows:

$$\% \text{ Efficiency} = 100 - \left[ \frac{\text{lbs/test (outlet)} \times 100}{\text{lbs/test (inlet)}} \right]$$

4. Calculate total emission rate of the VOS in lbs per 10,000 gallons of gasoline transferred as follows:

$$\frac{\text{lbs VOS}}{10,000 \text{ gallons}} = \frac{\text{lbs VOS} \times 10,000}{\text{gallons of gasoline transferred}}$$

(g) The test report shall include the following information submitted on the required reporting form found in Appendix B (any alternative reporting form shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e)):

1. A dimensioned sketch of the sampling location;
2. All flow rate data;
3. A sketch and/or description of the sampling system used;
4. The identity, concentration and means of verification for each standard used;
5. A description of the analysis instrument and the conditions of operation;
6. Sufficient details of the calculations to allow the results to be reproduced independently;
7. The emissions in lbs/10,000 gallons of gasoline transferred for each test;
8. The percent efficiency of the control device, if required;
9. Concentration of VOS in gas displaced from delivery vessel, volume percent, if required;
10. Operating conditions of the source operation; and
11. An explanation for any unusual procedures or results.

7:27B-3.12 Procedures for the determination of volatile organic substances in cutback and emulsified asphalts

(a) The method in this section is applicable for the determination of VOS in cutback or emulsified asphalts. For the same circumstances as described above, any alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon the separation by distillation of the more volatile organic constituents from cutback and emulsified asphalts. A representative sample of the cutback or emulsified asphalt is subjected to distillation at a controlled rate to a temperature of 347°F (175°C) and the weight and volume of the resulting distillate excluding water is determined.

(c) The procedure for this section shall be as follows:

1. Obtain a representative sample of the cutback or emulsified asphalt.

2. Analyze the sample as follows:

i. Distill at 347°F (175°C) a measured weight to the nearest 0.1 gm using the distillation apparatus described in ASTM Designation D 402-76 "Distillation of Cut-Back Asphaltic (Bituminous) Products" (N.J.A.C. 7:27B-3.18, Reference 10);

ii. Determine the specific gravity of the Cut-Back or Emulsified Asphalt by ASTM Designation D-70-76 "Specific Gravity of Semi-Solid Bituminous Materials" (N.J.A.C. 7:27B-3.18, Reference 11); and

iii. Collect and measure to the nearest .5 ml the volume of the distillate excluding any water present.

3. The calculations shall be performed as follows:

i. Calculate the sample volume from the sample weight and its specific gravity using the following formula:

$$\frac{\text{Volume of}}{\text{Sample (cc)}} = \frac{\text{sample gms} \times \text{specific gravity}}{\text{(cc)}} \frac{\text{(cc)}}{\text{(gm)}}$$

ii. Calculate and report the VOS distillate as a volume percent of the total sample using the following formula:

$$\text{Volume \%} = \frac{\text{Volume VOS distillate} \times 100}{\text{Volume Sample}}$$

7:27B-3.13 Procedures for the determination of leak tightness of gasoline delivery vessels

(a) The method in this section is applicable for the determination of the leak tightness of gasoline delivery vessels. For the same circumstances as described above, any alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon the application of a pressure/vacuum to the compartment(s) of a gasoline delivery vessel and the measurement of the change in pressure/vacuum over a period of time.

(c) The following is a list of equipment used in this method:

1. Pressure source: pump or compressed gas cylinder of air or inert gas sufficient to pressurize the delivery vessel to 25 inches of H<sub>2</sub>O (47 millimeters of Hg);

2. Regulator: low pressure regulator for controlling the pressurization of the delivery vessel;

3. Vacuum source: vacuum pump capable of evacuating the delivery vessel to ten inches of H<sub>2</sub>O (19 millimeters of Hg);

4. Manometer: liquid manometer, or equivalent, capable of measuring up to 25 inches of H<sub>2</sub>O (47 millimeters of Hg) with ± 0.1 inch H<sub>2</sub>O (02 millimeters of Hg) precision;

5. Test cap for vapor recovery hose fittings: a cap shall be equipped with a tap for the manometer connection and shall be equipped with a shut-off valve for connection to the pressure/vacuum source; and

6. Pressure/vacuum relief valves: the test apparatus shall be equipped with an in-line pressure/vacuum relief valve set to activate at 28 inches of H<sub>2</sub>O (53 millimeters of Hg) above atmospheric pressure and 12 inches of H<sub>2</sub>O (23 millimeters of Hg) below atmospheric pressure. The valves shall have a flow

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capacity greater than or equal to the pressurizing or evacuating pump rates.

(d) The following pretest conditions shall be met:

1. The delivery vessel shall be purged of gasoline vapors and tested empty; and
2. The delivery vessel shall be tested where it will be protected from the sun.

(e) The procedure for this section shall be as follows:

1. The dome covers are to be opened and closed;
2. Connect static electrical ground connections to the delivery vessel. Attach the delivery and vapor hoses, remove the delivery elbows, and plug the liquid delivery fittings;
3. Attach the test cap to the vapor recovery line of the delivery vessel;
4. Connect the compartments of the delivery vessel internally to each other (if connecting the compartments internally is not possible, each compartment shall be tested separately);
5. Connect the pressure/vacuum supply hose and the pressure/vacuum relief valve to the shut-off valve. Attach the pressure source to the hose. Attach a manometer to the pressure tap;
6. Open the shut-off valve in the vapor recovery hose cap. Applying air pressure slowly, pressurize the delivery vessel to 18 inches of H<sub>2</sub>O (34 millimeters of Hg);
7. Close the shut-off valve and allow the pressure in the delivery vessel to stabilize. Adjust the pressure, if necessary, to maintain 18 inches of water (34 millimeters of Hg). When the pressure stabilizes, record the time and initial pressure; and
8. At the end of five minutes, record the final pressure.
9. Repeat steps 6 through 8 above until the pressure for two consecutive runs agrees to within  $\pm 12.5$  mm H<sub>2</sub>O.
10. Disconnect the pressure source from the pressure/vacuum supply hose, and slowly open the shut-off valve to bring the tank to atmospheric pressure;
11. Connect the vacuum source to the pressure/vacuum supply hose;
12. Slowly evacuate the tank to six inches of H<sub>2</sub>O (11 millimeters of Hg);
13. Close the shut-off valve and allow the pressure in the delivery vessel to stabilize. Adjust the pressure, if necessary, to maintain six inches of H<sub>2</sub>O (11 millimeters of Hg) vacuum. When the pressure stabilizes, record the time and initial pressure; and
14. At the end of five minutes, record the time and final pressure.
15. Repeat steps 6 through 14 for each compartment if they were not interconnected.
16. Alternate methods for purging and pressurizing shall be submitted for review by the Department pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e). See Appendix G for the required reporting form (any alternative reporting form shall be submitted to the Department for review, pursuant to N.J.A.C. 7:27B-3.2(c) and (e)).

**7:27B-3.14 Procedures for the direct detection of volatile organic substances fugitive leaks**

(a) The method in this section is applicable for the detection of fugitive VOS leaks. For the same circumstances as described above, any alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon the detection of a volatile organic substances leak from individual sources by a portable instrument. The instrument detector type is not specified but shall meet the performance criteria of (d)4 below. This

procedure is intended to locate and classify leaks only and shall not be used to measure mass emission rates from individual sources.

(c) The following is a summary of this method:

1. The detector is calibrated with a standard gas mixture to establish the response of the instrument. A representative sample of fugitive emissions is drawn into the instrument. The response is read from the instrument meter.
2. For purposes of this procedure a single test shall be sufficient to establish the presence of a leak.

(d) The following is a list of equipment used in this method:

1. Probe: glass, stainless steel, or Teflon tubing as required by source gas conditions and equipped with 0.4 inch (one centimeter) tip spacer;
2. Pump: a leakless Teflon-coated diaphragm pump capable of maintaining an appropriate flow to the detector;
3. Dilutor: (if circumstances require) capable of diluting the sample gas into the range of the instrument such that concentration levels of 10,000 ppm can be measured. The dilutor tip shall be equipped with a 0.4 inch (one centimeter) spacer;
4. Monitoring instrument, as set forth below:
  - i. The monitoring instrument shall be certified as safe for operation in explosive atmospheres;
  - ii. The monitoring instrument detector shall be capable of measuring the leak definition concentration specified in the appropriate section in N.J.A.C. 7:27-16. Detector types which meet this requirement include but are not limited to catalytic oxidation, flame ionization, infra-red absorption, and photo-ionization; and
  - iii. The instrument shall be readable to within five percent of the specified leak concentration and shall have a response time of 30 seconds or less; and
5. Standard calibration gas—10,000 ppmv Hexane or Methane in air.

(e) The procedure for this section shall be as follows:

1. A presampling survey shall be conducted to locate components where potential leaks could occur;
2. Calibration shall be conducted as follows:
  - i. The instrument should be operated according to the manufacturer's directions;
  - ii. Adjust the analyzer to zero by using ambient air; and
  - iii. Introduce the 9,000 ppm calibration gas into the instrument sample probe. Adjust the instrument meter readout and chart recorder to correspond to the calibration value. If necessary, use a dilution system to bring the calibration gas into the instrument range.
3. Sampling and analyses shall be conducted as follows:

Place the instrument probe with the 0.4 inch (one centimeter) spacer at the surface of the component interface where leakage could occur. Move the probe along the interface periphery while observing the instrument readout. If an increased meter reading is observed, slowly probe the interface where leakage is indicated until the maximum meter reading is obtained. Leave the probe at the maximum reading location for approximately two times the instrument response time. If the concentration reading is in excess of the range of the instrument, add the dilution assembly and sample as above using a correction factor to convert the measurements to the undiluted bases. Record the date, time and identity of the leaking components. See Appendix F for the required reporting form. (Any alternative form shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e).)

**7:27B-3.15 Procedures for the direct detection of volatile organic substances fugitive emissions from**

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gasoline tank trucks and vapor collection systems using a combustible gas detector

(a) The method in this section is applicable for the detection of fugitive VOS leaks from gasoline tank trucks and vapor collection systems. For the same circumstances as described above, any alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon the detection of a volatile organic substance leak from individual sources by a portable instrument. The instrument detector type is not specified but must meet the performance criteria of N.J.A.C. 7:27B-3.14(d)4. This procedure is intended to locate and classify leaks only and shall not be used as a measure of mass emission rates from individual sources.

(c) The following is a summary of this method:

1. The detector is calibrated with a standard gas mixture to establish the response of the instrument. A representative sample of the fugitive emissions is drawn into the instrument. The response is read from the instrument meter.

2. For purposes of this procedure a single test shall be sufficient to establish the presence of a leak.

(d) The following is a list of equipment used in this method:

1. Probe: glass, stainless steel, or Teflon tubing as required by source gas conditions and equipped with a 1.0 inch (2.54 centimeter) tip spacer;

2. Pump: a leakless Teflon-coated diaphragm pump capable of maintaining an appropriate flow to the detector;

3. Dilutor: (if circumstances require) capable of diluting the sample gas into the range of the instrument such that concentration levels of 20,000 ppm can be measured. The dilutor tip shall be equipped with a 1.0 inch (2.54 centimeter) spacer;

4. Monitoring instrument as set forth below:

i. The monitoring instrument shall be certified as safe for operation in explosive atmosphere;

ii. The monitoring instrument detector shall be capable of measuring the leak definition concentration specified in the appropriate section of N.J.A.C. 7:27-16. Detector types meeting this requirement include but are not limited to catalytic oxidation, flame ionization, infra-red absorption, and photoionization; and

iii. The instrument shall be readable to within five percent of the specified leak concentration and shall have a response time of 30 seconds or less; and

5. Standard calibration gas—20,000 ppm propane in air.

(d) The procedure for this section shall be as follows:

1. A presampling survey shall be conducted to locate components where potential leaks could occur;

2. Calibration shall be conducted as follows:

i. The instrument shall be operated according to the manufacturer's directions;

ii. Adjust the analyzer to zero by using zero gas; and

iii. Introduce the 22,000 ppm calibration gas into the instrument sample probe. Adjust the instrument meter readout such that a reading between 50 and 100 percent of scale is obtained.

3. Sampling and Analysis shall be conducted as follows:

i. All leak testing shall be done during a loading operation;

ii. Place the instrument probe with the 1.0 inch (2.54 centimeters) spacer at the surface of the component interface where leakage could occur. Move the probe along the interface periphery while observing the instrument readout. If an increased meter reading is observed, slowly probe the interface where leakage is indicated until the maximum reading is obtained. Leave the probe at the maximum reading location for approximately two times the instrument response time. If the

concentration reading is in excess of the range of the instrument, add the dilution assembly and sample as above using a correction factor to convert the measurements to the undiluted basis. Record the date, time, amount, and identity of the leaking components. See Appendix F for the required reporting form. (Any alternative reporting form shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e).)

7:27B-3.16 Procedures for determining the efficiency of gasoline vapor recovery systems at service stations

(a) The method for this section is applicable for the determination of the efficiency of vapor recovery systems controlling gasoline vapors emitted during the filling of underground storage tanks. For the same circumstances as described above, any alternative method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon the amount of gasoline vapor discharged from the atmospheric vent(s) of underground storage tank(s) being filled. The procedure is intended for all control systems which have a vapor recovery line connecting the underground storage tank to the tank truck.

(c) The following is a summary of this method:

1. A positive displacement meter is mounted on each atmospheric vent pipe to determine the amount of vapor displaced during the filling of underground storage tanks. The efficiency of the vapor recovery system is determined by comparing the amount of vapor emitted from the atmospheric vents with the total amount of gasoline transferred to the underground storage tanks.

2. For the purpose of this procedure, a single test shall be sufficient to establish the efficiency of the vapor recovery system.

(d) The following is a list of equipment used in this method:

1. Gas meter device: a positive displacement meter with a capacity of 3000 SCFH and a pressure drop of 0.05 inches of water at an air flow of 30 SCFH. This meter shall be designed to read (in 0.1 cubic foot increments) only the amount of positive vapors displaced and shall allow for any negative in-breathing. The meter shall be equipped with taps for a thermocouple and a pressure sensor;

2. Coupling for atmospheric vent pipe: a coupling to connect the gas metering device to the atmospheric vent pipe. Coupling shall be sized for a minimum pressure drop;

3. Thermocouples: temperature sensing devices to measure the temperature of the vapors emitted at the gas metering device and ambient temperature; and

4. Manometer: liquid manometer or other equivalent pressure sensing device capable of measuring zero to ten inches of water at the gas metering device.

5. Leak detection equipment standards shall be as follows:

i. The leak detection equipment shall be certified as safe for operation in explosive atmospheres;

ii. The monitoring instrument detector shall be capable of measuring the leak definition concentration specified in the appropriate section in N.J.A.C. 7:27-16. Detector types meeting this requirement include but are not limited to catalytic oxidation, flame oxidation, infrared absorption and photoionization; and

iii. The instrument shall be readable to within five percent of the specific leak concentration and shall have a response time of 30 seconds or less.

(e) The procedure for this section shall be as follows:

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1. Mount the positive displacement meter to the top of the atmospheric vent of underground storage tank. If the vent has restriction, remove the restriction before mounting the meter;
2. Connect the manometer and thermocouple to the taps on the meter;
3. Connect tank truck fuel and vapor return hoses to the underground storage tanks in accordance with procedures outlined by the manufacturer;
4. Check the tank truck and all vapor return line connections with an explosimeter for a tight seal before and during the test;
5. Record the initial reading of the gas meter(s);
6. Start the transfer of gasoline to underground storage tank(s) in accordance with manufacturer's established normal procedures;
7. Record temperature, pressure, and gas meter readings at two minute intervals;
8. Record at the start and the end of the test the barometric pressure and ambient temperature;
9. Disconnect the tank truck hoses from the underground storage tank in accordance with the procedures outlined by the manufacturer when the transfer has been completed;
10. Continue to record temperature, pressure, and gas meter readings at the underground storage tank vent(s) at two-minute intervals for a period of ten minutes after the completion of the gasoline transfer;
11. Record the final reading of the gas meter;
12. Record the volume of gasoline that was transferred; and
13. Disconnect instrumentation from the atmospheric vent(s).

(f) Calculate the efficiency of the vapor recovery system using the following equation:

$$E = 1 - \frac{V_v (7.481) (T_s + 460) (P_b) 100}{V_T (T_v + 460) (29.92)}$$

Where:

E = Efficiency of the vapor recovery system at standard conditions.

V<sub>v</sub> = Volume of displaced vapors vented from the atmospheric vent in actual cubic feet (ACF).

V<sub>T</sub> = Volume of gasoline transferred to underground storage tanks (gallons).

T<sub>v</sub> = Temperature of vapors vented from atmospheric vent° (°F).

T<sub>s</sub> = Standard temperature (70°F).

P<sub>b</sub> = Average barometric pressure during test (inches Hg.).

7.481 = Conversion factor—gallons per cubic foot (Gal/ft<sup>3</sup>).

29.92 = Standard pressure (inches Hg.).

(g) The test report shall include the following information submitted on the required reporting forms listed in Appendix H (any alternative report form shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e)):

1. A dimensioned sketch of the sampling location detailing number of storage tanks; type of fill pipe; and type of vapor recovery system;
2. The total amount of each product transferred;
3. The size of the underground storage tank(s) product was transferred into;
4. The total amount of product existing in the underground storage tank prior to transfer;
5. Pressure/vacuum date listed on delivery vessel; and
6. Identification of delivery vessel.

7:27B-3.17 Procedures for the determination of volatile organic substances emitted from petroleum solvent dry cleaning operations

(a) The method in this section is applicable for the determination of the final recovered solvent flow rate at the completion of the recovery cycle, and the VOS content in all filtration waste. For the same circumstances as described above, any alternative method shall be submitted to the Department for review, pursuant to N.J.A.C. 7:27B-3.2(c), (d), and (e).

(b) This method is based upon:

1. The volume determination of the recovered solvent; and
2. The separation and weight determination of the VOS.

(c) The following is a summary of this method:

1. The recovered solvent is diverted to a graduated cylinder at the end of the recovery cycle. The volume of solvent recovered during a one minute period is recorded.
2. The VOS is separated from other filtration waste and weighed.

(d) The procedure for this section shall be as follows:

1. Recovered solvent shall be determined as follows:
  - i. The flow rate of the recovered solvent is determined from the outlet of the solvent-water separator;
  - ii. The flow rate of the recovered solvent is determined at the end of the solvent recovery phase;
  - iii. Divert the flow of the recovered solvent to a graduated cylinder;
  - iv. Record the volume of recovered solvent to the nearest milliliter, after a one minute interval;
  - v. Record the type of articles cleaned and the length of the recovery cycle; and
  - vi. Repeat steps i-v over three cleaning cycles.
2. VOS content in filtration waste shall be determined as follows:
  - i. Collect three one-kilogram samples of still and filtration waste in air-tight containers which are impervious to petroleum solvents;
  - ii. Record the total mass of articles cleaned since the last still boildown or filter change;
  - iii. Record the total mass of still or filter waste produced since the last waste removal;
  - iv. Determine the solvent content of the still and filter waste using the procedure specified in ASTM Method D322-80, "Standard Test Method for Gasoline Diluent in Used Gasoline Engine Oils by Distillation" (N.J.A.C. 7:27B-3.18, Reference 15); and
  - v. Report the results as mass of VOS per mass of dry weight of articles dry cleaned.

7:27B-3.18 Test methods and sources incorporated by reference

(a) The following sources and test methods are incorporated by reference in this subchapter:

1. New Jersey Administrative Code Title 7, Chapter 27B-1, Air Test Method 1 is available from New Jersey Department of Environmental Protection, John Fitch Plaza, CN 027, Trenton, New Jersey 08625. (Free)
2. Code of Federal Regulations, Title 29, Chapter XVII, Parts 1910 and 1926 are available from the Occupational Safety and Health Administration, U.S. Department of Labor, 1515 Broadway, New York, New York 10036.
3. ASTM Designation D323-79, Standard Method of Test for Vapor Pressure of Petroleum Products (Reid Method), American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103 (\$4.00).

4. ASTM Designation D2879-75, Standard Method for Test for Vapor Pressure—Temperature Relationship and Initial Decomposition Temperature of Liquids by Isotenscope, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103 (\$4.00).

5. API (American Petroleum Institute) Bulletin 2517, Selecting the Proper Nomograph, 156 William Street, New York, New York 10038.

6. ASTM Designation D2551-80, Standard Method of Test of Vapor Pressure of Petroleum Products (micromethod), American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103 (\$4.00).

7. ASTM Designation D1475-60, Standard Method of Test for Density of Paint, Varnish, Lacquer, and Related Products, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103 (\$4.00).

8. ASTM Designation D2369-81, Standard Method of Test for Volatile Content of Coatings, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103 (\$4.00).

9. ASTM Designation D4017-81, Standard Test Method for Water in Paints and Paint Materials by Karl Fischer Titration Method, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

10. ASTM Designation D402-76, Standard Test Method for Distillation of Cut-Back Asphaltic (Bituminous) Products, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103 (\$4.00).

11. ASTM Designation D-70-76, Standard Test Method for Specific Gravity of Semi-Solid Bituminous Materials, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103 (\$4.00).

12. ASTM Designation D2698-73, Standard Test Method for the Determination of the Pigment Content of Solvent Reducible Paints by High Speed Centrifuging, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103 (\$4.00).

13. ASTM Designation D95-83, Standard Method for Determining water in Petroleum and Bituminous Materials by Distillation, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103 (\$4.00).

14. Method 2-1 California Air Resources Board, Test Procedures for Determining the Efficiency of Gasoline Vapor Recovery Systems at Service Stations. Available from State of California, Air Resources Board, 1102 Q Street, Sacramento, California 95812.

15. ASTM Designation D322-80, Standard Test Method for Gasoline Diluent in Used Gasoline Engine Oils by Distillation, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103 (\$4.00).

16. Code of Federal Regulations, Title 40, Part 60—Reference Methods 2A and 2B are available from the Superintendent of documents, Government Printing Office, Washington, D.C. 20402.

OFFICE OF ADMINISTRATIVE LAW NOTE: Appendices A through I were submitted as part of this proposal but have not been reproduced herein.

# HEALTH

## DIVISION OF HEALTH FACILITIES EVALUATION

(a)

### Health Care Facilities Licensure Licensing of Nursing Home Administrators

#### Proposed New Rule: N.J.A.C. 8:34-1:31

Authorized By: J. Richard Goldstein, M.D.

Commissioner of Health (with approval of the  
Nursing Home Administrator's Licensing Board).

Authority: N.J.S.A. 26:2H-1 et seq. specifically  
26:2H-27, 26:2H-28 and 26:2H-51.

Proposal Number: PRN 1985-497.

Submit comments by October 16, 1985 to:  
John J. Haney, Executive Secretary  
Nursing Home Administrator's  
Licensing Board  
Department of Health  
CN 367  
Trenton, NJ 08625

The agency proposal follows:

#### Summary

The Nursing Home Administrator's Licensing Board came into being as a result of Section 1908 of the 1967 Social Security Amendments. The regulation stipulated that a State plan of medical assistance under Title XIX of the Social Security Act must include a State program for the licensure of administrators of nursing homes and such program must include a Nursing Home Administrator's Licensing Board.

Consequently, Chapter 356 P.L. 68 was enacted and was defined and promulgated pursuant to authority of N.J.S.A. 30:11-13 and 30:11-21. This was later changed to N.J.S.A. 26:2H-27 and 26:2H-28.

Thus the public policy of the State is to provide for the development, establishment and enforcement of basic standards for the training, experience and education of individuals desiring to become administrators of long term care facilities. Also the State wants to ensure safe and adequate treatment of patients in the long term care facilities.

One of the Board's duties is the licensing and registration of nursing home administrators, following successful taking of an examination prepared by the Board.

There has been a history of some candidates for a nursing home Administrator's License failing numerous examinations. Some individuals have taken the examinations as many as five to 17 times with some of those candidates eventually passing.

Marginal candidates through successful guesswork could ultimately pass an examination. The Nursing Home Administrator's Licensing Board feels that this will result in licensed long term care administrators who may perform marginally. This is not in the best interest of patients of long term care facilities, the industry, as well as the citizens of New Jersey.

Currently, there is no requirement that failing candidates take additional seminars in weak areas previous to retaking

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the administrator examinations. The Nursing Home Administrator Licensing Board is proposing to have candidates who fail three times to have to take further long term care education.

**Social Impact**

Some licensed nursing home administrators eventually receive their licenses after repeated examination failures, as some candidates barely secure a passing score.

The Nursing Home Administrator's Licensing Board is concerned and would prefer that only those candidates demonstrating substantial knowledge of long term administration be licensed without indefinite examination failures before they eventually pass an examination.

The people of New Jersey and long term care patients would be better served if candidates for licensure take a mandatory remedial education in deficient areas after three examination failures.

The Nursing Home Administrator's Licensing Board does not wish a candidate to take more than six examinations feeling if the candidate cannot demonstrate proficiency in the area of long term care administration in six attempts, the candidate is no longer suitable to be considered for licensure.

This should result in a stronger licensed administrator, providing better long term care to patients and the long term care facilities operating with fewer deficiencies.

**Economic Impact**

The economic impact would be minimal to the State, other than that of the Executive Secretary of the Nursing Home Administrator's Licensing Board utilizing time to maintain files on candidates who fail three times, counseling and ensuring that the candidates have documented the required remedial courses or seminars.

Full text of the proposed new rule follows.

8:34-1.31 Reexamination procedures

(a) A candidate who is qualified to take the Nursing Home Administrator's Licensing Examination will be allowed to take no more than three examinations.

(b) In the event a candidate has failed three examinations the candidate must take 50 hours of courses or seminars approved by the Nursing Home Administrator's Licensing Board.

(c) Upon documentation of completion of courses or seminars, the candidate will be eligible to retake the licensing examination no more than three additional times following the completion of the approved courses or seminars. The Board will not permit a candidate any further opportunity to reapply for additional reexaminations.

**(a)**

**Standards for Licensure of Hospital Facilities  
Obstetric and Newborn Services**

**Proposed Amendment: N.J.A.C. 8:43B-8.16**

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

Authority: N.J.S.A. 26:2H-1 et seq., specifically  
26:2H-5b.

Proposal Number: PRN 1985-495.

Submit comments by October 16, 1985 to:

John A. Sunkiskis, Administrative Analyst  
Office of Assistant Commissioner  
Division of Health Facilities Evaluation  
CN 360  
Trenton, NJ 08625

**Summary**

The standard concerning use of tocolytics and pitocin (oxytocic agents), N.J.A.C. 8:43B-8.16(a)10ii, includes a requirement that a physician with obstetrical privileges be available within the facility. This proposed amendment divides the standard into separate standards for both tocolytics and pitocin and expands on the policies for administration of the drugs so as to be more specific and comprehensive. In the proposed revisions, an obstetrically-qualified physician need only be in the institution during use of pitocin, and for tocolytics, a physician's presence is not required after drug therapy is stabilized.

**Social Impact**

There should be a positive social impact on both providers of obstetric services and maternity patients. The proposed amendment is more progressive, more responsive to the needs of individual facilities and patients, and more clearly written than the current rule.

**Economic Impact**

The Department does not expect the proposed amendment to have any substantial economic impact upon hospitals providing obstetrical services since pitocin and tocolytics are already routinely used, and the functions of the personnel will remain the same as those they have performed to date.

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

8:43B-8.16 Policies and procedures for the obstetric service

(a) Policies and procedures for the obstetric service shall include those for the obstetric and newborn services, in addition to the following:

1.-9. (No change.)

10. Policies and procedures for the care of patients during labor and delivery. These shall include, but not be limited to, the following:

i. (No change.)

ii. Policies for the use of oxytocic and tocolytic agents, including a requirement that a physician with obstetrical privileges be available within the facility. A physician engaged in surgery on another patient within the facility shall not be considered available for the purposes of this standard;]

ii. **The obstetrical staff in conjunction with nursing staff, shall develop and approve a protocol for the use of pitocin for induction and stimulation of labor. The protocol shall address how the patient will be assessed prior to the drug's use; monitoring of the status of the mother and fetus during its use; indications for discontinuance of the drug; methods of drug administration; and staff training concerning the drug's use. An obstetrically-qualified physician must be in the institution when pitocin is being administered. The protocol shall be kept at the nurses station in the labor and delivery unit, and available to staff at**

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all times;

iii. The obstetrical staff in conjunction with nursing staff, and in consultation with their referral Level III Perinatal Center shall develop and approve a protocol for the antepartum use of intravenous tocolytic drugs for the termination of premature labor. This protocol shall address criteria for drug use; patient assessment prior to intravenous drug administration; monitoring of the status of the mother and fetus during therapy; procedures for managing known complications of therapy; indications for discontinuance of the drug; procedures for maternal and infant transfer to the appropriate level of care; and staff training concerning the drug's use. An obstetrically-qualified physician must be present for evaluation of the patient and for initiation and stabilization of drug therapy;

Re-number existing iii.-ix. as iv.-x. (No change in text.)  
11.-19. (No change.)

**(a)**

**NARCOTIC AND DRUG ABUSE CONTROL**

**Controlled Dangerous Substances  
Temporary Placement of 3,4-Methylenedioxymethamphetamine into Schedule I**

**Proposed Amendments: N.J.A.C. 8:65-10.1**

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

Authority: N.J.S.A. 24:21-3.

Proposal Number: PRN 1985-498.

Submit comments by October 16, 1985 to:  
Lucius A. Bowser, R.P., M.P.H.  
Chief, Drug Control Program  
CN 352  
Trenton, NJ 08625  
609-984-1308

**Summary**

The Department proposes to amend the Schedules of Controlled Dangerous Substances to add 3,4-Methylenedioxymethamphetamine to Schedule I on a temporary basis, because the substance poses an imminent hazard to public safety. This amendment will bring the State regulations into conformity with Federal regulations. 3,4-Methylenedioxymethamphetamine was placed into Schedule I of the Controlled Dangerous Substances Act as a final rule published in the Federal Register, cited as 50 F.R. 23118, dated May 31, 1985.

3,4-Methylenedioxymethamphetamine is chemically and pharmacologically related to 3,4-Methylenedioxyamphetamine, a Schedule I substance, that can produce psychedelic effects and has no legitimate medical use or is manufactured in the United States. This substance can present a significant risk to public health and has a high potential for abuse. Information was obtained in a study on the neurotoxic properties of this substance and published in a paper "Hallucinogenic Amphetamine Selectively Destroys Brain Serotonergic Nerve Terminals: Neurochemical and Anatomical Evidence,"

by G. Ricaurte, G. Brian, L. Strauss, L. Seiden, and C. Schuster. Neurotoxic effects of amphetamine and methamphetamine have been shown in five diverse mammalian species and suggest that it is neurotoxic in humans. Clandestine production, distribution and abuse of 3,4-Methylenedioxymethamphetamine is occurring nationwide and escalating. Certain drug abuse treatment programs have begun to report that they are seeing individuals seeking treatment for multiple doses of this substance. The 22nd Expert Committee on Drug Dependence of the World Health Organization has recommended that it be controlled in Schedule I of the Convention on Psychotropic Substances, 1971.

**Social Impact**

The controlling of 3,4-Methylenedioxymethamphetamine as a Schedule I substance, having no known medical use in the United States, would have a great social impact in that it would control the illicit production and distribution of this extremely potent neurotoxic substance. These controls would lower the incidence of drug overdosing or hospitalizations resulting from ingestion or administration of 3,4-Methylenedioxymethamphetamine preparations. There will be no social impact on practitioners or performances as these products are not commercially available in modern medical practice.

**Economic Impact**

Preventing drug substance abuse, overdosing or long term hospitalization from the ingestion or administration of 3,4-Methylenedioxymethamphetamine would have a great economic impact on the community and hospitals. It would be in the interest of the public safety to control the manufacture and distribution of this substance. There would be no economic impact on practitioners, pharmacists or other dispensers, because it would make the substance a Schedule I, nonmedicinal preparation.

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

- 8:65-10.1 Controlled dangerous substances; Schedule I
  - (a) (No change.)
  - (b) The following is Schedule I listing of the controlled dangerous substances by generic, established or chemical name and the controlled dangerous substances code number
    - 1.-6. (No change.)
    - 7. Temporary listing of substances subject to emergency scheduling. Any material, compound, mixture or preparation which contains any quantity of the following substances:
      - i. (No change.)
      - ii. **3,4-Methylenedioxymethamphetamine: its optical positional and geometric isomers, salts and salts of isomers 7405**

**HIGHER EDUCATION**

**(a)**

**EDUCATIONAL OPPORTUNITY FUND BOARD**

**Administrative Policies and Procedures  
Program Support**

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## HIGHER EDUCATION

**Proposed Amendments: N.J.A.C. 9:11-1.1, 1.3, 1.5, 1.6, 1.7, 1.8, 1.9, 1.11, 1.12, 1.13, 1.17, 1.18, 1.19, 1.20 and 1.21; N.J.A.C. 9:12-1.2, 1.3, 1.4, 1.6, 1.7, 1.10, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, 1.17 and 1.19; N.J.A.C. 9:12-2.2, 2.3, 2.4, 2.5, 2.6**

**Proposed New Rules: N.J.A.C. 9:11-1.9 and 1.10; N.J.A.C. 9:12-1.4 and 1.17; N.J.A.C. 9:12-2.7, 2.8 and 2.9**

Authorized By: Educational Opportunity Fund Board,  
T. Edward Hollander, Chairman.

Authority: N.J.S.A. 18A:71-33 through 18A:71-36.

Proposal Number: PRN 1985-509.

Submit comments by October 16, 1985 to:  
Grey J. Dimenna, Esq.  
Administrative Practice Officer  
Department of Higher Education  
225 West State Street  
Trenton, New Jersey 08625

The agency proposal follows:

### Summary

The Educational Opportunity Fund Board is statutorily charged with establishing policies and procedures governing the operation of the Educational Opportunity Fund Program.

This proposal makes several technical and other more substantive changes in the regulations governing the program. These technical and other changes serve to update the regulations, clarify and refine particular areas and rearrange the order of certain sections into a more coherent sequence.

The rules establish requirements for student status and eligibility, program services and administrative procedures of campus based programs.

### Social Impact

The Educational Opportunity Fund Program provides supportive services and awards based upon financial need to enable economically and educationally disadvantaged students to obtain undergraduate and graduate degrees from both public and private institutions of higher education in the State of New Jersey. The proposed amendments will serve to clarify and improve the administration of the program on a statewide and campus basis. Specifically, the proposal would have the following impact on the following areas:

**Student Eligibility:** The proposal provides that where applicable, both a student's educational and economical background will be considered in determining eligibility to participate in the program. Previously, it was unclear whether fulfillment of both criteria were necessary for entrance into the program.

**Administration:** The proposal expands upon particular administrative requirements of the campus based programs and sets forth in greater detail requirements regarding non-funded students, minimum percentage of incoming freshman participating in the program, record keeping, data collection and program reports.

**Summer Programs:** The proposal clarifies and further elaborates upon various aspects of the summer programs such as attendance, renewal students, eligibility, reporting requirements, payment requirements and refunds.

### Economic Impact

The proposed amendments represent qualitative standards which do not involve additional costs to the institutions or students in the program.

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

#### 9:11-1.1 Student eligibility

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

(c) To be eligible for an Educational Opportunity Fund grant, a student must have demonstrated that he or she:

1.-3. (No change.)

4. As an undergraduate student, is enrolled or intends to be enrolled full-time and matriculated in a curriculum leading to an undergraduate degree or certificate in an institution of collegiate grade in New Jersey approved or licensed by the State Board of Higher Education and participating in the EOF Program. Degree or certificate programs must have a minimum requirement equal to the equivalent of 24 semester hours and be at least one academic year in duration. An eligible student must exhibit evidence for potential success in college, but:

i. Has not demonstrated a sufficient academic preparation to gain admission to an approved institution of higher education under its regular standards of admission (**where applicable**); [or] **and**

ii. Whose standardized test scores are below the institutional norms; [or] **and**

iii. Whose educational background indicates a need for improvement of basic skills [.] ; **and**

iv. **Whose economic background reflects a history of poverty.**

5. (No change.)

6. Students may not receive assistance under the programs administered by the Educational Opportunity Fund Board if information is made known [before the semester begins] that they owe a refund on a grant or scholarship previously received from a state or federal program through any institution, or are in default on any student loan made or insured by the federal government at any institution.

7. (No change.)

#### 9:11-1.3 Foreign nationals

(a) A foreign national must present affirmative evidence that he or she is not in the United States for the temporary purpose of obtaining an education. Such evidence must include documentation from the United State Immigration and Naturalization Service that the student may remain permanently in this country and such evidence must be placed in the student's file. The student must:

1.-2. (No change.)

3. Be the holder of an arrival departure record [parole edition,] form I-94 endorsed by the Immigration and Naturalization Service showing [indefinite parole status.] **one of the following:**

i. **Parole Edition: Paroled pursuant to Sec. 212(d)(5) of the Immigration and Naturalization Act; or**

ii. **Refugees: Admitted as a refugee pursuant to Sec. 207 of the Immigration and Naturalization Act; or**

iii. **Employment Authorized and Adjustment Applicant: A Foreign National holding form I-94 with this endorsement would normally meet the requirements of this regulation. However, if the institution has knowledge that the student is planning to leave the United States following the completion of his or her educational program, the Office of Student Assistance shall be notified**

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and the award canceled.

(b) Foreign nationals with student visa status, **F1 or F2 Exchange visitor visa status or J1 or J2 visa status, even when stamped "employment authorized"**, are considered to be in the United States for the sole purpose of obtaining an education and are therefore not eligible for [an E.O.F. grant] **student assistance.**

9:11-1.5 Financial eligibility for undergraduate grants

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

[(e) Students deemed eligible at the time of initial enrollment shall retain eligibility for program support services throughout the duration of the initial degree study. In addition, students shall retain eligibility for an E.O.F. grant as long as the student has demonstrated financial need as defined by the New Jersey Methodology.]

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

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

9:11-1.6 Verification of financial eligibility

[(a) Verification procedures set forth in this section will not duplicate any other income verification procedures performed by the State of New Jersey.]

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

[(c)](b) It is required that all recipients of undergraduate E.O.F. grants apply for the Federal [PELL] **Pell Grant** and the New Jersey Tuition Aid Grant and all students' files shall contain information from the New Jersey Financial Aid Form indicating application for the above.

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

[(e)](d) In those instances where earnings are not the source of income, regardless of the status of dependency of the awardee, files must contain appropriate documentation and verification on which to base awards ([For example] e.g., statements from the Welfare Department, Social Security Administration, Bureau of Children's Services, Veteran's Administration[,], or any other approved administrative agency).

[(f)](e) In every case, a student's file must contain evidence that the College Scholarship Service, Uniform Methodology, which forms the basis on which the financial aid officer has recommended **the** E.O.F. grant, has been performed.

[(g)](f) In every case, files should contain completed forms indicating all relevant data such as annual income, household size, sources of income, parent(s) or guardian(s) income, [and so forth] etc. Students' records should include the application for financial aid, the student's signed acceptance of the financial aid package and proof that the grant was actually received by the student.

9:11-1.7 Grant amount

(a) The dollar amount of each E.O.F. grant will be based on two factors:

1. [T] the financial need of the student[,]; and

2. The type of institution which the student will be attending.

(b) Financial need is to be ascertained through the use of the College Scholarship Service, Uniform Methodology. Financial need is to be defined as the difference between a student's cost of education and his expected family contribution.

[(b)](c) Once it is determined that a student is eligible, he shall not receive less than the minimum grant nor more than the maximum grant. Under no circumstance shall an E.O.F. award be granted which, in combination with other aid, exceeds documented financial need, as defined above.

[(c)](d) The E.O.F. Board of Directors shall annually re-

view the state grant amounts of E.O.F. students and make adjustments if necessary. The minimum and maximum awards for Graduate and Undergraduate E.O.F. grants for each type of institution follows:

UNDERGRADUATE	MINIMUM	MAXIMUM
2-Year Public Colleges	\$200	\$ 450
4-Year Public Colleges:		
Commuter	200	450
Residential	200	700
Rutgers, NJIT:		
Commuter	200	450
Residential	200	700
Independent Colleges	200	1,400
GRADUATE	MINIMUM	MAXIMUM
4-Year Public Colleges	\$200	\$1,500
4-Year Independent Colleges	200	2,500
Rutgers, NJIT	200	2,500
[C]UMDNJ/FDU Dental School	200	4,000

[(d)](e) The [Standard] **Minimum Award**, as set forth in this section, shall be granted to all eligible E.O.F. students [, except renewal students who received an E.O.F. grant before 1978-79].

[(e) Those renewal students who received an E.O.F. grant before 1978-79 shall be granted the Standard Award unless such an award, in combination with a Tuition Aid Grant is less than the Hold Harmless Maximum as set forth in this section. In such cases, the Standard Award shall be increased until the TAG/E.O.F. combination reaches the Hold Harmless Maximum.]

(f) The awarding of all grants within the above stated minimum and maximum shall be based upon a careful analysis of the student's total financial situation and financial need. The neediest students must be accorded priority.

9:11-1.8 Duration of student eligibility

(a) **Students deemed eligible at the time of initial enrollment shall retain eligibility for program support services throughout the duration of the initial degree study as long as he or she maintains full-time enrollment. In addition, students shall retain eligibility for an E.O.F. grant as long as the student has demonstrated financial need as determined by the institution through submission of a New Jersey Financial Aid Form, in accordance with annually established deadline dates. The information on the Financial Aid Form will be evaluated by employing the National Uniform Methodology, as represented in the College Scholarship Service System or by approaches modified to meet the purposes of New Jersey student assistance programs.**

[(a)](b) Students are eligible for a maximum of 12 semesters or its equivalent of undergraduate study. Students in an established 5 year undergraduate course of study shall be eligible for an additional two semesters beyond the 12 semesters [as stipulated below].

[1. Students in county colleges are expected to complete their academic program in no more than six semesters. Students enrolled in baccalaureate programs in public and independent institutions are expected to complete their degree in no more than 10 semesters.

2. Exceptions to the above may be granted upon written

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request to the E.O.F. Executive Director who will grant such requests based on criteria approved by the Board.]

(c) Students attending four-year institutions will receive ten terms of E.O.F. payment to complete four class levels. Additional term awards up to the maximum allowable terms are available upon formal written request from the institution and approval by the Executive Director of E.O.F.

(d) Students attending two-year institutions will be eligible to receive six terms of E.O.F. payment to complete two class levels. Additional term awards up to the eight maximum allowable terms are available upon formal request from the institution and approval by the Executive Director of E.O.F.

[3.](e) Graduating seniors in their last semester of study, and sophomores in their last semester at a county college, may take less than 12 credits (full-time status) and remain eligible for E.O.F.

[(b) Criteria established at the time of enrollment in the program shall be effective for the duration of a student's continuous enrollment:

1. unless newly established criteria are beneficial to that student;

2. enrollment was based on incomplete or inaccurate information.

(c) Students deemed eligible at the time of initial enrollment shall retain eligibility for program support services throughout the duration of the initial degree study and shall retain their eligibility for an E.O.F. grant provided the family income does not exceed \$2,000 over the maximum income eligibility cut-offs for both dependent and independent students.]

**9:11-1.9 Non-funded students**

(a) Students who have received an initial E.O.F. grant, but as a result of a change in income status or enrollment status no longer demonstrate need for Article III funds, shall be termed non-funded.

(b) Students who are denied Article III grants due to inability to meet satisfactory academic progress, as defined in N.J.A.C. 9:11-1.10 of the E.O.F. Financial Aid Guidelines, who enroll full-time the subsequent term, may be considered non-funded and are entitled to Program Support Services for one year.

(c) Students who, due to extenuating circumstances, are advised to enroll at less than full-time status, may be considered non-funded, and are entitled to Program Support Services for one year. Documentation of advisement shall be maintained in the student's record.

(d) Non-funded students must continue to file the New Jersey Financial Aid Form, and have been determined eligible and received Article III academic year funds during initial enrollment into the program.

(e) A student who enrolls into the pre-freshman summer program prior to the completion of eligibility determination and who is determined financially ineligible at the end of the eligibility determination process cannot be considered as a non-funded student.

(f) Non-funded students shall constitute no more than 10 percent of the total institutional Educational Opportunity Fund Program enrollment.

**9:11-1.10 Academic progress**

(a) Before payment may be made to an eligible student, the institution shall have satisfactory evidence that the student is eligible for an Educational Opportunity Fund Article III student grant by maintaining academic progress and standing according to the institution's established policy for academic progress of Educational Opportunity Fund students.

(b) Academic progress criteria for E.O.F. Article III Student

Grants is as follows:

1. E.O.F. students must complete 12 credits, or their equivalent, in a semester. With the written approval of the E.O.F. campus director, a student may, for academic reasons, complete no less than nine credits in a semester. Directors approving such circumstances must maintain documentation on file. The provision permitting completion of less than 12 credits in a semester may only be used during the first four terms of a degree course and in the first year following transfer for transfer students.

2. E.O.F. students will be required to complete all remedial courses within the first four terms of E.O.F. payment, excluding the pre-freshman summer program. Approval for additional remedial/developmental work beyond the four terms may be granted upon formal written request to and approval by the Executive Director of E.O.F.

3. Students and institutions shall have the right to appeal the denial of financial aid based upon these guidelines through the established appeal procedures in N.J.A.C. 9:11-1.21. The Executive Director of E.O.F. will consider individual cases and shall have the authority to make such exceptions as unusual circumstances may warrant.

(c) The Educational Opportunity Fund Board of Directors shall recognize minimum standards for academic progress that an institution adopts for determining financial aid eligibility if these standards are the same as or stricter than those outlined in this section.

[9:11-1.9] **9:11-1.11** Financial aid packaging

[(a) The E.O.F. grant should be considered an integral part of a student's total financial aid package. As such, it is expected that a student's financial need will be met by utilizing all available sources of grant aid to the maximum extent possible.]

[(b)](a) A total financial aid package shall be granted to all freshmen and sophomore E.O.F. students, wherever possible, to meet 100% of need.

[1.](b) All sources of student financial aid should be used to augment the financial aid package.

[2.](c) Because E.O.F. students are from historically poor backgrounds, loan encumbrance shall be a low priority and loans shall be given to complete the package only after all other forms of financial aid are exhausted.

[9:11-1.10] **9:11-1.12** Transfer of grant

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

[9:11-1.11] **9:11-1.13** Student notification and payment

(a) A student(s) should be notified in writing, by the institution's financial aid officer, of the content of his or her financial aid package. The institution's written notification to the student shall contain a clause absolving the State of any responsibility for funding in the event that the grant is based upon fraudulent, inaccurate or misleading information.

(b) (No change.)

[9:11-1.12] **9:11-1.14** [Discontinuation] **Discontinuance** of E.O.F. grants and program support services

(a)-(g) (No change in text.)

[9:11-1.13] **9:11-1.15** Liability

(a) (No change.)

(b) In the event that an institution has knowingly conveyed fraudulent and misleading information in order to obtain E.O.F. grants for ineligible students, the institution will be held liable and will be required to make restitution.

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- (c)-(d) (No change.)
- [9:11-1.14]9:11-1.16 Grant usage  
(No change.)
- [9:11-1.15]9:11-1.17 Grant awarding cycle  
(No change.)
- [9:11-1.16]9:11-1.18 Eligibility requirements for graduate grants  
(No change.)
- [9:11-1.17]9:11-1.19 Operational provisions for undergraduate and graduate grants  
(a)-(d) (No change.)  
(e) A timetable for submission of reports and payment request forms shall be made available to each participating institution. [No E.O.F. funds will be released until verification of registration of eligible students is received in the E.O.F. Central Office.]  
(f) (No change.)  
(g) All [participation] **participating** institutional programs shall be required to cooperate fully in specified program analysis and evaluation activities carried out by the E.O.F. central office.
- [9:11-1.18]9:11-1.20 Application procedures for E.O.F. graduate and undergraduate grants  
(a) (No change.)  
(b) Applicants for undergraduate E.O.F. must complete a New Jersey Financial Aid Form and submit it to the College Scholarship Service, Princeton, New Jersey for processing. Students must apply for the [basic educational opportunity grant] **Pell Grant** and State student assistance programs by authorizing release of information to the New Jersey Department of Higher Education.  
(c)-(d) (No change.)
- [9:11-1.19]9:11-1.21 Appeals  
(a) A student(s) or his or her parents may file a written appeal with the Executive Director of E.O.F. regarding institutional decisions of ineligibility.  
(b) **The first step in appealing E.O.F. grant eligibility begins within the institution. As a campus based program, the verification of E.O.F. grant eligibility is the responsibility of institutional officials.**  
[1.] (c) A student(s) must have already appealed through institutional channels before his or her appeal will be heard by the Executive Director of E.O.F.  
[2.](d) The letter of appeal must furnish detailed information as to the nature of the case and contain the names of institutional officials who have been contacted.  
(e) **For academic progress appeals, the following are offered as examples of circumstances that institutions might consider for appeal of institution policies when they are more rigorous than the E.O.F. requirements:**  
1. Documented medical excuse of personal or immediate family illness or death, when such an event causes significant change in course or class status;  
2. Incomplete grant from previous semester, with assurances documented by faculty or staff that grade is to be made up in the current semester and that the credits in question are not counted in the current semester's 12 credit requirement;  
3. When considering the student's cumulative academic progress, the student has demonstrated a clear history of meeting academic progress standards and has earned an average of 12 credit hours per semester.

(f) **If, after State payment deadline dates, new information or evidence has been presented regarding previous institutional eligibility decisions, the institution may request consideration by the E.O.F. Executive Director for payment in the same fiscal year. Such requests must be submitted before fiscal year end reconciliation and should be submitted through payment rosters co-endorsed by the E.O.F. campus director and financial aid officer.**

(g) **In no case should institutional requests for opinions, clarification, or consideration based on new evidence constitute an appeal for a student or students who have not met the minimum standards set forth in State regulations. These standards are intended to be the "floor" above which institutional standards and appeals may operate, but no appeals, institutional or central, should result in an E.O.F. student not meeting these State minimum standards for eligibility.**

[9:11-1.20] Renewal of grants awarded prior to March 1, 1978]

[(a) The purpose of this section is to establish "hold harmless" provisions for E.O.F. students which provide parallel benefit to those set forth in Public Law 1977, Chapter 344.

1. No student holding an E.O.F. grant in 1977-78 shall have a loss or reduction in their individual combined state grants for the duration of their undergraduate eligibility because of the implementation of new programs and award tables.]

[9:11-1.21]9:11-1.22 Refunds [of] and repayments of disbursements made to students

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

(d) The **above** formula [in (a) above] should be applied if a student reduces his academic course load to less than full-time prior to the date full tuition liability is required by the institution. However, if the student reduces his academic course load to less than full time after the date full tuition liability is due the institution, and the student budget for the payment period is not reduced by the institution, a refund to the State is not necessarily required.

(e)-(f) (No change.)

(g) If a cash disbursement has been made by an institution for non-institutional costs from [any] a State assistance program, and it is determined by application of the institution's refund policy and the **above** formula [in (a) above] that a refund should be paid to the State, the institution shall endeavor to collect the overpayment from the student and return it to the State. If this effort is unsuccessful, the institution shall notify the Office of Student Assistance of the amount owed for each State assistance program. Non-institutional costs may include, but are not limited to room and board, books and supplies, transportation, and miscellaneous expenses.

(h) (No change.)

### CHAPTER 12 PROGRAM SUPPORT

#### SUBCHAPTER 1. ACADEMIC YEAR PROGRAM SUPPORT FUNDS

##### PREFACE

N.J.S.A. 18A:71-39 provides that the Chancellor of Higher Education shall develop, establish and maintain programs of remedial and supplementary education for students who receive assistance under the Educational Opportunity Fund. These regulations govern the process by which institutions receive and utilize funds pursuant to this statutory authority.

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E.O.F. students, as students of the institution who pay tuition and for whom the institution receives State support other than E.O.F., are entitled to all services available to all other students at the institution. E.O.F. funds are intended to supplement and not supplant existing services provided by the institution. The E.O.F. Program may not be charged directly nor through the institutional match provision of [this chapter] **these regulations** for services which are not over and above those provided to the general student population.

9:12-1.1 Institutional eligibility  
(No change.)

9:12-1.2 Eligible E.O.F. program requirements

(a) Any program shall be eligible for funding consideration which increases access to higher education for students eligible for E.O.F. grants, improves E.O.F. student academic performance and promotes student retention, promotes student progress toward graduation within the established period of program eligibility and within the academic regulations of the institution, and provides effective administrative support for the operation of the E.O.F. Program within the institution. All programs must meet all of these objective mandates for funding under this provision. Such programs may include, but are not limited to [the following]:

1. Recruitment and screening of prospective students for college enrollment;
2. Testing of prospective and admitted students;
3. Academic and financial advisement;
4. Personal and career counseling;
5. Tutorial services;
6. Remedial/developmental instruction;
7. A structured summer orientation program with academic and counseling support services;
8. **Financial assistance;**
9. **Experimental projects for research and development of innovative practices; and**
10. **Administration of the above services.**

9:12-1.3 Application process

(a) The E.O.F. Executive Director will distribute a standard proposal application form to all **eligible participating** colleges and universities in the State each year.

(b) Each institution shall submit the proposal application to the Executive Director of the Educational Opportunity Fund each year. All applications must include written endorsement of the campus E.O.F. Director, the Community Advisory Board, the President and/or the governing board of the institution.

(c) The application will be reviewed by the E.O.F. Executive Director in the Department of Higher Education for compliance and development of [P] program recommendations to the E.O.F. Board of Directors. The Board shall conduct an annual meeting to determine funding allocations for the next academic year for each institution. The Executive Director shall provide written notification of the Board's decision on each proposal. This shall be in the form of a [written agreement] **preliminary notification** specifying the funding level and any stipulations regarding the conduct of the program or the disbursement of funds. This [agreement] **preliminary notification** shall be endorsed by the institutional president and returned to the Executive Director.

[(e)](d) Institutions may appeal the funding decision of the Board by submitting a written request to the Executive Director within 30 days of issuance of the [formal agreement] **preliminary notification**. The E.O.F. Executive Director will

conduct a review of the appeal and make appropriate recommendations to the Board of Directors.

[(d)](e) The E.O.F. Executive Director shall execute a contract with each participating institution which indicates provisions of the grant with a statement of intent to comply with all E.O.F. Program regulations.

9:12-1.4 **Restriction on use of E.O.F. funds**

(a) **E.O.F. grant funds must not be used for the following items:**

1. **Employee benefits for student assistants and part-time personnel;**
2. **Equipment/hardware;**
3. **Indirect expenses (for example, overhead cost—space, heat, lights, postage and telephone);**
4. **Cultural trips; and**
5. **Transportation of students for normal commuting costs.**

[9:12-1.4] **9:12-1.5** Institutional commitment

(a) Institutions which participate in the E.O.F. Program shall provide a broad range of supportive services to students enrolled in the program. Institutions shall provide funding equivalent to no less than 50% of the proposed total cost of each program to be supported by E.O.F. grant funds[.] **in the following manner:**

1. With regard to matching funds, it is expected that high level institutional officers who are required to serve all students will normally not be included as part of the institutional match. In cases where these individuals are included, a detailed justification must accompany the proposal. The justification should include services provided to the E.O.F. students which would not normally accrue to the student as a result of his/her tuition payment. Generally, personnel who provide direct services to students will be allowed, but must meet the above criteria for institutional match.

2. Indirect expenses [may] **should** not exceed 10 percent of the total program cost in meeting the match (for example, space, light, heat, etc.).

(b) (No change.)

[9:12-1.5] **9:12-1.6** Accountability of institutional share  
(No change.)

[9:12-1.6] **9:12-1.7** Institutional administration

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

(c) Each participating institution shall insure that provisions are made for the director to fulfill the following responsibilities:

1. program planning[:];
- 2.-9. (No change.)

[9:12-1.7] **9:12-1.8** Requirement and admission

(a) Each participating institution shall develop and implement an annual plan for the recruitment of potential students for the E.O.F. Program. This plan shall be appended to the proposal application. The plan will identify a significant pool of potential students from specific disadvantaged groups in the geographic region. Target populations shall include significant numbers of students with a background of historical poverty (in the black, Puerto Rican, and other Hispanic communities, as well as other disadvantaged ethnic groups of the region). In addition, the plan shall identify a significant pool of potential non-traditional students such as welfare recipients, unemployed or underemployed adults, and participants enrolled in [CETA] JTPA and Veterans Programs, as well as various social rehabilitation services in the community. The recruitment plan shall include the timetable, goals, objectives and

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selection process for E.O.F. students at the participating institution.

(b) Each participating public institution shall enroll E.O.F. freshmen as a minimum of 10 percent of the entering fall first-time, full-time, New Jersey residents in the freshman class each year. Independent institutions are encouraged to meet this goal.

[(b)](c) The institution, through its admissions and E.O.F. staff, has the [inherent] primary responsibility for the recruitment of E.O.F. students. The staff must have the requisite skills and information to accurately convey the goals and objectives of the E.O.F. institutional program. E.O.F. staff will give support to the primary recruitment program (that is, assist in identifying, interviewing and selecting prospective program participants) but, ultimately, the institution is to be held accountable for the recruitment yield on an annual basis.

[9:12-1.8]9:12-1.9 Criteria for admission  
(No change.)

[9:12-1.9]9:12-1.10 Eligible program support components  
(No change.)

[9:12-1.20]9:11-1.11 Students for whom English is a second language  
(No change.)

[9:12-1.10]9:11-1.12 Transfer procedure  
Each participating institution shall develop and maintain a policy to facilitate transfer of E.O.F. students from two-year to four-year institutions and between institutions. The E.O.F. Program shall have procedures to demonstrate delivery of services to students who are eligible for funding consideration under N.J.A.C. 9:11-1.12, Transfer of Grant, of the E.O.F. Financial Aid Guidelines.

[9:12-1.11]9:12-1.13 Academic progress  
(a) (No change.)  
(b) To remain eligible for E.O.F. Program Support Services, students shall maintain satisfactory academic standing and progress according to the institution's established policy for the academic progress of E.O.F. students[.] and sections 9:11-1.8, 9:11-1.9, and 9:11-1.10 of the E.O.F. Financial Aid Guidelines.

[(c) E.O.F. students must be matriculated as full-time students according to the institutional definition.

(d) Students must comply with the established E.O.F. Program policies as stipulated in the E.O.F. Financial Aid Guidelines, N.J.A.C. 9:11-1.13.]

[9:12-1.12]9:12-1.14 Academic probation/dismissal of E.O.F. students

(a) Program support services may be discontinued for reasons outlined in N.J.A.C. 9:11-1.14 of the E.O.F. Financial Aid Guidelines.

[(a)](b) Each participating institution shall develop and implement a procedure to notify the E.O.F. campus director of each program participant who is placed on academic probation. In such cases, the E.O.F. staff shall conduct a personal interview with each student requiring that such students participate in such support programs as may be appropriate.

[(b)](c) Each participating institution will be expected to establish a standing committee to review the record and circumstances of any program participant prior to academic dismissal. This committee may include the E.O.F. Campus Director, faculty from the student's academic study area, and an administrative official to be selected by the institutional president. This committee will make recommendations to the in-

stitution regarding the retention or dismissal of a student.

[9:12-1.13]9:12-1.15 Experimental programs

(a) The Executive Director [shall] may request proposals from institutions to support research and developmental projects that may increase program effectiveness and encourage innovative practices. The Executive Director of E.O.F., upon approval of the Board of Directors, is authorized to grant awards to the institutions for such projects. Experimental areas may include, but are not limited to, projects that would:

1. Increase student placement into careers traditionally underrepresented to minority populations;
2. Increase student placement into professional schools of medicine, law, science, and technology; and
3. Increase the development of exemplary programs which have the potential for expansion and extension to other institutions.

[9:12-1.14]9:12-1.22 Annual program report  
[Each institution shall produce an annual report on its programs to be submitted in accordance with the required submission timetable.]

(a) The institutions shall submit to the E.O.F. Central Office reports of program activities and outcomes, and fiscal expenditures. The format for reports shall be established prior to the period for which reports will be submitted.

(b) The timetable for submission of reports shall be included in the final contract executed with each participating institution.

(c) Periodic reports will be requested in accordance with a timetable established in advance by the Executive Director. Failure to submit reports in a timely manner may result in cancellation or non-payment of the grant award.

[9:12-1.15]9:12-1.16 Program audits and evaluations

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

[(c) Transfer of Funds:

1. Restrictions:  
i. E.O.F. grant funds must not be used for the following items:

- (1) Employee benefits for student assistants and part-time personnel;
- (2) Equipment/hardware;
- (3) Indirect expenses (e.g., overhead cost—space, heat, lights, postage and telephone);
- (4) Cultural trips; and
- (5) Transportation of students for normal commuting costs.

2. E.O.F. grant funds may not be transferred between and among budget categories without prior written approval from the Executive Director. Failure to follow this procedure will result in a disallowance of the unapproved expenditure. Such transfer may only be negotiated in accordance with the established E.O.F. Required Submission Timetable. No transfers will be honored or approved beyond the close of the contract period.]

9:12-1.17 Transfer of funds

(a) E.O.F. grant funds may not be transferred to establish items that were not a part of the original contract, without prior approval by the Executive Director.

(b) Transfers within existing personnel lines or within existing other than personnel services (O.T.P.S.) lines (as included in the original contract) do not require Central Office approval, however, the Central Office must receive written notification that such transfers have taken place.

(c) Approved budgets are based upon a specified ratio between personnel and O.T.P.S. categories. Transfers from personnel to

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**O.T.P.S. (and vice versa) do not need approval from the Central Office unless such transfer falls outside of the specified ratio. Written approval must be granted by the Executive Director prior to the transfer being made. Requests for approval must be made in accordance with the deadlines contained in Attachment F (Required Submissions Timetable) of the current year contract.**

**9:12-1.16]9:12-1.18 Program non-compliance**

(a) (No change.)

(b) The Executive Director shall make a written report of the findings and [within thirty days of the institutional visitation,] a copy of the report will be transmitted to the institutional president and campus E.O.F. Director. This report shall include a specific description of the violation or practice with specific recommendations to correct the situation within a specified time period as the Executive Director shall determine.

(c) The institution may appeal the findings of this report [within fifteen days of the report's issuance]. Such appeal shall be in writing and directed to the Chairman of the E.O.F. Board. When such an appeal is taken, the E.O.F. Board of Directors shall schedule a hearing of the appeal within a reasonable time period. The E.O.F. Board may uphold or overturn the report of the Executive Director and modify recommendations as it deems appropriate.

**9:12-1.17]9:12-1.19 Program probationary status**

(a) The E.O.F. Board of Directors may place an institutional program on probation for failure to correct program deficiencies within the time directed by the Executive Director [of the E.O.F. Board]. The E.O.F. Board shall place such restrictions as it believes are necessary upon an institutional program which is placed on probation. Restrictions which may be imposed include—but are not limited to—the following:

1. Restrict the recruitment of new students into the program.
2. Withhold funds for the program pursuant to the provisions of the contract.
3. Terminate an institutional program pursuant to the contractual provisions.

**9:12-1.18]9:12-1.20 Community Advisory Board**

(No change.)

**9:12-1.19]9:12-1.21 Record keeping and data collection**

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

(c) Each institution participating in this program shall maintain thorough academic and financial aid files on program participants. This information shall include, but not be limited to, the following:

1. Data and assessment of student performance in the area of basic skills;
2. Data and assessment of counseling programs designed to assist students in improving academic performance;
3. Data and assessment of tutorial services directed toward the resolution of academic difficulty;
4. **Financial data including eligibility determination and annual notification;**
5. **Current registration and academic transcripts;**

[4.]6. Data and assessment of the career and graduate placement assistance provided to program participants.

[(d) Periodic reports will be requested. Failure to submit reports in a timely manner may result in cancellation or non-payment of the grant award.]

(d) Each institution participating in this program shall maintain adequate financial documentation of all program budgets and expenditures. Accounts must be structured to reflect E.O.F. and institutional monies by line item. State, institutional, Federal and other grant funds must be clearly delineated.

(e) The Program Director, along with appropriate institutional officials, must be involved in and responsible for the preparation of budgetary documents and coordination of E.O.F. fiscal affairs.

**9:12-2.2 Summer program requirements**

(a) (No change.)

(b) **All participating institutions [must] shall operate program[s which address] objectives one through five[.] to receive funds for summer program. Any program [Institutions] may elect to develop projects [which address] according to objectives six, seven, and eight.**

(c) **In addition, participating institutions must demonstrate evidence of:**

1. **Assessment and evaluation of program and student outcomes;**
2. **Orientation and training activities for summer program staff;**
3. **Continuity with academic year programming activities and offerings.**

**9:12-2.3 Student eligibility**

(a) Any student deemed eligible for admission and matriculation to the E.O.F. Program by the institution in the academic year (pursuant to N.J.A.C. 9:11-1 et seq.) is qualified to receive additional grant funds to support enrollment and full participation in the summer program in accordance with the following provisions:

[1. All students who will enter college for the first time shall be encouraged to attend the summer program, prior to fall enrollment.]

**1. Summer or pre-freshman attendance should be mandatory for all entering students. Institutions may permit entering students to enroll without attending the summer program, but shall provide alternative activities for such students consistent with criteria listed in N.J.A.C. 9:12-2.2 of the Summer Program Regulations, during the academic year. Such program offerings must be described in the annual funding proposal.**

2. Depending on the availability of funds, renewal students may be permitted to attend summer programs [for remediation or revision needed in their academic program] for a maximum of two summers after initial enrollment.

**3. Priority for funding should be given to those students who:**

- i. **Need to complete basic skills requirements;**
- ii. **Must meet academic progress regulations; and**
- iii. **Are able to graduate by the end of the summer session.**

[3.]4. Student enrolled in highly technical and/or pre-professional programs (pre-law, pre-med) shall be eligible for three summer school programs to increase preparation for post-graduate placement.

[4.]5. Special exceptions for students with unique problems may be granted upon written request by the campus E.O.F. Director and [review] approval by the Executive Director.

**9:12-2.5]9:12-2.4 Application process**

Each institution shall submit a summer program plan [as a separate section of] **in addition to its regular academic year funding application in accordance with provisions of N.J.A.C. 9:12-1.3 [and], 9:12-1.4, and 9:12-1.5 (Program Support Regulations).**

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### [9:12-2.4]9:12-2.5 Funding process

(a) Funds will be allocated to eligible institutions according to program proposal budgets submitted to the E.O.F. Central [E.O.F.] Office and approved by the E.O.F. Board of Directors.

(b) (No change.)

### 9:12-2.6 Verification of financial eligibility

(a) Entering students participating in the summer program must have filed the New Jersey Financial Aid Form prior to summer program enrollment or as part of summer program enrollment procedures (to be established prior to the summer program).

(b) Procedures for verification of student eligibility for summer program attendance shall be consistent with those outlined in N.J.A.C. 9:11-1.6 Verification of Financial Eligibility, of the Financial Aid Regulations.

### 9:12-2.7 Liability

(a) The basic responsibility for submitting accurate information to institution officials rests with the student.

(b) In the event that an institution has conveyed fraudulent and misleading information in order to obtain E.O.F. grants for ineligible students, the institution will be held liable and will be required to make restitution.

(c) In cases where institutions have made awards in good faith based upon fraudulent and misleading information which has been conveyed by the student(s), the student(s) is liable for the return of the E.O.F. grant. A written statement to this effect shall accompany each student's award notification.

(d) The Executive Director, with the cooperation of institutional officials, shall undertake appropriate steps to reclaim monies due the Educational Opportunity Fund from ineligible students.

### 9:12-2.8 Operational provisions for summer program payment

(a) Participating institutions are to submit a summer program request for student allocations.

(b) Notification of action on institutional requests from the Executive Director of E.O.F. will be given in writing to the President of each institution.

(c) To apply for summer program grant funds, the campus E.O.F. Directors are to complete a payment request form (to be established prior to the summer program for which funds are being requested) for both initial and renewal (if applicable) students.

(d) All files of students receiving E.O.F. grants will be subject to a fiscal audit conducted by the Department of Higher Education, Management Compliance Unit.

### 9:12-2.9 Refunds and repayments of disbursements made to students

(a) If a refund is due to a student under the institution's refund policy and the student received financial aid under any State student assistance program, the institution shall multiply the institutional refund by the following fraction to determine the amount to be refunded to the Treasurer, State of New Jersey, through the Office of Student Assistance:

$$\frac{\text{Amount of State assistance (minus work earnings) awarded for the payment period}}{\text{Total amount of financial aid (minus work earnings) awarded for the payment period}}$$

(b) The payment period is the time between the day a student registers for a summer term and the end of that term according to the institutional calendar.

(c) The enrollment period is the time between the day a student registers for an academic term and the date the student officially or unofficially withdraws from an institution, is expelled by an institution, or reduces his academic course load such that he is no longer eligible for State assistance.

(d) If a cash disbursement has been made by an institution for non-institutional costs from a State assistance program, and it is determined by application of the institution's refund policy and the above formula that a refund should be paid to the State, the institution shall endeavor to collect the overpayment from the student and return it to the State. If this effort is unsuccessful, the institution shall notify the Office of Student Assistance of the amount owed for each State assistance program. Non-institutional costs may include, but are not limited to, room and board, books and supplies, transportation, and miscellaneous expenses.

### [9:12-2.6]9:12-2.10 Summer program evaluation

(a) The E.O.F. Executive Director shall distribute a standard summer program evaluation form to participating programs [by the deadline dates specified in the E.O.F. required submission timetable to all participating institutions]. Each institution shall submit the completed form according to the [date requested in the E.O.F.] required submission timetable to the E.O.F. Central Office.

(b) The E.O.F. Central Office may, in addition, conduct summer program evaluations to insure maximum program effectiveness and accountability.

(c) A [summary of all summer program evaluation reports] report on the summer program shall be provided to the E.O.F. Board of Directors on an annual basis.

## HUMAN SERVICES

The following proposals are authorized by Geoffrey S. Persey, Acting Commissioner, Department of Human Services.

(a)

### DIVISION OF MENTAL HEALTH AND HOSPITALS

#### Community Mental Health Services

#### Proposed Readoption: N.J.A.C. 10:37

Authority: N.J.S.A. 30:9A-1.

Proposal Number: PRN 1985-499.

Submit comments by October 16, 1985 to:

LaRay Brown  
Assistant Director for Community Services  
Division of Mental Health and Hospitals  
CN 700  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

Since the enactment of the Community Mental Health Services Act in 1957 (N.J.S.A. 30:9A), there has been a broad expansion of public funding sources administered by the State

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and utilized to support community mental health services.

The Department of Human Services, through its Division of Mental Health and Hospitals personnel, conducted a review of the rules pertaining to Community Mental Health Services (N.J.A.C. 10:37). It was determined that the rules provided a sound basis for the integration of the multiple funding sources and the minimal requirements for the agencies seeking funds to provide services to the mentally ill. These requirements are conceptually based upon the Division's basic principles as to essential services and their delivery while encouraging innovative implementation and a variety of comprehensive service models, developed in response to local needs and talents.

### Social Impact

Readoption of this chapter should continue the unification of the community mental health system and the improvement of relationships between the community and the institutional mental health sectors. Pursuant to these regulations, the Community Mental Health agencies serve in excess of 140,000 citizens per year.

### Economic Impact

The economic impact of these rules derives from the fact that they establish the parameters and requirements necessary for provider agencies to receive funding. The rules also reflect the requirements for certain flow of Federal Mental Health dollars to the State.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:37.

## DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

### (a)

### Pharmacy Manual Pharmaceutical Services and Billing Procedures

**Proposed Readoption: N.J.A.C. 10:51-1.1, 1.3 through 1.12, 1.14 through 1.20, Appendix A through E, 10:51-2.1 through 2.5, 2.7, 2.8, 2.10, 2.11**

**Proposed Readoption with Concurrent Amendments: N.J.A.C. 10:51-1.2, 1.13, 1.21, 10:51-2.6, 2.9, 2.12**

Authority: N.J.S.A. 30:4D-6b(6), 7, 7a, 7b, 4D-20.  
Proposal Number: PRN 1985-486.

Submit comments by October 16, 1985 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), N.J.A.C. 10:51-1, entitled *Pharmaceutical Services*, expires on November 2, 1985. N.J.A.C. 10:51-2, entitled *Billing Procedures*, expires on July 10, 1986. This proposal is designed to readopt both Subchapter 1, including Appendix A through E, and Subchapter 2 of the Pharmacy Manual. Subchapter 1 entitled *Pharmaceutical Services*, describes the basic program requirements for the New Jersey Medicaid Program. The topics covered include the requirements for participation in the Medicaid program, covered and non-covered services, those persons who are eligible to prescribe drugs and medicines, policies governing quantity of medication, dosage, refills and the basis of payment. In general, this Subchapter deals primarily with the requirements for Title XIX (Medicaid). The PAAD program (Pharmaceutical Assistance to the Aged and Disabled) is mentioned only when there is a reference to claim processing or fees, because in these instances the Medicaid and PAAD programs use the same system with the same reimbursement rate.

Subchapter 2, entitled *Billing Procedures*, describes the proper method for a provider of pharmaceutical services to submit a claim for either the Medicaid or PAAD program. The same claim form (MC-6) is used for both programs and is processed by New Jersey Blue Cross, acting as fiscal agent for the Division of Medical Assistance and Health Services. The rule contains instructions for completion of the form, use of payment vouchers, an explanation of the claim return statement and pharmacy adjustment request and tape-to-tape claims processing.

An administrative review has been conducted, and a determination made that both Subchapters should be continued because the rules are necessary, reasonable, adequate, efficient and responsive for the purposes for which they were promulgated. Providers of pharmaceutical services must be aware of the program requirements, reimbursement structure, and billing procedures in order to dispense medication and be paid for this service.

Subchapter 1 has been amended several times, including increases in the dispensing fee. A rule concerning less than effective drugs was adopted as R.1982 d.28 effective February 1, 1982 in order to comply with regulations issued by the Federal Food and Drug Administration. A rule concerning delivery services was adopted as R.1983 d.56 effective April 1, 1983.

On readoption, the Division is making some technical amendments. Section 1.2 changes the address to CN-712. The reference to local Medicaid unit is changed to Medicaid District Office in Section 1.13. The references to PAA are changed to PAAD in Section 1.21.

In Subchapter 2, the reference to the Medicaid drug reference chart, and the chart itself, is being deleted. The chart served as a guide in completion of the claim form, but the specific instructions are already contained in 10:51-2.6(d), which will now be recodified as (c). The remaining subsections in this section will be recodified accordingly. There were some other technical amendments at 10:51-2.9 and 10:51-2.12.

### Social Impact

Subchapter 1 primarily impacts on Medicaid patients who require medication. The rule also informs those pharmacies that participate in the New Jersey Medicaid Program about the policies, procedures, and requirements they must follow.

There were 14 million prescriptions filled in the Medicaid and PAAD programs in 1984.

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The rule needs to be readopted to enable Medicaid patients to receive necessary medication, and to inform providers of those services covered by Medicaid, basis of reimbursement, etc.

Subchapter 2 needs to be readopted so that providers will be able to submit claims in the prescribed manner and know the procedure for requesting an adjustment in the event a claim is denied.

**Economic Impact**

There is no cost to the Medicaid patient for pharmaceutical services.

There is no change in fee schedule associated with this proposal. Providers of pharmaceutical services will continue to be reimbursed in accordance with the existing fee structure.

The New Jersey Medicaid Program spent approximately 78 million dollars (federal-state share combined) in FY 1985. This figure pertains to Title XIX expenditures only. The rule needs to be continued so that the Division of Medical Assistance and Health Services can receive federal matching funds so that this necessary service will be available to Medicaid patients.

In addition, providers of pharmaceutical services must be aware of Medicaid policies and billing procedures in order to be reimbursed for rendering these services.

**Full text** of the proposed readoption without change appears in the New Jersey Administrative Code at N.J.A.C. 10:51-1 and 2.

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

10:51-1.2 Covered pharmaceutical services

(a) (No change.)

(b) All covered pharmaceutical services must be provided within the scope of the program policies and procedures, and billed to the Hospital Service Plan of New Jersey (Blue Cross of New Jersey) on the Prescription Claim Form (MC-6), or other approved billing methods.

1. All other medical or pharmaceutical supplies, durable or nondurable, not listed in (a) above shall be reimbursed as medical supplies and equipment through the Prudential Insurance Company of America. The Medical Supplier Manual, furnished to pharmacies by Prudential, provides information concerning the provision of and reimbursement for these supplies. Pharmacies not already approved as medical suppliers may apply by contacting the Prudential Insurance Company, P.O. Box 1900, Millville, New Jersey 08332 or Chief, Provider Enrollment Medical Care Administration, Division of Medical Assistance and Health Services, [P.O. Box 2486] CN-712, Trenton, New Jersey 08625.

2. For all services provided to long term care Medicaid eligible recipients, providers are required to complete a separate agreement of service with the New Jersey Health Services (Medicaid) Program. Application can be made by writing to the Chief, Pharmaceutical Services, Division of Medical Assistance and Health Services, [P.O. Box 2486] CN-712, Trenton, New Jersey 08625.

10:51-1.13 Services requiring prior authorization

(a) The therapeutic classes and dosage forms listed below require prior authorization, obtained by the prescriber from the [local Medicaid Unit] **Medicaid District Office**. If the prior

authorization request is approved, an authorization number will be provided and must appear on the prescriber's original or valid transcribed prescription. The space labeled "Check if Prior Authorized Service" on the Prescription Claim Form (MC-6) must be checked and the "prior authorization" number provided must be entered in the proper space.

1.-6. (No change.)

10:51-1.21 Tape-to-tape incentive program

(a) An incentive payment instituted January 1, 1979, is available to approved pharmacies which submit Medicaid and/or [PAA] **PAAD** claims on magnetic tape. Incentive payments will be made when the total volume of paid magnetic tape Medicaid/[PAA] **PAAD** claims, submitted by pharmacy providers as a whole, equals or exceeds 20 percent of the total volume of paid Medicaid/[PAA] **PAAD** claims.

(b) The reimbursement for incentive payments is based on the following schedule:

Percent of total Medicaid/[PAA] <b>PAAD</b> Paid Claims	Amount of Incentive Payment
If tape claims comprise:	The incentive payment is:
20-29%	2 cents/tape claim
30-39%	3 cents/tape claim
40-55%	4 cents/tape claim
over 55%	5 cents/tape claim

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

(f) In order to be eligible to submit magnetic tape claims for the Medicaid or [PAA] **PAAD** programs, a pharmacy provider must complete form FD-103 and receive approval by the Division of Medical Assistance and Health Services.

10:51-2.6 Instructions for completion of form MC-6

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

(c) The Medicaid drug reference chart, at the end of this subchapter, is included to aid in the completion of the claim form.]

[(d)](c) When completing the claim form enter the following information:

1.-14. (No change.)

15. Check if prior authorized service, medical certification or both and authorization number. Check the box, and enter the authorization number or medical certification as explained under "Services requiring prior authorization" and "certification" in N.J.A.C. 10:51-1.

i. (No change.)

ii. The area headed by "Check Appropriate Box," box on the MC-6 claim form will be used to indicate prior authorization as well as medical certification as follows:

(1)-(3) (No change.)

(4) If prior authorization and medical certification [exists] exist, check the box entitled "Both" and indicate the authorization number.

16.-20. (No change.)

[(e)](d) Mailing addresses for claims:

1. New Jersey pharmacies—Claim form MC-6.

i. All pharmacy providers in the state of New Jersey must submit Medicaid pharmacy prescription claim forms (MC-6) for processing within 90 days from the dispensing date to:

Hospital Service Plan of New Jersey  
[2 Cherry Hill Executive Campus  
Cherry Hill, New Jersey 08034]  
**P.O. Box 900**  
**Newark, New Jersey 07101**

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2-3. (No change.)

AGENCY NOTE: The text of the lists following this section, entitled "LEGEND DRUGS" and "NON-LEGEND DRUGS," is proposed for deletion.

10:51-2.9 Medicaid pharmacy adjustment request (form FD-238)

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

(c) Completion of the Adjustment Request form: Always complete the first three lines of information (shaded areas) in the top portion of the Adjustment Request form. This information should be copied and entered exactly as it appears on the voucher. Do not enter corrections in this area (first three [lines] lines of shaded areas). The following areas will always be completed for every adjustment request:

1-6. (No change.)

(d)-(g) (No change.)

10:51-2.12 Tape-to-tape claims and computer generated hard copy claims

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

(c) Tape-to-tape incentive payment rules are:

1. An incentive payment will be available to approved pharmacies which submit Medicaid and/or [PAA] PAAD claims on magnetic tape. Incentive payment will be made when the total volume of paid magnetic tape Medicaid/[PAA] PAAD claims, submitted by pharmacy providers as a whole, equals or exceeds 20 percent of the total volume of paid Medicaid/[PAA] PAAD claims.

2. The amount of the incentive payment will be determined according to the following schedule:

Percent of Total Medicaid/[PAA] PAAD Paid Claims

Amount of Incentive Payment

If tape claims comprise:	The incentive payment is:
20-29 percent	two cents/tape claim
30-39 percent	three cents/tape claim
40-55 percent	four cents/tape claim
Over 55 percent	five cents/tape claim

3-5. (No change.)

6. In order to be eligible to submit magnetic tape claims for the Medicaid or [PAA] PAAD programs, a provider must complete form FD-103 and receive approval by the Division.

**(a)**

**Manual for Hospital Services  
Out-of-State Inpatient Hospital Services**

**Proposed Amendments: N.J.A.C. 10:52-1.17**

Authority: N.J.S.A. 30:4D-6a(1), 7, 7a, 7b; 42 CFR 431.52.

Proposal Number: PRN 1985-507.

Submit comments by October 16, 1985 to:  
Henry W. Hardy, Esq.  
Administrative Practice Officer  
Division of Medical Assistance and  
Health Services  
CN 712  
Trenton, New Jersey 08625

Any comments submitted are available for public review at the above address. A copy of this proposal is available for review at the sixteen Medicaid District Offices.

The agency proposal follows:

**Summary**

The Division of Medical Assistance and Health Services is proposing to change its method of reimbursement for out-of-state hospitals that provide inpatient services to New Jersey Medicaid patients. The existing reimbursement methodology, which is based on the SHARE (Standard Hospital Accounting and Rate Evaluation) System, is no longer viable for acute care general hospitals because out-of-state SHARE per diem rates can no longer be established.

This proposal provides that interim reimbursement for inpatient hospital services in approved out-of-state hospitals will be based on 95 percent of the per diem rate or 100 percent of the DRG (Diagnostic Related Group) rate approved by the state Medicaid agency of the state in which the hospital is located. Final reimbursement will be 95 percent of the hospital's final audited per diem in its respective state, or the DRG rate, whichever is appropriate.

If a New Jersey Medicaid patient is approved for a liver, heart, or bone marrow transplant, payment will be made at the rate approved by the state Medicaid agency of the state in which the hospital is located, whether this is a DRG rate, negotiated rate, or a per diem rate.

If an out-of-state hospital is non-approved, i.e., does not have a valid provider agreement with the Title XIX agency in the state in which it is located, the Division will make reimbursement but only for emergency services.

The proposal also indicates that an out-of-state hospital may file an appeal on an issue relating to the claim payments process. However, the Division has no jurisdiction to conduct hearings on issues relating to the rate that is actually determined by a state other than New Jersey.

The Division's prior authorization policy for out-of-state medical care and services remains in effect (See N.J.A.C. 10:49-1.9 and N.J.A.C. 10:52-1.9(h)).

**Social Impact**

Federal regulations (42 CFR 431.52) require that Medicaid patients may receive services in another state in situations such as an emergency, where the health of the patient would be endangered if he/she were required to travel, or where the state determines, based on medical advice, that the needed medical services are more readily available in another state.

Since Medicaid patients do require and receive services and treatment in hospitals outside New Jersey, there must be a system of reimbursement for these providers.

The providers that will be primarily affected by this proposal will be out-of-state hospitals that provide inpatient services to New Jersey Medicaid patients.

**Economic Impact**

Medicaid patients are not required to contribute towards the cost of their hospitalization.

It is estimated that the increased in total Medicaid reimbursement will be approximately seven million dollars (federal-state share combined).

The proposal's basic objective is to reimbursement out-of-state hospitals in a manner consistent with the Title XIX (Medicaid) rate in their own state. Therefore, both interim and final reimbursement is based on either the DRG rate or the

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per diem rate, whichever is appropriate. In those instances where a Medicaid patient requires a liver, heart or bone marrow transplant, because of a life threatening situation, New Jersey will make reimbursement based on the DRG rate, per diem rate, or negotiated rate, depending on which methodology is used by the state Medicaid agency where the hospital is located.

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

### 10:52-1.17 Out-of-State Inpatient Hospital Services

(a) Out-of-state approved hospitals are hospitals with a valid provider agreement with the Title XIX agency in the state in which they are located.

(b) Reimbursement of inpatient services in out-of-state approved hospitals will be based on the following criteria:

[1. Interim reimbursement will be the lesser of the hospital's per diem approved by the Title XIX (Medicaid) agency in its respective state or a weighted per diem based upon New Jersey hospital's Title XIX costs and Title XIX days adjusted prospectively for inflation;

2. Final reimbursement will be the lesser of the hospitals final audited per diem in its respective state or the actual weighted Medicaid per diem based upon New Jersey hospitals' Title XIX costs and Title XIX days.]

1. Interim reimbursement will be 95 percent of per diem rate approved by the State Medicaid Agency of the state in which the hospital is located, or 100 percent of the Diagnosis Related Group (DRG) rate approved by the state Medicaid agency of the state in which the hospital is located.

2. Final reimbursement will be 95 percent of the hospital's final audited per diem in its respective state, or the DRG rate, whichever is appropriate.

3. Reimbursement for out-of-state inpatient hospital services provided to an eligible Medicaid recipient, who has been determined to be in need of, and approved for, a liver, heart or bone marrow transplant, because of a life threatening situation, will be made at the rate approved by the state Medicaid agency of the state in which the hospital is located whether this is a DRG rate, a negotiated rate, or a per diem rate. The reimbursement for liver, heart and bone marrow transplants is not to exceed 100 percent of the state Medicaid agency rate of the state in which the hospital is located.

(c) (No change.)

(d) Reimbursement of inpatient services in out-of-state non-approved hospitals will be based on the following criteria:

1. Service will be limited to emergency services.

[2. Interim reimbursement will be based upon the lesser of the hospitals per diem approved by the Title XIX agency in its respective state or a weighted per diem based upon New Jersey hospitals' Title XIX costs and Title XIX days adjusted prospectively for inflation;

3. Final reimbursement will be the lesser of the hospitals final, audited per diem in its respective state or the actual weighted Medicaid per diem based upon New Jersey hospitals' Title XIX costs and Title XIX days.]

2. Interim reimbursement will be 95 percent of per diem rate approved by the state Medicaid agency of the state in which the hospital is located, or 100 percent of the Diagnosis Related Group (DRG) rate approved by the state Medicaid agency of the state in which the hospital is located.

3. Final reimbursement will be 95 percent of the hospitals final audited per diem in its respective state, or the DRG rate, whichever is appropriate.

[(e) The Medicaid program offers out-of-state hospitals the option of selecting the weighted Medicaid per diem adjusted for inflation or a per diem rate based upon the Standard Hospital Accounting and Rate Evaluation (SHARE) System.

1. The weighted per diem calculation is the product of the SHARE rate multiplied by the Title XIX patient days for each and every New Jersey hospital participating in the SHARE system. The sum of this product for all hospitals divided by the sum of all Title XIX days produces the weighted per diem.

2. A weighted per diem for a base year will be calculated and be updated every three years. Compounded inflation will be applied to the base year, each year until a new base year is determined. The inflation factor used will be that which is part of the SHARE system.

3. The weighted Medicaid per diem rate may be obtained by contacting:

Director, Provider Reimbursement  
Hospital Service Plan of New Jersey  
33 Washington Street  
Newark, New Jersey 07102

4. If out-of-state hospitals wish to receive a SHARE rate, the following procedures should be followed:

i. Out-of-state hospital must contact

Director, Health Economic Service  
New Jersey Department of Health  
P.O. Box 1540  
John Fitch Plaza  
Trenton, New Jersey 08625  
Telephone: (609) 292-8710

and request a copy of the necessary SHARE budget forms and instructions for filing.

ii. Based on the information provided in the SHARE budget, the Department of Health will notify the hospital, the Hospital Service Plan of New Jersey (New Jersey's Medicaid's contractor for out-of-state hospitals) and the New Jersey Medicaid program of the approved rate of reimbursement. Appropriate procedures included in this SHARE system may be followed if the hospital wishes to appeal the rate.

iii. For SHARE rates, settlement will be based upon actual costs. Hospital selecting the SHARE option must submit a SHARE actual cost study to the Director, Health Economic Services, and a Cost Report form HCFA 2552 to the Hospital Service Plan of New Jersey.

iv. The Department of Health will notify the Hospital Service Plan of New Jersey, the out-of-state hospital, and the New Jersey Medicaid program of the final payment rate; and the Hospital Service Plan of New Jersey will make final settlement with the out-of-state hospital for the New Jersey Medicaid program.]

(e) The following procedures must be followed when an appeal is filed by an out-of-state hospital;

1. If an out-of-state hospital, whether approved or non-approved, wishes to file an appeal concerning any complaint or issue arising out of the claims payment process, a written request must be submitted within 20 days from the date of mailing of the notice of the agency action that gave rise to the complaint or issue. The hearing request should be addressed to:

Director  
Division of Medical Assistance  
and Health Services  
CN 712  
Trenton, New Jersey 08625

2. The Division of Medical Assistance and Health Services has no jurisdiction to conduct hearings on issues related to the Medicaid rate, whether interim or final, as determined by a state

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other than New Jersey.

3. The conduct of all hearings shall conform to the requirements of the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B et seq. State administrative hearings are conducted by the Office of Administrative Law, who has developed and published their own procedural rules (N.J.A.C. 1:1-1.1 et seq.).

4. An out-of-state provider who requests a hearing would have the same rights, duties and obligations as an in-state provider. Additional regulations governing hearings are set forth at N.J.A.C. 10:49-5.1 et seq.

**(a)**

**DIVISION OF PUBLIC WELFARE**

**Public Assistance Manual  
Refugee Resettlement Program-Cuban/Haitian  
Entrant Program, Eligibility**

**Proposed Amendment: N.J.A.C. 10:81-10.7**

Authority: N.J.S.A. 44:7-6, 44:10-3; P.L. 97-363.  
Proposal Number: PRN 1985-478.

Submit comments by October 16, 1985 to:  
Audrey Harris, Director  
Division of Public Welfare  
CN 716  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

Current regulations at N.J.A.C. 10:81-10.7(e) provide that all employable AFDC-N and GA-type refugees and entrants who are not exempt from the work requirements cited at N.J.A.C. 10:81-10.7(i) must register with the Job Service (JS) office of the New Jersey Employment Service (NJES). However, Federal law (P.L. 97-363) provides that a refugee may only receive cash assistance if he or she agrees to participate in a social service program providing job or language training in the area in which he or she resides. Furthermore, such program must be funded under subsection 412(c) of the Immigration and Nationality Act (INA).

Hence, in compliance with the aforementioned Federal statute, N.J.A.C. 10:81-10.7(e) is being amended to provide that all non-exempt AFDC-N and GA-type refugees must register with the local employment service provider (ESP) as a condition of eligibility for assistance. An ESP is an agency which provides job and/or language training for refugees. Such services are funded by the Federal Office of Refugee Resettlement (ORR) through the Division of Youth and Family Services (DYFS). A list of ESP providers is provided to administering agencies and is available upon request.

The proposed amendment also provides that all AFDC-N and GA-type entrants, as well as those AFDC-N and GA-type refugees who are exempt from registration with an ESP because the commuting time from home to the ESP site is greater than one hour each way by reasonably available public or private transportation must register with the local NJES/JS office.

In addition, N.J.A.C. 10:81-10.7(h) is being amended to

provide that any non-exempt adult refugee or entrant who refuses, without good cause, either to register with the local ESP or NJES/JS, as appropriate, or to accept or continue any employment or training opportunity will incur the following penalties of ineligibility: (1) three payment months for the first refusal; and (2) six payment months for the second and each subsequent refusal.

Text at N.J.A.C. 10:81-10.7(f)1 currently provides that a refugee or entrant who is 18 years old and a full-time student shall be eligible for assistance "if the student is reasonably expected to complete a program of secondary school (or the equivalent level of vocational or technical training) before attaining age 19." However, Public Law 97-363 provides that cash assistance for refugees "shall not be made available to refugees who are full-time students in institutions of higher education (as defined by the Director after consultation with the Secretary of Education)." N.J.A.C. 10:81-10.7(f) is thus being amended to provide that a full-time student in an institution of higher education is not eligible for assistance. The amendment also provides, for the purposes of the Cuban/Haitian Entrant Program (CHEP) and the Refugee Resettlement Program (RRP), definitions for the following terms: (1) full-time student; (2) public or private institution of higher education; and (3) Proprietary institution or post-secondary vocational institution of higher education.

**Social Impact**

Positive social impact is anticipated as a result of the proposed amendment. By updating and revising the inconsistencies in N.J.A.C. 10:81-10 to comport with existing Federal regulatory change, both the AFDC client population and CWAs will be benefited. This benefit will be realized by ensuring that the State and CWAs are carrying out the intent of Federal regulations with respect to the equitable treatment of applicant and recipients.

**Economic Impact**

Savings in public assistance expenditures and administrative costs may be experienced from the proposed amendment, as it provides for a more uniform application of program policy consistent with Federal regulations.

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

10:81-10.7 Eligibility

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

(e) Work and training requirements: Refugees and entrants who are under the -C or -F segment of the AFDC program are subject to the work and training requirements governing that program.

1. (No change.)

2. Refugees and entrant cases that are under the N segment of the AFDC program and those considered GA-type cases are subject to the work and training requirements detailed in (e)2i through iii below:

[i. Work registration: All refugees and entrants who are not exempt from the work requirements (see (i) below) must register with the Job Service Office of the New Jersey Employment Service using Form NJES-511F, "New Jersey Division of Employment Services Self-Registration Application," and identifying RRP or CHEP on that form.]

**i. Registration for work or training:**

**(1) Employment Service Provider (ESP) registration: All AFDC-N and GA-type refugees who are not exempt from regis-**

## HUMAN SERVICES

## PROPOSALS

tration for work or training (see N.J.A.C. 10:81-10.7(i)), must be registered with the local ESP (a list of ESP providers is provided to administering agencies and is available upon request). ESP registration is accomplished when the sending agency (CWA or ESP) completes Form PA-54, Refugee Program Inter-Agency Referral. This form is used to monitor the progress of refugees in employment and language training. For applicants, Form PA-54 must be completed at the time an individual applies for assistance under RRP and immediately forwarded to the appropriate ESP unless already registered with that provider. For recipients, unless previously registered, this form must be completed and transmitted to the ESP when the case next comes to the attention of the worker or at the time of the next re-determination, whichever is earlier. Form PA-54 is to be completed in triplicate: the original is to be forwarded to the ESP, one copy is to be retained in the case record, and one copy is to be given to the client. A new Form PA-54 must be completed for each new or reopened case.

(2) New Jersey Employment Service/Job Services (NJES/JS): All AFDC-N and GA-type entrants and those AFDC-N and GA-type refugees who are exempt from registration with an ESP when commuting time from home to the ESP site is greater than one hour each way by reasonably available public or private transportation, who are not exempt from registration for work and/or training under N.J.A.C. 10:81-10.7(i), must register with the NJES/JS office. Registration is accomplished when the client completes Form NJES-511F, New Jersey Division of Employment Services Self-Registration Application. Form NJES-511F is used to match the client's skills and experience with possible employment opportunities. A copy of Form NJES-511F is retained in the case record and the original is sent to the NJES/JS office.

ii. [Appropriate w]Work and training criteria: All [employable] non-exempt refugees and entrants [must] are required to accept [appropriate] work or training opportunities. In the case of offers of employment or training made through the local job service (JS) office, the application of appropriate work criteria and initial determination whether there is good cause to refuse will be made by the JS office subject to review and final determination by the CWA. The job or training assignment must be related to the physical and mental capability of the individual to perform the task on a regular basis. Any claim of adverse affect to physical or mental health shall be based on an adequate medical testimony from a physician or licensed or certified psychologist indicating that participation would impair the individual's physical or mental health. The cost of obtaining such medical evidence is 100 percent reimbursable to the agency.

(1) (No change.)

iii. (No change.)

(f) Rules on refugees and entrants attending school are as follows:

1. (No change.)

2. A full-time student in an institution of higher education, as defined in (f)3 below, is not eligible for assistance. A full-time student is a student enrolled in an institution of higher education (other than a correspondence school) who is carrying a full-time academic workload as determined by the school, under standards applicable to all students enrolled in that particular program, provided that workloads are equal to or greater than those specified below.

i. 12 semester hours or 12 quarter-hours per academic term in those institutions using standard semester, trimester or quarter-hour systems;

ii. 24 semester hours or 36 quarter-hours per academic year

for institutions using credit hours to measure progress but not using semester, trimester or quarter-hour systems, or the prorated equivalent for programs of less than an academic year;

iii. 24 clock hours per week for institutions using clock hours;

iv. In those institutions using both credit and clock hours, if the sum of the following fractions is equal to or greater than one: the number of credit hours per term divided by 12 plus the number of clock hours per week divided by 24;

v. A series of courses or seminars which equals 12 semester hours or 12 quarter-hours in a maximum of 18 weeks; or

vi. The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

3. An institution of higher education is a public or private nonprofit institution of higher education, a proprietary institution of higher education or a postsecondary vocational institution of higher education.

i. A public or private nonprofit institution of higher education is an educational institution which provides any of the following:

(1) An educational program for which it awards an associate, baccalaureate, graduate or professional degree;

(2) At least a two-year program which is acceptable for full credit toward a baccalaureate degree; or

(3) At least a one-year training program which leads to a certificate or degree and prepares students for gainful employment in a recognized occupation.

ii. A proprietary institution or postsecondary vocational institution of higher education is an educational institution which provides at least a six-month program of training to prepare students for gainful employment in a recognized occupation.

[2]4. A refugee or entrant of any age who is otherwise eligible shall not be denied [case] cash assistance while enrolled and participating in a full-time training program which is approved by the welfare agency and intended to have a definite short-term (less than one year) employment objective.

(g) (No change.)

(h) Sanctions: Refusal of [an employable] a non-exempt adult [recipient] refugee or entrant to register with the [Employment Service] ESP or NJES/JS, as appropriate, or to accept or continue an employment or training opportunity without good cause will result in the following [actions] penalties of ineligibility:

[1. The welfare agency will provide (either directly or through arrangements with the Employment Service or an appropriate voluntary resettlement agency or sponsor) counseling within seven days intended to provide the refugee or entrant with an understanding of the implications of his refusal to accept employment or training and to encourage the refugee's or entrant's acceptance of such opportunity. Only one such counseling session is required but additional counseling may be provided at the discretion of the welfare agency.]

1. Three payment months for the first refusal; and

[2. If the employable refugee or entrant recipient continues to refuse an offer of employment or training, assistance will be terminated 30 days after the date of his original refusal. The refugee or entrant shall be given at least 10 days written notice of the termination of assistance and the reason therefore (see N.J.A.C. 10:81-6 and 7.1). This sanction shall be applied in the following manner:]

2. Six payment months for the second and each subsequent refusal.

i.-ii. (No change.)

[iii. A decision by the refugee or entrant to accept employment or training, made at any time within the 30-day period after the date of the original refusal, shall result in the continu-

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ation of assistance without interruption if the refugee or entrant continues to meet the income eligibility requirements for continued assistance.

iv. An employable refugee or entrant may reapply for assistance 30 days after the termination of assistance because of refusal to accept or continue employment or training.]

(i) Exemptions from employment or training requirements: The inability to communicate in English does not make the refugee or entrant "unemployable."

1. The following refugees and entrants are exempt from the employment or training requirements given in (e) above: i.-vi. (No change.)

vii. All refugees and entrants whose commuting time from home to the registration site is greater than one hour each way by reasonably available public or private transportation.

(j) (No change.)

**CORRECTIONS**

**(a)**

**BUREAU OF COUNTY SERVICES**

**Adult County Correctional Facilities Security; Strip Searches**

**Proposed Amendments: N.J.A.C. 10A:31-3.7 and 3.12**

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1-15 and 30:1B-10.

Proposal Number: PRN 1985-493.

Submit comments by October 16, 1985 to:

Louis Scavo, Chief  
Bureau of County Services  
Department of Corrections  
Whittlesey Road  
Post Office Box 7387  
Trenton, New Jersey 08628

The agency proposal follows:

**Summary**

The New Jersey Department of Corrections, pursuant to the authority of N.J.S.A. 30:1-15 and 30:1B-10, proposes to amend N.J.A.C. 10A:31-3.7 and 10A:31-3.12. These amendments concern the procedures for admitting new inmates into Adult County Correctional Facilities.

The proposed amendments address a change in the laws governing body strip searches.

N.J.A.C. 10A:31-3.7 provides for the basic provisions governing security of inmates into Adult Correctional Facilities. The proposed amendment will make minor changes in the wording of this provision to indicate the prerequisite statutory requirements needed to conduct strip searches and bodily searches pursuant to N.J.A.C. 10A:31-3.12(b)2.

N.J.A.C. 10A:31-3.12(b)2. provides for the basic provisions for the reception, orientation, release, and the property control of inmates in Adult Correctional facilities. The proposed

amendment has been restructured to clarify the requirements for a body cavity and strip search. The proposed N.J.A.C. 10A:31-3.12(b)2. incorporates the changes in strip search law pursuant to N.J.S.A. 2A:161A-1 to 2A:161A-10. Changes in the wording include the new threshold as to when and under what circumstances an inmate may be subjected to a body and strip search.

**Social Impact**

The proposed amendments will impact upon all adult correctional facilities which conduct bodily searches of inmates.

The proposed amendments are intended to contain a precise delineation of the circumstances and conditions which are required to effect a body and strip search in county adult correctional facilities.

**Economic Impact**

The proposed amendments will not increase State or local expenditures. The amendments to the reception of inmates in adult county correctional facilities should not require any additional cost to these facilities since they are presently complying with the provisions as proposed.

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

10A:31-3.7 Security

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

(c) The standards pertaining to security shall provide that:

1. All inmates admitted to the facility shall be thoroughly searched, **except that strip searches and body cavity searches shall be conducted only in accordance with the conditions set forth in N.J.A.C. 10A:31-3.12(b)2.** If for any reason [they] inmates are permitted to leave the facility, they [shall be thoroughly searched before leaving and upon their return.] **may be strip searched upon their return to custody.**

2.-54. (No change.)

10A:31-3.12 Reception, orientation, release and property control

(a) (No change.)

(b) The standards pertaining to reception, orientation, release and property control shall provide that:

1. (No change.)

2. [All newly admitted inmates shall be thoroughly searched. Each newly admitted inmate shall be strip-searched for weapons and contraband. This search also shall include a check for body vermin, cuts, bruises, needle scars, and other injuries. The strip-search shall be conducted in private and in a manner that preserves the dignity of the inmate. Newly admitted female inmates shall be strip-searched for a female staff member in an area separate from that of male inmates. Such searches shall be conducted under sanitary conditions.] **No newly admitted inmate may be subjected to a strip search or body cavity search unless the following conditions are met:**

i. **The person is being lodged in a lockup, detention facility, prison or jail by court order or pursuant to an arrest authorized by law; and**

ii. **The person has been 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 station house.**

iii. **Newly admitted inmates who may be strip searched pursuant to the above conditions, shall be strip searched for**

weapons and contraband. This search shall also include a check for body vermin, cuts, bruises, needle scars and other injuries.

iv. The strip search shall be conducted in private, and at a location where the search cannot be observed by persons not physically conducting the search.

v. Newly admitted female inmates shall be strip searched by a female staff member in an area separate from that of male inmates.

vi. All searches shall be conducted under sanitary conditions.

vii. The law enforcement officer or other person authorized to conduct a strip search or body cavity search shall obtain permission of the officer in charge of the station house to conduct the search and shall report the reason for the search on the record of arrest.

viii. A body cavity search shall be conducted only by a licensed physician or registered professional nurse.

ix. Under no circumstances, may a body cavity search be conducted, unless the officer in charge of the station house is satisfied that probable cause exists that the person is concealing contraband in his or her body cavity.

x. A written report of the result of a body cavity search shall be made part of the inmate's arrest record.

3.-9. (No change.)

# INSURANCE

## (a)

### DIVISION OF THE REAL ESTATE COMMISSION

#### Fingerprinting/Criminal History Checks

#### Proposed Repeal and New Rule: N.J.A.C. 11:5-1.29

Authorized By: Hazel Frank Gluck, Commissioner, Department of Insurance.

Authority: N.J.S.A. 45:15-6 and P.L. 1985, c. 69.

Proposal Number: PRN 1985-508.

Submit comments by October 16, 1985 to:  
Verice M. Mason, Director  
Legislative and Regulatory Affairs  
Department of Insurance  
CN 325  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The proposed new rule, N.J.A.C. 11:5-1.29, provides for a criminal history name search in lieu of the current rule concerning fingerprints for all license applicants.

On March 7, 1985, Senate Bill S-788 was signed into law (P.L. 1985, c. 69), providing statutory fees for the processing of state criminal history record checks for non-criminal licensing and employment purposes. This statute provides for a fee of \$12.00 for processing an applicant's fingerprint card; a name search request on a state police-approved form is \$8.00. According to a newsletter distributed to state agencies by the

New Jersey State Police Records and Identification Section, the start date for this program is October 1, 1985.

The proposed amendment would eliminate the requirement that all new license applicants submit fingerprint cards for a criminal history check. Instead new applicants must submit a completed Request for Criminal History Record Information on a State Police form, and the new statutory fee, payable to the State Police, for processing it. Subsection (a) of the proposed regulation requires this of all natural person license applicants. Subsection (b) requires this of all officers, directors, partners or other controlling persons of corporate or partnership licensees. Subsection (c) permits the Commission upon request to require specific licensees to have fingerprints taken and submit them for a record check. This may be necessary occasionally if an individual has applied for license using a different name.

Because real estate licensees act as agents for consumers in transactions of substantial importance and often act as fiduciaries, their conviction of crimes, particularly those involving dishonesty, is an important consideration in licensing.

#### Social Impact

The proposed amendment impacts upon real estate licensees and the public they serve. It should have a positive social impact in that criminal history record checks can serve to guarantee the integrity of those to whom real estate licenses are issued.

#### Economic Impact

The proposed new rule will impact upon licensed applicants and the Real Estate Commission staff. It will have a positive economic impact on license applicants. According to the new legislation, a name search request costs \$8.00. The present rule requiring submission of fingerprint cards would cost an applicant \$12.00 for processing plus whatever fee the applicant is charged by the agency taking the impressions.

The proposed new rule will have a positive economic impact on the Real Estate Commission staff as experience has shown that approximately 10 percent of all fingerprint cards received must be rejected and resubmitted because they are illegible. This requires double handling of these applications, and additional personnel time.

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

[11:5-1.29 Fingerprinting]

[(a) The applicant, if a natural person, shall in connection with his or her original application for a salesperson's or broker's license, have his or her impressions taken by a recognized law enforcement agency on a State policy fingerprint (non-criminal) and submit same with his application to sit for the examination unless already submitted and on file with Commission.

(b) The applicant, if a corporation or partnership (general or limited), shall in connection with its original application for a broker's license, have impressions taken by a recognized law enforcement agency on a State policy fingerprint card (non-criminal) for each officer, director or controlling person, active or inactive, within three months from the effective date of the issuance of the license so applied for.

(c) Holders of multiple licenses shall be required to file only one State police fingerprint card.]

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**11:5-1.29 Criminal history record check**

(a) The applicant, if a natural person, shall submit with his or her application for salesperson's or broker's license a New Jersey State Police Request for Criminal History Record Information and a certified check or money order to pay for its processing.

(b) The applicant, if a corporation or partnership, shall submit with its application for license New Jersey State Police Requests for Criminal History Record Information, and certified checks or money orders to pay for their processing, for each officer, director, partner or controlling person.

(c) Upon request, licensees shall have impressions taken and submit them to the Commission on a New Jersey State Police fingerprint card, with a certified check or money order to pay for their processing, for any natural person licensee or any officer, director, partner or controlling person of any licensed corporation or partnership.

**LAW AND PUBLIC SAFETY**

**(a)**

**DIVISION OF MOTOR VEHICLES**

**Driver Control Service  
Point System and Driving During Suspension**

**Proposed Amendment: N.J.A.C. 13:19-10.1**

Authorized By: Robert S. Kline, Acting Director,  
Division of Motor Vehicles.  
Authority: N.J.S.A. 39:5-30, 39:5-30.5, and P.L. 1985,  
c. 154, §2 (C. 39:5-30.5a).  
Proposal Number: PRN 1985-502.

Submit comments by October 16, 1985 to:  
Robert S. Kline, Acting Director  
Division of Motor Vehicles  
25 So. Montgomery Street  
Trenton, New Jersey 08666

The agency proposal follows:

**Summary**

The proposal amends the Point System Regulation to provide that two points shall be assessed against a driver convicted of violating P.L. 1985, c. 154, §1 (C. 39:4-97a), which pertains to the destruction of agricultural or recreational property by a motorist. The proposal brings the Point System Regulation into conformity with P.L. 1985, c. 154, § 2 (C. 39:5-30.5a), which requires that the Director of the Division of Motor Vehicles include a violation of P.L. 1985, c. 154, §1, as an offense for which points will be assessed against the convicted driver.

**Social Impact**

The proposed amendment is intended to foster safe driving habits among New Jersey licensed drivers. Those licensees who persistently violate this State's motor vehicle laws and acquire an excessive number of points are subject to suspension of their New Jersey driving privileges by the Division of Motor Vehicles.

**Economic Impact**

The State of New Jersey funds the operations of the Division of Motor Vehicles, which is responsible for updating the driving records of New Jersey licensees to reflect point system offenses and for taking suspension action against point system offenders. The proposal has a direct economic impact on the public in that insurance surcharges will be assessed against drivers who accumulate points in accordance with P.L. 1983, c. 65, as amended and supplemented by P.L. 1984, c. 1.

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

**13:19-10.1 Point assessment**

Any person who is convicted of any of the following offenses, including offenses committed while operating a motorized bicycle, shall be assessed points for each conviction in accordance with the following schedule:

SECTION NUMBER	OFFENSE	POINTS
1.-33.	(No change.)	
34.	<b>N.J.S.A. 39:4-97a Destruction of agricultural or recreational property</b>	<b>2</b>
	Renumber existing 34.-52. as <b>35.-53.</b> (No change in text.)	

**(b)**

**BOARD OF MEDICAL EXAMINERS**

**Requirements for Approval of Colleges of  
Chiropractic**

**Proposed Amendment: N.J.A.C. 13:35-2.4**

Authorized By: Board of Medical Examiners, Edward  
M. Luka, M.D., President.  
Authority: N.J.S.A. 45:9-2.  
Proposal Number: PRN 1985-505.

Submit comments by October 16, 1985 to:  
Charles A. Janousek, Executive Secretary  
Board of Medical Examiners  
28 West State Street  
Trenton, New Jersey 08608

The agency proposal follows:

**Summary**

The proposed amendment extends from August 1, 1987 to March 31, 1988, the opportunity for a graduate of certain chiropractic colleges to sit for this State's licensure examination.

**Social Impact**

The proposal takes into account an assertion by one chiropractic college that its students who had already matriculated by March 4, 1985, the date of promulgation of a significant prior amendment to this subsection of the rule, would not have completed their normal course of studies by the cutoff date set forth in the current rule. The proposed amendment will permit a normal progression of studies followed by

**LAW AND PUBLIC SAFETY**

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the taking of the earliest licensure examination given in this State subsequent to the graduation date of that class of students.

**Economic Impact**

No economic impact is expected since all persons attaining a chiropractic license in this State are expected to adhere to the same standards of practice. Those graduating from colleges which have provided less than the customary scope of educational studies may find it more difficult to pass the licensure examination and will not have a subsequent opportunity in the event they fail that first available examination.

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

13:35-2.4 Requirements for approval of colleges of chiropractic

(a)-(j) (No change.)

(k) The requirement of N.J.S.A. 45:9-41.5 that an applicant for chiropractic licensure shall have graduated from an approved school(s), institution(s), or college(s) of chiropractic shall mean that the school was approved during the entire course of the applicant's training by the Council on Chiropractic Education or other accrediting agency having prior approval of the Board. Board approval of a college's accreditation shall be effective for a period not to exceed five years. Renewed approval may be sought prior to the end of that period. The Board may also inspect the school prior to determining its approval. However, any graduate of a chiropractic college who was a bona fide student in good standing enrolled at a school which, prior to [the effective date of this rule] **March 4, 1985**, was approved by the Board, shall upon proof of satisfaction of all other statutory prerequisites, be deemed eligible to sit for the licensure examination in this State until [August 1, 1987] **March 31, 1988** and not thereafter.

**(a)**

**BOARD OF NURSING**

**Reporting Unlawful Conduct**

**Proposed New Rule: N.J.A.C. 13:37-1.4**

Authorized By: New Jersey State Board of Nursing, Sylvia Edge, R.N., M.A., President.  
Authority: N.J.S.A. 45:1-21(e) and 45:11-24(d)(19).  
Proposal Number: PRN 1985-501.

Submit comments by October 16, 1985 to:  
Sister Teresa Louise Harris  
Executive Secretary  
State Board of Nursing  
1100 Raymond Boulevard, Room 319  
Newark, New Jersey 07102

The agency proposal follows:

**Summary**

The proposed new rule codifies the existing guidelines on reporting unlawful conduct and professional responsibility that every nursing licensee report to the Board of Nursing any incident which may violate the Nurse Practice Act, N.J.S.A.

45:11-23 et seq.

**Social Impact**

The proposed new rule will have a favorable impact on all concerned. It will insure the public that nurse misconduct will be fully investigated and acted upon by the Board of Nursing. It will clarify for nursing licensees and health care facilities the professional responsibility to report all incidents which appear to violate the Nurse Practice Act. It will aid the Board of Nursing in investigating and resolving disciplinary matters.

**Economic Impact**

The proposed new rule will have a favorable economic impact on all concerned. It will facilitate investigation of disciplinary matters for the Board of Nursing. It will promote the expeditious reporting of unlawful conduct to benefit the public interest.

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

13:37-1.4 Reporting unlawful conduct

Every nurse licensee shall report in a timely manner to the Board of Nursing or its designated representative any and all incidents or series of incidents which upon objective evaluation leads to the good faith belief that the conduct is in violation of the Nurse Practice Act (N.J.S.A. 45:1-14, 45:11-23 et seq.) or any regulation adopted by the Board. (See the "Guidelines on Reporting Unlawful Conduct" available on request from the Board of Nursing office.)

**(b)**

**DIVISION OF CONSUMER AFFAIRS**

**Unit Pricing of Consumer Commodities in Retail Establishments**

**Proposed Readoption: N.J.A.C. 13:45A-14**

**Proposed Amendments: N.J.A.C. 13:45A-14.2, 14.3**

Authorized By: Division of Consumer Affairs, James J. Barry, Jr.,  
Authority: N.J.S.A. 56:8-21 et seq., specifically 56:8-25.  
Proposal Number: PRN 1985-506.

Submit comments by October 16, 1985 to:  
James J. Barry, Jr., Director  
Division of Consumer Affairs  
1100 Raymond Boulevard, Room 504  
Newark, New Jersey 07102

The agency proposal follows:

**Summary**

N.J.A.C. 13:45A-14 was initially adopted in August 1976 and was amended in October 1980. The rules implement the Unit Price Disclosure Act (N.J.S.A. 56:8-21 et seq.) which provides consumers information necessary to compare the retail prices of regulated commodities according to standard designations of size or quantity.

There have been minor changes in the proposed text for

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readoption. Specifically, there is a clarification in the definition of "Person." Additionally, clarification has been added in the section pertaining to exempted "Persons and Operations." The definition of "Person" now applies to any retail establishment, whether a one-store operation or one in a series of retail establishments, whose combined total floor area or combined annual gross receipts exceed the indicated limits. Parallel distinctions have been introduced in the section pertaining to exempted "Persons and Operations." Further, a provision has been added to permit the Division of Consumer Affairs, upon reasonable notice, to review applicable documentation of any retail establishment claiming exemption from required compliance with the rules.

The rules clearly define regulated consumer commodities and their approved units of measure, exempt consumer commodities, standard methods of calculation of the numerical unit price of regulated commodities, and standard approved formats for display of the required unit price information.

**Social Impact**

The rules permit consumers to make informed decisions on purchases in regulated retail establishments. They provide the consumer simplified standards to readily compare the prices per unit of measure for comparable regulated commodities. In addition to other factors entering into consumers' purchase decisions, such as package size and desired frequency of shopping, they allow the consumer the ability to utilize cost per standard quantity or size as an additional factor in shopping decisions.

The improved standardized methods of comparison available to consumers also tend to improve the retail selling environment by enhancing consumer confidence in the utility of their shopping decisions.

**Economic Impact**

The rules have minimal economic impact on the regulated retail establishments and food store chains. Since the regulated establishments are relatively large scale operations, the cost and inconvenience of maintaining unit price information is minimal, especially in light of recent advances and implementation of computerized checkouts, including scanner/laser technology.

Consumers benefit economically by an enhanced ability to add comparative cost considerations to any additional factors, for example, package size and preferred frequency of shopping visits, that they normally utilize in their pertinent retail purchasing. The environment of enhanced consumer confidence in the economic soundness of their purchase decisions, as well as retailer certainty as to defined standards applicable throughout the competitive industry, result in economic benefit and greater confidence for both the consumer and retailer.

**Full text** of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 13:45A-14.

**Full Text** of the amendments to the readoption follows (additions shown in boldface **thus**; deletions shown in brackets [thus]).

13:45A-14.2 Definitions

• • •

"Person" means any natural person, partnership, corporation or other organization engaged in the sale, display or offering for sale of consumer commodities at retail [from one

or more retail establishment] whose combined total floor area, exclusive of office, receiving and storage areas, dedicated to the sale of consumer commodities exceeds 4,000 square feet or whose combined annual gross receipts from the sale of consumer commodities in the preceding year exceeded \$2 million, regardless of the square footage involved.

13:45A-14.3 Persons and operations exempted from complying with Unit Price Disclosure Act

(a) The following persons or entities shall be exempted from complying with this subchapter and the terms of the Unit Price Disclosure Act:

1. (No change.)
2. Any person owning and operating a single retail establishment [or a series of retail establishments each] having a total floor space of 4,000 square feet or less, regardless of the annual gross receipts from the sale of consumer commodities therein.
- 3.-4. (No change.)

**5. An exempt person shall maintain sufficient documentation which may be necessary to support a claim of exemption. The Division of Consumer Affairs, upon reasonable notice, shall have the right to examine said documentation.**

**OFFICE OF WEIGHTS AND MEASURES**

Proposals numbered PRN 1985-500, 503 and 504 are authorized by Thomas W. Kelly, State Superintendent, Office of Weights and Measures.

Submit comments by October 16, 1985 to:

Thomas W. Kelly  
State Superintendent  
New Jersey Office of  
Weights and Measures  
187 West Hanover St.  
Trenton, NJ 08625

**(a)**

**National Bureau of Standards Handbook 44**

**Proposed Amendment: N.J.A.C. 13:47B-1.20**

Authority: N.J.S.A. 51:1-61.

Proposal Number: PRN 1985-500.

The agency proposal follows:

**Summary**

In accordance with the provisions of N.J.S.A. 51:1-61, the State Superintendent proposes to amend N.J.A.C. 13:47B-1.20 in order to promulgate the National Bureau of Standards Handbook 44, 1985 Edition, and all future editions as the legal requirements for all commercial weighing and measuring devices in the State of New Jersey.

**Social Impact**

The proposed amendment sets the specifications, tolerances and other technical requirements for commercial weighing and measuring devices in New Jersey and will provide a single standard reference to govern regulatory officials in their official decisions to the suitability of commercial weighing and measuring devices to determine quantity transfers in the marketplace.

**Economic Impact**

The public will be protected from the use of inaccurate or fraudulent weighing and measuring devices and weights and measures officers will have a scientific standard to apply to commercial weighing and measuring devices during official inspection and testing of these commercial weighing and measuring devices.

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

13:47B-1.20 National Bureau of Standards Handbook 44  
 All specifications, tolerances and [regulations] **other technical requirements** for weighing and measuring devices contained in National Bureau of Standards Handbook H-44, [1984 Edition] **1985 and all future editions** together with all amendments and supplements thereto, adopted by the National Conference on Weights and Measures are hereby adopted and promulgated as the legal requirements for all weighing and measuring devices used for commercial purposes and law enforcement in the State of New Jersey; provided, however, that the Superintendent of the Office of Weights and Measures of the **Division of Consumer Affairs**, Department of Law and Public Safety may from time to time further amend or supplement said specifications, tolerances [regulations] **and other technical requirements** for the purpose of conforming to the needs of any situation affecting the interests of the State and its people.

**(a)**

**Registry for Security Sealing Devices**

**Proposed New Rule: N.J.A.C. 13:47B-1.24**

Authority: N.J.S.A. 51:1-118.  
 Proposal Number: PRN 1985-503.

The agency proposal follows:

**Summary**

In accordance with the provisions of N.J.S.A. 51:1-118, the State Superintendent proposes to adopt a new rule establishing a central registry for the marks placed on security sealing devices by weights and measures licensed repairmen. This registry will establish for the first time a means of determining which licensed repairman had serviced a weight or measure or a weighing or measuring device. In addition, the rule provides that a repairman who violates certain provisions of the rule shall be subject to a license suspension or revocation.

**Social Impact**

In order that both licensed repairmen of commercial weights and measure or weighing and measuring devices and the consuming public be protected from those that would alter tested and sealed weights and measures or weighing and measuring devices by the destruction of official sealing devices, all licensed repairmen will register their security sealing dies with the office of the State Superintendent of Weights and Measures.

Registration of security sealing dies by licensed repairmen will enable both State and local weights and measures officers to ascertain if a repaired or adjusted weight or measure or

weighing and measuring device has been repaired or adjusted by a bona fide licensee.

**Economic Impact**

The Office of Weights and Measures, the licensing agency, will have an additional administrative code to register the sealing die designs but the licensees face little or no cost beyond postage because sealing dies have to be renewed annually in any event.

The consuming public will benefit the most from this rule by being protected from the use of altered weights and measures and weighing and measuring devices through the use of bogus sealing devices by either licensed repairmen or private persons.

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

13:47B-1.24 Registry for security sealing devices

(a) Licensed repairman means any person engaging in the partial or complete constructing and reconstructing, repairing, altering, installing or adjusting of any weight or measure or any weighing and measuring device, used in trade or commerce, in New Jersey, as set forth in N.J.S.A. 51:1-113 et. seq.

(b) "Security sealing device" means any mechanical device used to block or prevent entry to the adjustable elements of any weight or measure or any weighing and measuring device used in trade or commerce in New Jersey.

(c) "Weights and measures and weighing or measuring devices" means a "weight or measure" or "weights and measures" as set forth and defined by N.J.S.A. 51:1-2.

(d) The State Superintendent of Weights and Measures, in the Division of Consumer Affairs, Department of Law and Public Safety, State of New Jersey, shall design and adopt an official registry for security sealing devices. Said registry shall be used to issue to any and all licensed repairmen a distinct and individual combination of letters and numerals which will be that licensed repairman's registry mark.

(e) All licensed repairmen shall incorporate his or her registry mark into and upon any security sealing device affixed by that licensed repairman to any weights or measures or weighing and measuring device partially or completely constructed, repaired, altered, installed or adjusted by said licensed repairman.

(f) No weighing or measuring device shall be permitted to be used for any commercial purpose unless the devices adjustable elements are blocked and sealed by a security sealing device bearing the registry mark of a licensed repairman or that of a weights and measures officer.

(g) Any licensed repairman who shall issue a false certificate of inspection and test of a commercial weight or measure or weighing and measuring device or who shall delegate his or her authority or registry mark, to any person, shall be subject to the revocation or suspension of his or her license as provided in N.J.S.A. 51:1-122.

(h) Any violation of or non compliance with the provisions of this section shall subject the violator thereof to the penalties authorized by N.J.S.A. 51:1-113, et. seq.

**(b)**

**Standard for Treated Lumber**

**Proposed Amendment: N.J.A.C. 13:47C-3.6**

**PROPOSALS**

**PUBLIC UTILITIES/ENERGY**

Authority: N.J.S.A. 51:4-31.  
 Proposal Number: PRN 1985-504.

The agency proposal follows:

**Summary**

In accordance with the provisions of N.J.S.A. 51:4-31, the State Superintendent proposes to amend the rule adopting the standards for treated lumber. The amendments set forth exemptions for the sale and delivery of non AWPA standard treated lumber and set forth requirements to be followed for the labeling of such non AWPA treated lumber.

**Social Impact**

The proposed amendments which will provide exemptions and labeling requirements have proven to be needed to allow the sale and delivery of treated lumber in New Jersey which is to be used for above ground, decorative and landscaping purposes only.

**Economic Impact**

There will be little or no additional cost to either the regulating agency, the lumber treaters or retail lumber dealers because the proposed amendments have been promulgated by the State Superintendent as guidelines, on a trial basis, since early 1984 and are essentially in place in the marketplace.

The greatest economic benefit will be to the consuming public who will be able to choose from clearly labeled treated lumber products that item(s) which will fill the consumers needs, at the best possible price, and still provide the consumer with the appropriate degree of protection for his or her particular construction purposes.

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

13:47C-3.6 Standard for treated lumber

(a) All preservatives, commodities, analysis methods, miscellaneous standards, conversion factors and correction tables for treated lumber so contained in the "Book of Standards" published by the American Wood Preservers Association (AWPA), 7753 Georgetown Road, Bethesda, Maryland, 20814, together [will] **with** all amendments and supplements thereto, are hereby adopted by reference as the legal requirements for treated lumber sold, sold and delivered, offered or advertised for sale to consumers as building materials in the State of New Jersey.

(b) Treated lumber sold, sold and delivered, offered or advertised for sale to consumers as building materials in the State of New Jersey with a preservative retention of less than .4 of a pound per cubic foot (**hereinafter referred to as pcf**) shall in addition to being graded, measured, and labeled in accordance with the requirements of N.J.S.A. 51:4-25, bear legible treatment marks that contain the following minimum information:

1. The year of treatment;
2. The treaters trademark, **if any**;
3. The preservative used in treatment;
4. The applicable AWPA or equivalent standard;
5. The maximum or worst exposure conditions to which the [pressure] treated wood should be subjected;
6. Treating company name and plant location.

(c) [Because of] **Due to industry practices and standards recognized by the Superintendent pursuant to N.J.S.A. 51:4-24**, treated lumber with waterborne preservative retentions in ex-

cess of .4[pound per cubic foot] **pcf** or equivalent [may carry] **need** only carry a treatment mark with the information required in (b) **1 through 6** above.

[(d) Any violation of or non compliance with the provisions of this section shall subject the violator to a penalty of not less than \$50.00 nor more than \$100.00 for the first offense, not less than \$100.00 nor more than \$250.00 for the second offense, and not less than \$250.00 nor more than \$500.00 for each subsequent offense, as authorized by N.J.S.A. 51:4-38.]

(d) **Hardwoods as listed in the National Hardwood Lumber Association Rule Book which are treated to either plus or minus .4 pcf need only carry a treatment mark as described in (b)1 through 6 above.**

(e) **Rough finished lumber treated to plus or minus .4 pcf, which are either hardwoods as described in (d) above or softwoods as set forth in National Bureau of Standards Product Standard 20-70, need only carry a treatment mark as described in (b)1 through 6 above.**

(f) **Treated timbers, treated to plus or minus .4 pcf including both hardwoods and softwoods as defined in (d) and (e) above, five inches (nominal size) in thickness or larger; surfaced four sides —S4S— or rough finished, 12 feet or less in length need not carry a grademark but must carry a treatment mark.**

(g) **Any treated lumber product treated to a plus or minus .4 pcf, sold and delivered, offered or advertised for sale to consumers by the use of any media, exclusively for landscaping or gardening purposes that for any reasons are not treated in complete accordance with the applicable AWPA standards for that treated lumber product, need not be grademarked but must be labeled with the following minimum information:**

1. The year of treatment;
2. The treaters trademark, **if any**;
3. The preservative used in the treatment;
4. The words "Non AWPA standard";
5. The words "Above ground use only";
6. The name and address of the treating company or plant.

(h) **The exemptions listed above in (c) through (g) from the grademarking requirements pertain only to those treated lumber products specifically enumerated within the subsections. All other treated lumber products, building materials, as defined in N.J.S.A. 51:4-23 must fully comply with all provisions of law.**

(i) **Any violation of or non compliance with the provisions of this regulation shall subject the violator to the penalties set forth in N.J.S.A. 51:4-38.**

**PUBLIC UTILITIES**

**BOARD OF PUBLIC UTILITIES**

The following proposals are authorized by the Board of Public Utilities. Barbara A. Curran, President.

**(a)**

**Rules of Practice: General Provisions; Petitions**

**Proposed New Rules: N.J.A.C. 14:1-1 and 14:1-6**

Authority: N.J.S.A. 48:2-12 and 48:2-13.  
 BPU Docket Number: AX 8507795.  
 Proposal Number: 1985-481.

**PUBLIC UTILITIES/ENERGY****PROPOSALS**

Submit comments by October 16, 1985 to:  
 Eugene J. Byrne, Esq.  
 Regulatory Officer  
 Board of Public Utilities  
 1100 Raymond Boulevard  
 Newark, New Jersey 07102

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 14:1-1 (Rules of Practice; General Provisions) and 14:1-6 (Petitions) expired on April 23, 1984. Since the rules have expired, they are being proposed by the Board of Utilities as new rules.

In September 1983 the Board submitted a comprehensive proposed revision and amendment of its Rules of Practice, N.J.A.C. 14:1, including N.J.A.C. 14:1-1 (General Provisions) and N.J.A.C. 14:1-6 (Petitions), to the Office of Administrative Law (OAL) for publication in the New Jersey Register. The September 1983 submittal took cognizance of the establishment of the OAL and the transfer of the Board's functions, powers and duties in respect to autobuses and railroads to the Department of Transportation, both of which were subsequent to the promulgation of most of the Board's Rules of Practice.

The OAL objected to the 1983 submittal on the ground that many of the rules were unnecessary or would be covered by substantially similar or identical general or special rules then to be proposed and adopted by that Office. Such objections have not yet been resolved. Pending a comprehensive revision of the Board's Rules of Practice, the public will best be served by adopting as new rules the expired text of N.J.A.C. 14:1-1 and N.J.A.C. 14:1-6 on an interim basis.

N.J.A.C. 14:1-1 contains general provisions for the operation of the Board of Public Utilities.

The substantive provisions of the rules are summarized as follows:

- N.J.A.C. 14:1-1.1 defines the scope of the rules.
- N.J.A.C. 14:1-1.2 provides that the rules shall be liberally construed.
- N.J.A.C. 14:1-1.3 defines certain terms.
- N.J.A.C. 14:1-1.4 lists the address of the BPU.
- N.J.A.C. 14:1-1.5 lists the hours of operations of the BPU.
- N.J.A.C. 14:1-1.6 specifies the session and hearings of the BPU.
- N.J.A.C. 14:1-1.7 concerns communications with the BPU.
- N.J.A.C. 14:1-1.8 concerns official records of the BPU.
- N.J.A.C. 14:1-1.9 concerns the use of cameras and recording devices in proceedings before the BPU.
- N.J.A.C. 14:1-6 contains provisions governing petitions filed with the Board of Public Utilities.

The substantive provisions of the rules are summarized as follows:

- N.J.A.C. 14:1-6.1 delineates the form and content of petitions.
- N.J.A.C. 14:1-6.2 concerns applications to regulatory bodies in addition to the BPU.
- N.J.A.C. 14:1-6.3 concerns joinder of requests for relief.
- N.J.A.C. 14:1-6.4 delineates the procedure to be followed by the BPU on the filing of a petition.
- N.J.A.C. 14:1-6.5 concerns the granting of ex parte or emergency relief.
- N.J.A.C. 14:1-6.6 concerns petitions for approval of franchises or consents.
- N.J.A.C. 14:1-6.7 concerns petitions for approval of municipal consents for the operation of autobuses.

- N.J.A.C. 14:1-6.8 concerns petitions for the approval of changes in the operation of autobuses.
- N.J.A.C. 14:1-6.9 concerns petitions for approval of the transfer of municipal consents for autobuses.
- N.J.A.C. 14:1-6.10 concerns petitions for the approval of the sale or lease of property.
- N.J.A.C. 14:1-6.11 concerns petitions for authority to change depreciation rates.
- N.J.A.C. 14:1-6.12 concerns petitions for authority to exercise power of eminent domain.
- N.J.A.C. 14:1-6.13 concerns petitions for authority to issue stocks, bonds, notes and other evidence of indebtedness or to execute mortgages.
- N.J.A.C. 14:1-6.14 concerns petitions for authority to transfer capital stock.
- N.J.A.C. 14:1-6.15 concerns tariff filings which do not propose increases in charges to customers.
- N.J.A.C. 14:1-6.16 concerns tariff filings or petitions which propose increases in charges to customers.
- N.J.A.C. 14:1-6.17 concerns informal complaints in lieu of a petition.
- N.J.A.C. 14:1-6.18 concerns petitions for approval of a merger or consolidation.
- N.J.A.C. 14:1-6.19 concerns petitions for permission to keep books and records outside the State of New Jersey.
- N.J.A.C. 14:1-6.20 concerns transcript expenses.
- N.J.A.C. 14:1-6.21 concerns the co-extensive jurisdiction of the Department of Energy.

**Social Impact**

The rules contained in N.J.A.C. 14:1-1 provide for the interpretation and implementation of the Board's Rules of Practice. N.J.A.C. 14:1-6 contains rules governing petitions filed with the Board. The latter rules set forth the requirements to be met in filing petitions for various types of relief, including petitions for new rates for service.

Both N.J.A.C. 14:1-1 and 14:1-6 provide guidance to utilities, consumers and the general public when they seek relief and information from the Board of Public Utilities.

**Economic Impact**

N.J.A.C. 14:1-1 has no specific economic impact since it simply concerns general provisions of an administrative nature. N.J.A.C. 14:1-6 has an economic impact on petitioners in that they must assume the costs related to the preparation, filing and prosecution of various petitions before the Board.

These rules have had no adverse economic impact upon consumers, the utility companies, or the Board of Public Utilities with respect to administrative costs, and their proposal as new rules will not cause any new costs to consumers, the utility companies or the Board.

Full text of the expired rules proposed as new rules appears in the New Jersey Administrative Code at N.J.A.C. 14:1-1 and 14:1-6.

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**(a)**

**Meters****Adjustment of Charges**

**Proposed Repeal: N.J.A.C. 14:3-4.7**

**Proposed New Rule: N.J.A.C. 14:3-4.7**

## PROPOSALS

Authority: N.J.S.A. 48:2-12 and 48:2-13.  
BPU Docket Number: AX 840283.  
Proposal Number: PRN 1985-491.

Submit comments by October 16, 1985 to:  
Michael S. Keszler  
Regulatory Officer  
Board of Public Utilities  
1100 Raymond Boulevard  
Newark, New Jersey 07102

The agency proposal follows:

### Summary

The proposed new rule rewrites N.J.A.C. 14:3-4.7 and replaces a proposal which was published March 19, 1984 at 16 N.J.R. 511. In its current form, the rule provides for adjustment of a utility customer's bill only if a meter is registering fast by two percent or more. If the time period covered by the fast metering is known, a full adjustment is made. If the time period is unknown, the amount of the adjustment is calculated by applying the discovered error rate to one-half of the total billed amount since the last meter test, or for the last six years, whichever is shorter.

The proposed new rule provides for full adjustment of utility bills if a meter registers fast or slow by two percent or more. If the time period of inaccurate metering is known, a full adjustment is made. If the time period of inaccurate metering is unknown, the amount of the adjustment for overcharged accounts is calculated by applying the error rate to the total billed amount since the last meter test, or for the last six years, whichever is shorter. When an inaccurate meter has caused undercharging for an unknown period of time, the amount of the adjustment is calculated by applying the error rate to one-half of the total billed amount since the last meter test, or for the last six years, whichever is shorter.

The proposed rule allows an overcharged customer to choose adjustment by refund or by credit to his or her account. The customer will also receive interest on any overcharged amounts.

The proposed rule will allow full adjustment to accounts where the meter has been subject to tampering. The period of adjustment in these cases will not be limited to six years.

The proposed rule retains the current definition of an accurate meter, that is, one which registers fast or slow by less than two percent.

### Social Impact

The social impact of this rule will be to recognize that the burden of maintaining meter accuracy lays more heavily on the utility than on the customer. In addition, the utility companies, for the first time, will have guidelines to follow in the collection of undercharges. Customers in undercharge situations will have a clearer understanding of the utility's rights and obligations, as well as their own.

Finally, by allowing full adjustment in tampering situations, the Board hopes to discourage such actions on the part of utility customers.

### Economic Impact

The economic impact of the rule is expected to be that more customers will pay the proper amount for the utility service received. This, in turn, should reduce the costs for service which are passed through to all ratepayers.

Implementation of this rule is not expected to impose any

## PUBLIC UTILITIES/ENERGY

additional costs on the Board of Public Utilities, and in fact will expedite settlement of customer complaints which are filed with the Board.

Full text of the proposed repeal can be found in the New Jersey Administrative Code at N.J.A.C. 14:3-4.7.

Full text of the proposed new rule follows.

### 14:3-4.7 Adjustment of charges

(a) Whenever an inaccurate meter has caused a customer to be undercharged or overcharged for gas, water or electricity consumed, an adjustment for the undercharge or overcharge shall be made in accordance with this section. An inaccurate meter is a meter which has registered improperly, due to any cause other than tampering.

1. If the date when the meter had first become inaccurate can be definitely ascertained, then the adjustment in billing shall be such percentage as the meter is found to be in error at the time of test applied to all bills for the period of inaccurate metering. However, in no case shall adjustments be made for a period which exceeds six years.

2. If the date when the meter had first become inaccurate is not ascertainable, then:

i. In the case of undercharged accounts, the adjustment in billing shall be such percentage as the meter is found to be in error at the time of testing applied to one-half of the total amount of billing since the time of the previous test, but not to exceed a period of six years.

ii. In the case of overcharged accounts, the adjustment in billing shall be such percentage as the meter is found to be in error at the time of testing applied to the total amount of billing affected by the inaccurate meter since the time of the previous test, but not to exceed a period of six years.

(b) Under this section, adjustments on overcharged accounts shall be in the form of a refund to the customer, or a credit to the customer's account, depending upon the customer's preference.

(c) Interest shall be credited to all overcharged accounts. The interest rate shall be set pursuant to N.J.A.C. 14:3-7.5(c).

(d) No adjustment shall be made for a period greater than the time during which the customer has received service through the meter.

(e) A meter which registers either fast or slow by less than two percent shall be considered to be accurate.

(f) If a meter registers improperly due to tampering, billing for the full time period of tampering shall be adjusted to reflect the amount of gas, water or electricity consumed. Such adjustments are not limited to six-year periods.

(a)

### Electric Meters

#### Proposed New Rule: N.J.A.C. 14:5-3.

Authority: N.J.S.A. 48:2-12, 48:2-13 and 48:2-25.  
BPU Docket Number: EX 8507794.  
Proposal Number: PRN 1985-482.

Submit comments by October 16, 1985 to:  
Eugene J. Byrne, Esq.  
Regulatory Officer

**PUBLIC UTILITIES/ENERGY**

**PROPOSALS**

Board of Public Utilities  
1100 Raymond Boulevard  
Newark, New Jersey 07102

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 14:5-3 concerning the regulation of electric meters, expired on April 23, 1984. Since the rules have expired they are being proposed by the Board of Public Utilities as new rules.

The substantive provisions of the rules are summarized as follows:

- N.J.A.C. 14:5-3.1 concerns the testing of electric meters.
- N.J.A.C. 14:5-3.2 concerns periodic testing of electric meters.
- N.J.A.C. 14:5-3.3 concerns determination of electric meter accuracy.
- N.J.A.C. 14:5-3.4 concerns outdoor electric meters.
- N.J.A.C. 14:5-3.5 concerns the readjustment of electric meters.

The Board finds these rules to be adequate, reasonable, and necessary in the public interest and therefore repropose them as new rules without any substantive change from the expired text.

**Social Impact**

The rules contained in N.J.A.C. 14:5-3 govern the testing, accuracy and readjustment of electric meters. These rules have an impact on electric utility companies and their customers and consumers of electricity. The overall societal impact has been and will be to help insure that electric meters accurately measure electric consumption and that bills for such consumption are accurate.

**Economic Impact**

N.J.A.C. 14:5-3 has an economic impact upon electric utility companies in that they must provide for the testing of meters. These rules have not had an adverse economic impact upon consumers, electric utility companies or the Board of Public Utilities, and their proposal as new rules will not result in any new cost to consumers, electric companies or the Board of Public Utilities.

Full text of the expired rules proposed as new rules appears in the New Jersey Administrative Code at N.J.A.C. 14:5-3.

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**TREASURY-GENERAL**

**DIVISION OF PENSIONS**

For proposals numbered PRN 1985-476, 477 and 479, submit comments by October 16, 1985 to:

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

**(a)**

**Public Employees' Retirement System  
Election of Member-Trustee**

**Proposed Amendment: N.J.A.C. 17:2-1.4**

Authorized By: Board of Trustees, Public Employees' Retirement System, Regina Trauner, Secretary.  
Authority: N.J.S.A. 43:15A-17  
Proposal Number: PRN 1985-479.

The agency proposal follows:

**Summary**

The proposed amendments to N.J.A.C. 17:2-1.4 state that, if there is only one nominee for the position of member-trustee on the PERS Board of Trustees, that one individual will be deemed to have been elected without the necessity of balloting in such cases. It is hoped that such revised procedures will facilitate the election process and reduce the unnecessary costs associated with such elections where there is only one uncontested candidate.

**Social Impact**

The proposed amendment will affect current and future candidates for the elective position of PERS member-trustee and the manner in which such candidates are elected.

**Economic Impact**

The proposed amendments will have no significant, adverse economic effect upon PERS candidates who may be directly affected by the proposal. The amendments may, however, produce significant cost savings in the conduct of the election process for these positions.

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

17:2-1.4 Election of member-trustee

(a) The election of the Board of Trustee members will include the use of nominating petitions.

1.-3. (No change.)

4. The second will be ballot, containing the names of the candidates who have been properly nominated as well as the rules governing the balloting. **If only one candidate is nominated, the second form will be a notice containing the name of the candidate and an indication that the candidate is deemed elected to the position without balloting because there was only one nominee.**

5. (No change.)

(b) Rules concerning election notice and petition are as follows:

1.-8. (No change.)

**9. If only one candidate is nominated for a position, the candidate is deemed elected to the position without balloting.**

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

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**(b)**

**Teachers' Pension and Annuity Fund  
Eligible Enrollment; Positions**

**Proposed Amendment: N.J.A.C. 17:3-2.1**

Authorized By: Teachers' Pensions and Annuity Fund, Anthony P. Ferrazza, Secretary.  
Authority: N.J.S.A. 18A:66-56.  
Proposal Number: PRN 1985-477.

**PROPOSALS**

**TREASURY-GENERAL**

The agency proposal follows:

**Summary**

The proposed amendment is made upon the recommendation of the Attorney General's office and involves the deletion of any reference to the possible temporary Federal funding status of a position in determining if a holder of such position is eligible for enrollment in the Teachers' Pension and Annuity Fund. Previously, if a position was funded on a temporary or possibly temporary basis with Federal funds, the holder of such a position was not eligible to enroll in the TPAF. The proposed amendment is intended to remove that requirement in determining the TPAF eligibility.

**Social Impact**

The proposed amendment will affect current and future holders of positions in the educational field in New Jersey that are funded with Federal funds. These teachers will now be eligible to enroll in the TPAF.

**Economic Impact**

Since this proposal will permit certain employees who were not previously permitted to enroll in the TPAF to now do so, it may lead to increased costs for the retirement system and eventually to the taxpaying public who funds such retirement systems.

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

17:3-2.1 Eligible positions

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

(c) If a person, who is employed under the Federal Elementary and Secondary Education Act of 1965, meets all three of the following prerequisites, he shall be eligible for enrollment in the fund:

1. He is a regular full-time employee of the board of education [serving under a contract not conditioned by the continuance of Federal funding];

2. He is appointed to a position which comes within the classification of "teacher";

3. He has a valid certificate of the State Board of Education for the position that he holds under the Federal Act.

**(a)**

**Teachers' Pension and Annuity Fund  
Determination of Last Year's Salary**

**Proposed Amendment: N.J.A.C. 17:3-6.21**

Authorized By: Board of Trustees, Teachers' Pension and Annuity Fund, Anthony P. Ferrazza, Secretary.  
Authority: N.J.S.A. 18A:66-56.  
Proposal Number: PRN 1985-476.

The agency proposal follows:

**Summary**

The purpose of this proposal is to clarify the procedures in effect that are utilized to calculate the special veterans' retirement allowance in the Teachers' Pension and Annuity Fund, which is based upon the member's last year's salary.

For a 10-month employee, such calculation is based upon the last 10 months upon which contributions were made to the TPAF. This is to clarify situations where the member retires in the middle of a school year and the last year of his or her service would technically include the summer months in which no salary is usually earned. In these cases, the calculations are based upon the last 10 months in which contributions were made to the TPAF. Thus, 10-month employees would not be penalized in the calculation for the summer months in which they earn no salary and make no contributions to the TPAF.

**Social Impact**

The proposed amendment will affect current and future members of the TPAF who qualify for the special veterans' retirement allowance. The amendments will eliminate any confusion with respect to how a veterans' retirement allowance is calculated.

**Economic Impact**

The proposed amendments will not have any significant economic impact upon the TPAF members or the public at large since the amendments are essentially clarification of current policy.

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

17:3-6.21 Determination of last year's salary; veterans (veteran one-half pay retirement)

For a member reported on a monthly basis under a 10-month contract, use the **member's final 10 months of creditable salaries** upon which contributions were made [in the member's final 10 months of service] **for the period immediately** preceding retirement: on a 12-month contract basis, his **or her** final 12 months of service; combination of 10 and 12-month contracts, on a proportional basis. The months for which no contributions were made shall be counted as zero.

**(b)**

**STATE INVESTMENT COUNCIL**

**Common and Preferred stocks  
Limitations**

**Proposed Amendment: N.J.A.C. 17:16-17.3**

Authorized By: State Investment Council, Roland M. Machold, Director, Division of Investment.  
Authority: N.J.S.A. 52:18A-91.  
Proposal Number: PRN 1985-492.

Submit comments by October 16, 1985 to:  
Roland M. Machold  
Administrative Practice Officer  
Division of Investment  
349 West State Street  
CN 290  
Trenton, NJ 08625

The agency proposal follows:

**Summary**

In N.J.A.C. 17:16-17.3, the book value limit of total invest-

**TREASURY-GENERAL**

**PROPOSALS**

ment in common and preferred stock for any pension fund under the investment supervision of the State Investment Council is raised from 35 percent to 40 percent of the book value of that fund. Reference to the 1837 Surplus Revenue Fund has been deleted since that fund has been closed down.

**Social Impact**

The proposed amendment permits the pension funds to secure the possible benefit of increased returns through a larger percentage of investment in equities. The increase is in line with the recommendations of the Governor's Pension Policy Commission.

**Economic Impact**

The larger percentage permitted for investment in equities may produce a higher total return over time than might be available for fixed income securities. However, economic studies indicate that returns could be more volatile. Higher returns could increase pension fund assets and reduce the State's level of funding.

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

17:16-17.3 Limitations

(a) The book value of the total investment in common and preferred stock for any one fund shall not exceed [35 percent] **40 percent** of the book value of such fund.

(b) Not more than two percent of the book value of any fund shall be invested in the common and preferred stock of any one corporation, except that this limitation for the [1837 Surplus Revenue Fund and] Trustees for the Support of Public Schools shall be 10 percent.

(c) The total amount of stock purchased or acquired of any one corporation shall not exceed five percent of the common stock, or of any other class of stock which entitles the holder thereof to vote at all elections of directors, of such corporation.

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# **TREASURY-TAXATION**

## **DIVISION OF TAXATION**

The following proposals are authorized by John R. Baldwin, Director, Division of Taxation.

For proposals numbered PRN1985-484 and 485, submit comments by October 16, 1985 to:

John R. Baldwin, Director  
Division of Taxation  
50 Barrack Street  
CN 240  
Trenton, NJ 08646

### **(a)**

#### **Sales and Use Tax Data Processing Record Retention**

#### **Proposed Amendment: N.J.A.C. 18:24-2.3**

Authority: N.J.S.A. 54:32B-24 and 54:32B-16.  
Proposal Number: PRN 1985-484.

The agency proposal follows:

**Summary**

The proposed amendment to N.J.A.C. 18:24-2.3 deals with data processing record retention by sales and use taxpayers. The Division of Taxation's policy, now put into rule form, covers the subject of computerized record retention. N.J.S.A. 54:32B-16 of the Sales and Use Tax Act sets forth what records are to be kept and these requirements are amplified in rule form in N.J.A.C. 18:24-2.3. In order for the Division of Taxation to conduct audits it needs records for the full audit period. The requirements for automatic data processing record retention are basically like the requirements of the United States Department of Treasury's Internal Revenue Service. Fundamentally, machine-sensible data media, such as punched cards, magnetic tape and disks are deemed to be records within the meaning of N.J.S.A. 54:32B-16 and must be retained in accordance with said statute for the full audit period. The purpose of N.J.A.C. 18:24-2.3, including this amendment, is to set forth guidelines specifying the basic record retention requirements which the Division of Taxation considers to be essential in cases where a taxpayer's records are maintained within an automatic data processing (ADP) system. Reference here to data processing record systems include all accounting systems which process all or part of a taxpayer's transactions, records or data by other than manual methods.

**Social Impact**

The social impact upon sales and use tax taxpayers should not be onerous since they are required to maintain substantially the same records for the Federal Internal Revenue Service. Since the Federal Internal Revenue Service instituted these requirements, the Division also must keep pace with the times to properly perform out auditing responsibilities. An additional time consumption or cost requirement argument is not as prevalent now that ADP record retention has been imposed by the Federal government.

**Economic Impact**

As noted above, any additional cost to taxpayer resulting from this rule is a subject of necessity and is mitigated by substantially the same requirements imposed by the Federal Internal Revenue Service. Most of the procedures and records are in place. The availability of adequate records allowing audits to proceed will generally have a beneficial effect on the public as a saving of cost administration of state taxing statutes.

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

18:24-2.3 General requirements

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

(d) An automatic data processing tax accounting system must have built into its program a method of producing visible and legible records which will provide the necessary information for verification of the taxpayer's liability.

**1. Machine-sensible data media, such as punched cards, magnetic tape and disks are deemed to be records within the meaning of N.J.S.A. 54:32B-16 and must be retained in accordance with said statute.**

Renumber existing 1.-5. as 2.-6. (No change in text.)

**(a)****Luxury Tax****Proposed Readoption: N.J.A.C. 18:25**

Authority: N.J.S.A. 54:32B-1, et seq., specifically  
N.J.S.A. 54:32B-24.

Proposal Number: PRN 1985-485.

The agency proposal follows:

**Summary**

In New Jersey, in 1980, the Director of the Division of Taxation was given the duty and authority of administering the luxury tax, specifically applicable to Atlantic City, by P.L. 1980, chapter 60, N.J.S.A. 54:32B-24.1, effective July 1, 1980. The luxury tax was the result of a power given to certain municipalities under P.L. 1947, chapter 71 (N.J.S.A. 40:48-8.15 et seq.). The preamble to P.L. 1947, chapter 71 provided that since the legislature greatly enlarged municipal activities with no consequent revenue power to meet modern and expanding conditions, and since sources of revenue in municipalities, particularly in cities of this State bordering upon the Atlantic Ocean and being seaside and summer resorts, are inadequate and insufficient to meet existing municipal obligations, any city of the fourth class may enact an ordinance or ordinances for the purpose of levying and collecting tax upon retail sales or a sale at retail as defined in this act. The Director was given all the powers granted in P.L. 1966, chapter 30 (N.J.S.A. 54:32B-1 et seq.), the New Jersey Sales and Use Tax Act. Section 24 of the Sales and Use Tax Act gave the Director authority to adopt or readopt the rules contained in this proposal. Atlantic City had adopted an ordinance or ordinances in furtherance of its statutory authorization. N.J.S.A. 54:32B-8.19 applies to Atlantic City's ordinance and sets forth what the combined rate may be, but the combined rate cannot exceed 12 percent, which is in effect at the present time. These rules set forth the provisions of the Luxury Tax Act, instructions and forms to be used in administration.

Pursuant to Executive Order 66 (1978), this chapter expires October 9, 1985. The Division proposes to readopt the chapter without change in order to continue to effectively administer the Luxury Tax Act and its application to certain retail sales the receipts of which are subject to the tax.

The rules include definitions of significant terms forms and instructions. The rules also specify the tax rates and exemptions from the luxury tax on room and apartment rentals.

**Social Impact**

These rules are being readopted to provide taxpayers, businessmen and the public, their attorneys, accountants or other representatives, guidance and assistance in the administration of the luxury tax. The readoption is intended to clarify application of the luxury tax to certain sales at retail or the hiring of property or services at retail, room and apartment rentals, the receipts from which are subject to tax in Atlantic City, and exemptions.

**Economic Impact**

When a person visits Atlantic City, he or she pays a 12 percent tax on the retail purchase price of certain tangible personal property and services and on certain hotel and motel

room and apartment rentals. Since by statute the combined rate of State sales tax and luxury tax cannot exceed 12 percent, the luxury tax is nine percent and the State sales tax is three percent. For fiscal year 1982, Atlantic City received \$5,356,369 and for fiscal year 1983, it received \$11,282,819.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 18:25-1 through 18:25-2.4.

**(b)****Transfer Inheritance Tax  
Affidavit of Waiver; Surviving Spouse****Proposed Amendment: N.J.A.C. 18:26-11.1**

Authority: N.J.S.A. 54:50-1 and P.L. 1985, c. 57.  
Proposal Number: PRN 1985-494.

Submit comments by October 16, 1985 to:  
Emil Petrecca, Chief Auditor  
Inheritance Tax Branch  
Division of Taxation  
Trenton, NJ 08646

The agency proposal follows:

**Summary**

P.L. 1985, chapter 57, approved and effective February 27, 1985 and applicable to transfers of property on and after January 1, 1985, exempted from New Jersey's Transfer Inheritance Tax all transfers to a surviving spouse from a decedent dying on or after January 1, 1985. Because these can be various kinds of transfers from the decedent to the surviving spouse, a widow or widower, including those by will, by intestacy, through the joint ownership with the surviving spouse, through joint ownership with the surviving spouse and one or more third parties, through operations of law and other death benefits not controlled by the will or the estate to be probated, the Division of Taxation is proposing rules concerning the use of an affidavit of waiver, also known as a "spousal waiver." In general, the spousal waiver applies to transfers of intangible personal property to a surviving spouse on the date of death of a spouse, such as bank deposits, accounts or certificates and securities. The spousal waiver procedure is not applicable for the transfer of real property and tangible personal property from the decedent to a surviving spouse or for the release of safe deposit box contents.

**Social Impact**

P.L. 1985, chapter 57 and this proposed amendment will provide a widow or widower an opportunity to acquire assets from banking institutions and public and private corporations before an inheritance tax return is filed and audited. Since all transfers to a surviving spouse are exempt from inheritance tax under Chapter 57, the spousal waiver procedure will allow instant access to estate assets intended for the benefit of the spouse.

Relations will improve among banking institutions, corporations public or private, and the surviving spouse who is a beneficiary or a joint owner of assets with the decedent and/or estate fiduciaries.

**Economic Impact**

There is no appreciable economic impact since the State of New Jersey will receive the same amount of inheritance tax due under the Transfer Inheritance Tax Act, as amended by P.L. 1985, Chapter 57.

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

18:26-11.1 Consent to transfer; generally

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

(c) **No waivers are required to be issued by the Director in the case of certain transfers to the surviving spouse of a New Jersey domiciled decedent who died on or after January 1, 1985. In order to satisfy a corporation (its transfer agent) including any banking institution, trust company organized under the laws of New Jersey, national bank operating in this State, building and loan or savings and loan association in New Jersey, or credit union chartered by the United States operating in this State that intangible assets may be released to the surviving spouse, an affidavit of waiver can be executed by the surviving spouse or the personal representative of the decedent's estate.**

1. Letters testamentary or of administration must be attached and made a part of the affidavit when executed by an executor or administrator; or, in any case where intangible assets are transferred to the spouse under a will or the law of intestate distribution. If two or more executors or administrators qualify, the affidavit may be executed by one of them.

2. The decedent's surviving spouse can execute an affidavit in all cases where under the terms of the account or instrument and applicable State law the spouse has the right of survivorship or is the named beneficiary. Letters testamentary or of administration are not required to be attached as part of the affidavit when executed by the surviving spouse, except as provided in (c)3 below.

3. Where the surviving spouse has qualified as executor or administrator of the decedent's estate, intangible assets which pass to the spouse under a will or the law of intestate distribution can be released by the affidavit together with other assets described in (c)2 above, provided that the spouse's letters testamentary or of administration are attached and made a part of the affidavit as provided in (c)1 above. Where the spouse has not qualified as an executor or administrator of the decedent's estate, only intangible assets may be released by the affidavit in accordance with (c)2 above.

4. A separate affidavit is required for each institution, organization or corporation releasing assets to a surviving spouse.

5. The affidavit or waiver by the surviving spouse can not be used for real property and tangible personal property transfers from a decedent to a surviving spouse.

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

**OTHER AGENCIES****CASINO CONTROL COMMISSION**

The following proposals are authorized by the Casino Control Commission, Theron G. Schmidt, Executive Secretary.

**(a)****Fees****Distribution of Surplus; Fees for Services Provided to Other Governmental Bodies**

**Proposed Amendments: N.J.A.C. 19:41-9.1, 9.4 and 9.19**

**Proposed New Rule: N.J.A.C. 19:41-9.20**

Authority: N.J.S.A. 5:12-63, -69, -70(e) and -170.  
Proposal Number: PRN 1985-489.

Submit comments by October 16, 1985 to:  
William H. Delaney, Director  
Division of Financial Evaluation & Control  
Casino Control Commission  
3131 Princeton Pike Office Park  
Building No. 5, CN 208  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The Commission's fee regulations currently provide a mechanism whereby any deficit which exists or is anticipated to exist in the Casino Control Fund as of the close of a fiscal year is assessed to casino licensees. See N.J.A.C. 19:41-9.4(f). As noted in N.J.A.C. 19:41-9.1(d), any such deficit is assessed equally among all casino licensees since the agency expenditures which create such a deficit indirectly benefit all casino licensees and are not directly attributable to any particular casino licensee.

In contrast, the proposed amendments to N.J.A.C. 19:41-9.1(e) and 9.19(d) are intended to address the situation where a surplus exists in the Casino Control Fund as of the close of a fiscal year for reasons unrelated to excess estimated payments against an anticipated deficiency. Since fees charged to persons other than casino licensees are no more than and frequently less than the actual cost of the agency services attributable to those persons, it is reasonable to conclude that any surplus existing in the Casino Control Fund as of the close of a fiscal year is attributable to fee payments made by casino licensees and should be credited against their future fee obligations. Moreover, since it would be extremely difficult and prohibitively expensive to maintain records sufficiently detailed to identify the exact source of the surplus among the many and varied fees paid by casino licensees, the proposed amendment would credit any such surplus among casino licensees in proportion to the relative amount of total fees incurred or paid by each casino licensee with respect to the relevant fiscal year.

In addition to establishing a procedure for the crediting of surplus fee payments, the proposed amendments to N.J.A.C. 19:41-9.1, 9.4 and 9.19 would also implement various clarifying or structural changes which would conform the existing regulations to previous statutory or regulatory amendments.

The Commission is also proposing a new rule establishing fees for services provided by the Commission and Division to other governmental bodies. This rule results from the passage of the Casino Reinvestment Development Authority Act, (L. 1984, c. 218, effective December 19, 1984), which, inter alia, provides that the Casino Reinvestment Development Authority (CRDA) compensate other governmental bodies for the cost and expense of services provided to it. Since the Commission is authorized by this new law to provide services to the CRDA, the proposed new rule is necessary to implement this provision.

#### Social Impact

The proposed amendments will have no significant social impact upon casino licensees (other than fairly distributing surplus fee payments), the public or the regulatory agencies.

The proposed new rule will enable the Commission to assess and secure fees from those governmental bodies to which it may provide services thus facilitating the process of providing assistance to those agencies.

#### Economic Impact

To the extent that the proposed amendments will create a procedure for fairly distributing credit to casino licensees for surplus fee payments, the amendments will provide a positive economic benefit to casino licensees. Neither the State regulatory agencies nor the general public should experience any significant economic impact should the proposed amendments be adopted.

The proposed new rule will enable the Commission to receive payment for services provided to other governmental bodies.

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

#### 19:41-9.1 General description of fees and policy

(a) Under the Act, the Commission and Division are required to be financed exclusively from fees charged each fiscal year to applicants, licensees and registrants. Generally, the Act divides fees into two broad categories: those pertaining to casino licenses and those pertaining to all other forms of licensure or approval. Section 139 of the Act requires the Commission to establish, by regulation, fees for the issuance and renewal of casino licenses. The statutory basis for the casino license issuance fee is the cost of investigation and consideration of the application. The statutory basis for the casino license renewal fee is the cost of maintaining the control and regulatory activities of the Commission and the Division. In contrast, Sections 141 and 142 of the Act require the Commission to establish, by regulation, issuance and renewal fees for all non-casino licenses and work permits, but indicate no cost basis for establishing such fees.

(b) The differing treatment of these categories reflects a legislative recognition and judgment that casino applicants and licensees benefit directly or indirectly from all aspects of the regulatory process and are best suited to bear the largest share of the costs incurred by the agencies in implementing that process. Moreover, the experience of the Commission and the Division reveals that the actual cost of investigating and

considering applications for individual employee licenses and [non-gaming related] casino service industry licenses frequently exceeds the amount which those applicants and licensees may fairly be required to pay as fees. The fee structure established by these regulations is designed to respond to these policies and problems.

(c) To the extent fairly possible, each applicant or licensee should pay the investigatory or regulatory costs attributable to that applicant or licensee. However, since individual employees and [non-gaming related businesses] **casino service industry enterprises** cannot always be expected to cover the full amount expended and since a portion of the costs incurred by the agencies pertain to the industry generally, there will be an amount of the annual combined budgets of the agencies which will not be recoverable through specified fees for particular services. This amount cannot be predicted with precision because of the necessarily variable allocation of Commission and Division efforts.

(d) Given the mandate of the Act to recover the cost of maintaining control and regulatory activities from casino license renewal fees and given the fact that all such activities are undertaken for the direct or indirect benefit or protection of casino operations, the obligation to supply additional funds necessary to recover the otherwise uncollected expenditures of the agencies should be spread among the licensed casino facilities[, whether such a facility is owned or operated by a casino licensee or a temporary casino permittee]. By their nature the agency activities generating the otherwise uncollected expenditures are not attributable to any specific casino operation and they produce benefits for all such operations, for example, creating a pool of licensed individuals to employ and enlarging the class of licensed casino service industries to contract with for goods and services. Thus, it is reasonable to apportion the assessment for the otherwise uncollected costs equally among the licensed casino facilities subject to an appropriate adjustment where a particular facility is not authorized to conduct operations for an entire fiscal year or where a change of ownership or control of casino operations occurs during the fiscal year.

(e) **In the event that the Casino Control Fund has a surplus as of the close of a fiscal year, other than a surplus due to estimated payments against an expected deficiency, the surplus should be credited to the extent possible to the individual licensees who made the surplus payments. Since, as noted in (c) above, fees charged to persons other than casino licensees are no more than and frequently less than the actual cost of the investigatory and regulatory services actually attributable to them and since the casino licensees, through various hourly and other charges, contribute the overwhelming majority of all fees generated by the agencies, any surplus in the Casino Control Fund may be attributable to payments made by the casino licensees. Further, since it is not feasible to ascertain precisely the source of the surplus due to the variety of charges levied against the casino licensees and the numerous variables affecting the revenues and expenditures of the agencies, it is reasonable and equitable to distribute the surplus by granting credit to the casino licensees against future fee obligations and to allocate the credit among the licensees in proportion to the relative amount of total fees incurred or paid by each casino licensee with respect to the fiscal year.**

#### 19:41-9.4 Casino license fees

(a) For the purposes of this section, the following words and terms shall have the meanings herein ascribed to them unless a different meaning clearly appears from the context:

1. "Casino license" means a plenary casino license issued under Section 87 of the Act [or a temporary casino permit issued under Section 95.1 of the Act];

2.-3. (No change.)

4. "Initial license fee" or "Issuance fee" means the total fee which is required by the Act and these regulations to be paid prior to consideration or issuance of [either a temporary casino permit or] a plenary casino license to an unlicensed applicant and which is based upon the cost of investigating and considering the application;

5. "License renewal fee" means the total fee which is required by the Act and these regulations to be paid prior to [either] the renewal of a plenary casino license under Section 88 of the Act [or issuance of an initial plenary casino license under Section 87 of the Act to the holder of a temporary casino permit] and which is based upon the cost of investigating and considering the application and of maintaining control and regulatory activities of the Commission and the Division.

(b) No application for the issuance or renewal of a casino license shall be accepted for filing by the Chairman unless a nonrefundable deposit of \$100,000 shall first have been paid in full; provided that, where an unlicensed applicant for a casino license has paid the said deposit and subsequently requests a temporary casino permit in accordance with Section 95.1, the deposit previously paid shall be considered as the deposit for the temporary casino permit application]. Such deposit shall be applied to the initial license fee or renewal fee if the application is approved.

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

(f) A licensed casino facility shall be required to pay, as a component of the renewal fee for any casino license necessary to casino operations therein and as a condition of any such casino license, a share of the amount of any liability of the Casino Control Fund [existing] existing as of the close of business on June 30 of each fiscal year. The share for each licensed casino facility shall be the amount which is in the same proportion to the total liability as the proportion of the number of months in the fiscal year when casino operations are conducted or authorized in the facility to the total number of such months for all licensed casino facilities. For purposes of this calculation any part of a calendar month shall be considered a full month. Any months during which a necessary casino license or operation certificate for a licensed casino facility has been suspended shall also be counted in determining the share of such facility. Further, the operation of the facility by a conservator or a trustee shall be deemed continued operation by the casino operator for these purposes. The primary obligation to pay the assessed share of a licensed casino facility shall be upon the casino operator; provided that where a change of casino operators occurs during the fiscal year each such operator shall be liable for an amount of the share apportioned according to the time during which each operator functioned. **Any share calculated in accordance with this section shall be paid in full by December 31 of the year following the fiscal year. The Commission, through its Division of Financial Evaluation and Control, shall have the authority to estimate from time to time during the fiscal year the share for each licensed casino facility incurred to that time and to demand payment of such estimated share.**

19:41-9.19 Obligation to pay fees; [and] nonrefundable nature of fees; credits

(a) Any fee obligation arising in accordance with the Act and this subchapter shall be due and payable notwithstanding the withdrawal or abandonment of any application or the

termination in any manner of an existing license. **In accordance with N.J.S.A. 5:12-82c(9), each party to an agreement to lease the casino hotel or the land thereunder, to jointly own a casino hotel or the land thereunder, or to manage a casino, shall also be liable for any amounts chargeable to the casino operator.**

(b) **Except as otherwise provided in (e) below, [Amounts] amounts actually paid by an applicant or licensee in accordance with the Act and this subchapter shall not be refundable; provided, however, that where payments made by a casino licensee or temporary casino permittee for its estimated share under N.J.A.C. 19:41-9.4(f) exceed the actual share as finally determined, the excess payments shall be credited toward payment of additional fees by that casino licensee or temporary casino permittee; and provided further, however, that where estimated payments exceeding the actual share are made by a former casino licensee or former temporary casino permittee, which ceases to hold any license and which does not owe and will not accrue additional fee obligations, the former licensee or permittee may claim a refund of any excess amount to which it is found to be entitled. In accordance with Section 82(c)(9) of the Act, the holder of any casino license necessary to the conduct of gaming in the facility shall also be liable for any amounts chargeable to the casino operator. Any share calculated in accordance with this section shall be paid in full by December 31 of the year following the fiscal year. The Commission, through its Division of Financial Evaluation and Control, shall have the authority to estimate from time to time during the fiscal year the share for during the fiscal year the share for each licensed casino facility incurred to that time and to demand payment of such estimated share].**

(c) **Payments made by a casino licensee for its estimated share under N.J.A.C. 19:41-9.4(f) which exceed its actual share as finally determined by the Commission for the fiscal year shall be credited toward the payment of additional fees by that casino licensee.**

(d) **Any surplus which exists in the Casino Control Fund as of the close of a fiscal year which is not due to excess payments of estimated shares collected pursuant to N.J.A.C. 19:41-9.4(f) shall be credited toward the payment of additional fees by casino licensees. The share for each casino licensee shall be the amount which is in the same proportion to the total surplus subject to this subsection as the proportion of the total amount of fees incurred or paid by the casino licensee with respect to the fiscal year is to the total amount of all fees incurred or paid by all casino licensees with respect to the fiscal year.**

(e) **Any former casino licensee which would be entitled to a credit toward the payment of additional fees pursuant to (c) or (d) above and which ceases to hold any license and which does not owe and will not accrue additional fee or other obligations to the State under the Act may claim a refund of any amount to which it is found to be entitled to a credit.**

19:41-9.20 Fees for services provided to other governmental bodies.

(a) Whenever the Commission or Division is authorized by law to provide services to any State, county or municipal department, board, bureau, commission, authority or agency, and to receive compensation for the performance of such services, the Commission shall assess fees for the cost and expense of providing these services as follows:

1. Payment for the efforts of professional agents and employees of the Commission and Division at the rate of \$40.00 per hour; and

2. Payment for any unusual or out-of-pocket expenses in-

**curred by agents or employees of the Commission and Division on matters directly related to the performance of the services which are being provided.**

[19:41-9.20] **19:41-9.21** Powers and duties of Commission and Division

(No change in text.)

**(a)**

**Accounting and Internal Controls  
Acceptance By Casinos Of Checks Issued By  
Other Casino Licensees**

**Proposed Amendments: N.J.A.C. 19:45-1.1  
and 1.25**

Authority: N.J.S.A. 5:12-63(c), 5:12-69, 5:12-70(1) and 5:12-101(g).

Proposal Number: PRN 1985-490.

Submit comments by October 16, 1985 to:  
Deno R. Marino, Deputy Director  
Division of Financial Evaluation & Control  
Casino Control Commission  
3131 Princeton Pike  
Building No. 5, CN 208  
Trenton, NJ 08625

The agency proposal follows:

**Summary**

The proposed amendments to N.J.A.C. 19:45-1.1 and 1.25 are intended to implement recent amendments to N.J.S.A. 5:12-101 governing the casinos acceptance of checks issued by other New Jersey casino licensees.

Prior to the legislative amendment, Section 101(b) of the Casino Control Act precluded any New Jersey casino from accepting a check issued by a casino. Since such checks were not issued and guaranteed by recognized financial institutions, they could not be accepted as cash equivalents.

The proposed amendment to N.J.A.C. 19:45-1.1 provides a definition of a casino check consistent with the guidelines established by the Legislature in N.J.S.A. 5:12-101(g)1 and (g)2. In addition, specific procedures governing the verification of casino checks and who performs the verification procedure have been added to N.J.A.C. 19:45-1.25 to comply with the intent of N.J.S.A. 5:12-101(g)4. The verification procedure is the most important element of the amendment since it provides for the integrity of the transaction and more importantly it established a uniform standard that every casino licensee must follow before accepting a casino check from a patron. Absent a regulation requiring a standard of compliance among casinos issuing and accepting each others checks there can be no uniformity or even a guaranteed minimum level of cooperation within the casino industry.

Finally, the amendment addresses the verification of the identity of the patron presenting the check to the general cashier. This is more easily accomplished since the procedures for verification of a person's identity have previously been established for cash equivalents and may also be applied to casino checks.

**Social Impact**

The proposed amendments will provide greater convenience and security to gaming patrons who choose to gamble at more than one casino. This amendment allows gaming patrons the ability to redeem their gaming chips or withdraw their deposit money from a casino in the form of a check and to use that check to gamble or to establish a deposit account at the same casino or another casino. Currently, patrons that gamble at more than one casino are forced to redeem their chips and withdraw their deposit funds in cash in order to gamble at a second casino. Now, a casino that issues a check to a patron in redemption of its chips or to return a patron's deposit money can not accept that check back from the patron in order for the patron to continue gambling.

Without the ability to use casino checks to obtain chips or deposit funds with casinos where that patron chooses to gamble, he is forced to take his cash and personally carry that cash to the other casinos. This presents considerable potential for loss or theft from patrons traveling between casinos with large amounts of cash on their person. The more important consideration is for the safety of the patrons who may be harmed if they are robbed.

Another benefit to be derived from this amendment is the ability by law enforcement agencies to monitor compliance with the verification procedures and to enforce the uniformity of the regulation among the casino licensees. This amendment will also allow the enforcement agencies to better track the transactions of individuals who may attempt to launder cash for illegal purposes.

**Economic Impact**

The proposed amendment will allow the casinos to generate substantially more revenue because many patrons visit more than one casino, and the acceptance of other casino licensees' checks will provide increased revenue to each of the casinos. It has been forecasted by marketing professionals within the casino industry that this amendment will generate several million dollars of additional revenue to each casino licensee. If the forecasts are correct even though their dollar estimates may be inaccurate, the State will also benefit by the increased amount of tax collected on the additional gross revenues.

Another economic benefit that may result from this amendment, although it is much harder to measure, is the possibility that local law enforcement agencies may be able to direct less attention to the prevention of robberies of gaming patrons and more to other areas. The result would be that costs might decrease or at least may not increase to provide police protection for gamblers in the Atlantic City area.

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

19:45-1.1 Definitions

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

• • •

**"Casino check"** means a check which is drawn by a casino licensee upon the licensee's account at any New Jersey banking institution and made payable to a person in redemption of the licensee's gaming chips, pursuant to N.J.S.A. 5:12-100(k) or in return, either in whole or in part, of a person's deposit on account with the casino licensee pursuant to N.J.S.A. 5:12-101(b), and

which is identifiable in a manner approved by the Commission as a check issued for one of these purposes. At a minimum, such identification method shall include an endorsement or imprinting on the check which indicates that the check is issued in redemption of gaming chips or in return of funds on account with the casino licensee.

• • •

19:45-1.25 Procedures for exchange of checks submitted by gaming patrons

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

(e) Cash equivalents and casino checks, as defined in N.J.A.C. 19:45-1.1, shall only be accepted at the cashiers' cage by general cashiers. Prior to acceptance of any cash equivalent from a patron, the general cashier shall determine the validity of such cash equivalent by performing the necessary verification for each type of cash equivalent and such other procedures as may be required by the issuer of such cash equivalent. Prior to the acceptance of a cash equivalent made payable to the presenting patron or of a casino check pursuant to N.J.S.A. 5:12-101(g), the general cashier shall examine that patron's identification credentials to ensure the patron's identity and shall maintain documentation supporting that examination.

(f) Prior to the acceptance of any casino check from a patron, a general cashier shall determine the validity of such casino check by contacting the New Jersey casino which issued the check and shall verify the following information:

1. The date of the check;
2. The check number;
3. The name of the payee appearing on the check;
4. The amount of the check; and
5. That the check represents either:
  - i. The return of a patron's deposit money; or
  - ii. The redemption of the casino's gaming chips.

(g) The general cashier accepting a casino check shall document the verifications performed in (f) above in a log and record the name of the cashier providing such information and the date and time the information was obtained. In addition, the general cashier shall record his name and license number in the log.

(h) A general cashier of the New Jersey casino which issued the casino check shall provide such information, as required by (f) above, to the casino licensee accepting such check and shall indicate that verification was requested by notating in a log the following information:

1. The date and time of the request;
2. The name of the casino requesting the information;
3. The name of the general cage cashier making the request;
4. The check number;
5. The date of the check;
6. The name of the payee appearing on the check; and
7. The reason for the check as either:
  - i. The return of a patron's deposit money; or
  - ii. The redemption of the casino's gaming chips.

Redesignate existing (f) and (g) as (i) and (j) (No change in text.)

[(h)] (k) For each Counter Check exchanged at a gaming table, the casino clerk shall:

1. Verify the patron's identity by either:

i. Obtaining the patron's signature, on a form, which signature shall be compared to the original signature, or a computer generated facsimile thereof, contained within the patron's credit file. The casino clerk shall sign the form indicating that the signature of the patron on the form appears to agree with the signature on his credit file. Such form shall be attached to the accounting copy of the Counter Check exchanged by the patron prior to forwarding it to the accounting department in conformity with [(m)] (p) below.

(l) After the patron's identity has been verified by the casino clerk as required above, the requirements for subsequent verification of the patron's identity during the same shift and in the same gaming pit may be satisfied by that casino clerk signing a form attesting to the patron's identity before each subsequent [c]Counter [c]Check is exchanged. The form shall include the patron's name and the serial number of the initial [c]Counter [c]Check exchanged by the patron. Such form shall be attached to the accounting copy of the [c]Counter [c]Check prior to forwarding it to the accounting department in conformity with [(m)] (p) below; or

ii. Obtaining the attestation of a casino supervisor as to the identity of the patron. The casino supervisor shall sign a form attesting to the patron's identity and shall record his license number thereon. Such form shall be attached to the accounting copy of the Counter Check exchanged by the patron prior to forwarding it to the accounting department in conformity with [(m)] (p) below.

2.-6. (No change.)

Redesignate existing (i) through (l) as (1) through (o) (No change in text.)

[(m)] (p) At the end of the gaming activity each day, at a minimum, the following procedures and requirements shall be observed:

1. The original and all copies of void Counter Checks and the accounting and acknowledgment copies of the Counter Check shall be forwarded by a representative of the [account] accounting or security department to the accounting department for agreement, on a daily basis, with the issuance copy of the Counter Check removed from the drop box or stored data.

2. The redemption copy of Counter Check maintained and controlled in conformity with subsection [(f)] (i) 6i above shall be forwarded to the accounting department subsequent to the redemption, consolidation or deposit of the original Counter Check for agreement with the accounting and issuance copies of the Counter Check or stored data.

# RULE ADOPTIONS

## BANKING

### (a)

#### DIVISION OF BANKING

#### Examination of Banks and Savings Banks

#### Adopted Amendments: N.J.A.C. 3:7-3.3, 3.6, and 3.7

Proposed: July 15, 1985 at 17 N.J.R. 1702(a).

Adopted: August 23, 1985 by Mary Little Parell,  
Commissioner, Department of Banking.

Filed: August 26, 1985 as R.1985 d.485, **without change.**

Authority: N.J.S.A. 17:9A-253A.

Effective Date: September 16, 1985.

Expiration Date pursuant to Executive Order No. 66  
(1978): September 16, 1990.

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

Comments from Harmonia Savings Bank and The Howard Savings Bank expressed support for the amendment. No other comments were received.

Full text of the adoption follows.

#### 3:7-3.3 Confirmation of deposits and debts

The public accountant or other approved person examining for the board of directors shall confirm with certain depositors and debtors the correctness of the deposits due them and debts owed to the bank on various types of loans and contracts purchased. Such confirmations, except for provided exclusions, shall be either of the positive or negative type or any combination of the two types and shall be mailed during each calendar year to the savings deposit accounts and other time deposits, the demand deposit accounts and any and all types of direct loans, serviced loans or contracts purchased. Collateral pledged to secure a loan shall be included in the confirmation. The person conducting the confirmation program will be responsible for resolving to his satisfaction any differences disclosed through the confirmation procedures which he deems to be of a material nature and all such differences which remain unresolved, shall be reported to the board of directors for its further disposition. A schedule reflecting the confirmation program shall be included as a part of the report or included in a supplement to the report.

#### 3:7-3.6 Provision for sampling

Selection of accounts by random sampling, specific selection or any other form of statistical sampling is permitted to provide the proper latitude in achieving a satisfactory confirmation level.

#### 3:7-3.7 Review of internal controls and audit program

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

(d) The public accountant shall determine the extent of confirmations that in his judgement are necessary pursuant to N.J.A.C. 3:7-3.3 to achieve a satisfactory confirmation level. The public accountant's report shall clearly disclose the number and dollar amount and percent of accounts confirmed. The report must also disclose the type of confirmation used (that is, positive or negative) and the basis used to select accounts for confirmation. If statistical sampling is used as the basis for selecting accounts, the report must also disclose the method used and the confidence level achieved.

(e) If the internal auditor has been granted permission to perform the confirmation program, the public accountant shall annually review the program and results to determine that the requirements in (d) above have been satisfactorily met and shall so note this in his report. If the confirmation program performed by the internal auditor is deemed to be insufficient, it shall be the public accountants responsibility to perform additional confirmations to satisfy the provisions of (d) above.

### (b)

#### CONSUMER CREDIT BUREAU

#### Small Loan Licensees

#### Mortgage Bankers and Brokers

#### Adopted Amendments: N.J.A.C. 3:17-7.1 and 7.3

Proposed: July 15, 1985 at 17 N.J.R. 1703(a).

Adopted: August 23, 1985 by Mary Little Parell,  
Commissioner, Department of Banking.

Filed: August 26, 1985 as R.1985 and d.486, **without change.**

Authority: N.J.S.A. 17:10-13 and 17:10-23.

Effective Date: September 16, 1985.

Expiration Date pursuant to Executive Order No. 66  
(1978): June 18, 1986.

#### Summary of Public Comments and Agency Responses: No Comments received.

Full text of the adoption follows.

#### 3:17-7.1 Permissible other businesses

(a) (No change.)

(b) Upon obtaining any necessary license or authorization, a small loan licensee may engage in the following other types of businesses:

1.-10. (No change.)

11. The mortgage bankers and brokers business. Any such business shall be conducted in accordance with the provisions of N.J.S.A. 17:11B-1 et seq., the Mortgage Bankers and Brokers Act.

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12. Such other business as the Commissioner may deem appropriate and for which specific approval is obtained pursuant to N.J.S.A. 3:17-7.3

3:17-7.3 Procedure for obtaining approval

(a) Commencing 60 days from the effective date of this subchapter, no small loan licensee may conduct any business activity other than the business of making small loans, except those businesses specifically permitted by N.J.A.C. 3:17-7.1(b)1 through 11, without approval from the Commissioner obtained as specified in this section. Prior to commencing the conduct of any of the other business activities permitted by N.J.A.C. 3:17-7.1(b)12, a small loan licensee shall notify the Commissioner of its intention to do so. Such notice shall contain a detailed description of the proposed activity and a statement of the perceived public need for such activity. Within 30 days from the date of the Commissioner's Notice of Acceptance to the small loan licensee, if the Commissioner does not disapprove of that activity, the activity shall be deemed approved.

(b) (No change.)

**(a)**

**DIVISION OF SAVINGS AND LOAN**

**Asset Limitation  
Service Corporations**

**Adopted Repeal: N.J.A.C. 3:27-4.5  
Adopted Amendment: N.J.A.C. 3:27-4.6**

Proposed: July 1, 1985 at 17 N.J.R. 1619(a).  
Adopted: August 23, 1985 by Mary Little Parell,  
Commissioner, Department of Banking.  
Filed: August 26, 1985 as R.1985 d.484, **without change.**

Authority: N.J.S.A. 19:12B-152, 153, 165(7).

Effective Date: September 16, 1985.  
Expiration Date pursuant to Executive Order No. 66  
(1978): September 16, 1990.

**Summary of Public Comments and Agency Responses:  
No comments received.**

Full text of the adoption follows.

3:27-4.5 (Reserved)

3:27-4.6 Service corporations

(a) Any insured association, by resolution of its board of directors, may authorize its service corporation to engage in activities to the same extent as Federally chartered savings and loan associations under Part 545.74 of the Rules and Regulations for the Federal Savings and Loan System. A State chartered association making such investment shall comply with the following conditions and procedures:

1. Prior to investing in any service corporation, a written resolution, permitting the Commissioner of Banking or other person appointed by him to examine or audit the books and records of the service corporation will be submitted to the Department of Banking. The resolution shall also provide that the service corporation will pay the cost of such examination

or audit. If the Commissioner determines that it is necessary to perform an examination or audit of the books of the service corporation and such corporation is subject to examination by both Federal and State supervisory authorities, the examinations will be conducted jointly whenever possible.

2. A copy of the independent audit report of the service corporation shall be submitted to the Commissioner of Banking annually.

3. If the service corporation is to engage in activities not specifically outlined in Part 545.74 of the Rules and Regulations for the Federal Savings and Loan System, application shall be made to the Commissioner of Banking for approval where the service corporation is wholly owned by one or more State-chartered institutions. The application shall take the form of a resolution adopted by the State-chartered institutions, together with a letter explaining the nature and anticipated equity investment relative to the proposed activity. If the service corporation is jointly owned by both Federal and State chartered associations a copy of the application filed with the Federal Home Loan Bank Board will be forwarded to the Commissioner of Banking for approval.

**COMMUNITY AFFAIRS**

**DIVISION OF HOUSING AND  
DEVELOPMENT**

**(b)**

**Uniform Construction Code  
Construction Permits: Contractor Seals**

**Adopted Amendments: N.J.A.C. 5:23-2.15**

Proposed: June 17, 1985 at 17 N.J.R. 1462(a).  
Adopted: August 20, 1985 by John P. Renna,  
Commissioner, Department of Community Affairs.  
Filed: August 22, 1985 as R.1985 d.479, **without change.**

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

Effective Date: September 16, 1985.  
Expiration Date pursuant to Executive Order No. 66  
(1978): April 1, 1988.

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

Comments were received from representatives of electrical and mechanical contractors questioning the provision of the proposed amendment that declares issued permits to be the property of the owner rather than of the contractor. In response, the Department states that this provision is consistent with established principles of the law of agency. Enforcing agencies should not be involved in disputes between owners and contractors and should not have to require a new permit if a contractor leaves a job for which there is already an issued permit.

Full text of the adoption follows.

5:23-2.15 Construction permits-application  
(a) (No change.)

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(b) In addition, the following information shall be required on any application for a construction permit when such information is available but not later than the commencement of work:

- 1. (No change.)
- 2. The name and license number of the contractor or subcontractor of plumbing and/or electrical work where such work is proposed.
  - i. Plumbing and electrical work shall not be undertaken except by persons licensed to perform such work pursuant to law, except in the case of a single family homeowner on his own dwelling.
  - ii. The seal and signature of the licensed plumbing and electrical contractor shall be affixed to the corresponding sub-code application form.

3.-4. (No change.)

(c) (No change.)

(d) Application for a permit shall be made by the owner, or his agent, a licensed engineer, architect or plumbing, electrical or other contractor employed in connection with the proposed work. If the application is by a person other than the owner in fee, it shall be accompanied by an affidavit of the owner or the authorized person making the application, that the proposed work is authorized by the owner in fee, and that the applicant is authorized to make such application. All issued permits shall remain the property of the owner even if the application was made by a contractor or authorized agent.

(e) (No change.)

**(a)**

**Uniform Construction Code  
Asbestos Hazard Abatement Subcode**

**Readoption: N.J.A.C. 5:23-8**

Proposed: July 15, 1985 at 17 N.J.R. 1782(a).

Adopted: August 16, 1985 by John P. Renna,

Commissioner, Department of Community Affairs.

Filed: August 16, 1985 as R.1985 d.472, **with substantive and technical changes** not requiring additional public notice and comment (N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 52:27D-124, 34:5A-32.

Effective Date: August 16, 1985.

Expiration Date pursuant to Executive Order No. 66 (1978): April 1, 1988.

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

A comment was received from a representative of a private university recommending a limit of 0.05 fibers/cc. rather than 0.01/cc. which was viewed by the comment writer as excessive and unduly restrictive. This comment also included recommendations that the requirement that buildings be vacant when work is done be modified to meet the needs of colleges and universities, which are generally in use year round, that private institutions be allowed to proceed with abatement work which is not publicly funded even without a Department of Health hazard assessment and that the definition of "educational facility" be limited so as to exclude buildings which may be owned by an educational institution, but which are not used

for educational purposes. The Department has amended the definition of "educational facility" to meet the objection and has eliminated the requirement that projects in occupied buildings be approved only in "limited circumstances." The other comments, however, apply also to requirements of the Department of Health and that Department will have to be consulted before changes are made. Unfortunately, the time constraints involved in the readoption of an emergency rule make it necessary to defer any action in response to these other comments to a future rule proposal.

Another comment was received recommending that the rules specify that the work permit issued by the Department of Labor and required to be presented by a worker to the inspector contain the worker's photograph. While the Department of Community Affairs sees merit to this proposal, DCA considers it to be a matter within the jurisdiction of the Department of Labor and DCA will bring it to that Department's attention.

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

**SUBCHAPTER 8. ASBESTOS HAZARD ABATEMENT  
SUBCODE**

5:23-8.1 Title; scope; intent

(a) This part of the regulations, adopted pursuant to c. 217, P.L. 1975, the Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.) and entitled Asbestos Hazard Abatement Subcode shall be known and may be cited throughout the regulations as N.J.A.C. 5:23-8 and when referred to in this subchapter, may be cited as "this subchapter."

1. In addition, the New Jersey Departments of Health and Labor have jointly adopted regulations pursuant to c.217, P.L. 1984, the Asbestos Control and Licensing Act (N.J.S.A. 34:5A-32 et seq.) and are cited as N.J.A.C. 8:60, and N.J.A.C. 12:120, respectively. These regulations provide for: a standardized training course for all asbestos workers; licensing of asbestos removal contractors; and issuing work-permits for asbestos removal workers.

i. Copies of N.J.A.C. 8:60 may be obtained from the New Jersey Department of Health, Occupational Disease Prevention and Information Program, CN 360, Trenton, New Jersey 08625-0360.

ii. Copies of N.J.A.C. 12:120 may be obtained from the New Jersey Department of Labor, Division of Workplace Standards, CN 054, Trenton, New Jersey 08625-0054.

2. The New Jersey Department of Environmental Protection has authority to enforce regulations regarding the transport and disposal of asbestos-containing materials pursuant to N.J.S.A. 13:1D-9, 13:1E-1 et seq. and are cited as N.J.A.C. 7:26-1 et seq.

i. Copies of N.J.A.C. 7:26 may be obtained from the New Jersey Department of Environmental Protection, Division of Waste Management, Bureau of Field Operations, 120 Route 156, Yardville, New Jersey 08620.

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

(c) This subchapter, which pertains to Educational Facilities as defined in N.J.A.C. 5:23-8.2, shall control matters relating to: construction permits for asbestos abatement; fees; licenses; certification; work permits; reports required;

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documentation; inspections by the administrative authority having jurisdiction; air monitoring; enforcement responsibilities; inspector certification; and remedies and enforcement. Until further action is taken, this subcode remains advisory for all other buildings and structures in the State.

(d) This subchapter seeks to provide and ensure public safety, health, and welfare insofar as they are affected by asbestos and asbestos-containing materials. It is not intended to, nor should it be construed to, conflict with or impede the operation of the asbestos work standards issued by the Occupational Safety and Health Administration, 29 CFR Section 1910.1001 et seq.

1. It is the purpose of this subchapter to establish standards and procedures to ensure that all State laws and regulations applicable to asbestos hazard abatement work are actually adhered to wherever work takes place.

2. Asbestos has been a pervasive construction material which in many of its forms poses no significant health risk. These standards and procedures need not be applied to all work involving asbestos-containing materials but only those which pose serious health hazards to the public.

3. Asbestos which is or which can readily become friable was a widely used construction material. Its removal, replacement, repair, enclosure or encapsulation shall be considered construction work and therefore requires a construction permit issued pursuant to the State Uniform Construction Code Act (N.J.S.A. 52:27d-119 et seq.). Asbestos and asbestos-containing materials were, in many cases, used in order to satisfy important code requirements pertaining to fire safety. Accordingly, where asbestos was used originally to satisfy fire code requirements, it shall not be removed unless it is replaced as part of the project, with material or assembly which has equivalent fire resistive or heat resistive characteristics. Additionally, any encapsulation materials or methods shall conform to the construction requirements of the Uniform Construction Code.

## 5:23-8.2 Definitions

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

"Asbestos" means a general term used to describe a group of naturally occurring hydrated mineral silicates. The asbestiform varieties include chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite);

"Asbestos-containing material" means any material which contains more than 1 percent asbestos by weight.

"Asbestos Safety Monitor" means a private firm approved by the New Jersey Department of Health, hired by the building owner, who continuously monitors the asbestos abatement work pursuant to this subchapter. This monitor shall be required to be on the job site during the time the asbestos abatement work is taking place.

"Barrier" means polyethylene sheeting that completely seals off the work area to prevent the distribution of fibers to surrounding area.

"Bureau" means Bureau of Construction Code Enforcement, Division of Housing and Development, Department of Community Affairs.

"Construction permit for asbestos abatement" means required official approval to commence any asbestos hazard abatement job. This permit is issued by the administrative authority having jurisdiction.

"Contractor" means the Asbestos Removal Contractor licensed by the New Jersey Department of Labor.

"Decontamination unit" means serial arrangement of rooms or spaces for the purpose of separating the work site from the building environment upon entering the work site and for the cleaning of persons, equipment, and contained waste prior to returning to the clean environment.

"Educational facility" means all buildings and structures, or parts thereof, which are under **\*[common]\* \*the\*** ownership or control of an educational institution **\*and which are used for student residences, educational purposes or learning experiences or as dining facilities or as libraries\***. Educational institutions include schools (public and private) colleges, universities, academies, child day care centers and nurseries.

"Employee" means an asbestos abatement worker having a valid work permit, issued by New Jersey Department of Labor and employed by the contractor.

"Encapsulation" means treatment of asbestos-containing materials, generally ceilings, using a liquid to bond or seal the surface to minimize the potential for fiber release.

"Enclosure" means an impermeable barrier (made of wood, metal, etc.) placed around asbestos-containing material.

"Friable" means any material applied to ceilings, walls, piping, duct work, etc., which when dry may be crumbled, pulverized, or reduced to a powder by moderate hand pressure.

"Glove bag" means a plastic bag especially designed to contain sections of pipe for the purpose of removing short lengths of damaged asbestos material without releasing fibers into the air.

"HEPA" means High Efficiency Particulate Absolute filter, capable of filter efficiency of 99.97 percent down to 0.3 um (microns).

"Large asbestos hazard abatement job" means asbestos-containing materials which: involves the removal, repair, enclosure, or encapsulation within one year of 160 square feet or more of asbestos-containing material used on an equipment, wall, or ceiling area; or involves the removal or encapsulation, using a liquid material applied by a pressurized spray, within one year of 260 linear feet or more of asbestos-containing material on covered piping.

"Minor asbestos hazard abatement job" means asbestos-containing materials which: involves the removal, repair, encapsulation or enclosure of 25 square feet or less of asbestos-containing material used on an equipment, wall or ceiling area; or involves the removal or encapsulation, using a liquid material applied by a pressurized spray, of 10 linear feet or less of asbestos-containing material on covered piping as delineated in N.J.A.C. 5:23-8.4. Encapsulation by other methods and the repair and enclosure of any amount of asbestos-containing material, used to cover piping, shall also be a minor asbestos hazard abatement job.

"Primary seal/critical barrier" means two layers of 6 mil polyethylene sheeting that completely seals off the work area to prevent the distribution of fibers to the surrounding area, such as the opening between the top of a wall and the underside of ceiling construction, electrical outlets, non-removable lights, HVAC systems, windows, doorways, entranceways, ducts, grilles, grates, diffusers, wall clocks, speaker grilles, floor drains, sink drains, etc.

"Repair" means corrective action using recommended work practices to minimize the likelihood of fiber release from small damaged areas of asbestos ceilings, pipe and boiler insulation. Repair may include but is not limited to: enclosure of pipe and boiler insulation, spot removal and replacement with non-asbestos materials, and spot encapsulation of ceiling materials with minor damage.

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“Small asbestos hazard abatement job” means asbestos-containing materials which: involves the removal, repair, enclosure, or encapsulation within one year of more than 25 and less than 160 square feet of asbestos-containing material used on an equipment, wall or ceiling area; or involves the removal or encapsulation, using a liquid material applied by a pressurized spray, within one year of more than 10 and less than 260 linear feet of asbestos-containing material on covered piping.

## 5:23-8.3 Matters covered; exceptions

(a) Except as is otherwise provided in 1. below, the provisions of this subchapter shall be enforced by municipal enforcing agencies (the Bureau of Construction Code Enforcement, hereafter cited as the Bureau, if applicable) and shall be administered and enforced uniformly throughout the State. Any municipality shall be authorized to enforce this subchapter when staffed with at least one inspector who is certified pursuant to this subchapter. This subchapter shall be in addition to existing regulations already adopted pursuant to the Uniform Construction Code Act (P.L. 1975, c.217 as amended) and known as the Regulations for the Uniform Construction Code (N.J.A.C. 5:23). This subchapter contains administrative procedures for the inspection of asbestos abatement work involving: removal; encapsulation; enclosure; repair; renovation or demolition work which disturbs asbestos in Educational Facilities.

## 1. Rules concerning exceptions are as follows:

i. State-owned or State-managed buildings: The Division of Building and Construction, New Jersey Department of Treasury, shall be the sole enforcing agency to administer and enforce the Asbestos Hazard Abatement Subcode with respect to State-owned or State-managed buildings where construction work is required to be contracted through the Division. This shall involve the issuance of permits; monitoring of asbestos projects; issuance of written notices to proceed and certificates of approval or occupancy; and any other provisions as may be deemed appropriate.

(b) Except as is otherwise provided in 1. below, the joint regulations adopted by the New Jersey Departments of Health and Labor, which are cited as N.J.A.C. 8:60 and N.J.A.C. 12:120, respectively, provide the licensing requirements of contractors who perform any of the functions of application, enclosure, removal or encapsulation.

## 1. Rules concerning exceptions are as follows:

i. Repair: A contractor is not required to be licensed to perform the function of repair.

## 5:23-8.4 Minor asbestos hazard abatement job

(a) Minor asbestos hazard abatement job, as defined in N.J.A.C. 5:23-8.2, involves asbestos abatement work which may be made without application or notice to the administrative authority having jurisdiction. This work requires general isolation of the work area from the surrounding environment, proper clean-up procedures, and shall be conducted by trained personnel who have successfully completed a training program for maintenance and custodial personnel and other construction trade groups which meets the applicable requirements of the New Jersey Public Employees OSHA or applicable federal standards. Specific records of each minor asbestos hazard abatement job shall be kept on file at a central location by the owner of the facility and shall be open for review and audit by the administrative authority having jurisdiction and for public inspections during normal business hours. The information required shall be: exact locations of

the worksite within the building, type of abatement work conducted, scope of work, type of replacement material used (if applicable), date, name(s) and address(es) of personnel, and the location of the disposal site. A copy of this information shall be sent to the administrative authority having jurisdiction each time a minor asbestos hazard abatement job takes place.

1. Exception: Although asbestos abatement work involving enclosure of any amount of asbestos-containing material used to cover piping does not require a construction permit for asbestos abatement pursuant to this subchapter, it shall be considered construction work and, therefore, may require a construction permit issued by the administrative authority having jurisdiction pursuant to N.J.A.C. 5:23-2.

## 5:23-8.5 Variations

(a) No variations from the requirements of this subchapter shall be made except upon written approval from the administrative authority having jurisdiction and shall be consistent with N.J.A.C. 5:23-2.

(b) An application for a variation pursuant to this section shall be filed in writing with the administrative authority having jurisdiction and shall include specifically:

1. A statement of the requirements of the subcode from which a variation is sought;

2. A statement of manner by which strict compliance with said provisions would result in practical difficulties;

3. A statement of nature and extent of such practical difficulties; and

4. A statement of feasible alternatives to the requirements of the subcode which would adequately protect the health, safety and welfare of the occupants or intended occupants and the public generally and which would adequately prevent contamination of the environment.

## 5:23-8.6 Construction permit for asbestos statement

(a) It shall be unlawful to undertake a large or small, but not a \*,\* asbestos hazard abatement job unless the owner\*,\* or an authorized representative on behalf of the owner, first files an application in writing with the administrative authority having jurisdiction and obtains the required permit. All asbestos abatement work shall be conducted in unoccupied buildings \*[except under limited circumstances]\* \*as\* approved by the New Jersey Departments of Community Affairs and Health (and New Jersey Department of Education for public school projects). The type of asbestos abatement work to be performed and the amount of asbestos to be removed, encapsulated, enclosed or repaired shall be the governing factor in determining whether it is considered a large asbestos hazard abatement job, a small asbestos hazard abatement job or a minor asbestos hazard abatement job.

1. The Bureau; Division of Building and Construction, New Jersey Department of Treasury; or a municipality which has been authorized by the Bureau to enforce the Asbestos Hazard Abatement Subcode within its jurisdiction, shall be the sole enforcing agency for asbestos hazard abatement work which:

i. For the purposes of this subchapter, the following work shall be considered a large asbestos hazard abatement job: Involves the removal, repair, enclosure or encapsulation within one year of 160 square feet or more of asbestos-containing material used on an equipment, wall, or ceiling area; or involves the removal, or encapsulation, using a liquid material applied by pressurized spray, within one year, of 260 linear feet or more of asbestos-containing material on covered piping.

ii. For the purposes of this subchapter, the following work

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shall be considered a small asbestos hazard abatement job: Involves the removal, repair, enclosure, or encapsulation within one year of more than 25 and less than 160 square feet of asbestos-containing material used on an equipment, wall or ceiling area; or involves the removal or encapsulation, using a liquid material applied by pressurized spray, within one year of more than 10 and less than 260 linear feet of asbestos-containing material on covered piping.

(b) The application for a construction permit for asbestos abatement shall be subject to the following:

1. The application for a permit shall be submitted in such form as the Bureau may prescribe and shall be accompanied by the required fee as provided for in this subchapter.

2. The application for a construction permit for asbestos abatement shall be required to include the following:

i. The name, address and license number of the asbestos contractor pursuant to N.J.A.C. 12:120 Asbestos Licenses and Permits under the jurisdiction of the New Jersey Department of Labor;

ii. The asbestos hazard assessment conducted by the New Jersey Department of Health;

iii. The name and address of the private air monitoring firm, hired by the building owner who shall act as the Asbestos Safety Monitor approved by the New Jersey Department of Health who will be responsible for continuously monitoring the asbestos abatement project;

iv. The name and address of the analytical testing laboratory approved by the New Jersey Department of Health which shall analyze bulk, dust and air monitor samples, as needed;

v. Plans and specifications (not less than two sets) indicating the scope of the proposed work, the provisions proposed to contain the asbestos-containing material during abatement work and scheduled starting and completion dates for the asbestos work project;

vi. Documentation that all buildings, except \*[under limited circumstances]\* \*as\* approved by the New Jersey Departments of Health, Education or Community Affairs, as appropriate, will be unoccupied at the time an asbestos abatement job takes place;

vii. The name and address of the New Jersey Department of Environmental Protection registered waste hauler and of the New Jersey Department of Environmental Protection registered landfill where the asbestos waste will be deposited.

(c) The issuance of a construction permit for asbestos abatement shall be subject to the following:

1. Submission of a completed application;

2. The described work and containment measures conform to the requirements of this subchapter and the requirements of any other applicable law or regulation adopted or enforced by any other State agency.

(d) The issuance of the construction permit for asbestos abatement authorizes the preparation of the job site. No actual asbestos abatement work shall commence until:

1. A pre-commencement inspection has been conducted and approved by the administrative authority having jurisdiction.

(e) A permit, once issued remains valid only as long as all of the information contained in the application remains correct and is adhered to. Any change requires an amendment to the application before the change takes place. Failure to adhere to these requirements may result in a stop work order.

(f) The applicant or contractor shall notify the following agencies in writing prior to the start of the asbestos abatement project. Such notice shall be supplied in the form of a copy of the completed application for a construction permit for

asbestos abatement and a copy of the permit if the administrative authority is a municipal enforcing agency and not the Bureau:

1. New Jersey Department of Health  
Asbestos Control Project  
Environmental Health Program  
CN 360  
Trenton, New Jersey 08625-0360

2. New Jersey Department of Education  
(For Public School Projects Only)  
Bureau of Facility Planning Services  
225 W. State Street  
Trenton, New Jersey 08625

3. New Jersey Department of Community Affairs  
Bureau of Construction Code Enforcement  
CN 805  
Trenton, New Jersey 08625-0805

5:23-8.7 Inspections; violations

(a) Pre-commencement inspections shall be conducted as follows:

1. Notification to the administrative authority having jurisdiction shall be made by the applicant or contractor to request a pre-commencement inspection at least 48 hours in advance of the desired date of inspection. This inspection shall be requested each time another worksite is started in a multi-phase project.

2. The inspector shall ensure that:

i. The job site is properly prepared and that all containment measures are in place pursuant to this subchapter;

ii. All workers shall present to the inspector a valid work permit issued by the New Jersey Department of Labor;

iii. Measures for the disposal of removed asbestos material are in place and shall conform to the adopted standards;

iv. The Asbestos Safety Monitor approved by the New Jersey Department of Health is on the job site and properly equipped to carry out the monitor's responsibilities.

v. The contractor has a list of emergency telephone numbers at the job site which shall include the monitoring firm employed by the building owner and telephone numbers for fire, police, emergency squad, local hospital and health officer, New Jersey Department of Labor and New Jersey Department of Health.

3. If all is in order, the inspector from the administrative authority having jurisdiction shall issue a written notice to proceed in the field. If the job site is not in order, then any needed corrective action must be taken before any work is to commence. Conditional approvals shall not be granted.

(b) Progress inspections shall be conducted as follows:

1. Primary responsibility for ensuring that the asbestos abatement work progresses in accordance with this subchapter rests with the Asbestos Safety Monitor. This monitor shall continuously be present to observe the progress of work and perform required tests.

2. Inspections performed by inspectors from the administrative authority shall be unannounced and ensure that:

i. The Asbestos Safety Monitor is present and is performing all required tests and maintaining required records; and

ii. The work is progressing in accordance with this subchapter.

3. If the Asbestos Safety Monitor observes irregularities at any time, the monitor shall direct such corrective action as may be necessary. If the contractor fails to take the corrective action required, or if the contractor or any of their employees habitually and/or excessively violate the requirements of any

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regulation, then the Asbestos Safety Monitor shall inform the inspector from the administrative authority having jurisdiction who shall issue a Stop Work Order to the contractor and have the work site secured until all violations are abated.

(c) Clean-up inspections shall be conducted as follows:

1. Notice for clean-up inspection shall be requested by the contractor at least 48 hours in advance of the desired date of inspection;

2. The clean-up inspection shall be conducted prior to the removal of the critical barriers;

3. The inspector from the administrative authority having jurisdiction shall ensure that:

i. The work site has been properly cleaned and is free of visible asbestos and asbestos-containing material;

ii. All Asbestos Safety Monitor responsibilities have been properly performed and all records are complete and demonstrate compliance with this subchapter; and

iii. All removed asbestos has been properly disposed of off-site in accordance with the regulations of the New Jersey Department of Environmental Protection, N.J.A.C. 7:26-1 et seq.

4. If all is in order, the inspector shall issue a written notice of authorization to remove barriers from the job site.

(d) Final inspections shall be conducted as follows:

1. Upon notice by the owner or by the contractor and at least 48 hours after the removal of the critical barriers, a final inspection shall be made to ensure the absence of any visible signs of asbestos or asbestos-containing materials.

(e) Bureau inspections shall be conducted as follows:

1. The Bureau shall make unannounced periodic inspections of any job-site involving asbestos abatement work.

(f) Violations: The inspector shall ensure that the work conforms to this subchapter. If it is found that the asbestos abatement work is being conducted in violation of this subchapter, the inspector shall issue a Stop Work Order to the contractor and have the work site secured until all violations are abated.

#### 5:23-8.8 Certificate of occupancy; certificate of approval

(a) Certificate of occupancy requirements are as follows:

1. It shall be unlawful to use or occupy the portion of the building affected by asbestos abatement in whole or part until a certificate of occupancy has been issued by the administrative authority having jurisdiction. The certificate of occupancy shall be issued after the project has been successfully completed in which asbestos is disturbed and the work is conducted in an unoccupied building.

2. The application for a certificate of occupancy shall be in writing and submitted in such form as the Bureau may prescribe and shall be accompanied by the required fee as provided for in this subchapter.

i. The application shall include the following:

(1) The name and address of the owner;

(2) The address of the building or structure;

(3) The statement by the responsible person in charge of work, that to the best of his knowledge all work has been completed in accordance with the permit, the approved plans, and the regulations;

(4) A statement of the final costs of the asbestos abatement project;

(5) The report of the Asbestos Safety Monitor, including all records and test data required; and

(6) Final air monitoring level of .01 fibers/cc or lower submitted by the Asbestos Safety Monitor.

3. If all the information required is complete and in ac-

cordance with this subchapter, and if the final inspection reveals no visible evidence of asbestos, a certificate of occupancy shall be issued.

i. If the project fails to pass the final inspection or meet the final air monitoring level, a certificate shall not be issued until remedial measures are taken.

(b) Certificate of approval requirements are as follows:

1. It shall be unlawful to use or occupy the portion of the building affected by asbestos abatement in whole or part until a certificate of approval has been issued by the administrative authority having jurisdiction. The certificate of approval shall be issued after the project has been successfully completed and the work has been conducted in an occupied building.

2. The application for a certificate of approval shall be in writing and submitted in such form as the Bureau may prescribe and shall be accompanied by the required fee as provided for in this subchapter.

i. The application shall include the information specified in (a)2i(1) through (4) above.

3. If all the information required is complete and in accordance with this subchapter, and if the final inspection reveals no visible evidence of asbestos, a certificate of approval shall be issued.

i. If the project fails to pass the final inspection, a certificate shall not be issued until remedial measures are taken.

#### 5:23-8.9 Fees

(a) Bureau of Construction Code Enforcement fees are as follows:

1. The fee charged for a construction permit for asbestos abatement shall be based upon the estimated cost of the abatement work. The fee shall be charged according to the following rate: \$40.00 per \$1,000 for each \$1,000 increment up to \$50,000; \$32.00 per \$1,000 for each \$1,000 increment from \$50,001 to \$100,000; \$24.00 per \$1,000 for each \$1,000 above \$100,000. For the purpose of determining estimated cost, the applicant shall submit to the department, if available, cost data produced by the architect or engineer of record, or by a recognized estimating firm, or by the contractor. A bona fide contractor's bid, if available, shall be submitted. The department will make the final decision regarding estimated costs. This fee shall be paid before the permit is issued.

i. The minimum fee charged for a construction permit for asbestos abatement shall be \$300.00.

2. The fee charged for a certificate of occupancy or a certificate of approval shall be in the amount of 10 percent of the construction permit for asbestos abatement fee which is charged pursuant to this subchapter.

i. The minimum fee charged for a certificate of occupancy or a certificate of approval pursuant to this subchapter shall be \$100.00.

(b) Municipal enforcing agency fees are as follows:

1. The fees charged for a construction permit for asbestos abatement, certificate of occupancy, and certificate of approval shall be set forth by Ordinance as provided in N.J.A.C. 5:23-4.17.

#### 5:23-8.10 Precautions and procedures during a large asbestos hazard abatement job

(a) Protective clothing and equipment for asbestos abatement shall be subject to the following requirements:

1. The contractor shall provide the required respirators and protective clothing to all who may inspect or visit the job site;

2. The protective clothing and equipment requirements set forth in this section shall be used to prevent the contamination of areas and buildings accessible to or used by the public by

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persons engaged in asbestos abatement projects;

3. No specific protection clothing is required; however, all clothing worn during removal operations shall be disposed of as contaminated waste. The requirement that clothing be disposed of as contaminated waste shall not include rubber boots, respirators, eye protection, hard hats, and other protective clothing, which can be easily cleaned.

4. Polyethylene bags shall be 6 mil thick and of sufficient size for their intended use:

5. All tape shall be a high-quality duct tape. All spray-on adhesives, glue, and other barrier securing material shall also be high quality products:

6. The contractor shall have available sufficient inventory of protective clothing, respirators, filter cartridges, plastic sheeting of size and thickness, duct tape, glue, spray-on adhesives, and air filters. Personal protective equipment inventory shall allow for inspector and visitor usage:

7. The contractor shall have available shower stalls and sufficient plumbing for these showers including sufficient hose length and drain systems or an acceptable alternate such as a portable decontamination trailer with showers. Waste shower water shall be filtered through 5-um filters and recycled to be used as a wetting agent or added to asbestos contaminated waste before disposal in an approved landfill:

8. The contractor shall have available ladders and/or scaffolds of adequate length and sufficient quantity so that all work surfaces may be easily reached by inspectors:

9. The contractor shall have available air filtering equipment capable of filtering asbestos fibers to 0.3 um at 99.97 percent efficiency and of sufficient quantity and capacity to cause a complete air change within the work area once every 15 minutes: such equipment shall exhaust the filtered air so as to maintain a negative pressure inside the work area. Air shall flow in through the decontamination chamber and waste exit ports, and exhaust through the negative air filtration unit by means of flexible duct leading outside the work area, preferably outside of the building. The air-filtering equipment should be positioned at a maximum distance from the decontamination chamber. Air flow shall be sufficient to prevent escape of airborne fibers. Negative air-filtration shall be in operation at all times.

(b) Decontamination procedures are as follows:

1. The contractor shall provide an adequate decontamination unit consisting of a serial arrangement of rooms or spaces adjoining the work area or a decontamination trailer. Each space shall be clearly identified and separated from the others by plastic sheet doors, acceptable air locks, or other arrangements designed to minimize fiber and air transfer as people pass between areas. A minimum of two layers of 6 mil plastic sheeting shall be required for floors, walls, and the ceiling for on-site constructed decontamination units. Air locks shall have at least three layers of 6 mil plastic sheetings.

2. The decontamination areas shall consist of the following:

i. Clean room: In this room persons remove and leave all street clothes and put on clean disposable coveralls. Approved respiratory protection equipment is also picked up in this area. No asbestos contaminated items are permitted in this room.

ii. Shower room: This is a separate room used for transit by cleanly dressed people entering the job site from the clean room and for showering by them after they have undressed in the equipment room. This is a contaminated area.

iii. Equipment room: Work equipment, footwear, and all other contaminated work clothing shall be stored here. This is also a change and transit room for people. All areas between the shower room and work area shall be considered part of

the equipment room. This is a contaminated area.

3. The contractor in order to prevent contamination of the environment shall be responsible for controlling access at the work site and shall maintain a daily log of personnel entering the work area. A list of names of workers shall be posted with their start and stop times for each day. In addition, the contractor shall assure that all who enter the work area (hereafter referred to as person) shall observe the following work area entry and exit procedures:

i. Person enters clean room and removes street clothing, puts on a respirator, and passes through shower room into the equipment room.

ii. Any additional required clothing and equipment previously deposited in the equipment room is put on.

iii. Person proceeds to work area.

iv. Before leaving the work area, the person shall remove all gross contamination and debris from the coveralls using a vacuum with a high efficiency particulate absolute (HEPA) filter. In practice, this is usually carried out by one person assisting another.

v. The person then proceeds to equipment room and removes all clothing except approved respirators. Extra clothing may be stored in contaminated end of the unit. Disposable coveralls are placed in a bag for disposal with other material.

vi. The person then proceeds directly into the shower room. Respirators shall be taken off last to prevent inhalation of fibers during removal of contaminated clothing, and shall not be removed until they have been washed free of dust.

vii. After showering, the person moves to the clean room and dresses in street clothing prior to exiting.

viii. Respirators are picked up, washed thoroughly, and disinfected as required, wrapped and stored in the clean room.

4. The contractor shall assure that filters in dual cartridge type respirators used during the preparation phase of the job shall be removed, wetted and discarded as contaminated waste. A new filter shall be in place in the respirator prior to reuse. For powered air purifying respirators or supplied air respirators, the manufacturer shall be consulted about the proper decontamination sequence.

5. There shall be no smoking, eating, or drinking in any contaminated areas (shower room, equipment room, and work area). Respirators shall be worn in all contaminated areas.

6. Nondisposable footwear shall remain inside the contaminated area until completion of the visit, and shall be thoroughly cleaned at that time.

(c) Preliminary preparations in the work area shall be conducted as follows:

1. The contractor shall provide and post in clearly visible locations, caution signs indicating that asbestos work is being conducted and that unprotected persons should not enter;

2. The contractor or persons employed by the building owner shall clean with wet cloths all movable items that can be removed from the work area without disrupting the asbestos material. This shall include furniture, equipment, drapes, curtains. The cloths used for cleaning shall be disposed of as asbestos contaminated waste;

3. The contractor shall install or build an approved decontamination facility;

4. The contractor shall shut down and seal off all heating, cooling ventilating or other air handling systems;

5. The contractor shall establish written emergency procedures to be posted within each work area. These procedures shall include plans for medical emergencies, fire evacuation, temporary loss of electrical power or water and procedures for repair and clean-up following temporary

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breach of containment barriers.

(d) Isolation and barrier construction in the work area shall be conducted as follows:

1. Before removing any asbestos from the work area, the contractor shall ensure that the outer perimeters of the work area have been securely sealed off from the rest of the building;

2. All vertical and horizontal surfaces except those of asbestos containing materials shall be sealed with watertight polyethylene plastic sheeting except as provided in (d)3 below;

3. The only permissible exception to total enclosure shall be:

i. An entrance airlock with showers and a decontamination chamber;

ii. A debris removal airlock to permit cleaning and removing asbestos waste;

iii. Staircases.

4. Barriers used to isolate contaminated from uncontaminated areas shall be constructed of plastic polyethylene sheeting. This plastic sheeting shall be replaced or repaired immediately if torn or damaged. The minimum acceptable thickness for covering walls shall be 6 mil plastic sheeting. A double layer of 6 mil plastic sheeting shall be used to seal open space between work areas and non-contaminated areas and for all floors except stairs.

(e) Initial activity in the work area shall be conducted in the following order:

1. Remove filters from all heating, ventilating and air conditioning systems and place them in 6 mil plastic bags, double bagged with visible labels, for disposal as asbestos-containing waste and securely sealed by knotting the bag. These bags should be handled in the same manner as removed asbestos;

2. The contractor shall: wet clean and/or HEPA vacuum all non-removable non-asbestos items such as radiators and suspended light fixtures in the work area, including built-in equipment; and cover with two thickness of 6 mil plastic sheeting taped securely in place;

3. The contractor shall detach and wet clean removable electrical, heating and ventilating equipment and other items which may be connected to the asbestos surfaces. These items shall be removed from the work area and returned and re-attached to their proper place when the work area has been decontaminated and final air testing provided satisfactory results;

4. The contractor shall seal all openings between the work area and uncontaminated areas including (but not limited to) windows, doorways, elevator openings, skylights, corridor entrances, floor and sink drains, air ducts, grills, grates and diffusers with two layers of 6 mil plastic sheeting taped securely in place or stapled or fastened by spray-on adhesives, glue beads, or horizontal wood battens or the equivalent. Floor drains shall be sealed individually and then covered as all other floor surfaces with two thicknesses of 6 mil plastic sheeting. Temporary walls may be constructed in order to facilitate barrier construction;

5. For floor covering two layers of 6 mil polyethylene sheeting shall be used. Floor sheeting shall be extended up sidewalls at least 24 inches. Sheetting shall be sized so as to minimize the number of seams necessary. No seams shall be located at the joints between walls and floors;

6. Wall sheeting shall consist of one layer of 6 mil polyethylene sheeting. It shall be installed to minimize joints and shall overlap floor sheeting by at least 18 inches. No seams shall be located at the corners. Plastic wall coverings shall be taped first to the upper most edge of the wall and shall hang straight down;

7. As all existing ventilating systems in the work area are to be sealed throughout the removal operation, an alternate system shall be utilized. Install approved negative air filtration units utilizing appropriate HEPA filters to exhaust air from the work area. Negative air filtration units shall be of sufficient number and capacity to ensure that total air volume is exchanged once every 15 minutes.

8. Replacement air shall enter the work area through the decontamination facility, in order to reduce the possible escape of contaminated air. The entire alternate ventilating system shall be installed and operating prior to commencement of asbestos abatement.

(f) Sequence of asbestos removal activities shall be conducted as follows:

1. The asbestos-containing material shall be sprayed with water containing an additive to enhance penetration (amended water). All wetting agents shall be tested on a small area before use to ensure effectiveness. A fine low-pressure spray of this solution shall be applied to prevent fiber disturbance preceding removal. The wetted or amended water shall be sprayed on as many times and as often as necessary to ensure that the asbestos material is adequately wetted throughout (especially that asbestos nearest the substrate) to prevent dust emission. No dry removal of asbestos is allowable.

2. As a method of organizing the asbestos removal work, workers shall begin working on the areas nearest to the decontamination unit and work towards the negative air filtration units.

3. Asbestos-containing material located more than 15 feet above the floor shall be dropped into inclined chutes, or dropped onto scaffolding, or containerized at that height for eventual disposal. Asbestos-containing materials shall not be dropped or thrown to the floor from 15 feet or greater. For materials located at heights greater than 40 feet above the floor, a dust-tight, enclosed chute shall be constructed to transport removed material directly to containers located on the floor.

4. The wet material from each section shall be packed and sealed into labeled 6 mil plastic bags, double bagged with visible labels, prior to starting the next section. Water-soaked fallen material shall be picked up while wet to prevent water loss due to evaporation.

5. Contaminated material containing sharp edged items shall be cut to size while adequately wet, placed in small cardboard boxes and double bagged, or singly bagged and then placed in temporary fiber drums. 40 CFR 61.22(j) prescribes a leak-tight container, the integrity of which is the contractor's responsibility.

6. Bags and drums shall be marked with the label prescribed by Section 61.22(c) of the EPA regulations. The outside of all containers shall be wet-cleaned or HEPA vacuumed before leaving the work area.

7. After completion of this removal phase (stripping), all surfaces from which asbestos has been removed shall be scrubbed using nylon or bristle brushes and wet sponged or cleaned by an equivalent method to remove all visible asbestos containing material. During this work the surfaces being cleaned shall be kept wet using amended water. All disposable equipment shall be packaged for disposal. Containers shall be washed with amended water and shall have all exterior particulate matter removed prior to removal from the contaminated area.

8. All accessory equipment shall be moved to the equipment room in sealed polyethylene (6 mil minimum) and decontaminated for removal.

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9. All free water (in contaminated areas) shall be retrieved and added to asbestos-contaminated waste and/or placed in plastic lined leak-tight drums.

10. Final clean-up of the work area may commence.

(g) Final clean-up work of the work area shall be conducted as follows in the order listed:

1. The contractor shall first clean all surfaces in the work area using a fine spray or mist of amended water applied to all surfaces followed by the wet-wiping procedure using disposable cloths. These cloths shall be disposed of or rinsed thoroughly on a frequency sufficient to eliminate visible accumulation of debris. Allow 24 hours before re-entering the work area and proceeding to step number 2 below of this procedure.

2. After completion of cleaning all surfaces in the work area, the contractor shall spray coat all dried exposed surfaces with a binding agent such as a diluted clear encapsulant or a water based paint. The surfaces to be coated shall include surfaces from which asbestos-containing materials have been removed (such as ceilings) and polyethylene which has been used to cover walls, floors and non-removable fixtures and equipment.

3. The plastic sheeting used to protect floors, walls, fixtures and equipment shall be carefully removed and rolled up, with the contaminated portion on the inside, and packaged for disposal. Tape and any other debris shall also be disposed of in sealed plastic bags labeled as asbestos-contaminated waste.

4. Wet clean with amended water all walls, floors, wood-work, ceilings, electric light fixtures and other surfaces. Allow all surfaces to dry and repeat procedure. Cloths or sponges used in the cleaning operation shall be disposed of as contaminated waste.

5. Plastic used to maintain critical barriers between work areas and clean areas such as those in doorways, windows and air vents shall be sprayed with encapsulant, but not removed until air monitoring is completed and satisfactory results have been obtained.

6. After completion of the cleaning operations the contractor shall:

i. Notify the administrative authority having jurisdiction that a clean-up inspection can be performed to insure all visible asbestos has been removed and the area is dust free;

ii. Request air monitoring of the work area.

7. Air monitoring results must indicate asbestos concentrations of no more than .01 f/cc for every 10,000 square feet of floor space contained by the critical barrier. These results must be achieved before critical barrier removal and reconstruction activities may begin. If the test results show asbestos fiber concentrations above the acceptance criteria, then clean-up shall be repeated until compliance is achieved by re-cleaning all surfaces using wet methods and operating HEPA equipped Negative Air Filtration Units to exhaust air outside the work area to filter the air.

8. After the work area is found to be in compliance with the acceptance criteria, the following tasks shall be performed by the contractor:

i. All critical barriers shall be unsealed;

ii. The inside of windows shall be washed;

iii. Any walls, floors, trim, doors, furniture or other items damaged during the work shall be repaired and refinished to match existing material;

9. Notice for a final inspection shall be made by the owner or contractor to the administrative authority having jurisdiction.

10. Upon receiving a satisfactory final inspection, appli-

cation for a Certificate of Occupancy may be made.

5:23-8.11 Precautions and procedures during a small asbestos hazard abatement job

(a) Since this work may disturb small amounts of asbestos, it does not require the same level of precautions as with a large asbestos hazard abatement job, but it does require that all asbestos abatement work be performed by a licensed contractor and that the employees have valid work permits issued by the New Jersey Department of Labor. A construction permit shall be issued. An asbestos safety monitor approved by the New Jersey Department of Health and air monitoring will not be required but the work will have to be contained and performed in accordance with established standards.

1. Exception: The administrative authority having jurisdiction may require an asbestos safety monitor, with the responsibility of air monitoring, and the installation of a decontamination unit consisting of a serial arrangement of rooms or spaces adjoining the work area or a decontamination trailer. Reasons for which, but are not limited to, may be that the type of asbestos abatement work to be performed may involve a highly friable asbestos-containing material, or that the asbestos-containing material contains a high percentage of asbestos by weight, or because of the asbestos abatement procedure, the asbestos-containing material becomes highly friable. The administrative authority shall receive written approval from the New Jersey Department of Community Affairs or the New Jersey Department of Health, which may require this additional measure.

(b) The following minimum level of precautions and procedures shall be employed:

1. The contractor shall provide the required respirators and protective clothing to all who may inspect or visit the job site;

2. Prior to the start of the project adequate warning signs of asbestos dust hazard shall be posted outside of all work areas where work on asbestos-containing materials will be conducted;

3. Work areas where asbestos-containing materials will be disturbed must be isolated from the surrounding environment. This enclosure is extremely important where work is to be performed adjacent to occupied areas. Furniture and moveable equipment shall be removed from the work area. The work area shall then be sealed off from the surrounding area with polyethylene sheeting having a thickness of 6 mil. The material and building conditions involved in each job need to be evaluated carefully to develop a proper enclosure;

4. Only personnel essential to asbestos abatement work shall be present in the work area. This may necessitate that the work not be done during normal work hours, so as to avoid exposure to people who usually occupy the area;

5. Release of asbestos fibers from material to be repaired or removed can be controlled by thoroughly wetting the materials. Before removal of asbestos-containing material from covered pipes, boilers, hot water heaters, etc. all asbestos-containing material must be thoroughly sprayed (using a large garden-type insect sprayer) with water, using a wetting agent. Wetting agents shall be tested on a small area first before full scale use to insure effectiveness;

6. After wetting the material which is to be removed, every effort shall be made to minimize disturbance of the material. Under special conditions, glovebags can also be used to minimize building contamination;

7. Fans or blowers shall not be used to ventilate tunnels, basement areas or manholes before or during asbestos removal or repair work;

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8. All gross contamination of people or their disposable clothing shall be removed using a HEPA vacuum before leaving the work area. The suits shall be discarded after cleaning up the work area with the HEPA vacuum. Maintenance employees must have access to shower facilities after performing asbestos-related work activities;

9. The work area must be thoroughly HEPA-vacuumed and wet mopped before any plastic sheeting is taken down. All contaminated clothing, cleaning rags, mops, etc. must be treated and disposed of as asbestos waste;

10. All asbestos waste shall be picked up while wet and shall be placed in 6 mil plastic bags, double bagged with visible labels for disposal as asbestos-containing waste, and securely sealed by knotting the bag;

11. When work is completed, all plastic sheeting used to protect walls, floors, and equipment shall be carefully wet-cleaned and removed in a manner that keeps the contaminated area inside. Sheets of plastic can be rolled up, ends tucked in, and placed in 6 mil plastic bags, double bagged with visible labels for disposal as asbestos-containing waste, and securely sealed by knotting the bags. The outside of all containers shall be wet-cleaned or HEPA vacuumed before leaving the work area;

12. Asbestos waste must be disposed of in accordance with the regulations of the New Jersey Department of Environmental Protection, N.J.A.C. 7:26-1 et seq.

13. Outside contractors, who will be working in an area where asbestos materials are located, should be advised of its presence and cautioned to prevent disturbance of the material and possible exposure to the workers.

(c) Asbestos repair jobs in tunnels, crawl spaces and plumbing access spaces are likely to present unique conditions which will require modification of the recommended procedures described in this section. In all instances, every effort should be made to minimize airborne fibers and contamination of surrounding areas by enclosing the work area effectively.

(d) Asbestos repair or removal projects should not be conducted when the building is in general use.

**5:23-8.12 Asbestos encapsulation and enclosure**

(a) Encapsulation usually constitutes spraying friable asbestos-containing material with a liquid sealant (not including paint) that helps bind the asbestos together with other material components and to adhere it firmly to the building structure.

1. The requirements of this section are set forth in order to prevent the contamination of the building environment which may be caused by improperly performed asbestos encapsulation work.

i. Encapsulation shall not be performed where:

(1) Asbestos-containing material is friable, damaged, or deteriorating;

(2) Effective long-term inspection of the encapsulated site cannot be assured;

(3) The source of asbestos is highly accessible to building occupants and damage to material is probable;

(4) The asbestos-containing material does not adhere well to the substrate;

(5) There is existing or potential water damage to asbestos containing material;

(6) The asbestos-containing material is more than one inch thick; and is used to cover ceilings, walls, beams, or other structural members;

(7) The asbestos-containing material is subject to high vibration.

ii. Encapsulation may be performed when:

(1) Damage to the material is improbable;

(2) The asbestos-containing material is granular or cementitious;

(3) The encapsulating material is known to bond asbestos to the subsurface and asbestos-containing material still retains its bonding integrity;

(4) Asbestos-containing material has been removed and loose fibers remain which should be bonded.

iii. If encapsulation is used as a method of asbestos abatement the following maintenance procedures shall be employed:

(1) A periodic monitoring and maintenance program consisting of inspection at least annually to check for damage to all encapsulated surfaces;

(2) Maintenance of records by the building owner, on the locations and condition of the encapsulated material;

(3) The removal of encapsulated asbestos when conditions change, making encapsulation no longer an appropriate method of asbestos abatement.

iv. Sealants considered for use in encapsulation shall first be tested to ensure that the sealant is adequate for its intended use. A section of the asbestos-containing material shall be evaluated following this initial test application of the sealant to quantitatively determine the sealant's effectiveness in terms of penetrating and hardening the asbestos-containing material. The United States Environmental Protection Agency, Office of Toxic Substances, has developed guidelines for the use of encapsulants on asbestos-containing materials which discuss advantages and disadvantages of encapsulation. The American Society of Testing and Materials (ASTM) Committee E06.21.06E on Encapsulation of Building Materials has developed a guidance document to assist in the selection of an encapsulant once a decision to encapsulate has been made.

v. Before encapsulation is performed, all loose and hanging asbestos-containing material shall be removed while damp, and disposed of in accordance with this subchapter.

vi. Filler material used to repair damaged and missing areas of asbestos-containing material shall contain no asbestos, shall adhere well to the substrate and shall provide an adequate base for the encapsulating agent.

vii. Encapsulated asbestos containing materials shall be identified by signs, labels, color coding or some other mechanism to warn persons who may be required to disturb the material that asbestos is present.

viii. Where encapsulants are sprayed on asbestos-containing materials:

(1) Low pressure airless spray shall be used.

(2) Negative air filtration units (with HEPA filters) shall be used during the encapsulation process which shall have sufficient capacity to cause one complete air exchange every 30 minutes.

ix. Sealants used in encapsulation shall be flame resistant.

(b) Enclosure constitutes construction of an air-tight barrier to isolate a surface coated with asbestos-containing material. The barrier for an enclosure job should be impact-resistant. It is not necessary to have an air-tight barrier for piping if the insulation has first been covered with an appropriate sealant or tape. When removal is not feasible or practical and the integrity of the barrier can be maintained, enclosure may be the most appropriate remedial measure. Enclosure is particularly suitable (when applied after the repair of damaged material) as part of the remediation procedure for piping because the shape and structure of piping is relatively complex to be treated and the usual difficulty of

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accessability prevents an adequate removal job. For example, an enclosure is recommended for vertical piping in classrooms, or for piping in basement areas to prevent the asbestos insulation from being damaged or disturbed by an opening door.

1. The requirements of this section are set forth in order to prevent the contamination of the building environment which may be caused by improperly performed asbestos enclosure work. The following procedures shall be adhered to:

i. The surface area of asbestos-containing material which will be disturbed during the installation of hangers, brackets or other enclosure supports shall first be sprayed with amended water using a low pressure airless spray;

ii. Power drills used to install anchors or other tools which may disturb asbestos containing material shall be equipped with or used in conjunction with HEPA vacuum filters;

iii. Loose and hanging asbestos-containing materials shall be removed while damp and disposed of in accordance with this subchapter;

iv. After the installation of hangers, brackets or other supports and before the asbestos-containing material is enclosed, asbestos containing materials shall be repaired, using materials which do not contain asbestos;

v. Enclosures for asbestos-containing materials shall be identified by signs, labels, color coding or some other mechanism to warn persons who may be required to disturb the enclosure that asbestos is present;

vi. Enclosures shall be inspected at least annually to ensure their integrity.

### 5:23-8.13 Disposal of asbestos waste

(a) This subsection shall apply to the removal of asbestos from the job site and the disposal of asbestos waste.

1. Disposal of asbestos waste shall be conducted as follows:

i. A notification of intent to dispose of asbestos shall be sent to the New Jersey Department of Environmental Protection at least 10 days prior to actual disposal. The notification shall be sent to the Division of Waste Management, Bureau of Field Operations, 120 Route 156, Yardville, New Jersey 08620 pursuant to N.J.A.C. 7:26-1 et seq.

ii. All asbestos waste materials destined for disposal in New Jersey shall be wetted and packaged in permanently sealed, leaktight containers (such as 6 mil plastic bags, double bagged with visible labels) in accordance with 40 CFR 61.20-25 before it can be legally transported and disposed of in New Jersey. No haulage of loose asbestos is permitted.

iii. The notification of (a)ii above shall include the following:

(1) Name, address, and telephone number of the removal project;

(2) Quantity and nature of the waste to be disposed;

(3) Name, address, and New Jersey Department of Environmental Protection registration number of the collector-handler;

(4) Name and address of the landfill at which disposal will occur;

(5) Date and time of disposal;

(6) A copy of any written notification required by 40 CFR 61.22 to 61.25.

iv. Asbestos waste which is properly packaged is classified as Waste ID #27, non-hazardous industrial waste, and shall be disposed of at a landfill which is registered by the New Jersey Department of Environmental Protection in conformance with the following:

(1) The landfill used must be registered by the New Jersey Department of Environmental Protection to accept Waste ID number 27;

(2) The specific landfill facility chosen must be one designated by the New Jersey Department of Environmental Protection as the recipient facility for the community in which the removal project is located;

(3) The waste hauler must possess a valid solid waste transporter registration issued by the New Jersey Department of Environmental Protection. A licensed solid waste transporter shall be a commercial collector/hauler or shall be the removal company if they are so registered.

(4) Asbestos waste can be hauled in dumpster containers provided the load is comprised only of asbestos in bags and does not contain any other wastes or asbestos-containing wastes which could compromise the integrity of the permanent containers;

(5) If rough surfaces or other materials are present in the load which could potentially puncture the permanent containers, then those containers shall be enclosed in temporary fiber or steel drums during loading, transport, and unloading operations. In addition, asbestos wastes shall not be loaded into or hauled with vehicles containing compaction devices;

(6) To determine which landfill to use for a particular project, N.J.A.C. 7:26-6.5 shall be consulted.

### 5:23-8.14 Duties of the Asbestos Safety Monitor

(a) The asbestos safety monitor shall perform all air sampling specified in this subchapter, and shall be thoroughly familiar with this subchapter. He shall have access to all areas of the asbestos removal project at all times and shall continuously inspect and monitor the performance of the contractor to verify that said performance complies with this subchapter. The asbestos safety monitor shall be on site throughout the entire abatement operation.

(b) The asbestos safety monitor shall have the authority to direct the actions of the contractor verbally and in writing to assure compliance. The monitor shall have authority to require that all workers present a valid work permit issued by the New Jersey Department of Labor before entering the worksite. The monitor shall have the authority to test the seal of the respirator of all who enter the worksite to ensure a proper fit. In matters of gross negligence and/or flagrant disregard for the safety of others including the possibility of contaminating the building environment and the appearance of an emergent, unsafe condition at the worksite, the monitor shall have the authority to stop work. In the event of continual noncompliance or serious violation, the asbestos safety monitor shall notify the inspector from the administrative authority having jurisdiction who shall issue a written Stop Work Order to the contractor and have the work site secured until all violations are abated.

(c) The asbestos safety monitor, upon receipt of testing results indicating that concentrations above 0.01 fibers per cc have occurred outside the containment barriers or above 0.02 fibers/cc within the clean room of the decontamination chamber during the abatement action shall report these results within one working day verbally or by telephone communication if necessary to the contractor, the owner and the architect/engineer so that prompt corrective action may be taken. This telephone or verbal communication shall be followed by a written report, a copy of which shall be sent to the administrative authority having jurisdiction.

(d) The asbestos safety monitor shall keep a daily log of on-site observations concerning contractor's compliance with activities required under this subchapter. This log shall be made available upon request at all times to the owner, the architect/engineer and to appropriate local and State agencies.

(e) The asbestos safety monitor shall report results in a

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comprehensive final report, including daily logs, observations and air monitoring results simultaneously to the owner or his agent, the contractor and the New Jersey Department of Community Affairs within 20 working days following final testing for reoccupancy. For public school projects only, the results of tests shall be reported also to the New Jersey Department of Education, Bureau of Facility Planning Services.

(f) Removal phase shall be conducted as follows:

1. Monitoring outside the work area shall be provided throughout removal operations, to ensure that no outside contamination is occurring;

2. Filter cassettes and sampling train shall be assembled as specified in NIOSH #7400. The flow rate shall be between 0.5 and 16 liters per minute. The total volume shall be a volume sufficient to achieve a detection limit of 0.01 f/cc. Pumps shall be calibrated before and after sampling and a record kept of this calibration;

3. Three samples per day shall be provided. One stationary sample at decontamination unit entrance/exit and two samples adjacent to work area but remote from the decontamination unit entrance. In the selection of adjacent areas to be monitored, preference shall be given to rooms adjacent to critical barriers;

4. If the contractor's barriers or other control methods are observed to malfunction and if the contractor does not correct the problems immediately upon notification, the monitor shall inform the administrative authority having jurisdiction. In such a situation additional sampling of up to three samples per day shall be performed by the asbestos safety monitor;

5. The analysis of air samples shall be done using NIOSH Method #7400;

6. The maximum turn-around time for analysis of the samples shall be two working days following delivery of the samples to the laboratory;

7. The evaluation criteria shall be 0.01 fibers per cubic centimeter;

8. A series of smoke tests shall be performed at the decontamination unit entrance/exit, by the asbestos safety monitor to ensure continuous negative air pressure. This test shall be performed before each work shift and every four hours thereafter until the works stops;

9. The asbestos safety monitor shall calculate the required number of negative air filtration units for each work area. This calculation shall be made whenever the volume of the work area changes. The asbestos safety monitor shall inform the owner, contractor and the architect/engineer of any discrepancies between the number of units required and those in operation within the work area. If problems are identified and not corrected, the monitor shall inform the administrative authority having jurisdiction.

10. A record shall be kept in a daily log of all on-site observations, and required activities of the contractor.

(g) Post-removal test shall be conducted as follows:

1. Within 48 hours after final clean-up and before the removal of critical barriers, a final air test shall be performed. This test is required to establish safe conditions for removal of critical barriers and to permit reconstruction activity to begin. Sufficient time following clean-up activities shall be allowed so that all surfaces are dry during monitoring. Negative air filtration units shall not be in use during monitoring. At least 24 hours shall be allowed to pass after any wet cleaning has been done and negative air filtration units have been used before the post-removal tests are begun;

2. Normal occupancy use conditions shall be simulated using propeller-type fans. The fans shall be placed in each

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room to be sampled so as to cause settled fibers to rise and enter the air. The fans shall be fan blades with a radius of at least one foot and shall be capable of creating a minimum air velocity of 500 feet per minute. These fans may be of the oscillating type. The sampling pump and sampling media shall be placed 20-40 feet at a right angle from the line(s) of air flow created in front of the fan;

3. Filter cassettes and sampling train shall be assembled as specified in NIOSH #7400. The flow rate shall be between 0.5 and 16 liters per minute. The total volume shall be a volume sufficient to achieve a detection limit of 0.01 f/cc. Pumps shall be calibrated before and after sampling and record kept of this calibration.

4. One representative sample of every 10,000 square feet of floor space where asbestos containing materials have been removed or abated shall be taken. Where the 10,000 square feet area includes several rooms, the sample shall be located in the room where the asbestos-containing material was in the worst conditions before the abatement project began;

5. Analysis shall be by NIOSH Method #7400.

6. Maximum turn-around time for analysis of samples shall be 24 hours after submission of samples to the laboratory;

7. Evaluation criteria: If test results exceeds 0.01 fiber/cc TWA, the asbestos safety monitor shall so inform the contractor, the owner and the architect/engineer. If these criteria have not been met, the contract shall be required to re-clean all surfaces using wet cleaning methods and provide negative HEPA-filtered exhaust air during the re-cleaning process. This process of re-cleaning, allowing surfaces to dry and re-testing shall be repeated until compliance is achieved.

(h) Submission of final report shall be conducted as follows:

1. Upon satisfactory completion of all asbestos removal work and of all tests, the asbestos safety monitor and an official of the testing laboratory shall jointly submit a written final report to the owner including copies of all back-up records (charts, logs, calibration results, records, ventilation measurements, etc.) documenting the day-by-day progress of work and related tests;

2. Copies of this report shall be made available upon request to appropriate State or Federal agencies. This report shall be presented in logical form, neatly bound, and properly titled, dated and signed;

3. Any deviations from acceptance practice on the part of the contractor, and any unsatisfactory test results reported during the course of the job, shall be highlighted in the report for record purposes.

### 5:23-8.15 Coordinator with other permits

(a) When a building owner or an authorized representative on behalf of the owner submits an application for a construction permit for repair, renovation, or demolition work, the following information shall be required to be given to the construction official having jurisdiction before a construction permit is issued:

1. An architect/engineer certification concerning whether asbestos will be disturbed and to what extent it will be disturbed during the planned construction work.

i. Where minor work not requiring an architect/engineer is involved then this certification will be required of the contractor undertaking the work.

(b) When it is certified that asbestos may become disturbed, an assessment performed by a New Jersey Department of Health certified assessor shall be required.

1. If the assessment indicates that the work and the disturbance which will result from it has made asbestos hazard

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abatement work necessary, then the construction official shall determine if the issuance of the permit is within the proper jurisdiction or if it is within the administrative authority having jurisdiction to enforce this subchapter.

i. The work which will cause the disturbance will not be permitted to proceed until the hazard abatement work is complete or the asbestos-containing material clearly presents no further hazard.

ii. The construction official shall issue a partial permit for work which clearly will not disturb or interfere with the asbestos hazard abatement work. Written approval from the administrative authority having jurisdiction is required before such a partial permit is issued.

5:23-8.16 Asbestos Hazard Abatement Inspector:  
Qualifications

(a) Individuals permitted to administer and enforce the Asbestos Hazard Abatement Subcode shall possess the following requirements:

1. Licensed code enforcement officials pursuant to N.J.A.C. 5:23-5 shall have:

i. A technical license as an Inspector with at least a license level of Residential and Small Commercial Structures (R.C.S.); and

ii. Successful completion of a training program approved for inspectors by the New Jersey Department of Health and certification by the New Jersey Department of Health.

iii. As delineated in i and ii above, for the purposes of this subchapter, the inspector shall be permitted to inspect all aspects of asbestos abatement work including replacement work pursuant to the Uniform Construction Code.

iv. The license may be renewed as follows:

(1) Individuals must meet the requirements for license renewal pursuant to N.J.A.C. 5:23-5.7; and

(2) Successful completion of such continuing educational requirements as may be established by the New Jersey Department of Health.

2. As an alternative to 1. above, a person shall be permitted to inspect the removal of asbestos only, if:

i. That person demonstrates practical knowledge in the area of architecture, inspection, engineering, construction, environmental sciences or health; and

ii. Successful completion of a training program approved for inspectors by the New Jersey Department of Health and certification by the New Jersey Department of Health.

5:23-8.17 Application of asbestos

(a) This section shall apply to the application of asbestos, except as provided in 1. below.

1. This section shall not apply to asbestos materials which are applied in solid, non-friable form, such as floor tiles or cement pipe.

(b) The requirements of this section are set forth in order to prevent the contamination of the building environment which may be caused by improperly performed asbestos application work.

1. No person may cause or allow surface coating by spraying on any building structure, facility, installation or internal or external portion thereof, using asbestos or any friable material containing in excess of 0.25 percent by weight of asbestos. See N.J.A.C. 7:27-17.

2. The direct application of asbestos material during construction or renovation of structures, facilities or installations by means such as troweling by hand shall be prohibited.

3. The only permissible applications of asbestos-containing materials during construction or renovation of structures, fa-

cilities or installations shall be those in which the asbestos is securely bound into a solid matrix before the application is performed, such as floor tiles in which asbestos is a minor component.

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## ENVIRONMENTAL PROTECTION

### (a)

#### DIVISION OF WASTE MANAGEMENT

#### Fee Schedule for Environmental Cleanup Responsibility Act

#### Adopted New Rule: N.J.A.C. 7:1-4

Proposed: July 1, 1985 at 17 N.J.R. 1622(a).

Adopted: August 26, 1985 by Robert E. Hughey,  
Commissioner, Department of Environmental  
Protection.

Filed: August 26, 1985 as R.1985 d.487, **with substantive  
and technical changes** not requiring additional public  
notice or comment (N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 13:1K-10(a).

Effective Date: September 16, 1985.

Operative Date: October 1, 1985.

Expiration Date pursuant to Executive Order No. 66  
(1978): September 16, 1990.

DEP Docket No.: 033-85-06.

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

The New Jersey Department of Environmental Protection ("NJDEP" or "Department") held a July 16, 1985 public hearing concerning the Fee Schedule for Environmental Cleanup Responsibility Act, N.J.A.C. 7:1-4 ("Fee Schedule") promulgated pursuant to the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq. ("Act" or "ECRA"). Although seven people attended, only one individual gave public comments on the record on July 16, 1985 at the New Jersey Museum Auditorium, Trenton, New Jersey. An additional seven comments were received on the Fee Schedule during the written comment period.

The Department's changes to the Fee Schedule upon adoption consist of clarification of text and format. For example, the definition of "small business test" at N.J.A.C. 7:1-4.3 has been revised pursuant to several comments to more clearly specify the types of "employees" included in the calculation. As another example, N.J.A.C. 7:1-4.4(b) has been revised pursuant to internal NJDEP discussions to more precisely state which responsible parties should actually pay the appropriate fees required at N.J.A.C. 7:1-4.4(b)1, 2 and 3. NJDEP summarizes and responds to the comments received and explains the revisions upon adoption to the Fee Schedule as follows:

1. Several commenters felt that the Fee Schedule should be based on a "conscientious cost accounting" system. One com-

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menter believed that the Fee Schedule should be based solely on the actual cost incurred by NJDEP's Bureau of Industrial Site Evaluation ("BISE" or "Bureau") associated with the review of a specific ECRA case. A few commenters recommended that NJDEP develop a detailed cost accounting system that specifically includes all costs associated with the operation of the Bureau. NJDEP notes that N.J.S.A. 13:1K-10(a) does not require that NJDEP promulgate a cost accounting system for ECRA fees. N.J.S.A. 13:1K-10(a) broadly authorizes NJDEP to adopt a "fee schedule, as necessary, reflecting the actual costs associated with the review of negative declarations and cleanup plans." The Legislature did not require individual or particular fee assessments for each individual ECRA case. Rather, NJDEP interprets the statute as authorizing it to generically or programmatically develop a fee schedule generally reflecting the actual NJDEP costs associated with the review of negative declarations and cleanup plans. However, NJDEP held several internal meetings discussing the potential of a cost accounting program for ECRA. NJDEP rejected basing the Fee Schedule on cost accounting principles for several reasons. NJDEP determined that implementation and operation of a cost accounting system on an individual ECRA case basis would significantly increase BISE's administrative costs and, consequently, the fees charged to industrial establishments. NJDEP does not currently assess any fee program on a cost accounting basis. BISE has designed the Fee Schedule consist with N.J.S.A. 13:1K-10(a) establishing an economical and fair Fee Schedule as indicated by the Bureau's program experience and therefore believes it has reasonably exercised the discretion authorized by the Legislature in the development of the Fee Schedule.

2. Several commenters questioned NJDEP's interpretation of N.J.S.A. 13:1K-10(a) authorizing promulgation of fees for the actual costs "associated with the review of negative declaration and cleanup plans". A few commentors felt it was unclear how certain fees pursuant to N.J.A.C. 7:1-4.5(a) and (b) related to the review of negative declarations and cleanup plans. NJDEP stands firmly behind its position that ECRA authorizes all the fees for the various BISE Services set forth at N.J.A.C. 7:1-4.5(a) and (b). Obviously, fees for negative declaration review (see N.J.A.C. 7:1-4.5(a)3 and (b)2) and cleanup plan review (see N.J.A.C. 7:1-4.5(a)4) are authorized by ECRA. Fees for initial notice required by N.J.A.C. 7:1-3.7 provide vital information associated with BISE's review of negative declarations and cleanup plans. In fact, initial notice information, with or without sampling plans, determine whether a negative declaration or cleanup plan would be appropriate in particular cases (see N.J.A.C. 7:1-4.5(a)1, (a)2, and (b)1). BISE services involving cleanup plan deferral review pursuant to N.J.A.C. 7:1-3.14 also would be an integral part of a cleanup plan review (see N.J.A.C. 7:1-4.5(a)5). A vital part of all ECRA cleanup plans consists of time schedules for implementation of approved cleanup activities. N.J.A.C. 7:1-3.12(e) requires NJDEP to conduct a final inspection and provide a written notice to the owner or operator of an industrial establishment that the cleanup has been fully implemented. NJDEP interprets BISE's ongoing oversight of cleanup plan implementation as a cost associated with the review of cleanup plans (see N.J.A.C. 7:1-4.5(a)6). One commenter strongly disagreed with NJDEP's determination that applicability/nonapplicability determination reviews were costs associated with the review of negative declarations and cleanup plans. Furthermore, this commentor found it an "unsavory position" for NJDEP to charge a \$100.00 fee for providing applicability/nonapplicability determinations.

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NJDEP disagrees with the commenters statements. The threshold question of applicability of ECRA has a direct connection with the review of negative declarations and cleanup plans. In fact, an applicability/nonapplicability determination constitutes the initial step in any negative declaration or cleanup plan review. As stated in the Basis and Background which accompanied with the July 1, 1985 proposal, NJDEP received 1,000 requests for applicability/nonapplicability determination in 1984 and expects 1,500 more requests in 1985. The Bureau's applicability/nonapplicability determinations have found widespread acceptance among New Jersey's financial, title insurance and legal communities. BISE will not be able to provide this valuable service in a responsive and timely manner without imposing the minimal fee set forth at N.J.A.C. 7:1-4.5(a)7 for this vital first step in the review of negative declarations and cleanup plans.

3. One commenter's primary concern was the Fee Schedule's effective date provision at N.J.A.C. 7:1-4.6. In particular, this commenter felt strongly that the Fee Schedule should only be effective for initial notices for new ECRA cases received on or after October 1, 1985, or alternatively should only be effective for documents received on or after October 1, 1985. According to this commenter, no notice of fees prior to the submission of existing cases and documents being processed by BISE make imposition of fees for those cases inequitable and unjust. Furthermore, this commenter believes that NJDEP leaves itself open for major criticism as to all those ECRA files and documents for which ECRA review has not be rendered before October 1, 1985. N.J.A.C. 7:1-4.6(b), as proposed, states that "ECRA cases under review by BISE prior to October 1, 1985 shall be subject only to the fees pursuant to N.J.A.C. 7:1-4.5 for the individual BISE services and approvals required by ECRA and N.J.A.C. 7:1-3 that BISE provides on or after October 1, 1985." NJDEP, after internal discussions, agrees with the concerns expressed by the commenter. Therefore, the Department has revised N.J.A.C. 7:1-4.6(a) and deleted N.J.A.C. 7:1-4.6(b) from the adopted Fee Schedule. The "Effective date" provision at N.J.A.C. 7:1-4.6 now states that "the provisions of this subchapter, as amended and supplemented pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., shall be effective for all applicable BISE services rendered relating to written submissions made pursuant to ECRA which are received by the Bureau on or after October 1, 1985. NJDEP believes that this revision upon adoption will solve the problems addressed by the commenter. NJDEP balanced the loss of revenue against the clarity and fairness of N.J.A.C. 7:1-4.6(b) as proposed prior to adopting the revised N.J.A.C. 7:1-4.6. However, NJDEP directs the regulated community to review the definition of "Initial Notice" at N.J.A.C. 7:1-4.3. NJDEP will not consider submission of only the written notice required by N.J.A.C. 7:1-3.7(d)1 through 8 (known as the General Information Submission) as the entire initial notice without completion of the written notice required by N.J.A.C. 7:1-3.7(d)9 through 17 (known as the Site Evaluation Submission) also.

4. Most commenters supported the general concept of the Small Business Test defined at N.J.A.C. 7:1-4.3 and the lower fees assessed for initial notice and negative declaration review at N.J.A.C. 7:1-4.4(b). One commenter felt that the Fee Schedule would imposed a "minor hardship" on smaller companies and transactions despite the reduced fees for small businesses established in the Fee Schedule. Several commenters strongly expressed concern about the possibility of larger industrial establishments subsidizing the smaller industrial establish-

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ments. As stated in the Basis and Background, the small business fees stand on their own and will not increase the Fee Schedule for larger industrial establishments that fail the Small Business Test. NJDEP has determined that the small business fees more closely reflect the actual cost incurred by the Bureau in handling ECRA reviews of smaller industrial establishments. NJDEP notes that smaller industrial establishments shall bear a cost equal to the larger industrial establishments if BISE's cleanup plan review is required due to spills, poor housekeeping or other reasons.

5. Several commenters expressed concern over the requirement at N.J.A.C. 7:1-4.4(a) that all fees pursuant to the Fee Schedule must be paid by certified checks or money orders. One commenter requested that the Bureau accept attorney's checks without certification. Another commenter felt that NJDEP should accept ordinary checks or drafts. This commenter noted that the Department could avail itself of the same remedy as any other creditor, including appropriate criminal sanctions. If further protection was necessary, this commenter stated that NJDEP could impose fines for bounced checks. NJDEP, after careful consideration, has decided not to change the Fee Schedule. The Bureau cannot risk the possibility of involvement in the debt collection business. Certified checks or money orders assure NJDEP that money for fees will be paid without excess administrative burdens and increased expenses. NJDEP understands the minor inconvenience and expense the payment requirements at N.J.A.C. 7:1-4.4(a) may cause industrial establishments. However, administrative and enforcement concerns outweigh any revision to the Fee Schedule upon adoption.

6. A few commenters felt that N.J.A.C. 7:1-4.4(e) should be revised to insure that NJDEP would not obtain a "windfall profit" if an ECRA transaction terminated at an early stage after payment of a required fee. One commenter suggested that a pro rata refund system or a credit of fees should be developed for early or unexpected ECRA case terminations. NJDEP revised N.J.A.C. 7:1-4.4(e) to expressly state that fees pursuant to the Fee Schedule shall be returnable "upon termination of BISE services before the Bureau's expenditure of significant time and effort as determined by the Bureau". NJDEP believes that this revision addresses the essential elements of the comments on N.J.A.C. 7:1-4.4(e).

7. A few commenters requested clarification of the definition of the Small Business Test at N.J.A.C. 7:1-4.3. In particular, the commenters felt that the definition of "E" should be narrowed to reflect the reality of the work force, specifically excluding seasonal and part-time workers, and thereby expanding the scope of the Small Business Test. NJDEP revised the definition of "E" to "equal the maximum number of persons employed full-time and year-round at the site of the industrial establishment during any of the last five years". A requested clarification of "A" at N.J.A.C. 7:1-4.3 concerning the operational area of the industrial establishment in square feet remains unchanged from the July 1, 1985 proposal. However, NJDEP takes this opportunity to state our understanding of the term "operational area". For the purpose of the Fee Schedule's Small Business Test, operational area constitutes all areas of the facility, including property and buildings, necessary for the industrial establishment to carry out its business operations including, for example, tank farms and parking areas, but not vacant or unimproved property or unused buildings.

8. After Departmental discussions, NJDEP revised N.J.A.C. 7:1-4.4(b) to more clearly state the Department's original intentions. N.J.A.C. 7:1-4.4(b)1, 2 and 3 now states

more precisely which responsible parties should actually pay the appropriate fees. Also, NJDEP added a new N.J.A.C. 7:1-4.4(b)4 to express the Department's position that fees pursuant to N.J.A.C. 7:1-4.4(b)1 and 2 may be paid by persons or other entities in place of the owner or operator of an industrial establishment upon approval of such fee payment arrangements by the Bureau.

9. Upon review of the Fee Schedule, the Department recognized that the fee amount for additional required submissions of sampling plans was not easily identifiable. The Bureau's program experience illustrates that industrial establishments may often require sampling plan submissions contrary to their preliminary expectations. Also, some cases require submission of an entirely new sampling plan with another complete review by NJDEP. The fee for additional required sampling plans can be determined by subtracting the fee for review of initial notice with sampling plan review (N.J.A.C. 7:1-4.5(a)liii minus N.J.A.C. 7:1-4.5(a)li or N.J.A.C. 7:1-4.5(b)iii minus N.J.A.C. 7:1-4.5(b)j as originally proposed) for a total fee of \$1,000.00. Also, NJDEP addressed a commenter's suggestion by reducing the fee for review of initial notice with underground tank system integrity test as the only sampling plan from \$200.00 and \$50.00 per each additional underground tank tested (N.J.A.C. 7:1-4.5(a)ii minus N.J.A.C. 7:1-4.5(a)i or N.J.A.C. 7:1-4.5(b)ii minus N.J.A.C. 7:1-4.5(b)i as originally proposed) to a fee of \$50.00 per each underground tank tested in addition to the basic initial notice review at N.J.A.C. 7:1-4.5(a)li and (b)li respectively. Therefore, NJDEP established a new N.J.A.C. 7:1-4.5(a)2 to clarify the fees for the additional required submissions of sampling plans only and underground tank system integrity tests only. The revision does not add any new fees, but merely clarifies and corrects an oversight of NJDEP from the original proposal of the Fee Schedule. Please note that the following paragraphs of N.J.A.C. 7:1-4.5(a) were renumbered as necessary. The renumbering of N.J.A.C. 7:1-4.5(a) also necessitated technical numbering changes to N.J.A.C. 7:1-4.4(b) and (c).

10. At the request of one commenter NJDEP revised N.J.A.C. 7:1-4.4(e) to expressly state the Department's intention to withhold issuance of negative declarations, cleanup plans or applicability/nonapplicability determinations until payment of all "appropriate" fees required pursuant to the Fee Schedule.

11. A few commenters requested that NJDEP "formally adopt a time schedule for its own compliance" under the ECRA program. One commenter felt that New Jersey's business community would remain skeptical of the Bureau's commitment to expeditious action if NJDEP did not impose a time schedule on itself. Another commenter felt a two week response time for issuance by NJDEP of applicability/nonapplicability determinations should be promulgated in the Fee Schedule. ECRA establishes only two time periods for Departmental actions. The Department has 45 days to approve or deny any negative declaration submitted (see N.J.S.A. 13:1K-10(b) and N.J.A.C. 7:1-3.11(c)) and 60 days to approve, conditionally approve or deny a cleanup plan deferral if the premises of the industrial establishment would be subject to substantially the same use (see N.J.S.A. 13:1K-11(b) and N.J.A.C. 7:1-3.14). The Department cannot at this time establish firm time constraints for other activities under the Act. Personnel constraints and changing case priorities further complicate the matter of establishing the time periods requested by commenters. However, the Department restates its firm commitment to work with the owners or

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operators of the industrial establishments to ensure expeditious ECRA reviews and to avoid delays that may negatively affect pending sales or closures.

12. One commenter suggested that NJDEP consider adopting an additional ECRA fee for expedited handling of a particular ECRA case. The Department, according to the commenter, should be able to provide "speedier treatment in exchange for the higher fee". Although similar arrangements are in place in certain industries, for example, laboratories performing sample analysis, the Department cannot accept this recommendation. NJDEP does not intend to set ECRA priorities based on an industrial establishment's ability to pay a higher fee. BISE will continue to establish equitably and fairly based priorities, whenever possible, on the time frames of the industrial establishment. The Bureau's performance record indicates that this successful and timely implementation should continue without any new expedited review fee.

13. A commenter felt that N.J.A.C. 7:1-4.4(b)2 should require a "fee invoice" during specific stages of BISE's ECRA review. NJDEP does not feel that the administrative burden of generating additional fee invoices would be necessary. Ongoing communications with the appropriate BISE case manager should be the proper avenue for any fee amount updates. Pursuant to N.J.A.C. 7:1-4.4(b)2, the Bureau shall prepare and mail an appropriate bill to the owner or operator of an industrial establishment for all BISE services rendered as described pursuant to N.J.A.C. 7:1-4.5(a)2, (a)3, (a)4, (a)5, (a)6 and (b)2. NJDEP believes that this building process, in addition to the fee for initial notice review pursuant to N.J.A.C. 7:1-4.4(b)1, should provide satisfactory notice of total fee amounts for all parties.

14. A few commenters questioned the appropriateness of the Fee Schedule since the Bureau has "successfully implemented" ECRA without fees. In addition, the commenters suggested that NJDEP should attempt to secure additional funding from other legislative sources prior to promulgating the Fee Schedule. The Department believes that the Basis and Background adequately documents the financial crisis for the ECRA program without the Fee Schedule. NJDEP has determined that adoption of the Fee Schedule authorized by N.J.S.A. 13:1K-10(a) is necessary for the continued successful implementation of the Department's statutory mandate. Furthermore, NJDEP has no need to request new funding sources for the ECRA program. The Legislature generously included an annual \$400,000.00 appropriation from the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10.11o(6), and the authority for the Fee Schedule to fund NJDEP's ECRA program. Other solicitation of ECRA funding is not necessary.

15. A few commenters demanded various disclosures of NJDEP concerning preparation of the Fee Schedule. One commenter requested access to NJDEP's "unpublished budget". NJDEP refers these commenters to the Basis and Background for the Fee Schedule. This document should answer most, if not all, of the commenters questions. Copies of the Basis and Background may be obtained by writing to:

Anthony McMahon, Chief  
 Bureau of Industrial Site Evaluation  
 Division of Waste Management  
 CN 028  
 Trenton, New Jersey 08625  
 Attention: Fee Schedule  
 Basis and Background  
 Document Request

Other Department records, subject to NJDEP's determination

of confidentiality or privilege, shall be available for public review pursuant to New Jersey's Right to Know Law, N.J.S.A. 47:1A-1 et seq.

16. A few commenters believe that the Department's plan to periodically update and refine the Fee Schedule should be incorporated as a regulatory requirement. One commenter encouraged NJDEP to institute an annual or bi-annual independent audit of the Bureau and NJDEP's ECRA program for public distribution. This commenter felt that business and industry would support the recovery through increased fees for the cost of the proposed audit system. The Department does not plan regulatory amendments to incorporate these suggestions. NJDEP's internal audit system will provide a satisfactory review of the ECRA program. However, NJDEP reiterates its commitment to conduct informal reviews each year of the Fee Schedule. Any amendments deemed necessary by the Department shall be promulgated by NJDEP as required. As BISE accumulates experiences, NJDEP will continue to refine the Fee Schedule. NJDEP does not wish to formalize this policy at this time.

17. One commenter conceded that N.J.A.C. 7:1-4.4(c) may be necessary to protect NJDEP against "wholly inadequate" ECRA filings. However, the commenter perceived that NJDEP's "changing policies and procedures" may impose additional requirements and fees beyond the control of an industrial establishment. Therefore, the commenter suggested that N.J.A.C. 7:1-4.4(c)1 include a provision that additional fees shall only be charged if the Bureau written disapproval of any initial notice, negative declaration or cleanup plan remains the "fault" of the industrial establishment. NJDEP finds this recommendation unnecessary and unworkable. Any valid requirement under ECRA must be complied with by industrial establishments as applicable. The Bureau must be paid additional fees for their significant, additional expenditure of time and effort. If not, the entire concept upon which the Fee Schedule has been prepared is compromised.

18. One commenter felt that NJDEP should acknowledge the "occasional occurrence of a series of transactions, each of which under the regulations separately trigger the necessity of ECRA compliance and payment of fees". This commenter recommended that the Department allow such transaction to occur in unlimited numbers during a limited period of time following approval of any negative declaration or cleanup plan without further ECRA compliance or payment of fees. The commenter's proposed revision actually goes beyond the scope of the Fee Schedule promulgation and would require revisions to N.J.A.C. 7:1-3. N.J.A.C. 7:1-3 expires on March 5, 1986 after a two year period of legal effectiveness. NJDEP's upcoming revision of N.J.A.C. 7:1-3 may provide the proper forum for consideration of this problem. The Bureau's current policy on the subsequent transactions described above would require submission of a new initial notice and an update of activities on the industrial establishment since the previous ECRA approval. Therefore, an initial notice fee would be necessary to compensate NJDEP for appropriate BISE services. Please note that the bill prepared by NJDEP pursuant to N.J.A.C. 7:1-4.4(a)2 would only be for actual BISE services rendered and double fees for the same BISE time and efforts would not be permitted. However, if the significant, additional expenditure of BISE's time and effort are required in any ECRA case appropriate fees pursuant to the Fee Schedule must be paid to NJDEP.

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

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proposal shown in brackets with asterisks \*[thus]\*).

**SUBCHAPTER 4. FEE SCHEDULE FOR ENVIRONMENTAL CLEANUP RESPONSIBILITY ACT**

**7:1-4.1 Scope**

(a) This subchapter shall constitute the fee schedule pertaining to the monetary charges to be paid by industrial establishments as reimbursement for the Department's costs for activities pursuant to the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq. ("ECRA"), and any regulations promulgated thereto.

(b) This subchapter shall be applicable to all those persons and business operations as set forth in N.J.A.C. 7:1-3.4.

**7:1-4.2 Purpose**

(a) The purpose of this subchapter is to establish a fee schedule for the Department's ECRA program reflecting the actual costs associated with the review of negative declarations and cleanup plans pursuant to N.J.S.A. 13:1K-10(a).

(b) This fee schedule supplements the annual appropriation of up to \$400,000.00 pursuant to the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11o(6).

**7:1-4.3 Definitions**

For the purpose of this subchapter, the following definitions in addition to those found in N.J.A.C. 7:1-3.3 are applicable:

"Applicability/nonapplicability determination" means a formal written response issued by BISE pursuant to a fully detailed and documented written request from an industrial establishment, person or any other entity requesting a determination from BISE concerning the applicability of any provision of ECRA to one particular factual or hypothetical transaction or other institution.

"Bureau" or "BISE" means the Bureau of Industrial Site Evaluation or its successor within the Division of Waste Management of the Department.

"Initial notice" means the written notice required by ECRA pursuant to N.J.A.C. 7:1-3.7(d)1 through 8 (known as the General Information Submission) and by N.J.A.C. 7:1-3.7(d)9 through 17 (known as Site Evaluation Submission).

"Small business test" means the formula developed by BISE, set forth below, as applied to the fee schedule provisions of N.J.A.C. 7:1-4.5(b):

$$\frac{(2000 E + A)}{2} = \text{Less than 31,000 points}$$

where "E" equals the maximum number of \*[employees]\* \*persons employed full-time and year-round at the site of the industrial establishment\* during any of the last five years and where "A" equals the operational area of the industrial establishment in square feet.

"Underground tank system integrity test" means any documentation, evidence or test results relating to a test conducted pursuant to any BISE approved test methodology designed to determine whether an underground storage tank or tank system \*[consisting of a maximum of four underground tanks,]\* is discharging, spilling or otherwise leaking into the environment.

**7:1-4.4 Fees**

(a) All fees established pursuant to this subchapter shall be paid by certified checks or money orders made payable to "New Jersey Department of Environmental Protection". All fees shall be mailed to the following address: "Bureau of Industrial Site Evaluation, Division of Waste Management,

New Jersey Department of Environmental Protection, CN-208, Trenton, New Jersey 08625, Attention: N.J.A.C. 7:1-4 Submission".

(b) Fee payments for all applicable BISE services pursuant to ECRA shall be submitted to the Bureau \*[by an industrial establishment, person or other entity]\* as set forth below:

1. Fees pursuant to N.J.A.C. 7:1-4.5(a)1 and (b)1 shall be paid **\*by the owner or operator of an industrial establishment\*** along with the General Information Submission required pursuant to N.J.A.C. 7:1-3.7(d)1 through 8;

2. The Bureau shall prepare and mail an appropriate bill to **\*the owner or operator of\*** an industrial establishment to be paid within 14 days of receipt by the industrial establishment for all BISE services rendered as described pursuant to N.J.A.C. 7:1-4.5(a)2, 3, 4, 5 \*, 6\* and (b)2 below; **\*[and]\***

3. Fees pursuant to N.J.A.C. 7:1-4.5(a) **\*[6]\* \*7\*** shall be submitted **\*by an industrial establishment, person or other entity\*** along with each written request for an applicability/nonapplicability determination **\*[.] \* \*; and\***

**\*4. Payment of fees required pursuant to (b)1 and 2 above may be paid by persons or other entities in place of the owner or operator of an industrial establishment upon approval of such fee payment arrangements by the Bureau.\***

(c) Upon the Bureau's written disapproval of any initial notice, negative declaration or cleanup plan, an industrial establishment may be required to submit additional appropriate fees pursuant to N.J.A.C. 7:1-4.5(a)1, 2, 3, 4, 5, **\*6,\*** (b)1 and (b)2 as applicable along with the submission of any revised initial notice, negative declaration or cleanup plan to the Bureau under the conditions set forth below:

1. Upon the Bureau's written determination to the industrial establishment that the review of the submission of any revised initial notice, negative declaration or cleanup plan shall require significant, additional expenditure of the Bureau's time and effort; and

2. For the purposes of paragraph (c)1 above, the Bureau's "significant, additional expenditure of time and effort" shall describe those cases in which a substantial portion of an initial notice, negative declaration or cleanup plan must be resubmitted to the Bureau and for all practical purposes the industrial establishment has made a new submission.

(d) The Bureau shall not issue any negative declaration or cleanup plan approvals or applicability/nonapplicability determinations until the industrial establishment has paid all **\*appropriate\*** fees required pursuant to this subchapter.

(e) No fees required pursuant to this subchapter shall be returnable except in the case of an overpayment due to miscalculation of any fee required pursuant to this subchapter as determined by the Bureau **\*or upon termination of BISE services before the Bureau's expenditure of significant time and effort as determined by the Bureau\*.**

**7:1-4.5 Fee schedule**

(a) Fees shall be charged, except as provided for in (b) below, for the following services associated with the review of an industrial establishment's negative declaration or cleanup plan:

BISE SERVICE	FEE
1. Review of initial notice:	
i. Without sampling plan review	\$1,600.00
ii. With underground tank system integrity test as only sampling plan review required by NJDEP	<b>*[\$1,800.00]*</b> <b>*\$1,600.00 plus*</b> <b>*\$50.00 per each underground tank tested.*</b>

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<p>*[(1) Additional fee for BISE review of underground tank system integrity test per each additional underground tank over a maximum of four underground tanks.]*</p> <p>iii. With sampling plan review</p> <p><b>*2. Additional required submissions:</b></p> <p>    <b>i. Sampling plan only</b></p> <p>    <b>ii. Underground tank system integrity test only*</b></p> <p><b>*[2.]* *3.* Negative declaration review</b> *[:]*</p> <p><b>*[3.]* *4.* Cleanup plan review (Fee based on cost of approved cleanup plan):</b></p> <p>    i. \$1.00-\$9,999.00</p> <p>    ii. \$10,000.00-\$99,999.00</p> <p>    iii. \$100,000.00-*\$499,000.00]*     <b>*\$499,999.00*</b></p> <p>    iv. \$500,000.00-\$999,999.00</p> <p>    v. over \$1,000,000.00</p> <p><b>*[4.]* *5.* Cleanup plan deferral review</b> *[:]*</p> <p><b>*[5.]* *6.* Oversight of cleanup plan implementation (Fee based on duration of approved cleanup plan):</b></p> <p>    i. 1-14 days</p> <p>    ii. 15-30 days</p> <p>    iii. 31-90 days</p> <p>    iv. 91-120 days</p> <p>    v. over 120 days</p> <p><b>*[6.]* *7.* Applicability/nonapplicability determination</b></p>	<p>*[\$50.00 per each additional underground tank tested]*</p> <p>\$2,600.00</p> <p><b>*\$1,000.00*</b></p> <p><b>*\$50.00 per each underground tank tested.*</b></p> <p>\$500.00</p> <p>\$500.00</p> <p>\$1,500.00</p> <p>\$5,000.00</p> <p>\$10,000.00</p> <p>\$15,000.00</p> <p>\$1,000.00</p> <p>\$400.00</p> <p>\$700.00</p> <p>\$1,000.00</p> <p>\$1,500.00</p> <p>\$2,000.00</p> <p>\$100.00</p>
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(b) Any industrial establishment that receives a score of less than 31,000 points pursuant to the small business test may apply to the Bureau, subject to compliance with (c) below, for the application of the following fee schedule for the specific services set forth below:

BISE SERVICE	FEE
<p>1. Review of initial notice:</p> <p>    i. Without sampling plan review</p> <p>    ii. With underground tank system integrity test as only sampling plan review required by NJDEP</p> <p>    *[(1)Additional fee for BISE review of underground tank system integrity test per each additional underground tank over a maximum of four underground tanks.]*</p> <p>    iii. With sampling plan review</p> <p>2. Negative declaration review</p>	<p>\$500.00</p> <p>*[\$700.00]*</p> <p><b>*\$500.00 plus*</b></p> <p><b>*\$50.00 per each underground tank tested.*</b></p> <p>*[\$50.00 per each additional underground tank tested.]*</p> <p>\$1,500.00</p> <p>\$200.00</p>

3. All other necessary BISE services required by industrial establishments from BISE not specified in (b)1 and (b)2 above shall be subject to the fee schedule set forth in (a) above.
- (c) Any industrial establishment petitioning the Bureau for application of the fee schedule established in (b) above shall submit the following information to the Bureau:
1. An affidavit from an authorized officer or management official stating the details of the industrial establishment's calculation of its score of less than 31,000 points pursuant to the small business test and the justification for application of the fee schedule established in (b) above;
  2. All other evidence and proofs of the industrial establishment's eligibility for application of the fee schedule established in (b) above; and
  3. Any other reasonable information requested in writing by the Bureau.

(d) Any industrial establishment deemed in writing by the Bureau to be ineligible for application of the fee schedule established in (b) above shall be charged fees pursuant to (a) above as applicable.

7:1-4.6 Effective date

\*[(a)]\* The provisions of this subchapter, as amended and supplemented pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., shall be effective for all applicable BISE services rendered **\*relating to written submissions made\*** pursuant to ECRA **\*which are received by the Bureau\*** on **\*or after\*** October 1, 1985 **\*[and thereafter]\***.

\*[(b)]\* ECRA cases under review by BISE prior to October 1, 1985 shall be subject only to the fees pursuant to N.J.A.C. 7:1-4.5 for the individual BISE services and approvals required by ECRA and N.J.A.C. 7:1-3 that BISE provides on or after October 1, 1985.]\*

7:1-4.7 Severability

If any section, subsection, provision, clause, or portion of this subchapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this subchapter shall not be affected thereby.

**HEALTH**

**(a)**

**PUBLIC HEALTH COUNCIL  
LOCAL HEALTH DEVELOPMENT  
SERVICES**

**Licensure of Persons for Public Health  
Positions**

**Adopted New Rule: N.J.A.C. 8:7-1**

Proposed: June 17, 1985 at 17 N.J.R. 1503(a); adopted as Emergency Rule R.1985 d.388 at 17 N.J.R. 1926(a).

Adopted: August 21, 1985 by Evelyn Geddes, Chairperson Public Health Council.

Filed: August 21, 1985 as R.1985 d.476, **without change.**

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Authority: N.J.S.A. 26:1A-38.

Effective Date: September 16, 1985.

Expiration Date pursuant to Executive Order No. 66 (1978): September 16, 1990.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

Full text of the adoption follows.

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 8:7-1.1 Positions requiring a license

(a) A license granted by the New Jersey State Department of Health is required for any person who is employed as a:

1. Health officer;
2. Sanitary inspector, first grade;
3. Sanitary inspector, second grade;
4. Food and drug inspector;
5. Milk inspector;
6. Meat inspector;
7. Veterinary meat inspector;
8. Plumbing inspector, first grade;
9. Plumbing inspector, second grade;
10. Public health laboratory technician.

#### 8:7-1.2 Board of examiners

(a) There shall be established in the Health Department, a board of examiners to be known as the Public Health Examining Board.

(b) The Board shall conduct examinations for the licensing of:

1. Health officer;
2. Sanitary inspector, first grade;
3. Sanitary inspector, second grade;
4. Food and drug inspector;
5. Milk inspector;
6. Veterinary meat inspector;
7. Meat inspector;
8. Public health laboratory technician;
9. Plumbing inspector, first grade;
10. Plumbing inspector, second grade.

(c) The Board shall be composed of 12 members appointed by the Commissioner of Health whereby:

1. One of the members of the Board shall be either a deputy commissioner of health or an assistant commissioner of health, and such individual shall serve as chairperson of the Board.
2. With the exception of the chairperson, a Board member shall be:
  - i. Appointed for a term of two years; and
  - ii. Permitted to serve for no more than six years.
3. Of the initial appointments to the Board, six members shall be appointed for a one-year term and, thereafter, all appointments shall be for terms of two years, except those appointments which shall be for the purpose of completing an unexpired term.

(d) The Board membership shall include:

1. Two health officers, whereby the initial appointments shall be for one one-year term and one two-year term;
2. One sanitary inspector of the first grade;
3. One veterinarian;
4. One laboratory representative;
5. One representative of the State Department of Civil Service;

6. One plumbing inspector of the first grade;
7. One comprehensive health planner;
8. Two consumers, whereby at least one shall be from a minority group;
9. One health professions educator; and
10. Either a deputy commissioner of health or an assistant commissioner of health.

(e) At least one member of the Board shall be a woman.

(f) For purposes of continuity, at least two of the members of the present board of examiners shall be appointed to the Public Health Examining Board and such individuals shall not be eligible for reappointment.

(g) As vacancies occur, when a Board member cannot complete his/her term, the Commissioner shall appoint a person representing a constituency similar to that of the person being replaced. The replacement appointment shall be for the completion of the unexpired term.

(h) For the purpose of conducting its business meetings, seven members of the Board shall be required for quorum and no actions shall be taken by the Board in the absence of a quorum.

(i) In the absence of the chairperson at a business meeting, the members of the Board shall elect a chairperson pro tem to direct the business of that meeting.

(j) Any action of the Board shall require a majority vote of the members present and no proxy votes shall be permitted.

(k) Members of the Board shall serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties.

#### 8:7-1.3 Submission of evidence of qualification

(a) The State Commissioner of Health in the name of the New Jersey State Department of Health shall grant licenses only to those candidates who submit evidence of the required training and experience, are accepted for testing by the Public Health Examining Board and/or the Commissioner of Health, and who subsequently pass examinations, indicating their fitness for the positions they seek.

(b) A person who desires to be admitted to an examination may obtain an application form from the New Jersey State Department of Health, P.O. Box 1540, Trenton, New Jersey 08625. The application shall be filed with the department and accompanied by documentary evidence satisfying the education, training, and experience requirements for the position. Such documentary evidence shall include an evaluation of the candidate's performance written by the supervisor(s) under whom the candidate obtained such working experience.

(c) In evaluating applications for admission to examinations, the New Jersey high school equivalency certificate will be recognized as the equivalent to graduation from an accredited high school.

#### 8:7-1.4 Examination and initial license fee

The New Jersey State Department of Health shall collect a fee, as established by statute, from each qualified candidate for licensure prior to the examination. Such fee will be payable only after a candidate has been notified of eligibility for admission to the examination. Candidates who are successful in passing the examination will not be required to pay an additional fee for the issuance of their initial license.

#### 8:7-1.5 Determination of qualified candidates

(a) Appropriate members of the Public Health Examining Board shall review each candidate's application for admission to the licensure examination. Based upon the qualifications of the candidate, the Board shall approve or deny such can-

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didate entrance to the examination.

(b) The candidate and the Department of Health shall be notified within ten days of the Board's determination. In the case of a denial the candidate shall have the opportunity to appeal the decision of the Board.

### 8:7-1.6 Appeal procedure

(a) Any candidate who has been denied admission to a licensure examination by the Public Health Examining Board may appeal the Board's action according to the following procedure:

1. Within 30 days of notification of denial, the candidate may request, in writing, a reconsideration of his qualifications by the Board;

2. At a regular meeting of the Board, the candidate will have the opportunity to discuss his qualifications. At the conclusion of the discussion, the Board shall vote on the candidate's appeal;

3. In the event that the Board reaffirms its denial decision, the candidate may immediately request a formal hearing of his case in accordance with the Department's rules regarding hearings. The Office of the Commissioner shall arrange for such hearing to be conducted by the Public Health Council.

4. At the conclusion of the formal hearing, the Council will forward its findings and recommendations to the Commissioner of Health for a final decision.

### 8:7-1.7 Examinations

(a) The Department of Health shall schedule examinations for the licensure of persons for public health positions at least twice a year.

(b) Examinations shall be prepared, conducted and scored in accordance with the department's standard operating procedures with the advice of the Public Health Examining Board.

(c) If any qualified candidate fails an examination for a particular type of license two times, such candidate shall not be permitted entrance to the next examination for that type of license until, and unless, the candidate submits evidence, to the Board, of further formal training and supervised experience specifically in those areas in which the candidate was deficient. The board, in its discretion, may accept the additional evidence or require the candidate to postpone taking the licensure examination for a period of one year from the date of the last examination. During the one year waiting period, the candidate shall be required by the Board to either obtain further training and experience under the supervision of a person licensed for the position for which the candidate seeks licensure, or obtain further educational training and experience through formal courses at an accredited institution of higher education or through recognized professional or governmental bodies. At the conclusion of the one-year period, the candidate shall furnish the Board with a written report from his supervisor or from the educational institution, attesting to the completion of the additional training and experience and may then make application to gain admission to the licensure examination.

### 8:7-1.8 Record keeping requirements of the Board

The Public Health Examining Board shall keep minutes of its meetings and shall transmit the record of all its transactions and recommendations to the Commissioner of Health.

### 8:7-1.9 Qualifications for candidates for licensure

(a) Regarding the qualifications of health officer candidates, applicants shall meet one of the following qualifications:

1. Diplomate of the American Board of Preventive Medicine or complete eligibility therefor;

2. Degree of doctor or master from an accredited college or university program in a health-related field (recognized as such by the New Jersey Departments of Higher Education and/or Education, as appropriate) such as medicine, osteopathy, veterinary medicine, public health, environmental science, health administration, social work, nursing or health education. The core course work for the degree shall include or be supplemented by at least three credits in each of the following: planning, administration, environmental science, social science and epidemiology; and

i. Unless otherwise exempted by statute, satisfactory completion of two years full-time employment in a position providing administrative experience in at least three of the five existing recognized public health activities as specified in N.J.A.C. 8:51.

3. What a candidate for health officer license should know:

i. The health officer is expected to provide leadership in the field of public health in his community. In addition to being the administrative officer of a local health department, he is responsible for evaluating the health problems of his community, planning appropriate activities to meet their health problems, developing necessary budget procedures to cover these activities, and directing the department's staff so as to carry out the activities efficiently and economically. These activities are covered in "Recognized Public Health Activities and Minimum Standards of Performance for Local Boards of Health in New Jersey." Applicants are examined relative to these essential activities.

(b) Sanitary inspector, first grade, qualifications are as follows:

1. A baccalaureate degree from an accredited college or university recognized as such by the Department of Higher Education and/or Education, as appropriate, with a minimum of 32 credits in the biological sciences, physical sciences, environmental sciences and mathematics; and

2. Successful completion of a course in environmental health and law conducted by an accredited college or university recognized as such by the Departments of Higher Education and/or Education, as appropriate. This course must be equivalent to that offered by Rutgers—The State University; and

3. Successful completion of a field training course approved as such by the State Department of Health. Full-time employment for a minimum period of one year in a local health agency (under the supervision of either a licensed health officer or sanitary inspector, first grade), as defined in "Recognized Public Health Activities and Minimum Standards of Performance for Local Boards of Health in New Jersey," will be accepted in lieu of the field training course only if an approved field training course is not available.

4. What a candidate for sanitary inspector, first grade license, should know:

i. The sanitary inspector is responsible for making inspections, compiling proper records of such inspections, informing operators of establishments of violations, the sanitary basis thereof, methods of abating such violations, and securing evidence that may be necessary for legal action. Such inspections shall be in all environmental sanitation activities, particularly those indicated in the "Recognized Public Health Activities and Minimum Standards of Performance for Local Health Departments in New Jersey." Applicants are examined relative to these indicated activities.

(c) The qualifications for sanitary inspector, second grade,

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are as follows:

1. Satisfactory completion of a two-year associate degree course in a recognized college or university or two years of training in a recognized college or university, recognized as such by the Departments of Higher Education and/or Education, as appropriate, with satisfactory completion of 60 credit hours. The collegiate training shall include credits in the biological and/or physical sciences; and

2. Successful completion of a course in environmental health and law conducted by an accredited college or university recognized as such by the Departments of Higher Education and/or Education, as appropriate. This course must be equivalent to that offered by Rutgers—The State University. Equivalent training and/or experience may be accepted in lieu of completion of the environmental health and law course. The academic qualification is a basic requirement and no substitution is to be accepted.

3. What a candidate for sanitary inspector, second grade license, should know:

i. The sanitary inspector is responsible for making inspections, compiling proper records of such inspections, informing operators of establishments of violations, the sanitary basis thereof, methods of abating such violations, and securing evidence that may be necessary for legal action. Such inspections shall be in all environmental sanitation activities particularly those indicated in the "Recognized Public Health Activities and Minimum Standards of Performance for Local Health Departments in New Jersey." Applicants are examined relative to these indicated activities.

(d) The qualifications for food and drug inspector are as follows:

1. The applicant must hold a license for sanitary inspector, first grade; or

2. Have the qualifications equivalent to those required of a sanitary inspector, first grade, and show evidence at the licensure examination (food and drug inspector) to the satisfaction of the examining board of adequate knowledge of the basic sanitary sciences, such knowledge being equivalent to that possessed by a person having a license for sanitary inspector, first grade; and

i. The applicant must also indicate one year's full-time working experience in food and drug control under the supervision of a license health officer.

3. What a candidate for food and drug inspector license should know:

i. The food and drug inspector is responsible for making inspections, compiling proper records of such inspections, informing operators of establishments of violations, the sanitary basis thereof, methods of abating such violations, and securing evidence that may be necessary for legal action. Applicants are examined relative to these activities.

(e) The qualifications for milk inspector are as follows:

1. The applicant must hold a license for sanitary inspector, first grade; or

2. Have the qualifications equivalent to those required of a sanitary inspector, first grade, and show evidence at the licensure examination (milk inspector) to the satisfaction of the examining board of adequate knowledge of the basic sanitary science, such knowledge being equivalent to that possessed by a person having a license for sanitary inspector, first grade; and

i. The applicant must also indicate one year's full-time working experience in milk control under the supervision of a licensed health officer.

3. What a candidate for milk inspector license should know:

The milk inspector is responsible for making inspections, compiling proper records of such inspections, informing operators of establishments of violations, the sanitary basis thereof, methods of abating such violations, and securing evidence that may be necessary to legal action. Applicants are examined relative to these indicated activities.

(f) The qualifications for veterinary meat inspector are:

1. Graduation from a generally recognized school of veterinary medicine, recognized as such by the Department of Higher Education and/or Education, as appropriate; and

i. Knowledge and skill in the theory and practical application of sanitary sciences, specially in the field of food control.

2. What a candidate for veterinary meat inspector should know: The candidate should be prepared to answer questions covering the public health aspects of the slaughtering and processing of meat. This includes both red meat and poultry. Specifically included may be the following:

i. Basic principals of meat inspection and their application to public health;

ii. State and Federal laws regarding inspection of meat and its products;

iii. Methods of sanitation and types of compounds that may be used in the sanitizing of slaughter houses, meat markets and meat processing plants;

iv. Preservatives that are allowed and those not allowed in meat and its products;

v. Legal methods of sampling meat and its products;

vi. Diseases of animals where carcasses are used for meat or meat products, and whether such diseases are transmissible to humans. Proper disposition of infected or inedible carcasses in accordance with State Health Department regulations;

vii. Elements of a safe water supply and satisfactory method of sewage disposal;

viii. Each candidate may be asked to display his knowledge of inspection and processing techniques in an actual practical examination.

(g) The qualifications for meat inspector are:

1. Except for the substitution of education provided for in 2 below, applicants for meat inspector license must have had, since their 16th birthday, at least three years of experience in one or any combination of the following:

i. Experience with animals such as that gained in the capacity of an assistant to a veterinarian or in field disease control activities;

ii. Experience with livestock or poultry such as that gained in a public stockyard, in the manufacture or preparation of veterinary biological products, or on a ranch, farm or hatchery in the management or handling of livestock or poultry, or in some other comparable activity;

iii. Experience with livestock or poultry slaughtering or poultry or meat processing, an experience in marketing or handling meat or poultry at wholesale or retail outlets;

iv. Experience in dairy, poultry, meat or other food processing in plants or activities where sanitary measures and quality controls are applied;

v. Experience (such as laborer, guard, sales clerk, and so forth), in the activities described above, which does not provide an intimate knowledge of livestock or poultry, livestock slaughtering or meat, dairy or other food processing will not be qualifying. The total training and experience of an applicant must show that he possesses the ability to comprehend, interpret, explain and apply regulations and instruction pertaining to the duties of a meat or poultry inspector, and show that he can meet and deal satisfactorily with em-

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ployees and officials of poultry eviscerating or processing plants, or meat packing establishments;

2. Educational substitution (maximum of three years of experience) rules are:

i. Satisfactory completion of a full four-year course of accredited high school study which has included at least two one-year courses in biology, general science, chemistry or appropriate agricultural subjects, or a time-equivalent combination of these subjects, may be substituted for one year of the experience required; or

(1) Satisfactory completion of the courses entitled "Inspection of meat and meat products" offered by Rutgers University Extension Division in cooperation with the New Jersey State Department of Health may be substituted for one year of the experience required; or

ii. Each successfully completed year of study in a residence school above the high school level may be substituted for nine months of required experience, provided that such study included an average of at least six semester hours (or equivalent) per year in one or in any combination of the subjects of zoology, biology, chemistry or appropriate agricultural subjects;

3. What a candidate for meat inspector license should know: The candidate should be prepared to answer questions covering the public health aspects of the slaughtering and processing of meat. This includes both red meat and poultry. Specifically included may be the following:

i. Basic principles of meat inspection and their application to public health, and why inspectors look at glands, tissues and organs;

ii. State and Federal laws regarding inspection of meat and its products;

iii. Methods of sanitation of slaughter houses, meat markets and meat processing plants;

iv. Preservatives that are allowed and those not allowed in meat and its products;

v. Legal methods of sampling meat and its products;

vi. Common diseases of animals whose carcasses are used for meat and its products;

vii. Principles and procedures to be followed in conducting a postmortem examination under supervision of a veterinary meat inspector, and the normal from abnormal tissue appearance of all food animals;

viii. Each candidate may be asked to display his knowledge of inspection and processing techniques in an actual practical examination. Questions on the practical examination will be of the type to determine knowledge or location and function of the liver, kidney, spleen, heart, lungs, their surrounding and protective tissues, as well as lymph glands—all on actual carcasses under actual inspection procedures;

ix. In addition, each candidate should be able to demonstrate his ability to handle inspection equipment, such as knives, hooks and trays, and to sharpen a knife, if on his observation it needs sharpening to allow him to utilize same in his inspection procedures.

(h) The qualifications for plumbing inspector, first and second grade, are:

1. Possess a New Jersey professional engineer's license, plus successful completion of the advanced course in plumbing regulation and inspection at Rutgers University, or its equivalent; or

2. Possess a license for sanitary inspector, first grade, at least five years full-time working experience in the plumbing trade, plus successful completion of the advanced course in plumbing regulation and inspection at Rutgers University, or

its equivalent; or

3. Graduation from high school or equivalent with at least ten years of full-time working experience as a journeyman or master plumber following an apprenticeship<sup>1</sup> of four years, plus successful completion of the basic course in plumbing regulation and inspection at Rutgers University, or its equivalent; or

4. Fourteen years as a journeyman or master plumber, plus successful completion of the basic course in plumbing regulation and inspection at Rutgers University, or its equivalent;

5. What a candidate for plumbing inspector license should know:

i. The candidate for a plumbing inspector's license should have detailed knowledge of the proper methods and procedures for all types of plumbing installations used in private dwelling, industrial buildings, office buildings, and so forth, in order that the public health of citizenry be protected;

ii. A plumbing inspector should be able to administer a program which includes techniques of plumbing, methods of inspection, enforcement procedures and record keeping.

iii. The candidate should be prepared in the following areas:

(1) Engineering principles of water purification and sewage disposal;

(2) Interpretation and corrections of plans for plumbing and drainage systems;

(3) Methods of testing plumbing systems, locating defects, and improper cross-connections and correcting the same;

(4) Principles of physics and hygiene which deal with the proper methods of removing waste water and sewage from buildings;

(5) Knowledge of standards for materials used in the installation of plumbing and draining systems;

(6) Ability to draw plans of plumbing systems showing soil waste and vent pipes, traps and fixtures;

(7) Devices used in connection with plumbing systems;

(8) Hot water heaters and storage tanks, condensing tanks and blowoff tanks;

(9) Plumbing aspects of air conditioning and ventilating system;

(10) Knowledge of laws and State rules and regulations for installation of cross-connections between safe and unsafe water supplies;

(11) Methods of construction, location and operation of cesspools, septic tanks, small sewage disposal plants and private water supply systems;

(12) Principles of administration, record keeping and communications with public;

(13) Statutes relating to licensing, local board of health powers and States codes;

(14) Procedures for preparing cases for legal action.

(i) Public health laboratory technician rules are:

1. The qualifications for public health laboratory technician license are:

i. Formal education represented by graduation from a recognized college or university, recognized as such by the Departments of Higher Education and/or Education, as appropriate, with a major in the chemical or biological sciences, or its equivalent; or

ii. Certification as "registered technician" by the American Society of Clinical Pathologists in cooperation with the American Society of Medical Technicians;

iii. Graduation from a high school; at least one year of full-time experience in a laboratory performing bacteriological, serological, chemical or related technical laboratory tests. Completion of one year's successful training in a recognized

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school for laboratory technicians will be accepted in lieu of one year of full-time experience required above;

2. What a candidate for public health laboratory technician license should know:

i. The laboratory technician candidate should have special information and training in the handling, laboratory preparation and examination of specimens for identification of communicable disease organisms. Training should be in the following categories:

(1) Bacteriology: Knowledge of care and use of microscope; preparation of specimens for bacteriological examination; media, their uses and preparation; stains, their application and preparation; methods of sterilization; bacteriological examination of milk and water; and knowledge of laboratory techniques in the handling of infectious material;

(2) Chemistry: General background in chemistry with knowledge of the chemical techniques in blood, food and drug, sanitation, milk and milk products, drinking waters, streams, trade wastes and sewage;

(3) Pathology: Knowledge of preparation, embedding and staining of pathological specimens for examination; use of microtome, preparation of stains, and proper recording of specimens of tissue;

(4) Serology: Knowledge of techniques and principles involved in standard blood tests for syphilis, blood counts, blood grouping and Rh factor determination, and serological tests for communicable diseases;

(5) Virology knowledge and techniques involved in examination or studies of virus infections;

ii. The candidate has the privilege of selecting one of three booklet titles on the day of examination: "Bacteriology," "Pathology" or "Serology." It must be emphasized that each booklet contains a certain number of general questions in addition to those related to title.

'For the purpose of these qualifications, an apprenticeship is regarded as the first four years of full-time working experience in the plumbing trade under the supervision of a master plumber.

**(a)**

**HEALTH AID SERVICES****Recognized Public Health Activities and Minimum Standards of Performance for Local Boards of Health in New Jersey**

**Adopted New Rule: N.J.A.C. 8:51-1**

**Readoption: N.J.A.C. 8:51-2 through 6**

Proposed: July 1, 1985 at 17 N.J.R. 1633(a).

Adopted: August 21, 1985 by Evelyn Geddes,

Chairperson, Public Health Council, with the approval of the Public Health Council.

Filed: August 21, 1985 as R.1985 d.477, **without change.**

Authority: N.J.S.A. 26:1A-15.

Effective Date for Readoption: September 16, 1985 for N.J.A.C. 8:51-1; August 21, 1985 for N.J.A.C. 8:51-2 through 6.

Expiration Date pursuant to Executive Order No. 66

(1978); September 16, 1990 for N.J.A.C. 8:51-1; August 21, 1990 for N.J.A.C. 8:51-2 through 6.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text** of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 8:51-2 through 6.

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

NOTE: The FOREWORD which precedes subchapter 1 is deleted.

**SUBCHAPTER 1. GENERAL PROVISIONS****8:51-1.1 General scope and applicability**

(a) Local boards of health are required to establish and maintain a program of recognized public health activities and to meet the minimum standards of performance for each activity. The recognized activities are classified as follows:

1. Core: Core activities are designated as mandatory; these are considered the public health common denominators for all municipalities. A waiver may be granted for a core activity if a definite lack of need can be documented by the local board of health to the satisfaction of the pertinent State agency.

2. Elective: All recognized public health activities, other than those designated core, are deemed elective on the part of the local board of health. Depending upon needs and resources available, local boards of health which provide one or more elective recognized health activities are urged to meet the standards listed on each activity undertaken. However, local boards of health must meet all standards for each activity selected within two years from the effective date of this revision or the date of initial implementation if the activity is started after the effective date of this revision.

(b) All New Jersey statutes relating to public health and the State Sanitary Code are hereby included and made a part of the Recognized Public Health Activities and Minimum Standards of Performance for Local Boards of Health in New Jersey. No such minimum standard shall be construed as:

1. Authorizing a lesser standard than that prescribed by said statutes or Code or other regulation imposed by a properly authorized agency.

2. Empowering or requiring a local health agency to act in matters solely under the jurisdiction of a State, county or municipal agency.

(c) A core or elective recognized public health activity meeting the minimum standards prescribed herein below may be planned and provided by the local board of health or by a person or agency under contract to the board. Personnel employed by, or under contract to, a local board of health must be licensed as required by law or qualified to the satisfaction of the pertinent State agency to carry out the minimum standards of performance for the recognized public health activities.

1. Personnel requirements for the activity "Provide public health nursing services" are satisfied when the program is administered by:

i. A public health nurse director who is a registered professional nurse currently licensed in New Jersey and who has:

(1) Completed a Master's Degree program accredited by the National League for Nursing with a nursing major in supervision, teaching, consultation or administration and advanced study in a clinical specialty; or has completed a Mas-

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ter's program in public health in an institution accredited by the American Public Health Association; and

(2) Five years of experience in public health nursing, one year of which shall have been a supervisory experience; or  
ii. A public health nurse supervisor who is a registered professional nurse currently licensed in New Jersey and who has:

(1) Completed a baccalaureate degree program approved by the National League for Nursing for public health nursing preparation or post-baccalaureate study which includes content approved by the National League for public health nursing preparation; and

(2) Three years of experience in public health nursing under qualified nursing supervision.

2. Personnel requirements for the activity "Administer a planned health education program" are satisfied when the program is administered by:

i. A full-time employee who has a degree of Masters of Public Health in health education, or its equivalent, e.g. a Master of Arts in community health education from an accredited program; or

ii. A full-time employee with a bachelors degree, preferably in community health education, who receives part-time direction from a person with a Masters degree (see above). If efforts, satisfactory to the State Department of Health, made to employ or contract for this part-time person are not successful, the local health agency may receive guidance in health education from the State Department of Health until such time that this person can be obtained.

(d) A local official body, agency, or department, other than the local board of health, which has the responsibility for and administers any recognized public health activity must comply with the minimum standards of performance for that activity to the satisfaction of the pertinent State agency.

(e) Local boards of health retain responsibility to provide the following public health activities under direction of the Department of Environmental Protection: air pollution, water pollution, noise pollution, and solid waste (C.26:3A2-21 et al.).

1. The standards for these activities will be promulgated by the Department of Environmental Protection and will no longer appear in the "Recognized Public Activities and Minimum Standards of Performance for Local Boards of Health" published by the Department of Health.

(f) This document will be revised within three years following the effective date of this revision.

**8:51-1.2 Definitions and requirements**

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

"Full-time health officer" means a holder of a license as a health officer issued by the State Department of Health and who is employed by a local board of health in function during all the working hours of the regularly scheduled workweek of the governmental unit to which the local health agency is attached and not regularly employed during the working hours of that scheduled workweek in other activities for which he receives remuneration.

"Local board of health" means the board of health as defined in N.J.S.A. 26:1A-1 and N.J.S.A. 26:3-1, and shall be the enforcement, policy and rule-making body with respect to Local Health Services provided by local health agencies under N.J.S.A. 26:3A-2.1 et seq.

"Local health agency" means a municipal, county, regional or other governmental agency conducting a public health pro-

gram pursuant to law.

"Pertinent State agency" means that governmental entity charged by law with the responsibility for a particular public health program that is not within the primary authority of the State Department of Health, but is acknowledged by the Public Health Council as a "recognized public health activity."

"Secretary." Every local board of health shall appoint a secretary who shall keep accurate records of all official actions of said board and perform such other duties as may be assigned by that board. A full-time health officer or other person in the employ of any jurisdiction may be appointed as the secretary of the local board of health.

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**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

**Transportation Services Manual  
Basis of Payment**

**Adopted Amendments: N.J.A.C. 10:50-1.5, 1.6**

Proposed: July 1, 1985 at 17 N.J.R. 1637(a).

Adopted: August 16, 1985 by Geoffrey S. Perselay, Esq., Acting Commissioner, Department of Human Services.

Filed: August 19, 1985 as R.1985 d.473, **without change**.

Authority: N.J.S.A. 30:4D-6b(15), 7, 7a, 7b; 42 CFR 431.53, 42 CFR 440.170(a).

Effective Date: September 16, 1985.

Expiration Date pursuant to Executive Order No. 66 (1978): August 22, 1988.

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

There were three comments submitted by Medicaid providers of transportation services. The commentators felt that the proposed fee increase was inadequate in relation to the recently enacted regulations issued by the New Jersey Department of Health governing ambulance and invalid coach services. (Reference is made to the rules that were adopted by the Health Department in the April 15, 1985 issue of the New Jersey Register at 17 N.J.R. 919(a).) The Division of Medical Assistance and Health Services' response is to adopt the rates that were contained in the original proposal.

**Full text** of the adoption follows.

**10:50-1.5 Basis of Payment**

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

(d) Ambulance service shall be reimbursed on the basis of customary charge, not to exceed the following maximums:

1. Transportation charge, one way—\$30.00;

2. Transportation charge, round trip—\$60.00;

i. A carrier when performing round-trip services shall be responsible for completing each round-trip obligation by honoring the return trip if occurring within 24 hours from the

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original pickup time. This responsibility is interpreted to include the carrier's guarantee that if he does not perform the return trip himself that arrangements are to be made with another transportation company to do so with no additional expense to the Medicaid program.

3. Mileage, \$1.00 per loaded mile;

4. Waiting time: \$10.00 per hour maximum waiting time is payable only on one-way trips and only after 30 minutes has elapsed. It is payable in one-quarter hour increments, for example, one-quarter hour—\$2.50, one-half hour—\$5.00, 3/4 hour—\$7.50, and one hour—\$10.00.

(e) Invalid coach service shall be reimbursed on the basis of customary charge, not to exceed the following maximums:

1. Transportation charge, one way, per patient—\$20.00;
2. Transportation charge, round trip, per patient—\$40.00.

i. The limit as to the number of patients being carried at one time is three. A carrier when performing round-trip services shall be responsible for completing each round-trip obligation by honoring the return trip if occurring within 24 hours from the original pickup time. This responsibility is interpreted to include the carrier's guarantee that if he does not perform the return trip himself that arrangements are to be made with another transportation company to do so with no additional expense to the Medicaid Program.

3. Mileage, \$1.00 per loaded mile.

i. (No change.)

4. (No change.)

(f)-(i) (No change.)

(j) The Medicaid Program has special conditions for invalid coach services for patients receiving dialysis treatment who require invalid coach transportation.

1. The Medicaid program does not pay for waiting time for patients transported to receive dialysis treatments.

2. Prior authorization is required for invalid coach services for patients receiving dialysis treatment; however, services may be authorized for up to three calendar months at a time.

3. The Program limits the number of persons in a multiple load for dialysis treatments to four.

Delete 5. and 6.

**10:50-1.6 Transportation services; maximum allowable fees**

(a) The following procedure codes, description and maximum allowances are recognized for reimbursement by the New Jersey Medicaid Program.

PROCEDURE CODES	DESCRIPTION	MAXIMUM ALLOWANCE
6101	Ambulance—One Way	\$30.00
6102	Ambulance—Round Trip	\$60.00
6111	Invalid coach—one way per patient	\$20.00
6113	Invalid coach—round trip per patient	\$40.00
6103	Mileage—Ambulance	\$1.00 per loaded mile
6103	*Mileage—Invalid coach	\$1.00 per loaded mile
6109	Waiting time—Ambulance—One-way trip only:	
	1/4 hour	\$ 2.50
	1/2 hour	\$ 5.00
	3/4 hour	\$ 7.50
	1 hour	\$10.00
6110	Waiting time—invalid coach—One-way trip only:	
	1/4 hour	\$1.25
	1/2 hour	\$2.50
	3/4 hour	\$3.75
	1 hour	\$5.00
6119	Oxygen 1/2 hour minimum	\$6.00 per 1/2 hour

\*Maximum of three patients for invalid coach at one time, except for patients transported to receive dialysis treatments where a maximum of four patients is allowed. Medicaid will pay mileage for only one patient in a multiple load from the farthest location to the destination (and back if a round trip). Provider must submit all claims for multiple-load patients together and certify on the claim forms that they are charging mileage only for the one patient who is being transported the farthest distance.

**DIVISION OF PUBLIC WELFARE**

**(a)**

**Comments Received on Amendments to N.J.A.C. 10:82-1.2 and 10:85-4.1**

**Public Notice**

On April 15, 1985, the Department of Human Services proposed rules at 17 N.J.R. 880(a) and 882(a) to revise the public assistance payment levels in the programs of Aid to Families with Dependent Children and General Assistance, respectively. Both proposals were adopted without change at 17 N.J.R. 1656(a) and 1658(a). Both revisions increased the public assistance standards effective July 1, 1985 by five percent over those previously in effect.

At the time of adoption, the agency reported that no comments were received. Prior to the expiration of the proposed rule comment period, the Department of the Public Advocate, Division of Public Interest Advocacy, had indicated a desire to comment on the proposed rules. Those comments were, however, received after expiration of the rule comment period. Upon review of them, the Department determined that no change to the proposals was warranted and given the fact that the rule adoptions were already undergoing the Departmental approval process so as to meet publication deadlines of the Office of Administration Law, they were not withdrawn in order to reflect the comments received. It was, nevertheless, decided to acknowledge and respond to the comments in the form of this public notice.

Since the letter of comment on each proposal was concerned with the same issue (the five percent increase in Aid to Families with Dependent Children and General Assistance programs) and the views expressed by the Department of the Public Advocate in each submittal were substantially identical, this notice serves as a combined response. The comments and responses are summarized below.

The Department of the Public Advocate does not express opposition to the proposed increase in the public assistance standards. Rather, the Department of the Public Advocate argues that the rationale for the selection of a five percent increase in the public assistance standards should have been disclosed in the summary to the proposed rules. Citing gross inadequacy of the public assistance standards, the Department of the Public Advocate requests that the Department of Human Services disclose, in detail, the methodology for calculating this proposed increase and its correlation, if any, to the cost of basic necessities in this State.

Further, the Department of the Public Advocate maintains that the inadequacy of the public assistance standards in New Jersey is well documented and that the proposed five percent increase in standards does not address the effects of inflation

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on assistance levels. The Department of the Public Advocate requests that the Department of Human Services further propose increased public assistance standards to levels that meet the actual increase in basic necessities or, minimally, to reflect the increase in inflation since July 1974. As an alternate measure, it is suggested that this Department undertake investigative hearings to review current public assistance payment levels in conjunction with the actual needs of public assistance recipients.

The Department of Human Services, in response, maintains that the rules at issue were proposed in anticipation that the five percent increase in public assistance standards provided for in the Governor's budget request for Fiscal Year 1986 would be enacted. These regulatory proposals were contingent upon Legislative approval of the increase and would have been withdrawn had the Legislature modified the budgetary request and had the Governor upheld that action. The proposed rules should not be construed to be part of the appropriation process but, rather, viewed as reflective of the expected result of that process only. The State budget process is not, itself, subject to rulemaking requirements and is, therefore, not addressed here. The budgetary process does, however, provide an adequate public forum for discussion of the adequacy or inadequacy of any budget item.

Proposal of public assistance standards which mirror the actual needs of recipients would serve no useful purpose. To do so, without sufficient appropriation, would be of no consequence. Since the Department cannot expend unappropriated funds, this suggestion would result in no financial benefit to public assistance recipients.

Finally, the Department is cognizant that public assistance standards, when compared to inflation measures or benchmarks of adequate living standards are insufficient, and is aware, as the Department of the Public Advocate suggests, that these facts have already been variously documented. Therefore, the Department does not deem it necessary to conduct the requested investigative hearings.

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**Food Stamp Program  
Confidentiality and Disclosure of Information**

**Adopted Amendment: N.J.A.C. 10:87-1.14**

Proposed: June 3, 1985 at 17 N.J.R. 1377(b).  
Adopted: August 16, 1985 by Geoffrey S. Perselay,  
Acting Commissioner, Department of Human  
Services.  
Filed: August 20, 1985 as R.1985 d.475, with a technical  
change not requiring additional public notice and  
comment (N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 30:4B-2 and 49 FR 48677.

Effective Date: September 16, 1985.  
Expiration Date pursuant to Executive Order No. 66  
(1978): March 1, 1989.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Summary of Changes Subsequent to Proposal:**

The reference at N.J.A.C. 10:87-1.14(b)6 has been corrected.

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

10:87-1.14 Confidentiality and disclosure of information  
(a) Confidentiality of information: The county welfare agency shall restrict the use or disclosure of information obtained from applicant households to persons directly connected with the administration or enforcement of the Food Stamp Program, AFDC, SSI, Medicaid, Child Support and Paternity Program, or with any other federal or federally aided, means-tested assistance programs.

(b) Disclosure of information: The county welfare agency may release information concerning an applicant household in the following situations only:

1. Law enforcement agencies: Upon written request, the county welfare agency shall cooperate in furnishing information to Federal, State or local law enforcement agencies in any investigation which concerns a household fraudulently obtaining coupons or otherwise violating the statutory provisions of the Food Stamp Act or FNS regulations. (See (a) above.) The law enforcement agency must provide a written request which shall include the identity of the individual requesting the information and his or her authority to do so, the violation being investigated, and the identity of the person about whom the information is requested.

2.-5. (No change.)

6. Release of lists of names and addresses: The furnishing of any lists of names or addresses or both for purposes not directly related to provisions of **\*[Item 141]\* \*subsection (a) of this section\*** is specifically prohibited.

7.-8. (No change.)

9. School officials: The CWA shall honor requests from school officials to verify Food Stamp Program participation for households applying for free school meals. The CWA shall not release any information with regard to the household beyond the verification of Food Stamp Program participation.

10. Comptroller General's Office: The CWA shall furnish information to employees of the Comptroller General's Office of the United States for audit examination authorized by any other provision of law.

**(b)**

**Food Stamp Program  
Revised Maximum Income Eligibility Limits**

**Readopted Amendment: N.J.A.C. 10:87-12.3,  
12.4, and 12.7**

Proposed: July 15, 1985 at 17 N.J.R. 1793(a).  
Adopted: August 26, 1985 by Geoffrey S. Perselay,  
Acting Commissioner, Department of Human  
Services.  
Filed: August 26, 1985 as R.1985 d.480, **without change.**

Authority: N.J.S.A. 30:4B-2, the Food Stamp Act of  
1977, as amended (7 USC 2014), 7 CFR 273.9(a) and  
50 FR 19766.

**HUMAN SERVICES**

**ADOPTIONS**

Effective Date: August 26, 1985.  
 Expiration Date pursuant to Executive Order No. 66  
 (1978): March 1, 1989.

**(a)**

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

Full text of the readoption follows.

10:87-12.3 Maximum allowable net income standards

TABLE III

Household Size	Maximum Allowable Net Income
1	\$ 438
2	588
3	738
4	888
5	1038
6	1188
7	1338
8	1488
9	1638
10	1788
Each Additional Member	+150

10:87-12.4 Maximum allowable gross income standards

TABLE IV

Household Size	Maximum Allowable Gross Income
1	\$ 569
2	764
3	959
4	1154
5	1349
6	1544
7	1739
8	1934
9	2129
10	2324
Each Additional Member	+195

10:87-12.7 165 percent of poverty level

(a) The following table is to be used when determining separate household status for elderly and disabled individuals in accordance with N.J.A.C. 10:87-2.2(a)4.

TABLE VII

165% of Poverty Level

Household Size	Maximum Allowable Income
1	\$ 722
2	970
3	1217
4	1465
5	1712
6	1960
7	2207
8	2455
9	2703
10	2951
Each Additional Member	+248

**Medicaid Only Manual  
 Resource Eligibility and Limits**

**Adopted Amendments: N.J.A.C. 10:94-4.5, 4.6  
 and 4.7**

Proposed: June 17, 1985 at 17 N.J.R. 1525(a).

Adopted: August 16, 1985 by Geoffrey S. Perselay,  
 Acting Commissioner, Department of Human  
 Services.

Filed: August 20, 1985 as R.1985 d.474, **without change.**

Authority: N.J.S.A. 44:7-87.

Effective Date: September 16, 1985.

Expiration Date pursuant to Executive Order No. 66  
 (1978): August 22, 1988.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

Full text of the adoption follows.

10:94-4.5 Resource eligibility standards

(a) For eligibility in the Medicaid Only Program, total countable resources are limited by the following limits. (See N.J.A.C. 10:94-4.19(b) regarding resources defined and N.J.A.C. 10:94-4.2 regarding countable resources.)

1. Resource eligibility is determined as of the first moment of the first day of the month. Changes in the amount of countable resources subsequent to the first moment of the first day of the month shall not affect eligibility.

2. In the case of checking accounts, the balance as of the first moment of the first day of the month shall be reduced by the amount of any checks which have been drawn on the account but which have not yet cleared the financial institution.

(b) Resource maximum for a couple: Participation in the program shall be denied or terminated if the total value of a couple's countable resources exceeds the limits below:

before January 1, 1986	\$2,400
January 1, 1986-December 31, 1986	\$2,550
January 1, 1987-December 31, 1987	\$2,700
January 1, 1988-December 31, 1988	\$2,850
January 1, 1989 and thereafter	\$3,000

1. (No change.)

(c) Resource maximum for an individual: participation in the program shall be denied or terminated if the total value of an individual's resources exceeds the limits below:

before January 1, 1986	\$1,600
January 1, 1986-December 31, 1986	\$1,700
January 1, 1987-December 31, 1987	\$1,800
January 1, 1988-December 31, 1988	\$1,900
January 1, 1989 and thereafter	\$2,000

(d) Resource maximum (institutionalized individuals): The resource maximum for an individual in (c) above applies equally to individuals institutionalized in a Title XIX approved facility. Countable resources held in the institution (e.g., trust funds, personal needs accounts) together with those held outside the institution, are to be applied toward the resource maximum. If the resource maximum is exceeded,

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Medicaid eligibility will cease.

(e) (No change.)

10:04-4.6 Deeming of resources

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

(e) Applicant/recipient unmarried and under 18 years of age, living with parents: If the applicant/recipient is an unmarried child under 18 years of age who lives with his or her parents (including stepparents), the total value of all countable resources in excess of the appropriate parental resource maximum, cited in (e)1 below, shall be applied toward the resource maximum for an individual (see N.J.A.C. 10:94-4.5). A child will be considered to be not living with his or her parents when he or she has ceased living with them for a period of one calendar month.

1. (No change.)

2. Parental resource maximums (including stepparents):

i. One parent: The total value of countable resources in excess of the source limit for an individual (see N.J.A.C. 10:94-4.5) shall be applied toward the eligible child's resource maximum.

ii. Two parents: The total value of countable resources in excess of the resource limit for a couple (see N.J.A.C. 10:94-4.5) shall be applied toward the eligible child's resource maximum.

3. (No change.)

(f) Deeming resources of an alien's sponsor: When the sponsor of an alien is subject to deeming provisions (see N.J.A.C. 10:94-5.7) any countable resources of the sponsor in excess of the appropriate resource limit (the resource limit for an individual or the resource limit for a couple if the sponsor resides with his or her spouse) shall be considered to be resources of the alien in addition to whatever resources the alien has.

10:94-4.7 Transfer of resources

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

(e) Resource transferred, resource limit not exceeded: When the UV of a transferred resource, combined with other countable resources does not exceed the applicable resource limit, the application shall be processed as usual. In addition, the following procedures shall be adhered to.

1. (No change.)

2. The client shall be informed that although eligible at the time of application, if his or her resources, including the amount of the UV, should exceed the resource maximum within the 24-month period, he or she will lose Medicaid eligibility.

i. Example: At the time of application the UV equals \$1,000, other resources equal \$200.00 for a total of \$1,200, the client is resource eligible. At the time of redetermination, the UV equals \$1,000, other resources equal \$1,100 for a total of \$2,100, the client is ineligible because of excess resources and the case must be terminated.

3. (No change.)

(f)-(i) (No change.)

# LABOR/HEALTH

## (a)

### DIVISION OF WORKPLACE STANDARDS OCCUPATIONAL AND ENVIRONMENTAL HEALTH SERVICES

#### Asbestos Licenses and Permits

#### Joint Readoption: N.J.A.C. 12:120-1, 2, 3, 4, 5, and 7; N.J.A.C. 8:60-1, 2, 3, 4, 5 and 7

Proposed: July 1, 1985 at 17 N.J.R. 1676(a).

Adopted: August 16, 1985 by Charles Serraino, Commissioner, Department of Labor and J. Richard Goldstein, M.D., Commissioner, Department of Health.

Filed: August 16, 1985 as R.1985 d.468, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1-30-3.5).

Authority: N.J.S.A. 34:5A-39 (P.L. 1984, c.173).

Effective Date: August 16, 1985.

Expiration Date pursuant to Executive Order No. 66 (1978): May 3, 1990.

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

The New Jersey Department of Labor and Department of Health held a comment period open until July 17, 1985. One public comment was received from the Building and Construction Trades of the AFL-CIO. They felt the term "repair" too broad in N.J.A.C. 12:120-1.4(b)1 and 8:60-1.4(b)1. The adjective "limited" was inserted before "repair" which is consistent with the repair concepts of the Asbestos Policy Committee Report to the Governor dated March 1985 on pages VI-6 and XI-5. Both the Department of Health and the Department of Labor had editorial comments resulting in some changes upon adoption.

**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 120 (CHAPTER 60) ASBESTOS LICENSING AND PERMITS

#### SUBCHAPTER 1. GENERAL PROVISIONS

12:120-1.1 and 8:60-1.1 Title and citation

This chapter shall be known and may be cited as N.J.A.C. 12:120, Asbestos Licenses and Permits.

12:120-1.2 and 8:60-1.2 Authority

These rules are promulgated pursuant to the authority of the Asbestos Control and Licensing Act, N.J.S.A. 34:5A-32 et seq.

12:120-1.3 and 8:60-1.3 Purpose

(a) The purpose of this chapter is to provide reasonable

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standards for:

1. Licensing of employers;
2. Permitting of employees; and
3. Certifying training courses.

12:120-1.4 and 8:60-1.4 Scope

(a) This chapter shall apply to:

1. The licensing of employers;
2. The examination and issuance of permits to employees;
3. Certification of training courses;
4. Employers having a contractual relationship for asbestos work with the owner of a building or structure or equipment for the application or enclosure or encapsulation or removal or disposal of asbestos;
5. Employers using their own employees for the application or enclosure or encapsulation or removal or disposal of asbestos; and
6. Any public or private building, structure or equipment on which asbestos work is performed, except as provided in (b) below.

(b) This chapter shall not apply to:

1. The **\*limited\*** repair of asbestos on any pipe, boiler, tank, structural member or similar equipment by applying duct tape, rewettable glass cloth, canvas, cement or other sealable material to seal exposed areas where 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 **\*[26]\* \*25\*** square feet or less of asbestos from any duct, boiler, tank, structural member or similar equipment; or
4. The sale, **\*or\*** storage **\*[or use]\*** of asbestos.

12:120-1.5 and 8:60-1.5 Documents referred to by reference

The availability of standards and publications referred to in this chapter is explained in N.J.A.C. 12:120-7 and 8:60-7.

12:120-1.6 and 8:60-1.6 Validity

Should any section, paragraph, sentence or word of this chapter be declared for any reason to be invalid, such decision shall not affect the remaining portions of this chapter.

**SUBCHAPTER 2. DEFINITIONS**

12:120-2.1 and 8:60-2.1 Definitions

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

"Act" means the Asbestos Control and Licensing Act, N.J.S.A. 34:5A-32 et seq.

"Approved" means acceptable to the Commissioner of Labor.

"Asbestos" means the asbestiform varieties of chrysotile; crocidolite; amosite; anthophyllite; tremolite; or antinolite 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 removal or disposal of asbestos.

"Commissioner" means the Commissioner of Labor or his authorized designee.

"Commissioner of Health" means the Commissioner of Health or his authorized designee.

"Contractor" means an employer who hires employees to perform asbestos work or performs the asbestos work directly.

"Control" means to exercise restraint or direction over any

activity concerning asbestos for the purpose of reducing the number of airborne asbestos fibers.

"Department of Health" means the Occupational Health Program in the New Jersey Department of Health, CN 360, Trenton, N.J. 08625-0860.

"Division of Workplace Standards" means the Division of Workplace Standards of the New Jersey Department of Labor, CN 054, Trenton, N.J. 08625-0054.

"Employee" means:

1. Any person including supervisory personnel suffered or permitted to work by an employer, or
2. A member of either a board, corporation, partnership, proprietorship, joint venture, fund, authority or similar entity directly performing asbestos work.

"Employer" means a body, board, person, corporation, partnership, proprietorship, joint venture, fund, authority or similar entity employing, permitting or suffering another to work or directly performing the asbestos work. This term shall apply to private employers and to the State, its political subdivisions and any boards, commissions, schools, institutions or authorities created or recognized thereby. This term also includes contractors and subcontractors.

"Experienced asbestos worker" see N.J.A.C. 12:120-5.4(b) and 8:60-5.4(b).

"License" means a certificate documenting acceptance by the commissioner **\*[or]\* \*of\*** an employer as competent to perform the application or enclosure or encapsulation or removal of asbestos.

"N.J.A.C." means the New Jersey Administrative Code.

"N.J.S.A." means the New Jersey Statutes Annotated.

"Permit" means a certificate documenting acceptance by the commissioner of an employee as competent to perform the application or enclosure or encapsulation or removal of asbestos.

"Shall" means a mandatory requirement.

"Subcontractor" means an employer who hires employees to perform asbestos work or performs the asbestos work directly.

**SUBCHAPTER 3. ADMINISTRATION**

12:120-3.1 and 8:60-3.1 Scope of subchapter

This subchapter shall apply to the administration of the licensing, permitting and certification standards mandated by this chapter.

12:120-3.2 and 8:60-3.2 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.

(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.

(c) Every employer shall take all prudent measures to comply with written recommendation made by the Commissioner **\*[or]\* \*of\*** Labor or the Commissioner of Health, as the case may be.

(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

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demolition work; and

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.

12:120-3.3 and 8:60-3.3 Interface of State agencies

(a) The Department of Labor shall under the provisions of this chapter:

1. Issue licenses to qualified employers;
2. Issue permits to qualified employees;
3. Collect the fees for licenses and permits;
4. Determine that employers have a valid license; and
5. Determine that employees have a valid permit.

(b) The Department of Health shall under the provisions of this chapter:

1. Certify the course of training and the examination thereon given to the employee;
2. Have the authority to determine that an employer has a valid license; and
3. Have the authority to determine that an employee has a valid permit.

12:120-3.4 and 8:60-3.4 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 liable to a fine of \$1,000.00 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 alternative or in addition to the fines and imprisonment specified in (a) above, may impose administrative penalties in accordance with N.J.A.C. 12:120-3.5 and 8:60-3.5

12:120-3.5 and 8:60-3.5 Administrative penalties

(a) Employers 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 Penalties

Employer Violation	Penalty Up To
1. Performing as employer without license	\$1000.00
2. Allowing an employee to work without a permit	\$1000.00
3. Submitting false information on application for license	\$1000.00
4. Failure to perform quality asbestos work	\$1000.00
5. Other violations of the act or this chapter	\$ 500.00

(b) Employees 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 Penalties

Employee Violation	Penalty Up To
1. Working as an employee without a permit	\$ 500.00
2. Submitting false information on application for a permit	\$ 200.00
3. Other violations of the act or this chapter	\$ 100.00

(c) In addition to other sanctions in this chapter or the Act, the Commissioner of Labor or the Commissioner of Health, as the case may be, shall have the authority to require:

1. The immediate correction of any violation;
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 from the job site within the meaning and purposes of the Act.

12:120-3.6 and 8:60-3.6 Hearings

(a) When the Commissioner of Labor or 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 or the employee shall have the right to an informal hearing under (b) below or a formal hearing under (c) below or both.

(b) An informal hearing before the Commissioner of Labor or Health, as the case may be, may be held provided a written request is submitted within ten 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 or Health, as the case may be, he shall state his findings and conclusions in writing and transmit a copy to the employer or the employee.

(c) The employer or employee 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, N.J.A.C. 1:1-1 et seq.

**SUBCHAPTER 4. LICENSING OF EMPLOYERS**

12:120-4.1 and 8:60-4.1 Scope of subchapter

This subchapter shall apply to the procedures required to obtain a license as an employer.

12:120-4.2 and 8:60-4.2 Application for license

(a) The application to obtain a license as an employer shall be typewritten or neatly and legibly printed in ink.

(b) All applications shall be carefully completed.

(c) 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 experience. 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 contract.

(d) 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 original application.

(f) An application for a license shall be made on forms provided by the Division of Workplace Standards.

(g) No license shall be granted to an employer:

1. If he is less than 18 years of age; or
2. If he has been found in non-compliance with N.J.A.C.

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(h) All correspondence relative to applications for licenses shall be addressed to the Division of Workplace Standards.

(i) 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) The application fee for a license shall be \$100.00.

(k) The fee shall accompany the application.

(l) The fee for a license shall be a check or money order made payable to the order of the Commissioner of Labor.

(m) No liability shall be assumed by the Division of Workplace Standards for loss in the transmission of the fee.

12:120-4.3 and 8:60-4.3 Eligibility for license

(a) The applicant to be eligible for a license as an employer shall:

1. Provide evidence of having successfully completed the training course for supervisors approved by the Commissioner of Health as provided in N.J.A.C. 12:120-6.2 and 8:60-6.2; or

2. Have with the firm a job supervisor who can comply with (a)1 above; or

3. Have with the firm an experienced asbestos worker who has received a permit under N.J.A.C. 12:120-5.4(b) and 8:60-5.4(b) and who serves in a supervisor's capacity; and

4. Disclose and attach all information in the application form supplied by the Department of Labor including but not limited to i. through ix. below and such information shall demonstrate reliability and responsibility:

i. A copy of his certificate of insurance stipulating the name of insurance carrier, policy number, and policy period under which the entire New Jersey Workers' Compensation obligation is insured;

ii. A listing of respiratory protective equipment including serial numbers and proof of purchase or availability;

iii. A list of all other equipment and its location specific to asbestos abatement including serial numbers and proof of purchase or availability;

iv. Any and all citations of violations issued by the Occupational Safety and Health Administration;

v. Any and all citations of violations issued by the Environmental Protection Agency;

vi. Any previous and pending civil litigation;

vii. Any previous and pending criminal litigation;

viii. Any previous and pending litigation pertaining to other State, Federal, local laws or regulations or both; and

ix. A list of all public and private asbestos abatement projects performed within the past five years.

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.

12:120-4.4 and 8:60-4.4 Granting of license

(a) A license shall be granted in accordance with (b) below, when an employer can comply with N.J.A.C. 12:120-4.3 and 8:60-4.3.

(b) The license for an employer shall:

1. Be in writing;

2. Contain the date of issuance;

3. Contain an expiration date;

4. Contain the name and address of the employer to whom it is issued;

5. Be valid for one year from the date of issuance; and

6. Be signed by the Commissioner of Labor or his designee.

**\*(c) The license granted shall be either an A license or a B**

license.

**1. An A license shall permit the employer to perform any type of asbestos work.**

**2. A B license shall permit the employer to remove asbestos containing material from mechanical systems, such as pipes, boilers, ducts, flues, or breeching.\***

12:120-4.5 and 8:60-4.5 Identification of license

(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.

(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.

(c) All commercial vehicles used in connection with the application or enclosure or encapsulation or removal of asbestos shall be visibly marked with the employer's license number.

(d) The employer shall have a duplicate of the original license available at more than one job site. This duplicate of the original license shall be available at a cost of \$5.00.

(e) All business correspondence shall display the employer's license number.

12:120-4.6 and 8:60-4.6 Quality of work

(a) Every \*[license]\* **\*licensee\*** shall assure that work performed conforms to the following standards:

1. Section 1910.1001 Asbestos of 29 CFR Part 1910;

2. Section 1910.20 Access to Employee Exposure and Medical Records of 29 CFR 1910;

3. Subpart E, Personal Protective Equipment of 29 CFR 1926, Construction Industry Standards;

4. Subparts A and B of 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants; **\*[and]\***

5. N.J.A.C. 7:26, Non-Hazardous Waste Regulations **\*[.]\* \*; and\***

**\*6. N.J.A.C. 5:23-8, Asbestos Hazard Abatement Subcode of the Uniform Construction Code in educational facilities.\***

(b) Every licensee who performs 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.

(c) Every licensee shall be responsible for 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.

12:120-4.7 and 8:60-4.7 Suspension or revocation of 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.

(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; or

2. Being debarred 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.

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(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.

(d) All licenses shall expire unless renewed on or before the anniversary month of the original license.

(e) 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) 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.

## 12:120-4.8 and 8:60-4.8 Renewal of license

(a) When applying for the annual renewal of a license, it shall be necessary to submit a fee of \$100.00.

(b) An application for renewal of a license shall not be approved until all outstanding penalties lawfully imposed on the applicant under the Act 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) An application for renewal of a license that has expired may 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.

## 12:120-4.9 and 8:60-4.9 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. 56:14F-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) In all other cases where the 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 (c) below or both.

(c) An informal hearing before the commissioner may be held provided a written request is submitted within five days after due notice has been given that the 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, he shall state his findings and conclusions in writing and transmit a copy to the employer.

(d) The employer shall have the right to a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1, et seq., N.J.S.A. 56:14F-1, et seq., and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1, et seq.

## SUBCHAPTER 5. PERMITTING OF ASBESTOS EMPLOYEES

## 12:120-5.1 and 8:60-5.1 Scope of subchapter

This subchapter shall apply to the procedures required to obtain a permit as an employee.

## 12:120-5.2 and 8:60-5.2 Application for permit

(a) The application to obtain a permit as an employee shall be typewritten or neatly and legibly printed in ink.

(b) All applications shall be carefully completed.

(c) Incomplete, improper, or false applications shall not be accepted.

(d) An application for a permit shall be made on forms provided by the Division of Workplace Standards.

(e) No permit shall be granted to a person less than 18 years of age.

(f) All correspondence relative to applications for permits shall be addressed to the Division of Workplace Standards.

(g) The Division of Workplace Standards shall be notified by the asbestos employees of any change of his address. When writing, the permit number shall be specified.

(h) The applicable fee for a permit shall be \$10.00.

(i) The fee shall accompany the application.

(j) The fee for a permit shall be a check or money order made payable to the order of the Commissioner of Labor.

(k) No liability shall be assumed by the Division of Workplace Standards for loss in the transmission of the fee.

## 12:120-5.3 and 8:60-5.3 Examinations

(a) An applicant for a permit as an employee, other than an experienced asbestos worker, shall successfully complete a training course as required by N.J.A.C. 12:120-6 and 8:60-6 and an examination thereon.

(b) \*[Examination]\* **\*Examinations\*** shall be conducted by the Department of Health \*[on the first Wednesday of each month at Trenton or]\* at various \*[other]\* times and places throughout the State \*[when warranted.]\* **\*\***

(c) \*[Applications]\* **\*An applicant\*** shall be notified when and where to appear for examination.

\*[(d) An applicant who fails to appear at the appointed time for the examination shall forfeit the application fee, unless the applicant can present to the Commissioner of Health a satisfactory explanation for the failure to appear.

(e) Failure to appear for examination or to obtain a passing grade shall not entitle the applicant to a refund of any fee.]\*

\*[(f)\*\*(d)\* Examinations for an employee's permit shall be conducted in a written form and shall consist of as many questions and be of such nature as the Commissioner of Health shall consider appropriate.

\*[(g)\*\*(e)\* An applicant may, upon prior request, be examined through a reader or interpreter accompanying the applicant, provided the reader or interpreter is acceptable to the Commissioner of Health.

\*[(h)\*\*(f)\* Questions used in an examination shall not be copied by any applicant or retained by the applicant after examination, or taken from the presence of the authorized agent of the Commissioner of Health during the examination. Violation of this subsection shall be sufficient cause for disapproving the application for the permit.

\*[(i)\*\*(g)\* Evidence of the successful completion of the training course and examination thereon shall be issued in the name of the employee and transmitted directly to the employee.

## 12:120-5.4 and 8:60-5.4 Granting a permit

(a) A permit shall be granted by the commissioner to an employee who has demonstrated the ability to perform the application or enclosure or encapsulation or removal of asbestos in accordance with the current state-of-the-art tech-

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nology:

1. When the commissioner receives evidence of successful completion of a training course and examination thereon approved by the Commissioner of Health; or

2. When the conditions of (b) below are met.

(b) A permit shall be granted to an experienced asbestos worker without examination provided the asbestos employee:

1. Has experience with the application or enclosure or encapsulation or removal of asbestos; and

2. Has submitted proof of having completed a training course prior to promulgation of this chapter with a minimum of 24 hours of instruction which has been approved by the Commissioner of Health as substantially complying with asbestos training programs as provided in N.J.A.C. 12:120-6 and 8:60-6; and

3. Has submitted proof of having had a qualitative fit test of a respirator administered by a qualified industrial hygienist or health professional; and

4. Submits the application in accordance with N.J.A.C. 12:120-5.2 and 8:60-5.2; and

5. Submits the application on or before November 1, 1985.

(c) The permit for an employee shall:

1. Be in writing;

2. Contain the date of issuance;

3. Contain an expiration date;

4. Contain the name and address of the employee to whom it is issued;

5. Contain his social security number; and

6. Be signed by the Commissioner of Labor or his designee.

(d) The permit shall be valid for one year from the date of issuance.

12:120-5.5 and 8:60-5.5 Identification of permittee

(a) The permit shall be carried upon the employee's person.

(b) The permit shall be available for examination by the Commissioners of Labor and Health, as the case may be, the contracting agency, owner and employee's representative.

12:120-5.6 and 8:60-5.6 Suspension or revocation of permit

(a) Any permit may be suspended or revoked for incompetence, negligence, or for any other valid reason establishing that the permittee is unfit to hold a permit.

(b) The permit shall be suspended and immediately revoked if for any purpose, it is loaned, abandoned or allowed to pass from the personal control of the owner.

(c) The temporary suspension of a permit 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 employee of the violations; and

2. The employee has the opportunity to respond to the charges.

(d) All permits shall expire unless renewed on or before the anniversary month of the original permit.

(e) A permit shall be automatically cancelled on the date of its expiration. Any person performing the duties of a permittee and holding an expired permit shall be subject to the penalty provisions of the Act as is his employer.

(f) Any person using fraudulent means to obtain a permit shall be subject to prosecution under the Act. Any permit acquired through such means shall be invalid.

12:120-5.7 and 8:60-5.7 Renewal of permit

(a) When applying for the annual renewal of a permit, the permittee, except as otherwise provided by (b) below, shall:

1. Enclose the fee of \$10.00; and

2. Provide evidence of any continuing education that may

be required by the Commissioner of Health in consultation with the Commissioner of Labor.

(b) When applying for the first renewal of a permit, a permittee who is an experienced asbestos worker shall:

1. Enclose the fee of \$10.00; and

2. Provide evidence of successful completion of the training course and examination thereon described in N.J.A.C. 12:120-5.4(a)1 and 8:60-5.4(a)1.

(c) A permit shall be renewed within 30 days prior to the date of its expiration.

(d) An application for a renewal of an expired permit shall be approved provided:

1. A fee of \$10.00 is enclosed for one year;

2. The application is made within three years of the expiration date of the expired permit; and

3. All penalties lawfully imposed on the applicant under the Act have been paid.

(e) Application for renewal of a permit expired more than three years shall be treated as an original application.

(f) An altered, defaced, mutilated or lost permit shall be replaced at a cost of \$10.00, only after review by the commissioner. Photostats, photographs or reproduction of a permit shall have no status, and shall not be recognized.

12:120-5.8 and 8:60-5.8 Hearing for employees

(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 permit pending the hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1, et seq., N.J.S.A. 56:14F-1, et seq., and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1, et seq. When the permit has been suspended, the employee shall have the right to a hearing within 10 days of suspension.

(b) In all other cases where the commissioner proposes to revoke or suspend a permit, refuses to renew a permit, or denies an application for a permit, the permittee shall have the right to an informal hearing under (c) below or a formal hearing under (d) below or both.

(c) An informal hearing before the commissioner may be held provided a written request is submitted within five days after due notice has been given that the commissioner proposes to revoke or suspend a permit, refuses to renew a permit or denies an application for a permit. When the hearing is held before the commissioner, he shall state his findings and conclusions in writing and transmit a copy to the employee.

(d) The employee shall have the right to a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1, et seq., N.J.S.A. 56:14F-1, et seq., and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1, et seq.

**SUBCHAPTER 6. CERTIFICATION OF TRAINING COURSES**

**OFFICE OF ADMINISTRATIVE LAW NOTE:** This subchapter concerning certification of training courses has previously been adopted on an emergency basis (see 17 N.J.R. 741(a)). The emergency rule was readopted effective May 3, 1985 (see 17 N.J.R. 1417(b)) and may be found in the New Jersey Administrative Code at N.J.A.C. 12:120-6 and N.J.A.C. 8:60-6.

**SUBCHAPTER 7. STANDARDS AND PUBLICATIONS REFERRED TO IN THIS CHAPTER**

12:120-7.1 and 8:60-7.1 Documents referred to by reference

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(a) The full title and edition of each of the standards and publications referred to in this chapter are as follows:

- 1. 29 CFR Part 1910, General Industry Standards;
- 2. 29 CFR Part 1926, Construction Industry Standards;
- 3. 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants;
- 4. N.J.A.C. 1:1, Uniform Administrative Rules of Practice;
- \*5. N.J.A.C. 5:23-8, Asbestos Hazard Abatement Subcode of the Uniform Construction Code;\*
- \*[5.]\*6.\* N.J.A.C. 7:26, Non-Hazardous Waste Regulations;
- \*[6.]\*7.\* N.J.S.A. 34:5A-32 et seq., Asbestos Control and Licensing Act; and
- \*[7.]\*8.\* N.J.S.A. 52:14B-1 et seq., Administrative Procedures Act.

12:120-7.2 and 8:60-7.2 Availability of documents for inspection on

A copy of each of the standards and publications referred to in this chapter is on file and may be inspected at the following office of the Division of Workplace Standards between the hours of 9:00 A.M. and 4:00 P.M. on normal working days:

New Jersey Department of Labor  
Division of Workplace Standards  
36 West State Street, Room 313  
Trenton, New Jersey 08625

12:120-7.3 and 8:60-7.3 Availability of documents from issuing organization

Copies of the standards and publications referred to in this chapter may be obtained from the organizations listed below. The abbreviations preceding these standards and publications have the following meaning, and are the organizations issuing the standards and publications listed in N.J.A.C. 12:120-7.1 and 8:60-7.1.

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

**LAW AND PUBLIC SAFETY**

**(a)**

**DIVISION OF MOTOR VEHICLES  
DEPARTMENT OF INSURANCE**

**Driver Control Service  
Motor Vehicle Insurance Surcharge;  
Supplemental Surcharges**

**Adopted Amendments: N.J.A.C. 13:19-13.1 and 13.2.**

**Adopted New Rule: N.J.A.C. 13:19-13.3.**

Proposed: April 15, 1985 at 17 N.J.R. 893(a).  
Adopted: June 17, 1985 by Robert S. Kline, Acting Director, Division of Motor Vehicles and Hazel F. Gluck, Commissioner, Department of Insurance.  
Filed: August 26, 1985 as R.1985 d.482, **without change.**

Authority: N.J.S.A. 17:29A-35.

Effective Date: September 16, 1985.

Expiration Date pursuant to Executive Order No. 66 (1978): March 19, 1989.

Summary of Public Comments and Agency Responses:  
**No comments received.**

Full text of the adoption follows.

**SUBCHAPTER 13. MOTOR VEHICLE INSURANCE  
SURCHARGE; SUPPLEMENTAL  
SURCHARGES**

13:19-13.1 Surcharges for three year period; convictions; amounts

(a) Plan surcharges shall be levied by the Division of Motor Vehicles for convictions of violations set forth in (b) below which violations occurred on or after March 19, 1984, the effective date of the original regulation. The surcharges shall be annually assessed for a three year period.

(b) The following violations shall be subject to surcharges as indicated in (a) above for the amount set forth below:

1. N.J.S.A. 39:3-10	Unlicensed driver	\$100.00
2. N.J.S.A. 39:3-40	Driving while suspended	\$250.00
3. N.J.S.A. 39:4-14e	Failing to have insurance on motorized bicycle	\$100.00
4. N.J.S.A. 39:6B-2	Failing to maintain liability insurance on motor vehicle	\$250.00

13:19-13.2 Surcharges for three year period; administrative violations; amounts

(a) Plan surcharges shall be levied by the Division of Motor Vehicles for violations resulting in license suspensions imposed administratively which are set forth in (b) below and which violations or suspensions have occurred on or after March 19, 1984, the effective date of the original regulation. The surcharge shall be assessed each year for a three year period and shall be in addition to the license restoration fee charged pursuant to N.J.S.A. 39:3-10a.

(b) The following violations resulting in administrative license suspensions shall be subject to surcharge as indicated in (a) for the amount set forth below:

1. Operating while suspended .....	\$250.00
2. Failure to maintain liability insurance on motor vehicle .....	\$250.00
(c) (No change.)	

13:19-13.3 Refund of surcharge; deletion of suspension  
A person who previously had been suspended for failing to

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pay a surcharge pursuant to N.J.A.C. 13:19-13.1 or 13:19-13.2 for a violation or suspension that occurred on or after January 1, 1983, but before March 19, 1984, will have the driving privilege suspension deleted without the payment of the mandatory restoration fee. If the restoration fee had been previously paid, the fee will be refunded, provided the person was serving no other suspension.

**(a)**

**BOARD OF NURSING**

**Programs in Nursing Education**

**Adopted Amendment: N.J.A.C. 13:37-1.2**  
**Adopted Repeal: N.J.A.C. 13:37-1.21, 1.23,**  
**1.24, 1.25**

Proposed: June 17, 1985 at 17 N.J.R. 1528(a).  
Adopted: August 12, 1985 by New Jersey State Board of Nursing, Sylvia Edge, President.  
Filed: August 26, 1985 as R.1985 d.483, **without change.**  
Authority: N.J.S.A. 45:11-33, 45:11-24(d) (12) (13) (14) and (19).

Effective Date: September 16, 1985.  
Expiration Date pursuant to Executive Order No. 66 (1978): June 3, 1990.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

Full text of the adoption follows.

- 13:37-1.2 Criteria for accreditation
- (a)-(u) (No change.)
  - (v) An annual report of the school of nursing shall be submitted each year on a date determined by the Board. Forms will be supplied by the Board two months before the report is due.
  - (w) The administrative officer responsible for an educational institution or hospital which plans to discontinue the educational program in nursing, or to suspend any essential part of its program, shall forward a written notification to the Board which shall:
    1. Be received by the Board at least six months prior to the admission of the last class;
    2. Include the reasons for terminating the program;
    3. Define the specific plans for the students enrolled.
  - (x) Procedures for termination of the program include:
    1. "Phasing out," in which students enrolled continue until they complete the program, and no students are admitted or accepted by transfer, qualified faculty remain and Board requirements continue to be met, according to conditions under which the program was originally approved;
    2. Transfer of students to other schools in a manner providing a minimum loss to the students.
  - (y) Within ten days of the official date of closure the date on which the last student is properly transferred or completes the program, the administrative officer shall notify the Board of same in writing.

1. Governing bodies shall notify the Board in writing in cases involving change of control, said notification containing their intentions with respect to the school of nursing. If the intent is to continue the operation of the school, notification shall be made of the name under which the school will operate and statements of assurance that requirements will continue to be met shall be included.

2. The institution shall be responsible for the safekeeping of the records and, at termination, shall plan with the Board for the future custody of such records.

**(b)**

**DIVISION OF STATE POLICE**

**User Fees for Criminal History Record**  
**Background Checks for Non-Criminal Matters**

**Adopted New Rule: N.J.A.C. 13:59**

Proposed: July 15, 1985 at 17 N.J.R. 1743(a).  
Adopted: August 19, 1985 by Clinton L. Pagano, Superintendent, Division of State Police.  
Filed: August 26, 1985 as R.1985 d.481, **without change.**  
Authority: N.J.S.A. 53:1-20.5, 53:1-20.6 and 53:1-20.7 (L. 1985, c.69).

Effective Date: September 16, 1985.  
Expiration Date pursuant to Executive Order No. 66 (1978): September 16, 1990.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

Full text of the adoption follows.

**CHAPTER 59**  
**CRIMINAL HISTORY RECORD BACKGROUND**  
**CHECKS FOR NON-CRIMINAL MATTERS**

**SUBCHAPTER 1. USER FEES**

- 13:59-1.1 Definitions
- The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.
- "Authorized agency" means any governmental or quasi-governmental, state, county or local agency which is authorized by a state statute, rule, or regulation or local ordinance to have access to the Criminal History Record Information File for non-criminal licensing and/or employment purposes.
  - "Fee" means that price established by law for processing all record requests for a licensing and/or employment purpose for authorized agencies.
  - "Licensing and/or employment purpose" means any matter in which applicant fingerprints or name search requests are submitted as required by state or county statute, rule, regulation or local ordinance to the State Bureau of Identification for processing from all authorized agencies.
  - "Processing Criminal History Record background checks" means the process whereby the State Bureau of Identification

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compares a set of classifiable fingerprints or conducts a name search request to determine if a New Jersey criminal history record exists for the person identified by the request.

"State Bureau of Identification, (S.B.I.);" means the State Bureau of Identification as created by L.1930, c.65 as a bureau within the Division of State Police.

**13:59-1.2 Fees**

(a) A fee of \$12.00 shall be imposed and used exclusively for the purpose of processing fingerprint identification checks.

(b) A fee of \$8.00 shall be imposed and used exclusively for the purpose of processing criminal history name search identification checks.

(c) These fees shall be in addition to any other fee required by law.

**13:59-1.3 Separation of fees**

All licensing and/or employment purpose requests from authorized agencies will be subject to the prescribed fees as set forth at N.J.A.C. 13:59-1.2 and will be limited to that purpose only.

**13:59-1.4 Prescribed forms**

(a) Requests for Criminal History Record Information by authorized agents shall be on forms as prescribed by this section.

(b) The prescribed forms must be used to obtain Criminal History Record Information on any request which meets the dissemination criteria for the state licensing and/or employment purposes from authorized agencies.

(c) For fingerprint identification purposes an "Applicant" fingerprint card (SBI-19) must be used. The exception to this rule will be for a firearms application which requires a "Firearms Application" card (SBI-19A).

1. Fingerprint card (SBI-19 or SBI-19A): The fee as prescribed in this subchapter, in the form of a cashiers check, certified check or money order payable to the "Division of State Police-SBI", must be stapled on the lower left corner of the "Applicant" fingerprint card (SBI-19) or "Firearms Application" fingerprint card (SBI-19A) and submitted to the State Bureau of Identification.

(d) For name search identification purposes a "Request for Criminal History Record Information" form (SBI-212) must be used.

1. "Request for Criminal History Record Information" form (SBI-212): This form will be filled out in its entirety and must contain all the required information necessary to complete the check. The fee as prescribed in this subchapter, in the form of a cashiers check, certified check or money order payable to the "Division of State Police-SBI", must be stapled to the front of each SBI-212 form and submitted to the State Bureau of Identification.

**13:59-1.5 Acceptance form of payment**

A cashier check, certified check or money order made payable to the "Division of State Police-SBI" will be accepted.

**13:59-1.6 Superintendent's waiver provision**

Nothing in this section shall prohibit the Superintendent of State Police from providing this processing service without the collection of fees from the applicant or in other circumstances which in his sole discretion he deems appropriate if the applicants would not receive a wage or salary for the time and services they provide to an organization or who are considered volunteers. In those circumstances where the Superintendent of State Police determines to provide this processing service without the collection of fees to the individual applicants, the

superintendent may assess the fee for providing this service on behalf of the applicants to any department of State, county or municipal government which is responsible for operating or overseeing that volunteer program.

**13:59-1.7 Rejection and resubmission procedures**

(a) Any fingerprint card or Request for Criminal History Record Information form which is rejected will be returned with the submitted fee to the authorized agency. The procedure as set forth at N.J.A.C. 13:59-1.4 will be utilized for resubmissions with the following exceptions.

1. Fingerprint cards that cannot be classified will be rejected and returned to the authorized agencies, but the fee which accompanied the fingerprint card will be retained by the SBI. Upon resubmission, staple the rejected fingerprint card to the newly taken fingerprint card and submit both cards along with the original rejection form to the SBI. This procedure will ensure that no additional charge will be assessed for a resubmitted fingerprint card.

**13:59-1.8 Limitation of access to Criminal History Record Information (CHRI)**

Access to Criminal History Record Information (CHRI) for non-criminal licensing and/or employment purposes is restricted to authorized agencies as defined in this subchapter.

**ENERGY**

**THE COMMISSIONER**

**(a)**

**Energy Subcode  
Thermal Efficiency Standards**

**Adopted Amendments: N.J.A.C. 14A:3-4.4**

Proposed: October 15, 1985 at 16 N.J.R. 2748(a).  
Adopted: August 20, 1985 by Leonard S. Coleman, Jr.,  
Commissioner, Department of Energy.  
Filed: August 22, 1985 as R.1985 d.478, **without change**.

Authority: N.J.S.A. 52:27F-27.

Effective Date: September 16, 1985.  
Expiration Date pursuant to Executive Order No. 66  
(1978): August 20, 1989.

**Summary of Public Comments and Agency Responses:  
No comments received.**

**Full text** of the adoption follows.

**SUBCHAPTER 4. ENERGY SUBCODE**

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**14A:3-4.4 Thermal efficiency standards**

(a) (No change.)  
(b) The energy subcode is amended as follows:  
1.-3. (No change.)

4. The following amendments are made to Article 4 of the

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energy subcode entitled "Warm Air Heating; Ventilating and Air Conditioning Systems and Equipment":

- i. In Table E-402.1.1a change the numbers as follows:
  - (1) Replace the Air EER values of 6.1 and 6.8 with the values 7.8 and 8.2, and add the Evaporative or Water Cooled EER values of 8.8 and 9.2, respectively.
  - (2) Replace the Air COP values of 1.8 and 2.0 with the values 2.28 and 2.40, and add the Evaporative or Water Cooled COP values of 2.58 and 2.69, respectively.
- ii. (No change.)
- iii. In Table E-402.1.2 change the numbers as follows:
  - (1) Replace the Air EER values of 7.5, 7.2, 8.9 and 7.8 with the values 8.0, 8.4, 9.9 and 9.5, respectively.
  - (2) Replace the Air COP values of 2.2, 2.1, 2.6 and 2.3 with the values 2.34, 2.46, 2.9 and 2.78, respectively.
  - (3) Replace the Water EER values of 12.9, 10.9, 10.9 and 11.3 with the values 13.8, 12.0, 12.0 and 12.5, respectively.
  - (4) Replace the Water COP values of 3.8, 3.2, 3.2 and 3.3 with the values 4.04, 3.51, 3.51 and 3.66, respectively.
  - (5) Replace the Evaporative EER value of 11.3 with the value 12.5.
  - (6) Replace the Evaporative COP value of 3.3 with the value 3.66.
- iv. In Table E-402.1.3 replace the Minimum COP values of 2.2, 1.2 and 2.2 with the values 2.7, 1.8 and 3.0, respectively.
- 5.-6. (No change.)
- 7. The following amendments are made to Appendix A, entitled "Referenced Standards":
  - i. ASHRAE Standard Reference Number is amended to delete the words "90-75" and add "90A-80".

**(a)**

**Submission and Handling of Information which may be Entitled to Confidential Treatment**

**Adopted New Rule: N.J.A.C. 14A:7**

Proposed: July 15, 1985 at 17 N.J.R. 1745(a).  
 Adopted: August 15, 1985 by Leonard S. Coleman, Jr.,  
 Commissioner, Department of Energy.  
 Filed: August 16, 1985 as R.1985 d.470, **without change**.  
 Authority: N.J.S.A. 52:27F-11(q) and 18(d).

Effective Date: September 16, 1985.  
 Expiration Date pursuant to Executive Order No. 66  
 (1978): September 16, 1990.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

Full text of the adoption follows.

CHAPTER 7  
 SUBMISSION AND HANDLING OF  
 INFORMATION WHICH MAY BE ENTITLED  
 TO CONFIDENTIAL TREATMENT

SUBCHAPTER 1. TRADE SECRETS

14A:7-1.1 Scope  
 The rules in this chapter shall govern the submission and

handling of information which may be entitled to confidential treatment because such information constitutes a trade secret.

14A:7-1.2 Definitions

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

"Authorized agent" means any person who is duly authorized by the department to perform work in connection with the conduct of the department's business.

"Commissioner" means Commissioner of the New Jersey Department of Energy.

"Confidentiality claim" means a claim that information is entitled to confidential treatment because such information constitutes a trade secret.

"Department" means the New Jersey Department of Energy.

"Trade secret" means the whole or any portion or phase of any scientific, technical, or otherwise proprietary information, design, process, procedure, formula, or improvement which is used in one's business and is secret and of value; and a trade secret shall be presumed to be secret when the owner takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

"Energy industry" means any person, company, corporation, business, institution, establishment, or other organization of any nature engaged in the exploration, extraction, transportation, transmission, refining, processing, generation, distribution, sale or storage of energy.

14A:7-1.3 Confidential information

(a) Any energy industry requested by the department to submit information pursuant to N.J.S.A. 52:27F-18 may assert a confidentiality claim covering part or all of the information by following the procedures set forth in subsections (b) and (g) below.

(b) Any energy industry submitting information pursuant to N.J.S.A. 52:27F-18 to the department and asserting a confidentiality claim covering such information shall submit two documents to the department. The first document shall contain all the information requested by the department, including any information which the energy industry claims to be entitled to confidential treatment. The second document shall be identical to the first report except that it shall contain no information which the energy industry claims to be entitled to confidential treatment. If all submitted information is claimed to be confidential, no second document is required.

(c) The top of each page of the first document containing the information which the energy industry claims to be entitled to confidential treatment shall display the heading "CONFIDENTIAL" in bold type.

(d) All parts of the text of the first document which the energy industry claims to be entitled to confidential treatment shall be underscored. Parts already determined by the department to be entitled to confidential treatment shall be so labeled.

(e) The first document containing the information which the energy industry claims to be entitled to confidential treatment shall be enclosed in an envelope. The outside of the envelope shall display the word "CONFIDENTIAL" in bold type on both sides.

(f) If all the information has been already determined by the department to be entitled to confidential treatment, only one document is required to be submitted and the top of each

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page shall display the heading "CONFIDENTIALITY DETERMINED."

(g) The energy industry submitting the documents shall send them to the department official who requested the information by certified mail return receipt requested, by personal delivery, or by other means which allows verification of the fact of receipt and the date of receipt.

**14A:7-1.4 Confidentiality determinations**

(a) Information claimed to be entitled to confidential treatment will be treated as confidential until the department receives a request under N.J.S.A. 47:1A-1 et seq., to inspect or copy such information.

(b) After receiving such request, the department shall make a confidentiality determination. The department shall so notify the energy industry that submitted the information by certified mail return receipt requested. The notice shall state that a request for the information has been made and that the energy industry that submitted the information may, within thirty days of notification, submit a request to the department for a summary proceeding. The request should include evidence to support a claim that the information is entitled to confidential treatment. The evidence may include, but is not limited to affidavits, records, other documents, and a statement, which shall be as detailed as possible without disclosing any information which the energy industry claims to be entitled to confidential treatment, indicating:

1. The measures taken by the energy industry to guard against undesired disclosure of the information to others;
2. The extent to which the information has been disclosed to others, and the precautions taken in connection therewith; and
3. Whether the energy industry asserts that disclosure of the information would be likely to result in substantial, harmful effects on the energy industry's competitive position, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects.

(c) The department shall review the evidence. If after such review, the department determines that the information is not entitled to confidential treatment, the department shall so notify the energy industry that submitted the information by certified mail return receipt requested. Such determination shall be made after consideration of the applicable criteria in N.J.A.C. 14:7-1.5. The notice shall state the basis for the determination, that a party may request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Rules of Procedure, N.J.A.C. 1:1-1 et seq. and 1:21-1 et seq., within 10 days of the determination and that, if the request for confidentiality was not granted and a hearing is not requested, the department will make the information available to the public on the tenth working day after the date of the energy industry's receipt of the written notice.

(d) If the department determines that the information is entitled to confidential treatment, the information shall not be deemed to be public records and shall be exempt from the requirements of N.J.S.A. 47:1A-1 et seq., pursuant to N.J.S.A. 52:27F-18(d). The department shall so inform the affected person who made the request for release of the information under N.J.S.A. 47:1A-1 et seq. The notice shall state the basis for the determination and that it constitutes final agency action.

**14A:7-1.5 Criteria for confidential determination**

(a) Determinations are made under N.J.A.C. 14A:7-1.4(d)

shall hold that information is entitled to confidential treatment if:

1. The energy industry has asserted a confidentiality claim;
2. The energy industry has satisfactorily shown that it has taken and will continue to take reasonable measures to protect the confidentiality of the information;
3. The information is not, and has not been, reasonably obtainable without the energy industry's consent by persons, other than governmental bodies, using legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding;
4. No statute specifically requires disclosure of the information;
5. The energy industry has satisfactorily shown that disclosure of the information would be likely to cause substantial harm to the energy industry's competitive position;
6. Disclosure of the information is likely to impair the department's ability to obtain similar information in the future.

**14A:7-1.6 Access to confidential information**

Unless specifically provided for by Federal or State law, no person shall have access to information which has been determined to be entitled to confidential treatment, other than: department personnel with the express written permission of the Commissioner or his or her designate, Federal agencies, State agencies, or other governmental entities, subject to the provisions of N.J.A.C. 14A:7-1.7 or authorized agents of the department, subject to the provisions of N.J.A.C. 14:7-1.8.

**14A:7-1.7 Disclosure of confidential information to Federal agencies, other State agencies, and municipal agencies**

(a) The department may disclose information entitled to confidential treatment to federal agencies, other State agencies, and municipal agencies if:

1. The department receives a written request for disclosure of the information from a duly authorized officer or employee of the other agency. The request must set forth the official purpose for which the information is needed;
2. The department notifies the other agency of its determination that the information is entitled to confidential treatment;
3. The other agency has first furnished to the department a written opinion from that agency's chief legal officer or counsel stating that under applicable law the agency has the authority to compel the energy industry that submitted the information to the department to disclose such information to the other agency; and
4. The other agency agrees to take reasonable precautions to maintain the confidentiality of such information.

(b) After determining that it will release the confidential information, the department shall so notify the energy industry that submitted the information by certified mail return receipt requested. The notice shall state the basis of the determination. If within 14 days of notification of proposed disclosure, the provider of such information requests in writing that the department reconsider its decision to release the information, the department shall conduct a summary proceeding. The request should include evidence to support a claim that the department's determination was incorrect. The evidence may include, but is not limited to, affidavits, records, and other documents.

(c) If a timely request for reconsideration has been made by the provider of such information, the department shall review the evidence and its prior determination. If after such

review, the department determines that it will release the confidential information, the department shall so notify the energy industry that submitted the information by certified mail return receipt requested. The notice shall state the basis for the determination, that it constitutes final agency action concerning the release of the confidential information, and that the department will make the information available to the requesting governmental agency on the tenth working day after the date of the energy industry's receipt of the written notice. If the department determines that it will not release the confidential information, the department shall so inform the requesting governmental agency. The notice shall so state the basis for the determination and that it constitutes final agency action.

#### 14A:7-1.8 Disclosure of confidential information to authorized agents

(a) The department may disclose information which has been determined to be entitled to confidential treatment to an authorized agent of the department if the department determines that such disclosure is necessary in order for the authorized agent to perform the work in connection with the conduct of the department's business.

(b) No information shall be disclosed under (a) above, unless there is a written agreement entered into between the department and the authorized agent which provides that the authorized agent and the authorized agent's employees shall use the information only for the purpose of performing the work in connection with the conduct of the department's business, shall refrain from disclosing the information to anyone other than the department, and shall return to the department all copies of the information (and any abstracts or extracts therefrom) upon request by the department or whenever the information is no longer required by the authorized agent for the performance of the work.

**(a)**

### Energy Conservation in State Buildings

#### Adopted Amendments: N.J.A.C. 14A:13-1.2, 1.8, 1.9, 1.10, 1.11, 1.13, and 1.14

Proposed: July 15, 1985 at 17 N.J.R. 1747(a).

Adopted: August 15, 1985 by Leonard S. Coleman, Jr.  
Commissioner, Department of Energy.

Filed: August 16, 1985 as R.1985 d.471, **without change.**

Authority: N.J.S.A. 52:27F-11(q) and (n) and P.L. 1980, c.68.

Effective Date: September 16, 1985.

Expiration Date pursuant to Executive Order No. 66 (1978): November 2, 1986.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text** of the adoption follows.

#### 14A:13-1.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the con-

text clearly indicates otherwise.

"Educational facilities" means buildings, structures, and facilities under the supervision and control of the Department of Education or the Department of Higher Education, including, but not limited to, Rutgers, the State University, The University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology, the State colleges, the Marie H. Katzenbach School for the Deaf, the Milburn Avenue School for the Hearing Handicapped, the State Library, and the State Museum.

"Supervision and control" means the holding of any fee simple estate, or any leasehold estate for a duration of more than 10 years.

"Using agency" means the recipient of the Energy Conservation Bond funds.

#### 14A:13-1.7 Project ranking: Energy audits

(a) Requests for funding of energy audits shall be ranked and/or approved for funding at the discretion of NJDOE and subject to review by the State Treasurer and the commission in accordance with the following criteria:

1. That they do not duplicate existing audits or engineering studies considered acceptable by NJDOE.

2. That the estimated cost of the audit or analysis is consistent with the possible savings that may be identified.

3.-6. (No change.)

#### 14A:13-1.8 Project authorization: Energy audits

(a) Upon encumbrance of funds, the NJDOE shall submit to the DBC a list of the energy audits to be performed. However, Rutgers-the State University, the New Jersey Institute of Technology (NJIT), the New Jersey Department of Defense (NJDOD), or the University of Medicine and Dentistry of New Jersey (UMDNJ) shall use their own procurement procedures, provided that they use the auditors on NJDOE's approved list and that the contents of the audit are consistent with N.J.A.C. 14A:13-1.13.

(b) The DBC shall coordinate with the NJDOE to define the programs and obtain details and specific information on each project prior to advertisement and selection of the consultant. One major objective will be to group projects by institution, location and technical similarities in order to keep the number of consultants to a minimum and expedite the energy audits.

(c) The DBC shall select and retain an engineer or architect/engineer firm which meets the auditor qualifications set forth in N.J.A.C. 14A:13-1.14 and shall perform the energy audits in accordance with the DBC's Architect/Engineer Selection Procedures, N.J.A.C. 17:19-10.

(d) The NJDOE and the Using Agency for which the energy audit will be performed may each designate a voting member to the DBC Architect/Engineer Selection Board in accordance with N.J.A.C. 17:19-10.9.

(e) The consultant shall submit the audit to the DBC. When the using agency is Rutgers, NJIT, NJDOD, or UMDNJ, the consultant shall submit the audit to the using agency. Prior to final acceptance of the audit, the DBC, or when applicable Rutgers, NJIT, NJDOD, or UMDNJ, shall forward the audit to NJDOE for revision or acceptance. The NJDOE shall have 15 working days after receipt of the audit to notify the DBC, or when applicable Rutgers, NJIT, NJDOD, or UMDNJ, of acceptance or any deficiencies in the audit with regard to conformance with general auditing procedure, completion of specific tasks in the work assignment and compliance with the audit requirements contained in N.J.A.C. 14A:13-1.13. If there are any deficiencies, the DBC, or when applicable Rutgers,

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NJIT, NJDOD, or UMDNJ, shall return the work product to the contractor marked unacceptable.

(f) Upon acceptance of the completed audit, the NJDOE shall transmit the audit to the using agency.

**14A:13-1.9 Project ranking: Energy conserving renovations**

(a) Requests for funding of energy conserving renovations shall be evaluated and ranked using the following procedure.

1. Project funding requests shall be reviewed for compliance with N.J.A.C. 14A:13-1.6, and may be returned to the submitting agency for revision if not found complete or in compliance.

2. Individual requests shall be evaluated by NJDOE, the State Treasurer and the commission for consistency with overall renovation needs of the building or facility and for consistency with the commission's long-range capital plan. Requests may be returned to the submitting agency if not in conformity with the overall program.

3. Individual requests shall be screened to identify proposed installations which appear to require unusual or extensive maintenance. Supporting data may be required before acceptance.

4. Individual requests shall be screened to eliminate proposals which expose the State to unproven or experimental systems.

(b) Acceptable proposals conforming to the requirements of (a) above shall be ranked by payback.

(c) Based on the total funding available for the fiscal year as determined by the annual plan, the NJDOE shall establish the maximum payback for projects which shall be funded in that fiscal year. However, the Commissioner, at his/her discretion, may include lower ranked projects of special need, merit or significance.

(d) Maximum payback established for any year shall not exceed 10 years.

(e) Consideration shall be given to the submitting department's preference list where selection must be made between projects of approximately equal payback.

**14A:13-1.10 Project authorization: Energy conserving renovations**

(a) Upon selection and approval of energy conserving renovations for funding, the NJDOE shall notify the using agency in writing and provide the funds for the renovation.

(b) The using agency shall encumber the funds for the following:

1. Estimated cost of planning, programming, design and preparation of plans and specifications; and

2. Cost of acquisition, installation and construction of the energy conserving renovation.

(c) Upon encumbrance of funds, the using agency shall submit to the DBC a list of renovations to be performed. However, Rutgers, NJIT, NJDOD, or UMDNJ shall use their own procurement procedures, provided that they use the designers on NJDOE's approved list. In the event Rutgers, NJIT, NJDOD, or UMDNJ do not use the DBC for procurement, they shall be subject to (l), (m) and (n) below and N.J.A.C. 14A:13-1.11.

(d) The DBC shall select and retain an engineer or architect/engineer firm for the design of energy conserving renovations in accordance with the DBC's Architect/Engineer Selection Procedures, N.J.A.C. 17:19-10.

(e) The NJDOE and the Using Agency for which the renovation will be performed may each designate a voting member to the DBC Architect/Engineer Selection Board in accordance with N.J.A.C. 17:19-10.9.

(f) The NJDOE and the Using Agency shall have 15 days from receipt of the plans and specifications prepared by the consultant to review and comment.

(g) Those projects with an aggregate cost less than \$10,000 and procured through DBC shall be exempt from the requirements of this section and shall be carried out in accordance with the DBC's rules.

(h) Renovation projects shall be advertised and bid by the DBC in accordance with its established procedures. All contractors bidding on renovation projects shall be qualified in accordance with applicable law and DBC regulations.

(i) In the event the lowest responsible bid or sum of low bids exceeds the construction cost estimate by more than five percent, the bid(s) shall be subject to rejection by the Director of the DBC. The DBC shall also consider the effect of the bids on projected payback, and other related factors.

1. The DBC shall coordinate with the appropriate Using Agency to determine if the project should be reduced in scope and rebid to meet available funds or should be abandoned.

2. If the DBC determines that the project shall be changed in scope, the NJDOE shall determine whether the project still conforms with the objectives of the original project sufficiently to be funded.

(j) Supervision, quality control, inspection, change orders, contract administration and all related construction management activities shall be the responsibility of the Director of the DBC in his capacity as Contracting Officer.

(k) Any claims by the design consultants or by the contractors shall be processed and handled by the Director of the DBC under the provisions of the Contractual Liability Act, N.J.S.A. 59:13-1 et seq., in accordance with established procedures.

(l) When the Using Agency is Rutgers, NJIT, NJDOD, or UMDNJ, the NJDOE shall have 15 working days from receipt of the plans and specifications prepared by the consultant to review and comment.

(m) When the Using Agency is Rutgers, NJIT, NJDOD, or UMDNJ, and the Using Agency determines that the scope of the project should be changed, the Using Agency shall notify the NJDOE, in writing of the proposed change in scope and describe in detail the proposed change. The NJDOE shall have 15 working days from receipt of said notice to determine whether the project sufficiently conforms with the objectives of the original project to be funded.

(n) If an architect and/or engineer is responsible for the audit and/or design work, that architect and/or engineer, or any firm with which he or she was associated at the time of the audit and/or design work cannot bid on the construction of the project. If the responsible architect and/or engineer disassociates from that firm after the audit and/or design work has been bid, he or she cannot participate in any construction bid for that project.

**14A:13-1.11 Project review and control**

(a) Renovation projects authorized for funding (or for which funding has been obligated) shall be monitored in accordance with the following procedure:

1. As part of the review for technical comment, NJDOE shall confirm that the plans and specifications conform with the objectives of the original project submittal and the NJDOE's Conservation Regulations, N.J.A.C. 14A:3 and verify that the costs to be incurred are, as far as practicable, solely for application to the purpose of renovation. In the event that they are deficient in either of these respects, the NJDOE shall notify the using agency and the DBC in writing that the funds

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should not be released for construction.

2. The NJDOE may require the installation of metering equipment during the design period, or as a part of the renovation where such installation is economically and technically feasible in order that the NJDOE may fulfill its statutory responsibility to annually report an estimate of the savings resulting from the renovation.

3. Prior to final acceptance of the project the NJDOE and the using agency shall be notified by the DBC in writing within a reasonable time prior to closeout and final acceptance of the project in order that NJDOE may participate therein. Both the NJDOE and the Using Agency shall have 15 days from receipt of the notice from DBC to sign the final acceptance certificate (DBC Form 20) or to provide reasons for objection. When the using agency is Rutgers, NJIT, NJDOD or UMDNJ prior to final acceptance of the project, the Using Agency shall notify the NJDOE in writing within a reasonable time prior to closeout and final acceptance of the project in order that NJDOE may participate therein.

4. Following installation, the using agency shall annually from date of closing provide the NJDOE with measurements or estimates of the savings resulting from the energy conserving renovations.

14A:13-1.13 Energy audits: Contents

(a) The energy audits shall be submitted to the DBC, or when applicable to Rutgers, NJIT, NJDOD, or UMDNJ, in a final report in a format prescribed by NJDOE. The energy audit shall include the following.

1.-6. (No change.)

14A:13-1.14 Auditor and designer qualifications

(a) In order to be qualified to perform energy audits and design projects pursuant to this subchapter an individual must meet the following requirements:

1. Be a New Jersey licensed professional engineer or architect, or a member of an architect-engineer team, the principal team members of which are licensed in New Jersey;

2. Be free from any financial interests which may conflict with the proper performance of his/her duties; and

3. In the case of an auditor, the auditor must have completed a prior analysis which is substantially the same as the study required under the Institutional Building Grants Program as specified in 10 C.F.R. Part 455.42 (44FR 22940), or have completed an NJDOE approved Technical Assistance Analyst Training Course.

**TRANSPORTATION**

**(a)**

**TRANSPORTATION OPERATIONS**

**Restricted Parking and Stopping  
Route 27 in Middlesex County**

**Adopted Amendment: N.J.A.C. 16:28A-1.18**

Proposed: July 1, 1985 at 17 N.J.R. 1642(a).

Adopted: August 7, 1985 by Jarrett R. Hunt, Assistant Chief Engineer, Traffic and Local Road Design.

Filed: August 15, 1985 as R.1985 d.467, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139, 39:4-199.

Effective Date: September 16, 1985.

Expiration Date pursuant to Executive Order No. 66 (1978): November 7, 1988.

**Summary of Public Comments and Agency Responses:  
No comments received.**

Full text of the adoption follows.

16:28A-1.18 Route 27

(a) The certain parts of State highway Route 27 described in this section shall be designated and established as "no parking" zones where stopping and standing are prohibited at all times except as provided in N.J.S.A. 39:4-199.

1.-15. (No change.)

16. No stopping or standing in Metuchen Borough, Middlesex County:

i. Along both sides

(1) From a point 310 feet east of Main Street to the easterly curb line of Lake Avenue

ii.-iii. (No change.)

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

**ADMINISTRATIVE LAW**

**(b)**

**OFFICE OF ADMINISTRATIVE LAW**

**Uniform Administrative Rules of Practice  
Rules of Special Applicability**

**Department of Corrections Inmate Discipline  
Cases**

**Adopted New Rule: N.J.A.C. 1:10A**

Proposed: July 1, 1985 at 17 N.J.R. 1610(a).

Adopted: September 3, 1985 by Ronald I. Parker, Acting Director, Office of Administrative Law.

Filed: September 3, 1985 as R.1985 d.489, with **substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

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

Effective Date: September 16, 1985.

Expiration Date pursuant to Executive Order No. 66 (1978): September 16, 1990.

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

During the comment period, the OAL received a written comment from Elaine Ballai, Esq. of the Department of Corrections and a number of comments from inmates at State institutions. The following inmates submitted comments that were received on or before the comment deadline:

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Bruce Anderson #68800  
 Dave Bove A/K/A Rosenberg #75183  
 Mark Burbic #72865  
 Aiken Edwards #75546  
 Dutch Hunterson #52482  
 W.D. Muhammad #52180  
 William Spinks #53130  
 Arthur Washington #55504  
 Louis W. Zeltner #69617

Each commentor was responded to individually. The following summarizes those comments which do not relate to individual cases or which do not more properly constitute arguments in individual cases:

Initially, a number of inmate commentors requested an extension of the time to file written comments and a public hearing, to be conducted in one or more State institutions, on the rules. OAL extended the deadline for the filing of written comments from July 31, 1985 until August 31, 1985. The OAL declined to conduct public hearings within the State institutions. Prior to proposal of the rules, the OAL met on a number of occasions with representatives from the Attorney General's Office, the Department of Corrections, and the Office of the Public Advocate. Thus, the OAL had extensive discussions on these rules prior to proposal in addition to the written comments submitted subsequently. Therefore, the OAL did not believe that a public hearing was necessary.

The Department of Corrections questioned whether the judge could give materials to an inmate's representative over the Department's objections after a claim of confidentiality has been upheld by the judge. Under the rules, the judge's Order concerning a claim of confidentiality would contain three parts: whether the claim of confidentiality should be upheld; if so, whether the other party's representative could nevertheless be present during the testimony and, if the representative could not be present, whether a summary of the testimony could be given to the other party without revealing the identity of the confidential witness. If either party disagrees with the Order, interlocutory review may be sought under the provisions of the Uniform Administrative Rules of Procedure, N.J.A.C. 1:1-1 et seq. That review by the Commissioner of the Department of Corrections would include all parts of the judge's Order and would be binding on the subsequent proceeding. The OAL has reorganized N.J.A.C. 1:10A-9.2, reversing the order of subparagraphs (e) and (f), in order to clarify this point.

A number of inmate commentors questioned whether the Uniform Administrative Rules of Procedures, N.J.A.C. 1:1-1 et seq., applied in any way to these proceedings. As indicated in N.J.A.C. 1:10A-1.1, the Uniform Administrative Rules apply if the Special Rules are silent and if the Uniform Administrative Rules do not conflict with the Special Rules. Several additional comments were caused because the inmates lacked a copy of the Uniform Administrative Rules of Procedure. The Department of Corrections has advised the OAL that it will provide a copy of these rules for the prison libraries.

Several inmate commentors also objected to the fact that an OAL hearing is provided only when the institution removes 365 or more days of commutation time credits. These commentors felt that the decision in *Zeltner v. Fauver*, 116 N.J.L.J. 303 (August 29, 1985), required the opportunity for an OAL hearing whenever the imposition of 365 days loss of commutation time was a possible sanction for an offense. The OAL Rules were not before the Appellate Division in *Zeltner*. The OAL's jurisdiction is invoked only upon transmittal of a contested case from an administrative agency. It is the trans-

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mitting agency which determines when a case is contested and therefore must be transmitted to the OAL. Thus, we are bound by the Department of Correction's construction of the 1985 amendment to N.J.S.A. 52:14F-8(a). The special rules merely reflect the Department's construction.

One inmate suggested that N.J.A.C. 1:10A-7.1 be amended to allow the transmittal form to be amended up to 20 days before hearing. The transmittal form, which is required in all contested case hearings, contains basically clerical information to provide OAL with necessary background information on the case. It does not limit the evidence or witnesses to be presented and, thus, there is no need to amend the form if new substantive information arises in the case.

An inmate commentor also suggested that two copies of the Notice of Filing and Hearing be sent to the inmate. The OAL does not believe that it is necessary to provide any party with two copies of a Notice. If a party is represented, the representative also receives a copy of the Notice.

Regarding N.J.A.C. 1:10A-9.1, several prisoners questioned the requirement that the evidence list indicate whether testimony will be live or will be presented through affidavits or other written documents. The prisoners were concerned that they were being deprived of the opportunity to question witnesses against them. As clarified by N.J.A.C. 1:10A-14.1(e), affidavits or other written documents may be used to present non-contested facts. If a party indicates that testimony will be presented through affidavits, the other party may object to the form of the testimony within 10 days of receipt of the evidence list.

One inmate commentator also pointed out that N.J.A.C. 1:10A-9.1(b) permitted a party to object to information contained on an evidence list, but did not contain any mechanism for an objection if information should have been contained on the list but was omitted. The OAL agrees that the parties must be permitted to object if the evidence list of the other party is insufficient. Therefore, this section has been clarified to indicate that objections can be made to information on the evidence list or to information which should have been supplied on the list.

A few commentors suggested that the rules provide for motions to compel information. The OAL believes that the amendment to N.J.A.C. 1:10A-9.1(b) allowing a party to object to evidence list omissions accomplishes this objective. Therefore, no additional provision for motions to compel has been provided.

A number of individuals raised concerns about N.J.A.C. 1:10A-9.2, claims of confidentiality. The inmates are concerned about abuses in this process. They raised issues concerning their inability to rebut charges when they do not know the identity of the witnesses against them nor the content of their testimony. The OAL is also concerned about protection of the adversary process, but believes that the realities of the prison situation require the availability of a procedure for confidentiality when it is truly required. The judge is one of the safeguards in the process to ensure that confidentiality is permitted for a witness only when it is truly required. All of the information supporting a confidentiality request must be disclosed to the judge. The judge will carefully review each request and apply the required standards. It may also be possible to structure the hearing so that the party's representative, when there is one, will be present and participating during the presentation of confidential testimony. In most, if not all, cases, it should be possible to provide summaries of the confidential testimony. In sum, OAL believes that the process for confidential testimony balances the competing concerns.

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An inmate commented that N.J.A.C. 1:10A-9.2(e) provides an automatic stay of the judge's Order on confidentiality only if the Order denied the confidentiality claim. No stay was provided where interlocutory review of an order granting confidentiality was sought. The OAL concurs that a stay of the order is appropriate whether the order granted or denied the confidentiality claim. The rule has been so amended.

Inmate commentators were also concerned that the institution would fail to provide the inmate with all reports and materials in its possession, including exculpatory matter, as required by N.J.A.C. 1:10A-9.4(a). The rules clearly require the institution to provide the inmate with such materials. If an individual believes that such materials have not been provided in a particular case, the matter should be brought to the attention of the administrative law judge.

Several prisoners also questioned the restriction in N.J.A.C. 1:10A-9.4(b) limited written interrogatories to no more than ten single part questions. The rules otherwise require extensive disclosure. The institution must provide the inmate with all materials in their possession regarding the charge including exculpatory matter. The parties are provided with a list of all witnesses who will testify for the opposition and a summary of their testimony. Therefore, extensive discovery should not normally be required. In unusual circumstances, a motion showing good cause can be submitted to the judge requesting additional discovery.

N.J.A.C. 1:10A-9.4(c) provides that a party objecting to an interrogatory or a party objecting to a response or seeking to compel a response to an interrogatory shall do so via telephone conference call with the administrative law judge. A number of inmates questioned this process because of their limited access to telephones. In the event a telephone call is necessary, the Department of Corrections has assured the OAL that it will provide telephone access to an inmate who is involved in one of these cases. After verifying that the call is reasonably related to a case proceeding, the Department is willing to pay for telephone conference calls of reasonable duration.

One commentator also questioned whether depositions would be available for witnesses who are unable to attend the hearing. Under subsection (d) of 1:10A-9.4, such discovery could be sought on motion for good cause shown.

A number of inmates objected to N.J.A.C. 1:10A-10.1(a) which provides that subpoenas will not be issued for individuals employed by or confined at State institutions if the individuals are listed on a properly served evidence list and the judge has not sustained an objection to the witness' testimony. In such case, the Department must use its best efforts to ensure the presence of the witness at the hearing. The inmates were concerned that this process provides parties seeking the attendance of employees or inmates at State institutions with less protection than a subpoena. It is OAL's intention that appearance on a witness list of a person employed by or confined at a State institution is the equivalent of a subpoena. The Department must use its best efforts to produce the witness. If best efforts are not used, motions designed to compel the presence of the witness or to seek appropriate sanctions can be made. OAL believes that a court of competent jurisdiction could enforce this provision if necessary. Therefore, a subpoena would simply be an additional document of no particular value to the process.

N.J.A.C. 1:10A-10.1(b) sets forth a process for requesting subpoenas for individuals other than those employed by or confined at a State institution. In view of the fact that all intended witnesses listed on an evidence list may be objected

to, this process was determined by OAL to be unnecessary. Therefore, it has been amended to provide that no subpoena for such individuals can be issued unless the individual is properly listed on an evidence list and no objection has been sustained to the witness' testimony. Separate requests for subpoenas are no longer required.

Questions were also raised concerning the provision of free transcripts of the OAL hearing, as well as concerning the opportunity to listen to tapes of transcripts of such hearings. The OAL does not provide free transcripts in these cases. However, if supplied with a blank cassette of suitable length, the OAL will provide a free tape of the proceeding. If the matter is being appealed, requests for free transcripts should be directed to the Appellate Division. The OAL will discuss with the institutions the possibility of making equipment available to prisoners to listen to transcripts of hearings.

One inmate requested that N.J.A.C. 1:10A-13.5(a) be amended to permit inmate paralegals to represent other inmates in these proceedings. The rule currently permits the inmate to appear *pro se* or to be represented by an attorney, including a Public Defender, or by a law student pursuant to the New Jersey Court Rules. The Public Advocate has indicated its intention to create and maintain a law student clinic program to provide the inmates with assistance in these cases. At this time, the OAL does not deem it advisable to permit inmate paralegals to appear.

Two inmate commentators suggested that the rules require the administrative law judge to reject the testimony of a witness if it varies from the summary presented on the evidence list, or, with confidential testimony, if it varies from the summary presented to the other party. It is the responsibility of the administrative law judge to assess the believability of each piece of evidence or witness' testimony. An inflexible rule would limit the judge's review in each case and is not advisable.

Several commentators supported the provision of use immunity to inmates and suggested that it be extended to any witness testifying at these hearings. N.J.A.C. 1:10A-14.1(f) granting use immunity to prisoners is a restatement of the law contained in court decisions which grant use immunity to inmates. In most cases, witnesses are not provided with use immunity and, absent legislation or court decision to the contrary, we do not believe it advisable to expand this procedure.

One commentator suggested that the rules and the procedures established by them are unconstitutional. The OAL feels that the rules protect an inmate's constitutional rights, and balance the inmate's need to fully prepare for a hearing with the legitimate security needs of the institution involved.

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

CHAPTER 10A  
DEPARTMENT OF CORRECTIONS  
INMATE DISCIPLINE CASES

SUBCHAPTER 1. APPLICABILITY

1:10A-1.1 Applicability

The rules in this chapter shall apply to Department of Corrections (Department) matters wherein an inmate of a State custodial, penal or correctional institution or program appeals from a sanction, arising from a single incident, which imposes the loss of 365 days or more of commutation time

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credits awarded pursuant to N.J.S.A. 30:4-140. To the extent that these Rules of Special Applicability are inconsistent with the Uniform Administrative Procedure Rules (UAPR) contained in N.J.A.C. 1:1-1 et seq., these rules shall apply.

### SUBCHAPTER 2. DEFINITIONS

#### 1:10A-2.1 Parties; representatives

(a) The parties to inmate discipline cases shall be the inmate who allegedly committed the offense for which a sanction is being sought and the superintendent of the institution where the alleged offense occurred.

(b) A representative of a party is a person who is authorized to represent a party by these rules of special applicability.

### SUBCHAPTER 3. (RESERVED)

### SUBCHAPTER 4. (RESERVED)

### SUBCHAPTER 5. (RESERVED)

### SUBCHAPTER 6. (RESERVED)

### SUBCHAPTER 7. FILING AND TRANSMISSION

#### 1:10A-7.1 Transmission of discipline cases by the Department of Corrections to the Office of Administrative Law

(a) The Department shall attach to a completed transmittal form, described in N.J.A.C. 1:1-5.2(a), a copy of the charge, the hearing officer's and superintendent's adjudications, the inmate's appeal to the superintendent containing exceptions to the hearing officer's adjudication and any documents relating to an application for a stay of administrative sanctions.

(b) In addition to the information required by N.J.A.C. 1:1-5.2(a), the Department shall ensure that the transmittal provides the names and addresses of the inmate's representative and the superintendent's representative, if known; and the current location of the inmate.

### SUBCHAPTER 8. SCHEDULING; CLERK'S NOTICES

#### 1:10A-8.1 Scheduling of proceeding; notice

(a) After consulting with the representatives in the case and the Department, the Clerk shall send to all parties and to the Department, a Notice of Filing and Hearing, assigning a judge to the matter and setting the time, date and place of hearing. Whenever possible, the hearing date shall be scheduled approximately 60 days after the date of the Notice of Filing and Hearing.

(b) The hearing shall be scheduled at the institution in which the inmate is confined.

### SUBCHAPTER 9. DISCOVERY

#### 1:10A-9.1 Exchange of evidence lists

(a) Within 25 days of receipt of the Notice of Filing and Hearing, each party shall serve on each other party an evidence list containing the following information:

1. The name of each proposed witness;
2. A summary of the witness' testimony;
3. An indication of whether the testimony will be live or will be presented through affidavits or other written documents;
4. A description and copy of each document to be offered into evidence at the hearing;
5. A description of all physical evidence to be offered; and
6. A statement indicating whether a confidentiality request has been or will be made pursuant to N.J.A.C. 1:10A-9.2.

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(b) Within 10 days of receipt of a party's evidence list, another party may object to the admissibility of a proposed witness, to the form of a witness' testimony, to a proposed document or to any other matter contained within the list **\*or which should have been supplied on the list.\*** Each objection must specify in writing the reasons for the objection and be filed with the judge and served upon the other party. Replies to each objection may be made in writing within five days of receiving the objection. Each reply must be filed with the judge and served on each party. The judge shall determine all such objections within 10 days of the filing of the reply and no later than the day of the hearing.

#### 1:10A-9.2 Claims of confidentiality

(a) Where a party is asserting that it is necessary to maintain the confidentiality of the identity of a witness, contents of a document or physical evidence, a written claim of confidentiality must be forwarded to the judge within 25 days of receipt of the Notice of Filing and Hearing. This claim shall not be served on the other parties.

(b) The claim must contain the following:

1. A clear specification of the evidence for which the claim is asserted. If the claim relates to a document, the claimant shall attach a copy of the document in question to the claim;

2. Facts and argument demonstrating that divulgence of the identity of a witness or disclosure of documentary or physical evidence to the other party presents a bona fide risk of physical violence or significant harmful retaliation to that individual, to any other individual or to the security of the institution;

3. A statement as to whether or not the requesting party believes that the confidential information could be disclosed to the representative of the other party. If the requesting party believes that the information should not be disclosed to the representative, the party must explain why the representative cannot be present and participate without creating a substantial risk that the informant's identity will be revealed;

4. A summary of the confidential information in sufficient detail to permit the other party to rebut it, without disclosing the identity of the individual or materials. If the requesting party believes that there is a substantial risk that disclosure of the summary will disclose the identity of the individual or materials, the requesting party shall also include a request that the summary not be disclosed to the other party and an explanation of the risk.

(c) The judge shall decide in writing each confidentiality request within 10 days of receipt of the request.

(d) If the claim of confidentiality is denied, and a request for interlocutory review is not being made, the party who made the request shall immediately serve on each other party the information required in N.J.A.C. 1:10A-9.1(a) concerning the witness or item for which confidentiality was denied.

**\*[(e)]\*\*(f)\*** The making of a request for interlocutory review of an order **\*granting or\*** denying of confidentiality claim shall automatically stay the effect of the judge's order pending the review.

**\*[(f)]\*\*(e)\*** If a claim of confidentiality is upheld, the order shall include:

1. A finding explaining why confidentiality is required;
2. A determination of whether the confidential information can be disclosed to the representative of the other party. In making such determination, the judge shall consider:
  - i. The seriousness of the potential risk involved; and
  - ii. Whether the hearing can be structured to minimize the possibility of disclosure of confidential information to the other party.
3. If the confidential information cannot be disclosed to the

## ADMINISTRATIVE LAW

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representative of the other party, a determination of whether the confidential information can be summarized in sufficient detail to permit the other party to rebut it without disclosing the identity of the individual or materials. If so, the judge shall direct the applicant to provide the summary to the other party.

### 1:10A-9.3 Breach of confidentiality

(a) If the representative of a party who received confidential information pursuant to N.J.A.C. 1:10A-9.2(b)2 discloses any part of that confidential information to any individual, the judge may order one or more of the following:

1. Revocation of the individual's right to appear in any case before the Office of Administrative Law;
2. The filing of a complaint with the New Jersey Supreme Court or with an appropriate Ethics Committee for disciplinary action;
3. Such other action as the judge deems appropriate.

### 1:10A-9.4 Additional discovery

(a) Within 10 days after receiving the Notice of Filing and Hearing, the institution shall provide the inmate with copies of any reports or other materials in the institution's possession, including exculpatory matter, concerning the charge.

(b) Within 10 days of receipt of the other party's witness list, a party may serve no more than 10 single part written interrogatories which shall not request information which has already been provided.

(c) Answers to interrogatories are due within 10 days after receiving the written interrogatories. A party who wishes to object to an interrogatory or who wishes to object to the answer to an interrogatory or to compel an answer to an interrogatory shall place a telephone conference call to the judge and the other parties for resolution of the matter. A party objecting to an interrogatory shall place the telephone call within five days of receipt of the interrogatory. A party objecting to a response or seeking to compel a response shall place the telephone call within five days of the due date for the response to the interrogatory. If a party fails without good reason to place a timely telephone call, the judge shall deny that party's objection or motion to compel.

(d) No other discovery shall be provided except on motion for good cause shown.

## SUBCHAPTER 10. SUBPOENAS

### 1:10A-10.1 Subpoenas

(a) Except on motion for good cause shown, no subpoenas shall be issued for any individual who is employed by or confined at any State institution. If such individual is listed on a properly served evidence list, pursuant to N.J.A.C. 1:10A-9.1, as a witness who will present live testimony and the judge has not sustained an objection to the witness' testimony, the Department shall use its best efforts to ensure the presence of the witness at the time and place of hearing.

(b) No subpoena shall be issued for any other individual \*except pursuant to the procedure set forth herein. Any requests for subpoenas for an individual who is not employed by or confined at a State institution shall be in writing and shall be filed with the judge. The request must be made within 35 days or receipt of the Notice of Filing and Hearing and shall explain the necessity of the individual's testimony, shall summarize the individual's anticipated testimony and shall state the individual's current location. The judge shall decide all subpoena requests within 10 days of the date of the subpoena request.]\* **\*unless the individual is listed on a properly served evidence list, pursuant to N.J.A.C. 1:10A-9.1, as a witness**

**who will present live testimony and the judge has not sustained an objection to the witness' testimony.\***

## SUBCHAPTER 11. MOTIONS

### 1:10A-11.1 Limitations on prehearing motions

Except for motions specifically permitted by this chapter and motions for emergent relief, a party may not file a motion in advance of the scheduled date of hearing.

## SUBCHAPTER 12. PREHEARING CONFERENCES AND PROCEDURES

### 1:10A-12.1 Prehearing conferences

Except for good cause shown, prehearing conferences shall not be scheduled in any proceeding conducted under this chapter.

## SUBCHAPTER 13. CONDUCT OF CASES

### 1:10A-13.1 De novo hearings

Hearings conducted pursuant to this chapter shall be de novo. The hearing shall not be "on the record" below, but shall be a plenary hearing at which evidence and testimony are presented.

### 1:10A-13.2 Closed hearings

(a) Because of the security which must be provided each hearing participant, all evidentiary hearings or any other proceeding conducted at an institution pursuant to this chapter will be conducted in closed session.

(b) Applications by any member of the public seeking permission to attend any hearing shall be made to the Commissioner of the Department of Corrections and shall not be made to the judge.

### 1:10A-13.3 Sealing the record

(a) The record of all hearings shall be open to public inspection, but the judge may, for good cause shown, order the sealing of that part of any record wherein confidential testimony or evidence was presented.

(b) When sealing a portion of the record, the judge must specify the consequences of such an order to all confidential material in the case file including any evidence, the tapes and the initial decision. The judge shall also indicate what safeguards shall be imposed upon the preparation and disclosure of any transcript of the proceeding.

(c) No duplicate copy of any sealed material shall be permitted.

(d) That part of any record that has been sealed shall be safeguarded by the judge and/or the Clerk until the Clerk, after the initial decision, can deliver the sealed material to an authorized representative of the Department.

### 1:10A-13.4 Verbatim record of proceedings; sound recording; requesting transcript

(a) All proceedings shall be recorded verbatim by sound recording.

(b) In any case in which a claim of confidentiality has been upheld, prior to the issuance of an initial decision, all requests for transcripts shall be made to the judge. The judge shall determine whether the individual requesting the transcript may receive a transcript of all or of any part of the tapes.

(c) Subsequent to the issuance of the initial decision and upon return of the case to the Department, all requests for transcripts must be directed to the Department.

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**1:10A-13.5 Representation; entry of appearance**

(a) The inmate may represent him or herself or may be represented by an attorney authorized to practice law in this State, including a Public Defender, or by a law student pursuant to R. 1:21-3(c). The Superintendent may be represented pursuant to N.J.A.C. 1:1-3.12(a)2 or by a Deputy Attorney General or by a law assistant pursuant to R. 1:21-3(c).

(b) Any lawyer agreeing to represent a party shall promptly file an entry of appearance with the Clerk and notify the other party and the judge, if one has been assigned to the matter.

**1:10A-13.6 Failure to appear**

(a) If the inmate refuses to appear at the hearing, the judge shall prepare an initial decision dismissing the appeal and affirming the sanction.

(b) If the institution is unable to proceed at the hearing, the judge shall prepare an initial decision dismissing the charges and penalty.

**SUBCHAPTER 14. EVIDENCE**

**1:10A-14.1 Testimony of witnesses: confidentiality; non-contested facts**

(a) Live testimony shall be presented by witnesses under oath.

(b) A party shall be permitted cross-examination of any witness testifying in person for whom a claim of confidentiality has not been upheld.

(c) Where a claim of confidentiality for a witness has been upheld, the testimony of that witness shall be taken in the presence of the judge, the party presenting the confidential witness, any necessary security personnel and, if permitted by the judge's order, the representative of the other party. No other party nor representatives of any other party, nor any person permitted by the Commissioner to attend under N.J.A.C. 1:10-13.2(b) may be present during this testimony.

1. The judge may schedule a time and date other than the scheduled hearing date for taking the testimony of a confidential witness and need not disclose this schedule to the other party or his or her representative.

2. If the confidential information presented at the hearing significantly varies from the summary presented, the judge shall determine how most appropriately to proceed in order to adequately safeguard the interests of the absent party.

(d) Where a claim of confidentiality for a document or physical evidence has been upheld, the party and/or representative of the party offering the evidence shall present the evidence to the judge in the presence of any necessary security personnel, and if permitted by the judge's order, the representative of the other party. No other persons may be present.

(e) Evidence to prove non-contested facts may be presented by affidavit or other writing and by written or oral stipulations.

(f) Any inmate testifying shall be accorded use immunity in subsequent criminal prosecutions to the extent that his or her statements shall not be used affirmatively against him or her. Such use immunity extends to evidence derived directly or indirectly from the prisoner's statement, but shall not prevent prosecution for perjury relating to the immunized statement.

**SUBCHAPTER 15. (RESERVED)**

**SUBCHAPTER 16. (RESERVED)**

**SUBCHAPTER 17. DECISION**

**1:10A-17.1 Initial decision**

The initial decision may be rendered in writing or orally either on the record at the hearing before the parties or after the hearing is concluded. If the initial decision is rendered orally, it shall be transcribed and filed with the Department and mailed to each party.

**1:10A-17.2 Findings based upon confidential informant**

Each factual finding which is based upon confidential testimony shall be supported by evidence present in the record from which it can reasonably be determined that the informant was credible or that the information presented was reliable. In addition, the informant's statement must be factual, rather than conclusory and be sufficiently specific to establish that the informant spoke with personal knowledge.

**1:10A-17.3 Delivering the record to the Department**

Within 10 days after the initial decision is filed with the Department, the Clerk shall deliver along with the record to the Department the audio tapes of the hearing.

**SUBCHAPTER 18. (RESERVED)**

# EMERGENCY ADOPTION

## TREASURY-GENERAL

### (a)

#### STATE TREASURER

#### Charitable Fund-Raising Among Employees of Local Units of Government

#### Adopted Emergency New Rule and Concurrent Proposal: N.J.A.C. 17:29

Emergency New Rule Adopted: August 15, 1985 by Michael M. Horn, State Treasurer.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): August 15, 1985.

Emergency New Rule Filed: August 16, 1985 as R.1985 d.469.

Authority: N.J.S.A. 52:14-15.9cl and N.J.S.A. 52:18A-30.

Emergency New Rule Effective Date: August 16, 1985.

Emergency New Rule Expiration Date: October 15, 1985.

Concurrent Proposal Number PRN 1985-488.

Submit comments by October 16, 1985 to:

Michael M. Horn, State Treasurer  
State House  
CN 002  
Trenton, New Jersey 08625  
Telephone: (609) 292-1038

The new rule was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of the emergency new rule is being proposed for re-adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The re-adopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The agency emergency adoption and concurrent proposal follows:

#### Summary

The Public Employee Charitable Fund-Raising Act, N.J.S.A. 52:14-15.9cl, was enacted earlier this year to provide for a greatly expanded Charitable Fund-Raising Campaign among public employees. The Act followed a successful court challenge to prior law which had afforded only the United Way access to public employees to conduct a payroll deduction campaign. Under the new law the State Treasurer is directed to develop regulations to implement the provisions of the Act.

The Act contemplates fund-raising campaigns to be con-

ducted annually among all State and local government employees. Regulations outlining the procedure for charitable fund-raising campaigns among State employees and employees of independent Boards, Commissions and Authorities were adopted under an emergency procedure on July 15, 1985 (see 17 N.J.R. 1931(a)). Those regulations, although somewhat applicable to charitable fund-raising campaigns among employees of local units of government, are not fully appropriate to address the unique problems encountered by a local unit of government wishing to conduct a charitable fund-raising campaign among its employees.

Ideally, the campaigns will be run in the fall and public employees can expect their annual contributions to be deducted starting with the first paycheck of the following year. In order for this to be possible, eleven months of planning is necessary. However, the Act was not signed into law until mid-April, and this places the 1985-86 campaigns at a serious disadvantage. If campaigns are to be conducted this fall, a modified procedure must be adopted for this year.

For over thirty years public employee charitable fund-raising campaigns have contributed millions of dollars to support vital health, welfare and human care services throughout the State. These good works must be assured continued support this year. It is the policy of this State that charitable fund-raising campaigns among employees of local units of government be conducted this year, in accordance with the Act.

These regulations, filed hereunder in an emergency procedure, will ensure that charitable fund-raising campaigns among employees of local units of government shall take place.

#### Social Impact

The rules provide access to the local public workplace to a variety of charitable organizations and agencies in order that these groups may solicit and collect contributions and further their respective missions. These rules will parallel rules for charitable fund-raising campaigns among State employees and will afford employees of local units of government wider avenues of expression and more freedom in designating recipients of their charitable contributions. The rules will ensure a truly united and comprehensive fund drive.

The rules are intended to provide the basis for local units of government to establish their own payroll deduction scheme as set forth in N.J.S.A. 52:14-15.9cl and to ensure that the campaigns conform to State and Federal guarantees of freedom of speech and equal protection under the law.

The procedures set forth in this rule will also provide an additional source of funds to agencies which are neither affiliated with nor members of any umbrella fund-raising organization. This new source of funds may replace some Federal funds that are no longer provided due to budgetary cutbacks.

#### Economic Impact

The rules will have no significant impact on the finances of local units of government. However, as many charitable organizations and agencies will participate in local units of government campaigns, a minimal administrative cost would be incurred. The bulk of these costs will be deducted from contributions. It should be noted that provisions for increased organization and agency participation may well encourage

## EMERGENCY ADOPTION

## TREASURY-GENERAL

greater total charitable giving by employees of local units of government through payroll deductions.

**Full text** of the emergency new rule and concurrent proposal follows.

### CHAPTER 29 CHARITABLE FUND-RAISING AMONG EMPLOYEES OF LOCAL UNITS OF GOVERNMENT

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 17:29-1.1 Purpose

(a) The purpose of the regulations in this chapter is to:

1. Provide a convenient channel through which employees of local units of government may support the efforts of charitable fund-raising organizations and charitable agencies by minimizing disruption to the workplace and cost to the taxpayers that fund-raising may entail;

2. Establish a system for the planning and conduct of charitable fund-raising campaigns among employees of local units of government in order to ensure that the funds will be collected and distributed in a reasonable manner; and

3. Provide eligible charitable organizations and charitable agencies access to the public workplace for soliciting and collecting such contributions.

##### 17:29-1.2 Scope

No deductions shall be made for compensation payable by disbursing officers of local units of government or their agents, or from the compensation payable to employees of any local unit of government, for the payment of contributions to any charitable fund-raising organization or charitable agency pursuant to N.J.S.A. 52:14-15.9c1, unless such organization or agency complies with the requirements of this chapter.

##### 17:29-1.3 Definitions

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

"Affiliated charitable agency" means a charitable agency which is affiliated with a charitable fund-raising organization participating in the Campaign for the purpose of directly sharing in funds raised by the organization.

"Appropriate disbursing officer" means that individual or individuals, in the case of a local unit of government, who is responsible for employee payroll for that local unit of government.

"Campaign manager" means a charitable fund-raising organization which manages a charitable fund-raising campaign.

"Campaign volunteer" means a public employee who volunteers to assist the local Campaign Manager in the administration of the local Campaign.

"Charitable agency" means a volunteer, not-for-profit organization which provides health, welfare, or human care services to individuals.

"Charitable fund-raising campaign" (Campaign) means an annual payroll deduction campaign among employees of a local unit of government, organized pursuant to this Act, to receive and distribute the voluntary charitable contributions of employees.

"Charitable fund-raising organization" means a volunteer, not-for-profit organization which receives and distributes voluntary charitable contributions.

"Compensation" means compensation payable by the appropriate disbursing officer to an employee of a local unit of

government.

"Day" means a working day.

"Local unit of government" means any county, municipality, board of education or instrumentality thereof.

"Payroll deduction" means a contribution deducted from a State employee's compensation pursuant to N.J.S.A. 52:14-15.9c1.

"Unaffiliated charitable agency" means a charitable agency which provides health, welfare, or human care services within New Jersey and which is not affiliated with a charitable fund-raising organization.

"Undesignated contributions" means funds contributed to a charitable fund-raising campaign with no designation by the contributor as to the recipient charitable fund-raising organization or charitable agency.

##### 17:29-1.4 Forms

In order to carry out its functions, the Chief Executive Officer of a local unit of government shall use such forms that he or she shall deem appropriate. Such forms may be amended, supplemented and/or replaced at the discretion of the Chief Executive Officer of the local unit of government.

#### SUBCHAPTER 2. CHARITABLE FUND-RAISING CAMPAIGN STEERING COMMITTEE

##### 17:29-2.1 General provisions

(a) Each local Campaign Steering Committee shall act as the operational unit of its local unit of government Campaign. Its actions on behalf of the members of the participating charitable fund-raising organizations shall be binding; it may assign functions, organize subgroups, and enlist others in its activities as it deems necessary in order to carry out its responsibilities.

(b) The underlying philosophy that shall govern the actions of each local Campaign Steering Committee and the relationship among participating charitable fund-raising organizations is that no one organization shall function in a manner that will be detrimental to other participating organizations or to agencies participating in the Campaign.

(c) Each local Campaign Steering Committee shall convene annually at the call of the Chief Executive Officer of the local unit of government.

(d) Each member shall have one vote.

##### 17:29-2.2 Membership

Each local Campaign Steering Committee shall consist of one representative to be appointed by each charitable fund-raising organization eligible to participate in the local unit of government Campaign, pursuant to N.J.S.A. 52:14-15.9c7a-e.g, and one representative of the local unit of government to be appointed by the Chief Executive Officer of the unit. Each local Committee may also include two representatives of the employees or the management of the local unit of government as may be designated by the governing body of the unit.

##### 17:29-2.3 Duties of Campaign Steering Committee

(a) Each local Campaign Steering Committee shall:

1. Elect a chairman to conduct the meetings of the local Campaign Steering Committee and who shall be eligible for re-election;

2. Elect and oversee a Campaign Manager;

3. Establish policies and procedures in the operation and administration of the local unit of government Campaign.

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### 17:29-2.4 Eligibility of fund-raising organizations

(a) The requirements for eligibility are set forth in N.J.S.A. 52:14-15.9c7.

(b) Charitable fund-raising organizations found eligible to participate on the State Campaign Steering Committee shall automatically be eligible to participate on a local Campaign Steering Committee. The letter of the State Treasurer so stating eligibility shall be proof of such eligibility. See N.J.A.C. 17:28-2.6.

(c) The burden of demonstrating eligibility shall rest with the applicant.

### 17:29-2.5 Membership procedure

(a) Prior to the local unit of government Campaign, the Chief Executive Officer of the local unit of government shall publish in one local newspaper (if one exists) and one state-wide newspaper a notice of application for charitable fund-raising organizations wishing to participate in the local Campaign Steering Committee. The Chief Executive Officer shall indicate a reasonable application deadline in the notice.

(b) No later than five days after the close of the application due date, the Chief Executive Officer of the local unit of government shall notify each applicant of its eligibility or ineligibility for the local Campaign Steering Committee. In cases of ineligibility the notice shall set forth reasons for such ineligibility.

### 17:29-2.6 Appeal procedure

(a) Any charitable fund-raising organization receiving notice of ineligibility shall have five days from receipt of such notice to submit to the Chief Executive Officer of the local unit of government any additional information addressing any deficiencies in the application.

(b) Within five days of receipt of any additional information, the Chief Executive Officer shall convene a special appeal panel consisting of the representatives of the employees or management and the representative of the Chief Executive Officer to review the charitable fund-raising organization's application and any additional documentation or information submitted by the charitable fund-raising organization to address any deficiency in the application as determined by the Chief Executive Officer.

(c) The special appeal panel shall conduct its review within five days and in that time notify the Chief Executive Officer of its decision. The decision of the special appeal panel shall be final.

### 17:29-2.7 Application form/organization

(a) The Chief Executive Officer of a local unit of government may request any general background information of the applicant charitable fund-raising organization which may aid the Chief Executive Officer in his or her determination of an organization's eligibility.

(b) In addition to such background information, the applicant must submit:

1. With respect to the requirements set forth in N.J.S.A. 52:14-15.9c7a, b, and c, from the Internal Revenue Service Letter of Determination or other proof from the Internal Revenue Service that the applicant:

- i. Is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code;
- ii. Qualifies for tax deductible contributions under Section 170(b)(1)(A) (vi) or (viii) of the Internal Revenue Code;
- iii. Is not a private foundation as defined in Section 509(a) of the Internal Revenue Code; and

2. With respect to the requirements set forth in N.J.S.A.

52:14-15.9c7e, annual financial reports which demonstrate that the organization raised, in each of the two fiscal years preceding its application to participate in the local Campaign, at least \$15,000 from individual citizens of New Jersey; and

3. With respect to N.J.S.A. 52:14-15.9c7g, annual financial reports which demonstrate that the organization raised at least \$25,000 and distributed that sum among a minimum of five charitable agencies (not necessarily located within the State) in each of its two fiscal years preceding its application to participate in a State Campaign.

(c) In order to meet its application requirement, each charitable fund-raising organization found eligible to participate on the State Campaign Steering Committee need only submit along with its request to participate in the Campaign in the letter of the State Treasurer so stating eligibility to participate in the State Campaign.

## SUBCHAPTER 3. LOCAL UNIT OF GOVERNMENT CHARITABLE FUND-RAISING CAMPAIGN

### 17:29-3.1 Eligibility

(a) A charitable fund-raising organization eligible for membership on a local Campaign Steering Committee shall be eligible to participate in the charitable fund-raising Campaign for that local unit of government campaign.

(b) A charitable agency shall be eligible to participate in a local unit of government Campaign if it is affiliated with a charitable fund-raising organization which is participating in the local unit of government campaign or if the agency meets the requirements of N.J.S.A. 52:14-15.9c7a-e.

1. The burden of demonstrating eligibility shall rest with the applicant.

### 17:29-3.2 Application procedure

(a) See N.J.A.C. 17:29-2.5 for the application procedure of charitable fund-raising organizations.

(b) The application procedure for charitable agencies is as follows:

1. Prior to the local unit of government Campaign, the Chief Executive Officer of the local unit of government shall publish in one local newspaper (if one exists) and one state-wide newspaper a notice of application for charitable agencies wishing to participate in the local unit of government Campaign. The Chief Executive Officer shall indicate a reasonable application deadline in the notice.

2. No later than five days after the close of the application due date, the Chief Executive Officer of the local unit of government, with the advice of the local Campaign Steering Committee, shall review applications of unaffiliated charitable agencies wishing to participate in the local Campaign and shall notify each applicant of its eligibility or ineligibility to participate in the local Campaign. In cases of ineligibility, the notice shall set forth reasons for such ineligibility.

3. Any charitable agency receiving notice of ineligibility shall have five days from receipt of such notice to submit to the Chief Executive Officer of the local unit of government any additional information addressing any deficiency in the application.

4. No later than five days after receipt of any additional information, the Chief Executive Officer shall convene a special appeal panel consisting of the representatives of the employees or management and the representative of the Chief Executive Officer to review the charitable agencies application and any additional documentation or information submitted by the charitable agency to address any deficiency in the

## EMERGENCY ADOPTION

## TREASURY-GENERAL

application as determined by the Chief Executive Officer.

5. The special appeal panel shall conduct its review within five days and in that time notify the Chief Executive Officer of its decision. The decision of the special appeal panel shall be final.

### 17:29-3.3 Application form/affiliated charitable agency

Affiliated charitable agencies wishing to participate in a local unit of government Campaign shall be certified as affiliated by their charitable fund-raising organization.

### 17:29-3.4 Application form/unaffiliated charitable agency

(a) The Chief Executive Officer of a local unit of government may request any general background information of the applicant charitable agency which may aid the Chief Executive Officer in his or her determination of an agency's eligibility.

(b) In addition to such background information, the applicant must submit:

1. With respect to the requirements set forth in N.J.S.A. 52:14-15.9c7a, b, and c, a Letter of Determination from the Internal Revenue Service or other proof from the Internal Revenue Service that the applicant:

i. Is exempt from Federal Income Tax under Section 501(c)(3) of the Internal Revenue Code;

ii. Qualifies for tax deductible contributions under Section 170(b)(1)(A) (vi) or (viii) of the Internal Revenue Code; and

iii. Is not a private foundation as defined in Section 509(a) of the Internal Revenue Code; and

2. With respect to the requirements set forth in N.J.S.A. 52:14-15.9c7e, annual financial reports which demonstrate that the agency raised, in each of its fiscal years preceding its application to participate in a local unit of government Campaign, at least \$15,000 from individual citizens of New Jersey.

## SUBCHAPTER 4. CAMPAIGN ADMINISTRATION

### 17:29-4.1 General provisions

The provisions of this subchapter shall apply to employees of local units of government.

### 17:29-4.2 Campaign period

(a) Each local Campaign Steering Committee shall schedule the Campaign solicitation period for its local unit of government.

(b) Participating charitable fund-raising organizations and charitable agencies may not engage in educational activities among employees of local units of government at the work site of the employees during the local Campaign period.

(c) Participating charitable fund-raising organizations and charitable agencies may not engage in solicitation activities among employees of the local unit of government at the work site of the employees during the non-campaign period.

### 17:29-4.3 Payroll deduction

The appropriate disbursing officer for each local unit of government shall establish a payroll deduction system for the collection and distribution of voluntary charitable contributions by employees of the local unit of government in accordance with the Act.

### 17:29-4.4 Campaign Literature

(a) Each local Campaign Steering Committee shall be responsible for the design, printing and distribution of Cam-

paign pledge/designation cards and other Campaign literature.

### 17:29-4.5 Distribution of campaign literature

During working hours, campaign volunteers shall distribute at the request of the local Campaign Manager, only Campaign information or literature approved by the Chief Executive Officer for distribution in the local unit of government Campaign.

### 17:29-4.6 Designated contributions

Employees may designate, on the Campaign pledge/designation card, their contribution to a specific charitable fund-raising organization and/or charitable agency, and/or may select the undesignated option. For contributions through the payroll deduction there shall be a minimum of \$.50 per week (\$26.00 per year) per organization or agency designated. The minimum contribution requirement shall be met for each additional organization or agency designated.

### 17:29-4.7 Distribution of contributions

(a) Designated contributions shall be distributed in a manner established by the local Campaign Steering Committee and in accordance with the wishes of the designating employees of the local units of government.

(b) Undesignated contributions shall be distributed to participating or non-participating charitable fund-raising organizations or charitable agencies in such amounts as the local Campaign Steering Committee shall determine.

## SUBCHAPTER 5. CAMPAIGN ACCOUNTING

### 17:29-5.1 General provisions

The Chief Executive Officer of each local unit of government shall establish a system to ensure that the total amount of contribution as requested by the employees of the local unit of government is deducted from employees compensation and that amount is remitted to the local Campaign Steering Committee.

### 17:29-5.2 Campaign accounting

At the end of the Campaign solicitation period the Chief Executive Officer of the local unit of government shall provide to the Campaign Manager information containing the total amount contributed by the employees of the local unit of government to charitable fund-raising organizations and charitable agencies participating in the local Campaign.

### 17:29-5.3 Costs

(a) The operation of the payroll deduction system for each local unit of government campaign will be provided by the local unit of government as a service to its employees in the same manner that other authorized deductions are provided.

(b) Other costs attributed to the local unit of government Campaign including, but not limited to the design, printing, preparation, and distribution of the Campaign materials, Campaign accounting and administration to be conducted by the local Campaign Manager shall be approved by the local Campaign Steering Committee and payable by the Committee from contributions. These costs shall not exceed ten percent of the total amount contributed in the local unit of government Campaign.

# MISCELLANEOUS NOTICES

## ENVIRONMENTAL PROTECTION

(a)

### DIVISION OF WATER RESOURCES

#### Amendment To The Lower Delaware Water Quality Management Plan

##### Public Notice

The Lower Alloways Creek Township has applied to the New Jersey Department of Environmental Protection (NJDEP) for an amendment to the Lower Delaware Water Quality Management (WQM) Plan. This amendment would provide for the construction of a new 50,000 gallons per day sewage treatment plant to serve the Village of Canton. The delineation of the sewer service area was based on existing zoning adjusted for environmentally constrained features. This amendment has been approved by the governing body of Lower Alloways Creek Township.

This notice is being given to inform the public that a plan amendment has been developed for the Lower Delaware WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Planning and Standards, 25 Arctic Parkway, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M. Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Planning and Standards, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested 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. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

## LAW AND PUBLIC SAFETY

(b)

### DIVISION OF MOTOR VEHICLES

#### Bulk Commodities Application

##### Public Notice

Take notice that Robert S. Kline, Acting Director, Division of Motor Vehicles pursuant to the authority of N.J.S.A. 39:5E.11 hereby list the name and address of an applicant who has filed an application for a Contract Carrier Permit.

Transport Special Commodities, Inc.  
129 Newbold Road  
Fairless Hills, PA 19030

Protest in writing and verified under oath may be presented by interested parties to the Director of Motor Vehicles within 20 days following the publication date of an application.

## TREASURY-GENERAL

(c)

### DIVISION OF BUILDING AND CONSTRUCTION

#### Architect-Engineer Selection

#### Notice of Assignments: August 13, 1985

Solicitations of design services for major projects are made by notices published in construction trade publications and newspapers and by direct notification of professional associations/societies and listed, prequalified New Jersey consulting firms. For information on DBC's prequalification and assignment procedures, call (609) 984-6979.

Last list dated July 15, 1985.

The following assignments have been made:

DBC No.	PROJECT	A/E	CCE
M600	Phases II and III Veterans Nursing Facility Paramus, NJ	CUH2A	\$12,387,488
J003	Facility Consultant Capitol Services Bureau Trenton, NJ	Haines, Lundberg, Wachler	\$10,000.00 Services
J001	Facility Consultant Capitol Services Bureau Trenton, NJ	Frank R. Holtaway & Sons	\$10,000.00 Services
M625	Miscellaneous Repairs-Plainfield Code Compliance Repairs-Freehold Division of Youth & Family Services	Eugene F. O'Connor AIA	\$24,300.00
J002	Facility Consultant Capitol Services Bureau Trenton, NJ	Andrew Marshall, Jr. P.E.	\$10,000.00 Services
A487	Design Review of New Storage System Record Storage Building Trenton, NJ	Paulus, Sokolowski and Sartor	\$3,000.00 Services
F015	Facility Consultant Stockton State College Pomona, NJ	A & A Engineering Associates, Inc.	\$40,000.00 Services
F016	Facility Consultant Stockton State College Pomona, NJ	Martin F. Blumberg AIA	\$20,000.00 Services

# 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 changes proposed in this issue will be entered in the Index of the next Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule 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 the rule to find any related entries.

**At the bottom of the index listing for each Administrative Code Title is the date of the latest update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the May 6, 1985 issue.**

**If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers.** A proposal may be adopted up to one year after its initial publication in the Register. Failure to timely adopt a proposed rule requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(d).

### Terms and abbreviations 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.1985 d.300 means the three hundredth rule adopted in 1985.

**Adoption Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

**Transmittal.** A number and date verifying the currency of rules found in each Title of the New Jersey Administrative Code: rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

**N.J.R. Citation Locator.** An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find quickly the issue of publication of a rule proposal or adoption.

## N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
16 N.J.R. 2319 and 2390	September 4, 1984	17 N.J.R. 635 and 762	March 18, 1985
16 N.J.R. 2391 and 2474	September 17, 1984	17 N.J.R. 763 and 858	April 1, 1985
16 N.J.R. 2475 and 2708	October 1, 1984	17 N.J.R. 859 and 1006	April 15, 1985
16 N.J.R. 2709 and 2864	October 15, 1984	17 N.J.R. 1007 and 1158	May 6, 1985
16 N.J.R. 2865 and 3066	November 5, 1984	17 N.J.R. 1159 and 1358	May 20, 1985
16 N.J.R. 3067 and 3240	November 19, 1984	17 N.J.R. 1359 and 1460	June 3, 1985
16 N.J.R. 3241 and 3336	December 3, 1984	17 N.J.R. 1461 and 1608	June 17, 1985
16 N.J.R. 3337 and 3518	December 17, 1984	17 N.J.R. 1609 and 1700	July 1, 1985
17 N.J.R. 1 and 140	January 7, 1985	17 N.J.R. 1701 and 1818	July 15, 1985
17 N.J.R. 141 and 236	January 21, 1985	17 N.J.R. 1819 and 1954	August 5, 1985
17 N.J.R. 237 and 338	February 4, 1985	17 N.J.R. 1955 and 2070	August 19, 1985
17 N.J.R. 339 and 502	February 19, 1985	17 N.J.R. 2071 and 2170	September 3, 1985
17 N.J.R. 503 and 634	March 4, 1985	17 N.J.R. 2171 and 2318	September 16, 1985

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>ADMINISTRATIVE LAW—TITLE 1</b>				
1:1, 1:2	Readopt General Hearing and Summary Proceedings rules	17 N.J.R. 2(a)	R.1985 d.292	17 N.J.R. 1403(a)
1:1-3.7	Appearances by out-of-state attorneys	17 N.J.R. 1820(a)		
1:1-11.2, 11.3	Discovery and countervailing factors	17 N.J.R. 1008(a)	R.1985 d.368	17 N.J.R. 1754(a)
1:1-13.4, 15.7	Correction to Administrative Code			17 N.J.R. 1795(a)
1:2-2.1	Civil Service cases: pre-proposal concerning conference hearings	17 N.J.R. 2072(a)		
1:6A-3.1	Correction to Administrative Code			17 N.J.R. 1795(b)
1:6A-3.2	Adjournment and Department of Education settlement conferences	17 N.J.R. 2073(a)		
1:7	Emergency Water Supply Allocation Plan cases	17 N.J.R. 1674(a)	R.1985 d.446	17 N.J.R. 2099 (a)
1:10A	Inmate discipline cases	17 N.J.R. 1610(a)	R.1985 d.489	17 N.J.R. 2288(b)
1:21	Trade secret claims	17 N.J.R. 1009(a)	R.1985 d.367	17 N.J.R. 1754(b)

(TRANSMITTAL 11, dated March 18, 1985)

<b>AGRICULTURE—TITLE 2</b>				
2:1-2.3, 3.1, 3.2, 3.4, 3.7, 3.8	Department organization	17 N.J.R. 1614(a)	R.1985 d.447	17 N.J.R. 2100(a)
2:6-1	Control of veterinary biologicals	17 N.J.R. 1617(a)	R.1985 d.448	17 N.J.R. 2102(a)
2:16-2	Seed certification standards	17 N.J.R. 636(a)	R.1985 d.278	17 N.J.R. 1403(b)
2:16-4	Field corn standards (commercial hybrids)	17 N.J.R. 638(a)	R.1985 d.277	17 N.J.R. 1404(a)
2:16-5	Sweetcorn standards (inbred lines)	17 N.J.R. 639(a)	R.1985 d.276	17 N.J.R. 1404(b)
2:16-6	Sweetcorn standards (single cross hybrids)	17 N.J.R. 639(b)	R.1985 d.275	17 N.J.R. 1404(c)
2:16-7	Small grain standards	17 N.J.R. 640(a)	R.1985 d.274	17 N.J.R. 1405(a)
2:16-9	Soybean standards	17 N.J.R. 641(a)	R.1985 d.273	17 N.J.R. 1405(b)
2:16-10	Vegetable standards	17 N.J.R. 641(b)	R.1985 d.272	17 N.J.R. 1405(c)
2:16-13	Turfgrass sod standards	17 N.J.R. 642(a)	R.1985 d.271	17 N.J.R. 1405(d)
2:16-15	Vegetatively propagated grass standards	17 N.J.R. 643(a)	R.1985 d.269	17 N.J.R. 1406(a)
2:16-16	Asparagus seed standards	17 N.J.R. 643(b)	R.1985 d.270	17 N.J.R. 1406(b)
2:16-17	Asparagus crown standards	17 N.J.R. 644(a)	R.1985 d.268	17 N.J.R. 1406(c)
2:16-19	Flatpea certification standards	17 N.J.R. 644(b)	R.1985 d.267	17 N.J.R. 1407(a)
2:24-1.1, 1.2	Disease of bees: repeal Acarine mite quarantine	17 N.J.R. 860(a)	R.1985 d.304	17 N.J.R. 1542(a)
2:24-1.3, 1.4, 1.5	Bee diseases: Tracheal mite quarantine	17 N.J.R. 985(a)	R.1985 d.301	17 N.J.R. 1542(b)
2:24-1.6	Honeybee tracheal mite quarantine	17 N.J.R. 1589(a)	R.1985 d.437	17 N.J.R. 2019(a)
2:32-2.7	Sire Stakes Program	17 N.J.R. 1956(a)		
2:52-2, 3, 4.1, 7	Readopt rules concerning milk processors, dealers and subdealers	17 N.J.R. 1011(a)	R.1985 d.336	17 N.J.R. 1645(a)
2:52-2.1, 3.1	Sale of yogurt	17 N.J.R. 1012(a)	R.1985 d.335	17 N.J.R. 1645(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
2:53-4	Milk processors, dealers and subdealers	17 N.J.R. 1011(a)	R.1985 d.336	17 N.J.R. 1645(a)
2:53-4.1	Sale of yogurt	17 N.J.R. 1012(a)	R.1985 d.335	17 N.J.R. 1645(b)
2:69-1.11	Commercial values of fertilizers and soil conditioners	17 N.J.R. 764(a)	R.1985 d.266	17 N.J.R. 1407(b)
2:70-1	Liming materials: readopt fineness classification	17 N.J.R. 765(a)	R.1985 d.265	17 N.J.R. 1407(c)
2:71-2.2—2.7	Jersey Fresh Logo program	17 N.J.R. 765(b)	R.1985 d.282	17 N.J.R. 1407(d)
2:90-1	State Soil Conservation Committee: readopt General Provisions	17 N.J.R. 1160(a)	R.1985 d.370	17 N.J.R. 1756(a)
2:90-1.13	Soil conservation: extraction activity	17 N.J.R. 1957(a)		
2:90-2.24	Cost share rates for soil and water conservation projects	17 N.J.R. 861(a)	R.1985 d.303	17 N.J.R. 1542(c)
2:90-3.6	Soil and water conservation management problems	17 N.J.R. 861(b)	R.1985 d.302	17 N.J.R. 1543(a)

(TRANSMITTAL 30, dated April 15, 1985)

**BANKING—TITLE 3**

3:1-11.1	Savings banks and loans to affiliated persons	17 N.J.R. 2073(b)		
3:6-15	Savings banks and loans to affiliated persons	17 N.J.R. 2073(b)		
3:7-3.3, 3.6, 3.7	Confirmation of loans and deposits	17 N.J.R. 1702(a)	R.1985 d.485	17 N.J.R. 2247(a)
3:17-7.1, 7.3	Small loan licensees: mortgage bankers and brokers business	17 N.J.R. 1703(a)	R.1985 d.486	17 N.J.R. 2247(b)
3:27-4.5, 4.6	Savings and loan associations: asset limitation; service corporations	17 N.J.R. 1619(a)	R.1985 d.484	17 N.J.R. 2248(a)
3:41	Readoption of Cemetery Board rules	17 N.J.R. 1704(a)		

(TRANSMITTAL 27, dated April 15, 1985)

**CIVIL SERVICE—TITLE 4**

4:1-5.1, 8.26, 8.27	Appeals concerning removal from eligible list for medical reasons	17 N.J.R. 1957(b)		
4:1-6.8	Nondiscriminatory titles	17 N.J.R. 1012(b)	R.1985 d.416	17 N.J.R. 2019(b)
4:1-12.12	Restorations to promotional lists	17 N.J.R. 645(a)		
4:1-12.15	Appointment of eligible certified	17 N.J.R. 10(a)	R.1985 d.227	17 N.J.R. 1257(a)
4:1-16.7	Suspension, fine and demotion for disciplinary purposes	17 N.J.R. 1360(a)	R.1985 d.456	17 N.J.R. 2103(a)
4:1-21.3	Prohibition against political activity	17 N.J.R. 1013(a)	R.1985 d.417	17 N.J.R. 2019(c)
4:2-6.1, 6.2	Nondiscriminatory titles	17 N.J.R. 1012(b)	R.1985 d.416	17 N.J.R. 2019(b)
4:2-7.13	Ninth step salary maximum	17 N.J.R. 1014(a)	R.1985 d.345	17 N.J.R. 1645(c)
4:2-12.1, 12.2	Appeals concerning removal from eligible list for medical reasons	17 N.J.R. 1957(b)		
4:3-6.2, 6.3	Nondiscriminatory titles	17 N.J.R. 1012(b)	R.1985 d.416	17 N.J.R. 2019(b)
4:3-12.1, 12.2	Appeals concerning removal from eligible list for medical reasons	17 N.J.R. 1957(b)		
4:3-14.1	Seasonal positions	17 N.J.R. 1015(a)	R.1985 d.418	17 N.J.R. 2020(a)

(TRANSMITTAL 24, dated March 18, 1985)

**COMMUNITY AFFAIRS—TITLE 5**

5:18-1.1, 1.3, 1.4, 1.5, 2.4, 2.5, 2.7, 2.8, 2.12, 3.1, 3.2	Uniform Fire Code	17 N.J.R. 1015(b)		
5:18-1.1, 1.4, 1.5, 1.6, 2.3, 4	Uniform Fire Code, Fire Safety Code	17 N.J.R. 1161(a)		
5:18A-2.1—2.4, 2.6, 3.2, 3.3, 4.1, 4.3, 4.4	Fire Code Enforcement	17 N.J.R. 1015(b)		
5:18B-3.2	High Level Alarms	17 N.J.R. 1015(b)		
5:23-1.4, 2.14, 4.18, 4.20	Uniform Construction Code: annual permits	17 N.J.R. 1029(a)	R.1985 d.351	17 N.J.R. 1756(b)
5:23-2.15	Uniform Construction Code: contractor seals	17 N.J.R. 1462(a)	R.1985 d.479	17 N.J.R. 2248(b)
5:23-2.15, 2.21	UCC: engineers and architects	17 N.J.R. 1033(a)		
5:23-2.15, 5.7	UCC: applying for construction permit; renewal of enforcement license	17 N.J.R. 1031(a)	R.1985 d.352	17 N.J.R. 1758(a)
5:23-3.11, 4.22, 4.24, 4.25	Uniform Construction Code: premanufactured construction	17 N.J.R. 1169(a)		
5:23-3.14, 3.21	One and two-family dwelling construction subcode	17 N.J.R. 861(c)	R.1985 d.324	17 N.J.R. 1646(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:23-4.5	UCC: duties of construction officials	17 N.J.R. 340(a)	R.1985 d.232	17 N.J.R. 1257(b)
5:23-4.21, 5.4	UCC: private enforcing agency fees; trainees	17 N.J.R. 1032(a)	R.1985 d.353	17 N.J.R. 1758(b)
5:23-5.4	UCC: private enforcing agencies and trainee positions	17 N.J.R. 341(a)	R.1985 d.231	17 N.J.R. 1258(a)
5:23-5.4, 5.5	UCC inspectors: experience requirements	17 N.J.R. 1821(a)		
5:23-5.7, 5.11	UCC: license suspensions and revocations	17 N.J.R. 1705(a)		
5:23-8	Asbestos Hazard Abatement Subcode	17 N.J.R. 1782(a)	R.1985 d.472	17 N.J.R. 2249(a)
5:24	Condominium and cooperative conversion: readopt rules	17 N.J.R. 1706(a)		
5:27	Readopt rules on Rooming and Boarding Homes	17 N.J.R. 341(b)	R.1985 d.350	17 N.J.R. 1759(a)
5:27-1.6	Rooming and boarding houses: owner and operator training	17 N.J.R. 777(a)	R.1985 d.300	17 N.J.R. 1543(b)
5:28	Readopt State Housing Code	17 N.J.R. 1174(a)		
5:31-2.1—2.5, 4.1, 4.2, 7.1—7.7	Local authorities: accounting principles, auditing and budgeting	17 N.J.R. 1823(a)		
5:31-7.5	Local authorities: audit reports	17 N.J.R. 504(a)	R.1985 d.283	17 N.J.R. 1409(b)
5:37	Municipal, County and Authority Employees Deferred Compensation Programs	17 N.J.R. 1960(a)		
5:51-1.4, 1.5	Local provision of recreational services for handicapped persons	17 N.J.R. 1463(a)	R.1985 d.444	17 N.J.R. 2105(a)
5:80	Rules of the Housing and Mortgage Finance Agency	17 N.J.R. 505(a)	R.1985 d.241	17 N.J.R. 1258(b)
5:80-4	Housing and Mortgage Finance	17 N.J.R. 1174(b)		
5:80-8	Housing and Mortgage Finance Agency: housing project occupancy requirements	17 N.J.R. 1620(a)		
5:80-17, 18	Housing and Mortgage Finance: prevailing wages; debarment from contracting	17 N.J.R. 1174(b)		

(TRANSMITTAL 29, dated April 15, 1985)

**DEFENSE—TITLE 5A**

5A:2	Leaves of absence for members of National Guard	17 N.J.R. 646(a)	R.1985 d.242	17 N.J.R. 1267(a)
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**EDUCATION—TITLE 6**

6:3-1.10	Standards for determining seniority	17 N.J.R. 1033(b)	R.1985 d.397	17 N.J.R. 1874(a)
6:3-1.17, 1.23	School facility planning services	17 N.J.R. 650(a)		
6:11-7	Standards for State approval of teacher preparation	17 N.J.R. 1708(a)		
6:20-2	Readopt Local Bookkeeping and Accounting rules	17 N.J.R. 1361(a)	R.1985 d.452	17 N.J.R. 2105(b)
6:20-5.3, 5.4	State facility pupil assignments: district of residence	17 N.J.R. 344(a)	R.1985 d.208	17 N.J.R. 1076(a)
6:20-5.5	Asbestos removal and encapsulation reimbursement	17 N.J.R. 863(a)	R.1985 d.340	17 N.J.R. 1648(a)
6:21-1	Readopt Pupil Transportation Standards	17 N.J.R. 1365(a)	R.1985 d.451	17 N.J.R. 2107(a)
6:21-5	Standards for school buses	17 N.J.R. 1035(a)	17 N.J.R. 396	17 N.J.R. 1875(a)
6:22	School facility planning services	17 N.J.R. 650(a)		
6:28-3.2, 3.6, 6.1, 6.3, 8.3	Special Education	17 N.J.R. 345(a)	R.1985 d.209	17 N.J.R. 1077(a)
6:29-6.4	Athletics procedures	17 N.J.R. 659(a)	R.1985 d.281	17 N.J.R. 1410(a)
6:30-1.4	Fees for GED test	17 N.J.R. 1367(a)	R.1985 d.450	17 N.J.R. 2108(a)
6:68-2	Library assistance: readopt Incentive Grant Program rules	17 N.J.R. 346(a)	R.1985 d.207	17 N.J.R. 1078(a)

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**ENVIRONMENTAL PROTECTION—TITLE 7**

7:1-4	Fee schedule for Environmental Cleanup Responsibility Act	17 N.J.R. 1622(a)	R.1985 d.487	17 N.J.R. 2260(a)
7:1-7	Hazardous substance discharges: reports and notices	17 N.J.R. 1826(a)		
7:1C-1	90-day construction permits	16 N.J.R. 3243(a)	R.1985 d.316	17 N.J.R. 1544(a)
7:1E	Readopt rules on Discharges of Petroleum and Other Hazardous Substances	17 N.J.R. 865(a)	R.1985 d.377	17 N.J.R. 1759(b)
7:1F	Industrial Survey Project rules: waiver of Executive Order No. 66	17 N.J.R. 866(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:1F	Industrial Survey Project rules: new expiration date	_____	_____	17 N.J.R. 1139(b)
7:1G	Right to Know Act: Federal district court ruling	_____	_____	17 N.J.R. 1139(c)
7:1H	Readopt County Environmental Health administrative rules	17 N.J.R. 1463(b)	R.1985 d.420	17 N.J.R. 2020(b)
7:2-2.14, 3.4, 3.5	Use of State Park lands	17 N.J.R. 778(a)	R.1985 d.421	17 N.J.R. 2020(c)
7:2-12	Open lands management	17 N.J.R. 866(b)		
7:4-2	Register of Historic Places: continuation of selection criteria	_____	_____	17 N.J.R. 1795(d)
7:6-1.37	Waiver of maximum tow line length for parasailing exhibitions	_____	_____	17 N.J.R. 1801(a)
7:7-2.2	Wetlands maps in Ocean County	17 N.J.R. 1710(a)		
7:7E	Readopt Coastal Resource and Development Policies	17 N.J.R. 1465(a)	R.1985 d.422	17 N.J.R. 2021(a)
7:7E	Revisions to Coastal Resources and Development rules	17 N.J.R. 1466(a)		
7:7E	Coastal Resource and Development revisions: extension of comment period	17 N.J.R. 1797(b)		
7:7E	Coastal Resource and Development Policies: correction to Code and proposed revisions	17 N.J.R. 1797(c)		
7:7E-7.2	Correction to Administrative Code: Coastal Resource and Development Policies	_____	_____	17 N.J.R. 1140(a)
7:9-4, Index D	Surface water classifications: Hackensack and Hudson rivers	17 N.J.R. 1625(a)	R.1985 d.466	17 N.J.R. 2109(a)
7:9-4, 5	Surface water quality and treatment of wastewater discharges	16 N.J.R. 3080(a)	R.1985 d.249	17 N.J.R. 1270(a)
7:9-5.4	Correction: Policy concerning disinfection of wastewater	16 N.J.R. 3080(a)	R.1985 d.249	17 N.J.R. 1759(c)
7:11-2.3, 2.5, 2.8—2.12	Delaware and Raritan Canal water supply system	17 N.J.R. 11(a)	R.1985 d.402	17 N.J.R. 1879(a)
7:12-1.3, 1.4	Shellfish-growing water classifications	17 N.J.R. 661(a)	R.1985 d.290	17 N.J.R. 1412(a)
7:13-1.11(c)27	Floodways along Pequest River in Sussex and Warren counties	16 N.J.R. 1306(a)	R.1985 d.218	17 N.J.R. 1080(a)
7:13-7.1(c)17	Redelineation of Delaware River in Harmony Township, Warren County	17 N.J.R. 151(a)	R.1985 d.319	17 N.J.R. 1550(a)
7:13-7.1(c)30	Floodway delineation along Paulins Kill	16 N.J.R. 2397(a)	R.1985 d.217	17 N.J.R. 1080(b)
7:13-7.1	Paulins Kill floodway delineation: public hearing	16 N.J.R. 2885(a)		
7:13-7.1(d)47	Redelineation of Pine Brook in Bergen County	17 N.J.R. 2074(a)		
7:13-7.1(d)49	Floodway delineations in Union County	17 N.J.R. 1965(a)		
7:13-7.1(d)50	Floodway delineation along North Branch Foulerton's Brook	16 N.J.R. 2398(a)	R.1985 d.320	17 N.J.R. 1551(a)
7:13-7.1(d)51	Floodways along North Branch Raritan (Project U)	16 N.J.R. 1307(a)	R.1985 d.329	17 N.J.R. 1648(b)
7:13-7.1(h)	Floodway delineations in Hackensack Basin	17 N.J.R. 1175(a)		
7:13-7.1(i)	Floodway delineations in Central Passaic Basin Projects G and R	17 N.J.R. 1176(a)		
7:14A-1.8	Fee schedule for NJPDES permits and applicants	17 N.J.R. 13(a)	R.1985 d.315	17 N.J.R. 1551(b)
7:14A-1.8	Correction: NJPDES fee schedule	17 N.J.R. 13(a)	R.1985 d.315	17 N.J.R. 1882(a)
7:19-5.11	Correction: Acquisition costs	16 N.J.R. 3380(a)	R.1985 d.182	17 N.J.R. 1559(a)
7:19-6.10	Water supply management in critical areas	17 N.J.R. 1966(a)		
7:19A-1.4	Emergency water supply: residential and nonresidential users defined	17 N.J.R. 1967(a)		
7:19B-1.3	Emergency water supply: residential and nonresidential users defined	17 N.J.R. 1967(a)		
7:20	Dam Safety Standards	16 N.J.R. 790(a)	R.1985 d.214	17 N.J.R. 1081(a)
7:25-4.2, 4.14, 4.17	Possession of endangered and nongame species	17 N.J.R. 516(a)	R.1985 d.251	17 N.J.R. 1289(a)
7:25-4.13, 4.17	Status of the osprey	17 N.J.R. 350(a)	R.1985 d.215	17 N.J.R. 1091(a)
7:25-5	1985-86 Game Code	17 N.J.R. 1177(a)	R.1985 d.419	17 N.J.R. 2021(b)
7:25-7.10, 7.11	Taking of oysters and mussels	16 N.J.R. 3385(a)	R.1985 d.401	17 N.J.R. 1883(a)
7:25-12.1	Close of sea clam season	_____	_____	17 N.J.R. 1142(a)
7:25-14	Readopt rules on Crab Pots	17 N.J.R. 1830(a)		
7:25-18	Readopt Marine Fisheries rules	17 N.J.R. 1188(a)	R.1985 d.386	17 N.J.R. 1883(b)
7:25-18.5	Marine fisheries: general net rules	Emergency	R.1985 d.240	17 N.J.R. 1334(a)
7:25-23	Permit to kill wild deer	17 N.J.R. 350(b)	17 N.J.R. 250	17 N.J.R. 1289(b)
7:25A	Oyster management	17 N.J.R. 352(a)	R.1985 d.216	17 N.J.R. 1092(a)
7:25A-1.9	Closure of certain Delaware Bay oyster beds	_____	_____	17 N.J.R. 1795(c)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:26-1.4, 1.6, 9.1, 12.1	Tolling agreements and reclamation of hazardous waste	17 N.J.R. 1968(a)		
7:26-1.4, 9.3	Above-ground tank storage of hazardous waste	17 N.J.R. 1501(a)		
7:26-1.7	Waste management: on-site disposal of construction debris	17 N.J.R. 1040(a)		
7:26-1.7	Solid waste disposal: exemption from registration	17 N.J.R. 1368(a)		
7:26-3	Waste management: readopt Collection and Haulage rules	17 N.J.R. 1041(a)		
7:26-6.5	Solid waste flow: Atlantic County	17 N.J.R. 517(b)	R.1985 d.317	17 N.J.R. 1560(a)
7:26-6.5	Solid waste flow: Hunterdon County	17 N.J.R. 517(a)		
7:26-7.4, 8.3, 8.15, 9.2, 10.6, 10.	Restriction of land disposal of hazardous waste	17 N.J.R. 779(a)		
7:26-8.13, 8.16	Hazardous waste from non-specific sources: hazardous constituents	17 N.J.R. 354(a)	R.1985 d.248	17 N.J.R. 1290(a)
7:26-8.15	Hazardous waste management: warfarin and zinc phosphide	17 N.J.R. 356(a)	R.1985 d.375	17 N.J.R. 1760(a)
7:26-9.10, 9.11, App. A.	Hazardous waste facilities: closure letters of credit	17 N.J.R. 241(a)	R.1985 d.247	17 N.J.R. 1291(a)
7:26-10.5	Tank storage containment requirements	17 N.J.R. 152(a)	R.1985 d.318	17 N.J.R. 1560(b)
7:26-14	Resource Recovery grants and loans	16 N.J.R. 3385(b)		
7:26-14	Resource Recovery grants and loans: extension of comment period	17 N.J.R. 242(a)		
7:26-16.4	Solid and hazardous waste: transporters and facilities	17 N.J.R. 518(a)		
7:27-13.1, 13.2, 13.5-13.8	Ambient air quality standards	16 N.J.R. 1767(a)	R.1985 d.252	17 N.J.R. 1292(a)
7:27-14.3	Diesel-powered motor vehicles: idle standard	16 N.J.R. 2887		
7:27-15.4	Air pollution and gas-fueled motor vehicles	17 N.J.R. 781(a)	R.1985 d.331	17 N.J.R. 1649(a)
7:27-15.6	Gas-fueled motor vehicle: idle standard	16 N.J.R. 2889		
7:27-16	Air pollution by volatile organic substances	17 N.J.R. 1969(a)		
7:27B-4.6	Lead test paper procedure	17 N.J.R. 781(a)		
7:27B-4.6, 4.7	Air pollution and gas-fueled motor vehicles	17 N.J.R. (a)	R.1985 d.331	17 N.J.R. 1649(a)
7:28-1.4, 17	Industrial and nonmedical radiology	17 N.J.R. 1626(a)		
7:28-12	Transportation of radioactive material	17 N.J.R. 1369(a)	R.1985 d.387	17 N.J.R. 1884(a)
7:28-19.2, 19.3, 19.4, 19.6, 19.9, 19.10	Podiatric x-ray technology	17 N.J.R. 1632(a)		
7:29-1.1—1.5	Noise control: extension of comment period	16 N.J.R. 2405(a)		
7:30	Pesticide Control Code	17 N.J.R. 242(b)		
7:36	Green Acres Program	16 N.J.R. 2405(b)	R.1985 d.400	17 N.J.R. 1885(a)
7:38	Wild and scenic rivers system	17 N.J.R. 1986(a)		
7:45	Delaware Raritan Canal State Park: Review Zone rules	17 N.J.R. 1711(a)		
7:50-2.11, 4.12-4.92	Pinelands comprehensive management	Emergency	R.1985 d.399	17 N.J.R. 1918(a)

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**HEALTH—TITLE 8**

8:7-1	Licensure of persons for public health positions	17 N.J.R. 1926(a)	R.1985 d.476	17 N.J.R. 2265(a)
8:13-2.1, 2.4, 2.6—2.11, 2.13, 2.14	Depuration of soft shell clams	17 N.J.R. 1370(a)		
8:19	Readopt Newborn Hearing Screening rules	17 N.J.R. 869(a)	R.1985 d.380	17 N.J.R. 1892(a)
8:21-7	Frozen dessert products	17 N.J.R. 1986(b)		
8:31-26.3, 26.4	Health care facilities: employee physicals; child abuse	16 N.J.R. 3249(a)	R.1985 d.440	17 N.J.R. 2100(a)
8:31-26.5	Health care facilities: licensure fees	17 N.J.R. 664(a)	R.1985 d.372	17 N.J.R. 1760(b)
8:31-26.5	Health care facilities licensure fee	17 N.J.R. 664(a)	R.1985 d.414	17 N.J.R. 2032(a)
8:31-26.5	Family planning facilities: licensure fee	17 N.J.R. 1999(a)		
8:31B-2, 3, 4	Hospital Rate Setting rules: temporary waiver of expiration	16 N.J.R. 2733(a)		
8:31B-3	Hospital reimbursement: procedure and methodology	17 N.J.R. 2000(a)		
8:31B-3.19	RIM methodology for nursing cost allocation: implementation date	16 N.J.R. 2848(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:31B-3.23	Correction: Hospital reimbursement	16 N.J.R. 2733(b)		
8:31B-3.72	Hospital reimbursement: periodic rate adjustments	17 N.J.R. 872(a)	R.1985 d.349	17 N.J.R. 1652(a)
8:31B-3.79	Hospital reimbursement: post-acute care patients	17 N.J.R. 873(a)	R.1985 d.359	17 N.J.R. 1761(a)
8:31B-4	Hospital reimbursement: financial elements and reporting	17 N.J.R. 2004(a)		
8:33	Certificate of Need application and review process	17 N.J.R. 1190(a)		
8:33A-1.1	New and expanded surgical services: deferral of need applications	16 N.J.R. 2734(a)		
8:33B	Extracorporeal Shock Wave Lithotripsy (ESWL)	17 N.J.R. 1728(a)		
8:33E-2.1—2.5, 2.10, 2.12, 2.13	Cardiac surgical centers: need review	16 N.J.R. 2196(a)	Expired	
8:33F-1.4	Renal disease services: acute hemodialysis standards	17 N.J.R. 874(a)	R.1985 d.360	17 N.J.R. 1762(a)
8:33G-1	Computerized tomography services	17 N.J.R. 1214(a)	R.1985 d.411	17 N.J.R. 2033(a)
8:33H	Long-Term Care Facilities and Services: readopt Certificate of Need rules	17 N.J.R. 1216(a)	R.1985 d.413	17 N.J.R. 2034(a)
8:43-3.22	Fire safety in residential health care facilities	17 N.J.R. 1731(a)		
8:43-4	Residential Health Care Facilities: readopt Administration rules	17 N.J.R. 1231(a)	R.1985 d.412	17 N.J.R. 2042(a)
8:43-4.13	Residential health care: personal needs allowance	17 N.J.R. 1731(b)		
8:43A	Licensure of ambulatory care facilities	16 N.J.R. 3254(a)	R.1985 d.438	17 N.J.R. 2110(b)
8:43B-1.14	Hospital facilities: psychiatric patient rights	17 N.J.R. 665(a)		
8:43B-8.33—8.44	Newborn care services: physical plant standards	17 N.J.R. 519(a)		
8:43E-1	Hospital Policy Manual: Certificate of Need rules	17 N.J.R. 1220(a)		
8:44-2.10	Reportable occupational and environmental diseases and poisons	17 N.J.R. 1831(a)		
8:45	Clinical laboratory services	17 N.J.R. 268(a)	R.1985 d.243	17 N.J.R. 1294(a)
8:51-1-6	Local boards: recognized public health activities and minimum standards	17 N.J.R. 1633(a)	R.1985 d.477	17 N.J.R. 2270(a)
8:57-1	Readopt Reportable Disease rules	17 N.J.R. 784(a)	R.1985 d.363	17 N.J.R. 1764(a)
8:57-1.13	Reportable occupational and environmental diseases and poisons	17 N.J.R. 1831(a)		
8:57-4.15	Immunization of school children: mumps vaccine	17 N.J.R. 358(a)	R.1985 d.264	17 N.J.R. 1414(a)
8:60	Asbestos licenses and permits	17 N.J.R. 1676(a)	R.1985 d.468	17 N.J.R. 2275(a)
8:60-2, 6	Asbestos training courses	17 N.J.R. 741(a)	R.1985 d.262	17 N.J.R. 1417(b)
8:65-1	Controlled Dangerous Substances: readopt Registration rules	17 N.J.R. 1508(a)	R.1985 d.459	17 N.J.R. 2132(a)
8:65-5	Controlled dangerous substances: records and reports of registrants	17 N.J.R. 524(a)		
8:65-6	Controlled dangerous substances: Federally-required order forms	17 N.J.R. 528(a)	R.1985 d.457	17 N.J.R. 2135(a)
8:65-7.3	Controlled dangerous substances: issuing of prescriptions	17 N.J.R. 876(a)	R.1985 d.461	17 N.J.R. 2138(a)
8:65-10.1	Add 3-Methylfentanyl to Schedule I	17 N.J.R. 1511(a)	R.1985 d.458	17 N.J.R. 2138(b)
8:65-10.5	Reschedule Buphenorphine to Schedule V	17 N.J.R. 1234(a)	R.1985 d.460	17 N.J.R. 2138(c)
8:65-11.2	Narcotic treatment programs: registration fee	17 N.J.R. 359(a)		
8:71	Generic drug list additions (see 16 N.J.R. 2672(b), 17 N.J.R. 200(b), 957(b), 1296(a))	16 N.J.R. 1436(a)	R.1985 d.295	17 N.J.R. 1561(a)
8:71	Generic drug list additions (see 17 N.J.R. 201(a), 957(c), 1296(b))	16 N.J.R. 2483	R.1985 d.297	17 N.J.R. 1562(b)
8:71	Additions to generic drug list (see 17 N.J.R. 1295(a), 1562(a))	17 N.J.R. 158(a)	R.1985 d.415	17 N.J.R. 2043(a)
8:71	Generic drug list additions	17 N.J.R. 1043(a)	R.1985 d.410	17 N.J.R. 2042(b)
8:71	Generic drug list additions	17 N.J.R. 1733(a)		

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**HIGHER EDUCATION—TITLE 9**

9:2-1	Minority Faculty Advancement Loan Program	17 N.J.R. 1512(a)		
9:2-1, 2, 3, 8, 9	Repeal (See 9:6)	16 N.J.R. 2209(a)	R.1985 d.244	17 N.J.R. 1296(c)
9:2-4, 6, 7, 12, 13	Readopt Administrative Policies for colleges and universities	16 N.J.R. 2216(a)	R.1985 d.309	17 N.J.R. 1563(a)
9:2-4.1	Eligibility for Alternate Benefit Program	17 N.J.R. 1635(a)		
9:2-11	Recodify as 9:7-7	16 N.J.R. 2218(a)	Expired	
9:2-12.1, 12.2	Teacher education: degree standards	17 N.J.R. 1515(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
9:2-12.2	Teacher education: curriculum	17 N.J.R. 22(b)		
9:6	State College: policies and standards	16 N.J.R. 2209(a)	R.1985 d.244	17 N.J.R. 1296(c)
9:6-1.2, 3.1, 3.4, 3.5, 3.6, 3.11, 4.4, 4.7, 5.2, 5.13	State Colleges: policies and standards	17 N.J.R. 160(a)	R.1985 d.244	17 N.J.R. 1296(c)
9:7-2.4, 2.9	Student assistance programs: eligibility: award combinations	R.1985 d.787(a)	R.1985 d.338	17 N.J.R. 1653(a)
9:7-3.1	Tuition Aid Grants: 1985-86 Award Table	Emergency	R.1985 d.430	17 N.J.R. 2050(a)
9:7-3.3, 5.9, 6.8	Student assistance program revisions	17 N.J.R. 1734(a)		
9:7-4.1	Garden State Scholars: eligibility	17 N.J.R. 2007(a)		
9:7-4.1, 4.7, 4.8	Distinguished Scholars Program	17 N.J.R. 787(b)	R.1985 d.339	17 N.J.R. 1654(a)
9:7-7	Readopt Veteran's Tuition Credit Program	16 N.J.R. 2218(a)	Expired	
9:7-8	Vietnam Veterans Tuition Aid Program	17 N.J.R. 1735(a)		
9:8	Jobs, Science and Technology Bond Act: policies and procedures	17 N.J.R. 1516(a)		
9:9-1.2	Guaranteed Student Loan Program: second borrowing	17 N.J.R. 1518(a)		
9:9-1.6	Student loan applications: prohibited fee	16 N.J.R. 3281(b)	R.1985 d.311	17 N.J.R. 1564(a)
9:14	Readopt Independent College and University Assistance rules	17 N.J.R. 25(a)	R.1985 d.245	17 N.J.R. 1303(a)

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**HUMAN SERVICES—TITLE 10**

10:42	Developmental Disabilities: Emergency Mechanical Restraint	17 N.J.R. 1832(a)		
10:44-A-1.1—1.5, 2.2, 2.4, 3.1, 3.3, 4.3, 5.2, 9	Community residences for developmentally disabled: Supportive Living Programs	16 N.J.R. 1438(a)	R.1985 d.258	17 N.J.R. 1304(a)
10:47	Private Licensed Facilities for Developmentally Disabled	16 N.J.R. 2902(a)		
10:48	Division of Mental Retardation: appeal procedures	17 N.J.R. 876(b)		
10:49-1	Administration Manual: readopt General Provisions	17 N.J.R. 532(a)	R.1985 d.246	17 N.J.R. 1307(a)
10:49-1.1	Medicaid eligibility	16 N.J.R. 2219(a)	Expired	
10:49-1.4	Narcotic and drug abuse treatment centers	17 N.J.R. 1235(a)		
10:49-7	Reinstatement of Medicaid provider	17 N.J.R. 1519(a)	R.1985 d.463	17 N.J.R. 2139(a)
10:50	Transportation Services: HCFA Common Procedure Coding System	17 N.J.R. 1519(b)		
10:50-1.2, 1.5, 1.6	Invalid coach services: oxygen equipment: carrier charges	17 N.J.R. 1373(a)	R.1985 d.427	17 N.J.R. 2044(a)
10:50-1.5, 1.6	Reimbursement for ambulance and invalid coach services	17 N.J.R. 1637(a)	R.1985 d.473	17 N.J.R. 2271(a)
10:51-1.13, 1.14, 3.12, App. A	Pharmaceutical services: "vaccine" reimbursement	17 N.J.R. 1237(a)		
10:51-1.17, 3.15	Pharmaceutical services: dispensing fee and capitation rates	17 N.J.R. 1044(a)	R.1985 d.369	17 N.J.R. 1766(a)
10:51-5.1, 5.16	PAAD: diabetic testing material	17 N.J.R. 1521(a)	R.1985 d.462	17 N.J.R. 2139(b)
10:52-1.1, 1.20	Ambulatory surgical centers	16 N.J.R. 3153(a)		
10:52-1.16	Termination of pregnancy in licensed health care facilities	17 N.J.R. 1375(a)		
10:52-1.21	Narcotic and drug abuse treatment centers	17 N.J.R. 1235(a)		
10:53-1.1, 1.16	Ambulatory surgical centers	16 N.J.R. 3153(a)		
10:53-1.14	Termination of pregnancy	17 N.J.R. 1375(a)		
10:53-2	Special Hospital Services: admission and billing	17 N.J.R. 544(a)	R.1985 d.257	17 N.J.R. 1317(a)
10:54	Physician Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:54-1.23	Termination of pregnancy	17 N.J.R. 1375(a)		
10:54-3	Procedure Code Manual: immunizations	17 N.J.R. 546(a)	R.1985 d.211	17 N.J.R. 1094(a)
10:54-3	Procedure Code Manual: fees for laboratory services	17 N.J.R. 1376(a)		
10:55	Prosthetic-Orthotic Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:55-3.1	Fee increases for shoe appliances	17 N.J.R. 1522(a)	R.1985 d.429	17 N.J.R. 2045(a)

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10:57	Podiatry Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:58	Nurse Midwifery Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:59	Medical Supplier Manual: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:59-1.2, 1.4, 1.9, 1.12	Medical Supplier Manual: recycling of durable medical equipment	16 N.J.R. 2048(a)	R.1985 d.376	17 N.J.R. 1894(a)
10:59-1.7, 1.13, 1.14, 3.2	Fee increases for shoe appliances	17 N.J.R. 1522 (a)	R.1985 d.429	17 N.J.R. 2045(a)
10:60	Readopt Home Care Services Manual	17 N.J.R. 28(a)		
10:60-4	Community Care Waiver Program for Elderly and Disabled	16 N.J.R. 3161(a)	R.1985 d.263	17 N.J.R. 1415(a)
10:61	Independent Laboratory Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:61-1.2	Medicaid participation by State, county and municipal labs	16 N.J.R. 3162(a)	R.1985 d.237	17 N.J.R. 1318(a)
10:62	Vision Care: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:63-1.5, 1.6, 1.8, 1.13, 2.5, 2.7	Long term care facilities: certification and plan of care	17 N.J.R. 2075(a)		
10:63-1.6	Changes in level of long-term care	16 N.J.R. 2049(a)	R.1985 d.384	17 N.J.R. 1895(a)
10:63-3.17	Long Term Care Services: adjustments to base period data	17 N.J.R. 1736 (a)		
10:64	Hearing Aid Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:66	Independent Clinic Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:66-1.1, 1.2, 1.3, 1.6, 1.7, 1.9	Ambulatory surgical centers	16 N.J.R. 3153(a)		
10:66-1.2, 1.6, 3.3	Narcotic and drug abuse treatment centers	17 N.J.R. 1235(a)		
10:66-1.5	Independent Clinic Manual: mental health services	17 N.J.R. 1377(a)	R.1985 d.428	17 N.J.R. 2046(a)
10:66-1.6	Termination of pregnancy	17 N.J.R. 1375(a)		
10:67	Psychological Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:69A-1.2, 2.1, 5.3, 5.6, 6.1, 6.4, 6.6, 6.10, 6.11	Pharmaceutical Assistance for Aged and Disabled	17 N.J.R. 367(a)	R.1985 d.259	17 N.J.R. 1318(b)
10:81-3.27	PAM: transmission of data to receiving county	17 N.J.R. 878(a)	R.1985 d.344	17 N.J.R. 1655(a)
10:81-3.34	PAM: temporary absence of children from home	17 N.J.R. 163(a)	R.1985 d.312	17 N.J.R. 1565(a)
10:81-11.1, 11.4, 11.12	PAM: continuing IV-D services for families that lose AFDC	17 N.J.R. 164(a)	R.1985 d.210	17 N.J.R. 1094(b)
10:81-11.7, 11.9	PAM: child support and health benefits	17 N.J.R. 165(a)	R.1985 d.219	17 N.J.R. 1095(a)
10:81-11.9	PAM: reimbursement by counties to State	17 N.J.R. 369(a)		
10:81-11.9	Public Hearing: County reimbursement to State for Tax Setoff Program for child support enforcement	17 N.J.R. 1526(a)		
10:81-11.18	PAM: weekly second family adjustment	17 N.J.R. 879(a)	R.1985 d.343	17 N.J.R. 1655(b)
10:81-11.19	PAM: distribution of arrearage payments for child support	17 N.J.R. 1238(a)		
10:82-1.2	AFDC payment levels: comments	17 N.J.R. 880(a)	R.1985 d.341	17 N.J.R. 2272(a)
10:82-1.2, 2.13, 3.11, 5.11	ASH: AFDC payment standards	17 N.J.R. 880(a)	R.1985 d.341	17 N.J.R. 1656(a)
10:82-2.2	ASH: initial grant computation	17 N.J.R. 546(b)	R.1985 d.299	17 N.J.R. 1566(a)
10:82-2.19, 3.2	Correction to Administrative Code: Assistance Standards Handbook	_____	_____	17 N.J.R. 1143(b)
10:82-3.13	ASH: eligibility of sponsored alien and sponsor's income	17 N.J.R. 1523(a)		
10:82-4.11, 4.12	ASH: income from apartments, rooms, or housekeeping units	17 N.J.R. 1045(a)	R.1985 d.385	17 N.J.R. 1895(b)
10:82-5.3	ASH: correction to Administrative Code	_____	_____	17 N.J.R. 1801(c)
10:82-5.3	ASH: child care	17 N.J.R. 1835(a)		
10:85-3.2	GAM: determination of unemployability	17 N.J.R. 547(a)		
10:85-3.2, 10.6	GAM: willingness to work and penalty period	16 N.J.R. 2741(a)		
10:85-3.3	GAM: monthly assistance payment for residential health care	16 N.J.R. 2742(a)		
10:85-3.3	General Assistance rate in residential health care	_____	_____	17 N.J.R. 485(c)

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	facilities			
10:85-3.4	GAM: suits and claims	17 N.J.R. 548(a)	R.1985 d.298	17 N.J.R. 1566(b)
10:85-4.1	General Assistance payment levels: comments	17 N.J.R. 882(a)	R.1985 d.342	17 N.J.R. 2272(a)
10:85-4.1, 9.4	General Assistance payment levels	17 N.J.R. 882(a)	R.1985 d.342	17 N.J.R. 1658(a)
10:85-4.6	GAM: correction to Administrative Code	_____	_____	17 N.J.R. 1802(a)
10:85-5.2	Correction to Administrative Code: General Assistance Manual	_____	_____	17 N.J.R. 1339(b)
10:85-5.3	GAM: outpatient mental health care	17 N.J.R. 1836(a)		
10:85-5.3	GAM: correction to Administrative Code	_____	_____	17 N.J.R. 2051(b)
10:85-6.4	GAM: final reporting requirements	17 N.J.R. 1837(a)		
10:85-10.8	GAM: work registration violations and Food Stamp recipients	17 N.J.R. 1838(a)		
10:86	Repeal obsolete AFDC Work Incentive Program rules	17 N.J.R. 1838(b)		
10:87-1.14	Food Stamp Program: disclosure of information	17 N.J.R. 1377(b)	R.1985 d.475	17 N.J.R. 2273(a)
10:87-2.21, 2.24, 2.28, 2.31, 2.35, 9.7, 11.29	Food Stamp Program revisions	17 N.J.R. 883(a)	R.1985 d.346	17 N.J.R. 1659(a)
10:87-5.7	Food Stamp Program: treatment of moneys used to repay overpayments	17 N.J.R. 986(a)	R.1985 d.313	17 N.J.R. 1567(a)
10:87-12.3, 12.4, 12.7	Food Stamp Program: maximum allowable income	17 N.J.R. 1793(a)	R.1985 d.480	17 N.J.R. 2273(b)
10:89	Home Energy Assistance Handbook	17 N.J.R. 1737(a)		
10:89-2.3	Correction to Administrative Code: Home Energy Assistance Handbook	_____	_____	17 N.J.R. 1444(b)
10:90-2.2, 2.3, 2.4, 2.6, 3.3, 4.1—4.10, 5.1, 5.2, 5.6, 6.1, 6.2, 6.3	Monthly Reporting Policy Handbook	17 N.J.R. 1839(a)		
10:90-4.8	Correction to Administrative Code: Monthly Reporting Policy Handbook	_____	_____	17 N.J.R. 1143(c)
10:94-3.16	Medicaid district office	17 N.J.R. 38(a)	R.1985 d.291	17 N.J.R. 1416(a)
10:94-4.5, 4.6, 4.7	Medicaid Only: resource eligibility and limits	17 N.J.R. 1525(a)	R.1985 d.474	17 N.J.R. 2274(a)
10:122-2.3, 2.6, 3.2, 3.3, 4.1, 4.3, 4.6, 6.8, 6.9	Child care centers	17 N.J.R. 548(b)	R.1985 d.314	17 N.J.R. 1568(a)
10:123-3	Residential health care and boarding homes: readopt Personal Needs Allowance rules	17 N.J.R. 1526(b)	R.1985 d.426	17 N.J.R. 2046(b)
10:129-2	Confidentiality of child abuse records	17 N.J.R. 885(a)	R.1985 d.373	17 N.J.R. 1766(b)
<b>(TRANSMITTAL 28, dated April 15, 1985)</b>				
<b>CORRECTIONS—TITLE 10A</b>				
10A:71	State Parole Board rules	16 N.J.R. 3391(a)	R.1985 d.213	17 N.J.R. 1096(a)
<b>(TRANSMITTAL 10, dated March 18, 1985)</b>				
<b>INSURANCE—TITLE 11</b>				
11:1-2.5-2.8	Property-liability: rate counsel participation	16 N.J.R. 2918(a)		
11:1-5.2	Fire and casualty coverage: cancellation notice requirement	_____	_____	17 N.J.R. 1939(a)
11:1-16	Request for rate decrease	16 N.J.R. 3169(a)		
11:1-18	Approval of business names	17 N.J.R. 41(a)		
11:1-19	Uniform registration of branch offices	17 N.J.R. 42(a)		
11:2-19	Approval of insurance schools and company training programs	16 N.J.R. 2920(b)		
11:2-20	License renewal: continuing education requirement	16 N.J.R. 2922(a)		
11:2-21	Property and casualty coverage: underwriting guidelines	16 N.J.R. 2924(a)		
11:2-23	Advertisement of life insurance and annuities	16 N.J.R. 2926(a)		
11:3-7	Automobile Reparation Reform Act rules: 90-day waiver of expiration	16 N.J.R. 2414(a)		
11:3-7	Automobile Reparation Reform Act rules	16 N.J.R. 3417(a)		
11:3-8	Nonrenewal of auto insurance policies	16 N.J.R. 2930(a)		
11:3-10	Auto physical damage claims	16 N.J.R. 3170(a)		
11:3-16	Private passenger automobile rate filings	16 N.J.R. 2934(a)		
11:3-17	Automobile rate filings	16 N.J.R. 2936(a)		

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11:3-18	Filing review procedures	16 N.J.R. 2937(a)		
11:3-20	Reporting excess profits	17 N.J.R. 370(a)		
11:3-21	Reduced PIP premium charges	16 N.J.R. 3286(a)		
11:4-2	Replacement of life insurance and annuities	17 N.J.R. 887(a)		
11:4-9	Annuity and deposit fund disclosure	16 N.J.R. 2939(a)		
11:4-16, 17, 18	Readopt health insurance standards	17 N.J.R. 554(a)	R.1985 d.221	17 N.J.R. 1129(a)
11:4-21	Readopt Limited Death Benefit Forms	17 N.J.R. 891(a)	R.1985 d.325	17 N.J.R. 1660(a)
11:4-25	Social security disability offset	16 N.J.R. 3287(a)		
11:5-1.15, 1.25	Advertising of real estate: sale of interstate property	17 N.J.R. 666(a)		
11:5-1.28	Approved real estate schools: requirements	17 N.J.R. 376(a)		
11:10-1	Dental plan organizations	16 N.J.R. 2230(a)	R.1985 d.374	17 N.J.R. 1768(a)
11:10-2	Employees' dental benefit plans	17 N.J.R. 45(a)	R.1985 d.220	17 N.J.R. 1129(b)
11:16	Provider verification of services	17 N.J.R. 47(a)		
11:17-1	Surplus lines insurance guaranty fund surcharge	17 N.J.R. 1045(b)		

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12:15-1.1	Unemployment Compensation: contributions, records and reports	16 N.J.R. 2488(b)		
12:15-1.1, 1.2	Unemployment and Temporary Disability Benefits programs: purpose and scope	17 N.J.R. 1378(a)	R.1985 d.423	17 N.J.R. 2046(c)
12:15-1.3	Maximum weekly benefit rates for Unemployment Compensation and State Plan Disability	17 N.J.R. 2079(a)		
12:15-1.4	Taxable wage base subject to Unemployment Compensation contributions	17 N.J.R. 2079(b)		
12:15-1.5	Unemployment Compensation contribution rate for government units	17 N.J.R. 2079(c)		
12:15-1.6	Base week for unemployment compensation and temporary disability	17 N.J.R. 2007(b)		
12:15-1.6	Base week for Unemployment Compensation and State Plan Disability claims	17 N.J.R. 2080(a)		
12:15-1.7	Alternate earnings test for benefits eligibility	17 N.J.R. 2080(b)		
12:35	Workfare rules	17 N.J.R. 1048(a)	R.1985 d.404	17 N.J.R. 1896(a)
12:56	Readopt Wage and Hour rules	17 N.J.R. 2008(a)		
12:57	Readopt Wage Orders for Minors	17 N.J.R. 2009(a)		
12:58	Readopt Child Labor rules	17 N.J.R. 2009(b)		
12:70	Field sanitation for seasonal farm workers	17 N.J.R. 1860(a)		
12:120	Asbestos licenses and permits	17 N.J.R. 1676(a)	R.1985 d.468	17 N.J.R. 2275(a)
12:120-2, 6	Asbestos training courses	17 N.J.R. 741(a)	R.1985 d.262	R.1985 d.1417(b)
12:200	Liquefield Petroleum Gas rules	17 N.J.R. 1379(a)	R.1985 d.403	17 N.J.R. 1899(a)
12:235	Practice and procedure before Division of Workers' Compensation	17 N.J.R. 2081(a)		
12:235-1.5	Maximum weekly benefit rate for Workers' Compensation	17 N.J.R. 2090(a)		

**(TRANSMITTAL 21, dated April 15, 1985)****COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A**

12A	Departmental rules: small business set-aside contracts	16 N.J.R. 1955(a)	R.1985 d.421	17 N.J.R. 2683(a)
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**LAW AND PUBLIC SAFETY—TITLE 13**

13:1-4.6	Police Training Commission: radar instructor certification	17 N.J.R. 377(a)	R.1985 d.226	17 N.J.R. 1130(a)
13:1-5.1, 6.1, 8.1	Police officer training and certification	17 N.J.R. 1239(a)	R.1985 d.405	17 N.J.R. 1899(b)
13:2-4	ABC: readopt rules on Issuance or Transfer of Municipal Retail Licenses	17 N.J.R. 1052(a)	R.1985 d.332	17 N.J.R. 1661(a)
13:2-20	ABC: readopt rules on Transportation by Licensees: Transit Insignia	17 N.J.R. 1054(a)	R.1985 d.333	17 N.J.R. 1662(a)
13:23.16, -24, -35	ABC preproposal: industry marketing and sales practices	17 N.J.R. 3292(a)		
13:2-33	ABC: readopt Brand Registration rules	17 N.J.R. 794(a)	R.1985 d.279	17 N.J.R. 1423(a)
13:2-40	ABC: readopt rules on Issuances of IDs by County Clerks	17 N.J.R. 1380(a)	R.1985 d.395	17 N.J.R. 1900(a)
13:3-3.5, 3.6, 7.9	Amusement games control	17 N.J.R. 1058(a)	R.1985 d.334	17 N.J.R. 1664(a)

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13:13	Discrimination against handicapped persons	17 N.J.R. 671(a)	R.1985 d.305	17 N.J.R. 1574(a)
13:13-1.3, 2.2, 2.3	Correction: Discrimination against handicapped persons	17 N.J.R. 671(a)	R.1985 d.305	17 N.J.R. 1773(a)
13:19-13.1, 13.2, 13.3	Motor vehicle insurance surcharges	17 N.J.R. 893(a)	R.1985 d.482	17 N.J.R. 2281(a)
13:20-28	Readopt rules on Inspection of New Motor Vehicles	17 N.J.R. 1059(a)	R.1985 d.379	17 N.J.R. 1901(a)
13:20-32.16	Motor vehicle reinspection centers	17 N.J.R. 676(a)		
13:20-33.6	Glazing inspection standards for motor vehicles	17 N.J.R. 894(a)		
13:21-1.3, 1.4, 1.5	Driver licenses and social security numbers	16 N.J.R. 2746(a)	R.1985 d.307	17 N.J.R. 1579(a)
13:21-2	Motor Vehicle Licensing Service: Statutory Language Interpretation	17 N.J.R. 2090(b)		
13:21-4	Readopt rules on Motor Vehicle Titles	17 N.J.R. 377(b)	R.1985 d.200	17 N.J.R. 1131(a)
13:21-11.13	Temporary initial registration of motor vehicles	17 N.J.R. 1863(a)		
13:21-14	Readopt rules on licensing of bus drivers	17 N.J.R. 556(a)	R.1985 d.205	17 N.J.R. 1131(b)
13:21-15.6	Auto dealers: acceptance of altered title documents	17 N.J.R. 169(a)		
13:27-8.11	Certified landscape architects: title block contents	17 N.J.R. 1864(a)		
13:28-4.1	Board of Beauty Culture Control fee schedule	17 N.J.R. 1638(a)	R.1985 d.464	17 N.J.R. 2139(c)
13:29-1.1—1.6, 1.8—1.12	Board of Accountancy general rules	17 N.J.R. 557(a)	R.1985 d.287	17 N.J.R. 1424(a)
13:29-1.4	Change of address by licensed accountants	17 N.J.R. 1639(a)		
13:29-1.11	Fee for CPA certificate	17 N.J.R. 2092(a)		
13:29-2.1	Applicants for registered municipal accountant's test	17 N.J.R. 2092(b)		
13:29-2.1, 2.2, 2.3	Registered municipal accountants	17 N.J.R. 559(a)	R.1985 d.286	17 N.J.R. 1426(a)
13:30-8.1	Board of Dentistry: fee schedule	17 N.J.R. 378(a)		
13:30-8.3	Board of Dentistry licensee requirements	17 N.J.R. 1864(b)		
13:30-8.4, 8.6	Dentistry: specialty practice; professional advertising	17 N.J.R. 378(a)	R.1985 d.253	17 N.J.R. 1320(a)
13:30-8.4, 8.6	Correction: Specialties in dentistry	17 N.J.R. 378(a)	R.1985 d.253	17 N.J.R. 1665(a)
13:34-1.1	Marriage counseling: annual license fees and charges	17 N.J.R. 1527(a)		
13:35-1A.4	Clinical clerkships for foreign medical graduates	17 N.J.R. 2010(a)		
13:35-2.15	Physician-nurse anesthetist standards	17 N.J.R. 796(a)		
13:35-3.1-3.4	Licensing of medical practitioners	17 N.J.R. 561(a)	R.1985 d.224	17 N.J.R. 1131(c)
13:35-4.2	Termination of pregnancy	17 N.J.R. 1865(a)		
13:35-6.4	Pre-proposal: professional conduct of Medical Board licensees	17 N.J.R. 894(b)		
13:35-66	Directly dispensed medication by physicians and podiatrists	17 N.J.R. 1866(a)		
13:35-6.13	Medical examiners board: fee schedule	17 N.J.R. 562(a)	R.1985 d.223	17 N.J.R. 1132(a)
13:36-2.10, 2.12, 4.4, 4.13, 5.1, 5.6, 5.9, 6.8, 7.1, 7.2	Mortuary science rules	17 N.J.R. 797(a)	R.1985 d.293	17 N.J.R. 1580(a)
13:37-1	Programs in nursing education	17 N.J.R. 51(a)	R.1985 d.285	17 N.J.R. 1426(b)
13:37-1.2, 1.21, 1.23-1.25	Programs in nursing education	17 N.J.R. 1528(a)	R.1985 d.483	17 N.J.R. 2282(a)
13:37-2.1, 2.3, 3.5, 4.1, 4.3-4.6, 5.1, 5.5	Licensing of nurses	17 N.J.R. 1529(a)		
13:38-3.2	Board of Optometrists: reexamination	17 N.J.R. 677(a)		
13:38-3.2	Reexamination for optometry licensure	17 N.J.R. 1639(b)		
13:38-5.1	Board of Optometrists: fee schedule	17 N.J.R. 677(a)	R.1985 d.254	17 N.J.R. 1323(a)
13:40-3.2, 4.1, 5.1	Professional engineers and land surveyors: Board rules	17 N.J.R. 799(a)	R.1985 d.465	17 N.J.R. 2140(a)
13:40-8	Engineers and land surveyors: release of project records	17 N.J.R. 1027(a)	R.1985 d.225	17 N.J.R. 1133(a)
13:40-9	Supervision of engineering and land surveying projects	17 N.J.R. 2067(b)	R.1985 d.222	17 N.J.R. 1134(a)
13:41-1	Board of Professional Planners: readopt Seal rules	17 N.J.R. 1060(a)	R.1985 d.424	17 N.J.R. 2047(a)
13:41-3.2	Board of Professional Planners: fee schedule	17 N.J.R. 1061(a)	R.1985 d.443	17 N.J.R. 2141(a)
13:41-4	Board of Professional Planners: readopt preparation of site plan rules	17 N.J.R. 1240(a)		
13:42-1.5	Psychological Board licensees: notification of	17 N.J.R. 896(a)		

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13:43-3.4	current address Certified Shorthand Reporting exam: conditional credit	17 N.J.R. 801(a)	R.1985 d.288	17 N.J.R. 1431(a)
13:43-3.5	Shorthand reporting licensees: change of address notification requirement	17 N.J.R. 801(b)	R.1985 d.289	17 N.J.R. 1431(b)
13:44-1.2, 1.3, 1.4, 2.4, 2.9, 2.14, 2.15, 6	Veterinarian licensure	17 N.J.R. 1739(a)		
13:44-4.1	Veterinary medicine: training certificate fee	17 N.J.R. 383(a)	R.1985 d.364	17 N.J.R. 1773(b)
13:44C-1.1	Audiology and Speech Language Pathology Advisory Committee: fees and charges	17 N.J.R. 1062(a)		
13:44D	Public moving and warehousing	17 N.J.R. 1382(a)		
13:45A-9	Merchandise advertising: readopt rules	17 N.J.R. 678(a)	R.1985 d.256	17 N.J.R. 1323(b)
13:45A-16	Home improvement practices: readopt rules	17 N.J.R. 679(a)	R.1985 d.255	17 N.J.R. 1325(a)
13:45A-22	Kosher meat and poultry dealers: inspections and recordkeeping	17 N.J.R. 1241(a)	R.1985 d.407	17 N.J.R. 1901(b)
13:45A-23	Deceptive watercraft repair practices	17 N.J.R. 680(a)	R.1985 d.306	17 N.J.R. 1581(a)
13:46	Boxing Rules	16 N.J.R. 2962(a)	R.1985 d.284	17 N.J.R. 1432(a)
13:48	Charitable fund raising	17 N.J.R. 1244(a)		
13:51-3.5, 3.6	Chemical breath testing: approved instruments	17 N.J.R. 1531(a)	R.1985 d.441	17 N.J.R. 2141(b)
13:59	Background checks for licensing and employment purposes: user fees	17 N.J.R. 1743(a)	R.1985 d.481	17 N.J.R. 2282(b)
13:70-3.46	Thoroughbred rules: horsemen's bookkeeper account	17 N.J.R. 173(a)	R.1985 d.204	17 N.J.R. 1135(a)
13:70-4.15	Thoroughbred racing: farms and training centers	17 N.J.R. 1393(a)		
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13:70-14A.11	Thoroughbred racing: urine testing of track personnel	17 N.J.R. 1640(a)		
13:71-7.26	Harness racing: farms and training centers	17 N.J.R. 1393(b)		
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13:75-1.5	Violent crimes compensation: filing of claims	17 N.J.R. 2010(b)		
13:76-1.2, 1.3, 3.2, 4.1	Arson investigators	17 N.J.R. 2011(a)		

(TRANSMITTAL 30, dated April 15, 1985)

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14:1-5.2, 5.3	Filings with Board of Public Utilities	17 N.J.R. 802(a)	R.1985 d.439	17 N.J.R. 2142(a)
14:3-8.1, 8.2	Suggested formulae for extension of utility service	17 N.J.R. 174(a)	R.1985 d.202	17 N.J.R. 1136(a)
14:3-10.9	Petitions by solid waste collectors	16 N.J.R. 3292(b)		
14:9-6.11	Correction: Acquisition costs	16 N.J.R. 3380(a)	R.1985 d.182	17 N.J.R. 1559(a)
14:10-5	Inter LATA telecommunications carriers	17 N.J.R. 2012		
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14:18-2.9	CATV pole attachment rate methodology	17 N.J.R. 1589(b)	R.1985 d.425	17 N.J.R. 2047(b)
14:18-3.10	CATV installation: compensation for taking	17 N.J.R. 563(a)	R.1985 d.337	17 N.J.R. 1666(a)
14:18-11	Pre-proposal: Renewal of CATV municipal consents and certificates of approval	17 N.J.R. 1394(a)		

(TRANSMITTAL 21, dated April 15, 1985)

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14A:3-11	Used oil recycling	17 N.J.R. 1866(b)		
14A:7	Submission and handling of confidential information	17 N.J.R. 1745(a)	R.1985 d.470	17 N.J.R. 2284(a)
14A:13-1.2, 1.8-1.11, 1.13, 1.14	Energy conservation in State buildings	17 N.J.R. 1747(a)	R.1985 d.471	17 N.J.R. 2286(a)
14A:20-1	Energy conservation planning and evaluation	16 N.J.R. 3293(a)		

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15:2-1.1, 1.3, 1.4	Commercial recording: expedited service	17 N.J.R. 897(a)	R.1985 d.327	17 N.J.R. 1670(a)
15:2-1.5	Commercial recording: fee payment for expedited service	17 N.J.R. 898(a)	R.1985 d.326	17 N.J.R. 1671(a)

(TRANSMITTAL 14, dated January 3, 1984)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>PUBLIC ADVOCATE—TITLE 15A</b>				
<b>(TRANSMITTAL 1, dated March 20, 1978)</b>				
<b>TRANSPORTATION—TITLE 16</b>				
16:1	Records management	17 N.J.R. 564(a)	R.1985 d.409	17 N.J.R. 1903(a)
16:6	Relocation assistance	17 N.J.R. 565(a)	R.1985 d.435	17 N.J.R. 2143(a)
16:20A-4.4	Municipalities qualified for depressed rural centers aid	17 N.J.R. 565(b)	R.1985 d.233	17 N.J.R. 1325(b)
16:21	State aid to counties and municipalities: readopt rules	17 N.J.R. 566(a)	R.1985 d.434	17 N.J.R. 2143(b)
16:28-1.79	Route 94 speed limits, Sussex County	17 N.J.R. 384(a)	R.1985 d.198	17 N.J.R. 1137(a)
16:28A-1.4, 1.31, 1.33	Bus stops on Route 4 in Hackensack and Routes 45 and 47 in Deptford	17 N.J.R. 1396(a)	R.1985 d.393	17 N.J.R. 1903(b)
16:28A-1.7	Parking on U.S. 9 in Berkeley Township	17 N.J.R. 1063(a)	R.1985 d.355	17 N.J.R. 1774(b)
16:28A-1.7, 1.19, 1.21, 1.31, 1.32	Parking on Routes U.S. 9, 28, U.S. 30, 45, U.S. 46	17 N.J.R. 898(b)	R.1985 d.328	17 N.J.R. 1671(b)
16:28A-1.7, 1.24	Bus stops on U.S. 9 and 34 in Old Bridge	17 N.J.R. 1064(a)	R.1985 d.354	17 N.J.R. 1774(a)
16:28A-1.7, 1.38, 1.51, 1.71	Parking on U.S. 9 in Marlboro, Routes 71 in Asbury Park, 168 in Camden, and 67 in Fort Lee	17 N.J.R. 2013(a)		
16:28A-1.7, 1.45	Parking on U.S. 9 in Ocean County and Route 94 in Sussex County	17 N.J.R. 1250(a)	R.1985 d.390	17 N.J.R. 1904(a)
16:28-1.9, 1.19, 1.21, 1.23, 1.33, 1.38, 1.41, 1.57, 1.104	Parking on Routes 17, 28, U.S. 30, 33, 47, 71, 77, U.S. 206 and U.S. 40-322	17 N.J.R. 802(b)	R.1985 d.294	17 N.J.R. 1583(a)
16:28A-1.13, 1.27, 1.30	Bus stops on U.S. 22 in Kenilworth, Routes 38 in Cherry Hill and 44 in Paulsboro	17 N.J.R. 1397(a)	R.1985 d.394	17 N.J.R. 1905(a)
16:28A-1.18	Parking on Route 27 in Metuchen	17 N.J.R. 1642(a)	R.1985 d.467	17 N.J.R. 2288(a)
16:28A-1.18	Parking on Route 27 in Union County	17 N.J.R. 1251(a)	R.1985 d.391	17 N.J.R. 1906(a)
16:28A-1.18, 1.21, 1.37, 1.40, 1.55, 1.56, 1.57, 1.69	Parking on Routes 27 in Middlesex County, U.S. 30 in Hammonton, 70 in Cherry Hill, 73 in Mt. Laurel, U.S. 202, 202-206 and 206 in Bedminster, and 124 in Springfield	17 N.J.R. 2014(a)		
16:28A-1.20, 1.25, 1.29, 1.64, 1.65	Parking and bus stops on Routes 29, 35, 42, 41 and 15	17 N.J.R. 1398(a)	R.1985 d.392	17 N.J.R. 1906(b)
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16:28A-1.31, 1.46	Parking on Route 45 in Mantua, U.S. 130 in Penns Grove and Carneys Point	17 N.J.R. 2016(a)		
16:28A-1.35	Route 52 in Cape May County	17 N.J.R. 898(b)	R.1985 d.365	17 N.J.R. 1776(a)
16:28A-1.36	Parking on Route 57 in Warren County	17 N.J.R. 1251(a)	Withdrawn	17 N.J.R. 2053(a)
16:28A-1.96	Route 183 parking, Sussex County	17 N.J.R. 384(a)	R.1985 d.198	17 N.J.R. 1137(a)
16:30-6.4	Weight limit on Route 45 in Gloucester County	17 N.J.R. 1337(a)	R.1985 d.389	17 N.J.R. 1907(a)
16:30-12	Truck weigh stations on Interstate Highway System I-78, I-80, I-287 and I-295	17 N.J.R. 987(a)	R.1985 d.357	17 N.J.R. 1778(a)
16:31-1.1	No left turn on US 206 in Hillsborough	17 N.J.R. 1250(a)	R.1985 d.390	17 N.J.R. 1904(a)
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16:41A-6.1	Outdoor advertising permit fees	17 N.J.R. 385(a)	R.1985 d.230	17 N.J.R. 1325(c)
16:43	Junkyards adjacent to public highways: readopt rules	17 N.J.R. 567(b)	R.1985 d.432	17 N.J.R. 2144(a)
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16:56-7.1	Airport safety improvement aid	17 N.J.R. 2017(a)		
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16:78	Senior Citizen and Disabled Resident Transportation Assistance Act Program	17 N.J.R. 1532(a)		

**(TRANSMITTAL 29, dated April 15, 1985)****TREASURY-GENERAL—TITLE 17****(CITE 17 N.J.R. 2312)****NEW JERSEY REGISTER, MONDAY, SEPTEMBER 16, 1985**

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17:1-1.8	State pension checks and signature cards	17 N.J.R. 1068(a)	R.1985 d.348	17 N.J.R. 1673(a)
17:1-1.10	Minimum adjustments to pension accounts	17 N.J.R. 1642(b)	R.1985 d.442	17 N.J.R. 2144(b)
17:1-2.3	Alternate Benefit Program: salary reduction and deduction	17 N.J.R. 2350(b)		
17:1-4.11	PERs: purchase of service credit by certain nurses	17 N.J.R. 900(a)	R.1985 d.321	17 N.J.R. 1586(a)
17:3-2.3	Teachers' pension and annuity: full-time employment	17 N.J.R. 60(a)		
17:3-3.2	Teachers' Pension and Annuity: contributory insurance benefits	17 N.J.R. 1252(a)	R.1985 d.431	17 N.J.R. 2144(c)
17:4	Readopt Police and Firemen's Retirement System rules	17 N.J.R. 805(a)	R.1985 d.330	17 N.J.R. 1673(b)
17:5	State Police Retirement System rules	17 N.J.R. 2018(a)		
17:5-5.5	State Police Retirement: outstanding loans	16 N.J.R. 2997(a)		
17:8	Supplemental Annuity Collective Trust: readopt rules	17 N.J.R. 682(a)	R.1985 d.378	17 N.J.R. 1907(b)
17:9-1.5	State Health Benefits Program: voluntary termination by employer	17 N.J.R. 1399(a)		
17:16-6.1	Permissible purchases for funds under control of Director of Investment	17 N.J.R. 2093(a)		
17:16-7.1, 7.2, 7.3, 7.4, 8	Debt issue ceiling on long-term corporate issues	17 N.J.R. 2093(b)		
17:16-27	Investment Council: certificates of deposit	17 N.J.R. 60(b)	R.1985 d.201	17 N.J.R. 1907(c)
17:16-31.3-31.11	Cash Management Fund: method of accounting	17 N.J.R. 2095(a)		
17:16-39.1, 39.3	Capital requirements for bankers acceptance eligibility	17 N.J.R. 2095(b)		
17:19-2.10	Classification of bidders: settlement conferences	16 N.J.R. 2751(a)	R.1985 d.436	17 N.J.R. 2048(a)
17:20-5	Revocation or suspension of Lottery agent's license	17 N.J.R. 272(b)	R.1985 d.308	17 N.J.R. 1586(b)
17:28	Charitable fund raising and public employees: payroll deduction campaigns	Emergency	17 N.J.R. 406	17 N.J.R. 1931(a)
17:29	Charitable fund raising and local government	Emergency	R.1985 d.469	17 N.J.R. 2294(a)

(TRANSMITTAL 29, dated April 15, 1985)

**TREASURY-TAXATION—TITLE 18**

18:7-1.15, 4.5, 4.11, 11.7	Corporation Business Tax: investment company, subsidiary, indebtedness, timely filing	17 N.J.R. 1537(a)		
18:7-1.17, 11.15	Consolidated casino business tax returns	17 N.J.R. 901(a)	R.1985 d.453	17 N.J.R. 2145(a)
18:7-5.1, 5.2, 5.4	Corporation Business Tax: entire net income base	17 N.J.R. 1538(a)		
18:7-5.12-5.16	Corporation Business Tax: net operating loss carryover	17 N.J.R. 2096(a)		
18:7-14.12, 14.17—14.20	Corporation Business Tax: prior issuance of tax clearance certificate	17 N.J.R. 1252(b)	R.1985 d.383	17 N.J.R. 1909(a)
18:12A-1.2	County tax boards: member education	17 N.J.R. 683(a)	R.1985 d.261	17 N.J.R. 1439(a)
18:15-2.1—2.6	Farmland assessments	17 N.J.R. 903(a)	R.1985 d.310	17 N.J.R. 1587(a)
18:17-4.1	Local property tax: assessor duties	17 N.J.R. 1870(a)		
18:23A	Tax maps	17 N.J.R. 1068(b)	R.1985 d.381	17 N.J.R. 1910(a)
18:24-12	Sale of food and drink	17 N.J.R. 178(a)	R.1985 d.280	17 N.J.R. 1440(a)
18:35-1.18	Extension of time to file Gross Income Tax Return	17 N.J.R. 1643(a)	R.1985 d.454	17 N.J.R. 2146(a)
18:37	Spill Compensation and Control Tax rules	17 N.J.R. 1074(a)	R.1985 d.382	17 N.J.R. 1915(a)
18:37-2.2	Transfer of hazardous substances other than petroleum or its products	17 N.J.R. 1540(a)	R.1985 d.455	17 N.J.R. 2147(a)

(TRANSMITTAL 28, dated April 15, 1985)

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19:4-4.33, 4.35, 4.36, 4.37, 4.39, 4.40, 4.42, 6.28	Hackensack Meadowlands waterfront recreation zone	16 N.J.R. 3423(b)	R.1985 d.408	17 N.J.R. 1916(a)
19:4-4.142	Meadowlands: granting zoning variances	17 N.J.R. 1871(a)		
19:4-5.6, 5.6A, 6.28	Zoning changes	16 N.J.R. 2351(a)		
19:4-6.28	Official zoning map	16 N.J.R. 3423(b)	R.1985 d.212	17 N.J.R. 1138(b)
19:4-6.28	Change in zoning designation	17 N.J.R. 385(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
19:4-6.28	Meadowlands: official zoning map change	17 N.J.R. 1872(a)		
19:25-1, 7, 11	Readopt General Provisions, Use of Deposited Funds, Reporting of Contributions	17 N.J.R. 683(b)	R.1985 d.238	17 N.J.R. 1326(a)
19:25-2.6	Facsimile signatures	17 N.J.R. 1399(b)	R.1985 d.238	17 N.J.R. 1917(b)
19:25-15.3, 15.12, 16.3, 16.10	Continuing political committees	17 N.J.R. 684(a)	R.1985 d.239	17 N.J.R. 1326(b)
19:30-4.4	Targeting of EDA assistance	17 N.J.R. 1872(b)		
19:30-7	Economic Development Authority: private activity bonds	17 N.J.R. 1750(a)		

**(TRANSMITTAL 25, dated February 19, 1985)**

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19:43, 45	Pre-proposal: Rules governing casino industry bus operations	17 N.J.R. 1401(a)		
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19:45-1.27	Patron credit	17 N.J.R. 181(a)	R.1985 d.229	17 N.J.R. 1327(a)
19:45-1.27	Correction: Granting of patron credit	17 N.J.R. 181(a)	R.1985 d.229	17 N.J.R. 1673(c)
19:45-1.27	Patron credit	17 N.J.R. 1254(a)		
19:45-1.33	Counting and recording contents of drop boxes	17 N.J.R. 1752(a)		
19:45-1.37	Issuance and use of tokens for slot machines	17 N.J.R. 184(a)		
19:46-1.26, 1.27, 1.33	Issuance and use of tokens for slot machines	17 N.J.R. 184(a)		
19:47-2.4, 3.4, 4.3	Opening of the table for gaming	17 N.J.R. 61(a)	R.1985 d.228	17 N.J.R. 1332(a)
19:52-1.4	Correction: Prohibited entertainment activities	_____	_____	17 N.J.R. 1684(a)

**(TRANSMITTAL 14, dated March 18, 1985)**

**NOTES**

**NOTES**

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