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THE JOURNAL OF STATE AGENCY RULEMAKING

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(Includes rules filed through September 15, 1986)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE JULY 21, 1986

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE WILL BE DATED AUGUST 18, 1986.

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INTERESTED PERSONS

Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **November 5, 1986**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-4.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

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NEW JERSEY REGISTER

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RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF RURAL RESOURCES
State Agriculture Development Committee
Soil and Water Conservation Project Cost-Sharing
Proposed Amendment: N.J.A.C. 2:76-5.3

Authorized By: Arthur R. Brown, Jr., Chairman, State
Agriculture Development Committee.

Authority: N.J.S.A. 4:1C-5f.

Proposal Number: PRN 1986-399.

Submit comments by November 5, 1986 to:

Donald D. Applegate, Executive Secretary
State Agriculture Development Committee
CN 330

Trenton, New Jersey 08625

The agency proposal follows:

Summary

One of the primary provisions of the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c. 32, is to provide for funding of soil and water conservation projects on agricultural lands enrolled in a farmland preservation program or a municipally approved farmland preservation program. Qualified landowners or authorized farm operators are eligible to apply for cost-share assistance from the State for soil and water conservation projects. Soil and water conservation projects are projects that are designed for the control and prevention of soil erosion and sediment damages, the control of pollution on agricultural lands, the impoundment, storage and management of water for agricultural purposes, or the improved management of land and soils to achieve maximum agricultural productivity.

The present rule, N.J.A.C. 2:76-5.3, authorizes the State Agriculture Development Committee to determine the limits of funding from the Farmland Preservation Bond Act of 1981 for soil and water conservation grants and maximum allocation of funds per eligible applicant or unit of land. The Committee had established these limits by policy, which permitted flexibility during the early stages of the program.

Experience gained in the process has been helpful for the Committee in determining reasonable cost-share limits which ensure the prudent use of public funds and still provide an incentive for landowners to participate in the program. During the past two years, landowners have shown a significant interest in applying for soil and water cost-share grants and have subsequently enrolled their lands into eight year preservation programs.

The proposed amendment, N.J.A.C. 2:76-5.3(b)1, establishes that the Committee will dedicate \$4.9 million from the \$50 million Farmland Preservation Bond Fund for the purpose of providing 50 percent cost-share assistance to landowners for installing approved soil and water conservation projects on lands enrolled in eight-year preservation programs. In addition, no more than 25 percent of the \$4.9 million dedicated for soil and water conservation projects shall be aggregately obligated for approved projects in any one county.

Proposed amendment, N.J.A.C. 2:76-5.3(b)2, establishes the total eligible state soil and water cost-share funds which a landowner is eligible to apply for during the term of the eight year farmland preservation program. The allocation is based on common deed ownership according to the following formula:

- 0 to 50 acres at \$400/acre
- 51 to 100 acres at \$100/acre
- 101 to 516.7 acres at \$60/acre

Proposed amendment, N.J.A.C. 2:76-5.3(b)3, states that the State Agriculture Development Committee shall obligate funds as approved in a soil and water cost-share application for up to three years from the date of approval. The term of obligation may be extended due to seasonal constraints or other unavoidable delays with the approval of the local soil conservation district, the State Soil Conservation Committee, and the State Agriculture Development Committee.

Social Impact

The proposed amendment will have a positive social impact throughout the agricultural community by encouraging farmers to install the proper soil and water conservation measures on their lands. Incorporating these practices into a technically sound farm conservation plan will increase crop production and enhance and protect lands. To be eligible to receive assistance, landowners must voluntarily agree to deed restrict their property to be maintained in agricultural production for a minimum period of eight years. Presently there are approximately 11,300 acres enrolled in eight year farmland preservation programs across the State.

By incorporating the soil and water cost-share provisions in an administrative role, landowners either enrolled in the program or contemplating enrollment in the program can be assured that the allocations will not be amended without the Committee complying with the provisions of the Administrative Procedures Act, which requires public comment and review.

Economic Impact

The proposed amendment will have a positive economic impact on the Garden State by encouraging farmers to invest in their agricultural operations. This investment, through the installation of soil and water conservation practices will not only conserve soil and water resources but will improve the overall efficiency, productivity and profitability of the farm enterprise. As a result, these operations will be less likely to go out of business due to economic pressures and will remain viable even beyond the eight year program.

Capital investment by the State through cost-share programs has been authorized by the enactment of the Farmland Preservation Bond Act of 1981. The Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c. 32, is the implementing legislation which provides for State matching grants for up to 50 percent of the cost of projects up to a maximum amount determined by the prescribed formula. As an added incentive, a county may also provide funding to further reduce costs incurred by the landowner.

In order to effectively implement this program, the proposed amendment will give the agricultural community an opportunity to comment on the Committee's present policies for allocating funds for soil and water conservation projects.

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

2:76-5.3 Approved practices and cost-share [limitations] provisions

(a) (No change.)

(b) The following cost-share [limitations] provisions shall be applicable for soil and water conservation projects:

1. The State Agriculture Development Committee shall [determine the limits of funding for the following:] **dedicate \$4.9 million from the fund for the purpose of providing grants to landowners for approved soil and water conservation projects.**

i. **No more than 25 percent of the \$4.9 million dedicated for soil and water conservation projects shall be aggregately obligated for approved projects in any one county.**

[i. Allocation from the fund for soil and water conservation project grants;]

[ii. Maximum allocation, on a Statewide basis, per eligible applicant, or unit of land, where a development easement has not been permanently retired;]

[iii. Maximum allocation, on a Statewide basis, per eligible applicant, or unit of land, where a development easement has been permanently retired.]

2. **Upon certification of a farmland preservation program or a municipally approved program, the committee shall determine the total eligible state soil and water cost-share funds based on common deed ownership in accordance with the following formula:**

- 0 to 50 acres at \$400/acre**
- 51 to 100 acres at \$100/acre**
- 101 to 516.7 acres at \$60/acre**

i. **For acreage exceeding 516.7 acres, no additional funding will be available to the landowner.**

ii. **The total eligible amount determined shall remain in effect for the**

duration of the farmland preservation program or municipally approved program.

3. Upon State Soil Conservation Committee approval and recommendation for funding of an application for soil and water project cost sharing in compliance with N.J.A.C. 2:76-5.6, and upon State Agriculture Development Committee approval, the State Agriculture Development Committee shall obligate funds as approved in the application for up to three years from the date of approval.

i. Approval of funds shall not exceed the amount determined in (b)2 above.

ii. The term of obligation may be extended due to seasonal constraints or other unavoidable delays only upon the approval of the local soil conservation district, the State Soil Conservation Committee and the State Agriculture Development Committee.

[2. The committee shall inform the board of Statewide maximum funding limitations for project cost-sharing.]

[3. The board shall, on a jurisdiction wide basis adopt the committee's maximum per eligible applicant or unit of land allocation or establish a lower maximum on a uniform basis.]

[4. The board shall inform the soil conservation district of the maximum funding available to persons enrolled in a farmland preservation program or municipally approved program who apply to the soil conservation district for grants for projects.]

BANKING

(a)

DIVISION OF BANKING

Eligibility of Proposed Interstate Acquisitions

Proposed New Rule: N.J.A.C. 3:13-4

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

Authority: N.J.S.A. 17:9A-371 and N.J.S.A. 17:1-8.

Proposal Number: PRN 1986-397.

Submit comments by November 5, 1986 to:

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

The agency proposal follows:

Summary

With the passage of Senate Bill No. 1467, the Legislature dealt with the right of New Jersey to provide for "interstate banking" within limitations set out in the bill. The bill was signed into law by Governor Kean on March 28, 1986 as Chapter 5, P.L. 1986 (N.J.S.A. 17:9A-370 through 372). The effective date of the Act was April 27, 1986 with the further stipulation that the actual implementation of interstate acquisitions would be inoperative until such time as the Commissioner determined that the number of eligible states, as defined in the Act, has been established.

The Act establishes a Central-Atlantic Region consisting of New Jersey and thirteen other states, plus the District of Columbia. When at least three of these states (in addition to New Jersey) each have \$20,000,000,000 or more in commercial bank deposits and have reciprocal legislation in effect, the Commissioner shall make a determination that the required number of eligible states has been established. Interstate acquisitions may then commence within the Central-Atlantic Region with those states from the region which have reciprocal legislation in effect.

The Commissioner has now issued a decision and determination of reciprocity that pursuant to Chapter 5, Public Laws of 1986, the aforementioned criteria have been met and the required number of eligible states have been established. She has determined that effective August 24, 1986, interstate banking between New Jersey, Kentucky, Ohio and Pennsylvania may begin. Thereafter, additional states, within the Central Atlantic Region, may become eligible when a state adopts reciprocal legislation with New Jersey.

The Act further provides that nationwide interstate banking may take place when at least 13 states in addition to New Jersey, at least four (other than New Jersey) of which are among the 10 states (other than New Jersey) with the largest amount of commercial bank deposits, have reciprocal legislation in effect. While there is no specific time frame when this national trigger will take place, it is generally anticipated that it could

take place by January of 1989, or earlier. The regional plan, set forth in the aforementioned Act, should provide New Jersey institutions with the opportunity to expand through interstate acquisitions, prior to the opening of New Jersey to nationwide banking.

The Act specifies that the Commissioner has the authority to promulgate regulations to enforce the conditions of the Act. The proposed new rule will require any out-of-state bank holding company that proposes to acquire a New Jersey bank or bank holding company located in New Jersey to file an application relative to such acquisition with the Department of Banking. The application will require the out-of-state bank holding company to supply sufficient information to allow the Commissioner to determine that the proposed acquisition meets the requirements of the Act. The Commissioner will issue a determination that the proposed acquisition would qualify as an eligible acquisition within the parameters set out in the Act. The applicant would then be able to pursue such approvals as may be necessary to consummate the acquisition.

Social Impact

The Legislature recognized that there was a need to allow the banking industry to grow beyond the borders of New Jersey. The creation of a Central-Atlantic Region will allow New Jersey institutions to gradually expand into new areas without losing sight of its New Jersey roots. The regional interstate phase is followed by a national trigger, which should be a few years away.

The proposed rule will set up a procedure enabling the Commissioner to ascertain that any proposed interstate acquisitions of New Jersey institutions fall within the parameters set out by the legislature, and to determine whether any limitations or restrictions on reciprocity must be applied to the transaction, as set forth in the Act.

Economic Impact

The application aspects of this rule will have no negative impact on the out-of-state bank holding companies involved. The application process will ensure that any proposed acquisitions meet the statutory requirements established in the Act, since by their nature any acquisition will have an economic impact on New Jersey due to the change in control of our banking institutions.

The Legislature was aware when the Act was adopted that we are in an era of high technology and shrinking distances. For New Jersey to maintain its economic leadership, its banks must be unshackled to grow into their natural marketplace, free of narrow or artificial boundaries. To accomplish this, our banking institutions must initially open themselves to competition from states within the established region. This will result in an ultimate economic gain for New Jersey through the infusion of additional resources from regional institutions which already have expressed an interest in New Jersey's vibrant economy. During this formative period, New Jersey institutions will also be able to grow and position themselves to be economically competitive with larger institutions when the national trigger becomes effective.

Full text of the proposed new rule follows.

CHAPTER 13. BANK HOLDING COMPANIES

SUBCHAPTER 4. DETERMINATION OF ELIGIBILITY OF PROPOSED INTERSTATE ACQUISITION

3:13-4.1 Purpose and scope

This subchapter requires an out-of-state bank holding company, which desires to acquire and retain control of a bank or banks located in New Jersey, to file an application with the Department of Banking. The application will contain sufficient information for the Commissioner to determine that the applicant is an eligible bank holding company located in a state which the Commissioner has found to be an eligible state which has reciprocal legislation in effect, has deposits within the prescribed deposit limitations and, therefore, the applicant would be eligible to proceed with obtaining all necessary approvals relative to the proposed acquisition. The determination shall also reflect any limitations or restrictions that shall be placed upon the out-of-state bank holding company's acquisition of banks or bank holding companies located in this State.

3:13-4.2 Definitions

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

"Bank", "bank holding company" and "control" shall have the meanings set forth in the federal "Bank Holding Company Act of 1956," 70 Stat. 133 (12 U.S.C. 1841 et seq.); provided, however, the term "bank"

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shall not include a state or federally chartered mutual or capital stock savings bank and shall not include an institution which limits its activities to the conduct of activities that may be performed by a trust company (including activities of a fiduciary, agency or custodial nature) as those activities are permitted by the Board of Governors of the Federal Reserve System under section 4 of the federal "Bank Holding Company Act of 1956" 70 Stat. 135 (12 U.S.C. 1843).

"Banking subsidiary" means a bank or bank holding company, more than 50 percent of the stock of which is controlled by a bank holding company.

"Central-Atlantic Region" means the states of New Jersey, Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, Missouri, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, Wisconsin and the District of Columbia.

"Commercial bank deposits" means the total domestic deposits in commercial banks in each state according to the most recent statistics of the Federal Deposit Insurance Corporation or the Federal Reserve System or, if those statistics are not available, from sources designated by the Commissioner.

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

"Eligible state" means any state which meets either or both of the following conditions:

1. Any state in the Central-Atlantic Region, when at least three of those states (in addition to New Jersey), each of which has at least \$20,000,000,000 in commercial bank deposits, have reciprocal legislation in effect; and

2. Any state or territory of the United States, when at least 13 states in addition to New Jersey (for this purpose the District of Columbia is included as a state, but all other territories are excluded), at least four (other than New Jersey) of which are among the 10 states (other than New Jersey) with the largest amount of commercial bank deposits, have reciprocal legislation in effect.

"Eligible bank holding company" means a bank holding company:

1. Located in an eligible state which has reciprocal legislation in effect, other than New Jersey;

2. Which is not directly or indirectly controlled by a bank holding company which is not located in an eligible state; and

3. Which has at least 75 percent of the total aggregate deposits of its banking subsidiaries in banking subsidiaries located in an eligible state or eligible states.

"Location" or "located" when referring to a bank means the state in which the amount of aggregate deposits of all of its offices in that state is greater than the amount of aggregate deposits of all its offices in any one other state or foreign jurisdiction.

"Location" or "located" when referring to a bank holding company means the state in which the amount of aggregate deposits of all of its banking subsidiaries in that state is greater than the amount of aggregate deposits of all of its banking subsidiaries in any one other state or foreign jurisdiction.

"Out-of-state bank holding company" means a bank holding company which is not located in New Jersey.

"Reciprocal legislation" means statutory law of a state of the United States (including the District of Columbia) which authorizes or permits a bank holding company located in New Jersey to acquire banks or bank holding companies located in that state on terms and conditions substantially the same as the terms and conditions pursuant to which a bank holding company located in that state may acquire banks or bank holding companies located in that state. The fact that the law of that other state imposes limitations or restrictions on the acquisition of banks or bank holding companies located in that state by a bank or bank holding company located in New Jersey shall not necessarily mean that the law of that state is not reciprocal legislation; provided, however, that if the law of the other state limits acquisitions by a bank or bank holding company located in New Jersey to banks or bank holding companies which are not in competition with banks or bank holding companies located in or chartered by that state or to banks or bank holding companies which do not have customary banking deposit and commercial loan powers, the law of that other state shall not be reciprocal legislation. If the reciprocal legislation of that other state imposes limitations or restrictions on the acquisition or ownership of a bank or bank holding company located in New Jersey, substantially the same limitations and restrictions shall be applicable to the eligible bank holding company located in that other state with respect to its acquisition of banks or bank holding companies located in New Jersey.

3:13-4.3 Content of application

(a) Any out-of-state bank holding company proposing to acquire and retain control of a bank or bank holding located in New Jersey pursuant to N.J.S.A. 17:9A-370 et seq. shall submit an application for determination of compliance with the requirements of N.J.S.A. 17:9A-371 to the Department of Banking, which application shall contain the following information:

1. Name and location of the out-of-state bank holding company proposing to acquire a bank, banks or bank holding company located in New Jersey.

2. Name and location of the New Jersey bank, banks or bank holding company to be acquired.

3. Certified copies of:

i. The board resolution of the out-of-state bank holding company authorizing the proposed acquisition of the New Jersey bank, banks or bank holding company located in New Jersey; and

ii. The board resolution of the bank, banks or bank holding company approving the proposed acquisition.

4. A schedule reflecting the name, location and total aggregate deposits of each banking subsidiary of the out-of-state bank holding company, as of the last call date.

5. The total commercial bank deposits in the state in which the out-of-state bank holding company is located, as of the last call date.

6. Copies of the current reciprocal legislation of each of the states in which a banking subsidiary of the out-of-state bank holding company is located.

7. A listing of any limitations or restrictions on the acquisition or ownership of a bank or bank holding company in the state in which the out-of-state bank holding company is located that would be imposed on a bank holding company located in New Jersey if it proposed to acquire a bank or bank holding company in that state.

8. A certification that the acquisition of control of the bank or banks located in New Jersey will not result in the out-of-state bank holding company exceeding the limitations on stock ownership imposed by subsection (a) of section 2 of P.L. 1957, c.70 (N.J.S.A. 17:9A-345). Such certification shall include a schedule which reflects the aggregate average deposits of the bank or banks, located in New Jersey, which are controlled or which are to be controlled by the out-of-state bank holding company. The schedule should reflect both a dollar total and percentage ratio to the aggregate average deposits of all depository institutions in the State of New Jersey, as set forth in subsection (a) of section 2 of P.L. 1957, c.70 (N.J.S.A. 17:9A-345).

9. Name and location of the controlling bank holding company, if the out-of-state bank holding company is directly or indirectly controlled by a bank holding company.

3:13-4.4 Determination of eligibility

(a) Within 30 days after receipt of an application for determination of compliance with the requirements of N.J.S.A. 17:9A-371, the Commissioner shall issue a determination regarding:

1. Whether or not the out-of-state bank holding company is an eligible bank holding company.

2. Whether the out-of-state bank holding company has more than 50 percent of the total aggregate deposits of its banking subsidiaries in banking subsidiaries located in an eligible state or states, each of which has reciprocal legislation in effect.

3. Whether the acquisition would be in compliance with the stock ownership and deposit limitations of subsection (a) of section 2 of P.L. 1957, c.70 (N.J.S.A. 17:9A-345).

4. Whether any limitations or restrictions on acquisition or ownership shall be applicable with respect to the proposed transaction.

3:13-4.5 Filing fee

(a) The following fees shall be paid to the Commissioner relative to the application called for in N.J.A.C. 3:13-4.3:

1. Filing of application: \$1,500;

2. Issuance by the Commissioner of a determination that the proposed acquisition would be in compliance with the requirements of N.J.S.A. 17:9A-371, if it were consummated and approved by all applicable persons and/or regulatory authorities: \$100.00.

EDUCATION

STATE BOARD OF EDUCATION

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

Submit comments by November 5, 1986 to:

Patricia Joseph, Rules Analyst
Department of Education
225 West State Street
Trenton, New Jersey 08625

(a)

Thorough and Efficient System of Free Public Schools

Proposed Repeal and New Rules: N.J.A.C. 6:8

Authority: N.J.S.A. 18A:1-1, 4-15, as supplemented and amended by N.J.S.A. 18A:7A-1 et seq.

Proposal Number: PRN 1986-398.

The agency proposal follows:

Summary

The goal of a thorough and efficient system of free public schools is to provide all children in New Jersey, regardless of socioeconomic status or geographic location, the educational opportunity which will prepare them to function politically, economically and socially in a democratic society. Thorough and efficient education is described in the Public School Education Act of 1975 as "a growing and evolving concept", which, the law explains, must change to fit the economic, historical, social and cultural context of the times.

Local involvement and participation in the education process is stressed, as is the establishment of a decentralized approach to planning and decision making. The statute reaffirms that decisions on subjects such as personnel, curriculum and budget are essentially local options. The law is a planning model for school improvement in which districts are instructed to set annual educational objectives that address their long-range educational goals after seeking input from the community.

The existing rules for a Thorough and Efficient System of Free Public Schools are due to expire January 1, 1987, pursuant to the sunset provision of Executive Order 66(1978). These rules were adopted pursuant to the authority of N.J.S.A. 18A:1-1 et seq., as supplemented and amended by N.J.S.A. 18A:7A-1 et seq., and became effective January 7, 1986. The rules were amended July, 1977, March, 1978, August, 1979, March, 1980, September, 1983 and July, 1984.

The rules were last adopted in July, 1984 for two and one-half years to permit evaluation of the provisions pertaining to the new planning and certification process. These rules have now been reviewed internally and been found to be workable, effective and necessary for the maintenance of a thorough and efficient system of free public schools in accordance with the New Jersey Constitution and the provisions of N.J.S.A. 18A:7A-1 et seq. The rules have been amended to redefine the standards and procedures for the evaluation and certification of school districts.

As a result of the two and one-half year evaluation, Subchapters one through five have been reorganized and amended to effectively describe the standards and procedures for the evaluation and certification of school districts. Section 3.3 has been included to continue the provisions for district staffing as contained in the current rules. While section 4.3 will not be effective until July 1, 1988, it is included in the proposed rules to provide sufficient time for school districts to prepare for the next five-year monitoring cycle. Subchapter six addresses preventive and remedial programs in communications and computation and reflects current requirements in this area. Subchapter seven describes the high school graduation requirements and procedures.

The new Subchapter 8 cites interim evaluation procedures and standards for school districts monitored under the existing rules. In conjunction with Subchapter 8, section 4.6 cites the corrective procedure required of a certified district that fails to meet the High School Proficiency Test standard pursuant to N.J.A.C. 6:8-8.3(b)8. The provisions of Subchapter 8 will expire June 30, 1988 and the amended rules for the evaluation and certification of school districts contained in Subchapter 4 will become effective.

As an historical note, it should be noted that in order to more fully address the issue of high school graduation requirements, the Com-

missioner established a broad-based High School Graduation Requirements Study Panel that was charged to make recommendations for improvement. This panel presented its recommendations to the State Board in May, 1986. Subsequent to the panel's presentation, the State Board established a committee on high school graduation requirements. The committee reported its preliminary findings in August, 1986.

Subchapter 7 has been revised and now contains recommendations for changes to the current graduation requirements. First, the number of credits required for graduation is being increased from 92 to 110, effective with the entering ninth grade class of 1988-89. Second, one year of science, one year of mathematics and one year of world history/cultures have been added as part of the require core curriculum. These additional course requirements will be phased in for entering freshman classes over a period of three years: 1988-89 (world history/cultures), 1989-90 (science), and 1990-91 (mathematics).

Finally, the entire chapter has been edited for punctuation and grammar to coincide with literary style for administrative rules. Dates which no longer pertain have been deleted.

Social Impact

In accordance with the provisions of N.J.S.A. 18A:7A-1 et seq., these rules were originally adopted in January, 1976 to ensure the existence of a thorough and efficient system of free public schools in New Jersey. The underlying premise of the enabling statute was the requirement for educational program planning by the local school district. The law and subsequent rules emphasize involvement of the public and teaching staff members in the setting of educational goals. Further, the rules extend provisions for public involvement by mandating consultation with parents and guardians concerning pupil progress toward district educational goals and objectives as well as communication regarding pupil participation in State compensatory and remedial programs. Community involvement is enhanced by the requirement for annual reporting by the local school district to the public of the district's progress and plans in implementing local goals, objectives and standards. Finally, the rules require that the State Board of Education publicly and individually certify districts subsequent to an extensive monitoring and evaluation of progress in achieving State and local educational goals, objectives and standards.

The rules, as originally adopted, were intended to institute a planning process for school improvement which was predicated upon community involvement. Since that original adoption, several amendments have been made to the rules to include minimum proficiency and compensatory programs for pupils who are not achieving to the standard established by the State in minimum basic skills. Another more recent amendment eliminated reference to a minimum level of basic skills and instead emphasized the attainment of State standards in reading, writing and mathematics skills, and the most recent amendment to the rules was the delineation of minimum high school graduation requirements.

A review of the rules by department staff, in consultation with a broad range of educational leaders and concerned citizens, indicates that the rules are philosophically sound as an educational planning model. The proposed changes will limit both the monitoring and the paperwork aspects of the regulations to that which is essential. Districts will be required to link educational objectives to major deficiencies which are identified in the monitoring process. Under supervision of the county superintendents, every district in the State will be rigorously monitored. Thereafter, the monitoring process will become considerably more focused. Districts that meet essential requirements and are found to be in compliance will be monitored only at five-year intervals.

Limiting review of districts that are in compliance with the law and regulations will not only free them from unproductive paperwork but also will allow the State to direct more of its efforts and limited resources towards assisting districts which are not in compliance. Such districts will be subject to more frequent, in-depth and, if necessary, continuous review until their problems are satisfactorily resolved.

Those few districts which cannot or will not resolve their problems will be held accountable. When necessary, the commissioner will use his/her authority under law to assure the delivery of appropriate educational programs and services by local districts.

The State will hold local districts accountable for compliance with law and rules but will not encumber successful districts with unnecessary monitoring and paperwork. Rather, the State will focus its efforts directly toward districts which are not in compliance and will also seek to help all school districts help themselves through improved services.

Adoption of these rules will ensure a thorough and efficient public school system pursuant to the provisions of N.J.S.A. 18A:7A et seq.

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Economic Impact

These rules are expected to contribute to an economic expenditure of time, money and effort at the State and local levels in providing a thorough and efficient system of free public schools. The assistance, monitoring and evaluation prescribed by these rules in effect provides oversight of proper expenditure of State and local funds pursuant to the State aid funding formula in N.J.S.A. 18A:7A-17 et seq.

There will be no additional cost to the State in the adoption of Subchapters one through five. The proposed changes will permit the State to direct more of its resources and skills towards solving the major issues as defined by local school district objectives. The State will also be freed from unnecessary aspects of its monitoring duties and will address the needs of districts at three separate levels, while providing products, programs and services to assist local district educational efforts.

As a result of Subchapter six, however, some additional costs will be incurred by school districts for the development of individual student improvement plans beginning at grade 3 rather than grade 6. Likewise, the increased requirements of subchapter seven concerning numbers of credits and mandated core curriculum will also result in an additional cost to local school districts. Some districts may need to develop new programs, hire additional staff and provide appropriate facilities to meet the heightened requirements of this new subchapter.

The overall economic impact of these subchapters upon the local district will ultimately be determined by the degree to which a district's current policies coincide with the proposed requirements.

Full text of the rules proposed for repeal appears in the New Jersey Administrative Code at N.J.A.C. 6:8.

Full text of the proposed new rules follows.

CHAPTER 8
THOROUGH AND EFFICIENT SYSTEM
OF FREE PUBLIC SCHOOLS

SUBCHAPTER 1. DEFINITIONS

6:8-1-1 Words and phrases defined

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

"Action plan" means a written document describing how the district will organize and act to achieve its objectives.

"Affirmative action plan" means the "school/classroom practice plan" and the "employment/contract practices plan" submitted by each district for approval by the Department of Education, Office of Equal Educational Opportunity.

"Annual education plan" means the plan submitted by each district by September 30 of its priority need areas, related objectives, action plans, and supporting information for review and approval of the county superintendent of schools by October 31.

"Annual special education plan" means the "annual plan for education of all handicapped children" submitted each year.

"Articulation" means continuity, consistency and interdependence in the curricular offerings of the successive divisions of the school system.

"Assessment" means a written analysis of the current status of an educational system in terms of achieving its goals and objectives.

"Basic Skills Improvement (BSI) Plan" means a plan submitted by districts to the department which outlines the provisions of services to all pupils in need of assistance in communications and computation skills.

"Bilingual/ESL education program plan" means a plan submitted by districts to the department which outlines the provisions of appropriate educational programs for pupils who are limited English proficient.

"Bilingual/ESL education program" means a full time program of instruction given in both the native language of a pupil of limited English proficiency and in English in all courses which a pupil is required by law or rule to receive.

"Certification" means an acceptable rating in all required indicators as prescribed for all 10 essential elements in the educational process of the district.

"Commissioner" means the Commissioner of the Department of Education.

"Communications" means reading and/or writing.

"Community" means the community at large, including, but not limited to, the parents of students.

"Computation" means mathematics.

"Disaffected pupil" means the pupil who has instructional needs that are not being met by the regular instructional program and who is performing well below his or her social or academic capacity.

"Disruptive pupil" means the pupil who has difficulty establishing good relationships with peers and adult authority figures and who exhibits a pattern of conduct which is in defiance of school rules or regulations and which hinders academic success for other pupils as well as for himself or herself.

"District average daily attendance" means that figure of average daily attendance for the year computed annually in June and submitted by districts to the department as part of a district data report.

"Element" means one of the ten essential components of the educational process reviewed during monitoring for the purpose of certifying school districts.

"Evaluation" means procedures used to determine the success of programs, projects, techniques and materials in relation to the achievement of goals, objectives and standards; that is, the act of making judgment based upon the data gathered.

"Goals" means a written statement of educational aspirations for learner achievement and the educational process stated in general terms.

"Indicator" means one of the 43 subsections of the 10 essential elements that contains specific criteria reviewed during the monitoring process and rated as either acceptable or unacceptable.

"Individual Comprehensive Assessment" means the analysis of pupil proficiency on the basis of procedures which may include, but are not limited to, teacher observation, parental or guardian interview, formal and informal evaluation techniques, cumulative pupil records, student performance data collected through local testing programs which meet state criteria, state testing results, and visual, auditory and/or medical examination.

"Limited English proficient pupil" means a pupil whose native language is other than English and who has sufficient difficulty speaking, reading, writing or understanding the English language to be denied the opportunity to learning successfully in classrooms where the language of instruction is English. This term means a child of limited English speaking ability, as the term is used in State law.

"Maintenance of effort" means that a district's combined fiscal effort per student or aggregate expenditures of State and local funds with respect to the provision of free public education for the preceding fiscal year was not less than the combined fiscal effort per student or the aggregate expenditures for the second preceding fiscal year.

"Mandated State programs and services" means specific educational offerings required by New Jersey Statute or Administrative Code (for example, high school graduation requirements, family life education, kindergarten, pre-school handicapped education, courses and services in physical education, health and safety and drug and alcohol education.)

"Minimum level of pupil proficiency" means passing scores on the State test established pursuant to N.J.S.A. 18A:7A-6 and the State approved minimum levels of pupil proficiency (MLP) in grades where State testing does not take place.

"Monitoring" means the process whereby the Commissioner of Education evaluates the status of each school district every five years for the purpose of certification. Monitoring also pertains to any evaluation of school districts by the New Jersey State Department of Education.

"Objective" means a written statement of the intended outcome of a specific educational process.

"Occasional staff absenteeism" means all professional staff absences exclusive of approved professional days and extended illness in excess of five consecutive work days.

"Preventive and remedial program" means any program which is designed to prevent regression and to improve the level of pupil proficiency in the areas of communications and computation for students below the State minimum levels of proficiency.

"Proficiency" means an explicitly stated and demonstrable knowledge and/or skill used to define a desired learning outcome.

"Regular school program" means curriculum and materials, instructional activities, services and staff training designed to address the learning needs of all pupils, which are adopted annually by each district board of education and funded by local resources and/or State equalization aid.

"Standards" means the stated levels of proficiency used in determining the extent to which indicators in Subchapter 4 are being met and also means both State and local levels of pupil proficiencies as required in Subchapter 7.

"State compensatory education pupil" means a pupil who is enrolled in September 30 in an approved preventive and remedial program, and who:

1. Is in grades K-3 and does not meet locally established, State approved standards of proficiency in communications and/or computation; or

2. Is in grades 4-9 and does not meet the State minimum levels of pupil proficiency in communications and/or computation; or

3. Is in grades 10-12 and does not pass the ninth grade State test in communications and/or computation.

"State endorsed diploma" means a diploma signifying successful completion of a high school program containing the minimum curricular, programmatic and proficiency requirements as set forth by State law and rule, and by district board of education policies and procedures.

"Supplemental program for State compensatory education" means instructional or related services provided over and above the regular school program which are funded in whole or in part by State compensatory education funds.

"Teaching staff members" means all teachers, principals, assistant principals, vice principals, superintendents, assistant superintendents, school nurses and such other employees as are in positions which require them to hold appropriate certificates issued by the board of examiners and are serving in any school district or under any board of education.

SUBCHAPTER 2. STATE EDUCATIONAL GOALS AND STANDARDS

6:8-2.1 State educational goals

(a) The State educational goals shall be the following outcome and process goals and shall be applicable to all public school districts and schools in the State.

(b) The public schools in New Jersey shall help every pupil in the State:

1. To acquire basic skills in obtaining information, solving problems, thinking critically and communicating effectively;

2. To acquire a stock of basic information concerning the principles of the physical, biological and social sciences, the historical record of human achievement and failures, and current social issues;

3. To become an effective and responsible contributor to decision-making processes of the political and other institutions of the community, State, country and world;

4. To acquire the knowledge, skills and understanding that permit him or her to play a satisfying and responsible role as both producer and consumer;

5. To acquire job entry level skills and also to acquire knowledge necessary for further education;

6. To acquire the understanding of and the ability to form responsible relations with a wide range of other people including, but not limited to, those with social and cultural characteristics different from his or her own;

7. To acquire the capacities for playing satisfying and responsible roles in family life;

8. To acquire the knowledge, habits and attitudes that promote personal and public health, both physical and mental;

9. To acquire the ability and the desire to express himself or herself creatively in one or more of the arts and to appreciate the aesthetic expressions of other people;

10. To acquire an understanding of ethical principles and values and the ability to apply them to his or her own life;

11. To develop an understanding of his or her own worth, abilities, potentialities and limitations;

12. To learn to enjoy the process of learning and to acquire the skills necessary for a lifetime of continuous learning and adaptation to change.

(c) The public schools in New Jersey shall provide:

1. Instruction which bears a meaningful relationship to the present and future needs and/or interests of pupils;

2. Significant opportunities, consistent with the age of the pupil, for helping to determine the nature of the educational experiences of the pupil;

3. Specialized and individualized kinds of educational experiences to meet the needs of each pupil;

4. Opportunities for teaching staff members and pupils to make recommendations concerning the operation of the schools;

5. Comprehensive guidance facilities and services for each pupil;

6. An environment in which any competition among pupils is positive;

7. Resources for education, used with maximum efficiency;

8. Teaching staff members of high quality;

9. Diverse forms of constructive cooperation with parents and community groups.

6:8-2.2 State educational standards

The State educational standards shall be those set forth in N.J.A.C. 6:8-4.3 which shall be used for the implementation of a thorough and efficient system of free public schools in accordance with N.J.S.A. 18A:7A-1 et seq. and the New Jersey Constitution.

6:8-2.3 Review of State educational goals and standards

(a) The State Board of Education, after consultation with the commissioner and review by the Joint Committee on the Public Schools, shall, from time to time but at least once every five years, review and update the State goals and standards.

(b) In reviewing and updating these goals and standards, the State Board shall consult with the Commissioner of Labor, the Chancellor of Higher Education, the Commissioner of Health, the Commissioner of Human Services and such other State employees and officers as deemed necessary.

SUBCHAPTER 3. ANNUAL REPORTING AND STAFFING OF SCHOOL DISTRICTS

6:8-3.1 July 1 report

Each district board of education shall submit by July 1 a report describing progress of the district in achieving its objectives.

6:8-3.2 Annual reports

(a) Each district board of education shall, on approved forms and at specified times, submit annually a report on:

1. Demographic data relative to each school;

2. Number and reasons for school dropouts;

3. Results of district and school assessment programs of pupil achievement in basic skills in the basic skills application;

4. Plans and programs for professional improvement; and

5. All required annual fiscal reports pursuant to law and rule.

6:8-3.3 Staffing

(a) Teaching staff members shall be employed by the district board of education based upon the specific instructional needs of pupils of the district and each school within the district. The district board of education shall provide certified personnel needed to implement a thorough and efficient system of free public schools.

(b) Each school shall be assigned the services of a fulltime nonteaching principal to be responsible for administration and supervision of the school.

1. A district board of education, upon advice of the chief school administrator, may request from the Commissioner of Education an exception to this subsection.

SUBCHAPTER 4. PROCEDURES FOR THE EVALUATION OF THE PERFORMANCE OF EACH PUBLIC SCHOOL DISTRICT

6:8-4.1 General requirements

(a) The Commissioner of Education shall evaluate each school district in implementing the standards required by this chapter.

(b) Based upon the evaluation, the commissioner shall recommend to the State Board of Education the certification of each district meeting the criteria established in this chapter.

(c) The State Board of Education shall determine the certification of each district.

(d) A district certified pursuant to this chapter shall not be required to be formally evaluated for five years.

(e) The commissioner reserves the right to recommend that the State Board of Education rescind the certification of any district which may fall into noncompliance with the standards set forth in this chapter.

6:8-4.2 Evaluation procedures

(a) Each school district within a county shall be monitored between July 1, 1988 and June 30, 1993 and, if certified, every five years thereafter by a team of persons from the county office under the supervision of the county superintendent of schools.

1. The county superintendent of schools shall establish a monitoring schedule with the approval of the assistant commissioner, Division of County and Regional Services.

2. Each district scheduled for monitoring shall be notified in advance by the county superintendent of schools. The dates for such monitoring visits to the district shall be established in consultation with the chief school administrator of the district.

3. A representative of the county superintendent of schools shall conduct a pre-monitoring conference with a representative of the district to establish the monitoring format.

4. Prior to the monitoring visit, the county office representative shall request that the district representative provide such documentation materials that are unavailable at the county office. The district representative shall be directed to either forward the documentation materials or make them available at the time of the monitoring visit.

(b) During the monitoring visit, the team shall evaluate the school

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district pursuant to the elements and standards set forth in N.J.A.C. 6:8-4.3.

6:8-4.3 Evaluation of elements and standards

(a) The following ten essential elements and the prescribed indicators of standards of acceptable performance shall be evaluated by the monitoring team under the supervision of the county superintendent of schools as specified in this section.

1. The annual educational planning element of the district shall be rated acceptable upon demonstration of performance in three indicators as follows:

i. Written educational goals, based on district educational needs and consistent with the intent of State educational goals, shall be developed and shall serve as the basis for the educational program (curriculum) of the district. Goals shall be developed in consultation with teaching staff members, pupils, parents or guardians of pupils and other district residents, under the direction of the chief school administrator.

(1) The district board of education shall give public notice of the proposed goals or revisions thereof and shall provide opportunity for comment at a public meeting.

(2) District educational goals shall be reviewed, updated and adopted by the district board of education at least once every five years.

ii. Three or more written educational objectives which shall include standards of pupil achievement and action plans based upon district needs shall be developed annually in consultation with teaching staff members and the community under the direction of the chief school administrator in accordance with requirements established by the commissioner.

(1) The district board of education shall review, discuss and adopt the annually developed objectives and action plans at a public meeting prior to September 30.

(2) The objectives and action plans of the district shall be submitted by September 30 to the county superintendent of schools who shall review and approve them no later than October 31.

(3) The district shall submit a report on the attainment of objectives to the county superintendent of schools by July 1. The county superintendent of schools shall, by August 15, submit a written analysis on the district's attainment of objectives to the chief school administrator and board secretary.

iii. A long range plan containing a five-year written schedule and procedure for evaluation and improvement of all curriculum and educational services shall be developed and implemented.

2. The school and community relations element of the district shall be rated acceptable upon documentation of performance in five indicators as follows:

i. The district board of education shall share information with the community.

ii. The district board of education shall provide parents or guardians as well as other district residents and teaching staff members opportunities for discussion regarding State rules and local school procedures for implementation of district goals, objectives and standards through one or more public meetings of the district board of education. The initial meeting shall be held prior to September 30 of each year. The district board shall publish a special notice 10 days in advance of each meeting describing the purpose, listing the items to be discussed and indicating the availability of material relative to such items. The discussion at such meeting(s) shall include, but not be limited to:

(1) The annual reports of the district submitted to the Commissioner of Education, pursuant to N.J.S.A. 18A:7A-11, and N.J.A.C. 6:8-3.1 and 6:8-3.2;

(2) The result of:

(A) The annual evaluation of the district's objectives and action plans;

(B) The statewide and district testing programs including analysis and interpretation of schools and district performance;

(C) The objectives and action plans to be implemented to remediate needs identified through district needs assessment.

(3) The documents listed in (1) and (2) above shall be accessible to the public for inspection at such meetings and shall be available upon request at the earliest possible time in accordance with the provisions of the public records law, N.J.S.A. 47:1A-1 et seq.;

iii. The district board of education shall provide opportunity for comment by the public at its regularly scheduled meetings.

iv. The district shall involve business, industry and other community resources in the schools.

v. The district shall involve the community as advisors in the decision-making process.

3. The comprehensive curriculum and instruction element of the district shall be rated acceptable upon documentation of performance in

seven indicators as follows:

i. The district board of education shall approve annually a curriculum for all grades from pre-kindergarten through grade 12 for all subjects including all State mandated programs and services.

(1) The district shall implement the curriculum which was adopted by the district board of education.

(2) The district shall provide for articulation of the curriculum.

ii. The district shall make provisions for identifying pupils with exceptional abilities and for providing them with an educational program and services.

iii. The instructional program shall provide all pupils with guidance and counseling.

iv. The instructional program of the district shall provide all pupils with a library skills program.

v. The district shall introduce instruction in effective study and work skills early in the curriculum and reinforce such instruction throughout the curriculum.

vi. The district shall make provisions for identifying disruptive pupils and for providing them with an appropriate educational program and services.

vii. The district shall make provisions for identifying disaffected pupils and for providing them with an educational program and services.

4. The pupil attendance element of the district shall be rated acceptable upon documentation of performance in three indicators as follows:

i. The average daily attendance rate for each district shall be 90 percent or higher as calculated for the school year immediately prior to the school year in which the district is monitored.

(1) The district shall develop and implement an attendance improvement plan when the average daily attendance rate is between 85 and 89.9 percent.

(2) If the attendance rate for the district is less than 85 percent, performance for this element shall be rated unacceptable.

ii. The average daily attendance rate for each school within the district shall be 85 percent or higher.

(1) The district shall develop and implement an attendance improvement plan for each school within the district that has an average daily attendance rate between 80 and 84.9 percent.

(2) If the attendance rate for any school is less than 80 percent, performance for this element shall be rated unacceptable.

iii. The district shall develop and implement an improvement plan to reduce the rate of pupils who drop out after completion of eighth grade.

5. The facilities element of the district shall be rated acceptable by documentation of performance in four indicators as follows:

i. The district board of education shall develop and implement a five year comprehensive maintenance plan.

ii. The district shall perform an annual inspection of buildings to insure adherence to health and safety laws.

iii. The district board of education shall approve and implement a plan to upgrade or eliminate all substandard classrooms pursuant to law and rule.

iv. The district board of education shall review and revise, as necessary, the long-range facilities plan of the district at least every five years.

6. The staff element of the district shall be rated acceptable by documentation of performance in seven indicators as follows:

i. All professional staff members shall be certified in their area(s) of assignment pursuant to law and rule.

ii. All substitute teachers and aides shall be employed pursuant to law and rule.

iii. The annual rate of occasional professional staff absenteeism, including teachers and administrators, shall not exceed five percent; or

iv. The district shall develop and implement an attendance improvement plan approved by the board of education when the annual rate of occasional professional staff absenteeism exceeds 3.5 percent.

v. The district shall observe and evaluate tenured and nontenured teaching and administrative staff pursuant to law and rule.

vi. The district shall adopt and implement a staff development program based on the assessed needs of the district.

vii. The chief school administrator shall recommend to the district board of education formal appointment of all teaching staff members.

7. The mandated programs element of the district shall be rated acceptable upon documentation of performance in three indicators as follows:

i. The district shall implement a basic skills improvement plan pursuant to N.J.A.C. 6:8-6.3.

(1) The basic skills improvement plan shall be approved by the county superintendent of schools.

(2) The district shall communicate a description of the basic skills

improvement plan to the public.

ii. The district shall implement the bilingual and English-as-a-second language (ESL) education plan pursuant to N.J.A.C. 6:31.

(1) The bilingual and ESL education plan shall be approved by the county superintendent of schools.

(2) The district shall communicate a description of the bilingual and ESL plan to the public.

iii. The district shall implement the special education plan pursuant to N.J.A.C. 6:28.

(1) The special education plan shall be approved by the county superintendent of schools.

(2) The district shall communicate a description of the special education plan to the public.

8. The mandated basic skills test element of the district shall be rated acceptable upon documentation of achievement in two indicators as follows:

i. Seventy-five percent of the pupils in grade nine of each school shall have passed the State mandated High School Proficiency Test pursuant to N.J.A.C. 6:39-1.2(a) and (b).

ii. Seventy-five percent of the pupils in grade three and 75 percent of the pupils in grade six in each school of the district shall score at or above the minimum level of proficiency established by the State Board of Education for commercially published tests or district criterion-referenced tests.

9. The equal educational opportunity and affirmative action element of the district shall be rated acceptable by documentation of performance in three indicators as follows:

i. Where applicable, the district shall implement a desegregation plan approved by the Commissioner of Education.

ii. Annually, the district shall review progress toward the objectives of the State approved affirmative action plans for classroom and employment practices of the district.

iii. Annually, the district shall implement the affirmative action plans, including inservice training.

10. The financial element of the district shall be rated acceptable upon documentation of performance in six indicators as follows:

i. The chief school administrator shall present to the district board of education accurate and timely fiscal and statistical reports of the district pursuant to law and rule.

ii. The fiscal and statistical reports of the district shall be accurate and timely in transmittal to county, state and federal offices pursuant to law and rule.

iii. The annual budget for the district shall be developed, approved and presented to the public pursuant to law and rule.

(1) The district board of education shall submit a proposed budget to the county superintendent of schools on or before January 15 in an authorized budget format.

(2) The proposed budget shall be reviewed and approved by the county superintendent of schools prior to its advertisement.

iv. The district shall have an annual audit of accounts and financial transactions pursuant to law and rule and state audits as determined by the Commissioner of Education.

(1) Within 30 days of receipt, the district board of education shall accept and discuss the annual or State audit at a regularly scheduled board meeting.

(2) The district board of education shall implement the recommendations cited in the annual or State audit and shall report such implementation to the Commissioner of Education.

v. The district shall not incur a deficit pursuant to N.J.A.C. 6:20-2.13.

vi. All pupil transportation costs shall be reviewed and recommended for approval of State aid by the county superintendent of schools.

6:8-4.4 Findings

(a) The monitoring team shall record its findings on each element required by this chapter, using worksheets prescribed by the Commissioner of Education.

1. The monitoring team shall meet with the chief school administrator and board secretary at an exit conference to review its findings and outline future directions for the district.

2. The county superintendent of schools shall send a formal notification of the findings to the chief school administrator and board secretary within 20 workdays of the completion of the monitoring visit.

3. The notification shall include:

i. Copies of the completed worksheets;

ii. A copy of the recommendation to the commissioner of the certification status of the districts; and

iii. If necessary, a statement of future actions to be taken by the district.

4. The district shall, within 60 days of the receipt of formal notification, discuss the findings of the monitoring team at a regular or special meeting of the board of education.

6:8-4.5 Certification

(a) Certification of a district shall be based on an acceptable rating of all indicators in the 10 essential elements required by this chapter.

1. For each district that receives an acceptable rating on all indicators in the 10 essential elements, the county superintendent of schools shall submit a recommendation for certification and a summary report of the findings to the Commissioner of Education. The commissioner, with approval of the State Board of Education, shall notify the district of State certification.

2. For each district that receives an unacceptable rating on any required indicator(s) in the 10 essential elements, the county superintendent of schools shall submit a summary report of the findings and a recommendation to the commissioner that the district not be certified. The district will then implement the Level II process, pursuant to N.J.A.C. 6:8-5.1 et seq.

(b) A district rated as unacceptable may, with approval of the district board of education, petition the county superintendent of schools to rescind the rating by presenting written documentation of its performance on indicators rated as unacceptable. The assistant commissioner, Division of County and Regional Services, shall rule on petitions when there is lack of agreement on acceptable performance.

6:8-4.6 Failure of a certified district to meet the State mandated High School Proficiency Test standards

(a) A district which falls below the passing standards for the State mandated High School Proficiency Test (HSPT) pursuant to N.J.A.C. 6:8-8.3(b)8i and has been determined by the Commissioner of Education that it may not meet the HSPT standard within the district's five-year certification period shall be required to develop a local planning objective and improvement plan to bring the district's performance to the prescribed standard.

1. The objective and improvement plan shall be approved by the district board of education and submitted to the county superintendent for review and approval.

2. The county superintendent shall periodically review the progress of the district in meeting the objective and in implementing the improvement plan.

(b) The district shall have two school years to achieve an interim standard of a minimum of 60 percent of ninth grade students passing the High School Proficiency Test.

(c) If a district fails to implement the improvement plan and/or fails to achieve the interim standard, the county superintendent shall recommend to the Commissioner of Education that the district's certification be rescinded.

(d) As a result of the county superintendent's recommendation, the commissioner may issue an order requiring the district to show cause as to why the State Board of Education should not rescind the district's certification.

(e) Upon rescission of the district's certification, the district shall be required to undergo the Level II corrective action process pursuant to N.J.A.C. 6:8-5.1.

SUBCHAPTER 5. CORRECTIVE PLANS

6:8-5.1 Level II review process

(a) A Level II review process shall be implemented when a local school district is formally notified by the county superintendent of schools after monitoring that the district is not certified.

1. The chief school administrator shall organize a self study team within one month of notification, according to established procedures.

i. The chief school administrator shall inform the county superintendent of schools that a team has been formed.

ii. The county superintendent of schools shall acknowledge formation of the team, confirm its task and establish a deadline for submission of the improvement plan.

2. The team shall analyze the nature and causes of the problem identified by the monitoring team and within three months develop an improvement plan to correct the problem. The improvement plan shall contain the following components:

i. Objective(s);

ii. Activities;

iii. Person(s) responsible;

iv. Timelines; and

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vi. Documentation/evaluation of completed activity.

3. The plan shall be submitted to the district board of education for approval.

(b) The approved plan shall be submitted to the county superintendent of schools.

1. The county superintendent of schools, after reviewing the improvement plan with the assistant commissioner, Division of County and Regional Services shall approve or disapprove the plan within one month of receipt.

2. If the plan is approved, the chief school administrator shall be authorized to implement the plan.

3. If the plan is unacceptable, it shall be referred back to the chief school administrator with recommendations.

4. The district shall have one month to make the necessary revisions and resubmit the plan to the county superintendent of schools for approval.

(c) The district shall correct the deficiency(ies) in accordance with the approved improvement plan.

(d) The district's chief school administrator shall make periodic progress reports at district board of education public meetings.

(e) The county superintendent of schools shall monitor progress and conduct interim reviews at least once every three months by reviewing the chief school administrator's reports to the board of education, by conducting onsite visits or both.

(f) At the completion of the improvement plan activities, the county superintendent of schools, in consultation with the assistant commissioner, Division of County and Regional Services, shall determine the scope of the required reassessment of the district's current status with regard to all elements and indicators.

(g) The county superintendent of school shall monitor the district to determine that all elements and required indicators have been achieved.

1. A formal notification of the findings shall be sent by the county superintendent of schools to the chief school administrator and board secretary within 20 workdays of the completion of the monitoring visit.

i. The notification shall include:

(1) Copies of the revised worksheets;

(2) A copy of the recommendation to the Commissioner of Education of the certification status of the district; and

(3) If necessary, a statement of future actions to be taken by the district.

2. The district shall, within 60 days of the receipt of formal notification, discuss the findings of the monitoring team at a regular or special meeting of the district board of education.

3. If the district has achieved an acceptable rating on all elements and indicators, the county superintendent of schools shall submit a recommendation for certification and a summary report of the findings to the Commissioner of Education.

i. The commissioner, with approval of the State Board of Education, shall notify the district of State certification.

4. If the district receives an unacceptable rating on any element(s) and required indicator(s), the county superintendent of schools shall recommend to the commissioner that the district not be certified.

6:8-5.2 Level III corrective action

(a) A district which fails to become certified as a result of its own corrective action pursuant to N.J.A.C. 6:8-5.1 shall be examined by a review team consisting of an external committee appointed by the county superintendent of schools from among qualified staff of other districts and supplemented by the Department of Education's compliance unit.

1. The review team shall review the identified deficiencies of the district.

2. Prior to the team's review of the district, the county superintendent shall provide the team with background information about the district, results of Level I monitoring, recommendations of the Level II self-study team and the Level II monitoring report of findings.

3. The team shall assess the reasons for the inability of the district to correct the identified deficiencies.

(b) The team shall prepare a report of the identified deficiencies of the district and submit the report to the assistant commissioner, Division of County and Regional Services within 15 calendar days after completion of the team's review of the district. The report shall include two primary components:

1. Specific findings and directives for correcting programmatic deficiencies.

2. An assessment of potential causative factors that contribute to the district's deficiencies.

(c) The assistant commissioner, Division of County and Regional Services, in consultation with the county superintendent, chairperson of the review team, coordinating county superintendent and director of compliance, shall review the team's report to determine if the district shall begin implementation of a corrective action plan or, if conditions within the district warrant, the initiation of a comprehensive compliance investigation, pursuant to N.J.A.C. 6:8-5.3.

1. If it is determined that the district can resolve the deficiencies through the implementation of a corrective action plan, the assistant commissioner shall require the county superintendent to transmit, within seven days, the team's findings and directives to the chief school administrator of the district.

2. Upon receiving the findings and directives, the chief school administrator of the district shall develop a corrective action plan to implement the directives.

3. Within 45 days of receipt of the findings and directives, the chief school administrator shall submit a corrective action plan approved by the district board of education to the county superintendent for approval.

(d) The district shall complete the approved corrective action plan activities within one year.

1. Monthly, until the district is certified, the county superintendent shall monitor and assess the progress of the district in implementing the corrective action plan and shall submit quarterly reports to the assistant commissioner, Division of County and Regional Services.

2. The county superintendent, upon the completion of the district's corrective action plan activities shall determine whether the standards for certification have been achieved and shall recommend to the assistant commissioner, Division of County and Regional Services that the district be certified.

3. The assistant commissioner, Division of County and Regional Services shall submit to the Commissioner of Education a formal report evaluating the corrected deficiencies and recommending certification of the district.

(e) If a district fails to achieve certification after completion of a Level III corrective action plan, but demonstrates reasonable progress in correcting its deficiencies, corrective action plan activities and timelines may be extended by the assistant commissioner, Division of County and Regional Services. However, if the district does not demonstrate reasonable progress toward meeting certification standards, a comprehensive compliance investigation will be initiated, pursuant to this chapter.

6:8-5.3 Compliance investigation

(a) A comprehensive compliance investigation will be conducted under the supervision of the assistant commissioner, Division of County and Regional Services under one of the following circumstances:

1. The review team's report indicates that conditions exist within the district that may preclude the successful implementation of a corrective action plan.

2. After completion of the corrective action plan activities, a district fails to achieve certification and does not demonstrate reasonable progress toward meeting certification standards, pursuant to N.J.A.C. 6:8-5.2(e).

(b) The director of the Department of Education's compliance unit shall organize and supervise an investigatory team to assess conditions in the district.

1. A comprehensive audit of the district's governance, management and fiscal operations shall be conducted by a private auditing agency under contract to the Department of Education.

2. The compliance unit shall conduct a thorough investigation of the district's programmatic, fiscal and management activities.

(c) The director of the Department of Education's compliance unit shall submit a report of investigatory findings to the assistant commissioner, Division of County and Regional Services.

(d) Based on the report of investigatory findings, the assistant commissioner shall submit to the Commissioner of Education a recommended administrative order outlining such corrective action as is deemed necessary.

(e) The Commissioner of Education, after a plenary hearing, may order the implementation of an administrative order requiring the district to implement the corrective action.

6:8-5.4 Corrective action by Commissioner of Education

Any noncertified district which does not demonstrate reasonable progress toward compliance with the provisions of N.J.S.A. 18A:7A-1 et seq. (Public School Education Act of 1975) and New Jersey Administrative Code Title 6, Education and toward the resolution of major problems shall be submitted to further intervention by the Commissioner of Education, as provided by law.

SUBCHAPTER 6. PREVENTIVE AND REMEDIAL PROGRAMS
IN COMMUNICATIONS AND
COMPUTATION

6:8-6.1 Assessment procedures

(a) Each pupil shall be assessed, upon entrance into the educational system and annually thereafter, to identify pupils not meeting state minimum levels of proficiency. Pupils so identified shall be provided with an individual comprehensive assessment. In instances of pupil transfers, assessment records shall be forwarded from the previous school or district to the school or district in which the pupil is newly enrolled.

(b) Limited English proficient students shall be assessed to identify pupils not meeting state proficiency levels.

6:8-6.2 Individual Student Improvement Plans

(a) For pupils performing below state minimum levels of proficiency after completion of three academic years of instruction beyond kindergarten, the district board of education shall develop procedures for the development and implementation of Individual Student Improvement Plans. These procedures shall include but not be limited to:

1. A process for the development of the Individual Student Improvement Plan including those persons responsible for the development and implementation of the plan;

2. Identification of a teaching staff member responsible for monitoring the development, implementation and evaluation of the Individual Student Improvement Plan; and

3. A process for notifying the pupil and the parent(s) or guardian(s) of the need for a content of the Individual Student Improvement Plan in the language or mode of communication which is understood by the pupil and the parent(s) or guardian(s).

6:8-6.3 State compensatory education preventive and remedial programs

(a) State compensatory education preventive and remedial programs, supplemental to the regular school programs, shall be established by the district board of education. Application for and approval of these State compensatory education programs shall be based upon the following:

1. Enrollment in appropriate preventive and remedial programs of all pupils who have academic needs that prevent them from succeeding in the regular school program, and who are:

i. In grades K-3 and do not meet locally established, State approved standards of proficiency in communications and/or computation; or

ii. Are in grades 4-9 and do not meet the State minimum levels of pupil proficiency in communications and/or computation; or

iii. Are in grades 10-12 and do not pass the State mandated High School Proficiency Test in communications and/or computation.

2. Procedures for the screening of currently and newly enrolled pupils to determine whether they should be enrolled in preventive and remedial programs. Screening procedures shall be completed within one month of the date of enrollment. These procedures should include those diagnostic measures which are used to predict the relevant learning difficulties and needs;

3. Instructional and related activities and services which are supplemental to the regular school program and based upon identified priority pupil needs and designed to meet the academic, social, economic and environmental needs of enrolled pupils.

4. Procedures to provide ongoing communications between teaching staff members and parents or guardians of pupils who are participating in State compensatory education preventive and remedial programs;

5. Evaluation procedures which measure pupil gains in basic skills proficiency which are related to preventive and remedial program objectives and to State minimum levels of pupil proficiency in communications and computation;

6. Evaluation of the effectiveness of State compensatory education preventive and remedial programs in terms of pupil gains in basic skills proficiency and other relevant indicators;

7. A detailed budget for administration, instructional personnel, paraprofessional and clerical personnel, instructional materials and supplies, equipment, staff training, health and community services;

8. Assurance of maintenance of effort in the provision of the regular school program.

(b) The commissioner shall determine annually, on or before August 15, which applications for compensatory education programs are approved and so notify each district board of education.

(c) State compensatory education funds shall be calculated and distributed on the basis of actual enrollment in approved programs as of the last school day of September.

(d) The Department of Education shall conduct studies and evaluate

findings annually after the effective date of this chapter in order to report the status of progress toward the attainment of State minimum levels of pupil proficiency in communications and computation skills.

SUBCHAPTER 7. PROMOTION AND HIGH SCHOOL
GRADUATION REQUIREMENTS AND
PROCEDURES

6:8-7.1 Promotion, remediation and graduation procedures

(a) District boards of education shall adopt policies and procedures for:

1. Pupil promotion, related to district goals, objectives and pupil proficiency;

2. Remediation opportunities for pupils to satisfy any failed proficiencies;

3. High school graduation requirements, pursuant to law and rule, which are consistent with the achievements of State and district goals, objectives and pupil proficiency with particular reference to reading, writing and mathematics skills as specified in (b), (c), (d) and (e) below;

4. Annual notification to pupils and parent(s) or guardian(s) of the policies and procedures for pupil promotion, remediation and the high school graduation requirements;

5. Notification to each entering ninth grade pupil and his or her parent(s) or guardian(s) of all State and local high school graduation requirements. In addition, at the beginning of each course required for graduation, each district board of education shall distribute a list of proficiencies required for successful completion of that course to all pupils and their parents or guardian(s);

6. Notification to each pupil and parent(s) or guardian(s) at appropriate times during the school year of the pupil's progress in meeting the promotion proficiencies and the high school graduation requirements;

7. Immediate consultation, not longer than 10 school days after the local school district becomes aware of the pupil's deficiencies, with the pupil's parents or guardian;

8. Appeal of promotion/retention decision by parent(s) or guardian(s) and adult pupils; and

9. Participation of parent(s) or guardian(s), teachers, and students, where appropriate, in the development of pupil promotion and remediation policies.

(b) District boards of education shall adopt policies and procedures for high school graduation of all pupils pursuant to law and rule which shall include but not be limited to performing at or above the State minimum levels of pupil proficiency on the State mandated High School Proficiency Test in reading, writing, and mathematics skills.

1. Pupils who perform below State minimum levels of pupil proficiency on one or more areas of the State mandated High School Proficiency Test shall be provided with an individual comprehensive assessment as specified in N.J.A.C. 6:8-6.1. Based on the individual comprehensive assessment, the pupil shall receive the necessary services to remedy the identified deficiencies. Such services shall include but not be limited to the development and implementation of an Individual Student Improvement Plan. This individual plan may be carried out through the regular program or through an extended school day, extended school week or extended school year. Comprehensive pupil assessment and re-evaluation of the individual plans shall take place at least once each year until all identified deficiencies have been remediated.

2. Each local school district shall develop procedures for the development of Individual Student Improvement Plans. These procedures shall include but not be limited to those procedures set forth in N.J.A.C. 6:8-6.2.

3. Pupils who perform below State levels of pupil proficiency on one or more areas of the State mandated High School Proficiency Test shall be provided an opportunity to demonstrate mastery in each academic year.

4. Pupils who perform below State minimum levels of pupil proficiency on one or more areas of the State mandated High School Proficiency Test and have satisfied all other State and local graduation requirements shall be provided an additional evaluation during the twelfth year which is based on the Individual Student Improvement Plan required under paragraph 1 above. This evaluation, the Special Review Assessment, may include but is not limited to:

i. Performance on State tests, including all retests;

ii. Performance on locally selected tests;

iii. Performance on course work;

iv. Practical demonstrations of specific skill mastery which occur either in or outside of school but which are not part of regular course work;

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- v. Formal interview with the parents;
- vi. Formal interview with the teaching staff;
- vii. Guidance counselor and/or psychologist review, as appropriate;
- viii. Visual, auditory and/or medical data, as appropriate;
- ix. Examination of credit and curriculum performance; and
- x. Examination of pupil proficiencies in other areas;

5. The findings of the evaluation required in paragraph 4 above shall be recorded on a Special Review Assessment Student Profile Form developed by the Department of Education. An independent evaluation of these data must be made by a local district review panel comprised of at least three teaching staff members not currently instructing the pupil. On the basis of the evidence listed in paragraph 4 above and the recommendations of the review panel, the building principal and the chief school administrator may certify satisfactory attainment of the State minimum levels of pupil proficiency in reading, writing and/or mathematics. Whether or not such certification occurs, the district must retain the Student Profile Form including all attachments for one year after the pupil's class graduates. If such certification occurs, the Special Review Assessment Student Profile Form must be forwarded to the county superintendent of schools by March 1 of the regularly scheduled graduation year. Based upon the documentation provided by the local district, the county superintendent of schools must certify whether or not the State minimum levels of pupil proficiency have been achieved and notify, in writing, the chief school administrator of this decision.

6. Pupils classified pursuant to N.J.S.A. 18A:46-1 may be exempted from the State minimum levels of pupil proficiency requirement based on the recommendation of the child study team, as noted in the pupil's Individual Education Program and with the approval of the chief school administrator.

7. Any out-of-school youth or adult age 18 or older who has otherwise met all State and local graduation requirements but has failed to pass the State mandated High School Proficiency Test may return at times which have been scheduled and publicly announced by the district for the purpose of taking the necessary test. Upon certification of passing the test, a State endorsed diploma will be granted by the high school of record.

(c) Minimum high school graduation requirements include the following:

1. District boards of education providing high school diplomas, in cooperation with any sending district(s), shall adopt policies and procedures for defining minimum high school curriculum requirements and locally determined proficiencies therein, pursuant to law and rule, which shall include but not be limited to:

i. Requiring the successful completion of a program of study in grades nine through 12, effective with the September, 1987 grade nine class, which shall include, but not be limited to:

(1) One credit year of English for each year of enrollment, up to four credit years;

(2) Two credit years of mathematics effective through August, 1990; three credit years of mathematics effective with the September, 1990 grade nine class;

(3) Two credits of social studies and history as required by N.J.S.A. 18A:35-1 through August 1988, and one additional credit year of world history/cultures effective with the September, 1988 grade nine class;

(4) One credit year of natural or physical science through August, 1989; two credit years of natural or physical science effective with the September, 1989 grade nine class;

(5) One credit year of physical education, health and safety for each year of enrollment as required by N.J.S.A. 18A:35-7.

(6) One credit year of fine, practical, and/or performing arts until August, 1988; and

(7) One-half credit year of career education until August, 1988.

ii. Pupils may meet the curriculum requirements set forth in subparagraph i. above through demonstration of mastery of the locally determined proficiencies in each of the above curriculum areas or through program completion procedures noted in (d) below. This determination shall be made by the district board of education.

2. Pupil proficiencies in i. above shall be developed as follows:

i. The Commissioner of Education shall provide guidelines to district boards of education for the development of local proficiencies for each curriculum area.

ii. District boards of education shall establish proficiency requirements in each curriculum area. Upon approval of these proficiencies by the district board of education, demonstration of mastery will be required as a condition of graduation.

(d) Subject to approval of the State Board of Education:

1. Each district board of education shall establish graduation requirements on the basis of either course credits, program completion or a combination of course credits and program completion.

i. Course credit requirements shall be established as follows:

(1) Each four-year high school shall establish a minimum number of not less than 92 credits to be required for graduation effective with the September, 1987 grade nine class; not less than 110 credits effective with the September, 1988 grade nine class.

(2) Each three year high school shall establish a minimum number of not less than 69 credits to be completed in grades 10 to 12 inclusive, effective with the September, 1987 grade ten class; not less than 82.5 credits effective with the September, 1989 grade ten class.

(3) Six-year schools may base their graduation requirements on formal completion of grades nine to 12 or 10 to 12 within the credit limits established for four-year or three-year high schools, respectively.

(4) Credit toward graduation shall be awarded by the following method:

(A) Credit shall be assigned on the same basis to all high school courses offered by the district board of education. One credit is awarded for a class period of instruction which meets one time per week during the school year. A class period of instruction is a minimum of 40 minutes. A credit year is awarded for a class period of instruction which meets daily for the school year and equals five credits.

(B) Credit may be assigned by each district board of education for curricular activities as defined in N.J.A.C. 6:27-1.13.

(C) Approved cooperative education program credits shall not exceed 15 credits per year.

ii. Credit year requirements set forth in (c) above may be met in whole or in part through program completion as follows:

(1) District boards of education may determine and establish a set number of curricular activities or programs for promotion and graduation purposes.

(2) Programs shall be planned for individuals and/or a group based on specific instructional objectives.

(3) The principal shall certify completion of curricular activities or programs based upon specified instructional objectives.

(4) Group programs based on specific instructional objectives shall be approved in the same manner as other approved courses. Individual programs shall be on file in the local district and subject to review by the commissioner or his or her designee.

3. District boards of education shall establish pupil attendance requirements appropriate to each of the particular educational programs.

(e) Successful completion of the requirements set forth in (b), (c), and (d) above and any local requirements shall be required as conditions for awarding a State endorsed diploma, except as provided for seniors entering military or naval service pursuant to N.J.S.A. 18A:36-17. No district board of education may issue a high school diploma without State endorsement.

(f) Review and reporting rules include the following:

1. Annually, not later than September 30, the chief school administrator shall report at a public meeting to the district board of education and the Commissioner of Education the number of pupils graduated and the number of pupils denied graduation from the prior 12th grade class based on the provision of this chapter. The chief school administrator shall include in the annual report the number of pupils graduated under the special education and special review assessment procedures noted in this subsection;

2. The Commissioner of Education, in accordance with law and rule, shall report to the State Board of Education on the status and outcomes of the promotion and graduation procedures;

3. District boards of education shall submit their graduation requirements on forms provided by the State Department of Education to the commissioner or his or her designee. District boards of education shall update this filed copy as their graduation policies are revised;

4. The Commissioner of Education or his or her designee shall review and approve the district board of education policies and procedures for pupil promotion, remediation and high school graduation requirements;

5. The Commissioner of Education or his or her designee shall monitor the implementation of the promotion, remediation and high school graduation policies and procedures; and

6. From time to time, but at least once every five years, the State Board of Education and district boards of education shall review and update their promotion and graduation requirement policies as a result of the State and local goal review processes noted in N.J.S.A. 18A:7A-8 and N.J.A.C. 6:8-2.3 and 6:8-4.3(a)1i.

SUBCHAPTER 8. INTERIM RULES FOR THE EVALUATION OF ELEMENTS AND STANDARDS FOR SCHOOL DISTRICTS MONITORED BETWEEN JANUARY 1, 1984 AND DECEMBER 31, 1986

6:8-8.1 Conditions

(a) This subchapter shall apply to school districts monitored between January 1, 1984 and December 31, 1986.

1. Any district that failed to become certified during that period shall be required to take corrective action as described in N.J.A.C. 6:8.5.

2. The corrective action shall address deficiencies identified during monitoring of the elements and standards described in N.J.A.C. 6:8-8.3.

(b) This subchapter shall become operative January 1, 1987 and expire June 30, 1988.

6:8-8.2 Monitoring categories

(a) The following are definitions of monitoring categories of non-certified districts:

1. Monitoring Category A—Local school districts for which the county office completed monitoring before January 1, 1986 and did not achieve the minimum basic skills (MBS) standard.

2. Monitoring Category B—Local school districts for which the county office completed monitoring before January 1, 1986 and which achieved the minimum basic skills (MBS) standard.

3. Monitoring Category C—Local school districts for which the county office completed monitoring before July 1, 1986 and on or after January 1, 1986.

4. Monitoring category D—Local school districts for which the county office completed monitoring before January 1, 1987 and on or after July 1, 1986.

6:8-8.3 Procedures for evaluation and certification

(a) Each school district within a county shall be monitored between January 1, 1984 and December 31, 1986 and, if certified, every five years thereafter by a team of persons from the county office under the supervision of the county superintendent of schools.

1. The county superintendent of schools shall establish a monitoring schedule with the approval of the assistant commissioner, Division of County and Regional Services.

2. Each district scheduled for monitoring shall be notified in advance by the county superintendent of schools. The dates for such monitoring visits to the district shall be established in consultation with the chief school administrator of the district.

3. A pre-monitoring conference shall be conducted by a representative of the county superintendent of schools with a representative of the district to establish the monitoring format.

4. Prior to the monitoring visit, the county office representative shall request that the district representative provide such documentation materials that are not available at the county office. The district representative shall be directed to either forward the documentation materials or make them available at the time of the monitoring visit.

(b) During the monitoring visit, the team shall examine 10 essential elements of the educational process of the district using prescribed indicators of acceptable performance and documentation as follows:

1. The planning element of the district pursuant to N.J.A.C. 6:8-1.1 shall be rated acceptable upon documentation of performance in five indicators as follows:

i. The district board of education shall approve the objectives of the district after community participation and develop plans of action under the direction of the chief school administrator in consultation with teaching staff members. Documentation of these actions shall include but not be limited to the minutes of district board of education meetings, receipt of objectives and plans of action by the county superintendent of schools, and evidence of staff consultation and community participation.

ii. The county superintendent of schools shall approve the objectives and plans of action of the district pursuant to N.J.A.C. 6:8-1.1. The assistant commissioner, Division of County and Regional Services, shall approve the objectives and plans of action in the event of appeal. Documentation of these respective actions shall be a letter of approval from the county superintendent or the assistant commissioner.

iii. The district board shall review and discuss the annually developed objectives and plans of action at a public meeting prior to September 30. Documentation of this action shall include, but not be limited to, minutes of meetings of the district board, news releases or other evidence of dissemination.

iv. The plans of action of the district shall indicate who was involved in developing the plans and the method of involvement. Documentation shall consist of a list of persons involved and their responsibilities.

v. The plans of action of the district shall contain a long-range schedule for program evaluation. Documentation of such program shall be a written schedule and procedure for evaluating programs.

2. The school and community relations element of the district shall be rated acceptable upon documentation of performance in subparagraph i. below and one of the remaining three indicators as follows:

i. The district board of education shall share information with the community. Documentation of this shall include, but not be limited to, letters, newsletters or other media.

ii. The district board of education shall provide opportunity for comment by the public at regularly scheduled monthly meetings of the district board. Documentation of this opportunity shall be agenda of meetings, reports of ad hoc committees, reports of community surveys and other similar evidence.

iii. The district shall involve business, industry and other community resources in the schools. Documentation of this involvement shall be resource files, cooperative programs, industry loan of materials and/or services, field trips to business and industry and other similar evidence.

iv. The district shall involve the community as advisors in the decision making process of the district. Documentation shall be by reports of community surveys, ad hoc committees or advisory councils, and other similar evidence.

3. The comprehensive curriculum and instruction element of the district shall be rated acceptable upon documentation of performance in eight indicators as follows:

i. The district board of education shall approve a curriculum for all grades from kindergarten through grade 12 for all subjects including all State mandated programs and services. Documentation of the existence of the curriculum shall include a written or printed curriculum formally cited in the minutes of the meeting at which such curriculum was adopted by the district board.

ii. The district shall implement the curriculum which was adopted by the district board of education. Documentation shall include, but not be limited to, a written program of studies, a master schedule or reports of program evaluation.

iii. The instructional program of the district shall recognize the individual talents, interests, needs and exceptional abilities of pupils. Documentation of such recognition shall include, but not be limited to, a written program of studies, a master schedule or reports of program evaluation.

iv. The instructional program of the district shall provide all pupils with guidance and counseling. Documentation shall be a written plan to provide guidance and counseling services for all pupils from kindergarten through grade 12.

v. The instructional program of the district shall provide all pupils with a library skills program. Documentation shall be a written description of a library skills program.

vi. The district shall introduce instruction in effective study and work skills early in the curriculum and reinforce such instruction throughout the curriculum of the district. Documentation of these efforts shall be a written description of the sequential introduction and reinforcement of study skills and work habits through the curriculum.

vii. The district shall make provisions for identifying disruptive pupils and providing them with an educational program and services. Documentation of these provisions shall be a written description of the identification process, the results of needs assessment including out-of-school suspension and expulsion rates, and the year-end violence and vandalism report. If the district board of education deems the implementation of an improvement program as necessary for disruptive pupils, a written description shall be made available as documentation of the district program.

viii. The district board of education shall have the option of making provisions for identifying and providing for disaffected pupils. Documentation of these provisions shall include but not be limited to a description of the identification process, the results of a needs assessment and a statement of the program provisions.

4. The pupil attendance element of the district shall be rated acceptable upon documentation of performance in at least two of five indicators as follows:

i. The average daily attendance rate for the district shall be 90 percent or higher as calculated for the school year immediately prior to the school year in which monitored. Documentation shall be provided using district attendance data to divide total pupil days present for all pupils by total possible pupils days for all pupils and multiplying by 100. The resultant quantity subtracted from 100 shall be the attendance rate.

ii. The district shall implement an attendance improvement plan when the average daily attendance rate is calculated to be between 85 and 89.9

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percent for the immediate prior school year. If the rate for the district is less than 85 percent, performance for this element shall be rated unacceptable. Documentation shall be written attendance improvement plan based on the calculated average daily attendance rate of the district.

iii. Performance in the pupil attendance element shall be acceptable if the average daily attendance rate for each school within the district is at least 85 percent. Documentation shall be calculated using attendance data for the immediate prior school year for each school.

iv. The district shall implement an attendance improvement plan for each school within the district that has an average daily attendance rate for the immediate prior school year of 84.9 percent or below. If the rate is less than 80 percent, performance for this element shall be rated unacceptable.

v. The district shall implement an improvement plan to reduce rate of pupil dropouts. Documentation shall be a written plan to reduce the dropout rate based on an analysis of pupils who drop out of school after completion of the eighth grade.

5. The facilities element of the district shall be rated acceptable by documentation of performance in subparagraph iv. below and one of the remaining three indicators as follows:

i. The district board of education shall implement a multi-year comprehensive maintenance plan. Documentation shall be a written maintenance plan, budget appropriation and other such records of facilities maintenance.

ii. The district shall perform an inspection of buildings to ensure adherence to health and safety laws. Documentation shall be checklists and certificates issued within the last 12 months.

iii. The district shall approve a plan to upgrade or eliminate all substandard classrooms. Documentation shall be a substandard classroom facility plan.

iv. The district shall review and revise, as necessary, the long-range facilities plan of the district every five years. Documentation shall be an updated written facilities plan.

6. The professional staff element of the district shall be rated acceptable by documentation of performance in the first five of six indicators as follows:

i. The district board of education shall ensure that all professional staff members are certified for the position to which assigned. Documentation shall be obtained by comparison of data of the New Jersey State Department of Education Fall Report and certification records of the Department of Education.

ii. The annual rate of occasional absenteeism for district staff (including teachers and administrators) shall not exceed five percent. Documentation shall be calculated from district staff attendance data for the immediate prior school year by dividing total days of staff occasional absences by total possible days of attendance for all staff and multiplying by 100.

iii. The district board of education shall adopt a review and improvement process to address staff absenteeism, if the annual rate of occasional staff absenteeism exceeds 3.5 percent. Documentation shall be a written description of the review process and improvement plan based on district staff attendance records.

iv. The district shall observe and evaluate tenured and nontenured teaching and administrative staff pursuant to law and rule. Documentation shall be a written plan including a schedule of staff observation and evaluation dates, including the name(s) of person(s) responsible to conduct the evaluations.

v. The district shall adopt a staff development program based on the assessed needs of the district. Documentation shall show that school and individual development programs have been developed in consultation with teaching staff members and evaluated for demonstrable results.

vi. Minutes of meetings of the district board of education may be reviewed to determine that the chief school administrator has recommended to the district board formal appointment of all teaching staff members.

7. The mandated programs element of the district shall be rated acceptable upon documentation of performance in six indicators as follows:

i. The county superintendent of schools shall approve the basic skills improvement plan of the district. Documentation shall be a letter of approval from the county superintendent.

ii. The district board of education shall communicate a description of the basic skills improvement plan to the public. Documentation shall be an agenda and/or minutes of meetings of the district board of education indicating that the plan was described to the public or newsletters and/or other media were used.

iii. The county superintendent of schools shall approve the bilingual

and English as a second language (ESL) education plan of the district. Documentation shall be a letter of approval from the county superintendent.

iv. The district board of education shall communicate a description of the bilingual and ESL education plan to the public. Documentation shall be an agenda and/or minutes of the district board indicating that the plan was described to the public or newsletters and/or other media were used.

v. The county superintendent of schools shall approve the annual special education plan of the district. Documentation shall be a letter of approval from the county superintendent.

vi. The district board of education shall communicate a description of the annual special education plan to the public. Documentation of this communication shall be an agenda and/or minutes of meetings of the district board indicating that the plan was described to the public or newsletters and/or other media were used.

8. The mandated basic skills test (high school proficiency test) element of the district shall be rated acceptable upon documentation of achievement in the two indicators as follows:

i. Seventy-five percent of the pupils in grade nine of each school shall have passed the State mandated High School Proficiency Test pursuant to N.J.A.C. 6:39-1.2(a) and (b).

ii. Seventy-five percent of the pupils in grade three and 75 percent of the pupils in grade six of each school of the district shall score at or above the minimum level of proficiency established by the State Board of Education for commercially published tests or district criterion-referenced tests.

iii. On the effective date of N.J.A.C. 6:8-8, this section shall only apply to local school districts in Monitoring Category A and Monitoring Category B. This section shall not apply to local school districts in Monitoring Category C until July 1, 1987. This section shall not apply to local school districts in Monitoring Category D until January 1, 1988.

9. The mandated basic skills (minimum basic skills test) element of the district shall be rated acceptable upon documentation of achievement in the first two of the four indicators as follows:

i. Seventy-five percent of the pupils in grade nine of the district for the immediate prior school year shall have passed the State mandated minimum basic skills test pursuant to N.J.A.C. 6:39-1.2(a) and (b). Documentation shall be obtained by calculation using test results or data from the basic skills improvement application and/or plan of the district.

ii. Test scores of 75 percent of the pupils in grades three and six of each school of the district shall equal or exceed scores prescribed by the State Board of Education for commercially published tests or district criterion-referenced tests approved by the State Board of Education. Documentation shall be obtained from calculations using test results or data in the basic skills improvement application and/or plan of the district.

iii. The district shall develop a basic skills improvement plan pursuant to N.J.A.C. 6:8-6.3(a) for each school within the district that did not have 75 percent of the pupils in grade nine scoring at or above the State standard in the immediate prior school year. Documentation of the improvement plan shall be a written basic skills improvement plan and the test results for grade nine of each school of the district for the immediate prior school year.

iv. The district shall develop a basic skills improvement plan pursuant to N.J.A.C. 6:8-6.3(a) for each school within the district that did not have 75 percent of the pupils in each of grades three and six in the immediate prior school year score at or above the State standards for reading, writing and mathematics on standardized commercially published tests or State approved district criterion-referenced tests. Documentation of the improvement plan shall be a written basic skills improvement plan and the test results for grades three and six for each school of the district for the immediate prior school year.

v. On the effective date of N.J.A.C. 6:8-8, this section shall only apply to local school districts in Monitoring Category C and Monitoring Category D. This section shall not apply to Monitoring Category C after June 30, 1987. This section shall not apply to Monitoring Category D after December 31, 1987. This subsection (N.J.A.C. 6:8-8.3(b)) shall expire on December 31, 1987.

10. The equal educational opportunity and affirmative action element of the district shall be rated acceptable by documentation of performance in three indicators as follows:

i. The district shall have approved desegregation plan where required by the Commissioner of Education. Documentation of an approved desegregation plan shall be a written plan and a letter from the commissioner approving such plan.

ii. The district shall review annually progress in the objectives of the State approved affirmative action plans for classroom and employment practices of the district as developed pursuant to N.J.A.C. 6:4-1.3(b). Documentation of annual review shall be a statement by the district of progress in each plan.

iii. The district shall annually implement the affirmative action plans, including inservice training pursuant to N.J.A.C. 6:4-1.3(d), and the desegregation plan, if applicable. Documentation of the implementation of the plans shall be a written statement of objectives and activities for the district and a description of inservice training for personnel of the district.

11. The financial element of the district shall be rated acceptable upon documentation of performance in six indicators as follows:

i. The district board of education shall receive accurate and timely fiscal and statistical reports of the district pursuant to law and rule. Documentation shall be the recorded submission for the immediate prior school year of the financial reports of the secretary to the district board of education and the financial reports of the treasurer of school monies.

ii. The fiscal and statistical reports of the district shall be accurate and timely in transmittal to county, state and federal offices pursuant to law and rule. Documentation shall be the record of submission of applications and reports.

iii. The annual budget for the district shall be developed and presented to the public pursuant to law and rule. Documentation shall be the proposed budget as submitted to the public.

iv. The district shall have an annual audit of accounts and financial transactions pursuant to law and rule. Documentation shall be the completed audit of accounts and financial transactions for the immediate prior school year as accepted by the district board of education.

v. The district board of education shall implement recommendations cited in audit reports of the district and shall report such implementation to the commissioner. Documentation of implementation of the recommendations contained in the audit report shall be minutes of meetings of the district board of education and a letter of acknowledgment from the commissioner.

vi. The county superintendent of schools shall approve the cost of pupil transportation for the district. Documentation shall include but not be limited to approved transportation contracts and agreements, transportation route reports and reports of pupil transportation program costs for the district.

(c) The monitoring team shall record its findings on each element using worksheets prescribed by the commissioner.

1. The monitoring team shall review its findings and outline future directions for the district with the chief school administrator at an exit conference.

2. A formal notification of the findings shall be sent to the chief school administrator and board secretary within 10 workdays of the completion of the monitoring visit.

3. The notification shall include:

i. Copies of the completed worksheets;

ii. A copy of the recommendation to the commissioner of the certification status of the district; and

iii. If necessary, a statement of future actions to be taken by the district.

(d) Certification of a district shall be based on an acceptable rating of all required indicators in the 10 essential elements, as cited in this chapter.

1. For each district that receives an acceptable rating on the required indicators in the ten essential elements, the county superintendent shall submit a nomination for certification and a summary report of the findings to the commissioner.

2. The commissioner, with approval of the State Board of Education, shall notify the district of State certification.

(e) A district which is certified and is given an unacceptable rating in an indicator(s) which is not required for certification shall include, pursuant to N.J.A.C. 6:8-1.1, the unacceptable indicator(s) as an objective(s) in the annual educational plan of the district for the succeeding year.

(f) A district rated as unacceptable may petition the county superintendent to rescind the ratings by presenting written documentation of its performance on indicators previously rated as unacceptable.

(g) The assistant commissioner, Division of County and Regional Services shall rule on petitions when there is lack of agreement on acceptable performance.

(a)

Teacher Preparation and Certification New Jersey Educational Services Supplement to Standards for State Approval of Teacher Education

Proposed Repeal and New Rule: N.J.A.C. 6:11-12.11

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

Proposal Number: PRN 1986-403.

The agency proposal follows:

Summary

In 1983, the New Jersey legislature adopted a law licensing the profession of speech pathologists and audiologists (Senate Bill 967, Chapter 420, P.L. 1983). This law required that all speech pathologists complete a Master's degree, a professional internship and a professional examination as the minimum requirements necessary to ensure safe and effective practice by speech pathologists. The law exempted those speech pathologists who work in public school settings since requirements for these individuals are set by the State Board of Education.

The issue of requirements for public school practitioners was referred to the State Board of Examiners for consideration. After extensive deliberation, the Board of Examiners voted to recommend the proposed requirements as those which will assure that public school students are provided quality services by speech pathologists employed within the system. If adopted, the proposed requirements for public school speech pathologists will be identical to those now required by law for others in this profession. In addition, candidates for public school certification would be required to complete study in three topics relating to practice in the educational setting. Studying these topics may be completed by candidates prior to or during the first two years of employment. In requiring these special study topics, the State Board will assure that those who practice speech correction in the public schools are, in addition to having received basic preparation, attuned to the distinct needs of school students.

These new provisions are proposed to ensure that public school speech therapists have met preparation requirements which are: (a) considered essential by the profession itself; (b) required by New Jersey law for those who practice in other settings; (c) typical of those required by public school systems in the state, and, most importantly, (d) recommended by the State Board of Examiners as essential in assuring that quality services are provided to public school children.

Social Impact

The proposed changes are consistent with the Legislature's judgment as to what is considered minimally essential for the protection of the public interest in ensuring safe and effective practice in the field of speech pathology. It is anticipated that the changes will enhance the quality of services provided to school children. The proposed requirements will not affect those speech therapists who already hold certificates or those who apply for certification before August 31, 1988, the recommended effective date for the new standards. New applicants beyond the effective date of the rule will, however, need to conform to the revised preparation requirement.

Economic Impact

The proposed changes will have little economic impact upon the State or local school districts. The requirements will result in higher salaries for some speech pathologists in public schools as a result of their higher level of education. However, it should be recognized that the majority of those speech pathologists who currently practice in the schools already possess Master's degrees or are pursuing such degrees. Therefore, there would be no economic impact in those districts which already employ Master's level pathologists and little economic impact overall.

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

6:11-12.11 [Speech correction] **Speech-language specialist**

[(a) This endorsement is required for service as a speech correctionist in elementary, secondary or vocational schools.

(b) Requirements for the endorsement are as follows:

1. A minimum of eighteen semester-hour credits in the following areas or their equivalent, in separate or intergraded courses. Work in i. through vii. below is required.

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- i. Education and/or psychology of the handicapped;
- ii. Speech correction;
- iii. Introduction to audiology;
- iv. Anatomy and physiology of the ear and speech mechanisms;
- v. Phonetics;
- vi. Speech pathology;
- vii. Supervised clinical practice in speech therapy;
- viii. Voice, speech improvement;
- ix. Orientation in psychological tests;
- x. Reading disabilities;
- xi. Electives in special education.

(c) Requirements for the endorsement are as follows:

1. A bachelor's degree based upon a four-year curriculum in an accredited college;

2. Successful completion of one of the following:

i. A college curriculum approved by the New Jersey State Department of Education as the basis for issuing this endorsement; or

ii. A program of college studies including:

(1) A minimum of 45 semester-hour credits in general background courses distributed in at least three of the following fields: English, social studies, science, fine arts, mathematics, foreign languages, philosophy and psychology.

(2) Thirty semester-hour credits in the field of professional education, including the 18 specified for the endorsement in (b)1. above, and, in addition, at least nine semester hours of credit in the following fields of study, including work in areas (A), (B) and (C) below. These 30 credits do not include student teaching.

(A) Principles and practices of education. This group includes such areas as introduction to education, social and philosophical foundations of education, methods of teaching, audio-visual aids and individualizing instruction.

(B) Educational psychology. This group includes such areas as psychology of learning, child growth and development, adolescent psychology and mental hygiene.

(C) Curriculum. This group includes such areas as principles of curriculum construction, the elementary or secondary school curriculum, a study of the curriculum in one specific field and extracurriculum activities.

(D) Electives in education, guidance or special education.

3. Approved student teaching in therapy with children who have speech disorders.]

(a) **The speech-language specialist endorsement is required to provide service as a speech-language specialist in all public schools. The speech-language specialist must possess the professional preparation and experience to:**

1. **Make assessments, analyses and classifications of students' communication competencies and characteristics;**

2. **Plan, prepare and deliver treatment programs for children with speech and language deficiencies;**

3. **Serve as a resource person in the area of speech and language development and disorders to classroom teachers, parents, administrators and the child study team; and**

4. **Participate in the planning of educational programs for children with communication handicaps.**

(b) **Requirements for the speech-language specialist endorsement become operative September 1, 1988 and do not affect those individuals who already possess the endorsement or whose official applications have been received in the Office of Certification prior to that date.**

(c) **The requirements for the speech-language specialist endorsement are as follows:**

1. **A Master's degree in Speech-language Pathology from an accredited institution. Graduate preparation must include coursework in a coherent sequence covering the following areas:**

i. **Basic processes of normal human communication;**

ii. **Nature of disorders of human communication;**

iii. **Principles underlying assessment, treatment and prevention of speech, language and hearing disorders;**

iv. **Applications of speech-language pathology to the school setting; and**

v. **Extensive supervised field experience;**

2. **Graduate or undergraduate coursework in the areas listed below which is taken within or in addition to the Master's program. Job candidates who possess Master's degrees and meet all other requirements for certification except the following three study areas may be employed provisionally for a period of two years until these requirements are met.**

i. **Speech and language development in the preschool child, including such topics as Speech and Language Acquisition, Early Childhood Development and Infant Communication;**

ii. **Special education and learning disabilities, including such topics as Language and Learning Disabilities, A Survey of Special Education and Education of the Exceptional Child;**

iii. **Applications of speech-language pathology to the school settings, including such topics as Speech Program Development, Clinical Problems in the Public Schools and Administration of Speech and Hearing Programs in the Public Schools;**

3. **A minimum of 300 clock hours of supervised practicum experience with individuals who present a variety of communication disorders. This experience must be obtained within a speech-language pathology program of an accredited institution or in one of its cooperating programs. At least 100 of the 300 hours must be earned in work with children; and**

4. **Demonstrated comprehensive knowledge in the field of speech-language pathology through the achievement of a passing score on an examination as approved by the State Department of Education.**

(a)

Teacher Preparation and Certification New Jersey Educational Services Supplement to Standards for State Approval of Teacher Education

Proposed Amendment: N.J.A.C. 6:11-12.24

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

Proposal Number: PRN 1986-404.

The agency proposal follows:

Summary

The Work Experience Career Exploration Program (W.E.C.E.P.) is a cooperative education program that places handicapped and disadvantaged 14- and 15-year olds in nonhazardous occupations. The teacher-coordinator is responsible for the student's placement and follow-up evaluation. Currently, to be endorsed as a W.E.C.E.P. teacher-coordinator, a person must hold a valid New Jersey vocational education, industrial arts or home economics certificate, must have taught for a minimum of two years and have at least two years' occupational experience.

The proposed amendment allows teachers with two years of full-time teaching experience and a regular New Jersey instructional certificate to meet the certification requirement for W.E.C.E.P. teacher-coordinator provided that they have taken a program of college studies including at least one course in each of the following areas:

1. Principles and philosophy of vocational-technical education;

2. Problems in organizing and teaching cooperative education programs;

3. Curriculum construction in vocational-technical education; and

4. Vocational guidance.

The Department of Education and the Division of Vocational Education believe that occupational experience is not essential for W.E.C.E.P. certification because the W.E.C.E.P. teacher-coordinator is involved strictly in the coordination of nonhazardous occupational placements. The elimination of this requirement will benefit vocational as well as special needs service delivery in New Jersey. At present, many outstanding teachers of special needs students are prevented from serving as W.E.C.E.P. coordinators, because they fail to fulfill these requirements. Under the proposed amendment, however, these teachers will become eligible for W.E.C.E.P. certification.

Social Impact

Under the proposed amendment, vocational and special needs service delivery will be improved. Teachers who heretofore were denied W.E.C.E.P. certification based on a lack of occupational experience will become eligible for certification. New Jersey's vocational, handicapped and disadvantaged student populations will benefit from exposure to the talents and experiences of a greatly expanded group of W.E.C.E.P.-eligible teachers.

Economic Impact

The proposed amendment will have no economic impact on either the State or local school districts, as existing staff will be used, during the course of their normal duties.

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

6:11-12.24 Teacher-coordinator of cooperative vocational-technical education program

(a) An endorsement shall be required for the position of teacher-coordinator of cooperative vocational-technical education in the occupational area(s) of agriculture education, distributive education, health occupations, home economics education, business education[,] and work experience career exploration program (W.E.C.E.P.). The specific area(s) in which the holder may serve as teacher-coordinator will be designated on the endorsement. Such endorsement shall also entitle the holder to teach related vocational-technical subjects in the appropriate occupational area(s) designated on the endorsement[,] and to act as liaison between the school and the co-operating employer's training station in the respective subject area(s).

(b) The prerequisites for a teacher-coordinator's endorsement are:

1. A regular New Jersey instructional certificate in the appropriate occupational area to be coordinated. [(The appropriate instructional certificate for W.E.C.E.P. may be any regular endorsement in vocational education, industrial arts, or home economics.);]

2. Successful completion of one of the following:

i. Two years of teaching in the occupational area to be coordinated, plus two years of approved occupational experience; [(A W.E.C.E.P. teacher coordinator will be required to document two years of teaching under a New Jersey instructional certificate, plus two years of approved occupational experience.);] or

ii. A combination of:

(1)-(2) (No change.)

(3) A program of directed occupational field experience offered as part of a college curriculum directly related to the area to be coordinated[; and],

3. A program of college studies including one of the following:

i. (No change.)

ii. A program of college studies including at least one course in each of the following areas:

(1)-(2) (No change.)

(3) Curriculum construction in vocational-technical education; and

(4) (No change.)

(c) The requirements for a W.E.C.E.P. teacher-coordinator endorsement are as follows:

1. A regular New Jersey instructional endorsement;

2. Two years of full-time teaching experience under a valid instructional certificate; and

3. A program of college studies including at least one course in each of the areas as specified in (b)3.ii. above.

(a)

Health, Safety and Physical Education Audiometric Screening

Proposed Amendment: N.J.A.C. 6:29-8.1 and 8.2

Authority: N.J.S.A. 18A:1-1, 18A:4-15 and 18A:40-4.

Proposal Number: PRN 1986-405.

The agency proposal follows:

Summary

The Department of Education is proposing an amendment to allow the school nurse, before rescreening, to use an otoscope to look into the external ear canal of a pupil who has failed a hearing examination and identify any condition which could interfere with the hearing. The nurse could then identify possible problems such as cerumen (impacted ear wax) and otitis media (middle ear infection) that could receive prompt medical treatment and thus restore hearing. Both of the above conditions are easily detected and among the most common causes of hearing loss in children. Without this examination, a referral would be delayed for four to six weeks.

Social Impact

The social impact of the proposed amendment will be positive. The rule would provide for more efficient referral, medical evaluation and treatment of pupils with suspected hearing deficiencies. The provision should eliminate delays in the processes which are now rather common.

Economic Impact

The amendment will impose little or no additional economic burden upon those who avail themselves of these provisions since the process outlined in the amendments utilizes existing staff.

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

6:29-8.1 Definitions

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

"Audiometer" means an electroacoustical generator which provides pure tones at selected frequencies of output through calibrated earphones mounted in MX41/AR earmuffs. Audiometers shall be calibrated annually in accordance with ANSI S3.6-1969, American National Standard Specifications for Audiometers, which with all subsequent amendments and supplements is hereby adopted as a rule. **This document may be purchased from the American National Standards Institute, Inc., 1430 Broadway, New York 10018.**

[1. This document is available for review at the Division of School Programs, Department of Education, 225 West State Street, CN 500, Trenton, New Jersey 08625, or at the Office of Administrative Law, CN 301, Trenton, New Jersey 08625.]

[2. This document may be purchased from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.]

6:29-8.2 Screening procedures

(a) (No change.)

(b) Auditory screening shall be conducted for pupils who are:

1.-5. (No change.)

6. Referred to the [Child Study Team] **child study team** for evaluation;

or

7. (No change.)

(c) The medical inspector, certified school nurse[,] or the health care personnel shall conduct the hearing screening. All screening shall be conducted in cooperation with the school nurse.

(d) (No change.)

(e) If a pupil fails the first screening, the school nurse, using an otoscope, may look into the external ear canal and identify any condition which could interfere with the hearing. If there is a possible problem, the pupil and parent shall be notified and a recommendation made for a medical examination.

[(e)](f) A pupil who fails to respond to any one frequency in either ear shall be [screened again,] **given a second screening** in four to six weeks.

[(f)](g) If a pupil fails to respond to the same frequency or frequencies in the same ear on the second [valid] screening, the pupil shall be considered to have failed the screening and [should] **shall** be referred for further evaluation.

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

[(h)](i) A pupil who fails to respond at any one frequency on the third screening shall be considered to have failed the screening and [should] **shall** be referred for further evaluation.

[(i)](j) [The] **school nurse shall notify in writing the parent or guardian of pupils failing auditory screening [shall be notified in writing by the school nurse] of the necessity for additional evaluation by a physician or family health care provider.**

(b)

STATE BOARD OF EDUCATION

Area Vocational Technical and Private Schools

N.J.A.C. 6:46-1 through 6:46-9

Waiver of Executive Order No. 66(1978)

Authorized By: Governor Thomas H. Kean

Take notice that the regulations which address Area Vocational Technical and Private Schools, N.J.A.C. 6:46-1 through 6:46-9, adopted by the Department of Education, are due to expire on December 1, 1986 pursuant to the sunset provisions of Executive Order No. 66(1978). Although the Education Department intends to readopt these regulations, they will expire before readoption can be accomplished. Governor Thomas H. Kean has been informed by the Education Department that the readoption will be completed by December 1, 1987.

These regulations cover the operation of the 18 local area vocational school districts (LAVSDs), approval and regulation of 200 private vocational schools and the supervision of New Jersey's apprenticeship pro-

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gram. If the regulations are allowed to expire, the educational program of more than 7300 secondary vocational education students as well as more than 5000 apprentices will be disrupted, school districts will be denied access to over \$7 million in categorical aid, and the approval and reapproval of 200 private vocational schools serving more than 50,000 students will be disrupted. Also, apart from the disruption in educational services that would result from a lapse in the regulations, economic loss could result for private school owners.

Therefore, as Governor of the State of New Jersey and by the authority vested in him by Executive Order No. 66(1978), Governor Kean, on September 3, 1986, directed that the five-year sunset provision of Executive Order No. 66(1978) be waived for the regulations N.J.A.C. 6:46-1 through 6:46-9, and the expiration for these regulations has been extended for a period of one year from December 1, 1986 through, to, and including December 1, 1987.

HUMAN SERVICES

(a)

OFFICE OF THE COMMISSIONER

Referral of Handicapped Students for Adult Educational Services

Proposed New Rule: N.J.A.C. 10:12-3.

Authorized By: Drew Altman, Ph.D., Commissioner,
Department of Human Services.

Authority: N.J.S.A. 30:1-12; P.L. 1986, c.32.

Proposal Number: PRN 1986-392.

Submit comments by November 5, 1986 to:

Patricia Holliday, Ed.D.
Director, Office of Education
Department of Human Services
10 Quakerbridge Plaza
CN 700
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The new rule is being proposed as a result of Chapter 32, Public Law 1986, which was signed into law in the State of New Jersey on June 23, 1986. Presently, in accordance with N.J.A.C. 6:28, during a 21 year old handicapped pupil's last year in an educational program, a meeting shall be held to develop nonbinding written recommendations concerning services and resources available after the responsibility of the district board of education has ended. In addition, N.J.A.C. 6:28 requires that an educational plan be developed by each approved facility for each school age pupil leaving a Department of Corrections or Department of Human Services education program which includes the current individualized education program or a description of the general education program; and any other educational information necessary to formulate an appropriate educational program when the pupil returns to a local district.

The enacted legislation reinforces the process as stated in N.J.A.C. 6:28. At the age of 18, the multidisciplinary treatment team at each state facility will be required to provide written notice to the parent(s) or legal guardian(s) indicating that the student will not be entitled to receive tuition free education after the age of 21. This written notice shall describe, in detail, the opportunity for consent to have relevant information forwarded in a report to the Commissioner of Human Services. The purposes of this information is to determine whether the student will need educational services after the age of 21 and, if so, recommend possible adult educational services upon determination of need.

The Commissioner of Human Services, in consultation with the Commissioner of Education, shall recommend appropriate educational programs operated or approved by the Department of Human Services, Department of Education or other agencies, which may be available when the student attains the age of 21.

Social Impact

The proposed planning and referral process will aid in the identification of educational and vocational needs and provides the information necessary for the determination of services for students beyond the age of 21. This information will provide the basis for transitional planning which

can enhance the potential ability of these students to lead more independent and productive lives.

Economic Impact

The proposal will not, of itself, cause a negative economic impact. Existing staff within the state facilities, who are routinely involved in the educational evaluation of these individuals, will provide the evaluations; give notice to the parent(s) and guardian(s); report findings to the Commissioner of Human Services and Commissioner of Education; and determine the educational needs of young handicapped adults. The nature and variety of existing programs, both within the Departments of Human Services and Education, will be examined to ascertain the current level of service available and to develop recommendations to address the programmatic needs of these students.

Full text of the proposed new rule follows:

CHAPTER 12

REFERRAL OF HANDICAPPED STUDENTS FOR ADULT EDUCATIONAL SERVICES

SUBCHAPTER 3. GENERAL PROCEDURES

10:12-3.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

"Age 21" means the attainment of the 21st birthday before July 1.

"Learning disability teacher consultant" means an individual who possesses a learning disability teacher consultant certificate issued by the New Jersey Department of Education.

"Multidisciplinary treatment team" means an evaluation team consisting of a psychologist; a learning disability teacher consultant; a social worker and any other professional who may be involved in the evaluation or treatment of a child in a State facility.

"Psychologist" means an individual who possesses a school psychologist certificate issued by the New Jersey Department of Education.

"Relevant information" means that information in the possession of and used by the multidisciplinary treatment team to ascertain the physical, mental, emotional and cultural-educational factors which contribute to the child's handicapping condition, including but not limited to:

1. Results of physical and psychological examinations performed by private and school district physicians and psychologists;
2. Relevant information presented by the parent or legal guardian and teacher;
3. School data which bear on the child's progress including the child's most recent individualized education program;
4. Results of the most recent examinations and evaluations performed;
5. Results of other suitable evaluations and examinations possessed by the team.

"Social worker" means an individual who possesses a school social worker certificate issued by the New Jersey Department of Education.

"State facility" means a state facility for the retarded; a day training center which is operated by or under contract with the state and in which all the children have been placed by the state including a private school approved by the Department of Education which is operated under contract with the Bureau of Special Residential Services in the Division of Developmental Disabilities in the Department of Human Services; a state residential youth center; a state training school or correctional facility; a state child treatment center or psychiatric hospital.

"Student" means those individuals between the ages of 18 and 21 years, residing in a state facility which is operated by, or under contract with the state, who have not received a high school diploma and who have been determined eligible for special education.

10:12-3.2 Referral process

(a) The multidisciplinary treatment team at a state facility shall provide written notice to the parent or legal guardian of a student who is placed in a facility when the student attains the age of 18, or, if the student is over the age of 18 when placed in a facility, that the student is not entitled to receive tuition free education services after the age of 21.

1. Written notice shall describe in detail the parent's or guardian's opportunity to consent to having the student's name or other relevant information forwarded in a report to the Office of Education in the Department of Human Services and the Commissioner of Human Services for the purpose of determining whether the student will likely need educational services after the age of 21 and, if so, recommending possible adult educational services consistent with N.J.A.C. 6:28.

INSURANCE

(b) The multidisciplinary treatment team shall be composed of those State facility professionals routinely involved in the educational evaluation of school-age students.

1. The multidisciplinary treatment team shall evaluate students no later than six months before the student attains the age of 21.

2. The multidisciplinary treatment team shall act in consultation with any other professional staff member(s) or consultant(s) deemed appropriate by the multidisciplinary treatment team.

(c) Upon the written consent of the parent or legal guardian, the multidisciplinary treatment team shall forward the student's name and other relevant information in a report to the Office of Education, Department of Human Services, for the development of a recommendation for adult educational services. A copy of this report shall be forwarded, by the Office of Education, to the Commissioner of Human Services and the Commissioner of Education.

(d) The report shall contain such information as defined in N.J.A.C. 6:28, which contributes to the evaluation of the student's handicapping condition, including, but not limited to:

1. Results of physical and psychological examinations;
2. Relevant information presented by the parent or legal guardian and teacher;

3. Most recent individualized education plan;

4. Results of most recent examinations and evaluations performed.

(e) The multidisciplinary treatment team is not required to perform any examinations or evaluations not otherwise required by law.

(f) The Office of Education, Department of Human Services, in consultation with the Commissioner of Education or his designee, shall determine whether a student may need adult educational services and, if the need exists, shall recommend appropriate educational programs operated or approved by the Departments of Human Services and Education which may be available when the student attains the age of 21.

(g) The Commissioner of Human Services may conduct an additional evaluation of the student to determine if adult educational services will be needed.

(h) The program recommendations for each individual student shall be made available to the parent or guardian of the student no later than six months before the student attains the age of 21.

(i) If it is determined that a student will not require educational services beyond the age of 21, the Commissioner of Human Services, or his designee, shall notify the student's parent or guardian, in writing, of the determination no later than six months before the student attains the age of 21.

(j) The Office of Education, Department of Human Services, shall compile and submit an annual report to the Departments of Human Services and Education on October 1, 1987 and thereafter on or before October 1 of each year.

1. The annual report shall contain the number of cases submitted to the Office of Education and the type and severity of the handicapping condition involved in each case.

2. The annual report shall not contain any information which particularly identifies a student.

(k) N.J.A.C. 1:1-1.1 et seq. requires that issues in dispute determined to be contested matters by the Division Director (that is, agency head) shall be referred for an Administrative Hearing by the Office of Administrative Law.

(l) N.J.A.C. 10:6-2.1 provides that disputed matters determined to be non-contested shall be entitled to review only at the discretion of the Division Director and to the extent that such is consistent with Federal and State Law.

The following proposals are authorized by Kenneth D. Merin, Commissioner, Department of Insurance.

Submit comments by November 5, 1986 to:

Verice M. Mason

Assistant Commissioner

Legislative and Regulatory Affairs

Department of Insurance

CN 325

Trenton, New Jersey 08625

DIVISION OF ADMINISTRATION

(a)

Requirements for Filing a Downward Deviation in Currently Approved Rates

Proposed New Rule: N.J.A.C. 11:1-16

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17:29A-1 et seq.

Proposal Number: PRN 1986-401.

The agency proposal follows:

Summary

An earlier proposal of this rule was published on November 19, 1984 at 16 N.J.R. 3169(a). The Department received comments and reviewed them but the proposal expired without having been acted upon. This new proposal reflects the Department's response to the comments on the prior proposal.

The proposed new rule establishes procedural and statistical requirements which are applicable to the filing of downward deviations in the rates which are currently approved for an insurer which makes its own rates or a member or subscriber of a rating organization. This rule is patterned greatly after a rule which has been in effect in Pennsylvania for several years. The proposed rule is designed to streamline the processing of such filings while at the same time maintaining the Department's ability to monitor the financial condition of insurers.

Proposed N.J.A.C. 11:1-16.1 contains purpose and scope provisions for the subchapter.

The proposal at N.J.A.C. 11:1-16.2 requires submission of the filing of the downward deviation at least 30 days prior to the proposed date of implementation. The request for the rate decrease must be accompanied by a statement explaining the basis for the decrease and an agreement that the decrease in rate filing will remain in effect for at least six months from the effective date. Unless the Commissioner finds the filing unacceptable within 15 days of submission, the filing shall be deemed approved.

In addition, the proposal caps requests for downward deviations using the procedure specified in the subchapter to 20 percent of the approved rate. Finally, the proposal allows an insurer to automatically withdraw its decrease after six months by so notifying the Commissioner at least 30 days prior to the withdrawal date.

Social Impact

The proposed new rule will enhance the ability of independent insurers and rating organization members or subscribers to effect decreases in approved rates in an expeditious fashion and should, thereby, stimulate competition among insurers to the benefit of both the insurers and the public. The safeguard included in the rule of a 20 percent cap ensures that the public is adequately protected against insurance premium price-cutting which might adversely affect an insurer's financial condition.

Economic Impact

Through the promotion of competition among insurers, it is expected that the rule will have a positive impact on the public. The streamlined procedures contained in the rule may be utilized by insurers to establish or maintain a competitive advantage. The Department anticipates minimal economic impact on its operation as a result of the implementation of this rule.

Full text of the proposed new rule follows.

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SUBCHAPTER 16. REQUIREMENTS FOR FILING A
DOWNWARD DEVIATION IN CURRENTLY
APPROVED RATES

11:1-16.1 Purpose and scope

(a) The purpose of this subchapter is to promote competition among insurers for the benefit of the insurance consuming public by permitting insurers subject to N.J.S.A. 17:29A-1 et seq. to effect expeditiously certain decreases in a rate filing currently approved by the Department when, in an insurer's judgment, economic or competitive reasons or conditions warrant such a decrease.

(b) A further purpose is to enable an insurer to return to the currently approved rate level without delay or regulatory review when, in its judgment, the conditions or reasons for the decrease no longer pertain.

(c) This subchapter shall apply to every property and liability insurer which makes its own rates and to every member or subscriber of a rating organization on whose behalf rate filings are made pursuant to the provisions of N.J.S.A. 17:29A-1 et seq. For the purpose of this subchapter, the term "insurer" shall include all such independent insurers and rating organization members or subscribers who are subject to the provisions of N.J.S.A. 17:29A-1 et seq.

11:1-16.2 Filing requirements

(a) Any insurer, subject to the provisions of N.J.S.A. 17:29A-1 et seq., to effect a decrease in rates currently approved by the Commissioner, shall comply with the following filing requirements:

1. The insurer by a rate filing shall notify the Commissioner of Insurance at least 30 days prior to the date it wants to put into effect a decrease in rates currently approved for it by the Commissioner. In such rate filing, the insurer shall state the basis for the decrease in rates and its agreement that the decrease in rate filing shall remain in effect for at least six months from the effective date. Within a 15-day period following the filing of such a proposed decrease in rates, the Commissioner will notify the insurer of the unacceptability of the filing for a decrease in rates. The Commissioner will only find unacceptable a decrease in rate filing if, in his opinion, the decrease in rates may have a tendency or capacity to imperil the financial condition of the filing insurer.

2. The decrease in rate filing may be up to 20 percent from the currently approved rates and must apply to all policyholders either by coverage or line of insurance.

3. After a filing has been in effect for six months or more, an insurer may automatically withdraw its decrease or any portion thereof by so notifying the Commissioner of Insurance at least 30 days prior to the withdrawal date.

(a)**Use of Credit Cards to Pay Insurance Premiums****Proposed New Rule: N.J.A.C. 11:1-24.**

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17B:30-1 et seq.,

17:29B-1 et seq., 17B:22-27, 17:22-6.16, 17B:22-31, 17:22-6.25 and 17:33-2.

Proposal Number: PRN 1986-400.

The agency proposal follows:

Summary

Over the years, many consumers have shown a strong interest in using credit cards to purchase various goods and services. Credit card transactions offer the consumer a convenient method for making a purchase and, in many instances, credit cards also provide a vehicle for financing the cost of the purchase over an extended period of time. As such, credit cards are frequently used to finance the purchase of major budget items. In recent years, insurance premiums have become a major budget item for many consumers.

As a result, the status of credit cards as an acceptable means of both paying and financing insurance premiums has become an issue. The purpose of the proposed new subchapter is to address that issue.

The Department acknowledges the potential value of credit cards in facilitating the purchase of insurance. With respect to utilizing credit cards as a means of financing the premium, the Department recognizes that, due to the interest charges associated with these cards, the cost of spreading insurance premium payments over an extended period of time can be significant. Consumers, accordingly, should be aware of and carefully consider such costs in determining whether to finance insurance premium charges through a credit card transaction. Consumers should

also consider other budgeting or payment alternatives which may be available, such as the installment payment options which are provided by some insurers. These payment options are generally accompanied by a small set installment fee applicable to each payment.

Nonetheless, the Department realizes that in those instances where a suitable payment plan is not offered by the insurer, credit cards can be a means of achieving necessary financing. It also appears that credit card transactions may provide some consumers with a viable alternative to the finance arrangements provided by insurance premium finance companies. The Department has been advised that the interest rates charged by such companies are, generally, substantially in excess of those applicable to credit card transactions.

While the Department recognizes the potential benefits of authorizing the use of credit cards to pay insurance premiums, the Department also believes that it is necessary to establish standards and requirements applicable to their use to ensure that consumers are given fair access to this method of payment and to otherwise prevent possible abuses. Certain other states, notably California and Florida, have enacted statutes or have by other means addressed the use of credit cards to pay for insurance coverages. The Department's proposal incorporates many standards and requirements utilized by California and Florida.

The proposed new subchapter authorizes the acceptance of credit cards by licensees and insurers for payment of insurance premiums and applies to all lines of insurance.

N.J.A.C. 11:1-24.1 provides purpose and scope statements for the proposed new subchapter.

N.J.A.C. 11:1-24.2 establishes definitions of key terms used in the proposed new subchapter. For example, "credit card" means those cards issued by or through banks and non-financial entities. "Credit card company" means such entities which enter into contractual arrangements with merchants, including providers of services, whereby the merchant agrees to accept for payment of goods purchased or services rendered a credit card issued by the entity to the recipient of such goods or services.

N.J.A.C. 11:1-24.3 sets forth the requirements for acceptance of credit cards by licensees and insurers for payment of insurance premiums. Specifically, N.J.A.C. 11:1-24.3(a)1 prevents unfair discrimination by requiring licensees and insurers to make credit card service available to all consumers.

N.J.A.C. 11:1-24.3(a)2 also prevents unfair discrimination by forbidding insurers from classifying consumers who pay by credit card differently from consumers who pay by other means for ratemaking purposes.

N.J.A.C. 11:1-24.3(a)3 prohibits licensees and insurers from giving discounts, rebates or other compensation to consumers who pay insurance premiums by methods other than credit cards.

N.J.A.C. 11:1-24.3(a)4 prohibits licensees and insurers from imposing service fees on consumers solely because of payment of insurance premiums by credit card.

N.J.A.C. 11:1-34.3(a)5 prohibits insurance coverages purchased via a credit card transaction from being cancelled by any person or entity other than the named insured, the policyholder or the insurer. Accordingly, the credit card company may not request cancellation and must seek payment from a defaulting insured through the normal collection process. This is in contrast to a premium finance company which, pursuant to a power of attorney set forth in its agreement with the insured, and in accordance with N.J.S.A. 17:16D-13, may request that an insurer cancel the insurance policy of an insured who has failed to remit installment payments to the company.

N.J.A.C. 11:1-24.3(a)6 provides that any refund of unearned premiums must be paid to the credit card holder.

N.J.A.C. 11:1-24.3(a)7 requires licensees and insurers to make all portions of the insurance premium payable by use of the credit card, not, for instance, only the initial premium deposit.

N.J.A.C. 11:1-24.3(a)8 requires the credit card transaction to be authorized by the signature of the credit card holder or other person authorized to sign on the credit card account.

N.J.A.C. 11:1-24.4 sets forth the penalties for violations of the provisions of the subchapter.

Social Impact

Credit cards provide consumers with a convenient method of paying insurance premiums. Where circumstances warrant, credit cards also can be used to finance the cost of insurance over an extended period of time. Specifically authorizing the use of credit cards may serve to spark increased interest on the part of insurers and licensees in providing consumers with this alternative mode of payment.

The standards in the proposed rule protect consumers against unfair discrimination in connection with the offering of the credit card payment option. Also, insurers and licensees will benefit by being fully apprized of the standards applicable to the offering of credit card payments to insureds. Finally, the enforcement activities of the Department will be facilitated by the establishment of specific requirements for credit card transactions.

Economic Impact

In many cases, credit cards can provide consumers with a mechanism of paying for insurance coverage that permits the consumer to spread the cost over a period of time. Insureds, of course, must weigh the benefits and costs of financing insurance premiums through credit card installment payments relative to any other budget or payment methods which may be available, such as a suitable installment payment plan provided by the insurer.

Where credit cards are used as an alternative to insurance premium financing, interest charges to consumers should be reduced. Interest rates at premium finance companies may run as high as 30 percent (see N.J.S.A. 2C:21-19) with annualized percentage rates even higher. In comparison, interest rates at banks for credit cards average approximately 19 percent.

For example, if an \$800.00 premium is financed through an insurance premium finance agreement that provides for repayment of the loan in eight equal monthly installments at an annual interest rate of 30 percent, the total finance charge will amount to more than \$70.00. In contrast, an \$800.00 premium financed in a similar fashion through a credit card company at an annual interest rate of 17 percent will generate a finance charge of \$50.00.

The actual economic impact of the proposed new rule will be largely dependent on the extent to which insurers make credit card payments available to consumers. It must be recognized that licensees and insurers which provide clients with the credit card payment option will incur the cost of credit card company service fees. On the other hand, licensees and insurers which accept credit cards may receive payment for premiums more expeditiously. Also, the credit card companies will be responsible for any collection problems. These two features may serve to reduce certain administrative costs for licensees and insurers, and thereby offset the service fees that they will incur in providing the credit card option.

There will be no economic impact on the Department of Insurance.

Full text of the proposed new rule follows.

SUBCHAPTER 24. USE OF CREDIT CARDS TO PAY INSURANCE PREMIUMS

11:1-24.1 Purpose; scope

The purpose of this subchapter is to regulate the use of credit cards to pay for insurance coverages. This subchapter applies to all lines of insurance.

11:1-24.2 Definitions

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

"Credit card" means those cards issued by or through banks (for example, VISA, Mastercard and BankAmericard) and by non-financial entities (for example, Carte Blanche, American Express and Diner's Club).

"Credit card company" means such entities which enter into contractual arrangements with merchants, including providers of services, whereby the merchant agrees to accept for payment of goods purchased or services rendered a credit card issued by the entity to the recipient of such goods or services.

"Licensee" means any person, partnership or corporation holding a license issued by the Commissioner as an agent, broker or solicitor.

11:1-24.3 General requirements

(a) Any licensee or insurer may accept credit cards for payment of insurance premiums provided the following requirements are met:

1. Any licensee or insurer who enters into a contract with a credit card company to accept credit cards for the payment of premiums shall make that service available to all existing and prospective insureds and shall not limit the acceptance of credit cards to only certain persons or entities;

2. No insurer shall, for ratemaking purposes, deem insureds who elect to utilize their credit cards for premium payments to be a different class of insureds from those who elect to pay premiums by other methods;

3. No licensee or insurer shall give a discount, rebate or compensation to insureds who elect to make payment of premium by any method (cash, for example) other than credit cards;

4. No licensee or insurer shall impose any fee or service charge on insureds solely because insureds have elected to use credit cards as the method of payment of premiums;

5. The insurance or policy which is the subject of the transaction shall be non-cancellable by any person or entity other than the named insured, the policyholder or the insurer;

6. Any refund of unearned premium shall be made directly to the credit card holder;

7. The licensee or insurer shall make all portions of the insurance premium payable by use of credit card; and

8. The credit card transaction shall be authorized by the signature of the credit card holder or other person authorized to sign on the credit card account.

11:1-24.4 Penalties

Failure to comply with this subchapter shall constitute a violation of the insurance laws of New Jersey and shall subject any individual or company so failing to comply to all the penalties provided by law.

(a)

DIVISION OF THE REAL ESTATE COMMISSION Sponsoring of License Applications or Transfers of License

Proposed Amendment: N.J.A.C. 11:5-1.30

Authority: N.J.S.A. 45:15-14 and N.J.S.A. 45:15-6.

Proposal Number: PRN 1986-402.

The agency proposal follows:

Summary

Every application for a real estate salesperson's or broker-salesperson's license must be sponsored by his or her employing broker, and upon termination of employment, the broker must surrender the individual's license to the Real Estate Commission. The salesperson or broker-salesperson is prohibited from acting as a licensee until employment with another broker is secured.

N.J.A.C. 11:5-1.30 established a mechanism designed to facilitate both the initial licensing and transfer of employment process. Under the existing regulation, a corporation or partnership broker may, by filing a power of attorney with the Real Estate Commission, have both initial license applications and license transfer documents executed by one person, other than the authorized broker of record. The person so designated must be the holder of a broker's license and an officer of the corporation or partnership.

The proposed amendment to N.J.A.C. 11:5-1.30 separates the procedure applicable to the sponsoring of initial applications for licenses from the subsequent surrender of the license to the Real Estate Commission upon termination of the licensee's employment. The amendment establishes different criteria for who may be authorized by the broker to execute the required documents in each situation. The proposal also extends the authority to delegate these functions to brokers operating as sole proprietors.

With respect to initial license applications, the proposal permits a broker operating as a sole proprietor to file a power of attorney with the Real Estate Commission designating a broker-salesperson in his or her employ to perform the sponsorship function. The proposal further requires that any power of attorney filed pursuant to the rule must be submitted to the Real Estate Commission at least 10 days prior to the actual delegation of the sponsoring function to a designated individual.

With respect to the surrender of a license, the proposed amendment permits all brokers to designate one person, other than the authorized broker of record, to complete the document which must be submitted to the Real Estate Commission. This designated person need not be a licensed broker or broker-salesperson as is required in the case of the sponsorship of initial license applications, but, however, must be an employee of the broker. The proposal requires that a broker supply the Real Estate Commission with at least 10 days prior written notice of the designation and immediate notice of any change thereto. Forms to be utilized by brokers in providing notice of the designation shall be provided by the Commission.

Finally, the proposal specifies that at any one time, only one person may be designated by the broker as the alternative person authorized to execute either initial license applications or license surrender documents, as applicable.

The proposed amendment is necessary to cure a situation which is

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occurring with increasing frequency. After terminating employment with larger real estate operations, some licensed salespersons have been prevented from promptly commencing employment with new employers because of tardy submission of the surrender document to the Commission. The former employing broker or broker of record has been either unavailable or so preoccupied with other pressing matters that he or she has been unable to perform the physical function of signing the transfer portion of the license document in a timely fashion. By allowing a designee of the employing broker or broker of record to perform this function, it is anticipated that such delays will be avoided.

Social Impact

The proposed amendment will have a favorable social impact by avoiding delays in the transfer of licenses from a former employer to a new employer. Salespersons and broker-salespersons will be able to continue to perform the functions of fully licensed individuals. As a result, pending transactions will not be delayed and potentially negated due to a lack of continuity in the individual's status as an active licensee. The proposal will also benefit employing brokers and brokers of record, including those operating as sole proprietorships, by permitting them to delegate this function and devote their time to other aspects of their business.

Economic Impact

The economic impact of the proposed amendment will be substantial, in that licensees transferring from one employer to another will not experience extended periods of inactivity and resulting loss of income due to dilatory submission of documents required to effectuate a valid license transfer. Inordinate delay of pending transactions involving the licensee will also be avoided.

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

11:5-1.30 Sponsoring of license applications or transfers of [license] licenses

(a) The New Jersey Real Estate Commission, Department of Insurance, hereby grants to [a corporation or a copartnership] **brokers of record or employing brokers** the right to have **initial** applications [or] for [transfers of] licenses [for] of salespersons or broker-salespersons **who will be in their employ** sponsored by one other person, other than the authorized broker of record or employing broker. **This other person must be** [, provided such person is] the holder of a broker's license and [is] an officer of the **broker of record's** corporation or a member of the **employing broker's** [co] partnership, as the case may be. **In the event the employing broker is a sole proprietor, such a designee shall be licensed as a broker-salesperson in the employ of the employing broker.** [; and further provided that a power of attorney is filed with the New Jersey Real Estate Commission granting this authority to said person.] **The broker of record or employing broker, as applicable, shall file with the New Jersey Real Estate Commission a power of attorney granting this authority to the designated person at least 10 days prior to delegating performance of the function to that person.**

(b) **Any employing broker or broker of record may authorize one individual in their employ to sign and surrender to the Real Estate Commission, in accordance with the requirements of N.J.S.A. 45:15-14, the real estate salesperson or broker-salesperson license of any licensee whose employment relationship with that employing broker or broker of record is terminated. The employing broker or broker of record shall, on a form to be provided by the Commission, notify the Commission in writing of the designation of an employee as the person so authorized, which person need not be the holder of a real estate license. The form designating the authorized person shall be filed with the Real Estate Commission at least 10 days prior to delegating performance of the function to that person. The employing broker or broker of record shall immediately notify the Real Estate Commission in writing in the event that, for any reason, the authority of the person so designated to perform that function is revoked, and shall indicate whether a new designee is to be named. Only the employing broker or broker of record and the one other person duly designated and identified to the Real Estate Commission as provided in this section may perform the said license transfer functions at any one time.**

ENERGY

(a)

DIVISION OF ENERGY PLANNING AND CONSERVATION

Home Energy Savings Program

Proposed Amendments: 14A:21-1.2, 2.2, 2.3, 3.4, 3.5, 3.6, 3.7, 5.2, 6.1, 6.2, 7.1, 7.2, 7.5, 7.6, 7.7, 8.1, 8.2, 8.3, 9.4, 10.1, 11.2, 11.3

Authorized By: Charles A. Richman, Acting Commissioner,
Department of Energy.

Authority: N.J.S.A. 52:27F-11q.

Proposal Number: PRN 1986-406.

Submit comments by November 5, 1986 to:

Edward J. Linky
Chief Regulatory Officer
Division of Energy Planning and Conservation
New Jersey Department of Commerce and
Economic Development
101 Commerce Street
Newark, New Jersey 07102

The agency proposal follows:

Summary

The majority of the proposed changes involve grammatical corrections, in some instances a change in language to further clarify the meaning of a particular section, and deletion of one subchapter to streamline the administrative approval for utility supply and installation of energy conservation measures. These changes are not substantive and hence do not warrant a section-by-section explanation. However, two sections covering solar domestic hot water heating systems do have changes which require explanation. These sections are: N.J.A.C. 14A:21-1.2 Definitions, "Solar domestic hot water systems", "Solar sunspace system" and "Window heat gain and heat loss retardants and sunlight control devices" and N.J.A.C. 14A:21-3.4 Program Services and Program Audits. It is to these sections that the Division of Energy Planning and Conservation invites comments.

The changed requirement is for all covered solar equipment to be + or -30 degrees of true south. The common assumption for optimal installation of solar equipment is that the window orientation must be true south. However, variations in orientation to the west or the east of up to 30 degrees will not negatively impact upon the efficiency of the solar units. The previous 45 degrees of variation will not provide the optimal performance of these units. Other proposed changes are made to account for enhanced benefits of new solar window films and energy practices for non-southerly facing windows.

An amendment, changing the Department's update of the Master record from every thirty days to every sixty days, has been proposed at N.J.A.C. 14A:21-7.1, and additions have been made to the requirements for installers at N.J.A.C. 14A:21-7.2, so that consistency with other rules in this area may be maintained (14A:21-7.1) and to conform with existing practice (14A:21-7.2). Material at N.J.A.C. 14A:21-11.3(b) is being deleted to streamline the administrative review of utility supply and installation elements of the program.

Social Impact

It is anticipated that these changes will make the regulations more easily understood by the general public and will thus result in greater participation in all elements of the Home Energy Savings Program.

Economic Impact

The proposed changes will result in more cost-effective installation of domestic solar hot water systems and thus should stimulate the manufacture and sales of such systems in the state. This stimulus will have a positive economic effect by providing jobs in both the manufacturing and sales sectors of this industry. The administrative streamlining will result in lower administrative costs to the utilities associated with the program.

Environmental Impact

The increased use of solar energy generally is viewed as having a positive environmental impact. To the extent that these proposed changes to the regulations promote the use of residential solar hot water systems, they lessen the demand for fossil fuel sources to create the same volume

of domestic hot water. The negative environmental impacts associated with the use of fossil fuels is thereby lessened.

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

14A:21-1.2 Definitions

...
"Energy conservation measures" means the following measures in a residential building:

- 1.-11. (No change.)
12. Storm window [and] **or door.**
13. Thermal window [and] **or door.**
- 14.-18. (No change.)
19. Solar [S]sunspace.
20. (No change.)

...
"Master Record" means the record of qualified installers[,] and suppliers compiled by the Department pursuant to N.J.A.C. 14A:21-9.

...
"Program auditor" means any individual employed by the Department or by a covered utility or home heating supplier or under contract with a covered utility, home heating supplier or the Department who meets all of the qualifications contained in N.J.A.C. 14A:21-[7]5.2 and has successfully passed a Department auditor test.

"Program inspector" means any individual employed by the Department or by a covered utility or home heating supplier or under contract with a covered utility, home heating supplier or the Department who meets all of the qualifications contained in N.J.A.C. 14A:21-[7]5.3 and has successfully passed a Department inspector test.

...
"Residential building" means any building used for residential occupancy which:

1. On the date of the program audit request has had a certificate of occupancy for more than two years[.];
2. Has a system for heating, cooling or both heating and cooling living spaces; and
3. Contains at least one, but not more than four, dwelling units. Multi-family dwellings not centrally heated or cooled, mobile homes, townhouses and rowhouses in rows of more than four separate houses are included in this definition.

...
"Solar domestic hot water systems" means equipment designed to absorb the sun's energy, **using South-facing solar collectors (+ or -30 degrees of True South)**, and to use this energy to heat water for use in a residential building other than for space heating.

"Solar sunspace [system]" means a structure of glass, fiberglass or similar transparent material which is [attached to the] South-facing (+ or -[45] 30 degrees of True South) [wall of a structure which] **and is attached to the existing residence in such a way as to allow[s]** for air circulation to bring heat into the residence, and which is able to be closed off from the residential structure during periods of low solar ins[ulation].

"Window heat gain and loss retardant[s] materials [and sunlight control devices]" means those mechanisms which significantly reduce summer heat gain through [South-facing (+ or -45 degrees of True South)] windows and/or which significantly reduce heat loss through windows in winter by use of devices such as awnings, insulated rollup shades (external or internal), metal or plastic solar screens **and films**, or moveable rigid insulation.

14A:21-2.2 Contents and prohibitions

(a) The program announcement may include all of the following for a typical New Jersey residential building, as specified from time to time by the Department:

- 1.-2. (No change.)
3. A description and offer of available program services, instructions **regarding** [as to] how to apply for them, and the cost, if any, for each service, including instructions on how to apply for a program audit.

(b) (No change.)

14A:21-2.3 New customers

(a) Each covered [electric] utility shall identify and send a program announcement to each new eligible customer within sixty calendar days of the date service is established in the customer's name.

(b) (No change.)

14A:21-3.4 Applicability of program measures

(a) (No change.)

(b) A program measure is applicable in a residence if:

1.-13. (No change.)

14. With respect to solar sunspaces [systems], an evaluation is made only if [adequate ground area in front or beside a south facing wall exists for the addition of a sunspace system and if adequate solar radiation is present on the south side] **a site exists which is of sufficient size and orientation and is free of major obstruction of solar radiation during the heating season.**

14A:21-3.5 Cost, savings and payback estimates

(a) (No change.)

(b) All costs, savings and payback estimates for a gas-fired heating unit shall be based upon an evaluation of the unit's seasonal efficiency. This evaluation shall be based upon steady state efficiency corrected for cycling losses, pursuant to a procedure [to be] provided to the auditor by the Department.

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

(e) All costs, savings and payback estimates for applicable solar sunspaces [systems] shall be based upon the following information:

1.-3. (No change.)

14A:21-3.6 Results of the program audit

(a) As part of every program audit each auditor shall provide a written list on a form provided or approved by the Department of Energy conserving practices at the time of onsite evaluation. The auditor shall:

1.-2. (No change.)

3. Explain the importance of completing applicable program practices before any energy conservation measure is installed[.].

(b) (No change.)

(c) Program audits results shall include the following:

1.-2. (No change.)

3. An estimate of the total cost, expressed in dollars, of installation by the customer of each applicable program measure addressed in the program audit; however, such estimates shall not be provided for replacement central air conditioners, wall insulation, furnace efficiency modifications, devices associated with load management techniques, and thermal windows[.];

4.-6. (No change.)

7. An example of the effect that the installation of one energy conservation measure has on the energy savings of a related energy conservation measure[.] [The], **which** example shall be in a form provided or approved by the Department[.];

8. The possible economic benefits to the customer of existing federal or [S]state tax incentives, with one sample calculation of the effect of the tax benefit on the cost to the customer of installing an applicable energy conservation measure.

14A:21-3.7 Additional information

(a) Every auditor shall present the following to an eligible customer upon the completion of the program audit:

1.-4. (No change.)

[b] Every auditor shall provide an eligible customer with a written statement of any substantial interest in which the auditor or the auditor's employer has, directly or indirectly, in the sale or installation of any program measure[.]

14A:21-5.2 Qualifications of auditors

(a) Persons conducting a program audit shall have the following qualifications:

1.-4. (No change.)

5. The capability to conduct the program audit, including:

i.-ii. (No change.)

iii. A proficiency in the pertinent auditing procedures for each applicable program measure[.].

6.-7. (No change.)

i. Ins[ulation];

ii.-iii. (No change.)

iv. Where appropriate, heat transfer for hot water and space heating[.].

8. (No change.)

(b) (No change.)

14A:21-6.1 Mandatory inspections

(a) All inspections of the following installations of program measures shall be conducted pursuant to the Uniform Construction Code, N.J.A.C. 5:23-1.1 et seq.:

1. Flue opening modifications[.];

2. [Electrical or mechanical ignition systems;]

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[3.]2. Solar water heating systems and solar sunspaces [systems];

[4.]3. (No change in text.)

[5.]4. (No change in text.)

(b) (No change.)

14A:21-6.2 Random inspections

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

(d) The Department shall promptly notify a covered utility, which services the geographic area of the installation, of the name, address and telephone number of the audit recipient[s], and the type of installation needed to be inspected. The covered utility shall promptly contact the audit recipient and inform [them] **him or her** of the proposed inspection, and arrange an appointment within two weeks. The covered utility shall provide an inspector, qualified by the Department to inspect that type of installation, to make an inspection report of the site to determine compliance with applicable installation standards. In no case[,] may an inspector inspect **his or her** [their] own work or the work performed directly by the inspector's employer.

(e)-(j) (No change.)

14A:21-7.1 General requirements

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

(c) The Department shall update the Master Record every [30] **60** days and shall promptly notify covered utilities of any changes in its content.

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

14A:21-7.2 Installers: Requirements for participation

(a) To be eligible for inclusion on the Master Record an installer must submit a certified application to the Department which shall include the following:

1.-3. (No change.)

4. A detailed list of any liens, stop notices or claims filed against or by reason of any project undertaken or supervised by the installer within the past three years, including any administrative or judicial complaints and any claims filed with the Better Business Bureau, the New Jersey Division of Consumer Affairs or its subdivisions, or any similar state, county or municipal agency, and the disposition of same[.];

5.-7. (No change.)

8. A statement that the installer agrees not to discriminate among audit recipients participating in the HESP Program[.];

9.-11. (No change.)

(b) The installer shall agree to provide the following to any audit recipient who selects that installer from a program list:

1.-4. (No change.)

5. Written assurance that all program measures installed by the installer carry a manufacturer's and/or installer's warranty pursuant to N.J.A.C. 14A:21-9]7.2(a)10; and

6. (No change.)

(c) Installers of program measures shall be thoroughly familiar with applicable installation standards.

(d) All installers shall have a minimum of six months' experience in the installation of each program measure they are applying to be listed for.

(e) Installers of vent dampers and solar sunspaces shall provide proof that they have successfully completed the following:

1. **Manufacturer's installation training;**2. **Private or county vocational school training; or,**3. **Any other Department-approved training program.**

14A:21-7.5 Exclusion

(a) (No change.)

(b) (No change.)

1.-5. (No change.)

6. Any other cause affecting the responsibility of an installer, or supplier of such a serious and compelling nature as may be determined by the Department to warrant exclusion, including but not limited to unresolved claims, liens or stop notices or such conduct as may be prescribed by law or regulation even though such conduct has or may not be prosecuted as a violation of such law or regulation; [and]

7. Failure to fully comply with the listing requirements contained in this subchapter[.]; **and**

8. Falsification or willful omission of any information required by the Department of any applicant and/or participant.

14A:21-7.6 Removal

(a) (No change.)

(b) Grounds for removal may include, but are not limited to, the following:

1. Any ground which is a ground for exclusion pursuant to N.J.A.C.

14A:21-9.6]7.5;

2.-4. (No change.)

14A:21-7.7 Procedures for removal or exclusion

(a) (No change.)

(b) A person who has been excluded or removed from the Master Record by the Department may reapply[,] after one year.

14A:21-8.1 General contents

(a) (No change.)

(b) All lists shall contain an effective date and expiration date on the first page. The expiration date shall be [seventy-five] 75 days after the effective date[.], **and the list shall include the following statement:**

"EFFECTIVE FOR SEVENTY-FIVE DAYS"

14A:21-8.2 Installer lists

(a) All lists of installers may contain information that any eligible customer who receives an installer list, and has program measures installed by an installer chosen from that list, is entitled to the following program benefits:

1.-4. (No change.)

5. Assurance that a listed installer has agreed to comply with all applicable program requirements[.];

6. That in order to ensure program benefits, appropriate forms should be returned to the New Jersey Department of Energy[.];

7. That installers on this list must be informed that the work is being done under the New Jersey Home Energy Savings Program (HESP)[.];

8. That inclusion of any installer on this list does not imply that the installer is recommended or selected by the New Jersey Department of Energy, nor does the [d]Department in providing this list guarantee or warranty the type of quality of the work to be performed.

14A:21-8.3 Supplier lists

(a) All lists of suppliers may contain the following information that any eligible customer who purchases any program measure from a listed supplier who indicates that the program measure meets applicable material standards or carries program measures warranty is entitled to the following benefits:

1.-3. (No change.)

4. That inclusion of a supplier on this list does not imply that the supplier is recommended or selected by the New Jersey Department of Energy [or the customer's utility].

14A:21-9.4 Disqualification

(a) (No change.)

(b) Grounds for disqualification include, but are not limited to, the following:

1.-4. (No change.)

5. Any other cause affecting the responsibility of a home heating supplier of such a serious and compelling nature as may be determined by the Department to warrant disqualification, including such conduct as may be prescribed by law or regulation even though such conduct has or may not be prosecuted as a violation of such or regulation; [or]

6. Failure to fully comply with all applicable requirements of this chapter; or

7. Falsification or willful omission of any information [reported] required by the Department.

14A:21-10.1 Reporting: Covered utilities

(a) Each covered utility shall submit the following information in writing to the Department on May 30, 1986 and annually thereafter through May 30, 1990 for the 12 month period ending in preceding April 1[.];

[1. Whether the utility is engaged in supplying, installing, or financing any program measures pursuant to N.J.A.C. 14A:21-13 or 14A:21-14 and a description of the program(s);]

Renumber 2.-13. as 1.-12. (No change in text.)

(b) Each covered utility shall submit the following information in writing and in a form provided or approved by the Department on the 15th of each month for the preceding month:

1.-5. (No change.)

6. The total number of service requests completed pursuant to N.J.A.C. 14A:21-3.1[.];

7.-10. (No change.)

14A:21-11.2 General exception

(a) The prohibition contained in N.J.A.C. 14A:21-[14]11.1 shall not apply to any program measure supplied or installed by a covered utility through contracts between such utility and independent suppliers or installers where the customer requests such supply or installation and each such supplier or installer:

1. Is on the Master Record of suppliers and installers referred to in

N.J.A.C. 14A:21-[9]7;

2.-3. (No change.)

(b) (No change.)

1. (No change.)

i. Covered utilities must use certified licensed contractors where such skills are required by the nature of the work and the New Jersey Uniform Construction Code (N.J.S.A. 32:27-119 et seq.);

ii. (No change.)

2. (No change.)

3. Shall be undertaken in a manner which provides, subject to reasonable conditions the utility may establish to insure the quality of supply and installation of program measures, that any financing by the utility of such measures shall be available for the supply or installation by any supplier or installer on the Master Record referred to in N.J.A.C. 14A:21-[9]7 or for the purchase of such measures to be installed by the customer;

4.-5. (No change.)

14A:21-11.3 Exception for certain measures

(a) The prohibition contained in N.J.A.C. 14A:21-[14]11.1 shall not apply to the supply or installation of:

1.-3. (No change.)

[(b) Any covered utility which wishes to engage in the supply or installation of any energy conservation measure pursuant to the exception contained in N.J.A.C. 14A:21-14.4(a) shall:

1. Submit to the Department and the BPU a description of its program which shall include the following:

i. A description of the energy conservation measure to be supplied or installed, including a description of the product;

ii. The geographical areas where the energy conservation measure will be installed;

iii. Procedures for the selection of suppliers and installers, if applicable;

iv. A copy of the standard contract to be used by the utility and the selected suppliers and installers, if applicable; and

v. A description of the quality control procedures;

2. Agree to insure that all selected suppliers and installers, will be on the Master Record and provide the Department with the names of all selected suppliers and installers in order that the Department can insure that they are included on the Master Record;

3. Agree to provide the Department every six months for which the program operates with sales records and relevant financial data, including sales prices, of their contractual suppliers and installers. Sales records for two years prior to the program shall also be supplied.]

14A:21-11.4 Exception for existing supply and installation

(a) Any supply or installation of any program measure that the covered utility was engaged in on November 9, 1978, shall not be subject to the prohibition contained in N.J.A.C. 14A:21-[14]11.1:

1.-2. (No change.)

(b) Any supply or installation of any program measure which the covered utility had by November 9, 1978, broadly advertised that it would supply or install, or with respect to which the utility had by November 9, 1978, completed substantial preparations for supplying or installing shall not be subject to the prohibition contained in N.J.A.C. 14A:21-[14] 11.1:

1.-2. (No change.)

TREASURY-GENERAL

(a)

Standard Third Party Contracts

Proposed New Rule: N.J.A.C. 17:12-8.1

Authorized By: Feather O'Connor, State Treasurer

Authority: N.J.S.A. 52:18A-9.

Take notice that the proposal regarding the Standard Third Party Contract published in the July 7, 1986 New Jersey Register at 1353(c) has been **withdrawn** by the Treasury Department. The Department's position after review is that the costs and risks of failing to give parties dealing with the State complete and unequivocal notice as to their rights and obligations under the contract outweigh any benefits which the rule could provide.

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Corporation Business Tax

Indebtedness and Interest on Indebtedness; Offsets

Proposed Amendments: N.J.A.C. 18:7-4.5 and 4.6.

Proposed Repeal and New Rule: N.J.A.C. 18:7-5.5.

Authorized By: John R. Baldwin, Director, Division of Taxation.

Authority: N.J.S.A. 54:10A-27.

Proposal Number: PRN 1986-396.

Submit comments by November 5, 1986 to:

Nicholas Catalano

Assistant Chief Tax Counselor

Division of Taxation

50 Barrack Street

CN 269

Trenton, NJ 08646

The agency proposal follows:

Summary

The proposed amendments relate to New Jersey's Corporation Business Tax Act, N.J.S.A. 54:10A-1 et seq. and its rules N.J.A.C. 18:7-1.1 et seq., particularly N.J.S.A. 54:10A-4 and N.J.A.C. 18:7-4.5, 4.6 and 5.5. In the May 5, 1986 issue of the New Jersey Register at 18 N.J.R. 934(a), amendments to N.J.A.C. 18:7-4.5 and 4.6 were proposed. The Division of Taxation received and responded to several commenters to these proposed amendments. The same situation exists with N.J.A.C. 18:7-5.5, which appeared in the June 16, 1986 New Jersey Register at 18 N.J.R. 1256(b). The comments were carefully reviewed and analyzed. In consideration of some of the concerns expressed, the Division has made substantial changes to the original proposal, which require new public notice. This new proposal supersedes the prior proposals and reflects those changes. The Corporation Business Tax Act and the proposed amendments involve an addback to entire net income of interest on indebtedness owed to a stockholder owning 10 percent or more of taxpayer's outstanding shares of capital stock. An offset is possible, in whole or in part, if the 10 percent stockholder (the creditor) is indebted to the taxpayer and there is interest on such indebtedness to taxpayer. This is an area of law that needed further clarification as a result of *Fedders Financial Corp. v. Director, Division of Taxation*, 96 N.J. 376 (1984), *Mobay Chemical Corp. v. Director, Division of Taxation*, 96 N.J. 407 (1984) and *International Flavors and Fragrances*, 102 N.J. 210 (1986). The proposed amendments (with the examples contained therein) are in accord with the practice, policy and administration of the Division of Taxation in the light of the Act, case law, rules, forms and instructions which have not been limited by the facts in the *Fedders*, *Mobay* and *International Flavors and Fragrances* cases cited above.

Social Impact

Adoption of the proposed amendments should clarify perplexing problems the Division has with taxpayers, their attorneys, accountants and the public itself and may prevent unnecessary litigation with the attendant costs, fees, time, labor and effort as well as dollars. The addbacks and possible offsets may also make a light case load, thus shortening the time spent in telephone calls, correspondence and in hearings and conferences.

Economic Impact

There is minimal impact caused by the proposed amendments. Due to the current statute, rules and case law relating to indebtedness and interest on indebtedness, State revenue should not be impacted substantially by this proposal, which is intended to ameliorate confusion. Costs of administration on the Division's side and costs of preparation of corporation business tax returns on the taxpayer's side should lessen somewhat.

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

18:7-4.5 Indebtedness owing directly or indirectly

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

(f) For the purpose of determining the degree of stock ownership of a corporate creditor all the shares of the taxpayer's capital stock held by all corporations bearing the relationship of parent, subsidiary, or

affiliate of the corporate creditor shall be aggregated.

Example 1: L Corporation owns 100 percent of the stock of M Corporation which in turn owns 100 percent of N Corporation. L Corporation made loans or otherwise provided funds directly to N Corporation. The indebtedness from N Corporation to L Corporation is indebtedness owing directly or indirectly to a 10 percent stockholder.

Example 2: P Corporation owns 30 percent of the stock of Q Corporation, which in turn owns 30 percent of R Corporation. P Corporation made loans or otherwise provided directly to R Corporation. The indebtedness from R Corporation to P Corporation is not indebtedness owing directly or indirectly to a 10 percent stockholder since P Corporation only owns 9 percent of the stock (30 percent x 30 percent) of R Corporation.

18:7-4.6 Receivables offset against [includible] indebtedness owing directly or indirectly

(a) The taxpayer may offset against includible indebtedness owed to any creditor the amount of any receivable due from that creditor.

Example 1: P Corporation owns 100 percent of the capital stock of S Corporation. S Corporation has indebtedness owing directly or indirectly to P Corporation as well as a lesser receivable due from them. Indebtedness owing directly or indirectly to P Corporation is the amount of the indebtedness reduced by the receivable due from that creditor.

Example 2: P Corporation owns 100 percent of the capital stock of both S1 Corporation and S2 Corporation. S1 Corporation has indebtedness owing directly or indirectly to P Corporation. S1 Corporation also has a receivable due from S2 Corporation which, had it been a debt, would also have been indebtedness owing directly or indirectly to P Corporation. S1 Corporation may not offset the receivable due from S2 Corporation from its indebtedness owing directly or indirectly to P Corporation since it is not a receivable due from that creditor.

Example 3: P Corporation owns 100 percent of the capital stock of S1 Corporation. S1 Corporation owns 100 percent of the capital stock of S2 Corporation. S1 Corporation has indebtedness owing directly or indirectly to P Corporation and has a receivable due from S2 Corporation which, had it been a debt, would also have been indebtedness owing directly or indirectly to P Corporation. S1 Corporation may not offset the receivable due from S2 Corporation from its indebtedness owing directly or indirectly to P Corporation since it is not a receivable due from that creditor.

18:7-5.5 Entire net income; [degree of stock ownership by creditor a factor in computing includible indebtedness] determining stock ownership

[The regulations of Section 4.5 and 4.6 of this Chapter relating to the manner or degree of direct or indirect stock ownership by a creditor in determining includability of indebtedness in the purpose of computing entire net worth, are also applicable in determining includability of interest paid or accrued on such indebtedness for the purpose of computing entire net income.]

(a) The provisions of N.J.A.C. 18:7-4.5 and 4.6 relating to the manner or degree of direct or indirect stock ownership by a creditor are applicable in determining deductibility of interest paid or accrued to holders of 10 percent or more of the aggregate outstanding shares of the taxpayer's capital stock of all classes.

(b) In determining the percent ownership of investment for purposes of computing the dividend exclusion, a taxpayer can aggregate its ownership of stock by basing its computation on its ownership equity in the payor. No part of such investment may be determined with reference to loans or advances but must be based upon investment in capital stock.

Example 1. Corporation A received a dividend from Corporation B and a dividend from Corporation C. Corporation A owns 90 percent of Corporation B. Corporation A owns 20 percent of Corporation C. Corporation B owns 70 percent of Corporation C. The remaining shares of Corporation B and Corporation C are owned by unrelated persons.

By literal terms of the Act, the dividend received by Corporation A from its 90 percent owned Corporation B is excludible from entire net income.

Since the equity of Corporation A in Corporation C is 80 percent or more ownership, it may also exclude the dividends received from Corporation C from entire net income.

Ownership equity of Corporation A in Corporation C:

Direct investment in Corporation C		20%
Investment in Corporation B	90%	
Investment of Corporation B		
in Corporation C	70%	
Indirect investment in Corporation C	.90 x .70 =	63%
Aggregate ownership by Corporation A		
of the stock of Corporation C		83%

Example 2. Corporation D received a dividend from Corporation E and a dividend from Corporation F. Corporation D owns 90 percent of Corporation E. Corporation D owns 20 percent of Corporation F. Corporation E owns 60 percent of Corporation F. The remaining shares of Corporation E and Corporation F are owned by unrelated persons.

By literal terms of the Act, the dividend received by Corporation D from its 90 percent owned Corporation E is excludible from entire net income.

Since the equity of Corporation D in Corporation F is less than 80 percent ownership, it may only exclude 50 percent of the dividend received from Corporation F from entire net income.

Ownership equity of Corporation D in Corporation F:

Direct investment in Corporation F		20%
Investment in Corporation E	90%	
Investment of Corporation E		
in Corporation F	60%	
Indirect investment in Corporation F	.90 x .60 =	54%
Aggregate ownership by Corporation D		
of the stock of Corporation F		74%

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Internal Controls; Gaming Equipment Slot Machine Merchandise Payouts

Proposed New Rule: N.J.A.C. 19:45-1.40A.

Proposed Amendments: N.J.A.C. 19:40-1.2, 19:45-1.1, 1.37, 1.40 and 19:46-1.26.

Authorized By: Casino Control Commission,

Theron G. Schmidt, Executive Secretary.

Authority: N.J.S.A. 5:12-45, 5:12-63(c), 5:12-69, 5:12-70(g)(1).

Proposal Number: PRN 1986-391.

Submit comments by November 5, 1986 to:

William H. Delaney, 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

Section 45 of the New Jersey Casino Control Act (N.J.S.A. 5:12-45) was amended to enable a casino licensee to offer merchandise or other things of value as part of a slot machine jackpot payout. Pursuant to the terms of N.J.S.A. 5:12-45, jackpot payouts of merchandise or other things of value may not be offered by casino licensees until appropriate implementing rules have been promulgated by the Casino Control Commission. The proposed rules are intended to fulfill the Commission's responsibilities under the Act.

The proposed rules establish standards and procedures governing jackpot payouts of merchandise or other things of value. Such payouts shall have a cash equivalent value of at least \$5,000 and shall not be included in the total of all sums paid out as winnings to patrons for purposes of determining gross revenue or be included in determining the payout percentage of any slot machine.

Social Impact

Although not easily verifiable, the availability of jackpot payouts of merchandise or other things of value in Atlantic City casinos may have some social impact on the patrons who frequent these establishments. Any such impact, however, may be attributed to the legislative authorization of jackpot payouts of merchandise or other things of value as opposed to the implementing regulations now being proposed by the Commission. Similarly, it is possible that the introduction of jackpot payouts of merchandise or other things of value in Atlantic City may attract additional patrons to the casinos, thus fulfilling the underlining statutory goals of encouraging tourism and generating tax revenues for the benefit of the disabled and senior citizens of the State.

The proposed rules are intended to further the statutory goals of assuming fairness to the player while at the same time, protecting the

viability of casino operations. By doing so, the proposed rules will also serve the broader goal of maintaining public confidence and trust in the operation and regulation of casino gaming in this State.

Economic Impact

The actual economic impact of the proposed rules will be difficult to ascertain until jackpot payouts of merchandise or other things of value are put into use, monitored and evaluated. Implementation of such payouts through compliance with the proposed rules will require both the casino industry and the regulatory agencies to incur certain costs. It is not anticipated, however, that these costs will be significant.

It is possible that the introduction of jackpot payouts of merchandise or other things of value in Atlantic City will generate increased revenues for casino licensees and accordingly lead to increased tax revenues for the State. Any attempt to project this economic effect, however, would be highly speculative at this time.

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

19:40-1.2 Definitions

...
 "Slot machine" means any mechanical, electrical or other device, contrivance or machine which, upon insertion of a coin, **currency**, token or similar object therein, or upon payment of any consideration whatsoever, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash or tokens to be exchanged for cash or to receive any merchandise or thing of value or a token to be exchanged for any merchandise or thing of value, whether the payoff is made automatically from the machine or in any other manner whatsoever.

19:45-1.1 Definitions

...
 "Cash equivalent value of any merchandise or thing of value" is defined in N.J.A.C. 19:45-1.40A.

...
 "Jackpot" means [an amount of] any money, **merchandise or thing of value** to be paid to a patron as the result of a specific combination(s) of [reel] characters indicated on a slot machine.

...
 "Payout" is defined in N.J.A.C. 19:45-1.40 and 19:45-1.40A.

...
 "Slot Machine" means any mechanical, electrical or other device, contrivance or machine which, upon insertion of a coin, [or] **currency, token or similar object** therein, or upon payment of any consideration whatsoever, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash or tokens to be exchanged for cash or to receive any merchandise or thing of value or a token to be exchanged for any merchandise or thing of value, whether the payoff is made automatically from the machine or in any other manner whatsoever.

...
 "Slot Machine Win" means the amount determined by subtracting the hopper fills, other than initial hopper fills, and **cash payouts pursuant to N.J.A.C. 19:45-1.40** from the slot machine drop.

19:45-1.37 Slot machines; identification; signs; meters

(a) Unless otherwise authorized by the Commission, each slot machine in a casino shall have the following identifying features:

1.-3. (No change.)

4. A display on the front of the slot machine that clearly represents its rules of play, [reel] character combinations requiring payouts, and the amount of the related payouts. [;] **In addition, a casino licensee shall display on the slot machine a clear description of any merchandise or thing of value offered as a payout, including the cash equivalent value of the merchandise or thing of value offered, the dates the merchandise or thing of value will be offered if the casino licensee establishes a time limit upon initially offering the merchandise or thing of value and the availability or unavailability to the patron of the optional cash equivalent value authorized by N.J.A.C. 19:45-1.40A(m);**

5.-6. (No change.)

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

(f) The casino licensee shall set each slot machine to pay out, at a minimum, 83 percent of the amount of coins, [or] **currency or tokens**

placed by patrons into the slot machine and shall maintain a record of each slot machine setting and theoretical payout percentage. **No payout of any merchandise or thing of value or payment of cash in lieu of any merchandise or thing of value pursuant to N.J.A.C. 19:45-1.40A shall be included in determining whether a slot machine meets the 83 percent minimum payout requirement.**

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

19:45-1.40 Jackpot payouts of cash

(a) Whenever a patron wins a jackpot of cash or tokens to be exchanged for cash that is not totally and automatically paid directly from the slot machine, a slot booth cashier ("slot cashier") shall prepare a Jackpot Payout Slip ("Payouts").

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

19:45-1.40A Jackpot payouts of merchandise or other things of value

(a) Whenever a casino licensee offers any merchandise or thing of value as part of a slot machine payout, such payout shall have a cash equivalent value of at least \$5,000 and shall not be included in the total of all sums paid out as winnings to patrons for purposes of determining gross revenue or be included in determining the payout percentage of any slot machine.

(b) The cash equivalent value of such payout shall be determined in accordance with the following requirements:

1. Any merchandise or thing of value of a type sold directly to the public in the normal course of a casino licensee's business shall be recorded at an amount based upon the full retail price normally charged for such item;

2. Any merchandise or thing of value which is of a type not offered for sale to the public in the normal course of a casino licensee's business but which is provided directly to the patron by the casino licensee shall be recorded at an amount based upon the actual cost to the casino licensee of providing such item;

3. Any merchandise or thing of value provided directly or indirectly to the patron on behalf of a casino licensee by a third party not affiliated with the casino licensee shall be recorded at an amount based upon the actual cost to the casino licensee of having the third party provide such item;

4. Any merchandise or thing of value provided directly or indirectly to the patron on behalf of a casino licensee by a third party who is affiliated with the casino licensee shall be recorded by the casino licensee in accordance with the provisions of this section as if the affiliated party were the licensee.

(c) The casino licensee shall retain and make available to the Commission and Division upon request any supporting documentation relating to the acquisition and valuation of any merchandise or thing of value to be offered as a payout and shall accumulate the total dollar amount and number of such payouts. The supporting documentation shall include a detailed description of the merchandise or thing of value and shall specifically identify which slot machines offer which merchandise or things of value as payouts. In addition, a quarterly report shall be filed with the Commission, on a form prescribed by the Commission, which shall, at a minimum, provide the current quarter and year-to-date total dollar amount and number of payouts of merchandise or things of value.

(d) Whenever a patron wins a jackpot which includes any merchandise or thing of value, an accounting representative, with no incompatible functions, shall prepare a Payout Slip ("Slip"). Such Slips shall be serially prenumbered forms and shall be used in sequential order. All original and duplicate void Slips shall be marked "Void" and shall require the signature of the preparer.

(e) For establishments in which Slips are manually prepared, the following procedures and requirements shall be observed:

1. Each series of Slips shall be a three-part form, at a minimum, and shall be inserted in a locked dispenser that will permit an individual Slip in the series and its copies to be written upon simultaneously while still locked in the dispenser, and that will discharge the original Slip and a duplicate copy while the triplicate copy remains in a continuous, unbroken form in the dispenser; and

2. Access to the triplicate copy shall be maintained and controlled at all times by employees responsible for controlling and accounting for the unused supply of Slips, placing Slips in the dispensers, and removing from the dispensers each day the triplicate copy remaining therein. These employees shall have no incompatible functions.

(f) For establishments in which Slips are computer prepared, each series of Slips shall be a two-part form, at a minimum, and shall be inserted in a printer that will: simultaneously print an original Slip and duplicate copy; store, in machine readable form, all information printed on those copies; and discharge the original Slip and duplicate copy. The stored data shall not be susceptible to change or removal by any personnel after preparation of a Slip.

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(g) On the original and all copies of the Slip, or in stored data, the preparer shall record, at a minimum, the following information:

1. The casino number of the slot machine on which the jackpot was registered;
2. The winning combinations of characters constituting the jackpot;
3. The date, shift and time when the jackpot occurred;
4. The merchandise or thing of value won and its cash equivalent value;
5. The selection of merchandise or its cash equivalent value as made by the patron;
6. The time of the Slip's preparation;
7. The signature or, if computer prepared, identification code of the preparer.

(h) Signatures attesting to the accuracy of the information contained on the Slip shall be, at a minimum, of the following personnel at the following times:

1. The original:
 - i. An accounting representative with no incompatible functions upon preparation; and
 - ii. A slot supervisor after observing the combination of characters indicated on the slot machine; and
2. The duplicate:
 - i. An accounting representative with no incompatible functions upon preparation;
 - ii. A slot supervisor after observing the combination of characters indicated on the slot machine; and
 - iii. A security department member after observing the combination of characters indicated on the slot machine.

(i) Upon meeting the signature requirements as described in (h) above, the security department shall maintain and control the duplicate copy of the Slip, and the accounting department shall maintain and control the original Slip.

(j) At the end of gaming activity each day, at a minimum, the original Slip and duplicate copy of the Slip shall be forwarded as follows:

1. The original Slip shall be forwarded to the accounting department for agreement with the triplicate copy or stored data; and
2. The duplicate Slip shall be forwarded to the accounting department for agreement with the triplicate copy or stored data.

(k) Except as otherwise provided in (m) below, any merchandise or thing of value to which a patron is entitled as a result of a slot machine payout shall be given to the patron. Documentation supporting the receipt by the patron of such merchandise, thing of value or, in accordance with (m) below, cash equivalent value shall be prepared by a representative of the casino licensee having no incompatible functions and shall be agreed to the triplicate copy of the Slip or stored data by a representative of the accounting department having no incompatible functions.

(l) Each casino licensee offering slot machine payouts of tokens redeemable for any merchandise or thing of value shall submit, at a minimum, to the Commission and Division a description of the internal procedures governing such payouts, which shall include, without limitation, access to and security over the slot machines, accountability and control over the tokens and such other controls as are necessary to ensure integrity of the game and fairness to the patron equivalent to that provided by these regulations for payouts based on slot machine character combinations.

(m) The casino licensee may permit a winning patron to request and receive the exact cash equivalent value of the merchandise or thing of value as determined in (b)1-4 above in lieu of the merchandise or thing of value. However, any cash so provided shall not be included in determining gross revenue or in determining the minimum 83 percent payout of any slot machine as required by N.J.A.C. 19:45-1.37(f) and 19:46-1.26(e). If a licensee chooses to offer a patron this option, the licensee shall advise the patron in advance of actual play pursuant to N.J.A.C. 19:45-1.37(a)4 and 19:46-1.26(a)5.

(n) Any advertising involving slot machine payouts of any merchandise or thing of value by the casino licensee shall include an accurate description of the merchandise or thing of value offered, the cash equivalent value of the merchandise or thing of value offered and the dates the merchandise or thing of value will be offered if the casino licensee establishes a time limit upon initially offering the merchandise or thing of value. Any statements or depictions contained in the advertisement shall not be contrary to the provisions of the Casino Control Act or the Commission's regulations.

(o) Until the expiration of any time limit established in accordance with (n) above or, if no such time limit is initially established by the casino licensee, until the merchandise or thing of value offered as a slot machine payout is won by a patron, a casino licensee shall not change the odds of winning the merchandise or thing of value, the denomination of the machine, nor in any other way vary the terms upon which the merchandise or thing of value is offered to the public until it is won by a patron. Repair or replacement of a slot machine offering any merchandise or thing of value shall be governed by the restrictions applicable to progressive jackpot machines pursuant to N.J.A.C. 19:45-1.39, whether or not the merchandise or thing of value is offered in conjunction with a progressive jackpot payout.

19:46-1.26 Slot machines, identification; signs; meters; other devices

(a) Unless otherwise authorized by the Commission, each slot machine in a casino shall have the following features:

1.-4. (No change.)

5. A display on the front of the slot machine that clearly represents its rules of play, [reel] character combinations requiring payouts, and the amount of the related payouts. [;] In addition, a casino licensee shall display on the slot machine a clear description of any merchandise or thing of value offered as a payout, including the cash equivalent value of the merchandise or thing of value offered, the dates the merchandise or thing of value will be offered if the casino licensee establishes a time limit upon initially offering the merchandise or thing of value and the availability or unavailability to the patron of the optional cash equivalent value authorized by N.J.A.C. 19:45-1.40A(m); and

6. (No change.)

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

(e) The casino licensee shall set each slot machine to payout at a minimum 83 percent of the amount of coins, currency or tokens placed by patrons into the slot machine and shall maintain a record of each slot machine setting and theoretical payout percentage. No payout of any merchandise or thing of value or payment of cash in lieu of any merchandise or thing of value pursuant to N.J.A.C. 19:45-1.40A shall be included in determining whether a slot machine meets the 83 percent minimum payout requirement.

(f)-(g) (No change.)

RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Special Hearing Rules

Division of Medical Assistance and Health Services Applicant/Recipient Hearings

Adopted New Rules: N.J.A.C. 1:10B

Proposed: August 4, 1986 at 18 N.J.R. 1507(a).

Adopted: September 11, 1986 by Ronald I. Parker, Acting
Director, Office of Administrative Law.

Filed: September 12, 1986 as R.1986 d.405, with changes not
requiring additional public notice and comment (see N.J.A.C.
1:30-4.5).

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

Effective Date: October 6, 1986.

Expiration Date: October 6, 1991.

Summary of Public Comments and Agency Responses:

The OAL received one comment from Richard S. Semel of Bergen County Legal Services. He objected to limited discovery and the accelerated decision required by the rules. However, the OAL hearing rules are subject to the Federal requirement that final agency action in Medical Assistance Programs cases be completed within 90 days of the request for a hearing. 42 C.F.R. Section 431.224(f). Therefore, the rules were designed to allow for expedition and are being adopted as proposed.

Although no substantive changes are being made in these rules, some of the subchapters have been renumbered or relocated. This was done to conform the style of 1:10B to the OAL proposed revision of all general and special hearing rules. See OAL proposal at 18 N.J.R. 1728(a).

In addition, 1:10B-18.3 has been added. This rule requires that all initial decisions be issued in writing, rather than orally at the hearing. This change also relates to the OAL's proposed rule revisions, since the proposed new hearing rules will allow for oral decisions. See, 18 N.J.R. 1728(a). The Department of Human Services opposes oral decisions in its cases. Therefore, provisions are being added to N.J.A.C. 1:10, Public Welfare Hearings, and to this Chapter, 1:10B, to require decisions in writing.

Full text of the adoption follows (additions to the proposal indicated in boldface with asterisks *thus*).

CHAPTER 10B

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES APPLICANT/RECIPIENT HEARINGS

SUBCHAPTER 1. HEARING APPLICABILITY

1:10B-1.1 Applicability

(a) The rules in this chapter shall apply to matters transmitted to the Office of Administrative Law by the Division of Medical Assistance and Health Services involving applicants for or recipients of Medicaid and Medically Needy benefits or services.

(b) This chapter shall not apply to matters involving providers.

(c) Any aspect of the hearing not covered by these rules of special applicability shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that this chapter is inconsistent with the U.A.P.R., this chapter shall apply.

SUBCHAPTER 2. DEFINITIONS

1:10B-2.1 Definitions

For purposes of this chapter, the following definitions apply.

"Applicant" means any person who has made an application to become qualified to receive Medicaid or Medically Needy benefits.

"Recipient" means a New Jersey resident who has been determined to meet the applicable eligibility criteria for either the Medicaid or Medically Needy Programs and is determined to need medical care and services authorized under the New Jersey Medical Assistance and Health Services Act.

"Provider" means any person, public or private institution, agency or business concern approved by the Division of Medical Assistance and Health Services that is lawfully providing medical care, services, goods and supplies and holding, where applicable, a current valid license to provide such services or to dispense such goods or supplies.

SUBCHAPTER 3 THROUGH SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 5. REPRESENTATION

1:10B-5.1 Representation

An applicant/recipient may appear at a proceeding within representation or may be represented by an attorney or by a relative, friend or other spokesperson pursuant to the procedures set forth in N.J.A.C. 1:1-3.12.

SUBCHAPTER 6 THROUGH SUBCHAPTER 8. (RESERVED)

SUBCHAPTER 9. CLERK'S NOTICE; SCHEDULING OF HEARING

1:10B-9.1 Clerk's notice

(a) The Clerk shall send a written notice of filing and hearing to each party at least 10 days before the scheduled hearing date.

(b) The notice shall indicate that the applicant/recipient may represent himself/herself or use legal counsel, a relative, a friend or other spokesperson as per the Federal Fair Hearing Regulations at 42 C.F.R. 431.206(b)(3).

(c) The notice shall establish the hearing location, time and date.

1:10B-9.2 Scheduling of hearing

(a) The hearing shall be conducted at a reasonable time, date and place.

(b) Upon presentation of acceptable information regarding an applicant's/recipient's illness or infirmity which would prevent his or her appearance at a hearing location, the hearing shall be scheduled at the applicant's/recipient's current residence.

SUBCHAPTER 10. DISCOVERY

1:10B-10.1 Discovery

(a) The county welfare agency or the Division of Medical Assistance and Health Services shall provide the applicant/recipient or his or her authorized representative an opportunity to review the entire case file and all documents and records to be used in the hearing. The review shall occur at a reasonable time before the hearing as well as during the hearing.

(b) If a party wants information other than what is provided in (a) above, the party must request permission from the judge. The judge may permit the additional discovery only if there is good cause. The judge may not delay the hearing to allow for additional discovery.

SUBCHAPTER 11 THROUGH SUBCHAPTER 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:10B-14.1 Attendance at hearing

The applicant/recipient or a representative and the county welfare agency or the Division of Medical Assistance and Health Services and their representatives, if any, shall attend the hearing.

SUBCHAPTER 15 THROUGH SUBCHAPTER 17. (RESERVED)

SUBCHAPTER 18. DECISIONS

1:10B-18.1 Initial decision

An initial decision shall be issued within 21 days from the date of the hearing.

1:10B-18.2 Exceptions

(a) If the parties wish to take exception to the initial decision, such exception must be submitted in writing to the Director of the Division of Medical Assistance and Health Services, the OAL Clerk and to all parties.

(b) Exceptions must be received by the Division of Medical Assistance and Health Services no later than five business days after receipt of the initial decision.

(b) No replies and cross-exceptions shall be permitted.

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1:10B-18.3 Written initial decisions***All initial decisions shall be issued in writing. Oral initial decisions are not permitted.***

SUBCHAPTER 19 THROUGH SUBCHAPTER 21. (RESERVED)

EDUCATION**(a)****STATE BOARD OF EDUCATION****Health, Safety and Physical Education
Drugs and Alcohol****Adopted New Rule: N.J.A.C. 6:29-9**

Proposed: June 16, 1986 at 18 N.J.R. 1237(b).

Adopted: September 8, 1986 by State Board of Education,
Saul Cooperman, Secretary.Filed: September 8, 1986, as R.1986 d.396, **with technical changes**
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).Authority: N.J.S.A. 18A:1-1, 18A:4-10, 18A:4-15, 18A:4-28.7,
18A:35-4, 18A:35-4a and 18A:40-4.1.

Effective Date: October 6, 1986.

Expiration Date: March 25, 1990.

Summary of Public Comments and Agency Responses:

Six letters with comments were received within the comment period and two were received after the comment period expired. Three organizations expressed support for the intent of the new rules. The comments and the Department's responses follow.

COMMENT: Evaluation and treatment services in schools should be provided only by educationally certified personnel.

RESPONSE: A change has been made in accordance with an informal opinion by the Attorney General's Office to the effect that service delivery shall be done in conjunction with a certified guidance counselor.

COMMENT: Community input to the annual policy review process should be formalized.

RESPONSE: District boards can best determine the appropriate process for soliciting community input, and that additional requirements would represent unnecessary interference with district board operations.

COMMENT: Hospital examination of student requested by school presents legal problems and presents a jurisdictional overextension by the department.

RESPONSE: N.J.S.A. 18A:4-4.1 mandates the procedural elements of the code against which objections are being raised.

COMMENT: Require more than ten hours of drug and alcohol education per year in the elementary grades.

RESPONSE: The additional curriculum requirement suggested goes beyond the intent of the governing statute, N.J.S.A. 18A:35-4.

Summary of Changes made between Proposal and Adoption:

N.J.A.C. 6:29-9.2: A portion of the definition of "Evaluation" was changed from, "4. Assessment by a teaching staff member or district board of education service provider appropriately trained in alcoholism or substance abuse, including, but not limited to, certified alcoholism or substance abuse counselors, to determine the extent of the pupil's drug or alcohol use and dependency." to "4. Assessment by a teaching staff member or district board of education service provider appropriately certified by the New Jersey State Board of Examiners and trained in alcoholism or substance abuse, to determine the extent of the pupil's drug or alcohol use and dependency. Such assessment may be made through the use of trained service providers, certified alcoholism or substance abuse counselors who are acting as resource person(s) or in conjunction with a certified teacher or guidance counselor."

The Department of Education made this change in response to the June 2, 1986 Attorney General Opinion regarding the use of certified alcoholism counselors in public schools.

A portion of the definition of "Treatment" was changed from "1. Provisions for program instruction, counseling and related services provided by the board of education or its service providers while a pupil is receiving medical or therapeutic care for a diagnosed drug or alcohol dependency problem;" to "1. Provisions for program instruction, counseling and related services provided by the board of education or its

service providers while a pupil is receiving medical or therapeutic care for a diagnosed drug or alcohol dependency problem. Treatment shall be provided by individuals who are appropriately certified by the New Jersey State Board of Examiners and trained in alcohol and substance abuse or individuals acting as resource person(s) or in conjunction with a certified teacher or guidance counselor;" This change was made in response to the Attorney General Opinion cited above.

N.J.A.C. 6:29-9.5(b): The Department added a paragraph 4, which states that "provisions shall be made for the appropriate care of the pupil while awaiting the results of the medical examination."

The Department made this change in response to a comment. Previous numbers 4 through 8 have been renumbered 5 through 9.

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 9. DRUGS AND ALCOHOL****6:29-9.1 Purpose*****[The rules in this subchapter]* ***These rules***** are designed to provide guidance to district boards of education in their development of policies and procedures to evaluate and treat pupils who have alcohol and drug related problems in the school setting.**6:29-9.2 Definitions**

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

"Evaluation" includes, but is not limited to, the following:

1. Procedures used to determine a pupil's need for an educational program which extends beyond the regular school program;

2. Examination by a physician for the purpose of diagnosing whether the pupil is under the influence of alcohol and/or other drugs;

3. Evaluation by the child study team to determine a pupil's eligibility or need for a special education program and/or related services due to involvement or consumption of alcohol or other drugs.

4. Assessment by a teaching staff member or district board of education service provider appropriately ***[trained]* ***certified by the New Jersey State Board of Examiners and trained***** in alcoholism or substance abuse, ***[including but not limited to certified alcoholism or substance abuse counselors,]*** to determine the extent of the pupil's drug or alcohol use and dependency. ***Such assessment may be made through the use of trained service providers, certified alcoholism or substance abuse counselors who are acting as resource person(s) or in conjunction with a certified teacher or guidance counselor.***

"Treatment" includes, but is not limited to, the following:

1. Provisions for program instruction, counseling and related services provided by the board of education or its service providers while a pupil is receiving medical or therapeutic care for a diagnosed drug or alcohol dependency problem~~];~~ ***. ***Treatment shall be provided by individuals who are appropriately certified by the New Jersey State Board of Examiners and trained in alcohol and substance abuse or individuals acting as resource person(s) or in conjunction with a certified teacher or guidance counselor;*****

2. Referral to a community agency recommended by the County Alcoholism Authority or the State Department of Health;

3. Providing support services for pupils who are in care or returning from care for drug or alcohol dependency;

4. A special class or course designed to meet the needs of pupils with drug or alcohol use problems.

6:29-9.3 Adoption of policies and procedures

(a) District boards of education shall adopt and implement policies and procedures for the evaluation and treatment of pupils who possess, consume or who on reasonable grounds are suspected of being under the influence of the following substances:

1. Alcoholic beverages;

2. Any controlled dangerous substance, as identified in N.J.S.A. 24:21-2; and/or

3. Any chemical or chemical compound which releases vapor or fumes causing a condition of intoxication, inebriation, excitement, stupefaction, or dulling of the brain or nervous system including but not limited to glue containing a solvent having the property of releasing toxic vapors or fumes, as defined in N.J.S.A. 2A:170-25.9.

(b) In adopting and implementing policies and procedures for the evaluation and treatment of drug or alcohol affected pupils, district boards of education shall consult with local agencies recommended by the State Department of Health.

(c) Drug and alcohol policies of district boards of education shall

include, but not be limited to the following components:

1. The roles of appropriate school staff when handling a variety of possible drug or alcohol related situations involving pupils on school property or at school functions;

2. Specific procedures, sanctions and due process provisions for violations of the drug and alcohol policy requiring disciplinary action by the district board of education. The sanctions should be graded according to the severity of the offense;

3. Specific procedures to govern instances where emergency room services are required in treating alcohol and/or drug affected pupils;

4. Provisions for the inclusion of law enforcement authorities when warranted;

5. The provision of evaluation and treatment services for pupils who are affected by drug or alcohol use.

(d) The policies and procedures for the evaluation and treatment of drug and alcohol affected pupils developed under this section shall be reviewed and approved by the Department of Education.

6:29-9.4 Review and availability of policies and procedures

(a) Each district board of education shall establish an annual process to review the effectiveness of its alcohol and drug policies and procedures. The district board of education shall solicit community input as well as consult with local agencies recommended by the State Department of Health in the review process.

(b) Drug and alcohol policies and procedures for discipline, evaluation, and treatment of pupils shall be made available annually to all school staff, pupils, and parents or guardians.

6:29-9.5 Reporting, notification and examination procedures

(a) In instances involving alcoholic beverages, the following shall apply:

1. Any professional staff member having reason to believe that a pupil is under the influence of alcoholic beverages on school property or at a school function shall report the matter as soon as possible to the school nurse or medical inspector and the principal.

i. In the absence of the principal, his or her designee shall be notified.

ii. In instances where the school nurse, medical inspector and the principal are not in attendance, the staff member responsible for the school function shall be immediately notified.

2. The pupil shall be removed to a protective environment for observation and care by the school nurse or medical inspector until his or her parent(s) or guardian(s) can be contacted to take the pupil home. The principal shall request the assistance of the school nurse or medical inspector in assessing the physical state of the pupil. This shall not be construed to limit or condition the right of a district board of education to seek emergency medical assistance for a pupil when acting in loco parentis, and as an agent of the parent(s) or guardian(s), and for the welfare of the pupil.

3. The pupil's parent(s) or guardian(s) and the chief school administrator shall be immediately notified of the incident and shall be provided a description of the situation and symptoms.

4. When the principal has completed his or her investigation, a conference shall be arranged with the pupil and his or her parent(s) or guardian(s).

5. A plan to address those specific needs which the pupil may have shall be developed following the parent conference.

6. The district's policy shall provide for the evaluation and treatment of pupils who are suspected of the use, possession or consumption of alcoholic beverages in school or at school functions.

7. In instances where there is any doubt regarding the nature of the substance(s) affecting a pupil, the provisions outlined in (b) below shall be followed.

8. In all instances involving the use of alcoholic beverages*,* a *[*]*Violence, Vandalism and Substance Abuse Incident Report*[*]* shall be completed.

(b) In instances involving controlled dangerous substances or any chemical or chemical compound as identified in N.J.A.C. 6:29-9.3(a)2 and 3, the following shall apply:

1. Any professional staff member to whom it appears that a pupil may be under the influence of intoxicating drugs on school property or at a school function shall report the matter as soon as possible to the school nurse or medical inspector and the principal.

i. In the absence of the principal, his or her designee shall be notified;

ii. In instances where the school nurse, medical inspector or the principal are not in attendance, the staff member responsible for the school function shall be immediately notified.

2. The principal or his or her designee shall immediately notify the

parent or guardian and the chief school administrator and arrange for an immediate examination of the pupil. The examination may be performed by a physician selected by the parent or guardian or by the medical inspector. If the chosen physician is not immediately available, the examination shall be conducted by the medical inspector or, if the medical inspector is not available, the pupil shall be accompanied by a member of the school staff, designated by the principal, to the emergency room of the nearest hospital for examination. If available, a parent or guardian should also accompany the pupil.

3. If, at the request of the parent or legal guardian, the medical examination is conducted by a physician other than the medical inspector, such examination shall not be at the expense of the district board of education.

4. Provisions shall be made for the appropriate care of the pupil while awaiting the results of the medical examination.

*[4.]****5.*** A written report of the medical examination shall be furnished to the parent or guardian of the pupil, the principal and the chief school administrator by the examining physician within 24 hours.

*[5.]****6.*** If there is a positive diagnosis from the medical examination indicating that the pupil is under the influence of intoxicating drugs, the pupil shall be returned to the care of a parent or guardian as soon as possible. Attendance at school shall not resume until a written report has been submitted to the parent or guardian of the pupil, the principal and chief school administrator from a physician who has examined the pupil to diagnose drug use. The report shall certify that the pupil is physically and mentally able to return to school. In addition, the staff member shall complete the [*]Violence, Vandalism and Substance Abuse Incident Report.[*]

*[6.]****7.*** While the pupil is at home because of the medical examination[,] or after his or her return to school, the school may require additional evaluation for the purpose of determining the extent of the pupil's drug use and its effect on his or her school performance.

*[7.]****8.*** The district's policy shall provide for the evaluation and treatment of pupils whose use of drugs has affected their school performance or who possess or consume drugs in school or at school functions.

*[8.]****9.*** Any staff member who reports a pupil to the principal or his or her designee in compliance with the provisions of this subsection shall not be liable in civil damages as a result of making such a report as specified by N.J.S.A. 2A:62A-4 and as provided for under N.J.S.A. 18A:40-4.2.

6:29-9.6 Curriculum and instruction

(a) Each school district having secondary school grades shall incorporate a drug and alcohol education unit into its health education curriculum in accordance with existing Department of Education guidelines. A minimum of 10 clock hours per school year of drug and alcohol education shall be provided pursuant to N.J.S.A. 18A:4-28.7.

(b) Each school district having elementary school grades shall incorporate into its curriculum drug and alcohol education appropriate for the pupil's age, maturity, and grade level in accordance with existing Department of Education guidelines.

HEALTH

DIVISION OF PLANNING AND RESOURCES DEVELOPMENT

(a)

Certificate of Need Megavoltage Radiation Oncology Services Readoption with Amendments: N.J.A.C. 8:331

Proposed: July 21, 1986 at 18 N.J.R. 1436(a).

Adopted: September 12, 1986 by Molly Joel Coye, M.D., M.P.H.,
Commissioner, Department of Health (with approval of the
Health Care Administration Board).

Filed: September 15, 1986, as R.1986.d.417, **without change.**

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Effective Date for Readoption: September 15, 1986.

Effective Date for Amendments: October 6, 1986.

Expiration Date: September 15, 1991.

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Summary of Public Comments and Agency Responses:

Two written comments were received during the comment period. The commenters were The Valley Hospital and the law firm of Manger, Kalison, Murphy and McBride.

COMMENT: The Valley Hospital called attention to an apparent discrepancy at N.J.A.C. 8:33I-1.2(b)(1) which requires actual utilization of existing megavoltage equipment to be either 9000 patient visits *or* 500 patients but then requires projected utilization of 10,500 patient visits *and* 600 patients. The suggestion is made that the language should be consistent in that both the *actual* and *projected* utilization should be either patient visits *or* patients.

RESPONSE: The addition of the word "or" proposed by the Department was intended to correct a printing omission which had been made in 1984, when this paragraph was originally presented and approved by the Health Care Administration Board. The choice of meeting either the actual patient visit or actual total patient standard is intended to allow for different megavoltage treatment patterns and varying curative versus palliative casemixes at existing megavoltage programs. The approval of additional megavoltage equipment is intended to be based on the expectation that the additional equipment will be sufficiently well utilized to function efficiently and effectively. Applicants must therefore document that the additional equipment will be sufficiently utilized (that is, projecting 10,500 patient visits and 600 patients). The wording being proposed by the Department is the exact wording approved by the Megavoltage Radiation Oncology Technical Advisory Committee and by the Statewide Health Coordinating Council in both 1984 and again in 1986.

COMMENT: The law firm of Manger, Kalison, Murphy and McBride has proposed an amendment at N.J.A.C. 8:33I-1.3 (new Megavoltage Programs) which would provide for administrative review of applications by existing health care facilities to assume the operation of one of the 12 physician-operated megavoltage programs in the Department of Health's inventory. Such an amendment would thereby permit reclassification of existing megavoltage units from "physician-operated" to "facility-based" and would bring such units under the Department's megavoltage regulations.

RESPONSE: The moratorium on new hospital-based megavoltage programs is based on the number of existing and approved hospital-based units (53), the utilization of these units Statewide, and the projected need for megavoltage radiation treatment based on current and future cancer incidence data. As stated in the Social and Economic Impact statements, Statewide megavoltage therapy equipment operated at 66 percent of capacity during 1985. The addition of two new programs in 1986 will provide additional capacity to the State's inventory. In effect, there is considerable excess capacity for megavoltage services when only the hospital-based units are considered. The physician-operated units in the State are virtually all single unit, Cobalt-60 services that provide these services to a relatively small number of patients. The primary concern of the Department is the assurance that there are available, well-utilized, quality services for oncologic patients requiring megavoltage radiation treatment. The Department is convinced that such assurance can be best achieved through the encouragement of multiple multi-unit megavoltage sites, rather than the proliferation of additional single unit programs. The commentator's suggested amendment would, in effect, facilitate further proliferation of single unit megavoltage programs and encourage hospitals to incur the extensive costs of upgrading physician-owned megavoltage equipment at a time when existing Statewide utilization is at 66 percent of capacity.

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

Full text of the amendments to the readoption follows.

CHAPTER 33I CERTIFICATE OF NEED: MEGAVOLTAGE RADIATION ONCOLOGY UNITS

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

8:33I-1.1 Definitions

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

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

Energy levels of megavoltage units shall be defined as follows:

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

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

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

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

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

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

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

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

2.-4. (No change.)

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

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

8:33I-1.3 New megavoltage programs

No applications for new megavoltage programs will be accepted for processing by the Department pending annual review of these rules by the Ad Hoc Technical Advisory Committee (see N.J.A.C. 8:33I-1.5(a)10). In the event of a megavoltage program closure, a statewide needs assessment will be undertaken by the Department to consider a one time only processing of applications for new megavoltage services.

DIVISION OF EPIDEMIOLOGY AND DISEASE CONTROL

(a)

Reportable Diseases Reporting of Acquired Immunodeficiency Syndrome and AIDS Related Complex

Adopted New Rule: N.J.A.C. 8:57-1.14

Proposed: June 16, 1986 at 18 N.J.R. 1245(a).

Adopted: September 8, 1986 by Evelyn Geddes, Chairperson,
Public Health Council.

Filed: September 12, 1986 as R.1986 d.408, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:1A-7, N.J.S.A. 26:4-2.

Effective Date: October 6, 1986.

Expiration Date: June 18, 1990.

Summary of Public Comments and Agency Responses:

Most of the commenters on the regulations noted that there was no statement about the confidentiality of the data in these regulations. Therefore, for emphasis, the Department thought it should add a section which states the statute on the confidentiality of the data. It should be noted that this new subsection (f) does not provide any new requirement or protection, but restates what is already New Jersey law.

The following are the individuals or organizations that testified on these regulations and/or submitted written comments.

American Civil Liberties Union
Mona R. Bomgaars, M.D.
Richard E. Dixon, M.D.
Gay Men's Health Crisis, represented by Tim Sweeney
Kathleen M. Gekowski, M.D.
Hyacinth Foundation, Inc., represented by Robert A. Negran, Esq.
Albert S. Klainer, M.D.
Mary Ellen LaBrie
National Gay and Lesbian Task Force, represented by Jeffrey Levi
New Jersey Hospital Association, represented by Edmund A. Abramovitz
New Jersey Lesbian and Gay Coalition, represented by David Edelman and Norman Clevely
New Jersey State Nurses Association, represented by Dorothy Flemming
Linda Patak
Christine Reyelt, M.D.
Kathy T. Slawson
Alicia Thompson
Estella Y. Truax

COMMENT: Many comments received concerned the Social Impact Statement. In particular, the commenters felt that the Department was not sufficiently sensitive to the dangers of unwarranted disclosure of information about patients with AIDS or ARC, as evidenced by the statement that past experience with reportable diseases showed the risk of loss of confidentiality was minimal. There was also criticism that the Social Impact Statement was too short for so serious a problem.

RESPONSE: The Department agrees that the Social Impact Statement could be improved. However, in the usual procedure, only the actual rule is changed in the promulgation process, not the summary or impact statement. However, the Department would like to add the following to the record:

Although most of the conditions associated with AIDS are currently reportable, making AIDS itself reportable will require reporting of the few cases not currently reportable, thus giving more accurate data. Many individuals with illness due to Human Immunodeficiency Virus (HIV) are not classified as AIDS patients because they do not meet the formal definition for AIDS, yet some of these patients are very ill and others will develop more severe illness in the future. In order to get a more accurate picture of the illness due to HIV, it is important that patients who do not meet the formal definition of AIDS also be recorded. For this reason, the reporting of ARC is also being required.

Accurate measurement of the extent of illness due to HIV will allow for better projections of the needs for services to such patients in the future. Such needs would include provisions for hospitalization, medical care services outside the hospital, social services and other support services, and the provision of appropriate education to those around individuals ill with diseases due to HIV. In addition, analysis of the data on reporting will allow appropriate control efforts, such as education on prevention, to be directed to where it is most needed.

The negative impact of these regulations would be from a loss of confidentiality of those individuals identified by the reporting system. Past experience with communicable disease and other disease reporting systems has not shown evidence of any breakdown of such confidentiality; however, the Department of Health is very much aware of the particularly sensitive nature of information related to AIDS and ARC. The Department is aware of the discrimination to which patients with these diseases are subjected, in such areas as employment and a variety of social interactions. The Department is therefore attempting to keep the amount of identifying information it receives on any patient to a minimum. In most cases, the Department will not receive sufficient information for the Department, or anybody else, to contact the patient. In addition, all lists and computer files of the Department have patient identifiers coded.

The Department has included in the regulation a specific section on confidentiality, which comes from the statute. At the present time, the Department receives a good deal of information informally on AIDS and ARC patients. Only those AIDS patients with accompanying conditions

that are already reportable are currently protected by the confidentiality statute already in place. Making AIDS and ARC reportable will extend available confidentiality protection to all such patients.

COMMENT: One commenter took issue with the Economic Impact Statement that other jurisdictions had noted fewer ARC cases than AIDS cases being reported, noting that it has been estimated that there are ten ARC cases for each AIDS case.

RESPONSE: The Department is aware of the estimates concerning the ratio of ARC cases to AIDS cases. The Economic Impact Statement was only stating experience to date. The Department agrees with the commenter that if there were complete reporting there would be more ARC cases reported than AIDS cases.

COMMENT: Several commenters objected to the reporting of patients' names, addresses and telephone numbers, stating that it is not necessary that such information be collected to accomplish the purposes of the regulation to provide statistical data, and that such patient identifying data might be used adversely against patients if improperly disclosed. One commenter suggested that only a code number for each patient be transmitted to the Department.

RESPONSE: The Department is very aware that misuse of the data could be harmful to patients, and wishes to collect as little information as possible to obtain accurate statistical data on the occurrence of AIDS and ARC in New Jersey. The Department feels it needs to know the name and birth date of the patient to prevent duplication of information received. The Department does not feel that it is necessary to routinely obtain the address and telephone number of the patients, and this is being eliminated from the regulation. However, in place of the exact street address, the Department needs to know, for demographic purposes, the municipality, county and state of residence of the patients, so this information has been added to the regulation. In some instances, for example, when the Department needs to further interview a patient initially reported as not being a member of a high risk group, the Department may need additional locating information on the patient, and retains the right to obtain such information. Such information will only be retained by the Department for as long as is necessary to accomplish the immediate purpose of collecting the information.

The Department does not believe that a code assigned by a physician, as suggested by one commenter, is sufficient to prevent duplication. Patients with AIDS and ARC have been seen in different health care facilities. Many patients do not have a personal physician, so that a code would have to be given to the patient by the health care facility. It is difficult to see how that code would get transmitted as the patient moved from facility to facility. As noted above, the patient's name would be transmitted to the Department, but the information that could be used to directly trace the patient would not be so transmitted.

COMMENT: Many commenters raised the issue of confidentiality of the data. They did not feel that there is sufficient protection to prevent unwarranted access to the data, particularly patient identifying data. Various suggestions were made for strengthening the confidentiality protection, and several respondents suggested that reporting regulations not be adopted until there are confidentiality regulations.

RESPONSE: The Department is very aware of the needs for confidentiality and of the dangers to the patient from improper disclosure of identifying information. The statutes concerning confidentiality protection are now included in this regulation, for emphasis. A detailed discussion of confidentiality issues is included in the revised Social Impact Statement. As noted in this statement, the Department feels that making AIDS and ARC reportable will improve the confidentiality protection to some of the data that is, or will be, in the Department's possession.

Locating information will not be collected routinely. In such situations as required for epidemiologic investigation, it is the intent of the Department to delete any and all locating information from records maintained by the Department at the completion of such investigations.

Names of individuals will be held only by Department staff and solely for the purpose of preventing duplication in reporting. Any information released by the Department will be for statistical purposes without any identifying information.

COMMENT: Commenters expressed concerns about the use of information collected by the Department through the reporting of AIDS and ARC: how the data will be used; to whom personal identifiers will be reported; what steps the State will take to assure that information is provided only to those with the right to know; and how the State will define who does have the right to such information.

RESPONSE: The data collected through these regulations will be used for the purpose of providing epidemiologic information to describe symptomatic HIV infection in New Jersey. This information, as described in

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the economic and social impact statements, would provide for better projections of the needs for services to patients in the future. Personal identifiers will be reported by the reporting individual only to the New Jersey State Department of Health as described in the proposed reporting regulations. Only statistical information would be released by the Department. Personal identifiers will only be used to prevent duplication in reporting.

Only two individuals in the Department will review reports coming into the Department. One is the clerk who will code the name of the patient and then file the original report into a locking file cabinet. Only the coded information is released to the Centers for Disease Control and for data entry into the AIDS Registry. The other individual who may have reason to review this information on an individual case report is the Department representative who has responsibility for gathering necessary epidemiologic information required in the case report form.

COMMENT: Many commenters objected to the statement "and such other information as may be required by the State Department of Health" in subsection (c) concerning reporting procedures. This statement is contained in both the section on physician reporting and the section on institutional reporting. These commenters thought that the information to be reported to the Department should be stated in the regulation and that there should not be any other information to be reported. There was concern that such an open-ended reporting requirement could be subject to abuse, with the collection of information that might be harmful to the patient if such information were improperly released.

RESPONSE: The Department is very aware of the sensitive nature of information on patients with AIDS and ARC, and the potential for harm to the patients in such information. The Department feels that one way to minimize the potential for harm is to collect only the minimum amount of information as may be necessary on any particular patient. This minimum amount of information is specified in the regulation. With some patients, the Department may need additional information. For example, for the patient not initially noted to be in a recognized risk group, the Department usually conducts more intensive surveillance and may need to contact the patient. The Department might need to have access to more information on that particular patient than is the case for the vast majority of the cases. This particular phrase would allow the Department to obtain such information, while at the same time not have the Department get extraneous information on the bulk of the patients. The Department also feels that it cannot anticipate in advance all the information it may need on every patient, and feels strongly that it must have the ability to obtain additional information on specific patients. Any widespread additional reporting requirements would be handled by formally proposing amendments to these regulations.

COMMENT: Many comments were received that the period for reporting (12 hours after diagnosis for physicians and 24 hours after diagnosis for institutions) was too short a time to practically expect reporting. It was noted that the diagnosis of AIDS was not a public health emergency and that no specific action would be taken in regard to the patient to warrant such rapid reporting.

RESPONSE: The Department agrees that such rapid reporting is not necessary; although to maintain accuracy of data, reporting should be accomplished in a few days after the time of diagnosis. However, the time in which reporting should occur is in the statutes on disease reporting, and the draft regulation only repeated the wording of the statute. The Department does not feel that it can change the time period in regulation. However, the time periods are being removed from the regulation in order not to give emphasis to a time frame which the Department agrees is impractical.

COMMENT: A suggestion was made that laboratories be included as agencies required to report the disease.

RESPONSE: A diagnosis of a disease is made by taking all the information on a patient, including history, physical examination, and laboratory results, and making a diagnosis by considering all of this information. A diagnosis is traditionally made by a physician, not a laboratory, which reports the results of its analyses to a physician. Many individuals with laboratory evidence of HIV infection are not ill at the present time. This regulation is designed to require reporting only of illness due to HIV infection. Laboratory reporting would provide the Department with information that is extraneous to this purpose, which is not felt to be warranted considering the great sensitivity of this data.

COMMENT: Comment was raised that the definition of AIDS differs from the definition used by the Federal Centers for Disease Control (CDC). In addition, the use of the word "etc." in the definition of AIDS was questioned. There was also objection raised by several commenters

of the statement that appears in the definitions of both AIDS and ARC that allows the State Commissioner of Health to use any current scientifically accepted definition of either of these diseases.

RESPONSE: The Department is aware that the definition of AIDS in this regulation is not worded identically to the CDC definition. However, the Department does not see this definition as being significantly different from the CDC definition, but only a shortened version of it. Specifically, the definition in the regulation does not list all of the opportunistic infections that would be accepted for a diagnosis of AIDS, but gives the two most common examples and then uses the word "etc." The diagnosis of AIDS is well known in the medical community, so that the Department feels that this shortened version is sufficient. Conversely, the diagnosis ARC is not that well accepted, so that a more lengthy definition is provided in the regulation.

The science of AIDS is evolving rapidly as more is being learned about this disease and infection with HIV. It is anticipated that, as scientific advances occur, there may be changes in the definition generally accepted for AIDS and ARC. This has already occurred in the past. It is important that the Department be able to use the most up-to-date definitions in its surveillance activities, and therefore has included in the regulation the ability of the State Commissioner of Health to use the most scientifically current definitions. There has been some fear expressed that the Commissioner might accept the presence of a laboratory result indicating HIV infection as indicative of ARC. The regulation specifically states that HIV infection by itself shall not be considered indicative of AIDS or ARC.

COMMENT: Two commenters thought that the Department should address the issue of the cost of reporting to the health care providers. There was also concern about the issue of underreporting that would probably occur, and also the thought that the penalty for failure to report should be in the regulation.

RESPONSE: For most reportable diseases, the cost of reporting any individual case is very small. The Department is aware that the costs to the health care providers can reach some significance as the number of cases to be reported increases. The Department is also aware that current reporting practices for AIDS necessitate the provision of much more material than is the case with many other reportable diseases. The Department already provides considerable help to health care facilities for the surveillance of AIDS patients that meet current reporting requirements, and the Department recognizes that help in reporting will need to continue. Such help with active surveillance efforts being carried out by the Department, will help to minimize the problem of underreporting. As this regulation is part of the State Sanitary Code, the penalties for violation are already in the statute (N.J.S.A. 26:1A-10).

COMMENT: One commenter noted that ambulances and other public conveyances were not included in subsection (d) of the regulation, and thought that such reference should be included.

RESPONSE: The Department agrees and has added ambulances and other public conveyances to subsection (d).

COMMENT: The Department commented that the International Committee on the Taxonomy of Viruses has proposed the name Human Immunodeficiency Virus (HIV) for the virus that causes AIDS, and that this name is gradually being used instead of the names HTLV-III or LAV. The Department felt that it is appropriate in this and all other new regulations that the name HIV be used for the virus instead of HTLV-III.

RESPONSE: The Department has substituted HIV for HTLV-III throughout the regulation.

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

8:57-1.14 Reporting of Acquired Immunodeficiency Syndrome and AIDS related complex

(a) "Acquired Immunodeficiency Syndrome," hereafter referred to as AIDS, means a condition affecting a person who has a reliably diagnosed disease that is at least moderately indicative of any underlying cellular immunodeficiency in the absence of an identifiable cause of cellular immunodeficiency or of increased susceptibility to that disease (including but not limited to Pneumocystis carinii pneumonia, Kaposi's sarcoma, etc.) or any current*[ly]* scientifically determined definition, as accepted by the State Commissioner of Health.

(b) AIDS-Related Complex, hereafter referred to as ARC, means a condition affecting a person who has at least two of the following clinical signs or symptoms lasting three or more months, plus two or more of the following laboratory abnormalities, plus a positive test for *[HTLV-III]* *Human Immunodeficiency Virus (HIV)* antibody or any other test

which measures infection by **[HTLV-III virus,] HIV,** or any **[currently] current** scientifically determined definition as accepted by the State Commissioner of Health.

1. Clinical signs or symptoms:
 - i. Fever: 100°F, intermittent or continuous, for at least three months, in the absence of other identifiable cause.
 - ii. Weight Loss: 10 percent normal body weight or 15 pounds.
 - iii. Lymphadenopathy: persistent over at least three months, involving two extra-inguinal node-bearing areas.
 - iv. Diarrhea: intermittent or continuous, for three months, in the absence of other identifiable cause.
 - v. Fatigue: to the point of decreased physical or mental function.
 - vi. Night Sweats: intermittent or continuous, for three months, in the absence of other identifiable cause.
2. Laboratory abnormalities:
 - i. Depressed helper T-cells (two standard deviations below the mean).
 - ii. Depressed helper/suppressor ratio (two standard deviations below the mean).
 - iii. At least one of the following: leukopenia, thrombocytopenia, absolute lymphopenia or anemia.
 - iv. Elevated serum globulins.
 - v. Depressed blastogenesis (Pokeweed, phytohemagglutinin (PHA) mitogens).
 - vi. Abnormal intradermal tests for delayed cutaneous hypersensitivity (using Multi-Test or equivalent).

(c) The procedures below shall be followed when reporting AIDS or ARC:

1. Every physician attending any person ill with AIDS or ARC shall **[, within twelve hours after such disease has been diagnosed,] report in writing such disease directly to the State Department of Health. The report shall include the name and address of the reporting physician, the name of the disease, the name, [age,] birth date, sex, [the home address and telephone number] of this person, the date of onset of illness, and such other information as may be [requested] required by the State Department of Health.**

2. The superintendent or other person having control or supervision over any institution, such as a hospital, sanitarium, nursing home, or penal institution in which any person is ill with AIDS or ARC shall **[, within twenty-four hours after such disease has been diagnosed,] report such disease directly to the State Department of Health. The report[s] shall state the name of the disease, the name, [age,] birth date, sex, the [home address] municipality, county, and state of residence of such person, [or the address from which he was received into the institution,] the date [upon which he was received for care or treatment,] of onset of illness, the name of the attending physician, the name and address of the institution, and such other information as may be required by the State Department of Health. The superintendent may delegate this report activity to a member of the staff, but this delegation does not relieve the superintendent of the ultimate reporting responsibility.**

(d) AIDS/ARC or any other type of **[HTLV-III] HIV** infection shall not be considered a communicable disease for purposes of admission to, attendance in, or transportation in any of the **[follow:] following:**

1. Nursing homes and other health care facilities;
2. Rooming and boarding homes, and shelter for the homeless; **[and] 3. Ambulances and other public conveyances; and [3.] 4. Educational facilities.**

[(d)] (e) Laboratory tests demonstrating the presence of [HTLV-III] HIV antibody shall not be considered evidence, in and of themselves, of AIDS or ARC.

[(f) As provided by N.J.S.A. 26:4-2, the information reported to the Department shall not be subject to public inspection, but is subject to access only by the State Department of Health for public health purposes.]

(a)

Participation in School by Individuals with HIV Infection

Attendance at School by Individuals with HIV Infection

Adopted New Rule: N.J.A.C. 8:61-1.1

Proposed: August 4, 1986 at 18 N.J.R. 1512(a).

Adopted: September 10, 1986 by John H. Rutledge, M.D., M.P.H., Acting Commissioner of Health.

Filed: September 12, 1986 as R.1986 d.407, **without change.**

Authority: N.J.S.A. 26:1A-15.

Effective Date: October 6, 1986.

Expiration Date: October 6, 1991.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

CHAPTER 61

ACQUIRED IMMUNODEFICIENCY SYNDROME

SUBCHAPTER 1. PARTICIPATION AND ATTENDANCE AT SCHOOL BY INDIVIDUALS WITH HIV INFECTION

8:61-1.1 Attendance at school by pupils or adults infected by Human Immunodeficiency Virus (HIV), also known as HTLV-III or LAV

(a) For purposes of this section, the following words shall have the following meanings:

"Adult" means a teacher, administrator, food service employee or other school staff member.

"Pupil" means an individual who is entitled to attendance at school in grades K-12, as well as a pre-kindergarten child who is entitled to attendance at school.

(b) Pupils with HIV (Human Immunodeficiency Virus) infection shall not be excluded from attending school for reason of the infection unless the following exceptional conditions are evident as determined by the pupil's physician and/or the school medical inspector:

1. The pupil is not toilet-trained or is incontinent, or is unable to control drooling.

2. The pupil is unusually physically aggressive, with a documented history of biting or harming others.

(c) In the event that disagreement exists between the pupil's physician and the school medical inspector as to the existence of the excluding conditions in (b) above, an evaluation of the pupil from the Medical Advisory Panel should be sought regarding the pupil's admissibility in accordance with N.J.A.C. 6:29-4.4.

(d) Adults with HIV infection in all school settings shall not be restricted from their normal employment for reason of the HIV infection unless they have another illness which would restrict that employment.

(e) The New Jersey Commissioner of Health shall establish an expert Medical Advisory Panel, of no less than four members, to be comprised of persons with expertise in childhood behavior pediatrics and infectious disease.

(f) School districts, based upon advice of the school medical inspector, shall seek an evaluation from the Medical Advisory Panel of pupils with HIV infection whom a local school board deems have any of the conditions described in (b) above. This procedure shall be conducted in accordance with N.J.A.C. 6:29-4.4.

(g) The Panel shall render a report no later than four weeks from the time of referral by the Commissioner of Education.

1. The report shall be delivered by the Panel to the Commissioner of Education with a copy to the Commissioner of Health.

2. The report(s) by the Medical Advisory Panel shall be confidential except that a general summary of the conclusions shall be available.

(h) No pupil or adult shall be excluded from school solely by virtue of the fact of living with or being related to an infected individual.

(i) Any pupil or adult, with or without HIV infection, shall be removed from school if and when the individual has weeping skin lesions that cannot be covered.

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(j) All schools and day care facilities, regardless of whether pupils or adults with HIV infection are present, should adopt routine procedures for handling blood and body fluids.

(k) It is not necessary that anyone in the school be notified that an HIV infected individual is present.

DRUG UTILIZATION REVIEW COUNCIL

(a)

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: March 17, 1986 at 18 N.J.R. 537(a).

Adopted: September 6, 1986 by the Drug Utilization Review Council, Robert Kowalski, Acting Chairman.

Filed: September 12, 1986 as R.1986 d.406, with portions of the proposal not adopted and portions not adopted but still pending.

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: October 6, 1986.

Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

Wallace Laboratories had opposed the adoption of the Bolar carisoprodol with aspirin tablets, stating that the tablets failed to meet official specifications (failed the assay), therefore the Council did delay acceptance of this product. However, the Council subsequently received the results of an independent assay from the U.S. Food and Drug Administration which showed that the Bolar product meets all federal standards, therefore the Bolar carisoprodol with aspirin product was considered acceptable for inclusion in the List of Interchangeable Drug Products.

The following product and its manufacturer were **Adopted**:

Carisoprodol 200/Aspirin 325 mg tabs

The following products were not adopted but are still pending :	Bolar
Aminophylline oral soln 105 mg/5 ml	Roxane
Chlorzoxazone 250mg/Acetaminophen 300mg	Amer. Ther.
Flurazepam HCl caps 15, 30 mg	West-Ward
Isosorbide dinitrate oral tabs 20 mg	West-Ward
Lithium carbonate caps and tabs, 300 mg	Roxane
Methyldopa tabs 125, 250, 500 mg	Par
Methyldopa tabs 250, 500 mg	Superpharm
Methyldopa/HCTZ 250/150, 250/250 mg	Par
Methyldopa/HCTZ 250/25, 500/30, 500/50 mg	Par
SMZ/TMP Susp. 200 mg+40 mg/5 ml	Naska
Sulfasalazine tabs 500 mg	Superpharm
Tolazamide tabs 250, 500 mg	Superpharm
Trazodone HCl tabs 50, 100 mg	Pharm. Basics
Trazodone tabs 50 mg, 100 mg	Chelsea
Verapamil tabs 80 mg, 120 mg	Chelsea

OFFICE OF ADMINISTRATIVE LAW NOTE: Related Notices of Adoption appear at 18 N.J.R. 1381(a) and 18 N.J.R. 1463(b).

HUMAN SERVICES

DIVISION OF PUBLIC WELFARE

(b)

Public Assistance Manual

Transfer of Resources

Adopted Amendment: N.J.A.C. 10:81-3.38

Proposed: June 2, 1986 at 18 N.J.R. 1168(a).

Adopted: September 4, 1986 by Drew Altman, Ph.D.,

Commissioner, Department of Human Services.

Filed: September 10, 1986, as R.1986 d.397, with a technical change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 44:7-3, 44:7-6, 44:10-2 and 44:10-3.

Effective Date: October 6, 1986.

Expiration Date: October 15, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

Summary of Changes Subsequent to Proposal:

The change is of a technical nature in that instead of "two years" the regulations now read "24 months". Pursuant to internal review within the Department, this modification is made to conform with the wording of Federal legislation at section 132 of P.L. 97-248, 42 U.S.C. 1396 p.(c).

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

10:81-3.38 Liquidation of non-exempt real property, suits and claims, and transfer of resources

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

(c) Assignment or transfer of property: Applicants for AFDC must not have made a voluntary assignment or transfer of property within ***[two years]* *24 months*** prior to the time of initial application for the purpose of qualifying for assistance.

1. Whenever investigation indicates that a person applying for assistance has transferred or assigned any property, whether real or personal, within ***[two years]* *24 months*** prior to the initial application, the motive and circumstances surrounding such transfer or assignment shall be evaluated, and a determination made as to whether such transfer or assignment was made for the purpose of qualifying for assistance.

2.-5. (No change.)

(c)

Food Stamp Program

Revised Maximum Income Eligibility Limits

Adopted Concurrent Proposal: N.J.A.C. 10:87-5.4, 5.5, 12.3, 12.4, and 12.7

Proposed: July 21, 1986 at 18 N.J.R. 1490(a).

Adopted: September 3, 1986 by Drew Altman, Ph.D.,

Commissioner, Department of Human Services.

Filed: September 4, 1986, as R.1986 d.395, **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 51 FR 10764.

Effective Date: October 6, 1986.

Expiration Date: March 1, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

10:87-5.4 Earned income

(a) For the purposes of determining Net Food Stamp Income, earned income shall include:

1. Employee compensation: All wages and salaries received as compensation for services performed as an employee.

2.-5. (No change.)

10:87-5.5 Unearned income

(a) For the purposes of determining Net Food Stamp Income, unearned income shall include, but not be limited to:

1. Assistance payments: Assistance payment from Federal or federally aided public assistance programs such as SSI, AFDC and General Assistance payments;

i. All assistance payments from programs which require, as a condition of eligibility, the actual performance of work without compensation other than the assistance payments themselves, shall be considered unearned income.

2.-10. (No change.)

10:87-12.3 Maximum allowable net income standards

TABLE III

Maximum Allowable Net Income	
Household Size	Maximum Allowable Income
1	\$ 447
2	604
3	760
4	917
5	1074
6	1230
7	1387
8	1544
9	1701
10	1858
Each Additional Member	+157

10:87-12.4 Maximum allowable gross income standards

TABLE IV

Maximum Allowable Gross Income	
Household Size	Maximum Allowable Income
1	\$ 581
2	785
3	988
4	1192
5	1396
6	1599
7	1803
8	2007
9	2211
10	2415
Each Additional Member	+204

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	\$ 737
2	996
3	1254
4	1513
5	1771
6	2030
7	2288
8	2547
9	2806
10	3065
Each Additional Member	+259

CORRECTIONS

(a)

THE COMMISSIONER

**Security and Control
Close Custody Units**

Adopted New Rules: N.J.A.C. 10A:3 and 10A:5

Proposed: May 19, 1986 at 18 N.J.R. 1057(b) and 18 N.J.R. 1067(a).

Adopted: September 8, 1986 by William H. Fauver, Commissioner, Department of Corrections.

Filed: September 15, 1986 as R.1986 d.410 and R.1986 d.409, with **technical and substantive** changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: October 6, 1986.

Expiration Date: October 6, 1991.

Summary of Public Comments and Agency Responses:

The Department of Corrections conducted a public hearing on the proposed rules on June 10, 1986. Approximately ten persons attended. Written comments were received from the Public Advocate, New Jersey Commission on Sex Discrimination in the Statutes, several correction administrators and five prison inmates. Their comments, both oral and written, and the Department's responses are summarized below. A complete record of the hearing and correspondence is on file in the Office of the Special Assistant for Legal Affairs, New Jersey Department of Corrections.

COMMENT: Two commenters criticized N.J.A.C. 10A:3-2 as being discriminatory against female correction officers. They stated that the Department's policy violates State and Federal law because of its limitation on employment and promotional opportunities for females.

RESPONSE: The Department agrees that its policy on assignment of correction officers by sex is in need of revision. However, the Department believes that revision of this policy is more properly a task for the Department's Office of Human Resources and Office of Affirmative Action, through the elimination of unnecessary Bona Fide Occupational Qualifications (BFOQ's). Steps have been taken to effect appropriate changes. N.J.A.C. 10A:3-2 ASSIGNMENT OF CORRECTION OFFICERS BY SEX is therefore deleted from these rules in its entirety.

COMMENT: A commenter suggested that N.J.A.C. 10A:3-4.11(b) be amended to read: "Officers shall immediately and without exception, report to the local police jurisdiction and his or her correctional facility any incident where he or she has displayed, drawn, or fired his or her off-duty firearm; or any incident or injury which occurred from the use of any firearm he or she was involved with."

RESPONSE: The Department agrees that the suggested language will serve to clarify the officer's responsibility involving off-duty use of firearms and has amended the rule accordingly.

COMMENT: A commenter objected to the Department's policy permitting officers to carry firearms while off-duty.

RESPONSE: The decision to allow correction officers to carry firearms was made by the New Jersey Legislature. The Department of Corrections must follow State law as prescribed.

COMMENT: A commenter objected to N.J.A.C. 10A:3-3.2(b) which allows use of stun guns, which he contended could cause serious injury. He also objected to the term "chemical agents" (mace) as permitting too broad a range of chemicals, which might produce injurious side effects.

RESPONSE: The Department rejects this objection because the circumstances under which these weapons are to be used are carefully detailed, and their use in the described situations are both legal and necessary.

COMMENT: A commenter suggested that N.J.A.C. 10A:3-3.3(d) be amended to allow warning shots.

RESPONSE: The Department rejects this suggestion. State Police procedures do not recommend use of warning shots because they create increased danger of injury to bystanders.

COMMENT: A commenter requested that inmates be permitted to be present during search of their cells—N.J.A.C. 10A:3-5.3.

RESPONSE: The Department cannot grant this request. It is not usually feasible, nor does the law require that the inmate be present when the inmate's cell is searched.

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COMMENT: A commenter urged stricter rules governing collection and storage of urine samples.

RESPONSE: The Department believes that the present system is adequate and meets court mandated guidelines.

COMMENT: A commenter suggested that N.J.A.C. 10A:3-3.7 be modified to clarify when the use of chemical agents is appropriate. Mace, for example, may be used in order to avoid the necessity of physical force.

RESPONSE: The Department agrees and has made the necessary modification to N.J.A.C. 10A:3-3.7(a).

COMMENT: A commenter suggested that N.J.A.C. 10A:3-3.5 be amended to include statements from any inmate witnesses to an incident.

RESPONSE: The commenter misunderstands the purpose of N.J.A.C. 10A:3-3.5. A list of witnesses is provided in the incident report in order to facilitate further investigation, where needed. Witnesses' statements may or may not be included, depending on their relevance and credibility.

COMMENT: A petition signed by 24 inmates to the Trenton State Prison Administrative Segregation Unit offered the following:

1. Provide college level classes to Administrative Segregation Unit inmates;

2. Improve the system for submitting legal access request slips;

3. Cease use of polygraph tests;

4. Cease the practice of strip searching before recreation movements;

5. Give a copy of the "Self-Help Litigation Manual" to every inmate; and,

6. Allow canned foods in the Administrative Segregation Unit.

RESPONSE: The above suggestions are not adopted. Administrative Segregation is a variable term punitive confinement for inmates who have incurred serious disciplinary charges. It would be unproductive to schedule educational classes there.

No specific suggestion is made concerning processing of legal access request slips. The subject matter of legal access will be published at a later date as N.J.A.C. 10A:6.

Petitioners are under a mistaken belief that polygraph tests are mandatory. No polygraph is ever given unless the inmate voluntarily agrees to take it.

Strip searching must be conducted before recreation where large groups of inmates congregate. This is essential to protect against possible assault with a weapon and transfer of contraband.

The "Self-Help Litigation Manual" is a book which is available in the Prison Law Library, but is not in print and therefore cannot be ordered. Inmates in the Administrative Segregation Unit are provided legal services by trained inmate paralegals, in accordance with N.J.A.C. 10A:6 (Department Standard 210).

Canned foods cannot be permitted in the Administrative Segregation Unit because of the possible use of such materials for weapons.

Comments and Responses on N.J.A.C. 10A:5-4 CAPITAL SENTENCE UNIT:

COMMENT: Several commenters suggested that the Capital Sentence Unit inmates should be permitted direct access to legal materials and references, as a means of improving their access to the courts.

RESPONSE: Capital Sentence Inmates are provided with legal services via an assigned staff paralegal. All Capital Sentence Unit inmates are represented by private attorneys or Public Defenders on their appeals. Their other legal needs are adequately met by the staff paralegal.

COMMENT: A commenter requested that religious counseling be done via contact visits and that auditory privacy be permitted.

RESPONSE: The Department plans to continue to permit window visits only, but will revise the rule so as to ensure auditory privacy. Visual surveillance will continue to be maintained.

COMMENT: A commenter urged that 10A:5-4.13 be amended to provide that medical emergencies be attended to "immediately", and that over-the-counter medications need not be given in liquid form.

RESPONSE: The proposed rule requires that a medical staff person visit the Capital Sentence Unit daily to evaluate individual medical needs. A decision regarding emergent care can only be made by the medical person on a case by case basis. This comment is therefore rejected. Medications such as salves and lotions, when prescribed or ordered by the physician, are permitted. Pills must be ground up and mixed to liquid form to ensure that they are ingested when given.

COMMENT: A commenter requests a broader definition or a revision of the definition of "family-like" relationship for visits.

RESPONSE: The Department of Corrections feels that N.J.A.C. 10A:5-4.16(b) is flexible enough to allow the Superintendent's discretion

in permitting the type of visit requested, when it is in the best interest of the inmate and the Trenton State Prison. Two visits per week will be permitted.

COMMENT: A commenter stated that inmate personal telephone calls should not be monitored.

RESPONSE: This suggestion must be rejected. Prison officials must be able to monitor Capital Sentence Unit inmates' contact with the public as needed to protect the public from unwanted calls or other harassment by telephone.

COMMENT: A commenter asked that Capital Sentence Unit inmates be given work assignments with pay.

RESPONSE: The Department accepts this suggestion and will provide Capital Sentence Unit inmates with appropriate job assignments at the usual rates (see N.J.A.C. 10A:5-4.17). Capital Sentence Unit inmates are not eligible to earn commutation time in connection with this work.

COMMENT: A commenter asked for availability of legal phone calls during the p.m. shift.

RESPONSE: Legal calls may be made during the p.m. shift only during regular business hours with is from 9:00 a.m. to 5:00 p.m.

COMMENT: A commenter urged more opportunity for recreation, and that recreation not be cancelled on holidays.

RESPONSE: Outdoor recreation will continue to be offered for ten hours every two weeks. Outdoor recreation will not be cancelled on holidays. Indoor quiet recreation will now be held from 6:00 to 9:00 p.m. seven days per week. Each evening, two groups of four inmates will be offered 90 minutes of indoor recreation. Each of 21 inmates is offered indoor recreation for approximately three hours per week.

COMMENT: Several commenters asked that Capital Sentence Unit inmates be permitted to receive food packages or purchase additional items from the institution's canteen.

RESPONSE: The Department rejects this request. The receipt of outside food packages presents security problems which the Department cannot permit. The present availability of items from the Commissary satisfactorily meets the inmates' needs.

COMMENT: A commenter asked for daily showers.

RESPONSE: The present rule, which permits showers three times a week, is adequate. In addition, inmates are given showers in conjunction with outdoor recreation and special visits.

COMMENT: A commenter requests educational programs for Capital Sentence Unit inmates.

RESPONSE: The Department has no plan to allow educational programs in this Unit, but will take steps to increase availability and selection of library materials.

COMMENT: A commenter asked that rule governing confidentiality of inmate/therapist be spelled out.

RESPONSE: This policy is set forth in Department of Corrections Standard 520, to be published in the Administrative Code at N.J.A.C. 10A:17. It is presently available through the institution's law library.

COMMENT: A commenter noted that Trenton State Prison permits typewriters to be used only by Capital Sentence inmates but is not included in N.J.A.C. 10A:5-4.5(b).

RESPONSE: Typewriters have been added to the list of permitted items in N.J.A.C. 10A:5-4.5(b).

In addition to the specific modifications set forth above, there are a number of minor non-substantive changes in wording or grammatical corrections which do not affect the procedures being described. Also the following non-substantive changes have been made.

10A:5-2.4(a)2 has been amended to clarify that the review of past criminal offenses includes those for which incarcerated.

10A:5-5.2(a) has been amended and reworded into a new subsection (b) for clarification.

10A:5-5.2(k) has been amended to include new paragraphs 1 and 2 as requested by the Public Advocate and in conformance with a federal court case which outlined the requirement for use of confidential informant information. This language conforms to the text of 10A:4-9.15(b) of the disciplinary rules.

10A:5-6.5(c) and (d) have been reworded for clarification.

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 3
SECURITY AND CONTROL

SUBCHAPTER 1. INTRODUCTION

10A:3-1.1 Purpose

(a) The purpose of this chapter is to:

*[2.]**1.* Establish policies and procedures regarding the use of force by correction officers, both on-duty and off-duty;

*[3.]**2.* Establish policies and procedures for searching inmates and facilities in order to control and deter contraband;

*[4.]**3.* Define contraband and establish procedures for its seizure and disposal;

*[5.]**4.* Establish procedures for the use of polygraph examinations to insure that they are used only under limited and appropriate circumstances;

*[6.]**5.* Establish procedures for fingerprinting and photographing juvenile inmates; and*

*[7.]**6.* Establish policies and procedures regarding the transportation of inmates outside the correctional facility and from one jurisdiction to another.

10A:3-1.2 Scope

(a) Subchapters *[2,] 3 *[and] * *, * 5*, 6 and 7* shall be applicable to the Division of Adult Institutions and the Division of Juvenile Services.

(b) Subchapter 4 shall be applicable to the Department of Corrections.

*[(d)]***(c)* Subchapter 8 shall be applicable to inmates with Juvenile Delinquency Commitments and the Division of Juvenile Services.

*[(e)]***(d)* Subchapter 9 shall be applicable to all Department of Corrections facilities and the *[Bureau]* *Office* of Interstate Services.

10A:3-1.3 Definitions

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

“Central Control” means the unit which coordinates the security and communication functions within a correctional facility.

“Commissioner” means the Commissioner of the New Jersey Department of Corrections.

“Contact visit” means a visit between an inmate and a visitor where there is no barrier (that is, window, wall) between them.

“Deadly force” means force which an officer uses with the purpose of or which he or she knows will create a substantial risk of causing death or serious harm.

“Department” means the Department of Corrections.

“Housing unit” means a cell, dormitory or other type of sleeping area within a correctional facility.

“Internal Affairs Unit” means the unit responsible for conducting investigations at the direction of the Commissioner.

“Non-deadly force” means actions or conduct, with or without weapons or chemical agents, which is not likely to cause death or serious injury.

“Pat frisk” is synonymous with “frisk search” and means a thorough search of a fully-clothed inmate, including the clothing and personal property in the inmate’s possession.

“Roving patrol” means observation of a facility by making rounds, on foot or in a vehicle, of the outer perimeter at specific intervals.

“Shift supervisor” means the correction officer responsible for the maintenance of security during a tour of duty in a correctional facility.

“Strip frisk” is synonymous with “strip search” and means a thorough search of an unclothed inmate’s body and orifices, including visual inspection of external genital and anal areas, as well as the inmate’s clothing and personal possessions.

“Superintendent” means the chief executive officer of any State correctional facility in the Department of Corrections.

10A:3-1.4 Forms

(a) The following forms related to Security and Control shall be reproduced by each facility from originals that are available by contacting the Standards Development Unit:

1. 156-I Oath of Office
2. 172-I Continuity of Evidence—Urine Specimen
3. 171-I Seizure of Contraband Report
4. 171-II Inmate Receipt, Contraband Seizure
5. 171-III Notice of Decision on Appeal, Contraband Seizure (Non-Disciplinary)
6. 285-I Request for Polygraph Examination

SUBCHAPTER 2. *[ASSIGNMENT OF CORRECTION OFFICERS BY SEX]* *(RESERVED)*

*[10A:3-2.1 Post assignments

(a) Except as provided in (c) and (d) below, male correction officers shall not be assigned to work in female housing units and female correction officers shall not be assigned to work in male housing units.

(b) Post orders for housing units shall specify whether a male or female correction officer is required.

(c) Male correction officers may be utilized in female housing units and female correction officers may be utilized in male housing units during an emergency, where an imminent threat to life or property is clearly demonstrable.

(d) Male correction officers may be assigned to work in the cage area or to unlock and lock hallway doors leading to female housing units at the Correctional Institution for Women at Clinton. Female correction officers may be assigned to work in housing units at the Training School for Boys, Skillman.

10A:3-2.2 Pat frisks and strip frisks of inmates

Except during an emergency, where an imminent threat to life or property is clearly demonstrable, and personnel of the same sex are not available, male correction officers shall not be assigned to pat frisk or strip frisk female inmates, nor shall female correction officers be assigned to perform pat frisks or strip frisks of male inmates.

10A:3-2.3 Metal detector searches

Metal detector searches may be conducted by a male or female officer regardless of the sex of the inmate provided there is no physical contact between the inmate and officer and the metal detector search is not conducted during a strip search.

10A:3-2.4 Visitor searches

(a) Male or female officers may be assigned to conduct metal detector searches of visitors regardless of the sex of the visitors, provided no physical contact is required.

(b) A pat frisk of a visitor shall be conducted only by a correction officer of the same sex as the visitor.

10A:3-2.5 Other assignments

Except for searches and assignment to housing units, male and female correction officers shall be treated equally with respect to all other assignments or functions.]*

SUBCHAPTER 3. USE OF FORCE WHILE ON-DUTY

10A:3-3.1 Use of force; minimum force possible required

In any case when a correction officer uses force to control inmates while on-duty, the minimum force possible under the circumstances shall be used, consistent with correctional facility objectives.

10A:3-3.2 Non-deadly force; when authorized

(a) Non-deadly force may be used only under the following circumstances:

1. To defend one’s self or others against any physical assault;
2. To prevent serious damage to property;
3. To prevent escape;
4. To prevent or quell a riot or disturbance;
5. To prevent a suicide or attempted suicide; or
6. To enforce correctional facility regulations where expressly permitted by Department of Corrections regulation*s* or in situations where an officer with the rank of Sergeant or above believes that the inmate’s failure to comply constitutes an immediate threat to correctional facility security or personal safety.

(b) Non-deadly force may include the use of slapsticks, chemical agents (mace), batons, stun guns and other weapons which are not likely to cause death or serious injury.

(c) Non-deadly force may include the use of slapsticks, chemical agents (mace), batons, stun guns and other weapons which are not likely to cause death or serious injury.

10A:3-3.3 Deadly force; when authorized

(a) Deadly force shall be used only on order of the following:

1. Commissioner;
2. Deputy Commissioner;
3. Assistant Commissioner, Division of Adult Institutions;
4. Deputy Director, Division of Adult Institutions;
5. Administrator (Superintendent);
6. Associate Administrator (Assistant Superintendent).

(b) Deadly force may be ordered only in the following situations:

1. To prevent escape, where the staff member, by reason of his or her experience and best judgment, believes that a lesser degree of force will be ineffective; or,
2. In those situations where an inmate or inmates have created or present an immediate threat of death or serious bodily harm, and the

staff member, by reason of his or her experience and best judgment, believes that a lesser degree of force will be ineffective.

(c) Deadly force includes, but is not limited to, the use of shotguns, handguns, rifles, and other lethal weapons.

(d) Whenever firearms are used, the officer must first sound a verbal warning and then shoot to stop the inmate. Warning shots shall not be authorized by the Department of Corrections.

(e) Written post orders shall govern the use of deadly force by correction officers.

10A:3-3.4 Use of force against persons other than inmates; duties outside security perimeter

(a) While engaged in roving patrol or other duty outside the correctional facility's security perimeter, appropriate force may be used against persons other than prison inmates when a correction officer observes what appears to be a violation of the law and there is also imminent peril of bodily harm to any individual or destruction of property.

(b) Whenever possible, the correction officer should contact his or her Central Control to request assistance before engaging in any degree of force.

(c) In situations where a violation of law is suspected, but no imminent danger is present, the officer should immediately contact the local police and his or her Central Control.

10A:3-3.5 Reports

(a) Immediately following any incident in which force has been used, each staff member who participated in or witnessed the event shall write a special report to the Shift Supervisor. The report shall contain:

1. A description of the events leading up to the use of force;
2. A description of the incident, type of force used and reasons for employing force;
3. A list of all participants and witnesses to the incident;
4. A description of the injuries suffered, if any, and medical treatment given; and
5. Other relevant facts or comments about the incident or conduct of employees or inmates.

(b) The Shift Supervisor shall forward all special reports to the Internal Affairs Unit of the correctional facility and the Director of Custody Operations for review. The Director of Custody Operations shall forward all reports to the Superintendent. The Superintendent shall then report the incident in accordance with N.J.A.C. 10A:21, Reports.

10A:3-3.6 Use of mechanical restraints

(a) On authorization of the Shift Supervisor, mechanical restraints may be used in the following instances:

1. When transporting an inmate from place to place;
2. When the inmate's history, disciplinary record, behavior or present emotional state creates the likelihood that bodily injury to any person, damage to property or escape by the inmate will occur; or
3. On medical advice, to prevent the inmate from attempting suicide or inflicting serious physical injury upon himself or herself.

(b) Mechanical restraints shall not be used as punishment, or in any way that causes undue physical discomfort, inflicts physical pain or restricts the blood circulation or breathing of the inmate.

(c) Mechanical restraints shall be removed promptly when the reason for their initial use has ceased to exist or has sufficiently abated.

10A:3-3.7 Use of chemical agents; storage

(a) Tear gas, mace and related chemical agents shall be used only where all other means of control (that is, talking, use of protective equipment, use of force, etc.) are not effective or feasible. Chemical agents may be used only for the protection of life, limb or property*, in order to avoid the necessity of physical force,* or to maintain correctional facility security.

(b) Whenever chemical agents are used as a means of control, staff members shall comply with the reporting procedure in N.J.A.C. 10A:3-3.5.

(c) No member of the custodial staff may carry or use chemical agents unless he or she has received appropriate training in its use and effects.

(d) After each instance of use, all individuals who have been exposed to chemical agents shall receive prompt medical examination and treatment.

(e) Chemical agents shall be safely stored and proper inventory kept, to insure security and adequate supply.

10A:3-3.8 Training

All security and custodial personnel shall receive training in proper methods and techniques of using force to effectively control inmates. Such training shall be provided as part of the State Basic Correction Training

at the Correctional Officers Training Academy (COTA) and, in addition, shall be repeated at periodic intervals by each correctional facility.

10A:3-3.9 Correctional facility procedures

(a) Each correctional facility shall prepare suitable written post orders and procedures to govern the use of force and storage of chemical agents, consistent with these rules.

(b) Those correctional facilities which house juvenile commitments may promulgate written post orders and procedures which are more restrictive than these rules regarding use of chemical agents, mechanical restraints or force.

(c) All written post orders and procedures shall be forwarded to the Office of the Deputy Commissioner for review and approval on or before February 15 of each year.

SUBCHAPTER 4. USE OF PERSONAL FIREARMS AND USE OF FORCE WHILE OFF-DUTY

10A:3-4.1 Who may carry firearms while off-duty

(a) Firearms may be carried off-duty only by Department personnel holding the rank of Senior Correction Officer and higher who also meet the following requirements:

1. Have passed the firearms training course approved by the New Jersey State Police Training Commission, as set forth in N.J.S.A. *2C:39-6(j);* *2C:39-6(5);*
2. Qualify in the use and handling of approved off-duty firearms; and
3. Have been sworn as peace officers by taking the Oath of Office and completing Form 156-I (Oath of Office).

(b) The following Department of Corrections titles may be sworn as peace officers:

Commissioner
Deputy Commissioner
Assistant Commissioner—Division of Adult Institutions
Deputy Director—Division of Adult Institutions
Administrator (Superintendent)—State Prison, Trenton
Associate Administrator (Assistant Superintendent)—State Prison, Trenton
Assistant to the Superintendent—State Prison, Trenton
Administrator (Superintendent)—State Prison, Rahway
Associate Administrator (Assistant Superintendent)—State Prison, Rahway
Assistant to the Superintendent—State Prison, Rahway
Administrator (Superintendent)—State Prison, Leesburg
Associate Administrator (Assistant Superintendent)—State Prison, Leesburg
Assistant to the Superintendent—State Prison, Leesburg
Superintendent—Mid-State Correctional Facility
Assistant Superintendent—Mid-State Correctional Facility
Assistant to the Superintendent—Mid-State Correctional Facility
Superintendent—Correctional Institution for Women, Clinton
Assistant Superintendent—Correctional Institution for Women, Clinton
Assistant to the Superintendent—Correctional Institution for Women, Clinton
Superintendent—State Prison, Riverfront
Assistant Superintendent—State Prison, Riverfront
Administrator (Superintendent)—Youth Reception and Correction Center, Yardville
Associate Administrator (Assistant Superintendent)—Youth Reception and Correction Center, Yardville
Assistant to the Superintendent—Youth Reception and Correction Center, Yardville
Superintendent—Youth Correctional Institution, Bordentown
Assistant Superintendent—Youth Correctional Institution, Bordentown
Assistant to the Superintendent—Youth Correctional Institution, Bordentown
Superintendent—Youth Correctional Institution, Annandale
Assistant Superintendent—Youth Correctional Institution, Annandale
Assistant to the Superintendent—Youth Correctional Institution, Annandale
Superintendent—Adult Diagnostic and Treatment Center
Assistant Superintendent—Adult Diagnostic and Treatment Center
Assistant to the Superintendent—Adult Diagnostic and Treatment Center
Superintendent—Southern State Correctional Facility
Assistant Superintendent—Southern State Correctional Facility

Assistant to the Superintendent—Southern State Correctional Facility
Superintendent—Juvenile Medium Security Unit
Assistant Superintendent—Juvenile Medium Security Unit
Director—Vroom Readjustment Unit
Director of Custody Operations I
Director of Custody Operations II
Director of Custody Operations III
Correction Captain
Correction Lieutenant
Correction Sergeant
Senior Correction Officer
Chief Investigator
Assistant Chief Investigator
Principal Investigator
Senior Investigator
Investigator

Interstate Transportation Officers—Office of Interstate Services

(c) Correction Officer Recruits are excluded and may not carry firearms while off-duty.

10A:3-4.2 Authorized off-duty firearms, ammunition and holsters

(a) Eligible employees who are trained and meet qualification specifications shall be permitted only one firearm authorized for off-duty use.

(b) A firearm intended for use as an off-duty weapon must have been obtained and registered pursuant to State and local laws of the State in which the employee lives. Employees may not loan or improperly transfer personal firearms.

(c) Authorized weapons to be carried off-duty are Smith and Wesson, Colt or Ruger, .38 or .357 caliber with a minimum barrel length of two inches and a maximum barrel length of four inches.

(d) Authorized ammunition for the four inch barrel firearm is the Winchester, Remington, Federal or Speer 125 grain Semi-Jacketed Hollow Point Plus P. 38 caliber round. The 158 grain, round, lead nosed .38 caliber round or the 110 grain, Semi-Jacketed Hollow Point .38 caliber round may be used for the two inch barrel firearm only if manufactured by Winchester, Remington, Federal or Speer.

(e) Speed loaders are approved equipment for off-duty weapons qualifications.

(f) Only shoulder, waist and ankle holsters shall be used for off-duty use. The waist holster is the only holster approved for use while qualifying with the weapon. Holsters must hold the weapon firmly when inverted and have no internal clips. Off-duty firearms shall be carried in the approved holsters on the body. No purse holsters or holstered firearms in purses are approved.

(g) The employee shall be responsible for assuming the cost of weapons, ammunition, holsters and for maintaining his or her firearm in a safe and serviceable condition.

10A:3-4.3 Firearm instructors

Only those persons who have successfully completed the Police Training Commission Approved Training School's firearm instruction course and are certified as Firearms Instructors shall instruct in the Department of Corrections Firearms Training Program.

10A:3-4.4 Annual weapons training and re-qualification

(a) All correction officers and custody supervisors must be initially trained and qualify in the use and handling of approved off-duty firearms as provided in N.J.A.C. 10A:3-4-1(a). On an annual basis these employees must re-qualify in the same training course. Only those persons who achieve and maintain the required level of proficiency shall be authorized to use personal firearms while off-duty.

(b) Once an individual has qualified on his or her approved personal firearm, he or she shall receive the official Department off-duty weapons card. The off-duty firearm he or she carries must be the same one identified on the off-duty weapons card. Authorized personnel shall be required to carry their off-duty weapons card and the official Department identification card at all times while carrying their off-duty firearm.

(c) Should a personal firearm become unusable, stolen or unserviceable and the employee selects a personal firearm different from the one originally qualified for use, he or she must re-qualify on the different firearm before it can be used. This qualification may be completed prior to the next annual qualification period. If an employee merely wishes to change his or her authorized personal firearm as a matter of preference, he or she must wait until the next annual qualification period.

10A:3-4.5 Storage of personal firearms while on-duty

(a) An employee entering a correctional facility grounds while armed with an off-duty firearm must proceed directly to the facility's weapons collection station. The off-duty firearm shall be turned in fully loaded,

in its holster, attached to the off-duty weapons identification card. No loose or additional ammunition shall be brought into the correctional facility or carried onto Department property.

(b) The employee must present his or her official Department identification card when checking the firearm out of the weapons collection station.

(c) Employees are prohibited from storing off-duty weapons or ammunition in their personal vehicles while on Department property.

(d) Employees assigned to satellite units or other Department residential facilities must store their firearms at the main correctional facility or an approved authorized weapons storage unit.

(e) Personal firearms shall be checked in and out on the employee's own time. It is the employee's responsibility to allow sufficient time for this procedure so that he or she will be on time to work.

(f) Under no circumstances may an employee carry a personally owned firearm into the correctional facility beyond the weapons collection station. Personally owned firearms shall not be carried or used while on-duty except when authorized by the Superintendent and approved by the Assistant Commissioner. In those instances, only Department-approved firearms may be used by qualified officers.

(g) Each correctional facility shall be responsible for preparing and maintaining a current master list of each employee authorized to carry an off-duty firearm.

1. The master list shall be maintained by the weapons collector to indicate qualification dates (new or expired), model numbers and serial numbers of authorized off-duty firearms.

2. Each time the employee registers his or her firearm, the weapons collector is responsible for comparing the qualification date, model and serial number contained on the master list against the weapons qualifications card accompanying the personal firearm.

10A:3-4.6 Use of force while off-duty

(a) Although N.J.S.A. *[3A:154-4]* ***2A:154-4*** authorizes peace officers to exercise law enforcement powers, no correction officer is required to exercise those powers or to carry arms during off-duty hours.

(b) Corrections officers, while off-duty, should not become involved with routine law enforcement duties as they apply to local police departments and the State Police. When an officer observes what he or she believes to be a violation of the law, he or she should take note of vehicle description, license plate numbers, identifying characteristics of persons involved and other relevant information. Such violations should, whenever possible, be reported to the local law enforcement agency having jurisdiction or to Central Control. Officers should avoid stopping or detaining vehicles or persons, or *[become]* ***becoming*** involved in high speed chases whenever possible.

(c) In cases where officers have passed the qualifying examination and do elect to carry a weapon off-duty, the utmost discretion must be exercised by the officer to determine when and under what conditions to use force. Whenever he or she believes that possible criminal action is taking place and that a reasonable alternative to use force exists, the officer may take the action which is calculated to be least dangerous or harmful to persons or property.

(d) Any use of force while off-duty shall be in accordance with the requirements of this Subchapter.

(e) A correctional employee shall be deemed to have acted within the scope of his or her employment or in the law and enforcement interest of the State of New Jersey if he or she exercises police powers in accordance with the provisions of this Subchapter and post orders promulgated in connection therewith.

10A:3-4.7 Use of non-deadly force

(a) Whenever non-deadly force is used off-duty, the minimum force possible under the circumstances shall be used.

(b) Non-deadly force may be used off-duty by authorized persons when it is believed to be immediately necessary to:

1. Defend one's self or others against any physical assault;
2. Prevent a suicide or the infliction of serious bodily harm;
3. Thwart the commission of a crime involving or threatening bodily harm, damage to or loss of property or a breach of the peace;
4. Prevent an escape; ***or,***
5. *[Subject to (c) below, effect]* ***Effect*** an arrest for any offense or crime under the laws of the State of New Jersey*[.]* ***subject to (c) below.***

(c) The use of non-deadly force to effect an arrest is only justifiable if:

1. The officer makes known his or her identity and the purpose of the arrest or reasonably believes that his or her identity and purpose are

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otherwise known by or cannot reasonably be made known to the person to be arrested; and,

2. The arrest is made under a warrant and the warrant is valid or reasonably believed by the officer to be valid.

10A:3-4.8 Use of deadly force

(a) Whenever firearms are used, the officer must first sound a verbal warning and then shoot to stop the subject. Warning shot shall not be authorized by the Department of Corrections.

(b) Deadly force may be used in the following situations under limitations consistent with the provisions of the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq.

1. Self-Defense: When the officer reasonably believes that deadly force is immediately necessary to protect himself or herself against the use of unlawful force which he or she believes may result in death or serious bodily harm.

2. Defense of a Third Person: When the officer reasonably believes that deadly force is immediately necessary to protect another against the use of unlawful force which he or she believes may result in death or serious bodily harm. However, deadly force is not justifiable in the following situations:

i. If the officer can otherwise secure the complete safety of the protected person; or

ii. Where ***[is]* *it*** reasonably appears that the person sought to be protected has unlawfully, with the purpose of causing death or serious bodily harm, provoked the use of deadly force against himself or herself in the same encounter.

3. Prevention of Crime: When the following conditions are met.

i. The officer reasonably believes that deadly force is necessary to prevent the commission of the following crimes:

Criminal homicide (2C:11-2)

Kidnapping (2C:13-1)

Aggravated sexual assault and sexual assault (2C:14-2)

Aggravated criminal sexual contact (2C:14-3a)

Robbery (2C:15-1)

Arson and related offenses (2C:17-1)

Burglary (2C:18-2)

ii. The person who the officer is seeking to prevent from committing a crime will endanger human life or inflict serious physical injury upon another unless the commission or the consummation of the crime is prevented.

iii. The use of deadly force presents no substantial risk of injury to innocent persons.

iv. Deadly force may not be used to prevent the following crimes:

Death by auto (2C:11-5)

Criminal sexual contact (2C:14-3b)

4. Arrest and Escape from Custody: When the following conditions are met.

i. The officer reasonably believes that deadly force is necessary to effect an arrest or prevent the escape of a person who has committed or has attempted to commit the following crimes:

Criminal homicide (2C:11-2)

Kidnapping (2C:13-1)

Aggravated sexual assault and sexual assault (2C:14-2)

Aggravated criminal sexual contact (2C:14-3a)

Robbery (2C:15-1)

Arson and related offenses (2C:17-1)

Burglary (2C:18-2)

ii. The use of deadly force presents no substantial risk of injury to innocent persons.

iii. There is probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.

iv. The use of deadly force is necessary to thwart the commission of a crime as set forth in i. above or the use of deadly force is necessary to prevent an escape or flight from arrest for a crime as set forth in i. above, provided that the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.

v. Deadly force may not be used to effect an arrest or to prevent an escape from custody for the crimes or attempts to commit the crimes of:

Death by auto (2C:11-5)

Criminal sexual contact (2C:14-3b)

5. Escape from Detention: Where the officer reasonably believes that deadly force is necessary to prevent the escape of a person committed to a correctional facility for the detention of persons charged with or convicted of an offense, provided that the officer believes that the force employed creates no substantial risk of injury to innocent persons.

10A:3-4.9 Unauthorized use of personal weapons while off-duty

(a) An employee shall not be authorized to carry an off-duty firearm in the following instances:

1. Where N.J.S.A. 2C:39-7 (Persons Convicted of Certain Crimes) is applicable;

2. Where 18 U.S.C. 1202 Appx.—Appendix to the United States Code (Persons Convicted of Certain Crimes) is applicable;

3. When an employee has been suspended from duty for any violation by the Superintendent or a higher official of the Department;

4. Pending charges or during investigations of alleged incidents involving the misuse of a weapon; or

5. Any other situation where the Superintendent may exercise his or her authority to withdraw off-duty weapons privileges, subject to the review of the appropriate Assistant Commissioner.

(b) In any of the above instances, the off-duty weapons card must be turned in to the Superintendent or his or her designee.

10A:4.10 Carrying weapons in casinos prohibited

Pursuant to N.J.A.C. 19:45-1.13, an employee shall not carry a firearm within a casino.

10A:3-4.11 Reporting incidents

(a) When an authorized off-duty firearm is believed to have been lost or stolen, the employee must report this fact to the local police jurisdiction and his or her correctional facility within three hours from the time he or she is aware that the firearm is missing. When an off-duty weapons card, I.D. card or badge is believed to have been lost or stolen, the employee must notify the Superintendent or his or her designee within 24 hours.

(b) ***[Officers]* *A correction officer*** shall immediately and without exception report to the local police jurisdiction and his or her correctional facility any incident where he or she has displayed, drawn or fired ***[and off-duty firearm.]* *his or her off-duty firearm, or any incident or injury which occurred from the use of any firearm he or she was involved with.***

(c) On the next working day after any incident as described in (a) or (b) above, the officer must report in writing to the Superintendent the fact of the incident and identifying particulars of the incident. The Superintendent shall then forward the report to the Central Office Internal Affairs Unit for appropriate action.

(d) The employee shall, within three days, report to the correctional facility in writing whenever a registered authorized off-duty firearm has been sold or is no longer in use.

10A:3-4.12 Penalties for violation

(a) Actions which do not conform to the provisions of this subchapter and any post orders implemented in connection with this subchapter may result in the following:

1. Disciplinary action;

2. Personal, civil or criminal liability;

3. Denial of indemnification;

4. Refusal by the Office of the Attorney General to represent the officer.

(b) Decisions regarding 3. and 4. above will be made by the Attorney General after reviewing the facts of the case.

(c) Indemnification and representation may be denied whenever the officer has used force maliciously or criminally, as well as when the use of force violates the provisions of this subchapter.

10A:3-4.13 Post orders and procedures

(a) Each correctional facility shall be responsible for developing written post orders and procedures consistent with this subchapter.

(b) All written post orders and procedures shall be forwarded to the Office of the Deputy Commissioner for review and approval on or before February 15 of each year.

SUBCHAPTER 5. SEARCH OF INMATES AND FACILITIES

10A:3-5.1 Purpose

Facilities and inmates may be searched as provided by this subchapter for the purpose of controlling and deterring the introduction and concealment of contraband. The definition of contraband and all procedures for disposition of contraband set forth in N.J.A.C. 10A:3-6, ***[contraband and its disposition.]* *CONTRABAND AND DISPOSITION OF CONTRABAND*** are fully applicable to this subchapter.

10A:3-5.2 Search plan

Each correctional facility shall develop and implement a comprehensive written plan governing searches of facilities and inmates. Each plan shall be submitted to the Office of the Deputy Commissioner for legal review and approval on or before February 15 of each year.

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10A:3-5.3 Searches of facilities

(a) All inmate residential, work, training areas and other areas to which inmates have access shall be searched thoroughly for contraband on a routine, continuing basis. Searches shall be unannounced and irregularly timed, and may be limited to a specific building or area.

(b) Procedures to be utilized in conducting searches shall be as set forth by each correctional facility's Standard Operating Procedures, to be promulgated pursuant to the search plan required by N.J.A.C. 10A:3-5.2. Such procedures may provide that an inmate may be excluded from entry into an area being searched to facilitate the safe and effective performance of the search.

10A:3-5.4 Inspection of security devices

(a) All bars and sashes, locks, windows, doors, lock boxes and other security devices shall be inspected daily to detect any tampering or defect.

(b) Emergency keys shall be checked at least quarterly to determine that they work properly.

(c) Inspections of security devices shall be conducted continuously and systematically ***[by]* *but*** scheduled to avoid an observable or predictable routine. The results of all inspections shall be submitted in writing to the shift supervisor for review by the Director of Custody Operations.

10A:3-5.5 Metal detector searches

(a) Searches of inmates by the use of metal detectors may be done routinely where necessary for security purposes. This may be a walk-through device or a handheld device which is passed over the fully clothed body of the inmate. The metal detector may also be utilized in conjunction with a strip search, as, for example, to pass the detector over the inmate's anal area.

(b) Metal detector searches may be conducted by male or female officers ***[as provided by N.J.A.C. 10A:3-2.3]***.

10A:3-5.6 Frisk search

(a) A frisk search or pat-frisk shall be conducted while the inmate is fully clothed. It includes both the touching of the inmate's body through clothing, including hair, dentures, etc., and a thorough examination into pockets, cuffs, seams, etc., and all personal property in the inmate's possession.

(b) Frisk searches of inmates may be conducted at any time in the following circumstances:

1. Prior to the departure of the inmate from any area where the inmate has had access to dangerous or valuable items;
2. Prior to entering the visiting room; or
3. Under any other circumstances where conditions indicate a need for such searches, as, for example, upon departure of inmates from kitchen or dining areas.

(c) In addition to the foregoing routine searches, a frisk search may be conducted at any time when there is a reasonably clear indication that the inmate is carrying contraband. This search may be conducted only with prior approval of a supervisory level officer or staff member. Factors which may ***[for]* *form*** the basis for such search may include:

1. Personal observations of activities or conditions which may be interpreted in light of the correction officer's experience and knowledge of the inmate as indicating the possession of contraband; or
2. Information received from a third party who is believed to be reliable.

(d) All frisk searches shall be conducted by staff of the same sex as the inmate^{*}, except as provided by N.J.A.C. 10A:3-2.2^{*}.

10A:3-5.7 Strip searches

(a) A strip search or strip frisk shall be conducted while the inmate is unclothed. A strip search includes a thorough and systematic examination of the inmate's body and orifices, including visual inspection of external genital and anal areas, as well as the inmate's clothing and all personal possessions.

(b) Strip searches may be conducted in the following circumstances:

1. After a contact visit;
2. Before an inmate enters or leaves the facility's main building, whether to go to a destination in the outside community or to a minimum security camp or farm area; or
3. Prior to the departure of the inmate from any area where the inmate has had access to dangerous or valuable items.

(c) Strip searches may also be conducted before placement in administrative segregation, prehearing detention, disciplinary detention, protective custody, the Management Control Units, South Hall and all other close custody units, except that no visual examination of anal or genital parts shall be conducted in connection with these placements.

(d) In addition, an inmate may be strip searched when an officer with a rank of Sergeant or above is satisfied that there is a clear indication

that an inmate is carrying contraband on his or her person or in his or her anal or vaginal cavity.

1. In the event an officer of the rank of Sergeant or above is reasonably satisfied that an inmate has secreted or inserted contraband into his or her anal or vaginal cavity, the inmate shall be escorted immediately to the facility's hospital or medical department.

2. The following procedures shall be followed for examination of the inmate and removal of contraband:

i. The inmate may remove the object in the presence of a medical staff person of either sex, and a correction officer of the same sex as the inmate.

ii. A medical doctor or registered nurse may examine the inmate and remove the object, without the use of force, in the presence of a correction officer of the same sex as the inmate.

iii. In the event a correction officer of the rank of Sergeant or above determines, ***[but]* *by*** the use of a metal detector, that a foreign object which contains metal is present in the inmate's anal or vaginal cavity, such object may be removed by a medical doctor only, with or without the use of force, in the presence of such correction officers of the same sex as the inmate as are necessary to insure security.

iv. In the event the supervisory officer or medical staff person has determined that an inmate is concealing non-metal contraband in his or her anal or vaginal cavity, and the inmate refuses to permit its removal, the inmate shall receive appropriate disciplinary charges and may be placed in prehearing detention or medical isolation. During prehearing detention, medical isolation and disciplinary detention, if any, the inmate may be kept under visual surveillance to detect removal or elimination of the contraband. N.J.A.C. 10A:4, ***[Inmate Discipline]* *INMATE DISCIPLINE***, shall apply to all such placements.

(e) All frisk searches, strip searches and body cavity searches shall be conducted in a professional and dignified manner, with maximum courtesy and respect for the inmate's person. The number of officers present shall be only that number reasonably necessary to provide security. No member of the opposite sex shall be present during strip searches and body cavity searches except medical staff persons as set forth above ***[and as provided by N.J.A.C. 10A:3-2.2]***.

(f) No inmate shall be searched as punishment or discipline.

10A:3-5.8 Urine monitoring

(a) Urine monitoring may be conducted for the purpose of deterring and controlling the introduction of contraband or to detect the presence of opiates, methadone, barbiturates, amphetamines, cocaine, tranquilizers, darvon, marijuana, alcohol or any other drug not authorized for possession or use by the correctional facility medical staff.

(b) Inmates may be required to submit urine for analysis when:

1. A correction^{*[s]*} officer of the rank of Sergeant or above or an Internal Affairs Officer believes, based upon his or her education and experience, that there is a reasonable factual basis to suspect the inmate of using or possessing drugs or alcohol;

2. A supervising staff member or a licensed medical staff person in residential contract facilities and/or other community residential facilities utilizing non-custody staff believes based upon his or her education and experience that there is a reasonable factual basis to suspect the inmate of using or possessing drugs or alcohol;

3. The Superintendent, Assistant Superintendent or the Director of Custody Operations orders all inmates of a particular housing unit, work detail or other functional unit to submit urine samples. Such orders shall be in writing and this authority may not be delegated;

4. A correction^{*[s]*} officer of the rank of Sergeant or above orders urine samples to be taken upon any inmate's return from furlough or other unsupervised temporary release from custody; or^{*,*}

5. A Disciplinary Hearing Officer/Adjustment Committee orders a urine sample to be taken as part of a sanction for a drug or alcohol related infraction.

10A:3-5.9 Collection, storage and analysis of urine samples

(a) Each time a urine specimen is collected for the reasons stated in N.J.A.C. 10A:3-5.8(b), Form 172-I (Continuity of Evidence-Urine Specimen) shall be completed and submitted to the Internal Affairs Officer or the staff member responsible for maintaining custody of evidence.

(b) Urine samples taken from inmates shall be voided directly into an approved specimen bottle in the presence of at least one correction officer or staff member of the same sex as the inmate.

1. The specimen bottle shall immediately be closed, labeled and sealed by the correction officer or staff member.

2. The label shall indicate the inmate's name and number, the correctional facility to which the inmate is assigned, the name of the correction

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officer or staff member who witnessed the voiding of the sample, the date and time of the sample, and the prescription medication that the inmate is currently taking.

(c) The ***correction*** officer or staff member who signs the label as witness shall, as soon as reasonably practicable, deliver the urine sample to the Internal Affairs Officer or other officer responsible for maintaining custody over evidence.

1. The urine sample shall be placed in a locked and secure refrigerator or freezer by the officer for maintaining custody over evidence as soon as reasonably practical, but in no event later than eight hours after the sample was voided.

2. The officer who receives custody of the urine sample shall make a written record of the date and time he or she received the sample, the officer from whom it was received, and the date and time ***[if]* *of*** its placement into the evidence locker and/or locked refrigerator.

(d) Inmate urine samples transported out of the correctional facility for drug testing shall be transported, where reasonably practical, in an iced cooler or similar device. The date and time of the removal of the sample from the correctional facility as well as the date and time of its receipt by the testing facility shall be noted in writing by the persons performing these functions.

(e) The Department of Corrections shall not proceed with testing any urine sample for drugs or alcohol unless the sample arrives at the laboratory in a sealed approved specimen bottle.

(f) Inmates charged with use of drugs or intoxicants not prescribed by the medical staff based upon the results of urine analysis shall be advised of the results of any tests at least 24 hours prior to any hearing ordered because of those charges.

(g) All urine monitoring shall be accomplished in a professional and dignified manner with maximum courtesy and respect for the inmate's person.

(h) Urine monitoring shall not be conducted as a means of punishment or discipline, except as ordered by a Disciplinary Hearing Officer/Adjustment Committee as permitted by Chapter 4, INMATE DISCIPLINE.

(i) No inmate shall be disciplined for refusing to provide a urine sample unless that inmate has been given a reasonable physical opportunity to comply with such order.

1. For the purposes of this rule, a reasonable physical opportunity shall constitute a two-hour period from the time of the initial order. The inmate may be required to remain in isolation during this two-hour period.

2. The inmate shall not be deemed to have complied with the order to submit a urine sample unless he or she voids the sample in the presence of a correction officer or staff member.

10A:3-5.10 Orientation and training

Each Superintendent shall be ***[reasonable for insuring]* *responsible for ensuring*** that the requirements and guidelines set forth in this Subchapter are followed. Post orders developed in accordance with this Subchapter shall be made available to all correction officers and support staff. All personnel shall receive training in their interpretation and applicability, so as to insure effective and safe search techniques.

SUBCHAPTER 6. CONTRABAND AND DISPOSITION OF CONTRABAND

10A:3-6.1 Contraband defined

(a) Contraband means:

1. Any item, article or material found in the possession of or under the control of an inmate which is not authorized for retention or receipt;

2. Any item, article or material found within the facility or on its grounds which has not been issued by the correctional facility or authorized as permissible for retention or receipt;

3. Any item, article or material found in the possession of or under the control of staff or visitors within the facility or on its grounds which is not authorized for receipt, retention or importation; or,

4. Any item, article or material which is authorized for receipt, retention or importation by inmates, staff or visitors but which is found in an excessive amount or which has been altered from its original form. An amount shall be considered excessive if it exceeds stated correctional facility limits or exceeds reasonable safety, security, sanitary or space considerations.

(b) Any article which may be harmful or presents a threat to the security and orderly operation of the correctional facility shall be considered contraband. Items of contraband shall include, but shall not be limited to: guns and firearms of any type; ammunition; explosives; knives, tools and other implements not provided in accordance with correctional facility regulations; hazardous or poisonous chemicals and gases; un-

authorized drugs and medications; medicines dispensed or approved by the correctional facility but not consumed or utilized in the manner prescribed; intoxicants, including but not limited to liquor or alcoholic beverages; and, where prohibited, currency and stamps.

(c) Correspondence and publications which meet any of the foregoing definitions of "contraband" shall be handled in accordance with N.J.A.C. 10A:18, ***[communication, mail and visits. Unauthorized]* *MAIL, VISITS, AND TELEPHONE,*** unauthorized money or currency found in correspondence or publications shall be handled in accordance with N.J.A.C. 10A:3-6.7.

10A:3-6.2 Procedures for handling contraband upon discovery

(a) Whenever an item, article or material is determined to be contraband pursuant to N.J.A.C. 10A:3-6.1, it shall be immediately seized.

1. The ***correction*** officer or staff member making the seizure shall submit the contraband to the unit supervisor who shall submit it to the Internal Affairs or Central Control Unit of the correctional facility, together with a fully completed report form (Form 171-I, ***[seizure of contraband report].*** ***Seizure of Contraband Report.*** The contraband report must be submitted no later than the end of the shift during which it is seized.

2. Care should be taken at all times to carefully record the chain of possession of the contraband.

3. The ***correction*** officer or staff member shall also give an inmate from whose control or possession contraband is taken, an itemized, signed and dated receipt, (Form 171-II, Inmate Receipt, Contraband Seizure), a copy of which shall also go to the Internal Affairs or Central Control Unit or the Cottage Life Office at the Training Schools at Jamesburg and Skillman. The contents of this form shall be either read or explained to the inmate or resident as needed.

4. When contraband is removed from mail (that is, letters, packages, etc.) as defined by N.J.A.C. 10A:18, ***[Communication, mail and visits,]* *MAIL, VISITS AND TELEPHONE,*** the ***correction*** officer or staff member making the seizure shall send the inmate to whom the mail was addressed a completed copy of Form 171-II indicating that the specified items were removed.

5. The inmate shall have three days to appeal the seizure to the Superintendent or his or her designee.

(b) The Internal Affairs or Central Control Unit shall maintain a log of all Seizure of Contraband and Inmate Receipt forms (Forms 171-I and 171-II). It shall be the responsibility of these units to record the disposition of the contraband on the Seizure of Contraband Report (Form 171-I).

(c) All contraband seized shall be clearly and appropriately marked and securely stored by the Internal Affairs or Central Control Unit.

(d) If disciplinary charges are issued in connection with the seizure of contraband, the Internal Affairs or Central Control Unit shall present the contraband at the disciplinary hearing unless the contraband was seized pursuant to N.J.A.C. 10A:3-6.6. If the contraband was seized pursuant to N.J.A.C. 10A:3-6.6, the Disciplinary Hearing Officer/Adjustment Committee or Cottage Treatment Team at the Training School for Boys, Skillman shall arrange to view the contraband outside the inmate's presence.

(e) Contraband shall be disposed of by the Internal Affairs or Central Control Unit in accordance with this Subchapter.

10A:3-6.3 Disposal of contraband personal property seized in reception units

(a) When an inmate is delivered to the Prison Reception Unit, Youth Reception Unit, Juvenile Reception Unit, Reception Unit at the Adult Diagnostic and Treatment Center or the Reception Unit at Clinton with items of personal property not authorized for retention or possession, the items shall be seized.

(b) The staff member making the seizure shall give the inmate an itemized, signed and dated receipt for the property seized, and shall notify the inmate that such items are contraband, and that he or she has three working days, from the date of the seizure of the contraband, to appeal the classification of any or all items as contraband to the Superintendent.

1. If the Superintendent or his or her designee shall determine that any or all of the items are not contraband, they shall be returned to the inmate.

2. If the Superintendent shall determine that any item is contraband, the inmate shall be given two working days to indicate which of the following means of disposal should be used with respect to the property

***. The contraband shall either be*:**

i. Mailed to a designated relative or friend of the inmate at the inmate's expense;

ii. Given to a visitor for disposal;

iii. Donated by the inmate to a charitable organization at the inmate's expense; or

iv. Destroyed at the inmate's request.

3. If the inmate fails to indicate the desired disposition, the property shall be disposed of at the option of the Superintendent of the correctional facility in which the reception unit is located.

(c) Disciplinary reports shall not be issued to an inmate entering a reception unit for possession of unauthorized or excessive personal property.

10A:3-6.4 Disposal of contraband personal property seized within a correctional facility

(a) When contraband is seized within a correctional facility, appropriate disciplinary reports shall be written and issued pursuant to N.J.A.C. 10A:3-6.8.

(b) The staff member making the seizure shall give the inmate an itemized, signed and dated receipt (Form 171-II) for the property seized and shall notify the inmate that such items are contraband and that he ***or she*** has the right to appeal the classification of any or all items as contraband through the disciplinary process.

1. If the ***[disciplinary hearing officer, adjustment committee]* *Disciplinary Hearing Officer/Adjustment Committee*** or Cottage Treatment Team at the Training School for Boys, Skillman determines that any or all items are not contraband or if the Superintendent, on appeal, determines that an item is not contraband it shall be returned to the inmate.

2. If the Disciplinary Hearing Officer/Adjustment Committee or Cottage Treatment Team at the Training School for Boys, Skillman determine that any or all items are contraband, the inmate shall be given two working days following receipt of the ***[hearing officer's]* *Disciplinary Hearing Officer/Adjustment Committee*** or Cottage Treatment Team's decision or the decision of the Superintendent if the disciplinary decision is appealed to indicate to the Internal Affairs or Central Control Unit which of the following means shall be used to dispose of the contraband¹: ***. The contraband shall either be:**

i. Mailed to a designated relative or friend of the inmate at the inmate's expense;

ii. Donated by the inmate to a charitable organization at the inmate's expense; or

iii. Destroyed at the inmate's request.

3. Where the inmate fails to indicate the desired disposition, the property shall be disposed of at the option of the Superintendent.

4. For verifiable cases of inmates who have no family and no visitors, special arrangements to store property at the facility in which the inmate is housed may be approved on a case by case basis by the Superintendent ***and in accordance with N.J.A.C. 10A:1 ADMINISTRATION, ORGANIZATION AND MANAGEMENT***.

10A:3-6.5 Disposal of contraband, state issued property

Where State issued personal property is confiscated as contraband pursuant to N.J.A.C. 10A:3-6.2, the inmate shall not have any option with respect to its disposition. It shall be returned to the source for redistribution or subsequent disposal. Commissary items seized as contraband may be distributed among needy inmates as determined by the Superintendent.

10A:3-6.6 Disposal of contraband threatening to security or disruptive of operations

(a) All contraband determined to pose a threat to security or to be disruptive of the orderly running of a correctional facility shall be taken into the custody of the ***[institution]* *correctional facility*** and under no circumstances shall be returned to the inmate.

1. The staff member making the seizure shall immediately turn the contraband over to the Internal Affairs or Central Control Unit of the facility, together with the completed Seizure of Contraband Report form and Inmate Receipt form in accordance with N.J.A.C. 10A:3-6.2.

2. Appropriate disciplinary reports shall be written and issued, pursuant to N.J.A.C. 10A:3-6.8.

(b) Suspected contraband narcotics or dangerous drugs may be forwarded to an approved laboratory for chemical analysis or, where appropriate, field tested at the correctional facility. All weapons, ammunition, explosives, chemicals, liquor or items altered from original status may be sent to the laboratory for analysis. After analysis, the contraband shall be claimed at the laboratory and secured at the facility.

(c) Precautions shall be taken to assure the continuity of possession of contraband that will be used as evidence in accordance with accepted legal procedures. Unauthorized items determined to pose a threat to or to be disruptive of the operations of a facility may be destroyed or properly disposed of by the facility only under the following circumstances:

1. With the permission of the Superintendent;

2. Upon completion of all disciplinary action; and

3. With the prior approval of the appropriate county prosecutor's office.

10A:3-6.7 Confiscation and disposal of unauthorized currency or money

(a) All unauthorized money or currency found in an inmate's possession shall be immediately seized and turned over to the Central Control, Internal Affairs Unit together with reports required by N.J.A.C. 10A:3-6.2.

1. Any inmate found to be in possession or to have control over such money or currency shall receive a disciplinary report.

2. A determination as to the manner in which the money or currency has been acquired shall be made by the Disciplinary Hearing Officer/Adjustment Committee, or the Cottage Treatment Team at the Training School for Boys, Skillman at the disciplinary hearing of the reports against the inmate.

3. Unauthorized money or currency acquired through illegal or improper means, including but not limited to extortion, gambling or bribery, or intended to be used to disrupt the orderly running of the correctional facility, shall be forfeited by the inmate and credited to the correctional facility's Inmate Welfare Account. All other unauthorized money or currency shall be held for the inmate who had it in his or her possession and shall be payable to him or her only upon his or her release from the facility. In such instance, the inmate still shall be liable to disciplinary action for possession of contraband.

(b) Money orders and checks other than personal shall be the only approved form of money received through the mail which can be accepted by the correctional facility for deposit in inmates' accounts.

[(b)]**(c) All personal checks, whether received in the mail or brought in by visitors, shall be deemed contraband and shall not be accepted by the facility for deposit in ***[inmate's]* *inmates'*** accounts.

[(c)]**(d) All cash received through the mail shall be deemed contraband and shall not be accepted by the facility for deposit in ***[inmate's]* *inmates'*** accounts.

[(d)]**(e) Cash brought to the facility by visitors, for deposit in inmates' accounts, shall not be deemed contraband and shall be accepted by the facility provided appropriate records are maintained of cash received, and provided signed receipts are issued to the visitors with copies maintained by the facility.

[(e)]**(f) Facilities desiring to do so shall be permitted to place an upper limit on the total amount of cash which an inmate is permitted to receive, per day, from one visitor or a combination of visitors.

[(f)] Money orders and checks other than personal shall be the only approved form of money received through the mail which can be accepted by the facility for deposit in inmates' accounts.]²

(g) The following procedures shall be utilized for disposing of the items defined as contraband:

1. All personal checks shall be refused if brought in by a visitor. Personal checks received through the mail shall be returned to the sender, at the correctional facility's expense. Personal checks returned via the mail shall include a note to the sender indicating that Department policy prohibits acceptance. In addition, Form 171-I (Seizure of Contraband Report) shall be filled out and a copy sent to the inmate.

2. All cash received through the mail shall be sent to the facility's Business Office whereupon a check, for each amount of cash received, shall be issued to the sender and mailed to the sender at the facility's expense. Accompanying the check shall be a note to the sender indicating that Department policy prohibits the acceptance of cash through the mail and explaining that the money is being returned in check form to protect against theft. In addition, Form 171-I (Seizure of Contraband Report) shall be filled out and a copy sent to the inmate.

10A:3-6.8 Disciplinary reports

(a) When disciplinary reports are issued resulting from application of this Subchapter, such reports shall be issued and adjudicated in accordance with Chapter 4, INMATE DISCIPLINE.

(b) Specific prohibited acts which involve contraband and which apply to all facilities except the Training School for Boys, Skillman, are enumerated in N.J.A.C. 10A:4-4.1 and in the Prison Complex Handbook on Discipline, the Youth Complex Handbook on Discipline and the Juvenile Handbook on Discipline.

(c) Specific prohibited acts which may involve contraband for residents of Training School for Boys, Skillman, are listed in N.J.A.C. 10A:4-13.5 and in that facility's Handbook for Residents.

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10A:3-6.9 Introduction or discharge of contraband into or from a facility by a visitor

(a) Any visitor present within the correctional facility or on its grounds shall surrender any item, article, or material which the Superintendent or his or her designee shall determine to be contraband.

1. The ***correction*** officer or staff member seizing any item, article or material determined to be contraband, possession of which does not appear to violate any Federal or State statute, shall give the visitor an itemized, dated and signed receipt. When the visitor exits the facility, the employee shall, in return for the receipt, return the item to ***[him or her]* *the visitor***.

2. If there shall be reason to believe that possession of the contraband violates a Federal or State statute, the employee shall detain such ***[person]* *visitor*** and notify the appropriate police agency.

(b) If there shall be reason to believe that a visitor has willfully introduced or was attempting to introduce contraband into the facility, such person shall be detained in the facility and the appropriate police agency shall be notified.

(c) Visitors may be subject to denial of future visits as specified by the Superintendent because of the presence of contraband in their possession or under their control. Where warranted, the case may be referred for criminal prosecution.

10A:3-6.10 Introduction or discharge of contraband into or from a facility by the mail

(a) Incoming correspondence and publications shall always be inspected for contraband. Any discovery of contraband in correspondence or publications shall be handled in accordance with N.J.A.C. 10A:18, ***[communications, mail and visits.]* *MAIL, VISITS AND TELEPHONE.***

(b) Unauthorized money or currency found in correspondence or publications shall be handled in accordance with N.J.A.C. 10A:3-6.7.

SUBCHAPTER 7. POLYGRAPH EXAMINATIONS

10A:3-7.1 Use of polygraph examinations with inmates

(a) A polygraph examination may be requested by the Superintendent:

1. When there are issues of credibility regarding serious incidents or allegations which may result in a disciplinary charge; or
2. As part of a reinvestigation of a disciplinary charge, when the Superintendent is presented with new evidence or finds serious issues of credibility.

(b) The polygraph shall not be used in place of a thorough investigation, but to assist an investigation when appropriate.

(c) Agreement by the inmate to take a polygraph examinations shall not be a pre-condition for ordering a reinvestigation. An inmate's request for a polygraph examination shall not be sufficient cause for granting the request.

10A:3-7.2 Use of polygraph examinations with staff

Pursuant to N.J.S.A. 2A:170-90.1, no employee may be forced to consent to a polygraph examination as a prerequisite to employment or as a condition of retaining employment.

10A:3-7.3 Requesting a polygraph examination

The Superintendent shall request all polygraph examinations from the Department's Internal Affairs Unit, Polygraph Section, using Form 285-1 (Request for Polygraph Examinations). The Internal Affairs Unit, Polygraph Section, must approve all requests. If the polygraph involves a case in litigation, the request must be approved by the Commissioner or Deputy Commissioner prior to being referred to the Polygraph Section.

10A:3-7.4 Scheduling polygraph examinations

(a) Polygraph examinations shall be scheduled by the Department's Internal Affairs Unit, Polygraph Section. If the Department's polygraphists are not available, the Internal Affairs Unit shall make arrangements to obtain the services of a State Police polygraphist.

(b) The only polygraph examinations acceptable to the Department shall be those performed by the Department's polygraphists or those assigned to the State Police Polygraph Unit. No action of any kind shall be taken based on the results of independently performed polygraph examinations.

(c) Because polygraph examinations may be inappropriate under certain circumstances, the final decision on whether a polygraph examination will be given at a particular time shall be made by the polygraphist assigned to each individual case.

10A:3-7.*[4]**5* Procedural limitations

(a) The inmate must be advised that the test is being administered as part of an official investigation.

(b) No examination shall be conducted unless the inmate has knowingly and without duress signed a written consent form. Under no circumstances shall any inmate be threatened or coerced into taking a polygraph examination. No inmate shall receive a disciplinary charge for refusal to take a polygraph examination.

(c) Whenever possible, the examination shall be conducted at the correctional facility where the inmate resides. However, the polygraphist may choose any other competent testing facility.

10A:3-7.*[5]**6* Use of polygraph examinations with juveniles

(a) A juvenile under the age of 18 who consents to take a polygraph examination shall take the examination only with the express written consent of his ***or her*** parent or guardian, or if there is an appropriately executed court order.

(b) All other factors relating to administering polygraph examinations to juveniles shall be handled in the same manner as to an adult inmate.

SUBCHAPTER 8. FINGERPRINTING AND PHOTOGRAPHING JUVENILE INMATES

10A:3-8.1 Fingerprints of juvenile inmates

Pursuant to N.J.S.A. 2A:4A-61, a correctional facility may fingerprint any inmate detained in or committed to the facility as the result of an adjudication of delinquency. Such records may be retained by the facility to be used for purposes of identification.

10A:3-8.2 Photographs of juvenile inmates

Inmates 14 years of age or older may be photographed for purpose of identification. Inmates under the age of 14 shall not be photographed unless both the juvenile and his ***or her*** parent or guardian expressly consent in writing or there is an appropriately executed court order.

10A:3-8.3 Confidentiality

(a) All fingerprint and photograph records of juvenile inmates shall be plainly marked "confidential". These records shall not be released except to the following:

1. Law enforcement agencies of this State for law enforcement purposes;
2. Any court or probation department;
3. The Attorney General or County Prosecutor;
4. The parents or guardian;
5. The attorney of the juvenile, provided the attorney has secured permission from the parents or guardian;
6. The Division of Youth and Family Services, if DYFS is providing care or custody of the juvenile; or
7. As directed by court order, as permitted by N.J.A.C. 10A:22, RECORDS.

10A:3-8.4 Written policy and procedures

Each facility which houses inmates with juvenile commitments shall prepare written policy and procedures consistent with this Subchapter. These shall be submitted to the Special Assistant for Legal Affairs in the Office of the Deputy Commissioner for legal review and approval.

SUBCHAPTER 9. TRANSPORTATION OF INMATES

10A:3-9.1 Use of State-owned and privately-owned vehicles

(a) Transporting of inmates shall be done only in State-owned vehicles, except when emergencies or other unusual circumstances require the use of privately-owned vehicles.

(b) If it is necessary for an inmate to ride in an employee's private vehicle, the employee must secure approval from the Superintendent or his or her designee of the facility responsible for the inmate prior to such transportation.

1. If approval is granted, the employee shall be made aware of Departmental policy regarding the use of private vehicles and the liability provisions currently applicable as established by the Department of the Treasury, Division of Budget and Accounting.

2. In all cases, the employee shall furnish proof that the vehicle is properly licensed, registered and insured.

3. The use of an employee's vehicle may be authorized, but not required, by the correctional facility.

(c) Employees escorting inmates shall carry in their possession a valid drivers license.

10A:3-9.2 Transporting inmates by aircraft

The transporting of inmates by aircraft shall be in accordance with written guidelines formulated by the ***[Bureau]* *Office*** of Interstate Services, pursuant to N.J.A.C. 10A:3-9.11.

10A:3-9.3 Transport of maximum custody inmates

(a) State-owned vehicles used to escort maximum custody inmates shall be equipped with protective screening devices to separate inmates from

the driver. Opening devices on the inner rear doors and windows of passenger sedans shall be made inoperable for inmates. The rear door locking mechanism shall be modified so that is redirected, making it accessible to the officer only when the front door is open.

(b) The standard passenger sedan or van shall be used only in lieu of more secure but unavailable vehicles. Use of such vehicles to transport maximum custody inmates shall be in accordance with written institutional procedures.

(c) Vans or buses shall be used to transport groups of inmates. Those vehicles used to transport groups of maximum custody inmates shall comply with the following:

1. Windows or small ports must be protected by security screens or metal bars;
2. Security screen barricades with gates and locks must be located between driver and inmates;
3. A section of the rear of the bus must be screened off for baggage storage;
4. Transportation officer(s) must be seated with a clear view of the bus compartment; and
5. The vehicle must be equipped with one ten pound fire extinguisher (ABC Class).

(d) Vehicles used to transport maximum custody inmates shall be thoroughly searched for contraband by the transportation officer(s) before being used.

(e) Officers escorting inmates shall be provided by the correctional facility, or the *[Bureau]* *Office* of Interstate Services as appropriate, with necessary mechanical restraints.

1. The use of mechanical restraints shall be governed by N.J.A.C. 10A:3-3.6.

2. FAA regulations and individual airline rules govern the use of mechanical restraints while in aircraft flight.

(f) Upon arrival at a courthouse, any leg restraints shall be removed. Restraint belts and handcuffs shall not be removed until arraignment unless otherwise ordered by the court. Immediately at the conclusion of the hearing, handcuffs and restraint belts shall be replaced on the inmate.

(g) Officers escorting maximum custody inmates (except Training School inmates) shall always be armed with State issued weapons and ammunition. Any use of deadly force shall be governed by N.J.A.C. 10A:3-3.3.

(h) When escorting maximum custody inmates, the ratio of escorting officers to inmates shall be two officers for one inmate, two officers for two inmates, three officers for three inmates. Written procedures shall be developed by each *[institution]* *correctional facility* regarding the security and staffing arrangements required when transporting four or more inmates.

(i) When female inmates are being transported, at least one female escort must be present for the duration of the trip.

(j) Only properly trained officers may transport maximum custody inmates. Such officers shall have been fully trained in the following areas:

1. Use of weapons and restraint equipment;
2. Effective search for contraband of inmates, their personal property and transportation vehicles, and
3. Any other activities required to successfully complete a transportation assignment.

(k) An inmate shall be strip searched by the escorting officer(s) prior to the trip and at any time after the inmate has been out of their sight. Strip searching upon return to the unit or delivery to the receiving unit is the responsibility of the unit's officers. See, N.J.A.C. 10A:3-5.

10A:3-9.4 *[Transport of]* *Transporting* reduced custody inmates

(a) The Superintendent or his *or her* designee shall make a determination with respect to the specific staffing and security arrangements required when transporting a reduced custody inmate. In these cases, a careful review shall be made of the individual case to determine the most appropriate staffing and security arrangements for each trip.

(b) Transportation of minimum custody inmates in work/study release, furlough*[,]* program and other such programs shall be done in accordance with appropriate Department rules.

(c) The searching of inmates shall be in accordance with the requirements of N.J.A.C. 10A:3-5 *SEARCH OF INMATES AND FACILITIES*.

10A:3-9.5 Transportation documents

(a) Prior to accepting escort responsibility for any inmate, officers shall be informed of the following: inmate's name and number, *[designation,]* *destination,* degree of custody, unusual medical, emotional, or mental peculiarities. Officers shall also be provided appropriate medical

information setting forth any prescribed medication or instructions for special handling when transporting medical or psychiatric cases.

(b) Prior to escort to court and on inter-facility transfers, the officer shall ensure that he *or she* has all documents necessary to obtain custody and/or to effect delivery of the inmate being escorted.

(c) Officers escorting court trips shall be provided a form on which to indicate detainers filed against the inmate for use by the judge in case the sentence giving the unit jurisdiction is vacated. This form shall also have space for the officer to enter the following: name of judge, sentence passed, plea, other pertinent information.

(d) All officers shall carry the official Department identification card approved by the Commissioner and issued by the *[institution]* *correctional facility*.

10A:3-9.6 Recall to court

(a) An inmate shall only be produced in court by a writ of habeas corpus, writ of habeas corpus ad testificandum, post conviction relief order, or other order to produce which is to be at the correctional facility 24 hours prior to the scheduled court appearance.

1. It shall be improper to produce an inmate in court on a subpoena only.

2. Writs of habeas corpus must be signed by either a New Jersey State Superior Court judge or a Federal court judge. No other writs to produce shall be honored.

3. Questions concerning the validity of any writ shall be referred to the office of the Deputy Commissioner, Department of Corrections.

4. Any requests for exception to this policy shall be referred to the office of the Deputy Commissioner.

(b) A county may send its own officers to pick up an inmate at any time provided they have an appropriate writ with them.

10A:3-9.7 Inmate supervision

(a) During escort, inmates shall be carefully guarded to prevent escape and receipt of contraband.

(b) No communication between inmate and public shall be permitted at any time during escort.

(c) An inmate's special requests during escort not related to the purpose of the trip shall not be honored. The inmate shall be immediately returned to the correctional facility upon completion of the trip's purpose.

(d) If, while at court, the judge approves an interview of the inmate with the attorney, the officer shall be present during the interview. The officer shall not monitor the attorney-client conversation.

(e) An inmate shall be taken directly to the destination of a sickbed or funeral visit. Side trips for any purpose shall not be permitted. An inmate on such a trip shall not be allowed out of sight of the officer.

10A:3-9.8 Emergencies

Officers shall immediately notify the *[Superintendent]* *Superintendent* or the next person in line of authority if an emergency arises during the transportation of an inmate. If time or other considerations make it impossible to contact the Superintendent, the State Police and/or local police may be notified by the officer without prior clearance by the Superintendent.

10A:3-9.9 Transporting parole violators and escapees with physical injuries.

(a) Prior to accepting responsibility for an injured parole violator or escapee to be escorted, the escort officer shall make every effort to obtain written information on how the injury occurred and whether medical aid was administered. A copy of a medical report shall be obtained to aid medical authorities at the receiving correctional facility.

(b) If a medical report is not available, the escort officer shall request the supervisor on duty at the sending correctional facility to provide a brief written statement that the injury was received prior to turning over the custody of the parole violator or escapee.

(c) Upon arrival at the receiving correctional facility, Central Control shall be notified so that the parole violator or escapee may be promptly seen by the facility's medical department.

(d) The physical condition of the injured parole violator or escapee shall be recorded photographically by the receiving correctional facility. A full and accurate description of the injury shall be recorded.

(e) A brief written report of the injury shall be submitted pursuant to N.J.A.C. 10A:22, REPORTS.

10A:3-9.10 Clothing

(a) Escorting officers going out-of-state, to any Federal court or on sickbed or funeral visits shall wear civilian clothing. All other escorting officers shall wear uniforms.

(b) Inmates shall wear civilian clothing on court trips.

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10A:3-9.11 Office of Interstate Services

(a) The Interstate Escort Unit within the Office of Interstate Services of the Division of Policy and Planning shall be responsible for the return of parole violators and escapees from out-of-state and the transfer of inmates under the Interstate Corrections Compact. The ***[unit]* *Unit*** shall also assist, on an emergency basis, correctional facility officers in escorting inmates on writ to the courts, trips to out-side medical facilities or other movements within State boundaries.

(b) Unless otherwise specified, the Senior Interstate Escort Officer shall be in charge in all matters relating to the interstate transportation of New Jersey escapees, parole violators and/or corrections compact transfers. Whenever ***[institutional]* *correctional facility*** employees are assigned to assist the Interstate Escort Unit for such trips, they shall be responsible to the Senior Interstate Escort Officer for the duration of the assignment.

(c) The Office of Interstate Services shall develop specific guidelines governing the transporting of inmates by aircraft. These guidelines shall be approved by the Assistant Commissioner, ***Division of* Policy and Planning**, prior to implementation. Current Federal Aviation Administration rules applicable to any phase of aircraft use in transporting inmates shall be maintained by ***[Bureau]* *Office*** of Interstate Services.

10A:3-9.12 Medical transportation

(a) In emergency situations when a non-ambulatory maximum custody inmate is in need of hospitalization or treatment outside of the correctional facility, he ***or she*** shall be transported by ambulance, or by a State-owned vehicle if an ambulance is unavailable. A State-owned vehicle shall be used to transport an ambulatory inmate who is in need of hospitalization or treatment outside of the facility.

(b) When an inmate is transported by ambulance, an officer shall accompany him ***or her*** in the ambulance and another officer shall follow the ambulance in a back-up car. When an inmate is transported by a State-owned vehicle, the ratio of escorting officers to inmates shall be governed by N.J.A.C. 10A:3-9.3(h) ***TRANSPORTATION OF INMATES***.

(c) The use of mechanical restraints and equipment when transporting an inmate for hospitalization or treatment shall be governed by N.J.A.C. 10A:3-3.3 and the nature of the illness or injury.

(d) When a reduced custody inmate requires medical transport, the Superintendent or his or her designee shall make a determination with respect to the specific staffing and security arrangements required. In these cases, a careful review shall be made of the individual case to determine the appropriate vehicle, staffing and security arrangements for each trip.

10A:3-9.13 Written procedures

Each correctional facility and the Office of Interstate Services shall prepare written procedures governing the transportation of inmates outside of the correctional facility and from one jurisdiction to another, consistent with the requirements of this Subchapter. These procedures shall be made available to all personnel involved in transporting inmates and shall be reviewed at least annually and updated as necessary.

SUBCHAPTER 10. SECURITY PROCEDURES FOR
ADMINISTRATIVE TRANSFERS OF
INMATES FROM SATELLITE UNITS AND
COMMUNITY BASED PROGRAMS

10A:3-10.1 Use of mechanical restraints

(a) Inmates assigned to satellite units and community based facilities may be transferred to medical or dental appointments, approved interviews, Parole Board Hearings and other similar destinations without the use of mechanical restraints (that is, handcuffs, security belts, etc.).

(b) When an inmate is to be returned to a correctional facility for any reason that creates an increased likelihood of an escape attempt, staff members of the satellite unit or community based program shall put into effect the security measures necessary to prevent an escape.

(c) Satellite units and community based programs shall notify the appropriate correctional facility when a decision has been made to remove an inmate from the program. The correctional facility shall assign transporting officers to make the transfer. The transporting officers shall routinely carry restraint equipment in order that the transfer will be made in a safe and secure manner.

(d) The inmate shall not be informed of his or her impending removal from the program prior to the arrival of transporting officers from the correctional facility responsible for making the transfer. Upon arrival of the transporting officers, the inmate to be transferred shall be identified and he or she shall immediately be secured with mechanical restraints.

10A:3-10.2 Inmate's personal property

(a) All of the handcuffed inmate's personal property shall be packed in his or her presence to ensure an accurate inventory.

(b) In instances when the inmate's behavior, while his or her personal property is being packed, becomes disruptive to the extent that it poses a threat to the orderly operation of the unit, the inmate shall be removed from the facility and his or her personal property shall be forwarded to the receiving correctional facility immediately following the transfer.

10A:3-10.3 Inmate supervision

A transporting officer and/or facility staff member(s) shall be in the presence of the inmate during the entire transfer process.

CHAPTER 5
CLOSE CUSTODY UNITS

SUBCHAPTER 1. INTRODUCTION

10A:5-1.1 Purpose

The purpose of this Chapter is to establish guidelines for:

1. Assigning inmates to close custody units;
2. Reviewing the progress of inmates assigned to close custody units;
3. Releasing inmates from close custody units, when appropriate; and,
4. Operating the Management Control, Administrative Segregation, Capital Sentence, Protective Custody and Transitional Protective Custody Units.

10A:5-1.2 Scope

This Chapter shall be applicable to the Division of Adult Institutions unless otherwise indicated.

10A:5-1.3 Definitions

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

"Asterisk ***[offense]** shall mean" *** Offense** means* a prohibited act preceded by a number and an asterisk.

"Adjustment Committee" ***[shall mean]* *means*** the Committee within a correctional facility that is authorized to hear and adjudicate inmate violations of prohibited acts.

"Administrative Segregation" ***[shall mean]* *means*** removal of an inmate from the general population of a correction facility to a long term close custody unit because of one or more disciplinary infractions or other administrative considerations.

"Capital Sentence Unit (C.S.U.)" ***[shall mean]* *means*** the close custody unit to which persons sentenced to death pursuant to N.J.S.A. 2C:11-3, are assigned until such time that the execution is carried out, or the sentence is commuted or changed to a lesser penalty.

"Close ***[custody unit]**" shall mean" ***Custody Unit** means* an area within a correctional facility designated for assigning inmates who are removed from the general population for disciplinary or administrative reasons.

"Commissioner" ***[shall mean]* *means*** the Commissioner of the New Jersey Department of Corrections.

"Custody ***[status]**" shall mean" ***Status** means* the degree of supervision that is required for an inmate to enter or leave a correctional facility.

"Department" ***[shall mean]* *means*** the New Jersey Department of Corrections.

"Disciplinary ***[detention]**" shall mean" ***Detention** means* removal of an inmate from the general population of a correctional facility to a short term close custody unit because of a disciplinary infraction(s).

"Disciplinary Hearing Officer" ***[shall mean]* *means*** a Department staff member designated to hear and adjudicate inmate violations of prohibited acts.

"Disciplinary ***[report]**" shall mean" ***Report** means* a form on which a violation of prohibited act is recorded along with other pertinent information.

"Disciplinary Sanction" ***[shall mean]* *means*** a prescribed penalty that is imposed for violation of a prohibited act.

"Institutional Classification Committee (I.C.C.)" ***[shall mean]* *means*** the Committee within a correctional facility that is responsible for monitoring an inmate's progress and assigning him or her to appropriate programs or activities.

"Inter-Institutional Classification Committee (I.I.C.C.)" ***[shall mean]* *means*** the Committee, composed of representatives from different correctional facilities, that is responsible for determining the correctional facility to which an inmate is assigned and approving requests for transfer from one correctional facility to another.

"Major violations" *shall* *mean* the violation of a prohibited act that is preceded by an asterisk.

"Management Control Unit (M.C.U.)" *shall mean* *means* a close custody unit to which an inmate may be assigned if he or she poses a substantial threat to the safety of others; of damage to or destruction of property; or of interrupting the operation of a State correctional facility.

"Management Control Unit Review Committee (M.C.U.R.C.)" *shall mean* *means* the Committee within Trenton State Prison that is responsible for hearing cases of inmates referred for placement in the Management Control Unit (M.C.U.) and for conducting three month status reviews of inmates assigned to M.C.U.

"Minor violations" *shall mean* *means* the violation of a prohibited act that is not preceded by an asterisk.

"On-the-Spot Correction" *shall mean* *means* the immediate imposition of a sanction upon an inmate for the violation of a minor prohibited act.

"Prehearing detention" *shall mean* *means* removal of an inmate from the general population pending an investigation and a hearing into an alleged violation of a prohibited act.

"Prison Complex" *shall mean* *means* state correctional facilities designated to house inmates serving prison sentences.

"Prohibited acts" *shall mean* *means* conduct in violations of rules and regulations, which will result in the imposition of sanctions.

"Protective custody" *shall mean* *means* confinement to a secure unit designated to restrict or limit an inmate's activities and contacts with others, in order to provide protection to the inmate from injury or harm actually threatened, or reasonably believed to exist based on events, investigative reports, informants' reports or other reliable sources of information.

"Special Administrative Segregation Review Committee (S.A.S.R.C.)" *shall mean* *means* the administrators, designated by the Deputy Director of the Division of Adult Institutions, who are responsible for the bimonthly review of the status of inmates assigned to all Administrative Segregation Units except the Vroom Readjustment Unit.

"Superintendent" *shall mean* *means* the chief executive officer of any State correctional facility in the New Jersey Department of Corrections.

"Special Classification Committee (S.C.C.)" *shall mean* *means* the Committee composed of representatives from the Prison Complex, Youth Complex and Division of Juvenile Services which consider the transfer of inmates between Complexes.

"Transitional Protective Custody Unit" *shall mean* *means* a Unit to which certain inmates, who have been assigned to a Protective Custody Unit, may be assigned as an initial step toward their reintegration into the general population of a correctional facility.

"Vroom-Administrative Segregation Review Committee" *shall mean* *means* the administrators, designated by the Superintendent of the Trenton State Prison, who are responsible for the monthly review of the status of inmates assigned to the Vroom Readjustment Unit.

"Vroom Readjustment Unit (V.R.U.)" *shall mean* *means* an Administrative Segregation and Protective Custody Unit for inmates located in the Vroom Building, on the grounds of Trenton Psychiatric Hospital, Trenton, New Jersey.

"Youth Complex" *shall mean* *means* State correctional facilities designated to house young adult offenders with indeterminate sentences as set forth in N.J.S.A. 30:4-146.

10A:5-1.4 Forms

The following forms related to close custody units shall be reproduced by each correctional facility from originals that are available by contacting the Standards Development Unit, New Jersey Department of Corrections:

1. 141-I AUTHORIZATION FOR PREHEARING M.C.U.
2. 146-I VOLUNTARY—PROTECTIVE CUSTODY CONSENT
3. 146-II NOTICE OF PROTECTIVE CUSTODY HEARING—INVOLUNTARY
4. 146-III PROTECTIVE CUSTODY HEARING ADJUDICATION

SUBCHAPTER 2. MANAGEMENT CONTROL UNIT (M.C.U.)

10A:5-2.1 Referrals for placement in the Management Control Unit (M.C.U.)

(a) Recommendations for placement of inmates in the Management Control Unit (M.C.U.) may be submitted to the Management Control Unit Review Committee (M.C.U.R.C.) by the:

1. Inter-Institutional Classification Committee (I.I.C.C.);

2. Institutional Classification Committee (I.C.C.);
3. Disciplinary Hearing Officer/Adjustment Committee;
4. Administrative Segregation Review Committees;
5. Superintendent (Trenton Prison);
6. Director of Custody Operations (Trenton Prison);
7. Director of Professional Services (Trenton Prison).

10A:5-2.2 *Members* *Composition* of the Management Control Unit Review Committee (M.C.U.R.C.)

(a) The Management Control Unit Review Committee (M.C.U.R.C.) shall be composed of the:

1. Assistant Superintendent or the Director of the Vroom Readjustment Unit;
2. Director of Professional Services or his or her designate (that is, Director of Education, Director of Psychological Services, Director of Social Services, etc.); and,
3. *Person* *The person* designated by the Superintendent as the Supervisor of the Management Control Unit (M.C.U.).

10A:5-2.3 Responsibilities of the Management Control Unit Review Committee (M.C.U.R.C.)

(a) The Management Control Unit Review Committee (M.C.U.R.C.) shall meet at least once a week, when necessary, to deliberate on matters related to its responsibilities. The M.C.U.R.C. shall be responsible for:

1. Hearing the cases of inmates referred for placement in M.C.U.; and,
2. Reviewing the progress of each inmate placed in M.C.U. at least every three months to determine whether continued placement in the Unit is appropriate.

10A:5-2.4 Criteria for assigning inmates to the Management Control Unit (M.C.U.)

(a) The following criteria shall be utilized by the Management Control Unit Review Committee (M.C.U.R.C.) in determining the appropriateness of assigning inmates to the Management Control Unit (M.C.U.):

1. Disciplinary records during the inmates present term of confinement and any previous terms served. Weight shall be assigned to this criterion where there are a substantial number of minor charges, or one or more charges of a serious nature;
2. Past criminal offenses *including those for which incarcerated,* which indicate the capability and propensity to commit or precipitate serious acts of disruption or violence;
3. Number and location of previous institutionalizations including the disciplinary records, progress reports, classification reports, or any other records which indicate involvement in serious misbehavior;
4. Reports by professional staff (for example, psychologists, social workers, psychiatrists);
5. Reports indicating present involvement in criminal activities in the community or within the correctional facility;
6. Evidence of an attitude which indicates an unwillingness to follow rules and obey orders;
7. Inability to maintain a satisfactory work record as indicated in reports by work supervisors and/or frequency of job changes;
8. Information indicating unsatisfactory adjustment to, or performance in, treatment or rehabilitative programs; and,
9. Evidence of the inmate's inability or unwillingness to house with other inmates in a nondisruptive and nondestructive manner.

10A:5-2.5 Assignment to the Management Control Unit (M.C.U.)

(a) An inmate shall be assigned to the Management Control (M.C.U.) when the Management Control Unit Review Committee (M.C.U.R.C.), after considering the criteria in N.J.A.C. 10A:5-2.4, concludes that the inmate poses a substantial threat:

1. To the safety of others;
2. Of damage to or destruction of property; or,
3. Of interrupting the operation of a State correctional facility.

(b) Procedures for Management Control Classification Committee (M.C.U.R.C.) hearings described in N.J.A.C. 10A:5-2.6 shall be followed and completed prior to placement in M.C.U.

(c) If there is a need for immediate placement in the M.C.U., such placement shall be made in accordance with N.J.A.C. 10A:5-2.8.

10A:5-2.6 Procedures for the Management Control Unit Review Committee (M.C.U.R.C.) hearings

(a) An inmate being considered for assignment to the Management Control Unit (M.C.U.) shall be given written notice at least 24 hours prior to appearing before the Management Control Unit Review Committee (M.C.U.R.C.). The staff member delivering the notice shall indicate the time and date of delivery.

(b) This notice shall delineate the criteria which will be utilized in determining *[his]* *the inmate's* suitability for the M.C.U. and shall

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provide an outline of the major factors in the particular inmate's case history which will be closely scrutinized.

(c) The inmate shall also be notified that he may obtain the help of an inmate to act as a counsel substitute to assist in marshaling the facts in the inmate's case and to be present at the hearing as a spokesperson.

(d) Illiterate inmates or inmates otherwise demonstrating a need for assistance shall receive the assistance of a consenting inmate, or a staff member assigned to this function by the M.C.U.R.C. An interpreter shall be utilized if needed.

(e) The M.C.U.R.C. Chairperson shall have the discretion to keep the hearing within reasonable limits and to refuse to permit the collection and presentation of evidence which is not necessary for an adequate understanding of the case. The Chairperson shall exercise control over all presentations to prevent lack of relevancy, harassment, abuse or repetitiveness and to insure that the hearing does not develop into an adversary proceeding.

(f) Unless there are exceptional circumstances, unavoidable delays or reasonable postponements, *[inmate]* *inmates* shall be seen by the M.C.U.R.C. within 10 working days of being notified that they are being considered for the M.C.U.

(g) At the meeting with the M.C.U.R.C., the inmate shall be allowed to appear in person and to testify, unless his appearance would pose a serious threat to the safety or security of the correctional facility, the M.C.U.R.C., or unless he refuses to appear. In those cases where an inmate is not allowed to appear in person, he shall be permitted to present his case through a counsel substitute and through submission of such written materials as he believes appropriate.

(h) At the hearing, the inmate shall be informed of all adverse information bearing on the case, with the exception of information designated "confidential" by the M.C.U.R.C.

(i) Confidential information may consist of the following:

1. Informants' reports;
2. Professional reports (for example, *[psychiatrics]* *psychiatrists*, psychologists, social workers, teachers, etc); *[and,]* *or,*
3. Other information which would have an adverse impact upon the inmate's mental health, create a serious risk of reprisal against the reporting individual, or seriously impede progress on a pending correctional facility investigation into such areas as narcotics trafficking, gambling rings, escape plots and other security problems.

(j) When considering confidential informant information, the M.C.U.R.C. shall inquire into the reliability of the informant and the information, and it shall utilize such information only after satisfying itself that it is reasonably reliable.

(k) When information utilized by the M.C.U.R.C. is deemed confidential, and cannot be fully disclosed to the inmate, the M.C.U.R.C. shall direct the inmate and his representative to leave the meeting while this information is being presented or discussed. Whenever practicable, the inmate shall be informed of the general character of the information, the details of which have been withheld from him on grounds of confidentiality.

(l) When the inmate appears before the M.C.U.R.C., the Chairperson shall explain to him the reason for *[the]* his appearance, the nature of the proceeding and the particular areas of the M.C.U.R.C.'s concern.

(m) The inmate shall be permitted to present documentary evidence related to his case. The inmate shall also be permitted to call witnesses on his own behalf when permitting him to do so will not risk the maintenance of security or the orderly operation of the correctional facility. The M.C.U.R.C. shall have the discretion, however, to keep the hearing within reasonable limits.

(n) The Chairperson of the M.C.U.R.C. shall call those witnesses deemed to be reasonably available and whose testimony is necessary for a proper understanding of the circumstances of the particular case. Repetitive witnesses need not be called. The Chairperson shall have the discretion to refuse to call witnesses that may create a risk of reprisal. Unavailable witnesses may be asked to submit written statements. Witnesses requested by the inmate who are called should be questioned by members of the M.C.U.R.C. or the counsel substitute. Inmates without a counsel substitute may request that certain questions be directed by Committee members to any witnesses.

(o) The M.C.U.R.C. Chairperson shall exercise control over all presentations to exclude irrelevant information and to prevent harassment, abuse or repetition. If the Chairperson shall refuse to call one or more witnesses, the reasons for each such refusal shall be separately specified on the decision form.

(p) During the formal review with the inmate, the M.C.U.R.C. may give guidance to the inmate with respect to the reason for the rules and policies of the correctional facility.

(q) When the M.C.U.R.C. notes a particular treatment need which can be met by existing treatment services, and the inmate indicates a willingness to participate in such treatment, the M.C.U.R.C. shall make the appropriate referral.

(r) Within one calendar week, the M.C.U.R.C. shall provide a written notice of decision to the inmate advising him of its reason for the decision and a summary of the evidence relied upon.

(s) In its written notice of decision to the inmate being admitted or retained in M.C.U., the M.C.U.R.C. shall point out the elements of the inmate's behavior or attitude which are deemed to be unsatisfactory and shall advise him that the next formal M.C.U.R.C. review on his case will be held in three months.

10A:5-2.7 *[Review]* *Appeal* of Management Control Unit Review Committee (M.C.U.R.C.) *[disposition]* *decisions*

(a) At the time the inmate is provided with the Management Control Unit Review Committee's (M.C.U.R.C.) decision, he shall be advised of the opportunity to have the Superintendent or his or her designee review the M.C.U.R.C. decision. The inmate shall have one calendar week to submit a letter of appeal. The Superintendent or his or her designee may approve or modify any M.C.U.R.C. *[disposition]* *decision* as he or she deems appropriate. The Superintendent or his or her designee may also order further hearings where appropriate.

(b) During the Superintendent's review, the following factors shall be considered:

1. Whether there was compliance with N.J.A.C. 10A:5-2.6;
2. Whether the decision of the M.C.U.R.C. was based on substantial evidence; and,
3. Whether the decision was rendered appropriate to the inmate's case.

(c) The Superintendent's decision will be forwarded to the inmate in writing within seven working days following receipt of the appeal.

10A:5-2.8 Use of Prehearing Management Control Unit prior to the Management Control Unit Review Committee (M.C.U.R.C.) meeting

(a) The inmate may be placed in Prehearing M.C.U. by order of the Superintendent or his or her designee when there is reasonable evidence that, if the inmate remains in general population, there is an immediate threat:

1. To the safety of others;
2. Of damage to or destruction of property; or,
3. Of interrupting the safe, secure and orderly operation of the correctional facility.

(b) The inmate shall be entitled to a hearing within five working days following his placement into Prehearing M.C.U.

(c) An inmate placed in Prehearing M.C.U. shall be given the written notice of the Management Control Unit Review Committee (M.C.U.R.C.) hearing as described in N.J.A.C. 10A:5-2.6 within 24 hours following placement in Prehearing M.C.U.

(d) An inmate may be placed in Prehearing M.C.U. only after such placement is authorized by the Superintendent or Assistant Superintendent. Form 141-I AUTHORIZATION FOR PREHEARING M.C.U. shall be utilized for this purpose.

(e) A separate Form 141-I must be completed for each inmate and, *[wherever]* *whenever* possible, Form 141-I should be completed prior to placing the inmate in Prehearing M.C.U.

(f) When an emergency exists which precludes completion of the Form 141-I prior to placement, the Form must be completed immediately following placement. After all appropriate parties have signed Form 141-I, it shall be placed in the inmate's classification folder and a copy shall be placed in the inmate's M.C.U. folder.

(g) Additional copies of completed Form 141-I may be kept on file, for record keeping purposes, in any areas designated by the Superintendent and the Director of Custody Operations.

10A:5-2.9 Use of Prehearing Management Control Unit during an emergency

(a) In the event an emergency is declared which poses an immediate and substantial threat to the security and orderly operation of the correctional facility, it may become necessary to implement a total lock-up of inmates. The correctional facility shall remain in this lock-up state until such time as the emergency no longer exists.

(b) During this period between total lock-up and a return to normal operations any number of inmates may be placed in Prehearing M.C.U. status should their behavior fall into the placement criteria as outlined in N.J.A.C. 10A:5-2.8, USE OF PREHEARING MANAGEMENT CONTROL UNIT PRIOR TO THE MANAGEMENT CONTROL UNIT REVIEW COMMITTEE (M.C.U.R.C.) MEETING. When an

unusually large number of inmates is involved, the procedures set forth in this Subchapter shall be modified in order to maintain an effective level of security and order, and at the same time, attempt to provide each inmate with the maximum M.C.U. hearing safeguards under these unusual circumstances.

(c) The following procedures shall be implemented and remain in effect until normal operations resume:

1. Inmates who have been identified as being a threat to the secure and orderly operation of the facility shall remain in Prehearing M.C.U. at housing assignments to be designated by the Superintendent or his or her designee.

2. Each inmate shall receive a written notice explaining the existence of the emergency, informing him that he has been identified as a threat to the secure and orderly operation of the facility, and advising him that he will receive an in-person hearing as soon as possible.

3. The schedule for the hearings shall be affected by the number of inmates involved and the need to insure security. A schedule of such hearings shall be issued by the Superintendent.

4. The Superintendent shall designate such special hearing officers as are familiar with classification materials and the M.C.U. process to conduct hearings as promptly as is possible. The inmate shall be permitted to appear in person unless doing so would be unduly hazardous to the safety of the hearing officer or security of the facility.

5. At the hearing the inmate shall be informed verbally of all adverse information bearing on his case with the exception of information designated "confidential." When reviewing confidential information, procedures set forth in N.J.A.C. 10A:5-2.6 shall apply.

6. The inmate shall be permitted to speak on his own behalf or to submit a written statement. If the inmate is illiterate or otherwise demonstrates a need for assistance in presenting his statement, a staff member may be assigned to assist him at the hearing.

7. The inmate shall receive a written notice of decision within 10 days.

8. Review procedures, after initial classification to M.C.U. during these emergency conditions, shall be those set forth in N.J.A.C. 10A:5-2.6 *and N.J.A.C. 10A:5-2.10*. These review procedures shall be commenced within three months following initial placement with subsequent reviews held every three months.

9. Conditions of confinement as set forth in this Subchapter shall be modified as is reasonably necessary during the pendency of the emergency to insure security and the continued orderly operation of the facility.

10A:5-2.10 Review of inmates placed in the Management Control Unit (M.C.U.)

(a) When the Management Control Unit Review Committee (M.C.U.R.C.) determines that placement in the Management Control Unit (M.C.U.) is appropriate for a particular inmate, a preliminary determination shall also be made as to when the continued need for the M.C.U. *program* will be reviewed. In any case, a formal review of each inmate in the M.C.U. shall be made a minimum of every three months.

(b) A written record shall be maintained by the M.C.U.R.C. of all reviews of inmates in the M.C.U. This record shall be kept in a separate file in addition to being made a permanent part of the inmate's case folder. A confidential notation shall be made in the file if the M.C.U.R.C.'s conclusions regarding findings or disposition in a particular case are not unanimous. All M.C.U.R.C. reports shall be signed by all members.

(c) The inmate shall be permitted to appear at all reviews of his case unless doing so would be unduly hazardous to the safety and security of the facility, or he refuses to appear.

(d) Any member of the M.C.U.R.C. may request a review for an inmate in the M.C.U. earlier than was previously determined.

(e) At each review, the M.C.U.R.C. shall again review the information upon which it based its decision to assign the inmate to the M.C.U. Such information shall include:

1. Disciplinary reports;
2. Programs participation (for example, education, counseling, recreation activities, etc.); and,
3. Records of the inmate's behavior and attitude while in the Unit (for example, wing officers and professional staff reports which must periodically be filed describing pertinent observations, both positive and negative, of the inmate's behavior and attitude while in the M.C.U.).

(f) An inmate shall be released from the M.C.U. when, in the opinion of the M.C.U.R.C., he no longer poses a substantial threat:

1. To the safety of others;
2. Of damage to or destruction of property; or,
3. Of interrupting the operation of a State correctional facility.

10A:5-2.11 Ventilation, heating, lighting and sanitation

(a) Proper ventilation, lighting, normal room temperatures, cleanliness and properly functioning sanitary fixtures shall be maintained in cells within the Management Control Unit (M.C.U.).

(b) Daily inspections shall be made to insure that the cells, corridors, toilets, showers and other areas within the M.C.U. are kept secure, clean and sanitary.

10A:5-2.12 Food

(a) Management Control Unit (M.C.U.) inmates shall be served the normal correctional facility meals on the "Menu of the Day" or such special diet as shall be prescribed.

(b) Disposable utensils shall be used when necessary.

10A:5-2.13 Showers, shaving

Each inmate in the Management Control Unit (M.C.U.) shall be permitted to shave and shower at least two times a week, unless permitting these activities would present an undue security hazard. Every effort shall be made to permit each inmate in M.C.U. to shave and shower every other day.

10A:5-2.14 Medical and psychiatric services

(a) Medical and psychiatric emergencies of inmates in the Management Control Unit (M.C.U.) shall be attended to immediately.

(b) Requests for medical attention by staff or inmates in non-emergency situations shall be responded to by the physician who visits the M.C.U. every weekday.

(c) The level of all other medical and psychiatric services shall be the equivalent of that provided to inmates in the general population.

10A:5-2.15 Personal items

(a) All inmates shall be admitted to the Management Control Unit (M.C.U.) dressed in normal correctional facility clothing after a thorough search for contraband.

(b) Each inmate shall be provided with the following items to the same extent as such items are provided for inmates in the general population:

1. Clothing required for use in cell;
2. Bedding and mattress;
3. Personal hygiene supplies (including soap, deodorant, toothbrush, toothpaste or powder, towel and toilet paper);
4. Utensils and supplies for adequately cleaning cell;
5. Eyeglasses; and,
6. Writing materials.

(c) The possession and use of radios, televisions, typewriters and other appliances in the M.C.U. shall be subject to the same guidelines as those developed by the Superintendent for the general population.

(d) Inmates in M.C.U. shall be permitted the same number of personal and library books as the general population. Written procedures shall be in effect for requesting, receiving and returning reading materials to the correctional facility's library and Inmate Law Library.

10A:5-2.16 Disposition of inmate's personal possessions not authorized in the Management Control Unit (M.C.U.)

(a) The inmate's personal possessions not authorized in the Management Control Unit (M.C.U.) shall not be stored by the correctional facility.

(b) Disposition of these non-permissible personal possessions shall be handled in accordance with N.J.A.C. 10A:1, ADMINISTRATION, ORGANIZATION AND MANAGEMENT.

10A:5-2.17 Correctional facility clothing, bedding and linen

Written procedures shall be established which provide for each inmate in the Management Control Unit (M.C.U.) to send clothing, towels, sheets and other linens to the laundry on a weekly basis.

10A:5-2.18 Inmate legal activities

(a) Inmates shall be provided access to attorneys.

(b) Inmates shall also have access to the Inmate Law Library by means of inmate law library clerks who shall respond to the appropriate request of the Management Control Unit (M.C.U.) residents for legal reference materials, services and supplies as afforded inmates in the general population.

(c) The Superintendent shall be responsible for ensuring that M.C.U. inmates have reasonable access to notary services.

10A:5-2.19 Correspondence, visits and telephone calls

(a) Correspondence, visiting or telephone calling opportunities shall be available to inmates in the Management Control Unit (M.C.U.) but conducted in accordance with any special precautions deemed necessary or appropriate by the Superintendent.

(b) No staff member shall monitor the content of conversation between an inmate and his attorney or spiritual advisor.

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(c) Restrictions of visits or telephone calls for persons in the M.C.U. shall be made in accordance with N.J.A.C. 10A:5-2.26.

10A:5-2.20 Exercise and recreation

(a) Efforts shall be made to provide opportunities for exercise and recreation consistent with custodial considerations. Each inmate in the Management Control Unit (M.C.U.) shall be permitted the minimum of two hours exercise each week and every effort shall be made to provide at least five hours per week, unless compelling security, safety or weather reasons dictate otherwise. When exercise is not permitted, the reasons shall be well documented.

(b) The Superintendent may take emergency action in suspending exercise or recreation privileges for any or all inmates until the emergency has passed. In any such emergency, the Superintendent shall notify the Commissioner.

10A:5-2.21 Education

(a) Educational programs shall be made available to inmates in the Management Control Unit (M.C.U.) who are desirous of participating in them.

(b) A teacher shall be assigned to the M.C.U. and an office shall be available in the Unit for his or her activities.

10A:5-2.22 Visits by professional staff

(a) Inmates in the Management Control Unit (M.C.U.) shall be visited daily during the work week by a member of the correctional facility's professional staff to determine any emergency or unusual needs of the inmates and make referrals to appropriate departments or staff members.

(b) Spiritual counseling shall be available on an individual basis as coordinated by the correctional facility's chaplain and consistent with the M.C.U. operating procedures.

10A:5-2.23 Work opportunities

(a) Work opportunities shall be provided to all inmates in the Management Control Unit (M.C.U.) in keeping with the special conditions of the Unit.

(b) Pay and work time credits shall be commensurate with the skill level and the amount of work responsibilities involved.

(3) Education and program credits shall be commensurate with credits available to the general population.

10A:5-2.24 Social, psychological and counseling program

(a) Treatment programs shall be available in the Management Control Unit (M.C.U.) to at least the same extent as available to the general inmate population. Social workers and a psychologist shall be assigned to the M.C.U. and offices shall be provided for each of these professional persons. The professionals shall provide services consistent with those provided to the general population (for example, crisis intervention, problem solving, short and long term counseling, parole and classification evaluations, etc.) and shall work closely with the M.C.U. supervisor and staff.

(b) Counseling sessions shall be arranged upon the request of an inmate confined in the M.C.U. Counseling shall be coordinated between the professional assigned to the M.C.U. and the Director of Professional Services.

(c) Two interview rooms shall be set aside within the M.C.U. for use by the assigned professionals, the M.C.U. supervisor, the Parole Counselor, and professional representatives of outside agencies such as Social Security, Veteran's Administration, Morrow Project, and Vocational Rehabilitation.

10A:5-2.25 Commissary

(a) Purchase of commissary items in the Management Control Unit (M.C.U.) shall be permitted within guidelines developed by the M.C.U. supervisor and approved by the Superintendent.

(b) Procedures for obtaining commissary items shall be the same as for the general population.

10A:5-2.26 Withdrawal of personal items or activities

(a) Whenever in the judgment of the officer in charge of the Management Control Unit (M.C.U.) there is imminent danger that an inmate will destroy his clothing or any items usually permitted the inmate in his cell, or will do injury to himself, to another person or to property with such items, the officer may deprive the inmate of such items, if practicable. In such case, however, effort shall be made to provide a substitute for the item or to permit the inmate to use the item under the supervision of the officer.

(b) Whenever an inmate is deprived of any usually authorized item or activity, a written report shall immediately be forwarded to the Superintendent or his or her designee and the M.C.U. Supervisor, identifying the inmate and the item or activity.

(c) The Management Control Unit Review Committee (M.C.U.R.C.) shall review any such restriction within one week. Any continued restriction shall be permitted only with the written authorization of the M.C.U.R.C.

(d) Such restrictions shall be reviewed on a weekly basis to determine whether there is reasonable certainty that the danger to person or property is no longer imminent and the restriction may be lifted.

10A:5-2.27 Special custodial responsibilities

(a) Because of the increased need for close security within the Management Control Unit (M.C.U.), the frequency and intensity of certain custodial functions shall be increased. Thorough cell searches may be conducted as often as once a week if found necessary for certain inmates or as often as twice a month for the entire population of the M.C.U. Spot-checks of cells may be conducted at any time.

(b) Despite the increased need for security, precautions shall be taken to insure that the inmates in the M.C.U. are not subjected to unnecessary limitations of their personal privacy. The M.C.U. supervisor or another person acting on the direct or standing orders of the Superintendent must authorize any non-routine cell searches.

10A:5-2.28 Disciplinary action within the Management Control Unit (M.C.U.)

(a) The rules set forth in N.J.A.C. 10A:4, INMATE DISCIPLINE shall be in full force and effect in the Management Control Unit (M.C.U.).

(b) No special restriction of privilege on disciplinary grounds, such as denial of outside recreation or of work opportunities, may be continued in M.C.U. for longer than 30 days. If, in the judgment of the Disciplinary Hearing Officer/Adjustment Committee, there are special custodial reasons for desiring to maintain special restriction of privileges upon an inmate for longer than 30 days, the Disciplinary Hearing Officer/Adjustment Committee shall recommend assignment to Administrative Segregation to the Institutional Classification Committee (I.C.C.).

10A:5-2.29 Program monitoring, review and modification

The Management Control Unit Review Committee (M.C.U.R.C.) shall continuously monitor and review all aspects of the Management Control Unit (M.C.U.). When the M.C.U.R.C. desires to make any significant deviation from the M.C.U. Program as delineated in this Subchapter a request shall be submitted in writing through the Superintendent to the Assistant Commissioner, Division of Adult Institutions.

10A:5-2.30 Compliance with all other rules

In addition to the rules contained in this Subchapter, all other Department rules applicable to inmates in the State Prison, Trenton, shall apply with equal force to inmates in the Management Control Unit (M.C.U.).

SUBCHAPTER 3. ADMINISTRATIVE SEGREGATION

10A:5-3.1 Admission to Non-Vroom Administrative Segregation

(a) Whenever the Disciplinary Hearing Officer/Adjustment Committee imposes a sanction which includes Administrative Segregation, the administrative segregation part of the sanction shall be referred by the Disciplinary Hearing Officer/Adjustment Committee to the Institutional Classification Committee (I.C.C.) for confirmation at its next regularly scheduled meeting.

(b) In considering the sanction, the Institutional Classification Committee (I.C.C.) shall consider any relevant factors including, but not limited to:

1. The circumstances and gravity of the disciplinary infraction;
2. The reason(s) given by the Disciplinary Hearing Officer/Adjustment Committee for the sanction imposed;
3. The inmate's previous disciplinary record; and,
4. Whether other available dispositions are adequate to regulate the inmate's behavior within acceptable limits.

(c) Confirmation shall be made where the Institutional Classification Committee (I.C.C.) determines that the sanction is appropriate and within acceptable limits, and where the inmate's presence in the general population could pose a threat to the safe, secure and orderly operations of the correctional facility.

(d) The Institutional Classification Committee (I.C.C.) shall provide written notice to the inmate of its decision confirming, modifying or overruling the administrative segregation sanction together with its reasons therefor.

(e) A copy of the I.C.C. notice shall be filed in the inmate's classification folder.

(f) Not all correctional facilities within the Department of Corrections contain Administrative Segregation Units. If an inmate receives a sanction which includes administrative segregation, but is housed in a facility

which does not have an Administrative Segregation Unit, the sanction first must be confirmed by the Institutional Classification Committee (I.C.C.) of the correctional facility in which the inmate is housed. The sanction shall then be referred to the next regularly scheduled meeting of the Inter-Institutional Classification Committee (I.I.C.C.) which shall provide for the transfer of the inmate to a correctional facility within the Division of Adult Institutions which has an Administrative Segregation Unit.

10A:5-3.2 Special Administrative Segregation Review Committee
(S.A.S.R.C.)

(a) The Special Administrative Segregation Review Committee (S.A.S.R.C.) is a subcommittee of the Inter-Institutional Classification Committee (I.I.C.C.) which is responsible for providing a bimonthly review of the status of inmates assigned to all Administrative Segregation Units except the Vroom Readjustment Unit (V.R.U.).

(b) The Deputy Director of the Division of Adult Institutions shall designate voting members, whose titles shall not be lower than Assistant Superintendent, to serve on the S.A.S.R.C. on a six month rotating basis. The S.A.S.R.C. shall be composed of:

1. One voting member who shall be a representative of Trenton State Prison;

2. One voting member who shall be a representative from another Prison Complex facility; and,

3. One voting member who shall be a representative from a Youth Complex facility.

(c) The Deputy Director shall designate a Chairperson from among the voting members to serve a six month or extended term, as determined by the Deputy Director.

(d) An in-house psychiatrist or psychologist and a representative of the Classification Department *[will]* shall attend each meeting of the *[S.A.S.R.C.]* but they will have no voting power.

(e) The S.A.S.R.C. shall meet as frequently as is necessary to accomplish the business of the S.A.S.R.C., and the meetings shall be held at a facility designated by the members.

(f) Each inmate shall have his or her case reviewed at least once every 60 days by the S.A.S.R.C. in order to evaluate the inmate's behavior while in the Administrative Segregation Unit.

(g) The S.A.S.R.C. review shall not necessitate the inmate's presence although the Committee may, where it deems necessary, require the inmate to appear, unless he or she refuses to appear without the use of force.

(h) Upon review of the inmate's behavior, the S.A.S.R.C. may determine that *[he or she]* ***the inmate*** should be released from the Administrative Segregation Unit. The S.A.S.R.C. shall determine that an inmate should be released from the Administrative Segregation Unit when it concludes that:

1. The initial need for placement in the Administrative Segregation Unit no longer exists;

2. The inmate has clearly demonstrated by his or her behavior that he or she can and will adequately conform to the rules and regulations of correctional facilities;

3. The inmate's presence in the general population will not pose a threat to the safe, secure and orderly operations of a facility; and,

4. The inmate's presence in the general population prior to completion of the sanction as specified by the Disciplinary Hearing Officer/Adjustment Committee would not adversely affect the goals of a correctional facility.

(i) If the S.A.S.R.C. determines not to release the inmate from the Administrative Segregation Unit, the inmate shall be so advised in writing, together with the reasons therefor, unless security considerations preclude their disclosure, in which case a notation as to the Committee's reasons and an explanation of how security would be adversely affected shall be placed in the inmate's folder.

(j) If the S.A.S.R.C. determines to release the inmate, it shall give the inmate written notice of its decision. The inmate shall be:

1. Released into the general population of the correctional facility in which he or she has been confined in the Administrative Segregation Unit;

2. Referred to the Management Control Unit Review Committee (M.C.U.R.C.) for the Management Control Unit (M.C.U.);

3. Referred for a Protective Custody hearing; or,

4. Referred to the Inter-Institutional Classification Committee (I.I.C.C.) for possible transfer to another correctional facility.

(k) If the inmate is transferred to general population and wishes a transfer to another correctional facility, he or she shall submit a request to the Institutional Classification Committee (I.C.C.) for consideration by the Inter-Institutional Classification Committee (I.I.C.C.)

(l) The S.A.S.R.C. is authorized to assign inmates to an appropriate correctional facility in accordance with the guidelines established for the Inter-Institutional Classification Committee (I.I.C.C.).

(m) The decision of the S.A.S.R.C. to assign an inmate to another correctional facility shall be confirmed by the Inter-Institutional Classification Committee (I.I.C.C.) at its next regularly scheduled meeting. The inmate shall receive written notice of this decision.

(n) The appropriate Deputy Director shall be contacted for assistance when the transfer of an inmate from administration segregation status to another correctional facility cannot be completed because of a lack of available bed space.

(o) Upon final confirmation of the inmate's assignment by the Inter-Institutional Classification Committee (I.I.C.C.) and approval by the appropriate Deputy Director, the receiving correctional facility shall be responsible for immediately contacting the sending correctional facility and making the arrangements necessary for transferring the inmate.

10A:5-3.3 Admission to the Vroom Administrative Segregation Unit

(a) Whenever the Disciplinary Hearing Officer/Adjustment Committee has imposed a sanction which includes administrative segregation and specifies the Administrative Segregation Unit at the Vroom Readjustment Unit (V.R.U.), the administrative segregation part of the sanction shall be referred by the Disciplinary Hearing Officer/Adjustment Committee to the next regularly scheduled Inter-Institutional Classification Committee (I.I.C.C.) meeting for confirmation.

(b) In considering the sanction, the Inter-Institutional Classification Committee (I.I.C.C.) shall consider any relevant factors including, but not limited to:

1. The circumstances and gravity of the disciplinary infraction;

2. The reason(s) given by the Disciplinary hearing Officer/Adjustment Committee for the sanction imposed;

3. The inmate's previous disciplinary record; and/or,

4. Whether other available dispositions are adequate to regulate the inmate's behavior within acceptable limits.

(c) Confirmation shall be made where the Inter-Institutional Classification Committee (I.I.C.C.) determines that the sanction is appropriate and within acceptance limits, and where the inmate's presence in the general population could pose a threat to the safe, secure and orderly operations of the correctional facility.

(d) The Inter-Institutional Classification Committee (I.I.C.C.) shall provide written notice to the inmate of its decision confirming, modifying or overruling the administrative segregation sanction together with its reasons therefor. A copy of this notice shall be filed in the inmate's classification folder.

10A:5-3.4 Vroom-Administrative Segregation Review Committee

(a) The Superintendent of Trenton State Prison shall appoint a separate Vroom-Administrative Segregation Review Committee which shall be composed of three persons which shall include:

1. A correctional officer of the rank of Sergeant or above;

2. A treatment staff person; and,

3. An administrative staff person.

(b) The Superintendent shall designate one member of the Vroom-Administrative Segregation Review Committee to serve as Chairperson. All members shall regularly be assigned to work in the Vroom Readjustment Unit.

(c) Each inmate housed in the *[Vroom-Adjustment]* ***Vroom Administrative*** Segregation Unit shall have his case reviewed once each month by the Vroom Administrative Segregation Review Committee. This review shall not necessitate the inmate's presence although the Committee may, where it deems necessary, require the inmate to appear, unless the inmate refuses to appear without the use of force.

(d) The purpose of the review shall be to evaluate the inmate's behavior while in the Vroom Administrative Segregation Unit.

(e) Upon review of the inmate's record while in Vroom Administrative Segregation Unit, the Vroom Administrative Segregation Review Committee may recommend to the Inter-Institutional Classification Committee (I.I.C.C.) that he be released from the Unit. Such a recommendation shall be made when the Committee concludes that:

1. The initial need for placement in the Vroom Administrative Segregation Unit no longer exists;

2. The inmate has clearly demonstrated by his behavior that he can and will adequately conform to correctional facility rules and regulations;

3. The inmate's presence in general population will not pose a threat to the safe, secure and orderly operations of the correctional facility; and,

4. The inmate's presence in the general population prior to completion of the sanction as specified by the Disciplinary Hearing Of-

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ficer/Adjustment Committee would not adversely affect correctional facility goals.

(f) The inmate shall receive notice of the Vroom-Administrative Segregation Review Committee's decision.

(g) If the Vroom-Administrative Segregation Review Committee determines not to release the inmate from the Vroom Administrative Segregation Unit, the inmate shall be so advised in writing, together with the reasons therefor, unless security considerations preclude their disclosure, in which case a notation as to the Committee's reasons and an explanation of how security would be adversely affected shall be placed in the inmate's classification file.

10A:5-3.5 Role of the Inter-Institutional Classification Committee (I.I.C.C.) in review of inmates in the Vroom Administrative Segregation Unit

(a) If the Vroom-Administrative Segregation Review Committee recommends release from the Vroom Administrative Segregation Unit prior to the time specified by the Disciplinary Hearing Officer/Adjustment Committee, the Vroom-Administrative Segregation Review Committee shall make the recommendation to the Inter-Institutional Classification Committee (I.I.C.C.) together with the reasons therefor at the I.I.C.C.'s next regularly scheduled meeting.

(b) The Inter-Institutional Classification Committee (I.I.C.C.) shall act upon the Vroom-Administrative Segregation Review Committee's recommendation.

(c) The Inter-Institutional Classification Committee (I.I.C.C.) shall review the record of every inmate in the Vroom Administrative Segregation Unit no later than six months after his admission to the Unit and every three months thereafter to determine whether the inmate shall be released or retained in the Unit. The review shall be of the inmate's folder and include an evaluation of the reports of staff members. The review shall not necessitate the inmate's presence although the Inter-Institutional Classification Committee (I.I.C.C.) may, where it deems necessary, require the inmate to appear, unless the inmate refuses to appear without the use of force.

(d) In reviewing each case, the Inter-Institutional Classification Committee (I.I.C.C.) shall consider such factors as whether:

1. The initial need for placement in the Vroom Administrative Segregation Unit still exists;

2. The inmate has clearly demonstrated by his behavior that he can and will conform to correctional facility rules and regulations;

3. The inmate's presence in general population may pose a threat to the safe, secure and orderly operations of the correctional facility; and,

4. The inmate's presence in general population prior to completion of the sanction as specified by the Disciplinary Hearing Officer/Adjustment Committee would adversely affect the goals of the correctional facility.

(e) If the Inter-Institutional Classification Committee (I.I.C.C.) decides not to release the inmate from the Vroom Administrative Segregation Unit, it shall advise the inmate of its decision in writing, together with the reason(s) therefor, unless security considerations preclude their disclosure, in which case a notation as to the Inter-Institutional Classification Committee's (I.I.C.C.) reasons and an explanation of how security would be adversely affected, shall be placed in the inmate's file.

(f) If the Inter-Institutional Classification Committee (I.I.C.C.) decides to release the inmate from the Vroom Administrative Segregation Unit, it shall:

1. Assign him to the general population of an appropriate correctional facility;

2. Refer him to Trenton State Prison's Management Control Unit Review Committee (M.C.U.R.C.) for assignment to the Management Control Unit (M.C.U.); or,

3. Refer him for a Protective Custody hearing.

(g) The inmate shall receive notice of the Inter-Institutional Classification Committee's (I.I.C.C.) decision.

(h) No inmate shall be retained in the Vroom Administrative Segregation Unit because of a reluctance on the part of a correctional facility to accept him.

10A:5-3.6 Separate facilities

Whenever possible, areas utilized for Administrative Segregation Units shall be physically separate from other programs in the correctional facility.

10A:5-3.7 Ventilation, heating, lighting, sanitation and observation

(a) Ventilation and reasonable temperature shall be maintained on a 24 hour basis.

(b) Light of sufficient intensity shall be maintained to allow visual observation of inmates at all times.

(c) Partial curtains may be permitted over the cell door, at the discretion of the Superintendent.

(d) When admitted, inmates shall not be placed in the cells that lack cleanliness or have malfunctioning sanitary fixtures or lights. Daily inspections shall be made to insure the cells are kept secure, clean and sanitary.

(e) Toilets that are flush controlled from outside the cells shall be flushed as often as is necessary to maintain good sanitary standards.

10A:5-3.8 Food

(a) Segregated inmates shall be served the normal correctional facility meals on the "Menu of the Day" or such special diet as shall be prescribed.

(b) Disposable utensils shall be used when necessary.

10A:5-3.9 Grooming, showering and shaving

(a) As needed, barbering and hair care services shall be provided.

(b) Each inmate in an Administrative Segregation Unit shall be given the opportunity to shave and shower not less than three times per week, unless permitting these activities would present an undue security hazard.

10A:5-3.10 Medical and psychiatric services

(a) A member of the medical staff which can be a nurse, paramedic, doctor or other authorized health care personnel shall be available in the Administrative Segregation Unit on a daily basis to assess medical needs. Any inmate wishing to see a doctor shall notify the medical staff member or *[the]* tier officer *[or]* *of* his or her sick call request.

(b) Medical and psychiatric emergencies shall be attended to immediately. Requests for medical attention for inmates in non-emergency situations shall be responded to by the physician, or medical person designated by the physician, within 24 hours.

(c) Whenever it shall appear that an inmate is suffering from an emotional or psychiatric disturbance, arrangements shall be made for a psychiatric or psychological evaluation.

10A:5-3.11 Personal items

(a) All inmates admitted to a Non-Vroom Administrative Segregation Unit shall be permitted the same items and amounts of personal property (for example, TV's, radios, personal clothing, etc.) as inmates in the general population with the exception of those items which could pose a threat to the safety, security or orderly operation of the Administrative Segregation Unit. The Superintendent shall establish a list of permissible items for inmates in the Administrative Segregation Unit.

(b) Personal clothing shall not be permitted within the Vroom Administrative Segregation Unit. Disposition of personal items not permitted in Administrative Segregation shall be in accordance with *[established Department of Corrections' procedures.]* *N.J.A.C. 10A:1 ADMINISTRATION, ORGANIZATION AND MANAGEMENT.*

10A:5-3.12 Correctional facility clothing, bedding and linen

(a) The issue and exchange of correctional facility clothing, bedding, linen, and the laundry services in the Non-Vroom Administrative Segregation Unit shall be on the same basis as available to the general inmate population.

(b) The issue and exchange of correctional facility bedding, linen, and the laundry services in the Vroom Administrative Segregation Unit shall be on the same basis as available to the general inmate population.

(c) The issue of correctional facility clothing to inmates in the Vroom Administrative Segregation Unit shall be limited to the list of permissible items (for example, jump suits, canvas type footwear, etc.) as established by the Superintendent and approved in writing by the Division of Adult Institutions' Assistant Commissioner.

(d) The policies and procedures for clothing issue and bedding and laundry services shall be in accordance with N.J.A.C. 10A:14, SANITATION AND HYGIENE.

10A:5-3.13 Inmate legal service

Legal services shall be made available to *[inmate]* *inmates* assigned to an Administrative Segregation Unit. Legal services shall be in accordance with the provisions set forth in N.J.A.C. 10A:6, INMATE ACCESS TO COURTS.

10A:5-3.14 Reading material

Inmates in Administrative Segregation Units shall be permitted to retain in their possession a reasonable amount of reading material. *[In addition, procedures]* *Procedures* shall be in effect permitting inmates access to books and periodicals from the correctional facility library and Inmate Law Library.

10A:5-3.15 Correspondence, visits and telephone calls

(a) Inmates in Administrative Segregation Units shall have the same correspondence opportunities as inmates in the general population.

(b) Each correctional facility which has an Administrative Segregation Unit*[s]* shall provide each inmate in the Unit the opportunity to receive a minimum of one non-contact visit per week.

(c) Each correctional facility which has an Administrative Segregation Unit shall provide each inmate in the Unit the opportunity to make a minimum of one collect telephone call per week, excluding telephone calls of a legal nature.

10A:5-3.16 Recreation

(a) Where physical facilities permit, each inmate in an Administrative Segregation Unit shall be allowed recreation and exercise outside the cell at least five hours per week, unless to do so would adversely affect the security or orderly operations of the correctional facility.

(b) Inmates who shall be retained in Administrative Segregation shall be given the opportunity for out-of-doors recreation for a minimum of one hour of the required five per week unless to do so would adversely affect the security or orderly operations of the correctional facility.

10A:5-3.17 Education

Educational programs shall be made available to inmates assigned to an Administrative Segregation Unit and who are desirous of participating in an educational program.

10A:5-3.18 Visits by professional and correctional supervising staff

(a) A member of the correctional facility social work staff shall make visits to the Administrative Segregation Unit five days per week and shall be available to interview individual inmates as requested. When appropriate, referrals to other departments or staff members shall be made.

(b) The correctional facility chaplain shall also visit the Administrative Segregation Unit as requested by individual inmates to provide religious counseling or other pastoral services.

(c) The supervisor in charge of the Administrative Segregation Unit shall make daily visits to the Unit and shall be available to interview individual inmates as requested.

(d) All inmates transferred to the Vroom Administrative Segregation Unit shall be counseled by the Unit's professional staff regarding the behavioral and attitudinal changes that are necessary if they are to gain release from the Unit.

10A:5-3.19 Work opportunities

Work opportunities shall be made available to inmates assigned to the Administrative Segregation Unit to the extent possible in light of security considerations, limited resources, availability of physical facilities and budgetary constraints.

10A:5-3.20 Psychological/psychiatric evaluations

(a) Every inmate in the Administrative Segregation Unit for six months shall receive a psychiatric or psychological evaluation and shall receive a psychiatric or psychological evaluation every three months thereafter. The evaluation shall consider, but not be limited to the following factors:

1. The inmate's adjustment to his or her surroundings;
2. The likelihood of the inmate conforming his or her behavior to correctional facility rules and regulations; and,
3. The likelihood of the inmate posing a threat to the safe, orderly and secure operations of the correctional facility.

(b) The results of the evaluation shall be available to the Institutional Classification Committee (I.C.C.) for use in its periodic review of the inmate, or where applicable, to the Inter-Institutional Classification Committee (I.I.C.C.) for its periodic review of the inmate. This ***evaluation*** shall not preclude the Inter-Institutional Classification Committee (I.I.C.C.), Institutional Classification Committee (I.C.C.), or Special Administrative Segregation Review Committee (S.A.S.R.C.) from directing that additional evaluations be made where they deem it necessary.

10A:5-3.21 Withdrawal of personal items or activities

(a) ***[Whenever]* *Whenever***, in the judgment of the officer in charge of the Administrative Segregation Unit, there is imminent danger that an inmate will destroy his or her clothing or any item usually permitted the inmate in his or her cell or will do injury to ***[him]* *himself*** or herself, to another person or to property with such items, the officer may deprive the inmate of such items, if practicable. Every effort shall be made to supply a substitute for the item or to permit the inmate to use the item under the supervision of the officer.

(b) Whenever an inmate is deprived of any usually authorized item or activity, a written report shall immediately be forwarded to the Superintendent or his or her designee and the supervisor of the Administrative Segregation Unit, identifying the inmate and the item or activity. In addition, the Special Administrative Segregation Review Committee (S.A.S.R.C.) or Vroom Administrative Segregation Review Committee, whichever shall be appropriate shall review any such restriction within

one week. Any continued restriction shall be permitted only with the written authorization of the appropriate Review Committee.

(c) Such restrictions shall be reviewed on a weekly basis to determine whether there is reasonable certainty that the danger to person or property is no longer imminent and the restriction may be lifted.

10A:5-3.22 Selection of staff

All custody, treatment and administrative staff for Administrative Segregation Units shall be selected in accordance with Department of Civil Service regulations and the terms and conditions of all collective bargaining agreements and contracts entered into between the various working units and the Department of Corrections.

10A:5-3.23 Records

(a) The following information on inmates confined in an Administrative Segregation Unit shall be available in the Unit for the use of the custodial staff:

1. Inmate's name and number;
2. Previous housing locations;
3. Unit cell or room assignments;
4. Date admitted;
5. Disciplinary charge leading to administrative segregation;
6. Special medical or psychiatric problems; and,
7. Date beyond which the inmate may not be retained in the Administrative Segregation Unit on the instant offense.

(b) All unusual behavior shall be noted in the Unit log book together with the time and date of the incident. Unusual incidents shall also be reported pursuant to N.J.A.C. 10A:21, REPORTS.

SUBCHAPTER 4. CAPITAL SENTENCE UNIT (C.S.U.)

10A:5-4.1 Scope

Persons sentenced to death pursuant to N.J.S.A. 2C:11-3 shall be assigned to the Capital Sentence Unit (C.S.U.) until such time that the execution is carried out or in the alternative, that the sentence is commuted or otherwise changed to a lesser penalty.

10A:5-4.2 Establishment of the Capital Sentence Unit (C.S.U.)

(a) The Commissioner shall designate a specific housing unit at Trenton State Prison to be utilized solely for inmates under court imposed death sentence. There shall be no commingling of inmates in the Capital Sentence Unit (C.S.U.) with those in general population at Trenton State Prison.

(b) Female inmates under death sentence shall be housed in a separate section of the C.S.U. designated by the Commissioner.

(c) Access to inmates in the C.S.U. ***[Unit]*** shall be only as set forth in this subchapter and the post orders promulgated in connection herewith.

10A:5-4.3 Admissions to the Capital Sentence Unit (C.S.U.)

(a) All male inmates shall be initially admitted at the intake unit of the Youth Reception and Correction Center at Yardville.

(b) The Superintendent of the Youth Reception and Correction Center at Yardville shall be responsible for developing written procedures to specify amounts and types of personal property on admission, medical screening, classification information and other relevant procedures.

(c) All intake procedures shall be completed at the Youth Reception and Correction Center at Yardville and the inmate shall be transported to Trenton State Prison as soon as is practicable.

(d) Prior to the escort vehicle's leaving the Youth Reception and Correction Center at Yardville, the Superintendent or his or her designee shall telephone the Trenton State Prison Superintendent's office to advise them of the time of departure and expected arrival time at Trenton State Prison.

(e) Females shall be admitted directly to the Capital Sentence Unit of Trenton State Prison. All intake procedures for female inmates shall be conducted at the Trenton State Prison Intake Unit.

10A:5-4.4 Capital Sentence Unit Management Team

(a) The Superintendent shall appoint a team of custody and support service personnel to supervise, monitor and provide for custody, security and services in the Capital Sentence Unit. This team shall be comprised of a:

1. Correction officer of the rank of Lieutenant or above, as Chairperson and Supervisor of the C.S.U.;
2. Psychologist;
3. Social worker;
4. Medical staff person;
5. Chaplain; and,
6. Such other staff as may be assigned by the Superintendent.

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(b) In addition to delivery of services, the Supervisor of the C.S.U. shall be responsible for:

1. Maintaining a daily log;
2. Orientating new staff and inmates;
3. Supervising the proper use of restraints or force;
4. Conducting searches;
5. Preparing special reports concerning unusual incidents;
6. Supervising visits and telephone calls; and,
7. Other responsibilities as assigned by the Superintendent.

(c) The C.S.U. Management Team shall meet once per month, or more often as may be deemed necessary, to discuss problems, monitor delivery of services and share relevant information. A written summary of its deliberations shall be submitted to the Superintendent.

10A:5-4.5 Clothing, bedding and hygiene items

(a) Upon admission to C.S.U., the inmate shall receive one set of State issue clothing, bedding and hygiene items as set forth in the Capital Sentence Unit's post orders.

(b) *[He or she]* ***The inmate*** may also receive, according to Trenton State Prison rules and procedures, one:

1. TV set;
2. Radio; *[and,]*
3. Electric shaver*[.]* ***and,***
- *4. Typewriter.***

10A:5-4.6 Reading materials

(a) Inmates in the Capital Sentence Unit (C.S.U.) may enjoy the same types and number of reading materials that are available to general population.

(b) The C.S.U. Management Team shall make the necessary arrangements to have sufficient reading materials available on the C.S.U.

10A:5-4.7 Showers

Each inmate shall be permitted a minimum of three showers per week.

10A:5-4.8 Recreation

(a) Inmates ***shall be provided with indoor recreation, and they*** shall be permitted outdoor recreation a minimum of three, and up to six times per week, weather and security considerations permitting.

(b) Depending on security considerations and individual behavioral problems, recreation may be alone or in small groups as designated by the Capital Sentence Unit (C.S.U.) Supervisor.

10A:5-4.9 Legal services

A staff person who has had paralegal training shall assist each inmate with legal materials and services, except that no assistance will be provided concerning any matter which is being handled by an attorney.

10A:5-4.10 Food packages; canteen

(a) Inmates in the Capital Sentence Unit (C.S.U.) will receive correctional facility meals. No additional food or food packages will be permitted from any source.

(b) If an inmate has sufficient funds in his or her inmate account, he or she may order snack items, cigarettes, stamps and hygiene items approved by the Superintendent or his or her designee, from the canteen.

10A:5-4.11 Religious counseling

(a) The Trenton State Prison chaplain shall visit the Capital Sentence Unit (C.S.U.) at least once per week to minister to inmate's individual religious needs or to collect inmate's written requests for religious counseling.

(b) Upon written request, the chaplain shall arrange for individual religious counseling by a Trenton State Prison staff minister of the inmate's faith on a weekly basis.

(c) In any case where there is no Trenton State Prison staff person available, outside clergy of the inmate's faith may be permitted by means of a window visit only*,* provided he or she has passed a security check in accordance with correctional facility procedures. ***Auditory privacy shall be permitted during these visits, but visual surveillance will be maintained.***

(d) During the 72 hour period immediately preceding the inmate's execution, religious counseling shall be permitted as set forth in N.J.A.C. 10A:16-10 LETHAL INJECTION.

10A:5-4.12 Barber

A staff person assigned by the Superintendent or his or her designee shall provide barber services to inmates in the Capital Sentence Unit (C.S.U.) once per month.

10A:5-4.13 Medical services

(a) Upon admission, each inmate shall be given a physical and psychological examination.

(b) A correctional facility physician assigned by the Superintendent shall conduct a physical examination of each inmate in the Capital Sentence Unit (C.S.U.) every six months. ***[He or she]* ***The physician*** shall report to the Superintendent any unusual medical condition which may require specialized treatment or further evaluation.**

(c) The medical staff person assigned to the C.S.U. Management Team, or alternate assigned by the Superintendent or his or her designee, shall visit the C.S.U. daily or as often as may be necessary, to dispense medication and to evaluate individual medical needs.

(d) All medications ***except topical ointments, salves and lotions,*** shall be dispensed in liquid form or by injection.

10A:5-4.14 Sanitation

(a) Capital Sentence Unit (C.S.U.) staff shall be responsible for general sanitary maintenance of the C.S.U.

(b) Each inmate shall be responsible to clean his or her individual cell according to Trenton State Prison rules.

10A:5-4.15 Psychological and psychiatric services

(a) The C.S.U. Management Team psychologist shall monitor the condition of the inmates in the Capital Sentence Unit (C.S.U.) and shall make such recommendations, concerning the need for further evaluation or treatment, to the Superintendent and the C.S.U. Management Team as are appropriate.

(b) The psychologist shall file a written report concerning each inmate's psychological condition once every three months.

(c) In those cases where the psychologist believes the inmate is in need of additional evaluation or treatment, the psychologist shall refer the inmate to the facility psychiatrist. The psychiatrist shall examine the inmate and prescribe the needed treatment or medication.

(d) Inmates taking anti-psychotic drugs shall be examined by the psychiatrist at least once per month, and the psychiatrist shall file a written report of each examination.

(e) Prior to prescribing any anti-psychotic drug or sedative, the facility psychiatrist shall consult with the Department's Chief Medical Consultant to insure that the prescribed medication will not have an undesirable effect on death sentence procedures which may be scheduled. ***[All medications shall be dispensed in liquid form or by injection.]* ***All anti-psychotic drugs or sedatives shall be dispensed in liquid form or by injection.*****

10A:5-4.16 Visits and telephone use

(a) Each inmate in the Capital Sentence Unit (C.S.U.) shall have the opportunity for ***[one]* ***two*** non-contact visit*s*** per week with a member (up to two persons) of his or her family.

(b) Family members are defined as those set forth in N.J.S.A. 30:4-8.1 (father, mother, husband, wife, child, brother or sister) or a person with whom the inmate has shared a significant family-like relationship prior to his or her being sentenced under N.J.S.A. 2C:11-3. Whether such person meets this criteria shall be at the discretion of the Superintendent.

(c) Upon the written request of an inmate, a member of the press may be permitted to visit the inmate. Such visits shall be arranged at least 48 hours in advance through the Department's Public Information Officer, and shall be non-contact visits only.

(d) Contact visits as are necessary shall only be permitted to the inmate's attorney-of-record only. Such visits shall be arranged at least 24 hours in advance by notice of the attorney to the Superintendent's office.

(e) All visits shall be arranged and conducted according to correctional facility rules and are subject to cancellation as warranted by security and the orderly operation of the C.S.U.

(f) The Superintendent or his or her designee shall establish a schedule to permit each inmate to make a minimum of one collect telephone call per week to a person on the inmate's approved visit list or other member of his or her immediate family only.

(g) All personal telephone calls shall be monitored.

(h) The inmate may place such collect telephone calls as are needed to his or her attorney-of-record. Custody staff shall take whatever steps are deemed necessary by the Superintendent or his or her designee to insure that the person accepting the collect call is the inmate's attorney.

(i) Telephone calls of a legal nature shall not be monitored.

10A:5-4.17 Work assignments

[There shall be no correctional facility work assigned to inmates in the Capital Sentence Unit (C.S.U.), except that required to maintain the cleanliness and orderliness of their individual cells according to facility rules.]* ***Work opportunities shall be made available to inmates assigned to the Capital Sentence Unit (C.S.U.) to the extent possible in the light of security considerations, limited resources and budgetary constraints.**

10A:5-4.18 Correspondence

(a) Inmates in the Capital Sentence Unit (C.S.U.) shall have the same correspondence opportunities that are available to those in the general population. All mail may be carefully screened for evidence of escape plans and searched for contraband. Legal mail shall be processed as set forth in N.J.A.C. 10A:18, *[COMMUNICATION, MAIL AND VISITS]* *MAIL, VISITS AND TELEPHONE*.

(b) Custody staff shall examine purported legal mail to insure that it does in fact originate from or is directed to a source defined in N.J.A.C. 10A:18, *[COMMUNICATION, MAIL AND VISITS]* *MAIL, VISITS AND TELEPHONE* and that it contains no contraband.

10A:5-4.19 Records in the Capital Sentence Unit (C.S.U.)

(a) The following information on inmates confined in the Capital Sentence Unit (C.S.U.) shall be available on the C.S.U. for the use of staff:

1. Inmate's name and number;
2. Cell assignment;
3. Date admitted;
4. Disciplinary, medical or psychological problems;
5. List of approved visitors and telephone calls; and,
6. Name, address and telephone number of the inmate's attorney-of-record.

(b) All unusual behavior shall be noted in the C.S.U. log book together with date and time of the incident. Unusual incidents shall be reported pursuant to N.J.A.C. 10A:21, REPORTS.

10A:5-4.20 Disciplinary hearings

(a) Disciplinary hearings shall be heard by an Adjustment Committee and shall be held on the Capital Sentence Unit (C.S.U.) in a place designated by the Superintendent or his or her designee.

(b) In the event the inmate requests paralegal assistance at the hearing, the staff person assigned to assist the C.S.U. inmates with legal services shall provide this assistance. The hearing shall not be unreasonably delayed by reason of an inmate's request for paralegal assistance.

(c) Sanctions which may be imposed are those which do not conflict with the custody, security or objectives of the C.S.U. (for example, no loss of commutation time may be imposed).

10A:5-4.21 News media contact

News media contact shall be in accordance with N.J.A.C. 10A:19, NEWS MEDIA CONTACTS WITH CORRECTIONAL FACILITIES AND INMATES.

10A:5-4.22 Post orders

(a) Trenton State Prison shall develop post orders consistent with this Subchapter.

(b) Post orders shall be submitted, before September 15 of each year, to the Office of the Deputy Commissioner for his or her approval and for review by the Special Assistant for Legal Affairs.

10A:5-4.23 Training

(a) All staff and alternates selected for assignment to the Capital Sentence Unit (C.S.U.) shall be given training in management, custody support services and procedures before being assigned to the C.S.U.

(b) In the event of an emergency, at the discretion of the Superintendent, other staff may be temporarily assigned as are deemed necessary.

(c) Orientation of new inmates assigned to C.S.U. shall be accomplished pursuant to correctional facility rules as set forth in the post orders.

SUBCHAPTER 5. PROTECTIVE CUSTODY

10A:5-5.1 Admission to Protective Custody

(a) An inmate may be placed in Protective Custody by any of the following means:

1. On the recommendation of the Inter-Institutional Classification Committee (I.I.C.C.);
2. On the recommendation of a sentencing court or prosecutor, subject to approval of the Superintendent. The recommendation must be accompanied by a statement of justifiable reasons to support such placement;
3. On the recommendation of a prison *[lay]* *non-custody* staff person or a custody staff member of the rank of Sergeant or above. Emergency placement shall be reviewed and approved within 24 hours by the Shift Supervisor;
4. On the order of the Superintendent; Assistant Commissioner, Division of Adult Institutions; Deputy Commissioner; or Commissioner; or,

5. Voluntarily, on the inmate's request.

(b) If an inmate voluntarily requests placement in Protective Custody, he or she must fill out and sign Form 146-I VOLUNTARY-PROTECTIVE CUSTODY CONSENT in which his or her reasons for requesting Protective Custody are stated. If the inmate's reasons cannot be verified or are deemed frivolous by the Superintendent or his or her designee, placement in Protective Custody may be denied or the inmate released.

(c) In all cases of involuntary placement in Protective Custody, the Superintendent or his or her designee shall gather facts, information and available documentation to support or reject the request and shall order such additional investigation as is deemed necessary for a clear understanding of the case.

10A:5-5.2 Hearing procedure for involuntary placement to Protective Custody

(a) An inmate in *[emergency Protective Custody or]* under consideration for placement in Protective Custody shall be given written notice on Form 146-II NOTICE OF PROTECTIVE CUSTODY HEARING—INVOLUNTARY as soon as practicable*[, but no later than three working days after emergency placement]*.

(b) An inmate in emergency Protective Custody shall be given written notice on form 146-II NOTICE OF PROTECTIVE CUSTODY HEARING—INVOLUNTARY no later than three working days after emergency placement.*

[(b)](c)* The written notice shall be given to the inmate at least 24 hours prior to the in-person hearing. The notice shall be signed by the staff person delivering it and the date and time of delivery shall be noted.

[(c)](d)* The notice shall include the following:

1. Statement of reasons utilized by the administration to initiate the Protective Custody hearing procedure;
2. Date of the Protective Custody hearing; and,
3. Notification that the inmate may present any relevant evidence supporting or contesting placement in Protective Custody.

[(d)](e)* Evidence may consist of:

1. Witnesses' written statements;
2. Documents bearing on the nature of threat of harm involved; or,
3. Other facts relevant to the need or lack of need for placement in Protective Custody.

[(e)](f)* Illiterate inmates or inmates otherwise unable to marshal the facts shall receive the assistance of a counsel substitute assigned by the Disciplinary Hearing Officer/Adjustment Committee or Superintendent. An interpreter shall be utilized, if needed, at the discretion of the Disciplinary Hearing Officer/Adjustment Committee.

[(f)](g)* The Disciplinary Hearing Officer/Adjustment Committee shall have the discretion to keep the hearing within reasonable limits and to refuse to permit the collection and presentation of evidence which is not necessary for an adequate understanding of the case. The Disciplinary Hearing Officer/Adjustment Committee may order further investigation and reports where deemed necessary and shall exercise control over all presentations to prevent lack of relevancy, harassment, abuse or repetitiveness and to insure that the hearing does not develop into an adversary proceeding.

[(g)](h)* Inmates placed in emergent Protective Custody or under consideration for placement in Protective Custody shall receive a hearing within 10 working days after receipt of the notice unless there are exceptional circumstances, unavoidable delays or reasonable postponements.

[(h)](i)* At the hearing, the inmate shall be informed of all information bearing on his or her case, with the exception of information designated "confidential." or

[(i)](j)* Confidential information may consist of the following:

1. Informants' reports;
2. Professional reports (for example, psychiatrists, psychologists, social workers, teachers, etc.); or,
3. Other information which would have an adverse impact on the inmate's *mental* health, create a serious risk of reprisal against the reporting person or seriously impede progress on a pending investigation.

[(j)](k)* When reviewing confidential informant information, the Disciplinary Hearing Officer/Adjustment Committee shall inquire into the reliability of the informant and the information, and shall utilize such information only after satisfied that it is reasonably reliable. Whenever informant information is used, the inmate shall be informed of the general character of the information, if practicable. The details of informant information shall be withheld on grounds of confidentiality.

[(k)](l)* Within 10 working days of the hearing, the Disciplinary Hearing Officer/Adjustment Committee shall provide a written notice of decision and a summary of the evidence relied upon.

10A:5-5.3 Appeal procedures for Protective Custody placement

(a) The inmate shall be advised of the opportunity to appeal to the Superintendent or his or her designee at the time that he or she is provided with the Protective Custody hearing decision (Form 146-III PROTECTIVE CUSTODY HEARING ADJUDICATION).

(b) The inmate shall have five working days from the date he or she receives the Protective Custody decision to submit a letter of appeal.

(c) All appeals shall be reviewed by the Superintendent and the following factors shall be considered:

1. Whether there was compliance with this subchapter;
2. Whether the decision was based on reliable information; ***and***
3. Whether the decision to place the inmate in Protective Custody was justifiable considering the inmate's safety and the continued secure, orderly operation of the correctional facility.

(d) Within 10 working days of receipt of the appeal, the Superintendent may:

1. Approve the Disciplinary Hearing Officer/Adjustment Committee's decision;
2. Modify the Disciplinary Hearing Officer/Adjustment Committee's decision; or,
3. Order further hearings.

(e) In all cases, the inmate shall be notified in writing of the Superintendent's decision.

10A:5-5.4 Review of inmates in Non-Vroom Protective Custody Units

(a) Each inmate in Protective Custody, whether voluntary or involuntary, shall be reviewed every three months, or more often if feasible, by the Institutional Classification Committee (I.C.C.).

(b) An inmate who is placed in Protective Custody involuntarily shall, in every case, have an in-person hearing once per year in accordance with procedures specified in N.J.A.C. 10A:5-5.2 and N.J.A.C. 10A:5-5.3.

10A:5-5.5 Release of inmates from Non-Vroom Protective Custody Units

(a) An inmate who has voluntarily signed ***[him]* *himself*** or herself into Protective Custody may sign ***[him]* *himself*** or herself out upon completion of a release form, provided the Institutional Classification Committee (I.C.C.) and the Superintendent or his or her designee are satisfied that there is no known danger to the inmate's well being.

(b) An inmate who has been placed in Protective Custody involuntarily may be released by the Superintendent or his or her designee, upon recommendation by the Institutional Classification Committee (I.C.C.) when they are satisfied that the conditions giving rise to the inmate's placement in Protective Custody have abated or do not exist.

(c) Inmates released from involuntary Protective Custody shall, when appropriate, be referred to the Inter-Institutional Classification Committee (I.I.C.C.) for assignment to a suitable correctional facility.

10A:5-5.6 Transfer to the Vroom Protective Custody Unit

(a) Transfer of inmates to the Vroom Protective Custody Unit, whether emergent or based on the Disciplinary Hearing Officer/Adjustment Committee's recommendation, shall be reviewed by the Inter-Institutional Classification Committee (I.I.C.C.).

(b) The Inter-Institutional Classification Committee (I.I.C.C.) shall review the evidence and the Disciplinary Hearing Officer/Adjustment Committee's decision based on the following criteria:

1. Whether the decision to place the inmate in the Vroom Protective Custody Unit was based on substantial evidence of serious threat of harm should the inmate remain in general population; and,
2. Whether alternative housing locations, was not feasible based on classification criteria or because sufficient protection could not be reasonably assured.

10:5-5.7 Periodic review of inmates in the Vroom Protective Custody Unit

(a) Each inmate in the Vroom Protective Custody Unit shall be reviewed by the Vroom Classification Committee once each month. This review shall not necessitate the inmate's presence although the Committee may, where it deems necessary, require the inmate to appear unless the inmate refuses to appear without the use of force.

(b) The purpose of this review shall be to ascertain the continued need or change, if any, in circumstances requiring the inmate's continued retention in the Vroom Protective Custody Unit.

10A:5-5.8 Formal review of inmates in the Vroom Protective Custody Unit

One year from the date of the initial Disciplinary Hearing Officer/Adjustment Committee's decision to place an inmate in the Vroom Protective Custody Unit, and every twelve months thereafter, an inmate

shall be given a formal hearing in accordance with procedures specified in N.J.A.C. 10A:5-5.2 and N.J.A.C. 10A:5-5.3.

10A:5-5.9 Release of inmates from the Vroom Protective Custody Unit

(a) The Vroom Classification Committee may grant the inmate's release subject to the Superintendent's approval when it concludes that:

1. The initial circumstances creating the need for placement in the Vroom Protective Custody Unit no longer exist; and,
2. Release from the Vroom Protective Custody Unit will not pose a threat to the inmate's safety or well being or to the safe, secure orderly operation of the correctional facility.

10A:5-5.10 Ventilation, heating, lighting, sanitation, observation

(a) Ventilation and reasonable temperature shall be maintained on a 24 hour basis. Light of sufficient intensity (100 watts if requested) and if compatible with existing electrical load capacity shall be maintained to allow visual observations of inmates at all times. Partial curtains may be permitted over the cell door, at the discretion of the Superintendent.

(b) When admitted, inmates shall not be placed in cells that lack cleanliness or have malfunctioning sanitary fixtures or lights. Daily inspections shall be made to insure the cells are kept secure, clean and sanitary.

(c) Toilets that are flush controlled from outside the cells shall be flushed as often as is necessary to maintain good sanitary standards.

10A:5-5.11 Food

(a) Protective Custody inmates shall be served the normal correctional facility meals on the "Menu of the Day" or such special diet as shall be prescribed.

(b) Disposable utensils shall be used when necessary.

10:A5-5.12 Grooming, showering and shaving

(a) Barbering and hair care services shall be provided as needed.

(b) Each inmate in Protective Custody shall be given the opportunity to shave and shower not less than three times per week, unless permitting these activities would present an undue security hazard.

10A:5-5.13 Medical services

(a) A member of the medical staff, which can be a nurse, paramedic, doctor or other authorized health care personnel, shall be available in the Unit on a daily basis to assess medical needs. Any inmate wishing to see a doctor shall notify the medical staff member or the housing officer of his or her sick call request.

(b) Medical and psychiatric emergencies shall be attended to immediately. Requests for medical attention for inmates in non-emergency situations shall be responded to by the physician or medical person designated by the physician within 24 hours.

10A:5-5.14 Personal items

(a) All inmates shall be admitted to Protective Custody dressed in normal correctional facility clothing after a thorough search for contraband.

(b) Each inmate shall be provided with the following items for use in the cell to the same extent as such items are provided for inmates in the general population:

1. Clothing required for use in cell;
2. Bedding and mattresses;
3. Personal hygiene supplies (including soap, deodorant, toothbrush, toothpaste or powder, towel and toilet paper);
4. Utensils and supplies for cleaning cell;
5. Eyeglasses; and,
6. Writing materials.

(c) The possession and use of radios, televisions, typewriters and other appliances in Protective Custody shall be subject to the same guidelines as those developed by the Superintendent for the general population.

(d) Written procedures shall be in effect permitting inmates access to books and periodicals from the correctional facility's library and Inmate Law Library.

10A:5-5.15 Correctional facility clothing, bedding and linen

The issue and exchange of correctional facility clothing, bedding, linen, and the laundry service shall be on the same basis as is available to the general inmate population.

10A:5-5.16 Inmate legal services

Inmates in Protective Custody shall be afforded legal access to courts pursuant to N.J.A.C. 10A:6, INMATE ACCESS TO COURTS.

10A:5-5.17 Correspondence, visits and telephone calls

(a) Inmates in Protective Custody shall have the same correspondence opportunities that are available to inmates in the general population.

(b) Each correctional facility which has a Protective Custody Unit shall provide each inmate in the Unit with the opportunity to receive a mini-

imum of one window visit per week, unless precluded by security conditions or other extraordinary circumstances.

(c) An inmate who has completed seven consecutive years in the Vroom Protective Custody Unit may request permission to receive one contact visit per month in addition to the regularly scheduled window visits. Unless precluded by security problems or other emergent circumstances, such visits shall be arranged.

(d) Each correctional facility which has a Protective Custody Unit shall provide each inmate in the Unit the opportunity to make a minimum of one collect telephone call per week, excluding legal telephone calls.

10A:5-5.18 Recreation

(a) Where physical facilities permit, each inmate in Protective Custody shall be allowed recreation and exercise outside the cell at least five hours per week, unless to do so would adversely affect the security or orderly operations of the correctional facility.

(b) Inmates who shall be retained in Protective Custody shall be given the opportunity for out-of-doors recreation for a minimum of one hour of the required five hours per week unless to do so would adversely affect the security or orderly operations of the correctional facility.

10A:5-5.19 Education

(a) A member of the educational staff shall be assigned to develop individualized educational programs for inmates who are assigned to Protective Custody if they so desire.

(b) The educational opportunities available to inmates in Protective Custody shall be comparable to those available to inmates in general population to the extent possible in light of available resources, space constraints and security precautions.

10A:5-5.20 Visits by professional and correctional supervisory staff

(a) A member of the correctional facility social work staff shall make visits to the Protective Custody Unit five days per week and shall be available to interview individual inmates as requested. When appropriate, referrals to other departments or staff members shall be made.

(b) The correctional facility chaplain shall visit the Protective Custody Unit as requested by individual inmates to provide religious counseling or other pastoral services.

(c) The Unit supervisor or his or her designee in charge of the Protective Custody Unit shall make daily visits to the Unit and shall be available to interview individual inmates as requested.

10A:5-5.21 Work opportunities

Work opportunities shall be made available to inmates assigned to a Protective Custody Unit to the extent possible in light of security considerations, limited resources, availability of physical facilities and budgetary constraints.

10A:5-5.22 Psychological examination

Every inmate assigned to a Protective Custody Unit shall have a psychological examination every six months or whenever it appears that he or she is suffering from an emotional or psychological disorder.

10A:5-5.23 Withdrawal of personal items or activities

(a) Whenever in the judgment of the custody supervisor of the Protective Custody Unit there is imminent danger that an inmate will destroy his or her clothing or any item usually permitted the inmate in his or her cell or will do injury to ***[him]* *himself*** or herself, to another person or to property with such items, an officer of the rank of Sergeant or above may deprive the inmate of such items, if practicable. In such case, however, ***every*** effort shall be made to supply a substitute for the item or to permit the inmate to use the item under the supervision of the officer.

(b) Whenever an inmate is deprived of any usually authorized item or activity, a written report shall immediately be forwarded to the Superintendent or his or her designate and the supervisor of the Protective Custody Unit identifying the inmate and the item.

(c) The Institutional Classification Committee (I.C.C.) shall review any such restriction within one week. Any continued restriction shall be permitted only with the written authorization of the Institutional Classification Committee (I.C.C.).

(d) Such restrictions shall be reviewed on a weekly basis to determine whether there is reasonable certainty that the danger to person or property is no longer imminent and the restriction may be lifted.

10A:5-5.24 Selection of staff

All custody treatment and administrative staff for Protective Custody Units shall be selected in accordance with Department of Civil Service regulations and the terms and conditions of all collective bargaining arrangements and contracts entered into between the various working units and the Department of Corrections.

10A:5-5.25 Records

(a) The following information on inmates confined to Protective Custody shall be available in the Unit for the use of appropriate staff members:

1. Inmate's name and number;
2. Religion;
3. Previous housing location;
4. Unit cell or room assignment;
5. Date admitted;
6. Special medical or psychiatric problems; and
7. Date on which yearly review hearing is required.

(b) All unusual behavior shall be noted in the Unit log book together with the time and date of the incident. Unusual incidents shall also be reported pursuant to N.J.A.C. 10A:21 REPORTS.

10A:5-5.26 Disciplinary action within Protective Custody Units

The rules set forth in N.J.A.C. 10A:4, INMATE DISCIPLINE shall be in full force and effect in the Protective Custody Units.

10A:5-5.27 Transfers; record maintenance

All transfers into or out of a Protective Custody Unit shall be entered on the inmate's classification progress record.

10A:5-5.28 Correctional facility procedures

(a) Each correctional facility which has a Protective Custody Unit shall be responsible for developing written post orders/procedures consistent with this Subchapter.

(b) These written post orders/procedure shall be forwarded to the Department of Corrections' Office of the Deputy Commissioner for review and approval on or before September 15 of each year.

SUBCHAPTER 6. TRANSITIONAL PROTECTIVE CUSTODY

10A:5-6.1 Criteria for eligibility

(a) The criteria for consideration of assignment of inmates to the Transitional Protective Custody Unit are:

1. Present assignment to a Protective Custody Unit either voluntarily or on the recommendation of a Disciplinary Hearing Officer/Adjustment Committee;

2. Conduct and attitude demonstrated by the inmate that he may be able to modify his behavior sufficiently to enable him to successfully reintegrate into general population; and,

3. Conclusions by the correctional facility Internal Affairs Unit and the Superintendent that the inmate will be in no danger as a result of previous or present threats against his well-being at the facility to which he is ultimately assigned.

10A:5-6.2 Sentence considerations

(a) An inmate's maximum sentence shall not be a factor when he is being considered for assignment to the Transitional Protective Custody Unit.

(b) An inmate's maximum sentence shall be a factor when he is being considered for transfer from the Transitional Protective Custody Unit to the general population of a correctional facility.

10A:5-6.3 Admission

(a) The Institutional Classification Committee (I.C.C.) of the facility where the inmate is presently assigned to a Protective Custody Unit and the Leesburg State Prison I.C.C. shall meet to identify and select inmates who may be transferred to the Transitional Protective Custody Unit at the Leesburg State Prison. The transfer of an inmate, selected by the Committees, must be approved by the Superintendent of the sending correctional facility and the Inter-Institutional Classification Committee (I.I.C.C.) before the transfer is made.

(b) Joint Institutional Classification Committee (I.C.C.) meetings shall be held as often as is needed to consider inmates for transfer to the Transitional Protective Custody Unit.

10A:5-6.4 Program

(a) Inmates assigned to the Transitional Protective Custody Unit shall be afforded the opportunity to have contact visits, work assignments (as are available) and a recreational program modified to meet their individual need for protection or supervision.

(b) Escorts shall be provided during each program component as deemed advisable by the Superintendent.

10A:5-6.5 Review and transfer

(a) Each inmate assigned to the Transitional Protective Custody Unit shall be reviewed by the Leesburg State Prison Institutional Classification Committee once every three months.

(b) The Leesburg State Prison Institutional Classification Committee shall determine whether the inmate has demonstrated by his conduct,

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attitude and participation in activities, that he can satisfactorily be placed into the general population of a correctional facility.

*(c) If the Leesburg State Prison Institutional Classification Committee is satisfied that the inmate has made sufficient progress, it shall submit its decision for release from the Transitional Protective Custody Unit to the Superintendent of Leesburg State Prison or his designate for approval.

(d) Inmates who fail to make progress or who otherwise demonstrate by their conduct that they cannot adopt the behavior necessary for satisfactory adjustment to the general population of a facility shall be reassigned to a Protective Custody Unit pursuant to the procedures set forth in 10A:5-5, PROTECTIVE CUSTODY.]*

* (c) If the Leesburg State Prison Institutional Classification Committee (I.C.C.) determines that the inmate can satisfactorily be placed into the general population of a correctional facility, the I.C.C. shall submit its decision, for release from the Transitional Protective Custody Unit, to the Superintendent of Leesburg State Prison or his or her designate for approval.*

(d) If the Leesburg State Prison Institutional Classification Committee (I.C.C.) determines that the inmate is unable to be satisfactorily placed into the general population of a correctional facility, he shall be reassigned to a Protective Custody Unit pursuant to the procedures set forth in N.J.A.C. 10A:5-5 PROTECTIVE CUSTODY.

(e) All recommendations for reassignment shall be submitted to the Inter-Institutional Classification Committee (I.I.C.C.) for approval and selection of a suitable correctional facility.

10A:5-6.6 Services and conditions

All conditions of confinement and correctional facility services set forth in 10A:5-5, PROTECTIVE CUSTODY shall be afforded inmates in the Transitional Protective Custody Unit.

10A:5-6.7 Post orders

(a) Each sending correctional facility and Leesburg State Prison shall develop written procedures and Post Orders consistent with this Subchapter to implement the Transitional Protective Custody Program.

(b) These procedures and post orders shall be submitted for review and approval as to custody, program and legal sufficiency to the Office of the Deputy Commissioner and Assistant Commissioner of Adult Institutions on or before September 15 of each year.

INSURANCE

DIVISION OF ADMINISTRATION

(a)

Automobile Insurance

Nonrenewal of Automobile Insurance Policies

Adopted Amendments: N.J.A.C. 11:3-8

Proposed: May 19, 1986 at 18 N.J.R. 1079(a).

Adopted: September 16, 1986, by Kenneth D. Merin, Commissioner, Department of Insurance.

Filed: September 16, 1986, as R.1986 d.418, with substantive and technical changes not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1, 17:1C-61(e), 17:22-6.14a1, 2 and 3, 39:6A-3 and 39:6A-19.

Effective Date: October 6, 1986.

Expiration Date: January 6, 1991.

Summary of Public Comments and Agency Responses:

The Department received comments from eight insurance companies and four industry trade associations on its proposed amendments to N.J.A.C. 11:3-8 (Nonrenewal of Automobile Insurance Policies). The comments included general observations regarding the proposal as well as criticisms or questions directed to specific provisions of the rule.

Several commenters stated that they supported the idea of relaxing nonrenewal standards to encourage depopulation of the New Jersey Automobile Full Insurance Underwriting Association (Association or NJAFIUA). However, it was their opinion that significant depopulation could not be achieved by changes in the nonrenewal regulation alone. Among the suggested methods to achieve depopulation outside of the proposed regulation were: uncoupling Association rates from those of the

rating organization, ISO, and deregulating automobile insurance ratemaking as has been done for commercial insurance lines.

The Department recognizes that depopulation of the Association cannot be achieved solely through the amendments to this regulation. Other actions must be taken as well. For example, the Department has been working with a committee formed by the NJAFIUA to develop a specific depopulation program to be operated under the auspices of the Association. The Department believes that establishment of a viable depopulation program, together with the relaxed nonrenewal criteria afforded to insurers by the amendments to N.J.A.C. 11:3-8, will serve to foster good faith depopulation efforts by insurers.

It also should be recognized that implementation of the suggestions offered by these commenters for effecting depopulation of the residual market would require statutory modifications. Further, the Department does not necessarily concur that such modifications are essential to achieving depopulation.

Several commenters advocated the depopulation system used in New York which permits insurers to nonrenew up to two percent of policies per territory and allows nonrenewal of one policy in excess of the two percent limit for every two policies written voluntarily by the insurer. One writer suggested that insurers be allowed to keep policy constant revenues from former Association risks that they voluntarily write. These monies are currently a source of revenue to the Association.

A modified version of the New York plan was included in the amendments to this rule proposed by the Department on November 4, 1984. This proposal expired on November 5, 1985 without Department action. Upon further review of that proposal by the Department, the New York plan was not incorporated into the current proposal. The Department believes that this proposal, by restricting the relaxed nonrenewal criteria to those who now are least likely to be written voluntarily, such as Association insureds, first time applicants and those previously cancelled or nonrenewed, focuses more directly on depopulation.

COMMENT: Several commenters objected to the proposed amendment to N.J.A.C. 11:3-8.1 that would extend the scope of the rule to policies covering private passenger automobiles owned by business entities and fleets. One writer stated that the application of the rule to garage keepers' liability, truckers' and business automobile policies would create unnecessary confusion for insureds, agents and insurers without furthering the underlying purpose of regulating the termination of private passenger insurance policies. Several writers offered their opinion that the proposed broadening of the rule's scope would cause insurers to further limit their willingness to write in New Jersey since expansion of the rule's scope has not been coupled with a significant reduction in its restrictions on nonrenewal.

Several writers also questioned how the "household" concept contained in many of the standards for nonrenewal would be applied to commercial policies. These writers also anticipated confusion between the requirements of this rule and those of N.J.A.C. 11:1-20 concerning the cancellation and nonrenewal of commercial policies. They asked what circumstances in the commercial auto market makes such restrictions necessary.

Finally, one commenter stated that expansion of the rule's scope would not tend to depopulate the NJAFIUA and that commercial risks are negotiated by sophisticated managers and do not need the protection of the rule.

RESPONSE: Upon review, the Department has decided to exclude automobiles owned by business entities from the requirements of the rule. Automobile policies written in the commercial market are subject to N.J.A.C. 11:1-20 and 11:1-22 covering cancellation and nonrenewal of commercial insurance and are adequately protected thereunder. However, fleets, that is, more than four automobiles, owned by individuals or a husband and wife will be subject to the rule. It is not uncommon for a family, for example, to have more than four cars, and such policyholders need the protection this rule affords.

COMMENT: One commenter questioned the consequences for the insured and the company of not meeting the time frames of N.J.A.C. 11:3-8.2(b) that requires renewal notices to be sent not more than 45 days or less than 30 days before the expiration of the policy. Another writer objected to the requirement that notice of the nonrenewal premium must be "given" within the time frame since it appears to make the company guarantee receipt of the notice instead of simply ensuring it was mailed in compliance with the time frames set forth in the rule.

RESPONSE: Failure to meet the time frames for notice is a violation of the regulation and may subject the insurer to penalties. For the insured, if proper notice is lacking, the company should continue to provide coverage until proper notice is given. For example, if renewal notice were sent 15 days before expiration of the policy, the insurer would have to

extend the coverage and payment deadlines at least 15 but not more than 30 days. Finally, the problem with the word "given" in the rule reflects a misconception. Mailing or other delivery as described in the regulation is all that is required.

COMMENT: An insurer asserted that the schedule of premium payments should not be one of the terms in the renewal policy which must be at least as favorable to the insured as in the expiring policy as specified by N.J.A.C. 11:3-8.2(c). This requirement will force insurers to implement dual systems if an insurer wishes to alter its payment plan. The result would be a decrease in efficiency and an increase in costs. Another writer stated that installment payment plans are a benefit to consumers and if they are abused by chronic late payments, then the insurer should be able to withdraw the option.

RESPONSE: While it is true that this provision may require some insurers to implement dual systems, it must be recognized that many insurers already offer multiple payment plans and are able to handle more than one system. Further, given the fact that insurance premium payments are a major budget item for many consumers, the insured should not be penalized by an insurer's decision to alter its payment plan in a manner which is detrimental to the insured. Removal of a payment plan, for example, can make it difficult for an insured to continue coverage if other financial arrangements are not available. Finally, insurers are permitted to cancel a policy for nonpayment of premium. This should be a sufficient remedy for companies afflicted with chronic late payers.

COMMENT: One commenter believed the requirement in N.J.A.C. 11:3-8.2(f) that the nonrenewal notice include or be accompanied by a statement advising insureds to contact the Department of Insurance if they believe the nonrenewal does not comply with New Jersey law will not benefit insureds and will be too costly. Another writer objected to the use of "should" in N.J.A.C. 11:3-8.2(f)2.i. arguing that it puts insurers in the position of recommending a complaint to the Department when the company or agent may be liable to resolve the problem more quickly and less adversarially. The writer suggested "should" be replaced by "may."

RESPONSE: The Department believes that the requirement that insureds be notified of their right to file a complaint with the Department is of great benefit to insureds and outweighs the cost of incorporating appropriate language in the nonrenewal notice and in responding to any resulting complaints. The notification provision of the current proposal is considerably less costly than that of the expired November 4, 1984 proposal which required a copy of the Department's complaint form to be sent with all notices of nonrenewal.

The comment regarding the use of "should" is invalid. The "should" language is predicated on the insured's belief that the nonrenewal violated the law and this rule. Such violations should be brought to the attention of the Department. Finally, it is noted that the rule does not prohibit an insurer from also advising the insured to contact the agent or company regarding a questionable nonrenewal.

COMMENT: Three commenters objected to the requirement in N.J.A.C. 11:3-8.2(f)1.i. that the nonrenewal notice contain the number of autos in the household and the number of claims or accidents on which the nonrenewal is based. They stated that the old requirement that all information necessary for the insured to determine the validity of the notice be included was adequate. In addition, an insurer might not know the number of cars in the household if they are covered by different insurers. One writer interpreted cars in the household in the rule to mean cars on the policy.

RESPONSE: The Department's experience in handling complaints from insureds who have received nonrenewal notices is that the information necessary to determine compliance with the rule is not routinely provided by insurers. The language of the rule has always been clear that nonrenewal is determined by a certain number of accidents or claims and, in many instances, is also based on the number of automobiles in the household. If an insurer does not know how many automobiles there are in the household, it cannot determine when a nonrenewal is authorized unless claim volume is such that the number of autos in the household is no longer a relevant factor. The rule has been amended to reflect this contingency.

COMMENT: Several writers stated that the amendments to N.J.A.C. 11:3-8.3(a) are cosmetic and do not provide more flexibility in nonrenewals. One insurer thought that nonrenewal ought to be based on a number of accidents regardless of the number of automobiles in the household. The writer stated that the existing formula does not encourage companies to write new business and tends to discriminate against multiple operator households with only one automobile. Another commenter

offered suggestions for increasing the list of convictions concerning motor vehicle law that are grounds for nonrenewal set out at N.J.A.C. 11:3-8.3(a).

RESPONSE: The commenters are correct in asserting that the changes to N.J.A.C. 11:3-8.3(a) are essentially cosmetic. That is, they are intended to more simply state the current requirements of the rule. Since no substantive changes have been made in the standards for nonrenewal set out at N.J.A.C. 11:3-8.3(a), the commenters' opinions refer to an existing requirement of the regulation that is not a part of this rulemaking procedure. The Department believes that the current formula for nonrenewals based on number of accidents or claims is fair.

Suggestions for additions to the list of motor vehicle convictions triggering nonrenewal also constitute a substantive change to the rule requiring additional public comment. The Department believes a review of the interaction between the Motor Vehicle code and nonrenewal is indicated and the commenters' suggestions will be considered in future action by the Department.

COMMENT: Several commenters complained that the notification and recordkeeping requirements of N.J.A.C. 11:3-8.3(a)11. are very cumbersome to implement. Producers are unlikely to request that the insurer nonrenew the policy since simply advising insureds not to pay the premium will accomplish the same goal and will avoid the notification and recordkeeping procedures of the rule. Another writer did not believe that insureds should have the right to reinstate coverage if cancelled by their new carrier. If such a right was to be retained, the commenter suggested that the restrictions on such reinstatement be made clearer.

One writer observed that the notice of renewal premium must be made between 45 and 30 days before the expiration of the policy but the notice of intent not to renew a policy under N.J.A.C. 11:3-8.3(a)11. must be made at least 90 days before expiration of the policy. This effectively precludes a producer from obtaining a policy with a lower premium for the insured and is anticompetitive. Another commenter thought that the existing language of this section of the rule worked adequately and that the benefits provided to insureds by the amendments are outweighed by the additional costs to insurers.

RESPONSE: N.J.A.C. 11:3-8(a)11. is designed to preserve an insured's right to continue coverage through his or her insurer and in no way impinges on the right to replace coverage through another carrier, should that be the insured's desire.

The amendments to this provision clarify the existing text and formalize procedures developed by the Department over several years. With regard to the latter, for instance, the notifications appended to the subchapter as Exhibits A and B were required by a Circular Letter sent to insurers in 1977.

The Department believes that it is essential that insureds recognize that their right to renewal with the insurer is independent of the producer and, for example, is unaffected by termination of the agency contract. The notice requirements placed on insureds and producers under this paragraph simply ensure that the policyholder is adequately apprised of this right. Allegations of noncompliance with these requirements will, of course, be investigated by the Department and sanctions imposed, if warranted.

Certain of the comments concerning this paragraph pertained to existing requirements of the subchapter and are, therefore, outside the scope of this amendatory process. This includes the criticism of the language concerning the insured's right to reinstatement with the old insurer if the new carrier terminates coverage within the first 60 days.

Similarly, the existing text of N.J.A.C. 11:3-8.3(a)11. already states that a request for nonrenewal made by the producer pursuant to the paragraph must be submitted to the insurer 90 days in advance of policy expiration. The Department finds the comment concerning the anticompetitive effect of the interaction between the existing requirement and the amendment providing for 45 to 30 days prior notice of renewal premium to be without merit. Private passenger automobile rates are filed, and an agent should experience little difficulty in developing premium quotes for comparison purposes.

COMMENT: Two insurers suggested changes to N.J.A.C. 11:3-8.3(a)2.iii. which states that an accident cannot be utilized as a basis for nonrenewal if the named insured or customary operator has been reimbursed by or has a judgment against the person responsible for the accident. One writer suggested that the accident should be excluded only if the insured has been reimbursed in an amount greater than 50 percent of the loss. The other commenter believed that the insured must be fully or at least 90 percent reimbursed for the loss for the accident to be exempted.

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RESPONSE: The suggestions made by these commenters apply to existing portions of the rule. Therefore, consideration of the suggestions are outside the scope of this rulemaking proceeding. While the Department believes these suggestions warrant further review, it does not wish to delay adoption of the current amendments. The suggestion will therefore be considered for future action by the Department.

COMMENT: One commenter observed that N.J.A.C. 11:3-8.3(a)3.ii. that allows nonrenewal for accumulation of an average of nine motor vehicle points or more per car in the household has not been amended to eliminate the "average per car" wording as has been done in N.J.A.C. 11:3-8.3(a)1. The writer suggested that nonrenewal for motor vehicle points be on a per operator basis.

RESPONSE: The observation made by the commenter refers to an existing portion of the rule and is, therefore, outside the scope of this rulemaking proceeding. The comment will be considered for future action by the Department.

COMMENT: Several comments were received concerning proposed N.J.A.C. 11:3-8.3(b) that allows nonrenewal of comprehensive coverage including towing and labor. Most writers asserted that establishing four or more claims totalling at least \$100 for one car in the household in 12 months as the nonrenewal threshold was equivalent to not allowing nonrenewal at all. There were various suggestions for improving this formula, including allowing nonrenewal of the whole policy for four such claims within 12 months or extending the number of months to 36. Another commenter suggested that if an insurer pays two comprehensive claims of at least \$100 within one year, the company should have the right to raise the deductible for such coverage.

RESPONSE: Modifications to the current proposal, such as those suggested by the commenters, would constitute substantive changes to the rule requiring reproposal and an opportunity for additional public comment. It must be recognized that even as now proposed, the rule provides insurers with more flexibility than under the existing rule and the Department will therefore proceed with the adoption. However, the Department believes that the suggestions made by these commenters have merit and they will be considered for future action by the Department.

COMMENT: A writer noted that N.J.A.C. 11:3-8.3(b) allows nonrenewal of comprehensive coverage including towing and labor. Operation of this section, therefore, could result in an insured having collision only coverage, and insurers do not usually write collision on a stand-alone basis. One commenter thought that all physical damage coverage should be able to be nonrenewed for excessive comprehensive claims.

RESPONSE: The Department is not aware of anything that prevents collision from being written on a stand-alone basis and notes that comprehensive coverage is frequently written on this basis. Nor has the commenter advanced any arguments stating why collision must only be written together with comprehensive coverage. Insurers who wish to take advantage of the increased flexibility in nonrenewal of comprehensive coverages will have to write collision on a stand-alone basis.

COMMENT: One writer suggested that the words "payment by the insurer" be removed from N.J.A.C. 11:3-8.3(b). Because of the use of deductibles, insurers often pay less than \$100 on comprehensive claims and such claims are excluded as a basis for nonrenewal under this proposal. The commenters did not believe this serves the intent of the proposal.

RESPONSE: The Department believes that the approved standards for nonrenewal set forth in the rule should only reflect the potential for a significant loss by an insurer. Other circumstances not meeting the nonrenewal standards of the rule, which the insurer nonetheless believes to present a significant exposure to loss, may be submitted to the Department for approval pursuant to the procedures of N.J.A.C. 11:3-8.4(d).

COMMENT: Several comments were received regarding N.J.A.C. 11:3-8.3(c) that allows nonrenewal of towing and labor coverages for excessive claims. The proposal specifies that for one car in the household four or more claims must be made in a 12 month period to qualify for nonrenewal. Several writers made the same comment as for N.J.A.C. 11:3-8.3(a) concerning comprehensive coverages, namely, that a 12 month period to accumulate the claims made the provision meaningless. Another commenter noted that to use the provisions insurers would have to keep separate statistics for towing and labor claims. The requirement would be expensive in comparison to the limited value of the coverage to insureds.

RESPONSE: The suggestions for modifying the 12 month period for accumulation of towing and labor claims constitute a substantive change to the rule requiring reproposal. However, the Department believes that the comments have merit and they will be considered in future rulemaking action.

Regarding the cost of keeping statistics on towing and labor claims, the Department views the amendment as affording insurers flexibility on this coverage that they do not have under the current rule. In determining whether to implement procedures to track towing and labor claims insurers must consider the costs of implementation and make appropriate decisions.

COMMENT: One writer questioned why the time limit for submission of nonrenewals which are not based on the approved standards set forth in the rule has been extended from 90 to 120 days before the expiration of the policy. The commenter asserted that the extended deadline would require insurers to make decisions on individual cases so far in advance there would be an incentive to renew the policy to make sure they do not make a mistake.

RESPONSE: Because insurers must provide no less than 60 days prior notice of nonrenewal under the current rule, the Department has, in effect, a 30-day period in which to review nonrenewals submitted for its approval and to issue its determination. Such a time is viewed as inadequate; thus, the proposal extended the submission deadline to 120 days to afford a more adequate review period (45 days) and at the same time enable insurers to conform to the notice requirements of the rule.

COMMENT: Almost all the commenters on this proposal made observations concerning N.J.A.C. 11:3-8.4(a), a new section which provides insurers with increased flexibility with respect to nonrenewal of first time applicants for coverage, policyholders last insured through the NJAFIUA and insureds previously cancelled or nonrenewed.

Although acknowledging this increased flexibility, several insurers nonetheless argued that the proposal does not go far enough in this regard. One insurer, for example complained because the "probationary" period set forth in the rule is limited to three years following issuance of voluntary coverage.

Another writer objected to the requirement of the section that nonrenewals be premised on the insurer's underwriting guidelines. The commenter felt that during the probationary period nonrenewals should be prohibited only for the reasons of unfair discrimination. The writer argued that the requirement provides an incentive for insurers to tighten their underwriting guidelines so as to be able to nonrenew risks written on a probationary basis. This in turn could cause less voluntary business to be written and spur further growth of the residual market.

Finally, some writers expressed concern regarding the impact of the reporting requirement set forth at N.J.A.C. 11:3-8.5 on insurer's willingness to write voluntary business pursuant to N.J.A.C. 11:3-8.4. These commenters contended that the reporting requirements were so burdensome as to remove incentive for insurers to participate in writing new business.

RESPONSE: The Department believes that the provisions of N.J.A.C. 11:3-8.4 provides insurers with significant flexibility with respect to nonrenewal activity and should encourage voluntary writings and resulting depopulation of the residual market. The Department rejects the notion that requiring an insurer to exercise this flexibility pursuant to its underwriting guidelines somehow impairs its ability to properly underwrite the categories of risks affected by this section. Further, it is wholly appropriate that such guidelines be subject to the standard that they may not be arbitrary, capricious or unfairly discriminatory. Application of this standard will not prevent an insurer from invoking any legitimate ground for nonrenewal. Rather, the requirement merely ensures that underwriting decisions affecting these categories of insureds will be implemented in a responsible fashion and in accordance with basic standards of fairness.

COMMENT: One commenter thought that N.J.A.C. 11:3-8.4(a) had little value because an insurer would not utilize a nonrenewal procedure if it could cancel the policy. Further, the writer believed N.J.A.C. 11:3-8.4(a) that allows increased flexibility in nonrenewing certain insureds conflicted with N.J.A.C. 11:3-8.4(b)1.v. that describes restrictions on an insurer's underwriting guidelines. Finally, the commenter believed that the definition of first time applicant in N.J.A.C. 11:3-8.4(a)3.i. as someone "seeking insurance for the first time" rendered the general section meaningless since such persons would have no insurance to nonrenew.

RESPONSE: The commenter has misunderstood the provisions and structure of N.J.A.C. 11:3-8.4. The reference to a cancelled policy in N.J.A.C. 11:3-8.4(a)1. means that if an insurer is willing to write a policy for someone who has been cancelled previously, the company has increased flexibility in nonrenewal of that policy. N.J.A.C. 11:3-8.4(b)1.v. states only that the underwriting guidelines of an insurer may not contain a provision allowing nonrenewal merely because the policyholder has been insured in a residual market mechanism. However, N.J.A.C. 11:3-8.4(a)2. states that if an insured coming out of the NJAFIUA fails

to meet any of the non-prohibited underwriting guidelines of an insurer, his or her policy may be nonrenewed during the first 36 months of coverage. Finally, the provision regarding first time applicants means that if a company is willing to write a policy for someone who has never had an auto insurance policy before, that policy, for its first 36 months, can be nonrenewed for failure to meet the insurer's underwriting guidelines. The language of the rule on this is sufficiently clear.

COMMENT: One commenter observed that if an insured, who has otherwise met the definition of someone subject to the nonrenewal criteria of N.J.A.C. 11:3-8.4, changed companies after six months or a year, the three year underwriting period would be lost and the insured would be subject again to the standards for nonrenewal in N.J.A.C. 11:3-8.3(a). The commenter felt that the potential for this occurrence constituted a major loophole in the rule.

RESPONSE: The Department agrees that the situation described by the commenter can occur. However, it must be recognized that the insurer is not required to provide coverage and presumably does so with knowledge of the standards which will be applicable to any subsequent nonrenewal of the policy.

COMMENT: Three commenters addressed the recordkeeping provisions of N.J.A.C. 11:3-8.4(c) wherein insurers must be able to document that an insured is a first time applicant, was last insured through the residual market, was cancelled pursuant to N.J.S.A. 17:29C-7 or nonrenewed pursuant to this rule. Two commenters stated that the recordkeeping would increase costs and questioned its necessity. One writer suggested that some time limitation be applied to the recordkeeping requirement. Another commenter asked whether the requirement that the documentation "be available" means requests regarding complaints concerning individual insureds or blanket requests for all risks subject to N.J.A.C. 11:3-8.4.

RESPONSE: If an insurer wishes to effect a nonrenewal under the relaxed criteria provided by N.J.A.C. 11:3-8.4, it must, of course, be in a position to ascertain that the insured qualifies. The Department finds the comment concerning the limitations on record maintenance to have merit and has amended the proposal to provide that documentation be maintained for a period of not less than five years. Finally, with respect to the availability of documentation to the Department, the insurer must be able to respond to requests for documentation arising from individual complaints as well as to more generalized requests resulting, for example, from market conduct examinations.

COMMENT: One commenter hoped that the word "current" in describing an insurer's underwriting guidelines in 11:3-8.4(a) allowed a company latitude to revise its guidelines from time to time.

RESPONSE: The regulation does not prohibit an insurer from revising its underwriting guidelines. However, it is the Department's view that a nonrenewal decision with respect to an individual insured should be subject to the guidelines which were in effect at the time the risk was written. If an insurer believes that circumstances are such that its revised guidelines should be applicable to the insured, the Department will review the nonrenewal pursuant to N.J.A.C. 11:3-8.3(d).

COMMENT: Several writers objected to the reporting requirements of N.J.A.C. 11:3-8.5 arguing that they were unduly burdensome, the required information was not in their data base and the data requested would not demonstrate compliance with the rule. In addition, some commenters pointed out that the required territory reporting was linked to the Department's earlier proposal which allowed nonrenewals by territory. Since this proposal does not incorporate this premise, there is no need for such elaborate requirements. One company suggested a less burdensome format for reporting.

RESPONSE: The Department recognizes that some insurers may experience difficulty in complying with the reporting requirements of the rule. However, the Department continues to view as necessary inclusion of provisions permitting the Commissioner to monitor the operation of the subchapter and determine whether depopulation of the residual market is being achieved.

As previously indicated, the Department is currently working with the NJAFIUA to develop a depopulation program. Upon review, it appears that tracking depopulation of the residual market may be more readily accomplished as part of such a program and the Department will proceed accordingly. N.J.A.C. 11:3-8.5, therefore is being amended to delete the specific report requirements and to provide, instead, that the Commissioner may request such reports from insurers as he or she deems necessary.

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. NONRENEWAL OF AUTOMOBILE INSURANCE POLICIES

11:3-8.1 Scope

This subchapter applies to all automobiles as defined in N.J.S.A. 39:6A-2a, excluding those ***owned by business entities or*** insured through any statutorily mandated residual market mechanism, and to all policies or contracts of insurance insuring such automobiles.

11:3-8.2 General provisions

(a) Every insurer shall make an offer to the insured named in a policy subject to this subchapter to renew such policy upon its expiration date, unless a valid notice of nonrenewal or conditional renewal as specified in (h) below has been sent by the insurer to the insured in accordance with this subchapter.

(b) Each renewal offer shall be in the usual form of either a renewal policy, a certificate, or a renewal bill. With respect to payment of the renewal premium, notice shall be given not more than 45 days or less than 30 days prior to the due date of the premium and shall clearly state the effect on nonpayment of the premium by the due date.

(c) Subject to changes approved by the Commissioner that had become effective prior to the expiration of the current policy, each renewal shall offer coverage, limits and terms at least as favorable to the insured as the expiring policy, including, but not limited to:

1. Schedule of premium payments; if any; and
2. Duration of policy term;

i. Whenever an insurer, pursuant to changes approved by the Commissioner, alters the duration of the insured's policy term, the insurer shall permit the insured to revert to the prior duration of policy term upon request.

ii. The renewal offer shall include or be accompanied by a statement advising the insured of his or her right to revert to the prior duration of policy term.

(d) Payment by the insured in accordance with the terms stated in the billing notice or in accordance with terms agreed to with the company or producer shall constitute acceptance of the renewal offer by the insured.

(e) The requirements of (b) above shall not preclude the insurer from offering physical damage coverage with a higher deductible than that in the expiring policy, provided the insured is informed that a lower deductible is available at an appropriate rate.

(f) No notice of nonrenewal shall be valid unless it is mailed or delivered by the insurer to the insured no less than 60 days and no more than 90 days prior to the expiration of the current policy, setting forth the reason(s) for such nonrenewal.

1. No notice of nonrenewal shall be valid unless it includes the text of the designated provision(s) of this subchapter under which action is being taken and the correct facts which bring the insured under the provision(s), including dates and any other facts necessary for identification of the incidents. In the event action is being taken under N.J.A.C. 11:3-8.3(a)1, the text of the exceptions under N.J.A.C. 11:3-8.3(a)2 must be included together with a statement that none of these exceptions are applicable.

i. In the event action is being taken under N.J.A.C. 11:3-8.3(a)1, (b) or (c), the text of the notice shall include both the number of accidents or claims ***where the insurer's nonrenewal is contingent thereon,*** and the number of cars in the household.

2. Each notice of nonrenewal shall include or be accompanied by the statement prescribed in i. below which shall be clearly and prominently set out in boldface type or other manner which draws the reader's attention.

i. Each notice of nonrenewal must set forth: "If you have reason to believe that our decision to nonrenew (or conditionally renew, as appropriate) your policy is not in compliance with New Jersey Regulation N.J.A.C. 11:3-8, you should file a written complaint immediately with the New Jersey Department of Insurance, Division of Licensing and Enforcement, CN 325, Trenton, New Jersey 08625."

3. The notice of nonrenewal shall also include or be accompanied by a statement advising the insured of his possible eligibility for coverage through the New Jersey Automobile Full Insurance Underwriting Association.

(g) Nothing in this subchapter shall be construed as prohibiting a renewal policy from being issued for higher limits of coverage and/or additional coverage(s), provided that such additional protection is specifically requested by the insured and the insurer is willing to provide it. Conversely, nothing shall prohibit the renewal policy from being issued for lower limits of coverage and/or fewer coverages provided that such

reduction in protection is specifically requested by the insured and further provided that coverage in no case shall fall below the level or levels otherwise required by law.

(h) In any instance in which an insurer may, pursuant to the provisions of this subchapter, nonrenew an automobile policy, it may, in lieu of the nonrenewal and in compliance with such provisions, condition the renewal of the policy upon a change of limits or elimination of any coverage not required by law.

(i) No notice of nonrenewal for any coverage subject to this subchapter shall be valid unless it is based upon one or more of the standards set forth in N.J.A.C. 11:3-8.3 or is otherwise authorized by the Commissioner of Insurance pursuant to N.J.A.C. 11:3-8.4.

11:3-8.3 Standards of nonrenewal applicable to all automobile policies

(a) An insurer may issue notice of nonrenewal based upon one or more of the following reasons:

1. Accident involvement: The named insured or any operator who customarily operates the automobile has been involved during the 36 months period ended 90 days prior to the expiration of the current policy in:

i. Two or more bodily injury accidents if there is one car in the household or three or more accidents if there are at least two cars in the household, provided a loss payment has been made or a loss reserve has been established for such accidents other than a payment for the personal injury protection benefits; or

ii. Two or more accidents involving damage to any property including his own of \$300.00 or more for which accidents a payment was made if there is one car in the household, or three or more such accidents if there are at least two cars in the household, provided that loss payments under the comprehensive physical damage coverage shall not be counted; or

iii. A bodily injury and a physical damage accident as described in i. and ii. above if there is one car in the household. Two bodily injury and one physical damage accident or two physical damage and one bodily injury accident if there are at least two cars in the household.

2. Exceptions: Accidents under i. to iii. above shall not be counted if the accident occurred under the following circumstances:

i. The accident resulted in a claim or payment only under the Personal Injury Protection Coverage;

ii. The automobile was lawfully parked at the time of the accident (an automobile rolling from a parked position shall not be considered as lawfully parked, but shall be considered as in the operation of the last operator);

iii. The named insured or anyone customarily operating the automobile, has been reimbursed by, or on behalf of, a person responsible for the accident or has a judgment against such persons;

iv. The automobile of the named insured or other customary operator was struck in the rear by another vehicle, and the operator has not been convicted of a moving traffic violation in connection with the accident.

v. The operator of another automobile involved in such accident was convicted for a moving traffic violation and the named insured or other customary operator was not convicted of a moving traffic violation in connection therewith;

vi. The automobile operated by the named insured or anyone who customarily operates the automobile is damaged as a result of contact with a "hit and run" driver, provided that the accident has been reported to legal authorities within a reasonable time thereafter;

vii. The accident resulted from contact with animals or fowl.

3. Convictions concerning motor vehicle law: The named insured or any operator who customarily operates the automobile:

i. Has been convicted, entered a plea of guilty or nolo contendere, forfeited bail bond or other security for any one of the following motor vehicle law violations during the 36 months ended 90 days prior to the expiration date of the current policy:

(1) Driving while intoxicated or under the influence of drugs;

(2) Leaving the scene of an accident;

(3) Criminal negligence or assault arising out of the operation of a motor vehicle;

(4) Driving while license is suspended or revoked.

ii. Has been convicted, entered a plea of guilty or nolo contendere, or forfeited bail bond or other security for other moving traffic violations during the 36 months period ended 90 days prior to the expiration of the current policy which result in the accumulation of an average of nine points or more, as defined in the New Jersey Motor Vehicle Law, per car in the household or which result in an accumulation of nine or more

points for any one such operator, provided that any operator who has been involved in such motor vehicle law violations continues to be an operator of the automobile at the time of renewal.

4. Convictions other than motor vehicle laws: The named insured or anyone customarily operating the automobile is convicted, entered a plea of guilty or nolo contendere, forfeited bail bond or other security for obtaining or attempting to obtain from any other person, insurance company or the Unsatisfied Claim and Judgment Fund any money or any other thing of value by falsely or fraudulently representing that such person is entitled to such consideration under the automobile insurance policy, or falsely or fraudulently making statement or presenting documentation in order to obtain such consideration, or by cooperating, conspiring or otherwise acting in concert with any person seeking to obtain or attempting to obtain falsely or fraudulently such consideration.

5. Use of the automobile in professional racing.

6. Physical or mental impairment of the named insured or anyone customarily operating the automobile which adversely affects the ability to operate the automobile safely, unless a physical disability is compensated for by corrective measures.

i. A nonrenewal premised upon physical or mental impairment must be supported by a current medical examination. The medical examination report must clearly state the nature of the impairment and, in the case of a physical disability, the extent to which such disability adversely affects the ability to safely operate the automobile. In the event such a current medical examination report is not otherwise available, it must be secured by the insurer at its own expense.

7. Refusal to submit to a medical examination at company expense where there is reason for the company to doubt an operator's ability to operate the automobile safely.

8. Addition of an operator of the automobile during the policy term or for the new policy term with respect to whom any of the above causes for nonrenewal would apply.

9. In the case of companies which limit their writing to members of a church, profession or occupation or similar group, loss of the qualification for such group by the owner of the automobile. In such case an additional 12 months of nonrenewal notice shall be given. The membership of an automobile or travel club does not constitute a qualified group subject to this paragraph.

10. Failure by an insured under the policy to comply with the cooperation or subrogation clause of the policy, subject to reasonable rules established by the Commissioner.

11. Written request by the producer of record not to renew the policy. The producer's request shall include a certification that the policy has been replaced with like coverage at approved rates in the voluntary market with an admitted insurer and shall specify the name of the replacing insurer. The producer's request shall also certify that the insured has been informed in writing of his or her right to renewal and has agreed in writing to the nonrenewal because the producer has obtained comparable coverage with another insurer. The producer's request not to renew the policy shall be submitted to the insurer not less than 90 days prior to the expiration date of the policy and a copy thereof shall be simultaneously sent by the producer to the named insured.

i. Upon receipt of such request from the producer, the transferor carrier shall advise the insured in writing of his or her right to renewal in the same company before obtaining the insured's consent to transfer and also of the insured's right to renew the policy if he or she is cancelled by the new insurer for reasons other than nonpayment of premium or suspension or revocation of the registration or driver's license. Exhibit A appended to this subchapter is approved for this purpose. A nonrenewal based on such request shall be invalid and the original company shall renew the policy at the request of the insured through an active agent and/or broker, or directly if the replacement policy is cancelled by the new carrier for any reason other than the reasons allowed for cancellation by N.J.S.A. 17:29C-7 (nonpayment of premium or suspension or revocation of registration or driver's license).

ii. Failure by a terminated agent to request renewal during the period of nine months from the effective date of termination as provided in N.J.S.A. 17:22-6.14(a) shall be construed as request not to renew in the context of this subchapter. In such event, the insurer shall in writing advise the insured of the status of the agent and that the agent's failure to request renewal denotes that replacement coverage as specified in 11 and 11i above has been obtained. The written notice shall also set forth the insured's right to renewal in the same company as set forth in 11i. above. Exhibit B appended to this subchapter is approved for this purpose. The insurer's notice shall be sent to the insured not less than 60 days prior to the expiration date of the policy.

iii. Insurance companies and producers shall maintain copies of all correspondence required pursuant to 11, 11i. and 11ii. above for a period of three years.

iv. Notices to insureds set forth in Exhibits A and B shall be sent by certified mail or by regular mail, if at the time of such mailing the insurer has obtained from the Post Office Department a date stamped proof of mailing showing the name and address of the insured. The insurer shall also maintain documentation of the mailing.

(b) An insurer may issue notice of nonrenewal with respect to comprehensive physical damage coverage, including towing and labor coverage, if the insurer, during the 12-month period ended 90 days prior to the expiration of the current policy, has paid under such coverage claims each of which involve a loss payment by the insurer of at least \$100.00, as specified in paragraphs 1 and 2 below:

1. Four or more such claims if there is one car in the household or six or more such claims if there are at least two cars in the household.

2. For any policy which covers more than one car, an insurer may nonrenew comprehensive physical damage coverage, including towing and labor coverage for one of the covered cars, if that single car has four or more claims.

(c) An insurer may issue notice of nonrenewal with respect to towing and labor coverage if the insurer, during the 12-month period ended 90 days prior to the expiration of the current policy, has paid claims under such coverage as specified in 1 below:

1. Four or more such claims if there is one car in the household or six or more claims if there are at least two cars in the household.

(d) Except as provided at N.J.A.C. 11:3-8.4, any refusal to renew a policy or coverage, as applicable, which is not based upon the standards set forth in (a) through (c) above shall be submitted to the Commissioner of Insurance for review no later than 120 days prior to the expiration of the policy. The Commissioner shall, in writing, acknowledge receipt of any refusal to renew submitted pursuant to this subsection. The Commissioner shall, within 45 days of receipt, either disapprove or authorize issuance of any nonrenewal submitted by an insurer for review and acknowledged by the Commissioner pursuant to this subsection. If the Commissioner shall fail to either disapprove or authorize issuance of the nonrenewal within such 45-day period, issuance of the nonrenewal shall be deemed to be authorized.

11:3-8.4 Additional nonrenewals based on underwriting guidelines

(a) An insurer may issue notice of nonrenewal based upon a failure to meet current underwriting standards as specified in such insurer's underwriting guidelines provided that such nonrenewals may be issued only with respect to a policy:

1. Issued by the insurer to any policyholder who was cancelled pursuant to N.J.S.A. 17:29C-7 or nonrenewed pursuant to this subchapter; or

2. Issued by the insurer to any policyholder who was last insured through a statutorily mandated residual market insurance mechanism; or

3. Issued by the insurer to any policyholder who is a first-time applicant for automobile coverage.

i. For the purposes of this section, the term "first-time applicant" shall mean a person seeking automobile insurance for the first time, including a child applying for a policy in his or her own name after being on their parent's policy.

(b) Pursuant to the provisions of N.J.S.A. 17:22-6.14a1., an insurer's underwriting guidelines shall not be arbitrary, capricious or unfairly discriminatory.

1. Nonrenewals based upon one or more of the following reasons are specifically prohibited:

i. The race, religion, nationality or ethnic group of an insured;

ii. Solely upon the lawful occupation or profession of an insured, except that this provision shall not apply to any insurer, agent, or broker which limits its market to one lawful occupation or profession, or to several related lawful occupations or professions;

iii. The principal location of the insured motor vehicle, unless such decision is for a business purpose which is not a mere pretext for unfair discrimination. The insurer shall state the business purpose for such nonrenewal and provide the Department with documentation of such purpose on request;

iv. Solely upon the age, sex or marital status of an insured, except that this subparagraph shall not prohibit rating differentials based upon age, sex or marital status;

v. The insured previously obtained insurance coverage through a residual market insurance mechanism;

vi. Another insurer previously declined to insure the insured or terminated an existing policy of the insured.

(c) When policies are written subject to nonrenewal pursuant to this section, the company shall document that the insured is a first time applicant, was cancelled pursuant to N.J.S.A. 17:29C-7 or nonrenewed pursuant to this subchapter or was last insured through a statutorily mandated residual market insurance mechanism. ***Insurance companies shall maintain copies of such documentation for a period of not less than five years.*** Such documentation shall be available to the Department on request.

(d) Issuance of a notice of nonrenewal pursuant to this section shall be limited to a period of three years from the date as of which the policy becomes effective after first issuance.

11:3-8.5 Reporting requirements

(a) The Commissioner will review and monitor the operation of this subchapter to ensure compliance with its provisions, and further, to determine whether depopulation of the residual market is being effected through the utilization of the non-renewal procedures specified at N.J.A.C. 11:3-8.4

*[(b) Every insurer except as defined in (e) below shall maintain a record, in such detail as may be required by the Commissioner, of all policies subject to this subchapter which are:

1. In force in each rating territory as of December 31 of each calendar year;

2. Voluntarily written by the insurer in each rating territory, specifying separately:

i. Policies issued to first-time applicants; and

ii. Policies issued to insureds who were previously cancelled pursuant to N.J.S.A. 17:29C-7 or nonrenewed pursuant to this subchapter; and

iii. Policies issued to insureds previously insured through a statutorily mandated residual market mechanism.

3. Terminated by the insurer in each rating territory pursuant to the provisions of N.J.S.A. 17:29C-7(B); and

4. Nonrenewed or conditionally renewed by the insurer in each rating territory specifying separately:

i. Policies nonrenewed or conditionally renewed pursuant to N.J.A.C. 11:3-8.3.

ii. Policies nonrenewed or conditionally renewed pursuant to N.J.A.C. 11:3-8.4.

(c) Each insurer except as defined in (e) below shall file with the Commissioner an annual report containing the information required to be maintained by (b) above. The report shall be in a format to be prescribed by the Commissioner.

1. Reports for the -month period ending December 31, 1986 and for each full calendar year thereafter shall be filed with the Commissioner annually on May 1 after the close of the preceding calendar year.]*

*[(d)]***(b)* **In order to review and monitor the operation of this subchapter as indicated in (a) above* [T]**t*he Commissioner may require the filing of such *[additional]* reports as *he or* she deems necessary *[to effectuate the requirements of this subchapter]*.**

*[(e) Any insurer that does not write at least 0.5 percent of the New Jersey private passenger automobile market, based on direct premiums written shall be exempt from the reporting requirements of this section.

1. The method of calculating a market share report are set forth at N.J.A.C. 11:3-20.7.]*

11:3-8.6 Separability

If any provision of this subchapter or its application to any person or circumstances is held invalid, the remainder of this subchapter and its application to other persons or circumstances shall not be affected.

11:3-8.7 Penalties

(a) Any person violating the provisions of this subchapter shall be subject to such penalties as may be authorized by law.

(b) In addition to any such penalties, the Commissioner may, after notice and hearing, suspend or revoke the rights of any insurer or group of insurers under N.J.A.C. 11:3-8.4.

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EXHIBIT A

COMPANY LETTERHEAD INFORMATION GOES HERE

Date
Policy No.
Expiration Date

Insured's Name
and Address

Dear Policyholder:

Your automobile insurance policy is due to expire on (date).
Under New Jersey law you have the right TO RENEW your automobile policy with our company. It is our understanding that you have received written notification from your agent of your right to renew. Your agent has informed us, however, that after being so notified, you agreed in writing to the nonrenewal of your policy with us because your agent has obtained comparable coverage with another company. We have also been informed by your agent that your new policy will not be issued through the New Jersey Automobile Full Insurance Underwriting Association, also known as the JUA.

If any of these statements are not true and you wish to have your policy renewed by the (name of company) insurance company, please contact us before (date).

If your replacement policy should be cancelled by your new company within 60 days after its effective date, you also have the right TO RENEW your old coverage unless you have been cancelled by the new company for:

1. Nonpayment of premium, or
2. Suspension or revocation of car registration or driver's license.

If you want to renew your policy with our company, contact your agent or write or telephone us at:

New Jersey Telephone Number or 800 Number
Address

EXHIBIT B

COMPANY LETTERHEAD INFORMATION GOES HERE

Date
Policy No.
Expiration Date

Insured's Name
and Address

Dear Policyholder:

Your automobile insurance policy is due to expire on (date).

Your insurance agent (name of agent) is no longer an agent for the (name of company) insurance company. We have not been notified whether your agent wishes to renew your policy with our company. Under New Jersey laws, failure to request renewal means that your agent has obtained comparable coverage with another company.

If any of these statements are not true and you wish to have your policy renewed by the (name of company) insurance company, please contact us before (date).

Under New Jersey laws, we MUST RENEW your auto insurance if you want us to. You are not eligible to be placed in the New Jersey Automobile Full Insurance Underwriting Association, also known as the JUA.

If you have chosen to place your automobile insurance policy with another insurance company and it is cancelled by the new company within 60 days after effective date, you also have the right TO RENEW your old coverage with us unless you have been cancelled by the new company for:

1. Nonpayment of premium, or
2. Suspension or revocation of car registration or driver's license.

If you want to renew your policy with our company, contact your agent or write or telephone us at:

New Jersey Telephone Number or 800 Number
Address

(a)

**Rating Organizations: Private Passenger
Automobile Rate Filings**

Adopted New Rule: N.J.A.C. 11:3-17

Adopted Repeal: N.J.A.C. 11:3-17

Proposed: June 2, 1986 at 18 N.J.R. 1171(b).

Adopted: September 16, 1986, by Kenneth D. Merin,
Commissioner, Department of Insurance.

Filed: September 16, 1986, as R.1986 d.419, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:29A-4 and 17:29A-14.

Effective Date: October 6, 1986.

Expiration Date: January 6, 1991.

Summary of Public Comments and Agency Responses:

The Department received four written comments on its proposed repeal of N.J.A.C. 11:3-17 (Rating Organizations: Private Passenger Automobile Filings) and promulgation of a replacement regulation with the same title and citation. Comments were submitted by two insurers, Allstate and New Jersey Manufacturers Insurance Company, the Insurance Services Office (ISO) and an actuary employed by ISO. The commenters offered general observations regarding the proposal, raised legal arguments of both a general and specific nature and addressed questions or criticisms to specific provisions.

The Department found many of the general comments on this proposal to be quite similar to those submitted in conjunction with the Department's original adoption of N.J.A.C. 11:3-17. For example, commenters once again argued that the regulation would not accomplish its stated goal of promoting price diversity in the automobile insurance marketplace. The Department's proposal was sharply criticized as attacking a symptom of the illness in the marketplace rather than addressing the underlying causes. It was also asserted that the rule may, in fact, be counterproductive with respect to other efforts aimed at opening the market.

One writer attributed the current state of the market to various factors, including the existence of a large residual market population, a 12 year history of significant rate inadequacy, compulsory insurance, substantial restrictions on nonrenewal and a unique Public Advocate procedure. The interplay of these factors, it was claimed, has caused independent insurers to join ISO, particularly as a means to obtain needed rate relief. The commenter argued that price competition cannot be reintroduced into the marketplace simply by prohibiting insurers from exercising their right to use bureau rates.

At the same time, other commenters objected to the Department's observations concerning the lack of price diversity in the automobile insurance market. One writer noted that even in New Jersey's poorly functioning private passenger automobile market price diversity is evident among the leading companies through the use of deviations and dividend programs.

It is obvious that many factors have contributed to the current state of the automobile insurance market. However, the Department does not concur with the commenter's analysis of the situation. The Department continues to perceive N.J.A.C. 11:3-17 as a mechanism which will promote price diversity.

The Department finds little evidence of substantial price diversity in the market despite the contentions of commenters regarding the level of diversity now found in the market because of deviations and dividend programs. It must also be remembered that such programs are permissive in nature. Other comments on the proposal included the following.

COMMENT: One insurer suggested that the goal of promoting price diversity could be achieved in less disruptive fashion by promulgating a regulation setting forth streamlined procedures applicable to the filing of downward deviations in currently approved rates. A deviation rule, currently in place in Pennsylvania (Pa. Code 130.1 et seq.), was recommended as a model.

RESPONSE: The Department acknowledges the merit of this suggestion and has proposed a new rule which establishes streamlined procedures for the filing of downward deviations in currently approved

rates. The proposal cited, N.J.A.C. 11:1-16, is, in fact, closely patterned after the Pennsylvania rule recommended by this commenter. (See the proposal in this issue of the Register.)

At the same time, however, it must be noted that the filing of such deviations is permissive. As such, the proposed new rule N.J.A.C. 11:1-16 cannot be viewed as an alternative to N.J.A.C. 11:3-17.

COMMENT: The Insurance Services Office objected to certain characterizations contained in the Department's original adoption of N.J.A.C. 11:3-17 concerning the purpose of the rating organization, namely, that it is intended to be of service to small companies. ISO took note of the many services it performs for its members and subscribers, large and small. The services provided by ISO are those which can be most efficiently performed collectively or where economies of scale serve to enhance rather than diminish competition. ISO stated that its policy is to encourage independent pricing activity while continuing to provide information to insurers to aid them in making intelligent and informed pricing decisions.

In connection with this concern, ISO questioned the effect of the rule on ISO operations in a business sense. It was noted that companies currently purchase rate filing affiliation from ISO on a state by state, line by line basis. Since the regulation impacts on an insurer's ability to utilize the ISO rate, the organization is unable to inform companies of precisely what services it is purchasing from ISO.

RESPONSE: The Department recognizes that a rating organization provides many services to its members and subscribers and the market share of the insurer may not be a relevant consideration in all instances. The reference to small insurers in the Department's statement may not be entirely accurate.

However, a Federal study on the history of rating organizations indicates that such organizations were originally developed to protect insurer solvency by ensuring that all insurers used adequate rates. This was accomplished by pooling the data of all insurers thereby creating a credible ratemaking base. Additionally, rating organizations provided member insurers with actuarial expertise at a time when such expertise was not widely available.

To the extent that individual insurers now have sufficient market volume to engage in credible ratemaking and given the availability of actuarial expertise, performance of rate-making function by the bureau for such insurers is called into question. Nonetheless, the Department's rule does not prohibit the rating organization from filing rates on behalf of its members nor from providing them with statistical and other services. The regulation does, however, assert the Department's right to review the rates of any insurer for compliance with statutory standards. It is recognized that this review may result in some insurers being precluded from adopting the ISO rate and this, in turn, may impact on ISO business operations. This consideration does not remove the Department's obligations under the law.

COMMENT: Two commenters objected to the rule on legal grounds. These writers argued that its requirements infringe on the statutory rights of insurers to join rating organizations and on the rating organization's right to make rates on behalf of its members and subscribers.

One commenter raised several other legal arguments. First, this commenter argued that the rule constituted an abuse of discretion and is *ultra vires* in that it requires new data compilations beyond the level of detail called for in N.J.S.A. 17:29A-5.

Second, this writer argued that the rule contains provisions that are arbitrary and capricious. For example, the commenter asserted that the use of a two percent share of the voluntary market as a trigger for providing separate company data is arbitrary since it is not based on actuarial principles. The commenter also contended that the five percent figure used in the definition of "substantially different" is arbitrary and not supported by actuarial data. These views were shared by the actuary who commented on the rule. This actuary also doubted whether an individual insurer with a two percent market share would have credible data to make its own rates.

Third, this writer further asserted that the proposed rule contains statements that are not based on law or fact. The statements in question concern the rule's effect on price diversity and the underlying purpose of rating organizations and have been addressed by the Department elsewhere in this summary. This commenter also complained about a statement made in the proposal indicating that the rule will ensure compliance with N.J.S.A. 17:29A-4 and 14.

Fourth, the commenter argued that the proposal is manifestly unfair, oppressive and in contravention of a company's vested legal rights in that it ment made in the proposal indicating that the rule will ensure compliance with N.J.S.A. 17:29A-4 and 14.

Fourth, the commenter argued that the proposal is manifestly unfair, oppressive and in contravention of a company's vested legal rights in that it is to provide for a means by which it may implement its own rate indications. It was further argued that the rule is vague and ambiguous.

Finally, the commenter argued that the proposed rule is unfair and an abuse of discretion in that there is a likelihood that inconsistent fact-finding procedures and actuarial methodologies will be applied to the two percent companies in order to facilitate the achievement of certain social goals.

RESPONSE: The Department rejects the legal arguments advanced concerning the rule's impact on the statutory rights of rating organizations and their members and subscribers. As previously indicated, the rule does not interfere with a rating organization's statutory right to make rates on behalf of members and subscribers and the right of independent insurers to become members of rating organizations. However, "substantially different" insurers, as that term has been defined in the adopted rule, will be precluded from using the rating organization rate in order to ensure compliance by those insurers with the statutory mandate that rates not be excessive, inadequate or unfairly discriminatory. N.J.S.A. 17:29A-1 et seq.

The Department finds the charge that the rule is an abuse of discretion and *ultra vires* in that it requires the rating organization to provide individual company data to be without merit. The Commissioner has broad powers under N.J.S.A. 17:29A-1 et seq. to require data to ensure that rates are not excessive, inadequate or unfairly discriminatory. Furthermore, the Commissioner's broad powers are supported by case law, a Formal Attorney General's Opinion and various other reports.

Similarly, the Department rejects the assertions that the two percent market share trigger for providing separate data is arbitrary or will result in submission of data which is not credible. The Department's actuarial staff has found that a two percent market share provides a credible data base for independent rate making. In fact, a lower market share trigger could be supported; however the Department feels that the two percent trigger is sufficient at this time to stimulate price diversity.

With respect to the commenter's assertion that the definition of "substantially different" is arbitrary and not supported by actuarial principles, the Department points out that the five percent variation from the rating organization rate is the same percentage used by the Legislature in the Excess Profits Law at N.J.S.A. 17:29A-5.3 to calculate excess profits. This percentage was selected by the Department to make this rule consistent with the insurance laws of New Jersey as well as other rules promulgated by the Department.

The Department finds the commenter's assertion that this rule will not ensure compliance with the standards set forth in the rating laws to be unsupported and therefore rejected.

In regard to the contention that the rule violates the due process and equal protection rights of insurers by not informing them on what procedures are to be followed in filing for a rate increase, these rights are not infringed upon since such insurers can file their own rates or use their currently approved rate level.

In regard to the commenter's final legal objection, the Department does not intend to use inconsistent methodologies and fact-finding procedures to obtain social goals. The commenter's assertion is mere speculation.

COMMENT: With respect to N.J.A.C. 11:3-17.4(a)1.ii., commenters argued that separate loss development data broken out and split between paid and outstanding losses could be provided but only on a total limits basis. Commenters claimed that such data would be sufficient for this rule's purpose.

RESPONSE: Upon reviewing the statistical plan of the commenters, the Department believes that the commenters have the ability to provide the data required by this subparagraph on a basic and total limits basis. Consequently, the Department shall anticipate the commenters' submission of this data in the appropriate manner.

COMMENT: In regard to N.J.A.C. 11:3-17.4(a)1.v., one commenter argued that "investment income data showing compliance with the Department's rules and procedures for computing investment income" can only be provided for the aggregate industry filing. This commenter felt that although the rating organization can supply individual company experience, it would be inappropriate for the rating organization to "show compliance" since that would involve an interpretation of individual company experience.

RESPONSE: The Department does not find it inappropriate for a rating organization to show compliance. The rule simply requires the rating organization to run the individual company data through the

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Clifford Formula. Furthermore, it is the responsibility of the rating organization to ensure that the information it receives from individual insurers is accurate.

COMMENT: Two commenters raised general technical questions with respect to N.J.A.C. 11:3-17.5 concerning review procedures. One commenter requested clarification regarding the rights of the Public Advocate under this section. The same commenter also sought clarification of the legal rights of the "substantially different" companies under this section. This writer also inquired as to what procedures the "substantially different" insurers follow that under this section. Finally, the ISO actuary expressed concern that the rates for the New Jersey Automobile Full Insurance Underwriting Association (N.J.A.F.I.U.A.) would be distorted if the "substantially different" insurers disaffiliated from the rating organization. (N.J.A.F.I.U.A. rates are based on rating organization rates.)

RESPONSE: First, the information required by this rule is similar in purpose to the data required in all rate filings. Thus, the Public Advocate would have the right to review any information required by this rule who have been determined to be "substantially different", these companies have the same rights that they have always been entitled to under the Administrative Procedure Act.

In regard to the procedures that a substantially different insurer must follow, although not specifically mentioned in this section, a common sense approach suggests that such insurers should file their own rates and, unless otherwise ordered by the Commissioner, use their latest approved rates until their independent rate filings can be reviewed and a determination made by the Department. Finally, the Department's actuaries have advised that the rates for the N.J.A.F.I.U.A. would not be distorted if independent insurers disaffiliated from the rating organization.

COMMENT: One commenter suggested that the Department revise the rule to require that the Department give consideration to company dividend policies and deviations in evaluating the appropriateness of the insurers use of the rating organizations' filed rate. This commenter advised that several companies in New Jersey have used the paying of a large dividend at the end of a policy as a competitive tool to increase retentions.

RESPONSE: The Department recognizes that some insurers deviate from bureau rates or provide dividends to policyholders as a means to increase retentions. These methods, however, are permissive and cannot be viewed as alternatives to the requirements of the rule.

COMMENT: One writer inquired as to whether the two percent threshold is intended to apply on an individual company or group basis.

RESPONSE: The Department will consider market share on a group basis for purposes of this rule.

As a result of commentary on the proposal and further review by Department staff, the Department is amending the definition of "substantially different" set forth at N.J.A.C. 11:3-17.3 upon adoption to delete the reference to "plus" five percent as a basis for disapproving the insurer's use of the approved rating organization rate. It was not the Department's intent to prohibit such insurers from utilizing the approved ISO rate. Finally, the adoption includes technical amendments to N.J.A.C. 11:3-17.4(a) and 11:3-17.3.

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

SUBCHAPTER 17 RATING ORGANIZATIONS: PRIVATE PASSENGER AUTOMOBILE FILINGS

11:3-17.1 Purpose

The purpose of this subchapter is to promote price diversity and competition in the automobile insurance rate marketplace, and to guarantee compliance with the statutory standard that rates are not unreasonably high, inadequate, or unfairly discriminatory. N.J.S.A. 17:29A-4.

11:3-17.2 Scope

This subchapter shall apply to rating organizations filing a petition for the approval of private passenger automobile rates.

11:3-17.3 Definitions

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

"Substantially different" means a difference of *[plus or]* *at least* minus five percent from the rating organization's statewide rate level approved by the Department.

11:3-17.4 Private passenger automobile rate filings

(a) Upon filing of a petition for the approval of private passenger automobile rates for all members and subscriber companies, the rating organization, in addition, shall submit simultaneously the information as set forth below for each individual member or subscriber that has a two percent or greater share of New Jersey's voluntary private passenger automobile market and has authorized the rating organization to make rates on its behalf. Any filing made by a rating organization must contain, at a minimum, the most recent three years of loss, expense, financial, statistical and other data of its members and subscribers. The data required below for individual member and subscriber companies shall be for the same number of experience periods as set forth in the rating organization's filing made on behalf of all its members and subscribers*[*] *and shall:*

1. Provide separate data that was used in the development of the statewide rate level including:

- i. Premiums at present rates or on present level;
- ii. Loss development data broken out and split between paid and outstanding losses;
- iii. Incurred losses showing the number of claims and exposures;
- iv. Insurance Expense Exhibit (IEE) data underlying the expected loss ratio; and
- v. Investment income data showing compliance with the Department's rules and procedures for computing investment income.

2. Provide separate trend data broken out to show:

- i. Paid losses by quarter;
- ii. Number of paid claims by quarter; and
- iii. Number of exposures by quarter.

3. Provide separate territorial data broken out to show:

- i. Number of claims;
- ii. Dollar amount of incurred losses;
- iii. Exposures by territory; and
- iv. Statewide total of exposures.

(b) Market share percentage shall be calculated by dividing the insurer's most recent calendar year direct written premiums reported in the Annual Statement, page 14, lines 19.1, 19.2 and 21.1, by the total direct written premiums for all insurers in this State for the same Annual Statement lines.

(c) The total direct written premiums for all insurers in New Jersey for the specific lines shall be published annually by the Department of Insurance in the New Jersey Register on or before June 1.

11:3-17.5 Review procedures

(a) The Commissioner shall review the rating organization's rate filing made on behalf of all its members and subscribers to determine whether this filing is in accordance with the statutory standards of N.J.S.A. 17:29A-14.

(b) The Commissioner shall also review the individual company data submitted in accordance with N.J.A.C. 11:3-17.4(a), 1, 2 and 3 to determine the individual statewide rate level for each company for whom data is submitted.

(c) If the Commissioner determines that the rating organization's proposed rate level is not unreasonably high, inadequate or unfairly discriminatory, the Commissioner shall issue an order approving the rate. In addition, if the Commissioner determines that the rate level for any of the individual companies is substantially different from the rating organization's approved rate level, the Commissioner shall issue an order disapproving the use of the rating organization's approved rate by these individual companies.

(d) If the Commissioner determines that the rating organization's proposed rate level is unreasonably high, inadequate or unfairly discriminatory, the Commissioner shall issue an order disapproving the rate and advising the rating organization as to what rate level the Commissioner would approve. In addition, the Commissioner shall advise as to which of the individual companies, based on the "substantially different" test, would be precluded from using the rating organization rate that the Commissioner would approve.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS

General Rules of Practice

Referral Fees

Adopted New Rule: N.J.A.C. 13:44-2.5

Proposed: August 4, 1986 at 18 N.J.R. 1515(b).

Adopted: September 10, 1986 by State Board of Veterinary

Medical Examiners, Jean M. Buist, D.V.M., President.

Filed: September 15, 1986 as R.1986 d.414, **without change**.

Authority: N.J.S.A. 45:16-9.9.

Effective Date: October 6, 1986.

Expiration Date: August 20, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

13:44-2.5 Referral fees

A licensee shall not pay a fee to obtain a patient nor accept a fee for the referral of a patient.

(b)

DIVISION OF STATE POLICE

Firearms Dealer Rules

Adopted Repeal and New Rule: N.J.A.C. 13:54

Proposed: January 6, 1986 at 18 N.J.R. 51(a).

Adopted: September 5, 1986 by Colonel Clinton L. Pagano,

Superintendent, Division of State Police.

Filed: September 15, 1986 as R.1986 d.413, **with technical and substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 2C:58-1, et seq.

Effective Date: October 6, 1986.

Expiration Date: October 5, 1991.

Summary of Public Comments and Agency Responses:

The Division of State Police received comments from a representative of the National Rifle Association and from the Coalition of New Jersey Sportsmen. Both groups offered comments on the same proposals and for the purpose of clarity the following represents the comments received with the responses of the Division.

COMMENT: Both groups commented upon the various fees which are imposed pursuant to statutory and regulatory authority in matters of this type. The groups noted their opposition to such fees and confirmed that they are contesting such fees in some other forum.

RESPONSE: With respect to the assessment of fees in accordance with various statutory provisions, the law is clear that such fees authorized by statute are appropriate and shall be imposed in matters of this type.

COMMENT: The comments noted that the definition of "gunsmith", as proposed, was overly broad and might include persons who would not actually be in the business of being a gunsmith.

RESPONSE: The Division has accepted the comment favorably and has changed the proposed rule to reflect that a gunsmith is a person who is "in the business" of repairing or servicing firearms.

COMMENT: Both groups commented that the limitations concerning the issuance of a permit to purchase or an identification card are inappropriate when an applicant has merely been treated for a mental disorder or psychiatric condition.

RESPONSE: The proposed rule concerning this issue is in accordance with the pertinent statutory provision.

COMMENT: Both groups commented as to the time period within which an identification card must be issued and also commented that the proposed rules fail to include other information concerning any additional conditions or requirements above and beyond the statutory guidelines.

RESPONSE: The pertinent provisions of the law set forth the time periods for issuance of the permits in question and further provide adequate notice concerning other issues involved in the application process.

COMMENT: Both groups commented as to the proposed requirement that a firearms dealer must satisfy local zoning requirements for the operation of such a business. The thrust of the comments was that zoning laws are contradictory and vague and may not have been enforced for many years by the municipalities.

RESPONSE: The intention of the firearms laws in New Jersey is to safeguard the public health, safety and welfare. It is appropriate that local zoning requirements relative to public health, safety and welfare should be adhered to by a firearms business located within a municipality.

COMMENT: Comments were received concerning the use of the terms "frame" and "receiver" as they relate to the terms handgun and rifle.

RESPONSE: The Division acknowledged the comments and reviewed the issues concerning the use of the terms and has determined to adopt the rule as proposed.

COMMENT: A comment was received questioning the statutory authority of the Division of State Police to inspect the premises of a firearm dealer "at any time." The comment asserted this is not reasonable and such inspection should be restricted to reasonable hours.

RESPONSE: The Division agrees with this comment and the proposal has been changed to reflect that security systems for firearms dealers shall be subject to inspection at "all reasonable hours."

COMMENT: The appropriate regulation should point out that an applicant who has been denied a permit or identification card should be notified of that denial in writing.

RESPONSE: The Division agrees that the notification of a denial should be in writing and the proposal is changed accordingly.

Other comments from both groups were of a general nature concerning the statutory and regulatory authority of the Division of State Police. The Division of State Police responded by citing the appropriate statutory provisions to support the proposals.

Full text of the adopted repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:54.

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 54 FIREARMS AND WEAPONS

SUBCHAPTER 1 FIREARMS PERMIT AND IDENTIFICATION CARD

13:54-1.1 Firearms permit and identification card; general

This subchapter prescribes requirements for issuance of firearms purchaser identification card, a permit to purchase a handgun and the general rules for holders of such permits and identification cards.

13:54-1.2 Permit or identification card required

No person shall receive, purchase or otherwise acquire a rifle, shotgun, antique cannon, or handgun, except antique rifles and shotguns, unless he has first obtained a firearms purchaser identification card or a permit to purchase a handgun as issued under this chapter.

13:54-1.3 Definitions

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

"Ammunition" means various projectiles together with their fuses, propelling charges and primers that are fired from firearms or weapons.

"Body armor penetrating bullets" means any bullet primarily designed for handguns and whose core is of tungsten carbide or hard bronze *[or with a] *if the* jacket *is* thicker than .025 of an inch or is made of other material which is harder than a rating of 72 or greater on the Rockwell B. Hardness Scale and is capable of breaching or penetrating body armor.

"Firearm or firearms" means any handgun, rifle, shotgun, machine gun, automatic or semi-automatic rifle, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectile, ball, slug, pellet, missile or bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances. It shall also include, without limitation, any firearm which is in the nature of an air gun, or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas, or vapor, air or compressed air, or is ignited by compressed air, and

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ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person.

"Gunsmith" means a person who *[repairs]* *is in the business of repairing* or *[services]* *servicing* firearms.

"Handgun" means any pistol, revolver, or other firearms originally designed or manufactured to be fired by the use of single hand.

"Manufacturer" means any person(s) who receive(s) or obtain(s) raw materials or parts and processes them into firearms or finished parts of firearms, except a person who exclusively processes grips, stocks, and other nonmetal parts of firearms. The term does not include a person who repairs existing firearms or receives new and raw materials or parts solely for the repair of existing firearms.

"Person" means any individual, corporation, partnership, firm or association of any kind or nature whatsoever; any public entity of any kind or nature; the plural as well as the singular and any gender.

"Retail dealer" means any person, including a gunsmith, except a manufacturer or a wholesale dealer, who sells, transfers, or assigns for a fee or profit any firearm or parts of firearms or ammunition which he has purchased or obtained with the intention or for the purpose of reselling or reassigning to persons who are reasonably understood to be the ultimate consumer, and includes any person who is engaged in the business of repairing firearms or who sells any firearm to satisfy a debt secured by the pledge of a firearm.

"Rifle" means any firearm designed to be fired from the shoulder and using the energy of the explosive in a fixed metallic cartridge to fire a single projectile through a rifled bore for each single pull of the trigger.

"Sawed-off shotgun" means any shotgun having a barrel or barrels of less than 18 inches in length measured from the breach to the muzzle, or a rifle having a barrel or barrels of less than 16 inches in length measured from the breach to the muzzle, or any firearm made from a rifle or a shotgun, whether by alteration, or otherwise, if such firearm as modified has an overall length of less than 26 inches.

"Shotgun" means any firearm designed to be fired from the shoulder and using the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shots or a single projectile for each pull of the trigger, or any firearm designed to be fired from the shoulder which does not fire fixed ammunition.

"Superintendent" means Superintendent of State Police.

"Weapon" means anything readily capable of lethal use or of inflicting serious bodily injury. The term includes, but is not limited to, all:

1. Firearms, even though not loaded or lacking a clip or other component to render them immediately operable;
2. Components which can be readily assembled into a weapon; and
3. Gravity knives, switch-blades knives, daggers, dirks, stilettos, or other dangerous knives, billies, blackjacks, bludgeons, metal knuckles, sandclubs, slingshots, cestus or similar leather bands studded with metal filings or razor blades imbedded in wood; and any weapons or other device which projects, releases or emits tear gas or any other substance intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispensed in the air.

"Wholesale dealer" means any person, except a manufacturer, who sells, transfers, or assigns firearms, or parts of firearms, to persons who are reasonably understood not to be the ultimate consumer, and includes persons who receive finished parts of firearms and assemble them into completed or partially completed firearms, in furtherance of such purpose, except that it shall not include those persons dealing exclusively in grips, stocks and other nonmetal parts of firearms.

13:54-1.4 Application for a firearms purchaser identification card (rifles, shotguns and antique cannons only)

(a) Every person applying for a firearms purchaser identification card shall furnish such information and particulars as are set forth in the application form designated STS-33. Forms can be obtained from police departments and State Police stations, and licensed retail firearms dealers.

(b) The completed application, together with two sets of the applicant's fingerprints and fingerprint fees as established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.*[5]* *6* et seq. (L. 1985 c. 69), a consent for mental health records search form designated STS-1 and a nonrefundable application fee of \$5.00 shall be submitted to the chief of police of an organized full time police department in the municipality in which the applicant resides. If the municipality does not have an organized full time police department, application shall be made to the state police station servicing the municipality in which the applicant resides.

13:54-1.5 Prerequisites for permit or identification card

Every person issued a permit to purchase, or an identification card, shall be 18 years of age *or older and shall not be subject to any of the limitations set forth herein* *[and of good repute in the community in which he lives]*.

13:54-1.6 Limitations on issuance

(a) A permit to purchase, or an identification card, shall not be issued to any person who is subject to any of the following disabilities:

1. Convicted of any crime;
2. A drug dependent person;
3. Confined or treated for a mental disorder or psychiatric condition;
4. A habitual drunkard or alcoholic;
5. Suffering from a physical defect or disease which would make it unsafe for him to handle firearms;
6. Where the issuance would not be in the interest of the public health, safety and welfare;
7. Knowingly falsifies any information on the application forms for a permit to purchase a handgun or firearms purchaser identification card.
8. Refuses to waive statutory or other right of confidentiality relating to institutional confinement.

13:54-1.7 Exception for physical disability or mental disorder

A permit or identification card shall be issued to a person who suffers from a physical defect or disease, or mental disorder, or is an alcoholic if a certificate of a medical doctor or psychiatrist licensed in New Jersey or other satisfactory proof that he is no longer suffering from that particular disability in such a manner that it would interfere with or handicap him in the handling of firearms is provided by the applicant.

13:54-1.8 Limitations in the interest of public safety or welfare

A permit or identification card shall not be issued to any person where issuance would not be in the interest of the public health, safety and welfare.

13:54-1.9 A non-resident application

Any person who is not a resident of this State shall make application at a State Police station.

13:54-1.10 Issuance of identification card

(a) The chief of police or the Superintendent of State Police, as the case may be, shall cause the applicant to be investigated and either approve or disapprove the application upon completion of the investigation.

(b) If the application is approved, the chief of police or the superintendent shall issue a firearms purchaser identification card.

13:54-1.11 Duration

The identification card shall be valid permanently or until such time as the holder becomes subject to any of the disabilities set forth in this subchapter.

13:54-1.12 Return of identification card

Upon becoming subject to any of the disabilities set forth in this subchapter, the card shall be void and shall be returned to the Superintendent within five days.

13:54-1.13 Revocation

(a) A firearms purchaser identification card may be revoked by the judge of the Superior Court of the county wherein the card was issued.

(b) The county prosecutor, any law enforcement officer or any citizen may request a hearing for revocation by applying to the Superior Court having jurisdiction.

13:54-1.14 Duplicate firearms purchaser identification card

(a) Persons shall apply for a duplicate firearms purchaser identification card to replace a lost, stolen or mutilated card, or a change of residence by the holder within 30 days of such loss, theft, mutilation, or change of residence.

(b) The applicant will complete an application for a duplicate firearms purchaser identification card designated as form STS-3 and a consent for mental health records search designated as form STS-1 and present them to the police department where the applicant resides or the State Police in all other cases.

(c) It shall be the responsibility of the chief of police of the municipality wherein the applicant currently resides or the Superintendent of State Police in all other cases, to make a criminal history records check with the State Bureau of Identification to determine if the applicant is subject to any of the disabilities as provided by law and to issue the duplicate card, should the applicant qualify. The applicant shall pay the appropriate fee for the Criminal History Record Check as established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.*[5]* *6* et seq. (L. 1985 c. 69).

13:54-1.15 Application for permit to purchase a handgun

(a) Every person applying for a permit to purchase a handgun shall furnish such information and particulars as set forth in the application form designated STS-33A. Forms can be obtained from police departments and State Police stations, and licensed retail firearms dealers.

(b) The completed application together with two sets of the applicant's fingerprints and fingerprint fees as established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.*[5]* *6* et seq. (L. 1985 c. 69), a consent for mental health records search from designated STS-1 and a nonrefundable fee of \$2.00 for each permit requested, shall be submitted to the chief of police of an organized full time police department in the municipality in which the applicant resides or the State Police in all other cases.

(c) Applicants are not limited to one permit per application.

(d) The number of permits requested and each permit number shall be entered in the spaces provided on the application.

13:54-1.16 Issuance of a permit

(a) The chief of police or the Superintendent, as the case may be, shall cause the applicant to be investigated to determine whether the application should be approved or disapproved.

(b) If the application is approved, the chief of police or the Superintendent shall issue a permit to purchase a handgun.

13:54-1.17 Duration

(a) A permit to purchase a handgun shall be valid for a period of 90 days from the date of issuance and may be renewed by the issuing authority for an additional 90 days for a total of 180 consecutive days.

(b) Only one handgun can be purchased with each permit.

13:54-1.18 Appeal

(a) Any person denied a firearms purchaser identification card or a permit to purchase a handgun may request a hearing in the Superior Court of the county in which he resides or in the Superior Court of the county in which his application for a firearms purchasers identification card was filed if he is a nonresident.

(b) ***[The request for a hearing shall be made in writing within 30 days of the denial.]* *Any person denied a firearm purchaser identification card or a permit to purchase a handgun shall be notified in writing by the issuing authority of the reasons for the denial.***

(c) The request for a hearing shall be made in writing within 30 days of the denial.

SUBCHAPTER 2. HANDGUNS

13:54-2.1 Permit to carry handgun

This subchapter prescribes requirements for issuance of a permit to carry a handgun and the general rules for holders of such permits.

13:54-2.2 Permit required

No person, not otherwise permitted by law, shall carry, hold or possess a handgun in any automobile or other vehicle, or on or about this clothes or person, or otherwise in his possession or under his control in any public place or public areas without first having obtained a permit to carry the same in accordance with the provision of this chapter.

13:54-2.3 Application for a permit to carry a handgun

(a) Every person applying for a permit to carry a handgun shall furnish such information and particulars as set forth in the application form designated SP-642. Applications can be obtained at police departments and State Police stations.

(b) The completed application together with two sets of the applicant's fingerprints and fingerprint fees as established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.*[5]* *6* et seq. (L. 1985 c. 69), four photographs (1 1/2 x 1 1/2 square), a consent for mental health records search form designated STS-1 and a permit fee of \$20.00 payable to the County Clerk where the permit is to be issued shall be submitted to the chief of police of the municipality in which the applicant resides or the State Police if the applicant is a non-resident or an employee of an armored car company and in all other cases.

13:54-2.4 Proof of familiarity and need required

(a) All persons issued a permit to carry shall demonstrate that he is thoroughly familiar with the safe handling and use of handguns and that he has a justifiable need to carry such handgun.

(b) In addition to the requirements of N.J.S.A. 2C:58-4 any application to carry a handgun by an employee of an armored car company shall be accompanied by a letter from the chief executive officer of the armored car company verifying employment of the applicant; endorsing approval of the application; and agreeing to notify the superintendent within five

days of the termination of the employee or any person to whom a permit is issued and to obtain from the employee the permit which shall thereupon be surrendered to the superintendent.

13:54-2.5 Limitations on issuance

A permit to carry a handgun shall not be issued to any person who is subject to any of the disabilities which would prevent his obtaining a permit to purchase a handgun or a firearms purchaser identification card as provided in this chapter.

13:54-2.6 Approval of application

The chief of police or the Superintendent, as the case may be, shall cause the applicant to be investigated and either approved or disapprove the application after completion of the investigation. If the application is approved, it shall be forwarded to the county clerk for presentation to a judge of the Superior Court where the applicant resides, or if a nonresident to the county where he intends to carry the handgun.

13:54-2.7 Issuance of a permit to carry a handgun

(a) Upon being satisfied of the sufficiency of the application and the fulfillment of the provisions of Chapter 58, Laws of 1979, the judge shall issue a permit.

(b) The court may, at its discretion, issue a limited type permit which would restrict the applicant as to the types of handguns he may carry and where and for what purposes such handguns may be carried.

13:54-2.8 Appeal

(a) Any person making applications for a permit to carry a handgun who is denied approval by the chief of police or the superintendent, may request a hearing in the Superior Court of the county wherein the application was made. Such request shall be made in writing within 30 days of denial of approval of the application.

(b) If the application is denied by the judge of the Superior Court the appeal shall be made in accordance with law.

13:54-2.9 Duration

All permits to carry a handgun shall expire two years from the date of issuance or, in the case of an employee for an armored car company, upon termination of his employment by the company occurring prior thereto whichever is earlier in time.

(b) Permits may be renewed in the same manner and subject to the same provisions by which the original permit was obtained.

13:54-2.10 Return of permit

Upon becoming subject to any disability set forth in this chapter, or should the applicant need requirement no longer exist, the permit to carry a handgun shall be void and shall be returned to the superintendent within five days.

SUBCHAPTER 3. RETAIL DEALERS

13:54-3.1 Licensing of retail dealers; general

This subchapter prescribes requirements for issuance of a license for the retail sale of firearms, retail sale of ammunition, gunsmithing and the general rules for holders of such licenses.

13:54-3.2 Retail license required

No retail dealer shall sell or expose for sale or possess with intent to sell, any firearm, parts of firearms, ammunition, or engage in gunsmithing, unless he has first obtained a retail dealers license as issued under this chapter.

13:54-3.3 Application for license

(a) Every person, partnership or corporation applying for a license shall furnish such information and particulars as set forth in the application form designated SP-649 and in the case of partnerships and corporations, also the application form designated SP-649A. Such forms may be obtained from the Firearms Investigation Unit, Division of State Police, Box 7068, West Trenton, New Jersey 08625.

(b) The completed application, together with two sets of the applicant's fingerprints, a consent for mental health records search form designated STS-1 and a nonrefundable fee of \$50.00 for three years, in addition to the fingerprint fees as established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.*[5]* *6* et seq. (L. 1985 c. 69), shall be submitted to the superintendent.

(c) Any person who possesses an actual or equitable controlling interest in an applicant corporation shall complete the necessary application form and be fingerprinted.

13:54-3.4 Standards and qualifications

(a) Every individual proprietor, every member of a partnership, and every officer and director of a corporation, making application for a retail dealers license, shall possess the qualifications required to obtain a firearms purchaser identification card as provided in this chapter.

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(b) In the conduct of a retail business, no retail dealer, as provided in this subchapter, shall permit any employee or other person to engage in the purchase for sale or offering for sale of firearms, ammunition or engage in gunsmithing, unless such employee or person submits a completed application form NJSP-641 two sets of fingerprints, consent for mental health records search form STS-1 and would qualify to possess a firearms purchaser identification card as provided in this chapter and has been issued an employee license to sell firearms by the Superintendent of State Police. An employee who possesses a firearms purchaser identification card which was issued within two years previous to the employee application need not be fingerprinted, provided he includes the number of his firearms purchaser identification card in block number 29 of the application. A nonrefundable fee of \$5.00 shall be paid by the Retail Dealer to the Superintendent for each employee in addition to the fingerprint fees as established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.*[5]* *6* et seq. (L. 1985 c. 69).

(c) An employee who is licensed to engage in the purchase or sale of firearms, ammunition or engage in gunsmithing is permanently licensed until such time as he terminates his employment or becomes disabled as provided in this chapter.

(d) Should an employee be transferred from his licensed location to another location, within the same employer, that employee shall apply for a transfer of his employee license by submitting application form NJSP-641 consent for mental health records search form STS-1 and surrender his current employee license to the Superintendent of State Police.

(e) The retail dealer shall, within five days, return any employees' license for an employee who has been terminated, transferred, or has become disqualified as provided in this chapter, to the Superintendent of State Police.

(f) No retail dealer shall conduct a retail business in a mobile or temporary facility (mobile meaning easily moved from one location to another; temporary meaning facility not having permanency to it). Temporary includes but is not limited to garage sales, flea markets, gun shows and exhibits.

(g) No retail dealer shall conduct a retail firearms business unless local zoning requirements are satisfied for the operation of such a business.

13:54-3.5 Exemptions for physical handicap

A physical handicap shall not disqualify an applicant unless such handicap would interfere with the activities of the applicant or employee to the extent that it would endanger the public health, safety or welfare.

13:54-3.6 Exceptions for corporations

(a) A public corporation whose stock is listed on a major stock exchange at the time of filing of an application for a retail dealer's license shall not be required to furnish the personal data as set forth in the application form for officers or directors of such corporation or for the stockholders of such corporation unless such officer, directors or stockholders directly engage in the sale or purchase of firearms for the corporation.

(b) A certification shall be filed by the member or members holding an actual or equitable controlling interest in each corporation or partnership certifying that such member(s) shall take the appropriate action to inform all employees directly engaged in the sale, purchase or manufacture of firearms or ammunition of the pertinent laws and regulations governing the sale, purchase and manufacture of such firearms or ammunition.

13:54-3.7 Licensing

(a) The Superintendent shall cause the applicant to be investigated.

(b) The application shall then be forwarded by the superintendent to a judge of the Superior Court in the County wherein the retail dealer has his place of business.

(c) The judge shall issue a license to an applicant who conforms to the standards and qualifications prescribed by the Superintendent.

(d) A retail dealers license shall not be issued to any person who is subject to any of the disabilities which would prevent obtaining a permit to purchase a handgun or a firearms purchaser identification card as provided by this chapter.

13:54-3.8 Duration

A retail dealer's license shall be effective for three years from the date of issuance.

13:54-3.9 Renewal

(a) An applicant for renewal of a retail dealer's license shall follow the same procedure as required for the issue of the initial license. Such applications shall be accompanied by a nonrefundable fee of \$50.00 payable to the Superintendent of State Police.

(b) In addition to the licensee, all licensed employees who engage in the purchase or sale of firearms, ammunition or engage in gunsmithing, are required to submit renewal applications to continue transacting business for the licensee. *[An appropriate fee for a Criminal History Record Check shall be paid by the Retail Dealer for each Renewal Employee Application.]* *The fee for a criminal history record check shall be paid for each renewal employee application as established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.6, et seq. (L. 1985, c. 69).*

13:54-3.10 Revocation

(a) Any retail license may be revoked for breach of any of the conditions under which it was granted or provided for in this chapter, after a hearing by the issuing court.

(b) Any law enforcement officer may make application for such revocation to the Superior Court having jurisdiction.

(c) Any employee license may be revoked for breach of any conditions under which it was granted, or provided for in this chapter, by the Superintendent of State Police.

13:54-3.11 Location of business; security required

(a) The business shall be carried on only in the building or buildings designated in the license.

(b) Each retail dealer shall install a system for the prevention and detection of the theft of firearms or ammunition from the business premises.

(c) The proposed security system shall be subject to approval by the Superintendent of State Police, and plans for such proposed security system shall be submitted to the Superintendent prior to the installation thereof.

(d) The Superintendent shall prepare and furnish dealers a list of approved security systems.

13:54-3.12 Window display prohibited

No firearm, ammunition, or imitation thereof shall be placed in any window or in any part of the premises where it can readily be seen from the outside.

13:54-3.13 Requirements for sale of rifle or shotgun or receiver

Every purchaser must present a firearms purchaser identification card to the dealer who is required to confirm the identity of the purchaser. The purchaser must also sign a certificate of eligibility, filled out by the dealer or his licensed employee, for each rifle or shotgun or receiver purchased. The certificate shall be retained by the dealer.

13:54-3.14 Reimbursements for sale of a handgun or frame

(a) Every purchaser must present a valid permit to purchase a handgun to the dealer who is required to confirm the identity of the purchaser. A permit is valid for the purchase of one handgun or receiver. The dealer is also required to execute the following procedures:

1. Complete a form of register, which is part of the permit to purchase a handgun, (designated SP-671) for each handgun sold and obtain the signature and address of the purchaser in the purchaser's own handwriting;

2. Complete the permit to purchase a handgun in the space provided on the form;

3. Deliver the handgun unloaded and securely wrapped;

4. Forward the permit to purchase a handgun and form of register copies to the respective individuals, as noted on the left center of the forms, within five days of the date of sale. If the issuing authority is the State Police, both the original and the second copy of the permit to purchase and the form of register are to be forwarded to the State Police.

13:54-3.15 Permanent record or receipt and disposition

(a) Every retail dealer of firearms or gunsmith shall maintain a permanent record of each firearm acquisition and disposition, including firearm frames and receivers. The record shall be maintained in a bound form and shall be kept at the location where the business is being conducted. The purchase or other acquisition of a firearm by the licensed dealer must be recorded no later than at the close of the next business day following the date of such purchase or other acquisition. The record shall show the date each firearm was purchased or otherwise acquired, the type, manufacturer, importer, caliber or gauge, model, name and address of the person from whom received, and the serial number of the firearm. The sale or other disposition of a firearm must be recorded by the licensed dealer not later than the close of the next business day following the date of such sale or disposition. The record shall show the date of sale or other disposition of each firearm and the name and address of the person to whom the firearm was transferred. The information prescribed for the record required by the subchapter shall be in addition to the maintaining of the permit to purchase handgun and form of register (SP-671) and the certificate of eligibility NJSP-634.

(b) Every retail dealer of ammunition shall maintain a permanent record of ammunition acquisition and disposition. The record of purchase or acquisition shall consist of invoices or other commercial records which shall be filed in an orderly manner separate from other commercial records he maintains. Such record shall show the name of the manufacturer, the type, caliber or gauge, quantity of the ammunition acquired in the transaction, the date of each acquisition and from whom received. The record of sale or disposition shall be maintained in a bound form and shall contain the date of the transaction, name of manufacturer, caliber or gauge, quantity of ammunition sold, name, address and date of birth of purchaser, and identification used to establish the identity of purchaser. No record need be maintained for the sale or disposition of shotgun or rifle ammunition. However, sales or other dispositions of ammunition which are interchangeable between rifles and handguns, as well as hollow-nosed or dum-dum ammunition must be recorded. The records shall be maintained in chronological order by date of acquisition and disposition and shall be kept at the location the business is being conducted.

(c) The firearms and ammunition acquisition and disposition record as prescribed under this section need not be required, providing the dealer maintains an updated federal firearms and ammunition record on firearms or ammunition purchased or acquired and sold as prescribed in Title 26, Internal Revenue, Chapter 1 "Commerce in Firearms and Ammunition."

(d) Body armor penetrating bullets shall only be sold to a federally licensed collector of firearms and ammunition, military, law enforcement agencies and licensed firearms dealers.

1. Collectors will be limited to three rounds of each different cartridge.

2. The seller shall record all sales of such ammunition including the name of the purchaser, the agency represented, the authorizing chief of police or highest ranking officer, the date, time and amount of ammunition.

3. All of the above information shall be forwarded to the Superintendent of the State Police within 24 hours of the sale or disposition.

13:54-3.16 Records available to Division of State Police

Records are to be retained by the dealer and shall, for law enforcement purposes, be made available for inspection during reasonable hours to any member of the Division of State Police.

13:54-3.17 Records to Superintendent

Upon discontinuance or termination of a retail dealers license all firearm acquisition and disposition records and ammunition disposition records maintained as provided for in this chapter shall, within five days, be forwarded to the Superintendent of State Police. In addition, the retail dealers license and any employee licenses shall also be forwarded.

13:54-3.18 Appeal

Any person making application for a retail dealer license, who is denied approval by a Superior Court judge of the county wherein the application was made, may file an appeal in accordance with law.

SUBCHAPTER 4. WHOLESALE DEALERS AND MANUFACTURERS

13:54-4.1 General provisions

This subchapter prescribes standards and qualifications for registration of wholesale dealers and/or manufacturers of firearms and the general rules for holders of registration certificates to conduct such business.

13:54-4.2 Registration required

No person shall manufacture or sell at wholesale any firearm or part of a firearm unless he has registered under the provisions of this chapter.

13:54-4.3 Application for a certificate of registration

(a) Every person, partnership or corporation applying for a certificate of registration shall furnish such information and particulars as set forth in the applications forms designated STS-280 and 280A. The forms may be obtained from the Firearms Investigation Unit, Division of State Police, Box 7068, West Trenton, New Jersey 08625.

(b) Any person who possesses an actual or equitable controlling interest in the applicant shall complete the necessary application form and be fingerprinted.

(c) The completed application together with two sets of the applicant's fingerprints, a consent for mental health records search from STS-1 and a nonrefundable fee of \$150.00 for three years, in addition to the fingerprint fees as established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20*[5]* *6* et seq. (L. 1985 c. 69), shall be submitted to the Superintendent of State Police.

13:54-4.4 Standards and qualifications

(a) Every individual proprietor, every member of a partnership and every officer and director of a corporation, registered as a wholesale dealer and/or manufacturer of firearms shall possess the qualifications required to obtain a firearms purchasers identification card as provided in this chapter.

(b) In the conduct of a business to wholesale or manufacture firearms, no wholesale dealer or firearms manufacturer registered as provided in this subchapter shall permit any employee or other person to engage in the purchase or sale or offering for sale of firearms or finished parts of firearms, unless such employee or person submits completed application form NJSP-641 two sets of fingerprints, consent for mental health records search form STS-1 and would qualify to possess a firearms purchaser identification card as provided in this chapter and has been issued an employee license to sell firearms by the Superintendent of State Police. A nonrefundable fee of \$5.00 shall be paid by the employer to the Superintendent for each employee in addition to the fingerprint fees as established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.*[5]* *6* et seq. (L. 1985 c. 69).

(c) An employee who is licensed to engage in the purchase, sale or manufacturer of firearms is permanently licensed until such time as he terminates his employment or becomes disabled as provided in this chapter.

(d) Should an employee be transferred from his licensed location to another location, within the same employer, that employee shall apply for a transfer of his employee license by submitting application form NJSP-641 consent for mental health records search form STS-1 and surrender his current employee license to the Superintendent of State Police.

(e) The wholesale dealer and/or manufacturer shall, within five days, return any employee license for an employee who has been terminated, transferred or has become disqualified as provided by this chapter, to the Superintendent of State Police.

(f) No wholesale dealer and/or manufacturer shall conduct a business in a mobile or temporary facility (mobile meaning easily moved from one location to another; temporary meaning not having permanency to it). Temporary includes but is not limited to garage sales, flea markets, gun shows and exhibits.

13:54-4.5 Exemptions for physical handicap

A physical handicap shall not disqualify an application to be registered as a wholesale dealer or manufacturer of firearms unless such handicap would interfere with the activities of the applicant or employee to the extent that it would endanger the public health, safety and welfare.

13:54-4.6 Exceptions for corporations

(a) A public corporation whose stock is listed on a major stock exchange at the time of the filing an application for registration as a wholesale dealer and/or manufacturer of firearms, shall not be required to furnish the personal data as set forth in the application form STS-280 for officers or directors of such corporation or for the stockholders of such corporation, unless such officers, directors or stockholders directly engage in the sale or purchase of firearms for the corporation.

(b) A certification shall be filed by the member or members holding an actual or equitable controlling interest in each corporation or partnership certifying that such member(s) shall take the appropriate action to inform all employees directly engaged in the sale, purchase or manufacture of firearms or ammunition of the pertinent laws and regulations governing the sale, purchase and manufacture of such firearms or ammunition.

13:54-4.7 Certification; security required

(a) The Superintendent of State Police shall cause the applicant to be investigated and either approve or deny the application. If the application is approved, the superintendent shall issue a certificate of registration to wholesale and/or manufacture firearms or parts of firearms.

(b) Each registrant as a wholesale dealer and/or manufacturer shall install a system for the prevention a detection of the theft of firearms from the business premises.

(c) The proposed security system shall be subject to approval by the Superintendent of State Police and plans for such proposed system shall be submitted to the superintendent prior to installation thereof.

(d) The Superintendent shall prepare and furnish wholesale dealers and/or manufacturers a list of approved security systems.

(e) A certificate of registration for a wholesale dealer and/or manufacturer shall not be issued to any person who would not qualify for a firearms purchaser identification card as provided by this chapter.

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13:54-4.8 Duration

The certification of registration shall expire three years from the date of issuance.

13:54-4.9 Renewal

(a) An applicant for renewal of a certificate of registration shall follow the same procedure required for the initial registration. Renewal application(s) shall be accompanied with a fee of \$150.00 payable to the Superintendent of State Police.

(b) In addition to the registrant, all licensed employees who engage in the purchase or sale of firearms or parts of firearms are required to submit renewal applications in order to transact business for the registrant. An appropriate fee for a Criminal History Record Check shall be paid by the employer for each Renewal Employee Application.

13:54-4.10 Revocation

(a) Any certificate of registration may be revoked for breach of any of the conditions under which it was granted, or provided for in this chapter by the Superintendent of State Police.

(b) Any employee license may be revoked for breach of any conditions under which it was granted, or provided for in this chapter, by the Superintendent of State Police.

13:54-4.11 Appeals

Any person who has been refused registration as a manufacturer or wholesale dealer or any person whose name has been removed from registration by the superintendent, may appeal to the Superintendent within 30 days. If the appeal is denied by the Superintendent, he may appeal to the Appellate Division of the Superior Court.

13:54-4.12 Permanent record of receipt and disposition

(a) Each manufacturer and/or wholesale dealer of firearms shall record the type, model, caliber or gauge, and serial number of each complete firearm, frame or receiver he manufactures or otherwise acquires, and the date of manufacture or acquisition of such firearm, frame and receiver. This information shall be recorded no later than the close of the next business day following the date of manufacture or acquisition.

(b) A record of sale or other disposition of a firearm, frame or receiver must be recorded no later than the close of the next business day following the date of such sale or disposition. The record shall indicate the date of the sale or disposition of each firearm, frame or receiver and the name of address of the dealer to whom the firearm, frame or receiver was transferred.

(c) The firearms records as prescribed under this section need not be required providing the dealer maintains an updated federal firearms record on firearms manufactured, purchased or acquired and sold as prescribed in Title 26, Internal Revenue, Chapter I "Commerce in Firearms and Ammunition."

13:54-4.13 Records available to law enforcement agencies

Records are to be retained by wholesale dealers and/or manufacturers and shall, for law enforcement purposes, be made available for inspection during reasonable hours to any member of the Division of State Police.

13:54-4.14 Records to Superintendent

Upon discontinuance or termination of wholesale dealers and/or manufacturers certificate of registration, all firearm acquisition and disposition records maintained as provided for in this chapter shall, within five days, be forwarded to the Superintendent of State Police. In addition, the certificate of registration and any employee licenses shall also be forwarded to the Superintendent.

13:54-4.15 Identification of firearms required

Each registered manufacturer of firearms shall legibly identify each firearm manufactured by engraving, casting, stamping, or otherwise conspicuously placing or causing to be engraved, cast, stamped or placed on the frame, receiver or barrel thereof in a manner not susceptible to being readily obliterated, altered, or removed, an individual serial number not duplicating any serial number placed on any other firearm, manufactured and by engraving, casting stamping, or otherwise conspicuously placing or causing to be engraved, cast, stamped or placed on the frame, receiver, or barrel thereof in a manner not susceptible to being readily obliterated, altered or removed, the model, if such designation has been made; the caliber or gauge; the name of the manufacturer and also, the city wherein the registered manufacturer maintains his place of business. A firearm frame, receiver or barrel which is not a component part of a complete firearm at the time it is sold, shipped or otherwise disposed of by a registered manufacturer shall be identified as required by this subchapter.

SUBCHAPTER 5. SECURITY SYSTEMS FOR DEALERS

13:54-5.1 Definition of "dealer"

The word "dealer", when used in this subchapter, means retail dealers as well as wholesale dealers and shall also include manufacturers of firearms unless the context clearly indicates otherwise.

13:54-5.2 Approval of plans by Superintendent

(a) The dealer shall submit a plan of the selected security system to the Superintendent of State Police.

(b) Upon approval of such plan by the Superintendent, the dealer shall install such system prior to maintaining any inventory of firearms, parts of firearms, or ammunition.

(c) A plan that is not approved will be returned to the applicant along with the reasons for such rejection.

(d) The applicant shall have the opportunity to submit a revised plan.

(e) All security systems shall be subject to inspections by a member of the Division of State Police at any time.

(f) If at any time the system is found to be defective, the dealer shall make the necessary repairs or adjustment within seven days to correct the defect.

(g) Failure of a dealer to comply with any of the security standards may result in the revocation of the license or registration of such dealer.

13:54-5.3 Systems to detect and protect firearms and ammunition in a business premises

(a) The following general list of approved security systems has been formulated as a guide to the firearms dealer, any one of which may be acceptable upon investigation and approval by the Superintendent of State Police.

1. An alarm system designated to activate a bell, gong, horn or siren located on the outside of the business premises which is audible for a minimum distance of 500 feet. The system shall be equivalent or greater to the minimum standards as outlined in N.J.A.C. 13:54-5.4;

2. Silent alarm system capable of automatically transmitting an alarm to a constantly attended central station alarm company and/or to a police department headquarters providing full time service. The system shall be equivalent or greater to the minimum standards as outlined in N.J.A.C. 13:54-5.4;

3. A watchman or security guard on duty during nonbusiness hours;

4. A system other than those listed above proposed by a dealer which is acceptable by the Superintendent of State Police.

13:54-5.4 Minimum requirements for installment of a tape, contact or invisible ray alarm system

(a) The installation of a tape, contact or invisible ray alarm system must:

1. Completely protect all accessible windows, doors, transoms, skylights and other openings leading from the premises; or

2. Protect with contacts only, all movable accessible openings leading from the premises and which provides one or more invisible rays or channels of radiation, with the minimum overall length of the rays or radiation, equivalent to the longest dimensions of the area or areas to detect movement through the channel at a rate of one step per second; or

3. Protect with contact only, all doors leading from the premises and provide a system of invisible radiation to all sections of the enclosed areas so as to detect movement. The system shall respond to the movement of a person walking not more than four consecutive steps at a rate of one step per second.

13:54-5.5 Internal security of firearms and ammunition

(a) In addition to the alarm system, a dealer shall provide for the internal security of firearms and ammunition.

(b) The following is a list of approved internal security methods for the safeguarding of firearms and ammunition during nonbusiness hours. A dealer shall select the method(s) which is most compatible with his type of operation:

1. Shotguns and rifles secured in a rack equipped with a locking device such as a metal bar or a steel cable;

2. Firearms and ammunition secured in a heavy gauge metal cabinet equipped with an adequate locking device;

3. Firearms and ammunition secured in a heavy gauge mesh wire cage equipped with an adequate locking device on the door(s);

4. Firearms and ammunition secured in a safe or vault;

5. Metal bars on all windows and on glass portion of door(s);

6. Other method proposed by the dealer which is approved by the Superintendent of State Police.

(c) The method(s) selected by a dealer shall be included in the Security System form STS-61.

(d) Any other building(s) where firearms and/or ammunition are stored shall be subject to the same requirements as applicable to a business premise.

13:54-5.6 Report concerning theft of firearms

(a) Dealers are required to complete form STS-62 and such other forms as shall be required by the Superintendent of State Police, reporting the loss of firearm(s) and/or ammunition, as a result of a burglary, robbery or any other cause, from the business premise. The dealer shall forward the completed form to the Superintendent of State Police within 48 hours of the loss of theft of firearm(s) and/or ammunition. The police department where the business is located shall be notified by the dealer of the theft or loss of firearm(s) and/or ammunition as soon as such loss or theft is discovered.

(b) A complete description, including the type, make, model, barrel-length, caliber and serial number of the stolen/missing firearm(s) shall be given to the investigating police department.

(c) Failure of the dealer to comply with any of the above requirements may result in the revocation of the license of such dealer.

13:54-5.7 Regulations during a civil disturbance or declared emergency period

(a) In the interest of the public health, safety and welfare, firearms dealers shall discontinue the sale of firearms and ammunition upon notification by the Superintendent of State Police or the chief of police of the municipality where the firearms dealers' business is located, that a civil disturbance or other emergency exists.

(b) Those businesses affected shall not resume the sale of firearms or ammunition until such time as the Superintendent of State Police or the chief of police of the municipality determines that the civil disturbance or other emergency no longer exists.

(c) All dealers located in the area affected by such disturbance or emergency shall be required to comply with one of the following:

1. Arrange with the chief police officer of the municipality for appropriate security of firearms and ammunition;
2. Remove all firearms and ammunition from the business premises to a secure location.

(d) Failure of the dealer to comply with any of the above requirements may result in the revocation of the license of such dealer.

NEW JERSEY RACING COMMISSION

(a)

Thoroughbred Racing: Track Entrance; Coggins Test Requirement for Horses, Ponies or Equine Mascot Adopted Amendment: N.J.A.C. 13:70-3.47

Proposed: July 21, 1986 at 18 N.J.R. 1448(b).

Adopted: September 11, 1986 by New Jersey Racing

Commission, Bruce H. Garland, Executive Director.

Filed: September 15, 1986, as R.1986 d.416, **without change**.

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

Effective Date: October 6, 1986.

Expiration Date: February 25, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

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

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

(c) In the case of any pony or equine mascot, evidence of a negative Coggins test, together with a photograph of the animal, must be filed with the racing secretary.

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

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

(b)

Thoroughbred Rules: Super-Six

Readoption of Concurrent Proposal: N.J.A.C.

13:70-29.56

Proposed: August 4, 1986 at 18 N.J.R. 1619(a).

Adopted: September 15, 1986 by Bruce H. Garland, Executive Director, New Jersey Racing Commission.

Filed: September 15, 1986 as R.1986 d.411, **without change**.

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

Effective Date: September 15, 1986.

Expiration Date: February 25, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

13:70-29.56 Super-Six

(a) The Super-Six (or other approved name) is a form of pari-mutuel wagering. Each bettor selects the first horse in each of six consecutive races designated as the Super-Six races by the permitholder. The principle of a Super-Six is in effect a contract by the purchaser of a Super-Six ticket to select the winners of each of the six races designated as the Super-Six.

(b) The Super-Six pool shall be held entirely separate from all other pools and is no part of a daily double, exacta, trifecta or other wagering pool. The Super-Six pool is a pool wherein the bettor is required to select six consecutive winning horses and is not a parlay.

(c) Super-Six tickets shall be sold in not less than \$1.00 denominations and only from machines capable of issuing six numbers.

(d) Races in which Super-Six pools shall be conducted shall be approved by the Commission and clearly designated in the program.

(e) The design of Super-Six tickets shall be clearly and immediately distinguishable from other pari-mutuel tickets.

(f) The Super-Six pari-mutuel pool shall be calculated as follows:

1. 100 percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of pari-mutuel tickets which correctly designate the official winner in each of the six races comprising the Super-Six.

2. In the event there is no pari-mutuel ticket held which correctly designated the winner of all races comprising the Super-Six, 25 percent of that racing date's net amount available for distribution shall be distributed among the holders of pari-mutuel tickets correctly designating the most winning selections of the six races comprising the Super-Six, and the remaining undistributed 75 percent of said pool shall be carried over and added to the pool on the next day on which wagering is conducted.

3. If, on the last day on which the system of wagering is conducted at a horse race meeting, no bettor selects the winning horses in those races, the total amount of the pool which exists on that day in connection with those races shall be paid to the bettor or bettors who selected the largest number of winning horses in those races. In no event shall any part of the pool be carried over to the next year's race meeting.

(g) Those horses constituting an entry or a field as defined within the rules and regulations of the Commission shall race in any Super-Six race as a single wagering interest for the purpose of the Super-Six pari-mutuel pool calculations and payouts to the public. A scratch after wagering has begun of any part of an entry of field selection in such a race shall be of no effect with respect to the status of such entry and/or field as a viable wagering interest.

(h) At any time after wagering begins on the Super-Six pool should a horse, entire betting entry or field be scratched or declared a non starter in any Super-Six race, no further tickets selecting such horse, betting entry or field shall be issued, and wagers upon such horse, betting entry or field, for purposes of the Super-Six shall be deemed wagers upon the horse, betting entry or field upon which the most money has been wagered in the win pool at the track at the close of win pool betting for such race. In the event of a money tie, the tied horse, betting entry or field with the most inside post position shall be designated.

(i)-(j) (No change.)

(k) If, for any reason, any race or races of a Super-Six program is cancelled and declared "No Race," the Super-Six pool shall be distributed to the holders of the most winning selections of the remaining races pursuant to (f)1 and 2 above. In the event the Stewards cancel or declare

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as "No Race" three or more of the Super-Six races for any given date, all pari-mutuel tickets for that Super-Six pool shall be refunded and the Super-Six cancelled for that day.

(l) In the event of a dead heat for win between two or more horses in any Super-Six race, all such horses in the dead heat for win shall be considered as the winning horse in the race for the purpose of distributing the Super-Six pari-mutuel pool.

(m) No person shall disclose the number of tickets sold in the Super-Six pool or the number or amount of tickets selecting winners of Super-Six races prior to the time the Judges have declared the last Super-Six race on any given date official.

(n) No pari-mutuel ticket for the Super-Six pool shall be sold, exchanged or cancelled after the time of the closing of wagering in the first of the six races comprising the Super-Six, except for refunds as required by this section.

(o) This rule shall be prominently displayed throughout the betting area of each association conducting a Super-Six program and in the official racing program.

(p) Should circumstances occur which are not foreseen in this section, questions arising thereby shall be resolved in accordance with general pari-mutuel practice. Decisions regarding distribution of Super-Six pools will be final.

(a)

**Thoroughbred Racing
Track Entrance; Coggins Test Requirement for
Horses, Ponies or Equine Mascot
Adopted Amendment: N.J.A.C. 13:71-6.24**

Proposed: July 21, 1986 at 18 N.J.R. 1448(c).

Adopted: September 11, 1986 by New Jersey Racing

Commission, Bruce H. Garland, Executive Director.

Filed: September 15, 1986, as R.1986 d.415, **without change.**

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

Effective Date: October 6, 1986.

Expiration Date: February 25, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

13:71-6.24 Track entrance; Coggins test requirement for horses, ponies or equine mascot

(a)-(b) (No change in text of proposal at 18 N.J.R. 402(b).)

(c) In the case of any pony or equine mascot, evidence of a negative Coggins test, together with a photograph of the animal, must be filed with the racing secretary.

(d) (No change in text of proposal at 18 N.J.R. 402(b).)

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

(b)

**Harness Rules: Super-Six
Readoption of Concurrent Proposal: N.J.A.C.
13:71-27.53**

Proposed: August 4, 1986 at 18 N.J.R. 1619(a).

Adopted: September 15, 1986 by Bruce H. Garland, Executive Director, New Jersey Racing Commission.

Filed: September 15, 1986 as R.1986 d.412, **without change.**

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

Effective Date: September 15, 1986.

Expiration Date: February 25, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

13:71-27.53 Super-Six

(a) The Super-Six (or other approved name) is a form of pari-mutuel wagering. Each bettor selects the first horse in each of six consecutive races designated as the Super-Six races by the permitholder. The principle of a Super-Six is in effect a contract by the purchaser of a Super-Six ticket to select the winners of each of the six races designated as the Super-Six.

(b) The Super-Six pool shall be held entirely separate from all other pools and is no part of a daily double, exacta, trifecta or other wagering pool. The Super-Six pool is a pool wherein the bettor is required to select six consecutive winning horses and is not a parlay.

(c) Super-Six tickets shall be sold in not less than \$1.00 denominations and only from machines capable of issuing six numbers.

(d) Races in which Super-Six pools shall be conducted shall be approved by the Commission and clearly designated in the program.

(e) The design of Super-Six tickets shall be clearly and immediately distinguishable from other pari-mutuel tickets.

(f) The Super-Six pari-mutuel pool shall be calculated as follows:

1. 100 percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of pari-mutuel tickets which correctly designate the official winner in each of the six races comprising the Super-Six.

2. In the event there is no pari-mutuel ticket held which correctly designates the winner of all races comprising the Super-Six, 25 percent of that racing date's net amount available for distribution shall be distributed among the holders of pari-mutuel tickets correctly designating the most winning selections of the six races comprising the Super-Six, and the remaining undistributed 75 percent of said pool shall be carried over and added to the pool on the next day on which wagering is conducted.

3. If, on the last day on which this system of wagering is conducted at a horse race meeting, no bettor selects the winning horses in those races, the total amount of the pool which exists on that day in connection with those races shall be paid to the bettor or bettors who selected the largest number of winning horses in those races. In no event shall any part of the pool be carried over to the next year's race meeting.

(g) Those horses constituting an entry or a field as defined within the rules and regulations of the Commission shall race in any Super-Six race as a single wagering interest for the purpose of the Super-Six pari-mutuel pool calculations and payouts to the public. A scratch after wagering has begun of any part of an entry of field selection in such a race shall be of no effect with respect to the status of such entry and/or field as a viable wagering interest.

(h) At any time after wagering begins on the Super-Six pool should a horse, entire betting entry or field be scratched or declared a non starter in any Super-Six race, no further tickets selecting such horse, betting entry or field shall be issued, and wagers upon such horse, betting entry or field, for purposes of the Super-Six pool shall be deemed wagers upon the horse, betting entry or field upon which the most money has been wagered in the win pool at the track at the close of win pool betting for such race. In the event of a money tie, the tied horse, betting entry or field with the most inside post position shall be designated.

(i) After off-time, there shall be no refund in either of the cases, provided for in (h) above.

(j) For the purpose of this section, when horses are prevented from starting by any malfunction of the starting gate itself they shall be considered as having been excused by the judges.

(k) If, for any reason, any race or races of a Super-Six program is cancelled and declared "No Race," the Super-Six pool shall be distributed to the holders of the most winning selections of the remaining races pursuant to (f) 1 and 2 above. In the event the Stewards cancel or declare as "No Race" three or more of the Super-Six races for any given date, all pari-mutuel tickets for that Super-Six pool shall be refunded and the Super-Six cancelled for that day.

(l) In the event of a dead heat for win between two or more horses in any Super-Six race, all such horses in the dead heat for win shall be considered as the winning horse in the race for the purpose of distributing the Super-Six pari-mutuel pool.

(m) No person shall disclose the number of tickets sold in the Super-Six pool or the number or amount of tickets selecting winners of Super-Six races prior to the time the Judges have declared the last Super-Six race on any given date official.

(n) No pari-mutuel ticket for the Super-Six pool shall be sold, exchanged or cancelled after the time of the closing of wagering in the first

of the six races comprising the Super-Six, except for refunds as required by this section.

(o) This rule shall be prominently displayed throughout the betting area of each association conducting a Super-Six program and in the official racing program.

(p) Should circumstances occur which are not foreseen in this section, questions arising thereby shall be resolved in accordance with general pari-mutuel practice. Decisions regarding distribution of Super-Six pools will be final.

TRANSPORTATION

TRANSPORTATION OPERATIONS

(a)

**Restricted Parking and Stopping
 Routes U.S. 9 in Ocean County and 57 in Warren
 County**

Adopted Amendments: N.J.A.C. 16:28A-1.7 and 1.36

Proposed: August 4, 1986 at 18 N.J.R. 1517(a).
 Adopted: September 4, 1986 by John F. Dunn, Jr., Assistant
 Chief Engineer, Traffic and Local Road Design.
 Filed: September 11, 1986, as R.1986 d.400, **without change**.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139.
 Effective Date: October 6, 1986.
 Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

- 16:28A-1.7 Routes U.S. 9
- (a) (No change.)
 - (b) The certain parts of State highway Route U.S. 9 described in this section are designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:
 - 1.-33. (No change.)
 - 34. Along the southbound (westerly) side in Little Egg Harbor Township, Ocean County:
 - i. Far Side bus stop:
 - (1) (No change.)
 - (2) Dock Street—Beginning at the prolongation of the southerly curb line of Dock Street and extending 145 feet southerly therefrom.
 - ii. (No change.)
 - 35. Along the northbound (easterly) side in Little Egg Harbor Township, Ocean County:
 - i. (No change.)
 - ii. Mid-block bus stop:
 - (1) Between Dock Street and Railroad Avenue—Beginning 110 feet south of the southerly curb line of Dock Street and extending 135 feet southerly therefrom.
 - 36.-41. (No change.)
- 16:28A-1.36 Route 57
- (a) The certain parts of State highway Route 57 described in this section are designated and established as "no parking" zones where stopping and standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.
 - 1.-4. (No change.)
 - 5. No stopping or standing in Mansfield Township, Warren County:
 - i. Along the southern side, that is the eastbound lane from the most westerly side of Hoffman's Bakery, east to the Mansfield Township line.
 - ii. Along the northerly side, that is the westbound lane from the most westerly corner of Hoffman's Bakery to the easterly end of Krauszer's store.
 - (b) (No change.)

(b)

**Restricted Parking and Stopping
 Route 47 in Cape May County
 Adoption of Concurrent Proposal: N.J.A.C.
 16:28A-1.33.**

Proposed: July 21, 1986 at 18 N.J.R. 1491(a).
 Adopted: August 26, 1986 by John F. Dunn, Jr., Assistant Chief
 Engineer, Traffic and Local Road Design.
 Filed: September 3, 1986 as R.1986 d.391, **without change**.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139,
 52:14B-4(c) and N.J.A.C. 1:30-4.5.
 Effective Date: October 6, 1986.
 Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

- 16:28A-1.33 Route 47
- (a) The certain parts of State highway Route 47 described in this section shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.
 - 1.-9. (No change.)
 - 10. No stopping or standing in Dennis Township, Cape May County.
 - i. Along both sides:
 - (1) From Oak Lane to a point 650 feet from Petersburg Road (Co. Rd. 610).
 - (b) (No change.)

(c)

**No Passing Zones
 Routes U.S. 9W in Bergen County; U.S. 202 in
 Somerset and Morris Counties; and Route 77 in
 Salem and Gloucester Counties**

**Adopted Amendment: N.J.A.C. 16:29-1.56
 Adopted New Rules: N.J.A.C. 16:29-1.58 and 1.59**

Proposed: July 21, 1986 at 18 N.J.R. 1449(a).
 Adopted: August 26, 1986 by John F. Dunn, Jr., Assistant Chief
 Engineer, Traffic and Local Road Design.
 Filed: September 3, 1986 as R.1986 d.394 **without change**.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-201.1.
 Effective Date: October 6, 1986.
 Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

- 16:29-1.56 Route 77
- (a) The certain following parts of State Highway Route 77 shall be designated and established as "No Passing" zones:
 - 1. (No change.)
 - 2. Within the Townships of Alloway and Upper Pittsgrove, Salem County and described in drawing number HNPZ-099 dated March 25, 1986.
 - 3. Within the Townships of Elk, South Harrison and Harrison, Gloucester County and described in drawing number HNPZ-100 dated March 25, 1986.
- 16:29-1.58 Route U.S. 9W
- (a) The certain following parts of State highway Route U.S. 9W shall be designated and established as "No Passing" zones:
 - 1. Within the Boroughs of Tenafly and Alpine, Bergen County and described in drawing number HNPZ-096 dated February 26, 1986.

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16:29-1.59 Route U.S. 202

(a) The certain following parts of State highway Route U.S. 202 shall be designated and established as "No Passing" zones:

1. Within the Townships of Bedminster and Bernards; the Boroughs of Far Hills and Bernardsville, Somerset County and described in drawing number HNPZ-097 dated March 4, 1986.

2. Within the Townships of Harding and Morris; the Town of Morristown and Morris Plains Borough, Morris County and described in drawing number HNPZ-098 dated March 4, 1986.

(a)

**No Passing Zones
Route 54 in Atlantic County**

Adopted New Rule: N.J.A.C. 16:29-1.60

Proposed: July 21, 1986, at 18 N.J.R. 1449(b).

Adopted: August 21, 1986 by John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design.

Filed: September 3, 1986 as R.1986 d.392 **without change**.

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

Effective Date: October 6, 1986.

Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adopted new rule follows.

16:26-1.60 Route 54

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

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

(b)

**No Passing Zones
Routes 17 in Bergen County; 24 in Morris County; 45 in Salem County and 48 in Salem County**

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

Proposed: July 21, 1986 at 18 N.J.R. 1450(a).

Adopted: August 26, 1986 by John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design.

Filed: September 3, 1986 as R.1986 d.393 **without change**.

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

Effective Date: October 6, 1986.

Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adopted new rules follow.

16:29-1.61 Route 17

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

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

16:29-1.62 Route 24

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

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

16:29-1.63 Route 45

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

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

16:29-1.64 Route 48

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

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

(c)

**Miscellaneous Traffic Rules
One Way Street**

Route 57 in Warren County

Adopted New Rule: N.J.A.C. 16:30-1.8

Proposed: August 4, 1986 at 18 N.J.R. 1517(b).

Adopted: September 4, 1986 by John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design.

Filed: September 11, 1986 as R.1986 d.402, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-85.1.

Effective Date: October 6, 1986.

Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:30-1.8 Route 57

(a) The certain parts of State highway Route 57 described below shall be designated for One-Way Traffic:

1. At the ramp between Route 57 (milepost 12.1) and East Washington Avenue, northbound between Route 57 and East Washington Avenue in Washington Township, Warren County.

(d)

**Miscellaneous Traffic Rules
Through Street, Stop and Yield Intersection
Route 57 in Warren County**

Adopted New Rule: N.J.A.C. 16:30-2.11

Proposed: August 4, 1986 at 18 N.J.R. 1517(c).

Adopted: September 4, 1986 by John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design.

Filed: September 11, 1986 as R.1986 d.401, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-140.

Effective Date: October 6, 1986.

Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:30-2.11 Route 57

(a) The certain parts of Route 57 (East Washington Avenue) in Washington Township, Warren County, and described below shall be designated as STOP intersections.

1. At East Washington Avenue and Main Street, a ramp between Route 57 (milepost 12.1) and East Washington Avenue: STOP signs shall be installed on Main Street at the ramp between Route 57 (milepost 12.1) and East Washington Avenue.

2. At East Washington Avenue and Lock Street, a STOP sign shall be installed on Lock Street.

(a)

**Miscellaneous Traffic Rules
Lane Usage**

Route 9 in Middlesex County

Adopted Repeal and New Rule: N.J.A.C. 16:30-3.4

Proposed: August 4, 1986 at 18 N.J.R. 1518(a).

Adopted: September 4, 1986 by John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design.

Filed: September 11, 1986 as R.1986 d.403, **without change.**

Authority: N.J.S.A. 27:1A-5, 1A-6, 39:4-88.

Effective Date: October 6, 1986.

Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:30-3.4 Route U.S. 9

(a) For purposes of this section, "High occupancy vehicles" shall be defined as those which are occupied by three or more persons.

(b) A special reserved lane for buses and high occupancy vehicles only is hereby established on the Northbound and Southbound RIGHT TRAVEL Lanes on Route U.S. 9 in Old Bridge Township and Sayreville Borough, Middlesex County as follows:

1. Northbound in Old Bridge Township, from a point 200 feet north of the northerly curb line of Poor Farm Road to a point 900 feet south of the southerly curb line of Ernston Road, from 6:30 A.M. to 8:00 A.M., Monday to Friday, and;

2. Southbound in Sayreville Borough, from a point 200 feet south of the southerly curb line of Bordentown Avenue to a point 500 feet north of the northerly curb line of Ernston Road, from 5:30 P.M. to 7:00 P.M., Monday to Friday.

(c) A special reserved lane for buses and high occupancy vehicles only is hereby established on the Northbound and Southbound SHOULDER lanes of Route U.S. 9 in Old Bridge Township and Sayreville Borough, Middlesex County as follows:

1. Northbound in Old Bridge Township, from a point 475 feet south of the southerly curb line of Ernston Road to a point 20 feet south of the southerly curb line of Ernston Road, from 6:30 A.M. to 8:00 A.M., Monday to Friday, and;

2. Southbound in Sayreville Borough, from point 335 feet north of the northerly curb line of Ernston Road to a point 20 feet north of the northerly curb line of Ernston Road, from 5:30 P.M. to 7:00 P.M., Monday to Friday.

(d) This section is not intended to preclude normal use of the shoulder by other vehicles. "Normal Use" is defined as emergency stopping or driving on the shoulder for short distances to enter driveways or intersecting roadways.

(b)

Turns

Routes 15 in Morris County and 57 in Warren County

Adopted Amendments: N.J.A.C. 16:31-1.14 and 1.21

Proposed: August 4, 1986 at 18 N.J.R. 1518(b).

Adopted: September 4, 1986 by John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design.

Filed: September 11, 1986 as R.1986 d.404, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123, 39:4-183.6.

Effective Date: October 6, 1986.

Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:31-1.14 Route 57

(a) Turning movements of traffic on the certain parts of State highway Route 57 as described below are regulated as follows:

1. (No change.)

2. No left turn east on Route 57 to north on ramp between Route 57 (milepost 12.1) and East Washington Avenue in Washington Township, Warren County.

16:31-1.21 Route 15

(a) Turning movements of traffic on certain parts of State highway Route 15 as described below are regulated as follows:

1. (No Change.)

2. No left turn north on Route 15 to west on the Bowling Green Parkway in Jefferson Township, , Morris County.

PUBLIC TRANSPORTATION

(c)

Autobus Specifications

Autobus Specifications for Small Bus

Adopted Amendments: N.J.A.C. 16:53-3.5, 3.19, 6.28 and 6.29

Proposed: August 4, 1986 at 18 N.J.R. 1519(b).

Adopted: September 4, 1986 by James A. Crawford, Assistant Commissioner for Transportation Services and Planning.

Filed: September 11, 1986 as R.1986 d.399, **with substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 52:14D-1 et seq., Executive Order on Reorganization Plan for Board of Public Utilities, September 19, 1978.

Effective Date: October 6, 1986.

Expiration Date: March 19, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

Summary of changes between Proposal and Adoption:

N.J.A.C. 16:53-3.5 has been changed to require either AS-4 or AS-5 rated plastic among the options for driver's seat partition material for autobuses.

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

16:53-3.5 Partition and curtain

All autobuses shall be equipped with a partition of wood, metal and wire glass, safety glass or plexiglass at least 3/8 inches thick or rigid plastic of the approved type***[.]*** *****,* AS-4 ***[and]*** ***or*** AS-5, and located to the rear of the driver's seat with a suitable curtain or tinting, if necessary, to shield the driver from the glare of inside lights. The minimum dimensions of driver's partitions shall be 18 inches wide and shall extend upward from at least two inches below the top of the driver's seat back to not less than 18 inches from the ceiling.

16:53-3.19 Bumpers

(a) (No change.)

(b) The rear bumper shall extend at least four inches beyond the body limits and be shielded on the top to prevent toehold, except on an autobus constructed with its engine attached to the extreme rear end of the chassis frame or one having a similarly sized compartment between the extreme rear of the bus body and rear seat in the passenger compartment.

16:53-6.28 Partition and curtain

All autobuses shall be equipped with a partition of wood, metal and wire glass, safety glass or plexiglass at least 3/8 inches thick or rigid plastic of the approved type AS-4 or AS-5, and located to the rear of the driver's seat with a suitable curtain or tinting, if necessary, to shield the driver from the glare of inside lights. The minimum dimensions of driver's partitions shall be 18 inches wide and shall extend upward from at least two inches below the top of the driver's seat back to not less than 18 inches from the ceiling.

16:53-6.29 Bumpers

(a) (No change.)

(b) The rear bumper shall extend at least four inches beyond the body limits and be shielded on the top to prevent toehold, except on an autobus constructed with its engine attached to the extreme rear end of the chassis frame or one having similarly sized compartment between the extreme rear of the bus body and rear seat in the passenger compartment.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Public Employees' Retirement System Purchase of Temporary Service Credit

Adopted New Rule: N.J.A.C. 17:1-4.35

Proposed: July 21, 1986 at 18 N.J.R. 1450(b).

Adopted: August 29, 1986, by Douglas R. Forrester,
Director, Division of Pensions.

Filed: September 3, 1986 as R.1986 d.390, **without change.**

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

Effective Date: October 6, 1986.

Expiration Date: June 6, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

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

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

OTHER AGENCIES

CASINO CONTROL COMMISSION

(b)

Jackpot Payouts

Adopted Amendment: N.J.A.C. 19:45-1.40

Proposed: July 7, 1986 at 18 N.J.R. 1360(a).

Adopted: September 11, 1986, by the Casino Control
Commission, Walter N. Read, Chairman.

Filed: September 11, 1986, as R.1986 d.398, **without change.**

Authority: N.J.S.A. 5:12-63(c), 69(a) and 70(i).

Effective Date: October 6, 1986.

Expiration Date: April 7, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

19:45-1.40 Jackpot payouts

(a)-(f) (No change.)

(g) All coin or currency paid to a patron as a result of winning a jackpot shall be:

1. (No change.)

2. Disbursed by a slot cashier to a slot attendant or slot supervisor and if the manual jackpot is \$1,200 or more, to a slot supervisor who shall transport the coin or currency directly to the patron.

(h) Signatures attesting to the accuracy of the information contained on the originals shall be, at a minimum, of the following personnel at the following times:

1. The original:

i. (No change.)

ii. A slot attendant or slot supervisor after observing the reel characters of the slot machine or if the manual jackpot is \$1,200 or more, a slot supervisor after observing the reel characters of the slot machine; and

2. The duplicate:

i. (No change.)

ii. A slot attendant or slot supervisor after observing the reel characters of the slot machine or if the manual jackpot is \$1,200 or more, a slot supervisor after observing the reel characters of the slot machine;

iii.-iv. (No change.)

(i)-(j) (No change.)

MISCELLANEOUS NOTICES

EDUCATION

(a)

THE COMMISSIONER

State Plan for the Education of All Handicapped Children

Public Notice

Take notice that the New Jersey State Department of Education has received approval of its Amended Program Plan for Fiscal Years 1987 and 1988 for the Education of All Handicapped Children by the United States Office of the Assistant Secretary for Special Education and Rehabilitative Services.

Copies of the Plan are available to all interested parties through any Office of the County Superintendent of Schools or the Division of Special Education, Box CN 500, Trenton, New Jersey 08625.

For further information contact Dr. Mari Molenaar at (609) 292-0147.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF WATER RESOURCES

Amendment to Upper Delaware River Water Quality Management Plan

Public Notice

Take notice that an amendment to the Upper Delaware Water Quality Management (WQM) Plan has been submitted for approval. This amendment would allow a new treatment plant to serve the Lakeland Parks Shopping Center, a new Musconetcong Basin treatment plant, and a new Pohatcong Creek treatment plant. In addition, as part of this amendment, a Wastewater Management Plan will be adopted to provide a plan for addressing the wastewater management needs of Washington Township. The Township of Washington is designated as the Wastewater Management Agency and co-permittee for all of Washington Township except for those portions of the Township within the facilities planning areas of the Warren County-Pequest River Sewerage Authority or the Lopatcong Creek Sewerage Authority. Those agencies are designated as Wastewater Management Agencies for those portions of Washington Township within their facilities planning areas.

This notice is being given to inform the public that a plan amendment has been developed for the Upper Delaware WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 25 Arctic Parkway, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a non-adversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(c)

Amendment to Cape May County Water Quality Management Plan

Public Notice

The Township of Upper has requested an amendment to the Cape May County Water Quality Management (WQM) Plan for the adoption of a newly developed Wastewater Management Plan for Upper Township. The proposed Wastewater Management Plan identifies the utilization of individual subsurface systems for wastewater treatment within Upper Township.

This notice is being given to inform the public that a plan amendment has been developed for the Cape May County WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment, is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 25 Arctic Parkway, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(d)

Amendment to Upper Raritan Water Quality Management Plan

Public Notice

Take notice that an amendment to the Upper Raritan Water Quality Management (WQM) Plan has been submitted for approval. This amendment would permit abandonment of the Bedens Brook, Bedens Brook Country Club, and Burnt Hill sewage treatment plants. It would also allow for the proposed Polo Club and Great Road Land Company sewage treatment plants. In addition, as part of this amendment, a Wastewater Management Plan will be adopted to provide a plan for addressing the wastewater management needs of Montgomery Township.

This notice is being given to inform the public that a plan amendment has been developed for the Upper Raritan WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment, is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 25 Arctic Parkway, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(a)

**Surface Water Quality Standards
Lower Cuckels Brook**

Take notice that the Department of Environmental Protection is soliciting comments from the public regarding a petition from the Somerset Raritan Valley Sewerage Authority (SRVSA), dated June 6, 1986, for the reclassification of Lower Cuckels Brook for less restrictive uses in accordance with N.J.A.C. 7:9-4.10. Cuckels Brook is a tributary of the Raritan River, currently classified as FW2-NT waters, located in Bridgewater Township, Somerset County. The Lower Cuckels Brook segment is approximately 6000 feet in length, and extends from the former SRVSA outlet structure to the Raritan River at Calco Dam. SRVSA is petitioning for the removal, for the Lower Cuckels Brook segment, of three of the current designated uses (N.J.A.C. 7:9-4.12(c)), these being (1) Maintenance, migration and propagation of the natural and established biota; (2) Primary and secondary contact recreation; and (3) Public potable water supply after such treatment as required by law or regulation.

SRVSA's jurisdiction in support of their petition is contained in the *Cuckels Brook Reclassification Study*, revised May 1986, prepared by Metcalf & Eddy, Inc. SRVSA's original petition, dated January 7, 1985, was received by the Department during the last triennial review of the Surface Water Quality Standards which was completed in May 1985. The reclassification provisions of the March 1981 Surface Water Quality Standards regulations, in effect at the time of SRVSA's original petition, did not comply with the provisions of the Environmental Protection Agency's Water Quality Standards Regulation (40 CFR Part 131) which became effective November 8, 1983. For this reason and because of deficiencies in SRVSA's original petition, the Department decided not to act on SRVSA's petition either under the then existing state regulations or as part of the triennial review. In the *Response to Public Comments on the Surface Water Quality Standards & Wastewater Discharge Requirements*, dated April 29, 1985, the Department granted SRVSA a separate proceeding, conducted under the new regulations, to deal with their reclassification request. Due to the history of this petition as discussed above, the Department waived the application of N.J.A.C. 7:9-4.10(a) requiring the petition to be sponsored or endorsed by a county or municipal governing body.

The purpose of this notice is to solicit public comment on SRVSA's petition. Should the Department decide that SRVSA's petition should be granted, it will have to develop a new classification and new criteria appropriate for the remaining designated uses, formally propose revised standards for adoption, and hold a public hearing. If the Department decides to deny the petition, a notice to that effect will be published in the New Jersey Register.

A public hearing on this petition will be held on:

October 27, 1986 at 5 P.M. until the close of testimony
Somerset County Administration Building, Room 201
Corner of Bridge and High Streets
Somerville, NJ 08876

Interested persons may submit written comments on SRVSA's petition by November 5, 1986 to:

Dr. Shing-Fu Hsueh
Bureau of Water Quality Standards and Analysis
Division of Water Resources
Department of Environmental Protection
Box CN 029
Trenton, NJ 08625

Complete copies of the reclassification report in support of the petition may be examined at:

Alexander Library, Rutgers University, New Brunswick, NJ
Newark Public Library, Newark, NJ
New Jersey State Library, Trenton, NJ
Somerset County Library, Somerville, NJ; and
Office of Administrative Law
Quakerbridge Plaza, Bldg. No. 9
Quakerbridge Road
Trenton, NJ

HEALTH

(b)

Local and Community Health Services

Public Forum on Children/Adolescents and Smoking

Take notice that the Department of Health, in coordination with the departmental advisory Commission on Smoking or Health, is announcing an open forum to give opportunity for public participation in the discussion of current and proposed activities concerning children/adolescents: their motivation to smoke, their access to cigarettes and their use of other tobacco products (i.e. Smokeless tobacco).

New Jersey has been among the leaders in protecting the rights of nonsmoking adults through the control of smoking in workplace, government buildings, restaurants, and other areas of public congregation. The Department of Health now seeks to address what factors influence children/adolescents to start smoking and what preventive strategies can be implemented.

1. Advertising

(a) Should the free distribution of cigarettes be prohibited?

(b) Should sporting events not advertise cigarettes or tobacco products?

2. Sales Restrictions:

(a) Should unsupervised vending machine sales of cigarettes be banned or restricted?

3. Taxation

(a) Should the present state cigarette tax be increased in order to discourage consumption among children/adolescents? Would this be effective?

4. Education

(a) What source of revenue can be used to fund educational activities? Is it appropriate to tap into the cigarette tax?

The use of cigarettes by children/adolescents and young adults has proliferated to the point of significant increase in the rates of pulmonary diseases in these age groups. This public forum will serve as a catalyst for the department, and the community at large, on how to proceed to inform children and adolescents about the hazards of smoking, and reduce their use of cigarettes.

The public meeting will be held on Wednesday, November 19, 1986, at 9:00 A.M. to 4:00 P.M. at:

State House Annex
Room 403, Fourth Floor
West State Street
Trenton, NJ 08625

Persons wishing to present testimony or if further information is needed on this subject, please contact:

Diane DiDonato, R.N., M.P.H.
Coordinator, Chronic Illness Prevention
Adult Health Services
CN 364
120 South Stockton Street
Trenton, NJ 08625-0364
(609) 292-8106

LAW AND PUBLIC SAFETY

(c)

DIVISION OF MOTOR VEHICLES

Bulk Commodities Application

Public Notice

Take notice that Glenn R. Paulsen, Director, Division of Motor Vehicles pursuant to the authority of N.J.S.A. 39:5E.11 hereby list the name and address of an applicant who has filed an application for a Contract Carrier Permit.

CONTRACT CARRIER (NON-GRANDFATHER)
R. Schumaker Inc.
546 Ogden Road
Landing, NJ 07850

Protests 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

(a)

Charitable Agency Application for the Public Employee Charitable Fund-Raising Campaign Public Notice

Take notice that Feather O'Connor, Treasurer, State of New Jersey, pursuant to the Public Employees' Charitable Fund-Raising Act, P.L. 1985, c. 140 (N.J.A.C. 17:28-3.2(b)(1)), announces that the Department of the Treasury will be accepting applications until December 1, 1986 from charitable fund-raising agencies wishing to participate in the State Employees' Charitable Fund-Raising Campaign for 1987-1988.

For the purposes of this notice, "Charitable Fund-Raising Agency" shall mean a voluntary not-for-profit organization that provides health, welfare, or human care services to individuals. A charitable fund-raising agency shall be eligible to participate in the 1987-1988 Campaign if it meets the following requirements:

if it is an affiliated charitable agency (for this purpose affiliated charitable agency shall mean a charitable agency which is affiliated with a charitable fund-raising organization for the purpose of directly sharing in funds raised by the organization);

OR

- the agency is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code;
- the agency qualifies for tax deductible contributions under Section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code;
- the agency is not a private foundation as described in Section 509 of the Internal Revenue Code;
- the agency is incorporated under or subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and the "Charitable Fund-Raising Act of 1971," P.L. 1971, c. 469 (C. 45:17A-1 et seq.);
- the agency demonstrates to the satisfaction of the State Treasurer that a significant portion of funds raised in each of its two fiscal years preceding its application to participate in a campaign consist of individual contributions from citizens of the State;
- the agency shall have raised at least \$15,000 from individual citizens of New Jersey in each of its two fiscal years preceding its application to participate in a State campaign.

Copies of the following application may be obtained from the Department of the Treasury, or the information requested therein may be submitted along with a cover letter. Completed applications or requests for application forms should be addressed to:

Robert G. Kaufman
Assistant State Treasurer
Department of the Treasury
State House—CN002
Trenton, New Jersey 08625

Applications can also be requested by calling (609) 292-8951.

The application form for **affiliated** charitable fund-raising agencies follows:

APPLICATION—AFFILIATED AGENCIES

- Name of AGENCY and name under which it intends to conduct charitable fund-raising campaigns among public employees.
- Name and address of the charitable fund-raising organization with which agency is affiliated.

The application form for **non-affiliated** charitable fund-raising agencies follows:

APPLICATION—NON-AFFILIATED*

- Name of agency and name under which it intends to conduct charitable fund-raising campaigns among public employees.
- Address for agency and addresses of any agency offices within the state.
- Names and addresses of officers, directors, trustees and executive personnel of agency.

- Place and date agency was formed.
- Has agency received tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code? Yes _____ No _____
Please attach a copy of your IRS letter of determination.
- Is agency a private foundation as defined in Section 509(a) of the Internal Revenue Code? Yes _____ No _____
- Date on which fiscal year of agency ends.
- Has agency registered as a charitable fund-raising organization pursuant to N.J.S.A. 45:17A-1 et seq.? Yes _____ No _____ If no, is agency exempt from registration requirement? Yes _____ No _____ Explanation:
- Does the agency qualify for tax deductible contributions pursuant to Section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code? Yes _____ No _____ Section qualified under _____
Please attach a copy of your IRS letter of determination.
- Please attach a copy of the agency charter and all amendments thereto.
- Please submit and certify the following financial data for each of the two fiscal years preceding this application:
 - amount of funds raised;
 - what percentage of those funds consisted of individual contributions from citizens of New Jersey;

*Please note: Unaffiliated charitable agencies, which were found eligible by the State Treasurer to participate in the 1986-87 Campaign, shall be required only to submit to the State Treasurer their most recent financial information specified in question 11 above. (N.J.A.C. 17:28-3.4(e).)

(b)

Charitable Organization Application for the Public Employee Charitable Fund-Raising Campaign and Campaign Steering Committee Public Notice

Take notice that Feather O'Connor, Treasurer, State of New Jersey, pursuant to the Public Employees' Charitable Fund-Raising Act, P.L. 1985, c. 140 (N.J.A.C. 17:28-3.2(b)(1)), announces that the Department of the Treasury will be accepting applications until December 1, 1986 from charitable fund-raising organizations wishing to participate in the State Employees' Charitable Fund-Raising Campaign for 1987-1988 and the Campaign Steering Committee.

For the purposes of this notice, "Charitable Fund-Raising Organization" shall mean a voluntary not-for-profit organization which receives and distributes voluntary charitable contributions. A charitable fund-raising organization shall be eligible to participate on the Steering Committee and in the 1987-1988 Campaign if it meets the following requirements:

- the organization is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code;
- the organization qualifies for tax deductible contributions under Section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code;
- the organization is not a private foundation as described in Section 509 of the Internal Revenue Code;
- the organization is incorporated under or subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and the "Charitable Fund-Raising Act of 1971," P.L. 1971, c. 469 (C. 45:17A-1 et seq.);
- the organization demonstrates to the satisfaction of the State Treasurer that a significant portion of funds raised in each of its two fiscal years preceding its application to participate in a campaign consist of individual contributions from citizens of the State;
- the organization shall have raised at least \$60,000 and distributed that sum among at least 15 charitable agencies in each of its two fiscal years preceding its application to participate in a State campaign.

Copies of the following application may be obtained from the Department of the Treasury, or the information requested therein may be submitted along with a cover letter. Completed applications or requests for application forms should be addressed to:

Robert G. Kaufman
Assistant State Treasurer
Department of the Treasury
State House—CN002
Trenton, New Jersey 08625

Applications can also be requested by calling (609) 292-8951.

The application form follows:

APPLICATIONS*

1. Name of organization and name under which it intends to conduct charitable fund-raising campaigns among public employees.
2. Address for organization and addresses of any organization offices within state.
3. Names and addresses of officers, directors, trustees and executive personnel of organization.
4. Place and date organization was formed.
5. Has organization received tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code? Yes _____ No _____
Please attach a copy of your IRS letter of determination.
6. Is organization a private foundation as defined in Section 509(a) of the Internal Revenue Code? Yes _____ No _____
7. Date on which fiscal year of organization ends.
8. Has organization registered as a charitable fund-raising organization pursuant to N.J.S.A. 45:17A-1 et seq.? Yes _____ No _____ Section qualified under_____. Explanation:
9. Does the organization qualify for tax deductible contributions pursuant to Section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code? Yes _____ No _____ Section qualified under_____. Please attach a copy of your IRS letter of determination.
10. Provide the names and addresses of charitable agencies affiliated with your organization for the purpose of directly sharing in funds raised by the organization from charitable fund-raising campaigns among public employees.
11. Please attach a copy of the organization's charter and all amendments thereto.
12. Please submit and certify the following financial data for each of the two fiscal years preceding this application:
 - a) amount of funds raised;
 - b) what percentage of those funds consisted of individual contributions from citizens of New Jersey;
 - c) names and addresses of charitable agencies to which those funds were distributed and how much to each.

*Please note: charitable fund-raising organizations, which were found eligible by the State Treasurer to participate on the Campaign Steering Committee for the 1985-86 Campaign, shall be required only to submit to the State Treasurer their most recent financial information specified in question 12 above. (N.J.A.C. 17:28-2.8(e).)

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Notice of Correction: N.J.A.C. 5:23-3.4, 3.20

Take notice that an error appears in the September 22, 1986 issue of the New Jersey Register in the Adoption Notice at 18 N.J.R. 1931(a) concerning the Uniform Construction Code, N.J.A.C. 5:23-3.4 Responsibility. The corrected text appears below:

5:23-3.4 Responsibility

(a) Responsibility for enforcement of specific provisions of the building subcode shall be *[delineated]* as follows:

1. Plan review functions of sections 513.0, 601.0, through 607.0, 609.0 through 613.0, 617.0 through 621.0; article 8; sections 1316.0 and 1317.0; articles 14, 15, 16 and 17; and sections 1818.0, 1820.0, 2107.0, 2108.0,

2111.0, 2112.0, 2116.0 and 2117.0; shall be enforced jointly by the building subcode official and fire protection subcode official.

2. Plan review functions of sections 608.0 and 614.0 through 616.0 and 622.0 shall be enforced exclusively by the building subcode official.

3. Construction inspection functions of sections *513.0 and* 601.0 through *[612.0, 614.0 through]* 622.0; article 8; sections 1316.0 and 1317.0; articles 14 and 15 shall be enforced exclusively by the building subcode official.

4. Construction inspection functions of articles 16 and 17; and sections 1818.0*, *[and]* 1820.0*, **2108.3, 2111.4 and 2117.3*** shall be enforced exclusively by the fire protection subcode official.

5.-6. (No change.)

(b) (No change.)

(c) Responsibility for enforcement of specific provisions of the electrical subcode shall be *[delineated]* as follows:

1. Plan review functions of article 300-21; article 450, part C; chapter 5; and article 760 shall be enforced jointly by the electrical subcode official and the fire protection subcode official.

2. Construction inspection functions of article *[30021]* ***300-21***; article 450, part C; chapter 5; and article 760 shall be enforced exclusively by the electrical subcode official.

3.-4. (No change.)

(d) Responsibility for enforcement of the fire protection subcode shall be the exclusive province of the fire protection subcode official except as is otherwise provided in (a), (c) and (f).

(e) Responsibility for enforcement of specific provisions of the energy subcode shall be as follows:

1.-2. (No change.)

3. Article 6 and standard LEM-1 shall be enforced exclusively by the electrical subcode official.

4.-6. (No change.)

(f) Responsibility for enforcement of specific provisions of the Mechanical Subcode shall be as follows:

1. Articles 3, 11, 12, and 14, Plan Review functions shall be enforced jointly by the building and fire subcode officials. Construction inspection functions shall be enforced exclusively by the Building subcode official.

2. Articles 4, 5, and 10 Plan review and construction inspection functions shall be enforced exclusively by the fire subcode official.

3. Articles 6, 7, 8, 9, and 13 Plan review and construction inspection functions shall be enforced exclusively by the plumbing subcode official.

4. Article 15 Plan review functions shall be enforced by the Department of Community Affairs, and construction inspection functions shall be enforced by the fire subcode official.

5. Article 16 Plan review and construction inspection functions shall be enforced exclusively by the building subcode official.

6. Article 18 Plan review functions shall be enforced jointly by the building and plumbing subcode officials, construction inspection functions shall be enforced by the plumbing subcode official.

Take further notice that errors appear in the September 22, 1986 issue of the New Jersey Register in the Proposal Notice at 18 N.J.R. 1865(b) and that this proposal is being withdrawn and repropoed in the October 20, 1986 issue of the New Jersey Register in corrected form.

OTHER AGENCIES

(b)

DELAWARE RIVER BASIN COMMISSION

**Water Code and Administrative Manual—Part III
Water Quality Regulations**

Notice of Correction

Take notice that an error appears in the September 8, 1986 New Jersey Register at 18 N.J.R. 1841(b) concerning the effective date of the Water Code and Administrative Manual—Part III Water Quality Regulations. The effective date for these regulations should read **July 30, 1986**.

EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by Title and Chapter. If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the Title Table of Contents for each executive department or agency and on the Subtitle page for each group of chapters in a Title. Please disregard all expiration dates appearing elsewhere in a Title volume.

This listing is revised monthly and appears in the first issue of each month.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date	N.J.A.C.	Expiration Date
1:1	5/15/90	3:7	9/16/90
1:2	5/15/90	3:11	3/19/89
1:6	8/18/91	(Except for 3:11-2 which expired 6/3/85)	
1:6A	1/1/88	3:17	6/18/91
1:7	8/9/90	3:19	3/17/91
1:10	3/4/90	3:21	11/2/86
1:10A	9/16/90	(Except for 3:21-1 which expired 2/2/84)	
1:10B	10/6/91	3:22	5/21/89
1:11	3/4/90	3:23	5/3/87
1:20	8/1/88	3:24	8/20/89
1:21	7/15/90	3:26	12/31/90
1:30	2/14/91	3:27	9/16/90
1:31	8/12/87	3:28	12/17/89
		3:30	10/17/88
		3:38	9/7/87
		3:41	10/16/90

AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	9/3/90
2:2	10/3/88
(Except for 2:2-9 which expired 6/11/84)	
2:3	6/18/89
(Except for 2:3-4 which expired 1/8/86)	
2:5	6/18/89
2:6	9/3/90
2:7	9/29/88
2:9	7/7/91
2:16	5/7/90
2:22	1/18/87
2:23	6/6/88
2:24	2/11/90
2:32	2/3/91
2:48	11/27/90
2:50	7/15/87
2:52	6/7/90
2:53	3/3/91
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)
2:68	8/1/88
2:69	10/3/88
2:70	5/7/90
2:71	9/1/88
2:72	9/1/88
2:73	7/18/88
2:74	9/1/88
2:76	8/29/89
2:90	6/24/90

BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/6/91
3:2	4/15/90
3:6	3/3/91
(Except for 3:6-8 which expired 4/9/85)	

CIVIL SERVICE—TITLE 4

N.J.A.C.	Expiration Date
4:1	1/28/90
4:2	1/28/90
4:3	6/4/89
4:4	12/7/86
4:5	12/7/86
4:6	5/5/91

COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:3	9/1/88
5:10	12/1/88
5:11	3/1/89
5:12	1/1/90
5:13	1/1/88
5:14	12/1/90
5:17	6/1/89
5:18	2/1/90
5:18A	2/1/90
5:18B	2/1/90
5:22	12/1/90
5:23	4/1/88
5:24	9/1/90
5:25	3/1/91
5:26	3/1/91
5:27	6/1/90
5:28	12/20/90
5:29	6/18/91
5:30	6/1/88
5:31	12/1/89
5:37	11/18/90
5:38	11/7/88
5:51	9/1/88
5:70	8/16/87
5:71	3/1/90
5:80	5/20/90
5:91	6/16/91
5:92	6/16/91
5:100	5/7/89

N.J.A.C.	Expiration Date
8:43F	3/18/90
8:43G	9/8/91
8:44	11/7/88
8:45	5/20/90
8:48	8/20/89
8:51	9/16/90
8:53	8/4/91
8:57	6/18/90
8:58	Expired 5/1/84
8:59	10/1/89
8:60	5/3/90
8:61	10/6/91
8:65	12/2/90
8:70	9/17/88
8:71	4/2/89

N.J.A.C.	Expiration Date
10:69A	4/26/88
10:69B	11/21/88
10:70	6/16/91
10:80	8/23/89
10:81	10/15/89
10:82	10/29/89
10:85	1/30/90
10:87	3/1/89
10:89	9/11/90
10:90	11/15/87
10:94	1/6/91
10:95	8/23/89
10:97	4/16/89
10:98	7/12/87
10:99	2/19/90
10:100	2/6/89
10:109	3/17/91
10:112	2/17/89
10:120	9/26/88
10:121	3/13/89
10:121A	8/6/87
10:122	8/6/89
10:122A	Exempt
10:122B	9/10/89
10:123	7/20/90
10:124	7/19/87
10:125	7/16/89
10:127	9/19/88
10:129	10/11/89
10:130	9/19/88
10:131	9/20/87
10:132	11/16/86
10:140	12/31/86
10:141	2/21/89

HIGHER EDUCATION—TITLE 9

N.J.A.C.	Expiration Date
9:1	1/17/89
9:2	6/17/90
9:3	10/17/88
9:4	11/2/86
9:5	1/21/91
9:6	5/20/90
9:7	4/13/88
9:8	11/4/90
9:9	10/3/88
9:11	1/17/89
9:12	1/17/89
9:14	5/20/90
9:15	10/25/88
9:16	Expired 7/9/85

HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1	5/6/88
10:3	9/19/88
10:4	1/3/88
10:5	12/19/88
10:6	2/21/89
10:36	8/18/91
10:37	11/4/90
10:38	5/28/91
10:40	3/15/89
10:42	8/18/91
10:43	9/1/88
10:44	10/3/88
10:44A	2/7/88
10:44B	4/15/90
10:45	9/19/88
10:47	11/4/90
10:48	1/21/91
10:49	8/12/90
10:50	3/3/91
10:51	10/28/90
10:52	2/19/90
10:53	4/29/90
10:54	3/3/91
10:55	3/11/90
10:56	8/26/91
10:57	3/3/91
10:58	3/3/91
10:59	3/3/91
10:60	8/27/90
10:61	3/3/91
10:62	3/3/91
10:63	11/29/89
10:64	3/3/91
10:65	11/5/89
10:66	12/15/88
10:67	3/3/91
10:68	7/7/91

CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:3	10/6/91
10A:4	7/21/91
10A:5	10/6/91
10A:31	2/4/90
10A:32	3/4/90
10A:33	7/16/89
10A:70	Exempt
10A:71	4/15/90

INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	2/3/91
11:1-20	7/7/88
11:1-22	7/7/88
11:2	12/2/90
11:3	1/6/91
11:4	12/2/90
11:5	11/7/88
11:10	7/15/90
11:12	11/2/86
11:13	12/6/87
11:14	7/2/89
11:15	12/3/89
11:16	2/3/91

LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:15	8/19/90
12:16	4/1/90
12:17	1/6/91
12:20	11/5/89
12:35	8/5/90

N.J.A.C.	Expiration Date
12:45	5/2/88
12:46	5/2/88
12:47	5/2/88
12:48	5/2/88
12:49	5/2/88
12:51	6/30/91
12:56	9/26/90
12:57	9/26/90
12:58	9/26/90
12:90	12/17/89
12:100	11/5/89
12:105	1/21/91
12:120	5/3/90
12:175	12/9/88
12:190	9/5/87
12:195	9/6/88
12:200	8/5/90
12:235	5/5/91

N.J.A.C.	Expiration Date
13:47C	8/20/89
13:48	1/21/91
13:49	12/19/88
13:51	6/21/87
13:54	10/5/91
13:58	9/7/89
13:59	9/16/90
13:70	2/25/90
13:71	2/25/90
13:75	8/20/89
13:76	9/6/88

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

N.J.A.C.	Expiration Date
12A:100-1	9/8/91

PUBLIC UTILITIES—TITLE 14

N.J.A.C.	Expiration Date
14:1	12/16/90
14:3	5/6/90
14:5	12/16/90
14:6	3/3/91
14:9	4/15/90
14:11	2/1/87
14:10	9/8/91
14:17	5/7/89
14:18	7/29/90

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	7/19/88
13:1C	Expired 12/1/83
13:2	8/5/90
13:3	8/1/88
13:4	1/21/91
13:10	5/27/89
13:13	6/17/90
13:18	4/1/90
13:19	8/23/89
13:20	12/18/90
13:21	12/16/90
13:22	1/7/90
13:23	6/4/89
13:24	11/5/89
13:25	3/18/90
13:26	10/17/88
13:27	4/1/90
13:27A	11/1/87
13:28	9/3/90
13:29	6/3/90
13:30	4/15/90
13:31	12/21/86
13:32	11/1/87
13:33	3/18/90
13:34	11/21/88
13:35	11/19/89
13:36	11/19/89
13:37	2/11/90
13:38	10/7/90
13:39	1/6/91
13:39A	7/7/91
13:40	9/3/90
13:41	9/3/90
13:42	11/3/88
13:43	9/8/88
13:44	8/20/89
13:44A	Expired 5/17/84
13:44B	5/3/87
13:44C	6/2/91
13:45A	12/16/90
13:46	6/3/90
13:47A	8/16/87
(Except for 13:47A-25 which expired 8/14/83)	
13:47B	1/4/89

ENERGY—TITLE 14A

N.J.A.C.	Expiration Date
14A:2	4/17/89
14A:3	10/7/90
(Except for 14A:3-10 which expired 9/1/85)	
14A:4	10/19/88
14A:5	10/19/88
14A:6	8/6/89
14A:7	9/16/90
14A:8	9/20/89
14A:9	Expired 4/27/84
14A:11	9/20/89
14A:12	2/7/88
14A:13	11/2/86
14A:14	2/6/89
14A:20	2/3/91
14A:21	11/21/90
14A:22	6/4/89

STATE—TITLE 15

N.J.A.C.	Expiration Date
15:2	3/7/88
15:3	7/7/91
15:10	2/18/91

TRANSPORTATION—TITLE 16

N.J.A.C.	Expiration Date
16:1	8/5/90
16:2	10/3/88
16:6	9/3/90
16:13	5/7/89
16:16	11/7/88
16:17	11/7/88
16:20A	12/17/89
16:20B	12/17/89
16:21	9/3/90
16:21A	8/20/89
16:22	2/3/91
16:25-12	Expired 2/5/84
16:25-13	Expired 2/5/84
16:26	8/6/89
16:27	9/8/91
16:28	11/7/88

N.J.A.C.	Expiration Date
16:28A	11/7/88
16:29	11/7/88
16:30	11/7/88
16:31	11/7/88
16:31A	10/20/88
16:32	4/15/90
16:33	9/3/90
16:41	11/15/87
16:41A	2/19/90
16:41B	3/4/90
16:43	9/3/90
16:44	10/3/88
16:49	3/18/90
16:53	3/19/89
16:53A	4/15/90
16:53B	Expired 8/21/84
16:53C	9/19/88
16:53D	5/7/89
16:54	4/7/91
16:55	11/7/88
16:56	6/4/89
16:60	11/7/88
16:61	11/7/88
16:62	4/15/90
16:72	3/31/91
16:73	2/16/87
16:75	6/6/88
16:76	12/19/88
16:77	1/21/90
16:78	10/7/90

TREASURY-GENERAL—TITLE 17

N.J.A.C.	Expiration Date
17:1	6/6/88
17:2	12/17/89
17:3	6/6/88
17:4	7/1/90
17:5	12/2/90
17:6	2/19/89
17:7	6/6/88
17:8	6/27/90
17:9	6/6/88
17:10	6/6/88
17:12	8/15/89
17:16	12/2/90
17:19	3/18/90
(Except for 17:19-10 which expired 3/3/85)	
17:19A	Expired 2/1/84
17:20	11/7/88
17:25	6/18/89
17:27	11/7/88
17:28	9/13/90
17:29	10/18/90

TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:3	4/23/89
18:5	4/16/89
18:6	4/2/89
18:7	4/2/89
18:8	4/2/89
18:9	8/12/88
18:12	8/12/88
18:12A	8/12/88
18:14	8/12/88
18:15	8/12/88
18:16	8/12/88
18:17	8/12/88
18:18	4/2/89
18:19	4/6/89
18:22	4/2/89
18:23	4/2/89
18:23A	8/5/90
18:24	8/12/88
18:25	1/6/91
18:26	8/12/88
18:30	4/2/89
18:35	8/12/88
18:36	2/4/90
18:37	8/5/90

OTHER AGENCIES—TITLE 19

N.J.A.C.	Expiration Date
19:3	6/19/88
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	11/7/88
19:4A	5/2/88
19:8	6/1/88
19:9	7/13/88
19:12	8/7/91
19:16	8/7/91
19:17	7/15/88
19:25	1/9/91
19:30	10/7/90
19:40	9/26/89
19:41	5/17/88
19:42	5/17/88
19:43	4/27/89
19:44	10/13/88
19:45	4/7/88
19:46	5/4/88
19:47	5/4/88
19:48	10/13/88
19:49	3/29/88
19:50	5/23/88
19:51	8/14/91
19:52	10/8/86
19:53	5/4/88
19:54	4/15/88
19:61	7/7/91
19:65	7/7/91
19:75	1/17/89

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the August 4, 1986 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(d).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1986 d.100 means the one hundredth rule adopted in 1986.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A number and date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: JULY 21, 1986.

NEXT UPDATE WILL BE DATED AUGUST 18, 1986.

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
17 N.J.R. 2171 and 2318	September 16, 1985	18 N.J.R. 583 and 726	April 7, 1986
17 N.J.R. 2319 and 2484	October 7, 1985	18 N.J.R. 727 and 868	April 21, 1986
17 N.J.R. 2485 and 2584	October 21, 1985	18 N.J.R. 869 and 1018	May 5, 1986
17 N.J.R. 2585 and 2710	November 4, 1985	18 N.J.R. 1019 and 1122	May 19, 1986
17 N.J.R. 2711 and 2814	November 18, 1985	18 N.J.R. 1123 and 1222	June 2, 1986
17 N.J.R. 2815 and 2934	December 2, 1985	18 N.J.R. 1223 and 1326	June 16, 1986
17 N.J.R. 2935 and 3032	December 16, 1985	18 N.J.R. 1327 and 1432	July 7, 1986
18 N.J.R. 1 and 128	January 6, 1986	18 N.J.R. 1433 and 1504	July 21, 1986
18 N.J.R. 129 and 234	January 21, 1986	18 N.J.R. 1505 and 1640	August 4, 1986
18 N.J.R. 235 and 376	February 3, 1986	18 N.J.R. 1641 and 1726	August 18, 1986
18 N.J.R. 377 and 446	February 18, 1986	18 N.J.R. 1727 and 1862	September 8, 1986
18 N.J.R. 447 and 506	March 3, 1986	18 N.J.R. 1863 and 1978	September 22, 1986
18 N.J.R. 507 and 582	March 17, 1986	18 N.J.R. 1979 and 2078	October 6, 1986

N.J.A.C. CITATION	ADMINISTRATIVE LAW—TITLE 1	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
1:1, 1:2-1:21	Administrative hearings	18 N.J.R. 1728(a)		
1:1-3.8	Attorney disqualification from a case	18 N.J.R. 2(a)	R.1986 d.340	18 N.J.R. 1699(a)
1:1-15.10	Prior transcribed testimony	18 N.J.R. 1865(a)		
1:5	Council on Affordable Housing hearings	18 N.J.R. 1506(a)		
1:6	Education budget hearings	18 N.J.R. 1020(b)	R.1986 d.342	18 N.J.R. 1699(b)
1:10B	Medicaid and Medically Needy hearings	18 N.J.R. 1507(a)	R.1986 d.405	18 N.J.R. 2008(a)

(TRANSMITTAL 22, dated June 16, 1986)

AGRICULTURE—TITLE 2	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
2:7-1.2, 1.3, 1.4	Pullorum and fowl typhoid control	18 N.J.R. 1508(a)	
2:76-6.2, 6.15	Sale of development easements: deed restrictions	18 N.J.R. 1328(a)	R.1986 d.386
2:76-6.15	Acquisition of development easements: deed restrictions	18 N.J.R. 513(a)	18 N.J.R. 1930(a)
2:90-1.5, 1.14	Soil conservation plan certifications; minor subdivisions	17 N.J.R. 2172(a)	Expired

(TRANSMITTAL 42, dated July 21, 1986)

BANKING—TITLE 3	PROPOSAL NOTICE (N.J.R. CITATION)
3:11-11.13	Leeway investments: confidentiality of approval process
3:13-1	Registration of bank holding companies
3:13-2, 3	Bank holding company: reporting requirements and examination charges
3:38-5.2	Return of borrower's commitment fee
3:41	Cemeteries: disinterment and reinterment of human remains

(TRANSMITTAL 34, dated July 21, 1986)

CIVIL SERVICE—TITLE 4	PROPOSAL NOTICE (N.J.R. CITATION)
4:1-2.1, 5.2, 11.2, 16, 24	Separations, demotions, layoffs; review and appeals
4:1-8.4	Promotional examinations
4:1-12.18	Disposition of certification by appointing authority
4:1-15	Assignments and transfers
4:1-18	Workweek programs
4:2-15.1	Assignments and transfers
4:2-16	Separations and demotions
4:2-18	Workweek programs
4:3-16	Separations and demotions
4:4	State employees' awards program

(TRANSMITTAL 31, dated June 16, 1986)

COMMUNITY AFFAIRS—TITLE 5	PROPOSAL NOTICE (N.J.R. CITATION)
5:11-2.1	Uniform Fire Code enforcement and relocation assistance

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
5:18-2.5, 2.7, 2.11, 2.14, 3.2, 4.1, 4.7, 4.9-4.13, 4.17, 4.18	Uniform Fire Code: Fire Safety Code	18 N.J.R. 1225(a)		
5:18A-2.3, 4.3, 4.4	Fire Code Enforcement	18 N.J.R. 1225(a)		
5:23-3.2	Subcode exceptions	18 N.J.R. 757(a)		
5:23-3.4, 3.14, 3.17, 3.20	Building, Fire Protection, and Mechanical Subcodes	18 N.J.R. 1235(a)	R.1986 d.380	18 N.J.R. 1931(a)
5:23-3.11	Uniform Construction Code: correction to Administrative Code	_____	_____	18 N.J.R. 1621(a)
5:23-3.11	Uniform Construction Code: enforcement activities reserved to State	_____	_____	18 N.J.R. 1842(a)
5:23-3.20	Uniform Construction Code: mechanical subcode	18 N.J.R. 1865(b)		
5:23-5.7	Uniform Construction Code: correction to subcode official requirements	18 N.J.R. 1963(a)		
5:23-5.18	Uniform Construction Code: correction to inplant inspector requirements	18 N.J.R. 1963(b)		
5:23-7	Barrier Free Subcode: access for physically handicapped and aged	18 N.J.R. 757(a)		
5:25	New Home Warranty and Builders' Registration rules: waiver of sunset provision	18 N.J.R. 218(a)		
5:25	New Home Warranty and Builders' Registration rules: waiver of sunset provision	18 N.J.R. 490(a)		
5:30-17	Local public contracts: cooperative pricing and joint purchasing systems	18 N.J.R. 1022(a)	R.1986 d.315	18 N.J.R. 1524(a)
5:80-20	HMFA housing projects: applicant and tenant income certification	17 N.J.R. 2321(b)		
5:91-1.2, 1.3, 2.1, 3.1, 5.1, 7.1, 13.3, 13.4	Council on Affordable Housing: procedural rules	18 N.J.R. 1643(a)		
5:92	Council on Affordable Housing: substantive rules	18 N.J.R. 1124(b)	R.1986 d.333	18 N.J.R. 1527(a)

(TRANSMITTAL 43, dated July 21, 1986)

DEFENSE—TITLE 5A

(TRANSMITTAL 1, dated May 20, 1985)

EDUCATION—TITLE 6

6:20-4.4	Tuition for private schools for handicapped	18 N.J.R. 1237(a)	R.1986 d.360	18 N.J.R. 1797(a)
6:28-3.4, 3.5	Special education	18 N.J.R. 1771(a)		
6:29-4.4	Children with HIV infection and school attendance	18 N.J.R. 1509(a)		
6:29-9	Policies and procedures concerning pupil use of drugs and alcohol	18 N.J.R. 1237(b)	R.1986 d.396	18 N.J.R. 2009(a)
6:30	Adult and community education	18 N.J.R. 871(b)	R.1986 d.310	18 N.J.R. 1561(a)
6:46-1	Area vocational technical schools	18 N.J.R. 1511(a)		

(TRANSMITTAL 42, dated July 21, 1986)

ENVIRONMENTAL PROTECTION—TITLE 7

7:1-6	Disposal of solid waste	18 N.J.R. 883(a)		
7:2-11.22	Bear Swamp East natural area: public hearing	18 N.J.R. 532(a)		
7:6-1.42	Boating rules: diving and swimming	Emergency	R.1986 d.345	18 N.J.R. 1712(a)
7:7-2.1	CAFRA facilities	18 N.J.R. 1772(a)		
7:7-2.2	Wetlands management in Atlantic County	18 N.J.R. 1026(a)	R.1986 d.349	18 N.J.R. 1700(a)
7:11-3	Use of water from Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir Complex	18 N.J.R. 1330(a)		
7:13-7.1	Floodway delineations along East Branch of Stony Brook, South Branch of Rockaway Creek, and Whale Pond Brook	18 N.J.R. 1239(a)		
7:13-7.1	Floodway delineations in Montgomery Township and Rocky Hill	18 N.J.R. 1334(a)		
7:13-7.1(c)29	Floodway delineations within Maurice River Basin	17 N.J.R. 2186(a)	R.1986 d.346	18 N.J.R. 1700(b)
7:13-7.1(d)	Flood hazard delineations for Raritan River and Peters Brook	18 N.J.R. 600(a)		
7:13-7.1(d)	Redelineation of Holland Brook in Somerset County	18 N.J.R. 1866(a)		
7:13-7.1(d)	Redelineation of North Branch Raritan River in Somerset County	18 N.J.R. 1866(b)		
7:14A-4.4, 4.7	Dioxin-containing waste	18 N.J.R. 879(a)	R.1986 d.387	18 N.J.R. 1933(a)
7:14A-6.16	Disposal of solid waste	18 N.J.R. 883(a)		
7:18	Laboratory certification and standards of performance	18 N.J.R. 1239(b)	R.1986 d.351	18 N.J.R. 1797(b)
7:19-4.14	Water quality criteria for Mainstem Delaware River Zones	18 N.J.R. 1435(a)		
7:22-1, 2, 8	Wastewater treatment facilities: State matching grants	18 N.J.R. 1869(a)		
7:22-3	Wastewater Treatment Fund procedures	18 N.J.R. 1875(a)		
7:22-4	Wastewater Treatment Trust procedures	18 N.J.R. 1883(a)		
7:22-5	Determination of allowable costs: Wastewater Treatment Fund and Trust	18 N.J.R. 1891(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
7:22-6	Pinelands Infrastructure Trust Fund procedures	18 N.J.R. 1896(a)		
7:22-7	Determination of allowable costs: Pinelands	18 N.J.R. 1904(a)		
7:25-2.20	Higbee Beach Wildlife Management Area	18 N.J.R. 1511(b)		
7:25-6	1987-88 Fish Code	18 N.J.R. 1644(a)		
7:26-1.4, 2, 2A, 2B, 5, 12.11, 12.12	Disposal of solid waste	18 N.J.R. 883(a)		
7:26-1.4, 7.4, 9.1, 12.1, 12.8	Reuse of hazardous waste	17 N.J.R. 2716(a)	R.1986 d.347	18 N.J.R. 1701(a)
7:26-1.4, 7.5, 7.7, 8.13	Waste oil	18 N.J.R. 878(a)		
7:26-2.6, 2.7	Disposal of asbestos waste	17 N.J.R. 2719(a)	R.1986 d.388	18 N.J.R. 1932(a)
7:26-2.9	Closure and post-closure of sanitary landfills	18 N.J.R. 252(a)		
7:26-2.9	Closure and post-closure of sanitary landfills	18 N.J.R. 924(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow	18 N.J.R. 1773(a)		
7:26-8.1, 8.2, 8.19, 9.3, 9.7, 12.2	Hazardous waste management	17 N.J.R. 2941(a)		
7:26-8.1, 8.2, 8.19, 9.3, 9.7, 12.2	Hazardous waste management: extension of comment period	18 N.J.R. 254(a)		
7:26-8.3, 8.4, 8.13, 8.15, 10.5-10.8, 11.1, 11.5, 11.6, 12.2	Dioxin-containing waste	18 N.J.R. 879(a)	R.1986 d.387	18 N.J.R. 1933(a)
7:26-8.14, 8.15, 8.16	Hazardous waste criteria, identification and listing	18 N.J.R. 1037(a)		
7:26-8.16	Waste code numbers for hazardous constituents	18 N.J.R. 792(a)	R.1986 d.371	18 N.J.R. 1798(a)
7:26-8.17	Hazardous waste delisting procedure	18 N.J.R. 1335(a)		
7:26-17	Scales at solid waste facilities	18 N.J.R. 1154(a)		
7:27-16	Air pollution by volatile organic substances	17 N.J.R. 1969(a)	R.1986 d.379	18 N.J.R. 1936(a)
7:27-16.1, 16.3	Air pollution control: Stage II vapor recovery	18 N.J.R. 1867(a)		
7:27B-3	Determination of volatile organic substances from source operations	17 N.J.R. 2194(a)	R.1986 d.377	18 N.J.R. 1800(a)
7:28-14	Therapeutic radiation installations	18 N.J.R. 1157(a)		
7:28-42.1	Workplace exposure to radio frequency radiation	18 N.J.R. 1166(a)		
7:45-1, 2, 3	Delineation of Review Zone within Delaware and Raritan Canal State Park: reopening of comment period	18 N.J.R. 457(a)		

(TRANSMITTAL 44, dated July 21, 1986)

HEALTH—TITLE 8

8:21-5	Foods, drugs, cosmetics, devices: order to remove from sale and recall	18 N.J.R. 1361(b)		
8:21-5	Order to remove from sale and recall of foods, drugs, cosmetics, and devices: extension of proposal comment period	18 N.J.R. 1715(b)		
8:22-1	Campgrounds sanitation	18 N.J.R. 1038(a)	R.1986 d.329	18 N.J.R. 1576(a)
8:26	Recreational bathing	18 N.J.R. 1040(a)	R.1986 d.328	18 N.J.R. 1576(b)
8:31-25.1	Mobile intensive care: administration of medications	18 N.J.R. 602(a)		
8:31-30.1	Health facilities construction: plan review fees	18 N.J.R. 795(a)		
8:31B-2.2, 3.51, 3.57, 3.73, 4.40	Hospital reimbursement: Same Day Surgery services	18 N.J.R. 1908(a)		
8:31B-3.19	RIM methodology for nursing cost allocation: implementation date	17 N.J.R. 2464(a)		
8:31B-3.27, 4.42	Hospital reimbursement: capital facilities allowance	18 N.J.R. 1912(a)		
8:31B-3.38, 3.58, App. II, 4.66	Hospital reimbursement: malpractice costs	18 N.J.R. 1911(a)		
8:31B-3.72	Hospital reimbursement: periodic adjustments	18 N.J.R. 1917(a)		
8:31B-3.76-3.82	Hospital reimbursement: URO performance evaluation; post-billing denial of payments	18 N.J.R. 150(b)		
8:31C-1	Residential alcoholism treatment facilities: cost accounting and rate evaluation	18 N.J.R. 1918(a)		
8:33F-1.2	Continuous ambulatory peritoneal dialysis	18 N.J.R. 1241(a)	R.1986 d.372	18 N.J.R. 1816(a)
8:33I	Megavoltage radiation oncology services	18 N.J.R. 1436(a)	R.1986 d.417	18 N.J.R. 2010(a)
8:34-1.31	Licensing of nursing home administrators	17 N.J.R. 2212(a)	Expired	
8:39-3.11	Availability of information at long-term care facilities	18 N.J.R. 1241(b)	R.1986 d.384	18 N.J.R. 1955(a)
8:41-8	Mobile intensive care: administration of medications	18 N.J.R. 602(a)		
8:43E-1	Hospital Policy Manual	18 N.J.R. 825(a)		
8:43G	Hospital capital policy	18 N.J.R. 1242(a)	R.1986 d.375	18 N.J.R. 1817(a)
8:51-1—6	Standards for local boards of health	18 N.J.R. 1690(a)		
8:52	Standards for local boards of health	18 N.J.R. 1690(a)		
8:53	Implementation of Local Health Services Act	17 N.J.R. 2836(a)	R.1986 d.332	18 N.J.R. 1591(a)
8:57-1.14	Reporting of AIDS and AIDS Related Complex	18 N.J.R. 1245(a)	R.1986 d.408	18 N.J.R. 2011(a)
8:59-1.3, 1.5, 2.1, 3.13, 5.1, 5.5, 6.2, 7.1, 7.2, 8.1, 8.2, 8.5-8.12, 10.3	Worker and Community Right to Know Act	18 N.J.R. 1363(a)	R.1986 d.373	18 N.J.R. 1821(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:60-1.1, 4.2-4.8, 5.2, 5.4-5.7, 6.1, 6.3, 6.11	Asbestos licenses and permits	18 N.J.R. 156(a)		
8:61-1.1	Children and adults with HIV infection and school attendance	18 N.J.R. 1512(a)	R.1986 d.407	18 N.J.R. 2014(a)
8:65-10.1	Controlled dangerous substances: Parafluorofentanyl	18 N.J.R. 603(a)	R.1986 d.326	18 N.J.R. 1591(b)
8:65-10.1, 10.2	Reschedule Dronabinol from Schedule I to II	18 N.J.R. 1774(a)		
8:65-10.2	Removal of Nalmefene from Schedule II of controlled substances	18 N.J.R. 536(a)	R.1986 d.327	18 N.J.R. 1592(a)
8:65-10.4	Controlled substances: Quazepam and Midazolam	18 N.J.R. 1166(b)	R.1986 d.374	18 N.J.R. 1827(a)
8:65-11	Narcotic treatment programs	18 N.J.R. 924(b)	R.1986 d.330	18 N.J.R. 1592(b)
8:71	Generic drug list additions (see 18 N.J.R. 417(a), 984(b), 1102(b), 1382(a), 1463(a))	17 N.J.R. 2842(a)	R.1986 d.383	18 N.J.R. 1957(b)
8:71	Generic drug list additions: public hearing (see 18 N.J.R. 1381(a), 1463(b), 1957(a))	18 N.J.R. 537(a)	R.1986 d.406	18 N.J.R. 2015(a)
8:71	Generic drug list additions	18 N.J.R. 1167(a)	R.1986 d.381	18 N.J.R. 1955(b)
8:71	Generic drug additions	18 N.J.R. 1775(a)		

(TRANSMITTAL 41, dated July 21, 1986)

HIGHER EDUCATION—TITLE 9

9:2-5	Management of computerized information	18 N.J.R. 799(a)		
9:4	Policies and procedures for community colleges	18 N.J.R. 1439(a)		
9:7-2.2	Residency and student assistance	18 N.J.R. 801(a)	R.1986 d.322	18 N.J.R. 1592(c)
9:7-2.9	Student assistance programs: award combinations	17 N.J.R. 2725(a)	R.1986 d.323	18 N.J.R. 1593(a)
9:7-3.1	Tuition Aid Grant Program: 1986-87 Award Table	Emergency	R.1986 d.348	18 N.J.R. 1713(a)
9:11-1.2	Student residency	18 N.J.R. 1777(a)		
9:11-1.5	EOF: undergraduate grants	18 N.J.R. 926(a)	R.1986 d.344	18 N.J.R. 1704(a)
9:11-1.7	EOF: grant amounts	18 N.J.R. 926(b)	R.1986 d.343	18 N.J.R. 1704(b)
9:12-1.5, 2.3	Educational Opportunity Fund Program	17 N.J.R. 2214(b)	Expired	
9:12-1.5, 2.3	Educational Opportunity Fund Program	18 N.J.R. 801(b)		

(TRANSMITTAL 32, dated July 21, 1986)

HUMAN SERVICES—TITLE 10

10:2	County Human Services Advisory Councils	18 N.J.R. 1777(b)		
10:36-1	Patient supervision at State psychiatric hospitals	17 N.J.R. 2593(a)	R.1986 d.331	18 N.J.R. 1704(c)
10:36-1	Patient supervision at State psychiatric hospitals: public hearing	18 N.J.R. 20(a)		
10:36-2	Clinical review procedures for special status psychiatric patients	17 N.J.R. 2951(a)		
10:42	Developmental Disabilities: Emergency Mechanical Restraint	17 N.J.R. 1832(a)	R.1986 d.341	18 N.J.R. 1707(a)
10:51-1, App. B, C	Pharmaceutical services manual	18 N.J.R. 1780(a)		
10:51-1.14, 5.16	Pharmaceutical services: ineligible prescription drugs	17 N.J.R. 2730(a)		
10:51-2.2, 2.3, 2.6	Pharmaceutical Services Manual: pharmacy claims	18 N.J.R. 1674(a)		
10:52-1.5, 1.17	Out-of-state inpatient hospital services	18 N.J.R. 538(a)		
10:54-4	Physician's Services: common procedure coding (HCPCS)	18 N.J.R. 927(a)	R.1986 d.320	18 N.J.R. 1593(b)
10:56	Dental Services manual	18 N.J.R. 1337(a)	R.1986 d.385	18 N.J.R. 1958(a)
10:61-1, 2	Independent laboratory services	18 N.J.R. 540(a)		
10:62-1, 2, 3	Vision Care Manual	18 N.J.R. 1246(a)		
10:63-3.2, 3.4, 3.5, 3.6, 3.8, 3.10-3.15, 3.18, 3.19	Long-term care facilities: CARE Guidelines	18 N.J.R. 257(a)		
10:66-2, 3	Independent clinic services	18 N.J.R. 541(a)		
10:66-3	Independent Clinic Services: common procedure coding (HCPCS)	18 N.J.R. 927(a)	R.1986 d.320	18 N.J.R. 1593(b)
10:66-3	Independent clinic transportation services: HCPCS codes	18 N.J.R. 1053(a)	R.1986 d.369	18 N.J.R. 1827(b)
10:66-3	Independent clinic transportation services: HCPCS codes	18 N.J.R. 1252(a)		
10:68	Chiropractic services and billing procedures	18 N.J.R. 1053(b)	R.1986 d.309	18 N.J.R. 1594(a)
10:68-2	Chiropractor billing procedures	18 N.J.R. 810(a)		
10:69A-5.3	Renewal applications for PAAD beneficiaries	18 N.J.R. 1054(a)	R.1986 d.321	18 N.J.R. 1594(b)
10:81-3.17, 3.18, 5.9, 5.10	PAM: AFDC eligibility, WIN status, LLR reevaluation	18 N.J.R. 1513(a)		
10:81-3.34	PAM: temporary absence of child from home	18 N.J.R. 1675(a)		
10:81-3.38	PAM: transfer of resources	18 N.J.R. 1168(a)	R.1986 d.397	18 N.J.R. 2015(b)
10:81-3.40, 3.41	PAM: repayment agreements and child injury awards	18 N.J.R. 1055(a)	R.1986 d.317	18 N.J.R. 1594(c)
10:81-7.21—7.29	PAM: funeral and burial payments	18 N.J.R. 1168(b)		
10:81-10.7	PAM: eligibility for refugee and entrant programs	17 N.J.R. 2227(a)	Expired	
10:82-1.8, 1.9, 2.14, 2.20, 3.1, 3.2, 4.4, 4.6, 4.15, 4.17, 5.3, 5.10	ASH: conformity with Federal regulations	18 N.J.R. 260(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
10:82-2.3, 2.4, 4.3	ASH: AFDC eligibility requirements	18 N.J.R. 928(a)		
10:82-4.2	ASH: income from tips	18 N.J.R. 1056(a)	R.1986 d.318	18 N.J.R. 1595(a)
10:82-5.10	ASH: emergency assistance	17 N.J.R. 2337(a)		
10:85-3.3	GAM: income from tips	18 N.J.R. 1056(b)	R.1986 d.319	18 N.J.R. 1595(b)
10:85-3.3	GAM: Medically Needy eligibility	18 N.J.R. 1781(a)		
10:85-4.6	GAM: emergency assistance	18 N.J.R. 1343(a)	R.1986 d.389	18 N.J.R. 1962(a)
10:85-4.8	GAM: funeral and burial payments	18 N.J.R. 1170(a)		
10:85-6.4	GAM: fiscal and statistical reporting	18 N.J.R. 1056(c)	R.1986 d.316	18 N.J.R. 1595(c)
10:85-8.4	GAM: information concerning PAAD	18 N.J.R. 1343(b)		
10:87-5.4, 5.5, 12.3, 12.4, 12.7	Food Stamp Program: maximum income limits	18 N.J.R. 1490(a)	R.1986 d.395	18 N.J.R. 2015(c)
10:89-2.2, 2.3, 3.4	Home Energy Assistance	18 N.J.R. 1676(a)		
10:90-2.2, 2.3, 2.4, 2.6, 3.3, 4.1—4.10, 5.1, 5.2, 5.6, 6.1, 6.2, 6.3	Monthly Reporting Policy Handbook	17 N.J.R. 1839(a)	R.1986 d.307	18 N.J.R. 1596(a)
10:94-4.2, 4.3	Medicaid eligibility and nonliquid resources	18 N.J.R. 542(a)		
10:100-3.6, 3.7	Special Payments Handbook: funeral and burial payments	18 N.J.R. 1171(a)		
10:121-2	Adoption subsidy	18 N.J.R. 24(a)		
10:121A	Adoption agency standards	18 N.J.R. 1057(a)	R.1986 d.324	18 N.J.R. 1609(a)
10:121A-2.2	Certification period for adoption agencies	18 N.J.R. 1923(a)		
10:132	Youth and Family Services: court actions and proceedings	18 N.J.R. 1924(a)		

(TRANSMITTAL 42, dated July 21, 1986)

CORRECTIONS—TITLE 10A

10A:3	Security and control	18 N.J.R. 1057(b)	R.1986 d.410	18 N.J.R. 2016(a)
10A:4-4.1	Inmate prohibited acts: correction			18 N.J.R. 1709(a)
10A:5	Close custody units	18 N.J.R. 1067(a)	R.1986 d.409	18 N.J.R. 2027
10A:9	Classification of inmates	18 N.J.R. 1649(a)		
10A:16	Medical and health services	18 N.J.R. 1662(a)		
10A:31-3.12, 3.15	Medical screening of new inmates in county facilities: public hearing	17 N.J.R. 2955(b)		
10A:71-2.2, 3.3, 3.4, 3.22, 3.27, 3.28, 3.31, 4.2, 4.3	Parole Board process and procedure	18 N.J.R. 929(a)	R.1986 d.306	18 N.J.R. 1610(a)

(TRANSMITTAL 12, dated July 21, 1986)

INSURANCE—TITLE 11

11:1-20, 22	Cancellation and nonrenewal of property and casualty/liability policies	17 N.J.R. 2956(a)		
11:1-20.1, 20.2, 20.3, 22.1	Cancellation and nonrenewal of commercial policies	18 N.J.R. 1445(a)		
11:2-19.2	Continuing education	18 N.J.R. 44(a)		
11:2-20	License renewal: continuing education requirement	17 N.J.R. 2962(a)		
11:3-8	Nonrenewal of automobile policies	18 N.J.R. 1079(a)	R.1986 d.418	18 N.J.R. 2039(a)
11:3-16	Pre-proposal: Private passenger automobile rate filings	18 N.J.R. 1083(a)		
11:3-17	Rating organizations: private passenger automobile filings	18 N.J.R. 1171(b)	R.1986 d.419	18 N.J.R. 2045(a)
11:3-22	Automobile coverage option survey	18 N.J.R. 1344(b)		
11:4-2	Replacement of life insurance and annuities	17 N.J.R. 2344(a)		
11:4-16.6	Daily hospital room and board coverage	18 N.J.R. 608(a)		
11:4-20	Coverage of the handicapped	18 N.J.R. 44(b)		
11:4-21	Limited death benefit policies	18 N.J.R. 1085(a)		
11:5-1.3	Real estate licensing qualifications	18 N.J.R. 1782(a)		
11:5-1.15	Real estate advertising	17 N.J.R. 2351(a)		
11:5-1.15	Advertising by real estate licensees	18 N.J.R. 1679(a)		
11:5-1.16, 1.23	Obligations of real estate licensees	18 N.J.R. 1677(a)		
11:5-1.23	Obligations of real estate licensees	18 N.J.R. 1680(a)		
11:5-1.25	Sales of interstate properties	18 N.J.R. 1678(a)		
11:5-1.28	Certification as approved real estate education instructor	18 N.J.R. 1681(a)		
11:12	Legal services insurance	18 N.J.R. 1182(b)		
11:12	Pre-proposal: Legal services insurance	18 N.J.R. 1183(a)		
11:17-1	Surplus lines insurance guaranty fund surcharge	18 N.J.R. 1173(a)		

(TRANSMITTAL 40, dated July 21, 1986)

LABOR—TITLE 12

12:15-1.3	Unemployment compensation and temporary disability: 1987 maximum weekly benefits	18 N.J.R. 1787(a)		
12:15-1.4	Unemployment compensation: 1987 taxable wage base	18 N.J.R. 1787(b)		
12:15-1.5	Unemployment compensation: 1987 contribution rate for governmental entities	18 N.J.R. 1788(c)		

NEW JERSEY REGISTER, MONDAY, OCTOBER 6, 1986

(CITE 18 N.J.R. 2075)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
12:15-1.6	Base week earnings for claim eligibility	18 N.J.R. 1787(c)		
12:15-1.7	Alternate earnings test	18 N.J.R. 1788(a)		
12:16-19.1	Charging of unemployment benefits to employer's account	18 N.J.R. 1682(a)		
12:16-20.1	Work relief and work training programs: exempt employment	18 N.J.R. 1683(a)		
12:17-2.2, 2.4	Unemployment compensation claims and verification of Social Security numbers	18 N.J.R. 1683(b)		
12:17-3.1, 4.1, 4.2	"Week of partial unemployment" defined	18 N.J.R. 1684(a)		
12:17-7.1, 7.2	Unemployment compensation and temporary disability: disclosure of information	18 N.J.R. 1447(a)		
12:20-4.8	Temporary appointment to Unemployment Compensation Board of Review	18 N.J.R. 544(b)	R.1986 d.312	18 N.J.R. 1611(a)
12:235-1.6	Workers' compensation: 1987 maximum weekly benefit	18 N.J.R. 1788(b)		

(TRANSMITTAL 31, dated July 21, 1986)

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12A	Departmental rules; small business set-aside contracts	16 N.J.R. 1955(a)	R.1984 d.421	16 N.J.R. 2683(a)
12A:100-1	Commission on Science and Technology: Innovation Partnership Grant Program	18 N.J.R. 1175(a)	R.1986 d.350	18 N.J.R. 1828(a)

LAW AND PUBLIC SAFETY—TITLE 13

13:27	Rules of Board of Architects	17 N.J.R. 2851(b)		
13:30-8.6, 8.15	Practice of dentistry and referral fees	18 N.J.R. 1515(a)		
13:35-6.10	Ambulatory care facilities: advertising and solicitation practices	18 N.J.R. 1788(d)		
13:37-6.2	Delegation of nursing tasks by RPNs	17 N.J.R. 2354(a)		
13:37-6.2	Delegation of selected nursing tasks	18 N.J.R. 1448(a)		
13:37-6.2	Delegation of selected nursing tasks	18 N.J.R. 1176(a)		
13:37-6.3	Nursing procedures: administration of renal dialysis treatment	18 N.J.R. 398(b)		
13:39A-1.4	Licensure of physical therapists: fees and charges	18 N.J.R. 1177(a)		
13:39A-2.2	Authorized practice by physical therapist	18 N.J.R. 1177(b)		
13:39A-2.2, 3.3	Electromyographic testing by licensed physical therapist: public hearing	18 N.J.R. 1684(b)		
13:39A-3.2	Pre-proposal: fee splitting and kickbacks by physical therapists	17 N.J.R. 2360(a)		
13:39A-3.3	Physical therapy: unlawful practices	18 N.J.R. 1178(a)		
13:39A-5.2—5.4, 5.6—5.9	Physical therapy educational credentials and examination standards	18 N.J.R. 1179(a)		
13:39A-6	Temporary licensure of physical therapists	18 N.J.R. 1179(b)		
13:42-6	Reimbursement for psychological services: disclosure of patient information	18 N.J.R. 817(a)		
13:44-2.5	Veterinary practice and referral fees	18 N.J.R. 1515(b)	R.1986 d.414	18 N.J.R. 2048(a)
13:45A-2	Motor vehicle advertising practices	17 N.J.R. 2861(a)		
13:45A-24	Sale of grey market merchandise	17 N.J.R. 2866(a)		
13:46-1A.1, 1A.2, 5.19, 12.4	Boxing: weight classes, age limitations, health safeguards	18 N.J.R. 1789(a)		
13:46-3.1	Bandage specifications for boxer's hands	18 N.J.R. 1924(b)		
13:46-4.7, 4.25	Licensure of boxers	18 N.J.R. 1924(c)		
13:46-8.19	Point system scoring in boxing contests	18 N.J.R. 1515(c)		
13:46-8.25, 11.10	Compensation for boxing referees, judges and timekeepers	18 N.J.R. 1925(a)		
13:46-21.2	Compensation of wrestling referees	18 N.J.R. 1790(a)		
13:47-6.19	Prohibited prizes in games of chance	18 N.J.R. 1180(a)		
13:47-14.3	Rental of premises for bingo	18 N.J.R. 1180(b)		
13:54	Regulation of firearms businesses	18 N.J.R. 51(a)	R.1986 d.413	18 N.J.R. 2048(b)
13:70-1.17	Thoroughbred racing: policing requirements	18 N.J.R. 819(a)	R.1986 d.354	18 N.J.R. 1829(a)
13:70-3.47	Thoroughbred racing: Coggins test	18 N.J.R. 401(a)		
13:70-3.47	Thoroughbred racing: Coggins test for track entrance	18 N.J.R. 1448(b)	R.1986 d.416	18 N.J.R. 2054(a)
13:70-29.56	Thoroughbred racing: Super Six	18 N.J.R. 1619(a)	R.1986 d.411	18 N.J.R. 2054(b)
13:71-5.1	Harness racing: policing requirements	18 N.J.R. 820(a)	R.1986 d.358	18 N.J.R. 1830(a)
13:71-6.24	Harness racing: Coggins test	18 N.J.R. 402(b)		
13:71-6.24	Harness racing: Coggins test for track entrance	18 N.J.R. 1448(c)	R.1986 d.415	18 N.J.R. 2055(a)
13:71-21.8	Harness racing: purse deductions	18 N.J.R. 1516(a)		
13:71-27.53	Harness racing: Super Six	18 N.J.R. 1619(a)	R.1986 d.412	18 N.J.R. 2055(b)

(TRANSMITTAL 44, dated July 21, 1986)

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14:3-4.7	Adjustment of utility bills	17 N.J.R. 2236(a)	Expired	
14:10-5	Inter LATA telecommunications carriers	17 N.J.R. 2012(a)	R.1986 d.368	18 N.J.R. 1830(b)
14:18-1.2, 3.9	Cable TV: service outages	18 N.J.R. 619(a)	R.1986 d.376	18 N.J.R. 1831(a)
14:18-1.2, 11.21, 3	CATV: franchise renewals	18 N.J.R. 1181(a)		

(TRANSMITTAL 28, dated July 21, 1986)

(CITE 18 N.J.R. 2076)

NEW JERSEY REGISTER, MONDAY, OCTOBER 6, 1986

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
ENERGY—TITLE 14A				
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14A:3-4.4, 4.5	Thermal and lighting efficiency	18 N.J.R. 1089(a)	R.1986 d.314	18 N.J.R. 1612(a)
14A:6-2	Business Energy Improvement Subsidy Program	18 N.J.R. 1347(a)	R.1986 d.367	18 N.J.R. 1833(a)

(TRANSMITTAL 19, dated July 21, 1986)

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15:3-2.15	Microfilm standards: correction to Administrative Code			18 N.J.R. 1623(b)
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(TRANSMITTAL 17, dated July 21, 1986)

PUBLIC ADVOCATE—TITLE 15A

(TRANSMITTAL 1, dated March 20, 1978)

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16:28A-1.8, 1.15, 1.22, 1.37	No parking zones along Routes 10, 23, 31, and 70	18 N.J.R. 1252(b)	R.1986 d.335	18 N.J.R. 1709(b)
16:28A-1.23, 1.27, 1.51, 1.71, 1.106	No parking zones along Routes 33, 38, 168, 67 and Truck Route U.S. 1 and 9	18 N.J.R. 1350(a)	R.1986 d.361	18 N.J.R. 1836(a)
16:28A-1.33	Parking along Route 47 in Cape May County	18 N.J.R. 1491(a)	R.1986 d.391	18 N.J.R. 2056(b)
16:28A-1.61	Bus stop zones on U.S. 9W in Englewood Cliffs	18 N.J.R. 1351(a)	R.1986 d.362	18 N.J.R. 1836(b)
16:28A-1.71	Bus stop zones along Route 67 in Fort Lee	18 N.J.R. 1253(a)	R.1986 d.337	18 N.J.R. 1710(a)
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16:29-1.56, 1.58, 1.59	No passing zones along U.S. 9W, U.S. 202, and Route 77	18 N.J.R. 1449(a)	R.1986 d.394	18 N.J.R. 2056(c)
16:29-1.60	No passing zones along Route 54 in Atlantic County	18 N.J.R. 1449(b)	R.1986 d.392	18 N.J.R. 2057(a)
16:29-1.61-1.64	No passing zones along Routes 17, 24, 45 and 48	18 N.J.R. 1450(a)	R.1986 d.393	18 N.J.R. 2057(b)
16:30-1.8	One-way on Route 57 ramp in Warren County	18 N.J.R. 1517(b)	R.1986 d.402	18 N.J.R. 2057(c)
16:30-2.9	Yield intersection along U.S. 130 in Westville	18 N.J.R. 1254(b)	R.1986 d.338	18 N.J.R. 1710(c)
16:30-2.11	Stop-intersections along Route 57, Warren County	18 N.J.R. 1517(c)	R.1986 d.401	18 N.J.R. 2057(d)
16:30-3.4	Bus and HOV lane on U.S. 9 in Middlesex County	18 N.J.R. 1518(a)	R.1986 d.403	18 N.J.R. 2058(a)
16:30-3.5	Bus and carpool lane on I-95 approach to GWB	18 N.J.R. 624(a)	R.1986 d.339	18 N.J.R. 1710(d)
16:31-1.4	No left turn on Route 35 in Sayreville	18 N.J.R. 1352(a)	R.1986 d.363	18 N.J.R. 1837(a)
16:31-1.14, 1.21	No left turns along Route 15 in Morris County and Route 57 in Warren County	18 N.J.R. 1518(b)	R.1986 d.404	18 N.J.R. 2058(b)
16:32-1.2, 1.3, 3	Designated routes for double trailers and wide trucks	18 N.J.R. 1184(b)		
16:41-8.9	Outdoor advertising permit fees for vegetation control	18 N.J.R. 625(b)	R.1986 d.378	18 N.J.R. 1837(b)
16:49-1.3	Transportation of hazardous materials	18 N.J.R. 933(a)		
16:49-1.3, 1.4, 1.5, 1.6, 2.1	Transportation of hazardous materials	18 N.J.R. 1791(a)		
16:51	Pre-proposal: Practice before Office of Regulatory Affairs	17 N.J.R. 2867(a)		
16:53-3.5, 3.19, 6.28, 6.29	Autobus specifications	18 N.J.R. 1519(a)	R.1986 d.399	18 N.J.R. 2058(c)
16:74	NJ TRANSIT: claims of destructive competition	18 N.J.R. 1255(a)		
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17:1-1.17	Administrative expenses proration among retirement systems	18 N.J.R. 1686(a)		
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17:1-2.37	Alternate Benefit Program: transmittal of employee contributions	18 N.J.R. 1256(a)		
17:1-4.35	PERS: purchase of temporary service credit	18 N.J.R. 1450(b)		
17:2-6.1	PERS: application for retirement	18 N.J.R. 1451(a)	R.1986 d.390	18 N.J.R. 2059(a)
17:3-6.1	Teachers' Pension and Annuity Fund: filing of retirement application	18 N.J.R. 1517(b)		
17:4-6.1	Police and Firemen's Retirement System: retirement applications	18 N.J.R. 1795(a)		
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17:5-5.12	State Police disability retirant rule	17 N.J.R. 2746(b)		
17:6-3.1	Consolidated Police and Firemen's Pension Fund: administrative change			18 N.J.R. 1624(a)
17:7-1.4	Prison Officers' Pension Fund: election of commission members	18 N.J.R. 1352(b)		
17:7-3.1	Prison Officers' Pension Fund: retirement applications	18 N.J.R. 1796(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
17:9-6.1	State Health Benefits Program: "retired employee" status	18 N.J.R. 1451(b)		
17:9-6.6	State Health Benefits Program: coverage for surviving dependent	18 N.J.R. 1452(a)		
17:12-8.1	Standard third party contract	18 N.J.R. 1353(c)	Withdrawn	
17:16-17.1, 17.3	State Investment Council: limitations on common and preferred stock and convertible issues	18 N.J.R. 1353(a)	R.1986 d.356	18 N.J.R. 1838(a)
17:16-37.1	State Investment Council: repurchase agreements	18 N.J.R. 1353(b)	R.1986 d.357	18 N.J.R. 1838(b)
17:20-4.4, 5.1, 6.2, 6.4	Lottery Commission rules	18 N.J.R. 1927(a)		

(TRANSMITTAL 41, dated July 21, 1986)

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18:24-1.2	Sales and Use Tax: "periodicals"	18 N.J.R. 1928(a)		
18:26-8.7	Transfer inheritance tax waiver	18 N.J.R. 1520(b)		

(TRANSMITTAL 37, dated July 21, 1986)

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19:16	Labor disputes in public fire and police departments	18 N.J.R. 1358(a)	R.1986 d.355	18 N.J.R. 1839(a)
19:17-2.1, 3.1-4.5	PERC: Appeal Board procedure	18 N.J.R. 1521(a)		
19:25-1.7, 7.2, 7.3, 7.4	Surplus campaign funds	18 N.J.R. 1359(a)		
19:30-2	Economic Development Authority fees	18 N.J.R. 1094(b)	R.1986 d.311	18 N.J.R. 1614(a)
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(TRANSMITTAL 32, dated July 21, 1986)

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19:45-1.32, 1.43	Hard count room procedures	18 N.J.R. 1929(a)		
19:45-1.40	Manually-paid slot machine jackpots	18 N.J.R. 1360(a)	R.1986 d.398	18 N.J.R. 2059(b)
19:46-1.12, 1.19	Minibaccarat	18 N.J.R. 1096(a)	R.1986 d.308	18 N.J.R. 1614(b)
19:46-1.27	Aisle space and slot machines	17 N.J.R. 2533(a)		
19:47-2.9	Blackjack: insurance wagers	18 N.J.R. 1361(a)		
19:47-7, 8.2	Minibaccarat	18 N.J.R. 1096(a)	R.1986 d.308	18 N.J.R. 1614(b)
19:50-1.6	Purchasing and dispensing of wine	18 N.J.R. 160(a)	R.1986 d.364	18 N.J.R. 1840(a)
19:51	Advertising by licensees	18 N.J.R. 1258(a)	R.1986 d.366	18 N.J.R. 1841(a)
19:52	Casino entertainment	18 N.J.R. 1687(b)		

(TRANSMITTAL 24, dated July 21, 1986)

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